Commission of Inquiry

Into the Wrongful

Conviction of David Milgaard

before

THE HONOURABLE MR. JUSTICE

EDWARD P. MacCALLUM

****

<u>Transcript of Proceedings</u>

and

Testimony before the Commission

sitting at the

Radisson Hotel at

Saskatoon, Saskatchewan

****

On Monday, March 7th, 2005

Volume 22

<u>Inquiry Proceedings</u>

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Appearances:

Mr. Hersh Wolch, Q.C.,   **for** Mr. David Milgaard

Mr. James Lockyer,   **for** Ms. Joyce Milgaard

Ms. Lana Krogan,   **for** Government of Saskatchewan

Mr. Robert Kennedy, Esq., **for** *Mr. T.D.R. (Bobs) Caldwell*

Mr. Garrett Wilson, Q.C., **for** Mr. Serge Kujawa

Mr. Rick Elson, Esq.,   **for** the Saskatoon Police Service

Mr. Aaron Fox, Q.C.,   **for** Mr. Eddie Karst

Mr. Bruce Gibson,   **for** the RCMP

  and *Ms. Rochelle Wempe,*

Mr. Brian A. Beresh, Esq., **for** Mr. Larry Fisher

Mr. Stephen McLachlin, Esq., **for** Minister of Justice

                         Canada, The Hon. Irwin Cotler

Mr. Dino Bottos, Esq., **for** Justice Calvin Tallis (Retired)

  and *Mr. Dan Chivers, Esq.,*

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1 *Transcript of Proceedings*

2 *(Reconvened at 10:00 a.m.)*

3 COMMISSIONER MacCALLUM: Good morning.

4 ALL COUNSEL: Good morning.

10:03 5 MR. HODSON: Morning, Mr. Commissioner.

6 Before we start with evidence

7 there are a couple of applications for standing

8 that were received last week.

9 The first is an application by

10:03 10 the Retired Justice Calvin Tallis, who was legal

11 counsel for David Milgaard in the 1970 trial and

12 the appeal, and here representing Mr. Tallis are

13 Dino Bottos and Dan Chivers. And those materials

14 have been filed for standing and funding,

10:03 15 Mr. Commissioner, and if you are prepared to deal

16 with those now?

17 COMMISSIONER MacCALLUM: Yes, I am.

18 MR. HODSON: That application?

19 COMMISSIONER MacCALLUM: Right.

10:03 20 Mr. Bottos and Mr. Chivers, I

21 have read your material, and I'm satisfied that

22 your client should have standing as well as

23 funding in the usual way, according to our rules.

24 The lead counsel will be?

10:03 25 MR. HODSON: Lead counsel, I think, will be

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1   Alex Pringle, and second counsel will be Dino

2   Bottos; is that correct?

3   MR. BOTTOS: That's correct.

4   MR. HODSON: Yeah, and Mr. Pringle is not

10:04 5   able to be here this week, he has another matter.

6   COMMISSIONER MacCALLUM: All right.

7   Mr. Bottos, you understand that Mr. Pringle is

8   the lead counsel, funding will apply to the

9   services of one counsel only at a time. I

10:04 10   believe you are aware of that?

11   MR. BOTTOS: Yes.

12   MR. HODSON: Thank you, Mr. Commissioner.

13   The second is an application

14   that we received on Friday on behalf of the

10:04 15   Federal Minister of Justice, an application for

16   standing, not an application for funding.

17   Counsel here today is Mr. Stephen McLachlin from

18   the Attorney General of Canada office in

19   Saskatoon, and I understand that lead counsel on

10:04 20   behalf of the Federal Minister of Justice will be

21   Mr. David Frayer from their Winnipeg office, and

22   again they have an application for standing.

23   COMMISSIONER MacCALLUM: How does

24   Mr. Frayer spell his name, please?

10:04 25   MR. HODSON: F-R-A-Y-E-R?

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10:04

10:05

10:05

10:05

10:06

1   MR. McLACHLIN: That's correct.

2   MR. HODSON: And Mr. McLachlin is here, he

3   will be here for this week.

4   COMMISSIONER MacCALLUM: Thanks.

5   Mr. McLachlin, I read the

6   material as well in your case, and I'm satisfied

7   that the Federal Government should be a party

8   with standing in this Inquiry, and accordingly

9   Mr. Frayer is designated as the lead counsel.

10 And I -- will you be working on a continuing

11 basis as his alternate?

12   MR. McLACHLIN: Yes, I expect so, My Lord.

13   COMMISSIONER MacCALLUM: All right. And

14 there is no funding request attached to this

15 application, I understand?

16   MR. McLACHLIN: That's correct, there is no

17 request for funding.

18   COMMISSIONER MacCALLUM: Thank you very

19 much.

20   MR. HODSON: With that, Mr. Commissioner,

21 we are prepared to proceed with our first

22 witness, and I would like to call Ms. Nichol John

23 please.

24 *NICHOL JOHN*, sworn:

25 **BY MR. HODSON:**

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	1	Q	Good morning, Ms. John, thank you for agreeing to
	2		testify before this Commission.
	3		I understand that you are
	4		presently 53 years of age; is that correct?
10:06	5	A	No.
	6	Q	54?
	7	A	No.
	8	Q	52?
	9	A	Yes.
10:06	10	Q	Thank you. And that you reside in British
	11		Columbia?
	12	A	Yes.
	13	Q	I should have known to go lower before I went
	14		higher, I apologize.
10:06	15		I understand that you were a
	16		travelling companion of Ron Wilson and David
	17		Milgaard on a trip taken in January 1969; is that
	18		correct?
	19	A	Yes.
10:06	20	Q	And that you were in Saskatoon in the early
	21		morning of January 31, 1969, the morning that Gail
	22		Miller was murdered?
	23	A	Yes.
	24	Q	And that you testified at David Milgaard's
10:07	25		preliminary hearing and at his trial; is that

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1   correct?

2   A   I guess so.

3   Q   And in the years that followed Mr. Milgaard's

4   conviction, at least based on my reading of the

10:07 5   documents, Ms. John, that you have been asked to

6   recall and explain what happened in 1969 and in

7   1970 on a number of occasions; is that correct?

8   A   I'm sorry, could you repeat that question?

9   Q   Yes. I understand that in the years that followed

10:07 10 Mr. Milgaard's conviction in 1970, in those years

11   that followed, that on a number of occasions you

12   have been interviewed and subject to certain

13   processes where you have been asked to recall what

14   happened in 1969 and 1970; is that correct?

10:07 15 A   Yes.

16   Q   Yes?

17   A   Yes.

18   Q   And I would like to go through with you, Ms. John,

19   a list of the dates and circumstances. And I have

10:07 20 prepared a document, it's document 326521 -- it

21   will come up on the screen and you will see I have

22   just listed them, I've forgotten one which I'll

23   get to in a moment -- but the first time would be

24   May 9th, 1981 you were interviewed by Joyce

10:08 25 Milgaard and her counsel at the time, Mr. Tony

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1   Merchant, and that present at that was your

2   counsel, Larry Leslie; do you recall that?

3   A Not really.

4   Q You have no recollection of that meeting if, in

10:08   5   fact, it happened?

6   A I think it happened but I have no, what's the

7   word, no thoughts on the meeting.

8   Q Yes, and we have an audio tape of that interview

9   and a transcript, which we'll ploay a bit later,

10:08   10   but I'm just going through now to identify that.

11   The next time, I think, would be November 7th,

12   1989, when you were interviewed by Eugene Williams

13   of Federal Justice; do you recall meeting with

14   Mr. Williams in the late '80s?

10:09   15 A Yes.

16 Q And we have a transcript of that interview.

17   Number 3, it -- you underwent an

18   interview and a hypnosis session with a Dr. Lee

19   Pulos, who was retained by Federal Justice I

10:09   20   believe on September 25, 1991; do you recall that?

21 A I recall him.

22 Q Recall him? And, again, we have an audio tape and

23   a transcript of that. Now what I am missing

24   between 3 and 4 is that I understand between

10:09   25   November 13th and 14th, 1991, that you were

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1   interviewed or met with a Dr. Fleming, who was a

2   psychiatrist retained by Federal Justice to meet

3   with you; do you remember that meeting?

4   *A*   I don't recognize the name.

10:09   5   **Q**   Okay. I'll show you a document a bit later, Ms.

6   John, that may assist you with that.

7   I have just been handed a note

8   here, Ms. John, I think I need you to speak into

9   the mike, please, so that it's picked up on the

10:10   10   transcript. If you can either pull that closer or

11   just get closer to the, mike, please. Thank you.

12   Next is number 4, November 15th,

13   1991, when you were interviewed by Campbell Perry,

14   who was a Professor of Psychology, and again he

10:10   15   was retained by Federal Justice and I believe he

16   reviewed with you your hypnosis with Dr. Pulos.

17   Do you remember meeting with a fellow by the name

18   of Campbell Perry?

19   *A*   I don't recognize the name.

10:10   20   **Q**   Okay. We have a memorandum, which I'll show you a

21   bit later, that may assist you in recalling that.

22   Next, number 5, on January the

23   10th, 1992, I understand that you were interviewed

24   and underwent a hypnosis session with a fellow by

10:10   25   the name of Dr. Martin Horne in Philadelphia, and

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1   that present at that session was Eugene Williams

2   of Federal Justice and there was a post-hypnosis

3   interview; do you recall going to Philadelphia and

4   being hypnotised or interviewed by a Dr. Horne?

10:11 5   A   Yes.

6   Q   And then next, number 6, January 23-24, 1992 you

7   testified at the Supreme Court reference with

8   respect to David Milgaard; do you recall that?

9   That was in Ottawa before the Supreme Court.

10:11 10   A   Yes.

11   Q   And we have a transcript of that. Next, number 7

12   is May 17th, 1993, you were interviewed by

13   Corporal Templeton and Constable Dyck of the RCMP;

14   do you remember meeting with someone from the

10:11 15   RCMP?

16   A   Remember meeting with someone, but don't remember

17   the names.

18   Q   Okay. We have an audio tape and a transcript of

19   that that we will play for you a bit later.

10:11 20   And I understand from the

21   documents, number 8, that you were then

22   interviewed, a follow-up interview on February

23   3rd, 1994, and I'm not sure if I have the names of

24   the officers, but a short interview; do you recall

10:12 25   that?

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1   *A*   No.

2   **Q**   I will show you some notes later on that. And

3   lastly -- and the date may be wrong, I think

4   October 12th may have been the date of

10:12 5   commencement of the trial -- but you were called

6   as a witness by legal counsel for Larry Fisher at

7   his trial; do you recall that, --

8   *A*   Yes.

9   **Q**   -- testifying at Mr. Fisher's trial? Yes. Now

10:12 10   apart from that, and I understand at least from

11   the documents as well, Ms. John, that there were

12   some other attempts by media people to contact and

13   interview you that I understand you did not oblige

14   with interviews; is that correct?

10:12 15   *A*   Correct.

16   **Q**   Pardon me?

17   *A*   Correct.

18   **Q**   Okay. And is there anything else, other than what

19   I have gone through, where you recall sitting down

10:12 20   and telling anybody in authority or anybody on

21   behalf of David Milgaard or his family anything

22   relating to this matter?

23   *A*   I don't understand the question.

24   **Q**   In addition to what I have just gone through with

10:13 25   you, the nine items on this page and the

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1   additional one with Dr. Fleming, are there any

2   other interviews or sessions that you remember

3   post-conviction where you would have told your

4   story to someone in authority --

10:13   5   A   No.

6   Q   -- or to someone? Now I understand, Ms. John,

7   that you have not, for the purposes of your

8   evidence here, you have not reviewed any of your

9   earlier statements or transcripts; is that

10:13   10   correct?

11   A   Correct.

12   Q   And would the last time that you looked at any

13   paper in connection with this matter, would it

14   have been in October of 1999 at -- in connection

10:13   15   with Mr. Fisher's trial; is that --

16   A   Yes.

17   Q   And would it be fair to say that you looked at

18   some documents, but maybe not all documents at

19   that time, or do you remember what you looked at?

10:13   20   A   Don't really recall what I looked at.

21   Q   I want to just outline for you Ms. John, and for

22   the Commissioner, how I intend to proceed with

23   your evidence. I'm going to ask you for your

24   recollection of certain events without going to

10:14   25   documents, I want to go through and get your

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1   recollection on some matters, then I intend to go

2   through some documents and statements from the

3   investigation to see if that refreshes or assists

4   your memory. I then intend to go through your

10:14   5   evidence, parts of your evidence that you gave at

6   the preliminary hearing and trial of David

7   Milgaard to seek to refresh your memory and to ask

8   some questions regarding what you have said or

9   what's been attributed to you, I also am going to

10:14   10   ask you some questions about the circumstances

11   under which you attended these interviews or court

12   proceedings, and then I'll move to the

13   post-conviction phase and go through where you

14   gave interviews and testimony. And we will play

10:14   15   the audio or videotapes, where available, of these

16   interviews in their entirety, and then I will have

17   some questions for you.

18   If we can go back to starting

19   off with 1968; do you recall when and how you met

10:15   20   David Milgaard?

21   A   No.

22   Q   Would it be fair to say that you met him in or

23   about 1968, is that --

24   A   Sounds right.

10:15   25   Q   You would have -- in connection with January 31,

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	1		1969, which is the date of Gail Miller's murder,
	2		you would have known David Milgaard for some time
	3		prior to that; is that fair?
	4	A	I guess so.
10:15	5	Q	Months, a year, are you able to help us out?
	6	A	Can't help you out.
	7	Q	And let's -- in January of 1969 do you recall if
	8		you were working or if you were in school?
	9	A	Not sure.
10:15	10	Q	And I'm going to take another guess at age,
	11		hopefully I get this right, but I believe you were
	12		16 at the time; does that sound right, in January
	13		of 1969?
	14	A	Okay, if you do the math, yeah, I guess I was.
10:15	15	Q	Now, how about Ron Wilson, do you remember Ron
	16		Wilson?
	17	A	Not really.
	18	Q	You recall going on a trip with him to Saskatoon
	19		in 1969 do you?
10:16	20	A	Yeah.
	21	Q	Would he have been a friend of yours at the time
	22		do you recall?
	23	A	More than likely.
	24	Q	Now, I would like to draw your attention to the
10:16	25		trip to Saskatoon, January 30, January 31, 1969.

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1   Do you recall how that came about or why you

2   decided to go?

3   *A*   No.

4   **Q**   What do you recall of that trip?

10:16   5   *A*   Not a whole lot.

6   **Q**   Do you remember leaving after midnight and driving

7   through the night to Saskatoon?

8   *A*   I'm not sure what time we left, but I would say it

9   was night.

10:16   10   **Q**   Do you recall what time or what part of the day

11   you would have arrived in Saskatoon?

12   *A*   No.

13   **Q**   Do you remember whose car you were in?

14   *A*   I think it was Ron's or somebody that Ron knew.

10:17   15   **Q**   Do you recall having problems with the battery --

16   *A*   No.

17   **Q**   -- with the car prior to leaving? Pardon me?

18   *A*   No.

19   **Q**   Do you have any recollection of whether you or

10:17   20   Mr. Wilson or Mr. Milgaard were using drugs on the

21   trip?

22   *A*   No.

23   **Q**   No recollection?

24   *A*   No recollection.

10:17   25   **Q**   Do you have any recollection of stopping a woman

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 1              and asking for directions in Saskatoon?

 2      A       Not really.

 3      Q       You say not really.  Do you have any recollection?

 4      A       Well, I've got a thought in my head that that

10:17  5               happened, but I couldn't tell you about it.

 6      Q       We'll go through some documents and that may

 7              assist you.  Do you recall your vehicle that you

 8              were in that morning with Mr. Milgaard and

 9              Mr. Wilson getting stuck anywhere in the city?

10:17 10      A       Yes.

11      Q       And what do you recall about that?

12      A       Just getting stuck.

13      Q       And do you recall where that was?

14      A       Back alley.

10:17 15      Q       Do you recall anything in the vicinity of that

16              back alley, do you have any recollection of what

17              was in that area?

18      A       Some buildings on the left and a building at the

19              end of the alley.

10:18 20      Q       And can you give me any -- what do you recall of

21              those buildings, anything stick out in your mind?

22      A       No.

23      Q       And do you recall either Mr. Milgaard or

24              Mr. Wilson leaving the vehicle at or around the

10:18 25              time the vehicle was stuck?
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	1	*A*	I believe they did.
	2	**Q**	And what do you recall of that?
	3	*A*	That I was in the vehicle by myself in the back
	4		seat, that's what I recall.
10:18	5	**Q**	And do you recall seeing anything outside the
	6		vehicle --
	7	*A*	No.
	8	**Q**	-- about this time. Do you recall or do you have
	9		any recollection of the clothes that either Mr.
10:18	10		Milgaard or Mr. Wilson were wearing that morning?
	11	*A*	No.
	12	**Q**	Do you recall going to a motel for a map that
	13		morning?
	14	*A*	No.
10:19	15	**Q**	Do you recall being stuck in an alley behind a red
	16		convertible?
	17	*A*	No.
	18	**Q**	And the name Danchuk, does that ring a bell,
	19		Walter?
10:19	20	*A*	It's familiar, but I don't know why I know it.
	21	**Q**	Do you recall going to the house of a fellow by
	22		the name of Albert Cadrain whose nickname was
	23		Shorty Cadrain at the time?
	24	*A*	I recall being there, but not how I got there.
10:19	25	**Q**	And had you known Albert or Shorty Cadrain prior

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1   to this trip do you know?

2   A   I don't think so.

3   Q   And do you recall being at that house that morning

4   then?

10:19 5   A   I think it was his house.

6   Q   And what recollection do you have of what went on

7   at his house?

8   A   The only thing I recall is walking up the front

9   steps.

10:19 10   Q   Do you recall meeting Albert's sister or brother?

11   A   No.

12   Q   No? Do you recall observing David Milgaard or

13   Ron -- let's start with David Milgaard -- changing

14   his clothes at the Cadrain house?

10:20 15   A   No.

16   Q   Do you recall Ron Wilson changing his clothes at

17   the Cadrain house?

18   A   No.

19   Q   Do you recall observing blood on David Milgaard's

10:20 20   clothes that morning?

21   A   No.

22   Q   Do you recall observing battery acid on his

23   clothes?

24   A   No.

10:20 25   Q   Do you recall your group having car trouble after

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1		you were at the Cadrain house that morning?
2	A	No.
3	Q	Do you recall leaving Saskatoon?
4	A	Yes.
10:20 5	Q	What do you recall of departing Saskatoon?
6	A	I just recall being in the car driving.
7	Q	Okay. And do you remember where you were going?
8	A	I think we were on the way to Rosetown.
9	Q	And do you recall anything about that trip?
10:21 10	A	No.
11	Q	Do you remember where you were going or where you
12		ended up?
13	A	I think we ended up in Calgary.
14	Q	Does the name -- do you remember going to Edmonton
10:21 15		to see a girl or a woman by the name of Sharon
16		Williams, does that ring a bell?
17	A	As in did we go to Edmonton?
18	Q	Yes.
19	A	Did we get to Edmonton?
10:21 20	Q	Yes. Do you remember that?
21	A	No.
22	Q	And I understand that you then returned to Regina
23		after this trip; is that correct? Do you recall
24		that?
10:22 25	A	I don't recall the trip back, no.

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	1	Q	And you were living in Regina at the time?
	2	A	The time of?
	3	Q	In January of 1969?
	4	A	I guess so, yeah.
10:22	5	Q	Do you recall when you first heard about the Gail
	6		Miller murder?
	7	A	No.
	8	Q	Do you have a recollection of the police
	9		contacting you in March of 1969?
10:22	10	A	Vaguely.
	11	Q	And what do you remember?
	12	A	I was living in a house and two police officers
	13		came. That's all I remember. I couldn't even
	14		give you a description of what they looked like.
10:22	15	Q	And do you -- did you understand that it was in
	16		connection with the murder in Saskatoon?
	17	A	I don't recall.
	18	Q	Do you remember attending in Saskatoon and meeting
	19		with some police officers in Saskatoon in
10:22	20		connection with this matter?
	21	A	I know I was in Saskatoon.
	22	Q	Do you remember giving evidence at David
	23		Milgaard's preliminary hearing and trial?
	24	A	Not really.
10:23	25	Q	Ms. John, I now wish to go through some of the

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1   documents around this time to see if those

2   documents can assist in refreshing your memory and

3   first is a statement of March 11th, 1969, it's

4   document number 298455, and this is a statement

10:23 5   that's dated March 11th, 1969 at 4:30 p.m., and if

6   you could just go to the last page of that,

7   please, 298459, and you'll see there, Ms. John, is

8   that your signature?

9 A   It looks like it.

10:24 10 Q   And go back to the first page. This is a document

11   that I believe is prepared by an Inspector Riddell

12   who was with the RCMP and I take it, is this

13   handwriting in this statement, is that your

14   handwriting?

10:24 15 A   No.

16 Q   And I think you said you recall meeting with two

17   police officers; is that right?

18 A   I remember two police officers coming to the

19   house, but I don't know if I talked to them or

10:24 20   what happened.

21 Q   Do you recall at times subsequent to March 11th,

22   1969 being shown this statement and going through

23   this statement either in court or subsequently?

24 A   I think that I saw this statement at Mr. Fisher's

10:24 25   trial, but I couldn't be correct.

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1   **Q**   I'll go through a bit later today and show you

2   where this has been shown to you in other

3   proceedings. Is it fair to say, Ms. John, you

4   don't dispute that this is a statement that you

10:25 5   signed in March of 1969; is that fair?

6   *A*   No, I don't dispute it.

7   **Q**   Now, I'm going to call up a typed version and

8   someone has typed out the handwriting so we can

9   read it a bit better and I'll go through that.

10:25 10   It's document 002124 and this is just the

11   typewritten version and I want to go through parts

12   of this, Ms. John, to see if this refreshes your

13   memory. It says here:

14   "Ron Wilson, David Milgaard and myself

10:25 15   planned on going to Vancouver in Wilson's

16   car. We left Regina at about 1:00 A.M. on

17   the morning after Ron Wilson purchased

18   license plates for his car. This would be

19   Friday morning. We headed for Saskatoon as

10:26 20   Milgaard wanted to pick up Albert ("Shorty")

21   to go on this trip. On our way to Saskatoon

22   we stopped for coffee at Davidson and we

23   also got stuck in the snow a couple of times

24   on the highway. As near as I can figure out

10:26 25   we arrived in Saskatoon between 6:30 and

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1   7:30 A.M. We started to drive around

2   looking for Albert's place. Ron and I had

3   never been there before but David had and he

4   said that once we got into the area he would

10:26   5   know the house as it was near this gas

6   station."

7   Does that assist your recollection of events,

8   Ms. John?

9 A   No.

10:26 10 Q   Do you have any reason to believe that what I just

11   read to you, if you go back to the top, is not

12   accurate?

13 A   No.

14 Q   It says here that you and Ron Wilson had never

10:26 15   been to Saskatoon before; is that correct?

16 A   I had never been to Saskatoon.

17 Q   So the trip in January of 1969 with David Milgaard

18   and Ron Wilson was the first time you were in

19   Saskatoon?

10:26 20 A   Yeah.

21 Q   Go down, please, to the second paragraph. It

22   says:

23   "We stopped at this motel to get a map to

24   find out where "Pleasant Hill" area was

10:27 25   because David said that this was the area

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1   where this "Shorty" lived. David went in in

2   his stocking feet and he got this map. We

3   continued to drive and somehow we got on

4   this street and we wanted to go around the

10:27 5   block again so Ron, who was driving, turned

6   down this back alley and we came across this

7   convertible stuck in the middle of the

8   alley. The guy in this car asked us to give

9   him a push and when we did, our car stalled.

10:27 10   We all went into this fellow's house to get

11   warm and he phoned the tow truck. It took

12   the tow truck at least one-half hour. When

13   we first met this other car in the alley, it

14   was just starting to get daylight. After

10:27 15   the tow truck got the convertible going,

16   this fellow drove us to the gas station. We

17   got the tow truck to come back and give us a

18   "boost" to get our car started. This was

19   well after daylight. I don't think we ever

10:27 20   paid this tow truck driver."

21   Does that assist your recollection, Ms. John?

22   A   No.

23   Q   I think if we just go back, I'm sorry, stopping at

24   a motel for a map, I'm sorry, do you recall any of

10:28 25   that?

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1   *A*   No.

2   **Q**   Down to the next paragraph, please, you say:

3   "We then set out to look for Albert's place

4   and as we drove we saw this gas station and

10:28   5   from there David was able to find the house.

6   When we got there David went in the house by

7   himself, then he called us in. We met

8   Albert, his little brother and his sister.

9   We weren't there too long and then Albert's

10:28   10   mother came in. I don't know what time it

11   was but it was well after daylight. It

12   could have been noon or later. At Albert's

13   place both David and Ron changed clothes.

14   Ron's pants were being eaten by acid and

10:28   15   David had ripped the crotch out of his pants

16   which were green with some kind of stripe.

17   I think David also had on a brown coat or

18   jacket. I didn't see any blood on anybody's

19   clothing. David drove the car around the

10:28   20   block and it broke down. We got a tow truck

21   and we all went to this gas station to get

22   the car fixed. We all had something to eat

23   at this cafe across the street. Then after

24   a while myself and Albert went to the Credit

10:29   25   Union where Albert withdrew $70.00. Then we

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1   went to this Variety Store where Albert

2   bought a few things and then back to the gas

3   station."

4   Pause there. Does that assist in your

10:29 5   recollection of any events, Ms. John?

6 A   No.

7 Q   Do you recall being at the Cadrain house?

8 A   I think it was the Cadrain house.

9 Q   Carrying on:

10:29 10   "After the car was fixed we drove around

11   looking for Albert's girlfriend as he wanted

12   her to come along. We couldn't find her.

13   Then we went to Albert's friend's place to

14   see if he wanted to come with us. I don't

10:29 15   know his name but he lived not too far from

16   downtown and he didn't want to come. Then

17   we left the city and when we got to Rosetown

18   it was still daylight. We bought some food

19   and a small knife to cut meat and butter the

10:30 20   bread. We didn't go to Vancouver, but

21   instead we went to Calgary, then to Edmonton

22   and St. Albert, then back to Calgary, then

23   on to Banff and then back to Regina."

24   Does that assist in your recollection, Ms. John?

10:30 25 A   No.

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1   Q   I think you told me earlier you remember Rosetown;

2   is that right?

3   A   Yeah, that's --

4   Q   And Calgary?

10:30 5   A   And -- yeah, Calgary, but the sequence I have no

6   idea.

7   Q   It says:

8   "It was about 3:00 or 4:00 A.M. and we had

9   been gone about five or six days. The last

10:30 10   time I saw Milgaard was the morning we got

11   back when they dropped us off. It was also

12   the last time I saw Ron. Albert got picked

13   up the next day by the police and that was

14   the last time I saw him."

10:30 15   Does that assist in your recollection?

16   A   No.

17   Q   Do you have any memory of Albert Cadrain returning

18   to Regina with you after this trip?

19   A   No.

10:30 20   Q   And then it says:

21   "All during the morning we were in

22   Saskatoon, the three of us were together and

23   I am sure that David or Ron never left me

24   for more than one or two minutes that

10:31 25   morning. Just yesterday or the day before,

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1   Barb Berard, a friend of mine, told me that

2   David had returned to Regina and I think it

3   was him that told her that he was going to

4   be picked up for murder."

10:31 5   Does that assist your recollection at all?

6   A   No.

7   Q   Do you recall who Barb Berard was or is?

8   A   I recall her name, yes.

9   Q   Was she a friend of yours at the time?

10:31 10   A   Yes.

11   Q   Were you living at her house at that time do you

12   remember?

13   A   I'm not sure when.

14   Q   At some time in 1969 were you living with Barb

10:31 15   Berard?

16   A   I don't know what the year was, but it was within

17   a couple of years' span. Like, I couldn't tell

18   you exact dates.

19   Q   Now, I think you've acknowledged that this would

10:31 20   have been a statement that you signed after an

21   interview with the police; is that correct?

22   A   I guess so.

23   Q   Would you have told Inspector Riddell the truth

24   when you spoke to him on this date?

10:32 25   A   I would believe so.

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	1	**Q**	Do you recall any reason that you would mislead or
	2		lie to the police when you talked to them on this
	3		date?
	4	*A*	No.
10:32	5	**Q**	And I take it from this statement, Ms. John, that
	6		at this time, at least according to the statement,
	7		it would appear that you would have known that
	8		David Milgaard was a suspect for the murder?
	9	*A*	Well, according to the statement obviously.
10:32	10	**Q**	But do you have any recollection of that?
	11	*A*	No.
	12	**Q**	Now I would like to go to a police report,
	13		document 106640. Now, Ms. John, this is a police
	14		report prepared March 22nd, 1969 by the police.
10:33	15		You may not have seen this before, but this is a
	16		report that some city police officers prepared
	17		that set forth some of the things they did,
	18		including what they did with you, and I wish to
	19		just point out parts of this and read it to you
10:33	20		and see if this assists in your recollection, and
	21		this is a report by Lieutenant Charles Short.
	22		Does that name sound familiar to you?
	23	*A*	Who? I'm sorry.
	24	**Q**	Short, Charles Short.
10:33	25	*A*	No.

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1   **Q**   And if I can just start reading here. It says:

2   "On Tuesday March 18, 1969 --"

3   And if I can pause there. The statement I just

4   went through with Inspector Riddell was March

10:33   5   11th, so this would appear to be a week later:

6   "-- Detective Karst and myself took Albert

7   Cadrain to Regina and were in touch with the

8   Regina City Police there and later we

9   proceeded to the Regina gaol and interviewed

10:33   10   Ron Wilson again, however, nothing further

11   was learned from him and we also found his

12   home and talked to Mrs. Wilson where there

13   was some discrepancies found in the clothing

14   that these boys both Wilson and Milgaard

10:34   15   were wearing when they left Regina. Also

16   female Nichol John was located in a hippie

17   house in Regina and she was after

18   considerable persuasion brought to the

19   Regina jail and interviewed by Karst and

10:34   20   myself and was placed in a room with Cadrain

21   and allowed to discuss this matter and it

22   was learned from her after this discussion

23   that --"

24   It says throught -- I think it should be

25   throughout,

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1   "-- throughout interrogation that she was of

2   the opinion that Cadrain was telling the

3   truth and that everything he said was

4   exactly what had happened on this trip. She

10:34 5   was of the opinion that Milgaard was of a

6   dangerous character and that he had forced

7   her to have intercourse etc. several times

8   and she was afraid of him. It is my

9   opinion --"

10:34 10   And this is Charles Short,

11   "-- that Milgaard is a dangerous person and

12   it is known that he had a record as a

13   juvenile..."

14   Etcetera. Does that assist in recalling the

10:34 15   events of March 18th, 1969, Ms. John?

16 *A*   No.

17 *Q*   Do you recall meeting with Albert Cadrain in a

18   room with the police?

19 *A*   Not at all.

10:35 20 *Q*   Do you recall meeting with the police at this

21   time?

22 *A*   The name Karst is familiar, but I don't know when

23   I met with him.

24 *Q*   Do you recall -- I think it says that you went out

10:35 25   to the Regina jail. Do you remember attending at

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1   the jail with Ron Wilson?

2   A   No.

3   Q   And just back here it says -- or it's reported

4   that you say you are of the opinion that Milgaard

10:35   5   is of a dangerous character. Do you remember

6   thinking that at the time or telling the police

7   that at the time?

8   A   I have no memory of that.

9   Q   The next document is 106661 and again this is a

10:36 10   police report. This one is prepared by Detective

11   Karst, it's dated April 18th, 1969 and again,

12   Ms. John, this is a document you may not have seen

13   before, it's a report that the police prepared

14   outlining their notes of their dealings with you

10:36 15   and I just wish to read portions of this to you.

16   Call out this paragraph, please. It says:

17   "With the assistance of Ken Walters, Cst.

18   with Regina City Police, we located the

19   Nichol John girl at 817 Victoria Avenue and

10:36 20   transported her to the city police station

21   and was interviewed at length. Further

22   investigation of this girl when she was

23   interviewed gave one the feeling that she

24   was telling the truth and she emphatically

10:36 25   stated she could not recall any time while

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1   they were in the City of Saskatoon during

2   the morning of the murder at which time

3   Wilson or Milgaard had left the vehicle in

4   which they were driving long enough to

10:37   5   commit this offence. She denied that

6   Milgaard had left their vehicle at any time

7   to go to a bathroom or go for a cup of

8   coffee which she could recall. This girl

9   did however state that she felt Milgaard was

10:37   10   capable of an offence of this nature and

11   admitted having sexual relations with him at

12   different times and that he was more of the

13   animal nature than you would expect of a

14   human."

10:37   15   If I can pause there. Does that assist your

16   recollection at all, that paragraph, Ms. John?

17   A   Not at all.

18   Q   The name Ken Walters, a Regina police officer, do

19   you recall a Mr. Walters, a police officer in

10:37   20   Regina?

21   A   The name is familiar, but I couldn't tell you what

22   he looked like or anything.

23   Q   And 817 Victoria Avenue I believe is a home that

24   was Barbara Berard's home; does that sound right?

10:37   25   A   I think so, yeah.

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1   Q   And what's stated in this paragraph, do you have

2   any recollection of having that discussion or

3   stating that to the police at the time?

4   A   No. I wouldn't have used those words.

10:38   5   Q   Which words?

6   A   The last words in the last sentence.

7   Q   Okay. And you are referring, for the record,

8   "That he was more of the animal nature than you

9   would expect of a human," those were words that

10:38 10   you would not have used?

11   A   I would never have used words like that.

12   Q   Down to the next paragraph, please, it says:

13   "She was again questioned with regards to

14   the alleged blood on Milgaard's clothing and

10:38 15   changing clothing at the Cadrain's

16   residence, 334 Avenue O South Saskatoon,

17   however she states she could not recall

18   seeing any blood on his clothes, and thought

19   he had changed the trousers for the reason

10:38 20   that they had been ripped. Questioning of

21   this girl also revealed that her thoughts of

22   Milgaard had been that he had acted in a

23   queer manner when in Saskatoon to the effect

24   that he was always in a rather hurry also

10:38 25   that he drove unusually fast when in the car

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1   leaving Saskatoon and did not seem to be

2   himself at that time."

3   Keeping in mind these are the words that the

4   officer wrote down, Ms. John, does that assist

10:39 5   refreshing your memory, do you recall any of

6   those discussions with police at that time?

7   A   No.

8   Q   Again, I'm not sure if I had asked you this about

9   Mr. Milgaard being in a hurry. Do you recall that

10:39 10   on the trip?

11   A   No.

12   Q   Next paragraph, please, it says:

13   "The Nichol John girl described Milgaard's

14   jacket which he had worn at that time as

10:39 15   being made of brown suede material with

16   lighter colored knitted cuffs and knitted

17   stripes down the front and also a collar,

18   and she did not think there was any buttons

19   on this jacket. She also stated he was

10:39 20   wearing a dark colored toque when in Regina

21   however she did not recall seeing this toque

22   again. This being of interest as a toque

23   had been found by myself in the yard

24   directly north on Cadrain residence which

10:39 25   had red substance on it which Lieut. Penkala

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1   at present has sent to lab. for further

2   analysis.

3   The Nichol John girl states she

4   was wearing a purple colored 3/4 length

10:40 5   parka which had a hood on same, this hood

6   having fur around it as was on the bottom of

7   the parka which was of a brownish-white

8   color and she was also wearing slacks."

9   Does that assist you in recalling the events at

10:40 10   the time, Ms. John?

11 A   No.

12 Q   Do you have any recollection of the clothing that

13   either you or Mr. Milgaard or Mr. Wilson were

14   wearing that morning?

10:40 15 A   No.

16 Q   Next page, and this is reported here:

17   "Although there are many unanswered

18   questions with regards to Milgaard's

19   activities on that particular morning, if

10:40 20   one is to believe the girl, Nichol John, and

21   it appears that she is very convincing with

22   her story, then there is no way in which

23   Milgaard can be connected with this crime."

24   Does that assist you in recalling your

10:40 25   discussions with Detective Karst on or about

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1   April 18th, 1969?

2   A   No.

3   Q   Do you recall any discussions with the police at

4   that time about Mr. Milgaard being a suspect in

10:41 5   this murder?

6   A   I recall no -- nothing about any discussion with

7   the police.

8   Q   The next date, at least from the documents,

9   Ms. John, it appears that on or about May 22nd,

10:41 10   1969 the Saskatoon police attended in Regina and

11   then took you to Saskatoon. Do you recall

12   travelling to Saskatoon with the police?

13   A   Briefly, or vaguely I should say.

14   Q   Does the name Raymond Mackie sound familiar, a

10:41 15   police officer?

16   A   No.

17   Q   So when you say vaguely, you believe that you

18   travelled to Saskatoon?

19   A   Right.

10:41 20   Q   With the police?

21   A   Right.

22   Q   And it would be in connection with the Gail Miller

23   murder?

24   A   I would believe so, yeah.

10:42 25   Q   Do you recall at this time, and again after your

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1   trip back, do you recall having any discussion

2   with either Ron Wilson on Albert Cadrain or David

3   Milgaard?

4   A   No.

10:42 5   Q   If I could call up document 009222, please. Now,

6   this is a report, Ms. John, it's dated May 29th,

7   1969 and it's by Detective Sergeant Ray Mackie,

8   but it talks about events that started on May

9   22nd. Just call out that paragraph, please, and

10:42 10   I'll just read parts of this to you and see if

11   this assists in recalling these events, and again

12   this is Detective Mackie's report.

13   "In regards to further investigations that

14   have been carried out in regards to this

10:43 15   matter, on May 22nd, while in Regina, Sask.

16   Nichol John was picked up at her home 817

17   Victoria Ave. Regina, and taken to the

18   Regina City Police station where she was

19   interviewed in regards to her knowledge of

10:43 20   this offence. This interview has been taped

21   for further reference."

22   Do you recall being taken to the Regina City

23   Police station and giving an interview that was

24   taped?

10:43 25   A   No.

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1   **Q**   It says:

2   "On May 22nd, Barbara Berard, 817 Victoria

3   Avenue --"

4   And if I can pause there. Barbara Berard I think

10:43   5   you said was your friend at the time?

6   *A*   Yes.

7   **Q**   And the same address, correct, as you were living

8   at?

9   *A*   Yes.

10:43   10   **Q**   So does it sound -- would you agree that at this

11   time it certainly appeared from this document that

12   you and Barbara Berard were living in the same

13   house?

14   *A*   I would think so.

10:43   15   **Q**   It carries on to say on that date:

16   "... Barbara Berard was contacted and

17   interviewed in regards to her knowledge of

18   this murder from what she might have heard

19   from Nichole Johns. Present at this

10:44   20   interview was Cst. Ken Walters, Regina City

21   Police and myself. Berard in her interview

22   indicated that Nichole John was disturbed or

23   upset about something that she had started

24   to make statements in regards to what had

10:44   25   happened in Saskatoon, and these statements

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1   were never completed."

2   Pause there. Do you recall any discussions with

3   Barbara Berard at this time?

4   *A*   No.

10:44 5   **Q**   "In regards to David Milgaard,

6   Barbara Berard stated that Milgaard

7   associated very closely with Bob Harris and

8   Georgia Lapchuk."

9   Are either of those names, Harris and Lapchuk,

10:44 10   familiar to you?

11   *A*   Lapchuk is.

12   **Q**   And you knew Lapchuk at the time, did you?

13   *A*   Yeah, I think so.

14   **Q**   And was he an acquaintance of yours or --

10:44 15   *A*   I'm not sure.

16   **Q**   How about Bob Harris; is that name familiar to

17   you?

18   *A*   No.

19   **Q**   What about Craig Melnyk; is that a familiar name?

10:45 20   *A*   It's familiar, but I can't put it to a face.

21   **Q**   And Ute Frank?

22   *A*   Umm, yes.

23   **Q**   Remember Ute Frank; was she a friend of yours at

24   the time?

10:45 25   *A*   I don't remember at the time, but I met her at the

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1   Fisher trial.

2   **Q**   Okay.

3   *A*   Okay. I didn't recall her before that.

4   **Q**   And that would have been in 1999?

10:45   5   *A*   Yeah, whenever it was.

6   **Q**   And what about Deborah Hall; is that name

7   familiar?

8   *A*   No.

9   **Q**   Okay. If you could just then scroll down, please,

10:45   10   to the next paragraph. Again, this is Sergeant

11   Mackie writing:

12   "On the evening of May 22nd, Nichol John

13   was returned to Saskatoon and I received

14   from her also one maroon coloured pile

10:45   15   parka with a white fur trim around the

16   hood and bottom of the coat which she

17   was wearing while in Saskatoon on the

18   31st of January. I presently have

19   possession of this coat in my locker.

10:45   20   On returning to Saskatoon, Nichol John

21   was transported to the Freeway where

22   they came into Saskatoon off the Regina

23   Highway, and she felt that they had come

24   into the City via Preston Avenue but she

10:46   25   could not pick any streets or familiar

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1   markings. She was then transported to

2   20th Street West where she was driven

3   around the area and she stated that she

4   recalled the brick wall on the east side

10:46   5   of the Westwood Funeral Chapel, she also

6   indicated that she recalled two garbage

7   cans which she pointed out and where the

8   two where the purse was found. After

9   having left the scene, she stated that

10:46 10   the lid on the left hand garbage can,

11   the one being the closest to the houses

12   was tipped. This was however, found to

13   be not so. She also recalled something

14   of the church but she could not remember

10:46 15   exactly what the involvement was."

16   If I can pause there, does that assist you in

17   your recollection, Ms. John?

18   A   No.

19   Q   Do you have any recollection of driving around

10:46 20   with the city police, with a police officer in and

21   around a back alley and near a funeral home?

22   A   I have a vague recollection, but I couldn't tell

23   you when it was.

24   Q   What is your vague recollection; what do you

10:47 25   remember?

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1 *A* I just recall being in a car and being in that

2 back alley.

3 **Q** And this was with a police officer?

4 *A* Right, yup.

10:47 5 **Q** And when you say "that back alley" would that be

6 the back alley behind the funeral home where Gail

7 Miller's body was found?

8 *A* That's what they told me, that there was a funeral

9 home there, I remember that.

10:47 10 **Q** Okay. And do you remember seeing a church or

11 being shown a church at that time?

12 *A* Umm, can't remember.

13 **Q** And how about, it mentions here garbage cans, do

14 you remember that?

10:47 15 *A* Umm, don't remember that.

16 **Q** And just scroll down, please. Do you remember --

17 sorry -- the time of year that this would have

18 been, winter, summer?

19 *A* Nope.

10:47 20 **Q** It says:

21   "She was then transported west along

22   22nd Street where she pointed out the

23   Way Fare Inn as being a cafe where they

24   had been in the later part of the

10:48 25   morning on January 31st, Texaco Service

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1   Station, Avenue P and 22nd Street where

2   the car had been repaired, she then went

3   to the rear of apartment blocks on 22nd

4   Street West, where we were directed to

10:48 5   the lane of the rear of 129 Avenue T

6   South where she pointed out a house at

7   129 Avenue T South as being the house

8   where they had got stuck the second

9   time. This is also the house where they

10:48 10   had been invited in while waiting for

11   the tow truck."

12   If I can pause there, do you remember going with

13   the police in the back alley and being shown a

14   house where you got stuck?

10:48 15 A   No.

16 Q   No? It then goes on to say:

17   "Then we returned to the 200 block

18   Avenue M South which Nichol John did not

19   recognize as being the location where

10:48 20   they had asked the girl for directions."

21   Do you remember driving around looking for a spot

22   where -- which might be familiar, where you --

23 A   No.

24 Q   It says:

10:48 25   "I then drove her into the alley again

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1   at the rear of the funeral home and she

2   indicated that the entrance to the alley

3   was approximately where they had been

4   stuck as she recalled the side of the

10:49   5   car being up against the snowbank at

6   about the alley."

7   Do you recall that?

8   A   No.

9   Q   It says:

10:49   10   "Shortly after this I returned to the

11   Police Station where Nichol John was

12   interviewed in regard to LSD trips she

13   had been on and nightmares she had been

14   ...,"

10:49   15   scroll down, please:

16   "... nightmares she had been having

17   since this offence occurred. At this

18   time it appeared that Nichole John had

19   forgotten a great deal of what had

10:49   20   happened, possibly due to shock of what

21   she had witnessed."

22   If I can pause there, do you recall any

23   discussions with Sergeant Mackie about that?

24   A   No.

10:49   25   Q   Do you recall, Ms. John, whether you had been

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1   taking LSD at or about this time in 1969?

2 *A*   Don't know.

3 **Q**   Pardon me?

4 *A*   I said I don't know.

10:49 5 **Q**   And then it just goes on, and Sergeant Mackie

6   says:

7   "At approximately 10:00 p.m., I

8   proceeded to the Cavalier Hotel where

9   Superintendent Wood, Lieutenant Penkala

10:50 10   and I interviewed Inspector Roberts of

11   Calgary Police, in regards to this file,

12   so that he would be able to interrogate

13   Ronald Wilson and Nichole John for us on

14   the 23rd."

10:50 15   Do you remember at about this time, May of 1969,

16   staying overnight at the city police station in

17   either police cells or a maintenance room?

18 *A*   No.

19 **Q**   Do you recall where you would have stayed when you

10:50 20   were in Saskatoon at the time?

21 *A*   No.

22 **Q**   Do you recall anything about taking a lie detector

23   test or a lie detector test?

24 *A*   No.

10:50 25 **Q**   Do you have any recollection of meeting with the

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1   police officer at the Sheraton Cavalier hotel in a

2   hotel room?

3   A   No.

4   Q   I'm going to read for you, Ms. John, some parts of

10:50 5   the evidence that was given by a fellow named Art

6   Roberts, who was an inspector with the Calgary

7   police force who came into Saskatoon on May 23rd,

8   1969, and according to the records and his

9   evidence he interviewed both you and Ron Wilson

10:51 10   and he gave Ron Wilson a lie detector test. He

11   testified at the Supreme Court hearings in 1992,

12   he has since passed away, but I want to read to

13   you parts of his evidence where he outlines for

14   the Supreme Court his recollection of his dealings

10:51 15   with you to see if that assists you in refreshing

16   your memory. Okay?

17 A   Uh-huh.

18 Q   If I could call up, please -- actually, the first

19   document I just want to refer to you is -- or

10:51 20   actually, no, let's go to Inspector Roberts, we'll

21   come back to this later. It's document 043300.

22   Do you have any recollection of -- does the name

23   Roberts --

24 A   No.

10:52 25 Q   And this is simply the first page of the document

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1   for purposes of identifying it, and Mr. Roberts

2   was examined by Mr. Neufeld on behalf of the

3   Government of Saskatchewan, Mr. Wolch on behalf of

4   David Milgaard. If you could go to page 043336.

10:52 5   And again, Ms. John, I'm just going to read you

6   parts, and this is Mr. Roberts' evidence, and see

7   if this assists you in recalling what happened:

8   "Q   Okay. Do you know, yourself, today, how

9   long you were with Mr. Wilson in total

10   time that day?

11   A   I would say about two hours the first

12   time. He was taken away and then I

13   think I phoned again and requested him

14   to come back in the afternoon when

15   Nichol John was there. He came back,

16   and I'm going to say for about another

17   hour, hour-and-a-half, with Nichol

18   John. Maybe an hour. And there we

19   discussed it again. Then, the

20   Saskatoon City police -- we went down

21   for coffee. I remember going

22   downstairs for coffee; buying them

23   coffee. We took a walk in the park,

24   across from the Sheraton Cavalier, and

25   came back, the three of us. Then I

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1   called for the Saskatoon City police

2   and they came and picked him up.

3 Q   Can you tell me, after you first left

4   Mr. Wilson in the hands of the city

5   police, after you finished your first

6   interview with him and the test, all

7   right --

8 A   Yes, sir.

9 Q   Who did you then interview?

10 A   Nichol John.

11 Q   So, you interviewed her. Can you tell

12   us about that? The reports seem to

13   indicate that you didn't test her. Do

14   you recall --

15 A   No, I did not test her.

16 Q   All right. Can you tell us, please, of

17   your recollection of your dealings with

18   Nichol John?

19 A   Yes, sir. Now, it would be, I think,

20   after lunch, but I'm not too sure. I

21   remember taking both of them down for

22   coffee, so it would have to be after

23   lunch when Wilson came back that we

24   went for coffee.

25 Q   What I'm trying to understand, though,

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1		is that you had -- you've told us you
2		had the two individuals together.
3	A	Yes, but that was after I spoke to
4		Nichol John alone."
10:54 5		If we can pause there, does that assist your
6		recollection at all, Ms. John?
7	A	Not at all.
8	Q	Okay. Do you remember seeing Ron Wilson at the
9		time?
10:54 10	A	I have a brief thing in my head that Ron was there
11		but, you know, I have no idea when, where, how.
12	Q	Okay. Your recollection of Ron being there, when
13		you say "there," where are you referring to?
14	A	Ron and I being in the same location, but I
10:54 15		wouldn't know the date, I wouldn't know who would
16		have been there or anything like that.
17	Q	Okay.
18	A	I don't remember this gentleman.
19	Q	Would, your recollection of being with Ron, would
10:54 20		it be in connection with an interview by a police
21		officer or police officer?
22	A	I have no idea.
23	Q	Okay. If you can go to the next page, please,
24		043339, and again this is Mr. Roberts' account, he
10:55 25		says:

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1   "A   The next thing is I spoke to Nichol

2   John. She was brought to the room. I

3   introduced myself again, told her who I

4   was and that I understood she may have

5   some information with respect to the

6   murder of Gail Miller.

7   Now, she was a little nervous.

8   I talked to her at length and I asked

9   her how she came to be in Saskatoon, how

10   she had arrived there, and she told me

11   essentially the same story as Wilson,

12   that they had arrived in the early

13   morning and they were driving along and,

14   I guess, it was snowy. They stopped

15   somebody for directions, and then the

16   car got stuck close to this alley. She

17   could see down the alley. The car was

18   stuck and Wilson left the car to try and

19   get somebody to help them out and --

20   what's his name? -- Milgaard left the

21   car. I said to her, "And what happened

22   then?", and she hesitated and hummed and

23   hawed and I said, "Well, something must

24   have happened." She said, "Well, I

25   can't remember." That was what she

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1   said. I can remember her saying that.

2   "I can't remember."

3   Q   Go on?

4   A   I spoke to her for some time and went

5   through it again. You must realize,

6   in these things, you go over certain

7   things repetitiously to see whether

8   there's any variance in the story. I

9   suppose I spoke to her for half to

10   three-quarters of an hour. I finally

11   had the clothing, apparently, that was

12   worn by Gail Miller in the room in a

13   plastic bag.

14   Q   How did you come to have that in the

15   room?

16   A   They were given to me, I imagine, by

17   Superintendent John Wood, or one of

18   the detectives that had picked up the

19   articles. But I know I had the white

20   uniform -- and, I take it, it was a

21   nurse's uniform -- in a plastic bag in

22   the room. I think I had a cape; a

23   nurse's cape. I don't, honestly,

24   recall anything else of clothing.

25   Now, during this she kept

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1   saying, "No, I don't remember. I

2   don't remember." I said, "Well, I

3   think you do remember, but for some

4   reason or other you don't want to tell

5   me." I took the white -- I can recall

6   a white uniform being there, and it

7   was in a plastic bag, and I gave it to

8   her. I said, "What if this had been

9   your sister?", and she burst out, she

10   said, "My God, I do remember. I do

11   remember. I saw him fighting with her

12   down the lane. I saw him stab her."

13   I said, "Well, now you remember", and

14   she said, "Yes." I said, "Was there

15   some reason that you didn't want to

16   tell me before?" She said, "I

17   couldn't tell you before. I didn't

18   remember until I saw the dress."

19   Pause there. Does that assist you in your

10:57   20   recollection, Ms. John, of any interview you had

21   at the time?

22   A   Not at all.

23   Q   Do you have any recollection of being shown a

24   bloodied nurse's uniform?

10:57   25   A   No.

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1   **Q**   A nurse's coat?

2   *A*   No.

3   **Q**   Okay. Do you have any recollection of telling Mr.

4   Roberts as he said that you -- and I'll just

10:57   5   outline it here:

6   ""My God, I do remember. I do remember.

7   I saw him fighting with her down the

8   lane. I saw him stab her.""

9   *A*   No.

10:58   10   **Q**   Scroll down here, please. Again, this is Mr.

11   Roberts' evidence:

12   "So, I spoke to her again, just

13   to go over it again, and so on and so

14   forth, and I said, "What did you do when

15   you saw this?" She said, "I think I got

16   out of the car. I think I got out of

17   the car and ran." I said, "Well, where

18   did you run to?" She said, "I don't

19   know." Well, I said, "Did you get back

20   in the car? Were you picked up after,

21   or what happened?" She said, "I must

22   have got back in the car, because I was

23   there when Ron came back." I said,

24   "What happened then?", and again she

25   couldn't remember what happened.

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1   But I felt at that time that

2   she had made an admission. She told me

3   what she knew. I said, "Would it help

4   you if I brought back Wilson and we sat

5   down together and talked about it?

6   Would it help your memory?" To that, I

7   imagine, she must have said, "It may",

8   because I did get Wilson back again.

9   That's when Wilson came back and we sat

10   and talked for, I don't know, possibly

11   about three-quarters of an hour.

12   But I cannot recall anything

13   else that came out of that talk, other

14   than they went over it again. I

15   remember Wilson saying, "Well, I didn't

16   see that. I guess I was away from the

17   car.""

18   Does that assist your recollection?

19   A   No.

20   Q   If I can just call up, go to a different document

21   here, and this is Ron Wilson's evidence at the

22   Supreme Court reference, I want to read you a

23   portion have what he recalls of his dealings with

24   you on this date. It's document 120949, and if

25   you could go to page 121101, it's about page 153

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1   of this document. And again, this is Ron Wilson,

2   and he is being cross-examined by Hersh Wolch at

3   the time, and this relates to the session with Mr.

4   Roberts, and I'll just read a portion and then

11:00 5   I'll have a question for you:

6   "Q   Did you have any contact with Nicky in

7   and around that time?

8   A   Yes, I did.

9   Q   Where was that?

10   A   In the lobby of the hotel room where

11   the polygraph was being held.

12   Q   Did you and Nicky discuss what you were

13   going to say or anything of that

14   nature?

15   A   I believe we did, yes.

16   Q   What was that discussion?

17   A   All I can remember at this time is

18   "Let's sink him."

19   Q   Pardon me?

20   A   All I can remember at this time is

21   "Let's give them what they want.

22   Let's sink him."

23   Q   "Let's give them what they want. Let's

24   sink him." Who said that, you or

25   Nicky?

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1   A   I believe I did.

2   Q   And when you said "Let's sink him", what

3   did you mean by that?

4   A   By giving them what they wanted to get

5   David.

6   Q   Had they convinced you that David was

7   guilty?

8   A   Yes.

9   Q   And you told Nicky that the two of you

10   should give them what they want.

11   A   Yes."

12   Do you recall any discussion with Ron Wilson to

13   the effect that he testified here, the part I

14   just read, do you recall any of that discussion

11:01 15   with him, at the time, in May of 1969?

16   A   No.

17   Q   If we could go back to Mr. Roberts' transcript,

18   please, and go to page 043343. And, again, this

19   is parts of Mr. Roberts' evidence, Ms. John, and

11:01 20   he is asked, and this is by Mr. Neufeld:

21   "Q   Was there any physical indication at

22   that time that either of them were in

23   some physical difficulty or problem?

24   A   Not with Wilson, but I did think that

25   the little girl was a bit

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1   excitable.

2   Q   Excitable?

3   A   Yes.

4   Q   All right. Now, once you finished with

5   Mr. Wilson and Miss John, I take it you

6   went back to Calgary?

7   A   Yes. I returned back to the Saskatoon

8   City police. I think I went for

9   supper and then returned to Calgary

10   the next morning.

11   Q   With respect to Nichol John, did you

12   also take her in front of the police

13   officers and say, "She's told me certain

14   things", and --

15   A   Yes. Yes.

16   Q   Okay, and then leave them to deal with

17   it.

18   A   That's right. Now, I don't recall who

19   the police officer was that came. I

20   know it was a detective. It is my

21   usual practice, or was my usual

22   practice at that time, whenever I

23   received an admission from anybody and

24   it was somebody else's case, I would

25   repeat what the person told me in

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1   front of the detective?"

2   Does that assist your memory at all, Ms. John?

3   A   No.

4   Q   Go to page 043370. And down at the bottom, and

11:03 5   this is again Mr. Wolch examining Mr. Roberts, he

6   says:

7   "Q   Now, you showed her the blood-stained

8   dress?

9   A   Yes, sir.

10   Q   What was the purpose in that?

11   A   Just the same thing, to try and jog

12   her memory.

13   Q   How would she have seen the dress? If

14   you had gone through the case and knew

15   the facts, why would she have seen the

16   dress?

17   A   If she had seen the actual incident

18   occur, she would have seen something,

19   sir. I hoped that this would prompt

20   her.

21   Q   You felt the blood-stained dress might

22   just prompt her memory? That's your

23   position?

24   A   You bet you.

25   Q   I take it seeing that got her highly

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1   agitated?

2   A   Yes. She said, "My God, I do

3   remember. I do remember. I saw him

4   fighting with her and her fall to the

5   ground. I saw him stab her."

6   Q   That's when she said it, the dress being

7   shown to her?

8   A   Yes, sir.

9   Q   You had already had something from

10   Wilson earlier about leaving the car and

11   -- Wilson earlier told you that

12   stuff?

13   A   Yes, yes.

14   Q   So you had that in your mind. Did you

15   then put that to her and see what she

16   recalled about those things that Wilson

17   had told you?

18   A   At some stage of the game, yes, I

19   would have, sir.

20   I want you to understand this

21   --

22   Q   Please.

23   A   -- that it would be quite normal in

24   any investigation, a murder

25   investigation or anything else, if you

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1   have found articles of evidence that

2   you may show them to a suspect and ask

3   if they had seen them at any time.

4   Q   I appreciate --

5   A   This is not anything unusual.

6   Q   I appreciate that and I understand that,

7   but I understand from your evidence that

8   these were not suspects and they were

9   being treated with kid gloves?

10 A   Yes, that they would be a witness.

11 Q   But you said it's not unusual to do this

12   with a suspect and I am saying to you

13   your evidence is these are --

14 A   I'm sorry, I should have included

15   witness too.

16 Q   Okay. These are witnesses being treated

17   with kid gloves. That's what I am

18   trying to understand.

19   So, in the course of time with

20   these kids you would say to one of them,

21   "Well, I suggest to you the following

22   happened and the suggestion you were

23   putting came from what the other one had

24   told you?

25 A   Would you just repeat that, please,

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1   Mr. Wolch?

2   Q   Well, you had talked to one of the kids

3   and you would say to them, "I suggest to

4   you the following happened," whatever

5   the fact was. And that fact being

6   suggested was a fact the other kid had

7   told you already?

8   A   That technique has been used in

9   interrogation, but I do not recall it

10   being used on this occasion. I could

11   possibly have mentioned to her what

12   Wilson had said.

13   Q   Sure?

14   A   And I know, when Wilson came back,

15   that I told him what Nichol had said

16   in front of Wilson."

17   Does that assist your memory at all, Ms. John?

18 A   No.

19 Q   Page 043376, and again Mr. Roberts answering

20   Mr. Wolch's questions:

21   "Q   And after the -- in this case the kids

22   speak to you and the police come along,

23   you make sure that what was

24   significantly told to you is brought

25   home to the police in the presence of

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1   the young person?

2   A   Yes, sir.

3   It is a policy of mine

4   because then actually they can't back

5   out of it then, because I have already

6   said what they have told me in front

7   of the detective. If they were going

8   to back out of it they would have

9   probably said, "I didn't say that."

10   Neither one of them said that.

11   Q   They didn't back out?

12   A   No."

13   Do you recall him going over what you may have

14   said to Inspector Roberts?

11:06 15   A   No.

16   Q   Going to page 043380, and this is a question put

17   to Mr. Roberts by Mr. Justice Sopinka, and he

18   says:

19   "SOPINKA, J.: Following up on that,

20   were you advised that she wanted to take

21   a polygraph because she was telling this

22   story and somebody wasn't believing her.

23   THE WITNESS: My lord, I can't recall

24   that. I was advised that I was going to

25   possibly polygraph two people, but I

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1   would like you to know that on each

2   occasion I asked them, or I asked Wilson

3   if he would volunteer for a test."

4   Then scroll down, the second page, please. No,

11:07 5   further, starting right here. You can go back to

6   the full page. And Mr. Justice Sopinka says:

7   "SOPINKA, J.: With Nichol John --

8   THE WITNESS: I didn't have to do that.

9   SOPINKA, J.: -- you didn't test the first

10   version by taking a polygraph. You

11   immediately told her she was holding

12   something back.

13   THE WITNESS: No. We were going through

14   the scenario line-by-line. She was

15   telling me and I would ask questions,

16   sir.

17   SOPINKA, J.: Yes, but you came down to

18   the point, "Did you see anything?" And

19   she said, "I can't remember." At that

20   point you told her, without taking a

21   polygraph with respect to that version,

22   that she was holding something back.

23   THE WITNESS: Yes."

24   Do you recall, Ms. John, asking for or requesting

11:08 25   a polygraph at any time in -- when you were

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1   dealing with the police?

2   A   No.

3   Q   Do you recall ever being shown by anybody, or

4   seeing, the clothing worn by Gail Miller the

11:08   5   morning she was murdered?

6   A   No.

7   Q   How about photographs?

8   A   No. I have been shown photographs but I don't

9   remember what the photographs were of now.

11:08 10   Q   Photographs in connection with this case?

11   A   Yeah.

12   Q   I will be showing you a bit later, I believe the

13   RCMP, in subsequent interviews, showed you

14   photographs of the church and funeral home; is

11:08 15   that --

16   A   Possibly.

17   Q   Now what the record shows Ms. John, just to put

18   this in sequence, is I believe that the interview

19   with Inspector Roberts was on May 23, 1969, at

11:09 20   least that's what the reports say; Ron Wilson gave

21   a statement on May 23, 1969 at 3:30 p.m., and I'm

22   going to call up that document, 002242, and in a

23   moment I will be showing you a statement that's

24   attributed to you that was given on May 24th,

11:09 25   which is the next day, to put that in context.

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1   But here is Mr. Wilson's statement and we'll see

2   here it's May 23, 1969 at 3:30 p.m., and actually

3   there is a typed version that's easier to read if

4   we go to 065361. I think the next -- 361, and

11:10   5   this is just a typed copy of Ron Wilson's

6   statement, and according to this document, Ms.

7   John, this is what he told the police on that day.

8   It says:

9   "On the way to Calgary Nicky found a

11:10   10   white or cream coloured compact with

11   flower design, I'm not just sure about

12   the colour. She found this someplace in

13   the car. She asked Dave who's it was

14   and I don't know what he said, he just

11:10   15   took it and threw it out the window. I

16   remember on the road to Calgary Nicky

17   would scream every now and then, I don't

18   know what was the matter with her."

19   Does that assist in your recollection of the

11:11   20   events?

21   A   No.

22   Q   Do you have any recollection of finding a compact

23   or a cosmetic case in the vehicle on this trip

24   friendship?

11:11   25   A   I found something, I believe, in the glove box,

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1   but I don't recall right now what it was.

2   **Q**   And this would have been the trip with Mr.

3   Milgaard and Mr. Wilson?

4   *A*   Yeah. At some point in time. I'm not sure when

11:11 5   though.

6   **Q**   And --

7   *A*   I remember that.

8   **Q**   Pardon me?

9   *A*   I said I remember doing that.

11:11 10 **Q**   Okay. And do you recall what happened to that?

11 *A*   Nope.

12 **Q**   If you can go to the next page, which is 362, and

13   again this is Mr. Wilson's statement, and he says:

14   "At Calgary we went to the bus depot, that

11:11 15   is Dave and I. Nicky and Shorty stayed in

16   the car. We went to make a few phone calls

17   for a girl I knew - Heather Beaton who I

18   couldn't fine. This is when Dave told me he

19   hit a girl in Saskatoon, or maybe he said he

11:12 20   did a girl in Saskatoon. I don't remember

21   for sure which. He told me he grabbed her

22   purse and she fought and he said he jabbed

23   her with a knife a few times, and said he

24   put her purse in a trash can. He said he

11:12 25   thought she'd be all right.

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1   A little later in Calgary when

2   Nicky and I were together I told her what

3   Dave had told me and she said she already

4   knew. I don't know when he told her. We

11:12 5   talked about ditching Dave but we were

6   afraid of him so we decided against it."

7   Again this is his statement on May 23rd, 1969;

8   does that assist your recollection at all?

9 A   No.

11:12 10 Q   And do you recall any discussion with Ron Wilson

11   in Calgary on this trip to this effect or as what

12   is stated in this statement which I just stated to

13   you?

14 A   No.

11:12 15 Q   Mr. Commissioner, this is probably an appropriate

16   time to break, if that works?

17   COMMISSIONER MacCALLUM: Yes. 15 minutes

18   please.

19   *(Adjourned at 11:13 a.m.)*

20   *(Reconvened at 11:35 a.m.)*

21 BY MR. HODSON:

22 Q   Now, Ms. John, at the break, just before the break

23   I was talking about Ron Wilson's May 23rd, '69

24   statements. I now wish to go to his statement of

11:36 25   May 24th, 1969. If I could call up documents 1 --

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1   actually, it's 105506 and I've got a typewritten

2   version that I'll show you in a moment, but this

3   is May 4th, '69 at 9:30 a.m. Your statement,

4   which I'll get to in a moment, is at 10 a.m., so I

11:37   5   if I could just go to page 065360 and this is the,

6   Mr. Wilson's statement May 24th at 9:30 and this

7   is a second statement. Just if you could call out

8   that part, please. And in this statement

9   Mr. Wilson says Nicky --

11:37   10   "The car was still stuck. Nicky was waiting

11   in the car almost hysterical. I asked her

12   what was wrong and she told me she saw Dave

13   carry or drag a girl down the lane and bring

14   out the knife and stab her a few times.

11:37   15   Then she broke down again. Dave came back

16   to the car from the back I think and got in

17   beside Nicky. She shrugged away from him.

18   The rest is the same as I told you in the

19   other statement."

11:37   20   Does this assist you at all in recalling your

21   meeting with the police or the interview in May

22   of 1969?

23 A   No.

24 Q   Or the events of January 31, 1969?

11:38   25 A   No.

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1 Q   Do you recall any discussion with Ron Wilson at

2   any time where you told him the words that I just

3   read from that statement?

4 A   No.

11:38 5 Q   Now, next I want to show you a statement with your

6   name on it and signature of May 24th, 1969, it's

7   document 018593. Here is the typewritten version.

8   If you can go to 018593, I'll show you the

9   handwritten part, Nichol John, 16 years, 817

11:38 10   Victoria Avenue, Regina. That was your address at

11   the time; is that correct?

12 A   I believe so.

13 Q   And this says May 24th, 1969, 10 a.m. If you

14   could call out that bottom portion, please, and at

11:39 15   the bottom where it says signed, it says Nichol

16   John. Is that your signature?

17 A   I believe so.

18 Q   And you'll see under witness, it's R.W. Mackie,

19   Ray Mackie. Does that name sound familiar?

11:39 20 A   No.

21 Q   If we could then go to page 018 -- actually, if I

22   can just pause for a moment here, you'll see it

23   says 10 o'clock, 10 a.m. If you can go to 018603,

24   please, which is the last page of that, and again

11:39 25   that's your signature there, Ms. John?

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1   *A*   I believe so.

2   **Q**   And it says completed at 11:55 a.m., so it looks

3   like almost two hours, and then it says sworn

4   before me, if you could just call that out,

11:40 5   please, it says sworn before me this 24th day of

6   May, 1969 before R.R. Taylor, Justice of the

7   Peace. Do you recall -- actually, there's one

8   more point here, then I'll ask you a few

9   questions. There is a note of Detective Sergeant

11:40 10   Mackie that says completed and read. Do you

11   recall giving this statement to Detective Sergeant

12   Mackie on May 24th, 1969?

13   *A*   No.

14   **Q**   Do you have any recollection of giving any

11:40 15   statement to the police at or about this time?

16   *A*   No.

17   **Q**   You have been shown this statement before in

18   previous proceedings; is that correct?

19   *A*   I'm not sure.

11:40 20   **Q**   I will go through those with you in a moment. If

21   we can go back to the typed version of this,

22   018589, which is the first page, this one is a

23   little easier to read, Ms. John, it's a typed copy

24   of the handwritten statement, I wish to just go

11:41 25   through parts and see if this assists your

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1   recollection of events. It says:

2   "On January 31, 1969 I left Regina for

3   Saskatoon with Ron Wilson and Dave Milgaard.

4   We left Regina about 1:00 AM in Ron Wilson's

11:41 5   car."

6   Does that assist your recollection?

7   *A*   No.

8   **Q**   Is that pretty much what you told me earlier this

9   morning, that you left with -- you told me this

11:41 10   morning before that you recall a trip with David

11   Milgaard and Ron Wilson?

12   *A*   Yes.

13   **Q**   Does this sound right then, this first sentence,

14   on that date?

11:41 15   *A*   I believe so.

16   **Q**   It says:

17   "On the way to Saskatoon we stopped at

18   Aylsbury, Saskatchewan where Dave Milgaard

19   broke into an elevator. I do not recall the

11:41 20   name on the elevator. When Dave returned

21   from the elevator he had a flashlight.

22   Shortly after Dave got back into the car I

23   saw a knife he had. I do not know if the

24   knife came from the elevator or not. I am

11:42 25   sure I never saw the knife prior to the

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1   breakin at the elevator."

2   Does that assist your recollection?

3   A   No.

4   Q   Do you have any recollection of seeing a knife in

5   the vehicle on January 31, 1969?

6   A   No.

7   Q   Any recollection of David Milgaard having a knife?

8   A   No.

9   Q   Any recollection of Ron Wilson having a knife on

10   that trip?

11   A   No.

12   Q   Next paragraphs, please, scroll down, it says:

13   "This knife was a kitchen knife used to peal

14   potatoes and things like that. It had a

15   maroon handle. This knife was the same as

16   one of a group of knives that I was shown by

17   Mr. Roberts."

18   Do you recall Mr. Roberts showing you knives, a

19   group of knives?

20   A   No.

21   Q   Do you recall anybody showing you knives?

22   A   No.

23   Q   It says:

24   "On the way to Saskatoon Dave spoke of

25   wanting to snatch a purse. I didn't like

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1   the idea of the B & E or the snatching the

2   purse bit.

3   After we left Aylsbury we got stuck in

4   another town on the way to Saskatoon and I'm

11:43   5   pretty sure it was Girvin."

6   Does that assist your recollection at all?

7   A   No.

8   Q   It says:

9   "After we got to Saskatoon we drove around

11:43   10   for about 10 or 15 minutes. Then we talked

11   to this girl. This was in the area where

12   Sergeant Mackie drove me around."

13   Does this assist your recollection?

14   A   No.

11:43   15   Q   It says here:

16   "The area where Sergeant Mackie drove me

17   around."

18   I think you said earlier you had a vague

19   recollection of being driven around --

11:43   20   A   Yes.

21   Q   -- the funeral home, so is that what's being

22   referred to in this statement?

23   A   I'm not sure.

24   Q   Was there any other area that a police officer

11:43   25   drove you around in?

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1   *A*   I don't recall.

2   **Q**   It says:

3   "Ron was driving the car at this time. He

4   drove to the curb where Dave spoke to this

11:43 5   girl.

6   Dave was on the outside passenger side of

7   the front seat. Dave opened the door to

8   talk to this girl as she approached along

9   the sidewalk."

11:43 10   Does that assist your recollection?

11   *A*   No.

12   **Q**   Do you have any recollection on that trip of

13   seeing a girl or lady on the sidewalk and asking

14   her for directions?

11:43 15   *A*   No.

16   **Q**   Scroll down, please, it says:

17   "Dave asked this girl for directions to

18   either down town or Pleasant Hill. He

19   offered to give her a ride to where ever she

11:44 20   was going. She refused the ride.

21   Dave closed the door and said "The stupid

22   bitch".

23   We started to drive away and only went about

24   a half a block when we got stuck. We ended

11:44 25   up stuck at the entrance to the alley behind

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1   the funeral home."

2   Does that assist your recollection?

3   A   No.

4   Q   Do you have any recollection of the vehicle being

11:44 5   stuck in an alleyway near a funeral home?

6   A   Yes.

7   Q   You do have a recollection of that?

8   A   I believe we were stuck in an alleyway.

9   Q   By a funeral home do you recall?

11:44 10 A   I don't know if it was a funeral home or not.

11 Q   Then it says, scroll down, please:

12   "Ron and Dave got out and they tried to push

13   the car. They couldn't get it out.

14   I recall Dave going back in the direction we

11:44 15   had spoke to the girl. Ron went the other

16   way past the funeral home."

17   Does that assist your recollection?

18 A   No.

19 Q   Do you have any recollection, when you were stuck

11:45 20   in the alley, of Ron Wilson and David Milgaard

21   leaving the vehicle?

22 A   No, but I recall being in the vehicle by myself.

23 Q   Okay.

24 A   Okay.

11:45 25 Q   And do you have any recollection of them leaving

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1   or coming back?

2   A   No.

3   Q   And do you have a recollection of being in this

4   vehicle alone?

11:45   5   A   Yes.

6   Q   And what else do you recall about that?

7   A   That's about it.

8   Q   Was it light out, dark out; do you recall?

9   A   I don't know.

11:45   10   Q   Then scroll down, it says:

11   "The next thing I recall is seeing Dave in

12   the alley on the right side of the car. He

13   had a hold of the same girl we spoke to a

14   minute before. I saw him grab her purse. I

11:45   15   saw her grab for her purse again. Dave

16   reached into one of his pockets and pulled

17   out the knife. I don't know which pocket he

18   got the knife from. The knife was in his

19   right hand. I don't know if Dave had a hold

11:45   20   of this girl or not at this time. All I

21   recall seeing is him stabbing her with the

22   knife."

23   Do you recall any of this, Ms. John?

24   A   No.

11:46   25   Q   Do you have any recollection of telling the police

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1   that paragraph that I just read you?

2   A   No.

3   Q   Next paragraph:

4   "The next thing I recall is him taking her

11:46   5   around the corner of the alley. I think I

6   ran after that. I think I ran in the

7   direction Ron had gone. I recall running

8   down the street. I don't recall seeing

9   anyone. The next thing I knew I was sitting

11:46   10   in the car again. I don't know how I got

11   back to the car."

12   Does that assist your recollection?

13   A   No.

14   Q   It says here:

11:46   15   "I seem to recall seeing Dave putting a

16   purse into a garbage can. I don't remember

17   which time it was or where I was when I saw

18   this.

19   I recall there were two garbage cans. The

11:46   20   one on the left had the lid tipped. I don't

21   recall which one he put it in."

22   Does this assist your recollection at all?

23   A   No.

24   Q   Do you have any memory of anything in connection

11:46   25   with garbage cans in that alley?

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1   *A*   No.

2   **Q**   It says:

3   "The next I remember is sitting in the car.

4   I don't remember Ron being in the car or

11:47   5   coming back.

6   I remember Dave coming back and getting into

7   the front seat of the car. I remember

8   moving over toward the drivers side because

9   I didn't want to be near him.

11:47   10   I don't remember talking to Ron before Dave

11   got back. I do not recall Dave saying

12   anything."

13   Does this assist your recollection?

14   *A*   No.

11:47   15   **Q**   And down there:

16   "The next thing I recall is when we were

17   driving down an alley behind some apartment

18   blocks where we turned left into another

19   alley and got stuck behind a convertible.

11:47   20   We were not stuck in the snow but the engine

21   had stalled as a result of trying to push

22   the convertible out.

23   Shortly after this we got to Albert

24   Cadrain's house."

11:47   25   Does that assist your memory at all?

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1   *A*   No.

2   **Q**   You say:

3   "I do not recall seeing blood on Dave's

4   cloths or seeing the knife again.

11:47 5   Right after we got to Albert Cadrain's house

6   Dave changed cloths. He changed his pants

7   and shirt. Dave's trousers were ripped up

8   the rear. I don't recall the shirt being

9   torn. I did not see blood on his cloths or

11:48 10   hands."

11   Does that assist with your recollection of these

12   events?

13   *A*   No.

14   **Q**   Scroll down to the bottom paragraph:

11:48 15   "Shortly after Dave took the car for a

16   drive. I don't know if he got the keys from

17   Ron or if he had them. Dave was gone 10 to

18   15 minutes when he came back. He said he

19   had driven around the block. I don't know

11:48 20   if he took anything out to the car or not.

21   The car had apparently broke down at the

22   corner. He told Ron about it and Dave

23   phoned a tow truck. Albert, Ron, Dave and I

24   went with the tow truck to the service

11:48 25   station where the car was fixed. This was a

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1   texaco service station. We then went to an

2   all night Cafe across the street where we

3   had something to eat. After we ate we went

4   back where our car was. Dave kept going to

11:48 5   the car and the people at the service

6   station kept putting him out of the shop.

7   Dave never said why he did this. I never

8   saw him take anything from the car."

9   Does that assist your recollection at all?

11:48 10   A   No.

11   Q   Do you remember any events getting the car fixed

12   that morning?

13   A   No.

14   Q   "While the car was being fixed I had gone

11:49 15   to the cafe for a coffee. I was sitting

16   alone when Albert came over. After the

17   coffee I went with Albert to the bank where

18   he got some money. We then went to a

19   variety store where he got some things and

11:49 20   went back to the service station."

21   Does that assist your recollection?

22   A   No.

23   Q   Do you recall being with Albert Cadrain that

24   morning outside?

11:49 25   A   No.

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1   **Q**   Walking on 20th Street?

2   *A*   No.

3   **Q**   The statement goes on:

4   "After the car was fixed we all went to one

11:49   5   of Alberts friends. After this we left for

6   Calgary.

7   On our way about halfway between Saskatoon

8   and Rosetown I looked in the glove

9   compartment for a map. I saw a cosmetic

11:49   10   case which I opened up. There was a

11   compact, 2 lipstick and an eye shadow in it.

12   I asked whose it was. Nobody knew whose it

13   was then Dave grabbed it and threw it out

14   the window. Dave was driving at this time.

11:49   15   He was supposed to stop because he was

16   driving too fast. Ron didn't like it and we

17   were all getting scared."

18   Does that assist your recollection of those

19   events?

11:50   20   *A*   Not really.

21   **Q**   You say not really. Is there anything in there

22   that --

23   *A*   Just like I told you earlier, I remember looking

24   in the glove box at some point in time and finding

11:50   25   something in the glove box that was out of the

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1   ordinary.

2   Q   Your statement carries on:

3   "When we got to Rosetown we went to a store

4   and bought some groceries and a knife. Ron

11:50 5   drove from Rosetown.

6   From Rosetown we went to Calgary, Edmonton,

7   Calgary, Banff and back to Regina.

8   The second time in Calgary we got some

9   marijuana which we all smoked. We all got

11:50 10   high. Later in the night of the same day

11   Ron, Albert and Dave smoke grass again and

12   got real high. Ron was driving crazy with

13   the car and I told him to pull over. He did

14   and I took the keys and ran about a block

11:50 15   and then walked about a block. As I stopped

16   I saw Ron following me. We sat on the steps

17   inside an apartment block. Here Ron told me

18   Dave had killed a girl in Saskatoon. I told

19   him "I know". I do not recall anything

11:51 20   further being said about this murder."

21   Does that assist your recollection at all?

22   A   No.

23   Q   Do you remember in Calgary or anywhere on this

24   trip you and Ron being alone somewhere where you

11:51 25   were talking near an apartment block?

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	1	*A*	I remember sitting on a set of stairs in a strange
	2		place, but that's about all I remember.
	3	**Q**	And were you alone?
	4	*A*	At one point I think I was, but I'm not sure.
11:51	5	**Q**	And at a later point did someone join you?
	6	*A*	I'm not sure.
	7	**Q**	And is there a reason that this sticks out in your
	8		mind?
	9	*A*	I don't know why.
11:51	10	**Q**	Were you upset at the time do you remember?
	11	*A*	I don't recall.
	12	**Q**	Scroll down, please, and you say here:
	13		"I have not told anyone about witnessing
	14		this murder. I didn't recall actually
11:51	15		witnessing a murder until yesterday when I
	16		talked with Mr. Roberts. I was aware that
	17		however that I was somehow involved."
	18		Does that assist your memory at all?
	19	*A*	No.
11:52	20	**Q**	So I take it from that statement that prior to
	21		meeting with Mr. Roberts you would not have had a
	22		recollection of the murder?
	23	*A*	I'm not sure what you are getting at.
	24	**Q**	Well, this statement says that, and I'll read it
11:52	25		again, "I didn't recall actually witnessing a

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1   murder until yesterday when I talked with Mr.

2   Roberts." Yesterday would be May 23, 1969 and my

3   question was from here it appears that you didn't

4   recall witnessing a murder until you met with Mr.

11:52 5   Roberts.

6   A   That's what the statement says, yes.

7   Q   And does that assist your memory at all, are you

8   able to confirm that?

9   A   No, I can't.

11:52 10   Q   And I think you've told me already, but have you

11   ever had a recollection of witnessing a murder?

12   A   What do you mean?

13   Q   Have you ever had a recollection of witnessing a

14   murder?

11:52 15   A   Not that I'm aware of, no.

16   Q   The statement goes on:

17   "On May 23 Mr. Roberts showed me a coat.

18   This coat as I recall was identical to one

19   worn by the girl we spoke to and Dave

11:53 20   attacked.

21   The cosmetic case Dave threw away was about

22   four inches high and six inches long. It

23   had a zipper on top. I do not recall the

24   color. It was dirty inside with face

11:53 25   makeup."

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1   Does that assist your recollection at all?

2   A   I remember seeing a bunch of loose face makeup in

3   something, but I'm not sure what it was.

4   Q   And was this in the bag that you found in the

11:53 5   glove compartment?

6   A   It could be, yeah.

7   Q   The next page, please, it says:

8   "At the time of this attack Dave was wearing

9   green with yellow striped pants, brown suede

11:53 10   jacket with knit cuffs and knit insert

11   across chest. No buttons black snow boots,

12   long green tooke with other colors possible

13   red and blue. I think I would know this

14   tooke if I saw it again. Ron's brother has

11:54 15   mitts like it. The mitts match the tooke.

16   I do not recall seeing his cloths again. I

17   thought he left the pants at Albert's place

18   but I'm not the sure. I never saw them

19   again anyway."

11:54 20   Does this assist your recollection at all?

21   A   No.

22   Q   If I can call up, go back to the March 11th

23   statement, please, which is 298455, and the

24   left-hand side, and call up beside it the May

11:54 25   24th, 1969 statement, 018589 I believe is the

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1   typed version. Now, Ms. John, I have gone through

2   this morning with you, the first one was the

3   statement of March 11th, 1969 and the second was

4   the May 24th, 1969 statements that I went through

11:55 5   and read to you; right?

6 A   Yes.

7 Q   And I think you would agree that the statements

8   are different in the sense that you say different

9   things in the May 24th, 1969 statement that are

11:55 10   not in the March 11th, 1969 statement. Would you

11   agree with me?

12 A   I'll agree with you.

13 Q   Okay. Are you able to give us any explanation as

14   to why the statements you gave on March 11th, 1969

11:55 15   and May 24th, 1969 are different in significant

16   respects?

17 A   No.

18 Q   No explanation at all?

19 A   No.

11:55 20 Q   Can you tell me if you recall or whether you know

21   there would be any reason to be untruthful on

22   either March 11th, 1969 or on May 24th, 1969 when

23   you talked to the police?

24 A   No.

11:56 25 Q   I now want to show you a couple of documents that

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1   may assist your recollection of this time. The

2   first is a document 105593 and this is a Saskatoon

3   City Police receipt for prisoner's property. If

4   you could just zoom in, it's got your name and it

11:56   5   appears to be, "Ladies handbag and contents. All

6   of the above property returned to me this 24th day

7   of May, '69." Is that your signature there on two

8   spots on this form, Ms. John?

9   *A*   It looks like it.

11:57 10   **Q**   And this appears to be returning property from the

11   Saskatoon City Police on May 24th which I think is

12   the date of your statement. Do you recall -- does

13   that assist you, do you recall whether you were at

14   the city police station or stayed overnight there?

11:57 15   *A*   Don't recall.

16   **Q**   Next if you could call up 009222 and this is a

17   report I referred to earlier, it's a report of

18   Raymond Mackie, May 29, '69. If you could go to

19   page 009223, call out the top paragraph, and,

11:58 20   Ms. John, this is Mr. Mackie's report, he says:

21   "On May 24th, I returned to Regina with

22   Ronald Wilson and Nichole John, and on

23   returning Wilson to 126 Cornwall Street

24   North, I received from him one black Atlas

11:58 25   flashlight..."

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1   Etcetera. Do you recall returning to Regina with

2   Ron Wilson and Ray Mackie?

3   *A*   No.

4   **Q**   I take it you didn't have a vehicle at that time

11:58 5   did you?

6   *A*   No.

7   **Q**   Did you have a driver's license?

8   *A*   Not sure.

9   **Q**   Now, do you remember hearing at some point that

11:58 10   David Milgaard had been charged with the murder of

11   a nurse?

12   *A*   Yeah, but I don't know when.

13   **Q**   Do you recall what reaction you would have had at

14   the time about hearing about that?

11:58 15   *A*   No.

16   **Q**   When you say you don't know when, would it be fair

17   to say that it would be shortly after the May

18   24th, 1969 statement that we talked about?

19   *A*   I don't know.

11:59 20   **Q**   I would now like to move to the court proceedings

21   and the records indicate that you testified at

22   David Milgaard's preliminary hearing in August,

23   1969, commenced in August, 1969 in Saskatoon, and

24   again at his trial before a jury in January, 1970.

11:59 25   Do you recall attending at court to testify?

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1   *A*   I recall one time, but I'm not sure when.

2   **Q**   And what do you recall?

3   *A*   I just recall being in a courtroom situation.

4   **Q**   Do you remember if there was a jury present?

11:59 5   *A*   I don't recall.

6   **Q**   And do you remember giving evidence?

7   *A*   Not really.

8   **Q**   Now, there's some documents I'm going to show you

9   in a moment here, Ms. John, but do you recall at

12:00 10   the preliminary hearing or at the trial being in a

11   waiting room at the court house with Albert

12   Cadrain, Mary Marcoux and Peggy Miller, who would

13   be Gail Miller's sister?

14   *A*   No.

12:00 15   **Q**   I'm going to show you a couple of documents here

16   and see if you are able to assist us in recalling

17   what this is referring to. The first is document

18   067372 and this is a statement of Thomas David

19   Roberts Caldwell who was the prosecutor in the

12:00 20   David Milgaard matter. Do you remember the

21   prosecutor?

22   *A*   No.

23   **Q**   And I'll just read, this is part of his question

24   and answer, and this is a statement that he gave

12:00 25   March 11th, 1992, and I believe this is an RCMP

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1   officer:

2   "Q   I've been requested by the Federal

3   Justice Department to ask you certain

4   questions pertaining to your

12:01 5   involvement, as prosecutor, in the

6   Milgaard case. I am showing you a copy

7   of a handwritten sheet of paper which is

8   identified as Appendix "A". Do you know

9   anything about this?"

12:01 10   And Mr. Caldwell answers:

11   "A   At the preliminary inquiry, one of the

12   witnesses, Mary Marcoux, or Albert

13   Cadrain, or both of them, advised me

14   that they, plus Mrs. Miller, Gail

12:01 15   Miller's mother, who was present at the

16   hearing, all heard Nichol John say, "I

17   don't know why he didn't kill me too. I

18   was right there, and saw it all, but I'm

19   not going to say nothing." I copied

12:01 20   this down immediately and incorporated

21   it in a list of things to be followed up

22   after the preliminary hearing. The note

23   Appendix "A", to this statement, was

24   made in my handwriting from the entry on

12:01 25   that list, which is still on the

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1   original prosecution file, which

2   remained with Sask Justice and is

3   currently in Regina, Sask."

4   And I'll refer to you Appendix "A" which is at

12:02 5   page 00 -- pardon me, 067383, and if you could

6   just, it says here:

7   "Mrs. Miller, Mary Marcoux, Albert Cadrain,

8   all heard N. John say, "I don't know why he

9   didn't kill me too. I was right there and

12:02 10   saw it all, but I'm not going to say

11   nothing."

12   Next I want to show you a statement of Peggy

13   Miller, 037869, and this is a statement of Peggy

14   Morrow, February 9, '93. Peggy Morrow's maiden

12:02 15   name is Miller, she's Gail Miller's sister. If

16   you could go to the next page which is 037870,

17   and Ms. Morrow is asked the question:

18   "Q   Is there anything you can add to this

19   matter?"

12:03 20   And she says:

21   "A   At the court case in Saskatoon I was

22   sitting in the witness room with a bunch

23   of witnesses. Nichole John was there,

24   there was a Cadrain boy and they were

12:03 25   sitting together. Nichole said, "I

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 1                              don't know why the police didn't arrest

 2                              us, because I seen him to do it."  I did

 3                              not mention this to anyone.  Sgt. Mackie

 4                              of the Saskatoon City Police was also in

12:03  5                        the room, but I don't think he heard

 6                              this."

 7            Now, does this assist you in recalling any

 8            conversation you may have had around the

 9            preliminary hearing in 1969?

12:03 10     A    No.

11     Q    Do you recall stating words to the effect that, "I

12            don't know why he didn't kill me too.  I was right

13            there and saw it all, but I'm not going to say

14            anything"?

12:03 15     A    No.

16     Q    Do you recall saying the words here that

17            Ms. Morrow said she heard from you, "I don't know

18            why the police didn't arrest us, because I seen

19            him to do it," or words to that effect?

12:04 20     A    No.

21     Q    Now, moving to the preliminary hearing, do you

22            have any recollection of meeting with anybody

23            involved in the process, either the prosecutor or

24            the defence lawyer?

12:04 25     A    I remember meeting with someone at one time, but I
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1   don't know who it was, but he -- I would think

2   that he was a lawyer of some type.

3 Q   And do you recall where that meeting was?

4 A   No.

12:04 5 Q   And do you remember what was discussed at that

6   meeting?

7 A   No.

8 Q   Do you remember that this lawyer was for the

9   Crown?

12:04 10 A   I don't know.

11 Q   Do you remember who else may have been at that

12   meeting?

13 A   I think my parents were there with me, but I don't

14   know if they were in with us when there was a

12:04 15   supposed conversation going on.

16 Q   But you would have had -- your recollection is

17   talking to a lawyer at some point?

18 A   Right.

19 Q   And would it have been about your recollection of

12:05 20   events?

21 A   I don't know.

22 Q   Now at the preliminary hearing you would have

23   testified under oath, and at the trial, agreed?

24 A   Yes.

12:05 25 Q   Would you have told the truth at both of those

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1   proceedings to the best of your recollection?

2 A   Yes.

3 Q   Can you think of any reason that you would not

4   have told the truth either at the preliminary

12:05   5   hearing or the trial of David Milgaard?

6 A   No.

7 Q   Were you coerced or persuaded by someone to say

8   something other than the truth at either the

9   preliminary hearing or the trial?

12:05   10 A   No.

11 Q   Ms. John, I intend to go through the key parts of

12   your evidence at both the preliminary hearing and

13   trial, and I want to state a couple of reasons for

14   this;

12:06   15   One, you have testified that you

16   do not have much of a recollection of events from

17   that time, you have not reviewed these transcripts

18   at least for the last six years, therefore I wish

19   to review portions of the transcript with you to

12:06   20   see if your memory can be refreshed;

21   Secondly, I need to present your

22   evidence that you gave at the preliminary hearing

23   and trial before this Commission;

24   And lastly, after we go through

12:06   25   the court proceedings, I will be reviewing with

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1   you a number of post-conviction interviews where

2   you were asked about what happened and gave some

3   fairly detailed responses, so I intend to go

4   through the preliminary hearing and trial

12:06   5   transcript to identify those important parts.

6   The first part, or the first

7   document is the preliminary hearing transcript,

8   which is 030692. Does the name Mr. Tallis, who

9   was counsel for David Milgaard, does that sound

12:07   10   familiar at all?

11 A   No.

12 Q   And the name Mr. Caldwell; is that familiar at

13   all?

14 A   No.

12:07   15 Q   If you could go to page 030696, just starting at

16   question 47. And this is Mr. Caldwell examining

17   and these are your answers, Ms. John, that you

18   gave under oath at the time, and:

19   "Q   Some town. And who went to the

12:07   20   elevator?

21   A   David.

22   Q   And did you see him? I presume he came

23   back eventually did he?

24   A   Yes.

12:07   25   Q   Did you see him when he got back?

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	1	A	You mean into the car?
	2	Q	Yes.
	3	A	Yes.
	4	Q	And did Ron go with him?
12:08	5	A	No.
	6	Q	Did David have anything when he came
	7		back from the elevator?
	8	A	Yes he did.
	9	Q	What was that?
12:08	10	A	A flashlight and a knife.
	11	Q	And when did you see them?
	12	A	Right after he got into the car.
	13	Q	What did the flashlight look like, do
	14		you recall any details or not?
12:08	15	A	No, I can't recall.
	16	Q	And what did the knife look like?
	17	A	It resembled a hunting knife, and it
	18		had - I think it was a bone handle,
	19		and it had sort of carvings in it,
12:08	20		brown and sort of tannish colour."
	21		Does that assist you in recalling the events at
	22		the time, Ms. John?
	23	A	No.
	24	Q	The next page, 030697, and question 58 you were
12:08	25		asked by the prosecutor:

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1   "Q   I see. Did you see on the way to

2   Saskatoon, any other knife, or only this

3   one?

4   A   Yes, I saw a maroon-handled one,

12:08 5   resembling a paring knife.

6   Q   I see. When was that?

7   A   I don't really recall.

8   Q   I see. But who had that one?

9   A   I can't remember.

12:09 10   Q   Where was it you saw it?

11   A   It was in the car."

12   Does that assist your recollection at all?

13 *A*   No.

14 **Q**   Do you have any recollection of a maroon-handled

12:09 15 knife?

16 *A*   No.

17 **Q**   And to question 63, please:

18   "Q   And on the way to Saskatoon, was there

19   any discussion on what would or might

12:09 20   take place in Saskatoon, among the three

21   of you?

22   A   Yes.

23   Q   Where - how did this arise?

24   A   Just by normal talking.

12:09 25   Q   And what was said?

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1   A   A few things were said about purse

2   snatching, and other things.

3   And the judge asks:

4   "COURT: About which?

12:09   5   A   Purse snatching.

6   COURT: Purse snatching?

7   MR. CALDWELL:

8   Q   And I think you said something else

9   after that?

12:09   10   A   And I think breaking in, or something

11   to that effect, or something."

12   Does that assist your recollection at all, Ms.

13   John?

14 *A*   No.

12:10   15 **Q**   Next to page 030700. I take it, Ms. John, would

16   you agree that your recollection of events that

17   took place on January 31, 1969; would you agree

18   that your recollection would have been better back

19   in 1969 and '70 than it would be today?

12:10   20 *A*   Of course.

21 **Q**   Question 90:

22   "Q   Would you have an estimate of what time

23   of day it would be when you got to

24   Saskatoon?

12:10   25   A   I figure it was close to 6:30 in the

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1   morning.

2   Q   I see. And this would be the same

3   morning would it?

4   A   Yes.

12:10 5   Q   And you say you couldn't find Shorty's

6   place?

7   A   Yes.

8   Q   Now what efforts did you make to find

9   Shorty's place?

12:10 10   A   We stopped a girl on the street, and

11   we asked her if she knew where

12   downtown or Pleasant Hill was, and she

13   said she didn't know.

14   Q   Now do you know where you were in the

12:10 15   city when that happened?

16   A   No.

17   Q   And did you know the girl yourself?

18   A   No, I didn't.

19   Q   What did she look like in terms of dress

12:11 20   and appearance and so forth?

21   A   She had dark hair and she had a dark

22   coat on, to me it resembled a cape,

23   and it had a high collar, that's all I

24   remember."

12:11 25   Does that assist in your recollection?

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1   *A*   No.

2   **Q**   Go to page 030702 and, again, this is Mr. Caldwell

3   questioning you:

4   "Q   I see. Okay, and after you had spoken

12:11   5   with the girl what did you do?

6   A   We drove away.

7   Q   And would you be driving away in the

8   same direction as you'd been going?

9   A   Yes.

12:11   10   Q   What did you do then?

11   A   We went about half a block and then we

12   made a U-turn, and we kind of got

13   stuck or something on ice.

14   Q   Was this as a part of trying to make the

12:11   15   U-turn?

16   A   Yes.

17   Q   And what happened when you got stuck?

18   A   Dave got out of the car to see if he

19   could push it out.

12:12   20   Q   Now where were you stuck at that time,

21   in relation to your surroundings, you

22   started to make a U-turn, did you?

23   A   Yes.

24   Q   And I take it the car ended up stopped

12:12   25   and stuck?

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1   A   Yes it was on ice.

2   Q   And were you -- can you relate that

3   place to any things like buildings, or

4   streets or corners or what have you?

12:12 5   A   No, I can't.

6   Q   And you said Dave got out?

7   A   Yes."

8   And on to the next page, 030703, and question

9   130:

12:12 10   "Q   And then what?

11   A   And then we went down the street and

12   then Dave recognized something or

13   other and he said to go around the

14   block, and so we turned into this

12:12 15   alley instead.

16   Q   Okay now, this was after being stuck at

17   the U-turn?

18   A   Yes.

19   Q   And as I understand you, you got unstuck

12:12 20   there on your own hook, so to speak?

21   A   Yes.

22   Q   And then you drove away and we're now at

23   this next stage?

24   A   Yes.

12:13 25   Q   When you got unstuck from the U-turn,

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1   which way were you driving, can you tell

2   the Court, in comparison to the way you

3   had been going before you started the

4   U-turn?

12:13 5   A   The opposite direction to which the

6   girl was going.

7   Q   To which what?

8   A   To which the girl was going.

9   Q   I see. Now, the place where you got

12:13 10   stuck, where was this from where you'd

11   seen the girl?

12   A   It was only about, I think only about

13   half a block, maybe a little more."

14   Next page at the top:

12:13 15   "Q   I see. And was it at an intersection?

16   A   Yes.

17   Q   I see. So you were now going the

18   opposite way?

19   A   Yes.

12:13 20   Q   And on what street in relation to where

21   you'd seen the girl?

22   A   It was on the same street except on

23   the other side.

24   Q   I see. The same street going the

12:13 25   opposite way?

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1   A   Yes.

2   Q   And you said then you commenced to turn

3   into an alley?

4   A   Yes.

12:13   5   Q   And what happened as you commenced to

6   turn into the alley?

7   A   On the incline, we got hung up on some

8   snow.

9   Q   And was it an incline into the alley?

12:14 10   A   Yes.

11   Q   And what happened there?

12   A   Dave got out of the car to see what

13   was wrong, and we were stuck in the

14   snow so then he got back into the car.

12:14 15   Q   Now can you relate the alley to any

16   particular buildings or features?

17   A   Yes, behind the funeral home.

18   Q   Behind the funeral home?

19   A   Yes.

12:14 20   Q   Did you see that building?

21   A   Yes I did.

22   Q   And did you recognize it as being a

23   funeral home?

24   A   No, I didn't.

12:14 25   Q   I see. How do you say now that it is, I

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1   mean why is it now say it was behind the

2   funeral home?

3   A   I was told it was a funeral home."

4   Next page:

12:14 5   "Q   Have you been there again?

6   A   Do you mean after?

7   Q   Yes.

8   A   Through the alley?

9   Q   Yes.

12:14 10   A   Yes, I have.

11   Q   I see, you've been there since?

12   A   Yes, I have.

13   Q   But at the time, did you know it to be a

14   funeral home?

12:14 15   A   No, I didn't."

16   Does that assist your recollection, Ms. John?

17   A   No.

18   Q   And down at the bottom of that page, please, at

19   question 161:

12:15 20   "Q   And you said both he and Ron got out?

21   A   Yes.

22   Q   Was there any discussion as to what they

23   were going to do or --

24   A   Yes, they were going to get help."

12:15 25   Next page, please. And then at 166 it says:

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1   "Q   What happened after they got out?

2   A   Ron went in one direction and Dave

3   went in another."

4   Does that assist your recollection at all?

12:15 5   A   No.

6   Q   And question 167:

7   "Q   What happened then?

8   A   I don't recall.

9   Q   Well - you said you did not get out as I

12:15 10   understand it?

11   A   No, I didn't.

12   Q   What is the next thing that you recall,

13   or the next thing that happened?

14   A   It was when Dave got into the car

12:15 15   again."

16   If I could just pause there, and I'm going to ask

17   you to bring up on the right-hand side, if I

18   could, the document Ms. John's statement of 08 --

19   018589. Now if I could just call out, again --

12:16 20   sorry, the transcript should be on page 030706 --

21   yeah, left-hand document 030706, and if you could

22   just call out those questions, and you will see I

23   just read to you the portion of the preliminary

24   where you said after they got out what is the

12:17 25   next thing that you recall, and you say:

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1   "It was when Dave got into the car

2   again."

3   Do you see that?

4   *A*   Uh-huh.

12:17 5   **Q**   Yes?

6   *A*   Yes.

7   **Q**   Now in your statement of May 24th, 1969 --

8   actually, if you could leave that call-out up,

9   please -- in your statement of May 24th, 1969,

12:17 10   call out that portion, you will note in this

11   statement, Ms. John, of May 24th, you say here:

12   "I recall Dave ..."

13   you say:

14   "... I recall Dave going back in the

12:17 15   direction we had spoke to the girl. Ron

16   went the other way past the funeral

17   home."

18   You then say:

19   "The next thing I recall is seeing Dave

12:17 20   in the alley on the right side of the

21   car. He had a hold of the same girl we

22   spoke to a minute before. I saw him

23   grab her purse."

24   Etcetera. And I wonder if you could give me any

12:18 25   explanation why it would be at the preliminary

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1   hearing or August 1969 which would be, I think, a

2   couple, three months after the statement, why it

3   was that you were not able to recall what you had

4   recorded in -- or what was recorded in the

12:18   5   statement?

6   A   I have no idea.

7   Q   If you could go back to the transcript, please,

8   and just carrying on with prelim question 170, and

9   this is after you say Dave got in the car again:

12:18   10   "Q   Okay, and would you have an idea of how

11   much later this would be?

12   A   No, I have no idea

13   Q   And what happened when Dave got back in

14   the car?

12:19   15   A   I moved over.

16   Q   Which way?

17   A   Over to Ron's.

18   Q   Was Ron back at this time?

19   A   Yes, he was.

12:19   20   Q   Who got back first between him and Dave?

21   A   I don't know, really."

22   And I think you have told us you recall being

23   alone in the car and then you recall not being

24   alone in the car; is that fair?

12:19   25   A   No, I recall being alone in the car.

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1   Q   And do you recall Dave Milgaard or Ron Wilson

2   getting back in the car at some point?

3   A   No.

4   Q   You do recall that vehicle and the three of you

12:19   5   ended up at Albert Cadrain's later that morning

6   though?

7   A   I'm not sure who ended up at Albert's. I remember

8   being there myself.

9   Q   Okay. Go to page 030707. And, again, this is

12:19   10   Mr. Caldwell questioning you at the preliminary

11   hearing: (Note all quotes checked to here)

12   "Q   I see. Did Dave say anything when he

13   got back in the car?

14   A   I can't recall.

12:20   15   Q   Okay, and did you notice anything about

16   him, particularly his condition when he

17   got back in the car?

18   A   He was cold. That's all."

19   Does that assist your recollection?

12:20   20   A   No.

21   Q   Page 030711 you were asked a question about a

22   suitcase at the Cadrain's, question 219:

23   "Q   Alright, when you got in Shorty's house,

24   what happened?

12:20   25   A   The suitcase - somebody went to get

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1   the suitcase, and anyway, Dave and Ron

2   changed.

3   Q   Now, had you seen a suitcase before

4   this?

12:20   5   A   Yes.

6   Q   Where abouts?

7   A   It was in the car."

8   Do you have any recollection of the suitcase or

9   Mr. Milgaard and Mr. Wilson changing clothes?

12:21   10   A   No.

11   Q   Page 030718, question 313, again I believe this is

12   still Mr. Caldwell:

13   "Q   And as you went along out of Saskatoon

14   and towards Calgary, did you locate any

12:21   15   items in the car yourself?

16   A   Yes.

17   Q   What did you locate?

18   A   A cosmetic bag.

19   Q   And what does that consist of, the one

12:21   20   you located?

21   A   It had lipstick and a powder pack, and

22   I think an eyeshadow case.

23   Q   And now I presume when you said a

24   cosmetic bag, this is some kind of a

12:21   25   container, a bag, is it?

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1   A   Yes.

2   Q   What did it look like?

3   A   It was plastic, and it had a zipper on

4   top, and it was a white background, I

12:22   5   think, with yellow flowers."

6   Now I appreciate that your evidence at the prelim

7   was a bit more detailed, but was this the same

8   item that you told us earlier this morning that

9   you recall finding in the glove compartment?

12:22 10   A   I don't know if it's the same one. I couldn't

11   give you a description, right now, of what it was,

12   but I recall finding something in the glove box

13   and realizing that there was make up inside the

14   case.

12:22 15   COMMISSIONER MacCALLUM: Sorry, Mr. Hodson,

16   aren't we looking at the prelim right now?

17   MR. HODSON: Yes.

18   COMMISSIONER MacCALLUM: Oh. Well I heard

19   you say that "I realize that your description

12:22 20   that you gave at the prelim was more detailed"?

21   MR. HODSON: Oh, I'm sorry.

22   BY MR. HODSON:

23   Q   Yes, the description that you gave here at the

24   preliminary hearing of the description of the bag

12:22 25   is much more detailed than what you had told us

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1   this morning?

2   *A*   Yes.

3   **Q**   I'm sorry. You agree with that?

4   *A*   Yes.

12:22 5   **Q**   Okay. And would it be fair to say that your

6   recollection at that time would have been better

7   than it is today?

8   *A*   Yes.

9   **Q**   Okay. Now that part I read you, are you -- would

12:22 10   you agree that that would be the same item that

11   you told us about this morning?

12   *A*   I would tend to think so, yes.

13   **Q**   Down at the bottom of that page, question 328:

14   "Q   What did you do when you found the

12:23 15   cosmetic bag?

16   A   I looked in it.

17   Q   And then what?

18   A   I asked everybody whose it was, and

19   everybody said they don't know, and so

12:23 20   then Dave grabbed it, and he threw it

21   out the window.

22   Q   Now, do you know where this would be in

23   relation to when you left Saskatoon?

24   A   Between here and Rosetown."

12:23 25   Does that assist your recollection, Ms. John?

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1   *A*   No.

2   **Q**   Do you have any recollection of anybody throwing a

3   cosmetic bag out of the car?

4   *A*   No.

12:24   5   **Q**   Now to page 030729 and -- I'm sorry, actually

6   030728, the page before. Mr. Caldwell asks you:

7   "Q   Now I show you P.9 for Identification,

8   which is just the blade of a knife. How

9   would that blade compare with the one

12:24   10   you saw on the knife we're talking about

11   in the car?

12   A   I don't remember seeing that.

13   Q   Pardon?

14   A   I don't remember seeing that.

12:24   15   Q   No, I'm not asking whether you saw that,

16   Miss John, but I say how would P.9 for

17   Identification compare with the blade of

18   the knife that you saw in the car?

19   A   It's about that thick but, I'm pretty

12:24   20   sure the blade was longer on the other

21   knife.

22   Q   On the other knife, okay. I show you

23   P.15 for Identification, a knife handle,

24   how would that handle compare with the

12:25   25   one you saw in the car?

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1   A   It's the same thing.

2   Q   The same as that one?

3   A   Yes.

4   Q   Now what about the colour?

12:25   5   A   Yes, it was the same colour.

6   Q   What colour would you call this?

7   A   Maroon.

8   Q   Alright. And the knife you saw, of

9   course, was in one piece?

12:25   10   A   Yes."

11 Does that assist your recollection of the events

12 on that night, Ms. John?

13 A   No.

14 Q   Next to page 030730 and this is when Mr. Tallis is

12:25   15 questioning you, he is Mr. Milgaard's legal

16 counsel, first question he says:

17   "Q   Miss John, I don't think that you've

18   ever spoken to me before in your life,

19   have you?"

12:25   20 And you answer:

21   "A   No."

22 Do you recall that?

23 A   No.

24 Q   I take it, though, from this, Ms. John, that we

12:26   25 can assume that you would have -- you would not

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1   have met Mr. Tallis prior to the preliminary

2   hearing; is that fair?

3 *A*   I guess that would be fair.

4 **Q**   You would have no reason to tell Mr. Tallis that

12:26 5   you had not met him if, in fact, you had met him?

6 *A*   No.

7 **Q**   Page 030732, again this is Mr. Tallis who is Mr.

8   Milgaard's lawyer cross-examining you at the

9   prelim, and he asks you:

12:26 10   "Q   Now was this knife laying in the car?

11   A   No, it wasn't.

12   Q   One of the boys had it, did they?

13   A   Yes.

14   Q   But you don't know which one had it?

12:26 15   A   Yes, I do.

16   Q   I see. Which one did have it?

17   A   Dave had it in his hand.

18   Q   I see, this is the bone-handled hunting

19   knife?

12:26 20   A   Yes."

21   Does that assist your recollection, Ms. John?

22 *A*   No.

23 **Q**   Now, next, I want to show you a document, you

24   probably haven't seen it before, it's a report

12:27 25   that the prosecutor prepared after the preliminary

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1   hearing, it is 006976, and this is a report that

2   Mr. Caldwell prepared, Ms. John, after the

3   preliminary hearing. And you will see, on the

4   front page, your name down at the bottom as a

12:28 5   witness. I didn't draw that very well. If you go

6   to the next page, please, and this is dated

7   September 16th, 1969, if you call out that

8   paragraph, and Mr. Caldwell is reporting:

9   "The evidence of Wilson and Cadrain was

12:28 10   good evidence. However, the John girl

11   would not describe in her evidence

12   Milgaard actually stabbing the deceased

13   (which, according to the second of her

14   two statements, she had seen happening

12:28 15   at the time of the murder). I had

16   interviewed her three times prior to her

17   giving evidence and despite this she

18   still did not come forth with the

19   evidence of actually seeing the stabbing

12:28 20   take place. It may be, however, that at

21   the time of the trial she will reveal

22   more about what she saw."

23   Do you recall having three meetings with the

24   prosecutor or being interviewed three times?

12:28 25   A   No.

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1   **Q**   Other than the one time I think you told me you

2   did earlier --

3   *A*   Right.

4   **Q**   -- with the lawyer, that's all you recall?

12:29 5   *A*   Right.

6   **Q**   Do you recall any discussion, after the

7   preliminary hearing, about why your evidence at

8   the preliminary hearing did not -- was not

9   consistent with what you had said in your May

12:29 10   24th, 1969 statement?

11   *A*   No.

12   **Q**   Mr. Commissioner, this is probably an appropriate

13   time to break, I'm going to move in the trial

14   transcript next.

12:29 15   COMMISSIONER MacCALLUM: Thank you. 2:00

16   please.

17   *(Adjourned at 12:29 p.m.)*

18   *(Reconvened at 2:00 p.m.)*

19   MR. HODSON: Good afternoon,

02:02 20   Mr. Commissioner.

21   COMMISSIONER MacCALLUM: Mr. Hodson.

22   BY MR. HODSON:

23   **Q**   I'm been informed that over the break our touch

24   screen has malfunctioned, we'll get it fixed

02:02 25   tomorrow, so I will be less dynamic this afternoon

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1   than I was this morning, how's that, so we will

2   try and go through the documents and it may just

3   take us a bit while longer.

4   The first document is 065441,

02:02   5   Ms. John, that I wish to refer you to, and we had

6   talked this morning, we had finished up with the

7   preliminary hearing and this is a report by the

8   chief, Deputy Chief of Police to the Attorney

9   General. There's just a comment, if you could go

02:03   10   down to the very last paragraph, those four lines

11   and call that out, please, it says:

12   "Another witness required for this hearing

13   was Miss Nichol John of 817 Victoria Avenue,

14   Regina. This young lady was transported to

02:03   15   Saskatoon by an uncle on the first occasion

16   and both apparently lived in a trailer

17   during that visit. She also found her own

18   transportation when she was called back to

19   Court on September 3 and on that occasion

02:03   20   she had to be provided with a room and

21   meals."

22   And it looks from this letter that you were

23   actually up here twice for the preliminary

24   hearing. Do you recall that?

02:03   25   A   No.

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1   **Q**   Do you recall coming up here with your uncle?

2   *A*   No. I think that that's a false statement.

3   **Q**   I'm sorry?

4   *A*   I said I think that that's a false statement.

02:03 5   **Q**   And why do you say that?

6   *A*   Because I believe that my parents, my father was

7   with me, not my uncle.

8   **Q**   Okay. So you think you came up here with your

9   father --

02:03 10   *A*   Yeah.

11   **Q**   -- to the preliminary hearing. You remember that

12   now?

13   *A*   I remember being here, being there with my dad,

14   but I don't know if it was the preliminary hearing

02:04 15   or what it was.

16   **Q**   And do you have any recollection of an uncle being

17   up here with you then?

18   *A*   No.

19   **Q**   If we can now go to the trial transcript which is

02:04 20   003049 and this is your trial transcript,

21   Ms. John, and I may have asked you this this

22   morning, and I think you said you recall being in

23   court. Do you remember being at Mr. Milgaard's

24   trial in front of a jury and testifying?

02:04 25   *A*   No.

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1   **Q**   You have no recollection at all of that?

2   *A*   No.

3   **Q**   I take it you don't doubt that you were there and

4   you testified, do you?

02:04   5   *A*   I agree with that statement.

6   **Q**   If you could go, please, to page 003056 and just

7   the question above line 10, if you could call that

8   out to the bottom, please, I'll go through some of

9   your trial evidence, and you are asked here by Mr.

10   Caldwell:

11   "Q   During the course of that trip did you

12   see anything of any item that might be

13   used as a weapon in the car?

14   A   Yes, I did.

02:05   15   Q   What did you see?

16   A   A knife.

17   Q   Now how many did you see?

18   A   Two.

19   Q   Right; would you tell the court then if

02:05   20   you can get these in some sort of order,

21   was there a first and a second one you

22   saw?

23   A   I can't recall which was first.

24   Q   Alright; what was one of them then -

02:05   25   what can you recall about one of them?

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1   A   One was a maroon handled paring knife.

2   Q   A maroon handled paring knife did you

3   say?

4   A   Yes.

02:05 5   Q   Now, that knife when you saw it, where

6   was it?

7   A   I can't recall exactly.

8   Q   I take it though that certainly within

9   the car to start with?

02:05 10   A   Yes it was.

11   Q   And beyond being in the car can you say

12   where it was?

13   A   No."

14   Does that assist your recollection, Ms. John?

02:05 15 A   No.

16 Q   And the next page, please, just down about line 15

17 where it says Mr. Caldwell, again I think your

18 evidence is similar to the preliminary hearing.

19 You are asked:

02:06 20   "Q   And did you see anything of another

21   knife?

22   A   Yes I did.

23   Q   And how would you describe the second

24   one?

02:06 25   A   It was a hunting knife with a bone

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1   handle, I think it was brown.

2   Q   You're referring to the handle, I take

3   it?

4   A   Yes."

02:06   5   Does that assist your recollection at all?

6   A   No.

7   Q   Page 003059, please, and about line 12 starting

8   with the question Alright, just the first question

9   and answer:

02:06   10   "Q   Alright; what's the first recognizable

11   say landmark that you can tell the court

12   about?

13   A   Well, there was a church and what I

14   know now to be a funeral home, but

02:06   15   that's all."

16   Does that assist your recollection?

17   A   No.

18   Q   Do you have any recollection of a church or seeing

19   a church?

02:07   20   A   No.

21   Q   Pardon me?

22   A   I remember hearing church bells, but I don't

23   really recall seeing a church.

24   Q   And you say you recall hearing church bells. Is

02:07   25   that when you were with Mr. Milgaard and

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1   Mr. Wilson then?

2   A   I couldn't say.

3   Q   Page 003061 and about line 8, the question, it

4   says sidewalk, and this is talking about the woman

02:07   5   who your vehicle stopped for directions:

6   "Q   Sidewalk; and what did you see first of

7   all how this woman was dressed - that

8   you saw?

9   A   Well, she had a dark coat on and to me

02:07 10   it looked like a cape from the A-line

11   shape."

12   And then down at the bottom about line 25, and it

13   says:

14   "Q   And did you notice anything else about

02:08 15   her dress - the way she was dressed?

16   A   No.

17   Q   And did you have an impression or

18   opinion say as to approximately her age

19   group from what you saw of her?

02:08 20   A   She was approximately in her 20s I

21   figure."

22   And I don't think you gave an age at the prelim.

23   Does that assist in your recollection?

24   A   No.

02:08 25   Q   Page 003076 and starting with the second question

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1   at the top, and you were asked:

2   "Q   What is the next place you got to that

3   you can assign a name to or a

4   description?

02:09 5   A   Well, I remember getting stuck in

6   another alley which I now know to be

7   behind a funeral home.

8   Q   Okay; you remember getting stuck in

9   another alley which you now know to be

02:09 10   behind a funeral home?

11   A   Yes.

12   Q   And from saying now you know that I take

13   it you have been back on another

14   occasion?

02:09 15   A   Yes I have.

16   Q   With the police, I presume?

17   A   Yes.

18   Q   Okay; and you say that you got stuck in

19   an alley behind a funeral home?

02:09 20   A   On the incline actually.

21   Q   On the incline?

22   A   Yes, into the alley.

23   Q   Now, where in the block was this funeral

24   home?

02:09 25   A   It was right at the corner.

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1   Q   Right; at the corner and like on that

2   morning when you got stuck on the

3   incline in the alley behind the funeral

4   home did you at any time know say the

02:09   5   name of the avenue or street or

6   whatever?

7   A   No, I didn't.

8   Q   Okay; if I can just go ahead briefly and

9   say though that you have been back

02:10   10   since?

11   A   Yes I have."

12   Top of the next page, the first four questions:

13   "Q   And I take it driven by members of our

14   police department?

02:10   15   A   Yes.

16   Q   And did you see that same location?

17   A   Yes I did.

18   Q   And by the way, was it still winter then

19   or not?

02:10   20   A   No, it wasn't.

21   Q   Did you recognize the funeral home?

22   A   Yes, I did."

23   Does that assist your recollection?

24   A   No.

02:10   25   Q   I think this morning you told me you had a vague

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1   recollection of driving with somebody?

2 A   Right.

3 Q   You couldn't remember the season. Here you are

4   reported as saying it wasn't winter; is that

02:10 5   correct?

6 A   I'm not sure.

7 Q   Well, you testified that it wasn't winter?

8 A   Right.

9 Q   Okay. And you are now saying you don't remember

02:10 10   the season; is that right?

11 A   Right.

12 Q   Page 003078, go down to about question, the second

13   last question on that page starting with maybe you

14   could:

02:11 15   "Q   Maybe you could - I better put it after

16   Dave got out and back briefly, what

17   happened then?

18   A   They both went out.

19   Q   They both got out; okay; are we to

02:11 20   understand that on this occasion on the

21   incline where you were stuck that that

22   would be the first time Ron was out,

23   that is when they both went out

24   together?

02:11 25   A   Yes.

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1   Q   I see; okay; and before Ron and Dave got

2   out together there was there anything

3   said about what they would do or about,

4   you know, getting help or whatever?

02:11 5   A   Not that I can recall.

6   Q   At any rate they both got out together?

7   A   Yes.

8   Q   And did you get out?

9   A   No

02:11 10   Q   Alright; what happened when the two of

11   them got out?

12   A   Then they both came back into the car.

13   Q   And how much time elapsed between the

14   two of them getting out and the two of

02:11 15   them coming back?

16   A   Only a few minutes."

17   Do you recall -- does that assist your

18   recollection?

19   A   No.

02:12 20   Q   Now, the part that I read you, Ms. John, is

21   similar to what you said at the preliminary

22   hearing in that you did not tell the court about

23   what was in your statement of May 24th, 1969 about

24   observations of Mr. Milgaard outside of the car.

02:12 25   You agree with that?

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1   *A*   I agree with that.

2   **Q**   And do you recall or do you know why that was the

3   case?

4   *A*   No.

02:12 5   **Q**   In fact, I will go to page 003083 and line 9,

6   question and answer, and here's where Mr. Caldwell

7   says:

8   "Q   Now, up till the point when Dave got

9   back in on this occasion had you up till

02:13 10   this point seen anything of any other

11   person than the two of them and yourself

12   since you got unstuck at the

13   intersection?

14   A   Not that I can recall."

02:13 15   Do you see that? Do you recall that?

16   *A*   No.

17   **Q**   Then to page 003096, just down at the bottom, the

18   question at about line 28, I'll read you parts

19   about your evidence talking about Mr. Milgaard and

02:13 20   Mr. Wilson changing, and this is at the Cadrain

21   house:

22   "Q   Did the boys change?

23   A   Yes.

24   Q   What did they change?

02:14 25   A   Well, Ron changed his pants and Dave

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1   changed his pants.

2   Q   And did you see what was done with the

3   clothes, like I guess - you say Ron

4   changed his pants?

02:14 5   A   Mmhm.

6   Q   And Dave changed his pants?

7   A   Right."

8   And then down a bit:

9   "Q   What was done with the two pair of pants

02:14 10   they got out of?

11   A   Well, Dave's pants I put in his

12   suitcase but I don't know what

13   happened to Ron's.

14   Q   You say you put them in?

02:14 15   A   Yes."

16   Does this assist your recollection of what you

17   may have done with Mr. Milgaard's pants after he

18   changed them?

19   A   Not at all.

02:14 20   Q   And then to page 003098, the very bottom, the

21   court asks you a question -- do you remember the

22   judge in this case, Chief Justice Bence?

23   A   Not at all.

24   Q   He asks the question:

02:14 25   "THE COURT:

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1   Q   The question is after this time when the

2   pants were changed and you put the pants

3   of the accused Milgaard into the

4   suitcase did you see the suitcase again

02:15   5   after that anywhere?

6   A   Yes, it was put back into the car."

7   Do you have any recollection of the suitcase

8   going back into the car?

9   A   No.

02:15   10   Q   And page 003111 and just about line 6 or 7:

11   "Q   And on that journey the only thing I

12   wanted to ask you about at all is did

13   you locate anything during the trip out

14   of Saskatoon on the way to Calgary?

02:15   15   A   Yes I did.

16   Q   What was that?

17   A   It was a cosmetic bag."

18   And there's some further evidence on the pages

19   that follow, Mr. Commissioner, I don't propose to

02:16   20   put those to the witness. Ms. John, you've

21   already told us today that you recall finding a

22   cosmetic bag or a bag and I think you've told us

23   that it was, I don't want to put words in your

24   mouth, but likely on the trip with Mr. Milgaard,

02:16   25   Mr. Cadrain and Mr. Wilson; is that correct?

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1   *A*   Yes.

2   **Q**   At page 003123, call out at about line 8, you are

3   asked the question:

4   "Q   Now, if I can go back and ask you

02:16   5   just a thing or two about the earlier

6   parts of this voyage and I'd like to ask

7   you about the time from when you

8   originally left Regina after midnight of

9   January the 31st up until the time when

02:16   10   you left Saskatoon as I understand it in

11   the afternoon of the same day Friday

12   January the 31st 1969 - you understand

13   my period of time alright?

14   A   Right.

02:16   15   Q   Now, during any part of that period of

16   time were you yourself under the

17   influence of liquor or any sort of drugs

18   whatsoever - LSD or anything of that

19   short?

02:17   20   A   No, I wasn't.

21   Q   And during the same period of time did

22   you see anything to indicate to you that

23   either Ron Wilson or David Milgaard was

24   under the influence of liquor or any

02:17   25   sort of drug - LSD or anything of that

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1   sort?

2   A   No."

3   Does that assist your recollection of any drug

4   use on that trip?

02:17 5   A   No.

6   Q   Just during this time, just talking generally 1969

7   and 1970, do you recall at that time whether you

8   consumed drugs of any sort?

9   A   Oh, sure I did.

02:17 10 Q   And can you tell us what types of drugs you were

11   taking?

12 A   Oh, LSD, hash, THC. That was about it.

13 Q   Pardon me?

14 A   I said that was about it.

02:17 15 Q   And let's talk the time frame from January 1969

16   through until January 1970, that time frame; would

17   you have been taking drugs throughout that time

18   period?

19 A   Umm, during that time period.

02:18 20 Q   And how frequent, give me an idea of how frequent

21   would you be taking drugs?

22 A   Couldn't even guesstimate. Sorry.

23 Q   But would it be frequently?

24 A   What would you call "frequently?"

02:18 25 Q   Couple times a week let's say?

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 1    A     Umm, probably.

 2    Q     It wasn't sort of once a month or once every

 3          couple of months?

 4    A     No.

02:18  5    Q     So a couple times a week would sound about right?

 6    A     Uh-huh.

 7    Q     Yes?

 8    A     Yes.

 9    Q     And, when you were taking the drugs, did you

02:18 10          experience hallucinations or anything of that

11          nature?

12    A     Yes.

13    Q     Okay.  And did the drugs you take have any effect

14          on your memory?

02:18 15    A     As in?

16    Q     At that time do you recall whether or not, when

17          you were taking drugs, whether that affected your

18          memory at that time?

19    A     Oh, I couldn't tell you, I don't know.

02:18 20    Q     You don't remember?

21    A     No, I don't remember.

22    Q     Do you recall if you had any hallucinations, or

23          anything of that nature, related to the Gail

24          Miller murder?

02:19 25    A     No, I don't recall.
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1   **Q**   Or any hallucinations that in any way related to

2   David Milgaard?

3   *A*   No, don't recall.

4   **Q**   Go to page 003144, please -- and I propose to go

02:19 5   through, Ms. John, here is where you are

6   questioned by the prosecutor, Mr. Caldwell, with

7   respect to the May 24th, 1969 statement that you

8   gave Raymond Mackie. Okay? Now you recall the

9   statement that I went through this morning, the

02:20 10   May 24th, 1969 was the second statement, and that

11   was the statement where it's purported you said

12   you saw David Milgaard:

13   "He had a hold of the same girl we spoke

14   to a minute before. I saw him grab her

02:20 15   purse. I saw her grab for her purse

16   again."

17   etcetera, and:

18   "All I recall seeing is him stabbing her

19   with the knife."

02:20 20   Do you recall that statement I went through with

21   you this morning?

22   *A*   The second one, yes.

23   **Q**   The second one? Okay. So this line of

24   questioning that I am going to go through with you

02:20 25   relates to the giving of that statement; okay?

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1   *A*   Okay.

2   **Q**   And it starts off, if we could just go down to

3   about line 24, and this is Mr. Caldwell examining

4   you and it says:

02:20 5   "Q   And did there come a time in Saskatoon

6   when you gave Detective Sergeant Raymond

7   Mackie a statement?

8   A   Yes, there was.

9   Q   Now, what building did that take place

02:21 10   at?

11   A   The Police Station.

12   Q   At the Saskatoon City Police station?

13   A   Yes.

14   Q   And do you remember approximately say

02:21 15   what time of day you started that?

16   A   No.

17   Q   And did you give Sergeant Mackie one

18   statement reduced to writing or more

19   than one?

02:21 20   A   Just one.

21   Q   Just the one; I'm just asking you, you

22   understand, about Detective Sergeant

23   Mackie?

24   A   Yes.

02:21 25   Q   Alright; you gave him one statement and

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1   I think you said that was in Saskatoon

2   City Police station?

3   A   Right.

4   Q   And as I understand you it was reduced

02:21 5   to writing?

6   A   Yes it was.

7   Q   And did you have the opportunity - who

8   did the writing, by the way?

9   A   Sergeant Mackie did.

02:21 10   Q   And who was telling him what to write?

11   A   I was.

12   Q   And did you have the opportunity to read

13   it over?

14   A   Yes I did.

02:21 15   Q   And did you read it over?

16   A   Yes.

17   Q   And did you sign it in due course?

18   A   I think so."

19   Does that assist you in your recollection of your

02:22 20   meeting with Sergeant Mackie in May of 1969?

21   A   No.

22   Q   Page 003147, about half-way down just after the

23   words "the Court", and this is where Chief Justice

24   Bence asks you a question:

02:22 25   "Q   Was anyone with you besides Detective

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1   Sergeant Mackie when you gave the

2   statement or were there just the two of

3   you together?

4   A   Just the two of us.

02:22 5   Q   Was it upstairs in the Police Station or

6   downstairs on the main floor?

7   A   Upstairs.

8   Q   You remember that?

9   A   Yes."

02:22 10   Does that assist you in recalling where the

11   statement was taken?

12 A   No.

13 Q   Page 003150 at line 10 where it says Mr. Caldwell

14   the following five lines, Mr. Caldwell says to

15   you:

16   "MR. CALDWELL: Now, have you read the

17   entire thing silently through to

18   yourself, Miss John?

19   A   Yes I have.

02:23 20   Q   All 11 pages?

21   A   Yes.

22   Q   And I ask you now whether or not you

23   made that statement?

24   A   I did."

02:23 25   Do you recall that evidence, Ms. John, or let me

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1   put it this way; do you recall giving that

2   statement to Sergeant Mackie on May 24th, 1969?

3   A   Not at all.

4   Q   Now at page 003151, and I think we can start off,

02:23   5   if we go down to about line 5, where Mr. Caldwell

6   says:

7   "Are pages 3, 4 and 5 true?"

8   And you say:

9   "A   I don't know.

02:23   10   THE COURT:

11   Q   What do you mean you don't know? You

12   signed them.

13   A   Yah, I know I did but I don't know - I

14   don't remember saying that.

02:24   15   Q   You signed the pages each one at the

16   bottom of the page?

17   A   Yes.

18   Q   And you gave a detailed statement with

19   respect to what you said had taken

02:24   20   place, didn't you?

21   A   Yes.

22   Q   Now, having read it - having read it,

23   does that refresh your memory

24   sufficiently that you can now tell this

02:24   25   court what happened on January the 31st?

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1   A   No it doesn't; I don't remember saying

2   that."

3   Do you recall that exchange with the judge at the

4   trial, --

02:24   5   A   No.

6   Q   -- Ms. John? And what I am going to do is call

7   up, these questions asked about pages 3, 4, and 5

8   of the statement, and I think if you can call up

9   the handwritten statement which I think is 018593,

02:25   10   and if you could go to 593, please, so you will

11   see this is the handwritten statement.

12   Mr. Caldwell was talking about pages 3, 4, and 5,

13   if you could go to page 3 which is 018595, and if

14   we just, on page 3, if I can go down to -- maybe

02:25   15   down at the bottom, the last four lines:

16   "The next thing I recall is seeing Dave

17   in the alley on the right side of the

18   car. He had ahold of the same girl we

19   spoke ...,"

02:25   20   Next page:

21   "... to a minute before. I saw him grab

22   her purse. I saw her grab for her purse

23   again. Dave reached into one of his

24   pockets and pulled out the knife. I

25   don't know which pocket he got the knife

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1   from. The knife was in his right hand."

2   And I read through this with you earlier this

3   morning, if we could maybe go through to page 5

4   and show where I think this ends up, which I

02:26 5   think is page 018597 and then it finishes up

6   there where it says:

7   "The next thing I recall is when we were

8   ...,"

9   Down at the bottom:

02:26 10   "... driving down an alley behind some

11   apartment blocks ..."

12   So again, and I'll go through this in a bit more

13   detail with you, Ms. John, but it appears here,

14   from the trial transcript, that you are saying

02:26 15   that pages 3, 4, and 5 of the statement, you

16   don't remember saying that; is that correct?

17   A   Could you repeat that again?

18   Q   Sure. At the trial transcript, and it's your

19   evidence, --

02:26 20   A   Right.

21   Q   -- what you are saying here is you were asked

22   about the statement and pages, in particular pages

23   3, 4, and 5, and what you say to questions from

24   the judge is that you don't remember saying that?

02:26 25   A   That's what the transcript says; right?

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1   Q   Yes.

2   A   Yeah.

3   Q   And you don't dispute that; do you?

4   A   I don't dispute it, but I don't recall saying

02:26 5   that.

6   Q   All right. You are not denying saying that; are

7   you?

8   A   No.

9   Q   If you go to page 003152, and if we could go to

02:27 10   line 10 -- and this is still, I believe this is

11   the Chief Justice Bence questioning, doesn't say

12   that on the page but I believe it is -- he says:

13   "Q   And you remember quite clearly that it

14   was read over to you?

02:27 15   A   Yes.

16   Q   You remember quite clearly that you

17   signed every page?

18   A   Yes.

19   Q   Well, can you tell me why you can't

02:27 20   remember what you said on that occasion?

21   A   I don't know."

22   Do you recall that?

23   A   No.

24   Q   And I take it the answer that you gave to Chief

02:27 25   Justice Bence there, "I don't know", is the same

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1   answer you gave me this morning?

2   A   Yes.

3   Q   Go to page 003155, and if you could put that on

4   the left-hand side, please, and I'm going to put

02:28 5   your statement on the right-hand side, the

6   typewritten version of your statement, I believe.

7   And what I propose to do,

8   Mr. Commissioner and Ms. John, here you are

9   questioned by Mr. Caldwell at the trial about

02:28 10   which parts of this statement you can recall and

11   which parts you can't, and I'm simply going to go

12   through them with you, and we'll mark up the

13   statement on the right as to what you adopt -- for

14   lack of a better word -- and that which you can't

02:28 15   recall. And if you can, on the left-hand side on

16   the transcript at line 20, you will see

17   Mr. Caldwell say to you:

18   "Q   Did you tell Sergeant Mackie:

19   "He offered to give her a ride to

02:29 20   wherever she was going. She refused

21   the ride. Dave closed the door and

22   said, 'The stupid bitch'."

23   Did you tell Sergeant Mackie that?"

24   And your answer was, if you can scroll down:

02:29 25   "A   Not all of it. I don't remember saying

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1   part of it."

2   And scroll down, please, and this is the judge:

3   "Q   You said you didn't say it - did you say

4   it?

02:29 5   A   The first part I said but I don't

6   remember saying the last part here.

7   Q   Well just a minute - that's the kind of

8   thing I suggest that you might not

9   easily forget, ..."

02:29 10   Next page, and this is again the judge

11   questioning you:

12   "... the expression "Stupid Bitch"?

13   A   I don't remember him saying anything.

14   Q   Well, do you remember telling Sergeant

02:29 15   Mackie that?

16   A   No."

17   So again, if we can just go to the right-hand

18   side on the document, I think that what you are

19   saying is, if we can go down -- and I'm sorry, my

02:29 20   touch screen isn't going working -- but the

21   paragraph that says "Dave asked this girl for

22   directions"?

23   A   Pardon?

24   Q   Yeah, the words:

02:30 25   "He offered to give her a ride to

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1   where ever she was going. She

2   refused the ride.

3   The last part:

4   "Dave closed the door and said "The stupid

02:30   5   bitch."

6   The yellow part there, you have told Mr. Caldwell

7   you don't remember saying that Sergeant Mackie,

8   is that right?

9   A   Yes.

02:30 10   Q   Next, if we could go down again on the transcript

11   on the left-hand side, the Court questions you

12   here at about line 18, and again this is the

13   reference to the phrase "the stupid bitch", the

14   judge says:

02:30 15   "Q   And you don't remember telling Sergeant

16   Mackie that?

17   A   No.

18   Q   Might you have told Sergeant Mackie

19   that?

02:30 20   A   I might have, yes.

21   Q   And Dave might have said it?

22   A   He might have, yes."

23   And, next, if you could go to Mr. Caldwell just

24   down about line 25 -- or actually let me do this,

02:31 25   go through those portions where you don't adopt

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1   what's in your statement and we'll go back and

2   identify those which you do. And I think the

3   next one then is on page 003158, and you will see

4   at about line 8, if you can call that out please,

02:31   5   line 7, and you were asked:

6   "Q   Did you tell Sergeant Mackie this:

7   "The next thing I recall seeing Dave

8   in the alley on the right side of the

9   car. He had ahold of the same girl

02:31   10   he spoke to a minute before. I saw

11   him grab her purse, I saw her grab

12   for her purse again."

13   Just scroll down:

14   "Did you tell Sergeant Mackie those

02:31   15   things?

16   A   I don't remember.

17   THE COURT:

18   Q   Do you remember any part of it?

19   A   No.

02:31   20   Q   Are you saying you didn't tell Sergeant

21   Mackie that?

22   A   I'm saying I don't remember if I did

23   or if I didn't.

24   Q   Well, if you did see the accused grab

02:32   25   the purse it's something you would have

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1   remembered, isn't it? Isn't it?

2   Witness?

3   A   I don't know.

4   Q   Take a drink of water and stop crying.

02:32 5   A   If I could tell you what happened I'd

6   tell you. I don't know. I can't

7   remember."

8   And, again, this is the judge:

9   Q   The point is this. You told Sergeant

02:32 10   Mackie on March the 22nd according to

11   this statement. Now are you saying you

12   did tell Sergeant Mackie or you didn't

13   tell him?

14   A   I don't know,"

02:32 15   if we could just zoom in at the top:

16   "A   I don't know if I did.

17   Q   Did you see Dave have ahold of the girl?

18   Did you see Dave have ahold of the girl?

19   A   I don't remember anything. My mind is

02:32 20   a blank. Nobody understands. Nobody

21   wants to believe me.

22   Q   You remember the other things, don't

23   you?

24   A   Yes I do."

02:32 25   So if I could pause there, and I think on the

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1   right-hand side then, I think it's just down at

2   the bottom:

3   "The next thing I recall ...,"

4   if you could just highlight on the right. Again

02:33 5   I think what I have just read to you Ms. John,

6   the highlighted part on the bottom right, your

7   evidence was that you could not recall telling

8   Sergeant Mackie that; is that correct?

9   A   I'm not following your questioning, sorry.

02:33 10 Q   Well I just read you your evidence where you were

11   asked by the judge and by Mr. Caldwell as to

12   whether or not you remembered telling Sergeant

13   Mackie the words at the bottom right on your

14   statement, and the evidence I read you, you

02:33 15   answered no, you couldn't recall that?

16 A   Are you asking me can I recall that now?

17 Q   Yes?

18 A   Is that what you are asking? No, no I don't.

19 Q   Okay. But you don't dispute what's in the

02:33 20   transcript?

21 A   No, I don't dispute that.

22 Q   Okay. Again on 003159 and just carrying on, if

23   you could go over to where it says Mr. Caldwell at

24   line 10, and he says:

02:34 25   "MR. CALDWELL: I propose to go on --

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02:34 1   Q   Alright, Miss John, if you will try and

2   just follow along with this and we'll

3   get through it - you have told His

4   Lordship now that you don't remember

02:34 5   whether you told Sergeant Mackie that

6   last group of statements?

7   A   Yes.

8   Q   Do you remember whether that's what

9   happened or not?

02:34 10   A   I don't remember anything.

11   Q   Did you tell Sergeant Mackie this:

12   "Dave reached into one of his pockets

13   and pulled out the knife. I don't

14   know which pocket he got the knife

02:34 15   from. The knife was in his right

16   hand."

17   Did you tell Mackie that?

18   A   I don't remember.

19   Q   Alright; and did that happen in fact

02:34 20   whether or not you told Mackie?

21   A   I don't know.

22   Q   Did you tell Mackie this:

23   "I don't know if Dave had ahold of

24   this girl or not at this time. All I

02:35 25   recall is seeing him stabbing her

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1   with the knife."

2   Did you tell Mackie that?

3   A   I don't remember

4   Q   And whether or not you remember telling

02:35   5   him, did that happen? Did you see that?

6   A   I don't know.

7   THE COURT:

8   Q   You don't know whether it did or it

9   didn't?

02:35 10   A   No, I don't."

11   And then if I can pause there and we'll just go

12   to the statement on the right-hand side, I think

13   we'll have to go to the next page, again the

14   transcript shows you have identified, top of the

02:35 15   next page of the statement, I think the first

16   full paragraph there you told the Court that you

17   don't recall telling Sergeant Mackie; is that

18   correct?

19   A   Yes.

02:36 20   Q   Okay. If we could go back to the transcript, line

21   10 where it says Mr. Caldwell on the left, if you

22   could just call that out, please. Mr. Caldwell

23   says:

24   "MR. CALDWELL:

02:36 25   Q   Now, Miss John, I put it to you that

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1   that is something you absolutely would

2   never forget if you saw that happen?

3   A   As far as I'm concerned I don't know

4   what happened. I don't even know if I

02:36   5   was on that trip or not."

6   Do you recall that evidence, Ms. John?

7   A   No.

8   Q   If you could scroll down, please, and the Court

9   says to you:

02:36   10   "Q   Well, you've already given evidence

11   that you were on the trip - very

12   extensively yesterday. Have you

13   forgotten since yesterday that you told

14   us you were on the trip?

02:36   15   A   If you just stop and think how much

16   this bothered me - I'm beginning to

17   wonder if I even did it or not."

18   Do you recall giving that evidence?

19   A   No.

02:36   20   Q   Do you recall being bothered at this time, Ms.

21   John, about this matter?

22   A   I have no recall.

23   Q   Okay. Scrolling down the left-hand side on the

24   transcript Mr. Caldwell asks you:

02:37   25   "Q   Alright; did you tell Sergeant Mackie:

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1   "The next I recall is him taking her

2   around the corner of the alley. I

3   think I ran after that. I think I

4   ran in the direction Ron had gone."

02:37   5   Did you tell Mackie that?

6   A   I don't know."

7   Next page:

8   "Q   And whether or not you told him, did

9   that happen or not?

02:37 10   A   I don't know."

11   If we could pause there, and if I go to the

12   statement on the right-hand side, and we will

13   again just mark that part where you have

14   testified that you did not recall telling Mackie

02:37 15   that. And again on the left-hand side, about

16   line 5, Mr. Caldwell asks you:

17   "Did you tell Sergeant Mackie:

18   "I recall running down the street.

19   I don't recall seeing anyone.

02:38 20   The next thing I know I was sitting

21   in the car again. I don't know how I

22   got back to the car."

23   A   I don't remember saying that.

24   Q   Alright; and whether you remember saying

02:38 25   it or not, did that happen?

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1   A   Not as far as I know.

2   Q   Alright. Did you tell Mackie this:

3   "I seem to recall seeing Dave putting

4   a purse into a garbage can. I don't

02:38   5   remember which time it was or where I

6   was when I saw this. I recall there

7   were two garbage cans; the one on the

8   left had the lid tipped; I don't

9   recall which one he put it in."

02:38   10   Did you tell Mackie those things?

11   A   I don't remember.

12   Q   And whether you remember telling him or

13   not, did you see those things happening

14   or not?

02:38   15   A   I don't know."

16   And again, if we could just go back to the

17   statement on the right-hand side, and if you

18   could mark up those parts, again, of the

19   statement that -- I think as well the next

02:38   20   paragraph. Okay.

21   Again that, the transcript on

22   the left, about line 25:

23   "Q   All right. Did you tell Mackie:

24   "The next I remember sitting in the

02:39   25   car. I don't remember Ron being in

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1   the car or coming back. I remember

2   Dave coming back and getting into the

3   front seat of the car. I remember

4   moving over towards the driver's side

02:39 5   because I didn't want to be near

6   him."

7   Did you tell Mackie those things?

8   A   Yes I did.

9   Q   And did those things happen?

02:39 10   A   Yes.

11   THE COURT:

12   Q   You remember that?

13   A   Yes, I remember that. Oh God!

14   MR. CALDWELL:

02:39 15   Q   Did you tell Mackie:

16   "I don't remember talking to Ron

17   before Dave got back. I do not

18   recall Dave saying anything."

19   A   Yes.

02:39 20   Q   And did those things happen?

21   A   Yes."

22   So, again, I'm just going to mark that. It looks

23   like here, Ms. John, you are now telling the

24   Court that you remember telling Sergeant Mackie

02:39 25   certain things, and I'll mark those in blue.

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02:40 1   We'll carry on. At about line

2   20 on the left-hand side Mr. Caldwell says:

3   "MR. CALDWELL: About half-way down the

4   page.

02:40 5   Q   And, Miss John, you feel free to look at

6   that if you wish, - the statement in

7   front of you - now, did you tell

8   Sergeant Mackie:

9   "After this we left for Calgary.

02:40 10   On our way about half way between

11   Saskatoon and Rosetown I looked in

12   the glove compartment for a map. I

13   saw a cosmetic case which I opened

14   up. There was a compact, two

02:40 15   lipstick and an eye shadow in it.

16   I asked whose it was. Nobody knew

17   whose it was. Then Dave grabbed it

18   and threw it out the window. Dave

19   was driving at this time."

02:40 20   Did you tell Mackie those things?

21   A   Yes I did.

22   Q   And do you remember telling Sergeant

23   Mackie those things?

24   A   Yes.

02:40 25   Q   And are those things true?

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1   A   Yes."

2   And then the Court says

3   "THE COURT:

4   Q   How is it you can remember that?

02:41   5   A   I don't know. If I had a solution for

6   it --

7   THE COURT: All right - go ahead,".

8   And carry on. So if we could just go back to the

9   statement again, and we'll mark in blue that

02:41   10   portion of the statement that you have confirmed,

11   I think it's actually on page -- is the compact

12   part on page 8? If you want to just scroll

13   ahead, I think it's 9, 91, page 018591. So

14   that's the part there that I just read to you

02:41   15   that you confirmed.

16   Now again back on the

17   transcript on the left, about line 20,

18   Mr. Caldwell says:

19   "Q   Now, did you tell Sergeant Mackie,

02:42   20   referring to a stop:

21   "Shortly after Dave got back into the

22   car I saw a knife he had."

23   Skipping on:

24   "This knife was a kitchen knife used

02:42   25   to peel potatoes and things like

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1   that. It had a maroon handle."

2   Did you tell him those things?

3   A   Yes I did.

4   Q   And you remember telling Mackie that?

02:42 5   A   Yes.

6   Q   And just briefly that part of your

7   statement was on the way to Saskatoon

8   from Regina - that's where that

9   occurred?

02:42 10   A   Yah, I know.

11   Q   You agree with that?

12   A   Yes.

13   THE COURT:

14   Q   That was true?

02:42 15   A   Yes."

16   Does that assist you in recalling those events,

17   Ms. John?

18 *A*   No.

19 **Q**   But you would agree to me that you testified under

02:42 20   oath here to the Court that you confirmed, again,

21   another part of your May 24th, 1969 statement?

22 *A*   I agree with you.

23 **Q**   And, again, if we could just mark, I think that's

24   maybe back on the page -- on the first page,

02:43 25   018589. Okay.

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1   Now again at the left-hand side

2   down at the bottom where it says The Court --

3   actually, let me just go back up to line 10 where

4   it says Mr. Caldwell, and again this is just after

02:43   5   you talk about the knife, and he says:

6   "Q   And that particular incident you do

7   remember, Miss John, do you?

8   A   Yes I do.

9   Q   And that's true, is it?

02:43   10   A   Yes.

11   Q   And as I understood you to say there was

12   only one statement that you gave to

13   Sergeant Mackie that was written out and

14   signed in this way?

02:43   15   A   Yes.

16   Q   So that your position today is, as I

17   understand you, that you don't know

18   whether you saw Dave in the alley with

19   the same girl that he had spoken to

02:44   20   shortly before for directions?

21   A   No I don't.

22   Q   Alright; and you don't know whether you

23   saw him grab her purse ..?

24   THE COURT: Excuse me a minute, just a

02:44   25   minute -

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1   (to the witness). It's very easy for

2   you to stop crying because you've done

3   it several times when you were asked a

4   question with which you would agree - so

02:44   5   would you please stop crying."

6   Do you recall that exchange with the judge?

7   A   Not at all.

8   Q   So if we could just go back to the statement on

9   the right and in fact, Mr. Commissioner, there are

02:45   10   other parts in the transcript where Ms. John has

11   confirmed or adopted parts of the statement that

12   we'll go through and mark up and produce a

13   statement that has, that coincides with the

14   transcript that will have yellow highlights for

02:45   15   that which she did not adopt and blue for that

16   which she did adopt. I don't think there's a need

17   to go through it. You would accept, Ms. John,

18   that the transcript would accurately record what

19   you would have told the court at the time about

02:45   20   what you remembered about the statement and what

21   you didn't?

22   A   I agree.

23   Q   If I could then go to page 003177 and we'll just

24   go back to the transcript, we don't need the

02:46   25   statement any further, and again this part of the

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1   proceeding, Ms. John, you are being cross-examined

2   by Mr. Tallis who is counsel for David Milgaard at

3   the time. If you could go down to about line 13,

4   the question starts well now, and you are asked:

02:46 5   "Q   Well now, after you got into Saskatoon

6   you saw Wilson."

7   And again, just prior to this Mr. Tallis is

8   asking you about your trip to the Cavalier Hotel

9   in May 23, 24 of 1969 and the statement, he says:

02:46 10   "Q   Well now, after you got into Saskatoon

11   you saw Wilson?

12   A   Yes.

13   Q   And I suggest to you that it was at the

14   Cavalier?

02:47 15   A   Yes.

16   Q   And were you and Wilson in a room

17   together with some police officers at

18   the Cavalier?

19   A   There was just one police officer.

02:47 20   Q   One police officer; and how long were

21   you in the room there?

22   A   I don't know how long it was; it was

23   just a short period of time."

24   Does that assist you in recalling your interview

02:47 25   with the police and your interaction with

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1   Mr. Wilson in May of 1969?

2   A   No.

3   Q   Next page, please, 003178, and go down to about

4   line 15, it starts "I see; well now --" and again

02:47 5   this is Mr. Tallis cross-examining you.

6   "Q   I see; well now in any event up in this

7   particular room --"

8   And they are talking about the Sheraton Cavalier

9   Hotel room:

02:47 10   "   -- up in this particular room was there

11   a collection of knives there?

12   A   Yes.

13   Q   And how many knives were in this

14   particular collection?

02:47 15   A   Five or six.

16   Q   Five or six; and I take it that the

17   police officer had a broken knife - was

18   there a blade?

19   A   No.

02:48 20   Q   I see, but in any event there was a

21   collection - there was about five or six

22   knives there?

23   A   Yes.

24   Q   And now in addition to that were there

02:48 25   photographs?

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1   A   No.

2   Q   I see, were there clothes?

3   A   Yes.

4   Q   And was there a black coat?

02:48   5   A   Yes."

6   Does that assist you in recalling the events in

7   the hotel?

8   A   No.

9   Q   Do you agree with me that your recollection of

02:48   10   what happened in the hotel room would have been

11   better at the time of trial than it is now?

12 A   Oh, yes.

13 Q   And then to page 003181 and line 20, you are

14   asked, and this again is Mr. Tallis:

02:49   15   "Q   I see; and do you recall now whether the

16   dress was held up having blood on it,

17   that is apparent blood stains?"

18   And the court says:

19   "THE COURT: She doesn't remember any dress.

02:49   20   MR. TALLIS: Well, I just want to try and

21   see whether or not that refreshes her

22   memory, My Lord.

23   A   No, I don't think the dress was there.

24   Q   You don't think the dress was there?

02:49   25   A   No.

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1   Q   In any event there was a discussion of

2   some of the details of the things that

3   had happened to this girl by this police

4   officer?

02:49 5   A   Yes."

6   Does that refresh your memory at all?

7 A   No.

8 Q   The bottom of that page, please, down about line

9   25, and starting:

02:49 10   "Q   And I also suggest to you that - was it

11   at the preliminary that my learned

12   friend showed you a knife blade?

13   A   Yes.

14   Q   And is it fair to say that under oath at

02:49 15   that time you indicated to Mr. Caldwell

16   that the blade of the maroon handled

17   knife that you saw in the car was longer

18   than the broken blade?

19   A   Yes.

02:50 20   Q   Yes; and that is the actual knife blade

21   was longer?

22   A   Yes.

23   Q   And you're satisfied of that, are you?

24   A   Yes."

02:50 25   Does that refresh your memory at all, Ms. John?

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1 *A* No.

2 **Q** Go to page 003198 and about line 10, please, and

3   again this is Mr. Justice Tallis, and he questions

4   you:

02:50 5   "Q I see; well now, after you got back -

6   after you and Shorty stayed at the first

7   place in Regina --"

8   And that would be in early February, 1969,

9   "Q -- were you using LSD at all?

02:51 10   A Yes I was.

11   Q I see, and I take it that - were you

12   using it when Shorty was there too?

13   A No.

14   Q You weren't; it was after Shorty had

02:51 15   left?

16   A Yes.

17   Q And I'm not trying to embarrass you but

18   how long did you continue using LSD?

19   A Up until about October.

02:51 20   Q October of '69?

21   A Yes.

22   Q And how frequently were you using it?

23   A Approximately every third day.

24   Q About every third day; and once again

02:51 25   I'm not trying to embarrass you but how

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1   were you taking it? You see, Mr.

2   Caldwell and I have never been on

3   trips -- I think the record should show

4   that, My Lord, with deference to my

02:51 5   learned friend.."

6   On to the next page and just down about the third

7   line, if you could zoom in, it says:

8   "Q   Yes; how were you taking it - in what

9   form?

02:51 10   A   I was using a hypodermic, also

11   dropping.

12   Q   Now, what do you mean by "dropping"?

13   A   Just putting it in your mouth.

14   Q   I see - not pill forms?

02:52 15   A   Pill form, yes."

16   And does that assist your recollection, Ms. John,

17   about your drug use in 1969?

18   A   No.

19   Q   That seems to be consistent with what you just

02:52 20   told me earlier; is that correct?

21   A   Yes.

22   Q   And would it be fair to say that what you told the

23   court at this time about your drug use from

24   February to October, 1969 would have been truthful

02:52 25   as what's in the record?

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1   *A*   Yes.

2   **Q**   Page 003203 and if we can go about line 10 down

3   and you are asked:

4   "Q   And were you taking other drugs with a

02:53   5   needle?

6   A   No - well, not at that point.

7   Q   Not at that time point; well, did the

8   police ever check your arm or anything

9   when they were interviewing you at any

02:53   10   times following..

11   A   ..not the Saskatoon police.

12   Q   Not the Saskatoon police; so I take it

13   they didn't know - you didn't give them

14   any information about you taking drugs?

02:53   15   A   Not especially, no.

16   Q   No, you weren't anxious to help them out

17   on that, were you?

18   A   No.

19   Q   And you've never been charged with

02:53   20   anything in connection with drugs?

21   A   No.

22   Q   Possession or having it or anything like

23   that?

24   A   No.

02:53   25   Q   And when you were up here in Saskatoon

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1   on these various trips you didn't tell

2   them anything about taking LSD?

3   A   Well, I told one person.

4   Q   I see; but did you tell the man in the

02:53 5   Cavalier about taking LSD?

6   A   Well, he asked us questions like that,

7   yes.

8   Q   I see; and he's the only one that you

9   told?

02:54 10   A   Well, there's one more person.

11   Q   I see; you told one other person?

12   A   Yes.

13   Q   And who was that?

14   A   Raymond Mackie.

02:54 15   Q   I see; about taking LSD?

16   A   Mmhm."

17   Does that assist your recollection, Ms. John, of

18   what you may have told the police about your drug

19   use?

02:54 20   A   No.

21   Q   Do you have any reason to believe that what you

22   said at the trial was not truthful?

23   A   No.

24   Q   Page 003214, please, and down to about line 21 --

02:55 25   I'm sorry, is that 003214? Sorry, go back to line

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1   21, there, and the question, and is it then

2   that -- and again this is where Mr. Tallis is

3   asking you about where you were staying on May

4   23rd, 24, 1969 when you were, when you gave the

02:55   5   statement. It says:

6   "Q   And is it then that you were taken up to

7   the little room that you described to

8   His Lordship?

9   A   Not right away."

02:55   10   And just for the record, I think that little room

11   was referred to earlier as to where the statement

12   was given.

13   "Q   Not right away; where were you taken

14   first?

02:55   15   A   To the cells.

16   Q   Pardon?

17   A   To the cells.

18   Q   To the cells - well, were you under

19   arrest?

02:56   20   A   No, I wasn't.

21   Q   I see; were you put in the cells?

22   A   Yes."

23   Next page:

24   "Q   But you weren't arrested for anything?

02:56   25   A   No.

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1   Q   You know what I mean by being charged?

2   A   Yes.

3   Q   What cells were you put in?

4   A   In the women's and then I didn't want

02:56   5   to be in there so then they put me in

6   this little room where the matron

7   stays.

8   Q   I see; and you were in the charge of a

9   matron there?

02:56 10   A   No, I was there by myself.

11   Q   Oh, you were there in the room - but

12   they put you in the cells first?

13   A   Yes.

14   Q   And how long were you in the cells?

02:56 15   A   Only about two minutes.

16   Q   I see; and you complained about that?

17   A   Yes."

18   Scroll down, please.

19   "Q And then you were in the room where you

02:56 20   understood the matron stays?

21   A   Yes.

22   Q   And is this the room just up near the

23   women's cells?

24   A   Yes.

02:56 25   Q   Just opposite the women's cells?

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	1	A	Yes.
	2	Q	So that when a woman prisoner is in
	3		there the matron has this room to wait
	4		in?
02:56	5	A	Yes.
	6	Q	And you were left in there for some
	7		little time, were you?
	8	A	Yes.
	9	Q	And then did someone come and take you
02:57	10		out of there?
	11	A	Yes.
	12	Q	And who was it that came and took you
	13		out of there up to this office?
	14	A	I can't remember who it was.
02:57	15	Q	I see; in any event it wasn't Mr.
	16		Mackie?
	17	A	I don't know; it could be."

And just scroll down a bit, question 12:

"Q   And now - well, where had you stayed the
     night before?

A   In the cells.

Q   Oh I see - well now, let's get this
     straight. You were brought in here on
     the 23rd?

A   Yes.

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1   Q   And you were taken to a room at the

2   Cavalier?

3   A   Yes.

4   Q   And it was there that you spent some

02:57 5   time as you have told us?

6   A   Yes.

7   Q   And then after you were through at the

8   Cavalier that day where were you taken?

9   A   To the cells.

02:57 10   Q   Well now, that's the cells at the city

11   police station?

12   A   Yes.

13   Q   And what time were you taken there

14   approximately?

02:57 15   A   I don't know.

16   Q   Well, was it in the evening - after

17   suppertime?

18   A   I can't remember when it was."

19   And then to the next page, please, right at the

02:58 20   bottom, question 30 -- or I'm sorry, just scroll

21   up, please, about five lines, it says:

22   "Q   And you were placed in a cell, were you?

23   A   Well, there's one big room and I

24   wasn't put right in a cell but it was

02:58 25   in the cell block.

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 1              Q    In the cell block?

 2              A    Yes.

 3              Q    Well, is that where you stayed

 4                   overnight?

 5              A    Yes."

 6         Does that assist or refresh your memory, Ms.

 7         John, about your accommodations while you were in

 8         Saskatoon in May of 1969?

 9    A    Not at all.

10    Q    And again would your recollection of where you

11         stayed in May of 1969, your recollection have been

12         better at the trial in January of 1970 than it is

13         today?

14    A    Yes.

15    Q    Page 003227, down to about line 22, this is

16         Mr. Tallis examining you, cross-examining you.

17              "Q   I take it from what you have said that

18                   you really didn't get any sleep at all

19                   to speak of, if any, on the night of May

20                   the 23rd when the matron was called?

21              A    No.

22              Q    And did she give you anything - did she

23                   have anything to give you there?

24              A    Aspirins.

25              Q    I see; and then you wouldn't have any
```

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1   recollection of what time food was

2   brought in the morning or anything like

3   that?

4   A   No."

03:00   5   Again, do you have any recall of that?

6   A   No.

7   Q   Again, would you agree that what you recalled in

8   January of 1970 would have been better than your

9   recollection today?

03:00 10   A   Yes.

11   Q   I'm done with the transcript. Do you recall -- I

12   presume at some point, Ms. John, you became aware

13   that David Milgaard was convicted of murdering

14   Gail Miller; is that correct?

03:00 15   A   Yes.

16   Q   And would it be fair to say that that have been in

17   and around January 31, 1970, being the date that

18   he was convicted?

19   A   I'm not sure, but if you were to give me a date, I

03:00 20   would agree with you.

21   Q   That's the date that he was convicted.

22   A   Okay.

23   Q   So you would have learned about that at some time

24   in that vicinity?

03:00 25   A   I would presume so.

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1   **Q**   Do you recall your state of mind at the time when

2   you heard that or became aware of that?

3   *A*   No.

4   **Q**   Do you recall whether you thought that he had in

03:00 5   fact murdered Gail Miller?

6   *A*   No.

7   **Q**   You are saying you don't recall?

8   *A*   I don't recall.

9   **Q**   Okay. You are telling us you don't know what you

03:01 10   were thinking at the time when you learned that he

11   was convicted of the murder?

12   *A*   That's correct.

13   **Q**   After the trial did you have any further contact

14   with Ron Wilson?

03:01 15   *A*   No.

16   **Q**   How about with Albert Cadrain?

17   *A*   No.

18   **Q**   Now, I understand from the documents, and correct

19   me if I'm wrong, that the next time

03:01 20   chronologically that the David Milgaard matter

21   involved you was in early 1981 when you were

22   contacted by David Milgaard's mother Joyce

23   Milgaard; is that correct?

24   *A*   I couldn't tell you what the date was.

03:01 25   **Q**   Okay. I'll show you some documents in a moment

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1		that may assist you. I'm going to tell you it was
2		in early 1981. Do you recall at some point then
3		being contacted by Mrs. Milgaard?
4	A	Yes.
03:01 5	Q	And what do you recall?
6	A	I remember her coming to the door of my apartment.
7	Q	And what happened?
8	A	Unannounced.
9	Q	And where were you living at the time?
03:02 10	A	Regina.
11	Q	And had you been made aware that she was looking
12		for you or anything of that nature?
13	A	I don't know. I can't recall.
14	Q	And tell me what you recall happening between you
03:02 15		and Mrs. Milgaard?
16	A	I don't think -- she may have said something to
17		me, I don't know what it was, but the conversation
18		was very brief, that's all I can recall.
19	Q	Do you remember what she explained as a reason for
03:02 20		being there?
21	A	Don't remember.
22	Q	And do you remember what you would have told her
23		or the nature of what you would have told her?
24	A	No.
03:02 25	Q	Would it be fair to say that you did not want to

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1		talk to her at that time?
2	A	That would be fair to say, yes.
3	Q	And why was that?
4	A	What do you mean why was that?
03:02 5	Q	Why did you not want to talk to her at the time?
6	A	Why would I want to talk to her.
7	Q	Let me ask -- my question is why did you not want
8		to talk to her?
9	A	I didn't feel that I needed to talk to her.
03:02 10	Q	Okay.
11	A	Would that make sense?
12	Q	Well, no, I'm just asking for what you were
13		thinking and what caused you to say that you
14		didn't want to talk to her.
03:03 15	A	Okay.
16	Q	Is there anything else then, any other reason you
17		didn't want to talk to her?
18	A	No.
19	Q	Now, I understand from the documents that what
03:03 20		followed that was a meeting with Mrs. Milgaard and
21		her lawyer Tony Merchant at the time and your
22		lawyer. Do you remember that?
23	A	No.
24	Q	Do you remember a meeting with Mrs. Milgaard where
03:03 25		she asked you some questions?

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1   *A*   No.

2   **Q**   Well, I will play a tape for you in a moment,

3   there's a tape of that conversation, and then ask

4   you some questions. Before I do that, though, I

03:03   5   wish to just go through some documents that will

6   hopefully assist you in recalling what happened at

7   the time and to put this interview in some

8   context. They may be documents that you are not

9   familiar with, but I'll just go through them. The

03:03   10   first is document 238133, and again,

11   Mr. Commissioner, I intend, there's some documents

12   that are relevant to this time period, exchanges

13   between the police, Ms. John's lawyers and others

14   that put in context this meeting. This witness

03:04   15   may have no knowledge of them, but I wish to

16   simply point them out to the Commission at this

17   time if that's all right?

18   COMMISSIONER MacCALLUM: Yes.

19   BY MR. HODSON:

03:04   20   **Q**   So the first one is a letter December 31, 1980 and

21   this is a letter from Deputy Chief Corey to John

22   Gibbon, Chief of Police, and it's regarding a

23   telephone call from Mr. Chris O'Brien, a news

24   reporting at CHAB Moose Jaw. Does that name sound

03:04   25   familiar, do you remember a Chris O'Brien?

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1   *A*   No.

2   **Q**   Do you remember a radio person contacting you?

3   *A*   No.

4   **Q**   Do you remember someone named Chris contacting

03:04   5   you?

6   *A*   No.

7   **Q**   And this letter says:

8   "At approximately 4:15 p.m. December 30,

9   1980 I received a long distance telephone

03:05   10   call from a person who identified himself as

11   Chris O'Brien, an employee of CHAB who was

12   calling from Regina. He advised me that he

13   was involved in the investigation recently

14   instituted by Mrs. Joyce Milgaard, relating

03:05   15   to the murder conviction of her son, David,

16   in 1970."

17   Scroll down.

18   "O'Brien claimed to be related through

19   marriage to Mrs. Milgaard who had sought his

03:05   20   assistance in obtaining information relating

21   to events that resulted in David's

22   conviction."

23   And then if you could go to the top of the next

24   page, please, and the first full paragraph, it

03:05   25   says:

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1   "Mrs. Milgaard has retained Mr. Gary Young,

2   a local lawyer, associated with the firm of

3   Sherstobitoff, Hrabinsky, Stromberg, and

4   Young --"

03:05   5   And an address,

6   "-- and Mr. O'Brien suggested that he may

7   have Mr. Young contact your office on his

8   behalf."

9   And if I can then go to the next document, being

03:06   10 047947, and if you could just call out the first

11 full paragraph, again it says:

12   "With reference to our telephone

13   conversation in the p.m. of January 5, 1981,

14   and to enquiries from Mr. Chris O'Brien of

03:06   15   Moose Jaw, Saskatchewan, this is to confirm

16   that I have given consideration to the

17   request of Mr. O'Brien and yourself to be

18   given permission to interview the police

19   officers involved in the investigation of

03:06   20   the murder charge against David Milgaard in

21   1970 and to have access to the complete

22   police file. I am sorry to say that I

23   cannot agree to such a request."

24 Now, the rest of the letter, Mr. Commissioner, is

03:06   25 there for others to read, I don't propose to read

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1   it at this time. I'll certainly be dealing with

2   that with other witnesses.

3   Next is document 025326 and

4   this is a letter January 12th, 1981 from Gary

03:07   5   Young, who was Mrs. Milgaard's lawyer at the

6   time, to the Chief of Police. If you could go

7   down to the third full paragraph starting with

8   further, and it says:

9   "Further, I wish to confirm our telephone

03:07   10   conversation of January 12, 1981 whereby I

11   inquired into the possibility of obtaining

12   the assistance of the Saskatoon City Police

13   in locating the following individuals:

14   Ronald Dale Wilson; Nichol John; Albert

03:07   15   Henry Cadrain."

16   Scroll down, please.

17   "It is possible that the family will want to

18   try to speak to other individuals involved

19   in the investigative and trial process,

03:07   20   however for the time being I simply wish to

21   ask for the assistance of the police with

22   respect to locating the three people

23   mentioned above."

24   The next document is 106839, again this is a

03:08   25   letter January 16, '81 from Sergeant Karst to the

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1   Chief of Police, and if you could go to the

2   second full paragraph, Sergeant Karst is advising

3   the chief:

4   "I contacted Inspector Walters of the Regina

03:08 5   City Police, who assisted with the original

6   investigation of Wilson and John. After

7   making inquiries, he advised me of the

8   following:"

9   And again the letter provides some information

03:08 10   about you.

11   The next document is 106840 and

12   this is a memorandum from Joe Penkala. Do you

13   see that at the top right-hand corner, January,

14   1981, to Staff Sergeant Karst, it says:

03:09 15   "Ed, please contact Wilson and John, if

16   possible and confirm whether or not they

17   wish their names and addresses released to

18   lawyer for the Milgaard family. I'm sure

19   they won't, however, the chief would like to

03:09 20   know that specifically so that he can tell

21   the lawyer."

22   And the next document is 106841, this is a letter

23   from Detective Karst to John Gibbon, January 21,

24   1981, and call out the last paragraph, it says:

03:09 25   "I have also located and spoken to Nichol

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1   Demyen (nee John). She also states that she

2   does not want her name to be given to any

3   lawyer or representative of the Milgaard

4   family. As a matter of fact, she states

03:09 5   that she doesn't understand how anyone could

6   even consider releasing her name to the

7   lawyer."

8   Do you recall a discussion with a police officer

9   at about this time about releasing your name and

03:09 10 address to the Milgaard family?

11 A   No.

12 Q   Would the part that I just read you, do you recall

13   at the time whether you, I think you told me

14   earlier you didn't want to talk to Mrs. Milgaard?

03:10 15 A   Yes.

16 Q   Is what Mr. Karst written here consistent with

17   what you thought at the time?

18 A   I would think so.

19 Q   In other words, you did not want -- or did you

03:10 20   want your name to be released or your name and

21   address to be released?

22 A   No.

23 Q   Next is 106843 and this is a letter from Larry

24   Leslie of the Leslie Marlin firm, January 26,

03:10 25   1981, to Detective Karst, and the first full

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1   paragraph, if you could call it out, he says:

2   "Please be advised that we represent Nichol

3   John. As you are aware, she was one of the

4   witnesses in the Milgaard trial some decade

03:10 5   ago. I understand that you recently

6   contacted her requesting permission from her

7   that the files be released. She responded

8   in the negative."

9   Do you have any recollection of Mr. Larry Leslie

03:11 10   helping you in this matter in the early '80s?

11 A   I remember talking to Mr. Leslie, yes.

12 Q   And he was a lawyer that you knew at the time?

13 A   Someone else had used him and had recommended him.

14 Q   So is it fair to say that you went to see

03:11 15   Mr. Leslie in early 1981 then?

16 A   Whatever date you tell me, I would agree with

17   that. I don't know what the date was.

18 Q   Well, this letter is January 26, 1981 and the

19   first sentence, he says that he represents you.

03:11 20   That in fact is true is it?

21 A   Put it this way, I never retained him, I never

22   paid him a fee for what he did, okay, so if you

23   want to say that he represents me, well, then you

24   can say that.

03:11 25 Q   No, I would like you to tell me what he did. Did

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1   he assist you in his capacity as a lawyer?

2   *A*   He assisted -- yes, he did.

3   **Q**   And that would be in connection with your dealings

4   with Mrs. Milgaard?

03:12 5   *A*   And other issue.

6   **Q**   And other issues. And if you could scroll down,

7   next paragraph, he says:

8   "I believe this matter was very traumatic

9   for our client when it occurred and the

03:12 10   proposed re-occurrence of this whole matter

11   is equally disturbing. Accordingly it is

12   our intention to protect her to the very

13   best of our ability.

14   I thought you should be advised

03:12 15   that on Sunday, January 25, 1981

16   Mrs. Milgaard attended at the home of our

17   client. We refer to David Milgaard's

18   mother. We don't know how she got the

19   address. She did not get the address from

03:12 20   any member of the family. The address is

21   not listed locally and we can think of no

22   way she obtained the address locally. With

23   all due respect, the suggestion is very

24   strong that the address was received through

03:12 25   the Saskatoon City Police department. We

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1   must object to this procedure."

2   Do you recall having Mr. Leslie write to the

3   police on your behalf about this meeting?

4   A   No.

03:13 5   Q   The date in this letter, Sunday, January 25, 1981,

6   do you have any reason to dispute that that was

7   the date that Mrs. Milgaard attended at your

8   apartment?

9   A   No, I wouldn't dispute that.

03:13 10   Q   And then the last paragraph, he says:

11   "Our client will be moving and probably

12   changing her name. If anyone wishes to

13   contact her in the future, the only way that

14   they will be able to contact her will be

03:13 15   through the writer."

16   Now, do you recall discussing that with

17   Mr. Leslie or telling him anything of that

18   nature?

19   A   No.

03:13 20   Q   At that time were you considering moving and

21   changing your name?

22   A   I'm trying to think when I moved. I didn't move

23   after that time I believe, but as far as changing

24   my name, no, I was going through a divorce, so I

03:13 25   guess that's how the name change came up.

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1   **Q**   Were you considering moving for any reason related

2   to the David Milgaard matter?

3   *A*   Yes.

4   **Q**   And can you explain?

03:14 5   *A*   I had been contacted by different people, I don't

6   know how they got my address but they did, and

7   they didn't want to take no for an answer.

8   **Q**   So did you then consider moving to get away from

9   that, is that what you are saying?

03:14 10   *A*   Yes.

11   MR. HODSON: Mr. Commissioner, this is

12   probably an appropriate spot to break.

13   COMMISSIONER MacCALLUM: Okay.

14   *(Adjourned at 3:15 p.m.)*

03:34 15   *(Reconvened at 3:34 p.m.)*

16   MR. HODSON: Mr. Commissioner, just for the

17   record, before the break I had gone through with

18   Ms. John her May 24th, '69 statement and I

19   identified from her trial evidence those portions

03:34 20   of the statement which she said she cannot recall

21   happening, nor did she recall telling Sergeant

22   Mackie, those have been identified with the

23   yellow highlighter; and in blue, those are

24   portions of the statement where she did recall

03:35 25   them happening and did recall telling Sergeant

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1   Mackie, I think those are my words, but whatever

2   words she used in the transcript.

3   This is document number 326522,

4   and this document we'll put up on CaseVault, and

03:35   5   we'll make sure it's in a form that is printed if

6   counsel wishes to refer to that.

7   COMMISSIONER MacCALLUM: Will the emphasis

8   show somehow on the CaseVault?

9   MR. HODSON: Yes, it will. We may have to

03:35   10   change the colour so that it can talk in print,

11   but the statement itself will reflect those parts

12   which have been adopted, and those parts which

13   have not.

14   COMMISSIONER MacCALLUM: Okay. And perhaps

03:35   15   an identification paragraph could be attached

16   explaining the colours so that there won't be any

17   confusion?

18   MR. HODSON: Sure, yeah, we will do that.

19   COMMISSIONER MacCALLUM: Thank you.

03:36   20   BY MR. HODSON:

21   Q   Now Ms. John, at the break we were talking about

22   January of 1981, and I think you have told us that

23   the date January 25, 1981 would likely be the

24   date, then, that Mrs. Milgaard was at your house;

03:36   25   is that correct?

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 1    A      Yes.

 2                 COMMISSIONER MacCALLUM:   January what you

 3           say?

 4                 MR. HODSON:   January 25, 1981.

 5        BY MR. HODSON:

 6    Q      Now were there other occasions when she was at

 7           your home and tried to contact you that you can

 8           recall?

 9    A      I can't recall.

10    Q      Okay.  I would like to call up a document 009490,

11           and this is a handwritten note, I believe it's a

12           letter from Mrs. Milgaard to you, Nichol, it says:

13               "Dear Nichol",

14           I don't have a date but I can go through parts.

15           It says:

16               "Sorry I have missed you.  I know you are

17                upset.  I am, too, and I'm sorry if I have

18                caused you any concern.  I certainly don't

19                want to embarrass you or harass you in any

20                way but I would ask you to call collect in

21                Winnipeg at 889 0802 and if I'm not in Peter

22                can take a number to call you at.  But if

23                you arrange to call at 8 p.m. your time, on

24                Tuesday I'll be sure to be waiting.

25                         This is so important Dave has
```

03:36
03:36
03:37
03:37

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1   already lost 12 years of his life. He needs

2   your help. There may be a time in your

3   life, when as a mother you did have to ask

4   for help for your child. I hope you won't

03:37   5   let down and that you won't let us down."

6   Or:

7   "I hope that you won't be let down and that

8   you won't let us down. It's only a couple

9   of questions that are really important.

03:37   10   Please call.

11   Joyce Milgaard."

12   Do you recall getting this letter from

13   Mrs. Milgaard?

14   *A*   No.

03:38   15   **Q**   Do you recall getting any communication from her?

16   *A*   No.

17   **Q**   Is it possible this may have been stuck in a door

18   and you threw it away, or do you remember anything

19   of that nature?

03:38   20   *A*   Don't remember.

21   **Q**   Is it possible that you got the letter and you

22   just don't remember?

23   *A*   It's possible.

24   **Q**   The next document, and again 106844, and this just

03:38   25   relates to communications between your lawyer and

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1   the police, and this is a letter from Detective

2   Sergeant Karst to the chief of police, and the

3   third paragraph, if you could call that out, it

4   says:

03:38   5   "After consulting with Superintendents

6   Ferguson and Penkala, I contacted Mr. Leslie

7   by telephone and advised him in no uncertain

8   terms that as far as I could ascertain

9   (although you were not available for

03:38   10   confirmation) I was sure this information

11   did not come from our department, nor were

12   we pleased with his suggestion that it had."

13   And, again, it is referring to your address

14   information. And then down at the bottom, if you

03:39   15   scroll down to the last paragraph:

16   "He emphatically apologized for his

17   unfounded suggestive remarks, and assured me

18   there was no need for further communication

19   between yourself and his firm as he was

03:39   20   completely satisfied with my explanation

21   that the information did not come from this

22   department."

23   Do you recall any discussions with Mr. Leslie at

24   the time, or whether you had the thought in your

03:39   25   mind, that the police may have given

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1   Mrs. Milgaard your address?

2   A   No idea.

3   Q   And then, next, 025337, which is a letter from the

4   Chief of Police, John Gibbon, to Mr. Leslie, and

03:39 5   if you could call out the second and third

6   paragraph, please. The letter states:

7   "A short while ago we received a call from

8   Mr. Chris O'Brien from Moose Jaw,

9   Saskatchewan and a Mr. Gary Young of the law

03:40 10   firm Sherstobitoff, Hrabinsky, Stromberg and

11   Young here in Saskatoon. They advised us

12   they might have cause to re-open the

13   investigation into the Milgaard murder case

14   and wanted to know the whereabouts of three

03:40 15   of the witnesses, including Nichol John. I

16   personally dealt with Mr. Gary Young.

17   Mr. Young was advised that we

18   would contact the three persons if possible,

19   however, we would not be prepared to divulge

03:40 20   their addresses unless those persons

21   indicated they wished that done. We have

22   been in contact with your client and two

23   other witnesses. All three of them

24   indicated to us they were not prepared to

03:40 25   have their whereabouts made known to

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1   Mr. Young."

2   My question: Is that correct, Ms. John, that you

3   would have told the police not to give your

4   address to Mrs. Milgaard's lawyer?

5   *A*   Would I have? Is that what you are asking me?

6   **Q**   Yes. Did you? Did you tell the police --

7   *A*   Did do I recall doing that; no.

8   **Q**   But I take it it was consistent with what you were

9   thinking at the time, you did not want your

03:41 10   address given to the Milgaard family, is that

11   correct?

12   *A*   Yes, yes.

13   **Q**   Okay. And the next document, 000751, and this is

14   a letter dated February 26th, 1981, you will see

03:41 15   at the top right it's a letter from Joyce Milgaard

16   to you, and I could just go through that with you,

17   please. Call out the first two paragraphs. It

18   says:

19   "I have not received any reply from you

03:41 20   after our visit last month. You seemed

21   terribly upset by my visit and it certainly

22   was not my intention to cause you any

23   distress, as I tried to explain to you at

24   the time. I'm sorry you seem to have the

03:41 25   wrong idea about my call. I have since been

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1   to Saskatoon and have been to the scene of

2   the murder and checked various routes into

3   the city.

4   I have come across some very

03:41 5   important new information that could change

6   things dramatically. I feel I must discuss

7   this with you. You probably know I have

8   already spoken to everyone else connected

9   with the case and all have been most

03:42 10   cooperative, once they realized they had

11   nothing to fear from me."

12   Scroll down:

13   "I do not want to go to the media again and

14   have explained that to them. I merely

03:42 15   wanted to get the public's attention and to

16   explain that I do have $10,000 in cash which

17   will be paid to anyone who can assist in

18   proving David's innocence.

19   Please think about talking to

03:42 20   me, even if just by phone. I can tell you

21   what I have discovered and how it could

22   explain what really happened in 1969. All I

23   need answered are a couple of questions,

24   which would take very little time. It

03:42 25   really is important and I can't understand

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1   why you'd be afraid, since everyone has been

2   so helpful. Please call me collect at

3   204.885.7327 at any time you wish. I'm sure

4   you'll feel better once you hear what I have

03:42 5   found out.

6   Sincerely,

7   Joyce Milgaard".

8   Do you remembert getting this letter from

9   Mrs. Milgaard?

03:43 10   A   No.

11   Q   Again, is it possible that you did receive it and

12   don't recall?

13   A   I don't think I received this one, and the only

14   reason I say that is that at -- I remember

03:43 15   something, Mr. Leslie telling me at one point in

16   time that he received a letter from Mrs. Milgaard

17   and he said "I don't think you really want to read

18   it," so I'm going to assume that it's this one.

19   Q   Okay.

03:43 20   A   Okay.

21   Q   Let me show you a letter from David Milgaard,

22   046859, I'll read it to you. I recall, Ms. John,

23   reading somewhere in one of your interviews, again

24   you made reference to the fact that Mr. Leslie

03:43 25   told you you got a letter from David Milgaard, I

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1   believe, and we'll get to that.

2   A   That's possible.

3   Q   So let me just go through this letter, it's dated

4   May 1, 1981:

03:43 5   "Nichol:

6   From our energetic shuffling inside a

7   sleeping bag in Victoria Park to the

8   inadequate coupling in a hotel so long

9   ago -- all of this before the 12 years of

10   living inside 4 walls in a room like your

11   bathroom, Niki do you really have any idea

12   of who I am today?

13   I'm only going to tell you

14   once -- I am a 28 year old man that still

03:44 15   believes in human good and I'm also very

16   tired -- I don't believe how it's been for

17   you all this time to know that I never

18   killed anyone but for me it has been murder.

19   Regardless of whoever or

03:44 20   however things were arranged or rearranged

21   so long ago, the truth will always remain

22   the same. When I saw you on the stand I

23   said to myself they must have really screwed

24   you around. My mom and dad had hardly

03:44 25   anything then and today what they do have,

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1   they are putting behind me because they know

2   I cannot handle any more prison. Niki,

3   don't make them waste everything -- please

4   help them just by telling them the truth.

03:44 5   Sincerely,

6   David Milgaard,"

7   Do you recall receiving this letter from Mr.

8   Milgaard?

9   A   No.

03:44 10 Q   Okay. And, again, you testified about Joyce

11   Milgaard's letter; is it possible that Mr. -- that

12   this was the letter that Mr. Leslie was referring

13   to, or both perhaps?

14 A   Could be both.

03:45 15 Q   Now did you, in early 1981 or sometime in the

16   early '80s, did you in fact move from Regina?

17 A   Yes.

18 Q   And that was to B.C.?

19 A   Yes.

03:45 20 Q   And did your decision have anything to do with

21   being contacted by Joyce Milgaard?

22 A   Umm, partially.

23 Q   Okay. In what way?

24 A   Like I told you, I was going through other issues

03:45 25   at the time and there were marital problems, so

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1   that was kind of the topping on the cake.

2   Q   And so do you recall approximately when you would

3   have moved then?

4   A   Oh, gosh, no.

03:45 5   Q   Sometime in the early '80s?

6   A   Yup.

7   Q   Now I have a couple of transcripts here, Ms. John,

8   and a tape recording that we're going to play. It

9   relates to a meeting of -- if I can call up first

03:46 10   document 0 -- or pardon me -- document 173880, and

11   if you could just zoom in the top part, please.

12   And this says:

13   "Nichol John - 10:30 a.m. Sat. May 9/'81

14   with Joyce, Tony Merchant, Larry Leslie in

03:46 15   Leslie's law office, Regina,"

16   and then it goes on with the transcript. Do you

17   remember meeting in Mr. Leslie's law office with

18   Tony Merchant and Joyce Milgaard?

19   A   No.

03:46 20   Q   I'll play you a tape in a moment; have you heard

21   the tape or have you seen that transcript before?

22   A   No, I have no idea.

23   Q   Now for the record, Mr. Commissioner, this is a

24   transcript that is in, I will not be referring to

03:46 25   this. It appears to be, if I could go to the last

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1   page 173904, and there are some handwritten notes

2   throughout the transcript. I believe this is a

3   document that we obtained from either, from

4   counsel for either David or Joyce Milgaard. If

03:47 5   you could, just half-way down, just zoom in on the

6   handwritten parts there, please. And this says it

7   was typed Kathy M. Carlyle-Gordge, May 25, read

8   May 25, I think that's Peter Carlyle-Gordge,

9   copies Joyce, Tony, and David, and I simply refer

03:47 10   to that. It appears to be a transcript of the

11   interview.

12   The next document I wish to call

13   up is 048643, and I believe this is a transcript

14   that the RCMP typed up in 1993 as part of their

03:48 15   Flicker investigation from the tape, and for the

16   record the cassette tapes of the interview --

17   there is two of them although I think they are

18   identical -- are 048702 and 048704. I am told

19   that the tape and transcript that goes with it is

03:48 20   an hour and 17 minutes, so we will play it for

21   about -- until 4:30, Mr. Commissioner, and then

22   break at an appropriate spot.

23   Ms. John, I would simply ask

24   that you listen to the tape, follow along with the

03:48 25   transcript, at the conclusion of the tape tomorrow

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1   I'll have some quite specific questions about what

2   was said, said in the interview, and if you need

3   to go back and listen to parts or look at parts

4   again we will be able to do that. Okay?

5   (EDITED CONVERSATION BETWEEN NICHOL JOHN, LARRY

6   LESLIE, ANTHONY MERCHANT AND MRS. MILGAARD)

7   MRS. MILGAARD: Believe me. I'm sure

8   you're as nervous as I am over this.

9   L. LESLIE: Well don't be, but try to relax

10   because it's --

11   MRS. MILGAARD: Uh-huh.

12   L. LESLIE: You never did anything with

13   Warner Pitrov did you?

14   A. MERCHANT: No.

15   L. LESLIE: You never defended him for

16   anything?

17   A. MERCHANT: This guy may have about ten

18   years ago.

19   L. LESLIE: Just so that you I, I would

20   like you under to understand Mrs. Milgaard that I

21   think I understand what you're going through

22   because I represented a chap named Pitrov.

23   MRS. MILGAARD: Uh-huh.

24   L. LESLIE: In Regina. For most of his

25   criminal career up to a charge of murder.

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1   MRS. MILGAARD: Uh-huh.

2   L. LESLIE: And it involved a charge of a

3   child murder. And my daughter died in 197 -- our

4   daughter was our eldest of our four and died in

5   '77 with a bad heart condition just short of

6   being 16. At that time this trial came up and I

7   wouldn't represent Warner Pitrov and he was

8   eligible for legal aid and some people felt that

9   it was quite right that I shouldn't, in any

10 event, because I was grieving for a lost child

11 and a child was involved and that my whole heart

12 might not have been in the defence.

13   MRS. MILGAARD: Uh-huh.

14   L. LESLIE: In any event, I had gotten to

15 know Mrs. Pitrov over the years, very, very nice

16 lady here in Regina from a very good family and

17 of course she was heartbroken by the ultimate

18 conviction of her son through the court of

19 appeal. It never went to the Supreme Court of

20 Canada. There was, he was -- ultimately I think

21 Gerry Albright was particularly appointed by the

22 Attorney General's department through the legal

23 aid system to defend. And, well, they -- yeah,

24 but there was some difficulty in getting counsel.

25 You probably were asked.

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1   A. MERCHANT: (Unintelligible) kept coming

2   up in court.

3   L. LESLIE: I can't believe you weren't

4   asked at some point.

5   A. MERCHANT: Yeah.

6   L. LESLIE: To to. In any event I've been

7   talking almost once a month to Mrs. Pitrov ever

8   since. I've tried to indicate to her that my

9   reasons for not being involved at that time that

10 I felt I should not become involved now but I

11 understand her. I know her. I don't know you.

12 But understanding her and knowing her and knowing

13 her motives I feel I know your motivation. And

14 Nichol and I just this morning for the first time

15 did I mention to Nichol this other case which

16 perhaps is parallel.

17   MRS. MILGAARD: Uh-huh.

18   L. LESLIE: In in respect to your concern

19 about it.

20   MRS. MILGAARD: Well. Probably it's very

21 similar. I don't know. I.

22   L. LESLIE: Oh not factually of course.

23   MRS. MILGAARD: You know. All I'm knowing

24 is that with this case at the time when it

25 happened I think that I was a young mother. The

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1   children were young. We didn't have much money I

2   really didn't have much business experience or

3   anything like that. I sort of was in an

4   emotional shock when it happened. And I don't

5   feel that as a mother I really did what I should

6   have done at that time. Now I've been in the

7   business for over a number of years Um I went

8   back and looked at the case and I feel I have

9   looked at the case very logically and I feel that

10   I have allowed myself to look at it

11   unemotionally.

12   L. LESLIE: Uh-huh.

13   MRS. MILGAARD: Now and I may only be

14   guessing here but my feeling is that what

15   happened that time I my own feeling is I don't

16   believe they were even in that area but.

17   A. MERCHANT: Okay. I, I, I don't think

18   it's useful for the two of you to discuss the

19   matter on Nichol. I mean you wanna talk to

20   Nichol.

21   L. LESLIE: You want to talk to Nichol. I

22   just wanted to explain that, that I, I think I

23   understand how concerned you are.

24   MRS. MILGAARD: Uh-huh.

25   L. LESLIE: And I've tried to explain that

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1   to Nichol so that she understands your motives.

2   MRS. MILGAARD: Right.

3   L. LESLIE: So from that point I think now

4   I know nothing about the case.

5   MRS. MILGAARD: All right.

6   L. LESLIE: Other than what.

7   MRS. MILGAARD: Basically what we're trying

8   to find out factually is that we come up with a

9   lot of things to indicate that the Crowns theory

10   which is not valid, that it couldn't have

11   happened that way. That it absolutely,

12   scientifically couldn't have happened that way.

13   We have a number of leads. Um but some of the

14   things that are not clear in my mind is from your

15   testimony that you gave on the stand and when you

16   go back through the transcripts and there are

17   questions that we've asked of other witnesses

18   that we've got different pictures of. Now one

19   question that's very important that may seem very

20   incidental is on the trip from Regina to

21   Saskatoon. Now this was before you got to

22   Saskatoon and this is before anything happened,

23   so to speak, do you remember Nicky at that time

24   David having a knife? In his, can you recollect

25   anything about that?

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1   NICHOL: No.

2   MRS. MILGAARD: You can't remember a knife

3 at any time.

4   NICHOL: No.

5   MRS. MILGAARD: Okay. Now we know one was

6 bought after you left Saskatoon you went into a

7 store and bought one to use for a paring knife

8 for using when you were making bologna sandwiches

9 or something Dave said when you're making

10 sandwiches and stuff like that you bought a knife

11 and you sort of ate lunch in the car did you.

12 Something like that?

13   NICHOL: I don't remember.

14   MRS. MILGAARD: You don't remember that.

15 Okay. Do you remember the breaking into the

16 elevator?

17   NICHOL: Partially.

18   MRS. MILGAARD: Okay. At the time of the

19 trip when you were going to Saskatoon it, was

20 anyone on drugs at that point?

21   NICHOL: Yes.

22   MRS. MILGAARD: What type of drugs?

23   NICHOL: Marijuana.

24   MRS. MILGAARD: Marijuana. Now this was

25 something that did not come out in court of

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1   course that that surprises me because everyone

2   had said you weren't on drugs on the trip up.

3   That you were going there to get drugs. Can you

4   remember specifically smoking yourself before you

5   or like in Regina or on the way up from Regina to

6   Saskatoon? Can you really think about that?

7   NICHOL: On the way.

8   MRS. MILGAARD: Before you got to

9   Saskatoon. And about how many cigarettes would

10   you have had or?

11   NICHOL: That I don't remember.

12   MRS. MILGAARD: You don't remember? When

13   you were at the elevator, that would be very

14   early in the morning and, well, somewhere in the

15   middle of the night I guess. Do you remember

16   anything about that particular incident at all?

17   NICHOL: I just remember being in the town.

18   MRS. MILGAARD: Being in the town. Do you

19   remember David bringing anything back to the car?

20   NICHOL: No.

21   MRS. MILGAARD: Now we're in Saskatoon and

22   you're driving around and you're looking for

23   directions. Did you in fact stop a woman and ask

24   for directions?

25   NICHOL: Yes.

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1   MRS. MILGAARD: Okay. Do you remember who

2   this woman was? Did you see her face?

3   NICHOL: I don't remember seeing her face

4   no.

5   MRS. MILGAARD: You didn't see her face.

6   Okay. Um.

7   NICHOL: Not I didn't see her face. I

8   don't remember seeing her face.

9   MRS. MILGAARD: Okay. Can you just sort of

10 tell me what you remember about that?

11   NICHOL: All I remember was that she was

12 young. That's all I remember. And I remember

13 asking somebody asking whether it was me or

14 whatever asking the time.

15   MRS. MILGAARD: Asking the girl the time?

16   NICHOL: Yes.

17   MRS. MILGAARD: Do you remember asking her

18 if, ah, what district it was if she --

19   NICHOL: I don't remember that.

20   MRS. MILGAARD: Anything like that? Okay.

21 So do you recall David saying to her is this the

22 way to Pleasant Hill or do you know how to get to

23 Pleasant Hill?

24   NICHOL: I don't remember that.

25   MRS. MILGAARD: Do you remember him calling

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1   her anything?

2   NICHOL: Don't remember.

3   MRS. MILGAARD: He she he didn't refer to

4   her as a stupid bitch or anything like that?

5   NICHOL: Don't remember.

6   MRS. MILGAARD: You don't remember that?

7   What do you remember?

8   NICHOL: What do what do you mean what do I

9   remember.

10   MRS. MILGAARD: Well about that time, about

11   that incident.

12   NICHOL: About that incident? I remember

13   stopping the girl.

14   MRS. MILGAARD: Uh-huh.

15   NICHOL: Or whatever. We saw her walking

16   down the street. We stopped the car. I remember

17   somebody rolling down the window and asking her

18   the time. That's all I remember.

19   MRS. MILGAARD: Just asking the time and

20   then what do you remember?

21   NICHOL: Then I remember being stuck.

22   MRS. MILGAARD: And this the police I

23   believe placed as being behind a funeral home.

24   NICHOL: I don't know whether they placed

25   whether they placed us behind there or not.

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1   MRS. MILGAARD: Okay. What do you remember

2 then when you were stuck?

3   NICHOL: I remember see seeing what I

4 thought was a Church at the end of an alley.

5   MRS. MILGAARD: Uh-huh.

6   NICHOL: Then the next thing I remember is

7 me either walking or running down an alley. It's

8 daylight. When we got stuck I remember it's

9 dark. When -- when the guy stopped the car an I

10 got in the car it was daylight already. That's

11 all I remember.

12   MRS. MILGAARD: So you're saying that you

13 were actually out of the car?

14   NICHOL: Yes I was, as far as I remember.

15   MRS. MILGAARD: Uh-huh. Um. You remember

16 getting stuck and you and you would say it was in

17 an alley.

18   NICHOL: Uh-huh.

19   MRS. MILGAARD: Did David and Ron leave the

20 car to get help?

21   NICHOL: Yes they did.

22   MRS. MILGAARD: Okay. They left together?

23   NICHOL: No. I remember one going one way

24 and one going the other way.

25   MRS. MILGAARD: Okay. Which way?

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1   NICHOL: I don't know. That I don't

2 remember. Who went what way.

3   MRS. MILGAARD: Well in relation if you

4 were looking at the Church do you remember seeing

5 them go off into a certain direction?

6   NICHOL: Uh-huh. One went okay. The

7 Church is there, we're over here. One went this

8 way and one went that way. I don't remember

9 which one went which way.

10   MRS. MILGAARD: So that, in that case do

11 you -- you don't remember which one which went

12 which way?

13   NICHOL: Went. Right.

14   MRS. MILGAARD: Okay. Um, now in one

15 statement that the police had that you said you

16 didn't say, ah, they indicated that you said you

17 saw Dave stab a woman and grab a woman's purse.

18 Do you do you in fact remember that?

19   NICHOL: No.

20   MRS. MILGAARD: Do you remember telling

21 them that?

22   NICHOL: No.

23   MRS. MILGAARD: Do you remember seeing

24 blood on David's clothes?

25   NICHOL: No.

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1   MRS. MILGAARD: On Ron's clothes?

2   NICHOL: No.

3   MRS. MILGAARD: Can you give me a little

4   background about the time that the police took

5   the statement from you?

6   NICHOL: No I can't. It's been too many

7   years.

8   MRS. MILGAARD: Hm. Oh I, I'm just

9   visualizing that you were a 16 year old girl.

10 You must have been just terrified right out of

11 your mind.

12   NICHOL: I was very upset, yes. I remember

13 that.

14   MRS. MILGAARD: They told about the fact

15 that you were -- you see I have my own

16 impressions of what happened and --

17   NICHOL: Go ahead.

18   MRS. MILGAARD: You know, and they told

19 that you were taken to a cell in the women's part

20 of the jail upstairs. Do you recall that? And

21 that there was no one else around that you were

22 left there all alone.

23   NICHOL: I don't remember that.

24   MRS. MILGAARD: That you became very

25 hysterical. They had to actually call a, a woman

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1   officer to come in and she, she put her mattress

2   down on the floor in the cell with you. Do you

3   remember that?

4   NICHOL: No.

5   MRS. MILGAARD: Do you remember that

6   happening at all? And that was the first night

7   and I guess they kept you two nights or overnight

8   and then they took you out the next day. They

9   drove you around and around the scene. And then

10   you come back and they were going to put you in

11   the cell again and that was the time that you

12   gave the statement regarding what you'd seen

13   about David.

14   NICHOL: I don't remember that.

15   MRS. MILGAARD: You've really blanked a lot

16   of things out haven't you? It's a terrible

17   experience and I know the court was a terrible

18   experience for you at the time. When I saw you

19   there I just you know my heart went out to you

20   because I knew what you were going through. Um.

21   NICHOL: Can we stop this for a minute.

22   L. LESLIE: Yeah.

23   NICHOL: Can we leave the room for a

24   minute.

25   L. LESLIE: Uh-huh. PAUSE. I think it's,

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1   I think we're okay. To continue now.

2   MRS. MILGAARD: Okay. Could you

3   (unintelligible) I'm really sorry.

4   NICHOL: That's okay.

5   MRS. MILGAARD: I, I mean I just hate

6   putting you through this. It's just that with

7   the angles we're working on these questions are

8   really important because I had hoped that if you

9   had seen something there that day that it could

10   have been. We're working on a theory another man

11   was convicted later on who's now in a provincial

12   institution for a very similar crime, okay, and

13   he was visiting a priest at that particular

14   Church and my thought was that maybe if you were

15   in that incline at that alley behind that in fact

16   you could have seen something. You could in fact

17   have seen the real murderer doing this. I don't

18   believe it was David. Because you're telling me

19   that you didn't see any blood on his clothes or

20   you can't remember hey?

21   NICHOL: Right.

22   MRS. MILGAARD: Do you remember anything

23   that -- like, you're obviously frightened about

24   it. There -- there must be something that's

25   really blocking this out in your mind. Do you

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1 think you're subconsciously blocking it out

2 because you don't want to remember?

3   NICHOL: I know something happened. I know

4 that I saw something but I don't know what I saw.

5 You want the truth? That's the truth.

6   MRS. MILGAARD: That's really what I want

7 is the truth Nicky. I don't want lies. I don't.

8   NICHOL: I don't know what I saw. But I

9 know I know here that I did see something.

10   MRS. MILGAARD: You see my thought was that

11 this did happen in the alley just at the t-shape

12 of the alley in another car. Did the police tell

13 you at any time that they had concrete evidence

14 that something happened in that car?

15   NICHOL: I don't remember that. I don't

16 remember them telling me anything.

17   MRS. MILGAARD: They did tell Ron that they

18 found blood or hair belonging to Gail Miller in

19 the in the back seat of that car. Now that

20 wasn't the truth. They never found anything.

21 But they did tell Ron Wilson that. And he

22 believed them. Now we've been talking to Ron and

23 he so he really thought well I didn't do it.

24 David must have done it. You know and he said

25 you were upset that morning. So but if you had

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1   actually seen somebody else do it down and again

2   I'm going by the idea of this person that we have

3   sort of got leads on. If this person had done

4   that and he was standing in the t-point of that

5   alley there and he ran down the alley. It was a

6   very foggy morning and very cold and sort of dark

7   you could he could have he is the same build as

8   David and you know you've seen the two guys go

9   out. You've heard talk of purse snatching on the

10   way up. You see him reach or grab for her purse

11   now and in a statement given to the police at

12   that time you say you saw this fellow take a

13   knife in his right hand and stab this woman

14   twice. Now she had stab wounds in her coat. But

15   there were none in her dress. Now if it's

16   consistent with just a purse snatching they would

17   have been through the dress. Our thought is that

18   really in reality she had been raped in that car.

19   She managed to get her coat back on and jumped

20   out and was running down to where you were stuck

21   in the incline and not really aware that there

22   was a car up ahead because you couldn't see it.

23   And possibly could have seen something at that

24   point. And then of course in your mind thought

25   it was David. And this would certainly have

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1 terrified you all that time if you were carrying

2 around something like that inside. So, if that's

3 the case, I mean if you my thought too was I know

4 you would like to know. Wouldn't you really like

5 to know what you saw?

6   NICHOL: Yes.

7   MRS. MILGAARD: I don't know. I'm just

8 throwing this out as a remark but if we got a

9 very eminent doctor in the business, would you be

10 willing if we, like, I'd be willing to pay for

11 everything to be done, would you be willing to go

12 back through and find out what happened that

13 night. They can take a person back through

14 memory and find out what happened. And now I'm

15 asking you to think about this for the simple

16 reason that if you did see it happen and you

17 could remember something that would definitely

18 bring it into focus, that it wasn't Dave

19 (unintelligible) and he's been sitting there for

20 twelve years, you know. I believe it wasn't. I

21 believe that maybe you did see something and I

22 really believe that, you know, your mind is, is

23 protecting you at this time, from what you're

24 afraid of and I don't know if you ever thought of

25 it but if it wasn't David, what an injustice is

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1   being done right now, not by you consciously

2   because you're not consciously doing anything

3   about it. Would you consider something like

4   that?

5   NICHOL: I would consider it, yeah.

6   MRS. MILGAARD: I don't believe.

7   NICHOL: I've considered it for a lot of

8   years.

9   MRS. MILGAARD: Have you, really?

10   NICHOL: Yes, I have.

11   L. LESLIE: However, she came to see me,

12   primarily because your contact and that of the

13   chap from CHAB was, was causing her to rethink

14   the -- the issues of the day.

15   MRS. MILGAARD: Uh-huh. Uh-huh.

16   L. LESLIE: And they were disturbing to

17   her.

18   MRS. MILGAARD: Uh-huh.

19   L. LESLIE: They were causing her upset.

20   MRS. MILGAARD: Uh-huh.

21   L. LESLIE: And she didn't want to go

22   through it again.

23   MRS. MILGAARD: I realize. I can

24   understand that.

25   L. LESLIE: We'd want to be very cautious

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1   with respect to what's going to happen in terms

2   of somebody.

3   NICHOL: I'm not saying I would do it with

4   your knowledge. That I'm not saying.

5   MRS. MILGAARD: Uh-huh.

6   L. LESLIE: I think we'd want to know what

7   effect, if somebody, say a doctor, took her into

8   hypnosis and took her back to that day.

9   MRS. MILGAARD: Uh-huh.

10   L. LESLIE: After she came out of the

11   hypnosis I think, as her lawyer, I'd want to know

12   what effect there would be on her afterwards,

13   Mrs. Milgaard, because I'm very concerned that

14   she be able to live a, a normal life and of

15   course you're very concerned that your son be

16   able to do the same if he's not guilty.

17   MRS. MILGAARD: Uh-huh.

18   L. LESLIE: I mean everybody might come out

19   of this fine except Nichol. There is that

20   possibility.

21   MRS. MILGAARD: Yes and yet.

22   L. LESLIE: That it will.

23   MRS. MILGAARD: I, I try to put myself in

24   Nichol's place and it's pretty hard to do but I,

25   I have tried to put myself in your place and I

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1   can imagine not knowing must be just a, you know,

2   knowing inside that something terrible has

3   happened and not knowing what it was or, or

4   anything about it, it must scare, scare you.

5   NICHOL: You don't know. You don't know

6   what it's like, you know?

7   MRS. MILGAARD: I think that you're in a

8   prison even though you're on the outside Nicky.

9   Really. But you are. I'm so sure that in my,

10   and. To get back to these questions, maybe,

11   let's get off that but just sort of think it in

12   your mind because the reason I'm asking these

13   questions is has, have a lot of reasons behind

14   them. Okay? Um, you don't remember him stabbing

15   a woman, you can't remember giving a statement,

16   how was he after, after that car episode? Did he

17   seem normal, like after that happened? Did he?

18   NICHOL: I can't remember that.

19   MRS. MILGAARD: Can you remember on the

20   trip. Were you frightened of him or.

21   NICHOL: I can I can remember I didn't want

22   anything to do with him.

23   MRS. MILGAARD: Okay. With David in

24   particular?

25   NICHOL: With David. With David.

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1   MRS. MILGAARD: Or Ron? So that probably

2   you saw something that maybe put you off or

3   frightened you of David. It's possible that

4   could have happened. But you didn't see blood on

5   him. Now he changed, you put his changed

6   trousers in the suitcase at Cadrains' house, they

7   said. Like when he put.

8   NICHOL: I don't remember that.

9   MRS. MILGAARD: You don't remember that

10   either, eh. What was the first time you heard of

11   the murder?

12   NICHOL: When the police came to the door

13   of a house where I was staying.

14   MRS. MILGAARD: In Regina.

15   NICHOL: In Regina.

16   MRS. MILGAARD: Okay. Now, did they ever

17   threaten to charge you, like did they say that

18   you might be charged as an accomplice in this?

19   NICHOL: I don't remember that.

20   MRS. MILGAARD: Do you did they pressure

21   you or in any way?

22   NICHOL: I don't remember.

23   MRS. MILGAARD: Were you frightened of

24   them?

25   NICHOL: No I don't think I was.

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1   MRS. MILGAARD: And you don't remember them

2   telling you that they had evidence against David?

3   NICHOL: No. Don't remember.

4   MRS. MILGAARD: Did they suggest to you

5   that David was a sex maniac or a deviant or a

6   that he had a history of anything of that thing?

7   NICHOL: I don't remember them saying

8   anything like that.

9   MRS. MILGAARD: So you don't know how they

10   got that statement from you, about seeing the

11   murder?

12   NICHOL: No.

13   MRS. MILGAARD: What about identifying the

14   knife? They showed you some knives. Do you

15   remember identifying them?

16   NICHOL: I don't remember that.

17   MRS. MILGAARD: Do you remember when you

18   were leaving Saskatoon about a compact?

19   NICHOL: That I remember.

20   MRS. MILGAARD: You do remember that?

21   NICHOL: I remember that.

22   MRS. MILGAARD: And what exactly do you

23   remember about?

24   NICHOL: It was more than a compact.

25   MRS. MILGAARD: It was more than a compact?

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1   NICHOL: I'm sure, I'm positive. It was a

2   cosmetic case.

3   MRS. MILGAARD: Uh-huh.

4   NICHOL: And there was some identification

5   in it.

6   MRS. MILGAARD: There was identification in

7   it?

8   NICHOL: As far as I can remember.

9   MRS. MILGAARD: You see, When you tell

10   about that and that never having been in the car

11   before, that must have been a very damaging thing

12   in your thought, you know, when he threw it out

13   the window. Now -- and I gave you my thought on

14   that just for your own information. They cleaned

15   the car out in the garage. Now, say they came

16   across, Ron or Dave or somebody, came across, one

17   underneath the seat, it was Ron's car, okay, And

18   they stuck it in the glove compartment at that

19   point, It had never been in the glove compartment

20   before, But all of a sudden you discover it and

21   you pitch it out. I saw Gail Miller's purse.

22   She had two cosmetic bags. I saw the contents of

23   her purse and I tried to jam them into that

24   purse. There was no way she could get more than

25   another compact or something. This is why they

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1 kept saying is it a compact. She had lipsticks,

2 she had eye shadow, she had blush, rouge, she had

3 all kinds of stuff in her purse already, you

4 know, in the purse that they found and identified

5 as hers. So, to my way of thinking, this may

6 have been an item that convinced you in your

7 mind, well, gee David has pitched that, because

8 you did say he pitched it out the window; right?

9   NICHOL: He literally grabbed it from me

10 and threw it out the window.

11   MRS. MILGAARD: Threw it out the window.

12 So that if you were connecting this with the

13 other afterwards in your mind, you would

14 certainly think that it had belonged to her. Did

15 you?

16   NICHOL: Say that again?

17   MRS. MILGAARD: In your own mind, like, did

18 you think that this was Gail Miller's?

19   NICHOL: I didn't know --

20   MRS. MILGAARD: After you --

21   NICHOL: -- whose it was.

22   MRS. MILGAARD: No, but after you heard

23 about the crime, did you in your own mind say

24 well, hey, that must have been that girl's? Did

25 you tie it together in your own thought?

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1   NICHOL: I can't answer that.

2   MRS. MILGAARD: Well, okay. Was there

3   any --

4   NICHOL: Because I can't think of the words

5   that I want to say. It's not because I don't

6   want to answer the question. Keep going.

7   MRS. MILGAARD: Okay. When leaving

8   Saskatoon do you remember the radio coming off --

9   on and him snapping off the car radio to prevent

10   hearing the news?

11   NICHOL: I don't remember.

12   MRS. MILGAARD: Okay. Do you remember that

13   he was in any hurry to leave Cadrains'?

14   NICHOL: Yes, he was in a hurry to leave

15   there, That I remember.

16   MRS. MILGAARD: Uh-huh. Just to leave

17   Cadrains' or leave Saskatoon, Because I believe

18   you drove around quite a bit after that.

19   NICHOL: To leave Saskatoon.

20   MRS. MILGAARD: Uh-huh. Do you know if

21   Cadrain liked David?

22   NICHOL: I don't know.

23   MRS. MILGAARD: You don't know. What kind

24   of impression did you have of Shorty?

25   NICHOL: Very quiet.

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1   MRS. MILGAARD: Uh-huh. Did he sort of

2   romance things, did he invent things at all?

3   NICHOL: I don't remember.

4   MRS. MILGAARD: Do you remember screaming

5   hysterically when Cadrain asked you to go in for

6   coffee that day to a restaurant nearby with

7   Shorty?

8   NICHOL: No, I don't remember.

9   MRS. MILGAARD: Okay.

10   NICHOL: Where was this?

11   MRS. MILGAARD: At St. Paul's Cafe. This

12 is some of the things that Shorty has said. Now,

13 he said that David snapped the car radio off to

14 prevent hearing the news and yet the indication

15 was your radio hadn't been working, you know, Ron

16 said the radio wasn't even working in the car,

17 and so I -- I was more looking for confirmation

18 of Shorty lying than, you know, anything else,

19 because he said that the news came on and David

20 just snapped the aerial off and Ron says

21 absolutely not, that couldn't have happened, you

22 know, but it was just things that -- you see,

23 Shorty was the one that got the reward.

24   NICHOL: A reward for what?

25   MRS. MILGAARD: $2,000 reward for coming

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1   forward and saying that.

2   NICHOL: I didn't know there was a reward.

3   MRS. MILGAARD: Oh yeah, that he came

4   forward and said that he'd -- you guys had come

5   into the house and the first thing David had said

6   was he had to get out of town and, you know, and

7   in a hurry and this, that and the other thing and

8   that he had blood all over his clothes and came

9   up with quite a story, and I'm sure if he had

10   blood all over his clothes, you would certainly

11   remember it somehow, don't you think so?

12   NICHOL: Mrs. Milgaard, there's too many

13   things I do not remember. There's too many

14   holes.

15   MRS. MILGAARD: Uh-huh. Do you think it's

16   just because you're just trying to, like, you

17   know, as you say, your mind is just blank,

18   blacking it out for you?

19   NICHOL: Yeah.

20   MRS. MILGAARD: Do you remember the police

21   driving you around the funeral home and all the

22   rest of it and how you sort of talked to them

23   about it? You must have been under a great deal

24   of pressure there I imagine.

25   NICHOL: It's been a long time. I -- I

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1   don't know.

2   MRS. MILGAARD: When they picked you up, I

3   believe that was in May, were you on, had you

4   been taking drugs at that time?

5   NICHOL: Yes.

6   MRS. MILGAARD: For quite a while prior to

7   that?

8   NICHOL: Six months or so.

9   MRS. MILGAARD: And again, this is only a

10   theory and conjecture on my part, but if you were

11   and they had taken you in and kept you overnight

12   for a couple of days or something like that and

13   you didn't have anything, would you maybe have

14   been in pretty bad shape?

15   NICHOL: I wasn't -- I was not doing

16   drugs --

17   MRS. MILGAARD: Were you dependent?

18   NICHOL: -- that I would be dependent on.

19   MRS. MILGAARD: Okay. That's really what I

20   wanted to know.

21   NICHOL: Okay.

22   MRS. MILGAARD: What type of drug?

23   NICHOL: Marijuana, hash, that was about

24   it.

25   MRS. MILGAARD: Uh-huh. Uh-huh. So that

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1   when you took marijuana, hash or whatever, you

2   would still recollect what was going on, you

3   wouldn't be completely out of it? So that --

4   NICHOL: Exactly.

5   MRS. MILGAARD: -- the drugs wouldn't have

6   caused you to change your behavior patterns or

7   anything like that?

8   NICHOL: No.

9   MRS. MILGAARD: There's no thought in your

10   mind that you were connected in any way with

11   anything that went on that day other -- you know,

12   that you haven't blanked out yourself, that you

13   were involved in anything yourself?

14   NICHOL: What do you mean?

15   MRS. MILGAARD: Well, like you're saying,

16   you don't remember blood on David's clothes, you

17   don't remember really a lot of things that had

18   happened, that you're sort of blanking them out.

19   Did the police ever suggest to you at any time

20   that, well, you know, you were there, you were

21   involved with it, you could, you know, you could

22   be charged with this because you saw something or

23   you were in the car with these boys while they

24   attacked this girl or any number of things in

25   that. Do you remember any of that?

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1   NICHOL: My impression of my -- to do with

2   the police was that they treated me good, okay,

3   that they -- no, I don't think they ever believed

4   that I had anything to do with it.

5   MRS. MILGAARD: And they treated you very

6   well?

7   NICHOL: Yes, as much as I can remember.

8   MRS. MILGAARD: Uh-huh. So then this

9   statement that was read to the court, in that

10   they pointed that you signed on every page and

11   everything, if we look at it logically, you would

12   say that probably that statement could have been

13   true?

14   NICHOL: Yeah, okay. It depends, the

15   circumstances that the statement was made. I'm

16   no dummy. I'm 28 years old.

17   MRS. MILGAARD: Uh-huh.

18   NICHOL: If a person is emotionally upset

19   or mentally or under stress or strain, let's face

20   it, you would probably say anything.

21   MRS. MILGAARD: Do you think that was the

22   case?

23   NICHOL: I don't know, because there's too

24   much that I don't remember. There's too much I

25   don't want to remember.

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1   MRS. MILGAARD: Well, I'm sure that you

2   know as a responsible person now and the children

3   and everything, you know, that everyone wants to

4   sort of forget what any of the bad -- everybody

5   has bad in their lives and I know we all try to

6   go forward and, you know, do good and just forget

7   about the bad, and I'd be the first to agree

8   about doing that if I could, if I could rest with

9   what I feel is right about David, but after going

10 through the scene logically, thoroughly, through

11 the transcripts, through all the evidence, there

12 isn't one doubt in my mind that David is

13 innocent. I believe that a number of people that

14 have read it that are also very logical and

15 thorough people also believe that he's innocent.

16 Now, the police asked Father Murphy to talk to

17 Shorty and they told him that they felt that

18 David and Shorty had been involved in this and

19 they actually asked him to bring Shorty in and

20 talk to him and he did. We ran this down in

21 following up another murder and in fact I

22 actually may have stumbled on the murderer of the

23 other Saskatoon nurse that way, by following up,

24 Unbelievable as it may seem. This one. We have

25 been investigating so many leads, Nicky, and

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1   everything -- but in talking to --

2   NICHOL: Excuse me, my name is Nichol,

3   please.

4   MRS. MILGAARD: Oh, I'm sorry.

5   NICHOL: I don't like the name Nicky.

6   MRS. MILGAARD: I guess I think of you that

7   way because this is the way it was mentioned in

8   the --

9   NICHOL: I know, but I don't like that

10   name.

11   MRS. MILGAARD: -- Transcript and

12   affidavit. Okay. So you didn't know that Shorty

13   Cadrain got the reward money?

14   NICHOL: No, I didn't.

15   MRS. MILGAARD: Do you think he saw blood

16   on David? I mean, you were both there together.

17   NICHOL: I don't know what he saw.

18   MRS. MILGAARD: When you asked for a map at

19   the motel, David had no shoes on. Do you

20   remember going to the motel and David getting out

21   to get a map and he had no shoes on?

22   NICHOL: No, I don't remember.

23   MRS. MILGAARD: You don't remember that?

24   The motel owner testified about that.

25   NICHOL: Where was this?

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1   MRS. MILGAARD: The Trav-a-leer Motel.

2   NICHOL: In where?

3   MRS. MILGAARD: In Saskatoon. This was

4   after you were stuck apparently, you drove up

5   there.

6   NICHOL: I remember driving around looking

7   for a place to get a map.

8   MRS. MILGAARD: Uh-huh.

9   NICHOL: That's all I remember.

10   MRS. MILGAARD: Okay. Well, in the

11   questions that you have told me, I mean, for most

12   of them there are answers to, you know, that you

13   do not know the answers to the ones that we need

14   to know, so it all comes back to the scene tied

15   to the thing. We checked with the priest at the

16   -- as I said, regarding another lead that we're

17   following up and we (unintelligible) he happened

18   to mention about who was involved in this case as

19   well and we said, well, what's he like, this was

20   another investigator that was doing it, and we

21   said, well, what do you mean you're involved in

22   that case too? He said, well, he said, I was

23   instrumental in bringing that David Milgaard to

24   trial, and so the investigator said, well, how do

25   you mean? And he said, well, the priest asked me

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1   to call Shorty Cadrain in, and I said -- and so

2   the investigator said, well, I guess you couldn't

3   tell us what he said, it would be privileged

4   information. He said, oh no, it wasn't in the

5   confessional or anything. He talked quite freely

6   how that he had brought Shorty in and told him

7   there's a $2,000 reward out for this and if you

8   co-operate with the police and tell them exactly

9   what happened and what you saw, you could get

10   this reward. Now, up until this point Shorty's

11   testimony had that statement that had been given

12   to the police had not indicated any blood on

13   David's clothing or anything and it was at this

14   point he started to tell a different story.

15   First of all, he said that you and David and Ron,

16   all three of you, were covered in blood when you

17   came in and then he changed it to say no, it was

18   just David. And then, you know, his testimony,

19   he sort of indicated that David was almost a

20   Mafia type, like, that he was a member of the

21   Mafia and he talked about cousins and a number of

22   things like that. And of course you wouldn't be

23   there during his interrogation or anything

24   because you're kept out for all of that, but he

25   really did everything to nail David. Now, just

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1   in the testimony that we have had through his

2   mother about breaking off the aerial and all of

3   the other things he says David did, it was

4   because of all of these different things, you

5   know, and Shorty lived just a block from where

6   this happened. This was something that was just

7   stunning to me when I got there because David

8   seemed to recognize -- you said Ron said as

9   well -- recognize the area when he saw the

10   Church, he said hey, this is the street where

11   Shorty lives and so you went down and you found

12   Shorty's house. This was after you'd gotten out.

13   Well, if in fact he recognized the Church and

14   that was what triggered him to find Shorty's, if

15   they had been involved in a murder just prior to

16   that at that Church and half an hour prior to

17   that, certainly he would have recognized it at

18   that time, wouldn't have had to keep driving

19   around to look for Shorty's. So none of it

20   seemed to just sort of come together and make

21   sense. The time element doesn't make sense.

22   This girl was in a meeting at about seven

23   o'clock, Nicky, that morning who was seen and

24   heard in her room around seven o'clock. They

25   place the killing between seven and 7:30. The

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1   motel owner said he saw David at seven o'clock or

2   thereabouts when he opened. The next place they

3   put all of you together is at the Danchuks' and

4   Sandra Danchuk, I talked to her and Walter, her

5   husband, and they described you and they

6   described David and Ron. They said that none of

7   you, you know, that you were quite normal. They

8   said you were very pleasant. They had more to do

9   with David. They said he'd been in and into the

10   bathroom, but he had no blood on his clothes or

11   anything.

12   NICHOL: What else did they say?

13   (TAPE ENDED FOR THE DAY)

14   MR. HODSON: Mr. Commissioner, this is

04:29 15   probably an appropriate spot to break in the tape

16   for the day.

17   COMMISSION MacCALLUM: All right. Counsel,

18   we have to break a little early tomorrow, say

19   about 3:30.

20   MR. HODSON: Break early tomorrow?

21   COMMISSION MacCALLUM: 3:30 p.m., we'll

22   have to end tomorrow at 3:30.

23   *(Adjourned at 4:30 p.m.)*

24

25

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1 *OFFICIAL QUEEN'S BENCH COURT REPORTERS' CERTIFICATE*:

2 We, Karen Hinz, CSR, and Donald G. Meyer, RPR, CSR,

3 Official Queen's Bench Court Reporters for the Province of

4 Saskatchewan, hereby certify that the foregoing pages

5 contain a true and correct transcription of our shorthand

6 notes taken herein to the best of my knowledge, skill, and

7 ability.

8

9

10

11

12 _____, CSR

13 Karen Hinz, CSR

14 Official Queen's Bench Court Reporter

15

16 _____, RPR, CSR

17 Donald G. Meyer, RPR, CSR

18 Official Queen's Bench Court Reporter

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