

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

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

On Monday, April 24th, 2006

Volume 137

Inquiry Proceedings



Commission Staff:

<i>Mr. Douglas C. Hodson,</i>	Commission Counsel
<i>Ms. Candace D. Congram,</i>	Executive Director
<i>Ms. Sandra Boswell,</i>	Document Manager
<i>Ms. Cheryl Ellerman,</i>	Document Assistant

Support Staff:

<i>Ms. Irene Beitel,</i>	Clerk to the Commission
<i>Ms. Karen Hinz, CSR,</i>	Official Q.B. Court Reporter
<i>Mr. Jerry Wilde,</i>	Security Officer
<i>Mr. Larry Prehodchenko</i>	Inland Audio Technician
<i>and Mr. Tony Fitzgerald,</i>	



<i>Ms. Lana Krogan-Stevely,</i>	for Government of Saskatchewan
<i>Ms. Catherine Knox,</i>	for Mr. T.D.R. (Bobs) Caldwell
<i>Mr. Garrett Wilson, Q.C.,</i>	for Mr. Serge Kujawa
<i>Mr. Pat Loran, Esq.,</i>	for the Saskatoon Police Service
<i>Mr. Chris Boychuk, Esq.,</i>	for Mr. Eddie Karst
<i>Mr. Bruce Gibson, Esq.,</i>	for the RCMP
<i>Mr. Eamon O'Keefe, Esq.,</i>	for Mr. Larry Fisher
<i>Ms. Jennifer Cox,</i>	for Minister of Justice (Canada), The Hon. Vic Toews
<i>Mr. Marshall Hopkins,</i>	for Justice Calvin Tallis (Retired)



INDEX OF PROCEEDINGS

DESCRIPTION:

PAGE:

- (VIDEOTAPE OF DAVID MILGAARD'S EVIDENCE COMMENCED)	27644
- (VIDEOTAPE PAUSED)	27738
- (VIDEOTAPE RESUMED)	27738
- (VIDEOTAPE ENDS)	27791



Transcript of Proceedings

(Reconvened at 1:00 p.m.)

COMMISSIONER MacCALLUM: Good afternoon.

ALL COUNSEL: Good afternoon.

MR. HODSON: Good afternoon,

Mr. Commissioner. The only evidence we have today is the videotape evidence of David Milgaard that was conducted on March the 6th of this year and I just want to do a quick introduction for the record of how that evidence came about. I think it's reflected in some earlier applications and I don't propose to go through all of that.

The bottom line is this, that you ordered Mr. Milgaard attend in Vancouver to be examined under oath by way of video and audio recording. Counsel were to provide questions or input to me and I was the only one to examine Mr. Milgaard. That was done. I would like to point out a couple of things.

Unlike most witnesses, Mr. Milgaard chose not to review documents. In most cases I have provided to a witness documents to assist in refreshing their memory and for reasons I think stated by Mr. Wolch previously on his application, Mr. Milgaard chose not to review



1 those documents.

2 Secondly, the examination was
3 conducted with little or no advance interview by
4 me and it has been my practice with witnesses to
5 go through in advance the areas to cover, and
6 again for reasons that I think Mr. Wolch has
7 explained before, Mr. Milgaard declined, as was
8 his right to do so, so again, we will see, I
9 think it's two hours and 17 minutes.

10 The videotape was provided to
11 counsel for all parties back in mid March and no
12 counsel has provided me with any follow-up
13 questions, so I believe, unless you,
14 Mr. Commissioner, have any questions that arise
15 from it, this will be the extent of Mr.
16 Milgaard's evidence.

17 So we will play the tape and
18 we'll take a break at about 2:30 or thereabouts.

19 **(VIDEOTAPE OF DAVID MILGAARD'S EVIDENCE COMMENCED)**

20 **DAVID EDGAR MILGAARD, sworn:**

21 **BY MR. HODSON:**

22 **Q** Good morning, Mr. Milgaard. Thank you very much
23 for agreeing to testify before the Commission of
24 Inquiry.

25 I understand you are 53 years of



1 age and reside in Vancouver; is that correct?

2 A Yes, it is.

3 Q And I understand, before we get started with
4 questions, you would like to make some comments,
5 an introductory remark; is that correct?

6 A Yes.

7 Q Please, please do so.

8 A Thank you, Doug.

9 I want to tell everyone all I
10 know about the questions they have to help find
11 out how it was possible for me to be convicted of
12 murder. My one hope is that anyone found to be
13 involved in corruption is not able to hurt anyone
14 else in the same way ever again. I say this very
15 seriously.

16 There are many good people
17 involved in trying to make this work out well,
18 police, lawyers, prosecutors, Justice Department
19 officials, judges, and politicians. I find it sad
20 to say these are the very same people we are
21 investigating in the Canadian inquiry -- in this
22 Canadian inquiry.

23 I am concerned, as all Canadians
24 should be concerned. I hope what I can offer
25 helps. I have always told the truth to help in



1 the past, and will continue to do so.

2 In closing this opening
3 statement, I want everyone to know there are many
4 victims from this tragedy. I hope the court is
5 able to see this, and to try to offer what care it
6 can for these people where they can. Ronald
7 Wilson and Nichol John are just a few of the many
8 that need this kindness. Thank you.

9 Q Thank you. Before we get formally started I'll
10 just identify who's in the room here, Mr.
11 Milgaard; your counsel, Mr. Wolch, is here; as
12 well you've asked to have Joel Grymaloski present,
13 who's here; Jordan Hardy, who's here assisting me;
14 and as well the court reporter, Don Meyer; and
15 Larry, who is working the camera.

16 And your evidence is being
17 provided to the Commission pursuant to an order
18 made by the Commissioner in early February and so,
19 just for the record, I'll outline the rules and
20 procedures we will be following, the same rules,
21 Mr. Milgaard, as if you were a witness testifying
22 in person before the Commission and, as we
23 discussed earlier, I will ask you the questions,
24 if you have any questions or concerns please tell
25 me. Mr. Wolch may not assist or answer for you



1 but he may object to any question if he wishes.

2 And I will from time to time,
3 just so you know, when I refer to documents, in
4 the Commission we have a six-digit number for them
5 so we know what documents we're referring to. So
6 if I talk about a document and you hear me talk
7 about a document ID, that's what I'm referring to,
8 and I don't think you need to be concerned about
9 that.

10 And as well, Mr. Milgaard,
11 pursuant to the order made by the Commissioner,
12 I'm the only one who's going to be asking you
13 questions. Okay. Normally Mr. Wolch would ask
14 you questions and the counsel for the, all the
15 other parties -- there's 12 other parties for
16 other witnesses -- they would ask you questions,
17 but it's been agreed that I will be the only one
18 that will put the questions forward. So I'll ask
19 you some general questions, I might also ask you
20 some questions that counsel for some of the other
21 parties have asked me to put, so that there might
22 be some questions.

23 And their role for the other
24 parties, so you understand, is they're there to
25 protect their clients' interests before the



1 Commission, so there might be a few of those
2 questions, just so you understand that.

3 A Uh-huh.

4 Q And I'll try and limit my questions in two ways;
5 number 1, obviously they're relevant to our
6 Commission's Terms of Reference; and two, where
7 you have personal knowledge of facts.

8 You have counsel, Mr. Wolch,
9 before the Inquiry, who is -- can make, and has
10 made, submissions and arguments, and things of
11 that nature, so I will try and limit my questions
12 to your personal knowledge and to the Terms of
13 Reference.

14 A couple of comments before I
15 get into questions, just so that you understand
16 where I'm coming from. One of the main objectives
17 of the Commission of Inquiry is to inquire into
18 the conduct of the police investigation and the
19 trial and to look at the conduct of people who
20 were involved in that, in the investigation and
21 trial. So I will be asking you questions about
22 your recollection of events back from 1969 and '70
23 and, in particular, what you may have said to the
24 police and to Mr. Tallis. And I appreciate, from
25 what you've told me earlier in the previous



1 interview, that your recollection may not be very
2 good today, but we'll go through that and just see
3 what we can get from you by way of recollection,
4 or whether you are prepared to accept what other
5 witnesses have said about comments you may have
6 made.

7 A Well, sometimes I don't remember too well.

8 Q Yeah, that's fine. And we have had a number of
9 witnesses, Mr. Milgaard, who, when trying to
10 remember back 35, 36 years ago, do not have a
11 memory of events. So, again, we'll go through and
12 see what you are able to provide us.

13 A second area that I will go
14 into a bit as well is the post-conviction time
15 frame, and focus on the information that was
16 provided to authorities. If, at any time during
17 my questioning, you are uncomfortable with any
18 question that I ask you, please tell me.

19 A Uh-huh, all right.

20 Q Or if, at any time, you want to stop, just tell
21 me, and we'll take a break, or if you want me to
22 clarify a question if I don't ask it very good,
23 which happens from time to time, please tell me
24 and I'll try to --

25 A I have trouble, sometimes, with your bigger words,



1 but I'm -- should be okay. And even bigger words
2 I'm pretty good at sometimes, too, --

3 Q Okay.

4 A -- if I want to be.

5 Q So let's just talk, first, about your recollection
6 of events. Do you have any current, reliable
7 memory of the events of January 1969 to January
8 1970?

9 A Probably. Yeah, I think I do.

10 Q You have a memory of some --

11 A Some things. You are talking about --

12 Q Yes.

13 A -- the murder time?

14 Q Yes. I'm talking about the trip that --

15 A Yeah, I have some memory of those events.

16 Q And just tell me generally; what kind of things do
17 you remember from back in that time frame?

18 A Well I remember Cadrain's house, going to
19 Cadrain's house, I remember it was really messy.
20 There was pots on the stove that were, umm, really
21 disgusting.

22 Q Okay.

23 A I remember Albert at that time, a little bit,
24 trying to go to a bank or a credit union or
25 something. And I remember leaving town, getting



1 lost, hmm, having problems with the car in some,
2 some different ways, I remember going into
3 Alberta, and that's about it.

4 Q Okay. And then, as far as the events that
5 followed and during the trial, do you have some
6 recollection, today, of those events and your
7 dealings with Mr. Tallis and --

8 A Say that again, slower?

9 Q Yeah, sorry. Do you have a memory of your
10 dealings with Mr. Tallis, your lawyer at the time,
11 do you remember --

12 A Tallis? Yeah, I think so, yeah.

13 Q And some of the specifics; what was discussed back
14 and forth?

15 A Yeah, some of the specifics I remember, right.

16 Q Okay. Is there anything that stands out in your
17 mind about your dealings with Mr. Tallis; any
18 recollection that comes to mind?

19 A He didn't want me to testify.

20 Q Okay. And we'll talk a bit more about --

21 A Is this something I should be saying?

22 Q No, you --

23 A It's privileged information, I should be saying
24 it?

25 Q Yeah, no.



1 A Just telling the truth so --

2 Q Sure, no.

3 A I really wanted to testify. I mean I was hearing
4 stuff, you know, as far as I was concerned, that
5 was like really impossible, and it was making me
6 really upset.

7 Q All right. And I --

8 A It was impossible.

9 Q Right. And I think, ultimately, the decision was
10 made that you wouldn't testify; is that right?

11 A Yeah.

12 Q Yeah. And Mr. Tallis, he's testified before the
13 Commission of Inquiry in the last month, and he
14 told us that he gave legal advice to you and he
15 advised you not to testify.

16 A Yeah.

17 Q And he went through a number of reasons, and that
18 he told us that ultimately you talked it over with
19 your parents, and you came back and told him that
20 you did not wish to testify based on his advice;
21 is that correct?

22 A Yeah, we got together on that, and that's what we
23 decided.

24 Q Yeah. Now just, again, as far as memory, it's my
25 understanding that, in preparation for your



1 evidence here -- and I'm certainly not faulting
2 you, Mr. Milgaard -- but you didn't go back and
3 you haven't reviewed any documents on this matter
4 for many, many years; is that fair?

5 A No. I don't want to.

6 Q And so --

7 A I really don't want to have anything to do with it
8 any more.

9 Q Okay. And so it's been many years, at least ten
10 years, since you've sat down and read through
11 documents or matters of that nature?

12 A I'm just trying to think if it has been ten years
13 or not.

14 Q I think your examination --

15 A It's been a long time, --

16 Q Yeah.

17 A -- because the last time we were all working in
18 Winnipeg and we were working over in Hersh's
19 office with David Asper, and I think that's
20 probably the last time that I got close to any
21 kind of documentation in the case.

22 Q I think, in your civil claim, you were examined in
23 1996; do you remember that at all, being --

24 A My civil case?

25 Q -- examined by some lawyers.



1 A In a civil case?

2 Q Yes.

3 A In a civil case.

4 Q Do you have any memory of that? I think you --

5 A Oh, you mean at the little place in Saskatoon?

6 Q Yes?

7 A Yeah, I remember stuff then, yeah.

8 Q And so, at that time, do you think you would have
9 sat down and reviewed some documents in
10 preparation?

11 A Well there was a bunch of preparations that were
12 being made there.

13 Q Okay.

14 A The lawyers all had documents. I don't know if I
15 was reading any documents. I was just trying to
16 tell them how I felt, I guess.

17 Q And so, again, the -- it's been many years since
18 you've sat down and -- to try and read through the
19 documents?

20 A Yeah.

21 Q And I also understand that you have not been
22 following the evidence of the Commission of
23 Inquiry, so you haven't read the evidence of
24 various witnesses; is that correct?

25 A No, I haven't been.



1 Q And I think you have stated, and maybe you can
2 state it a bit -- state it again, I understand
3 that you have deliberately not wanted to go back
4 and read over these matters; is that right?

5 A Yeah. I don't want to have anything to do with
6 this any more. I have a son, --

7 Q Okay.

8 A -- a brand new son, and --

9 Q Right.

10 A -- my life is my future of my son, and I just
11 don't need this stuff on my doorstep.

12 Q Now, as well, I think the last, other than the
13 civil claim, the Supreme Court of Canada in 1992,
14 I think you testified there; do you remember that,
15 do you remember going to the Supreme Court of
16 Canada?

17 A I was in the Supreme Court of Canada. You have to
18 remember I was under a lot of drugs from the
19 institution, --

20 Q Yes.

21 A -- I don't remember very much about the Supreme
22 Court of Canada. Umm, no, I really don't remember
23 very much.

24 Q Do you remember testifying at the -- at court?

25 A I've been told that I have testified, and I guess



1 I must have testified, but I don't -- I don't
2 recollect it, my feeling -- feelings, that I can
3 actually remember actually getting up and
4 testifying, to tell you the truth.

5 Q Okay. And that would have been a pretty
6 significant event for you, the Supreme Court, that
7 was right before you were released from prison; is
8 that right?

9 A Yes.

10 Q Yeah. And so, again, you have a memory of being
11 there, but not of actually testifying or what you
12 would have said at that time; is that correct?

13 A Yeah, I don't remember.

14 Q Would you agree, David, that your recollection of
15 the events -- and, again, let's just talk about
16 1969 and '70 -- about what, what you remembered at
17 that time. Would you agree that your recollection
18 of those events, and what you said and did, would
19 have been better back then, 1969 and 1970, than
20 any other time later?

21 A Yeah, at that time they would be.

22 Q Yeah.

23 A For sure.

24 Q And that, over the years, your recollection maybe
25 has faded a little bit; is that fair?



1 A Yeah.

2 Q You --

3 A Well there are times when people -- for whatever
4 reason I have had -- I've been misdiagnosed with
5 problems because people felt I was guilty, I was
6 sent to mental institutions, given medications,
7 medications colluded (ph) my mind. It's no great
8 word, it just means they completely mixed me up
9 and they hurt me, and mentally I would review
10 things over in my mind, you know, knowing I was
11 not guilty, and this would mix up my memory,
12 sometimes, about different things, umm, yeah.

13 Q You --

14 A A person's memory is easily mixed up by many
15 different things. A person, themselves, can mix
16 them up. I think it's bad for people that are
17 wrongfully convicted to have this problem.

18 Q And maybe we'll just talk a bit more about that.
19 Would it be fair to say that when you had
20 discussions with Mr. Tallis in 1969 in preparing
21 for your trial, and at the trial in 1970, would
22 you agree that that would have been your best
23 recollection at that time, whatever you told him?

24 A Umm, your question again?

25 Q Sure. Back when you were getting ready to go to



1 court on this matter you would have talked to Mr.
2 Tallis about what you remembered about the events
3 of January 30th and 31st, 1969; is that correct?

4 A Uh-huh.

5 Q And would you have told Mr. Tallis the truth when
6 you talked to him about your recollection?

7 A Yeah. Oh, I was a real scared kid, --

8 Q Yeah.

9 A -- I was trying to help out everything I
10 possibly -- everyone, I was trying to help out.

11 Q Yeah. And would you have told him everything?

12 A Yes.

13 Q Okay. And so, at that time, would that have been
14 your best recollection at that time, back when you
15 were talking to Mr. Tallis? And --

16 A Well he asked me to go over it very carefully and
17 think about it, and I did, and I wrote a scribbler
18 out for him.

19 Q Right, and we'll talk about the scribbler a bit
20 later, but I guess the question is -- and I think
21 you've answered it -- is that when you talked to
22 --

23 A I'm sure that we sat down, I'm just wondering how
24 much he asked me of that, because I don't remember
25 how much he may have asked me about these things.



1 Don't forget, I was in custody, --

2 Q Yeah.

3 A -- and I was scared, and I mean at this point I
4 tried to help the police out on more than one
5 occasion, just offering them the truth.

6 Q Well --

7 A And this is the time that I was actually arrested
8 in Prince George, B.C., and brought back to
9 Saskatoon I think it was.

10 Q Yeah.

11 A I was concerned, a concerned young man.

12 Q What Mr. Tallis has told the Commission of Inquiry
13 in his evidence, that in about June of 1969 when
14 he was first --

15 A Oh yeah.

16 Q -- hired by you, he met with you in the city
17 police cells on a number of occasions, and then
18 before the preliminary hearing he went out to
19 Prince Albert, and that you were in the provincial
20 jail there, in August, --

21 A Uh-huh.

22 Q -- and then again in November and December. So he
23 visited you three times in the Prince Albert jail,
24 and he had some documents that were able to assist
25 him on the dates. And that he said as well, when



1 you were brought in for the preliminary hearing
2 and at the trial, he spent time with you, sort of
3 before you went into court and after, talking to
4 you, and he said he spent a fair bit of time with
5 you talking about the events, and he said you were
6 very cooperative with him and that you told him
7 everything you could remember; and do you agree
8 with that, does that sound right?

9 A That's an awful lot, Doug.

10 Q Yeah.

11 A Yeah. And do I agree to everything? Well Cal
12 Tallis, I believe, tried to work in his best
13 interests to help me out.

14 Q Yeah.

15 A A person that's wrongfully convicted, you know,
16 will sit back in a situation, and as things go
17 downhill with appeals and different situations
18 that's being under investigation, and
19 automatically reach around and say, "well, it must
20 be my lawyer, my lawyer is not doing their job
21 right". I don't know if Cal Tallis did his job
22 right or he didn't do his job right, I can't
23 answer that question for you.

24 Q Yeah, no, and I appreciate that answer. My
25 question is more that you would have told him,



1 that you would have told him everything?

2 A I would have told him everything.

3 Q Yeah.

4 A I'm sure, between that scribbler and me talking to
5 him, I told him everything, yes.

6 Q Yeah. And then let's just talk a bit more about
7 your recollection, because I think you've told me
8 that after your conviction, and again the years
9 that followed, I think you said that while you've
10 thought about this matter and reviewed it in your
11 mind, I think you said that that caused your
12 memory to suffer a bit by thinking about it in
13 jail and going over events and perhaps reading
14 things; did that -- I think that's what you were
15 telling me, is that right, that after a while in
16 jail --

17 A The bottom line is if a person really, really has
18 trouble dealing with, the best way to say it is
19 the fact that he is not guilty, and he has gone
20 over it a lot of times in his own mind, he begins
21 to say -- question himself, you know, "is it
22 possible I was guilty". This is many years after
23 Cal Tallis; right.

24 Q Yeah.

25 A And I was -- put myself in a deprivational



1 situation. That messed up my mind and my memories
2 because I kept poking at myself in a bad way. I
3 don't like to say that publicly like this, but at
4 one point in my mind I'm saying "well, is it
5 possible I could have possibly done this", because
6 this is many, many years later and I was just
7 really messed up mentally.

8 Q And, in going over it, did there come a point,
9 David, where your memory of the events of January,
10 1969, that time period, may not have been as
11 reliable as it was in 1969 because of --

12 A That's the truth, yeah.

13 Q -- what you've described, and thinking over it and
14 going over it, and I think --

15 A I'm sure that's the truth.

16 Q And so that in later years, when you went back and
17 said "I'm going to tell you what happened back
18 then", that your memory then may not have been as
19 reliable as it was in 1969?

20 A Yeah, that's the truth.

21 Q And I think you talked a bit about, I mean in your
22 own mind, questioning what would have happened;
23 did you go back and look at the trial transcripts
24 and wonder "how could people say these things" and
25 trying, in your own mind, to figure it out?



1 A I didn't have a problem with that, because I was
2 there in the court when --

3 Q Okay.

4 A -- the people that told the court what they did
5 for whatever reasons they did, whether it was
6 police harassment, I think just the girl being
7 locked up was probably her reason for doing that.
8 Ron Wilson, like I said, they're victims of this
9 whole situation. I truly believe they're victims.
10 I don't hold anything against them and I hope they
11 realize that. They were just kids like I was, on
12 a lark, hippies.

13 Q Uh-huh.

14 A What can I tell ya.

15 Q Okay, so I think that's helpful, and we'll maybe
16 just come back a bit on the memory.

17 I want to talk just a bit about,
18 I think before you talked to Mr. Tallis, you
19 talked to the Saskatoon City Police on a couple of
20 occasions?

21 A Yeah.

22 Q And I think, if I can help you here, from your
23 earlier evidence, I think in the Supreme Court,
24 you indicated that you tried to assist the police
25 and you provided them with hair samples, saliva



1 samples, --

2 A Yeah.

3 Q -- blood samples; is that correct?

4 A Yeah.

5 Q And I think you also testified in the Supreme
6 Court, or have said elsewhere, that as far as your
7 direct dealings with the Saskatoon City Police in
8 the investigation in 1969, that they treated you
9 in a courteous fashion and they treated you fine
10 as far as the direct dealings with you; is that
11 correct?

12 A Well, a 'courteous fashion'?

13 Q Yeah.

14 A That's a good word, 'courtesy'.

15 Q And it was actually a word Mr. Wolch asked you in
16 the Supreme Court, which is why I chose it, or
17 actually it was maybe in your answer. Umm --

18 A The truth is, Doug, I really don't remember this
19 to say it. I can remember some of the police
20 names, I can picture some of the policemen, and I
21 can remember the ones I did not like a little bit,
22 or maybe a lot. But why wouldn't I like them, I
23 don't know. If you're a policeman and you are
24 trying to find someone who is guilty of murder,
25 what are you gonna do, you have to do whatever you



1 have to do.

2 Q Okay.

3 A I don't know.

4 Q And --

5 A Some of the policemen were the good guys, and some
6 of the policemen were the bad guys, I think that's
7 the truth.

8 Q And when you say "bad guys", what, did they do
9 anything --

10 A They didn't beat me up with a phone book or
11 anything, no, that didn't happen.

12 Q Okay. And just as far as your statements with the
13 police, and we'll talk a bit more about this when
14 we get into what Mr. Tallis said, you would have
15 given --

16 A That's television.

17 Q Pardon me?

18 A I said that's television, when you see that kind
19 of stuff.

20 Q Oh.

21 A At least I hope it is. Some places in the world
22 maybe it isn't.

23 Q When you -- you gave two statements to the police,
24 the first one was in March 3rd, 1969 when you were
25 in Winnipeg, and then one later in April. And --



1 A Winnipeg in April?

2 Q Yeah, I think --

3 A This is after --

4 Q -- this is the first one.

5 A This is when I'm trying to help them without being
6 arrested?

7 Q Yes.

8 A Yeah, I can remember that, yeah.

9 Q And I think you gave them a statement, and at that
10 time you were 16 years of age, and I think the
11 police, the RCMP or someone contacted you in
12 Winnipeg and said you wanted to be questioned
13 about a murder; does that sound right?

14 A I remember that too, yeah.

15 Q What did you think at that time, do you remember
16 your -- were you scared?

17 A Well I was, I was in a motel and I was working as
18 a salesperson, and I was just young, and I believe
19 my manager asked me, he said "the police here
20 would like to question you about a murder" or
21 something. I guess that's how it happened. And
22 he looked very serious, I didn't think he was
23 joking, sometimes he joked a lot, right, so I said
24 "okay". And then it eventually ended up where I
25 went to a police station and was questioned about



1 a murder. That's how that happened. And I even
2 think to this day -- now, I don't know for sure
3 where that was in Winnipeg, I think it's on
4 Portage Avenue, someplace on this side of Portage
5 Avenue, on the west side.

6 Q And were you scared at that time?

7 A Not really, but I was getting a little bit
8 nervous, yeah. I guess I was a little bit scared,
9 --

10 Q And we'll go --

11 A -- yeah, I was, yeah.

12 Q I'm sorry. And we'll go through the statement a
13 bit later, and I think what Mr. Tallis testified
14 before the Commission, he said in the police
15 statement that some of your answers to the police
16 officers' questions may have been -- and I
17 can't -- I think he used the word, maybe, smart
18 alecky a bit?

19 A Who said this?

20 Q Mr. Tallis has said, and I think maybe you did as
21 well, in --

22 A In reading the --

23 Q Yeah?

24 A -- transcripts?

25 Q Yes?



1 A Oh, it was possible, because I was kind of a cocky
2 kid then.

3 Q Yeah. And, as well, that there was some things
4 that weren't in the statement that you later told
5 Mr. Tallis about the events, and I think what Mr.
6 Tallis said is "well, firstly, maybe --"

7 A About those events? That's possible too, yeah.

8 Q That maybe you weren't asked the questions was one
9 explanation?

10 A The police were serious, I mean well they should
11 be serious, they were serious. And the gentleman
12 that I remember at that point, he was very polite,
13 he treated me in a reasonable way, told me that
14 this was serious, asked me for samples and things
15 like that. I did my best to -- where I'd be smart
16 alecky I don't know, maybe, I guess I was. But
17 I -- the gentleman that I was with, and I'm sure
18 that you maybe have talked to him or not, he'll
19 probably tell you that I was pretty serious,
20 because I was a little bit scared, so I don't
21 think I would be that much smart alecky.

22 Q No, and I'll go through the statements, and
23 there's just a couple. I think you were asked
24 whether you were in Saskatoon --

25 A Yeah.



1 Q -- and your answer was "I don't know" when they
2 talked to you.

3 A I can't remember his name.

4 Q Yeah. And, again, as far as -- let's just go back
5 to your discussions with Mr. Tallis. He testified
6 at the Commission of Inquiry, as I mentioned,
7 recently, and he was able to recall a number of
8 the matters that he discussed with you in defence
9 of your claim, and --

10 A Are we still talking about Tallis, --

11 Q Yes?

12 A -- I guess?

13 Q And I --

14 A And what was the question?

15 Q Okay. He told the Commission of Inquiry a couple
16 weeks ago, --

17 A Right?

18 Q -- he told us about what he remembered about what
19 you told him --

20 A Right?

21 Q -- back in 1969, and he went through that. And I
22 propose to go through that with you and tell you
23 what --

24 A Okay.

25 Q -- he said and get your comment on that.



1 A All right.

2 Q And just, umm --

3 A Oh, my feet are sore.

4 Q That's fine. Just generally, would you have any
5 reason to dispute what Mr. Tallis might say you
6 told him back in 1969-1970, any reason to dispute
7 what, just generally -- and I'll go through what
8 he --

9 A Well, tell me what he said first, --

10 Q Okay.

11 A -- please?

12 Q No, and I'll do that, but again --

13 A I have no reason to hold Tallis in some sort of
14 animosity situation. I don't think I do, I really
15 don't think so, no.

16 Q And as -- you had talked earlier about a
17 scribbler, and I'll go through that with you; do
18 you -- what do you remember about the scribbler
19 and how that came about?

20 A I remember that, maybe under my own initiative or
21 maybe under Mr. Tallis' direction, which I don't
22 know for sure at this point, I decided I was going
23 to take every possible moment, when the murder was
24 supposed to have taken place, and write it out
25 perfectly, and I did so. And, according to some



1 comments we've had today, you know, I may have had
2 someone write it for me because maybe it wasn't
3 perfect, I -- like finally to the finish of it,
4 right, so I'd have it in a good, perfect
5 handwriting.

6 Q Okay. Now maybe this might assist you. I think
7 what Mr. Tallis said is that he had asked you to
8 write out your recollection of events, and he said
9 you wrote out some notes and that you gave him
10 these notes, and that they were on his file.
11 Okay? They -- and his file has since been
12 destroyed, so we don't have those notes, but he
13 said that you did give him notes and they talked
14 about the events. He said it also talked about
15 your family and your background and your job and
16 things like that. When Mr. Tallis --

17 A Huh.

18 Q -- was shown that scribbler --

19 A Right?

20 Q -- at the Supreme Court, and at the Inquiry, he
21 said "that's not the document that David gave me,
22 David gave me a different set of notes than the
23 scribbler" and he said that the information in the
24 scribbler, that he actually got more from you in
25 your notes. And so, again, is it possible that



1 you --

2 A Hmm.

3 Q -- gave notes to Mr. Tallis and prepared a
4 scribbler around the same time; are you able to
5 tell us?

6 A This is an interesting question, because in my
7 mind, you know, having just thought about this, I
8 really feel that that scribbler was so important
9 to me there would be no way that I would not get
10 that to Cal Tallis. Do you know what I mean?

11 Q Yes.

12 A And unless, for some reason or the other, I was in
13 trouble at that institution -- and I, it was a
14 possibility -- but I, I remember one time they
15 locked me up, they gave me some kind of strange
16 pill that was supposed to be like a food pill, you
17 know, it actually makes you full. It was like
18 Thanksgiving-time and I wasn't allowed to eat so
19 they gave me a pill, and maybe it was just in my
20 mind, but I felt like I was full. It was a, maybe
21 a special vitamin pill or something. Umm, that's
22 the only time I can remember being locked up.

23 I'm sure that that scribbler,
24 you know, that was probably the most important
25 thing I had in my possession, and I wanted to make



1 sure that that would get to Cal Tallis, and unless
2 for some reason I wasn't able to get that to Cal
3 Tallis personally -- and I don't remember in my
4 mind saying "here, this is it", and now I sense I
5 do, so I can't say for sure. I can't say for
6 sure.

7 Q That's fine. There was a fellow named Norman King
8 that helped you with your application for leave
9 to this --

10 A Norman King rings a bell, but I think that's a
11 different time. Norman King is inside a
12 penitentiary, this is much later, I'm talking
13 about while I'm on the provincial jail.

14 Q Okay. Is it possible -- and just let me just ask
15 you this, Mr. Milgaard -- that your notes, I think
16 Mr. Tallis said he got notes from you in your own
17 handwriting; is it possible that you then took
18 those notes and gave them to someone and had them
19 write out the scribbler for you, and added some
20 things, perhaps; that it was --

21 A Well, I think Cal Tallis has got a discrepancy
22 here that's not correct.

23 Q Okay. So you think that you gave the scribbler to
24 Mr. Tallis; that's your recollection?

25 A I can't say absolutely for sure I gave him that



1 scribbler, but I know that Norman King wasn't
2 involved in my situation until long after I was
3 convicted.

4 Q So, if we leave it on this basis, I think Mr.
5 Tallis and you are both saying that you prepared
6 notes of your recollection and you gave them to
7 Mr. Tallis; is that correct?

8 A Notes?

9 Q You wrote out your recollection of events?

10 A Well I'm sure that Cal Tallis, on many occasions,
11 was writing out notes of things that I was
12 saying --

13 Q Yeah.

14 A -- so those are the notes that are recollection
15 notes, or I may have written out something and
16 said "here's another piece of the puzzle, here's
17 another piece of the puzzle".

18 Q Yes.

19 A I was trying my best to help. And the notebook,
20 again, I really believe that it was significant
21 enough to me that I wanted that notebook to go to
22 Cal Tallis, he got it.

23 Q Okay.

24 A Yeah.

25 Q Now, as far as the preparation time, what Mr.



1 Tallis told us is that he would have met with you
2 before the preliminary hearing, and that's -- the
3 preliminary hearing was before the trial, and that
4 was in the summertime, and that he would have gone
5 through with you what Ron Wilson had in his
6 statements, what Nichol John had in her statement,
7 and Albert Cadrain in his statement, and reviewed
8 that with you. And I think he said he would have
9 asked you the question "do you know why these
10 people might have lied?", things of that nature?

11 A Well this whole thing, when I'm in that courtroom
12 and everything there, especially right at the very
13 end of it, eh, I can't, I can't give you a
14 relating feelings about my feelings and stuff
15 because I was really upset, I was stressed out.
16 My family, we felt at some point everything was
17 going great because it was taking so long for them
18 to decide, and I felt that the guards were on our
19 side, and it was a young man's perspective of
20 where -- where -- you are asking me to go back in
21 my mind and find the place there that I am dealing
22 with Cal Tallis in relation to these witnesses
23 when I'm dumbfounded by what these witnesses are
24 saying, and sure, he probably was asking me
25 questions, but I'd be like this, you know.



1 Q Yeah.

2 A You know. What can I tell ya, Doug.

3 Q Yeah, that's fine, no. So, again, when Mr. -- and
4 the only point is this. Mr. Tallis has said that
5 he would have gone over -- I think in a later
6 proceeding you said somewhere that you didn't know
7 what Wilson, John and Cadrain were going to say
8 until you heard it in court?

9 A So people are worried about Cal Tallis maybe being
10 involved in a situation in a wrong way; can I ask
11 you that question?

12 Q Yeah, no, well I -- and, again, my -- I think,
13 later on, you had made that comment that you
14 didn't know about what they were going to say
15 until you heard it in court, and Mr. Tallis, his
16 evidence was "no, I would have told David
17 earlier". Now it's possible you didn't -- you
18 don't remember that, or maybe you didn't ask him?

19 A He's 80 years old now; right?

20 Q 75.

21 A Really.

22 Q So do you have --

23 A I don't know.

24 Q -- any recollection of that? No?

25 A I don't know, Doug.



1 Q Okay. Now the one thing that --

2 A Hmm.

3 Q -- and, again, just --

4 A I'm just going to write a few things down.

5 Q Sure.

6 A Right? I think if everybody is going to be
7 practical about this finding out who is right and
8 wrong in this thing, and who's done wrong things,
9 I think it's just a practical way of just looking
10 at it, right, the lawyers, etcetera, etcetera,
11 etcetera.

12 Q Now the one thing that Mr. Tallis told us -- and
13 again, just for the record, he said that you
14 repeatedly told him --

15 A Who was the judge in the case?

16 Q Chief Justice Bence was his name.

17 A I am talking the original case where I was
18 convicted?

19 Q Yeah, yeah, it was Bence.

20 A What was his name?

21 Q Bence.

22 A B?

23 Q B-E-N-C-E.

24 A Bence, B-E-N-C-E.

25 Q And what Mr. Tallis said -- and, again, this goes



1 without saying -- that you told him repeatedly
2 that neither you nor anyone in your vehicle had
3 anything whatsoever to do with Gail Miller that
4 morning, and just so you know, that was his
5 recollection, but he -- well, that's what he told
6 the Commission of Inquiry that that's what you
7 told him.

8 Moving on to the travels into
9 Saskatoon, do you have a memory, David, of where
10 you came in, or anything like that, into Saskatoon
11 that morning --

12 A Yeah.

13 Q -- when you drove?

14 A Because we went over that so many times, right,
15 but I can't remember now. I couldn't remember the
16 streets if you asked me their names, but --

17 Q What --

18 A -- we came in the way that I said we came in, and
19 that was it.

20 Q Yeah. What Mr. Tallis told the Inquiry is that,
21 based on his meetings with you, he said he spent
22 time going through maps with you, and that you and
23 he would sketch out on the maps trying to figure
24 out where it was --

25 A Yeah.



1 Q -- your vehicle might have been; is that correct?

2 A Yeah, I think so, yeah.

3 Q And then he ended up saying that he thought, based
4 on the discussions with you, that you would have
5 come in off the freeway and travelled down either
6 20th Street or 22nd Street on the west side
7 looking for Albert Cadrain's house; do you
8 remember that?

9 A I remember that the discussions around how I came
10 into Saskatoon became a big issue in a lot of
11 different ways with Cal Tallis, or later on in the
12 case, with appeals and stuff. I think it was with
13 Cal Tallis. He was very concerned that he just
14 didn't feel comfortable with the way I came into
15 the city.

16 Q Yeah. What he ended up telling -- what he told
17 the Commission of Inquiry, that based upon what he
18 heard from you he thought that you were on the
19 west side, and he said in the vicinity of between
20 20th and 22nd Street, he said you didn't tell him,
21 you couldn't identify landmarks --

22 A Do you realize that if a person knows for sure how
23 he came in the city, then he knows for sure, and
24 if his lawyer is trying to tell him he came in a
25 different way, well he's for sure, his lawyer is



1 wrong.

2 Q Okay. No, and I think he, what he told us is
3 that -- what he told the Commission is that, if he
4 were going to call you as a witness at the trial,
5 that he was concerned that -- or I think what he
6 said is he thought your evidence would be, based
7 on what you told him, is that you'd be somewhere
8 over between 20th and 22nd Street somewhere?

9 A Yeah.

10 Q Does that sound right?

11 A I don't know for sure about the actual places, I
12 just know that he was really concerned about how I
13 came in, and then I said "well, that's the way I
14 came in, go check the garage, go this place, go
15 that place, please do it", and he didn't do it.

16 Q Umm --

17 A But, anyway. It's not funny, it's not worth
18 laughing about. I still wonder about that, you
19 know, it's an important issue. You know, there
20 were people that we stopped at, places and things
21 that we did.

22 Q And was that the -- and I saw some mention of
23 that -- was that the garage to get the heater
24 fixed, and is that what you --

25 A Could well be, --



1 Q -- were referring to, --

2 A -- yeah.

3 Q -- or was it something else?

4 A Well there was a garage, I can remember a garage,
5 and there was a soup machine, and it had pea soup,
6 little packages of pea soup.

7 Q Okay. And that was, do you remember where that
8 was --

9 A No.

10 Q -- in relation, was that before you got into
11 Saskatoon or in Saskatoon; do you remember?

12 A That's as we were entering into the city before we
13 go across the bridge.

14 Q And you stopped at a garage you think?

15 A Yeah.

16 Q And did you get your heater fixed there?

17 A I don't think the guy could help us, but he had
18 these pea soup packages.

19 Q Oh. And then you went into the city; is that
20 right?

21 A Yeah.

22 Q Or you were --

23 A Yeah.

24 Q Yeah. The -- how are we doing here, do you want
25 to keep going or take a break?



1 A Umm, I'm okay for a little while.

2 Q Okay. You let me know.

3 A I think so. Dry, though, from running.

4 Q Umm --

5 A Sore feet. I kind of look kind of strange, but
6 that's how I am, I'm getting in good shape for my
7 son, becoming stronger.

8 Q You will be happy to know --

9 A Have to be.

10 Q -- the camera can't see your feet, David, so
11 you're okay.

12 A We're all lucky.

13 Q And just on, again, in some of these areas, the
14 drug use at the time, I think there was some
15 evidence of that at the trial. What Mr. Tallis
16 says is that you were pretty clear with him that
17 there was no drug use by you or Ron Wilson or
18 Nichol John on the trip from Regina to Saskatoon;
19 do you remember telling him that? And that was
20 the evidence at the trial.

21 A Well, that may have been the evidence at trial,
22 but I betcha someplace along there we probably
23 smoked a little marijuana.

24 Q Between Regina and Saskatoon?

25 A Umm, probably between Regina and as far as we got,



1 which I think was Edmonton, Alberta or St. Albert,
2 Alberta.

3 Q And what about before you got into --

4 A No, we got further, we got up to, we got up to
5 Jasper or something, then we turned around because
6 Ron's father was sick.

7 Q Right. But I think what he was focused on was
8 before you got -- the trip from Regina to
9 Saskatoon?

10 A I don't think so.

11 Q You don't think there was any drugs?

12 A No. Because we were looking for drugs, or
13 something, and going to Vancouver maybe some day
14 to find some drugs, if we could.

15 Q And there was --

16 A That was the plan.

17 Q Yeah. And there was some evidence about stopping
18 on the way, I think it was at Aylesbury or, --

19 A Yeah.

20 Q -- Aylesbury or Craik, in an elevator, and a
21 flashlight; do you remember anything --

22 A I remember that. I remember the conversations we
23 had around that. I can't put together now, in my
24 mind, what happened.

25 Q Sure.



1 A It's been changed around so many times, I changed
2 it around myself and digging around at it, I don't
3 know what happened for sure.

4 Q And do you find, then, when you -- and, again, I
5 know you haven't thought about this for a while,
6 but back, like let's say in the late 1980s and
7 early 1990s when you were working on trying to get
8 the Justice Minister to re-open the case, and I
9 think your mum was working and Peter
10 Carlyle-Gordge, David Asper --

11 A Right.

12 Q -- Hersh Wolch, and I think we see from the
13 documents you would have spent a fair bit of time
14 going through matters, is that right, that you
15 would have been trying to go through the facts and
16 the details at that time?

17 A Yeah, I would think so.

18 Q Okay.

19 A We had a lot of people trying to help us out then.

20 Q And when you -- at that time did you have some
21 trouble trying to go back, you know, 20 years
22 earlier trying to remember what happened compared
23 to what you think might have happened?

24 A Well, as I told you before, sometimes I just got
25 to the point where I would just get stressed out



1 by this thing somehow, and feeling a sense of what
2 would you call it, I think there is a big term for
3 it, a psychological term. If you tell a person,
4 you put a dime on the table, right, and you say "I
5 know you took that dime", you know, and you
6 didn't, you say "oh, no I didn't", and you say
7 "yeah, I know you did". You know, some people,
8 you can feel it, they don't believe you, and this
9 would kind of build up inside me sometimes, and
10 I -- they would give me some drugs and stuff, I'd
11 end up kind of mixed up in my mind.

12 You are talking about a specific
13 time, this is probably the Stony Mountain where I
14 had some problems then, kind of just dug into
15 myself and hurt myself a little bit too much.

16 Q Uh-huh.

17 A And I think that's a good issue for all wrongfully
18 convicted people that have to go to court, because
19 they probably, quite well, have done some digging
20 around in their own mind, even though they know
21 they're not guilty, somehow they don't understand,
22 you know, why -- why --

23 Q Yeah. We've heard --

24 A -- what it is, I guess.

25 Q Yeah. We've heard the term in the Inquiry,



1 'reconstructive memory', where some witnesses --

2 A 'Reconstructive memory'?

3 Q Yeah, where some witnesses will go back and say "I
4 don't remember" --

5 A I betcha there is something to that.

6 Q Where they go --

7 A Yeah, I betcha there is something to that, --

8 Q Where they go --

9 A -- I think there probably is.

10 Q Sorry, where they go back and think "okay, I don't
11 remember exactly what happened, but this couldn't
12 have happened because of what I know or what
13 someone tells me". Do you think you may have gone
14 through some of that, as well, when you look back
15 20 years later saying "okay, well what actually
16 happened?"

17 A It's probably quite possible, yeah.

18 Q Umm, Mr. Tallis told the Commission that when he
19 interviewed you in 1969 he would have asked you
20 about whether you had a knife with you on the trip
21 from Regina to Saskatoon?

22 A Right.

23 Q And what he told the Commission is that you were
24 very adamant that you did not have a paring knife,
25 you did not have a maroon-handled knife, which was



1 what -- what was --

2 A Right.

3 Q -- the evidence, but that you had a flex-blade
4 jackknife, is what he called it, a soft blade or a
5 flex-blade jackknife that was used for locks; do
6 you have any recollection of that?

7 A No, but I do have a recollection of that as we got
8 out of Saskatoon we pulled into some small little
9 place, I don't know, small little town, small
10 little city, town, small town, and we bought some
11 kind of knife, and it was, I don't know, just some
12 kind of little knife that you would buy in a place
13 that we would have a little knife. I don't know
14 why we did.

15 Q Do you --

16 A I told, I told people that, I don't know if they
17 ever wrote it down but --

18 Q They did.

19 A -- that's the only recollection I have about a
20 knife; right.

21 Q I think you bought --

22 A That's --

23 Q -- some baloney --

24 A Could be, yeah.

25 Q -- and cheese?



1 A Yeah.

2 Q So just --

3 A You know this case much better than I do, much,
4 much better than I do.

5 Q Okay. Just back between Regina and Saskatoon Mr.
6 Tallis -- and, again, the important --

7 A I don't think there was another knife in that
8 vehicle.

9 Q Okay. Well he said not, maybe not in the vehicle,
10 but he said you thought, you know, that you'd told
11 him that you thought you had a jackknife -- or I
12 shouldn't say 'jackknife', a knife with a soft
13 blade or a flexible blade that he thought would
14 work on locks, on door locks?

15 A I don't know.

16 Q And Mr. Tallis said, that was important to him --

17 A I don't think so.

18 Q -- in trying to find out what you would say if you
19 testified and were asked the question "did you
20 have a knife", that was of concern, that's why he
21 asked you.

22 A It's possible.

23 Q Okay.

24 A You know, it's quite possible, because, you know,
25 he was very meticulous in asking me many different



1 things, right, and, umm, it's possible.

2 Q So is it possible you would have told him that you
3 did have a flex-blade knife?

4 A I don't know what a 'flex-blade knife' is.

5 Q Okay, or --

6 A I don't think I told him I had a knife.

7 Q Or a soft-blade knife?

8 A A 'soft' -- how do you have a 'soft-blade knife'?

9 Q Well he said one that bent, I think is what, how
10 he -- this is Mr. Tallis describing it. He
11 thought it was not a paring knife but a different
12 type of knife, umm --

13 A Why would he want to introduce that?

14 Q No, he wouldn't. I think what Mr. Tallis said is
15 he wanted to know from you, for example if he were
16 going to call you to testify I think what he said
17 is he would be worried what the prosecutor might
18 ask you, and that he might ask you "lookit, did
19 you have a knife", and so that's why he would have
20 asked you these questions.

21 A No, I don't think there was any knife.

22 Q Okay.

23 A I don't think so.

24 Q Now the -- there -- there was some discussion, I
25 think, that Mr. Tallis said about stopping a lady



1 for directions when you arrived in the city, and
2 in your first statement to the police you
3 mentioned stopping an older woman and asking for
4 directions; do you remember anything about that?

5 A Yeah, I do.

6 Q And what do you remember?

7 A Umm, an older woman. I don't know, sixties,
8 fifties. Now I'm older myself.

9 Q Yeah.

10 A Yeah, I would say fifties, sixties, in the low
11 seventies, sixties, fifties, something like that.

12 Q And you had asked her for directions, I think, to
13 either Pleasant Hill --

14 A To --

15 Q -- or Peace Hill?

16 A I don't know what I asked her, because we couldn't
17 find it, we kept looking and looking to find it.
18 Obviously, I couldn't ask the right directions,
19 because she didn't really know. If she showed us
20 to downtown, she -- I think she sent us to
21 downtown.

22 Q Yeah. And what Mr. --

23 A Peace Hill, maybe, yeah.

24 Q And Mr. Tallis said you described her as an older
25 woman?



1 A Yeah, she was.

2 Q And he, he said he spent some time with you, and I
3 think what he said is "what's old to a 16-year-old
4 may not be old to a 40-year-old", --

5 A Right.

6 Q -- and so he spent some time trying to pin down;
7 does that --

8 A Yeah, I remember that.

9 Q You recall that? And he also said that you had
10 described her as wearing a dark coat, or you
11 thought she was wearing a dark coat, do you
12 remember that or --

13 A She looked cold. Although it was very cold, I
14 guess, in and around that time.

15 Q Uh-huh.

16 A Yeah, she had coat on. A dark coat, I don't know
17 if it was a dark coat, I have no idea.

18 Q Now --

19 A I just remember her looking very old, not really
20 old, but old, yeah, old.

21 Q Yeah. And Mr. Tallis also told us, and I think
22 this is in one of your other later interviews,
23 that you confided in him that you had thought,
24 when you pulled over to ask for directions you had
25 thought about robbing her or snatching her purse;



1 do you remember telling him that?

2 A I remember telling Cal Tallis that as we were,
3 three of us, trying to figure out ways to get
4 money, right, --

5 Q Yes.

6 A -- and maybe this thought transiently ran through
7 my mind. But we weren't seriously thinking, I
8 would never rob an old lady, at my age I was still
9 a fairly good kid, I would never do that. So
10 maybe I told Cal Tallis we were looking for ways
11 to get money because we wanted to go to Vancouver,
12 but I would never rob that old lady, I know that
13 for sure. But it's possible I told Tallis, I had
14 a transient thought, you know.

15 Q Yeah. Umm --

16 A Yeah, it's possible.

17 Q Now let's just go on --

18 A Probably did.

19 Q Well --

20 A Just to be honest to Cal Tallis.

21 Q Yeah. And then I think the next, if we can just
22 go sort of in the sequence, what Mr. Tallis said
23 you told him is that after, after you met this
24 woman for directions, and asked for directions,
25 that -- and he wasn't able to pinpoint time, I



1 think he said it may have been up to three blocks
2 later, or a while, a short while later -- he said
3 that you told him that your car got stuck, and
4 that --

5 A Oh no, this is, this is way before we get into
6 Saskatoon, and I told Cal Tallis that on many
7 occasions.

8 Q Okay.

9 A Yeah.

10 Q So, yeah, so this -- let me just tell you, again,
11 what he says --

12 A Before we got stuck we went to this garage station
13 with the pea soup.

14 Q Okay. Let me just go through. So this would be,
15 remember the Dan -- remember the Trav-a-leer and
16 the Danchuks, you went to the Trav-a-leer for the
17 map?

18 A Yeah, but that's afterwards.

19 Q Yeah.

20 A Yeah.

21 Q So, before that, --

22 A Danchuks, we did get stuck there, didn't we?

23 Q Yeah.

24 A Danchuks? Yeah, I think so.

25 Q So before you got there, what Mr. Tallis said you



1 told him in 1969 was that after you saw the woman,
2 that you -- that Ron Wilson's vehicle had bald
3 summer tires --

4 A Right.

5 Q -- and got stuck somewhere, and that you and Mr.
6 Wilson got out to try and get it out, and that you
7 told him you left for a very short period of time,
8 you and Mr. Wilson left the car, and what he said
9 was a very short -- and he wasn't able to put a
10 time frame on it, but said "very short"?

11 A We had a discussion around this old woman, this
12 pea soup, and I kept telling him "go back, find
13 this gas station", right?

14 Q Okay.

15 A So any discussion about stopping there and
16 spinning the tires, umm, this is not so.

17 Q Okay. And I'm just, yeah, I'm just telling you
18 what evidence he gave at the Inquiry.

19 A Yeah.

20 Q He was saying that after --

21 A How old is he at the Inquiry, he's still 75 years
22 old, eh?

23 Q He's 75, yes.

24 A Yeah, all right.

25 Q Yeah. So that, but he said that --



1 A He might be forgetting some things himself, you
2 know, it happens to people when they get older
3 like that. It happens to me a little bit. But I,
4 you know what I find perfectly true in memory, is
5 a man will convince himself that he's not -- he
6 doesn't remember it yet, so he turns his memory
7 off and just says "well no, I'm not going to say
8 that to myself any more", seriously, "I'm not
9 going to say I don't remember any more, but I can
10 remember well", it comes back on. I'm doing
11 really well with my memory in a lot of ways, you
12 know.

13 Q So he --

14 A I know I am.

15 Q Yeah. And just what Mr. Tallis said is that the
16 time you were away from the car was very short, I
17 mean like a minute or two, no longer than that,
18 and that you came back and then two men came along
19 and pushed your car out, that's what Mr. Tallis
20 says you told him?

21 A Yeah.

22 Q Do you remember that?

23 A It's possible, but I don't remember a lot of
24 things, Doug.

25 Q No, so is it --



1 A I don't know for sure.

2 Q So, again, are you able -- you don't know if you
3 told him that or not, it's possible you did?

4 A Yeah, I don't know for sure I told him that. I
5 know that I told him about the pea soup place and
6 --

7 Q Okay.

8 A -- "get to that garage", I said, "I don't care,
9 please", and he never did. That bugged me.

10 Q Yeah.

11 A All he had to do was drive there and find out
12 exactly where I came in the city, and see this
13 person, and I wish he'd have done that. And I'm
14 sure he may see this, and he might feel bad about
15 that, but the bottom line is to Cal Tallis, right,
16 I still respect him as a man that had many things
17 to do involving in the case, many different
18 things, trying to investigate things, you know.
19 What chance is there he is going to find this guy
20 anyway, right. And maybe at some point he was
21 feeling, oh, there's things in this case this way
22 or that way, I don't know. I'm not trying to
23 defend him, but still he seemed to me like he was
24 a really good lawyer in a lot of different ways,
25 and he was trying very hard to help me.



1 Q And I think the reason that I keep putting to you,
2 or asking you questions about what he told the
3 Commission about the discussions, is that that's
4 one way the Commission can find out what were the
5 facts that happened back then, because that's,
6 that's why I'm asking you these questions.

7 A Well, --

8 Q And so, again, --

9 A -- you see, I concern myself here as a, just as a
10 person answering your questions because here we
11 have Caldwell, and then we have Tallis, and we
12 have a courtroom, and this is a courtroom where
13 these, these things are played out all the time,
14 maybe not in relation to murder so much, but big
15 cases of robbery and things like that. I just
16 hope, I really hope that there was not any
17 hanky-panky between the two of them, because if
18 there was, whether he is older or not, right, it's
19 not right for that to happen. I don't know, I
20 have no idea. You ask me all these questions. My
21 feeling was he was honest, he was fatherly to me,
22 and my feeling is that, you know, he tried his
23 best.

24 Q And, again, --

25 A That's my, my feeling, Doug.



1 Q And so when he told the Commission of Inquiry that
2 you told him that --

3 A When he told the Commission of Inquiry?

4 Q He told us.

5 A Oh, okay, he told you. Okay.

6 Q He told the Commission, when he was testifying,
7 that back in 1969, when he interviewed you, that
8 you had told him that, a short while after you
9 stopped the woman for directions, your vehicle got
10 stuck and that you and Ron Wilson left the vehicle
11 to look for help for a very short time, and that
12 nothing happened while you were gone; that's what
13 you'd told him.

14 A Right.

15 Q Again, are you -- do you accept that, that you
16 would have told him that, are you able to -- or do
17 you dispute that you would have told him that?

18 A Hmm. I don't know for sure. I might have told
19 him that. Maybe, before we went to get to the pea
20 soup, this is something that happened. It's
21 possible.

22 Q Okay.

23 A You know, that's being fair.

24 Q And then the travelled --

25 A You remember the things that stand out in your



1 mind. Pea soup, you know, you are cold, so --

2 Q Yeah.

3 A -- why is the pea soup so important, you know.

4 It's a good point.

5 Q So the Trav-a-leer for the map in your stocking
6 feet, I don't think -- we've heard evidence about
7 that, and I think --

8 A Yeah, I remember that.

9 Q -- that's where you went in for that?

10 A That was, that was important evidence, because
11 that place is, time-wise, impossible for the
12 murder to be committed by us.

13 Q Right. And so that you have a memory of going in
14 and getting a map from the fellow there; is that
15 right?

16 A Yeah.

17 Q And then to the Danchuks, I think that's where the
18 evidence was next, that you went to the Danchuks?

19 A And they were nice people, good people, I remember
20 them, yeah.

21 Q And you spent a bit of time there?

22 A Considering three young kids, you know, they still
23 helped us.

24 Q Now let's talk about to the Cadraings' house. You
25 told us about the kitchen?



1 A Yeah.

2 Q Yeah.

3 A It was a mess.

4 Q And I think what you, Mr. Tallis said you told him
5 was that you changed your pants there, it was --

6 A I did not know what's-his-name was there.

7 Q Not Larry Fisher?

8 A Yeah.

9 Q That you would have changed your pants because you
10 had a rip up the seam, and that's what Mr. Tallis
11 said you told him, that you may have had some
12 battery acid on as well?

13 A I was driving Ron's car, --

14 Q Yeah?

15 A -- I loved to drive cars, I'm 16 years old, I'm
16 driving Ron's car around in a circle.

17 Q Yeah?

18 A Somehow the transmission fluid, umm, it just
19 doesn't work any more, it doesn't have gears,
20 right. And inside that equation I probably
21 changed my pants because, I don't know, maybe I
22 was trying to figure out if the car was dirty or I
23 got dirty. Striped green pants, I remember a
24 strange pair, because that was the look at that
25 time --



1 Q Yeah?

2 A -- was striped pants, but that I do remember.

3 Q And do you remember changing your pants there?

4 A Yes.

5 Q At Albert Cadrain's?

6 A I don't know, I think so.

7 Q Okay.

8 A I remember getting -- I remember Ron really being
9 upset because the car was not working, it was in
10 gear, and nothing was working.

11 Q And, again, when you went for a drive around the
12 block, umm --

13 A It wasn't just one, I was, you know, zoom, zoom,
14 zoom, and then all of a sudden it just didn't work
15 any more.

16 Q And do you remember Mr. Tallis asking you about
17 why you did that and questioning you about that?

18 A Yeah. I told him I liked driving.

19 Q Yeah. And do you remember, do you remember him
20 expressing or someone expressing a concern about
21 how they thought that might be suspicious, even
22 though what you were saying was "I just took it
23 for" --

24 A Yeah, they said "maybe you -- it's going to sound
25 suspicious", or something, yeah, I remember the



1 concerns expressed about that.

2 Q Yeah, okay. Now the pants, do you remember, I
3 think you said they were striped green pants?

4 A Yellow and green maybe.

5 Q Yellow and green?

6 A Maybe.

7 Q And that Mr. Tallis said he questioned you a fair
8 bit as to whether you had anything on there that
9 looked like blood, or blood, and you told
10 him "no", --

11 A No.

12 Q -- there was no blood on your pants, and nothing
13 that looked like blood, other than maybe acid; do
14 you remember that?

15 A That was an issue. I -- there was no blood on my
16 pants, I never committed any murder, how can there
17 be blood on my pants?

18 Q Or something that looked like blood?

19 A Or something that looked like blood? No, not that
20 I can remember. I think they may have probably
21 been torn, all the crotch out of them, that
22 somehow sits in my mind. I don't know how. I
23 think I'd remember that.

24 Q Do you remember ha -- I had -- I think it came up
25 with one of the other witnesses, maybe



1 Mrs. Danchuk; did you have nosebleeds at the time,
2 do you remember anything about that?

3 A It's funny you say that because I remember,
4 somehow, something to do, umm, a bandage maybe, a
5 bandage?

6 Q Okay. From where?

7 A I don't know.

8 Q At Danchuks'?

9 A Yeah, maybe. Maybe she gave me a bandage or
10 something. I don't know what for.

11 Q And do you have a recollection of getting a
12 bandage from her?

13 A No, but you just popped that into my thinking.

14 Q Okay.

15 A Because they let us into the back porch of their
16 house or something?

17 Q Yes.

18 A I don't know. Would she have gave me a bandage?
19 I don't know why it just popped into my mind that
20 way. It's possible, I don't know for sure, I
21 really don't remember.

22 Q Now there was some evidence --

23 A What did she say, out of curiosity?

24 Q Actually, Mrs. Danchuk's evidence was, before the
25 Inquiry, that -- and I stand to be corrected on



1 this, David, I'll give you my memory of what she
2 said --

3 A Okay.

4 Q -- she said that she had something in her mind
5 that maybe you had a nosebleed but she wasn't
6 sure, --

7 A Hmm.

8 Q -- something along those lines, when you were at
9 the house that morning. She couldn't say for
10 sure, but she had something in her mind about a
11 nosebleed, that you may have had a nosebleed, and
12 that she said she would -- she -- she --

13 A Maybe I did. Maybe I had a nosebleed. Why would
14 I have a nosebleed? I don't know.

15 Q I'm just -- yeah. And the reason I asked the
16 question, --

17 A It's possible.

18 Q -- and I think Mr. Tallis had asked you the
19 question about whether the blood on your pants
20 maybe came from a completely innocent source?

21 A Oh, yeah. I would check the early statements, the
22 very early statements with Nichol and Ron, and see
23 if they remembered a nosebleed.

24 Q Yeah, no, and there wasn't anything in there so --

25 A Nothing in the very early statements? No? Okay.



1 Q Now, about the pants, there was a police report,
2 and let me just read in September of 1969, and so
3 this would be when you were in the city police
4 waiting for the preliminary hearing, and Mr.
5 Tallis said that --

6 A Uh-huh.

7 Q -- you were trying to find the pants --

8 A Egg sandwiches.

9 Q -- you were trying to find the pants for him.

10 A Right.

11 Q And let me just read a part, and --

12 A I was trying to find pants for him? Okay.

13 Q You were trying to find the pants that you were
14 wearing that morning that you had changed out of,
15 the ones --

16 A Oh yeah, we were trying to find those pants, I
17 remember. Ron Wilson's mum was looking for those
18 pants --

19 Q Because --

20 A -- because they were important to the case.

21 Q Because the evidence was that --

22 A Right.

23 Q -- Albert Cadrain said that he saw blood on your
24 pants, and then Ron Wilson said he saw it.

25 A I think that was what we were trying to do.



1 Q Yeah. And the again, I don't know if we need to
2 bring this up, but I'll just -- just -- and this
3 is for the record, you don't have to worry about
4 this number, but 032345. And this is a police
5 report of September 1, 1969, and this is a police
6 officer wrote a report saying he had a discussion
7 with you in the jail cells, and he writes this.
8 He says:

9 "The conversation then turned to his
10 suitcase ...",

11 and he quotes you:

12 "... 'Cal Tallis will bring my pants, my
13 mother asked me what the key was doing
14 with my belongings in Langenburg, I told
15 her just yesterday or the day before
16 that this key belonged to a locker in
17 the Bus Depot in Humboldt where my
18 suitcase was both the pants including
19 the striped pair of pants I changed in
20 S'toon are.' He further stated that he
21 threw the older suitcase, did not know
22 when or where ...",

23 let me pause:

24 "... and that the suitcase in Humboldt
25 was a new one and he purchased since the



1 murder."

2 And:

3 "He further stated that he figures that
4 Cal Tallis is bringing the suitcase and
5 that it probably will be in his mother's
6 possession and be submitted evidence by
7 his defence attorney."

8 So from this report it suggests that you maybe
9 thought the pants were in Humboldt --

10 A Humboldt, Saskatchewan?

11 Q -- at -- in the bus depot. Now Mr. Tallis said he
12 didn't know anything about this, and he says he
13 doesn't think you would have -- he doesn't
14 remember you telling him anything about that; do
15 you have any recollection of --

16 A I recollect that somehow or the other we were
17 looking for the pants with Ron's mother. Now
18 that, these pants are pants that were left with
19 Ron's mother, the green ones. Maybe after the
20 battery she just said, if there is a battery
21 involved, to take the pants or something.

22 Q She -- the drafting --

23 A Maybe they didn't even come to Saskatoon, these
24 green and yellow pants.

25 Q Yeah. The jack --



1 A Here we were thinking that these green and yellow
2 pants were important to the case, so Ron's mother
3 took all the laundry, I think that's what
4 happened. Humboldt?

5 Q Yeah.

6 A Hmm.

7 Q I think the evidence --

8 A I don't know about it.

9 Q -- we heard is that your jacket that you were
10 wearing, --

11 A Right.

12 Q -- Mrs. Wilson had, and I think she checked it and
13 threw it away and told the police she didn't
14 notice anything unusual on it.

15 A Well I maybe wore my green and yellow pants right
16 in Saskatoon here.

17 Q Okay.

18 A Maybe that's the pants that I tore a crotch open.
19 Why would they be stuck in Humboldt? I don't see
20 that.

21 Q I think what this report says --

22 A I don't remember.

23 Q -- is that you thought that the pants might have
24 been -- you might have had them in a suitcase
25 somewhere, and that they'd be in a locker in the



1 bus depot in Humboldt; do you remember anything
2 about that?

3 A Humboldt? Here is Saskatoon; where is Humboldt?

4 Q Humboldt is about an hour east of Saskatoon.

5 A An hour east? Okay. Here's Regina, here's
6 Saskatoon.

7 Q I'm assuming, David, it was when you were --

8 A Is that going west?

9 Q No, east.

10 A That's going east?

11 Q That maybe, when you were travelling in the months
12 after, that maybe you had been there and left a
13 suitcase there in your travels?

14 A Well, I liked the pants, I don't know. I don't
15 think so.

16 Q Okay. I now want --

17 A I don't think so at all.

18 Q -- to talk about the compact, the issue of the
19 compact or the cosmetic bag, and what --

20 A Big issue, this thing.

21 Q Yeah.

22 A That was a racker, a racker in my mind, too. A
23 cosmetic bag, you know, why would I throw a
24 cosmetic bag out of the window of a car, you know?

25 Q Yeah. What Mr. Tallis said he discussed with you



1 in 1969 is he asked you about this, and here, and
2 I'll just read you, and this is just on the
3 transcript at page 23844, and he was asked the
4 question:

5 "Q ... did you have any discussion with Mr.
6 Milgaard about whether he threw anything
7 out of their vehicle after they left
8 Saskatoon?"

9 Mr. Tallis says:

10 "A Yes. During the course of one of our
11 discussions, he confirmed for me that he
12 did throw out what I called a compact,
13 it was between Saskatoon and Rosetown,
14 and essentially he confirmed that Nichol
15 John had found it in the glove
16 compartment, and of course I asked him,
17 'Where did it come from?' and he said,
18 'Well, I don't know,' and, 'Why did you
19 throw it out?' 'Well, I don't know why,
20 it was just there.' So there was no
21 issue over that."

22 And then he said he went back and he revisited
23 this issue with you on more than one occasion to
24 see if there was an explanation as to why it was
25 thrown out, and he said there was never an



1 explanation.

2 Now, at the trial, Mr. Tallis
3 certainly argued that if that did happen it was
4 not Gail Miller's, because Gail Miller's purse
5 was found and it had make-up in it, and so -- but
6 just, again, do you have any recollection --

7 A I don't know.

8 Q -- of what you would have told him?

9 A This is something that we played around with a
10 lot, when I say "we played around with it", I
11 played around with a lot in my mind over the
12 years. It may be that she had a compact and we
13 were kibitzing around and I threw it out, Nichol
14 John, that's about the best I can come up with.
15 Why there would be a cosmetic bag or a compact in
16 a glove compartment, does a woman take out her
17 compact and leave it in the glove compartment?
18 Would Nichol do that? Don't know.

19 Q And when the --

20 A It could be something like that.

21 Q When the car was checked later, Ron Wilson's car,
22 a number of months later --

23 A Right?

24 Q -- they actually found some lipstick or some type
25 of make-up in the glove box --



1 A Okay.

2 Q -- that -- and, again, it was not connected to
3 Gail Miller, but just a random piece of make-up.

4 A Right.

5 Q So, just back to your discussions with Mr. Tallis,
6 is it possible that you would have told him that?
7 Do you remember, do you remember telling him that,
8 or is it possible that you did?

9 A Well I probably -- you know, I was straightforward
10 with Cal Tallis, I told him everything that I felt
11 could have happened. I know at some points we
12 were always fooling around and rolling down
13 windows and fighting in, in fun I think most of
14 the time, I don't think we were seriously fighting
15 about anything.

16 Q Yeah.

17 A Yeah, in fun.

18 Q But, again, do you -- is that something you
19 acknowledge, then, that you would have told him
20 that, or do you have any reason to dispute him
21 saying this?

22 A I don't have any reason to dispute that I could
23 have told him that, because I don't know for sure
24 if I did or I didn't.

25 Q And then is it possible -- I think later on, many



1 years later when you were going back and trying to
2 look at what happened in later years, I think you
3 said that you didn't think it happened, and is it
4 possible that, when you made those subsequent
5 statements, --

6 A Right.

7 Q -- that your memory may not have been as reliable
8 or may have been influenced by --

9 A Maybe just --

10 Q -- the things you have told us about?

11 A -- influenced by the fact that, you know, I know
12 I'm not guilty, and sounding like I'm throwing a
13 compact out of the car --

14 Q Yes?

15 A -- is something I don't want to say because it
16 doesn't sound very good for me. Maybe influenced
17 by that and maybe influenced by, you said, the
18 same thing that, you know, I pushed myself around
19 inside this equation because they have had me in
20 mental institutions and I just get lost,
21 sometimes, in there, and I just mixed it all up.
22 I never liked that feeling I had around all that,
23 because it's really bugged me that people would
24 think that I committed that kind of crime, --

25 Q And --



1 A -- you know.

2 Q -- so are you saying that on some of these things
3 that might, that might sound bad or suspicious,
4 that you might have thought "well, I couldn't have
5 done that because I know I didn't kill Gail Miller
6 there"?

7 A Yeah, exactly, I know I didn't kill her so how
8 could I do that. Even though it's possible Nichol
9 John may have had a lipstick or something in
10 there, and we were fighting and I threw it out, --

11 Q Okay.

12 A -- because we were always fooling around in the
13 car.

14 Q There was also some discussion about Albert
15 Cadrain, and some comments with Albert, that he
16 attributed to you about being in the Mafia or in a
17 gang. Do you remember any of that, did you have
18 those types of discussions with Albert, either
19 joking or --

20 A Albert Cadrain was a very simple person, right. I
21 don't mean 'simple' like some people that have
22 some problems that they're very simple and they
23 don't understand, he could understand things,
24 right, but, umm, umm, he wasn't -- he wasn't -- he
25 was okay, but he just didn't really think things



1 through, somehow, in some ways.

2 Q And --

3 A And --

4 Q I'm sorry, go on?

5 A That's all I can really say about him.

6 Q And there was some suggestion, I can't remember if
7 it was at the Supreme Court or somewhere, where
8 you, or someone had suggested that you might pull
9 his leg or some people might, it may have been a
10 spoof? Maybe it was Mr. Tallis saying some of
11 this, if it was said, might have been in a joking
12 manner; do you remember any of that?

13 A I liked Albert Cadrain. I thought he was a good
14 egg. And he liked me because, I don't know, we
15 met in the park, Wascana Park, a long time ago,
16 and chased girls together.

17 Q Okay.

18 A That's why we liked each other.

19 Q And did you kid around with him a bit?

20 A Oh yeah, I'm sure I did, in different ways.

21 Q Now I want to talk about --

22 A I think that's where we met. I'm not even sure
23 about that, to be honest with you.

24 Q -- your statement to the police. Maybe we can
25 just put up, there, 305273.



1 A Yes.

2 Q How are we doing here, do you want to take a break
3 or --

4 A If you want to take a break, I'm okay.

5 Q Sure.

6 A All right.

7 Q Well, let's just take a break and get this --
8 (Adjourned at 12:08 p.m.)

9 (Reconvened at 12:27 p.m.)

10 BY MR. HODSON:

11 Q Okay. We're back after the adjournment here, Mr.
12 Milgaard, and I've got up on the screen, just
13 there, is a copy of your statement that's
14 typewritten. And there's just two parts there,
15 I'm not sure how -- if we can -- here is the
16 questions I was telling you about before that Mr.
17 Tallis had some concerns about, and it was.

18 "Q Were you in Saskatoon this year?

19 A Maybe.

20 Q When would you have been in Saskatoon?

21 A I'm not sure."

22 And then if we can go to the next page, umm,
23 actually go to page 275. And then here:

24 "Q What time was that?

25 A I don't know.



1 Q Was it daylight?

2 A I think so.

3 Q Why can't you remember?

4 A Time doesn't mean anything or days,
5 maybe years."

6 And if we can just scroll ahead to the, to 278,
7 the next page, and here is one again. This is
8 your first statement, David, March 3rd.

9 A Right.

10 Q It says:

11 "Q Did you have blood on your clothes?"

12 And the answer is:

13 "A I don't know. - I don't think so, I
14 suppose you think I had something to do
15 with the girl?

16 Q What girl?

17 A Gail Miller."

18 And I think that was it from the statement. So
19 let me just --

20 A So where does it say there, it says:

21 "Q Where did you hear that name?",
22 you know, --

23 Q Oh, yeah.

24 A -- and I want to see what it says after that.

25 Q Yeah.



1 "Q Where did you hear that name?",

2 And you say:

3 "A The mounty (who was there) told me about
4 her being killed last night."

5 And I think the evidence we heard was that there
6 was an RCMP that brought you in for questioning,
7 umm --

8 A Is this the second time that I tried to help them
9 or --

10 Q No, this is the first time.

11 A This is the first time?

12 Q Yeah.

13 A Yeah. Now all I can tell you about this
14 statement, right, is I was feeling fairly serious
15 about this gentleman at the time I am answering
16 these questions, and what did you call it a while
17 back here, talking about --

18 Q The word?

19 A No, there was a strange word we used about when
20 you are asking somebody something about something
21 that they don't know nothing about, is --

22 Q A non-event.

23 A -- a 'non-event'. So if you look at this in
24 relation to being a non-event to me, you know,
25 this is how a person should normally answer.



1 Like:

2 "Q Where did you go?

3 A We got the car fixed ...",
4 now they're narrowing me down to something that I
5 can remember, but in the very beginning you can
6 see I must be treating it as a non-event, but I
7 know it's significant at this point because
8 they're asking me about a murder.

9 I'm 16 years old, I think, at
10 this point in time, I'm out at a motel, just
11 happy. I was fooling around with some of the
12 guys, we were selling magazines sort of door to
13 door with a script line saying that "we're
14 working our way through a point system to where
15 we" -- and, you know, I was interested because I
16 was working and I was happy, I was making some
17 money and we were having fun, but when I got to
18 this point where they're asking me things maybe
19 I'm a little bit nervous. Don't forget, now, at
20 that point I have never really been in really
21 significant, serious trouble in my life, but I
22 have had some trouble in relation to probably
23 doing right and wrong, and I'm maybe trying to
24 be -- I don't know, what's the right word -- a
25 little bit sly. I don't know.



1 Q Yeah.

2 A I really don't know, Doug.

3 Q Here's what Mr. Tallis related, is that he said he
4 thinks, he thinks:

5 "A ... he may have been, you know, as kids
6 sometimes do, playing a bit with the
7 inquiring officer ...",
8 and then at some other --

9 A Yeah, yeah, you know, maybe, maybe that's
10 possible.

11 Q And I think --

12 A But I don't know.

13 Q I think what he said, that you.

14 "A ... would have said quite honestly that
15 I was just sort of playing with them or
16 fooling with them a little."

17 Does that sound -- do you remember telling him
18 something like that or would that be accurate?

19 A Yeah. I'm just trying to look at something.

20 Q Sure.

21 A It says:

22 "Q Where did you go?

23 A We got the car fixed - did you know
24 about that too?

25 Q Did you leave Shorty's by yourself first



1 & drive away?

2 A Yeah, I turned the car around."

3 Well, I did more than that, I went around about
4 three or four times.

5 "Q Why?

6 A It was across the street, "...",
7 see, I'm not telling him I wanted to drive the
8 car, right:

9 "... I was putting it on the right side
10 for the suitcases.

11 Q Did you drive around the block?

12 A Yeah around up the lane - maybe twice.
13 (drew a map where he went)

14 Q If you "...",
15 tried -- if you tried -- if you got, if --

16 MR. WOLCH: "If you were tired".

17 A "Q If you were tired and got stuck in the
18 lane already why did you go in the lane
19 again?

20 A I like to drive I guess."
21 Yeah, and I'm telling the truth. I'm just
22 looking at it to see how I answered it.

23 "Q Did you see any people or police cars
24 when you were driving around there?

25 A No.



1 Q How come you drove - I thought Ron had
2 the keys?

3 A I guess I took them - I like to
4 drive."

5 And I did, I grabbed the keys, I said "I'm going
6 to turn the car around the block", just going to
7 turn it around and pull it from one side of the
8 street in front of the house, but soon as I got
9 the car keys, well that was it, around and around
10 and around. That's funny.

11 Q At the --

12 A Sad, I guess, but funny.

13 Q Yeah. At the Supreme Court, David, you were
14 asked, you were asked about this by Mr. Neufeld,
15 who was the lawyer there representing the
16 government, and just for the record this is at
17 120553. And he asked you -- and actually maybe
18 you can get that up, Jordan, the doc. ID is
19 120408 -- and he asked some questions and went
20 through, with you, this statement to the police,
21 and maybe I'll just read it for you and you tell
22 me if you remember?

23 A All right.

24 Q Actually, if we can go to 120553, this might help
25 you. That's your life passing before your eyes



1 there, we'll get to the page.

2 A Hmm. Somehow I remember you there, Hersh, I
3 remember you in the Supreme Court.

4 Q 553.

5 A I remember looking at you and trusting you,
6 somehow, but other than that I was pretty -- on
7 drugs.

8 Q So here's a, if you look where the red box is, and
9 I'll just read this for the record, he says:

10 "Q Mr. Milgaard, I am not trying to give
11 you any impression at all. I am trying
12 to ask you to answer, to tell me what
13 you knew."

14 And, again, what he was questioning you on,
15 David, is why you could give more details later
16 than you did to the police. And then here, where
17 it says A on line 14, is your answer, and I'll
18 just read it. It says:

19 "A I think maybe the best explanation for
20 something like that would be an honest
21 one. I mean you are sitting down and
22 you are writing a statement for a
23 lawyer, you are telling someone that you
24 know, or something like that, and you
25 kind of go ahead. But when you are



1 sitting across from a detective or a
2 policeman and people are kind of running
3 around and stuff like that, there was a
4 sense of distrust for police and stuff,
5 and you didn't just talk right away and
6 stuff. There may have been part of that
7 picture there."

8 The next page.

9 A Yeah, that could be the mindset for a young man
10 like that like me, yeah, I would think so.

11 Q And so, again, 16 years old, maybe with the police
12 you would tell them things differently than you
13 might tell your lawyer or a friend, is that, is
14 that a fair -- and I don't want to put words in
15 your mouth -- is that what you are trying to say?

16 A Well, probably.

17 Q Would you be a bit more cautious?

18 A I think, I think maybe I would be cautious, yeah.
19 A very significant thing.

20 Q Then if we could --

21 A Very carefully talking, how I'm describing things,
22 you know. I didn't say "I'm having fun, I'm just
23 borrowing my car and driving around", or stealing
24 the car, I'm saying "well I, yeah, I went around
25 the block once". You know, you stilt, I guess you



1 stilt what you are saying somehow, or you -- maybe
2 that's not a right word.

3 Q Yeah. If we can go to 120557, and here is an
4 answer, again this is your -- what you said here
5 at line 5. You say:

6 "I think you missed your whole point.
7 If a person, in working with the police,
8 has sort of a smart-alecky attitude or
9 something, which is basically what you
10 see between people and the police
11 sometimes, and they are writing a story
12 out while they are charged with an
13 offence and they are trying to remember
14 every possible little detail they
15 possibly can, you can be sure they are
16 going to do a lot better exactly the way
17 that I did than they are in interviews
18 with the police."

19 And I think what you are saying there -- and
20 please correct me if I'm wrong -- is that maybe
21 when you are with the police and you, your words
22 were "a smart-alecky attitude", you might say
23 things differently to the police than you would
24 if your lawyer said "sit down and write out all
25 the details to help me"; is that a fair way to



1 put it?

2 A Let me read what I'm saying there.

3 Q Sure.

4 A "I think you missed your whole point."

5 Now what am I answering, a question?

6 Q Yeah. Do you want -- the question is right at the
7 top:

8 "Q ... what is troubling ...",
9 right there at 23.

10 A Yeah.

11 Q "Q ... what is troublesome about that, sir,
12 is when I read your notes to your
13 lawyer, there is incredible detail of
14 the night of January 31st, 1969. You go
15 back before you left on the trip, you
16 talk about the battery, you talk about
17 your plans, about what you were
18 discussing, all of these things. How is
19 it that in September, when you made that
20 statement to your lawyer, you have this
21 great detail that you couldn't give to
22 the police in January or April?"

23 So I think the question was that they were
24 comparing, this lawyer was comparing what you
25 told Mr. Tallis, --



1 A Right.

2 Q -- which was far more detailed than what you told
3 the police in the statement, and I think your
4 answer here -- and I'm just asking you to
5 confirm -- is basically lookit, when I talked with
6 the police, you may have had a smart-alecky
7 attitude or something and you may not have told
8 them the same details that you would have told
9 your lawyer later on; is that a fair summary of
10 what you were trying to say?

11 A Yeah, I think so.

12 Q Okay.

13 A Without reading it, I think so, yeah:

14 "... they are trying to remember every
15 possible little detail they possibly
16 can, you can be sure they are going to
17 do a lot better exactly the way that I
18 did than they are in interviews with the
19 police."

20 I don't know what I am saying there, I'm just
21 going on, --

22 Q Yeah.

23 A -- I'm sort of babbling a little bit.

24 Q Well here, here's the next page, this might help
25 you. The 566, Jordan.



1 MR. HARDY: 566.

2 BY MR. HODSON:

3 Q And here's where the judge actually -- and right
4 here, this is you, David.

5 A How was I looking at this point, Hersh? Was I
6 feeling troubled, did I look natural, do you
7 remember?

8 Q You know what, you are going to put your lawyer in
9 a tough spot, because Mr. Wolch --

10 A Oh, he's not supposed to talk? Oh, I'm sorry, I'm
11 sorry, Hersh.

12 Q That's okay, --

13 MR. WOLCH: That's okay. Don't worry about
14 it.

15 MR. HODSON: -- we'll, yeah.

16 BY MR. HODSON:

17 Q And so here, this is what you say, and then I'll
18 read this. It says:

19 "The inference, I feel, here is that I
20 haven't or I didn't cooperate and I feel
21 uncomfortable with that. I know that I
22 was kind of a smart aleck and even
23 though it was a serious situation and
24 stuff like that, I may be kind of
25 flippant. But I felt uncomfortable with



1 the fact that everybody was getting the
2 impression that I wasn't trying to
3 cooperate and I was sincere when I would
4 cooperate."

5 And then down at the bottom --

6 A That's probably the truth, me telling that --

7 Q Right.

8 A -- right there, I can see that that's me trying to
9 tell the truth to somebody that I am trying to
10 speak to it. If it's a judge you can be sure I'm
11 trying to tell the truth there.

12 Q Yeah. And then here's where Chief Justice Lamer
13 says:

14 "LAMER, C.J.: You are giving us two reasons
15 and one is different from the other. In
16 one, you say: 'I didn't remember when I
17 was with the police, but I did remember
18 when I sat down to give details to my
19 lawyer.' That is one answer. In the
20 other answer, you are saying: 'Well, my
21 rapport with the police', the
22 relationship between a young smart aleck
23 of 17 who is doing drugs and other
24 things with the police is quite
25 different than when he is dealing with



1 his lawyer."

2 And you say:

3 "THE WITNESS: I agree with you."

4 A Well that, that is him stipulating something, it
5 isn't necessarily the truth. He is stipulating
6 that A and B doesn't equal A.

7 Q I --

8 A That's a stipulation by the judge.

9 Q Yeah.

10 A It doesn't mean he's right.

11 Q Yeah. No, I think the last point is --

12 A That's an important point.

13 Q Yeah. Just let me ask you this, is what he is
14 saying is that the rapport with -- your:

15 "... rapport with the police', the
16 relationship between a young smart aleck
17 of 17 who is doing drugs and other
18 things with the police is quite
19 different than when he is dealing with
20 his lawyer."

21 Q In other words --

22 A Yeah.

23 Q -- when you were -- do you agree with that, that
24 that might be a reason why you would tell more to
25 your lawyer than to the police?



1 A Yeah.

2 Q And don't agree with it, David, if you don't --

3 A I'm not going to agree that I was a real -- I mean
4 I was a smart aleck as a kid but, I mean, when I
5 was dealing with this whole situation I wasn't
6 trying to be a smart aleck. What you have is a
7 person-stipulated definition there, what he
8 believes, and this is the justice, he's making a
9 stipulative definition, doesn't mean he's right.
10 What I suggested there is the truth, what he is
11 suggesting there is what he is suggesting.

12 Q Yeah. And then -- but right here you say:

13 "I agree with you."

14 A Well --

15 Q That "The Witness:" is you.

16 A -- I'm talking to a judge, you know, trying to get
17 it over with, "I agree with you".

18 Q Okay.

19 A He's wrong. I think so.

20 Q So again, just to sum up on the statement, with
21 the police you may have been less -- you may have
22 been more cautious or less open with the police
23 than you would have been with your lawyer; is that
24 fair?

25 A I would agree. I would agree that with Mr. Tallis



1 I had sort of a father figure and I wanted to
2 just, every, every little thing I could possibly
3 do, as I felt comfortable with him, until I
4 started feeling uncomfortable with him sometimes,
5 but even then I had my family. And that's when
6 things started going haywire in the court, when
7 the truth, all the things about the truth were no
8 longer the truth, people were just lying directly
9 right in front of me, you know, saying things that
10 made me look guilty. At that point I was really
11 worried about everything.

12 Q Right. Now do you recall talking about -- and
13 again, we've heard some evidence about your first
14 statement to the police in March of 1969 that may
15 have not had all the details that you told later
16 about the events, and I think you've already told
17 us a couple reasons why?

18 A Right.

19 Q That you wouldn't tell the police necessarily
20 everything, and I think you also said that morning
21 was a non-event, and so to remember back you may
22 have missed some things; do you --

23 A I like the term, and I like the reason that it
24 would appear that way, or how do I explain that.
25 If someone does ask you about something that means



1 nothing to you, you should come out in saying, you
2 know, things that are, you know, like "I'm kind of
3 mystified about this" or "I don't understand
4 that". You know, I like that, I'm sure that
5 probably works itself out in my statements.

6 The initial times that I saw the
7 police I tried to help them, I really, sincerely
8 tried to help them the first few times. At one
9 point, the second time around, I -- my business
10 manager -- he wasn't my business manager, he was
11 my boss, Roger -- suggested I get in touch with my
12 family. He said "you know, before you decide to
13 do this or take a test or" -- they wanted me to
14 take a lie detector test is what it was, and he
15 said, "well, before you do this sort of thing why
16 don't you get in touch with your family and talk
17 to them about this", and I said "okay".

18 As far as the rest of the
19 hearings, if this was in the Supreme Court, well I
20 was all -- they had me on medications and I wasn't
21 too sure about -- but I can see that I am trying
22 to tell the truth there.

23 Q Okay. Do you remember, back, about this statement
24 you gave to the police and about discussing with
25 your lawyer about whether you -- if you were to



1 testify --

2 A When was this?

3 Q Back in, sorry, 1970, --

4 A 1970.

5 Q -- at the time of your trial, --

6 A Statement to police.

7 Q -- that one of the reasons --

8 A I wrote a statement to the police, signed it?

9 Q No, sorry, the statement that we just went through
10 of March 3rd, 1969, remember the one that --

11 A March 3rd?

12 Q -- the one we just had on the screen, the very
13 first time you met with the police in Winnipeg.

14 A Okay, that one, yeah.

15 Q They wrote down the answers you gave.

16 A Right.

17 Q Now you didn't sign that, I don't think, but they
18 wrote down your answers.

19 A Right.

20 Q And I think what -- at the time it came to testify
21 one of the considerations we've heard evidence of
22 is that that statement, when you compared it to
23 what you told later, --

24 A Uh-huh.

25 Q -- was -- had fewer details, and there was a



1 concern that there were some omissions in your
2 statement, in other words you didn't tell --

3 A Uh-huh. Now this is before I actually went to the
4 provincial jail.

5 Q Yes.

6 A You know, that's probably why, because that's
7 where I sat down with that book, I took every
8 possibility of trying to remember everything that
9 took place, maybe that's why I had more detail.
10 That might be one of the reasons for that.

11 Q Yeah. And I think what your lawyer stated is that
12 because that in that statement to the police, your
13 first statement, you didn't tell them some things
14 that, if you testified, you would have told the
15 court. You would have told the court that for
16 example, according to Mr. Tallis, you got stuck
17 after you saw the woman, and you left the vehicle
18 for a short time, that you threw the compact out,
19 umm, some things like that that weren't in the
20 statement, and I think you've told us why they
21 weren't in the statement --

22 A I know where you are coming from, yeah.

23 Q -- and so in other words that that was one of the
24 reasons he said he advised you not to testify, was
25 because the statement you gave to the police might



1 actually work against you.

2 A Right.

3 Q Do you remember discussing that with him or being
4 aware of that?

5 A I remember that the decision not to testify was
6 made as a result of him suggesting to me that with
7 everything that was before the court, everything
8 that was before the court at that time, if I was
9 to get up and tell the truth, the complete truth,
10 the story that I gave him -- which was not a
11 story, it was the truth, --

12 Q Yes?

13 A -- that my testimony, in relation to everything
14 that has been brought before the court, would
15 probably not work out well for me. That's the
16 reason Cal Tallis told me not to testify.

17 Q And I think that --

18 A And, probably, that means the same thing that you
19 are saying.

20 Q Yes.

21 A Yes?

22 Q Yes.

23 A Yes, I would think so.

24 Q And I think what he said, --

25 A Yeah.



1 Q -- that if you testified you'd be asked the
2 question by the prosecutor "why didn't you tell
3 the police some of the things you've told the
4 court today", in other words there were some
5 things that weren't in your first statement that
6 you would have told the court, and that was one
7 area that Mr. Tallis was concerned that you
8 might -- it might end up harming you.

9 A Well, the first statement that I told the police
10 in Winnipeg was everything that I knew was the
11 truth, so how could it harm me?

12 Q Well that, I guess that's the point, yeah. And I
13 think --

14 A I disagree with that.

15 Q Well I think what Mr. Tallis, what Mr. Tallis said
16 is that even though you told the truth to the
17 police, that it didn't contain some of the things
18 you said later, and it may have been, I think Mr.
19 Tallis said it may have been that you weren't
20 asked by the police, in other words you only
21 answered what you were asked?

22 A Well, don't forget, this is Mr. Tallis --

23 Q Yes.

24 A -- dealing ideationally (ph) with his own
25 thinking in --



1 Q Yes.

2 A -- relation to someone --

3 Q Yes.

4 A -- that is suggesting to him possibilities, little
5 ideas in his mind, a young boy there -- not a
6 young boy, well, a very young man.

7 Q That's fair.

8 A I think that's being fair to him and to me.

9 Q Yeah.

10 A Yeah.

11 **(VIDEOTAPE PAUSED)**

12 MR. HODSON: I think that's an appropriate
13 spot to break.

14 *(Adjourned at 2:30 p.m.)*

15 *(Reconvened at 2:48 p.m.)*

16 MR. HODSON: Just before we start the tape,
17 I should have just clarified, when Mr. Milgaard
18 is looking at the wall, we had some of the
19 documents up on a screen, that's what he's
20 looking at or referring to, so the doc. IDs are
21 on the record.

22 COMMISSIONER MacCALLUM: Thank you.

23 **(VIDEOTAPE RESUMED)**

24 BY MR. HODSON:

25 Q Let's go on to the heater and the garage and the



1 soup, we've talked about that a bit, but based on
2 the documents it looks as though that that may
3 have first -- there is no mention of that during
4 the trial time period back in '69-'70, and it came
5 out at the Supreme Court when you testified there
6 about stopping for the garage, and I think there
7 you said evidence to the effect that "lookit, I
8 told Tallis" --

9 A I wonder if it was more of a shop than a garage.
10 I don't remember. It just seemed like an
11 old-fashioned place, an old-fashioned soup
12 machine. If you can remember back to the late
13 '60s and, at that time, the kind of garages or
14 shops that were around then, and to find these
15 little soup machines was a bit of a treat because
16 they didn't even have very many of them, they were
17 that old, and so I think it was probably a very
18 old-fashioned place. As soon as I saw the soup,
19 "oh, soup".

20 Q Was it on the way to Saskatoon or was it on the
21 outskirts of Saskatoon?

22 A It was on the outskirts of Saskatoon, coming into
23 Saskatoon, before you go downtown, in the way that
24 we came into the city, which was the way that I
25 told everybody to begin with.



1 Q And do you remember whether you got your heater
2 fixed at that time or not?

3 A I don't think the person could fix it. Yeah, I
4 don't think so.

5 Q And do you have a memory of telling Mr. Tallis
6 about that?

7 A Yeah, for sure. Yeah, absolutely.

8 Q Now let's go to -- we haven't talked about this
9 subject yet, about an incident in a motel, and I
10 think you are familiar with that evidence that
11 came out at trial from Craig Melnyk and George
12 Lapchuk. Do you remember those fellows?

13 A Yeah, I remember them.

14 Q And Ute Frank, Deb Hall, and Bob Harris; those
15 names are familiar?

16 A I remember the names, yeah.

17 Q And what, and let me just summarize what
18 Mr. Melnyk and Mr. Lapchuk said at the trial.
19 They said that, I think it was in May of 1969 in
20 the Park Lane Motel in Regina, that they were in a
21 room with you, with Ute Frank, Deb Hall, and Bob
22 Harris, although some of the versions didn't have
23 Bob Harris in there.

24 A Hmm.

25 Q And at this time, David, you would have been



1 questioned already by the police twice. And so,

2 --

3 A Yeah.

4 Q -- and the Gail Miller story came on the news, and
5 Melnik and/or Lapchuk bugged you about it, and an
6 incident which has been described a bit
7 differently by the various people, but let me just
8 tell you the following: Melnik and Lapchuk, at
9 trial, said that in response to their question or
10 bugging you, you grabbed a pillow and struck it,
11 either stabbed it or pretended to stab it or punch
12 it; and secondly, that you said words to the
13 effect that "yes, I stabbed her, I killed her", or
14 something like that.

15 And it was later described by
16 Ute Frank and Deborah Hall -- and, again, I
17 think -- and I can, I think I can fairly state
18 that before the Commission -- Mr. Lapchuk is
19 deceased -- but the other four describe a similar
20 incident with a pillow and a striking and words.
21 Some perceived it as a joke, others said they
22 weren't sure?

23 But again, just back to that.

24 What Mr. Tallis said is when he became aware of
25 that at the trial he talked to you about that, and



1 what you told him, and I'll just read from page
2 23896, he says:

3 "A Well he told me that he couldn't deny
4 doing that reenactment, but that if he
5 did, it would be a joke. And he
6 explained to me that he was stoned at
7 the time and I gathered, from talking to
8 him and getting details, that he was --
9 he told me that he was stoned because he
10 was under the influence of drugs, as
11 distinct from alcohol, to a significant
12 degree."

13 And so, in other words, that you said "I was
14 there, I don't have a recollection, I can't deny,
15 if I said it, it would have been a joke"; does
16 that accord -- is that what you remember telling
17 him or having -- or at the time; are you able to
18 assist us on that?

19 A To be honest with you, I remember the people's
20 names and, umm, some of them I remember with a
21 sense of personable -- 'personable', that means
22 friendliness?

23 Q Yes.

24 A Some of the other names, I don't know if I
25 remember them in such a friendly way. But these



1 gentlemen, I believe, did whatever they did with
2 the police for whatever purposes they did it with
3 the police.

4 I do not remember jumping up and
5 stabbing a pillow and saying those things at all,
6 Doug. I think I would remember even if I was
7 stoned. If something came on television, that's
8 why I answered to Tallis in the way that I
9 answered it, you know, "well it's possible, right,
10 but I don't remember that taking place".

11 How the girls or the people
12 involved, if they were all there at the same
13 place, I don't know. I remember one girl, and
14 it's possible that -- and I don't really remember
15 those guys being people that I would want to have
16 around me, you know, with those people. That
17 was --

18 Q That was Melnyk and Lapchuk?

19 A Yeah.

20 Q And with --

21 A I don't think you would find us all in the same
22 room.

23 Q Okay.

24 A I really don't.

25 Q And so, again, --



1 A I think it was all fabrication. I don't think so.

2 Q You think that, what, the -- the incident, the
3 people talking about this incident, was a
4 fabrication?

5 A I think that's possible, yeah.

6 Q Umm, now what -- what --

7 A I don't want to go into the reasons why, I guess I
8 can, but I'd prefer not to, because these events
9 can probably still -- these people are all alive.
10 George Lapchuk is dead?

11 Q Yes.

12 A Okay.

13 Q And just let me just go back. I think what -- the
14 evidence that we heard before the Commission was
15 that after --

16 A He was not a very friendly person with women, Mr.
17 Lapchuk.

18 Q Mr. Lapchuk? Okay.

19 A And I have a reason, there, to be upset about it,
20 but that's a long time ago, in the past. And as
21 far as anything taking place, Ute Frank, I
22 remember her in a nice way; and Bob I seem to
23 remember in a nice way; Craig, he was George's
24 friend, and I think they were in trouble with the
25 law for stealing or something, and maybe this



1 situation, their dealing or something with the
2 police has got them out of it, or it's got them in
3 a lot of trouble, I betcha, one way or the other,
4 because it was not the truth. I don't think so.

5 Q What, the evidence that the Commission has heard,
6 is that after this evidence came to light the day
7 before the trial was to start, it was new
8 evidence, and that Mr. Tallis said he talked to
9 you about it and said "here's what Melnyk and
10 Lapchuk are going to say", and that you told him
11 "talk to Ute Frank, she's my friend".

12 A Yeah.

13 Q And that Mr. Tallis then went and talked to Ute
14 Frank.

15 A Yeah?

16 Q And Ute Frank told him that yes, the incident did
17 happen, she did observe, not exactly as Melnyk and
18 Lapchuk had described, but there was an incident
19 with you striking the pillow and uttering words to
20 that effect. That's what Mr. Tallis said he was
21 told by her, and that's --

22 A Oh, he did, he saw Ute Frank?

23 Q Yes.

24 A And --

25 Q And that's what --



1 A -- he probably told me that then.

2 Q That would be in 1970. And then Mr. Tallis said
3 that's why he didn't call Ute Frank as a witness,
4 and he didn't want her as a witness, because he
5 said --

6 A Why?

7 Q -- said she would confirm what Melnyk and Lapchuk
8 said.

9 A And this is over something come on about the
10 murder --

11 Q This --

12 A -- on television?

13 Q -- this would be the incident in the motel room,
14 yes.

15 A Hmm. Well I guess if I was being -- but why would
16 they be in the hotel room? Nah, I didn't like to
17 be near him.

18 Q And that's who, Lapchuk?

19 A Yeah.

20 Q I think the evidence was that they showed up at
21 the motel room, that you were there with Deborah
22 Hall and Ute Frank, and then they showed up.

23 A Maybe that was my way to just get rid of them or
24 something.

25 Q Yeah.



1 A Maybe.

2 Q So, again, do you have any recollection of these
3 discussions at the time of trial and Mr. Tallis
4 telling you that "lookit, Ute Frank confirms
5 basically that something did happen, that you did
6 have an incident with the pillow and you did say
7 words", umm --

8 A Well, if you were me and you were in this room and
9 you don't remember that part of it because it was
10 a lark if you did it, or even if you didn't do it,
11 you wouldn't remember. I don't remember doing it,
12 you know, if I did it, it was probably because I
13 just, umm, heard something on the TV. Is this
14 supposed to be after or before the -- I was asked
15 all these questions and stuff?

16 Q Yes, this would be after --

17 A After?

18 Q -- you'd been interviewed twice by the police?

19 A Well then, you know, I could see maybe. But I
20 don't know, Doug, I just --

21 Q Yeah.

22 A You know, I'm not trying to defend myself, because
23 I know I didn't do it. That's strange, but I do,
24 I know I didn't do anything. I just remember that
25 I didn't like one of those individuals, and the



1 other guy, I didn't like him because he was his
2 friend.

3 Q Okay.

4 A So --

5 Q So, again, is it fair to say that, at the time,
6 your recollection back in 1970 was "I remember
7 being in the room, I don't remember stabbing a
8 pillow or doing anything with the pillow, I don't
9 remember saying words" --

10 A Yeah, I don't remember saying words.

11 Q -- "to the affected that I killed her, but that if
12 I did, it would have been a joke"; is that fair?

13 A Well, it wasn't a joke, you know. Don't forget
14 I'm not guilty, Doug.

15 Q Yes, no, no, but I -- this is what you ended up
16 saying?

17 A Strange question.

18 Q No, what you ended up saying, --

19 A All right.

20 Q -- in fact you said at the Supreme Court I think,
21 you said --

22 A I'll answer.

23 Q -- "if I did say it, it was a joke".

24 A Your question is this: "David, if you did strike
25 the pillow and you are serious about it, were you



1 serious about it?" Well, how could I be serious
2 about it if I didn't commit the murder?

3 Q No, and I'm just trying to find out what you would
4 have said back then, that's all.

5 A Right.

6 Q That's all.

7 A Now if I did do it, I certainly wouldn't be
8 serious about it because I knew I didn't commit
9 the murder, and if I didn't do it, it doesn't
10 really matter. It doesn't make any sense --

11 Q Okay.

12 A -- except I didn't want those people in that room.

13 Q And that would be Melnyk and Lapchuk; is that
14 right?

15 A Was there a second girl besides Ute Frank that
16 was --

17 Q Deborah Hall.

18 A -- there?

19 Q Deborah Hall.

20 A Oh, that's -- okay.

21 Q Remember Deborah Hall?

22 A Yeah, I remember Deborah Hall.

23 Q Okay. Now just -- and, again, we've probably
24 covered this -- the decision to testify --

25 A Was she ever questioned about this?



1 Q Deborah Hall?

2 A Yeah.

3 Q Deborah Hall testified --

4 A What did she say?

5 Q Deborah Hall testified at the Inquiry and she said
6 that, yes, she saw you fluff the pillow and say
7 words to the effect that you -- "yes, I stabbed
8 her, I killed her in a snowbank", or words to that
9 effect, --

10 A Oh yeah?

11 Q -- but she took it as a joke, she said you were
12 joking is what she --

13 A So I guess I must have did it.

14 Q And so she viewed it as a joke.

15 A Yeah.

16 Q And at trial Melnyk and Lapchuk, I don't think,
17 were asked the question about whether they thought
18 it was a joke or not, they just said "here's what
19 we observed", and so --

20 A Hmm.

21 Q Umm, on the decision to testify, I think you told
22 us that you really wanted to get up and tell your
23 story, is that right, and that you talked, --

24 A Yeah.

25 Q -- and with the advice from your lawyer, and



1 talked to your parents?

2 A I didn't.

3 Q And do you remember; would you have gone through
4 with Mr. Tallis, did he give you the reasons why,
5 why he --

6 A That's what I said earlier.

7 Q Yeah.

8 A He felt that, you know, with everything that is
9 being said, all those stories and the B.S. that
10 was going on in that courtroom, he said "David, if
11 you get up and you start telling the truth,
12 they're gonna believe all the B.S. and they're not
13 gonna believe you, and you will be convicted".
14 And that makes good sense, you know, it does, you
15 know. They're going to believe something, they're
16 going to believe a lot of that stuff, right.

17 Q Yeah. I wouldn't mind just, you know, you talked
18 a bit earlier about at the trial; can you tell me
19 a bit, let's talk about Ron Wilson, I mean was
20 he -- he was a friend of yours at the time?

21 A Yeah, yeah, I liked Ron.

22 Q And was he --

23 A He's still, you know, like I said today with my
24 opening statement, he is a person that's been
25 victimized by this thing and I have no bad



1 feelings. If he walked up to me today I'd say
2 "hi, Ron, how are ya, sorry this thing has rooked
3 you as bad as it's shook me up", you know.

4 Q And was he -- I saw in some reference --

5 A I think I would.

6 Q Pardon me?

7 A I think I would.

8 Q Yeah.

9 A I would, yeah. That's how my heart feels,
10 somehow, for both him and Nichol John.

11 Q And why do you say that?

12 A Because I am a person that has grown in a lot of
13 different ways in my life, some of them, amazingly
14 enough, inside prison, you know, through --
15 through church, through different things that I
16 made efforts to become a better person in
17 different ways and learn about the world and
18 stuff.

19 And the one thing that I would
20 reason to say that is because how many times have
21 these people been, you know, before courts, how
22 many times have they -- they have gone through all
23 this, you know. I think there is a, a saying or
24 something, you know, that dishonesty, right, it
25 leads to big, big trouble, right. So maybe at



1 some point they were a little bit dishonest
2 because they felt they had no way to get away from
3 the police or the situation that you mentioned,
4 Ron was involved with a person with a lie
5 detector --

6 Q Yes.

7 A -- who is now dead, maybe he felt that they're
8 telling -- they're saying "I'm telling lies" and
9 so he started saying "well, I'll lie". This is
10 what you suggested to me. I don't know. I don't
11 know the answers. But the bottom line is, you
12 know, they knew the truth, you know, we all knew
13 the truth.

14 Q And, again, --

15 A And they changed. They were scared. She was kept
16 in the jail cell, you know, I can't see a young
17 lady being held in a jail cell in Saskatoon, I
18 just can't see it as being anything other than
19 just a terrible, terrible thing the Saskatoon
20 Police did to her.

21 Q And, apart from what role the police may have
22 played in that, is there anything, based on Ron or
23 Nichol, that -- and Albert Cadrain for that
24 matter -- that, you know, that they -- you had a
25 conflict with them or that you might think they



1 would lie or cause them to lie about something?

2 A No. No.

3 Q Just excuse me one second here, I want to now --

4 A Can we -- can I get some water or something?

5 Q Why don't we just maybe just take a break here for
6 a moment. We'll maybe just adjourn for a minute.

7 (Adjourned at 1:00 p.m.)

8 (Reconvened at 1:26 p.m.)

9 BY MR. HODSON:

10 Q We're back, Mr. Milgaard, after the break, and I
11 want to now turn to post-conviction matters and
12 relating to the re-opening. And in this phase of
13 the Inquiry what the Commission is looking at is
14 to seek to determine whether the investigation
15 should have been re-opened earlier, based on
16 information that was provided to the police and
17 Justice, so information to the authorities.

18 And we've heard lots of evidence
19 from people who, on your behalf, provided
20 information to the police and Justice over the
21 years trying to get the case re-opened, so I want
22 to ask you some questions about the role you
23 played in that and who was helping you in putting
24 forward information; and secondly, as part of
25 that, there was some criticism or comment put



1 forward on the conduct of the investigation and
2 trial by you and by others on your behalf, so I
3 just want to touch on that.

4 If we could just start with sort
5 of who; who was assisting you on this? And I
6 think the -- obviously your mother, Joyce
7 Milgaard, spent many years on your behalf putting
8 forward information to the authorities trying to
9 re-open the investigation; is that correct?

10 A My whole family.

11 Q Yes.

12 A I mean my mother obviously, you know, the most
13 working, but my brother, my brother's wife, I mean
14 they were walking around re-enacting. My whole
15 family was involved in trying to show people that
16 I was not guilty.

17 Q And to get information to give to the authorities
18 to say "re-open this investigation"; is that
19 correct?

20 A Yes.

21 Q Now tell us about Peter Carlyle-Gordge; do you
22 remember Mr. Carlyle-Gordge?

23 A Yes, I know Peter.

24 Q And, tell us, what role did he play in your
25 efforts to re-open the case?



1 A My understanding is at some point he tried to
2 contact the prosecutor's office and came into some
3 documents.

4 Q Was he helping you out, though, was he assisting
5 you in your efforts to re-open the case?

6 A Umm, I think he was assisting my mother.

7 Q Yeah.

8 A Yeah.

9 Q And did you talk to him, as well, a bit?

10 A At that point I didn't, but I've talked to Peter.
11 I still talk to Peter. I hope he's doing well in
12 Winnipeg. He's a gentleman, he's a good man.

13 Q And so -- but his -- and his efforts, though, were
14 on your behalf, like he was helping you out; is
15 that right?

16 A Well you have to remember, I'm inside prison, so I
17 don't know a lot of what's going on at all.

18 Q And maybe on that point, would it be fair to say
19 that as far as the efforts that were made while
20 you were in prison by your family and others on
21 your behalf, --

22 A Yeah?

23 Q -- how much or how involved were you in what they
24 were doing? Did they tell you what they were
25 doing, did you instruct them, or did they just --



1 A I didn't even know about a lot of these things
2 until, you know, long after. You know, I didn't
3 know, I didn't know that my brother and his wife
4 and my family were running around trying to
5 re-enact the crime, you know, saying, you know,
6 "is it possible that this happened, is it possible
7 that that has happened", and finding out that it
8 just wasn't even possible by times and distances
9 and streets. I didn't know that --

10 Q And --

11 A -- for years and years and years.

12 Q And, as well, you had your lawyers helping you,
13 David Asper and Hersh Wolch?

14 A Yes.

15 Q And then, prior to them, I think Gary Young and
16 Tony Merchant assisted for a while; does that --

17 A Tony Merchant? I remember that name.

18 Q I think he --

19 A Gary Young I remember too, a little bit.

20 Q And again, just generally, let's talk about
21 Mr. Wolch and Mr. Asper while you were in prison;
22 were they doing things on your behalf to try and
23 bring forward information to the authorities?

24 A Hersh and David Asper?

25 Q Yes?



1 A Yes. David took the case, as it was, and did most
2 of the research that was involved, working with
3 Hersh as a, I guess, mentor, and at the same time
4 David dealt with me on a regular basis, coming out
5 to the penitentiary. Living with me, and me
6 living with him sometimes, it was a, well, it
7 was -- it was sometimes an emotional thing. It
8 was very emotional, sometimes, with everybody,
9 because we were trying to just simply have people
10 see the truth, and if you are a person that's not
11 guilty in any way of doing anything wrong other
12 than being a kid, you know, travelling through
13 Saskatchewan, you know, doing what most kids were
14 doing at that point in their lives, I guess you
15 feel, you feel the weight of that guilt and you
16 want people to know that you are not guilty, and
17 you become emotional. So I become emotional with
18 all of the people that have been helping me, and
19 maybe sometimes not in the most polite way because
20 I would be upset, but at the same time loving
21 these people, you know, with my heart.

22 Q And would it be fair to say, David, that these
23 people we've talked about, your family, your
24 lawyers, Mr. Carlyle-Gordge and I think Paul
25 Henderson at Centurion -- do you remember Mr.



1 Henderson?

2 A Yeah, I remember Paul, I remember also his --

3 Q James McCloskey?

4 A James. They still work in the same area.

5 Q Yeah. Would it be fair to say that these people
6 would be working on your behalf, putting forward
7 information with your authority, so to speak, but
8 that you maybe always didn't know everything they
9 were doing; is that fair?

10 A Yeah, that's very fair.

11 Q So that you were -- while -- and in particular,
12 while you were in prison, you would be relying on
13 them to do things on your behalf; is that correct?

14 A Yes.

15 Q I want to talk a bit about parole, just a very
16 little bit. And David Asper testified before the
17 Commission, he's not complete yet, but he talked a
18 bit about parole, and what he said was to the
19 effect that you always denied your guilt to the
20 parole board, and that may have impacted your
21 ability to get parole, but that you also had
22 concerns about, I think his words were, "getting
23 out on their terms", in other words you wanted to
24 get out as an innocent person as opposed to parole
25 which meant that you were guilty; is that, do you



1 remember much about that?

2 A To be honest with you, I don't see how that's
3 relevant, Doug. I don't particularly like parole
4 boards, I don't see a lot of people inside prison
5 that's -- are usually young people as being,
6 really, a threat to society. Society may see it
7 differently, you know, I'm -- I -- I see it the
8 way I see it, and they're there just to see the
9 negative things about people. I'm not interested
10 in talking about --

11 Q Okay. That's fine.

12 A -- the National Parole Board.

13 Q Sure. Can we just talk about resources. One of
14 the things we've heard from some witnesses is
15 about the difficulty that a wrongfully convicted
16 person can have in accessing resources, being for
17 lawyers, investigators, and in this case I think
18 the evidence we've heard is that you could
19 never -- you couldn't -- you didn't get Legal Aid;
20 do you remember that? And I'm wondering if you
21 want to just comment on -- on -- on --

22 A I think my mother is probably the best person to
23 contact about, --

24 Q Okay.

25 A -- or to see to ask that question, because a lot



1 of these things, it was like a roller coaster
2 ride, you know. At some point we would have some
3 people interested in doing something and we
4 figured, well, we're going someplace with
5 something. And it all didn't really start until
6 after I got shot when I was unlawfully at large
7 and my mum put up a \$10,000, my family put up a
8 \$10,000 award for anybody that have any
9 information that might lead to my exoneration.

10 Q Okay. Umm, again, I want to just ask you about
11 some files. Do you remember -- and, again, the --
12 we've heard evidence before the Commission of
13 Inquiry that Mr. Tallis' file for defending you
14 was destroyed, I think, sometime in the '80s in
15 the course of the file destruction of his law
16 firm, but we have parts of his file, and we have
17 three memos from his file of his work, but no
18 other file materials. Do you have any knowledge
19 or any recollection of ever looking at the file
20 that Mr. Tallis had when he defended you?

21 A Well he always had, yeah, like a lawyer's binder
22 or a book with him, he would take notes.

23 Q Oh, I'm sorry, I didn't ask the question very
24 well. After you were done with the case, --

25 A Uh-huh?



1 Q -- later when you were looking at re-opening the
2 case, --

3 A Right.

4 Q -- do you remember getting a copy of Mr. Tallis'
5 file or looking at any of his memos from him?

6 A I don't know. Again, I would suggest that you
7 talk to people that were involved in the, in
8 trying to get the case re-opened if they were
9 trying to free that information from Cal Tallis.

10 Q Yeah, it --

11 A I think, at some point, we did try to get that
12 information from Mr. Tallis.

13 Q Yeah. And --

14 A I'm not just sure about that one.

15 Q And we did -- and I guess the one area that
16 we're -- there is still some questions or some
17 uncertainty is there are three memos from his file
18 that we have, and I think that your mother
19 obtained from somewhere, but the rest of the file,
20 we don't have copies of them. I'm just wondering
21 if you remember seeing any parts of his file; do
22 you have any recollection?

23 A No, I don't think so.

24 Q And this is as well, and I won't show you all of
25 them, but there is a number of original lab



1 reports from his file, that some of it, of --
2 which have your, I think it's your initials on the
3 back, or your handwriting. Let me just find one,
4 here, and I'll show you. Yeah.

5 A I see the "N.B.", that's me.

6 Q Yeah. And just -- that's --

7 A What does it say?

8 Q -- 225036. It says:

9 "N.B. Ron's car".

10 A "Ron's car"?

11 Q That's your handwriting?

12 A Yeah, I guess this is someone that has given me
13 something to read and I've written back, on the
14 back of it that something is significant about
15 Ron's car.

16 Q Okay. Is it fair --

17 A Yeah, I was involved in some of this stuff, yeah,
18 yeah.

19 Q But you don't have any knowledge, then, about what
20 files you had and when you would have got them
21 from Mr. Tallis?

22 A No. When I was working on them, yeah, probably
23 out of Winnipeg, out of Stony Mountain
24 Penitentiary is when we started to work with
25 David, and a lady that is no longer alive, she was



1 really -- a lot of people were involved in a
2 special way, Linda, yeah.

3 Q What about, talk a little bit about the media and
4 the role the media played in your efforts to
5 re-open the investigation, are you able to comment
6 on that at all?

7 A Yeah, yeah. I find it interesting, and I want to
8 say this, take it with a grain of salt -- is that
9 a Canadian term, "take this with a grain of salt",
10 right?

11 Q Yes, it is.

12 A That, even though I haven't been listening to the
13 media reports about my situation presently because
14 I just wanted to get this over with as quickly as
15 possible and work with a therapist that feels it's
16 a healthy thing for me to do to try and work my
17 way through this -- which I believe it is taking
18 place, I'm feeling better about it, I don't -- I
19 -- better yet, I'm not going to say what I wanted
20 to say.

21 But I just, I want people to
22 realize that, you know, the public may be hearing
23 all these things about what this Inquiry would
24 like to do and how they're going to do it, but
25 none of this has been really resolved until today,



1 and yet all these people in the media are out
2 there talking about things and I had never agreed
3 to anything, but I have agreed to work this out
4 today.

5 And as far as my original
6 situation is concerned, yes, you know, they were
7 there, and they were there to help me, and some of
8 the people originally there to help us, it made us
9 feel tight as a family. You remember the pictures
10 where we held up our hands, you know, they were
11 there, they were there to support us, and I'm glad
12 that the media are responsible people, and that's
13 all I can say.

14 Q Do you have a recollection of some concerns with
15 the *Fifth Estate* back, I think, in the late '80s?

16 A Yes, yes.

17 Q And I think we've heard some evidence that they
18 were gonna run a show, and then they decided not
19 to, and then they were going to run it again; what
20 do you remember about that?

21 A I just remember my feelings, and whether they were
22 right or they were wrong, they were the
23 impressions of myself under the influence of, you
24 know, "am I going to be a free man, are these
25 people going to treat my case in a way that I can



1 expect justice", and I guess for some reason or
2 other I didn't feel comfortable with it and I
3 decided not to go ahead with it, and then they
4 decided, themselves, not to go ahead with it.

5 Umm, you know, how often do
6 people talk openly about corruption and tie it to
7 a scenario with judges, supreme courts, Prime
8 Ministers -- I shouldn't say Prime Ministers --
9 but politicians, significant ones, and a man that
10 has spent his whole life inside a prison. And,
11 you know, it's -- we're Canada, and we're proud
12 people, and these things aren't things that we
13 expect to happen any more, and I think it is
14 significant that, you know, this has taken place
15 and that this Inquiry is here to resolve just how
16 it took place.

17 Q Uh-huh. You've used the word "corruption" on a
18 couple of occasions and is it fair to say, David,
19 that that -- is that something that you think
20 might have happened, or can you explain --

21 A Well to be honest with you, I can't say for sure
22 that the people involved in these situations, what
23 they are doing or why they are doing it. But as a
24 man that's held incarcerated, knowing that he is
25 not guilty, and then later on just by little bits



1 and pieces hearing the whole story -- I was at a
2 wrongfully convicted conference where my lawyer
3 was standing up basically outlining, point by
4 point by point by point, of how a lot of these
5 things took place. That was the first time I
6 heard this, Doug, I haven't been attending these
7 things. It was like a whammy, you know, I just
8 felt "boy, am I ever glad I got this all through
9 me at once". I mean there was just so much
10 information about people, tying them together in a
11 circle of what else but corruption, if it's not
12 corruption.

13 Q Is it --

14 A That's being honest with you.

15 Q Yeah.

16 A What do you think?

17 Q Yeah, no, let me ask you; is it fair to say
18 that -- and you tell me if I'm capturing this
19 right -- that number 1 you are saying because I
20 was wrongful convicted something must have gone
21 wrong, number 1; and number 2, you have had a
22 chance to hear your --

23 A These are your words.

24 Q No, no, and I'm asking you?

25 A No, but no, it's true.



1 Q Yeah.

2 A Many people can probably be wrongfully convicted
3 by no other reason other than it's a failure of
4 the courts. It's possible, but is it likely.

5 Q No, and I'm trying to get --

6 A Is that what you are trying to say?

7 Q Yes, yeah. And the second part is that the source
8 of information, when you say things are corrupt or
9 you think they might be corrupt or someone has
10 done wrong, is it fair to say that those comments
11 would be based upon what your advisors have told
12 you or what you have sort of heard about the case?

13 A I don't have any advisors.

14 Q Or I think you said --

15 A Not really.

16 Q -- your lawyers or your mother, or versus what
17 you've found out on your own?

18 A No. I find it's more likely that David Milgaard
19 would be the person to use the word "corruption"
20 than anybody else in my situation, because
21 somehow, in some strange way everybody is quite
22 satisfied that there's an inquiry. My reason for
23 not attending, which is part of the fact that, you
24 know, I don't feel good, I'm still overcoming some
25 problems --



1 Q Uh-huh.

2 A -- is I didn't want to be part of a picture where
3 everybody is saying "eh, David, it's all right,
4 we're just going to pat you on the back and, you
5 know, you're fine, you're -- this is all being
6 handled for you and it's all over with". I see
7 too many men here in this room that believe in
8 justice to sit and be part of a sort of a
9 pragmatic, you know, exercise --

10 Q Uh-huh.

11 A -- that's going to see me walk through it and be
12 patted on the back and walk out of a situation.

13 And everybody says it's okay,
14 no, because it's not okay. There are people, to
15 this day, that don't understand why all these
16 things took place. There is enough evidence here
17 to suggest there's very good reason to think that
18 there is a significant amount of corruption.

19 Q If we can talk a bit about your dealings with, or
20 your dealings on your behalf and through your
21 lawyers on the Section 690 process, and that was
22 your application to the Federal Minister. And I
23 think you made two of those applications, one in
24 1988, --

25 A Yes.



1 Q -- and the second one in August of 1991. And the
2 first application, that the two major grounds, at
3 least when the application was filed, were
4 evidence from Deb Hall on the -- disputing the
5 motel incident, and the second was from Dr.
6 Ferris, some scientific evidence; do you
7 remember --

8 A Ferris, I remember that name, yeah.

9 Q Yeah.

10 A Yeah.

11 Q And Dr. Ferris has testified at the Inquiry, and
12 --

13 A Is Dr. Ferris the DNA man?

14 Q Yes.

15 A Yes, I definitely remember that name.

16 Q And he gave --

17 A What a feeling that was.

18 Q -- and gave an opinion, --

19 A Strange.

20 Q -- he actually, his evidence was he couldn't do
21 the DNA in 1988, he tried, but he gave you an
22 opinion on the frozen semen and the physical
23 evidence.

24 A Oh, that wasn't the other doctor? Okay.

25 Q That was Dr. Ferris, yeah, sorry.



1 A Okay. All right.

2 Q And that the DNA came in 1997.

3 A Right.

4 Q Do you remember about, when you filed the
5 application to the Minister the very first time,
6 about what your thoughts were, your expectations
7 when you went to the Federal Justice Minister
8 through your lawyers and said "here, open up my
9 case, here's the Ferris" --

10 A My own thoughts?

11 Q Yes?

12 A Well it's a slow process by which everything has
13 to be put together, and these are my lawyer's
14 words, Hersh's words, "we have to be very careful,
15 and we have to put together an application
16 according to, according to the rules, the Court's
17 rules".

18 My first thing, I was very
19 upset -- it's been changed since -- due to the
20 fact that I have to ask for mercy for something I
21 didn't do wrong. That has since been changed,
22 which I'm glad, because that's in the Queen's
23 name, "the royal prerogative of mercy".

24 Q Uh-huh?

25 A Umm, my feelings? When they came down and told me



1 that they weren't going to open my case when we
2 told them that there was absolutely no evidence
3 there to suggest that I was guilty, and somehow
4 they came back and told us "well, David, there is
5 no evidence there to suggest that you are not
6 guilty, case closed", how did I feel? Blown away.

7 Q Yeah. Let me just go back -- sorry -- and I
8 didn't ask it very well. When you had the Dr.
9 Ferris opinion do you remember thinking that this
10 was evidence that was gonna --

11 A I thought it was a good -- good news.

12 Q Good news?

13 A Yeah.

14 Q That would prove your innocence or that would
15 cause --

16 A Hopefully something would happen, right.

17 Q Yeah.

18 A I think so.

19 Q And I think, once that was filed, it was many
20 months or perhaps even over a year that would be
21 --

22 A It took a long time to get the exhibits free. We
23 worked hard for that.

24 Q I think it was about -- after the Ferris, the Dr.
25 Ferris report was filed, it was many months later,



1 perhaps more than a year, before there was a reply
2 on that, actually two years. Do you remember
3 that?

4 A Oh --

5 Q Did you expect, are you able to tell us what was
6 your expectation when you filed the Dr. Ferris
7 opinion, did you think it was something that would
8 cause the government to do something right away?

9 A Well, I was hopeful.

10 Q In some of the documents, and we heard this from
11 David Asper in his evidence so far, that when the
12 application was filed with the Minister, that you
13 were going to put in a separate, not -- or an
14 additional presentation, a family presentation, a
15 video and something in writing; do you remember
16 that as part of the application?

17 A Well, I don't remember it, but my mother would if
18 I -- if it was something that we were going to do.

19 Q In the documents --

20 A It's strange, I should remember something like
21 that, but, again, I wasn't feeling all that great
22 sometimes.

23 Q In the documents, in some of your letters they
24 talk about, some of your letters talk about
25 sending in your own submission, and if you want I



1 can show them to you. Umm --

2 A Do you have all my letters to the Justice
3 Department?

4 Q I have a lot of them, yeah.

5 A Do you? Do you like my letters?

6 Q You have nice handwriting. How's that?

7 A Thank you.

8 Q The -- but as far as that, do you have any
9 recollection of putting in your own thoughts to
10 the Minister?

11 A To the Minister? To the --

12 Q To the Federal Justice Minister?

13 A Umm, who was the Minister at that time?

14 Q Well it was Doug Lewis, and then it was Joe Clark,
15 and then it was Kim Campbell.

16 A Well, I don't know. A lot of these letters that I
17 wrote then, you have to remember I'm a person that
18 is locked, I don't mean locked in a cage but I
19 mean locked in pursuit of my freedom, and when you
20 are dealing in a situation with powers that be, at
21 least I have found that whether it's a grievance
22 procedure or it's, or it's a situation where you
23 have to have -- find a legitimate remedy,
24 solution, right, you have to deal with
25 bureaucracies, and you have to deal with



1 time-consuming things where, before you get
2 answers, you get -- you move from one direction to
3 a different direction to a different direction.

4 In my mind, these things played
5 through me in a way that I didn't like it. I mean
6 I wanted to be free now, I didn't want to wait
7 forever to be free, and this may be reflected in
8 my letters to some extent. Maybe not. I tried to
9 be reasonable, I tried to be polite.

10 Q If we could, up on the screen there we've got,
11 it's document, for the record, 163321. And this
12 is a document, you will see at the top it says
13 'legal position', and it says 'original from
14 David'. And this, I believe, is --

15 A I can't read that.

16 Q Are you able to zoom in? There you go. And this,
17 I believe, is a document that you prepared
18 outlining a legal position on Section 9(2) of the
19 *Evidence Act* and Nichol John's statement and how
20 it was used in court.

21 A This is all legalese. It's actual part and parcel
22 of the *Criminal Code*, this is not my --

23 Q Okay.

24 A This is, this is tenets.

25 Q If we could --



1 A This is based in the legal --

2 Q Yeah. If we could go to the next page, and it
3 goes through some of this, --

4 A Okay.

5 Q -- and keep going down. Oh, that's good.

6 A I like that word, 'import'.

7 Q And it says right here --

8 A I like that word, that's my word.

9 Q Where is that?

10 A Over on the far right-hand side, 'an import'.

11 Q 'Contains an import'?

12 A I like that word, I put that word together.

13 Q Right. And I think, if you look here where it
14 says, 'In my case on page 451 and 452 trial
15 transcript the learned trial judge mentions with
16 admissions it is improper for a trial judge to
17 even look at it even in the trial of a judge and
18 jury', and it looks like, from this document, that
19 this is your, your drafting or your document,
20 David?

21 A Well you see what I'm doing here, I think I can
22 remember this, I'm trying to isolate what I feel
23 is important to my case. 'Circumstances and
24 inconsistent statements contain an import', this
25 is my word, that means it's a very important



1 consideration, 'a protection against improper,
2 unethical police procedures'. Okay. It goes down
3 to the next one, 'It allows the witness to speak
4 to the issue of making the statement'. I've got,
5 'And this is on the conduct and the nature of the
6 witness' testimony. The significance of this
7 protection must be given very serious
8 consideration prior to a possible', now I put a
9 line in between the two,
10 'impeaching/discrediting', so I'm trying to refer
11 the two to each other, I guess, 'of character
12 through a proving of an inconsistent statement.'
13 And I put a comma there, I don't know why I did
14 that.

15 Q So --

16 A I don't know why I did these things.

17 Q Yeah.

18 A This is just my mind going back to try to see it.
19 I can't remember that. But I like the word
20 'import'.

21 Q Yeah. And I know there's some other documents on
22 there where you spent some time on the 9(2) or the
23 evidence of Nichol John; do you remember doing
24 things like that? This, is this your document,
25 this is your --



1 A No, this is basically, this is written law. This
2 is what you would call legalese, that is part and
3 parcel of case law that is based upon --

4 Q But you would have written this or had it typed?

5 A No, I didn't write -- oh, I mean is this typed, by
6 hand typed? I probably typed it. If I typed it
7 all out, yeah, it's possible.

8 Q Umm --

9 A Is it my typing, has it got my signature on the
10 bottom, is it --

11 Q There's no signature on the bottom, but I think
12 just in going through it you recognize these as
13 your words, though?

14 A Yeah, yeah.

15 Q Okay.

16 A I've written on top of this for sure. I could
17 have typed that all out.

18 Q So this is something you would have worked on --

19 A Yeah.

20 Q -- putting your thoughts together?

21 A I think so. I definitely worked with it, worked
22 through it, thought about it, felt it was
23 important.

24 Q I --

25 A Do you ever -- I don't know, that's probably, it's



1 pretty complicated stuff.

2 **Q** If we could go to 001817, we'll go to the second
3 page, I want to now go ahead 'til -- to April and
4 May of 1990. And at this time, Larry Fisher came
5 to light on February 28th, 1990, and in the months
6 that followed I think your mother and others did
7 some investigating on him, and then during that
8 springtime there was some discussions I think
9 amongst David Asper, maybe Mr. Wolch and your
10 mother and Paul Henderson and others, about
11 whether he's -- whether you would publicly,
12 through the media, name him. Do you remember
13 being involved in any of those discussions about
14 whether or not you, or people on your behalf,
15 should publicly say "here's the person we think
16 committed the crime"?

17 **A** No, I wasn't part of anything to do with that. I
18 think the name Larry Fisher first surfaced as a
19 result of investigations on our part relative to
20 Mrs. Fisher.

21 **Q** Was it Linda Fisher? Yeah.

22 **A** Linda Fisher?

23 **Q** There was one media article, and I -- or a media
24 report where you indicated that you did not wish
25 to do to Mr. Fisher what others had done to you by



1 saying he was involved in the crime when you said
2 you didn't know; do you remember anything of that?

3 A I don't think I would say that. If the guy, if I
4 felt he was guilty, I wouldn't be trying to
5 suggest that he not be found guilty.

6 Q No, sorry, it was that not being named publicly
7 before he had been charged or a trial, that the
8 issue was whether or not -- do you remember
9 anything about that?

10 A There is something here that, again -- and it's
11 privy to being an ethical thing. There have been
12 victims in relation to Mr. Fisher that I had a
13 chance to speak to, and I didn't want it to be
14 made a media circus because I just wanted to thank
15 these people for wanting to -- it was funny, they
16 wanted to just say "David, are you okay" and I
17 just wanted to say "are you okay", because I cared
18 about them, and they cared about me. Nobody even
19 knows about it. And that's the only thing I can
20 think of that you are trying to discuss that's
21 somehow different than what you are saying.

22 Q No, I'm sorry, I think --

23 A Larry Fisher is guilty of this crime, right, and I
24 don't think there's any doubt about that, you
25 know.



1 Q No, this is back --

2 A I don't care too much about him.

3 Q Yeah, no, sorry. My question was back --

4 A I don't.

5 Q -- just when he first came to light and the
6 question, this was before he was charged or
7 anything, about whether the media or someone
8 should report publicly that "here's the person who
9 committed the crime or we think committed the
10 crime"?

11 A And what was I supposed to say?

12 Q Well there was an article, there was a report, I
13 think a news report where you said that you didn't
14 want to comment because he hadn't been charged or
15 tried yet and you didn't want to accuse him of
16 something when you didn't know --

17 A That could possibly be the advice of counsel
18 suggesting that.

19 Q Okay. Okay. If we could go to the Supreme Court
20 decision, you talked about this a bit earlier, and
21 I think you said -- and it may have been an
22 earlier interview -- about the fact when the
23 Supreme Court came out and said, and it ended up
24 you got out of jail, but I think --

25 A Say it again, slower?



1 Q Sorry, that you expressed some concern that the
2 Supreme Court judgement sort of left you in --

3 A Limbo.

4 Q -- limbo?

5 A Yeah.

6 Q Yeah. Can you just explain that for us, what your
7 concerns were at that time?

8 A In the end I have no idea to know. I mean you
9 have to assume that Supreme Court judges are
10 honourable, good people, and I do, I really do.
11 Except in my situation, I'm a young man and I'm
12 before the Supreme Court looking to be freed on
13 what I feel is a significant amount of evidence to
14 suggest that I be freed, they let me go possibly
15 maybe the only way that they could let me go,
16 and -- but I'm freed in the way that the public is
17 saying "well, they're letting Milgaard go but
18 they're not saying he's not guilty, they're saying
19 he's spent enough time for his crime". So where
20 is David Milgaard standing up and telling the
21 people, as he has been for so many years, that he
22 is not guilty? Where is his family? Where is his
23 brothers and sisters? Where is everybody inside
24 that picture? We were left in a limbo, --

25 Q And I think there was some --



1 A -- you know.

2 Q -- mention, at the time, that you wanted to go
3 ahead and have a trial and get acquitted, is that
4 right, that you wanted to be exonerated?

5 A Yes, I wanted -- I wanted the Supreme Court of
6 Canada to say that "David Milgaard" --
7 don't forget, they had rules that excluded them
8 from doing things that they could have done.
9 They shouldn't have had those rules in this
10 situation. The Supreme Court of Canada had rules
11 excluding things that were very important points
12 in my case, and that made me feel very badly
13 about my situation, because why can't they take a
14 look at these things?

15 Q Uh-huh. Just in sort of the years around that
16 time when the case was on you had made some
17 comments publicly, or through the media, about
18 wrongdoings, wrongs committed by people, and in
19 some cases it would be the police and it would be
20 the Crown or Justice or, just generally, the
21 authorities. And I'm wondering if, and I tried to
22 deal with this a bit earlier, but is it fair to
23 say -- and please correct me if I'm wrong --
24 that -- what I am trying to get at is did you have
25 any of your own personal information to support



1 these allegations of wrong or were they based upon
2 what you've been advised by others? Do you
3 follow?

4 A Hmm?

5 Q What I am trying to get at is if you are, if you
6 are going to say "okay, I think this person did
7 something wrong, I just want to know if there's
8 any information that we don't already have to
9 support --

10 A No, --

11 Q -- why you say that, that's all?

12 A -- sorry, do I have any information --

13 Q Yeah?

14 A -- about anybody doing anything wrong in my
15 situation, altogether, through this whole case?

16 Q Yes, Other --

17 A That's a very good question, Doug, you know.

18 Q Yeah. Other --

19 A What can I say to that.

20 Q I'm --

21 A I have to just very slowly just try to picture
22 my -- let me do this, let me go back in my mind in
23 time, and think of things that I could actually
24 say were maybe wrongdoing and stuff like that.

25 Well the Supreme Court, I felt,



1 was wrong. They should have -- they should not
2 exclude evidence about how witnesses are held in
3 jail and other treatments that they received while
4 they were in the hands of the Saskatoon City
5 Police.

6 Q And is that a reference to Nichol John?

7 A I believe that's a reference to all the evidence
8 they would not consider. Why.

9 Q And would that relate to police conduct, then, is
10 that what you are referring to?

11 A Well media and me, well, you can read a million
12 things in the media. I probably, maybe if I told
13 the media that, I don't know, but that's how I
14 feel in my heart. I don't know if I told anybody
15 that, or not, but that's how I feel in my heart.

16 Q And again, just maybe so that I can be a little
17 clearer on this, certainly in this Inquiry we've
18 heard allegations of wrongdoing that have been put
19 forward on your behalf by others --

20 A Yes, yes.

21 Q -- about who may have done wrong, and I simply
22 want to know if, when you make similar
23 statements, --

24 A Right.

25 Q -- whether it's the same type of allegation and



1 you are relying upon the same sorts of things?

2 A No, but that's just it, Doug, I don't have any
3 information. I'm not part of this procedure.

4 Q Okay. That was --

5 A I don't want to be part of this procedure.

6 Q That was my question, yeah, that was my question.

7 A You know, I feel that it's very important to
8 realize that this thing has been a long time in my
9 life. I realize my mother is there on behalf of
10 the family and possibly as well as AIDWYC, which
11 is the Association in Defence of the Wrongfully
12 Convicted, I admire her for it. But I made my
13 decision, and she respects it, that I want this
14 away from me, and I think that's a healthy
15 decision to make, at least I felt it was for some
16 time.

17 Now in some ways maybe it's been
18 to my benefit to pull myself back into the
19 situation, or be pulled back into it, if you don't
20 mind that sort of terminology. And I'm glad.
21 I -- I'm fine, I'm okay, I'm -- I'm in the middle
22 of having a new child.

23 I feel that in some ways,
24 Saskatoon has suffered a lot by this, the people
25 of Saskatoon. There are some very beautiful



1 people in Saskatoon, and this is a very horrible
2 case, and there's been a lot of people in
3 Saskatoon that I love, and they know who they are,
4 and I love them.

5 I think the answer to your
6 question is personally, in my heart, yes, I hold
7 feelings that things weren't done right because of
8 the rules of law, but that's what they have to do
9 them with I guess.

10 Q Okay.

11 A You know.

12 Q Do you remember, David, we've heard some evidence
13 about a, some allegations that came out in late
14 1992 about some alleged wrongdoings by Mr. Kujawa
15 and Mr. Romanow in dealing with some files, and it
16 was an information that came from a fellow named
17 Michael Breckenridge and there was a press
18 conference that you and your mother and Hersh
19 Wolch attended --

20 A Uh-huh.

21 Q -- I think September 19th, 1992 --

22 A Uh-huh.

23 Q -- where this information was put forward; do you
24 have any recollection of that?

25 A I -- I don't have any recollection of that. I



1 know the name Kujawa; is that the name you said?

2 Q Yes.

3 A Was that the Regina prosecutor?

4 Q Yes.

5 A And what was the other name?

6 Q Romanow, Roy Romanow?

7 A I know that name. He's the people that chased
8 after him to get the nurses paid more money;
9 right?

10 Q Umm --

11 A I think so, yeah. Uh, yeah, I know his name too.

12 Q But, as far as that, would it be fair to say
13 that -- I mean, you were at the press conference
14 where these things were announced, what -- would
15 you be relying upon others to be digging up this
16 information and presenting it, is that fair, as
17 opposed to you yourself?

18 A Well yeah, I don't have any access to anything,
19 really, to do all these things, but I would like
20 to think that I was part of that in some ways
21 because I was working with my family, my mother.
22 I was. Hmm.

23 My mother is a very beautiful
24 person, Doug, and she's also my mother, and she
25 will probably see this at some point in the



1 future, which is good. We, umm, we have grown
2 over the years to become two people that to some
3 degree, all right, try to, I don't like the word
4 'honour', but try to see people, right, for what
5 they are, and sometimes what we should be. And I
6 am still a person that's got a long ways to go in
7 being what I should be in my life, I'm not saying
8 she has a long ways to go to be where she should
9 be in her life, all right, but she's not perfect.
10 But she's a very, very special and very beautiful
11 woman and I, I am very happy that over the years,
12 even though they were taken from me, maybe more so
13 from my father than my mother and my family, my
14 brother, my sisters, that somehow this -- this --
15 I can't reach in and touch it -- this, this mother
16 and son relationship has sustained both of us and
17 a lot of people in some good ways throughout this
18 experience. I feel I'm a good person today as a
19 result of it, I'm happy with the person that I
20 am, --

21 Q Yeah?

22 A -- I can still be a better person and, strange as
23 it may sound, without this situation I wouldn't be
24 the person I am today.

25 Q Well, can we just take a break, a short break?



(Adjourned at 2:04 p.m.)

(Reconvened at 2:10 p.m.)

BY MR. HODSON:

Q We're back, recommencing. Those are all of my questions, Mr. Milgaard. I want to thank you on behalf of myself and the Commission for doing this for us and giving your evidence today, thank you very much.

And if you wish to make any concluding comments you may.

A Thank you very much, Doug.

All I can say is thank you very much to all the legal people that have been helping me out, my legal teams, there are quite a few of them over the years.

I think it's important to say one thing that comes to mind. You know, a lot of Canadian people have come up to my family, myself, my mother, and they come up to us and they congratulate us, still, and they ask me how I am, how my mum is. I think it's important for them to know, you know, that, you know, David Milgaard, Joyce Milgaard, they're not so important as what you see in these people's faces. You know, they, you see the love come up in their faces, and what



1 that is, really, is just them caring for what's
2 right and what's just. So even though I apologize
3 for this case taking as long as it has for this
4 country, maybe it's done a lot of people some good
5 somehow, because they care about what's right and
6 just, and I think that's important to Canada.

7 Q Thank you very much.

8 A Thank you very much, Doug.

9 *(Adjourned at 2:12 p.m.)*

10 **(VIDEOTAPE ENDS)**

11 MR. HODSON: That is all the evidence for
12 today, Mr. Commissioner. We are on tomorrow
13 morning at nine o'clock with Dr. Neil Boyd.

14 I should also indicate, I think
15 I've advised all counsel, that Mr. Asper will be
16 here on Thursday to continue his evidence and as
17 well we'll be sitting Friday with Mr. Asper's
18 evidence.

19 COMMISSIONER MacCALLUM: Thank you.

20 *(Adjourned at 3:43 p.m.)*

21

22

23

24

25



OFFICIAL QUEEN'S BENCH COURT REPORTER'S CERTIFICATE:

I, Karen Hinz, CSR, Official Queen's Bench Court Reporter
for the Province of Saskatchewan, hereby certify that the
foregoing pages contain a true and correct transcription
of my shorthand notes taken herein to the best of my
knowledge, skill, and ability.

_____, CSR

Karen Hinz, CSR

Official Queen's Bench Court Reporter

