

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

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Transcript of Proceedings

and

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

\*\*\*\*\*

On Monday, February 6th, 2006

Volume 118

Inquiry Proceedings



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CALVIN FORRESTER TALLIS, CONTINUED

- BY MR. HODSON

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1 Transcript of Proceedings

2 (Reconvened at 1:30 p.m.)

3 COMMISSIONER MacCALLUM: Good afternoon.

4 ALL COUNSEL: Good afternoon.

5 CALVIN FORRESTER TALLIS, continued:

6 BY MR. HODSON:

7 Q MR. HODSON: Good afternoon, Mr. Tallis. I'll  
8 maybe just call up the outline, 335414, and  
9 re-acquaint us as to where we finished off on  
10 Thursday. We had gone through the background and  
11 your engagement to defend Mr. Milgaard, and we  
12 were on number 2, Meetings with Mr. Milgaard. If  
13 you could go to the next page, we were part-way  
14 through your meetings or the information that Mr.  
15 Milgaard provided to you about the events of  
16 January 30 and 31, 1969, and I think, sir, where  
17 we -- what we established before we went into this  
18 is that I think you told us that you could not  
19 tell us which of the many meetings you had with  
20 David Milgaard when the information came out, but  
21 that you would try and tell us, if possible,  
22 whether the information came to your attention  
23 before the preliminary hearing, number 1; and  
24 number 2, whether it was the type of information  
25 that came out immediately or whether it took --



1           came out after some questioning from you. And I  
2           think for the most part, sir, and correct me if  
3           I'm wrong, that you told us that most or all of  
4           the key information would have been told to you by  
5           Mr. Milgaard either at your August 4, 1969 meeting  
6           or prior, in other words prior to the preliminary  
7           hearing; is that correct?

8           A       Yes, I'm not able to pinpoint it any better than  
9           that, although I certainly got a fair amount of  
10          information from him during our discussions here  
11          in Saskatoon before he was remanded to Prince  
12          Albert.

13          Q       Right. And so, today, we'll finish up on your  
14          meetings with Mr. Milgaard, I'll go through his  
15          statements to the police, a scribbler document,  
16          some of his evidence at the Supreme Court  
17          reference, and then into your assessment of Mr.  
18          Milgaard, dealings with the Crown, etcetera.

19                    If we could then -- the one  
20          other item from Thursday that I said I would bring  
21          back up was a map, and you told us that you had  
22          spent a considerable amount of time with Mr.  
23          Milgaard trying to figure out the route they came  
24          into the city and where they were travelling when  
25          they looked for Mr. Cadrain's house before they



1 got stuck for the first time, which I think you  
2 told us was before the Danchuk's; correct?

3 A Yes.

4 Q And then I think you told us that that was shortly  
5 after they had encountered a lady on the street  
6 and asked directions; correct?

7 A Yes.

8 Q And I think you told us on Thursday that you  
9 believe they came in, down the freeway, and turned  
10 left or west either on 20th or 22nd Street and  
11 then proceeded to go north and south on the  
12 avenues between 20th and 22nd Street; is that  
13 correct?

14 A Yes.

15 Q And if we could call up 054248, please. And this  
16 is a map I think from 1970 or that time frame, I  
17 think the RCMP, at least our source indicate it's  
18 from the RCMP. And if I can just trace through  
19 here, I think the top is north, and I think you  
20 will see at the bottom, here, Labatt's brewery  
21 coming in on the freeway, crossing the river, and  
22 where I've drawn the horizontal lines -- not very  
23 well -- but are 20th and 22nd Street; do you see  
24 that?

25 A Yes, I do.



1 Q And so running east-west are 20th and 22nd Street.  
2 You mentioned on Thursday the Sears store that was  
3 a landmark, or something that was identified, and  
4 where I've drawn the X is the Midtown Plaza and I  
5 believe that's where the Sears store was located;  
6 is that correct?

7 A That's my recollection.

8 Q And if I can just, I think then what you told us  
9 is you believe they came down the freeway and  
10 either turned left or west on either 20th or 22nd  
11 Street and then proceeded through the avenues; is  
12 that correct?

13 A Yes. I'm -- I was never able to pinpoint which  
14 particular avenues they went down. I don't mean  
15 to suggest that they went down every one. They  
16 went to the west, but where they started the  
17 north-south checking, I simply was not able to  
18 figure that out in my discussions with David.

19 Q And you had mentioned as well last day about, I  
20 think, the railroad tracks at Avenue H; do -- were  
21 you ever able to figure out whether it was on the  
22 west or east side of the railway tracks that  
23 intersected 20th and 22nd Street?

24 A No, I wasn't able to as far as David was  
25 concerned, and we spent time discussing that,



1                   particularly when I met with him in Prince Albert.

2           **Q**           Right. And I believe you told us, sir, that you  
3                   think you had a map or you did have a map and some  
4                   notes that you would have sketched on?

5           **A**           Yes. Actually, whether it was a city map or one  
6                   that I had prepared myself of that area, I simply  
7                   cannot recall.

8           **Q**           And the one other item from this map that I just  
9                   wish to point out is that in 1970 it's my  
10                  understanding that when one exited the freeway  
11                  into the west side of the city, today there's an  
12                  off-ramp that goes on to 1st Avenue, according to  
13                  this map that off-ramp wasn't there, so that if  
14                  you were travelling to the west side and going  
15                  west it would be on Idylwyld as opposed to 1st  
16                  Avenue; is that correct?

17          **A**           That's my recollection, but you know I could be  
18                  wrong on that, but in my own mind I'm quite sure  
19                  that you are correct on that.

20          **Q**           Okay. If we can then just go back, and I think  
21                  where we left off on Thursday we were talking a  
22                  bit about the Trav-a-leer Motel and the Danchuks,  
23                  and let me just pick up on the Danchuks. The -- I  
24                  think you've told us that Mr. Milgaard told you  
25                  that after they left the Trav-a-leer Motel they



1           were looking for Albert Cadrain's house; is that  
2           correct?

3           A           Yes. He used the term "Shorty" --

4           Q           Shorty?

5           A           -- Cadrain, "Shorty's" place.

6           Q           And did you ever ascertain from him as to why they  
7           would, why they would go down a back alley, as  
8           opposed to a city street, in looking for his  
9           house?

10          A           You know, I've thought about that question because  
11          you've asked me, and I simply have no recollection  
12          of the reason that was given. I'm quite sure I  
13          would have asked the question, but --

14          Q           Do you recall if --

15          A           -- I am unable to assist you any further than  
16          that.

17          Q           Do you recall whether you would have had any  
18          concerns about that conduct, in other words that  
19          it might be suspicious in some nature entering a  
20          back alley after having received the map?

21          A           Oh, I, I think it would be a better way for me to  
22          put it would be I wondered why, having been stuck,  
23          albeit earlier, why you would drive down a back  
24          alley, but that's my, that's just my general  
25          recollection now.



1 Q Do you have any recollection of it being a theory  
2 or a proposition of either the police or the Crown  
3 that, at that time, that they were trying to go  
4 back to where Gail Miller's body was, that alley,  
5 to check on things, as being a possible theory?

6 A No, I have no recollection of that being a theory  
7 that came to my attention, indeed, I'm quite sure  
8 it wasn't raised with me.

9 Q I think I recall, I think Mr. Fainstein asked that  
10 question of Mr. Milgaard at the Supreme Court,  
11 which is the only reference I saw to it, --

12 A Well --

13 Q -- but I just -- again, back at that time, that  
14 wasn't something on your mind?

15 A No.

16 Q Okay. If we can then go to Cadrain's, to the  
17 arrival at the Cadrain's house, can you tell us  
18 what David Milgaard told you, then, about what  
19 happened when they arrived at Shorty Cadrain's  
20 house?

21 A Well I recall him telling me that he went in to  
22 see if Shorty was home and that, when he found out  
23 that Shorty was home, he called the others in,  
24 Nichol John and Wilson in.

25 Q And did he tell you who was at the Cadrain house?



1           A           Well I remember Shorty and I know that, I think  
2                       there was a youngster there, now whether the other  
3                       brother was there I cannot say. But I know that,  
4                       later on that morning, he went upstairs to say  
5                       hello to Shorty's sister. I think she was in bed  
6                       or something like that, anyway, she wasn't  
7                       actually downstairs. And then I have a vague  
8                       recollection of him telling me that Shorty's  
9                       mother arrived later, in other words she wasn't  
10                      there when he went in or where -- or when the  
11                      group first went in, but I can't remember where  
12                      she came from or what she was out doing. That's  
13                      just very vague, --

14          Q           And you were --

15          A           -- the recollection that I have.

16          Q           And did you ask Mr. Milgaard about whether there  
17                      was anything on his clothing, and in particular  
18                      blood, and whether he changed his clothing at the  
19                      Cadrain house?

20          A           Well, first of all, he told me that he had changed  
21                      his clothes, that is his trousers, and I can't  
22                      recall whether that came from me asking him the  
23                      question or from him telling me. In any event, he  
24                      told me that the trousers were changed because  
25                      they were ripped down the seam, and probably right



1 down to the crotch area. And I asked him about  
2 whether or not he had any blood on his trousers,  
3 he told me that he did not, and that there was no  
4 blood on him anywhere. And I asked him if it was  
5 possible that there were any spots of any type on  
6 his trousers and he mentioned that, well, maybe  
7 there could have been spots from battery acid on  
8 them, but that was a 'maybe'. And I recall asking  
9 him somewhere along the way -- and it was probably  
10 around, at the same time we were discussing this  
11 aspect, whenever it was -- about whether or not he  
12 might have got a little transmission fluid on his  
13 trousers because, at that time, I recalled at  
14 least some of the types of transmission fluid had  
15 a rather maroon-type colour, and he, he told me  
16 that he did not have any fluid on his trousers.  
17 Now this is, I think, later on that we had this  
18 discussion because -- and I may be getting a  
19 little ahead of you here -- there -- I did know  
20 about the transmission trouble that occurred.

21 Q Would you have been -- in your meetings with Mr.  
22 Milgaard, I think you told us Thursday that  
23 certainly on August 4th, 1969, and you told us  
24 even prior to that, you would have been, you  
25 either would have had copies of the Cadrain,



1 Wilson and John statements and/or been aware of  
2 the contents; is that correct?

3 A Yes, I certainly was aware of the contents. I  
4 can't -- I can't tell you whether I had copies or  
5 not at this stage and the other day I think I told  
6 you where I most likely got the information that I  
7 had received, but I certainly remember canvassing  
8 that transmission fluid. Now, that was something  
9 that I asked, it wasn't something that he raised  
10 with me, but --

11 Q And --

12 A -- I thought that when I received the information  
13 from him, and I remember specifically that it was  
14 the transmission line or something that was broken  
15 and I thought that maybe he had got out to check  
16 underneath or something like that, but he said no,  
17 he didn't get anything of that nature, so it was  
18 limited to basically a maybe that there could have  
19 been some spots arising from battery acid.

20 Q Now, we know from the statements of Ron Wilson and  
21 perhaps others that there was mention made of  
22 later that morning when Mr. Milgaard took the car  
23 for a drive having some transmission trouble and  
24 fluid leaking. When you were questioning Mr.  
25 Milgaard or interviewing him on these various



1           dates, would you be putting to him here's what  
2           Albert Cadrain has said, Albert Cadrain has signed  
3           a statement saying that says he saw blood on your  
4           pants, are you able to explain that, things of  
5           that nature?

6           A        There's no doubt that I, in my mind that I did  
7                    that because I was, you know, armed with this  
8                    information and that's why, among other things, I  
9                    was exploring whether or not it could be  
10                   maroon-coloured transmission fluid. I was  
11                   familiar with types of transmission fluid at that  
12                   time and certainly I still recall that there was a  
13                   maroonish colour to some of it at least.

14          Q        Did you, as far as his reason then for changing  
15                    his pants, I think you said he told you that he  
16                    had a rip in them; is that correct?

17          A        That's right, and I'm talking about a significant  
18                    rip; that is, right -- he actually pointed to  
19                    roughly how it ran right down the back and I think  
20                    right into the crotch area. In other words, the  
21                    seam had gone, it wasn't a rip as such, it would  
22                    be the stitching that had ripped or gave way and  
23                    then left him in this type of situation where I  
24                    certainly could understand why he wanted to change  
25                    his trousers.



1 Q Would you, or did you ask him who else might have  
2 observed his pants and shirt before he changed?

3 A I'm sure I did, but I don't recall those details.

4 Q Would you have gone through then in detail what  
5 happened that morning and who said what and who  
6 saw what and who was where and things of that  
7 nature?

8 A Yeah. There were a whole series of discussions  
9 and revisiting it from time to time, but that's  
10 certainly one of the areas that I was quite  
11 interested in and had a duty to inquire.

12 Q Did the fact that Mr. Milgaard had changed his  
13 clothing when arriving at the Cadrain house that  
14 morning, in light of Mr. Cadrain's statement that  
15 he observed blood, did that cause you some  
16 concerns then?

17 A Well, naturally I knew that this was the type of  
18 potential evidence that one would face in the  
19 defence, but I proceeded on the footing that what  
20 David was telling me was correct, and of course I  
21 was certainly influenced I think by the  
22 observations of Danchuks or the fact that they  
23 didn't see anything of significance.

24 Q And the fact that he changed his clothes upon  
25 arrival, apart from the sighting, Mr. Cadrain's



1 statement that he saw blood, did that fact in and  
2 of itself cause you any concern?

3 A No, but I certainly wanted to pursue it and I, you  
4 know, realized that if one could obtain those  
5 actual trousers it would be very helpful.

6 Q And did you make inquiries or make efforts to find  
7 those pants?

8 A I did, we discussed that on more than one  
9 occasion, but I have to say that I don't recall  
10 all the inquiries I made, but I know that I was  
11 unable to locate them and, frankly, David I think  
12 tried to assist me as best he could, but he did  
13 not remember what had happened to them.

14 Q And do you know whether the police and/or the  
15 Crown were also looking for the pants?

16 A Well, I remember during the course of some of my  
17 inquiries learning that the police had been ahead  
18 of me in making inquiries, but --

19 Q About his pants?

20 A Oh, yes, but I can't tell you, you know, the  
21 sources of that information now without the  
22 benefit of file notes and so on.

23 Q And the fact that you, that either you and/or the  
24 police could not find the pants, did that cause  
25 you any concern as far as what the jury might



1 think, positive or negative, about that?

2 A Well, I certainly wanted to be able to produce  
3 them for that very reason.

4 Q And the fact that you could not produce them, did  
5 that cause you a concern, that the jury might  
6 consider that adversely to Mr. Milgaard?

7 A You know, trying to look back, I probably did, but  
8 I don't have any firm recollection of that now,  
9 but I certainly have a firm recollection of my  
10 desire to try and locate them so that they could  
11 be entered as an exhibit.

12 Q If we could call up 007009, please. This is a  
13 police report, Mr. Tallis, of September 1, 1969 by  
14 Constable Mildner, it's at 2:30 in the morning,  
15 and this is a report, so this would be in the  
16 middle of the preliminary inquiry, and so we would  
17 have heard evidence from a number of witnesses  
18 starting on August 18th, and let me just tell you,  
19 September 1 -- August 28th Ron Wilson testified  
20 and Albert Cadrain testified and then it was  
21 adjourned until September 4th, so this would be  
22 after both Ron Wilson and Mr. Cadrain testified,  
23 and I think as well Nichol John may have as well.  
24 In any event, Mr. Mildner was guarding David  
25 Milgaard and says he lays awake at 12 midnight and



1 he discusses his preliminary hearing, and then if  
2 we can just scroll down to this paragraph, it  
3 says:

4 "The conversation turned to the clothing  
5 and in particular to pants that he been  
6 wearing during these events. "I made  
7 two boo-boos in my statement to the  
8 dicks upstairs. One was that I had told  
9 him that I changed my pants in S'toon  
10 which wasn't right - I changed them in  
11 Regina. I can bring the woman up from  
12 Regina who saw me changing them."

13 Milgaard referred that he had a grey  
14 pair of pants that he did change in  
15 Regina when he stole the battery and  
16 spilled some acid on them and that he  
17 presumed that his defence lawyer Tallis  
18 will bring the woman from Regina to  
19 testify to that effect."

20 So if I can just pause there, and I believe that  
21 may be referring to Shirley Wilson, Ron Wilson's  
22 mother. Is that -- what is your recollection  
23 about -- did David Milgaard ever tell you  
24 something of that nature, the part that I just  
25 read you?



1           A           No. There are two things I note, first of all, I  
2                        had cautioned him very early in the going against  
3                        not discussing the matter with anyone unless he  
4                        first spoke to me about it. Secondly, he did not  
5                        at any time indicate to me that he had made some  
6                        boo-boos in talking to the police about this. At  
7                        the end of the day he indicated that he didn't, he  
8                        was unable to pinpoint what happened to his  
9                        trousers.

10          Q           And I'll read the rest in a moment, but on the  
11                        issue of changing pants in Regina, and I think  
12                        there was some -- we've seen some evidence on  
13                        that, on the question of whether David Milgaard  
14                        changed his pants in Regina because of the acid or  
15                        whether there was acid on them in the morning when  
16                        he arrived at Albert Cadrain's when he changed  
17                        them, do you recall asking Mr. Milgaard about that  
18                        and what he would have told you about changing his  
19                        pants in Regina versus in Saskatoon?

20          A           I don't recall him mentioning any change of  
21                        trousers in Regina. I do recall him telling me  
22                        that he had changed them at the Cadrain house.

23          Q           And did he --

24          A           Now, whether we're now talking about the same  
25                        trousers I can't say, but --



1 Q Do you recall whether he told you that when he  
2 changed his pants at Cadraings' house, I think you  
3 told us about the rip in the seam, but did he tell  
4 you about having battery acid on his pants?

5 A No, he didn't say that there was battery acid, his  
6 comment was in response to what I asked him, is it  
7 possible that there were any spots on your  
8 trousers; in effect, that might be mistaken.

9 Q Yes.

10 A And he told me that the only thing he could think  
11 of, and that is that there might be spots from  
12 battery acid, but it was a might or a maybe.

13 Q Okay. Then if we can carry on, the report says:  
14 "The conversation then turned to his  
15 suitcase "Cal Tallis will bring my  
16 pants, my mother asked me what the key  
17 was doing with my belongings in  
18 Langenburg, I told her just yesterday or  
19 the day before that this key belonged to  
20 a locker in the Bus Depot in Humboldt  
21 where my suitcase was both the pants  
22 including the striped pair of pants I  
23 changed in S'toon are." He further  
24 stated that he threw the older suitcase,  
25 did not know when or where, and that the



1 suitcase in Humboldt was a new one and  
2 he purchased since the murder. He  
3 further stated that he figures that Cal  
4 Tallis is bringing the suitcase and that  
5 it probably would be in his mother's  
6 possession and be submitted evidence by  
7 his defence attorney. When he was in  
8 Humboldt he stated that when he was  
9 working with MacLean's magazines after  
10 the murder he went to Humboldt. He  
11 further stated that Wilson may have the  
12 pants now - no explanation for that.  
13 Milgaard further stated "But I have a  
14 shirt" Afterward he stated "I was  
15 wearing it a few days ago in my cell up  
16 here at the Police Stn. and dicks did  
17 not know it." Presumably this shirt is  
18 in Milgaard's Mother's possession."

19 Now, from this police report it's talking about I  
20 think the pants he changed out of at Cadrains'  
21 house; in other words, the pants that Mr. Cadrain  
22 said he saw blood on. Do you have any  
23 recollection of trying to locate them in Humboldt  
24 at a bus depot or through Ms. Milgaard?

25 A No. I'm quite satisfied that David made no



1                    mention of them being in Humboldt to me.

2            **Q**            And as far as this part that I read you, did  
3                    either David Milgaard or Joyce Milgaard tell you  
4                    anything about the pants being in Humboldt in a  
5                    suitcase at the bus depot or elsewhere?

6            **A**            No.

7            **Q**            And if you had been made aware that the pants were  
8                    or might be in a suitcase in the bus depot in  
9                    Humboldt, would you have made efforts to retrieve  
10                   them?

11          **A**            Without a doubt. I should add that I didn't know  
12                   of this police report until you made it available  
13                   to me.

14          **Q**            Thank you for bringing that up, and I did show  
15                   this to you in the last little while and asked you  
16                   about it; is that correct?

17          **A**            That's correct.

18          **Q**            And would it be fair to say that prior to seeing  
19                   this police report, would this be the first that  
20                   you've heard of this possibility, that they might  
21                   have been in a locker in Humboldt?

22          **A**            That's correct.

23          **Q**            I'm done with that report. Now, after the  
24                   Milgaard group arrived at the Cadrain house, can  
25                   you tell us what Mr. Milgaard told you about the



1 incident where he went outside and drove the  
2 vehicle?

3 A Well, I recall that he went out, he got the keys  
4 and went out alone and drove the vehicle around.  
5 Now, I think he told me that he drove it around a  
6 couple of times.

7 Q Around what?

8 A Well, I think he went down the alley at least  
9 once.

10 Q And which alley?

11 A Maybe twice. That would be the alley in that  
12 block.

13 Q Maybe we can just bring up map A for a moment.

14 A But, you know, I'm not sure of all the details of  
15 this now, but --

16 Q Actually, map B I think might be better, and this  
17 map doesn't -- actually, map C has the back alleys  
18 I think, sorry. If we can just call out the  
19 bottom area. This is the Cadrain house on Avenue  
20 O. Would this be the back alley you are thinking  
21 running north-south?

22 A That's the one that I'm thinking of.

23 Q And so driving around, I've drawn a circle around  
24 the alley and then up on 19th and back down on O,  
25 so between 18th and 19th and Avenue O and the



1 alley; is that correct?

2 A Yes. I can't now, I cannot remember now whether  
3 it was once or twice he told me that he drove  
4 around there, but there was no question about him  
5 having gone out and driven on his own, and it was  
6 during the course of this driving that the  
7 transmission gave trouble, and I'm thinking in  
8 terms of the fluid leaking and the vehicle  
9 becoming, in effect, inoperable.

10 Q Did you ask Mr. Milgaard why he went out this  
11 morning and drove the vehicle around?

12 A I'm sure I did because I have a vague recollection  
13 of him telling me, well, I just like to drive and  
14 I'm sure that he assured me that he hadn't thrown  
15 anything out.

16 Q And at that time I take it you would have been  
17 aware that, and this map shows it, that Gail  
18 Miller's wallet had been found a couple, two or  
19 three houses down from Cadrains' house?

20 A Yes.

21 Q And that there was a toque found near the  
22 neighbour's house, a bloody toque that I don't  
23 think was ever connected to anybody or anything,  
24 but you would have been aware of that at the time?

25 A Yes.



1 Q Did you, and again when you learned this  
2 information, did this cause you concern, and I'm  
3 talking about the fact that David Milgaard drove  
4 around the block or the alley a couple of times  
5 and his explanation for doing so?

6 A I have no doubt that I pursued it with him for  
7 that reason and that naturally I expected it would  
8 be evidence that would be led in support of the  
9 prosecution case.

10 Q And in what respect did you think then it would be  
11 either incriminating or part of the Crown's case?

12 A Well, he had been in that vicinity and indeed had  
13 been at the Cadrain house, so with the wallet  
14 having been found fairly close and the driving  
15 around alone would prompt an inquiry by me about  
16 it.

17 Q Did you find this activity or conduct to be  
18 suspicious?

19 A Well, I think looking at it objectively, the  
20 answer is yes.

21 Q And would you have spent --

22 A Now, I have to say, I was of a partisan type of  
23 view, but trying to be as objective as possible,  
24 the answer to that question would have to be yes.

25 Q And again we will touch on this a bit later when



1 we talk about the advice you gave about David  
2 testifying, but would this activity or conduct and  
3 Mr. Milgaard's explanation, would that have been a  
4 factor that caused you concern about having him  
5 testify in his own defence?

6 A There's no doubt about it.

7 Q Now, did you, do you recall asking Mr. Milgaard or  
8 hearing from Mr. Milgaard about whether he and/or  
9 others in his group were in a hurry that morning  
10 or excited and wanting to leave Saskatoon or  
11 things of that nature?

12 A Well, I know that we discussed sort of the  
13 movements that morning, but I didn't see that  
14 there was any conduct that one could describe as  
15 flight from the scene, if that's what you are  
16 directing my attention to.

17 Q There is some, and we'll deal with this when we  
18 look at some of the statements, I think in  
19 particular Albert Cadrain's statement mentioned in  
20 a couple of spots that he thought that Mr.  
21 Milgaard was in a hurry or excited when he arrived  
22 and anxious to leave. Now, there was other  
23 evidence about going to look for Albert's friend  
24 and getting some boots later that day, but just on  
25 the issue of whether or not he was excited or in a



1           hurry, do you recall whether Mr. Milgaard told you  
2           anything about that?

3           A       No. My sense, and I'm trying to recall now, but  
4           at best is that while I think I probably assumed  
5           that these kids, like a lot of kids, were anxious  
6           to get on their way, I didn't see anything in  
7           terms of flight from the scene, and you've already  
8           alluded to some of the things that took place  
9           after they were at Cadraains', they got the car  
10          fixed and, as I recall it from the material, they  
11          then spent time looking around for a friend of  
12          Shorty's to see if he wanted to go and then  
13          looking maybe for a girlfriend, Shorty's or  
14          something like that, so I think from what I  
15          understood, a fair bit of time was consumed in  
16          sort of the post car-fixing period.

17          Q       Okay. What about after the group left Saskatoon  
18          and there was some mention in some of the  
19          statements about the manner in which Mr. Milgaard  
20          was driving the vehicle, I think the suggestion  
21          was that he was driving fast on icy roads and  
22          frightening Nichol John. Do you recall raising  
23          that issue with Mr. Milgaard or asking him about  
24          that?

25          A       Well, just in general terms I think he told me



1           that he liked driving fast and that's about all I  
2           can recall, I'm sure we went into it in more  
3           detail, but frankly, very early in the going I  
4           realized I would be questioning the admissibility  
5           of this type of evidence, whether it was being  
6           adduced for, to show consciousness of guilt by  
7           flight or whether it was sort of touching on bad  
8           character evidence. I didn't see it in that  
9           light, but I certainly wanted to probe it just in  
10          case there was something that I had missed.

11        **Q**       And then did you have any discussion with Mr.  
12        Milgaard about whether he threw anything out of  
13        their vehicle after they left Saskatoon?

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

23        **Q**       And do you recall asking him whether he knew  
24        whether or not that compact had been in the  
25        vehicle when they either left Regina or had



1 arrived in Saskatoon that morning?

2 A You know, I would like to be able to assist you on  
3 that, but I can't recall --

4 Q Okay. Nichol John's --

5 A -- at this time.

6 Q -- statement and/or evidence, I'm not sure which,  
7 but certainly I think her statement and evidence,  
8 she indicated that it was not in the car when they  
9 left Regina or they arrived in Saskatoon, and do  
10 you think that might have been something you would  
11 have asked Mr. Milgaard?

12 A Oh, I know I would have asked, but without my  
13 notes, I can't give you a precise answer on that.

14 Q And --

15 A And I know that I revisited that issue with him on  
16 more than one occasion just to see if there was an  
17 explanation as to why it was thrown out.

18 Q And did you ever get an explanation as to whose it  
19 was or why it was thrown out by Mr. Milgaard?

20 A No, I didn't. He was unable to assist me.

21 Q And did you have concerns about this piece of  
22 information?

23 A Well, I think I appreciated it, that in the  
24 context of this case it could be damaging  
25 evidence.



1 Q And I think --

2 A And that's why I revisited the issue with him.

3 Q I think the Crown asked the jury to draw the  
4 inference that it was Gail Miller's compact or  
5 taken from her purse and that that's why he threw  
6 it out. Do you recall that being part of the  
7 Crown's case?

8 A I'm sure it was. I haven't checked the record,  
9 but I'm sure it was.

10 Q And again, we'll touch on this globally when we  
11 talk about your advice to David Milgaard about  
12 testifying, but was the fact that he acknowledged  
13 throwing out the compact, and I think your words  
14 were 'couldn't explain where it came from or why  
15 he did it', was that a factor in your advice to  
16 him about testifying?

17 A That was certainly a factor that I considered and  
18 weighed in giving him the advice that I did.

19 Q Now do you recall, I think in evidence at trial  
20 was Gail Miller's purse, and I believe the  
21 evidence was that there was some questioning on  
22 its contents, about having make-up or a fair bit  
23 of make-up or being full; do you recall looking at  
24 that issue?

25 A I'm sure I did, but to specifically recall --



1 Q Sure.

2 A -- what I --

3 Q We'll maybe take you to that a little bit later in  
4 the transcript.

5 A Yeah.

6 Q Can you tell us on, just on the issue, I think at  
7 trial -- and I'll show you these parts in the  
8 transcript when we go through the individuals -- I  
9 think Albert Cadrain, Nichol John and Ron Wilson,  
10 I think they all gave evidence about David finding  
11 the compact and throwing it out the window; can  
12 you tell us --

13 A Well, I think it was, if I recall correctly I  
14 think it was Nichol John that had opened up the  
15 glove compartment but I may be wrong.

16 Q I think you are correct, I think that was in her  
17 statement, --

18 A Yeah.

19 Q -- and then Ron Wilson in his evidence -- and  
20 we'll go through all three of these --

21 A Yeah, okay.

22 Q -- but then Ron Wilson, in his evidence, also  
23 described the compact. Albert Cadrain, although  
24 it wasn't in his statement and I don't think he  
25 testified at the prelim, but certainly at the



1 trial he talked about it as well. And, again,  
2 I'll take you to those but just generally, as  
3 defence counsel, can you tell us what limitations,  
4 if any, the fact that Mr. Milgaard acknowledged  
5 throwing out -- finding the compact and throwing  
6 it out and not knowing where it came from; can you  
7 tell us what limitations, if any, that might place  
8 on you in how you approach other witnesses that  
9 give that evidence?

10 A Well, I considered that there were ethical and  
11 professional restraints on the type of suggestions  
12 that I could make. I knew that in fact, from what  
13 he had told me, that he had thrown out a compact,  
14 and under those circumstances it would be  
15 unprofessional for me to suggest to any one of the  
16 witnesses that this did not in fact happen.

17 Q And, again, if we can go --

18 A Now I think that summarizes it --

19 Q Yeah.

20 A -- as best I can distill it without going into a  
21 long-winded explanation.

22 Q Well, let's just go a little bit further, and let  
23 me ask you a couple more questions. Number one --

24 COMMISSIONER MacCALLUM: I'm sorry, I  
25 missed a word he said. Sorry, you said 'ethical



1 and something restraints'?

2 A Professional.

3 COMMISSIONER MacCALLUM: Professional?

4 Okay, thank you.

5 BY MR. HODSON:

6 Q Now obviously when you are cross-examining let's  
7 take Ron Wilson, for example, who says "I saw this  
8 happen", or Nichol John, I think you are saying,  
9 based on what Mr. Milgaard told you, you couldn't  
10 put to the witness, "lookit, I think you are  
11 making that up, I think you are lying, you must be  
12 mistaken, it must have happened on a different  
13 trip", things of those nature; I think you are  
14 telling us, professionally and ethically, couldn't  
15 put that to a witness?

16 A That was certainly my view and, I may say, still  
17 is.

18 Q And then at that time I take it, sir, you wouldn't  
19 know for certain, you may have views but you  
20 wouldn't know for certain whether or not Mr.  
21 Milgaard would be testifying; is that fair?

22 A No, the final decision had not been made.

23 Q And, if you put Mr. Milgaard on the stand to  
24 testify, would you have led evidence from him in  
25 chief about the compact?



1           A           I'm quite sure that I would have concluded that  
2                       the best way to try to take the sting out of it,  
3                       if I may use that term, would be to have led that  
4                       evidence in chief.

5           Q           And so I take it that in cross-examining Wilson,  
6                       John, or Cadrain and suggesting to them that this  
7                       didn't happen when in fact your own client, if he  
8                       was called to testify, would confirm that it did;  
9                       I take it that would be one of the things that you  
10                      talked about being ethical and professional  
11                      responsibility, that -- and obviously, in front of  
12                      the eyes of the jury, might cause them to question  
13                      your position; is that fair?

14          A           Well, and to question the merits of his position.

15          Q           Now that --

16          A           Which --

17          Q           I'm sorry?

18          A           Because that's far more important than what they  
19                      thought of me.

20          Q           Right. Now secondly, if you had made the decision  
21                      to call David and were certain about it so that he  
22                      wasn't going to testify, and I think you are  
23                      telling us that even in that scenario, where the  
24                      jury may never hear from David about whether he  
25                      did or didn't through out the compact so that only



1           you would know what he told you and he would know  
2           what he told you, in that scenario I think -- can  
3           you just expand a bit about your obligation and  
4           how you felt you were limited by your ethical and  
5           professional obligation in dealing with this issue  
6           with these witnesses?

7           A       Well, I can sum it up this way, by saying that in  
8           my opinion my duty to the Court -- and here I say,  
9           I use the term "Court" to include judge and jury  
10          -- would be the same.

11          Q       Do you recall David Milgaard's reaction to this  
12          issue about the compact; would you have told him  
13          that "lookit, this is the Crown's theory, this is  
14          what they are advancing, this is what these people  
15          are saying"?

16          A       Well we discussed it in a very serious way, and as  
17          I mentioned to you, this question, among others,  
18          was revisited on one or more occasions, I think  
19          several occasions, and not that I was coaching him  
20          to come up with an answer, but I was trying to  
21          make sure that there was no explanation that he  
22          could offer other than what he had told me  
23          initially, and that is that "you know, I don't  
24          know why I threw it out, I don't know where it  
25          came from". So this was an important issue, along



1 with others, but I --

2 Q And we'll just --

3 A -- can't go into more specifics, I guess at this  
4 stage, than that.

5 Q Would you tell us what you would have discussed  
6 with Mr. Milgaard about drug use by he and others  
7 in their group, Wilson, John, and Cadrain, both on  
8 January 31, 1969, the trip from Regina to  
9 Saskatoon, and the subsequent trip?

10 A Well as a result of our discussions I was quite  
11 satisfied, from what he told me, that there had  
12 been no use of drugs or alcohol on the trip from  
13 Regina to Saskatoon. I can't recall about what  
14 was said about the use of drugs sometime prior to  
15 leaving Regina, but certainly the -- every  
16 indication from him was that they were not using  
17 drugs on the trip to Saskatoon and that no one of  
18 them was under the influence of drugs on the trip  
19 or during the period of time they were in  
20 Saskatoon.

21 Q And then what about after that, when they left  
22 Saskatoon for Calgary, Edmonton, Banff?

23 A Well, when they got up into Alberta he told me  
24 about accessing drugs somewhere, but to give you  
25 all the details of that without my notes, I'm



1 simply unable to do so.

2 Q And would that have been a concern for you as far  
3 as, again, calling Mr. Milgaard to testify; the  
4 fact that he and his group had used and bought  
5 drugs, not on the day in question but after, what  
6 was your thinking on that?

7 A Well, naturally it was a concern, but I suppose  
8 the best way I could explain that was that I think  
9 we reached a stage where the Crown virtually  
10 conceded that drugs were not used at the relevant  
11 time. But I was concerned about what could happen  
12 if character was put in issue, and this is  
13 something that I wanted to avoid on his behalf,  
14 because of the potential damage that could do to  
15 any case.

16 Q And can you tell us how his drug use might affect  
17 the character evidence, or can you explain what  
18 your fear was there?

19 A Well I, you know, I -- to go into details now is  
20 very difficult for me, but I realized that if --  
21 the potential -- I tried to conduct the case in  
22 such a way that character was not put in issue by  
23 me through the questions I was putting. Whether I  
24 did it successfully, I guess, can only be measured  
25 by the way the Crown responded, and I don't think



1           there was any attempt to put it in, to put in  
2           character evidence.  Although in the initial  
3           stages -- and I think, I'm thinking in  
4           pre-preliminary, in the pre-preliminary hearing  
5           and even at the preliminary hearing stage -- I was  
6           cautious about whether or not the prosecution  
7           would attempt to lead evidence of this nature.  I  
8           would have strenuously resisted it on the footing  
9           that character evidence or propensity ought not to  
10          enter into it.

11          Q           Just on the drug use, would that -- and I'm not  
12                       sure if I understood your earlier answer -- would  
13                       there be a concern that the jury might think a  
14                       person who uses drugs might be more likely to  
15                       commit an offence than a person who doesn't?

16          A           Well I think that, having regard to the nature of  
17                       this homicide, there might be an inference that it  
18                       was a frenzied type of attack.  And I think that  
19                       during the course of the trial I have a general  
20                       recollection -- and you can correct me if I'm  
21                       wrong -- but I think that there came a point where  
22                       the jury asked a question about whether or not  
23                       drugs were used or whether alcohol -- now whether  
24                       they said drugs and/or alcohol I don't recall, but  
25                       certainly there was an inquiry about that in the



1 form of a question, and I think that question was  
2 answered by the judge.

3 Q Okay. I will look for that later today, Mr.  
4 Tallis, or tonight.

5 A Yes.

6 Q And so again, just on the question, I think you  
7 told us that you established or got the Crown to  
8 agree that there was no drug use either on the  
9 trip, drug or alcohol use on the trip to Saskatoon  
10 and/or that morning. And would that be, as I  
11 think you are telling us, that you did not -- you  
12 wanted to ensure that the jury knew that Mr.  
13 Milgaard was not under the influence of drugs or  
14 alcohol at the time that this murder had taken  
15 place?

16 A That's correct, and I think I was able to elicit  
17 from the witnesses that that was the case. Now,  
18 here again, I'm speaking purely from recollection  
19 but --

20 Q I believe that's in the charge to the jury.

21 A Yes, and that --

22 Q Do we take it from that, then, that your concern  
23 if the evidence had been the other way and in fact  
24 had been that there had been -- that they had been  
25 under the influence of drugs and/or alcohol on the



1 trip that morning, that the jury might draw an  
2 inference negatively to Mr. Milgaard; is that what  
3 you are telling us?

4 A Yes, yeah.

5 Q And, again, back to the question that -- and,  
6 again, an inference that a person on drugs and/or  
7 alcohol might be more likely to have committed  
8 this offence than someone who was not; was that  
9 your concern?

10 A Well, particularly with reference to the drugs.

11 Q Okay. Do you recall talking to Mr. Milgaard or  
12 him telling you anything about, after they left  
13 Saskatoon, encountering a transport truck or  
14 getting a push by a truck; do you remember  
15 anything about that?

16 A I do not recall any such conversation about that.

17 Q And a couple of other points. There was, in Ron  
18 Wilson's statement, his March -- or pardon me --  
19 his May 23rd, 1969 statement he talks about a  
20 conversation with David Milgaard at a bus depot in  
21 Calgary where he claims that, or he claimed at  
22 that time that, in the statement, that Mr.  
23 Milgaard had admitted to him jabbing or stabbing a  
24 girl, taking her purse and putting it in a garbage  
25 can; would you have asked him about that



1 conversation?

2 A Well, I'm sure I asked him about it, but --

3 Q Would he have denied that?

4 A I think that he told me that that didn't happen.

5 Q And then Albert Cadrain a couple of items in his  
6 statement, were one that he claims that David  
7 Milgaard told him that David Milgaard was in the  
8 Mafia; do you have a recollection of asking David  
9 about that or hearing his answer to that?

10 A I'm sure I asked him about it but I don't -- and I  
11 don't recall his answer on that. I think he just  
12 treated it as a joke, or not -- nonsensical, so to  
13 speak. But I -- but that, of course, gave rise to  
14 trying to make sure that that type of evidence was  
15 not admitted.

16 Q And then, as well, there -- and we'll come to  
17 that -- and I think Albert Cadrain also claimed  
18 that, in a statement, that David Milgaard had told  
19 him, I think right around the time he told him  
20 about the Mafia or -- that he had a gun and that  
21 he may want to get rid of Ron and Nichol because  
22 they know too much; is that something you would  
23 have asked Mr. Milgaard about?

24 A I asked him, and on reflection I'm sure that he  
25 said that that wasn't so but, you know, kids can



1           joke around and talk foolishly and I think, you  
2           know, David may have mentioned, "well, I can't  
3           remember everything that was said but, you know,  
4           there's joking around."

5           **Q**       Now I'll deal with this subject matter a bit later  
6           because I'd like to do it chronologically, and  
7           that is the motel reenactment, as we've termed it  
8           or it has been termed, the evidence from Craig  
9           Melnik and George Lapchuk; you know of what I  
10          talk, --

11          **A**       Yes.

12          **Q**       -- what I'm talking about? And we'll deal with  
13          this in January of 1970 when it comes up, but  
14          prior to you becoming aware -- and I think you  
15          would have become aware of this new evidence from  
16          Mr. Caldwell; is that correct?

17          **A**       Yes, I think you are correct on that.

18          **Q**       And I think the documents suggest that would have  
19          been on the eve of trial in January of 1970?

20          **A**       Yes, I think that's correct.

21          **Q**       Prior to that time, prior to you being made aware  
22          of that by Mr. Caldwell, would you have had any  
23          discussion with David Milgaard about that; did  
24          that subject come up in any discussions with him?

25          **A**       I don't recall it ever coming up, and I -- and



1 sort of trying to look at it globally, I don't  
2 think that it did.

3 Q Okay. And, again, we'll deal with this when we  
4 get to those statements a bit later.

5 A Yes.

6 Q If we could then go back to your meetings, again,  
7 with David, and I think I've touched on the  
8 subject matters that, at least the key subject  
9 matters; would it be fair to say that you would  
10 have probed other matters with him as well, trying  
11 to find out anything that might be of assistance  
12 in your defence of him?

13 A Yes, I certainly spent quite a bit of time with  
14 him, and anything that I thought would be of  
15 assistance I probed.

16 Q And did you -- what was your observation, if I can  
17 call it that, of your relationship with David  
18 Milgaard? Did you find -- did you think he was  
19 being -- that he was comfortable with you and  
20 comfortable talking with you about this matter?

21 A Umm, I thought that he was, and he seemed to  
22 listen carefully to any questions I asked, and he  
23 would respond to them carefully. He was not an  
24 emotional boy, if I may call him 'a boy'.

25 Q Yeah.



1           A           But by that I do not mean to suggest he didn't  
2                        have feelings but, you know, some people are much  
3                        more emotional than others and I would say he  
4                        wasn't an emotional boy in terms of exhibiting  
5                        emotions, and I don't think I could put it any  
6                        better than that. But in terms of a  
7                        solicitor/client relationship, I thought that it  
8                        was an understanding relationship.

9           Q           And did you come away from your meetings with him  
10                       with a view that he was being honest with you and  
11                       telling you everything?

12          A           I think he was endeavouring to. And his problem,  
13                       like many witnesses, is that trying to remember  
14                       all the details is often very difficult. And I'm  
15                       thinking of the trousers, you know, trying to  
16                       locate where the trousers were and so on, and it's  
17                       difficult to state it any other way.

18          Q           And do you recall; did you have any disagreements  
19                       with him or anything that might be characterized  
20                       as uncooperative on his part?

21          A           No, I never recall any hostility or near-hostility  
22                       arising with him or his family.

23          Q           I'd now like to turn to --

24          A           Let me --

25          Q           I'm sorry?



1           A           Let me put it this way. I think that we treated  
2                           one another with civility, and that, in my view,  
3                           was the way it should be handled.

4           Q           Now, again on the issue of your discussions and  
5                           meetings with David, I think you told us on  
6                           Thursday that you would have been aware, initially  
7                           at least from David, that he had given at least  
8                           two written statements to the police in connection  
9                           with this matter?

10          A           Yes, and I think at the time he mentioned, you  
11                           know, interviews. Now whether they were  
12                           interviews that later translated into those  
13                           statements, I don't recall, but from talking to  
14                           him I was quite aware about statements that he had  
15                           given or the discussions that he had.

16          Q           Can you tell us, as defence counsel, just  
17                           generally what concerns do you have or what do you  
18                           look for when you have an accused that has  
19                           provided written statements to the police? What  
20                           are the considerations, what do you look for in  
21                           the statements, and what concerns, if any, arise  
22                           from that?

23          A           Well, first of all, I -- you know, it's important  
24                           to know what has been said, whether the person has  
25                           put it into a written statement or, to use a term



1 I sometimes used, written with his mouth; that is,  
2 telling things to the investigators regardless of  
3 whether or not they were incorporated into  
4 statements.

5 Q And would the -- let's just go back to Mr.  
6 Milgaard's case, then, and/or any other accused  
7 for that matter -- would the, both the substance  
8 of what an accused says to the police and the  
9 manner in which he or she says that to the police,  
10 would that be an important consideration for you  
11 as defence counsel in defending an accused?

12 A Yes.

13 Q And can you tell us why?

14 A Well, if you have statements that are given, you  
15 have to know -- you have to -- you want to know  
16 about them, because the prosecution may well not  
17 put the statements in, but along the way they may  
18 have a voir dire -- at least in that era -- have a  
19 voir dire to determine whether the statement was  
20 voluntary, and then of course would use the  
21 statement for purposes of cross-examination.

22 Q Okay. So let's just go back, again, to just  
23 generally what may come of statements, written  
24 statements from an accused, and/or other  
25 statements. I think you are telling us that



1           number one, if an accused testifies, then the  
2           statement, assuming it to be voluntary, could be  
3           used to cross-examine the accused; --

4           A           Yes.

5           Q           -- is that correct?

6           A           Yes.

7           Q           And so what is in that statement, the substance,  
8           and I suppose what is not in the statement and how  
9           it's said; would that be important matters, then,  
10          for you as defence counsel?

11          A           Umm, yes. The question of what in the -- what is  
12          in the statement, and the manner in which it is  
13          stated, is significant. But then another aspect  
14          is whether or not there are any significant  
15          omissions from the statement, or narrative  
16          included in the statement. Because as I recall it  
17          -- and here, of course, I'm not up to date on it  
18          and I haven't re-briefed it going back to that  
19          period -- as I recall it, cross-examination on a  
20          statement, once found voluntary, could also focus  
21          on significant omissions.

22          Q           And again, if an accused gave a statement that had  
23          significant omissions, then would that go to the  
24          issue of credibility, then; is that --

25          A           I think the prosecution, the prosecutor, examining



1 -- the cross-examining counsel would certainly use  
2 it for that purpose.

3 Q And then again, as far as the statement itself, if  
4 ruled to be voluntary, if it had admissions in  
5 there, then the Crown might -- is -- am I correct  
6 the Crown might try and lead that evidence in the  
7 statement?

8 A Yes, that's correct.

9 Q If we can then go, and I'll go, I'll take you to  
10 Mr. Milgaard's statements. The first is 006586.  
11 And this is the handwritten statement of March  
12 3rd, 1969. I will go to a typed version in a  
13 moment. Do you remember when you would have  
14 received this statement and at what point you  
15 would have sat down with Mr. Milgaard to go  
16 through it?

17 A I can't tell you when I received this actual  
18 statement, I think you probably have a record of  
19 when I received it, --

20 Q Well --

21 A -- but, as I mentioned to you the other day I was  
22 quite aware of the contents of various statements,  
23 actually I'm quite sure I got information  
24 beforehand, and as I told you on reflection I  
25 think it was likely from Mr. Wolff --



1 Q And I think --

2 A -- or being allowed to look at them in his office.

3 Q I think there was a letter, and I stand to be  
4 corrected, in early September when Mr. Caldwell  
5 sent you a copy of the statement, --

6 A Yes.

7 Q -- which would be towards the end of the  
8 preliminary hearing, and I will turn that up a bit  
9 later once we get -- when we go through the  
10 disclosure part. Are you able to tell us whether  
11 you would have had either another copy of the  
12 statement, or been aware of its contents, for  
13 example at your August 4th, 1969 meeting with Mr.  
14 Milgaard?

15 A I was certainly, the best I can say to you at this  
16 time is that I was certainly aware of its  
17 contents, whether I'd actually got a copy through  
18 the good office of Mr. Wolff early in the going I  
19 cannot recall, but I certainly knew what had been  
20 said and --

21 Q I think what you told us Thursday, and please  
22 correct me if I'm wrong, that you said you either  
23 would have received or obtained a copy of it, a  
24 photocopy, or possibly transcribed it in your own  
25 notes what was in it; is that right?



1 A That's right.

2 Q And actually if we call up 168034, this is a  
3 letter of September 9th, 1969 from Mr. Caldwell,  
4 and we'll go to the second page. There is a  
5 comment there:

6 "I also enclose copies of the two  
7 statements taken from the accused, one  
8 in Winnipeg ...",  
9 etcetera.

10 A Yes.

11 Q And so this would be September 9th, which is I  
12 think at the end of the preliminary hearing.

13 A Yes.

14 Q And I think you are telling us that,  
15 notwithstanding this letter, you would have either  
16 had the contents or perhaps even a copy from  
17 another source; is that right?

18 A Yes, yes.

19 Q If we can go back to 006586. And this would have  
20 been taken by Mr. Karst in Winnipeg March 3rd,  
21 1969, the second statement was taken April 18th I  
22 believe, or April 16th, 1969, by Detective  
23 Barrett; do you recall asking David Milgaard about  
24 how he was treated by the police when these  
25 statements were taken?



1           A           My recollection is that he had no real complaint  
2                        about how he was treated, you know, in terms of  
3                        abuse or browbeating or anything like that.

4           Q           If we can go to 305273, and this is the  
5                        typewritten version, it's just easier to follow  
6                        through?

7           A           Yes.

8           Q           This is the March 3rd, 1969 statement, Mr. Tallis,  
9                        that was handwritten by Mr. Karst and taken in  
10                       Winnipeg, and I'll go through parts of this with  
11                       you, but do you have a recollection of having any  
12                       concerns about either the substance or the manner  
13                       in which these statements were provided by Mr.  
14                       Milgaard to the police?

15          A           Well, there was -- the part:

16                        "Q    Were you in Saskatoon this year?

17                        A    Maybe."

18                        I know from talking to him that, number 1, he  
19                        knew he had been in Saskatoon and he was able to  
20                        pinpoint pretty well the date that he was here.

21          Q           And did you ask him about why he would have  
22                        answered that way to the police or did you come to  
23                        any conclusions about that?

24          A           Well, I think he may have been, you know, as kids  
25                        sometimes do, playing a bit with the inquiring



1 officer, you know, but that's just my sense based  
2 on a recollection going back many, many years.

3 Q And again, we'll go through parts of this, but  
4 again if Mr. Milgaard were to testify at the  
5 trial, would these answers that you've pointed  
6 out, would these be of concern to you?

7 A Yes, they would, once -- if the statement was  
8 found to be voluntary and, from what I had been  
9 told, I thought probably it was, would pass the  
10 test of voluntariness.

11 Q And so just on that point, I think would it be  
12 fair to say at the time of trial it was your view  
13 that if the Crown submitted these statements, that  
14 they would likely be admissible as being  
15 voluntary?

16 A There was a good possibility of it.

17 Q And if we can -- again, back on these questions  
18 then, assuming this would have been admissible,  
19 would you have had concerns about those two  
20 questions and answers?

21 A Well, I knew that he would have been pressed to  
22 explain them.

23 Q And what was his explanation or what would it have  
24 been?

25 A Well, I think that he would have said quite



1                   honestly that I was just sort of playing with them  
2                   or fooling with them a little.

3           **Q**       Did you have any concerns that these questions and  
4                   answers might be construed to be suspicious by the  
5                   jury?

6           **A**       I think that depending how he was able to handle  
7                   it, they might reflect on credibility, yes.

8           **Q**       Now, again if we can just scroll down, it talks  
9                   about a record there and it appears that he  
10                  volunteered a fair bit of information to -- I  
11                  shouldn't say a fair bit of information, it  
12                  appears that he told the police what he knew of at  
13                  that time about his record of any type; is that  
14                  fair?

15          **A**       Yes.

16          **Q**       And again, did this information, were you aware of  
17                  this, would you have discussed this with him?

18          **A**       Well, he told -- you know, I think I mentioned to  
19                  you the other day, I sort of took, talked to him  
20                  about his troubled youth and that included details  
21                  of the conflict he had been into with the law and  
22                  I made careful notes of it, but, frankly, I don't  
23                  recall the particular items that he pinpointed.

24          **Q**       If we can go to the next page, and he's asked here  
25                  about whose car they took, and he says:



1 "A Ron borrowed a battery for it."

2 And I think you've told us that David Milgaard  
3 had told you that they actually stole a battery  
4 and I think Ron Wilson said the same thing. Did  
5 that piece of information cause you any concern?

6 A Well, naturally it's an issue of character, but  
7 that's the type of thing I would hope to keep out  
8 of the trial if they started expanding into  
9 various other areas.

10 Q And would one, I guess one response or one way to  
11 deal with this would be that any young person  
12 meeting with police might be reluctant to talk  
13 about other criminal activity or other activity  
14 that might draw some suspicion?

15 A Yes.

16 Q In other words, that it might not be unusual for a  
17 young person in this scenario not to volunteer  
18 that they had stolen a battery?

19 A Yes, I think that's a fair comment.

20 Q And then the next question and answer:

21 "Q When did you get to Saskatoon?

22 A In the morning - don't know light or  
23 dark - don't know the day."

24 And again I guess that's along the same lines as  
25 the questions on the previous page. Would that



1           have been something that would cause you concern  
2           if Mr. Milgaard were testifying at his trial?

3           A       Yes, but not to the same extent of some of the  
4           other things. From talking to him and the, you  
5           know, consistent with other information that came  
6           to my attention, it was essentially dark when they  
7           arrived in the city, you know, they hadn't reached  
8           day break as I recall it.

9           Q       And then again if we can scroll down a bit, a bit  
10          further, it talks here about:

11                   "Spoke to old woman on street - asked  
12                   directions - Stopped at motel with  
13                   carport - maybe got a map - motel was on  
14                   the perimeter."

15          And again, anything in that answer that would  
16          have caused you concern had he testified?

17          A       Well, the information that I had been given was  
18          that, and I don't want to quibble over words, but  
19          we talked the other day about an older woman and,  
20          you know, I endeavoured to sort of put an age  
21          frame bearing in mind that he was a 16 year old,  
22          17 -- or 16 1/2 years of age.

23          Q       And if we can just scroll down a bit:

24                   "Q    When did you stop first when you got to  
25                   Saskatoon?"



1                   A     I don't know."

2                   Would that have been something that would concern  
3                   you if Mr. Milgaard testified?

4           A     In the scheme of things I don't think they were,  
5                   that it was a major area, let's put it that way.

6           Q     Then if we can go to the next page, please, and  
7                   again he talks about, I don't want to go through  
8                   it, but talks about looking for Shorty, and then  
9                   the question:

10                   "Q    Was it daylight?

11                   A     I think so.

12                   Q     Why can't you remember?

13                   A     Time doesn't mean anything or days,  
14                             maybe years."

15                   Would that have been something that would have  
16                   caused you concern?

17           A     Well, I think that would have had to have been  
18                   explained as sort of a flippant answer, I think  
19                   that's what it was.

20           Q     And if we can scroll down a bit, and he goes  
21                   through questions and answer about car trouble:

22                   "A    Yes we got stuck & car wouldn't start.

23                   Q     Where?

24                   A     I don't know, in an alley."

25                   And then if we can scroll down, he says:



1 "Q Was it around an apartment block?

2 A Yeah, I think so."

3 And the next page:

4 "Q How did you happen to get stuck?

5 A A car was ahead of us & got stuck, we  
6 tried to push --"

7 It out, and I think this is the Danchuks.

8 A Yes.

9 Q Now, there is no mention in this statement of the  
10 occasion when Mr. Milgaard, as you've told us,  
11 told you they got stuck after stopping the woman  
12 for directions and him leaving the vehicle with  
13 Mr. Wilson. Would that have been something, did  
14 you ask Mr. Milgaard why he would not have told  
15 the police about that or why it might not be in  
16 the statement if he did tell the police about it?

17 A I'm sure I discussed it with him, but to recollect  
18 at this stage exactly what was said --

19 Q And would the fact that that information was not  
20 in the statement, would that be an omission that  
21 might cause you concern?

22 A Well, it could be under certain circumstances  
23 because it could give rise to cross-examination on  
24 what I would call significant omissions if these  
25 cases, if these statements were admitted.



1 Q And then again down, if we can go to the next  
2 page -- actually, go to page 278 and at the top,  
3 and this is talking about changing clothes at  
4 Cadraains':

5 "Q Did you change clothes there?

6 A (After long pause) Maybe, maybe my  
7 pants, there was acid on it from the  
8 battery. Maybe my shirt, I don't  
9 know, my clothes were dirty, I had to  
10 change."

11 Ask then:

12 "Q Where is the clothes you took off?

13 A Maybe in the car - or Ron's or at  
14 Shorty's or maybe threw them out, had  
15 a hole in the crotch. I remember when  
16 I got the map at the motel my crotch  
17 was ripped right around. "

18 Again, is there anything there that would have  
19 caused you concern?

20 A Well, in the context of this case, there were  
21 aspects of it that would, yes.

22 Q And can you just elaborate on that?

23 A Well, there's a positive statement "there was acid  
24 on it from the battery" and in the discussion that  
25 I had with him he did not think that there was



1 any -- well, number 1, there was no blood on it,  
2 on his trousers.

3 Q Yes.

4 A And secondly, he didn't think there were any spots  
5 on, but maybe there were spots arising from the  
6 battery acid. Now, it may be that it's a matter  
7 of language or words, but then further down here:

8 "Q Did you have blood on your clothes?

9 A I don't know."

10 That of course is a pretty significant comment  
11 because what I had been told was that there was  
12 no blood on his clothes; that is, no blood  
13 anywhere if we want to extend it.

14 Q And so if you called Mr. Milgaard to say, and he  
15 said that he did not have any blood on his  
16 clothes, can you tell us what your concern about  
17 how this statement might be used against him?

18 A Well, if he was cross-examined, I think the focus  
19 would be on the words:

20 "A I don't know. - I don't think so, I  
21 suppose you think I had something do  
22 with the girl?"

23 But I think the words "I don't know" would take  
24 on significance, that of course in my partisan  
25 way would say it was not warranted, but certainly



1           that wouldn't preclude cross-examination on it  
2           compared with the position that there was  
3           absolutely, you know, an absolute admission that  
4           there was no blood.

5           **Q**       So a question of a nature is on March 3rd you  
6           didn't know and now you do know, what caused you  
7           to be more certain?

8           **A**       That's right.

9           **Q**       Something along those lines?

10          **A**       Yes.

11          **Q**       And again, would you have asked David about that  
12          question and answer, do you recall, have any  
13          recollection?

14          **A**       Well, I'm sure that I reviewed, you know, what he  
15          had told the police.

16                    MR. HODSON:           This is probably an  
17                    appropriate spot to break, Mr. Commissioner.

18                    *(Adjourned at 2:59 p.m.)*

19                    *(Reconvened at 3:24 p.m.)*

20          BY MR. HODSON:

21          **Q**       If we can go back to 305273 and go to page 278,  
22          please, and this is the statement of David  
23          Milgaard we were going through and I think we just  
24          finished off about the blood part, you told us  
25          about the "I don't know". Anything about this --



1                    "... I suppose you think I had something  
2                    to do with the girl?

3                    Q     What girl?

4                    A     Gail Miller."

5                    Anything there that caused you concern,  
6                    Mr. Tallis?

7     A     Well, I think I've alluded to the --

8     Q     To the blood, right.

9     A     -- "I don't know" aspect, that's the primary  
10                  aspect of it that I would refer to.

11     Q     If we can then scroll down a bit, please, it talks  
12                  about, he's asked:

13                  "Q     Did you leave Shorty's by yourself first  
14                  & drive away?

15                  A     Yeah, I turned the car around.

16                  Q     Why?

17                  A     It was across the street, I was  
18                  putting it on the right side for the  
19                  suitcases.

20                  Q     Didn't you drive around the block?

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

23                  Q     If you were tired and got stuck in the  
24                  lane already why did you go in the lane  
25                  again?



1           A     I like to drive I guess."

2           And then:

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

5           A     No."

6           And again, you may have touched on this already  
7           when I asked you about his explanation that he  
8           gave to you about why he was driving around the  
9           alley. Did you have concerns about that being in  
10          the statement?

11          A     Well, that was actually essentially what he had  
12          told me when I asked, I like to drive was  
13          essentially the explanation he gave me, and that I  
14          think is essentially the explanation in here.

15          Q     Now, the question here, and I'm not, I can't  
16          recall if I -- I think we heard evidence to this  
17          effect, that a couple of theories that were part  
18          of the, came from either the police or the Crown  
19          at the time was that driving around the block in  
20          the alley, one, was to discard the wallet, and  
21          two, was to maybe check the scene of the crime to  
22          see what was happening there, and I think that's  
23          perhaps what prompted this question about did you  
24          see any people or police cars. Do you recall  
25          having any concerns about that being put to Mr.



1 Milgaard if he testified about why -- or a concern  
2 that the jury might infer that he was driving  
3 around the alley and the block for reasons other  
4 than he liked to drive?

5 A Well, I thought that was the explanation, and the  
6 way it came out to me, it wasn't something that  
7 shocked me or triggered any reaction. As far as  
8 the theory that he was driving around to check on  
9 the crime scene, I don't recall that theory  
10 having, you know, come to my mind or having been  
11 put in my mind at that time. I think that it  
12 emerged from some of the things that you asked me  
13 to read.

14 Q Okay. So at the time you are telling us you don't  
15 think that would have been something on your mind  
16 or a concern about having him testify in light of  
17 this statement?

18 A No. I think that the explanation was I like to  
19 drive and he of course told me, as I mentioned  
20 earlier, that he hadn't thrown anything out there.

21 Q Okay. Then if we can go to the next page, please.  
22 Actually, to 80, please. There's three questions  
23 and answers:

24 "Q Have you ever had psychiatric treatment?

25 A Yes.



1 Q Where?

2 A Yorkton Psychiatric Centre when I was  
3 13.

4 Q Who was the Dr.?

5 A Dr. Andrew - I make snap decisions, he  
6 had a name for it."

7 Was this information in the statement of any  
8 concern to you if Mr. Milgaard had testified?

9 A Well, number one, I had taken an history of his  
10 problems and I was aware of it, but frankly I  
11 didn't think that this would have been properly  
12 admissible evidence unless there was a foundation  
13 to be laid for it that I wasn't aware of.

14 Q And as far as this information, is this question  
15 and answer, is that something that you would want  
16 before the jury, putting aside the issue of how it  
17 gets there?

18 A No, I would have resisted it.

19 Q If we could go down here:

20 "Q Are you on drugs or anything?

21 A Not now, was on acid 5 or 6 times -  
22 speed - dexadrine - pot.

23 Q And were you hopped up before coming to  
24 Saskatoon?

25 A I was on pot a few days before but



1 O.K. when got to Saskatoon."

2 Now, again, would this information, would you  
3 want this information before the jury?

4 A No, and I would have resisted it on the footing  
5 that it offended some rules of admissibility.

6 Q And then scroll down to the bottom:

7 "Q When you were in Saskatoon that morning  
8 were you by yourself or did the rest  
9 leave you at any time?

10 A I'm not sure."

11 Again, was that part of the statement, did that  
12 cause you any concern in considering whether Mr.  
13 Milgaard might testify and how the statement may  
14 be used?

15 A Yes, that was the, a portion of the statement, if  
16 it was declared to be voluntary, that might well  
17 be used for cross-examination purposes,  
18 particularly in light of what he had told me.

19 Q And then if we can go to the next page, I think  
20 this statement finishes off and it wasn't signed.  
21 Do you have any recollection of discussing with  
22 Mr. Milgaard whether he signed this statement, or  
23 if he didn't, why he didn't?

24 A I'm not sure at this stage. I'm sure that we  
25 talked about it and -- but to recall it now --



1 Q You had mentioned a bit earlier --

2 A I know that, you know, many, some accused persons  
3 are perhaps under the mistaken impression that if  
4 they don't sign it, it can't be used against them,  
5 but I don't recall any comment or anything like  
6 that.

7 Q You had mentioned earlier this afternoon that one  
8 of the concerns you had generally for an accused  
9 who has given a written statement, and I think you  
10 said as well in this case was that if there were  
11 significant omissions in the written statement,  
12 that that might be used against the accused if he  
13 testifies; is that correct?

14 A Yes.

15 Q And so if we can go through this initial  
16 statement, there's no mention in the statement,  
17 I'm just trying to compare the statement with what  
18 information Mr. Milgaard had provided to you, and  
19 putting aside any reason as to why it may not be  
20 in the statement, but his thoughts or intentions  
21 of robbing the woman I think were your words about  
22 when he stopped the woman for directions, would  
23 that be a concern for you, the fact that that was  
24 not in the statement?

25 A In the context of this case, the answer is yes,



1 and I knew that if I didn't lead that kind of  
2 evidence, it would certainly be an area that was  
3 probed in cross-examination.

4 Q And in particular, I think you had already told us  
5 that that would be probed in cross-examination,  
6 but the fact that that was not information that  
7 was in the statement to the police, would that be  
8 an additional concern?

9 A Well, that would be another aspect of  
10 cross-examination --

11 Q And again --

12 A -- that would undoubtedly be pursued.

13 Q Now, the other, the next point, you told us that  
14 Mr. Milgaard told you that before the Danchuks, or  
15 that after they stopped the woman for directions  
16 and before they got stuck at Danchuks', they got  
17 stuck a second time?

18 A Yes.

19 Q I guess the first time, and that he and Mr. Wilson  
20 had left the car, I think, for a short while were  
21 the words you used.

22 A Yes.

23 Q Now, that is not in this statement. Is that --  
24 would that be an omission that you would view as a  
25 significant omission that might cause you concern?



1 A Yes, it would be an area of cross-examination on  
2 the footing that this was a significant omission.

3 Q Now, again this statement is in Q and A form and I  
4 suppose one response might be, well, I wasn't  
5 asked the question, but again, would that -- would  
6 that affect your answer in any way, the fact that  
7 it's in a Q and A type setting?

8 A Well, it could give rise to an explanation by the  
9 witness as to why it isn't in there, but it still  
10 would not foreclose cross-examination on it.

11 Q Another area that you told us Mr. Milgaard gave  
12 you information on that is not in this statement  
13 is throwing the compact out after leaving  
14 Saskatoon, and again, I don't believe there was a  
15 specific question, or there was not a specific  
16 question about that in the statement, but the fact  
17 that it's not in there in some form or another,  
18 would that have been a significant omission that  
19 might have concerned you?

20 A Well, I assumed, and I think correctly, that there  
21 would be a robust cross-examination on that point.

22 Q And the fact that it was not in the statement,  
23 would that be part of what you anticipated by way  
24 of cross-examination?

25 A That would be an aspect of the cross-examination,



1 or maybe one limb of it.

2 Q Now, as well the trip to Saskatoon does not talk  
3 about -- or pardon me, in the statement there's no  
4 reference to either Mr. Milgaard having a knife or  
5 being involved in the break-in in the elevator  
6 which is information that you told us he told you  
7 about?

8 A Yes.

9 Q Again, would those be, in your view, significant  
10 omissions that might be, that might hurt Mr.  
11 Milgaard if he were to testify?

12 A Yeah, there was that possibility, but that's an  
13 area where I would have endeavoured to, even in  
14 his cross-examination, limit it because it would  
15 be proof of another type of offence and might be  
16 held to be inadmissible.

17 Q Putting aside the question of how you would get  
18 this statement in, the first statement of David  
19 Milgaard, is this a statement that you would have  
20 wanted in front of the jury?

21 A Tactically, the answer is no.

22 Q And why not?

23 A Well, essentially for the reasons that I've just  
24 given to you, and that is that if he testified, he  
25 would have been subject to the type of



1 cross-examination that we have mentioned, and also  
2 there is always the likelihood that counsel would  
3 have been permitted in this trial to make  
4 reference to the omissions either in  
5 re-examination or otherwise, or whoever was being  
6 examined in connection with a statement.

7 Q And what about the advantage of the statements, if  
8 I can call it that, in that -- now, he wasn't  
9 asked the question in this statement whether he  
10 was involved in the murder, but the fact that in  
11 this statement he does not -- he does not admit to  
12 the murder, put it that way, would that be helpful  
13 to have in front of the jury, the fact that when  
14 he first talked to the police he didn't admit to  
15 anything?

16 A Well, if you could isolate everything to just a  
17 denial, that might be helpful, but there's more to  
18 it than that.

19 Q And again, do you -- did you view the first  
20 statement then as, I think, and we've gone through  
21 parts, on the whole were there parts in that  
22 statement then that gave you concern about how  
23 they might be viewed either by the police, for  
24 example, or by the jury?

25 A Yes.



1 Q If we can go to the second statement, and it's  
2 153079, and this is April 18th, 1969. I don't  
3 have a typed version, but there's only a couple of  
4 references that I wish to make, and this would be  
5 a second statement that he gave to Detective  
6 Barrett, and I think it was in conjunction with  
7 providing blood and hair samples, and if we can go  
8 to the next page, and again, sorry if we're going  
9 to repeat some parts here, but there are -- I  
10 think this is a bit more of a narrative. The  
11 question is asked -- actually, maybe we better  
12 just go to the previous page, and so here:

13 "Q Do you recall the evening of January  
14 30th, 1969?

15 A Not exactly.

16 Q What do you remember about that day?"

17 And then he goes on to say:

18 "A That's the day we left Regina ..."

19 And then go to the next page, and then here:

20 "I didn't know Albert's address & I was  
21 trying to recall it by memory. We went  
22 to some big motel & asked directions.  
23 The guy gave us a map I think, I'm not  
24 sure. We went back towards Pleasant  
25 Hill & we were going up & down some



1 streets trying to find something I would  
2 remember. Then we went down a back  
3 lane, and we saw a guy stuck ..."

4 And the Danchuks, so again in the second  
5 statement there's no mention made of getting  
6 stuck the first time and leaving the vehicle.  
7 Would that have been a concern to you with  
8 respect to this statement?

9 A Well, I knew that it would be an area of  
10 cross-examination. I should say a potential area  
11 of cross-examination.

12 Q Then, if we can go to 153079, here's a reference  
13 about -- no, I'm sorry, to 086, page 086, and a  
14 reference here about:

15 "Q How fast did you drive?"

16 This is leaving Saskatoon, and:

17 "A Pretty fast, about 60-70-80 or 90,  
18 because I like driving fast."

19 Do you remember that being discussed with Mr.  
20 Milgaard, or being evidence about his conduct  
21 after leaving the city?

22 A Yes, I recall a general discussion about it, and  
23 somewhere along the line I concluded that an  
24 effort should be made to keep this type of  
25 evidence out, because I was of the view that the



1 Crown were trying to tender it as evidence of  
2 consciousness of guilt.

3 Q Do you make any --

4 A In other words the alleged 'flight', so to speak,  
5 from the city, I think, would have been used for  
6 that purpose. At least that's what was in my mind  
7 at the time.

8 Q If we can go to the next page, please. And here,  
9 right at the end, Mr. Milgaard is asked in this  
10 statement:

11 "Q Did you murder this girl or have  
12 anything connection with the murder?

13 A No."

14 So there is a denial.

15 A Yes.

16 Q And then the statement:

17 "Don't wish to sign statement".

18 Again, I didn't go through this statement with  
19 you here in its entirety, but I think you have  
20 had a chance to read it, and as far as the  
21 questions about significant omissions that we  
22 talked about on the first statement, namely the  
23 thoughts of robbing the woman, getting stuck and  
24 leaving the car, the compact, the knife, and the  
25 elevator break-in; would you have similar



1 concerns about this statement as you did the  
2 initial March 3rd, 1969 statement?

3 A Yes.

4 Q And, again, is this a statement that you would  
5 want in front of the jury, putting aside how you  
6 might get it there?

7 A No.

8 Q And would it be for the same reasons as the March  
9 3rd, '69 statement?

10 A Generally the same reasons.

11 Q And the fact that in this statement Mr. Milgaard  
12 had stated that he had nothing to do with the  
13 murder, would you want that statement before the  
14 jury, that he had told the police that he had  
15 nothing to do with the murder?

16 A Well, if you could just get that in alone, then I  
17 wouldn't see any harm in it. But, of course, you  
18 are then faced with the rule with respect to  
19 self-serving evidence, and I'm sure it would be  
20 resisted --

21 Q Yeah. So in other words, --

22 A -- by the prosecution.

23 Q -- if you wished to have that evidence in, have  
24 Mr. Milgaard called as a witness to state it; is  
25 that what you are referring to?



1 A Yeah, that's right, yeah.

2 Q Yeah. If we could then go to 301675. I just want  
3 to go through, Mr. Tallis, a couple of -- there's  
4 an affidavit that Mr. Milgaard filed in connection  
5 with his application to the minister that  
6 references notes and information that he gave to  
7 you, and this would have been sworn by him about  
8 16, 17 years later, and I just want to go through  
9 and ask you about some of the things that he has  
10 stated in connection with what he told you. If we  
11 can go to 301679. And this is an affidavit,  
12 although it's sworn November 1986 it was filed as  
13 part of the application to the minister in  
14 December 1988, and at paragraph 15 he says:

15 "That insofar as this trip to Saskatoon  
16 is concerned my recollection of the  
17 events has faded somewhat. Attached to  
18 and forming part of this affidavit as  
19 Exhibit "A" is a photocopy of a  
20 narrative that I made for my lawyer  
21 shortly after my arrest. I recall that  
22 I had written everything down in a  
23 notebook, but I also recall that because  
24 my handwriting was poor I dictated the  
25 same information to a fellow prisoner



1                   and had him write it down. I cannot  
2                   recall whether Exhibit "A" is the  
3                   notebook in my handwriting or not but  
4                   nonetheless I adopt it as the truth."

5                   And then if we can just go to page 301682, and  
6                   this is the scribbler, I think. And I'll go  
7                   through this in some detail with you, but I think  
8                   you've been asked this question before, and  
9                   particularly at the Supreme Court reference; is  
10                  this scribbler, this narrative, is this a  
11                  document that David Milgaard provided to you back  
12                  in 1969 or 1970?

13           A           No, I'm quite sure it is not.

14           Q           And on what do you base that?

15           A           Well, the notes that he gave me in a notebook were  
16           not written in a disciplined way like this, or in  
17           point form; and secondly, I recall particularly  
18           working with him, and I think this was at Prince  
19           Albert where I got the notebook, I recall working  
20           with him trying to figure out where they had been  
21           driving while looking for Shorty, and we actually  
22           sketched in it to try and figure it out, and I see  
23           nothing of that in here. And there were also some  
24           notes in the material that I had from him dealing  
25           with his background, like on reflection on



1 schooling and things like that, and I think even  
2 the difficulties he'd had.

3 Q So his notebook --

4 A And also on the family. I recall, in the context  
5 of that discussion, him referring, I thought  
6 rather affectionately, to his little brother. Now  
7 I don't remember the little brother's first name  
8 or anything, but in the material it was -- I later  
9 read that you gave me, I think it probably was a  
10 reference to his brother Chris.

11 Q Yes. And so, again, you have had a chance to read  
12 through this, and I'll call it the scribbler or  
13 the notebook?

14 A Uh-huh.

15 Q And you are telling us that you are satisfied that  
16 this is not something that you would have received  
17 from him?

18 A That's right.

19 Q And I think you said --

20 A This is not the document or a copy of the document  
21 that I received from him.

22 Q And can you answer whether it would be a  
23 transcription, in other words someone would write  
24 out what he provided to you?

25 A No, it, in my view it's not.



1 Q And the notebook that he did give you, I think you  
2 told us it had a reference to his family, his  
3 background, and also some sketching about trying  
4 to figure out where they were that morning?

5 A Yeah, and that's the sketching that I recall we  
6 had tried to work up where he -- where they'd been  
7 in their travels looking for Shorty's place, and  
8 just weren't able to pinpoint the avenues, and so  
9 on, that they'd been down.

10 Q And would that notebook have been given to you,  
11 then, at that time?

12 A It was given to me, I think it was on the occasion  
13 when I -- the first occasion I was in Prince  
14 Albert.

15 Q And then would you have retained that on your file  
16 through to the conclusion of trial?

17 A Yes, I'm quite sure I did.

18 Q And it would have been on your file when you  
19 concluded the matter then?

20 A Yes, it would have.

21 Q Who --

22 A And, in particular, it would have been in what I  
23 will call the segment that had copies of his  
24 statements, memoranda that I had prepared in  
25 connection with visits and discussions with him,



1 as well as the draft examination-in-chief that I  
2 mentioned to you the other day.

3 Q Okay. If we can go back to 301680 of the  
4 affidavit and just go through a couple of these.  
5 16:

6 "THAT I deny absolutely any allegation  
7 of my admitting to committing the  
8 offence to anyone."

9 And I think you've told us that's what he told  
10 you; is that correct?

11 A That's right.

12 Q And 17:

13 "THAT I deny ever having blood on any of  
14 my clothes that day."

15 And is that consistent with what he told you?

16 A That's correct.

17 Q 18:

18 "THAT I deny throwing a woman's compact  
19 out of the car in between Saskatoon and  
20 Rose Town or anywhere else".

21 And I think you've told us that that's different  
22 from what he told you back in 1969; is that  
23 correct?

24 A That's correct.

25 Q And the motel room reenactment, we'll come to this



1 later, but what is your recollection of what Mr.  
2 Milgaard told you, back in 1970, about the motel  
3 room?

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

12 Q And we'll deal with the statements and -- a bit  
13 later, and the details a bit later, but did he  
14 have a recollection of being in the room with  
15 those people, namely George Melnyk (sic), Craig  
16 Lapchuk (sic), Ute Frank, and Deborah Harris -- or  
17 Deborah Hall, pardon me?

18 A Yes, he had a recollection of those names, and  
19 particularly Ute Frank who he was with.

20 Q And, again, we'll come back to that when I get to  
21 the statement. So, again, I think you have  
22 answered what he told you compared to what's in  
23 that affidavit.

24 If we can then go to, rather  
25 than going to the handwritten scribbler I'm going



1 to go to 333138, please. And Mr. Tallis, what  
2 somebody has done -- and I can't say for certain,  
3 it may well be the RCMP -- or someone has taken  
4 the handwritten notebook and simply typed it out  
5 so it's a little easier to read, and I just want  
6 to go through parts of this. And if we can go to  
7 just the bottom of the page, here they talk about  
8 stealing a battery:

9 "39) In the process of the theft we  
10 broke into the casing",

11 "43) It became apparent (the acid) as  
12 soon as we..." ,

13 and then next page:

14 "44) got back as my mitts were wet. It  
15 was on

16 45) my jacket and my grey pants. I used  
17 Ron's

18 46) bathroom to wash my hands and legs

19 47) I changed into a pair of green  
20 striped pants

21 48) with an opening in the seam and a  
22 coloured shirt.

23 49) my grey pants with the acid on it.

24 I placed

25 50) in my suite case and also the white



1 shirt I was  
2 51) wearing I think Mrs. Wilson gave me  
3 instructions  
4 52) to put paper around my grey pants so  
5 the acid  
6 53) wouldn't get on my clothes (the  
7 others in the  
8 54) suite case)".

9 Now, again, is that, can you tell us whether that  
10 accords with what Mr. Milgaard told you in your  
11 meetings in 1969?

12 A Well, my recollection is that he changed his  
13 trousers in Saskatoon at Cadrain's, and that there  
14 was no blood on them, and that there was the  
15 possibility, if someone saw spots on his trousers,  
16 that it came from acid because they'd been  
17 handling a battery.

18 Q If we can go to the next page. And this is, I  
19 think, a narrative of once they got into Saskatoon  
20 at line 95:

21 "95) We  
22 96) turned of the highway and proceeded  
23 down a  
24 97) boulevard Street. I was lost and  
25 saw a



1                   98) lady walking in the opposite  
2                   direction of us  
3                   99) on the other side of the boulevard  
4                   and suggested  
5                   100) we ask directions. We came to a  
6                   break in the  
7                   101) boulevard and stopped, then as we  
8                   started to turn  
9                   102) our wheels just spun in the ice,  
10                  but we finally  
11                  103) got around the boulevard (U turn)  
12                  and we  
13                  104) pulled up beside the lady and asked  
14                  directions  
15                  105) to Pleasant Hill or Peace Hill.  
16                  I'm not sure  
17                  106) which. She said she didn't know  
18                  and I asked  
19                  107) her how to get down town and she  
20                  gave us some  
21                  108) type of direction.  
22                  109)            My next recollection is a  
23                  garage by a bridge  
24                  110) we went over."

25                   And let me just pause there; does that -- how



1 does that accord with what Mr. Milgaard had told  
2 you at the time back in 1969?

3 A Well, I've already indicated to you my  
4 recollection of what he told me about, you know,  
5 asking an older lady for direction.

6 Q This reference about after getting the directions,  
7 then going to a garage by a bridge, do you have  
8 any recollection of that being discussed?

9 A No, there was no reference to that, or the Bay  
10 store, there was no reference to that, or an  
11 elderly man. Umm --

12 Q So here it says:

13 "I also remember going around the  
14 111) block with the Bay store on it,  
15 down town someplace."

16 A Yeah.

17 Q "112) we asked an elderly man (quite  
18 poorly dressed)

19 113) directions ...";

20 again, was that something --

21 A This was not something that was conveyed to me.

22 Q And, again, are you able to tell us, with respect  
23 to the notebook that Mr. Milgaard provided to you  
24 back in 1969, did it contain everything that -- at  
25 least all the key points that he would have



1           discussed with you, or was it his, his work  
2           product?

3           A       To a large extent it was his work product because  
4           I, you know, went over some of it with him, but  
5           then I actually took my own notes, going through  
6           the things, and the order in which I chose to  
7           discuss them.

8           Q       Is it --

9           A       And my own handwritten notes of the discussions  
10          that took place all along, at various times, were  
11          quite copious. And some areas, of course, I  
12          revisited, probably because I had some  
13          different -- some additional ideas or had maybe  
14          picked up some additional information.

15          Q       Okay. I'm just going to now -- I'm just going to  
16          grab another binder. I just want to put to you  
17          Mr. Tallis, and ask for your response, some of the  
18          things that Mr. Milgaard said at the Supreme Court  
19          of Canada when he testified with respect to what  
20          he said to you, and I appreciate that you've told  
21          us your recollection of events, but I simply want  
22          to go through some of these that you may not have  
23          touched on. The transcript is 120408, and if we  
24          can go to page 120423, and this is Mr. Milgaard  
25          being examined by Mr. Wolch. It talks about:



1 "A ... an older woman walking on the  
2 sidewalk. We tried to pull around this  
3 boulevard. Our tires kind of got caught  
4 up in snow and stuff. I don't think we  
5 actually came to a full stop. ... We  
6 pulled over to this woman. I asked her  
7 for directions. I am not sure whether I  
8 said 'Pleasant Hill' or 'Peace Hill',  
9 but it ended up that I think we just  
10 asked her for, you know, where was  
11 downtown. She directed us towards  
12 downtown.

13 So we turned around again  
14 around the boulevard and pulled next up  
15 into a garage where we got the heater of  
16 the car fixed. We bought some chicken  
17 soup."

18 And then:

19 "Q Just pause at 'the heater of the car  
20 fixed'. Was there a problem with the  
21 heater?

22 A I think so. I think it kind of broke  
23 down there when we were stuck."

24 Do you have any recollection, or is that  
25 something that Mr. Milgaard told you back in 1969



1 or '70?

2 A No. The first I heard of this, actually, was when  
3 Mr. Brown, in the Supreme Court hearing, asked me  
4 about it, but that was not something that was  
5 conveyed to me in any of our meetings.

6 Q And if it had been conveyed to you, that after  
7 stopping the woman for directions they would have  
8 gone to a garage, what would you have done?

9 A Well, I would have followed that up, because there  
10 would be the potential for demonstrating an alibi,  
11 that is that at the relevant time, or so near to  
12 the relevant time, they were actually getting a  
13 car repaired, that is the heater of it repaired,  
14 and usually, if work is done of that nature, there  
15 might well be a -- there likely would be a work  
16 order or at least a bill.

17 Q And is it a case of -- and I'm sorry, I maybe  
18 missed your last answer -- about the going to a  
19 garage and getting chicken soup to get -- going to  
20 a garage and getting the heater fixed and getting  
21 chicken soup while in Saskatoon; is that something  
22 that, is it possible that's something you don't  
23 recall, or are you telling us you weren't told  
24 that?

25 A I'm quite sure that was never conveyed to me.



1 Q Again, 120433, and again at this time when Mr.  
2 Milgaard is asked about discarding items from the  
3 car he says:

4 "A There could have been many times. I  
5 have a bad habit of throwing different  
6 things out of the car, or stuff. But  
7 the reference made has been in reference  
8 to a compact or stuff. I am positive  
9 that if there had been something like  
10 that that I had thrown out of the window  
11 that I would have a recollection for  
12 that. And I never ever threw any  
13 compact out of the window of the car."

14 Now you've told us that he told you he had?

15 A Yes.

16 Q When you had that discussion with him what, did he  
17 tell you he had a recollection of that, do you  
18 recall what words he used when he told you that?

19 A No, he said "I" -- his words were pretty  
20 straightforward, "I did", you know. In response  
21 to the question "did you throw out a compact as  
22 Nichol John or Wilson described", he said "yes I  
23 did", and then we had the discussion that I've  
24 already related to you about why and so forth.

25 Q If we can go to 120535, I just want to go through



1 a part here where Mr. Milgaard talks about his  
2 dealings with you, and again this is in reference  
3 to the scribbler notebook. And the question by  
4 Mr. Neufeld here is:

5 "Q I take it by September when this  
6 statement was probably written, you were  
7 pretty much aware of what the case was  
8 against you, weren't you.

9 A Basically, at this time, when this was  
10 written, I had no idea what case was  
11 against me.

12 Q Well, you had been in custody for three  
13 or four months at that point, three  
14 months at least.

15 A I never really knew what any kind of  
16 case was against me until, basically,  
17 they were testifying in Court.

18 Q Are you saying that Mr. Tallis didn't  
19 sit down with you and say: 'Look, Ron  
20 Wilson says you did this, Nichol John  
21 says you did this, Albert Cadrain says  
22 he saw this'; are you saying he didn't  
23 do that?

24 A All I was basically told by Mr. Tallis  
25 was: 'David, don't be a little bit



1 surprised if some of your friends are  
2 going to say things that are different  
3 from what you have told me.' There  
4 was no indication as to who was saying  
5 what or when or what was about to take  
6 place. That's why when I actually sat  
7 there and felt everything that I felt,  
8 it was as bad as it was for me."

9 And, again, would you take issue with what Mr.  
10 Milgaard has described about what you told him  
11 about the case against him?

12 A Well I made it a point to try to keep him up to  
13 date on matters, and certainly in the first day or  
14 two when I saw him, I didn't know all the details,  
15 but I certainly alerted him to the fact that his  
16 friends were pointing the finger at him, and I  
17 know that I discussed it with him in significant  
18 detail and got his story on the various aspects of  
19 it.

20 Q So as far as Ron Wilson, Albert Cadrain, and  
21 Nichol John, are you telling -- is that, would you  
22 have told Mr. Milgaard, prior to the preliminary  
23 hearing and trial, about what you thought these  
24 people were going to say based on their  
25 statements?



1           A           Well I knew roughly what they were going to say,  
2                           and I certainly conveyed it to him and got, tried  
3                           my best to get his version of events into my notes  
4                           so that I had them for the purposes of  
5                           cross-examination at the preliminary hearing.

6                                       For example, I think with  
7                           respect to getting stuck, we'll call it, the  
8                           'first time', --

9           Q           Yeah?

10          A           -- as distinct from getting stuck in the Danchuk  
11                           alley, I asked him whether or not the wheels were  
12                           spinning and if he thought they would leave a mark  
13                           where they had been spinning, and that is why I  
14                           then -- he told me "yes", and that is why, when I  
15                           was examining, cross-examining some of the police  
16                           officers -- and I can't remember their names -- I  
17                           asked whether or not they had looked for those  
18                           types of marks in the vicinity of the crime, and  
19                           as I recall it the answer was they had looked and  
20                           did not find any. And that was as a result of not  
21                           only the information I had received about what his  
22                           friends were saying but, also, what he told me  
23                           about getting stuck.

24                                       Now I just use that as an  
25                           illustration, but I don't think this is the time



1 where you want me to go into a comprehensive --

2 Q Well we will --

3 A -- survey of it.

4 Q We will get to all of it eventually. Would there  
5 be any reason, tactically or otherwise, as defence  
6 counsel, that you would not tell Mr. Milgaard  
7 about what these witnesses would be saying against  
8 him?

9 A None whatsoever. Indeed, quite the contrary,  
10 because another aspect to illustrate it, I spent  
11 quite a bit of time with him trying to figure out  
12 with him what their motive might be, had there  
13 been any friction between -- over --

14 Q And you are talking about who?

15 A Well, David and Wilson and Cadrain and Nichol  
16 John, whether there had been any friction over the  
17 girl and so on, and that was an area that I recall  
18 canvassing as best I could with him, but he  
19 couldn't point to anything that he felt --

20 Q Okay.

21 A -- was the cause of hostility with them.

22 Q If we can go to 120575, there is a couple parts  
23 here just again on this garage that I just wish to  
24 put to you. We maybe have touched on most of this  
25 but, again, he is asked by Mr. Neufeld:



1 "Q But do you remember stopping to get the  
2 heater fixed? That's what I am  
3 interested in.

4 A I don't remember much about it, except  
5 that's where it was supposed to have  
6 got fixed. At least I figured -- I  
7 don't remember all the details. The  
8 reason I say it was significant is  
9 because, in speaking to Mr. Tallis,  
10 this was the one place I wanted to  
11 have identified so that maybe the  
12 owner of the garage could come  
13 forward, at least, the way the  
14 directions got changed by the  
15 detectives."

16 And then if you could skip ahead to page 120578  
17 -- actually, if we could just go back to 577.  
18 And I think, I won't go through this, but  
19 Mr. Neufeld points out that the scribbler book  
20 doesn't mention the garage or fixing the heater  
21 or chicken soup, and then on the next page at the  
22 top the question is:

23 "Q So, what you are telling us today is you  
24 didn't tell Mr. Tallis everything.

25 A No. I asked Mr. Tallis to go and see



1                   the garage man just for the fact that  
2                   he could help us."

3                   And again, you may have already answered this in  
4                   a previous question, but did that happen?

5           A        No, and I can only repeat what I told you earlier.

6           Q        If we can then, now, just go to -- I think we've  
7                   covered most of the details as to what information  
8                   you would have had then, Mr. Tallis, from your  
9                   client David Milgaard about the events of January  
10                  30 and 31, 1969 at least as Mr. Milgaard advised  
11                  you they happened. Did you -- and you had alluded  
12                  to the point earlier about trying to, I guess,  
13                  compare what facts you received from Mr. Milgaard  
14                  versus the Crown's case and what they were saying,  
15                  and I think the one point you raised was to try  
16                  and figure out or understand why these people  
17                  might -- being Wilson, Cadrain and John -- why  
18                  they might lie; is that fair?

19          A        Yes.

20          Q        And can you recall any theories or thoughts you  
21                   had to try and figure out why they would be saying  
22                   things that, according to David Milgaard, were not  
23                   true?

24          A        Well, as I've told you, I've probed with him  
25                   whether or not any friction had arisen and one of



1 the things that I was interested in was whether or  
2 not there was any jealousy that had arisen over a  
3 girlfriend, such as whether he had started out  
4 with Nichol and then Cadrain had, in effect, taken  
5 over, but David dismissed that as a factor because  
6 he was going to see his girlfriend Sharon as I  
7 recall it, and I of course wondered if they were  
8 in it for the money because there was potential  
9 money.

10 Q You are talking about the reward?

11 A The reward money, and I asked him, you know, what  
12 type of people they were and he didn't think that  
13 they would be much interested in that, but he  
14 wasn't, certainly wasn't sure, and of course later  
15 on in the case I endeavoured to explore as to  
16 whether or not pressure had been brought to bear  
17 on them, that certainly, you know, was a question  
18 in my mind.

19 Q Pressure by whom?

20 A Well, possibly by investigators and so on, but  
21 that's not something that David would have had any  
22 knowledge of, so I was, in my discussions with  
23 him, I was confining it to areas that he might be  
24 able to assist me on and those are two that come  
25 to mind. There may be other things that I asked



1 him and that he told me about them, but I couldn't  
2 remember that now without, you know, without my  
3 notes.

4 Q Now, you told us earlier this afternoon about your  
5 professional and ethical obligations as defence  
6 counsel about asking questions or taking positions  
7 during the trial that would be inconsistent with  
8 what your client told you were the facts; is that  
9 fair?

10 A Yes.

11 Q And if we can just go through here, we spent some  
12 time on what Mr. Milgaard told you happened that  
13 morning, and if I could just go through and try  
14 and identify some areas where there may not have  
15 been disagreement based on what he said and what  
16 others said and where they were. First of all,  
17 the suggestion that the vehicle that they were in  
18 was in the vicinity of the murder, and I  
19 appreciate vicinity could mean different things to  
20 different people, but based on your discussions  
21 with David Milgaard at the time of the trial, what  
22 were your thoughts on that, did you think you  
23 could put forward a position that they were not in  
24 the vicinity of the murder at the time of the  
25 murder?



1           A           No. I used the term the other day, vicinity, in a  
2                        very general way, and I think that's probably as  
3                        good a terminology as I could use. I couldn't  
4                        suggest that they weren't in the general vicinity,  
5                        but by the same token, I was interested in  
6                        pinpointing it if I could, but in the discussions  
7                        I had with him, we weren't able to pinpoint the  
8                        north-south avenues and so on where they had  
9                        actually driven down and where they were, but the  
10                      question of getting stuck that first time, I  
11                      mentioned to you already about the potential for  
12                      marks in the packed snow that would arise from  
13                      wheels spinning.

14          Q           Okay. So just on, again on the issue of vicinity,  
15                      as far as defence counsel could you tell us what  
16                      limitations or what restrictions you felt as far  
17                      as how you could examine witnesses? For example,  
18                      could you question a witness on the basis that  
19                      this group was somewhere on the other side of town  
20                      that morning at the time of the murder?

21          A           No.

22          Q           Let's then talk --

23          A           Let's put it this way, from everything I had been  
24                      told and working it out with David, I knew they  
25                      had been on the west side.



1 Q I think you told us earlier today and on Thursday  
2 that you also believe that they were travelling  
3 avenues between 20th and 22nd Street?

4 A That's right.

5 Q But no idea whether it was east or west, on the  
6 west side; is that correct?

7 A Well, on the east or west side of the site of the  
8 homicide?

9 Q Yes.

10 A Yes, that's right. We tried to use St. Paul's as  
11 sort of a landmark or point, but that didn't seem  
12 to help, and I think I probably made reference to  
13 the service station, that intersection on Avenue P  
14 and 22nd Street as well, but that didn't bring  
15 anything to light.

16 Q Okay. Now let's turn to the, and again, the Crown  
17 theory or one of the theories was that this group,  
18 including David Milgaard, had stopped a woman and  
19 asked for directions in the vicinity of where Gail  
20 Miller's body was found, and I think went even  
21 further saying draw the inference that it was Gail  
22 Miller. You would have been aware of that as a  
23 Crown position at the trial?

24 A Yes.

25 Q And based on what you knew from your client, let's



1           just talk about that, were you able to say --  
2           obviously, one, I think from what you told us, you  
3           couldn't say they didn't stop a woman for  
4           directions; is that right?

5           A           That's correct.

6           Q           Two, you could perhaps put forward evidence that  
7           the person that was stopped was older than Gail  
8           Miller and therefore not likely Gail Miller?

9           A           Yes.

10          Q           And I think you told us Thursday that although Mr.  
11          Milgaard didn't see her face, based on how she  
12          walked he thought she was older than 20; is that  
13          correct?

14          A           Yes.

15          Q           And so that, you would have some room to say that  
16          even though --

17          A           I think the other, I think on Thursday I intimated  
18          that my recollection is that in the range of 35 to  
19          40 years of age, but, you know, that's just a  
20          vague recollection because I think I was kind of  
21          tying it in with my own age at that time which  
22          was, you know, roughly 40.

23          Q           Okay. So again, I'm just trying to understand,  
24          based on what you knew from your client what room,  
25          if I can call it that, you had at trial, and so I



1 think you are saying on the issue of the woman  
2 that was stopped for directions, you are telling  
3 us you felt that you could suggest that it was not  
4 Gail Miller, it was someone else; is that right?

5 A That's correct, yes.

6 Q Now, the other piece of information that your  
7 client told you is that whoever they stopped for  
8 direction, that he had, and I can't recall your  
9 words, but that he had thought about or intended  
10 or thought about robbing her or taking her purse  
11 or something of that nature; is that correct?

12 A Yes.

13 Q Now, that would be something that only you and Mr.  
14 Milgaard would know; is that fair? That's not  
15 something that you -- did you know whether the  
16 Crown or the police knew about that?

17 A I didn't think they did because there wasn't any,  
18 you know, anything in the statements where they  
19 were probing it.

20 Q And again, just generally then, would that,  
21 depending on how the evidence came out, would you  
22 be able to take a position contrary to what Mr.  
23 Milgaard had told you about his -- his thoughts  
24 anyway when they approached the woman?

25 A Well, no. As I think I indicated to you earlier,



1 or the other day, I, in my own mind, decided that  
2 if he was called as a witness, I would probably  
3 lead that evidence to try and take the sting out  
4 of it.

5 Q Okay. Now, as far as the Crown theory compared to  
6 what Mr. Milgaard told you, I think the Crown  
7 theory was that after they stopped a woman for  
8 directions, that their vehicle became stuck and  
9 that Ron Wilson and David Milgaard got out and  
10 tried to push the vehicle and then left the  
11 vehicle to look for help, and putting aside the  
12 moment of how long they were away for, is that  
13 something that you were able to challenge in the  
14 Crown's case?

15 A The fact of getting stuck was something that David  
16 had acknowledged to me, so I had to move on to  
17 another aspect of it that you've just alluded to.

18 Q And that would be the time that he was away from  
19 the --

20 A That's right.

21 Q And I think your evidence was that he had told you  
22 that it was a short time?

23 A That's correct.

24 Q And I can't recall whether you were able to put  
25 that in minutes were you?



1           A           I don't think he was able to pin it down in  
2                       minutes, but it was certainly, in his discussions  
3                       with me, a very short period of time, and that is  
4                       why I, based on what he had told me, I pursued  
5                       that with, particularly with Wilson at the  
6                       preliminary hearing, as to the distance he went,  
7                       the period of time he was away and so on.

8           Q           And you would have been aware that based on the  
9                       Crown theory, and in fact the evidence of the  
10                      Crown witnesses, that when they got stuck after  
11                      meeting the woman and asking directions is when  
12                      the Crown alleged that Mr. Milgaard had the  
13                      opportunity to commit the crime?

14          A           Yes.

15          Q           While he was away from the vehicle and away from  
16                      Wilson and John; correct?

17          A           Not only -- I assume they had, they were  
18                      contending that he had not only the opportunity,  
19                      but the time in which to commit it, and that is  
20                      why there was a major focus on the time period  
21                      based on what he had told me how short the period  
22                      was when he was away from the vehicle, and of  
23                      course I was aware of the nature of the homicide  
24                      and all the unique features of it in terms of the  
25                      clothes and so on, which I needn't go into because



1           it's a matter of record here, the state of dress  
2           or undress.

3           Q       So as far as challenging, if I can call it that,  
4           Ron Wilson's evidence about them getting, the  
5           vehicle getting stuck and David leaving the car,  
6           are you telling us that the length of time David  
7           being away was the only thing you felt you could  
8           challenge then based on what Mr. Milgaard --

9           A       Well, it was the most significant thing, and also  
10          the length of time that Wilson was away.

11          Q       Yes.

12          A       Because that was very relevant to this issue of  
13          whether or not it was, whether there was any  
14          reasonable basis on which to conclude that there  
15          was in fact time to have committed the offence in  
16          the manner in which it was committed. We weren't  
17          dealing with a gun shot or something like that.

18          Q       Now, the evidence of Nichol John and Ron Wilson  
19          was a little bit different as to where the vehicle  
20          became stuck and I think Nichol John had the  
21          vehicle in a back alley around a funeral home and  
22          Ron Wilson had it at an intersection and I think  
23          he said possibly or probably near Avenue N. Were  
24          you able to challenge, based on what your client  
25          had told you, what was your position on what you



1           could do with respect to where the vehicle got  
2           stuck?

3           A       Well, David really wasn't able to assist too much.  
4           We spent a lot of time on that, but as I said, the  
5           fact of being stuck was not an issue, but the  
6           location was of course something quite different  
7           and that's why this issue arose about the wheels  
8           spinning.

9           Q       Yes. Was David Milgaard, based on what he told  
10          you if he had testified, was he able to say that  
11          it wasn't near the funeral home or wasn't near  
12          Avenue N?

13          A       He would have said, I'm quite convinced, "I'm  
14          sorry, I don't know."

15          Q       Okay.

16          A       And I think Wilson, as I recall it, indicated that  
17          certainly the vehicle wasn't in that alley or T  
18          part of the T intersection and you've alluded to  
19          that.

20          Q       And so I think what you are telling us is that  
21          what you had focused on is the fact that it had  
22          left spinning tire marks in the snow and if that  
23          wasn't near where the body was found, then it  
24          would follow that the car wasn't stuck near where  
25          the body was found?



1 A And the fact that there were no tire marks in that  
2 immediate vicinity --

3 Q I see.

4 A -- would lend support to the view that the car  
5 wasn't there in that location.

6 Q Now, Mr. Wilson testified that after he got back  
7 to the car, that two gentlemen came along, I think  
8 in a 1967 cream Dodge or Chrysler, and helped push  
9 them out?

10 A Yes.

11 Q And I think you've told us that David Milgaard had  
12 told you, I think you said couldn't describe the  
13 car, but similar evidence, the two men came along  
14 and pushed them out?

15 A That's right.

16 Q And again, would that preclude you then from  
17 challenging Wilson on his evidence that that  
18 happened?

19 A Yes, that was something that David acknowledged  
20 and I had no reason to doubt him on that.

21 MR. HODSON: This is probably a good spot  
22 to break, Mr. Commissioner.

23 *(Adjourned at 4:26 p.m.)*

24

25





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