

*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 Wednesday, February 8th, 2006

Volume 120

Inquiry Proceedings



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**Appearances:**

Mr. Hersh Wolch, Q.C.,           **for** Mr. David Milgaard  
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., **for** Mr. Serge Kujawa  
Mr. Pat Loran, Esq.,           **for** the Saskatoon Police Service  
Mr. Aaron Fox, Q.C.,           **for** Mr. Eddie Karst  
Mr. Bruce Gibson and Ms. Rochelle Wempe, **for** the RCMP  
Mr. David Frayer, Q.C.,       **for** Minister of Justice  
  (Canada), The Hon. Vic Toews  
Mr. Alexander Pringle, Q.C., **for** Justice Calvin Tallis  
  (Retired)



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**CALVIN FORRESTER TALLIS, CONTINUED**

- BY MR. HODSON

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**Transcript of Proceedings**

(Reconvened at 9:05 a.m.)

COMMISSIONER MacCALLUM: Good morning.

ALL COUNSEL: Good morning.

COMMISSIONER MacCALLUM: Counsel, I'll read my reasons on the application on behalf of David Milgaard for an accommodation and, following that, Ms. Congram will distribute copies of the written reasons.

In support of his application for accommodation to David Milgaard in giving his evidence, Mr. Wolch called two witnesses, Dr. Patrick Baillie, a psychologist, and Mr. Joel Grymaloski, a therapist.

David Milgaard had signed an undertaking, doc. ID 332559, stating in part:

"If the Commissioner concludes that I am fit to testify, I undertake to appear and testify before the Commission of Inquiry on the terms directed by the Commission."

The proviso in that undertaking no longer applies. In abandoning his application to be excused, David Milgaard has conceded that he is fit to testify. The question remains, on



1           what terms? The accommodations sought are not  
2           based on what I might call logistical factors,  
3           such as ability to travel or conflicting  
4           commitments. Rather, they go to scope of  
5           questioning and the manner of taking evidence,  
6           limited, it is said, by Mr. Milgaard's emotional  
7           state.

8                       It is worth noting that his  
9           stated reluctance to testify at the Inquiry is a  
10          very recent thing. I have seen a news report  
11          from 1991 in which he is quoted giving cogent and  
12          articulate reasons for wanting a public inquiry.  
13          None of the symptoms of unease reported in Mr.  
14          Milgaard by Mr. Grymaloski relate to the prospect  
15          of testifying at the public inquiry until October  
16          2005.

17                     Background on this application  
18          reaches back to October of 2004 when Commission  
19          Counsel informed Mr. Wolch that he wanted Mr.  
20          Milgaard as a witness. To have waited until  
21          October of 2005 to announce his refusal to  
22          testify is both presumptuous and discourteous.

23                     Further notable dates and  
24          transcript references are:

25                     October 25th, 2005 - pages 16,929 to 16,937



November 8th, 2005 - pages 18,530 to 18,534

At page 18,534 condition number  
3 for a requested adjournment speaks of the  
motion to be filed by Mr. Wolch asking for Mr.  
Milgaard to be excused from testifying:

"Mr. Milgaard will undertake to abide by  
the Commissioner's ruling on the above  
motion. If he is found to be fit he  
will testify or lose his standing."

The next date is:

January 16th, 2006 - pages 21,36 to 21,238

January 24th, 2006 - page 22,309

January 30th, 2006 - pages 23,004 to 23,129,  
which covered a modified application for  
accomodation.

Proposed accommodation from other counsel was  
filed at that time. And, finally, on:

January 31st, 2006 - pages 23,135 to 23,344.

The family therapist, Joel  
Grymaloski, holds a Masters in clinical  
psychology. He began seeing David Milgaard in  
1995 and has had, I find, only sporadic contact  
with him since, consisting of occasional visits  
of an informal kind, usually outside the office.  
Mr. Grymaloski refused to bring his file to the



1 Inquiry, citing confidentiality, although it was  
2 made clear to counsel earlier that if the files  
3 of treating professionals were not made  
4 available, it would affect the weight of their  
5 evidence.

6 The therapist's report is doc.  
7 ID 332554. It is notable for its lack of  
8 clinical detail, not surprisingly, because Mr.  
9 Grymaloski did not treat Mr. Milgaard, saying  
10 that all his time with him has been spent trying  
11 to win his confidence.

12 The last paragraph of the  
13 report reads:

14 "For David Milgaard to appear at this  
15 Inquiry at this time, would most  
16 probably, undo the last 10 years of his  
17 work and effort to stabilize his life  
18 and move past his traumatizing past. As  
19 such it would throw him back into the  
20 dark chasm that was so long a part of  
21 his life and that he is so valiantly but  
22 slowly, climbing his way out of."

23 That, I find, is more the plea of an advocate  
24 rather than the assessment of a treating  
25 psychologist. Later in his testimony Mr.





1 Grymaloski acknowledged that he was an advocate  
2 for Mr. Milgaard's health and well-being.

3 The report shows a diagnosis of  
4 Post Traumatic Stress Disorder but does little to  
5 demonstrate it, relying mainly upon the  
6 undisputed ordeal of his long imprisonment. One  
7 difficulty I have, in terms of weight, is that  
8 the symptoms are described but not documented,  
9 leaving counsel with no means to verify or  
10 challenge the accuracy of the report. Another  
11 problem is that, as Mr. Grymaloski concedes,  
12 there is no literature in support of a wrongful  
13 conviction as the traumatic event for PTSD.

14 It is interesting to note that  
15 on October 25th, 2005, the day after Mr. Milgaard  
16 made his appearance before the cameras in this  
17 hearing room, he visited Mr. Grymaloski's office  
18 in Vancouver to announce that "there was no way  
19 he was going to the Inquiry".

20 What the report proves, if more  
21 proof were needed, is that Mr. Milgaard was  
22 determined not to give evidence at this Inquiry.  
23 Mr. Grymaloski testified that his client has  
24 "quite an issue with people in authority".

25 I accept that. It explains his



1           determined effort to avoid testifying.

2                       Also of interest is his  
3           evidence that after reading the report, Mr.  
4           Milgaard was not pleased with the diagnosis of  
5           PTSD. Mr. Grymaloski said that Mr. Milgaard does  
6           not like to think that this has affected him in  
7           any way. Why then is he asking, through counsel,  
8           for special treatment on the basis that he has a  
9           trauma induced illness?

10                      Mr. Grymaloski said that he  
11           opened a file on David Milgaard but did not  
12           record clinical findings, just observations. I  
13           suspect that there were no clinical findings. He  
14           admitted that he did not follow the common  
15           protocol of subjective history, objective  
16           findings, assessment and plan. And he has  
17           withheld his file, I find, without adequate  
18           excuse, relying on confidentiality when agreeing  
19           to testify on behalf of Mr. Milgaard at the  
20           request of the latter's counsel. He says, of his  
21           file, "I'm not sure it would have helped".

22                      That, in the first place, is  
23           not for him to say, but it is revelatory in that  
24           it is an admission that his file contains nothing  
25           useful. His report is based only on observations



1 made of Mr. Milgaard during informal visits.

2 Asked when these were, Mr. Grymaloski said:

3 in 1995 - 5 visits

4 in 1996 - 4 or 5 visits

5 in 1997 - 1 or 2 visits

6 in 1998 - none

7 1999 - 1 visit

8 2000 - perhaps 3 visits

9 2001 - perhaps 1 visit

10 2002-2004 - none

11 We know that since then and  
12 prior to the preparation of his report, Mr.  
13 Milgaard visited him only once, on October 25th,  
14 2005, and then only to express his determination  
15 not to attend the Inquiry.

16 Mr. Grymaloski has never had  
17 hospital records, or even admission or discharge  
18 summaries. That explains why Mr. Wolch has never  
19 produced any, despite his assertion that Mr.  
20 Milgaard has been hospitalised every time he has  
21 been required to speak about his experiences.

22 Dr. Baillie has suggested that  
23 both the manner of taking testimony and the scope  
24 of questioning are limited by Mr. Milgaard's  
25 psychological frailty and he is at risk of being



1           harmed by having to recall traumatic events.

2                       The applicant seems to be  
3           saying, as I understand Dr. Baillie:

4                       "I am fit to testify, but not in a  
5                       formal setting and only in response to  
6                       questions which do not suggest any  
7                       personal responsibility for my own  
8                       conviction."

9                       Before considering Dr.  
10           Baillie's evidence, let me say that I expected an  
11           assessment based upon current medical records and  
12           interviews with the applicant, who, as stated,  
13           had a year to make known to us his unwillingness  
14           to testify or to justify his need for  
15           accommodation.

16                      And the applicant has withheld  
17           from us vital evidence, namely his medical  
18           records (which Commission Counsel and others  
19           requested in writing on December the 5th,  
20           December 13th, and December the 16th, 2005  
21           (filed) which we had every right to expect. (And  
22           I refer you to pages 16,820 of the transcript))  
23           and has declined to be interviewed by Dr.  
24           Baillie.

25                      As a result, Dr. Baillie has



1 not been able to provide an assessment, as such,  
2 but has offered a commentary or opinion in his  
3 letter of the 13th of January, 2006, filed as  
4 doc. ID 335359. At page 7:

5 "In short, if other sources of  
6 information were available to me,  
7 including more recent medical records  
8 and, possibly, Mr. Milgaard's own words  
9 if he was willing to meet with me, then  
10 I could be in a better position in terms  
11 of providing the assessment needed by  
12 the Commission."

13 Dr. Baillie is eminently qualified for our  
14 purposes, both by experience and training, and  
15 his report, which he was led through in direct  
16 examination, makes the best of the information he  
17 had. He spoke to Mr. Grymaloski, Mr. Milgaard's  
18 therapist, who diagnosed his patient with PTSD.  
19 Dr. Baillie agrees, based on a reading of  
20 historical documents, including medical records  
21 pre-dating 1994. His evidence is not persuasive  
22 being both derivative (from Mr. Grymaloski) and  
23 dated.

24 Let us be clear that Dr.  
25 Baillie did not diagnose PTSD, Mr. Grymaloski



1 did, based not on a "forensic-style assessment",  
2 but on the basis of "clinical observation and  
3 professional experience."

4 "Nonetheless" says Dr. Baillie,  
5 "I have no quarrel with the diagnosis in this  
6 case".

7 At pages 4 and 5 of the report,  
8 Dr. Baillie describes the four core features of  
9 PTSD. The first of these is:

10 "... exposure to a traumatic event that  
11 involved death or serious injury or  
12 threat to physical integrity, and the  
13 person's response to the event involved  
14 intense fear, helplessness or horror  
15 ..."

16 Asked where such an experience  
17 was had by David Milgaard (who has said that he  
18 was not at the scene of the Miller murder, and  
19 could not therefore have been exposed to it), Dr.  
20 Baillie explained (as I understand him) that the  
21 definition was wide enough to comprise Mr.  
22 Milgaard's conviction and what happened to him as  
23 a result. While conceding that the literature  
24 contained no example of a conviction, per se, as  
25 the "traumatic event", Dr. Baillie said that the



1 event was not discrete - but rather a series of  
2 bad experiences which flowed from it.

3 Dr. Baillie frankly conceded  
4 that his opinion was limited by the lack of an  
5 assessment. He says (by way of reminder to me, I  
6 suppose) that a balancing test must be  
7 performed - one which weighs the potential value  
8 of his evidence against the risk of damaging his  
9 mental health.

10 I find that Dr. Baillie was  
11 seriously hampered in his work by lack of  
12 information he should have had from David  
13 Milgaard's medical records and from interviewing  
14 him. One example was the assumption he worked on  
15 that over the past ten years Mr. Milgaard was  
16 hospitalised as a result of recounting his  
17 experiences. There is no evidence of this. And  
18 the fact is that David Milgaard successfully gave  
19 evidence under oath on examination for discovery  
20 in 1996, doc. ID 198515, and pronounced himself  
21 healthy. Dr. Baillie did not read the  
22 transcript.

23 Mr. Milgaard also testified  
24 before the Supreme Court of Canada in 1992, not,  
25 to be sure, without discomfort, but he did it.



1           The doc ID is 182051.

2                           Although aware of David  
3           Milgaard's televised press conference in the  
4           Inquiry hearing room on October 24th, 2005, Dr.  
5           Baillie did not view it. He relied on Mr.  
6           Wolch's assurance that Mr. Milgaard was reading  
7           from a prepared text. That helped, I suppose,  
8           but he also took questions from reporters about  
9           this Inquiry and answered emphatically and  
10          apparently without difficulty. Had Dr. Baillie  
11          seen this, as I did in the broadcast, I wonder if  
12          he would be as apprehensive about Mr. Milgaard's  
13          fragility. In the absence of a formal  
14          assessment, and with the lack of recent evidence,  
15          I would be reluctant to accept the label of Post  
16          Traumatic Stress Disorder as a condition  
17          currently applying to Mr. Milgaard.

18                          Dr. Baillie, I think, has been  
19          persuaded that nothing of value remains to be  
20          learned from Mr. Milgaard who has already  
21          answered "thousands of questions". Possibly he  
22          is correct, but that is not for him to say. The  
23          second half of the test is more in his line - the  
24          probable harm to Mr. Milgaard. Here, his opinion  
25          is forcefully expressed in saying that if





1           questioning goes beyond general inquiries of  
2           knowledge of an event and seeks to find out why a  
3           certain thing happened or if it happened, Mr.  
4           Milgaard might conclude that he is being asked to  
5           share the blame, at least in part, for his  
6           conviction and will be devastated. But one must  
7           acknowledge the obvious. The point of the  
8           questions will not be whether Mr. Milgaard killed  
9           Gail Miller, but whether his words or actions led  
10          the authorities to believe he did, or at least to  
11          suspect him; and secondly whether it should have  
12          led to an earlier reopening of the case.

13                 As to Mr. Milgaard's possible  
14          devastation, that is a matter for the exercise of  
15          the Commission's discretion. By analogy the  
16          court proceedings, complainants or plaintiffs,  
17          often deeply traumatized children or women, are  
18          asked hard questions about intensely personal  
19          matters. Proof of a civil claim requires it and  
20          in criminal cases, the public interest demands  
21          it. If the witness cannot answer, discretion is  
22          exercised to alleviate the pain and embarrassment  
23          of testifying in public. Sometimes, the  
24          testimony does not come and the Court must then  
25          decide if the onus has been met.



1 We would not have required Mr.  
2 Milgaard's testimony if we did not believe that  
3 the public interest required it. I refer you to  
4 pages 16822 and following.

5 In his report, Dr. Baillie  
6 suggested accommodations which might permit the  
7 reception of Mr. Milgaard's evidence without  
8 causing him to bolt.

9 Amongst these is an audio/video  
10 examination by Commission Counsel in the  
11 presentation of Mr. Wolch. Referred to the  
12 method suggested by other counsel with standing,  
13 Dr. Baillie agreed that it was a reasonable  
14 middle ground. I observe, however, that it would  
15 permit, subject to my discretion, questions to be  
16 put to Mr. Milgaard which call upon him to  
17 explain alleged words or actions which put him  
18 under suspicion or which might have affected the  
19 reopening. If he did not say or do what is  
20 alleged, he can say so. If he did or said what  
21 is alleged, he can, if he wishes, offer an  
22 explanation. But let him be under no allusion  
23 that which is relevant to the terms of the  
24 reference may be asked.

25 Commission Counsel has gone to



1           some pains to disclose his areas of interest.  
2           They are relevant. I am happy to say that he  
3           enjoys the confidence of all counsel for his tact  
4           and sensitivity to witnesses' concerns. As well,  
5           he has successfully met with Mr. Milgaard in  
6           recent months, so I am satisfied that he would  
7           cover the ground for all counsel were he to  
8           examine Mr. Milgaard under some form of  
9           accommodation.

10                           It appeared from  
11           cross-examination that David Milgaard, during the  
12           1990's, gave paid presentations about his story  
13           to various groups including schools and  
14           universities. Dr. Baillie was not aware that  
15           since his release, Mr. Milgaard had also made  
16           public accusations against Saskatchewan Justice.

17                           It has not been satisfactorily  
18           explained to me why David Milgaard, who has  
19           functioned adequately in other venues, both  
20           public and legal, should find it so upsetting to  
21           testify at this Inquiry that he would suffer  
22           emotional harm or perhaps bolt.

23                           I understand from Mr. Wolch's  
24           re-examination of this witness that although he  
25           could agree to the suggested accommodation, his



1 client will not. That is an uncomfortable  
2 position for counsel. Mr. Milgaard has already  
3 undertaken to testify on terms set by the  
4 Commission. Mr. Wolch has no argument to present  
5 against the suggested terms and his own witnesses  
6 support them.

7 In argument, Mr. Wolch proposed  
8 acceptance of past testimony by Mr. Milgaard as  
9 his evidence with counsel to suggest questions on  
10 any remaining, uncovered areas.

11 That would be a departure from  
12 our practice. We necessarily make use of past  
13 testimony where a witness is dead or simply  
14 cannot testify for some other reason. But the  
15 best evidence is potentially, at least, to be had  
16 viva voce. It helps me observe the witness, and  
17 it affords the chance to cross-examine. These  
18 are not advantages to be foregone simply because  
19 a witness does not want to testify, saying that  
20 he has nothing to add. That is our decision to  
21 make before calling him, not his. Furthermore,  
22 the scope of questioning in the first instance is  
23 within the Commission's exclusive domain. Where  
24 there is cross-examination, counsel for parties  
25 with standing, of course, choose their own



1 questions. If an accommodation were to be  
2 extended which did not allow for  
3 cross-examination, such as the one suggested  
4 here, it would be reasonable to allow counsel to  
5 have questions put by Commission Counsel which  
6 had not been asked at the first session, subject  
7 to vetting by the Commissioner.

8 One counsel, although he  
9 favoured the proposed accommodation, asked for  
10 the right to cross-examine personally if  
11 unsatisfied with aspects of Commission Counsel's  
12 examination. This has the potential to render  
13 nugatory the curative effect of the  
14 accommodation, so I would not permit personal  
15 cross-examination. The proposal, as it stands,  
16 appears to meet the possible need for further  
17 questions after the first session.

18 Mr. Wolch' witnesses, both  
19 psychologists, approved of the proposal. Mr.  
20 Wolch reported that his client would not agree.  
21 The best he would do involved written questions  
22 and answers, but for reasons stated, I will not  
23 accept that.

24 The onus of showing the need  
25 for accommodation lies with Mr. Milgaard. He



1 alleges that testifying will make him sick and  
2 even proving the allegation by attending upon his  
3 own expert will make him sick. He has refused,  
4 without any reason, to the release of hospital  
5 records by means of which we could test his  
6 allegation (as expressed by Mr. Wolch) that by  
7 speaking about his experiences in the past has  
8 caused him to be hospitalized. His onus of proof  
9 has not been met by the evidence of Dr. Baillie  
10 and Mr. Grymaloski.

11 Accordingly, the need for  
12 special terms for testifying has not been made  
13 out. Were it not for the accommodation to which  
14 other counsel would still consent, I would  
15 dismiss the application and call upon Mr.  
16 Milgaard to appear before the Commission to be  
17 sworn and to testify as he undertook to do. But  
18 the suggested accommodation is still open and  
19 there is no dispute amongst all counsel,  
20 including Mr. Wolch, that I could order it  
21 without the ambit of the Notice of Motion.

22 I will do so, but lest there be  
23 uncertainty about the consequences of  
24 non-compliance, I have already indicated that  
25 refusal to testify will cost Mr. Milgaard his



1 standing. If he continues to refuse even the  
2 proposal to receive his evidence by audio/visual  
3 recording, he will lose standing.

4 My order is that he appear at  
5 Vancouver on the 6th of March, 2006 at a place to  
6 be designated by Commission Counsel and to remain  
7 there to give evidence until its completion  
8 according to the terms of the proposal, doc ID  
9 335366.

10 Mr. Wolch may be present as  
11 counsel for the witness, but shall not be  
12 entitled to suggest answers or put questions to  
13 the witness.

14 Any objections to the questions  
15 may be dealt with by the Commissioner by  
16 telephone.

17 Mr. Hodson?

18 **CALVIN FORRESTER TALLIS, continued:**

19 **BY MR. HODSON:**

20 **Q** Thank you, Mr. Commissioner, we will continue with  
21 Mr. Tallis' evidence.

22 Yesterday, Mr. Tallis, we  
23 finished going through your cross-examination, or  
24 how you dealt with Albert Cadrain, and there's  
25 just one area that I wanted to just touch on that



1 I neglected to.

2 We talked yesterday about the  
3 compact and the fact that David Milgaard had  
4 acknowledged that event to you and I note in your  
5 cross-examination of Mr. Cadrain at trial and in  
6 his evidence-in-chief Mr. Cadrain said yes, on the  
7 trip out of Saskatoon Nichol John found a compact  
8 and said whose is it and that David Milgaard  
9 grabbed it and threw it out the window. In your  
10 cross-examination you did not raise that at all  
11 and I'm just wondering if you can, and I  
12 appreciate you've explained generally, but just  
13 with respect to Mr. Cadrain, explain why you would  
14 not have asked him any questions on that?

15 A Well, in light of my instructions, it would not  
16 lie in my mouth to suggest something to the  
17 contrary.

18 Q And so did you then make the decision not to bring  
19 up the subject matter again, if I can put it that  
20 way, in front of the jury?

21 A With him, that's correct.

22 Q Now, yesterday when we adjourned we were dealing  
23 with Ron Wilson's first statement, and I think we  
24 went through, this was the March 3rd, 1969  
25 statement, the first one that he gave to Inspector





1 Riddell, that did not contain any incriminating  
2 information with respect to David Milgaard, but I  
3 think you described it as containing significant  
4 omissions, and I think in one case to be  
5 inconsistent with what David Milgaard had told  
6 you; is that correct?

7 A Yes.

8 Q And the one inconsistency was that Ron Wilson had  
9 said in his statement that there was only one  
10 occasion where he and David were apart, that was  
11 for a couple of minutes, and that's when, at the  
12 Cadrain house, David drove around the block;  
13 correct?

14 A Yes.

15 Q And I think you told us, and we'll come back to  
16 this a bit later, but just when we broke, that I  
17 think I asked you the question about use of that  
18 statement and you told us that it wasn't as simple  
19 as simply putting that to the witness and saying  
20 isn't this the truth; is that correct?

21 A That's correct.

22 Q So now let's go to the second statement and that  
23 is 065361. Now, we have heard, and this is the  
24 typewritten version, and just for the record, this  
25 was given on May 23rd, 1969, I believe to



1 Detective Karst, and it was given after a  
2 polygraph session with Inspector Roberts, and then  
3 the next day, May 24th, and I'll call this up in a  
4 moment, there was a second statement given, a  
5 supplemental statement. Now, at this Commission  
6 of Inquiry we have heard a fair bit of evidence  
7 and reviewed police reports and heard from police  
8 officers about the sequence of events of May 22,  
9 23 and 24, 1969 and in particular have gone  
10 through in some detail about what was discussed by  
11 Mr. Wilson with various officers, what was said by  
12 him that was incriminating before he met with Mr.  
13 Roberts and what was said after he met with Mr.  
14 Roberts.

15 Can you tell us, again going  
16 into the trial, I think you told us you would have  
17 had the statements, what information would you  
18 have had about the circumstances under which Ron  
19 Wilson gave his three statements? Focus on the  
20 latter two, the May 23rd and 24th.

21 A Yes. As I told you, I had arranged to interview  
22 Mr. Roberts because I was interested in trying to  
23 find out the circumstances that existed at that  
24 sort of phase or chapter, but I didn't feel that  
25 he was helpful in any way from David's



1 perspective. Quite the contrary.

2 Q Right. And as far as -- let me ask it this way.  
3 Looking at the documents and some of the evidence  
4 we have heard, it would appear that at least the  
5 most incriminating aspects of Ron Wilson's  
6 statement came after he met with Inspector Roberts  
7 and I'm wondering if that was something that you  
8 would have been aware of at the time of trial?

9 A Well, I didn't have any access to police reports  
10 outlining the background. I certainly had  
11 interviewed Mr. Roberts with a view to trying to  
12 capture the atmosphere and background under which  
13 omissions or statements were made, but as I told  
14 you yesterday, he basically represented himself as  
15 an expert polygraph operator who just dealt with  
16 the technical aspects of it. I tried to elicit  
17 from him the questions that were put before and  
18 after, if any, and he didn't have any, or he  
19 didn't volunteer any information about that and  
20 emphasized that he just ran the polygraph test.

21 Q And based on that, what did he tell you about what  
22 was tested?

23 A Well, he sort of, he summed it up without any  
24 details, because he didn't go into details with  
25 me, that Wilson was telling the truth.



1 Q So let me just pause there. The May 23rd or 24th  
2 statements, and maybe we can deal with those  
3 together, I think the May 24th supplemented the  
4 May 23rd.

5 A Yes.

6 Q Was it your understanding, from what Mr. Roberts  
7 told you, that he tested the veracity of Ron  
8 Wilson's May 23rd and 24th statements, or the  
9 contents of it anyway, and verified it as being  
10 truthful?

11 A Yes, that was the gist of what he told me, and he  
12 kept going out of his way to emphasize it, but I  
13 tried to elicit from him, well, what questions did  
14 you put, either by way of preliminary questions,  
15 and even I was looking for what I would call, for  
16 want of a better word, the virtue testing  
17 questions, and then any subsequent questions,  
18 because I was quite aware of the fact that in sort  
19 of post-polygraph discussions, sometimes that's  
20 when conversation is struck up, but I had no  
21 success in getting anything like that out of him.

22 Q Would you have been familiar at this time about  
23 how polygraph operators worked in the sense of how  
24 they set up the questions and how they went about  
25 conducting a polygraph?



1           A           Yes, much more familiar than I am now, but I had  
2                       had some involvement with the use of a polygraph  
3                       much before, quite a bit before that, and at that  
4                       time I had a good sense of the type of preliminary  
5                       questions that were put and then following it  
6                       through, and also with respect to the habit of  
7                       often having what I will call a little chat off  
8                       the record after the results. I don't know  
9                       whether you follow me or not on that.

10          Q           Yes. And I think we've heard actually some  
11                       evidence from Mike Robinson who is a polygraph  
12                       operator and we saw some reference, and I'll come  
13                       back to this, when Inspector Roberts testified at  
14                       the Supreme Court, but what Mr. Robinson testified  
15                       about is that often the polygraph is used as a  
16                       tool and that it's what comes after the polygraph  
17                       test that is of real value to the authorities. Is  
18                       that what you are referring --

19          A           Well, I wasn't aware that Mr. Robinson had so  
20                       testified because I haven't read his evidence.

21          Q           Yes.

22          A           Indeed, I don't think I even know that he was  
23                       called here, but that certainly is my recollection  
24                       going back many, many years, and of course through  
25                       the years I suppose the use of a polygraph evolved



1 to some extent, but in that era I am quite  
2 convinced that that was part of the technique, and  
3 I refer not only to the pre-test questioning, but  
4 the sort of post-polygraph test discussions.

5 Q Were you suspicious at the time, again the time of  
6 the trial and the prelim and your dealings with  
7 Inspector Roberts, that the polygraph may have  
8 been used as a tool by Inspector Roberts to cause  
9 Mr. Wilson perhaps to enhance or change his  
10 evidence?

11 A I'm quite sure at the time I was. I can't now  
12 point to anything in my memory that would say that  
13 definitely, but it's certainly a reasonable  
14 inference to me at this stage that that would be  
15 so. It was not admissible in evidence, so it  
16 follows from that it would be used as an  
17 investigative tool.

18 Q Do you recall whether you had a concern that it  
19 may have been the polygraph session and the use of  
20 the polygraph that may have caused Ron Wilson to  
21 give incriminating evidence against David Milgaard  
22 in his statement?

23 A Looking back, I can't pinpoint anything in my  
24 memory on that, but the way you have put it, I  
25 would say that that sounds reasonable to me, and



1           very likely was the situation.

2           **Q**       And I appreciate, Mr. Tallis, that you are going  
3                   by memory without the benefit of your notes, but I  
4                   think, and I'll show you a couple of these  
5                   documents in a moment, you asked for Inspector  
6                   Roberts to be flown into Saskatoon so that you  
7                   could interview him at the time of the preliminary  
8                   hearing and I think as well as at trial --

9           **A**       Yes.

10          **Q**       -- as a possibility. Would it be fair to say that  
11                   your purpose in doing so was to interview and  
12                   canvass with him to try and learn more about the  
13                   circumstances under which Ron Wilson gave his  
14                   incriminating statements?

15          **A**       Yes, that's correct.

16          **Q**       And I think you told us that what Inspector  
17                   Roberts said to you was he simply administered the  
18                   test and did not elaborate on anything before or  
19                   after; is that fair?

20          **A**       That's a fair assessment. In other words, he  
21                   represented himself, I hesitate to say, as a mere  
22                   technician, but that's the way it came across.

23          **Q**       So in other words, saying here's what Ron Wilson  
24                   said, he incriminated David Milgaard, I ran it  
25                   through the machine and it came out true?



1 A That's right.

2 Q Okay.

3 A And I think I was interested in the virtue testing  
4 aspect too as I call it, test questions, but he  
5 really didn't, he did not indicate what questions  
6 he used and so forth, that was just blank.

7 Q And by virtue testing, and I think we heard a bit  
8 about this from Mr. Robinson, that it's a test  
9 where you ask the witness to lie to a question so  
10 you can see how the machine picks it up; is  
11 that --

12 A Yes. I'm sure I'm not using the correct technical  
13 term, but I use the term virtue testing.

14 Q That may well be the term.

15 A I doubt that it is, but that's sort of a term I  
16 used in talking to you to convey the meaning that  
17 I was trying to --

18 Q And I think in Mr. Robinson's case, in his  
19 evidence he said sometimes the polygraph, the  
20 thought of a polygraph itself will cause some  
21 witnesses to change their evidence before they  
22 even go through the polygraph. Is that something  
23 that you would have been aware of?

24 A I can't say at this time, but I would think that  
25 in some circumstances it would certainly be very





1           intimidating.

2           Q       And is it fair to say that based on what Inspector  
3                    Roberts told you in your interview with him, that  
4                    if he were called as a witness, the evidence that  
5                    he would give would be, as you've described, I was  
6                    a mere technician, I tested Ron Wilson's  
7                    incriminating statement with the polygraph and he  
8                    passed as being truthful, or something of that  
9                    nature?

10          A       Yes.

11          Q       And I take it, sir, and I think you told us this  
12                    yesterday, that would be something that would not  
13                    be helpful to David Milgaard's case?

14          A       No, and if the Crown had tried to call him for the  
15                    purpose of oath helping, if I may use that term, I  
16                    certainly would have resisted it.

17          Q       Now, let's talk about, and again I appreciate  
18                    we're looking back now with the benefit of  
19                    hindsight and with more information than what you  
20                    had, would one approach with Inspector Roberts  
21                    that you may have contemplated, at least with the  
22                    interview, is to try and get some evidence that  
23                    might explain why Ron Wilson would have changed  
24                    his story after or in the course of the polygraph?

25          A       I'm sure that I was wondering about that, but once



1           again, without my notes, I can't pinpoint anything  
2           for you, but your suggestion is certainly a  
3           reasonable one and makes sense to me.

4       Q       Did you believe Inspector Roberts when he told you  
5           what he did with Ron Wilson, that he was being  
6           completely truthful with you?

7       A       I didn't think he was being frank with me,  
8           particularly on the questioning, but that was  
9           based on some previous experience I had had with  
10          how a polygraph is done.

11      Q       Okay.

12      A       And that's why I -- I'm sure I revisited those  
13          points with him during the discussion, but he held  
14          fast to his view, or stated position that he was,  
15          to use the word I used a moment ago, a mere  
16          technician.

17      Q       At the Supreme Court reference Inspector Roberts  
18          testified about his session with Ron Wilson, I  
19          won't call it up, but I can summarize it for you,  
20          and what he said at the Supreme Court is that he  
21          called in Ron Wilson, that to that point Ron  
22          Wilson had not implicated David Milgaard in the  
23          crime yet, although he may have said some things  
24          that were suspicious, that he did not believe Ron  
25          Wilson when he said he didn't know anything about



1 the murder and that he was trying to get the truth  
2 out of Ron Wilson, and what he thought the truth  
3 was is that David Milgaard had killed Gail Miller,  
4 Ron Wilson knew that, and that he tested Ron  
5 Wilson on the polygraph and Ron Wilson denied, or  
6 did not provide any incriminating information  
7 against David Milgaard; in other words, did not  
8 say the things that are in his statement. There  
9 was some debate about the questions, it may have  
10 been, "Do you know who killed Gail Miller? Do you  
11 suspect who killed Gail Miller?" there was some  
12 debate over that, and I think that's what Mr.  
13 Roberts said he asked, and that after that test  
14 Inspector Roberts told Mr. Wilson and testified at  
15 the Supreme Court that he had failed on two  
16 questions; namely, the "do you know" and "do you  
17 suspect", although there's a bit of a debate over  
18 that, and that it was after that in telling  
19 Mr. Wilson, and Inspector Roberts also testified  
20 that before he even conducted the test he told Ron  
21 Wilson that he didn't believe him. After the  
22 first test he said that he was lying on two points  
23 and it was at that point that Ron Wilson then gave  
24 incriminating evidence against David Milgaard, and  
25 again I appreciate that that's just a summary.



1 Did Inspector Roberts tell you anything of that  
2 sort when you interviewed him?

3 A Most definitely not.

4 Q And if you would have been aware of, and again I  
5 appreciate that I'm just giving you a quick  
6 summary, but if you had been aware of those  
7 circumstances, can you tell us what you might have  
8 done or thought about doing at the time, and I  
9 appreciate it's difficult to go back and try and  
10 pick up, take a piece of information that you  
11 didn't know about, but can you elaborate on how  
12 that might have affected what you did with Ron  
13 Wilson?

14 A Well, that would have led me on a chain of inquiry  
15 and it would have opened up potential areas for  
16 cross-examination.

17 Q For Mr. Wilson?

18 A Yes.

19 Q Okay. At the time of trial, again based on your  
20 interview with Inspector Roberts, and any other  
21 information you had at the time, was it your  
22 understanding that the May 23rd and/or May 24th,  
23 1969 incriminating statement that Ron Wilson gave  
24 had been verified by the lie detector? In other  
25 words, that Ron Wilson, when he made these



1           incriminating statements, passed the polygraph  
2           test?

3           A       That's correct.

4           Q       And I take it, would that -- you had told us  
5                   earlier that you found Mr. Wilson to be  
6                   treacherous. Can you tell us what was going  
7                   through your mind at the time, how you reconciled  
8                   or what you thought about this purported polygraph  
9                   approval, if I can call it that, of his statement?

10          A       Well, looking back, I know that I would have been  
11                   very cautious about putting any questions that  
12                   would elicit a reference to the polygraph or  
13                   polygraph test in the presence of the jury because  
14                   of the potential inference that might be drawn  
15                   from that. Now, that's trying to reflect back on  
16                   my mental processes, but as I've told you any  
17                   number of times, it's very difficult to  
18                   specifically recall those processes or  
19                   microanalyse or microdissect them, but I know that  
20                   the last thing in the world I would have wanted  
21                   would have been a mention of the polygraph because  
22                   the inference I think would be that he had passed  
23                   it and I wasn't prepared to concede in any way  
24                   that he was telling the truth and I didn't want to  
25                   leave that impression.



1 Q So let's take that a bit further. I think what  
2 you have said, and I don't think there's any doubt  
3 that the polygraph evidence was not admissible as  
4 oath-helping or proof of Ron Wilson's statement,  
5 correct, that wasn't admissible to the jury to say  
6 "lookit, you must --"

7 A That's correct, unless counsel, in  
8 cross-examination, opened the door, and then you  
9 can't be heard to complain.

10 Q And as far as getting that door open, for example  
11 if it was a question or if evidence came out that  
12 Mr. Wilson said, "well I was in the room hooked up  
13 to that polygraph machine" --

14 A Yeah.

15 Q -- that would be the type of information that a  
16 jury might say well (a) he must have been  
17 polygraphed, and (b) he must have passed it; is  
18 that the concern?

19 A That certainly is.

20 Q Okay. So putting that aside, and I think I hear  
21 you on that, saying I can't go there because even  
22 the mention of Ron Wilson being polygraphed will  
23 add to his credibility or may add to his  
24 credibility in the eyes of the jury; is that fair?

25 A Yes.



1       Q       Now let's contrast that with what we talked about  
2               in Inspector Roberts and trying to get into  
3               discrediting Ron Wilson's statement by saying that  
4               it was this polygraph process that may have  
5               improperly influenced or caused him to give a  
6               statement --

7       A       Yeah.

8       Q       -- that may not be reliable. And I think, and I'm  
9               summarizing a bit, but that, I think you said,  
10              could have been said to be one of your tacks or  
11              one of your thoughts at the time?

12      A       Yes.

13      Q       And that would require you to get into the fact  
14              that a polygraph was undertaken in the presence of  
15              a jury, is that -- in the presence of the jury?

16      A       Yes.

17      Q       And so if you take the risk of trying to establish  
18              that the polygraph was somehow misused in the  
19              process and caused Ron Wilson to give an  
20              untruthful statement, I take it the risk would be,  
21              if you didn't succeed, that you would be helping  
22              the credibility of his evidence?

23      A       Yes. And there is a further aspect to that.  
24              Cross-examination of that nature, which I would  
25              have considered very risky for the reasons I've



1 told you, might also open the door for the Crown  
2 to elect to call Mr. Roberts, not for the purpose  
3 of describing the polygraph test or anything like  
4 that, but for the purpose of demonstrating to  
5 testify that he didn't put any pressure on the  
6 witness during the course of the interview.

7 Q And, based on your interview with Inspector  
8 Roberts, I think you told us that's something you  
9 wanted to avoid?

10 A Yes. I mean, tactically, one wouldn't want to do  
11 something that would place the Crown in a position  
12 where they would say "I'm forced to call Dr. --  
13 Mr. Roberts".

14 Q Were you concerned that --

15 A But, you know, these are things that sort of go to  
16 and fro during the course of preparation and  
17 proceedings and so on, and that's why it's very  
18 difficult for me, years later, to articulate this  
19 in an orderly fashion, if I may use that term.

20 Q Just before we move off of Inspector Roberts, in  
21 addition to the fact that he said "I was a  
22 technician, I simply ran the test and simply  
23 verified the statement", did you have any other  
24 concerns or get any other sense that he might go a  
25 bit further and say anything that might be harmful





1 to your client's case?

2 A Well, let's put it this way, I was very leery.

3 Q Of him?

4 A That I just didn't think he was being frank with  
5 me. I don't like to malign a person but you've  
6 asked me for my assessment and, accordingly, I had  
7 to take that into account.

8 Q And, again, did you have concerns that, if you  
9 took steps that resulted in him being called as a  
10 witness, that there might be things that he didn't  
11 tell you in the interview that he might say that  
12 might be harmful to your client's position?

13 A I think that, if I did that, it would be, in  
14 effect, inviting an attempt to oath-help.

15 Q Okay.

16 A And that anything, even though it technically was  
17 not oath-helping, would be detrimental to David's  
18 interests.

19 Q Okay. If we can now go through, this is now the  
20 second statement, and again I want to go through  
21 this statement because I will have some questions  
22 when we go through what you did at trial and at  
23 the prelim with respect to Ron Wilson's statement,  
24 and that certainly has been an issue in this  
25 Inquiry as to how these statements came to be and



1           how they were used. So if we can go through, and  
2           again this is the typewritten version, and again  
3           I'll repeat it, Mr. Tallis, but this, the evidence  
4           that we have heard is that this statement was  
5           provided -- let me just back up -- that on the two  
6           days before Ron Wilson was subjected to the  
7           polygraph he was interviewed by a number of  
8           Saskatoon police officers, I think a Regina police  
9           officer, an RCMP officer, and gave some  
10          information, further information regarding the  
11          events of January 31, about getting stuck, seeing  
12          a lady, things of that nature, but he did not,  
13          prior to the polygraph and prior to this  
14          statement, at least according to the evidence  
15          we've heard, he did not give direct evidence  
16          implicating David Milgaard, namely the admission  
17          in Calgary, the comment "I fixed her", and the  
18          witnessing blood and seeing the maroon-handled  
19          paring knife. So, if we go through that, he's  
20          talking about the first statement to Riddell, he  
21          now adds the stop in Aylesbury where they broke  
22          into an elevator office and I think he stole a  
23          flashlight, and, based on what you told us, that  
24          is consistent with what Mr. Milgaard told you; is  
25          that correct?



1       A       Yes, except I think I did mention to you that I  
2               wasn't sure that there was a flashlight taken on  
3               the basis of what -- I don't --

4       Q       Your, I think you've told us you don't recall  
5               that?

6       A       Yes.

7       Q       We have had, we've seen other evidence on that,  
8               you are telling us you don't remember that?

9       A       That's right, and I don't recall David telling me  
10              that he took a flashlight, but the fact of the  
11              elevator office and so forth, we've canvassed  
12              that, and --

13      Q       And then I think you also told us that this you  
14              viewed as being a significant omission in his  
15              March 3rd, '69 statement; is that correct?

16      A       Yes.

17      Q       And then, second, he says:

18                       "Also today Mr. Roberts showed me 5  
19                       small knives at the Cavalier Hotel and I  
20                       picked out a brown bone handled one  
21                       which I had seen Milgaard with somewhere  
22                       between Regina and Saskatoon. He may  
23                       have got this knife from the Champs  
24                       Hotel where we ate that day. I don't  
25                       know just where I seen this knife on him



1 but I remember it or one like it."

2 Now you've told us that David Milgaard told you  
3 that he had a knife on the trip Regina to  
4 Saskatoon, --

5 A Yes.

6 Q -- and I think you told us that it had a flexible  
7 blade but that you could not recall any other  
8 details, the colour of the handle for example?

9 A No, nothing like that, I don't recall. But I do  
10 recall David making it clear that it was not the  
11 knife that was tendered as having been the weapon  
12 used in this homicide.

13 Q It was not a maroon-handled paring knife in other  
14 words?

15 A That's right. And the term "paring knife", if you  
16 think of a knife, a paring knife as having a  
17 serrated blade, I'm quite sure that it was not a  
18 serrated blade, from what David told me.

19 Q We have seen some reference, and we'll see it  
20 again when I go through some of the transcripts,  
21 of a bone-handled hunting knife, which presumably  
22 is different than a maroon-handled paring knife.  
23 Do you recall whether David described it as a  
24 bone-handled hunting knife?

25 A No, I -- that was a, I think there was some



1 question of whether there was a second knife,  
2 being a hunting knife.

3 Q Yes.

4 A And I'm quite sure David told me that he didn't  
5 have a hunting knife along with him.

6 Q And he didn't --

7 A And I'm sure that's something I would remember,  
8 because I'm familiar with hunting knives.

9 Q I think the evidence of Nichol John and Ron  
10 Wilson, and we'll see it in the transcript, I  
11 think both refer to seeing two knives on the trip,  
12 one -- well here it's a brown-handled one --

13 A That's what I am referring to.

14 Q Yeah.

15 A He had made me aware of that.

16 Q Yeah, okay. So this statement here would be  
17 inconsistent with what David Milgaard told you to  
18 the extent of the description of the knife, I  
19 think you are saying he said he had a knife, but  
20 you can't recall -- other than saying it wasn't a  
21 maroon-handled paring knife and you don't think it  
22 was a bone-handled hunting knife --

23 A Well, I'm quite sure it wasn't a bone-handled  
24 hunting knife.

25 Q Okay.



1       A       And I remember the flexible blade business because  
2               of the use that could, potentially, be made of it.

3       Q       Then it goes on to say:

4                        "Also when we got to Saskatoon and were  
5                        looking for Cadrain's we got stuck  
6                        earlier trying to make a "U" Turn ...",  
7       I'm sorry, let me just pause there.

8                        The fact that Ron Wilson, in  
9       his first statement, said he did not -- in his  
10      March 3rd statement he said he did not see a  
11      knife in David Milgaard's possession, and I think  
12      at that time you said "well that might be  
13      inconsistent with David, although if he didn't  
14      see it, then that might explain it", here he is  
15      now saying "okay, I did see a knife with David".

16     A       Yes.

17     Q       And so if he had always seen a knife, putting  
18               aside the description for a moment, would that  
19               have been a significant omission in the March 3rd,  
20               --

21     A       Yes.

22     Q       -- '69 statement?

23     A       Yes.

24     Q       So we go down to -- it says:

25                        "Also when we got to Saskatoon and were



1 looking for Cadrain's we got stuck  
2 earlier trying to make a "U" Turn just  
3 after we had spoken to a young lady in a  
4 dark coat about directions. This was in  
5 the area where the police showed me the  
6 all night cafe. She said she didn't  
7 know where Peice Hill was and when we  
8 left Milgaard said she was a stupid  
9 bitch. She had been walking on the  
10 passenger side and Milgaard was the only  
11 one that spoke to her. I should also  
12 mention that on the way to Saskatoon we  
13 discussed pulling B. & E's, rolling  
14 someone or purse snatching for money. I  
15 don't really remember if this girl was  
16 carrying a purse."

17 So, again, we have the incident of getting stuck  
18 after speaking to, he describes the person as:

19 "... a young lady in a dark coat about  
20 directions. This was in the area where  
21 the police showed me the all night  
22 cafe.",

23 which I think was Avenue P and 22nd Street:

24 "... didn't know where Peice Hill was  
25 and when we left Milgaard said she was a



1                   stupid bitch."

2                   If we can just pause there, I think you've told  
3                   that, with respect to Ron Wilson's March 3rd  
4                   statement, that the getting stuck -- stopping a  
5                   woman for directions and getting stuck was a  
6                   significant, or were both significant omissions;  
7                   is that correct?

8           A        Yes, yes.

9           Q        And so here, if we take a look at what Ron Wilson  
10           is saying in this statement compared to what David  
11           Milgaard has told you, I take it there's some  
12           consistencies and some inconsistencies; is that  
13           fair?

14          A        Yeah, that's a fair way of putting it.

15          Q        And so the -- certainly getting stuck David agreed  
16           with, and:

17                   "... just after we had spoken to a young  
18                   lady ...",

19                   he says it was an older lady, and again it may  
20                   have been more than half a block, but putting  
21                   that aside:

22                   "... in the area where the police showed  
23                   me the all night cafe.",

24                   I think David was not able to tell you where this  
25                   was other than over, I think you said over on the





1 west side between 20th and 22nd Street on one of  
2 the avenues?

3 A Yes. Yes. That's the best we could figure out,  
4 you know.

5 Q Right. And then the comment about "stupid bitch",  
6 I think you told us that you don't recall -- or do  
7 you know whether or not David acknowledged saying  
8 that when he discussed it with you?

9 A I don't think that he said that.

10 Q Okay.

11 A That is I don't, he told me that he didn't recall  
12 saying anything like that, and I think he was  
13 quite firm on that, --

14 Q Okay.

15 A -- that he hadn't called her that kind of name.

16 Q Okay. And then the discussion about:

17 "... pulling B. & E's, rolling someone  
18 or purse snatching for money.",

19 I think you have told us that David acknowledged  
20 having some thoughts about either robbing or  
21 snatching the purse of the woman they stopped for  
22 directions, but as far as discussions on the trip  
23 between Regina and Saskatoon, I think you told us  
24 that you don't recall whether he --

25 A I don't recall anything like that.



1 Q Then we carry on, and Mr. Wilson says:

2 "Dave and I got out to push when we got  
3 stuck but we couldn't get out. Dave  
4 said he'd go for help and he left and  
5 disappeared behind the car."

6 Now in the statement that he gives the next day  
7 he adds that Ron Wilson also left the car and,  
8 with that proviso, I take it that would be  
9 consistent with what David had told you?

10 A Yes, subject to the time --

11 Q Right.

12 A -- factor that we had mentioned before.

13 Q And he says:

14 "About 15 minutes later Dave came back,  
15 kind of running and breathing heavy and  
16 got into the car."

17 And your evidence has been that David told you  
18 that he left but I think it was "a short while"  
19 were your words; is that right?

20 A Yes, I think he was -- maybe I said "short while"  
21 or "a few minutes", I just don't recall now.

22 Q Okay. So again, and I think you told us yesterday  
23 that Ron Wilson, his failure to state in his March  
24 3rd, '69 statement that he and David had left the  
25 car, putting aside the time factor, I think you



1           said was a significant omission; the failure to  
2           mention that, putting aside the time, the failure  
3           to mention that in the first statement?

4           A       Yes.

5           Q       And so here, the 15 minutes, I think there's an  
6           issue there. I think David -- I don't want to put  
7           minutes to you but I think you said "maybe a  
8           couple of minutes", so -- or "a short while" or "a  
9           couple of minutes", so there would be a  
10          significant inconsistency there with respect to  
11          the time away; is that fair?

12          A       That's correct.

13          Q       And then Mr. Wilson now adds that when David got  
14          back he said "I got her" or "I fixed her", and I  
15          think you have told us that David said there was  
16          no words to that effect said; is that correct?

17          A       That's correct.

18          Q       And then it says:

19                   "I don't remember just when we got out,  
20                   if it was before or after David came  
21                   back ... that 2 men in a cream coloured  
22                   dodge or chrysler pushed us out by  
23                   hand."

24          And I think you have told us that you don't  
25          recall the description of the vehicle or the



1 people, but that David told you two men came  
2 along and pushed the car out, is that correct?

3 A That's correct.

4 Q And then they go on to describe going to the  
5 motel, and then here he describes the changing of  
6 the clothes, which I believe he did in his first  
7 statement. But here he says:

8 "... I noticed blood on the front of his  
9 pants at Cadrain's, I also noticed they  
10 were ripped up the ass."

11 And the blood, you've told us David was firm in  
12 denying that, so this would be an inconsistency  
13 between what David told you and what Mr. Wilson  
14 told you?

15 A That's correct.

16 Q The next paragraph Mr. Wilson says:

17 "On the way to Calgary Nicky found a  
18 white or cream coloured compact with  
19 flower design, I'm not just sure about  
20 the color. She found this someplace in  
21 the car. She asked Dave who's it was  
22 and I don't know what he said, he just  
23 took it and threw it out the window. I  
24 remember on the road to Calgary Nicky  
25 would scream every now and then, I don't



1 know what was the matter with her."

2 On the compact, I take it that's something that  
3 was consistent with what David Milgaard had told  
4 you?

5 A Yes, as I've outlined earlier.

6 Q And then as far as Nicky screaming on the road to  
7 Calgary, and there may have been some discussion  
8 about David's driving causing her some concern,  
9 what do you remember about David telling you about  
10 whether Nichol screamed or not on the trip to  
11 Calgary?

12 A I know he said he liked to drive fast, but the way  
13 this came out it almost would suggest that she was  
14 hysterical about it, and David was very clear that  
15 there was no type of hysteria like that.

16 Q Then, if we can go to the next page, and then he  
17 says:

18 "At Calgary we went to the bus depot,  
19 that is Dave and I. Nicky and Shorty  
20 stayed in the car. We went to make a  
21 few phone calls for a girl I knew -  
22 Heather Beaton who I couldn't fine.  
23 This is when Dave told me he hit a girl  
24 in Saskatoon, or maybe he said he did a  
25 girl in in Saskatoon. I don't remember



1                   for sure which. He told me he grabbed  
2                   her purse and she fought and he said he  
3                   jabbed her with a knife a few times, and  
4                   said he put her purse in a trash can.

5                   He said he thought she'd be alright."

6                   And you've told us that David Milgaard told you  
7                   that this did not happen; correct?

8           A       That's correct.

9           Q       What were your thoughts, Mr. Tallis, when you  
10           became aware of this information, and in  
11           particular I guess the -- how Mr. Wilson described  
12           what happened in Calgary about the jabbing, that  
13           he thought she'd be all right, and put the purse  
14           in the garbage can, and as far as trying to  
15           understand where this might have come from?

16          A       Well it, I think, goes back, you know, to I was  
17           trying to probe to see if it arose from Inspector  
18           Roberts, as we've discussed earlier. That's sort  
19           of the general recollection that I have now. And  
20           as I recall it David didn't, you know, certainly  
21           told me that he never said anything like that. He  
22           may or may not have been able to recall whether he  
23           was ever at the bus depot there, but the  
24           conversation was certainly something that he said  
25           just never took place, because he never did it.



1 Q And then just scroll down:

2 "A little later in Calgary when Nicky  
3 and I were together I told her what Dave  
4 had told me and she said she already  
5 knew. I don't know when he told her.  
6 We talked about ditching Dave but we  
7 were afraid of him so we decided against  
8 it."

9 And, again, I take it Mr. Milgaard wouldn't have  
10 any knowledge about that, other than saying that  
11 he didn't say the first part, so that the second  
12 part therefore couldn't have happened; is that  
13 right?

14 A That's right, yeah.

15 Q And then he goes on to say:

16 "Other than these 4 pages I can't think  
17 of anything different than before. I  
18 might also add that I am sure Milgaard  
19 killed that nurse, Gail Miller."

20 Did you get that sense from Mr. Wilson when he  
21 was testifying, that he was sure that David  
22 Milgaard had killed that nurse?

23 A Well, I come back to what I said to you, I think  
24 it was yesterday. I was of the view that Wilson,  
25 for whatever reason, was a treacherous witness. I



1 know that word can convey a lot of things but I  
2 really can't think of a better word to use to  
3 reflect my sort of mental processes at the time.

4 Q So are you telling us that he may have felt that  
5 way, or he may not have felt that way, and was  
6 just going out of his way to harm a friend?

7 A I think, if you'd asked me at that time when  
8 things were fresh in my mind, I would have thought  
9 that he didn't genuinely feel that and that he  
10 was, for some reason, blaming a friend.

11 Q And, as far as the reason, did you have any  
12 thoughts at the time as to what that might be?

13 A Well I think I, you know, canvassed it to some  
14 extent with you yesterday, and I'm not sure I can  
15 add to that. Naturally, I was speculating.

16 Q Yes.

17 A You know, this business was money the motive, had  
18 there been friction, you know, had there been  
19 somewhere along the way a bad drug deal or  
20 something, you know, all sorts of things go  
21 through your mind. And to canvass all the areas  
22 that I was speculating about at that time, I  
23 really couldn't improve much on what I have said  
24 generally yesterday --

25 Q If we --





1       A       -- and today.

2       Q       If we can go to 065360, please. Now this is a  
3               statement that is given the next day, May 24th,  
4               1969, and I believe the evidence that we have  
5               heard is that after Mr. Wilson gave this statement  
6               to the police -- actually, I'm sorry, after he  
7               gave his May 23rd, 1969 statement to the police,  
8               that he then spent some time with Inspector  
9               Roberts and Nichol John, and that Inspector  
10              Roberts had interviewed Nichol John, Nichol John  
11              hadn't given her statement yet, but if one is to  
12              take Inspector Roberts' evidence at the Supreme  
13              Court and Nichol John's statement of the next day  
14              during the interview with Inspector Roberts,  
15              Nichol John apparently told him that she now  
16              remembered witnessing a murder. So then I think  
17              the evidence we've heard is Ron Wilson, Inspector  
18              Roberts, and Nichol John get together, and then  
19              the next morning he adds this statement. He says:  
20                      "I would like to add further occurrences  
21                      to what I said yesterday in my sworn  
22                      statement. When Dave and I got out to  
23                      push the first time we were stuck we  
24                      couldn't push the car so I said to Dave  
25                      'you go one way for help and I'll go the



1 other'."

2 And I think, from what you have told us already,  
3 that that would be consistent, or perhaps maybe  
4 not the words being spoken, but David Milgaard  
5 told you that, when they got stuck, he and Ron  
6 went different directions for help; is that fair?

7 A That's correct.

8 Q And then he says:

9 "I went to the corner on the drivers  
10 side of the car and walked down the  
11 block, I couldn't find help so I went  
12 back to the car the same way I had left.  
13 The car was still stuck. Nicky was  
14 waiting in the car almost hysterical. I  
15 asked her what was wrong and she told me  
16 she saw Dave carry or drag a girl down  
17 the lane and bring out the knife and  
18 stab her a few times. Then she broke  
19 down again. Dave came back to the car  
20 from the back I think and got in beside  
21 Nicky. She shrugged away from him. The  
22 rest is the same as I told you in the  
23 other statement."

24 And then it goes on to describe the car that  
25 picked them up.



1 Now in this statement, Mr.  
2 Tallis -- and we have been through Mr. Wilson's  
3 statement and Nichol John's statement -- he is  
4 now adding that they both left the car, which I  
5 think you are saying is consistent with Mr.  
6 Milgaard's information to you, but now he is  
7 saying that when he got back to the car Nichol  
8 told him that she had witnessed Dave stabbing a  
9 girl, and I'm wondering how -- and again let's  
10 just identify, if I can, the inconsistency  
11 between this statement where in -- on May 23rd,  
12 the day before, Ron Wilson says in -- that --  
13 describes the event of that morning, does not say  
14 anything about Nichol telling him about seeing  
15 David grab a girl, but then says the next day in  
16 Calgary he talks to David at the bus depot and  
17 David tells Ron "I stabbed a girl" or "I jabbed a  
18 girl", etcetera, he then goes and tells Nicky,  
19 and Nicky says "I already know". And the  
20 question is this, or the inconsistency, is why  
21 would Wilson go and tell Nicky something that  
22 Nicky told him the day before. Do you follow?

23 A Yes, yes I do.

24 Q And so, again, do you recall -- and maybe let me  
25 just preface this before I ask the question.



1 Presumably, at trial, discussions between Ron  
2 Wilson and Nichol John would be hearsay; is that  
3 fair?

4 A I was just about to say that but you took the  
5 words out of my mouth. Yeah.

6 Q Okay. Well maybe you can --

7 A No, no, you go ahead. That's correct.

8 Q And as far as, and maybe "exploiting" is the wrong  
9 word, but do you recall looking at Ron Wilson's  
10 statement and Nichol John's statement and trying  
11 to identify inconsistencies?

12 A I have no doubt that I did, but I also have no  
13 doubt that one has to be very concerned about  
14 opening the door with respect to hearsay.

15 Q And so let's just go through that for a moment.  
16 Well, if you were to try and challenge Ron Wilson  
17 on the stand and say, well, I don't think your  
18 story is believable because on the one hand, you  
19 know, when you first told the police about  
20 incriminating information you said you had learned  
21 from David Milgaard what he had done, and you told  
22 Nichol John and she said she already knew, then  
23 the next day you said no, she had already told  
24 you, which then undermines the credibility of your  
25 statement, your first statement. Why would you go



1 tell Nichol something as significant as a stabbing  
2 or a murder when, the day before, she had told you  
3 that she had witnessed it? And I take it that  
4 that line of questioning, is it fair to say, would  
5 be -- you would not be able to pursue unless you  
6 got into hearsay evidence; is that fair?

7 A Yes, with the attendant risks, because during the  
8 course of the trial there was some hearsay  
9 evidence that the Crown were trying to get in and  
10 I managed to keep it out. I've just forgotten the  
11 particular point now, but I think that that's a  
12 fair recollection of what happened.

13 Q And so if Nichol John had adopted her statement in  
14 its entirety, in other words at trial had  
15 confirmed that she had witnessed these events, is  
16 it fair to say that the discussions between her  
17 and Ron (a) would be hearsay, and (b) you probably  
18 wouldn't want to get into; is that fair?

19 A Yes, I think that would be very risky.

20 Q And then let's take it a step further. If Nichol  
21 John does not adopt her statement, in other words  
22 she doesn't testify about witnessing the stabbing,  
23 --

24 A Yes.

25 Q -- is there any way that you can, in the presence



1 of the jury, bring to their attention this  
2 inconsistency between Ron Wilson's two statements  
3 of May 23rd and May 24th?

4 A Well, again, I -- in my respectful view it would  
5 have been a -- and I'm sure that was my view at  
6 the time -- it would have been a hazardous type of  
7 approach.

8 Q And might it result in either Ron Wilson's  
9 statements being tendered as an exhibit, namely  
10 the May 23rd and 24th statements?

11 A It could well have.

12 Q And did you want those statements before the jury?

13 A No, I did not.

14 Q So if we take a look at, and let's look at the two  
15 statements of Ron Wilson together, the May 23rd  
16 and 24th as one statement for the moment; is it  
17 fair to say, Mr. Tallis, that if we take the first  
18 statement of March 3rd that Ron Wilson gave, I  
19 think you said that that contained some  
20 significant omissions --

21 A Yeah.

22 Q -- and perhaps an inconsistency or two with your  
23 understanding of the facts, and I think you told  
24 us -- and let me maybe just ask it again. Based  
25 on what David Milgaard had told you would you have



1           been comfortable putting forward Ron Wilson's  
2           March 3rd, 1969 statement to him as the truth and  
3           the whole truth?

4       A       No, I couldn't have done that, and furthermore,  
5           putting that in would have, in my view, opened the  
6           door for a skillful re-examination on certain  
7           aspects.

8       Q       And what aspects would those be?

9       A       Well, the omissions for one thing, and that would  
10          lead into a potential discussion of whether or not  
11          he amplified it.

12      Q       And why he changed his story?

13      A       That's correct.

14      Q       So then as we --

15      A       As I said to you, I viewed Wilson as a treacherous  
16          type of person who, and I was hoping nobody would  
17          ask it, either the Crown or the trial judge, why  
18          did you change your story, that he would be the  
19          type of person who would likely say, well, I was  
20          doing it to protect my friend, you know, I gave  
21          the first statement to protect my friend. I  
22          thought he was that treacherous a type of person.

23      Q       If we then go ahead to the May 23rd, 24th, '69  
24          statements and view them as one, being what he  
25          revealed at that time would it be fair to say that



1           certainly the omissions in the March 3rd, '69  
2           statement were addressed in the sense that he now  
3           added in those things that were not in the March  
4           3rd statement; is that fair?

5       A       Yes.

6       Q       And that in some of the new information that he  
7           provided, some of that was consistent with what  
8           David Milgaard had told you; is that fair?

9       A       That's correct.

10      Q       And in other cases it was not?

11      A       That's correct.

12      Q       And would it be fair to say that some of the  
13           information that he added in these two statements  
14           that was consistent with what David Milgaard had  
15           told you would be considered, let me ask by you,  
16           to be somewhat suspicious in the sense of the fact  
17           that they got, asked the lady for directions,  
18           talked about break and enters, got stuck and that  
19           David left the car, that he threw the compact out,  
20           things of that nature, and I think you told us  
21           earlier that those were matters that caused you  
22           concern because the jury might view them as  
23           suspicious; is that fair?

24      A       Yes.

25      Q       And again in the statement of May 23, 24, '69,





1           some of the omissions that he has filled in would  
2           be both truthful or, in a sense, consistent with  
3           what David had told you and also be somewhat  
4           incriminating; is that a fair word to use?

5       A       Yes, incriminating or damaging.

6       Q       Damaging? And then next there would be some  
7           further information, and I'm thinking mainly of "I  
8           got her, I fixed her," the admission in Calgary,  
9           blood on the pants, that would be inconsistent  
10          with what David told you and very incriminating  
11          and damaging; is that fair?

12      A       Yes.

13                   MR. HODSON: This is probably an  
14           appropriate spot to break, Mr. Commissioner. I'm  
15           now going to go into the evidence.

16                   COMMISSIONER MacCALLUM: Thanks, Mr.  
17           Hodson. Before I go, I just wanted to pick up  
18           the fact that during my reading of the reasons I  
19           corrected a typo on page 5, the year was, on the  
20           third paragraph, it's supposed to be 2005, not  
21           2006. Thanks.

22                   *(Adjourned at 10:24 a.m.)*

23                   *(Reconvened at 10:50 a.m.)*

24       BY MR. HODSON:

25      Q       Mr. Tallis, I want to just go through a couple of



1 documents relating to your visit with Inspector  
2 Roberts, if we can call up 025305, and this is Mr.  
3 Caldwell's letter to the administrative officer  
4 with the AG's department, October 2nd, '69, and I  
5 just want to read this part here, he says:

6 "During the Preliminary Inquiry Mr. C.F.  
7 Tallis, Q.C., who was appointed under  
8 the Legal Aid Plan to defend Milgaard,  
9 became aware of the participation of  
10 Inspector Roberts in questioning the  
11 crown witnesses, Wilson and John, and  
12 formally requested me to have Inspector  
13 Roberts subpoenaed and brought to  
14 Saskatoon as a potential defence witness  
15 at the Preliminary Inquiry. As you  
16 know, Section 6(a) of the Plan requires  
17 the Crown Prosecutor to place such  
18 defence witnesses, as requested by  
19 defence counsel, on the crown witness  
20 sheet and have them summoned to attend  
21 and pay them as if they were crown  
22 witnesses."

23 And scroll down:

24 "Inspector Roberts attended at Saskatoon  
25 and was interviewed by myself and



1                   Mr. Tallis, jointly, concerning his part  
2                   in questioning the witnesses and, as  
3                   well, I interviewed him at some length  
4                   for my own purposes in connection with  
5                   the Preliminary Inquiry."

6                   And then it goes on to talk about billing. And  
7                   would that be, does that assist your recollection  
8                   of how -- would that be an accurate description  
9                   of how he came to Saskatoon?

10          A        Yes, I'm quite sure that letter accurately  
11                   reflects a request that I made and it was in fact  
12                   met in terms of bringing him here. Now, if you go  
13                   to the paragraph was interviewed --

14          Q        Jointly?

15          A        -- by myself and Mr. Tallis jointly --

16          Q        Yes.

17          A        -- now, initially there was just a joint  
18                   introduction, so to speak, but I actually spoke to  
19                   Mr. Roberts alone for a period of time and then  
20                   after that, I assume that's when Mr. Caldwell had  
21                   interviewed him. Now, it could be that Mr.  
22                   Caldwell had spoken to him before I actually saw  
23                   Mr. Roberts.

24          Q        Right. And it talks here about having him attend  
25                   for the possibility of being a defence witness and



1 I think what Mr. Caldwell told us is that if,  
2 after your interview, you had indicated your  
3 desire to have Inspector Roberts testify at the  
4 preliminary hearing, that he would have called him  
5 as a Crown witness. Is that your understanding of  
6 what --

7 A I'm sure he would have, because I would have asked  
8 him to do so, and I think that he would have done  
9 so without question.

10 Q And similarly at trial I think the same  
11 arrangement was put in place, he was subpoenaed?

12 A Yes.

13 Q And available, and I think Mr. Caldwell's evidence  
14 was that if you wished to have him testify at the  
15 trial, he would call him as a Crown witness?

16 A Yes.

17 Q And then if we can go to 007022, these are Mr.  
18 Caldwell's notes, it may well be of a telephone  
19 conversation September 3, '69, because it's got  
20 the phone numbers there, but it would be around  
21 the time, or shortly before when he came to  
22 Saskatoon. Presumably, Mr. Tallis, you would have  
23 had your own notes of your discussions with Mr.  
24 Roberts?

25 A Yes. I'm unfamiliar with these particular notes



1                   and I was not aware of them until you brought them  
2                   to my attention.

3       Q           Right.

4       A           Quite recently.

5       Q           And so -- but you would have had on your file your  
6                   own notes detailing what --

7       A           Most definitely.

8       Q           And so here, I'm just wondering if -- I think when  
9                   I told you about Inspector Roberts' evidence at  
10                  the Supreme Court and the questions here,  
11                  according to Mr. Caldwell's notes, 'are you  
12                  holding back anything re Gail Miller, did you ever  
13                  intentionally hurt someone, have you lied to any  
14                  question on this test,' and then the next page,  
15                  'Wilson questions re the Gail Miller murder, are  
16                  you holding back any information on that, have you  
17                  lied to any question on this test,' and then  
18                  'Wilson didn't see it, Wilson didn't do it. You  
19                  know for sure who did it? Yes.' And then 'Wilson  
20                  told Roberts that in Calgary Dave told him I took  
21                  her purse, I poked her with a knife a few times.'  
22                  So this appears to be a discussion between Mr.  
23                  Caldwell and Mr. Roberts.

24                               Just on the issue of the  
25                               questions that were asked and which Mr. Wilson



1 failed, according to Inspector Roberts, do you  
2 have any recollection or does this assist you in  
3 any way of refreshing your memory as to what it  
4 was that, the questions that Mr. Wilson supposedly  
5 failed on the polygraph?

6 A No, this is information that was not conveyed to  
7 me by Mr. Roberts, and my recollection is that  
8 this is the type of thing I was looking for in the  
9 interview that I had with him, and I've already  
10 alluded to that, the sort of pre-test questions,  
11 the post-test questions as well as the, any other  
12 questions during the operation of the polygraph.

13 Q And then just one last document on this point,  
14 006948, and I probably could have got a better  
15 reference, I think this was an internal memorandum  
16 to Mr. Caldwell January 12th confirming that  
17 Inspector Roberts was, had received his subpoena,  
18 and we have other documents on the record  
19 indicating that Inspector Roberts was served with  
20 a subpoena to testify, and I understand from Mr.  
21 Caldwell that you then told him you did not want  
22 him called at trial; is that correct?

23 A That's correct.

24 Q And would that be for the reasons you've already  
25 stated?



1       A       Yes. I would just have to revisit what I told you  
2               earlier.

3       Q       I think what -- yeah, what you told us earlier  
4               about the reasons, I think you were saying you did  
5               not trust Mr. Roberts, you did not think his  
6               evidence would help David Milgaard and that it  
7               would be oath helping to Mr. Wilson and things of  
8               that nature?

9       A       That's right.

10      Q       Yeah. And so as far as I think Mr. Caldwell's  
11              evidence was, he didn't intend to call him because  
12              he didn't think there was any evidence he could  
13              put in and I think what you've told us is that you  
14              didn't want him to testify either because you did  
15              not think he would help your case?

16      A       No.

17      Q       Is that fair?

18      A       That's correct, subject to a qualification I will  
19              have with respect to the 9(2) application.

20      Q       Right, okay.

21      A       Yes.

22      Q       And when we get to Nichol John we'll talk about  
23              that. We're done with that document. I now want  
24              to go to the preliminary hearing and the trial of  
25              Ron Wilson and talk about what you had and what



1 approach you took with him and why you took it,  
2 and I suppose we've gone through the statements  
3 and just to quickly summarize, you've told us, as  
4 you did with Albert Cadrain, that you were  
5 professionally and ethically precluded from  
6 challenging evidence of Ron Wilson or of a witness  
7 that was consistent with what David Milgaard had  
8 told you; is that correct?

9 A That's right.

10 Q So --

11 A Facts that he acknowledged were matters that I  
12 accepted as being correct and, accordingly, I  
13 could not, in good conscience, suggest something  
14 to the contrary.

15 Q So if we go through some of the key pieces,  
16 certainly the elevator break-in, although I think  
17 you managed to keep that out at the trial --

18 A Yes.

19 Q -- but that would be something that you could not  
20 say, well, that didn't happen; is that fair?

21 A That's correct, and, you know, until the ruling  
22 was made, there was no guarantee it would be kept  
23 out, or until the Crown elected not to put it in,  
24 because from my recollection of the briefing of  
25 the matter, there could have been a significant





1 argument over it on the footing that that  
2 reflected the motive that might go into any  
3 subsequent conduct.

4 Q And so there was an argument that it possibly  
5 could be admissible then?

6 A I thought so. I don't have a copy of my brief  
7 now, but I thought on balance the opportunity was  
8 there to keep it out.

9 Q Okay.

10 A And that's the line that I certainly pursued, both  
11 in discussions with Mr. Caldwell and also would  
12 have emphasized with the Court.

13 Q Now let's go to the issue of the knife. What Ron  
14 Wilson has in his statement is that he saw two  
15 knives, I believe a bone-handled or a  
16 brown-handled knife and then the maroon-handled  
17 paring knife. Now, you've testified that David  
18 Milgaard told you he had a knife, but that it  
19 wasn't a paring knife, it wasn't the  
20 maroon-handled paring knife, it was a different  
21 type of knife. Tell us, what were your limits, if  
22 any, in how you would challenge Ron Wilson with  
23 respect to the knife knowing that your client has  
24 told you that he had a different kind of knife?

25 A Well, there was no suggestion in the evidence as I



1 recall it that a hunting knife had been used in  
2 this homicide and the type of knife that David  
3 described to me with a flexible blade was  
4 something that one couldn't challenge the  
5 existence of a knife of that nature.

6 Q And so again as far as approaching Wilson, a  
7 question such as, you know, you know David didn't  
8 have a knife at all on the trip, that would be  
9 something that you couldn't put?

10 A In light of my instructions, no.

11 Q Now, the stopping a lady for directions, your  
12 instructions were that it was an older lady, dark  
13 coat?

14 A That's right.

15 Q But that David did not see the face of the woman.  
16 I think Ron Wilson's evidence was, or his  
17 statement, that it was a younger lady, dark coat,  
18 and I believe, and I stand to be corrected on  
19 this, I don't think he saw her face either, and  
20 since he was driving the vehicle and Mr. Milgaard  
21 was closer to her, I think one might assume that  
22 if Mr. Milgaard didn't see the face, the others  
23 likely didn't either. Tell us what limitations if  
24 any you had in challenging Mr. Wilson on that  
25 point?



1           A           Well, first of all, I knew that from what David  
2                       had told me about one of the additional purpose,  
3                       so to speak, that is, to look her over, was a view  
4                       to possibly robbing or snatching her purse, I  
5                       don't recall whether it was robbing or  
6                       purse-snatching at this stage, but one had to be  
7                       mindful of that background and try to avoid  
8                       fostering any undue emphasis on alleged  
9                       conversation about robbing people or  
10                      purse-snatching to get money, because these young  
11                      people had left Regina, as I told you, without  
12                      really having any funds for a trip, so I didn't  
13                      want to do anything that would expand on that  
14                      notion because in my view that would have been  
15                      very detrimental.

16          Q           In light of what Mr. Milgaard told you about his  
17                      thoughts when they approached this woman to ask  
18                      for directions, and in particular his thoughts  
19                      about robbing her or stealing her purse, did you  
20                      have a concern that that topic may have been  
21                      discussed with Ron Wilson right about that time  
22                      and that Mr. Wilson might, in the course of giving  
23                      evidence, say what David had thought and maybe  
24                      said to him? I'm maybe not asking that very well,  
25                      but in other words --



1           A           No, I understand what you are asking me. Well, I  
2                        had a concern and wanted to be careful that I  
3                        didn't put any questions and, you know, there's  
4                        always a risk, but put any questions that would  
5                        prompt him to improve his memory or concoct a  
6                        statement that, oh, yes, I remember David  
7                        mentioning he was going to look her over to rob  
8                        her.

9           Q           Okay. And that statement, I guess, did you know  
10                      whether or not Mr. Wilson might say that or  
11                      whether David had said to Ron Wilson, had  
12                      expressed his thoughts just prior to pulling the  
13                      vehicle over?

14          A           No, I didn't, but having assessed this chap as a  
15                      treacherous type of person, I didn't want to do  
16                      anything that would spawn that type of statement.

17          Q           And if he in fact had said, Mr. Wilson had said  
18                      yes, either Dave mentioned this or about when we  
19                      pulled this woman over for directions we had  
20                      thought about robbing her or stealing her purse,  
21                      in light of your instructions how would you have  
22                      been able to deal with that statement?

23          A           Well, I wouldn't have been able to challenge it.

24          Q           So again in your, planning your cross-examination  
25                      of Mr. Wilson then, would that have been a concern



1           on your mind, that -- and you may have already  
2           said this, to try and prevent that type of  
3           information coming out?

4       A       Yes, that would certainly be one of the pitfalls I  
5           would try to avoid in drafting up my  
6           cross-examination of this witness.

7       Q       What about the young versus old lady, is that  
8           something that you felt you could challenge him,  
9           saying look, wasn't it an older woman, based on  
10          what David had told you?

11      A       Yes, although sizing him up, I had the sense that  
12          he would re-emphasize his view.

13      Q       Okay. Now, the evidence of Mr. Wilson that they  
14          got stuck shortly after stopping the woman for  
15          directions, again that's something, I suppose, the  
16          length of time between leaving the woman and  
17          getting stuck may have been at odds with what  
18          David Milgaard told you; is that correct?

19      A       That's right.

20      Q       So that it would be appropriate for you to suggest  
21          that maybe it had been further away?

22      A       That's correct.

23      Q       Now, he also said that it was in the vicinity, in  
24          his statement anyway, of where the all-night cafe  
25          was, which I believe was Avenue P and 22nd Street.



1 I think at trial he ended up getting a bit more  
2 specific and put it on Avenue N, but certainly on  
3 his statement he said it was in that vicinity.  
4 Based upon what David Milgaard had told you about  
5 where it was they stopped the woman for directions  
6 and where it was they got stuck, how comfortable  
7 were you in how you could attack or challenge  
8 Mr. Wilson regarding the location of getting stuck  
9 and stopping the woman for directions?

10 A Well, I knew from what David had told me, and  
11 there was real difficulty in pinpointing anything,  
12 but that it was during the course of, you know,  
13 north-south driving, as I've mentioned to you  
14 earlier, down some of the avenues, but of course  
15 we weren't able to pinpoint that.

16 Q For example, based upon what your instructions  
17 were, could you have gone to Mr. Wilson and said  
18 look, I suggest that where you got stuck and where  
19 you stopped the woman for directions was five  
20 miles away from where Gail Miller's body was  
21 found, on the north end of the city or the east  
22 end of the city?

23 A No, that would have been unrealistic and I think  
24 would, in the eyes of a fact finder, smack of an  
25 absurd suggestion.



1       Q       As far as leaving the car for help, and we've  
2               touched on this, in light of your instructions  
3               from Mr. Milgaard, would it be fair to say that  
4               the only tact you could take with Mr. Wilson  
5               regarding his evidence that he and David left the  
6               car to look for help would be the length of time  
7               they were away from the vehicle?

8       A       Yes, that was most definitely one aspect of it,  
9               but I think there was also a second aspect,  
10              whether you would call it secondary or primary I  
11              leave to others, and that is that the car had --  
12              the car was stuck and there had been spinning and  
13              from the information that I had it had been  
14              spinning enough that it would leave marks, spin  
15              marks or tire marks where they were stuck in the  
16              snow or packed snow, so that was an aspect of it  
17              too. Now, whether I -- whether one pursued that  
18              with him is one, you know, is a matter for  
19              consideration, or whether you leave it for police  
20              officers who inspected the scene, and I think in  
21              this particular case, based on the information and  
22              instructions David gave me, that I questioned a  
23              police officer or police officers about that  
24              because they actually were looking for that type  
25              of thing.



1 Q And so is what you are telling us, that one  
2 approach with Mr. Wilson would be to try and  
3 adduce facts that on their own might not be of  
4 assistance, but when you take it to other facts  
5 such as the scene of the crime and observations,  
6 that you might be able to get evidence from  
7 Mr. Wilson that would, in effect, put them  
8 somewhere other than near where Gail Miller was  
9 found?

10 A Yes.

11 Q Is that fair?

12 A That's fair enough.

13 Q And again, based on what Mr. Milgaard told you,  
14 that was something that you were quite fine to do?

15 A Yes, and I remember discussing this business of  
16 being stuck enough with the smooth tires,  
17 relatively smooth tires, that marks would be left  
18 in the snow or packed snow, and I don't want to be  
19 repetitious on that, I've already told you about  
20 it yesterday I think it was.

21 Q The item of evidence that, and we've again touched  
22 on this, but the two individuals came and pushed  
23 the car out?

24 A Yes.

25 Q And again I think you've told us that David





1 confirmed that, so that's something you couldn't  
2 challenge?

3 A Yes.

4 Q And lastly, the finding of the compact, we've  
5 touched on that, that's something again that you  
6 could not challenge; is that fair?

7 A That's correct.

8 Q Now, if we take just that part, and let's just  
9 talk about Ron Wilson's statement, and you may  
10 have already covered this, but what was in his  
11 statements, the May 23rd and 24th, the  
12 incriminating statements, and you pare it down so  
13 that all that's left in Ron Wilson's statement is  
14 what is consistent with what David Milgaard told  
15 you, would you view that evidence as being  
16 incriminating against your client, or damaging?

17 A Well, there were portions in that statement that  
18 were damaging and I think we've alluded to those.

19 Q Yes, and that would be the getting stuck, the  
20 stopping the woman for directions, the compact,  
21 the driving around, things of that nature?

22 A Yes.

23 Q And so again, even if you got Ron Wilson to pare  
24 back his evidence and only give evidence  
25 consistent with what David Milgaard told you about



1 the facts, was it your assessment that that  
2 evidence would still be damaging and  
3 incriminating?

4 A Yes. In the context of this case, I would say  
5 yes.

6 Q And certainly the, would you agree that it would  
7 not be nearly as incriminating as the entire  
8 statement, in other words, there's more in the  
9 statement that's far more damaging than those  
10 items that were not, that you could not dispute;  
11 is that fair?

12 A That's correct.

13 Q And again, if we look at the parts of his  
14 statement or anticipated evidence that was not  
15 consistent or that based on what David Milgaard  
16 had told you were untruthful, it would be  
17 certainly, number 1, the age of the woman they  
18 stopped for directions, young versus old, the  
19 duration that they were away from the vehicle,  
20 being 15 minutes versus maybe a couple of minutes,  
21 the description of the knife being maroon handled,  
22 would you agree with those, those would be ones  
23 that would be damaging but not truthful according  
24 to what David had told you?

25 A That's right.



1 Q As well, Mr. Wilson's evidence about returning to  
2 the car and having Nichol John tell him what she  
3 saw about David Milgaard, now, that would be  
4 inadmissible as hearsay presumably, but --

5 A Yes, unless one opened it up.

6 Q And the comments that Wilson attributed to Mr.  
7 Milgaard, "stupid bitch" and "I got her" or "I  
8 fixed her" again would be damaging, but untruthful  
9 according to what David had told you?

10 A Yes.

11 Q The observation of blood on David's pants made by  
12 Ron Wilson and as well what Mr. Wilson said he was  
13 told in Calgary by David Milgaard about jabbing a  
14 person again, those would be, according to what  
15 David had told you, untruthful and I think again  
16 quite damaging; is that fair?

17 A Yes.

18 Q And I don't mean to simplify it, but would it  
19 be -- as far as your approach to Mr. Wilson, would  
20 it be fair to say that you would want to take  
21 issue and challenge and try to undermine the  
22 credibility of those damaging pieces of  
23 information which, based on your instructions,  
24 were untruthful?

25 A That's correct.



1 Q And with respect to those damaging pieces of  
2 information from him that were truthful according  
3 to your instructions, what if anything could you  
4 do with those?

5 A I suppose looking at it in a practical way, try to  
6 avoid emphasizing or over emphasizing them.

7 Q And so interwoven in this chain of events then  
8 that Mr. Wilson has in his statements --

9 A And I should add, if there was an innocent  
10 interpretation that could be placed on them, that  
11 of course would be a matter for argument.

12 Q And so again, interwoven in the story that  
13 Mr. Wilson was telling in these statements were,  
14 again according to your instructions, damaging  
15 evidence, some of which was truthful, some of  
16 which was not truthful?

17 A That's correct.

18 Q Let's just talk generally about --

19 A Now, I just should add this, that in making that  
20 assessment, I'm trying to look at it and I was  
21 trying to look at it as objectively as I could. I  
22 suppose you might say I was, I'm using the  
23 objective bystander test when I respond to your  
24 questions in this area.

25 Q Okay. And I want to just talk about the actual



1           written statements, and we know that there were  
2           three, --

3           A       Yes.

4           Q       -- the March 3rd statement and then the May 23rd  
5           and 24th statements. And I think we viewed the  
6           first one as being not incriminating and the  
7           second two being incriminating?

8           A       Yes.

9           Q       Can you tell us what your thoughts were, or  
10          concerns may have been, about the extent to which  
11          these statements would be (a) used in the course  
12          of the trial and heard by the jury, and secondly,  
13          your concerns or thoughts about whether any of  
14          them ought to be, or might be, put in as exhibits?

15          A       For my part, I'm quite sure that I concluded that  
16          if you go down that path and elect to put in,  
17          through a Crown witness, the, we'll say statement  
18          number one, you run the risk of two things, a real  
19          risk at least at that time in that trial; and  
20          number one was that in re-examination Crown  
21          counsel would likely have been permitted to focus  
22          on significant omissions; secondly, I think that  
23          it would also invite an inquiry with respect to,  
24          you know, "well did you give a subsequent  
25          statement or statements"; and, finally, you



1           couldn't overlook the possibility that the  
2           presiding judge, at the invitation of Crown  
3           counsel, would call for the production of those  
4           other statements so as to put in the whole  
5           picture.

6                       Now I'm distilling that down,  
7           but those were concerns that I certainly had, and  
8           I did not want -- and this was a judgement call on  
9           my part -- I did not want any of those statements,  
10          that is the combination of them, to end up in the  
11          jury room. Because, once again, sooner or later  
12          somebody would have asked the question "well why  
13          did you change your mind", and I think I've  
14          already -- or "why did you change", and I  
15          anticipated that his answer, being a treacherous  
16          type of person that I mentioned, would likely be  
17          "I was protecting my friend when I gave the first  
18          one".

19       Q       Okay.

20       A       And "when did you tell the truth" would be a  
21          question then, and "I told the truth in the later  
22          statements I gave", and --

23       Q       And it may be obvious and doesn't need to be  
24          asked, but what was your assessment of how -- of  
25          the impact that that would have on the case



1           against David Milgaard before the jury?

2       A       Well, I thought it would have a devastating  
3           impact.

4       Q       Just back on the first statement, did you see any  
5           way that you could get the first statement, the  
6           March 3rd statement, before the Court without  
7           running into all of the risks you've just  
8           identified about the statements?

9       A       Well, looking back on the atmosphere of the trial,  
10          I don't think so.

11      Q       I'll now go to 007595, please. And I'm going to  
12          try and use the skipping technique, Mr. Tallis, to  
13          go through these, so bear with me. This is the  
14          preliminary hearing transcript --

15      A       I'm not asking you to adopt my practices. That's  
16          many years ago.

17      Q       This is Mr. Wilson's examination-in-chief at the  
18          preliminary hearing by Mr. Caldwell, and I just  
19          want to touch on a couple points, in particular  
20          his key evidence about the length away or the time  
21          away from the car.

22      A       Is this the trial evidence?

23      Q       No, this is the preliminary hearing.

24      A       Okay, thanks.

25      Q       Actually, we can go to 007601. I just want to



1 highlight this part. This is where Mr. Caldwell  
2 is asking Mr. Wilson about the break and enters on  
3 the way, and he takes the benefit of the  
4 protection of the *Canada Evidence Act*, on the next  
5 page I think you object to the relevance of the  
6 matter and, I think, set the stage for an argument  
7 you make at trial. Mr. Caldwell says he thinks  
8 it's relevant. And it would appear just from the  
9 record that the presiding judge or the magistrate  
10 at the preliminary hearing allowed it to go in  
11 with the idea that, at trial, maybe different  
12 considerations would apply; is that fair?

13 A Yes, Magistrate Cumming ruled as he did there.

14 Q Would it be fair to say that, at a preliminary  
15 hearing, you'd be less concerned about  
16 inadmissible evidence being heard unless the issue  
17 of a committal is a live one; is that fair?

18 A Yes, and I think it's also fair to say that the,  
19 that at least in that era the application of the  
20 rules of admissibility were somewhat relaxed by  
21 the presiding magistrate or Provincial Court  
22 Judge.

23 Q Now at that time -- and I was going to deal with  
24 this later but I will bring it up now -- the law  
25 prohibiting publication of evidence at a





1 preliminary hearing, I think, was enacted shortly  
2 after this preliminary hearing; do you recall  
3 that?

4 A I don't recall the specific date when it came in  
5 but I'm sure that your research is correct on it.

6 Q In fact, yeah, in fact there is a reference in --  
7 that we'll look at in one of your exchanges with  
8 Chief Justice Bence that talks about what the  
9 jurors might have read from the preliminary  
10 hearing.

11 A Yeah.

12 Q So if we can maybe go ahead to 007616, and again  
13 this is Mr. Caldwell, and Mr. Wilson just talks  
14 about the knife and he describes it as -- I think  
15 he described it in his statement as brown,  
16 bone-handled, and then here a brownish red handle  
17 and a brownish handle.

18 And if we can go ahead to  
19 007619, and he just described the U-turn and  
20 getting stuck -- and the next page -- and then  
21 says:

22 "A I'm not sure if it it was at a corner or  
23 near an alley. I'm not positive because  
24 there was alot of snow out and I don't  
25 know the city.



1 Q ... You are not sure that if it was at  
2 an intersection or not?

3 A No."

4 And, again, I think later we'll see that he  
5 becomes a bit more specific about that. And then  
6 scroll down:

7 "Q Were you successful in getting unstuck?

8 A No, we weren't.

9 Q And what did you do then?

10 A Go look for some help, so we could get  
11 unstuck.

12 Q You said you went for some help?

13 A We said we would go look for some  
14 help.

15 Q Alright. Now, the place where you got  
16 stuck, how far would it be from the  
17 place where you talked to the lady?

18 A About three-quarters of a block.

19 Q And would it be in the same block, or  
20 had you gone across?

21 A Yah, it would be in the same block."

22 And I think this is something that you said was  
23 different from what David Milgaard had told you;  
24 is that right?

25 A Yes.



1 Q It would have maybe been a little further, I  
2 think?

3 A Yes.

4 Q Next page. There is a fair bit -- and I won't go  
5 through it -- but a fair bit in the transcript of  
6 both Ron Wilson and Nichol John about the  
7 directions, both that the car was facing and  
8 that -- the directions Ron Wilson and David  
9 Milgaard went when they left the car. And, again,  
10 do you recall, recall that being an issue, Mr.  
11 Tallis, or where that fit in?

12 A Yes, I recall it being an issue in the sense that  
13 Wilson either went to the, direction-wise to the  
14 left or forward, and David went in the opposite  
15 direction.

16 Q It would seem from the transcript that the issue  
17 was that some of the witnesses, or Wilson and  
18 John, were suggesting that Mr. Milgaard left the  
19 vehicle in the direction where the woman was who  
20 had been asked for directions; is that fair? And  
21 I think you were trying to take issue with that,  
22 and that maybe he didn't go in that, or went a  
23 different direction; is that a fair way to put it?

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

25 Q So down at the bottom:



1 "Q ... where did you go looking for help?

2 A Up a couple of blocks."

3 And then I'll just skip over, scroll down, 169:

4 "Q When you got back to the car, who was  
5 there?

6 A Nicol John."

7 What was going on with Nichol John when she got  
8 in the car:

9 "A She was pretty well hysterical when I  
10 got back.

11 Q What was she doing?

12 A Crying and just pretty well  
13 screaming."

14 And then down:

15 "Q And how long would you estimate that you  
16 were away in the course of walking up a  
17 couple of blocks?

18 A Five or ten minutes."

19 And I just remind you that in his statements that  
20 he gave to the police of May 23rd he said 15  
21 minutes, now let me just verify, I think that was  
22 15 minutes that David was away from the car.  
23 Actually, what he said is that Dave left, and  
24 about 15 minutes later Dave came back.

25 A Yes.



1 Q That in his statement the total time that he had  
2 David away was about 15 minutes, so here Wilson  
3 says he was gone 5 or 10 minutes, and I asked her  
4 what was wrong, and then Mr. Caldwell says you  
5 can't tell us anything of what she said. And this  
6 is the point we touched on earlier, that the  
7 exchanges between Ron Wilson and Nichol John would  
8 not be admissible as being hearsay; is that  
9 correct?

10 A That's correct.

11 Q And then what happened next:

12 "A Dave came back to the car."

13 And then down at 186:

14 "Q What happened when Dave got in?

15 A Nicol kind of shrugged away from him."

16 And then the next page, he talks about when Dave  
17 got back to the car was there anything said  
18 between you:

19 "A Yes, there was."

20 "A He fixed her or something to that  
21 effect."

22 And then the next page, 202:

23 "Q How did you get unstuck?

24 A Two men helped us."

25 And I think that's, again, something that David



1 had confirmed for you?

2 A Yes.

3 Q And then to 007634. This is where he says he  
4 observed blood on the front of his pants.

5 And then 007643, this is an area  
6 that we maybe haven't touched on yet, or in  
7 detail. He's asked, and this is when they are at  
8 the garage getting the car fixed, Mr. Caldwell  
9 asked:

10 "Q Did the accused do anything in  
11 particular while you were waiting?

12 A He cleaned out the car."

13 And I think there was some suggestion that that  
14 might have -- whether consciousness of guilt or  
15 cleaning up or getting rid of things from the  
16 car; do you recall that being an issue that you  
17 addressed?

18 A I recall, I think that the mechanic's evidence  
19 dealt with that to some extent, I believe  
20 Mr. Davis.

21 Q Yes.

22 A And, you know, I can be wrong but I think I  
23 canvassed that with him or some other person?

24 Q Yeah, I think the evidence was that they had  
25 cleaned out some wrappers and some garbage.



1       A       Yeah, and I think that I dealt with that aspect of  
2               it, and I don't think that the evidence, as I  
3               recall it, I don't think that the evidence was  
4               that he was the only one involved in the cleaning,  
5               but I -- my memory could be faulty on that.

6       Q       Do you remember discussing this issue with David  
7               Milgaard at all?

8       A       Not specifically, but I'm sure I did, in the light  
9               of some of the questions that I believe I asked  
10              Mr. Davis.

11      Q       Okay. If we can go to 007650. Again, just for  
12              the record, this is where Mr. Caldwell asks him  
13              about -- Mr. Wilson about the discussion in  
14              Calgary, and Mr. Wilson says David said he:

15                   "... he said that he had 'hit a girl',  
16                   which I figured like taking her purse or  
17                   something like this, or 'he got a girl',  
18                   something to this effect.",

19              words to that effect, etcetera, and I think  
20              that's consistent with what he had in his  
21              statement.

22                   If we can go to page 007666.  
23              This is where Mr. Caldwell asks him -- if you let  
24              me just back up, I'm sorry Mr. Tallis. This is  
25              now your cross-examination, and just for the



1 record that starts on 007659, and so these are  
2 your questions:

3 "Q And I take it that there came a time  
4 when he indicated to you ...",  
5 and we're talking about the police officers:

6 "... that you may as well realize that  
7 you were under suspicion in connection  
8 with this matter?

9 A Yes."

10 And can you tell us, what was the importance of  
11 establishing that, that he was a suspect; where  
12 were you trying to go with that?

13 A Well my recollection is that this was looking into  
14 the potential for a -- or the possibility of a  
15 motive to change his story, much like I mentioned  
16 to you yesterday with respect to Albert Cadrain,  
17 Shorty Cadrain I should say to keep consistency.  
18 I'm sure that's where I was probing, the area I  
19 was probing.

20 Q If we can go to 6, page 668, please. And, again,  
21 there's some further questions here that you ask  
22 about. I think the evidence was that, at the time  
23 of the preliminary hearing, Ron Wilson was in  
24 jail, in fact, he was brought in from custody. He  
25 was in jail in Regina at the first time Inspector





1 Riddell interviewed him, I think he got out of  
2 jail in early May '69 then went back into jail  
3 August 15th on some other charges, and I believe  
4 he was in Fort Saskatchewan or somewhere in  
5 Alberta, if I'm not mistaken. And so here you  
6 question him about, when he was in the Regina  
7 jail, getting advice, street lawyers, etcetera.

8 Can you tell us Mr. Tallis, at  
9 that time, what was your experience or what was  
10 your sense of people who were in prison testifying  
11 in criminal proceedings; was there some -- can you  
12 give us some background of what you might have  
13 been thinking with respect to Mr. Wilson?

14 A Well I'm sure that I had in my mind that an inmate  
15 testifying often is viewed as violating what I  
16 could call the 'code of silence', if I may use  
17 that term. I think that was generally well-known  
18 by people who were defending cases, so that when  
19 somebody became a 'snitch', to use the language  
20 that I sometimes heard used, questions were often  
21 raised within the institution and sometimes the  
22 consequences were pretty serious.

23 Q And so again with Mr. Wilson, knowing that he had  
24 been in jail when he was first interviewed, and  
25 now was in jail at the preliminary hearing -- and



1 I note, here, some questions about what he may  
2 have discussed with other prisoners --

3 A Yes.

4 Q -- what did you make of the fact that, number 1,  
5 you would have known, I think you told us, that  
6 Mr. Wilson -- or we've heard evidence anyway --  
7 was hanging around with a crowd that might have  
8 been, not a bike gang, but possibly that type of  
9 group, and secondly, that he was in jail; what did  
10 you think about those facts and the fact that he  
11 was here giving evidence against a friend?

12 A Well, it was difficult to figure out the real  
13 motive, if there was a real motive. I'm sure I,  
14 you know, engaged in speculation, like many  
15 lawyers would do in those circumstances.

16 Q And then if we can go to the next page. And  
17 again, here it questions --

18 A Now I should just add this. I probably was also  
19 speculating or wondering whether he was, you know,  
20 seeking favours from law enforcement people, but  
21 even then that is to some extent quite  
22 inconsistent with the 'code of silence', if I may  
23 use that term to convey the notion I'm trying to  
24 convey.

25 Q So when you talk 'favours', in other words



1           favourable sentencing --

2       A       Yeah.

3       Q       -- or favourable imprisonment terms, is that --

4       A       Yeah, a good word on sentencing, and so on. You  
5       can't rule -- when you are speculating I certainly  
6       wouldn't rule anything like that out.

7       Q       And had you encountered occasions where witnesses  
8       might stretch evidence or fabricate evidence with  
9       the hope of getting something in return on a  
10      different matter, for example?

11      A       Yes, I had seen instances of that.

12      Q       If we can go to the bottom of -- here we talk  
13      about or you ask him that Mr. Walters, who was a  
14      Regina police officer, visited him in Regina, and  
15      this was about the first interview back in March,  
16      and no recollection of what I told him. Then the  
17      next page, and here you get into the first  
18      statement:

19                "Q    But in any event, I think we can agree,  
20                    you certainly didn't suggest to him at  
21                    that time that David had anything to do  
22                    with this tragedy in Saskatoon?

23                A    No, I didn't.

24                Q    As a matter of fact, anything you said  
25                    at that time would tend to negative any



1 participation on his part in this thing?

2 A Yes.

3 Q You can remember that much about your  
4 interview?

5 A Yes."

6 Quite sober, yes. And so would you, here, be  
7 trying to establish the circumstances under which  
8 he gave the first statement in the event that you  
9 might use that at trial?

10 A Yes, or at least use the information, --

11 Q Now if we can go to the next page --

12 A -- as distinct from the statement.

13 Q And here we get into the statement:

14 "Q And when Mr. Riddell came to see you,  
15 you still hadn't been told that you were  
16 a suspect?

17 A No.

18 Q This was before you were a suspect. And  
19 did any other policemen come to see you,  
20 apart from these two gentlemen, before  
21 you were told that you were a suspect?

22 A Well, they told me I was a suspect  
23 after they had gotten the statement."

24 And then, the next page, he goes on to say that  
25 he was told that by Riddell. So, again, this



1           would be probing to try and find out what  
2           happened when he gave the first statement?

3           A       Yes.

4           Q       Go to page 007675. So here at 170, and again  
5           talking about the statement:

6                    "Q    What did you say on that occasion?

7                    A    All I said then, that Dave had nothing  
8                    to do with it.

9                    Q    I see. In other words, you told them  
10                   that David had nothing to do with it and  
11                   I suppose by the same token, you said  
12                   that nobody else in the car had anything  
13                   to do with it?

14                   A    Yes."

15           And again, and I think we maybe see this at  
16           trial, would one approach be to try and get in  
17           front of the jury, without putting the statement  
18           there, the fact that initially, when he talked to  
19           the police, he didn't implicate David?

20           A       That's correct.

21           Q       And so they would at least know that at one point  
22           in time he did not implicate him, but I take it  
23           what you are saying is that you tried to do that  
24           without getting the statement in; is that fair?

25           A       Yes, get the substance of portions of the



1 statement, in effect, before -- treating it as an  
2 oral statement where certain acknowledgements he  
3 made to the inquiring officer were before the  
4 jury.

5 Q Then if we can go to 007680, you question him  
6 about the polygraph test, and I take it at the  
7 preliminary hearing you would be less concerned  
8 about this information coming out before the Court  
9 because there is no jury there; is that fair?

10 A That -- that's right.

11 Q And would it be correct to say that the  
12 preliminary hearing would be your opportunity to  
13 find out, to the extent that you could, what  
14 happened and what gave rise to his statements?

15 A That's quite correct.

16 Q Then 007687. Just at the bottom, there is a  
17 reference to he and Nichol being together, and  
18 we've already been through this with other  
19 witnesses. I think you then also go through and  
20 question him about, I think in some detail, when  
21 he gave this statement, who he met with, when he  
22 gave the second statement, etcetera, and that  
23 would be to try and establish what happened to see  
24 how you might use that at trial?

25 A To, yes, get --



1 Q Backing?

2 A -- further assessment of the circumstances under  
3 which he changed his mind.

4 Q If we can go to 007691, and here you actually get  
5 into the questions that he was asked, and he says:

6 "A One question he said I had lied on."

7 And you talk about when you went in there you  
8 were going to tell the truth:

9 "Q And did you find it a bit upsetting,  
10 after having tried to tell the truth,  
11 that he should make this allegation  
12 against you that you weren't telling the  
13 truth?

14 A This certain question, I knew I had  
15 lied about to start with."

16 And I think that might be the virtue question  
17 that you had referred to?

18 A I rather suspect so.

19 Q And then the next page he says:

20 "Q Was there only one question that you  
21 lied about to him?

22 A Yes, I think so."

23 And then he says:

24 "A No, there was two.",  
25 and then goes on.



1                   Were you able to tell, from  
2                   your examination of Mr. Wilson, just what he was  
3                   asked and what he passed and what he failed in  
4                   the polygraph?

5       A       No, I wasn't. And that goes back to Mr. Roberts  
6                   and why I was wanting to talk to him and find out,  
7                   with some precision, as to what had been said and  
8                   done.

9       Q       And then again 007699. Again, just for the  
10                  record, you had mentioned the other day about  
11                  learning of a conspiracy to commit fraud that he  
12                  had been involved in, and identified, and I think  
13                  you told us you had learned that it wasn't David  
14                  Milgaard and that's why you put it to him; is that  
15                  correct?

16      A       Yes, I felt safe in putting that question, and I  
17                  wanted to be able to establish that David Milgaard  
18                  was not involved in any conspiracy with him in  
19                  light of the charges that were mentioned.

20      Q       If we can go to 007704. And we deal with the  
21                  toque here, and you will recall that the physical  
22                  evidence the Crown had, they had a blue toque  
23                  found in the house next door to the Cadrain house,  
24                  a woman by the name of Helen Gerse, and there was  
25                  a substance on it that appeared to be blood but I





1 don't think the lab, they weren't able to type it,  
2 and I think they confirmed that it was blood but I  
3 stand to be corrected. In any event, you  
4 questioned Mr. Wilson here about the toque that  
5 David was wearing, and he describes it as:

6 "Q White, green, and brown. And that's the  
7 toque that he was wearing on the morning  
8 in question?

9 A Yes."

10 And so would that be an effort to try and use Mr.  
11 Wilson to exclude the toque as belonging to David  
12 Milgaard, the blue toque?

13 A Yes.

14 Q Without having to call David Milgaard to state  
15 that, I take it?

16 A Yes.

17 Q Go to 007718. And, again, this is where you start  
18 to question, and I think you spend a bit of time  
19 with Mr. Wilson at the preliminary hearing -- I  
20 won't go through it all -- but trying to pin him  
21 down exactly where it was that they stopped the  
22 woman for directions and where they got stuck; is  
23 that correct, that you would be --

24 A I was endeavouring to at that stage.

25 Q I think, as well, you then questioned him -- and I



1           won't go through it -- but as well about police  
2           officers driving him around in the area, you do  
3           the same thing with Nichol John; what would be the  
4           purpose in establishing that evidence or getting  
5           that evidence?

6           A       Well, primarily to consider the circumstances  
7                   under which the damaging testimony against David  
8                   emerged, and whether or not he really knew or  
9                   whether or not certain things had been suggested  
10                  to him.

11          Q       So the purpose there would be to say the reason  
12                   you can now say you were in the vicinity is  
13                   because the police drove you there?

14          A       Yes.

15          Q       And influenced your thinking?

16          A       That was the potential there, that his thinking  
17                   had been affected.

18          Q       Then go to 007721, and at question 667 you have  
19                   him confirm that it was definitely on a street  
20                   that they were stuck, not in a back alley, and  
21                   then on the next page you go on and have him  
22                   confirm that he was never in the alley where Gail  
23                   Miller's body was found. 675:

24                   "Q    Well, you know that one that I'm talking  
25                          about -- "



1 Or let me back up.

2 "Q And from driving over that area --"

3 Which is with the police,

4 "-- I take it you are quite satisfied  
5 that you were never at any time stuck in  
6 the alley?

7 A Not in that particular alley."

8 It refers to Gail Miller:

9 "Q And you're quite satisfied that your car  
10 was never stuck in that alley?

11 A No, it wasn't.

12 Q Either in the north and south lane or  
13 the east and west lane?

14 A No.

15 Q And I take it that your position is that  
16 you have never driven your car through  
17 either of those alleys?

18 A No, I haven't."

19 And again, at this time, Mr. Tallis, there was  
20 the evidence of Henry Diwold, the St. Mary's  
21 church caretaker, who said he observed a car in  
22 the east-west alley at the T intersection near  
23 where Gail Miller's body was found. Do you  
24 recall that being evidence that was tendered and  
25 the suggestion that that was the vehicle that



1 David Milgaard was in?

2 A Yes, and I certainly was aware of that testimony  
3 before the, or the likely testimony on that point  
4 before the preliminary hearing and this was part  
5 of my preparation.

6 Q Okay. And so I take it here, and I may be stating  
7 the obvious, that at the prelim that you would  
8 seek to pin down and confirm that Mr. Wilson had  
9 never been in that alley with his vehicle?

10 A Yes, that's the way I read it, just as you have.

11 Q And as well I take it at this time, and I don't  
12 know if Nichol John had testified yet, but  
13 certainly in her statement she had said that her  
14 vehicle was stuck on the incline in the back alley  
15 behind the funeral home, and would that be  
16 something that you were aware of?

17 A Yes.

18 Q And then 007728, just on this point at 741, you  
19 have him confirm that:

20 "... where you got stuck there wasn't  
21 any Funeral Home?

22 A I don't know.

23 Q Well, you didn't see any Funeral Home?

24 A No. I wasn't looking for one  
25 actually.



1                   Q    No, and I appreciate that, but having  
2                           gone back and looking over the place,  
3                           you have no recollection with  
4                           associating the place where you got  
5                           stuck with a Funeral Home?

6                   A    No."

7                   So again, I take it that would be the same  
8                   purpose as the earlier questions?

9           A    That's correct.

10          Q    Then 007731, and here's where we're dealing with  
11               again about where they got stuck right after  
12               asking the woman for directions, and this is the  
13               reference at 770:

14               "Q   Well, what I'm getting at is, did you  
15                   spin them enough so they would leave  
16                   clear marks in the snow?

17               A    Yes."

18               And again I think you've told us about that, that  
19               you would then try to use this evidence with the  
20               other officer's evidence of observations in the  
21               area and the fact that no marks or spin marks  
22               were found in the snow; is that correct?

23          A    That's correct.

24          Q    Then if we can go ahead to 007734, and here you  
25               are questioning him about how far he walked when



1 he left the vehicle, and you had already asked him  
2 about his clothing and here's where you say:

3 "Q How far did you walk?

4 A Maybe two and a half blocks."

5 Is that one way or is it a total.

6 "A One way."

7 So two and a half blocks there, two back, you say  
8 five blocks.

9 "Q So you walked not more than five blocks?

10 A No."

11 Down the same street? Yeah. So again, would  
12 this be trying to pin down how far he would have  
13 walked to try and give you some sense of how long  
14 he was away from the vehicle?

15 A Yes. This was focusing on of course the distance  
16 he walked, but also on the time factor.

17 Q And if we can go to the next page at 812, you say:

18 "Q I see. So that actually you were away  
19 for just a few minutes then?

20 A About five minutes.

21 Q About five minutes. And then you  
22 returned to the car?

23 A Yes, I did.

24 Q And did you run because of the cold?

25 A Kind of trotted because my feet were



1 getting cold."

2 And I take it that if he was running, that would  
3 shorten the time to go two and a half blocks?

4 A Yes.

5 Q So then he says, if we can scroll down, at 817, so  
6 he said he's been away for about five minutes and  
7 you say:

8 "Q And now as I understand it, David came  
9 back, according to you, shortly after  
10 you got there?

11 A Yes.

12 Q And that would be -- when we say shortly  
13 after, how many minutes would you say?

14 A No more than five minutes after I got  
15 back."

16 So again, it appears here that you have him  
17 saying he was away for about five minutes and  
18 then when he got back no more than five minutes  
19 before David got back; is that fair?

20 A Yes.

21 Q So his first statement was 15 minutes that David  
22 was away, here he's down to about 10 minutes.  
23 Were you trying to get him to two minutes?

24 A Well, I'm trying to get him to a short time frame.  
25 I couldn't say two minutes or three minutes, but a



1           very short period of time in light of what David  
2           had told me.

3           Q       So with this evidence and how he stated it, were  
4           you still, would you still have been of the view  
5           that this was inconsistent with what David  
6           Milgaard had told you about the length that he was  
7           away from the car?

8           A       Well, I certainly felt it was longer than what  
9           David had indicated to me, but, you know,  
10          assessment of time can be a difficult matter for  
11          some witnesses, but I certainly wanted to pin down  
12          the time as being a short period of time and to  
13          pin it down as much as I could into minutes.

14          Q       And would the fact that it was 40 below that  
15          morning, and I won't bring the questions up, but I  
16          think you referred to, questioned them about their  
17          clothing to suggest that if they were gone for 10  
18          or 15 minutes, that without proper clothing, that  
19          they would freeze or have frost bite?

20          A       Well, that's right, it was a bitterly cold  
21          morning, as I recall the evidence, and that was  
22          certainly consistent with my recollection,  
23          personal recollections since I was living in  
24          Saskatoon at the time.

25          Q       If we can go to 007762 and here you are





1           questioning him, you say:

2           "Q    I take it that you didn't know anything  
3                   about a murder of a girl in Saskatoon on  
4                   January 31st, 1969 until the policeman  
5                   told you about it?

6           A    That's right."

7           Ken Walters, and then the next page:

8           "Q    So that when you told Mr. Riddell that  
9                   all during the trip there was never any  
10                  mention about the murder of a girl in  
11                  Saskatoon, in fact, I didn't even know  
12                  about this murder until the police told  
13                  me today, you were telling him the  
14                  truth, were you?

15          A    Yes."

16          Now, if I can pause there, we know from Ron  
17          Wilson's statement that he gave, that on May  
18          23rd, or at least in the May 24th statement he  
19          says that after he got back in the car Nichol  
20          told him that David had grabbed a girl and  
21          stabbed her and that the next day Ron Wilson in  
22          his statement said David told him that he had  
23          jabbed a girl and threw her purse in the garbage  
24          can. So again, would that -- how did you  
25          rationalize that with the fact that here he's



1           saying lookit, I didn't know about the murder  
2           until Mr. Riddell told me?

3       A       Well, I wanted to once again pin him down to this  
4           version and --

5       Q       Maybe if I can just scroll down, I think maybe  
6           here's the -- he literally -- you are talking  
7           about Riddell, was friendly and courteous.

8           "Q    He literally let you tell your own  
9           story?

10       A       Yes.

11       Q       And you weren't cross-examined on  
12           answers and so on by him?

13       A       I was every once in a while."

14       And then:

15       "Q    But to the best of your ability at that  
16           time, you told him the truth, didn't  
17           you?

18       A       No, I didn't.

19       Q       You didn't tell him the truth?

20       A       No.

21       Q       Just part of the truth?

22       A       Yes."

23       Next page:

24       "Q    And the part that I have referred to  
25           here was the truth?



1 A Yes.

2 Q But you didn't tell him the complete  
3 truth, you say?

4 A No, I didn't."

5 And again, would this be something, was this the  
6 type of answers that you were concerned about?

7 A Yes, and I was concerned, but I also wanted to pin  
8 him down as much as I could.

9 Q And so at the preliminary hearing would you be  
10 prepared to get into areas with him that you might  
11 not at trial?

12 A Yes.

13 Q Go to page 007769, you questioned here, and you do  
14 the same with Nichol John about their use of LSD  
15 and hallucinations?

16 A Yes.

17 Q And there's a bit of a cross-examination there.  
18 What was your purpose in that?

19 A Well, this was during -- this of course was quite  
20 some time, this was after the homicide, and I  
21 certainly wanted to raise this as, on the issue of  
22 reliability of recollection in addition to  
23 credibility. I viewed reliability and credibility  
24 as possibly different things, or different  
25 concepts, and in this particular case I was



1           probing to see whether or not, as an alternative,  
2           his recollection could be faulty because of the  
3           use of drugs on some of these trips.

4           Q       I think you told us a day or two ago, and please  
5                    correct me if I'm wrong, that this issue of drug  
6                    use was a double-edged sword or something like  
7                    that?

8           A       Yes.

9           Q       Cuts both ways?

10          A       Yes.

11          Q       Can you explain that in connection with this  
12                    evidence? Let me phrase it this way. Was there a  
13                    concern or risk you saw in bringing out evidence  
14                    that Ron Wilson and/or Nichol John were taking LSD  
15                    and hallucinating after the events of January 31,  
16                    1969?

17          A       Yes, that was a risky area.

18          Q       And what were some of the risks or what was --

19          A       Well, for one thing, that kind of association  
20                    would be visited upon David in the minds of people  
21                    and in this particular case one had to, at least  
22                    in my judgment, one had to make sure that there  
23                    was no suggestion that they were under the  
24                    influence, and particularly David, during the trip  
25                    from Regina to Saskatoon and then when they left,



1           because if I recall it, that became a question  
2           that was raised early in the trial by I think the  
3           jury, and I believe the judge may have asked  
4           several questions on that too as a result of that.

5       Q       Yeah. In fact, during the course of Ron Wilson's  
6           evidence, and we'll see that this afternoon --

7       A       Yeah, I'm just speaking now from vague  
8           recollection, and I'm sorry for jumping ahead of  
9           you.

10      Q       No, no. So just on the drug issue, I take it one  
11           approach would be that if you could discredit  
12           Wilson and John, that perhaps their LSD or drug  
13           taking and their hallucinations might lessen their  
14           credibility and therefore their recollections  
15           might not be as good?

16      A       Yeah.

17      Q       That would be helpful to David's case?

18      A       Yes.

19      Q       And the damaging effect, I think you indicated,  
20           was that the jury might associate their drug use  
21           with David, and I think your concern was the day  
22           of the events of January 30, 31, if the jury felt,  
23           notwithstanding the evidence of no drug use, that  
24           there may have been drug use, that that would be  
25           damaging to David's case?



1       A       Yes. I really wanted to maintain what I  
2               understood to be sobriety during that significant  
3               period.

4               MR. HODSON: Okay. This is probably an  
5               appropriate spot to break.

6               *(Adjourned at 12:00 noon)*

7               *(Reconvened at 1:31 p.m.)*

8       BY MR. HODSON:

9       Q       Afternoon, Mr. Tallis. If I could call up 005172.  
10              We'll now deal with the trial transcript of Ron  
11              Wilson, and I apologize, this version of the  
12              transcript is not as legible as some of the  
13              others. Go to page 005179. And this is where Mr.  
14              Caldwell is questioning about the knife, and there  
15              is a number of spots in here, in fact in general  
16              in looking at the trial transcript it appears that  
17              Chief Justice Bence, on many occasions, would  
18              interject with questions; would that be -- again,  
19              the transcript speaks for itself, but would you  
20              have a recollection of Chief Justice Bence  
21              participating in the questions a fair bit?

22      A       Yes. I would say -- well of course the  
23              transcript, in my view, reflects that, and I  
24              certainly have a recollection of that.

25      Q       And here is where Mr. Caldwell asks again, we'll



1           maybe call that out, about the knife. And he says  
2           I saw a knife, and the Court says wait a minute,  
3           you saw a knife in the car, saw it, how would you  
4           describe the knife, etcetera. And then the next  
5           page, and then he describes it as a reddish brown  
6           handle, and sort of a paring knife type:

7           "Q Now, had there been any knife of that  
8                   sort in your car to your knowledge when  
9                   you started out?

10          A No."

11          And I wondered, from that, if there was an  
12          implication that it was obtained from the  
13          elevator in the break-in; do you recall that  
14          being an issue?

15          A I don't, I'm trying to just recall, I don't recall  
16          anything of that now. I mean I knew what David  
17          had told, I mean I've told you what David had told  
18          me, but just from looking at that now, I assume  
19          that that's what Mr. Caldwell was probably  
20          focusing on.

21          Q If we can go to 005192, please. And I won't go  
22          through the earlier question and answer but he is  
23          -- we've gone through it before -- Mr. Caldwell is  
24          questioning him about when they got stuck and when  
25          they left the vehicle. And here he asks:



1 "Q ... how far did you go when you went  
2 away on foot?

3 A I didn't go any more than five blocks.

4 Q And did you find anything in the way of  
5 help of some sort?

6 A No, I didn't."

7 And I'll take you, we'll go a bit later to where  
8 you cross-examine on this, but what was your  
9 initial reaction when you heard this evidence,  
10 Mr. Tallis, having known that at the preliminary  
11 hearing he told you 2 1/2 blocks?

12 A Well I'm sure that I noted in my brief book that  
13 -- and bearing in mind that I had not only an  
14 index of the witness' evidence at the preliminary,  
15 but I had a trial brief including a draft  
16 cross-examination of him there, I'm sure that I  
17 immediately realized that he was, if I may use the  
18 term, "improving" -- that is in quotation marks --  
19 on his testimony.

20 Q Perhaps if we could just go to, you talked about  
21 your summary, if we could call up 179451. And we  
22 looked at these earlier. I think this, you told  
23 us, is your summary that you prepared from --

24 A Yes.

25 Q -- the preliminary hearing. If we can go to page





1           179453. And, again, these are parts from the  
2           preliminary hearing transcript, is this your  
3           handwriting by line 96? I think it says --

4       A       I'm quite sure it is.

5       Q       And, as well, by line 99?

6       A       Yes.

7       Q       Can you tell us what that says?

8       A       I can't. I think the second word is "house" but  
9           I'm not sure of the first word now.

10      Q       Okay. And then "only knife"?

11      A       I think "only 1 knife", I think there is a 1 in  
12           there.

13      Q       And then 179474. Here is where we see "he went up  
14           a couple of blocks" and then "NB"; would that be  
15           your writing, the NB?

16      A       The NB is certainly mine.

17      Q       And so --

18      A       And the tick mark, I think, is mine too.

19      Q       And so this would be where you had summarized his  
20           evidence about going up a couple of blocks?

21      A       Yes, and I noticed that it is highlighted, and my  
22           copy probably was underlined in red because some  
23           portions I would underline in red, as distinct  
24           from blue, and just not that I recall it being  
25           underlined in red but it's one of the things that



1           might well have been. And as I recall it I --  
2           some of those crucial areas like that, when I  
3           prepared the brief for cross-examination I not  
4           only had my draft question, but below the draft  
5           question I would have incorporated into the brief  
6           the actual text of what he said at the preliminary  
7           hearing with a reference to the page and question  
8           number. Now I've gone through that with you  
9           before --

10        Q       Right.

11        A       -- and I'm -- I'll try not to unnecessarily repeat  
12           that procedure when you are asking me questions.

13        Q       I think you have told us that would be that you  
14           could quickly put that to a witness if the witness  
15           strayed from what he or she had told you at the  
16           preliminary hearing?

17        A       That was the reason for that kind of preparation.

18        Q       And if you go to 179291, which is the remainder of  
19           this summary, and this picks up at page 6 -- and,  
20           again, this is the Ron Wilson summary -- if you  
21           can go to 179335, please, and this is right at the  
22           very end of your notes --

23        A       Yes.

24        Q       -- on -- is that your handwriting?

25        A       Yes, I'm quite sure it is.



1 Q Maybe we could just quickly go through that. I  
2 think it says "Cadrain - long hair"; is that  
3 correct?

4 A Yes, I think that's correct.

5 Q Then could you just carry on and tell us what the  
6 rest is?

7 A "Query re knife". These are obviously some  
8 thoughts that I jotted down. "Only one knife in  
9 car that he saw between Regina and Saskatoon", and  
10 then "where did you go looking for Shorty's  
11 girlfriend? Was he directing you? Were you  
12 picked up for questioning by RCMP to see if car is  
13 stolen, or if you ..."

14 Q I think this may relate to --

15 A -- "or if you were supposed to leave province  
16 since you were on bail".

17 Q I think that relates to an incident in Banff, yes.

18 A Yeah. And then "did you drop Shorty and Nicky off  
19 at a dope purchase place", and "where were blood  
20 samples taken? Did Shorty have long hair at that  
21 time to his shoulders?" Now those are notes that  
22 I obviously put on there after that was typed up  
23 and, while I don't recall writing them, I rather  
24 think they were additional references that I  
25 worked up when I was preparing my trial brief.



1 Q Okay.

2 A But I can't be sure of that, but --

3 Q Sure.

4 A -- I certainly know that I had been looking over  
5 certain aspects, because there are actual  
6 references to question numbers there in the  
7 right-hand column.

8 Q Okay. If we could go back to 005172. Again, this  
9 is the transcript -- if we can go to 005194 --  
10 again, this is Mr. Wilson being examined by Mr.  
11 Caldwell, and here he is asked a question about  
12 what time they got stuck, and this would be right  
13 after stopping the woman for directions. He says:

14 "A I think approximately it would be around  
15 six thirty."

16 on the morning of January 31. Based on what  
17 David Milgaard had told you were you in a  
18 position to dispute the time that this witness,  
19 at least, suggested they got stuck?

20 A It had -- I'd have to say that, just trying to  
21 recollect from what he said, he really wasn't that  
22 sure of the time, but I knew it was in the early  
23 morning, and I think it would be fair to say it  
24 was probably in that neighbourhood in terms of  
25 time.



1       Q       I think at the, in his direction to the jury or in  
2               the charge to the jury Chief Justice Bence, I  
3               think, put it at 6:45 to 7:10, in that time frame,  
4               that their vehicle would have been somewhere -- or  
5               wherever they were was at that time period; is  
6               that correct?

7       A       Yes.

8       Q       And would that be roughly in accord with what you  
9               ascertained from what David told you and what you  
10              gleaned from other information?

11      A       Yes, I -- and part of it would be gleaned from,  
12              you know, what had transpired at the trial.

13      Q       Okay. If we can go to the next page, please,  
14              again Mr. Caldwell asks about when he got into the  
15              car, he says that Nichol was screaming:

16              "Q   And what was the next thing that  
17                    happened?"

18              And then:

19              "A   Yes, Dave came later on.

20              Q   And which part did he come into?"

21              And then here's the question:

22              "Q   Now how much time would you estimate had  
23                    elapsed between you parting company with  
24                    David when the both of you went for help  
25                    and the time when he got back in the



1 car?

2 A Around fifteen minutes."

3 So, just to recap, in his statement of May 23rd,  
4 '69 he said that David was away from the car for  
5 about 15 minutes; at the preliminary hearing he  
6 said that -- Wilson said he went 2 1/2 blocks one  
7 way, 2 1/2 blocks back, took about five minutes,  
8 and then he said David got back to the car about  
9 five minutes later. So here at the trial, now,  
10 he is saying he went five blocks out, five blocks  
11 back, and that David was gone about 15 minutes in  
12 total; is that a fair summary of his evidence?

13 A Yes, I believe so. I haven't read it over as  
14 carefully as you but I certainly accept that.

15 Q Okay. And so here he has added, it appears, five  
16 minutes from what he said at the preliminary  
17 hearing, in addition to five blocks in total; is  
18 that fair?

19 A That's right, both additional time and additional  
20 blocks, which I suppose can be rolled together.

21 Q And then the next page -- actually, sorry, just at  
22 the bottom of that page the judge interjects and  
23 says:

24 "... you didn't go any more than five  
25 blocks on your walk?



1 A Yes.

2 Q Did you go five blocks?

3 A I'm not sure if I went five blocks.

4 Q What's your best estimate then of how  
5 far you went?

6 A Possibly four.

7 Q Would it be four for sure?

8 A For sure would be four.

9 Q And were they ordinary city blocks?

10 A Yes, they were.

11 Q And you turned around and you came back  
12 and walked the four blocks back?

13 A Yes.

14 Q And how long were you in the car before  
15 the accused Milgaard turned up?

16 A Five to six minutes."

17 And so again it appears that when the judge  
18 questioned him he went back to four for sure, and  
19 then similar to what he said at the preliminary  
20 hearing, that he was in the car for five, he says  
21 five or six minutes before David got back. So,  
22 again, just bear that in mind for when we go to  
23 your cross-examination.

24 If we can go to page 005201 --  
25 actually, I'm sorry, this is a break, this is



1 still, he's still in examination-in-chief, but  
2 here are some questions that the judge asks about  
3 the lady on the street. And he says:

4 "Q Were you able to see her face?"

5 And scroll down, please:

6 "A No, I wasn't.

7 Q You're not able to say then - there is  
8 nothing that you saw which would  
9 indicate to you in any way how old a  
10 woman she was?

11 A No.

12 Q I see; was there anything to indicate  
13 how tall she was?

14 A No."

15 So, again, it appears the judge elicited from Mr.  
16 Wilson the fact that he couldn't see the woman's  
17 face and nothing to say how old she was; is that  
18 correct?

19 A That's correct.

20 Q And would you have had concerns asking those types  
21 of questions?

22 A Well, they were not the type of question that I  
23 would ask, for obvious reasons.

24 Q Then to 005213, again here's where Mr. Wilson,  
25 this is still examination-in-chief, describes the





1 blood on David's clothes, he says:

2 "I imagine it wouldn't be any more than  
3 an inch and a half or two."

4 In diameter. And would that be consistent with  
5 what Mr. Cadrain had said about the blood he saw?

6 A Yes. I think Cadrain had used splotch or  
7 something like that, but as I recall it, he said  
8 in his testimony something about a dimension  
9 similar to that.

10 Q If we can then go ahead to 005225, and again this  
11 is still Mr. Caldwell, they are talking about  
12 driving when they left Saskatoon, and you rise and  
13 say:

14 "My Lord, my learned friend is entering  
15 into an area now where I think there are  
16 one or two things that should be  
17 discussed in the absence of the jury."

18 The jury retires, and then the next page, and  
19 then we won't go through all of this, it's in the  
20 record, but here's where you raise, you say you  
21 anticipate that he's going to go into areas of  
22 "so-called bad driving on the part of the  
23 accused." Can you tell us, what was your concern  
24 about that evidence going in?

25 A Now, this is the bad driving after they left



1 Saskatoon?

2 Q Yes.

3 A Well, my concern was that that would dovetail with  
4 the Crown argument or theory that this was  
5 evidence of flight or consciousness of guilt that  
6 was rolled up with the notion that he was getting  
7 out of town as quickly as possible.

8 Q And then if we can just scroll down a bit, please,  
9 I think here you talk about the fact that there's  
10 other evidence suggesting that they were not in a  
11 hurry, and you say, yeah, I think the evidence  
12 will show there was no rush to leave Cadrain's or  
13 anything like that but such evidence is of very  
14 little if any probative value and yet in front of  
15 a jury in this type of case it might be highly  
16 prejudicial, and then you talk here about bearing  
17 in mind the authorities which I know Your Lordship  
18 is familiar with. Would you have filed those  
19 authorities with him?

20 A When I read that, I'm sure that that's an  
21 indication that I had filed a list of cases or  
22 authorities and I'm sure that in accordance with  
23 the usual practice I would have given Mr.,  
24 probably given Mr. Caldwell a copy.

25 Q Then if we can go to 005229, I don't think I need



1 to read through the argument, but here the judge  
2 says:

3 "... under all the circumstances the  
4 evidence would be such that it would be  
5 just as consistent if not more so with  
6 the desire of a person just to get  
7 behind a wheel and drive fast; and I  
8 think it might prejudice the jury, Mr.  
9 Caldwell - it might possibly be  
10 prejudicial to the jury and wouldn't be  
11 of sufficient probative force to allow  
12 me to admit it."

13 So again this appears to be where that evidence  
14 was ruled to be admissible; is that correct?

15 A Yes.

16 Q And again I won't bother bringing up the  
17 transcript, but again he gives similar evidence  
18 about the compact, similar evidence about his  
19 discussion with David Milgaard in Calgary.

20 If we can go ahead to 005247 --  
21 actually, sorry, to 005249. I apologize, again  
22 this isn't a good copy, but I think we can  
23 decipher the words. So this is where you start  
24 your cross-examination, and I think you start off  
25 with the question of how far you walked:



1 "Q And then I think you told My Lord the  
2 Chief Justice that you were satisfied  
3 that it was at least four?

4 A Yes.

5 Q Now, Witness, I suggest to you that in  
6 fact you --"

7 I'm sorry, I can't --

8 A I think "did not" I believe.

9 Q "-- did not walk any more than two to  
10 two and a half blocks and then came back  
11 to the car, is that not correct?

12 A It's not.

13 Q So today your position is that you  
14 walked at least four blocks and probably  
15 five?"

16 And then go to the next page, and here's where  
17 you then direct him to the evidence of the  
18 preliminary hearing; is that correct?

19 A Yes.

20 Q And so you would be going to him saying you  
21 testified under oath at an earlier time and at  
22 that time you said two and a half blocks and now  
23 you've changed; is that fair?

24 A Yes, that was the gist of it.

25 Q And then if we can go to the next page, the



1 bottom, you ask:

2 "Q Is it fair to say that you were given  
3 plenty of time to answer the questions  
4 that were put to you?

5 A Yes."

6 And I think that's referring to the preliminary  
7 hearing?

8 A Yes, that refers to the questions and answers with  
9 respect to what he said at the preliminary hearing  
10 about the time and the distance I believe.

11 Q And then go to 005253, please, and you actually go  
12 through the questions again with him and you say:

13 "Q Why do you choose to double it under  
14 oath on this occasion?"

15 Actually, go back to the previous page, and you  
16 say, you now say it was five blocks instead of  
17 two and a half, you choose to double it under  
18 oath, and then the next page he says:

19 "A Because since the preliminary I have  
20 been thinking about it a lot.

21 Q I see; you've been thinking about it a  
22 lot?

23 A Yes.

24 Q And of course you thought about it  
25 before?



1 A Not that much.

2 Q I see; you had been interviewed on many  
3 occasions?

4 A Yes.

5 Q So it wasn't just like coming into court  
6 cold, was it?

7 A No.

8 Q No, you had seen any number of people  
9 and talked to them prior to the  
10 preliminary hearing?

11 A Yes.

12 Q Many police officers?

13 A Yes.

14 Q So it wasn't a question of coming in  
15 without thinking about it?"

16 And again just scroll down, and again you put the  
17 question to him about how long he was away, five  
18 minutes, and then the next page, again we'll just  
19 touch on these, again you put that to him where  
20 you asked the question and he gives the answer  
21 yes, and then on the next page, you say here:

22 "Q And is it fair to say that David came  
23 back to the car just a few minutes after  
24 you returned?

25 A Yes.



1                   Q     And would it be fair to say that that  
2                             would be not more than five minutes  
3                             after you got back?

4                   A     Not more than five or six minutes."  
5                   And then you refer to the five minutes at the  
6                   preliminary hearing. Were you concerned, in  
7                   examining Mr. Wilson about -- I think you said  
8                   that he had improved his evidence between the  
9                   preliminary hearing and the trial by adding  
10                  blocks and time. Were you concerned that he  
11                  might say something to the effect that at the  
12                  preliminary hearing I was trying to help my  
13                  friend, or words of that nature? Was that a  
14                  concern?

15         A         That's an area that I was trying to avoid  
16                   eliciting because, as I've told you, this to me  
17                   was just further indication of how treacherous he  
18                   could be.

19         Q         And again we touched on this earlier, I take it  
20                   that based on what Mr. Milgaard had told you by  
21                   way of instructions and the facts, that you were  
22                   not in a position to say to Mr. Wilson that he was  
23                   making up this getting stuck and leaving the car  
24                   business?

25         A         No, that wasn't in dispute for reasons I've told



1           you, but certainly the time factor and distance  
2           that this witness walked were.

3           Q       And 005265, again this is similar to the prelim,  
4           you asked him about the toque, a mixture of green,  
5           brown and white, and he says yes, so that would be  
6           to get in front of the jury the fact that David  
7           Milgaard's toque was not a blue toque, but rather  
8           a green, brown and white toque; is that correct?

9           A       That's right.

10          Q       005266, you ask questions about what he was  
11         wearing when he left the car and that he started  
12         to freeze pretty fast, he could feel him being  
13         frostbitten:

14                 "Q     Could you?

15                 A     Yes I did."

16         I think what you told us earlier is that  
17         obviously with the weather at 40 below, that  
18         might suggest that a person would be out a  
19         shorter length rather than a longer length of  
20         time; is that fair?

21          A       That's correct.

22          Q       005270, and you are questioning Mr. Wilson about  
23         what he observed of David Milgaard when he  
24         returned to the car after they got stuck and he  
25         went looking for help. You say:





1 "Q Well now, Witness, when David came back  
2 to the car after the two of you had been  
3 separated for this interval that we have  
4 talked about, you've told us you didn't  
5 see any blood."

6 That was an earlier question.

7 "Now, I take it that when he came back  
8 into the car you didn't observe him  
9 carrying anything in his hands?

10 A No I didn't.

11 Q And he got into the front seat with you  
12 and Nichol John at the time?

13 A Yes.

14 Q And in particular you didn't see him  
15 with a wallet or anything like that?

16 A No.

17 Q Or a compact case or anything of that  
18 nature?

19 A No."

20 And I take that this would be to counter the  
21 suggestion that the compact thrown out after they  
22 left Saskatoon had come from Gail Miller because  
23 if it had, one might expect Mr. Wilson to have  
24 seen Mr. Milgaard have that in his hand when he  
25 returned to the car?



1           A           Yes.

2           Q           And secondly, the same with the wallet, the Crown  
3                       theory was that it was thrown out near the Cadrain  
4                       house when Mr. Milgaard drove around the block.  
5                       Again, the fact that Mr. Wilson didn't see it on  
6                       his possession would allow you to argue that maybe  
7                       that didn't happen; is that fair?

8           A           That's correct. I just add this, as I told you  
9                       before, I don't specifically recall asking these  
10                      questions now and the mental processes I went  
11                      through in preparation or asking the questions,  
12                      but I'm quite sure that your assessment of it is a  
13                      reasonable assessment and it's one that I would  
14                      infer from reading over this material.

15          Q           Okay. Then if we can go to 005285, and again this  
16                       is some questions, and I think we went through all  
17                       of this with Ron Wilson, but you questioned him  
18                       about when he was considered a suspect and the  
19                       first statement, and so again:

20                      "Q     ... and accordingly you spent some time  
21                              talking to him about Saskatoon?

22                      A     About an hour.

23                      Q     Yes; on the morning in question ... on a  
24                              friendly basis?"

25                      And then to the next page, and:



1 "Q ... you spent I believe approximately an  
2 hour with Inspector Ruddell?

3 A Yes.

4 Q And as I understand it this discussion  
5 took place approximately March the 3rd  
6 1969?"

7 Which is the date of the statement.

8 "Q ... you were asked whether you knew  
9 anything about this murder?

10 A Yes.

11 Q And you told Mr. Ruddell that you  
12 certainly had nothing to hide?

13 A That's right.

14 Q In fact you were quite prepared to be  
15 straightforward with him?

16 A Yes.

17 Q And I think it's fair to say that you  
18 mentioned that David had left the coat  
19 that he had been wearing at your  
20 mother's place?

21 A Yes.

22 Q You told him where he could get the  
23 coat?

24 A Yes.

25 Q Did you mention to him about the sweater



1 of your dad's that he may have been  
2 wearing?

3 A No, I didn't."

4 And was this to indicate that he was being  
5 co-operative with the police in giving them  
6 information relating to David?

7 A Yes, and that his initial sort of description of  
8 that aspect of it was the one that was more  
9 believable than his testimony.

10 Q And then the next page there's some questions  
11 about, again this same visit about where your car  
12 was located.

13 "Q As far as you knew?

14 A Yes.

15 Q ... he could go look at it if he wanted  
16 to?

17 A Yes.

18 Q ... he might be interested in seeing the  
19 interior of it?

20 A Yes."

21 And David's clothes, and I would take it at this  
22 time, Mr. Tallis, you would be aware that  
23 Mr. Wilson's vehicle had been checked by the  
24 police and the RCMP lab and nothing was found in  
25 there of any suspicious nature?



1       A       That's correct, yes.

2       Q       Then the next page, here's where we get into your  
3               questioning regarding the first statement, you  
4               say:

5               "Q    And I suppose that it's fair to say that  
6                    when you were talking to Inspector  
7                    Ruddell on this occasion you told him  
8                    that nobody in your car had anything to  
9                    do with the terrible thing that happened  
10                  in Saskatoon?

11               A    That's right.

12               Q    And in particular you said that you  
13                    hadn't had anything to do with it?

14               A    Yes.

15               Q    And that David hadn't had anything to do  
16                    with it?

17               A    Yes.

18               Q    And as I understand it, you gave him as  
19                    best you could recollect particulars of  
20                    the various spots that you had been in  
21                    Saskatoon even though you couldn't  
22                    designate the name of the motel and so  
23                    forth?

24               A    I didn't give him everything."

25               Let me just pause there. Was that an answer that



1 concerned you?

2 A Undoubtedly it was.

3 Q And then if we can scroll down:

4 "Q So after Mr. Ruddell left you were told  
5 I take it by someone that you were now a  
6 suspect?

7 A Yes."

8 And I think you told us when we were looking at  
9 the preliminary hearing that one strategy you had  
10 was that if Ron Wilson thought he was a suspect,  
11 that might explain why he would point the finger  
12 at his friend to avoid the finger being pointed  
13 at him; is that correct?

14 A Yes, I'm sure that was part of my speculation, or  
15 maybe even more than that.

16 Q Page 005292, a couple of areas here, you question  
17 him about being in the presence of Nichol John  
18 with police officers. What was your purpose in  
19 getting that evidence in front of the jury?

20 A Well, I think essentially for the same reason that  
21 we discussed a moment ago.

22 Q And next 005293, just a confirmation, and again  
23 this came up at the prelim, confirming:

24 "Q ... that you never at any time drove  
25 your car down this east-west lane back



1 of the funeral home at 1402 on 20th  
2 Street?

3 A No, I never did."

4 And I think it had already been put in evidence  
5 that it was Ron who was driving the vehicle when  
6 they got stuck?

7 A Yes.

8 Q And after. If we can then go to 005296, and again  
9 the proceedings broke for the day and this is the  
10 morning -- just give me a moment here -- I think  
11 this relates to the bad driving and the fact that  
12 it would not only preclude it being asked of Ron  
13 Wilson, but also Nichol John, but if you can go to  
14 005298, and this is where the Court, the judge  
15 says:

16 "Well now, gentlemen, I have been asked  
17 by members of the jury to put certain  
18 questions to the witness on the stand;  
19 that's why I arranged to have him absent  
20 and I thought I had better mention them  
21 to you at this time because it seems to  
22 be in the interests of your client,  
23 Mr. Tallis, it might be better that I  
24 put them before you complete your  
25 cross-examination.



1 And those questions are:

2 (1) Is there any evidence that any of  
3 the three of the parties in the car on  
4 the trip from Regina to Saskatoon was  
5 under the influence of alcohol or  
6 drugs?"

7 Let me just pause there. I think, Mr. Tallis,  
8 that those witnesses, I think that had already  
9 been covered with Mr. Wilson and as well Miss  
10 John, although I'm not sure if she was before or  
11 after Mr. Wilson. Do you recall whether you  
12 attached any significance at the time to the fact  
13 that the jury would be asking the judge to raise  
14 this issue again with Mr. Wilson?

15 A Well, I think earlier in my testimony I mentioned  
16 to you that it occurred to me that they might have  
17 considered the evidence as involving sort of a  
18 frenzied attack resulting in the sexual assault  
19 and stabbing death of this girl, and once again  
20 I'm speculating, but I think some of the  
21 circumstances may have prompted some of them to  
22 decide that this is a question that they would  
23 like to pursue, have -- see pursued further.

24 Q And would it be fair to read into this that it  
25 might be important to establish or re-establish





1           that there was not drug use amongst this group on  
2           the morning in question?

3       A       I'm sure I thought so.

4       Q       And then as well:

5                        "Another question is - there was  
6                        evidence that the dash light was not  
7                        operating and the question is:  
8                        (2) Was the interior light working in  
9                        the car?"

10       Next page:

11                       "(3) What were the light conditions  
12                        which would enable the witness to have  
13                        seen the knife which he said was in the  
14                        possession of the accused - or on the  
15                        accused I think was the word he used?"

16       And would a fair reading of that be that maybe  
17       the jury was having trouble with Mr. Wilson's  
18       evidence that he said he saw a knife in the car  
19       on the trip from Regina to Saskatoon?

20       A       Well, I'm sure I speculated about that, but, you  
21       know, it's very difficult to say because the jury  
22       deliberations are secret.

23       Q       Right. But again, as far as defence counsel, I  
24       take it that when the jury comes back with  
25       questions, you might try and interpret something



1 in those questions and might tailor your future  
2 questions to address those issues; is that fair?

3 A Yes, I would say you pay very careful attention to  
4 jury questions at any stage of the proceedings,  
5 and at this particular stage, one would carefully  
6 consider what questions might be put to, in  
7 effect, answer that type of inquiry if it is a  
8 proper question.

9 Q And then the last two questions are four and five:  
10 "(4) How much time did the witness  
11 spend in trying to move the car when the  
12 car was stuck at that U-turn incident?  
13 (5) How much time did the witness and  
14 the accused together spend in trying to  
15 free the car?"

16 And I suppose that last one might be related to  
17 how long Mr. Wilson and Mr. Milgaard may have  
18 been exposed to the elements that morning; is  
19 that a fair read of that?

20 A I would think so.

21 Q And then I want to go down here to your, the judge  
22 then asks, if you can scroll down, comments, and  
23 you say the first question, which is the drug use:

24 "... I think it has to be put pretty  
25 directly and carefully by Your Lordship,



1                   if I may say so, because I wouldn't want  
2                   the witness wandering off into other  
3                   occasions, if you know what I mean."

4                   And can you explain what you were referring to  
5                   there, please?

6           A       Well, I was thinking about earlier times in Regina  
7                   and later times in Alberta.

8           Q       And so you wanted to keep out the drug use outside  
9                   the relevant time frame when the murder took  
10                  place; is that fair?

11          A       That's correct.

12          Q       And then 005302 there's an exchange, I'm skipping  
13                  over parts of the exchange between you and the  
14                  Court and Mr. Caldwell on the drug issue, and then  
15                  you say:

16                  "I think also, My Lord, in light of the  
17                  questions that the jury has asked Your  
18                  Lordship to pose to the witness - I  
19                  think probably it would be an  
20                  appropriate time for Your Lordship to  
21                  direct the jury - I don't think it was  
22                  said in so many words at the opening  
23                  that they are not to pay any attention  
24                  to things they may have heard about this  
25                  case through various sources. This case



1                   has attracted a great deal of  
2                   attention."

3           And then down at the bottom:

4                   "Well, I think it should be said now,  
5                   secondly this preliminary hearing was  
6                   not in camera and the new legislation  
7                   did not apply to it and I can tell you  
8                   frankly certain evidence was admitted  
9                   which I objected to and which Your  
10                  Lordship has now ruled to be  
11                  inadmissible; and certain other evidence  
12                  went in which I objected to but which my  
13                  learned friend I think quite soundly did  
14                  not pursue because I think it is  
15                  inadmissible and not relevant to the  
16                  issue here."

17               And so again it would appear that you expressed a  
18               concern about evidence at the preliminary hearing  
19               that is now inadmissible at trial might be in the  
20               public domain and be read by the jurors?

21       A           Well, they might have picked up information  
22                   through that source or others, and in light of the  
23                   questions, I certainly wanted the learned trial  
24                   judge to give a very emphatic direction on this.

25       Q           And was it the drug use that was of concern to



1           you, that type of evidence?

2       A       Yes, that was a particular concern because it was  
3           the focal point of one of the questions, and as I  
4           recall, the learned trial judge did give a  
5           direction on this.

6       Q       Actually, 005304, scroll down, there's a direction  
7           there that the trial judge asks the jury to:

8                   "... the fact that there was publication  
9                   of some of the preliminary inquiry  
10                  evidence; you are to entirely disregard  
11                  all of that ..."

12           And then if we can go ahead to 005306 --

13      A       I think he made clear that they could, should  
14           disregard anything they heard over the radio or in  
15           the press or anything like that.

16      Q       Yes, that's correct. And again here's where the  
17           question is put by the Court, that the jury asked  
18           of Mr. Wilson:

19                   "Q   During the course of that trip was there  
20                   anything to indicate to you that the  
21                   accused was under the influence of  
22                   either alcohol or drugs?

23                   A    No, there wasn't."

24           And then if you can skip ahead to 005318 --

25      A       And the witness gave the same answer with respect



1 to the condition of Nichol John and himself.

2 Q Yes, yeah. I'm sorry, I should have read that.  
3 So certainly he was asked about whether he had, or  
4 whether he had observed Nichol John or David  
5 Milgaard and the answer was no to each of those?

6 A Yes.

7 Q Now here's where you get into the May 22nd time  
8 frame and you say:

9 "Q And right up until about May the 22nd or  
10 May the 23rd you had always insisted  
11 that nobody in your car including David  
12 had anything to do with this incident?

13 A That's right.

14 Q And you had insisted that you had  
15 nothing to hide?

16 A That's right.

17 Q And then not too long before you were  
18 released from jail though, some blood  
19 samples were taken from you?

20 A Yes."

21 And then hair samples, and again, you were trying  
22 to put in the minds of the jury that he was a  
23 suspect or thought he was a suspect?

24 A Yes, and to perhaps point to a motive for changing  
25 his position.



1 Q And if we scroll down a little bit, we'll see you  
2 actually put that to him:

3 "Q ... you realized you were still a  
4 suspect at least to some extent?

5 A Yes.

6 Q And now you are up here and as I  
7 understand it Nicky was here too?

8 A Yes she was."

9 So this is May 22nd, 23rd. Next page, and you  
10 ask him:

11 "Q And you and Nicky were together on  
12 certain occasions with the police?

13 A Yes we were, yes.

14 Q And I believe you were together up at a  
15 room in the Cavalier Hotel, was it, with  
16 certain police officers?

17 A Yes.

18 Q Yes; and how many - these were fairly  
19 lengthy sessions, weren't they, some of  
20 them?

21 A Yes they were.

22 Q Maybe six hours?

23 A Yes."

24 So again, along the same lines of establishing  
25 that they spent a considerable amount of time



1 with police officers prior to giving the  
2 statements?

3 A Yes.

4 Q And then to page 005324, and I think in the middle  
5 of your exam, or cross-examination of Mr. Wilson  
6 on the subject matter of the treatment by police,  
7 the judge says:

8 "Now what I was going to ask now may be  
9 something that you were going to cover,  
10 Mr. Tallis."

11 You say:

12 "Well, I won't interfere with Your  
13 Lordship's questions unless I have an  
14 objection, which I think I'm obliged to  
15 take with deference if the need arises."

16 And then the following questions are from Chief  
17 Justice Bence down at the bottom, and then he  
18 says:

19 "And then when did you first tell the  
20 police the story that you have told in  
21 this courtroom . ."

22 And then:

23 "Q . . just a minute please - which tended  
24 to implicate - now, implicate means to  
25 bring the accused into the thing as a





1                   possible culprit - when did you first  
2                   tell that to the police?"

3                   Let me just pause there. I think you had told us  
4                   you were wanting to be quite careful with  
5                   Mr. Wilson in this area; is that correct?

6       A           Yes, well I didn't want to do anything to bring  
7                   about the introduction of the contents of the  
8                   statement by having it entered as an exhibit.

9       Q           And did you have some concern that the trial judge  
10                   was getting into areas that you might not want to  
11                   be delved into?

12      A           Oh, I have no doubt that I was concerned.

13      Q           And then again I think the answer here, he says  
14                   that:

15                   "In Regina on approximately May 22nd  
16                   ...",

17                   and then the rest of the page are his questions,  
18                   and the next page, which I think if we can skip  
19                   ahead to 005333. And we touched on this in the  
20                   prelim, --

21      A           Yes.

22      Q           -- again it looks as though, here, you are asking  
23                   Mr. Wilson about his LSD use and hallucinations,  
24                   that he hit it heavy in May of 1969, which is the  
25                   month he gave his incriminating statements. And



1 the hallucinations, and I think you've told us  
2 that that would be to perhaps discredit his  
3 recollection of events around that time, is that  
4 fair?

5 A Yes. And I think, having read it over in context  
6 the way you have, I probably decided that I had to  
7 pursue that aspect in light of the questions that  
8 he had been asked by the presiding judge.

9 Q If we can then go to 005341. And, again, this is  
10 right after an adjournment and it looks like the  
11 jury has come back with another series of  
12 questions. Was it common, Mr. Tallis, for the  
13 jury, in the course of questioning witnesses, to  
14 provide questions to the judge to have put to  
15 witnesses, or was this unusual?

16 A No, I must say through the years it happened, in  
17 cases that I was involved in, fairly frequently.  
18 Not, certainly not in every case, but I can recall  
19 several cases where there were far more questions  
20 put than -- to the judge by the jury than in this  
21 case.

22 COMMISSIONER MacCALLUM: Sir, and you are  
23 speaking of during the course of -- not during  
24 jury deliberations but, rather, during the course  
25 of receiving evidence?



1           A           That's correct, My Lord.

2                       COMMISSIONER MacCALLUM:   Okay.

3           BY MR. HODSON:

4           Q           And again, it looks as though the judge raised  
5                       these with you, and you told us earlier that --

6           A           Yes, that was the practice, when -- generally  
7                       speaking the practice, when questions had been  
8                       posed by the jury, usually they gave them to the  
9                       Sheriff or the attendant, they were passed on to  
10                      the judge, and then the usual practice was that in  
11                      the absence of the jury the judge would read the  
12                      questions to counsel and then deal with it.

13          Q           And I think you told us that you would pay a great  
14                       deal of attention to what the jury was asking to  
15                       get some insight into what they -- I don't think  
16                       these were your words -- but insight into what  
17                       they felt might be an important area?

18          A           Yes, and also to make sure that, in going into  
19                       answers to questions of that nature, the Court did  
20                       not embark on letting in inadmissible evidence,  
21                       even though the jury might like to hear it.

22          Q           Right. Well here the subject matter, they are  
23                       asking about clarification of the time which  
24                       expired between the time they left Regina and the  
25                       time they arrived in Saskatoon, and keep in mind



1           that you were able to keep out any evidence about  
2           the break-in of the elevator in Craik; and then  
3           secondly:

4                    "What was the purpose of the stop in  
5                    Craik?

6                    How long were they in Craik?"

7           And:

8                    "Question - Was the knife seen during  
9                    this stop?"

10           And let me just pause there. Is one reading of  
11           that that the jury might have thought "what were  
12           they doing in Craik and was that where they got  
13           the knife"?

14           A       Or another aspect that I think I was concerned  
15           with, what were they up to in Craik, and that of  
16           course, at least in my speculation, would involve  
17           whether or not they were trying to break into  
18           places or something like that.

19           Q       And would it be fair to say that the people on  
20           this jury would, of their own knowledge, know how  
21           long it would take to travel from Regina to  
22           Saskatoon?

23           A       I'm quite sure that at least some of them would  
24           know that.

25           Q       And then what about the knife being seen during



1           this stop; did you read anything into that or  
2           speculate as to where that might be coming from?

3       A       No. I knew from what David had told me that he  
4           had a knife, and I think the -- it was all tied  
5           together, and just what mental processes I went  
6           through at the time I don't recall. But I notice  
7           here that I thought that the trial, I didn't want  
8           the trial judge to be too quick in putting those  
9           questions, because I had some observations to  
10          make, and I was very concerned about whether or  
11          not, putting questions in that way, it may elicit  
12          what I considered to be inadmissible and  
13          prejudicial evidence.

14       Q       And so the elevator break-in and stop in Craik,  
15           you viewed that as being prejudicial, or possibly  
16           prejudicial?

17       A       Oh, I -- yes. And I'm thinking, you know, going  
18           back to Aylesbury, then you see Craik is the next  
19           town west of Aylesbury -- well I know you know  
20           that, you've driven the road many times -- but you  
21           can see the --

22       Q       Yes.

23       A       -- scenario shaping up.

24       Q       Okay. And then I think what you, what you say:  
25                   "... those questions frankly are in my



1 view objectionable because they may  
2 elicit evidence which is inadmissible  
3 and which my learned friend told me he  
4 did not propose to adduce because I  
5 think I fairly told him that I would be  
6 objecting to it."

7 So it may be that Mr. Caldwell had agreed not to  
8 adduce the elevator break-in evidence as opposed  
9 to a ruling from the Court; is that fair?

10 A I think that that's correct, looking through the  
11 material. As I told you, I was quite ready to  
12 argue that it was inadmissible, and Mr. Caldwell  
13 knew well in advance that I would be taking that  
14 position. I think I probably gave him a pretty  
15 clear indication of that at the time of the  
16 preliminary hearing if not shortly before.

17 Q If we could then go to the next page, please. The  
18 judge brings up another question from the jury  
19 that he says is more important:

20 "The question is put in this way but I  
21 think it should be put somewhat  
22 differently if it is going to be put:  
23 Was this witness under the influence of  
24 drugs during the period of statement  
25 given to the police in the station?"



1 And, again, I think this followed up on your  
2 questions about the hallucinations and the LSD  
3 use.

4 And then if we can go to  
5 005343, I think there's some further discussion,  
6 and to -- actually, go to 005346. There's some,  
7 still, further debate on these questions, and the  
8 Court says:

9 "Yes - excuse me before you do that,  
10 though - it would probably be advisable  
11 under the circumstances for me not even  
12 to mention the matter of the purpose of  
13 the stop in Craik. Mind you, it's in  
14 the minds of the jury now."

15 And you say:

16 "Well, obviously because they read the  
17 newspaper on the preliminary hearing."

18 And the judge says:

19 "Oh no, I didn't read the newspapers and  
20 it came to my mind immediately I heard  
21 the evidence."

22 And you say:

23 "Well I mean, I'm saying everybody that  
24 lives here would know exactly what was  
25 adduced at the preliminary hearing."



1 "The thing that occurred to me was why  
2 did they leave the highway - that's why  
3 I asked . . .",  
4 that's what the judge said. So, again, I think  
5 this is along the same line as the concern you  
6 had, is that the jury would be suspicious about  
7 the stop in Craik; is that correct?

8 A Yes, perhaps for the purpose of break-ins.

9 Q And then if we could go to 005348, and here's what  
10 ends up happening by way of questions from the  
11 Court to Mr. Wilson:

12 "Q How long were you in Craik?

13 A Over an hour.

14 Q Did you see any knife during that stop?

15 A No, I didn't."

16 And so that was what was distilled down to be  
17 asked of Mr. Wilson; is that correct?

18 A Yes.

19 Q And then 005350, and again, asked the questions  
20 about whether he was under the influence of drugs  
21 on May 23rd or May 22nd, and he answered no, he  
22 wasn't.

23 You had mentioned, Mr. Tallis,  
24 that you viewed Mr. Wilson as a treacherous  
25 witness from the prelim and from what you had





1 viewed. When you were done cross-examining him at  
2 the trial had your view changed at all on that?

3 A I don't think so.

4 Q And I think what you have told us, that you felt  
5 that there were certain risks in Mr. Wilson, in  
6 what he might say, that he hadn't already said,  
7 that might be damaging to Mr. Milgaard; is that  
8 fair?

9 A Yes.

10 Q If we can just call up your address to the jury,  
11 and I'll just touch on what you had to say about  
12 Mr. Wilson, 031284. You say:

13 "Now I want to deal with the evidence of  
14 Wilson, and once again my learned friend  
15 has invited you to find him, on the  
16 question of credibility, a very credible  
17 witness, and it is frankly his story I  
18 most disagree with",

19 and then a break in the transcription:

20 "I have suggested to you, and I  
21 re-emphasize the point, that it is more  
22 reasonable, by the practical, common  
23 sense tests, to give weight and  
24 consideration to evidence of people,  
25 average people who do their work, who



1 do",

2 and a break:

3 "and show",

4 and a break:

5 "without regard to other activities.

6 And that is why I have emphasized the  
7 evidence of the likes of Rasmussen, the  
8 Danchuks and so forth."

9 And so I take it you are comparing his  
10 credibility to some of the other witnesses and  
11 saying he should not be viewed as credible?

12 A Well, that's right. My position was that,  
13 compared with people like the Danchuks and  
14 Mr. Rasmussen, he would certainly be an unsavoury  
15 type of person.

16 Q And then scroll down to the bottom. You say:  
17 "Now, on the question of the time  
18 element, my learned friend suggested  
19 that perhaps I was nitpicking to say  
20 there isn't much to really warrant going  
21 two blocks or two and a half blocks in  
22 comparison to five blocks. Now, lady  
23 and gentlemen when you are getting down  
24 to matters of minutes, which is what  
25 this is, five blocks, or four blocks, or



1 two blocks isn't a trifle matter, this  
2 is not something to be reckless with and  
3 you may understand that when I asked him  
4 those questions as to what he said on  
5 the preliminary hearing it wasn't ...  
6 of nitpicking",

7 then a break:

8 "about half a block or something like  
9 that. It was because the question of  
10 minutes is of importance in this case,  
11 and I suggest to you that you examine  
12 that evidence very carefully. And if my  
13 learned friend even takes the evidence  
14 of Wilson as he invited you, I suggest  
15 to you that when you analyze the time it  
16 is unreasonable, it defies common sense  
17 to suggest that all of the things that  
18 he alleges, that everything that he",

19 and then a break:

20 "true happened in that space of time."

21 And, again, is there anything that you can  
22 elaborate on that, Mr. Tallis, other than what is  
23 stated?

24 A No, I think it focusses on the areas that we have  
25 discussed.



1       Q       And then to 031289, again hampered a bit because  
2               this transcription, there is a number of breaks in  
3               here, but I think it's referring to Wilson's  
4               questioning by Inspector Riddell in Regina:

5               "What was his position on numerous  
6               occasions before? His position was very  
7               clear",

8       and a break:

9               "to his car and had nothing to do with  
10              it. And even then, when under  
11              cross-examination, as I understand it,  
12              he said David was quite normal. You  
13              have all these things, he's covered one  
14              way or another but his position had  
15              always been until quite late in May that  
16              there was no blood or anything like that  
17              involved, there was no suggestion of  
18              blood when David came back to the car,  
19              and that's",

20      and then a break:

21              "and it is not without significance that  
22              he was not asked about the toque. I  
23              noticed that the toque in question which  
24              was in evidence was not put to any of  
25              the witnesses, was not shown to Wilson,



1 and I can only assume",

2 a break:

3 "to my learned friend, he would have  
4 asked the question, there is no  
5 suggestion that that is the toque."

6 And, again, I take it that you would have raised  
7 with the jury, in this part, the fact that Mr.  
8 Wilson had earlier said nothing to implicate Mr.  
9 Milgaard; is that fair?

10 A That's correct. And also to, you know, negate any  
11 suggestion that this toque that was found in that  
12 area was something that David had thrown out.

13 Q And then, if we can turn to 031291, you say:

14 "Now once again there are areas that I  
15 invite you to consider, you have got to  
16 consider his background, ...",

17 you are talking about Ron Wilson:

18 "... his education and so forth. I'm  
19 not going to dwell on it tell you",

20 break:

21 "upon his reputation, but these are  
22 things which you must, in my submission,  
23 you ought to consider how you may --  
24 while considering the vagueness of his  
25 answers when he was asked by My Lord,



1 the Chief Justice about the knife, in  
2 the matter of how he could see it and so  
3 on. You may while considering this and  
4 assessing the reliability that you can  
5 place on this type of evidence and you  
6 may, while considering the fact, that I  
7 said, which is common ground, that he,  
8 himself, was a suspect in this case",  
9 as then a break:

10 "as my learned friend",  
11 and then a break:

12 "until May 22nd or 23rd, as my learned  
13 friend said -- and I think the date is  
14 accurate -- ... when certain things are  
15 shown and so forth ..."

16 And I think that's all from the address.

17 So that would, again, relate to  
18 one of the other matters that you had raised in  
19 the cross-examination, that he had been a  
20 suspect, and that that might be a reason why his  
21 evidence changed so he might not be reliable?

22 A Yes.

23 Q I want to call up an article, 004752. This is a  
24 newspaper article of July 17th, 1990, and it  
25 relates to some commentary about Mr. Wilson's



1 evidence and the statement, and I just want to go  
2 through parts of this to get your response. And  
3 so this is July 17th, and Dan Lett is a reporter  
4 with the Winnipeg *Free Press*. It says:

5 "A statement given by a star  
6 witness in the *David Milgaard* case that  
7 could have discredited his entire  
8 testimony appears to have been withheld  
9 from defence counsel during the 1969  
10 trial, two lawyers close to the case  
11 have charged."

12 And then they go on and talk about the March 3rd,  
13 '69 statement, and you've already told us that  
14 you had that statement. Can you answer this  
15 about the use -- and maybe you've already touched  
16 on this -- but use of the March 3rd, 1969  
17 statement to discredit Mr. Wilson's entire  
18 testimony; have you got anything else to add,  
19 other than what you have told us, about how you  
20 used and -- or thought you used that statement  
21 and couldn't use that statement?

22 A Well I think I had the, used the information to  
23 establish the fact that he did not in any way  
24 implicate David or anyone else in that time frame  
25 that we have been discussing, and so I don't think



1 I can usefully add anything more than what you  
2 have already reviewed with me.

3 Q And then if we could just scroll over to the right  
4 here. And, again, this is at a time when Mr.  
5 Wilson has provided another statement, or provided  
6 a statement recanting some of his earlier  
7 evidence, and in this it says:

8 "... Wilson claimed he was pressured by  
9 police into testifying against his  
10 friend."

11 And I'm just looking for your observations back  
12 at the time, in 1969-1970, I'm not asking you to  
13 go beyond what you would have thought at that  
14 time. Did you have the sense, Mr. Tallis, when  
15 dealing with Mr. Wilson at the preliminary  
16 hearing and at the trial, that he may have been  
17 pressured by police into testifying against his  
18 friend?

19 A Well I certainly wondered why he changed his  
20 testimony, and what the motive was, but there was  
21 nothing that he came up, even when I was  
22 questioning him at the preliminary, with the  
23 suggestion that he was pressured into doing that.  
24 At least that's as I recall the preliminary  
25 hearing evidence that you have referred me to. I





1           was certainly exploring it.

2           **Q**       And again, beyond exploring it, did you ascertain  
3                   anything or -- of the nature that might support  
4                   the contention that the police were responsible  
5                   for influencing Mr. Wilson to give evidence that  
6                   was not true?

7           **A**       No, I didn't.

8           **Q**       If we can then go down to the -- scroll down a  
9                   bit, and I will be talking a bit later about the  
10                  media and your dealings with them, or lack of  
11                  dealings with them, but here they talk about --  
12                  actually, just scroll up a bit. It says:

13                               "The revelation of the first  
14                               statement has created serious concerns  
15                               about whether Cal Tallis, Milgaard's  
16                               lawyer in 1969 and now a Saskatchewan  
17                               Court of Appeal justice, was ever told  
18                               of its existence."

19           And it says:

20                               "Tallis will not discuss the  
21                               case."

22           And you may have already covered this on the  
23           opening day, but were you in the -- were you  
24           talking to reporters about this matter at any  
25           time?



1       A       No. I think that my -- regardless of the  
2               frequency of invitations I received, either  
3               directly or indirectly, I did not think it  
4               appropriate to discuss a client, a former client's  
5               case, with the press.

6       Q       And why not?

7       A       Well, for one thing, I always respected the  
8               sanctity of solicitor/client privilege; and  
9               secondly, there is no doubt -- there was no doubt  
10              in my mind that it would be unseemly for a member  
11              of a Court, where the issue or related issues  
12              might come before it, to start discussing it in  
13              any way as if he or she were assuming an advocacy  
14              role.

15      Q       Now I think you told us that you would have talked  
16               to Mr. Asper and Mr. Wolch and previous counsel on  
17               behalf of David Milgaard; is that correct?

18      A       Yes, I did.

19      Q       And here, this is July 1990, it says:

20                               "David Asper, Milgaard's  
21                               Winnipeg lawyer, noted Tallis made no  
22                               reference to the first statement in  
23                               questioning Wilson at either the  
24                               preliminary hearing or trial."

25               And I think we've gone through the transcript and



1 identified, or you identified that you did in  
2 fact question Wilson at least about the contents  
3 of the statement, is that correct?

4 A Yes.

5 Q It says:

6 "Asper said it is  
7 inconceivable that Tallis, if he had  
8 known of the original statement, would  
9 have ignored it at the trial.

10 'It is painfully obvious from  
11 the transcripts that Tallis did not  
12 direct Wilson to the original  
13 statement,' Asper said. 'It strikes me  
14 that it would be serious misconduct for  
15 the Crown not to provide that  
16 information to the defence.

17 'It suggests to me that Tallis  
18 may never have known about it.'"

19 And do you recall whether you would have had any  
20 discussion with Mr. Asper or Mr. Wolch about this  
21 subject matter?

22 A I don't recall specific discussion about it, but  
23 you've shown -- you've referred to portions of the  
24 transcript, and I know that I did use the  
25 information for purposes of cross-examination,



1           although I didn't put the statement in for use as  
2           a statement of a -- a written statement of the  
3           witness.

4           Q       And then just over. I think Mr. Watson, who was  
5           Ron Wilson's counsel, says that:

6                       "... not only does the first statement  
7                       lend credibility to his client's recent  
8                       recant of his testimony, it suggests a  
9                       serious omission in information given to  
10                      Tallis.

11                     'I can see no reason (for the  
12                     statement to be withheld),' ... 'Any  
13                     lawyer would have questioned it and it  
14                     would have been quickly exposed in a  
15                     Court.' "

16           And you may have already covered this, I think  
17           you said it wasn't as simple as simply presenting  
18           the statement, is that fair?

19           A       Yes, that's quite correct.

20           Q       Do you have anything else to add, other than what  
21           you've already told us, about the suggestion made  
22           here by Ron Wilson's counsel about how you should  
23           have used that statement?

24           A       Well I think I've already answered that, really,  
25           in responding to your question yesterday. I



1           decided, in the exercise of my best judgement, to  
2           handle the matter in the way in which I did, and  
3           that of course was based not only on my  
4           experience, but also with a general knowledge of  
5           how things sometimes come to be handled.

6                       As I said, by that time I think  
7           I had appeared in every Court in Saskatchewan on  
8           quite a number of occasions, and certainly was  
9           aware of some of the pitfalls, at least, if you  
10          embark on certain courses of action.

11       Q           If we could just scroll down a bit, and there's  
12           one last comment here from Mr. Wilson -- actually,  
13           scroll further. It says:

14                       "Wilson, in an interview from  
15           his B.C. home, said he did not remember  
16           giving the first statement, but firmly  
17           believes Tallis could have broken him on  
18           the stand if he had used it at the  
19           trial.

20                       'It's all a bunch of crap,'  
21           Wilson said of his testimony. 'The  
22           first one was the one that was supposed  
23           to be in court. If they had used it  
24           then, it would all have been over.'"

25           And do you have anything to say in response to



1           that suggestion made by Ron Wilson at that time?

2           A       Well I guess I have to leave that to others to  
3                   judge, and I don't think it was quite as simple as  
4                   he has stated, if that comment is an accurate  
5                   comment. There were opportunities for him if he  
6                   had wanted to concede certain things, and one had  
7                   to be very careful with him, because his tendency  
8                   was to improve his evidence if a question was  
9                   asked that appeared to be helpful to David.

10          Q       And did you get any sense, at the time you were  
11                   examining Mr. Wilson at the trial, that if you  
12                   pushed the right button you might get him to say  
13                   "whoops, I'm sorry, I take everything back, I  
14                   didn't see anything"?

15          A       No. Quite the contrary, I thought that he would  
16                   be very quick to explain why his first position  
17                   was not -- what he said was not the truth, and  
18                   that he would have said among other things, if  
19                   asked by anyone including the judge, "well why did  
20                   you change your story", he would have said "I'm  
21                   protecting" -- likely would have said "I'm  
22                   protecting my friend" or "I was protecting my  
23                   friend".

24          Q       Okay. I'm now moving on to Nichol John. It's  
25                   quarter to 3:00, I can break now, Mr.



Commissioner, or we can carry on until 3:00, I'm

--

COMMISSIONER MacCALLUM: Let's break.

MR. HODSON: Break?

*(Adjourned at 2:45 p.m.)*

*(Reconvened at 3:12 p.m.)*

BY MR. HODSON:

Q Mr. Tallis, I now move to Nichol John. Again, if you can tell us just your general impressions of Nichol John based on what you observed at the preliminary hearing and at the trial?

A I think the best place for me to focus, in terms of my recollection, is at the, is on the trial, and I have to say that I think she created the impression along the way at the trial, at least in the mind of the judge, presiding judge, that she was holding back and perhaps doing so to protect her friend. I say that because I recall, and indeed you've referred me to some material in the record that would indicate that he wondered whether or not anybody from the defence side, that includes counsel for the Milgaard family, had any, had exerted any pressure or influence on her.

Q And again we will spend a bit of time going through that part of her evidence where she did



1 not adopt parts of the incriminating statement.  
2 You had made the comment that at least from the  
3 judge's perspective you thought that the judge  
4 perceived that she was holding back. Was that  
5 your sense, that she might have been --

6 A Well, I think the best way I can put it is that if  
7 you listened objectively to the way things  
8 unfolded, I could see where people might draw that  
9 inference or conclusion. I think I was probably  
10 of mixed views and mixed concerns at that stage,  
11 but of course my thinking was coloured naturally  
12 by what David had told me and that is of course  
13 that he had had no involvement in this murder, but  
14 the atmosphere at trial was certainly something  
15 that -- I'm trying to put it in respectable  
16 language here -- was something that one could, I  
17 think, sense if you were looking at it from a  
18 particular perspective. I'm not saying it was my  
19 perspective, but --

20 Q Right.

21 A -- I sensed the perspective from the standpoint of  
22 others if I tried to stand back and look at it  
23 objectively.

24 Q And that would be what sense, that she was holding  
25 back?





1       A       Yes, and that more likely than not, that she was  
2               trying to protect a friend, and I know I'm  
3               coloured by my perception of what I thought the  
4               judge thought and I guess I was affected by at  
5               least one or two of the questions that were put  
6               and that's why I asked a number of questions very  
7               early in the going to try to establish that I  
8               hadn't talked to her, that nobody from the  
9               Milgaard family had talked to her about this and I  
10              think in particular David had not been in touch  
11              with her.

12       Q       You had referred to, on an early occasion, I think  
13               a couple of times, about what an objective  
14               bystander might perceive, and again I'm trying to  
15               get a sense from you, Mr. Tallis, as to how Nichol  
16               John -- well, I started off asking your impression  
17               of her, and I appreciate what you are saying is  
18               you would have a coloured view because you were an  
19               advocate for Mr. Milgaard?

20       A       Yes.

21       Q       But I think what you are saying is based on what  
22               you observed from the judge and others, that one  
23               might reasonably take the position that she was  
24               holding back and trying to help David; is that a  
25               fair summary of what you are saying?



1       A       Yes. I think if you apply an objective bystander  
2               test, that could well be so.

3       Q       And again we'll get into the specifics, but again,  
4               the holding back, holding back incriminating  
5               evidence, I take it, because the jury would have  
6               known what was in the statement?

7       A       Yes.

8       Q       And just for a moment if we compare that, if the  
9               jury did in fact believe that, that she was  
10              holding back and not giving the full, truthful  
11              story because she was trying to help her friend,  
12              just generally if you compare the impact or  
13              credibility of that versus the situation where she  
14              actually adopted and repeated the incriminating  
15              evidence and allowed you an opportunity to  
16              challenge her on it, are you able to give us some  
17              sense of what might be more damaging to David  
18              Milgaard's interest?

19      A       Well, looking back and trying to reflect on it in  
20               the manner in which you have asked me to, I'm  
21               inclined to the view that the -- that her conduct  
22               was, as we've talked about it, was probably more  
23               damaging to David because of the atmosphere that  
24               it created. Now, there's another aspect to this  
25               too and that is that it's sort of incidental to



1 the process, her conduct may have helped to  
2 enhance the credibility or reliability of, say,  
3 Wilson, albeit in a rather indirect way.

4 Q Would that be the situation that if the jury,  
5 viewing the totality of what Nichol John said and  
6 didn't say and the demeanour, etcetera, which we  
7 will go through, if they concluded that her  
8 statement that was not adopted was the truth, then  
9 that might support some of what Wilson had to say;  
10 is that fair?

11 A Yes. Now, I have to say to you that I'm sure that  
12 in a sense I'm speculating because one doesn't  
13 really know the answer to that question, but I'm  
14 giving you my personal assessment based on a  
15 recollection going back many years.

16 Q Sure.

17 A Which may be faulty in many respects. I think  
18 that's as objective an assessment as I can give  
19 you.

20 Q Sure. Let me just take that a bit further and go  
21 back to the time of trial, and some might say that  
22 if the Crown had an alleged eye witness of the  
23 murder, in fact, someone who would say I saw David  
24 Milgaard commit the crime or grab a girl and stab  
25 her and that at trial she did not adopt that



1 evidence and did not provide the evidence, some  
2 might say that that would be favourable to the  
3 accused; in other words, it's a good thing that  
4 evidence didn't come out. In fact, that's what  
5 happened at the trial, and we'll go through what  
6 and how that happened, and again, are you able to  
7 look back and provide any observations on whether  
8 or not you might have been better off or Mr.  
9 Milgaard's position might have been better off if  
10 she had in fact adopted the statement and allowed  
11 you to cross-examine on it, and I appreciate  
12 that's maybe not a fair question because you never  
13 did get the chance to do that, but what I'm trying  
14 to get at is whether or not her failure to adopt  
15 the statement may have actually harmed David  
16 Milgaard's position more than if she had adopted  
17 it.

18 A Well, once again here I'm trying to address it,  
19 address a hypothetical in a retrospective manner,  
20 but I think there may well be merit to your  
21 suggestion.

22 Q Okay. Now, just back to the statements, and we  
23 talked, when we dealt with Mr. Wilson and  
24 Mr. Cadrain I asked you similar type questions  
25 about, based upon the information David Milgaard



1 provided to you when you then looked at what  
2 Nichol John had to say, and we'll go through the  
3 evidence, and I think at trial what her evidence  
4 was was not as incriminating obviously as her  
5 statement, but may have had some incriminating  
6 components such as the compact and stopping for  
7 directions, but let's go back to the statement of  
8 May 24th and I'll go through that with you. Did  
9 you -- what were you, what was your sense of what  
10 might explain how she would come up with a sworn  
11 statement where she said she witnessed David  
12 grabbing the girl and stabbing her and things of  
13 that nature, did you ever -- what were you looking  
14 at to try and get an explanation to rationalize  
15 that statement with what David Milgaard had told  
16 you?

17 A Well, David and I talked about that I'm sure on  
18 more than one occasion and naturally I was probing  
19 with respect to any possible motive for this  
20 course of conduct, and certainly he didn't feel  
21 that any friction had arisen. I of course asked  
22 about, you know, her, in effect, going with Shorty  
23 during the trip and he certainly didn't think that  
24 was any real issue because everyone in the car  
25 really knew he was going to see his girlfriend in



1 Alberta, and on the question of whether or not she  
2 was looking for money, and by that I mean reward  
3 money, I don't think that he thought that that was  
4 a consideration, although I know that I was  
5 speculating about it, and that's why even on the  
6 eve of trial I had checked to see whether any one  
7 of the three or all of them had applied for the  
8 reward money even in advance, so that I guess  
9 really left in my mind the question of whether or  
10 not something had influenced her and that's one of  
11 the reasons why I was probing with Mr. Roberts to  
12 try and find out what had happened with her, and I  
13 didn't get any useful information in that  
14 connection. I knew that he had not administered  
15 the polygraph to her, but I don't recall all the  
16 details now and where I got them, but certainly  
17 she had been in his company, and I'm trying to  
18 separate from my thinking what I now know from  
19 some of the things you have shown me and what I  
20 had in front of me.

21 Q Would you have known at that time, at the time of  
22 trial, that Nichol John's incriminating statement  
23 of May 24th came after she met with Inspector  
24 Roberts?

25 A I think I probably thought that because I think



1           that was certainly one of the areas I hoped to  
2           find out more about when I spoke to him.

3           Q       Let me maybe assist you on this and I'll show you  
4           the statement in a moment. In the May 24th  
5           statement Nichol John says I have not told anyone  
6           about witnessing this murder, I didn't recall  
7           actually witnessing a murder until yesterday when  
8           I talked with Mr. Roberts.

9           A       Yeah.

10          Q       And on May 23rd Mr. Roberts showed me a coat, and  
11          so again you would have been aware of the contents  
12          of that statement at the time?

13          A       Yes.

14          Q       When you talked to Mr. Roberts, and again you've,  
15          we've dealt with your discussions with him in  
16          connection with Ron Wilson, would you have had a  
17          similar interview with him or similar questions  
18          about what happened when he met with Nichol John?

19          A       Yes.

20          Q       And do you recall whether you, what you came away  
21          from that meeting with as far as his dealings with  
22          Nichol John?

23          A       Well, certainly it was very little and I didn't --  
24          I didn't think that he had anything he was  
25          prepared to offer in that connection, because I



1           was interested in what questions he had put to her  
2           and so forth and he wasn't of any help to me,  
3           let's put it that way.

4       Q       And did you have similar concerns with respect to  
5           his dealings with Nichol John as you did with his  
6           dealings with Ron Wilson?

7       A       Yes.

8       Q       Now, just back on -- you mentioned you had talked  
9           to David and considered trying to figure out what  
10          would, what would be the motive for Nichol John to  
11          give the incriminating statement which, based on  
12          David's instructions to you, significant parts of  
13          it were false; correct?

14      A       Yes.

15      Q       And I suppose a second issue might be what would  
16          motivate her not to repeat it in the Court  
17          proceedings. Is that fair, that those were two,  
18          maybe competing things, but --

19      A       Yes.

20      Q       Were both of those things on your mind trying to  
21          figure out what would cause her to, number one,  
22          say something you don't believe to be true, and  
23          then secondly, once having said it and sworn it in  
24          a statement, not to carry through and repeat it?  
25          Not retract it or anything, but just not repeat





1 it?

2 A Or indicate I don't remember.

3 Q If we could call up 006329, and I take it,  
4 Mr. Tallis, you've told us this with respect to  
5 Cadrain and Wilson, that you would have relied  
6 upon the statements of Nichol John in trying to  
7 prepare an approach for her cross-examination; is  
8 that fair?

9 A Yes, and of course by the time we got to trial, I  
10 had, you know, the benefit of a preliminary  
11 hearing, although at the preliminary hearing the  
12 section 9(2) application did not arise.

13 Q Just on that point, was there any reason, perhaps  
14 it would have been Mr. Caldwell, I think it was  
15 Mr. Caldwell's choice, and I think what he told us  
16 is that he did not do it at the preliminary  
17 hearing because he thought maybe at trial, I think  
18 he said he thought she was afraid and that maybe  
19 at trial she wouldn't be afraid and would give the  
20 evidence there. Do you recall any discussion  
21 about why that was not done at the preliminary  
22 hearing?

23 A No, I don't recall any such discussion with him  
24 about that, and furthermore, I don't recall any  
25 suggestion that she was afraid of David.



1 Q And I think that was Mr. Caldwell's view as he  
2 described to the Commission, that he viewed that  
3 she was afraid and that that's why she did not  
4 repeat the incriminating statement. Did you have  
5 any sense, based on your observations, at trial  
6 and the preliminary hearing, that Nichol John was  
7 afraid of David Milgaard and that that might have  
8 influenced her in not repeating parts of her  
9 earlier statement?

10 A I didn't have any sense of that from what anybody  
11 said to me or from what David and I had discussed,  
12 and I'm sure if I had been, you know, asked about  
13 it at that time, I would have said, you know,  
14 there's just no basis for that suggestion.

15 Q And that's not something then that influenced or  
16 guided your thinking at the time, that when you  
17 approached Nichol John to cross-examine her, that  
18 be careful, she's afraid of David, that type of  
19 thing, is that something you are telling us was  
20 definitely not on your mind?

21 A I'm quite sure that was not on my mind.

22 Q So back on this statement --

23 A There's nothing to indicate that in what was said  
24 to me and in particular in my discussions with  
25 David.



1 Q And as well what you observed of Nichol John in  
2 the Court proceedings?

3 A Yeah, yeah.

4 Q So again, I think you've told us with respect to  
5 Ron Wilson's statements, Albert Cadrain's  
6 statements, that they were important both as to  
7 what they contained, but also what they did not  
8 contain; is that fair to say with respect to --

9 A That's correct.

10 Q -- Nichol John's? So this is the first statement,  
11 if we can scroll down, she's got the time at 6:30,  
12 between 6:30 and 7:30 a.m., and I think you've  
13 told us with respect to Mr. Wilson that that was,  
14 I think he had a bit of an earlier time, but that  
15 was in the ballpark as to when you believed your  
16 client was in Saskatoon?

17 A Yes. As I told you, David wasn't able to pinpoint  
18 the time, but certainly he, I think, would have  
19 told me that, you know, I can't say, but this is  
20 in the range or in the ballpark.

21 Q And then again she talks about driving around and  
22 the first event then is the map at the  
23 Trav-a-leer, it doesn't say Trav-a-leer, but the  
24 map at the motel where David went in with stocking  
25 feet, then getting stuck at the Danchuks'. Go to



1 the next page. Then to Albert's house, met  
2 Albert, his little brothers, little sister. It  
3 talks about Ron and David changing clothes. She  
4 says:

5 "I didn't see any blood on anybody's  
6 clothing."

7 It talks about David driving the car around the  
8 block, and the next page:

9 "All during the morning we were in  
10 Saskatoon, the three of us were together  
11 and I am sure that David or Ron never  
12 left me for more than one or two minutes  
13 that morning."

14 And again, that, would that be consistent with  
15 what David had told you as far as being with them  
16 on the morning of January 31, 1969?

17 A Yes, generally speaking that's so.

18 Q Now, there's a comment here:

19 "Just yesterday or the day before, Barb  
20 Berard, a friend of mine, told me that  
21 David had returned to Regina and I think  
22 it was him that told her that he was  
23 going to be picked up for murder."

24 So this would be March 11th, 1969, it would be  
25 about eight days after David Milgaard was



1 interviewed in Winnipeg. Do you recall  
2 discussing this point with David, as to where  
3 Barbara Berard got this from or whether he said  
4 that to her?

5 A No, I don't recall any discussion on that. I may  
6 well have had it, I probably did, but there's  
7 nothing that I can recall of assistance to you in  
8 that connection.

9 Q And again, if we just go through, I think I've  
10 covered the key parts of what is in the statement,  
11 and again putting aside for the moment what might  
12 be explanations as to why matters may not have  
13 been included in the statement, and we identified  
14 a couple, one may have been that the officer  
15 didn't ask Nichol John about it, or secondly,  
16 that, for completely innocent reasons, the witness  
17 did not think of including it, but putting aside  
18 what reasons might be there, can we just go  
19 through again and identify what might be, what  
20 were considered by you to be significant omissions  
21 in this statement, and I think the first two we've  
22 talked about, the stolen battery in Regina and the  
23 elevator break-in along the way, would you  
24 consider those to be significant omissions?

25 A Yes, when you were looking at the narrative.



1       Q       Yeah. And then as well the discussion of purse  
2               snatching and break-ins along the way, I think  
3               which although you've told us you don't remember  
4               David telling you that, I think that was Ron  
5               Wilson's statement in evidence, and again, would  
6               that be -- the fact that Nichol John later said  
7               yes, we talked about it, the fact that it's not in  
8               this statement, would that be a significant  
9               omission?

10      A       Yes.

11      Q       Stopping the woman for directions, would that be,  
12               the failure to mention that, would that be a  
13               significant omission?

14      A       Yes, in the context of this case and as related to  
15               me by David.

16      Q       And getting stuck and David Milgaard and Ron  
17               Wilson leaving the car, would that be a  
18               significant omission?

19      A       Yes.

20      Q       Throwing the compact out of the car, or David  
21               Milgaard throwing the compact out of the car,  
22               would that be considered a significant omission?

23      A       Yes.

24      Q       If we can then go to 018589 --

25                       COMMISSIONER MacCALLUM: Can I have the doc



1 ID for the statement of March?

2 MR. HODSON: 006329.

3 COMMISSIONER MacCALLUM: 329, thank you.

4 BY MR. HODSON:

5 Q Now this is a typed version -- sorry, 018589. Now  
6 this is the May 24th, 1969 statement, Mr. Tallis,  
7 that was -- just to give a bit of background, I  
8 think she was brought into Saskatoon I believe on  
9 May 22nd, although it may be May 21st. In any  
10 event, interviewed by and driven around by  
11 Saskatoon police officers, interviewed, and then  
12 interviewed by Inspector Roberts on the afternoon  
13 of May 23rd, and then on the morning of May 24th  
14 she provided this statement to Raymond Mackie.  
15 Now, this statement, as was Mr. Wilson's, was a  
16 sworn statement. Was that the practice at the  
17 time, to have witnesses swear a statement and was  
18 there any significance to that in your view as  
19 defence counsel?

20 A I don't think it was the invariable practice, but  
21 I can recall having observed it in various cases  
22 that I was involved in. In other words, there  
23 were justices of the peace on staff at the city  
24 police station and I was thinking Mr. Manton and  
25 Mr. Burron, I recall them as being there, and from



1           time to time you would see statements and get  
2           statements that were sworn in front of one of  
3           them. Now, there may have been other justices of  
4           the peace there. At this time I don't know who it  
5           was sworn before, unless I see the name.

6       Q       I think this was Taylor.

7       A       Oh, yes, well then he certainly came after Mr.  
8           Manton. I remember him now that you mentioned his  
9           name.

10      Q       And as defence counsel, would it matter any  
11           whether this statement was sworn or not as to what  
12           weight you might put on it or how you might use it  
13           or how it might be considered by a jury?

14      A       Well, that's certainly one factor you would want  
15           to consider.

16      Q       The fact that it's sworn?

17      A       Yes.

18      Q       As perhaps lending it more credibility?

19      A       It could in some circumstances be so construed,  
20           yes.

21      Q       So again, if we can go through parts of this, and  
22           I just want to identify those parts that are  
23           consistent with what Mr. Milgaard had instructed  
24           you and those which are not. Again, we've been  
25           through these issues a couple of times, so we'll





1 quickly go through them. The first one is about  
2 the stop at Aylesbury where David Milgaard broke  
3 into an elevator, returned with the flashlight. I  
4 think you've told us you don't remember the  
5 flashlight being discussed. And then:

6 "Shortly after Dave got back in the car  
7 I saw a knife he had. I do not know if  
8 the knife came from the elevator or not.  
9 I am sure I never saw the knife prior to  
10 the breakin at the elevator."

11 So I take it the part about the breakin is true.

12 As far as the knife, and again,  
13 I'm not sure, I think the best we can say is that  
14 David told you he had a knife, she's now saying I  
15 saw a knife, and we'll describe it a bit later  
16 and I'll ask you about it, but the fact that she  
17 saw a knife on David in the car, without  
18 describing the knife, that would not be  
19 inconsistent with what David told you; is that  
20 fair?

21 A No, that's right.

22 Q Then we go on, describes the knife as:

23 "... a kitchen knife used to peel  
24 potatoes and things like that. It had a  
25 maroon handle. This knife was the same



1 as one of a group of knives I was shown  
2 by Mr. Roberts."

3 And that, I take it, would be inconsistent with  
4 what David Milgaard told you about the type of  
5 knife he had; is that correct?

6 A Yes. Now I can't -- as far as the flexible blade,  
7 I remember that, but certainly nothing in the  
8 nature of a maroon handle, and he specifically  
9 told me that the knife that was in Court, the  
10 broken one, was not the knife that he had.

11 Q Right. And, again, so this would be, while I said  
12 inconsistent, --

13 A Yes.

14 Q -- according to David Milgaard's instructions --

15 A That's right.

16 Q -- this would be false; --

17 A Yes.

18 Q -- is that correct?

19 A Yes.

20 Q And then:

21 "On the way to Saskatoon Dave spoke of  
22 wanting to snatch a purse. I didn't  
23 like the idea of the B & E or the  
24 snatching the purse bit."

25 And, again, I think what you have told us is you



1           can't recall David telling you that they  
2           discussed it on the trip, but that he thought  
3           about it when he approached the woman; is that  
4           right?

5       A       Yes, that's correct.

6       Q       And then they talk about getting stuck in another  
7           town, she says she thinks it was Girvin, and I  
8           think it was actually Craik; is that right?

9       A       Well, you know, Craik is the next town west --

10      Q       Yes.

11      A       -- of Craik so, you know, I think one of the  
12           witnesses had referred to Craik, this girl  
13           mentioned Girvin. I think that, from talking to  
14           David, they may have stopped at Craik.

15      Q       Did you --

16      A       That's my sense of things.

17      Q       So certainly after the elevator, after stopping  
18           and the elevator break-in, --

19      A       Yeah.

20      Q       -- they stopped at the next town --

21      A       Yes.

22      Q       -- or at another town; is that fair?

23      A       Yes. And from talking to him, I think it was  
24           Craik, but --

25      Q       There's some reference, and I think we may see it



1 in one of the transcripts, that a truck may have  
2 been stolen or borrowed at that time to try and  
3 get their car unstuck; do you recall anything  
4 about that being discussed with David?

5 A I have no recollection of that discussion.

6 Q I think this is --

7 A And I, frankly, don't think that he ever said  
8 anything to that effect.

9 Q I think this is when they got stuck and stripped  
10 the reverse out of the car.

11 A Yeah, that's -- I just don't recall anything about  
12 stealing a truck or anything like that.

13 Q I think it -- I think the reference, and we may  
14 come across it in the transcript, is that they  
15 went and borrowed a truck, someone else's truck,  
16 presumably without their consent, to try and pull  
17 the vehicle out, and when that didn't work the  
18 truck was left there, but I'll see if we -- we may  
19 come across that in her evidence. And then here  
20 she says:

21 "After we got to Saskatoon we drove  
22 around for about 10 or 15 minutes. Then  
23 we talked to this girl. This was in the  
24 area where Sgt. Mackie drove me around."

25 And I guess at this point we don't know exactly



1           where he drove her around but I believe it would  
2           be in the vicinity of where Gail Miller's body  
3           was found. And, again, would that be, without  
4           getting too specific as to exactly where it was,  
5           would that be generally consistent with what  
6           David told you, and as well I guess "girl" may be  
7           considered younger than --

8       A       Well, that's right. The term "girl", we talked  
9           about "older lady", and I would view that as --

10      Q       Inconsistent?

11      A       -- something different from "girl".

12      Q       Then we go down, asked the girl for directions,  
13           and again with the proviso that it was a lady  
14           described by David, and then the comment  
15           attributed to David:

16                       "The stupid bitch",  
17           we talked about that with Ron Wilson, and again I  
18           think you told us that David said he did not say  
19           those words; is that right?

20      A       That's my recollection, he made no such comment  
21           about --

22      Q       She then says:

23                       "We started to drive away and only went  
24           about half a block when we got stuck.

25                       We ended up stuck at the entrance to the



1 alley behind the funeral home."

2 And I take it some consistencies, some  
3 inconsistencies, I think David said they went  
4 further and, secondly, made no mention of an  
5 alleyway behind the funeral home; is that  
6 correct?

7 A That's correct.

8 Q Were you able to, when you went through this with  
9 David about where they got stuck, would you have  
10 actually tried to identify the funeral home for  
11 him to see if that was a -- familiar?

12 A Yes, I -- I can't recall all of the sort of  
13 landmarks I tried to use to pinpoint the location,  
14 but I know that I asked him about the funeral  
15 home, and my recollection is that he had -- his  
16 recollection was there was no funeral home nearby  
17 that he observed.

18 Q And, again, if you --

19 A Now you have to remember that at this time, I  
20 think that not only at that hour of the morning it  
21 was quite dark, but I think there was some sort of  
22 ice fog or something.

23 Q Yes, we've heard evidence of that.

24 A I don't know if there's evidence on that?

25 Q Yes, there is.



1       A       My recollection, from talking to him, was to that  
2       effect.

3       Q       If --

4       A       And it was certainly consistent with my personal  
5       recollection of some of the days that winter,  
6       without being specific.

7       Q       If David Milgaard had testified and been asked the  
8       question to the effect that "lookit, if you don't  
9       know exactly where it was is it possible that you  
10      were near the funeral home when your car got  
11      stuck", how would he have answered that question?

12      A       He probably would have said "I don't know, I  
13      didn't see a funeral home".

14      Q       Okay.

15      A       It depends, you know, how robust the  
16      cross-examination was on him, and -- but I think  
17      that would have been the nature of his answer.

18      Q       Was it your sense, from talking to him, that he  
19      could positively deny that he was in the vicinity  
20      of -- on the street of the funeral home?

21      A       I don't think he could say that, but he could  
22      certainly say that he didn't see any funeral home.

23      Q       Or a building, a brick building?

24      A       Or a building of that nature.

25      Q       Okay.



1       A       I think, you know, he would have been quite clear  
2               on that.

3       Q       Then the next part:

4               "Ron and Dave got out and they tried to  
5               push the car. They couldn't get it  
6               out."

7               And I think that's consistent with what David  
8               told you; is that correct?

9       A       Yes.

10      Q       And then:

11              "I recall Dave going back in the  
12              direction we had spoke to the girl. Ron  
13              went the other way past the funeral  
14              home."

15              Let me just pause there. I think David Milgaard  
16              had told you that he and Ron left the car to look  
17              for help; do you recall whether he said it was in  
18              the direction of the woman they had asked for  
19              directions or not?

20      A       Well I think one of them went one way and one went  
21              the other way, but there was no suggestion on his  
22              part that he had gone, as such, in the direction  
23              of the older woman.

24      Q       Okay. And then:

25              "The next thing I recall is seeing Dave





1 in the alley on the right side of the  
2 car. He had a hold of the same girl we  
3 spoke to a minute before. I saw him  
4 grab her purse. I saw him grab for her  
5 purse again. Dave reached into one of  
6 his pockets and pulled out the knife. I  
7 don't know which pocket he got the knife  
8 from. The knife was in his right hand.  
9 I don't know if Dave had a hold of this  
10 girl or not at this time. All I recall  
11 seeing is him stabbing her with the  
12 knife."

13 And, of course, you've told us that David denied  
14 all of that information; correct?

15 A That's correct.

16 Q What did you make of the fact that, we've heard  
17 evidence that David Milgaard was left-handed, the  
18 fact that Nichol John described him using his  
19 right hand?

20 A Well, I remember that aspect of it quite well,  
21 because I did quite a lot of reading and, I might  
22 say, preparation on that aspect even before the  
23 preliminary hearing. I can't tell you in  
24 particular the medical books that I read, but I  
25 recall reading a segment of a publication dealing



1 with stab wounds, and I can't remember all the  
2 details now but there was a discussion about the  
3 indicia of right-handed or left-handed wounds, and  
4 I came to the conclusion that perhaps some headway  
5 could be made in establishing that these wounds on  
6 the girl's body had likely been inflicted by a  
7 right-handed person. I knew that David was  
8 left-handed from things he wrote for me, and  
9 accordingly at the preliminary hearing I think  
10 that I asked those questions, and if I recall  
11 correctly I believe that one of the people I asked  
12 about it was Mr. Karst, who I think without any  
13 reservation, without any hesitation, said that he  
14 was left-handed.

15 Q Yes.

16 A Now I think Mr. Penkala qualified it somewhat by  
17 saying words to the effect "well I meant that they  
18 were inflicted by a person using his right hand".  
19 At least I interpreted that as a distinction with  
20 a difference --

21 Q Right, and so --

22 A -- as -- in contrast to a distinction without a  
23 difference.

24 And then I believe I asked Dr.  
25 Emson about this too, but I may be wrong, but I



1           guess what I am saying to you, I thought that that  
2           was of significance --

3       Q       I think Dr. Emson --

4       A       -- at the time, and I can't really assist you any  
5           more than that at this stage. But I know I  
6           certainly directed my mind to it, and it was based  
7           not just on speculation, it was based, number 1,  
8           on the fact that David was left-handed; and number  
9           2, that I had done some research on it and I may  
10          have even talked to a doctor about it.

11      Q       Just back to this part of the statement where  
12          Nichol John says "I saw him grab the knife in his  
13          right hand".

14      A       Yes.

15      Q       And, again, would it fair to say that, given your  
16          information that David Milgaard was left-handed,  
17          that you might have concerns about what she is  
18          saying here?

19      A       I'm sure I, in the light of our discussion, I'm  
20          sure I would have.

21      Q       Now the fact that Nichol John did not adopt this  
22          part of the statement either at the preliminary  
23          hearing or at the trial, I take it that would have  
24          precluded you from challenging her on this point  
25          or cross-examining her on this point, is that



1 fair?

2 A Well it would be with an attendant risk if you,  
3 you know, persuaded her to remember a number of  
4 things, having regard to the position that she had  
5 taken.

6 Q So in order to ask her about how she could see  
7 David using his right hand you would have to  
8 refresh her memory or get her to the point where  
9 she says "okay, now I remember seeing him use his  
10 right hand" --

11 A Yeah.

12 Q -- and then challenge it; is that fair?

13 A I think that's the way one would have to go about  
14 it.

15 Q And then if her evidence is "I don't recall seeing  
16 that or saying that" I take it it would be very  
17 difficult, if not impossible, to question her  
18 about something she has no recollection of saying  
19 or seeing; is that fair?

20 A Yes.

21 Q Did this cause you, the fact that she would say  
22 she saw Mr. Milgaard use his right hand, did this  
23 cause you to doubt, further, the veracity of this  
24 part of her statement?

25 A Well, I'm sure it did, when I consider the



1 approach I took with those other witnesses. I  
2 mean I don't remember, as I say, the mental  
3 processes that I was going through, but looking at  
4 the approach taken with these other witnesses,  
5 that is a signal to me that it was of concern, and  
6 certainly on my part it was an attempt to  
7 discredit any suggestion that a left-handed person  
8 like David would have committed, you know, would  
9 have committed the stabbing.

10 Q And then:

11 "The next thing I recall is him taking  
12 her around the corner of the alley. I  
13 think I ran after that. I think I ran  
14 in the direction Ron had gone. I recall  
15 running down the street. I don't recall  
16 seeing anyone. The next thing I knew I  
17 was sitting in the car again. I don't  
18 know how I got back to the car."

19 And in your very first memorandum, or one of the  
20 ones that we looked at, you had referred to this  
21 part of the statement as being very confusing.  
22 Do you recall, now having looked at this, about  
23 her saying that she left the car, ran, and  
24 doesn't know how she got back into the car; did  
25 you have concerns about that?



1       A       Well I don't recall dictating the memorandum, but  
2               having read it, I must have had concerns, although  
3               I don't recall, at this time, the specifics of it.

4       Q       Then, next, she talks about:

5               "I seem to recall seeing Dave putting a  
6               purse into a garbage can. I don't  
7               remember which time it was or where I  
8               was when I saw this.

9               I recall there were two garbage  
10              cans. The one on the left had the lid  
11              tipped. I don't recall which one he put  
12              it in."

13             Do you recall, when you were looking at the scene  
14             in that back alley, observing any garbage cans in  
15             that area?

16      A       I'm sure I looked, and I'm sure I observed what  
17               was there, but unless I have a -- you know, had  
18               notes or a memorandum reflecting it, I couldn't  
19               say to you that I remembered it in that kind of  
20               detail.

21      Q       And then she says:

22              "I don't remember talking to Ron before  
23              Dave got back. I do not recall Dave  
24              saying anything."

25             And of course Mr. Wilson, in his statement of the



1 same date, says that when he got back Nichol was  
2 hysterical and told him that she saw Dave grab  
3 the girl, so that would be an inconsistency  
4 between those two; is that fair?

5 A That's correct.

6 Q If we can then scroll down:

7 "... do not recall seeing blood on  
8 Dave's clothes or seeing the knife  
9 again."

10 Certainly the clothes and no blood would be  
11 consistent with what David said?

12 A That's correct.

13 Q And, again, the changing of the clothes, did not  
14 see blood. And then in the last paragraph, I  
15 won't go through it, but she describes the  
16 incident at Cadrain's house where David took the  
17 car for a ride, and that would be consistent with  
18 what David had told you; is that correct?

19 A Yes, I think that detail is quite consistent with  
20 what David had told me.

21 Q And then, the next page, she describes the  
22 compact:

23 "I saw a cosmetic case which I opened  
24 up. There was a compact, 2 lipstick and  
25 an eye shadow in it. I asked whose it



1                   was. Nobody knew whose it was then dave  
2                   grabbed it and threw it out the window.

3                   Dave was driving at this time."

4                   And, again, that would be consistent with what  
5                   David Milgaard had told you?

6           A        Yes.

7           Q        Then if we can scroll down, again, here she talks  
8                   about being in Calgary and saying that:

9                   "Here Ron told me Dave had killed a girl  
10                  in Saskatoon. I told him 'I know'. I  
11                  do not recall anything further being  
12                  said about this murder."

13                  And, again, that would seem to coincide with what  
14                  Ron Wilson said in his statement of the same day  
15                  or the day before; is that correct?

16          A        Yes.

17          Q        And then she says:

18                  "I have not told anyone about witnessing  
19                  this murder. I didn't recall actually  
20                  witnessing a murder until yesterday when  
21                  I talked with Mr. Roberts. I was aware  
22                  that however that I was somehow  
23                  involved."

24                  Did you find this statement of any concern, in  
25                  particular that she didn't recall witnessing a





1 murder until she had met with Inspector Roberts?

2 A Yes, I'm sure that I did, but of course then the  
3 other part of her answer is somewhat contradictory  
4 or confusing.

5 Q If she had adopted her statement of witnessing the  
6 murder is this an area, this part of the statement  
7 where she says "I didn't recall seeing it until I  
8 met with Inspector Roberts", would that be  
9 something that you might cross-examine her on?

10 A I think so. But trying, of course, to avoid any  
11 description of him as a polygraph operator.

12 Q Right. But the fact that a witness who supposedly  
13 --

14 A Yeah.

15 Q -- witnessed a murder provides a statement six  
16 weeks later saying "nothing happened", and then  
17 two months later saying "I now remember, I did see  
18 a murder"; --

19 A Yes.

20 Q -- would that be something that you might be able  
21 to use --

22 A Yes.

23 Q -- to challenge her credibility if she had adopted  
24 it?

25 A Yes.



1 Q Next page, I think again the description of the  
2 clothing.

3 Would it be fair to say -- and I  
4 don't think we need to go through this as we've  
5 done with the other statements -- that in this  
6 statement there would be some statements made by  
7 Nichol John that, based on what David Milgaard had  
8 told you, would be truthful statements and  
9 incriminating; is that fair?

10 A Yes.

11 Q And, as well, there would be some statements in  
12 this statement that, according to what David  
13 Milgaard told you, were untruthful and  
14 incriminating?

15 A Yes.

16 Q And so again forgetting, putting aside for the  
17 moment that, presumably before the preliminary  
18 hearing started did you have any idea whether --  
19 that Nichol John was not going to adopt this  
20 statement as her evidence?

21 A No, I had had no intimation of that.

22 Q And so, in preparing for her evidence at the  
23 preliminary hearing, would it be fair to say that,  
24 much like Ron Wilson, you would have a statement  
25 that has some -- or anticipated evidence that



1           would be incriminating and truthful based on what  
2           David Milgaard had told you, but as well some that  
3           would be incriminating and untruthful based on  
4           what --

5       A       Yeah.

6       Q       -- David Milgaard had told you?

7       A       Yes.

8       Q       And, again, would it be the same tack for Nichol  
9           John as for Ron Wilson, and that would be to try  
10          and undermine the veracity of the untruthful  
11          incriminating evidence and perhaps, I think you  
12          said, provide innocent explanations for the  
13          truthful incriminating evidence?

14      A       Yes, yes.

15      Q       Prior to the preliminary hearing do you recall  
16          whether you had any information about how Nichol  
17          John was treated by the police on May 23rd-24th  
18          and where she was kept, where she stayed  
19          overnight?

20      A       You know, without my notes, it's very difficult  
21          for me to say with any degree of certainty.  
22          Judging from some of the questions that I asked  
23          her, I believe at the preliminary hearing, I think  
24          I may have had some information about the  
25          circumstances under which she was held, but that's



1           very vague. The reference, I think, to the matron  
2           that is in -- was in some of the material, which I  
3           think you showed me, --

4       Q       Yes.

5       A       -- causes me to pause and wonder if I didn't maybe  
6           even speak to the matron, but I can't say for  
7           sure, but --

8       Q       The name of the matron --

9       A       But there was something about the line of  
10           questioning that I used that prompted me, that  
11           prompts me to say that, but I have to tell you  
12           that I can't really work back and trace it with  
13           any degree of confidence.

14      Q       In the questions, when it came up about the  
15           matron, you said -- you asked Ms. John whether the  
16           matron's name was Mrs. Tetreault?

17      A       Yeah.

18      Q       And she wasn't able to provide a name; does that  
19           assist you at all in --

20      A       No, it doesn't now.

21      Q       So is it fair to put it this way, that based on  
22           your recollection you can't say for certain, but  
23           you may have talked to the matron and made some  
24           inquiries?

25      A       Yes. I may have, you know, talked to her either



1 directly or indirectly, because those questions  
2 that I put and which you drew my attention to  
3 caused me to try to reflect, but I'm afraid I  
4 can't really assist you any more than I have on  
5 that point.

6 Q Maybe, when we go through the transcript on those  
7 points, that may assist.

8 A Yeah. I have read it over, though, at your  
9 request, so I'm not just flying blind at this  
10 stage, if I may use that term.

11 Q Just one other point I want to touch before we get  
12 into the transcript. I think you told us that  
13 prior to -- let me ask this. When did you first  
14 learn or realize that Nichol John was not going to  
15 repeat certain of the incriminating parts of her  
16 May 24th, 1969 statement when she was giving  
17 evidence at the preliminary hearing?

18 A Well, I didn't learn before she was testifying, it  
19 emerged during the course of her evidence. And as  
20 I recall it, when Mr. Caldwell for the prosecution  
21 was trying to elicit testimony from her, it seemed  
22 to me that this is when I realized that she was  
23 taking the position that "I don't remember".

24 Q Okay. And so you had no prior inkling of that or  
25 any idea?



1 A I had no prior inkling or --

2 Q We have heard evidence --

3 A -- idea of it.

4 Q Sorry. We have heard evidence in this Inquiry  
5 from Mr. Caldwell and have had a chance to look at  
6 a note from his file and as well we've heard from  
7 Peggy Miller evidence to the effect that, I  
8 believe it was at the preliminary hearing, during  
9 the course of the preliminary hearing I think  
10 before Nichol John testified that she was in a  
11 witness waiting room with Albert Cadrain, Peggy  
12 Miller and Gail Miller's mother and according to  
13 those people in the room said words to the effect  
14 that 'I don't know why he didn't kill me too, I  
15 saw him do it,' I'm paraphrasing, but words to  
16 that effect reported to people in the room which  
17 in turn was reported to Mr. Caldwell. Were you  
18 ever made aware of that or do you recall hearing  
19 about that?

20 A I'm quite sure that I was never made aware of that  
21 and, furthermore, in my discussions with David,  
22 which we've gone over, there was certainly never  
23 any suggestion of threats or worries like that  
24 that he had directed toward Nichol or any other  
25 witness.



1       Q       Now, I think Mr. Caldwell, putting aside the issue  
2               of the threat for a moment, I think what Mr.  
3       Caldwell was saying is the fact that she repeated  
4       this comment in the witness room to these people  
5       about being a witness to the murder and then went  
6       on the stand and didn't repeat it at the  
7       preliminary hearing may have caused him to perhaps  
8       think that the reason she wasn't repeating it was  
9       because of fear, but as well might be another  
10       occasion other than May 24th, 1969 where she  
11       repeated to someone that she had witnessed the  
12       murder, and again, I'm wondering, if you had been  
13       made aware of this, the fact that there was this  
14       utterance at the hearing room, can you tell us  
15       what effect if any it would have had on how you  
16       dealt with her?

17       A       Well, I'm sure I would have first discussed it  
18       with David again in a very specific way and then I  
19       would have -- this is a hypothetical question, so  
20       I'm not -- at this stage I'm really not sure what  
21       I would have done with it.

22       Q       And putting aside -- I think the threat part of it  
23       was more I don't know why he didn't kill me too  
24       because I witnessed it, and I think the latter  
25       part, in your dealings with Nichol John as a



1 witness, if you would have known that there may  
2 have been this utterance by her, in addition to  
3 the May 24th statement, would that have caused you  
4 to change how you dealt with her evidence?

5 A It's possible, but, you know, I'm not sure. I  
6 mean, this wasn't a situation that I was  
7 confronted with.

8 Q Sure.

9 A So it's very difficult for me to say at this time  
10 what I might have done.

11 Q Okay.

12 A I just have no -- I had no intimation that this  
13 was the reason and I was proceeding on the footing  
14 that nothing like that had happened.

15 Q And can you, and I appreciate that this is now  
16 hypothetical or speculative because you didn't  
17 know it at the time, but can you envision some  
18 circumstance where this utterance might be used in  
19 the proceedings, in the 9(2) proceeding or somehow  
20 to bolster the position that, I mean, another  
21 prior inconsistent statement, albeit this one is  
22 not in writing? Would that be a concern?

23 A It would be, but when you get into that area of  
24 the 9(2), it would also be something that the  
25 prosecution might well have decided to lead if the





1 matter had been conducted in the absence of the  
2 jury.

3 Q Well, we'll maybe come back to that when we get to  
4 that part.

5 A Yes. I could see that being an aspect of it,  
6 but --

7 Q In those proceedings, asked the question of her,  
8 did you not tell witnesses at the preliminary  
9 hearing that you had witnessed the murder?

10 A Yes, and frankly, I think the trial judge probably  
11 would have permitted that.

12 Q If we can go to 030692, this is the transcript of  
13 Nichol John's evidence at the preliminary hearing.  
14 030696, again this is just talking, again examined  
15 by Mr. Caldwell, where she describes not the  
16 maroon-handled paring knife, but the other knife,  
17 and she says:

18 "A It resembled a hunting knife ... I think  
19 it was a bone handle, and it had sort of  
20 carvings in it, brown and sort of  
21 tannish color."

22 Is that something that you would have gone back  
23 to David and said is this possibly the knife that  
24 you had, did it have a brown and tannish colour  
25 handle on it?



1           A           Well, as far as the hunting knife, or similarity  
2                       to a hunting knife, he told me that he had no such  
3                       knife.

4           Q           If we can go to page 030699, and they are talking,  
5                       this is the incident after Aylesbury:

6                       "Q   And did anything else happen on the way  
7                       up?

8                       A   Yes, a truck was stolen in the same  
9                       town.

10                  Q   Was this at the time you were stuck?

11                  A   Yes.

12                  Q   And was it used for some purpose?

13                  A   No.

14                  Q   Well could you just tell the Court the  
15                       sequence of events there?

16                  A   Well David said he was going to get  
17                       help, and he came back with this  
18                       truck, and we were going to pull the  
19                       car out but there was no chain, so  
20                       then he just parked the truck  
21                       somewhere, and then got into the car.

22                  Q   And did you use the truck, or did Dave  
23                       or anybody use the truck in helping get  
24                       the car out?

25                  A   No. "



1 Do you have any recollection of discussing that  
2 fact, or that allegation with David, about  
3 whether a truck was stolen?

4 A No, I don't. I recall us discussing the stop in  
5 what I believed to be Craik, but as far as any  
6 details, now, there may have been a discussion  
7 about the reverse gear going out, but I don't  
8 recall any such discussion.

9 Q Go to 030704, again this is Mr. Caldwell just  
10 going through about where they got stuck, she says  
11 here, "... behind the funeral home," and then the  
12 next page, and it talks about Ron and David  
13 getting out, and then the next page:

14 "Q What happened then?"

15 And then she says:

16 "A I don't recall."

17 And I think Mr. Caldwell made a couple of  
18 attempts to have her talk about what happened in  
19 the alley and it was "I don't recall."

20 If we can go to the next page,  
21 030708, and then here:

22 "Q I see. Now then, when the two, Dave and  
23 Ron got back in the car, what happened  
24 next?

25 A I remember driving down another



1 alley."

2 And then I think she carries on about going to  
3 the motel, it talks about the compact, which I  
4 don't think we need to go through, and then to  
5 page 030727, I think here Mr. Caldwell makes  
6 another effort to go back, he says:

7 "Q I'd like to go back, just over one area,  
8 and ask you some more things, please,  
9 and that is the area where you've told  
10 the Court where you've told the Court  
11 that the car got stuck in the entrance  
12 to the alley, near the funeral home, do  
13 you remember that?

14 A Yes."

15 And then I think he goes on with some questions  
16 and she does not recall again.

17 Then to page 030730 is where  
18 you start your cross-examination. Would you have  
19 had any discussion with Mr. Caldwell after this  
20 point about what he was going to do or what his  
21 thoughts were about his case in light of the fact  
22 that someone, according to a statement, who was  
23 an eye witness now, was not repeating that  
24 evidence?

25 A We may have, but I certainly don't recall any



1 discussion of that nature.

2 Q Would you have gone to him and asked him to review  
3 the case again or anything like that?

4 A It's possible, but I just simply don't recall any  
5 discussion at that time with this course of  
6 conduct in mind.

7 Q The first question you ask Nichol John, now this  
8 is at the preliminary hearing, is:

9 "Q Miss John, I don't think that you've  
10 ever spoken to me before in your life,  
11 have you?

12 A No."

13 Would there be a purpose in that question?

14 A Well, I think even at that stage, the atmosphere  
15 was such that there might well be a suspicion that  
16 somebody had exerted persuasive influence on her.

17 Q And so the purpose here would be to establish that  
18 you had never talked to her?

19 A That I or anyone on behalf of David. I didn't  
20 want anything of this nature being visited upon  
21 him either directly or indirectly.

22 Q Now, we talked a couple of days ago about your  
23 practices in interviewing significant Crown  
24 witnesses and you told us that there were perils  
25 in doing so. Can you tell us what position you



1           would have been in if you had in fact interviewed  
2           Nichol John prior to the preliminary hearing and  
3           then at the preliminary hearing and trial she did  
4           not adopt the incriminating parts of the  
5           statement?

6           A       Well, there's always the risk of an allegation or  
7                   a suspicion that somebody got to her and certainly  
8                   in re-examination it might well be that the Court  
9                   would permit a question to be asked, well, who did  
10                  you speak to since giving that statement, and of  
11                  course in those circumstances the atmosphere might  
12                  well be that the defence had something to do with  
13                  her change of mind and that would reflect badly on  
14                  David.

15          Q       Go to 030734, again, you do ask her -- is it fair  
16                   to say that you would have changed your approach  
17                   to your cross-examination of Nichol John at the  
18                   preliminary hearing based upon her  
19                   evidence-in-chief?

20          A       There's no doubt that I would.

21          Q       So here she indicates that after they talked to  
22                   the girl, it was only a few minutes later, two to  
23                   three minutes when they got stuck, and would that  
24                   be more consistent with what David Milgaard had  
25                   told you?



1       A       Yes, except with your preamble concerning the  
2               distance, I wasn't sure, you know, how far they  
3               had gone.

4       Q       Right.

5       A       But certainly the time factor is there and  
6               consistent with what he had told me.

7       Q       Page 030743, confirmed here that there was no  
8               blood on the trousers, that David had changed, and  
9               I think that was her position through not only the  
10              statement, the prelim and trial; is that correct?

11      A       That's my recollection, as well as no blood on his  
12              hands or anything like that.

13      Q       We're done with the prelim transcript. Now --  
14              COMMISSIONER MacCALLUM: Sorry, that was  
15              Ron's trousers?

16              MR. HODSON: I'm sorry, did I have the --

17              COMMISSIONER MacCALLUM: I just wanted to  
18              be sure that we're all thinking about the same  
19              thing.

20              MR. HODSON: Okay, I think 139 -- I gather  
21              you did not see anything like that on Ron's, and  
22              then 139:

23              "Q   And you did not see any blood, or  
24                   anything resembling blood on the  
25                   trousers that David changed?"



1 And then:

2 "A None that I can recall at least."

3 So I think it was both Ron and David.

4 COMMISSIONER MacCALLUM: And that was --  
5 the witness' answer, that was consistent with --

6 MR. HODSON: With what David had told you.

7 COMMISSIONER MacCALLUM: Did David tell him  
8 anything about seeing blood on Ron?

9 BY MR. HODSON:

10 Q Oh, I'm sorry. Maybe I haven't asked you that.  
11 Do you recall talking to David Milgaard about  
12 whether he observed any blood on Ron Wilson's  
13 pants?

14 A No, David was quite firm with me that he had no  
15 blood on his clothes or person and he did not in  
16 any way suggest that anybody else in the car had  
17 blood on them, and that included Ron. In other  
18 words, he was very firm that nobody in the car had  
19 anything to do with this.

20 Q Now, after you were done with Nichol John's  
21 evidence at the preliminary hearing, would you  
22 have had further discussions with David Milgaard  
23 about what, again trying to assess -- you earlier  
24 told us you were trying to assess her motive in  
25 what would cause her to make the May 24th





1 statement. Did you have some discussions about  
2 what might have caused her to not repeat that or  
3 what was going on?

4 A Well, I'm sure I did because I did send him a copy  
5 of the preliminary hearing and then we discussed,  
6 you know, the contents of the preliminary hearing  
7 and what had happened, and I don't recall the  
8 specific conversation, but I know that he  
9 certainly didn't have any suggestion as to why she  
10 might be doing what she was, but in particular I  
11 know from what he told me that he had not been in  
12 touch with her and it was quite clear to me,  
13 although I can't recall the exact conversation,  
14 that he hadn't arranged to have anybody else get  
15 in touch with her.

16 Q Would you have pursued that issue with him to  
17 ensure that --

18 A Oh, yes, I wanted to know so that that wasn't an  
19 explanation that was later offered in any  
20 proceeding.

21 Q And were you, did you become satisfied that no one  
22 from, no one on David's behalf had talked to  
23 Nichol John prior to her giving evidence at the  
24 preliminary hearing?

25 A I was quite satisfied of that, that no attempt had



1           been made to exert pressure on her at all, and I  
2           don't think anybody had talked to her. Certainly  
3           David hadn't.

4       Q       Okay.

5       A       And I don't think anybody in his family had.

6       Q       Now, before the trial, do you recall whether you  
7           would have had any further discussions with Mr.  
8           Caldwell about anticipating what she might say at  
9           trial?

10      A       We may have, but I do not recall anything about  
11           it.

12      Q       I think we've heard some evidence that section  
13           9(2), which we'll deal with tomorrow, was a recent  
14           amendment to the *Evidence Act*; is that right?

15      A       Yes, I think that's accurate, but I don't think I  
16           recall -- as I recall it, there was no reported  
17           cases on it at that time.

18      Q       Prior to the trial then, would you have briefed or  
19           looked into the law in this area as to what use if  
20           any could be made of Nichol John's May 24th, '69  
21           statement in the event that she testified as she  
22           had at the preliminary hearing?

23      A       Well, from work that I had done, I was quite  
24           familiar with the new amendment even before it  
25           came into force, and I know that I directed my



1 mind to it in general terms being involved in the  
2 practice, and secondly, I realized that to at  
3 least some extent it appeared to me to codify  
4 principles that had been articulated I think in  
5 some English cases, and maybe even some other  
6 cases, but I recall in general terms having looked  
7 into it very early in the going in the sense that  
8 before it became an established provision in the  
9 *Evidence Act*, I knew it was coming into force.

10 MR. HODSON: And maybe I'll break here and  
11 pick up on this tomorrow morning when we get into  
12 the trial transcript.

13 COMMISSIONER MacCALLUM: Thank you.

14 (*Adjourned at 4:26 p.m.*)  
15  
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**OFFICIAL QUEEN'S BENCH COURT REPORTERS' CERTIFICATE:**

We, Karen Hinz, CSR, and Donald G. Meyer, RPR, CSR,  
Official Queen's Bench Court Reporters for the Province of  
Saskatchewan, hereby certify that the foregoing pages  
contain a true and correct transcription of our shorthand  
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

Official Queen's Bench Court Reporter



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