

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

Transcript of Proceedings

and

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

On Tuesday, February 7th, 2006

Volume 119

Inquiry Proceedings



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CALVIN FORRESTER TALLIS, CONTINUED

- BY MR. HODSON

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1 Transcript of Proceedings

2 (Reconvened at 9:04 a.m.)

3 COMMISSIONER MacCALLUM: Good morning.

4 CALVIN FORRESTER TALLIS, continued:

5 BY MR. HODSON:

6 Q Good morning, Mr. Tallis. Just before we begin,
7 Mr. Commissioner, I just wanted to make an
8 introduction of a guest we have joining us at Mr.
9 Pringle's table today, Renee Tulk, who is a second
10 year law student at the University of
11 Saskatchewan, was a first year law student at the
12 University of Alberta last year and was a student
13 of Mr. Pringle's in a class he taught there and is
14 clerking at the Court of Appeal, so she's joining
15 us for part of the day, so welcome.

16 And, Mr. Tallis, if we could,
17 where we left off yesterday, just if I could
18 briefly recap, we had gone through and you told us
19 what David Milgaard told you about the significant
20 facts of January 30, 31, '69 and I was going
21 through a bit of a comparison of what Mr. Milgaard
22 had told you versus what was the Crown's case
23 against him and some of the consistencies and
24 inconsistencies and I think you told us on a
25 couple of occasions that your ethical and



1 professional responsibilities were such that you
2 could not challenge facts which your client had
3 told you to be true; is that correct?

4 A That's correct.

5 Q And we had gone through the part, and I was just
6 going through a bit chronologically, and we had
7 touched on their vehicle, where it was that
8 morning, stopping the woman, being stuck and
9 leaving the car. If we could just carry on, the
10 motel, Trav-a-leer Motel incident where they went
11 to get the map, I don't think there was much in
12 the way of dispute as to what David's version was,
13 I mean, I think he said he went in in his stocking
14 feet and I think that was the evidence of other
15 witnesses; is that correct?

16 A Yes, I think that's a fair assessment on your
17 part.

18 Q And I think you as well told us on Thursday that
19 Mr. Milgaard was not able to give you a time that
20 he was at the motel and I think you said you went
21 to other sources, or to Mr. Rasmussen who was the
22 Trav-a-leer Motel manager to try and pinpoint the
23 time; is that correct?

24 A Yes.

25 Q And then the Danchuks, again Mr. Milgaard told you



1 about their vehicle getting stuck behind the
2 Danchuks and the visit with the Danchuks, and was
3 there anything there that you felt was
4 inconsistent between what David told you and what
5 others had said about that?

6 A No. I think there was general agreement about
7 what happened at the Danchuk residence as well as
8 the events leading up to getting stuck behind the
9 Danchuk vehicle.

10 Q Right. And you also told us yesterday, I think
11 you said you did not see anything significant or
12 incriminating or suspicious about the fact that
13 the Wilson, Milgaard, John vehicle went down the
14 alley as opposed to down a street, I think you
15 told us that didn't figure in your mind as a
16 concern; is that correct?

17 A That's correct, and of course I'm sure that my
18 assessment was affected by the statements of Mr.
19 and Mrs. Danchuk, there was no indication of any
20 blood that they saw. Now, that was canvassed and
21 there was no disagreement with that on David's
22 part, indeed there was agreement on his part --

23 Q Right.

24 A -- with essentially what the Danchuks had said.

25 Q And I believe you told us earlier that that, I



1 think you felt, was significant evidence, that
2 after this rape and murder was supposed to have
3 happened, that shortly after that, that your
4 client was observed by two strangers who had an
5 opportunity to observe him for some time period;
6 is that correct?

7 A Yes, I thought it was very significant for the
8 reason that you have mentioned, and also my
9 assessment of Mr. Danchuk in particular was that
10 he was curious as to why they were there and in my
11 assessment of the situation I thought that he
12 would likely take pretty careful notice of
13 anything that looked untoward and that's why at
14 the preliminary hearing and at trial, well, at
15 trial I knew what he would say. At the
16 preliminary hearing I went into his observations
17 and the fact that he did not observe any blood or
18 anything that looked like blood on David.

19 Q If we can then just move on to the arrival at the
20 Cadrain house, and as far as the changing of
21 clothes, and in particular David Milgaard changing
22 his clothes at the Cadrain house, putting aside
23 people's views on the reason for that, I take it
24 there was no dispute that David had in fact
25 changed his shirt and pants at the Cadrain house?



1 A Well, you know, sitting here today, the firm
2 recollection I have is of changing the trousers
3 because of that rip that I described for you.
4 Whether or not he changed his shirt at that time I
5 cannot definitely recall, although in the course
6 of change -- I rather think that he did, but I'm
7 trying my best to recollect without the benefit of
8 any notes.

9 Q And again I think the, we had touched on the fact
10 that although Albert Cadrain said he observed
11 blood, and we will see later where Ron Wilson,
12 we'll say he also observed blood, David had told
13 you that he did not have blood on his trousers or
14 on his shirt; correct?

15 A That's right, he didn't have blood --

16 Q On any clothing?

17 A On any clothing.

18 Q And so I think we also --

19 A And I know that I questioned whether or not there
20 was any blood on his hands or person, so I'm quite
21 confident in saying that he told me he had no
22 blood on his person and that would include his
23 clothes.

24 Q And I can't recall whether we've touched on this
25 issue, but apart from the blood, would there be



1 anything in your mind that might be suspicious or
2 of concern to you with the fact that your client
3 would have changed clothes upon arriving at
4 Mr. Cadrain's house, apart from the fact that
5 someone saw blood on them or said they saw blood
6 on them?

7 A No, because I understood that he was in, you might
8 say, an embarrassing situation with the split or
9 broken seam that was very significant.

10 Q And so again back on what we talked about
11 yesterday, the room that you had to manoeuvre at
12 trial, if I can call it that, in examining
13 witnesses on this issue in light of what Mr.
14 Milgaard told you, I take it that you could not
15 put to witnesses that David did not change his
16 clothes, but rather would focus on the reasons he
17 changed his clothes; is that fair?

18 A That's correct.

19 Q And then secondly, with respect to the
20 observations of blood, you were free to challenge
21 people, witnesses on that observation; is that
22 fair?

23 A Yes.

24 Q Now, we had talked as well about David Milgaard
25 driving the vehicle after arriving at Albert



1 Cadrain's house and it was, I can't recall how
2 much longer after, but he went out and drove the
3 car around the back alley in the street on one or
4 two occasions and then the car stalled, and I
5 think you told us that his explanation for that
6 was I like to drive; is that correct?

7 A Yes, that's essentially the explanation that he
8 gave me. There wasn't any other that I can
9 recollect.

10 Q And I think you told us that you felt some concern
11 about that fact in that it might be viewed as
12 suspicious by the jury; is that correct?

13 A Yes, I could see where it would arouse suspicion,
14 particularly in the light of what had been found
15 in that vicinity.

16 Q And that's the wallet and the toque?

17 A Yeah. I'm thinking more of the wallet.

18 Q So again in dealing with that fact in light of
19 what your client told you and from what you told
20 us yesterday about your ethical and professional
21 responsibilities, you could not suggest to any
22 witness that that had not happened; is that right?

23 A That's correct.

24 Q And what --

25 A And that is that he had driven in that area that



1 we discussed the other day, yesterday I guess it
2 was.

3 Q And as far as discarding any items out of the car,
4 I think you told us that Mr. Milgaard said that
5 didn't happen?

6 A That's correct, and of course I was particularly
7 interested in that because of the purse having
8 been found there.

9 Q How would you, tell us what your thoughts were as
10 to how you could deal with this fact, let's just
11 talk about that fact, and you said you thought the
12 jury might be suspicious about that or draw an
13 inference. As defence counsel what were your
14 options as to what you could do to try and
15 minimize the impact of that?

16 A Well, they were, in practical terms, they were
17 very limited because the fact of the purse having
18 been found there, or wallet having been found
19 there, was not, could not be realistically
20 disputed. With respect to the toque, I recall
21 there were some questions about colour and so on
22 and I think at the end of the day the toque was
23 pretty well neutralized, but I could be wrong on
24 that.

25 Q I think the judge's charge to the jury was to put



1 no weight on the toque.

2 A I see. Well, I thought --

3 Q And there's no link to the crime or anything else.

4 A I thought the circumstances that were elicited
5 with respect to the toque rendered it of little or
6 no value.

7 Q Now just as far as, I guess there is the issue of
8 the wallet being found there and the jury drawing
9 the inference that it may have come from Mr.
10 Milgaard when he drove the car around the block, I
11 think you told us you could not dispute the fact
12 that Gail Miller's wallet was found there?

13 A That's right.

14 Q What about an explanation or a reason for the trip
15 around the block, did you explore that as trying
16 to explain sort of an innocent explanation
17 unconnected to the murder?

18 A Well his explanation to me was a, you know, an
19 innocent explanation, "I just decided to drive
20 around because I liked to drive."

21 Q And, again, did you have concerns about how the
22 jury, or if Mr. Milgaard testified, what Mr.
23 Caldwell might do with that --

24 A Well --

25 Q -- in light of the temperature that morning and



1 the fact they'd been stuck twice?

2 A Well that was a factor that I would have
3 undoubtedly considered in connection with the
4 subsequent advice or recommendation I gave to him,
5 because I knew that counsel for the prosecution
6 would likely engage in a pretty -- in a robust
7 cross-examination on that point. That's the best
8 way I can put it at this stage.

9 Q Was there any --

10 A Because, you know, it's very difficult for me to
11 micro-analyse or microdissect all of my mental
12 processes going back that many years. Even if I
13 had the benefit of my notes, I'm not sure that my
14 recollection could be exhumed to the extent that I
15 would like to be able to do it, and I'm sure you
16 would like me to be able to do it as well. But
17 that certainly was something that I appreciated
18 would happen. It seemed to me -- to say it now
19 is, I think, to state the obvious.

20 Q And are you able to tell us, either from memory or
21 from looking back at this particular fact, was
22 there anything that you felt you could do to take
23 the sting out of -- I think that was your word on
24 another fact -- out of the negative inference that
25 might be drawn by the jury on this, or it was what



1 it was?

2 A It was what it was. And if he had, if he had
3 elected to testify, I would have thought the
4 prudent thing to do was to lead it to try to take
5 the sting out of it, even though that would not
6 foreclose a robust cross-examination on the point.

7 Q If we can then go on to, again, the one other
8 issue was -- or piece of evidence that was part of
9 the Crown's case that I think you may have touched
10 on with Mr. Milgaard was his driving after they
11 left the city. And I think you told us yesterday
12 that -- and please correct me if I'm wrong -- that
13 Mr. Milgaard maybe acknowledged to you that at
14 times he drove fast on the trip, but your focus
15 was on keeping it out on the basis that it would
16 not be admissible evidence regarding the
17 consciousness of guilt, is that correct?

18 A Yes. I can't remember all -- I know he told me he
19 liked, generally speaking, he liked to drive fast.
20 But I think you've put it fairly when you indicate
21 that I was focused on keeping this type of thing
22 out because I didn't see how it was relevant and
23 probative on the pivotal issue that was before the
24 Court.

25 Q And we --



1 A Now I certainly argued that point, and was
2 prepared to argue it at trial, and if I recall
3 correctly I believe it was rendered inadmissible.

4 Q That's right, and I would --

5 A Or ruled, I should say, inadmissible by the
6 Learned Trial Judge.

7 Q Yes, and I will touch on that when we go through
8 that, --

9 A Yes.

10 Q -- I think it's the transcript of Ron Wilson. The
11 compact we talked about a fair bit yesterday and I
12 think, just to summarize on that point, I think
13 you have told us yesterday that, in light of Mr.
14 Milgaard's admission to you that there was a
15 compact in the car, that Nichol did take it out of
16 the glove compartment, that he did grab it and
17 throw it out the window, and that he didn't know
18 where it came from or why he did that; --

19 A That's right.

20 Q -- I think that's what you told us?

21 A That's right.

22 Q And I think you told us that limited your ability
23 to deal with other witness' knowledge on the
24 subject matter; is that correct?

25 A Yes.



1 Q Now the one other area, admissions to Ron Wilson,
2 and when I go through Mr. Wilson's statement and
3 evidence later today, in his second statement he
4 talks about David Milgaard making an admission to
5 him in Calgary about jabbing a girl, throwing her
6 purse in the garbage, something of that nature. I
7 think you told us yesterday that David Milgaard
8 denied saying anything of that nature to Ron
9 Wilson, and so I take it that that's something
10 that you were unrestrained as far as how you would
11 deal with that fact --

12 A That's right.

13 Q -- coming from Ron Wilson? And we'll talk, when
14 we get into Mr. Wilson, about what strategies and
15 options you had for that. Drug use we talked
16 about as well yesterday, and I think you told us
17 that you were able to get from the Crown a
18 concession that there was no evidence to suggest
19 that any of Ron Wilson, Nichol John, or David
20 Milgaard were under the influence of drugs or
21 alcohol on the morning of the murder; correct?

22 A Yes, and I think that, generally speaking, the
23 evidence supported that, and certainly David
24 indicated that to me.

25 Q Now we also talked a little bit about drug use



1 both before and after the trip?

2 A Yeah.

3 Q And I think you told us that Mr. Milgaard had
4 acknowledged to you that he and Wilson -- I can't
5 recall if we talked about Nichol John -- but
6 certainly were acknowledged drug users; is that
7 fair?

8 A Yes, there was no dispute about that, that they
9 did use drugs.

10 Q Let's just talk about -- I think we've now covered
11 most of the significant facts that you would have
12 questioned Mr. Milgaard on and received answers
13 to. Did you, in the course of interviewing him --
14 and this would again be August 4th, November 11th,
15 and I think December 13th of 1969, or the dates
16 that you were in Prince Albert and otherwise --
17 can you tell us what were your observations as far
18 as his ability to answer your questions, his
19 demeanour, the manner in which he dealt with some
20 of the difficult questions; can you tell us what
21 your observations were?

22 A I think I indicated to you yesterday or the
23 previous occasion that he was not an emotional
24 boy, and I don't say that in a derogatory fashion,
25 and bearing in mind his youth, in a number of --



1 on a number of instances, and we've discussed it,
2 you know, he wouldn't -- he said "you know, I
3 don't know, I don't remember". That's -- that's
4 the type of thing that occurred. And I think, for
5 example when we were trying to figure out where
6 they had been driving, that he was generally
7 trying to assist me when we were trying to sketch
8 it out. So I can sum it up by saying that I
9 proceeded on the footing that what he told me was
10 correct.

11 Q And again, we'll talk about this a bit more when
12 we get into the question of whether or not he
13 should testify, but did you reach any conclusions
14 about how David Milgaard answered your questions
15 and how you thought a jury might react to the,
16 both the substance and the manner in which he
17 answered your questions?

18 A Well I was of the view that he would have
19 difficulty under cross-examination in some of the
20 areas. Now I guess what we're talking here is a
21 gut feeling, and it's hard to put it into words,
22 but you have -- you acquire a sense of things as
23 it goes on, and that's one of the reasons why I
24 revisited some of the areas with him on more than
25 one occasion, because I thought that there were



1 some areas, that maybe his memory would be revived
2 with respect to certain matters.

3 Q And were you satisfied, after your meetings with
4 him, that you had gone through at least the
5 important aspects of the case and the facts with
6 him to try and either refresh his memory and get a
7 response?

8 A I felt that I had spent a great deal of time with
9 him and that there wasn't much more that I could
10 really elicit from him than I had.

11 Q Okay. If we can just --

12 A Here again it's, you know, it's very difficult to
13 put into words your assessment of the situation,
14 but --

15 Q Let me ask this way. After having spent time with
16 him and questioned him on various significant
17 factors relating to the case against him and
18 hearing his answers, did you have concerns about
19 how or what the jury might think if he would have
20 answered the questions in Court the same way he
21 answered them in the discussions with you?

22 A Yes, and at the end of the day, at -- I certainly,
23 in our private discussions, I told him that I
24 thought that some of his evidence would help
25 strengthen the Crown's case and, in effect, be



1 damaging to his position.

2 **Q** And, what, can you give us an example of that?

3 **A** Well the area about the lady, the older lady, --

4 **Q** Yes.

5 **A** -- and the, one of the purposes being to look her
6 over for possibly robbing or stealing her purse.
7 As I've said, I can't remember whether the term
8 "rob" or "stealing the purse" was used now, but
9 that was the gist of it. And of course I thought,
10 in the context of this case, that was quite
11 significant, and I had no doubt that it would be
12 pursued vigorously on cross-examination, and of
13 course the stage would be set because of them
14 having really no money to -- and hitting out on a
15 trip of this nature. Now when I say "no money",
16 of course I knew from discussions that Nichol John
17 had a little money, but when you consider that
18 travel was involved it was minimal.

19 **Q** And, again, we'll come back to this a bit later
20 when we get to dealing with the time of trial and
21 the discussions you had about Mr. Milgaard
22 testifying. Just a couple more points here on,
23 before we finish up, on what you knew from David
24 Milgaard and about David Milgaard going into
25 trial. We have heard some evidence at this



1 Inquiry that the police obtained a statement of
2 March 20th, 1969 from a lady named Sharon, a young
3 lady named Sharon Williams who was David
4 Milgaard's friend or girlfriend, in fact the young
5 lady that he went to see in Edmonton after they
6 visited Saskatoon on January 31, 1969, and that
7 statement is quite detailed about their
8 relationship and, I think, says some things that
9 certainly the police have testified caused them to
10 have questions about David Milgaard; were you
11 aware of any of that information from Sharon
12 Williams?

13 A Well, I can't recall all the discussion we had
14 about his relationship with his girlfriend, but I
15 certainly knew that he was going up there hoping
16 to see her and that he did, in fact, see her. But
17 I can't recall any dramatic or salacious details
18 which you may be referring to.

19 Q I have provided you with a copy --

20 A Yes.

21 Q -- of the Sharon Williams statement?

22 A Yes.

23 Q And did you ever receive that, or were aware of
24 any of its contents, before the trial?

25 A I don't think I, I stand to be corrected, but I



1 don't think so.

2 Q And I don't think the records that we have suggest
3 that you do. Again, just about your knowledge
4 about what Sharon -- about David Milgaard's
5 relationship with, for example, Sharon Williams;
6 would that have come from David himself then?

7 A Yes, and I don't remember him describing any
8 untoward conduct with her that attracted my
9 attention. Now I understood that there was a
10 sexual relationship, don't misunderstand me, but
11 as far -- when I refer to "salacious details" I'm
12 thinking about what you have showed me, and I
13 don't have any recollection of information of that
14 nature from him, and I think that everything he
15 told me on that probably pointed, well, in my mind
16 I'm quite certain it pointed to the contrary.

17 Q And so going into the trial, as far as your
18 information regarding the relationship between
19 David Milgaard and Sharon Williams, there was
20 nothing to suggest that there was anything to be
21 concerned about as far as the case against David
22 Milgaard; is that fair?

23 A That's fair.

24 Q And, secondly, we have had an opportunity to see
25 and hear from both Mr. Caldwell and Dr. Ian



1 McDonald about information they had gathered by
2 way of psychiatric reports, social work reports,
3 information that existed in 1969 about David
4 Milgaard's past. And I believe you may have
5 already told us, but I'll ask you again just to
6 confirm, I think you told us that you did not have
7 any written information regarding David Milgaard's
8 -- any treatment, testing, comments by social
9 workers, anything of that nature, when you went
10 into trial; is that correct?

11 A No, I did not receive any of that package, if I
12 may use the term. But of course I had discussed,
13 as I mentioned to you, I had discussed with him
14 what I'd call, for want of a better word, his
15 troubled background, and I thought he was quite
16 candid with me about some of his difficulties, and
17 -- but to give you particulars, now, of any
18 brushes he'd had with the law, or treatment and so
19 on, without my notes I couldn't assist you on that
20 with any degree of reliability.

21 Q And the decision, or can you tell us, when was the
22 formal decision made by David Milgaard, and I
23 think with your advice, about not testifying at
24 the trial; when was that decision formally made?

25 A Well the -- it was formally made after the Crown



1 had closed its case.

2 Q And if we go back to going into the preliminary
3 hearing and going into the trial, can you tell us
4 what your -- whether you would have had views, and
5 whether they were strong views one way or another,
6 as to whether or not David Milgaard would be
7 testifying or whether your advice to him would be
8 "testify" or "don't testify"?

9 A Well, prior to the preliminary hearing I had
10 explained to him the difference between a
11 preliminary hearing and a trial, and indicated to
12 him that at the preliminary hearing we did not, in
13 this case, have to make any decision as to whether
14 or not he ought to testify. But I did discuss it
15 with him at that time, in general terms, as to the
16 factors one has to take into account, and in my
17 mind I'm quite sure I emphasized that, in general
18 terms, that "we don't want to be doing anything
19 that would strengthen the prosecution's case".

20 Now along the way, before the
21 final decision was made, I know that I had talked
22 with him from time to time about it and, you know,
23 once again indicated that "this is an issue that
24 we will have to make a final decision on once the
25 Crown's case is closed".



1 Q In your mind, sir -- and let's just talk about the
2 trial first of all -- would it be fair to say that
3 you -- were you leaning one way or the other, as
4 far as your opinion or what your advice would be
5 to him about testifying, prior to the trial
6 starting?

7 A Well I knew there were areas of concern, but I
8 certainly hadn't fastened on any hard view one way
9 or the other, and I think that I indicated that to
10 him in some of our discussions. But as the trial
11 moved along I was continually assessing things,
12 and of course I have no doubt that I considered my
13 -- any previous tentative views that I may have
14 had, but it certainly was something that I was
15 weighing and considering as we moved along.

16 Q And would that influence or affect how you might
17 deal with a particular witness if in the back of
18 your mind, or the front of your mind, you are
19 thinking "I'm not sure, I have concerns that I am
20 going to be able to call my client on particular
21 points"; would that limit your ability? In a --
22 compare that to a case where you are certain you
23 are able to call your client to testify?

24 A Well we've already discussed the ethical
25 constraints.



1 Q Yes?

2 A And, of course, that was something that I had to
3 take into account in conducting the case, but I
4 tried to conduct the case, I suppose, so that I
5 could have the best of both worlds. If he
6 decided, with -- after consultation with me, to
7 testify, that I wouldn't have done anything to
8 undermine him in so testifying.

9 Q Okay.

10 A And conversely, that if he elected not to testify,
11 I wouldn't have done anything that would have
12 undermined his case as I understood it to be.

13 Q Mr. Tallis, I'd now like to turn to the area of
14 disclosure that you received from the Crown, and I
15 just want to indicate that when I went through the
16 outline at the outset, how I intend to approach
17 this is really in two steps. Right now what I
18 wish to do is to go through and identify the
19 correspondence and exchanges that you had with Mr.
20 Caldwell, get your understanding of the practices
21 at the time and what you had asked for, identify
22 what you received, and proceed on that basis.
23 Obviously -- and please correct me if I'm wrong --
24 at the time of trial, when you are conducting the
25 trial, you would not have knowledge of what you



1 didn't get; is that fair?

2 A That's right, yeah.

3 Q And so later on, once we've completed the trial, I
4 will go back and go through some of the items that
5 you did not receive that we now know were there,
6 or in existence, and question you on what you
7 might have done. So this part of the disclosure I
8 simply want to go through and identify and have
9 you confirm for us the exchange with Mr. Caldwell,
10 and I'm not sure that there's much in the way of
11 dispute as to what you received at the time. And
12 I appreciate, sir, that you don't have your
13 file --

14 A Yes.

15 Q -- to assist you, but we have tried to
16 reconstruct, from Mr. Caldwell's file and other
17 documents, what may have passed between you. If
18 we could start off with 007063, please?

19 A Yes. I wonder if we could just break for a few
20 minutes?

21 Q Sure, certainly.

22 A And, sorry, but --

23 Q No, that's fine.

24 (*Adjourned at 9:38 a.m.*)

25 (*Reconvened at 9:46 a.m.*)



1 BY MR. HODSON:

2 Q If we could call up 007063, please, and I'm just
3 going to walk you through, Mr. Tallis, some of the
4 letters back and forth, and we have seen some of
5 these already, and certainly Mr. Caldwell went
6 through them, and I think this is your first
7 letter, this is the one that you copied to Ben
8 Wolff and we went through this. This is where you
9 asked for copies of any witness statements and
10 related reports on this matter and I think you
11 commented on the latter part last day. Just on
12 this issue of witness statements and related
13 reports, can you tell us, what was your
14 understanding at this time of what the practice
15 was as far as witness statements versus, let's
16 say, police reports?

17 A I haven't gone back and briefed the point, but my
18 recollection is that police reports as such were
19 not produced and that there were situations where
20 an attempt had been made to get them and counsel
21 were turned back by judicial rulings on it.

22 Q And what about the contents, I think what you are
23 saying is you could not force the Crown or the
24 Crown was not obliged to provide you with copies
25 of police reports, but what about information that



1 might be contained in there, was there any
2 practice or what was your understanding at the
3 time of what you might be entitled to if you went
4 to Court for relief?

5 A I don't think there was any legal entitlement to
6 it and you had to, you I think endeavoured to
7 establish a relationship with the prosecution with
8 a view to getting relevant information that might
9 lead you on a chain of inquiry; that is, relevant
10 information that might assist the defence.

11 Q And so if there was information in a police report
12 but not in a witness statement, what was your view
13 at the time as defence counsel as what you might
14 be entitled to or not entitled to?

15 A I don't think that, and as I say I haven't briefed
16 it, but I'm quite clear in my mind that you
17 weren't entitled to get that information from the
18 prosecution.

19 Q And it may be stating the obvious, but would you,
20 in that scenario then, would you be relying on the
21 Crown, and let's just talk generally, not this
22 case, would you then be relying upon the Crown to
23 identify what might be relevant or lead down a
24 chain of inquiry as opposed to defence counsel?

25 A Yes, you would hope that information of that



1 nature would be made available.

2 Q And in a case where, would there be cases where as
3 defence counsel what you might be putting forward
4 as a defence or thinking about you may not wish to
5 share with the Crown?

6 A Yes, I think you have -- I think you had to be
7 cautious.

8 Q And so again in -- let me maybe phrase it this
9 way. As far as identifying what might be, lead
10 defence counsel on a chain of inquiry by reviewing
11 police reports, in your view, sir, would defence
12 counsel be in a better position to do that than
13 Crown counsel?

14 A I think having regard to what you have in mind,
15 yes.

16 Q If we can then go to 007042. Sorry, just on
17 police notebooks, I think you told us this on the
18 first day, what was the practice as far as
19 disclosure of police officer's notebooks?

20 A My recollection is that they were not disclosed
21 and you couldn't get production of them unless the
22 officer of course referred to them during the
23 course of giving his testimony, that then became
24 an entirely different situation.

25 Q Next is the August 15th, 1969 letter from Mr.



1 Caldwell to you, it refers to your June 10th
2 letter and the conversation and sends the Cadrain,
3 Wilson and John statements, and I think you've
4 already told us that you believe you would have
5 either had copies of these statements or at least
6 been aware of its contents, I think you said
7 likely through Mr. Ben Wolff; is that right?

8 A That's correct.

9 Q And then the autopsy report of Dr. Emson. If we
10 can then go to 007038 --

11 COMMISSIONER MacCALLUM: I missed the doc
12 ID.

13 MR. HODSON: I'm sorry, the doc ID on that
14 is 007042.

15 COMMISSIONER MacCALLUM: Thanks. Now we're
16 at 48?

17 BY MR. HODSON:

18 Q No, 038, 007038, and this is an August 20th letter
19 from Mr. Caldwell, it references his earlier
20 letter and sends the second statement of Albert
21 Cadrain dated March 5, '69 as well as copies of
22 the Crime Detection Laboratory Reports concerning
23 the examination of the exhibits in this case, and
24 I think you told us earlier, Mr. Tallis, that the
25 practice was that as far as disclosure, that you



1 would usually get the lab reports relating to the
2 exhibits; is that right?

3 A Yes, that's my recollection, is that there was a
4 general convention, so to speak, that there never
5 seemed to be any question about the lab reports.

6 Q And the two RCMP lab witnesses, Bruce Paynter and
7 Mr. Molchanko testified on September 5th, if you
8 can just move this bar down, please -- no,
9 actually move it so I can see the date of the
10 letter, please. September 5, 1969. So it would
11 appear that the lab reports were sent to you a
12 couple of weeks prior to their evidence; is that
13 right?

14 A Yes. I certainly remember getting the lab reports
15 and I seem to have some recollection of knowing
16 about their content, you know, knowing about the
17 position even before that, but without my notes I
18 can't be any more specific than that.

19 Q We'll deal with this later when we touch on the
20 secretor issue. Do you have a recollection of
21 when, at what stage of your involvement in this
22 matter that that became an issue for you to look
23 at?

24 A Well, I know that I looked at it well before the
25 preliminary hearing, that's the best I can say to



1 you at this time, and I considered it to be a very
2 important issue from David's standpoint, this
3 secretor/non-secretor issue I thought was a very
4 significant point.

5 Q And do you recall where you would have got the
6 information on this secretor issue before the
7 prelim?

8 A I don't know whether -- Mr. Caldwell might well
9 have phoned me or I might have spoken to him, but
10 I just cannot say with any degree of precision
11 without having notes to assist me.

12 Q Okay. If we can call up 009374, again this letter
13 refers to copies of the Crime Detection Lab
14 reports. 009374 is, this is a document that was
15 on Mr. Caldwell's file, it says Milgaard lab
16 reports, and if we can go to 009386, this is a
17 document, it has -- Mr. Caldwell testified about
18 this, it's his handwriting, "omit, different
19 file," and it refers to (V2) (V2)- (V2)----- and
20 (V1)--- (V1)- and then a line through it. Are you
21 able to tell us, Mr. Tallis, whether this lab
22 report was one that was provided to you by Mr.
23 Caldwell?

24 A I'm quite satisfied that I did not receive that
25 particular report.



1 Q Okay. And on what basis are you able to say that?

2 A Well, I was first asked I think by Mr. Brown at
3 the Supreme Court of Canada whether or not I had
4 heard of Fisher and the, shall we say, sexual
5 assaults in the area and that really was the first
6 direct information I had about it, they were put
7 to me that way. I'm quite satisfied that I did
8 not receive this.

9 Q And if you had received it, what -- can you tell
10 us what you might have done with it?

11 A Well, this, combined with other information that
12 you've shown to me, would have led me to a chain
13 of inquiry about possible involvement.

14 Q Let me maybe just back up. If you would have
15 received this with a package of -- this relates to
16 a different file here than the Gail Miller.

17 A Yes.

18 Q -- what would you have done with it once you got
19 it, would you have made inquiries as to what it
20 was or where it came from or why you got it?

21 A Yes, I'm quite sure I would have if it had been
22 included because this has the potential to point
23 to the involvement of someone else other than
24 David as the perpetrator of this offence. Now,
25 I'm finding it hard to isolate this in light of



1 what you furnished to me about --

2 **Q** No, let me -- and we'll deal with that later,
3 Mr. Tallis.

4 **A** Yes.

5 **Q** About going through more information on the sexual
6 assaults.

7 **A** Yes.

8 **Q** I'm just trying to get back to the question of, I
9 think you are saying that having looked at this
10 you are satisfied that you didn't get it and the
11 only question --

12 **A** That's right.

13 **Q** -- is that if you had, would you have done
14 something with it at the time if you would have?

15 **A** I'm quite sure that it would have been relevant to
16 a chain of inquiry that one would have started.

17 **Q** Okay. And then apart from this document, again I
18 think you've had a chance to look through the lab
19 reports, and I don't believe there's any issue on
20 this, did you then receive the lab reports
21 relating then to the work that the RCMP lab did in
22 the Gail Miller file?

23 **A** Yes, I'm quite sure I received the lab reports,
24 and in particular I remember, was it corporal or
25 sergeant, I'll say Mr. Paynter's involvement.



1 Q And did you know of Mr. Paynter?

2 A Well, he had been involved in cases for quite a
3 number of years, so I think he was well known as
4 an expert witness in dealing with serological
5 matters.

6 Q If we can then go to 007037 --

7 A I'm sorry, I didn't notice it, he was a staff
8 sergeant at the time of this.

9 Q Yes, that's right. Now, this is August 21, 1969,
10 I just want to go through parts of this and ask
11 you some questions. This is your letter back to
12 Mr. Caldwell, we got it from his file, and we have
13 gone through where he sent you the statements from
14 Cadrain, Wilson and John. You say:

15 "You have been kind enough to make
16 available to me certain statements of
17 prosecution witnesses and various
18 reports which may be relevant to this
19 particular prosecution. In the event
20 that I do want further witness
21 statements, I will first make a request
22 of you before raising it in Court.
23 However, in the light of our
24 conversation on the afternoon of
25 Wednesday, August 20th, I would



1 certainly want you to make it a point to
2 check to see whether or not there are
3 any witnesses that you do not propose to
4 call who may be able to give evidence of
5 assistance to the defence. If the City
6 Police Department have not turned over
7 all of their material to you in this
8 connection I would be obliged if you
9 would look into this matter prior to the
10 completion of the preliminary hearing."

11 We'll pause there, I'll deal with the *Dallison*
12 case in a moment. Are you able to tell us or
13 shed any light on this matter based on this
14 letter?

15 A No, I have no recollection talking to Mr. Caldwell
16 on that date and without my notes I could not, you
17 know, in good conscience even hazard a guess.

18 Q I think what Mr. Caldwell has told us, and we'll
19 see this from a later letter, is that as a result
20 of a request from you, and it may well be this
21 letter, he went back, the city police file I think
22 had 95 statements or thereabouts, he did not
23 receive them all was his evidence when he got the
24 file. He then went back and asked for all of the
25 statements as a result of your request and then



1 went through them with a view to responding to
2 your request. Do you have any recollection of
3 that happening that way?

4 A No, but I certainly wouldn't dispute it. I have
5 no reason to.

6 Q And then this paragraph, you say:

7 "I might mention that I have always
8 thought that the procedure in a case of
9 this kind is correctly summarized by
10 Lord Denning in the case of Dallison vs
11 Caffery ..."

12 And I think you told us about that before, and
13 that was an English case that, I think you told
14 us, perhaps set a higher bar for disclosure than
15 did another line of Canadian cases; is that
16 right?

17 A Yes. At the time I felt that the English
18 authorities took a more generous view of
19 disclosure, or making available information that
20 might be of assistance to the defence, and it ties
21 in with the comment I made about lead the defence
22 on a chain of inquiry with respect to matters that
23 would be of assistance. If you were -- if you
24 were to ask me today why did I specifically use
25 the *Dallison* case and not also refer to a number



1 of other English cases that were along the same
2 theme, I really don't know, but I rather think
3 that I was attracted to Lord Denning's language.

4 Q If we could then go to 048305, and this is one of
5 your memorandums, Mr. Tallis. Unfortunately
6 there's only one page, it's the front page and it
7 stops in mid sentence at the bottom, and I can't
8 tell you from this document, you identify this as
9 yours, I can't tell you how many pages would have
10 been included with this, but this is a memo
11 September 8, 1969 and at this time almost all of
12 the witnesses have been heard at the preliminary
13 hearing, I think there was a few witnesses that
14 needed to be recalled, but certainly all of the
15 main witnesses had been called, and this memo
16 says:

17 "On this date I met with Mr. Caldwell
18 for approximately one hour to review
19 this file and discuss the question of
20 additional witnesses that are to be
21 called. I made notes of this in my
22 brief book and these notes appear in the
23 Luboff brief case where you pencilled on
24 my name in white letters. Pull out
25 those notes."



1 And then go on to, it talks about a few things.
2 When you would meet with Mr. Caldwell, if you are
3 able to tell us from your recollection of this
4 file, or even on your recollection of practices
5 at the time, would a prosecutor show you, for
6 example, police reports or anything of that
7 nature or discuss them or what would be the type
8 of information you might get in a face-to-face
9 meeting with the Crown?

10 A I'm quite sure that one was not allowed access to
11 police reports, but I have no recollection of this
12 particular meeting, but it's obvious to me that I
13 was focusing on certain things and of course I was
14 making notes at the time.

15 Q Maybe we'll go through these, Mr. Tallis.

16 A Yes.

17 Q Number 1, you say:

18 "The following points will have to be
19 carefully briefed in preparation for
20 this trial:

21 1. The admissibility of evidence with
22 respect to commission of other offences
23 by the accused both before and after the
24 alleged murder."

25 A Yeah. Now, if I could just indicate there, even



1 though I don't have a recollection of it, that
2 signals to me that I probably had a discussion
3 with Mr. Caldwell about whether or not he was
4 going to try to adduce this type of evidence and I
5 know that I had been concerned about that at a
6 very early stage.

7 Q What types of offences or other offences were you
8 concerned about?

9 A Well, I was thinking about, for example, the trip
10 to Saskatoon from Regina, the stop in Davidson and
11 then there had been a stop in Craik. Now, that's
12 one of the things that --

13 Q The elevator break-in?

14 A Yes, and that's one illustration of it.

15 Q Do you have any recollection of discussing with
16 Mr. Caldwell offences, any sexual offences, sexual
17 assault offences, things of that nature, that he
18 may have been either aware of or talking to you
19 about and the possible admissibility?

20 A He may have mentioned it, but I cannot recall the
21 discussion, but I notice here that something
22 happened that indicated to me that the prosecution
23 might well be trying to get evidence of this
24 nature in and I had concerns about that even long
25 before this and that's why I'm, I can't say the



1 exact date this was dictated.

2 Q Okay.

3 A But I know that there was a matter of concern and
4 one that had to be carefully considered.

5 Q And then again as far as the types of offences,
6 one, the elevator break-in, and are you able to
7 tell us by your memory any other offences before
8 or after the alleged murder that were causing you
9 concern?

10 A Well, there may have been some discussion about
11 sexual matters, but I can't say, I can't say one
12 way or the other on that.

13 Q I think I showed you, and we don't need to bring
14 it up, but on August 26th, 1969 Mr. Caldwell was
15 interviewing Albert Cadrain in connection with his
16 evidence at the preliminary hearing and present
17 were Elmer Ullrich and I believe Mr. Mackie and an
18 incident was provided by Albert Cadrain to Mr.
19 Caldwell and the police about an incident in
20 Calgary involving David Milgaard with some young
21 women in a bathtub involving a fellow, or not
22 involving, that a fellow by the name of Ed
23 Schellenberg may have had information or could
24 corroborate this, and we've heard some evidence
25 about that and what was done. That would be about



1 a week or two prior to this meeting. Do you have
2 any recollection of that subject matter being
3 raised with you by Mr. Caldwell?

4 A No, I don't, although he may well have raised it
5 in light of what you have outlined to me.

6 Q And I think I showed you that police report
7 earlier; have I not?

8 A Yes.

9 Q And does any of that information refresh your
10 memory on any of that?

11 A No, I can't say that it does.

12 Q If we can then --

13 A I'm trying to keep in mind the treachery of memory
14 after you read things and so on, but it just
15 doesn't --

16 Q In number 2 you write:

17 "The admissibility in evidence of
18 objects found but which cannot be
19 identified or specifically linked to the
20 particular crime - in this connection I
21 am thinking of such items as the toque
22 and so forth. When dealing with items
23 of this nature it seems to me that the
24 main grouping of the evidence or its
25 admissibility will centre around



1 relevance."

2 And are you able to shed any light on what this
3 may have referred to other than what's stated?

4 A No, but reading it over, I say the toque and so
5 forth, I probably had in mind objects that turned
6 out to be unrelated that were found in the alley
7 between N and O, I think there was, I think a
8 youngster had found -- was there some sort of a
9 knife or something there that was admittedly
10 unrelated.

11 Q Right, and I think that was Mr. Hounjet.

12 A But, you know, my recollection may be faulty on
13 that.

14 Q If we can go down to number 3, it says:

15 "In this particular case it will be
16 important to have complete production of
17 statements of Crown witnesses and in
18 this connection I may want to have
19 production of the lie detector
20 material."

21 Let's just talk about the statements of Crown
22 witnesses. Do you know what would have prompted
23 this note?

24 A Well, if there were additional witnesses going to
25 be called that I wasn't aware of, I certainly



1 would want to have that, and the other thing is if
2 there were additional statements, I mean, one
3 doesn't know, some witnesses might give two, three
4 or four statements, so it's partly a numbers game.

5 Q So is it fair to say that as far as when you say
6 Crown witnesses, that would be people that the
7 Crown called as witnesses at the trial and you are
8 saying you would want copies of all of the
9 statements given by those people who testified?

10 A Yes, and of course in my earlier correspondence I
11 wasn't limiting it just to those.

12 Q Right. So number one, you would certainly want
13 statements from anybody who would be a witness for
14 the Crown; is that correct?

15 A Yes.

16 Q And secondly, to the extent that there are witness
17 statements or information from other witnesses who
18 might not be called that might lead you to a chain
19 of inquiry or might assist the defence, you would
20 be seeking that as well; is that correct?

21 A Yes.

22 Q Now, this last point, and unfortunately we only
23 have half a sentence, it says:

24 "The admissibility of so-called --"

25 Actually, sorry, let me just go back to the lie



1 detector. At what point did you -- at what point
2 and how did you become aware of the involvement
3 of Inspector Art Roberts, the polygraph operator?

4 A Without my notes, I can't tell you when I became
5 involved, but it's obvious that I knew about it
6 because later I arranged to have him brought in so
7 I could interview him.

8 Q Right. And I think in your very first memo of
9 June 10th, 1969 there was a reference to the
10 polygraph, and certainly when Mr. Wilson testified
11 at the preliminary hearing you questioned him
12 about that, so at this point it looks as though
13 arising out of your meeting with Mr. Caldwell you
14 may have at least made a note to get production of
15 the lie detector material; is that right?

16 A That's what I would infer from it, even though I
17 don't recall the actual discussion.

18 Q And then item 4:

19 "The admissibility of so-called self
20 serving evidence will be very important
21 because in this connection the ..."

22 And again it ends there. Now, I appreciate we
23 don't have the next page, but are you able to
24 shed any light on what you would have been
25 referring to as self-serving evidence in this



1 partial memo?

2 A Well, the only thing I can say from that is that I
3 was undoubtedly weighing in my mind whether one
4 could get in a self-serving statement without
5 opening the door to other aspects of it.

6 Q And would you be referring to a self-serving
7 statement from David Milgaard?

8 A I think that that's what it would be in my mind.

9 Q Again, I appreciate we don't have the rest of the
10 memo.

11 A No, and I can't tell you how lengthy this memo was
12 and the extent to which I had various things noted
13 in my handwritten notes from which this would have
14 been created.

15 Q Then if we can go to 007014. Now, this memorandum
16 is September the 8th, 1969, a Monday. These are
17 Mr. Caldwell's notes of the same day and I just
18 want to ask you a couple of questions. It talks
19 about witnesses to recall at the preliminary
20 hearing, I think they are all police officers,
21 remaining Crown witnesses, and then I see here
22 McLeod, who I think was toxicology RCMP lab, and
23 it says, "(Tallis not requiring)." Would there
24 have been a discussion then between you and Mr.
25 Caldwell as to whether certain witnesses needed to



1 be called at the preliminary hearing?

2 A I don't recall, but from this I would assume that
3 to be the case. I have no reason to doubt Mr.
4 Caldwell's note.

5 Q And then if we can scroll down, number 3 it says,
6 'Cal wants Mrs. Wilson (ask deputy chief', I think
7 that is, 'to subpoena, Roberts', and then I'm not
8 sure if that says 'I to phone', but in any event
9 do you recall making that request of Mr. Caldwell
10 to have Shirley Wilson and Inspector Art Roberts
11 come to Saskatoon at the time of the preliminary
12 hearing to be interviewed by you?

13 A Well while I don't recall the discussion, I'm
14 quite sure that I did, and -- because I know that
15 Mr. Roberts was brought here and I'm sure
16 Mrs. Wilson was brought here too.

17 Q And was that at your request?

18 A Well, I'm sure it was, because there would be no
19 reason for Mr. Caldwell to note otherwise.

20 Q And we'll deal with Mr. Roberts in a bit more
21 detail when we go through some of Ron Wilson's
22 evidence, --

23 A Yeah.

24 Q -- but what, why did you want him brought to
25 Saskatoon?



1 A Well I wanted to really cap -- try to capture the
2 atmosphere under which the polygraph was
3 conducted, and maybe statements made to Mr.
4 Roberts, but since you want to go into that
5 later --

6 Q Sure.

7 A -- that's the, I think, the appropriate way for me
8 to state it at this point.

9 Q And I believe he was brought in and interviewed as
10 opposed to being called as a witness at the
11 preliminary hearing; is that right?

12 A That's correct.

13 Q And would that have been a decision that you made
14 after interviewing him, that you did not wish to
15 have him testify at the preliminary hearing?

16 A Well, I can sum it up this way, is that after
17 talking to him I was of the firm view that he
18 didn't have anything that would assist David and
19 some of the things -- and I don't remember them
20 all -- would have worked the other way.

21 Q Would have been damaging to David's case; is that
22 correct?

23 A Certainly detrimental to it.

24 Q Okay. And again, we'll go through that, I think
25 it's maybe easier when we go through Mr.



1 Wilson's -- your approach to Mr. Wilson.

2 And then as far as Shirley
3 Wilson, Ron Wilson's mother, I believe she did
4 testify at the preliminary hearing on the issue of
5 the clothing of David both before and after?

6 A Yes.

7 Q Do you remember what prompted to have you have
8 Mrs. Wilson brought in?

9 A Well I thought that perhaps she could shed some
10 light on particularly David's trousers, but I
11 think at the end of the day I didn't find anything
12 to be of real assistance there.

13 Q If we can go to the next page. I'm not sure if
14 this is a note of Mr. Caldwell's discussion with
15 Mr. Pratt or a note of you discussing it with him,
16 but he was the elevator agent in Aylesbury, and I
17 think they are talking about the flashlight.
18 Again, do you have any recollection of those
19 discussions with Mr. Caldwell?

20 A No, I don't, I --

21 Q Do you recall whether the elevator break-in was
22 something that the Crown wanted to put in as
23 evidence?

24 A Well I had a sense that, or at least early in the
25 going, that they probably would try to get it in



1 as -- on the footing that these kids were without
2 funds so that they had a motive to try and get
3 funds by various ways, and one of them, of course,
4 would be a break-in. But then of course there was
5 something else that I knew, and that was what
6 David had told me with respect to looking over the
7 older lady with a possible view to robbing her or
8 --

9 Q Right.

10 A -- snatching her purse, so I think that I was
11 apprehensive, certainly early in the going, that
12 this is something that might be attempted, and I
13 thought that it could cloud the pivotal issue that
14 --

15 Q Okay.

16 A -- the trial was all about.

17 Q If we could then go to the next page, 007016.
18 And, again, this is -- these are Mr. Caldwell's
19 notes of I believe September 8th, 1969. I will be
20 taking you to a letter of September 9th, the next
21 day, where he writes to you and details
22 information from the file, from witness
23 statements, that he thinks might be helpful to the
24 defence case, etcetera. And I am wondering
25 whether these notes, would that have been



1 something that he may have discussed with you in
2 person and then followed up with a letter, or --
3 and these may well simply be his notes that used
4 him to -- that he used to write the letter to you.
5 Are you able to tell us whether you would have had
6 a discussion with him where he would have gone
7 over some of the statements and said "lookit", for
8 example Dennis Elliott, "he was the fella who
9 dropped Gail Miller off the night before, Les
10 Spence was the former boyfriend or the boyfriend
11 at the time of death" -- if we could just scroll
12 down -- it's got some other statement numbers,
13 Morris Tkachuk, etcetera. Are you able to tell us
14 either by memory, number 1, or number 2 if you
15 don't recall, whether practices at the time would
16 be such that you might have had a discussion with
17 the prosecutor about his thoughts on statements
18 that might be of assistance to you?

19 A I don't recall ever discussing this with him but,
20 you know, at this late date I can't rule it out.
21 I rather think that his letter is one that was
22 composed from his own personal notes, but --

23 Q Right, as opposed --

24 A -- if -- there's nothing in here to indicate that
25 he had been talking to me --



1 Q I see.

2 A -- but I wouldn't rule it out.

3 Q Okay. If we can go to 168034, please. And this
4 is Mr. Caldwell's letter of the next day to you,
5 and it's responding to your August 21 letter, and
6 we'll just go through parts of this. You will see
7 that Mr. Caldwell says:

8 "... since receiving your letter I have
9 obtained all the statements obtained
10 from civilian witnesses in relation to
11 this investigation, totalling
12 ninety-five, and have read these
13 statements over to see whether any of
14 these witnesses would, in my opinion,
15 "...be able to give evidence of
16 assistance to the defence..." as
17 suggested in your letter."

18 And then notes the statement from *Dallison*. If
19 we can scroll down. And he writes:

20 "The duty of a prosecuting counsel, or
21 solicitor, as I have always understood
22 it, is this: if he knows of a credible
23 witness who can speak to material facts
24 which tend to show the prisoner to be
25 innocent, he must either call that



1 witness himself or make his statement
2 available to the defence."

3 And would that be the essence of the *Dallison*
4 case as quoted there?

5 A I haven't read it for a long time. I probably
6 read it as being a little broader than that, along
7 with the other, --

8 Q And as --

9 A -- and as I indicated to you, that statements or
10 reports that contain information that would be of
11 assistance.

12 Q And so go a bit further than just witnesses?

13 A Yeah, I wouldn't limit it to say -- you know,
14 witnesses can write out statements or 'write with
15 their mouth', as we used to sometimes say, either
16 when it's recorded with tape recordings or just
17 verbals are noted up by police officers that talk
18 to them.

19 Q And so, again, I think what you are saying, that
20 in addition to a formal witness statement, sort of
21 any recording or information from a witness that
22 relates to material facts which tend to show the
23 prisoner to be innocent; is that fair?

24 A Yes, or who -- that would lead one on a chain of
25 inquiry to establish matters that would go to the



1 innocence of an accused person.

2 Q And would that have been your understanding, sir,
3 then, of what you were seeking at the time from
4 the Crown by making the request that you did?

5 A Yes, well I, I was thinking in terms of the
6 English authorities that took a more generous
7 view. Because, you know, on the -- as I recall
8 it, on the other side of the coin, at that time
9 you couldn't compel the prosecution to deliver up
10 witness statements at the preliminary hearing
11 unless they chose to do so. I think I mentioned
12 to you earlier in these proceedings that I recall
13 some of the, at least some of the Provincial Court
14 Judges or magistrates who took the view that the
15 *Patterson* case and others were such that it was
16 the trial judge who could order production of
17 statements, but that the relevant provision of the
18 *Evidence Act* that was relied upon did not clothe
19 the magistrate or Provincial Court Judge with that
20 power. Now I haven't briefed this in years, so --

21 Q No, and I don't want to put you in a position of
22 giving legal opinion.

23 A No, and so I -- don't take this as a legal opinion
24 at this stage, but --

25 Q But what I would like to ask you though, again,



1 back in 1969-1970 what your understanding was of
2 what you could get? For example, if Mr. Caldwell
3 had said "no, I'm not giving you anything", I
4 think you told us earlier that you would have to
5 go to the magistrate if it was before the prelim;
6 let's say it's before the trial, what was your
7 understanding of what you might get from a trial
8 judge by way of an order compared to what you were
9 seeking through agreement from Mr. Caldwell?

10 A Well the trial judge, of course, had broader
11 powers for -- I mean with respect to production of
12 statements, and so on, if you ran into that type
13 of situation. But, generally speaking, the
14 convention had developed that prosecution were
15 going to make available matters that might well
16 assist the defence, and also make available
17 statements of witnesses, and so forth.

18 Q Okay. If we can just carry on with this letter, I
19 don't think we need to go through, and in detail
20 we have with Mr. Caldwell. This talks about
21 information regarding other suspects, Les Spence
22 of Perdue, and they were interviewed, one Dennis
23 Elliott, and that:

24 "Both Dennis Elliott and Les ... Spence
25 were eliminated as suspects in the



1 murder to the satisfaction of the
2 investigators as the investigation
3 progressed."

4 And, again, would that -- do you recall whether
5 you did anything with Dennis Elliott and Les
6 Spence as far as how they might assist the
7 defence?

8 A I don't recall anything like that.

9 Q And then, the top of the next page, Mr. Caldwell
10 points out:

11 "You will understand that in my opinion,
12 none of the above constitutes evidence
13 "...which tends to show the prisoner
14 innocent...". However, you may have a
15 different opinion on this and,
16 therefore, I have supplied the above
17 information as possibly coming closest
18 to evidence in that category which I
19 have been able to find on the file."

20 And I touched on this a bit earlier, it would be
21 the Crown prosecutor who would have to go through
22 the file asking the questions "might this",
23 whatever the test would be, whether it's tend to
24 show the prisoner innocent or lead to a chain of
25 inquiry; is that correct?



1 A Yes, the Crown prosecutor would undoubtedly be the
2 one who went through the matters with the
3 investigating officers.

4 Q Then, here, it talks about:

5 "You will recall asking me earlier about
6 a taxi driver who was supposed to have
7 driven Gail Miller and a man to work on
8 the morning of January 31st, and I some
9 time ago supplied you with copies of the
10 two statements by MacRae Fraser to read.
11 I now enclose copies of these statements
12 for your file ..."

13 If I can just pause there, it would appear that
14 Mr. Caldwell had allowed you to read some witness
15 statements before he actually provided you with
16 the physical copy, is that correct?

17 A He may well have, and from that I would gather
18 that he did.

19 Q And was that a practice at the time; do you
20 recall?

21 A I think so. Just as I indicated to you Ben Wolff
22 would often let you read the statements, he
23 wouldn't give them to you but -- or at least I
24 don't think he would give them to you when he
25 wouldn't be handling the case, but he was quite



1 open about things.

2 Q And then, next, it says:

3 "You also asked for, and I now enclose,
4 copies of the statements by Sandra
5 Danchuk and Walter Joseph Danchuk, both
6 of whom were crown witnesses at the
7 preliminary inquiry."

8 A Yeah.

9 Q Do you think you would have been aware of the
10 contents of the Danchuk statements before the
11 preliminary inquiry?

12 A I'm quite sure I was, one way or the other, aware
13 of what they would say.

14 Q And then again, I think we touched on this earlier
15 about copies of the statement taken from the
16 accused March 3rd and April 18th, and I think
17 you've told us that you would have been aware of
18 the contents --

19 A Yes.

20 Q -- or had them prior to your August 4th, '69
21 meeting with Mr. Milgaard; is that correct?

22 A Yes.

23 Q And I think you've already talked about the
24 voluntariness of that statement. And then he
25 says:



1 "The above material is forwarded to you
2 in addition to the various copies of
3 statements and reports which I sent you
4 earlier in this connection. I wish to
5 emphasize, however, that if you have any
6 specific inquiries to make of me
7 concerning specific persons whom you may
8 learn of who supposedly can shed any
9 light on the case I will be pleased to
10 track these down for you, to the best of
11 my abilities, in the file or through the
12 investigators."

13 And, again, would that be the practice of the day
14 by Crown prosecutors?

15 A I think that it was.

16 Q And then a mention:

17 "As requested by yourself, I have added
18 the names of Inspector Roberts ... and,
19 Mrs. Shirley Wilson ... to the list of
20 Crown witnesses as required by the Legal
21 Aid Plan, and ... hope ..."

22 to have these persons in Saskatoon Wednesday,
23 September 10th. And I believe we may have heard
24 some evidence, Mr. Tallis, that as far as paying
25 the cost to bring in these witnesses to



1 Saskatoon, that if you had -- I think Mr.
2 Caldwell told us that he was prepared to do it,
3 but was there an issue about how you would go
4 about paying them if you wished to bring in the
5 witnesses?

6 A I think there was some provision in the Legal Aid
7 Plan of the time for public funding of bringing in
8 of witnesses that were potentially material
9 witnesses, but I could be wrong on that, but I
10 don't recall any problem arising over bringing in
11 those two witnesses and I don't recall any problem
12 arising in bringing in, for example, Ute Frank.

13 Q And that was around the time the trial started?

14 A Yeah, but I don't think there was any -- well, I
15 know there was no problem there.

16 Q I think what Mr. Caldwell told us, told this
17 Inquiry, is that if there was a witness -- and I
18 think he referred specifically to Art Roberts,
19 Shirley Wilson, and there may have been others --
20 that if he decided he wasn't going to call them as
21 Crown witnesses, but that you wanted them called,
22 that he said he was prepared to do so as Crown
23 witnesses, I think in part so that you, as defence
24 counsel, wouldn't lose your right to speak last in
25 front of the jury; was that -- do you have any



1 recollection of that being discussed?

2 A I think we probably did discuss it.

3 Q And then here, at the bottom, the letter states:

4 "The various Police Officers who were to
5 check their notes for further
6 information will be attending at my
7 office at 12:00 noon on September 10th,
8 at which time we will be able to
9 interview them and you should be able to
10 recall any of them you wish in the
11 afternoon of that date."

12 Now this would be the day after your meeting with
13 Mr. Caldwell, and are you able to tell us, either
14 by memory or by looking at this letter and
15 considering practices at the time, whether you
16 would have asked Mr. Caldwell to have officers
17 check specific things for you?

18 A I don't recall this, but I would say that I may
19 well have.

20 Q So, for example, --

21 A It's something I wouldn't hesitate to do.

22 Q Right. So, for example, you might say "can you
23 ask officer X in his notebook whether the witness
24 gave them any specific time", for example?

25 A Yes.



1 Q And what about interviewing them; do you recall
2 whether, in this case, you would have attended at
3 Mr. Caldwell's office or had interviewed the
4 police officers when they had their notebooks?

5 A No, I don't recall anything like that.

6 Q And would that be something that would be unusual?

7 A Well, in my experience it was, because usually
8 that was -- if -- I recall, in this particular
9 case, asking Lieutenant Short briefly about
10 something, it wasn't directly to do with the case,
11 but he made it clear that anything like that would
12 have to be done through the prosecutor's office,
13 through the prosecutor.

14 Q But, again, would there be a situation where Mr.
15 Caldwell might call in the police officers with
16 their notebooks and have you in the room and ask
17 some questions?

18 A That's possible, but I don't recall it happening.

19 Q Okay. And, again, would that be a practice of --
20 just speaking generally, would that be something
21 that would be unusual, or would that be part of
22 the usual practice?

23 A In my view it would be unusual.

24 Q If we can then go to 007076, and just -- this is
25 January 12th, this is a week or so before the



1 trial, and just go through parts of this. It
2 talks about the indictment -- if we can just
3 scroll up a bit -- about the indictment that was
4 filed that would have had the witnesses on it, and
5 I think that was the practice, that the Crown
6 would list all of the Crown witnesses on the
7 indictment; is that correct?

8 A Yes.

9 Q And then, if we can scroll down, he talks about
10 one new witness, being Garry McLeod, the
11 toxicology fellow. And then down, the third
12 paragraph talks about:

13 "At the moment there is only one witness
14 who was called at the preliminary
15 inquiry whom I do not intend to call at
16 the trial, that being Marie Indyk."

17 And we'll talk a little bit later about her
18 evidence.

19 A Yes.

20 Q And then the next page he talks about having
21 Mrs. Indyk subpoenaed, that Mrs. Shirley Wilson of
22 Regina is subpoenaed and advised her to stand by:

23 "I am not sure whether I will call her
24 as part of my case or not, but perhaps
25 we can also discuss this ...",



1 and it talks about the statements of the Danchuks
2 having been forwarded. And then here it says:

3 "As you will further recall, and as I
4 advised you during the preliminary
5 inquiry, Mrs. Cadrain, the mother of
6 Albert Cadrain, appeared in my office
7 one morning during the preliminary
8 inquiry with a paper bag containing a
9 pair of trousers, apparently eaten by
10 acid, which I believe to be the ones
11 worn by Ron Wilson when the group left
12 Regina and changed, by him, at Cadrain's
13 house after the group of three persons
14 reached Cadrain's house on the morning
15 of January 31st. Is it not my
16 intention, at this time, to tender the
17 trousers as an exhibit, however, they
18 are in my office and available at any
19 time should you wish them for any
20 purpose at the trial."

21 Do you have any recollection of doing anything
22 with those pants or checking them?

23 A I have a vague recollection of that. And one of
24 the things, of course, I was interested in was
25 whether if, by chance, they had had anything to do



1 with David, but they obviously -- they weren't.
2 And I'm thinking in terms of the seam that was
3 split.

4 Q Oh, I see.

5 A Yeah.

6 Q And so do you think you would have checked those
7 or made inquiries?

8 A I'm quite sure I did at the time.

9 Q Then, if we can go to 007074. This is January
10 15th, 1970, and this is related to Maurice Cerato,
11 who was a witness who came forward about had
12 bought some pants from David Milgaard. And we
13 have seen this letter before, and they did some
14 checking, and I think the lab indicated they could
15 not verify any blood on this and some statements
16 there. Do you have a recollection of that?

17 A Yes, I do, because immediately when I learned of
18 the suggestion of, well, of -- let me back up.

19 The name Cerato rings a bell in
20 this sense, that I think that David had mentioned
21 that name, and there may have been a Roger, or
22 something like that, to do with his work in
23 selling. Now I can be, I could be wrong on this,
24 but that -- that's a recollection I have. And
25 then, of course, I was very interested in the --



1 were these blue jeans --

2 **Q** Yes.

3 **A** -- if I recall? Something to do with blue jeans.
4 But I had talked to David, I talked to David about
5 this as quickly as I could, and of course these
6 were not blue jeans or trousers that he had been
7 wearing at the time when he was in Saskatoon, at
8 least that was my understanding from talking to
9 him, and so that's just a -- some of the general
10 things I remember.

11 **Q** Do you have any recollection of any discussion
12 with him about whether there might have been blood
13 on those blue jeans, with Mr. Milgaard?

14 **A** I probably asked the question because of the way
15 the thing was unfolding, but I think that he told
16 me that he didn't think that there would be any
17 blood on them.

18 **Q** And so again, now, Mr. Cerato was not called at
19 the trial?

20 **A** No.

21 **Q** Do you recall anything else about his evidence and
22 the statement and the manner in which you became
23 aware of it?

24 **A** No, I don't, at this stage.

25 **Q** Then if we can go to 039537. And this is January



1 19th, and I think this is the day the trial maybe
2 started, and there was a copy of various
3 statements, --

4 A Yeah.

5 Q -- and I think those are all witnesses that
6 observed the alley area?

7 A Yeah.

8 Q And I believe that Mr. Beauchamp found the wallet,
9 etcetera. Again, do you recall whether you would
10 have been aware of the contents of these
11 statements before receiving them?

12 A I think I was. For some reason I believe that to
13 be the case.

14 Q And then, as well, right at the bottom --

15 A At least I was aware of what they were going to
16 say, and I think I had a good idea of that even
17 before the preliminary hearing.

18 Q Okay. Okay, now I will deal with the motel room
19 reenactment witnesses later on the issue, when we
20 deal with that and how that information was
21 disclosed to you.

22 I'd now like to turn to your --
23 to talk a bit about your preparation, sir, for the
24 preliminary hearing and trial. And we've already
25 touched on a significant part of that, I think



1 you've told us certainly what you did in your
2 interview with Mr. Milgaard, how you prepared your
3 questions for various witnesses. If we can just
4 go back to -- and I'd like you to tell us what
5 role Myrna Wilson played? You had told us that
6 she was your assistant at the time, and I think
7 that she participated and attended at parts of the
8 preliminary hearing and trial, can you tell us
9 generally what she did to assist you on this
10 matter?

11 A Well she was very heavily involved from a
12 secretarial standpoint, but also on various other
13 aspects. And I may have mentioned to you the
14 other day that I, in this case as in some other
15 cases, I actually had her attend quietly at the
16 courthouse, at the preliminary hearing, to take
17 shorthand notes of testimony of some of the
18 crucial or key witnesses. Her shorthand was very
19 good, and she would type up portions that I wanted
20 done promptly for use with respect to other
21 witnesses that would be called, and so forth.
22 And, of course, she was very involved in this
23 because she often, you know, would stay after
24 hours to type up things and so on. I --
25 unfortunately, she passed away several years ago,



1 and she had a, really a very good grip on the file
2 in so many ways it would take quite a bit of time
3 for me to detail it.

4 Q Okay. So I think you are telling us she was a
5 significant part of your team, if I can call it
6 that, as far as putting forward the defence?

7 A Yes. She worked very hard at, you know, the
8 various things that I have mentioned to you during
9 the course of you interviewing me, and quite apart
10 from that, she had a very deep interest in the
11 case and continued to have a deep interest in it.

12 Q Now, what about Mr. Disbery, you told us he was
13 either an articling student or a first year lawyer
14 that participated at, certainly at the trial, and
15 I think in part at the preliminary hearing; is
16 that correct?

17 A Yes.

18 Q And I think you've described his role. Can I get
19 you to give us a sense of, and again you've
20 already told us that you didn't keep track of
21 hours spent, but from your engagement in June of
22 1969 through until the conclusion of the trial at
23 the end of January, and that would cover the
24 summer months and as well the Christmas season,
25 can you give us some sense of how much time you



1 spent on this matter?

2 A Well, the best way I can sum it up is to say to
3 you that I spent a great deal of time on this and
4 that included a great deal of time outside of
5 normal working hours. I couldn't put percentages
6 or actual hours on it. If I had my working notes,
7 I probably could give you a better idea, but I
8 know that Miss Wilson worked many, many hours, you
9 know, in the evenings when needed even, you know,
10 early in the going, and throughout, and I felt in
11 this case an obligation to do the briefing of
12 essential points myself. I know Mr. Disbery may
13 have assisted me in some collateral way, but at
14 the end of the day I went through everything and,
15 as I say, did most of the briefing, and even where
16 he briefed points, I reviewed the work.

17 Q Okay.

18 A Going through some of the transcript that you
19 asked me to read, it brought back the fact that I
20 had prepared a brief covering many points of
21 admissibility which were, some of which were
22 argued and some of which it was unnecessary to
23 argue. I wish that I had the full text of these
24 things, including the draft cross-examinations and
25 so forth that I prepared in the manner in which I



1 described to you earlier, and with respect to the,
2 with respect to the serological chapter of this
3 case, I started well before the preliminary
4 hearing to go into it and actually prepared draft
5 cross-examinations not only in that field, but for
6 other witnesses that I knew that were going to be
7 called, and this was of course based on
8 information that I had picked up from various
9 sources, and I can't remember all the sources that
10 I had pursued, but I guess the bottom line is I
11 come back to what I said to you earlier, I spent a
12 great deal of time on this case and I felt that,
13 very sincerely that it was my duty not only to
14 David, but I had a duty to the Court, a duty to
15 society and a duty to myself, I had to look myself
16 in the mirror in the morning throughout the course
17 of these proceedings.

18 Q If we can just pick up on the secretor issue for a
19 moment. Would you have read up about that subject
20 matter?

21 A Yes. I not only read up about it, but I did speak
22 to a medical friend, and as I told you the other
23 day I think it was Dr. Mel Langer, but I could be
24 wrong on that, but I say that because he was one I
25 often turned to for starters on things, and in



1 addition to the material I dug up, I was also
2 directed to certain material, and I can't recall
3 where it was, but I actually located somewhere,
4 essentially it was a draft cross-examination of a
5 witness in this area and I patterned my
6 cross-examination on that material and I was put
7 in touch with somebody who was an expert in this
8 field, I can't recall who it was now, and I
9 discussed it by phone and felt that I was well
10 briefed for the preliminary, and then of course
11 after the preliminary I reviewed what I got and
12 was told that you can't hope to get any more than
13 what you got.

14 Q And that was with your medical advisor?

15 A Medical advisors.

16 Q And again just on the literature, I think you may
17 have touched on this, would you have read then
18 some materials that talked about A antigen
19 secretors, things of that nature?

20 A Yes, that's what I'm referring to.

21 Q Let's talk a bit about the polygraph. Did you do
22 any work to try and understand how the polygraph
23 worked?

24 A Well, I had had some experience with that before
25 this, I can't recall all the details, but it



1 wasn't just from reading, but I had had some
2 involvement in a situation where a polygraph was
3 used and that's why I was anxious to get
4 information from Mr. Roberts about the atmosphere
5 under which this was conducted, but I'll be quite
6 candid with you and say that my assessment was
7 that he was not inclined to be helpful, to say the
8 least, and I was not able to elicit anything from
9 him directly that I found to be of assistance.

10 **Q** And again, just on Mr. Roberts for a moment, what
11 did he tell you about what he had done as far as
12 the polygraph?

13 **A** Well, the situation, as I recall, is this, that he
14 represented his position as being essentially that
15 of an expert polygraph operator. He confined
16 himself, so to speak, to the technical aspect of
17 it and didn't range into other areas, if I may put
18 it that way.

19 **Q** Are you talking interrogation and questioning?

20 **A** That's right, you know, in terms of statement
21 taking and so forth.

22 **Q** Did you get a chance to look at the charts or any
23 of his questions?

24 **A** No. I asked him about the questions that he had
25 put and responses and he was not forthcoming on



1 that and he had a chart there and I think
2 essentially what he said was that, but he wasn't
3 producing it, but he said that, you know, as far
4 as he was concerned, the chart, his conduct of the
5 test indicated that Wilson was telling the truth
6 throughout.

7 Q With respect to his incriminating statement?

8 A Yes.

9 Q Did you -- and what was your level of trust with
10 Mr. Roberts as far as if he were a witness?

11 A Well, there was no doubt in my mind that he would
12 not be a witness of assistance to the defence and
13 that it would be a grave mistake to call him
14 because I felt that if I called him, he would
15 probably have been devastating on
16 cross-examination. Now, this once again is a gut
17 feeling and I put it on that basis to you because
18 I also would have been very apprehensive of any
19 reference to the polygraph being made before the
20 jury.

21 Q Why is that?

22 A Well, I think that it might be an inference that a
23 fact finder would make, such as a jury, that,
24 well, if he had a polygraph there, he must have
25 passed the test. Now, there's another aspect



1 later on, but I think, I don't think you want me
2 to go into that at this stage, I'm thinking of the
3 9(2) application. If there had been a *voir dire* I
4 would certainly have argued that the burden was on
5 the Crown to call all material witnesses and that
6 one would then have an opportunity to
7 cross-examine in the absence of the jury, but
8 that's another phase of it.

9 Q Sure. So what you are telling us, I think, and
10 please correct me if I'm wrong, that you didn't
11 want Mr. Roberts in front of the jury, but that
12 you might like a crack at him in a *voir dire*; is
13 that fair?

14 A That's right.

15 MR. HODSON: Mr. Commissioner, it's 11
16 o'clock. I'm wondering if we can maybe take a 10
17 minute break and then we can then finish up. I
18 don't think we want to go right through.

19 COMMISSIONER MacCALLUM: Okay.

20 (*Adjourned at 10:57 a.m.*)

21 (*Reconvened at 11:15 a.m.*)

22 BY MR. HODSON:

23 Q Mr. Tallis, when we broke we were talking about
24 your preparations for the Court proceedings and I
25 think earlier on we saw a memo where you had



1 indicated that you were out at the scene where
2 Gail Miller's body was found. Can you tell us
3 sort of what, how many times you went out there,
4 what you did when you were out there, what your
5 observations were?

6 A Well, I can't recall the number of times that I
7 was out there, but I was out there on a number of
8 occasions, and I recall the last occasion when I
9 was out there and that was either just before the
10 trial or during a break in the trial. I did that
11 because the weather conditions were somewhat
12 similar to the conditions that had existed back at
13 the relevant time in '69. I know that I had not
14 only driven there through the general area, and I
15 was familiar with that area because of having been
16 there on a number of occasions, for example, St.
17 Paul's Hospital is always a bit of a landmark to
18 me, and I prepared my own sort of sketch notes of
19 the area and I remember on one occasion checking
20 to see if there was a back door or back entrance
21 to the, I'll call it the Miller house for
22 shorthand, and I remember, for example, walking
23 and driving down the alley between O and N, I
24 remember the same thing with respect to the, what
25 I'll call the Cadrain alley, and in particular I



1 remember noticing that the Cadrain house appeared
2 to me to be what I call, would call a war time
3 house; that is, in appearance, and I must say that
4 I didn't think of the Cadrain house as having a
5 basement or, if it did, or if I did think about
6 it, I just assumed that with a large family it
7 would still be pretty cramped even if it did have
8 a basement.

9 Q Can you explain, you said a war time house, and
10 were there houses that to your knowledge did not
11 have basements that were built at --

12 A Well, yes, I had an uncle who, when he got out of
13 the air force, acquired one of them, more in the
14 northwest of town, I was very familiar with that
15 house and it didn't have a basement, and most of
16 them, any that I ran into did not have basements
17 except there came a time when people did dig out
18 the basements, and I know a relative of mine
19 helped dig out one such basement and it was quite
20 a task to get in and do it because at that time
21 most of it was done by hand.

22 Q What would you be looking for then when you were
23 walking around the Cadrain house in that area?

24 A Well, I think that one of the things, that my
25 checking of the area confirmed what David had told



1 me about, that there was an alley there and that
2 he had driven down it, and I'm sure that I also
3 looked at the landmarks, some of them that had
4 been mentioned that he was looking for and the way
5 the house was situated on the street and so on to
6 get the feel for what happened when they drove in
7 that, into that area that morning.

8 Q If we then go to Gail Miller's house, you
9 mentioned checking for a back door. What did you
10 observe and why would you be checking that?

11 A Well, my recollection is that there was a back
12 door, but, you know, I haven't gone back and
13 checked any of the documents or anything like
14 that, but it seems to me that there was something
15 like that that I made a note of and actually
16 sketched out, and I suppose at that time the
17 question of whether or not, you know, the route,
18 the most likely route, I think I mentioned that in
19 one of the memos, that she would go down Avenue O
20 to the bus stop.

21 Q Yes.

22 A Now, I could not discount the possibility of also
23 going out the back and down the alley because I
24 knew that kids had gone down there and I had
25 spoken to, before trial I had been put in touch



1 with a lady who had walked down there that
2 morning, and I can't remember her name, but I
3 phoned her and she came in to see me, but she had
4 gone down that alley very early that morning and
5 noticed nothing, but that's something that I
6 recall.

7 Q Yeah, and maybe just if we can call up map B and
8 we'll just make sure we're talking about, that we
9 have the alley identified. If we can just -- and
10 this is a map, Mr. Tallis, that I think was used
11 in the Supreme Court, so here's where the body was
12 found. Are you talking about the woman who
13 travelled down the alley, would it be north/south
14 down the alley?

15 A Yes, down that area, but my purpose in, and I was,
16 I interviewed her as a result of information I
17 received from somebody that told me, I can't
18 recall who it was now, but she had gone down
19 there, as I recall it, quite early in the morning
20 and saw nothing untoward. In other words, it was
21 well before the --

22 Q The body was found?

23 A The body was found, and I think it was well before
24 Gail Miller would have left for work on the
25 evidence.



1 Q And what did -- what did she tell you about her
2 frequency of use of this alley and others' use of
3 this alley?

4 A Well, it wasn't unusual for her to go down that
5 alley and my recollection is that people in the
6 wintertime there often found, quite often the
7 sidewalk areas, the snow hadn't been cleaned, so
8 it was easier to walk, say, on the travelled
9 portion of the avenues, or kids and other people
10 sometimes walked down the alley where there had
11 been packed snow from travel, and I know when I
12 was over there either just before the trial or
13 during the trial, the sidewalks were not that
14 comfortable to walk on on the occasion I was there
15 and people tended to go down the travelled
16 portion.

17 Q And so again when you were out looking, would that
18 be relevant then to the issue of which route Gail
19 Miller may have taken on the morning of her
20 murder, whether it was Avenue O, the alley or
21 Avenue N?

22 A That was certainly an aspect of it, yes.

23 Q And do you recall, Mr. Tallis, at the time of
24 trial in your preparations, as to the
25 significance, if any, of which route she went and



1 what information you could gather?

2 A Well, I thought it might be of assistance, but,
3 you know, it more or less cut both ways, I
4 couldn't rule out her having gone out the back
5 door and down the alley.

6 Q Yes.

7 A But my initial focus was certainly on the Avenue O
8 route.

9 Q And just on -- I think the evidence of Ron Wilson,
10 that he thought they got stuck here, Nichol John I
11 think was maybe closer in the alley, and I believe
12 their evidence is that they may have encountered
13 the woman and asked directions, I don't think
14 anybody was able to say that it was Gail Miller,
15 but the woman that they approached for directions
16 would have been along this way. Do you recall
17 what your thoughts were about the plausibility of
18 Gail Miller being over on Avenue N in light of the
19 fact that her house was on Avenue O and there was
20 a bus stop on Avenue O?

21 A I thought if she wasn't on Avenue O, the most
22 likely route that she would have taken would have
23 been going out the back and down the alley.

24 Q Okay. And then as far as the area where the body
25 was found and in behind the funeral home, would



1 you have inspected that area or looked at that
2 area?

3 A Yes, I walked through that area and I drove
4 through it and I know on one occasion I had Miss
5 Wilson with me and I actually dictated
6 observations. Now, whether that was during the,
7 before the trial, just before the trial or during
8 the trial I cannot recall. Certainly I'm quite
9 sure that it wasn't this, when I read the part
10 memo, the memo that you have here --

11 Q Yes.

12 A -- I don't think that was the one that I had
13 dictated.

14 Q And I'll take you to that in a moment.

15 A But --

16 Q What about the Trav-a-leer Motel, if we can go to
17 map A and just enlarge that, I think this was a
18 map that may have been used at trial. Is that
19 your recollection of where the Trav-a-leer Motel
20 was located in relation to where the body was
21 found?

22 A Yes. I was familiar with the location of the
23 Trav-a-leer Motel before this. I never stayed
24 there, but I was familiar with its location
25 because I had taken the 22nd Street route west of,



1 going west of Saskatoon and --

2 Q Did you drive, did you ever drive from the area
3 where Gail Miller's body was found to the
4 Trav-a-leer Motel to see how long it would take?

5 A Yes, I did, on more than one occasion, but I can't
6 recall the clocked minutes now.

7 Q And what about the Danchuks', do you recall
8 whether you would have driven in that vicinity as
9 well?

10 A Yes, I did, I wanted to get the feel for these
11 things.

12 Q If we could call up 224933, please, and this is
13 your August 20th, 1969 memorandum, and I think
14 you've told us earlier that the handwritten notes
15 do not belong to you?

16 A Yeah.

17 Q This would be -- the preliminary hearing started
18 on August 18th and I think inspector -- pardon me,
19 Officer Kleiv was the only officer who testified
20 on the 18th and then it was adjourned until August
21 21st, so it looks as though this would be a couple
22 of days after the prelim started and it talks
23 about:

24 "An examination of the site at the rear
25 of 221 and 227 Avenue "N" North ..."



1 And I think that's near where the body was found,
2 "... indicates that a board fence has
3 now been erected where the belt of trees
4 appears on the sketch."

5 Would that be a sketch that you had made of the
6 area?

7 A It could be, or it could be one that I had
8 received. Now, I should say that I'm not sure
9 that this memo indicates that August 20th was the
10 date --

11 Q I see.

12 A -- that I was there, but it certainly recaps
13 observations that I had made. Without my notes I
14 couldn't tell you that it was the day I was there,
15 but certainly this is a memo that I made along the
16 way and I may well have gone out again during the
17 preliminary hearing.

18 Q Sir, are you telling us that this memo may have
19 been, you may have visited the site prior to
20 August 20th and August 20th may have been the
21 dated that it was typed?

22 A Yeah. Well, I know I was there well before this,
23 but on this particular occasion I obviously sat
24 down and dictated a memorandum, but the notes from
25 which it was compiled I cannot tell you.



1 Q Okay. If we can just scroll down, paragraph 2
2 talks about your observations of the Cadrain
3 house, and then you say:

4 "The rear portion of the lot contains a
5 rough hewn garage and in case some
6 reference is made to a garbage container
7 the only thing I can see is an old
8 burning barrel plus a relatively new ash
9 can at the back of the lot."

10 Do you recall what significance would have been
11 on the garbage can and where it was located at
12 the Cadrain house?

13 A You know, I've read that memo, but I don't recall
14 that.

15 Q And we saw later in the reference to some
16 materials I think from Albert Cadrain many years
17 later about a suggestion that Mr. Milgaard's
18 clothes may have been taken out to the garbage and
19 disposed of. I don't believe there's anything,
20 that I saw anyways, in the statements around '69
21 and '70 in the evidence. Do you have a
22 recollection of that being an issue at the time of
23 trial, that the clothes may have been taken out to
24 the garbage?

25 A I don't recall anything like that coming up, but



1 why I made this observation at the time I simply
2 cannot recall, but it's certainly there and I'm
3 sure I would have had a reason for it at the time.

4 Q And then you say, if we can just scroll down a
5 bit, you say:

6 "In view of the heavy growth at the back
7 of this lot including crabapple trees a
8 good question will arise as to whether
9 the rear lane was passable for traffic."

10 Now if the rear lane was not passable for traffic
11 what concerns, if any, would that present for
12 you?

13 A I don't think any real concerns, but it was just a
14 matter of having the full picture. This obviously
15 was in the summertime or early fall when I made
16 these observations, and I noticed that I had
17 spotted crabapple trees there, I don't know why
18 unless they were overhanging or something like
19 that, and --

20 Q Okay. If we can go to the next page, paragraph 4,
21 if we could call that out you say:

22 "If Miss Miller lived south on Avenue O
23 the logical route for her to follow
24 would be to ...",

25 "walk" I presume that should be:



1 "... north to the intersection of 20th
2 Street and O and then proceed west for
3 one block because St. Paul is on the
4 north west corner of the intersection of
5 20th Street and Avenue P. If she was
6 living on Avenue O and north of 20th
7 Street the logical route for her to
8 follow would be to go south on O to 20th
9 Street and then cut west on 20th."

10 Are you able to elaborate on what this paragraph
11 refers to?

12 A No, other than I, you know, I certainly knew that
13 she lived in that house on Avenue O.

14 Q North of 20th Street?

15 A Yes. And, obviously, I was kind of ruminating
16 with respect to the various theories on this.

17 Q Okay. And what about the reference to St. Paul's
18 Hospital; do you know where that would have fit
19 in?

20 A Well I was always trying to, in discussions
21 particularly with David, and I was always using
22 St. Paul's as sort of a landmark or a focal point.
23 I guess it was just because of my familiarity with
24 the hospital and its location and --

25 Q Okay. If we can go down to paragraph 6. And,



1 again, you mention:

2 "On both Avenue O and Avenue N the
3 streets north and south of 20th are
4 available to two way traffic and parking
5 is apparently permitted on each side."

6 And, again, would that be relevant to the issue
7 of what -- identifying where a vehicle may have
8 been stuck that morning?

9 A Yes, umm, I remember making sure that it was
10 two-way traffic, and that basically Saskatoon at
11 that time had little, little or no -- little or
12 nothing in the way of one-way streets, whereas
13 Regina did. So this certainly would be reflective
14 of my thoughts about this aspect of the case, and
15 I guess on visibility, and --

16 Q Right. And you say here, there you talk about
17 large trees, but:

18 "... well enough so that people in
19 houses would have no difficulty seeing
20 persons who walk along the street."

21 A Yes.

22 Q And, again, what; can you explain the relevance of
23 that?

24 A Well I can only assume that I was thinking about
25 the opportunity for people, potential witnesses,



1 to observe --

2 Q Yes.

3 A -- what was going on. I don't have any particular
4 recollection of the matters on -- in that
5 connection, but --

6 Q Okay. You then state:

7 "Furthermore, the alley where the girl's
8 body was found is an area where
9 visibility is fairly good and questions
10 should be raised as to whether or not
11 the scene as found was consistent with
12 the girl having been raped in a car or
13 house before being dumped in the alley
14 and probably killed there."

15 And can you explain what your thinking was in
16 making that comment in the memo?

17 A Well I didn't rule out, in my mind, the
18 possibility that she may have been raped in a car
19 or a house before being dumped in the alley, and
20 maybe -- and probably killed there. But once
21 again, this was just sort of ruminating on the
22 question, and I think at one stage, although it
23 isn't mentioned here, I wondered if there was more
24 than one person involved in a situation like this.

25 Q Okay. And can you explain that?



1 A Well I thought the -- you know, you had, I think,
2 a young woman in I think good physical condition,
3 and it was obvious that she, I thought, put up
4 quite a battle there, and I wondered if she had
5 been, you might say, abducted. But this was just
6 a -- you know, thoughts that were rambling through
7 my mind, and that maybe two people -- I wasn't
8 thinking in terms of David or anyone else in the
9 car being involved, but I was thinking of the
10 potential involvement of, the likelihood of a
11 third person, albeit an unidentified person or
12 persons being involved in it.

13 Q Okay. And, again, the involvement of a car then;
14 was there anything about what you knew of the
15 scene or the facts that would say -- that caused
16 you to think that a car may have been involved or
17 that the rape may have happened in a car or a
18 house?

19 A No, that was speculation on my part.

20 Q And then you say:

21 "There are substantial fluorescent
22 lights on the west side of Avenue O
23 north of 20th Street and these should
24 throw a good light in that area during
25 the winter time."



1 And that would be in front of St. Mary's Church;
2 is that right?

3 A Yes. Now that, of course, reflected what the
4 lighting was after, you know, after I had been
5 retained. I mean I -- but I think you read it
6 that way.

7 Q And then paragraph 7 talks about the 22nd Street
8 and Avenue P and the number of gas stations; can
9 you tell us the significance, if any, that would
10 have had?

11 A Well that was another landmark, so to speak, in
12 that area that I thought might help pinpoint
13 things. It didn't turn out to be of any great
14 significance, but I was certainly, very early in
15 my assessment of the situation, conscious of that
16 service station.

17 Q If we can go to the next page. Paragraph 8 you
18 state:

19 "In dealing with the cross-examination
20 of Miss Nicole John reference should be
21 made to page 3 of her statement of May
22 24th. She refers to Dave speaking to
23 this girl and then states that they
24 started to drive away and went only
25 about half a block when they got stuck.



1 They ended up stuck at the entrance to
2 the alley behind the funeral home. She
3 then states that Dave went back in the
4 direction they had spoken to the girl
5 and this is very confusing in the light
6 of the physical evidence and should be
7 explored very carefully. Furthermore on
8 the basis of this girl's statement it is
9 hard to reconcile Miss Miller's dress
10 being down and rumped with no punctures
11 in it."

12 If we can just go to this first part here, can
13 you elaborate on what, when you say "it's very
14 confusing" can you elaborate on what you meant by
15 that, or what you would have meant, if you are
16 able to?

17 A Well, I really can't read that out of context with
18 the rest of the comment there. I don't recall
19 dictating this memo, and so I don't recall my
20 mental processes that I was going through at the
21 time, so in a sense my reconstruction can't be any
22 better than my recollection. I have no
23 recollection of it, but if you are asking me to,
24 you know, try to infer what was going on?

25 Q Yes, please?



1 A It goes back to everything that had happened to
2 this girl, if it happened there, there was a
3 tremendous amount of activity. You know, how
4 the -- one of the unique features was the coat had
5 obviously been taken off as I recall it, the dress
6 rolled down, no stab marks in the dress, so the
7 coat had been put back on the young woman and then
8 the stabbings had -- or the stabbing had taken
9 place. And this, of course, was a confusing
10 situation.

11 Now at the preliminary hearing,
12 of course, Miss John did not go through her
13 statement and adopt it, she did not remember some
14 of the things that I think the Crown hoped to
15 attribute to her.

16 Q Okay. And did that --

17 A And, accordingly, I was certainly not going to
18 open it up, at that stage, to refresh her memory
19 by referring to her statement.

20 Q Did you have some concerns about the credibility
21 or validity of what Nichol John said happened
22 based on her statement?

23 A Well, not just limited to that. Based upon what I
24 knew from David, and based upon what I knew of the
25 physical circumstances -- and when I talk about



1 the "physical circumstances" I'm referring
2 particularly to the, what I will call the unique
3 situation with respect to her clothes --

4 Q Yes.

5 A -- and the stabbing wounds that clearly had -- the
6 knife had penetrated the coat, but not the dress,
7 because the dress was down. Now I know I'm
8 stating that rather awkwardly, but --

9 Q So is it fair to say, Mr. Tallis, here, I mean at
10 this time when you are dictating this memorandum,
11 you would not have been aware that Ms. John would
12 not be repeating certain parts of her May 24th
13 statement when she testified?

14 A You are quite correct.

15 Q And if he had testified -- and we'll deal with
16 this in some detail later -- if she did testify
17 and repeat what was in her statement, would this
18 be, what's stated in paragraph 8, one of the areas
19 where you would have challenged her in
20 cross-examination?

21 A That's correct.

22 Q Now just back on this point about Nichol John
23 saying that after they stopped the woman for
24 directions they went up, and I think she said in
25 the same block, got stuck around near where the



1 funeral home, tried to push the car out, and then
2 David and Ron left the car. And one of the, one
3 of the things that has been said about that
4 version of events is that if it happened that way,
5 and if Gail Miller was the person that they
6 stopped for directions, that by the time Mr.
7 Milgaard and Mr. Wilson left the car, and in
8 particular if Mr. Milgaard went back towards where
9 they had stopped the woman for directions, that
10 this woman would already be at 20th Street at the
11 bus stop. Do you follow what I am trying to state
12 to you?

13 A Yes.

14 Q And in fact, maybe if we can just bring up the map
15 for a moment, map A might be the best -- sorry,
16 map B. And flip it around and just call out this
17 area here, actually just a bit -- yeah, this area
18 here. And, again, I think if -- and I'm not sure
19 if the evidence was clear on all these points --
20 but that if, where I've drawn the X just south of
21 21st street on Avenue N, if that is where they
22 would have stopped the lady for directions, and in
23 fact if it was Gail Miller, I think then Nichol
24 John's evidence was that they would have got stuck
25 in that area, tried to push the car out, and then



1 David would have -- David and Ron left, and that
2 David would have gone back in that direction
3 towards where the woman had been stopped for
4 directions. And I think the suggestion has been
5 made that, if that happened that way, this woman
6 would already be at 20th Street, given the time
7 that would elapse for the car to go into the back
8 alley, get stuck, try to push out, and then leave.
9 And is that something that you considered at the
10 time, or would have raised or dealt with?

11 A Well, I'm sure that in my own mind I canvassed it,
12 but I, on the basis of anything that I saw or
13 heard -- well, number one, David of course had
14 told me about an older woman, but where they
15 stopped, they stopped her, but certainly, from
16 talking to him, it wasn't in this immediate area.

17 Q Okay.

18 A But, secondly, I could not see any really logical
19 basis for Miss Miller to go along 21st Street to
20 Avenue N and then down.

21 Q Okay.

22 A And, if she took a different route than Avenue O,
23 the more logical area for her to go down would be
24 the back alley, through the back door. Now I'm
25 sure this is what was going on in my mind --



1 Q Okay.

2 A -- but, once again, to tell you that I have a
3 clear memory of all this -- but you've asked me to
4 try to reconstruct it, --

5 Q Yes.

6 A -- so to speak, to the best of my ability.

7 Q And again, the issue of timing, that again
8 according to what -- and I appreciate you've told
9 us that she did not adopt the entirety of her
10 statement -- but as far as your memorandum when
11 you talk about:

12 "She then states that Dave went back in
13 the direction they had spoken to the
14 girl and this is very confusing ...",
15 I think are your words; I'm trying to find out
16 whether that might have related to the fact that
17 by the time David would have left the vehicle,
18 according to Nichol, the woman that they stopped
19 for directions, if it was in fact on Avenue N
20 between 20th and 21st Street, that based on the
21 elapsed time, that she would likely be at the bus
22 stop unless she went back or went a different
23 route, and I'm just trying to find out whether
24 that might have been something that was on your
25 mind at the time?



1 A Well I have no doubt that it's something I thought
2 about, but do I remember all the tentative views
3 or theories I had at the time, the answer has to
4 be "no".

5 Q Okay.

6 A But I do remember, as I told you, the checking-out
7 of the back door area to look at the possibility
8 that she could have gone out the back door and
9 down the alley. On the other hand, I had this
10 other notion rattling around in my mind that maybe
11 she had been, in effect, abducted --

12 Q Okay?

13 A -- by a person or persons unknown in a car and
14 taken back around that way.

15 Q Okay. Just --

16 A But of course many types of things occur to you.
17 And I would be the first to say that I was
18 speculating about various aspects of this because,
19 you know, the unique feature of this girl having
20 been, in effect, undressed in the -- in bitterly
21 cold weather in these circumstances, and sexually
22 assaulted, you know, on a bed in the snow, so to
23 speak, naturally gave rise, in my view, to a lot
24 of speculation on my part.

25 Q Okay. This is probably an appropriate spot to



1 break, Mr. Commissioner.

2 COMMISSIONER MacCALLUM: Okay.

3 (*Adjourned at 11:51 a.m.*)

4 (*Reconvened at 1:32 p.m.*)

5 BY MR. HODSON:

6 Q Mr. Tallis, before the break we were talking about
7 your preparation work and we had gone through your
8 memo about your visits in the area, you also told
9 us about your discussions with experts on the
10 secretor issue and we'll deal with that a bit
11 later. Can you tell us about what steps you might
12 have taken to gather information about some of the
13 either prospective witnesses or potential
14 witnesses?

15 A Well, I know I had various sources of inquiry, or
16 I inquired through various sources, and in
17 particular there were people on the west side in
18 Saskatoon that either were friends of mine or
19 acquaintances, you know, who would have alerted me
20 to anything of significance that came to their
21 attention. I've mentioned the one lady that I
22 recall having been mentioned to me by an
23 acquaintance of mine and as a result of that I
24 interviewed her, and then of course I made
25 inquiries in Regina about Wilson, and actually as



1 I told you, I went down, I was in Regina and
2 actually went to the courthouse, as I recall it he
3 was coming up on something, and then I made, you
4 know, a number of inquiries about him and criminal
5 record and proceedings and so on. Now, I made
6 notes of all these things, but after all these
7 years it's very difficult for me to recount in
8 detail what I did, but I certainly did pursue
9 various avenues.

10 Q I think you told us earlier that you did not, for
11 reasons which you stated, interview any of the
12 significant Crown witnesses; namely, Cadrain,
13 Wilson and John. Let's just talk about -- did you
14 interview, do you recall interviewing any of the
15 other witnesses or making inquiries about other
16 witnesses?

17 A Well, I think I've told you about interviewing Ute
18 Frank and Roberts and --

19 Q Yes.

20 A I certainly made inquiries about other witnesses
21 to get background information on them as best I
22 could.

23 Q For example, did you make any effort to talk to
24 any of the Cadrain family members about what they
25 may have observed the morning of January 31, 1969?



1 A Well, now, I have a recollection of this. I
2 didn't talk to Mrs. Cadrain directly, but I recall
3 it coming to my attention that she had said that
4 her young lad had told her that he saw blood on
5 David's trousers. Now, I think that information
6 was gleaned by Miss Wilson making a call to her,
7 but I couldn't be sure --

8 Q Okay.

9 A -- of whether she was the one who did it. I know
10 that I didn't do it directly, but that of course
11 was information that was significant to me because
12 I didn't want the Crown, I didn't know whether --
13 I assumed the Crown didn't know about it, about
14 this, and I of course kept that confidential as
15 far as I was concerned, but I had to be very
16 careful that I didn't stir things up in that
17 connection because there was always the
18 possibility of the Crown calling the youngster.

19 Q Okay. When you talk about the young lad and the
20 youngster, are you referring to someone other than
21 Albert Cadrain, a younger sibling?

22 A Yes. My recollection is that he had a younger --
23 a younger sibling, quite young sibling.

24 Q The evidence that we've heard is that he had a
25 brother at the time who would be five, almost six,



1 named Ken Cadrain. Do you recall if that would
2 have been the age or the name of the person?

3 A Well, I wouldn't recall the name, but I recall the
4 general -- I think the age factor is within my
5 general recollection.

6 Q And would it be someone who was present the
7 morning of January 31, 1969 when David Milgaard
8 arrived at the Cadrain house?

9 A Well, I understood that and --

10 Q And that's when the observation was made?

11 A Yes.

12 Q If we can just go back to Miss Wilson, I think you
13 said you believed she may have called
14 Mrs. Cadrain. Would you have used Miss Wilson for
15 things like that on other files, was that part of
16 what she would do?

17 A She was very good on the phone, had a very good
18 voice, and I think certainly wouldn't frighten
19 people by saying that, you know, she was anything
20 other than calling from my office and that --

21 Q And again, as far as your recollection, and I
22 think you told us that this came from Albert
23 Cadrain's mother, that the youngster had seen
24 blood on David's clothing that morning?

25 A Yes. Now, I assumed that he had seen something



1 that looked like blood.

2 **Q** Okay.

3 **A** But that's the way it came across, that he had
4 said that.

5 **Q** Do you have any -- I'm sorry?

6 **A** But I of course was in no way, was not able to
7 verify that.

8 **Q** Now, on that, did you learn from any source at
9 that time as to any reason why the police may not
10 have been aware of that or the Crown may not have
11 been aware of that?

12 **A** No, I didn't have any indication of that.

13 **Q** Do you recall whether Mrs. Cadrain was taking any
14 position about whether the young lad, I think as
15 you called him, would or would not be involved in
16 the proceedings?

17 **A** Well, I certainly had no knowledge of that at the
18 time, but of course I think you've shown me
19 something which would lend support to that view.

20 **Q** I think there was some evidence to suggest that
21 she may not have wanted her young son to be
22 involved in the proceedings. Do you have any
23 recollection of that at the time?

24 **A** No, I don't. I can't rule it out either way, but,
25 you know, if I were making a guesstimate, I would



1 say that I had no indication of that conveyed to
2 me.

3 Q Now, did you ever hear from Mr. Caldwell any
4 information at the time that the young Cadrain
5 person, that there might be another person in the
6 Cadrain house that morning who witnessed blood,
7 anything of that nature, who witnessed what he
8 thought was blood?

9 A I can't recall any -- I can't recall any reference
10 being made to that.

11 Q I think you had said a bit earlier that you were
12 concerned about stirring the pot, I think were
13 your words.

14 A Yes.

15 Q And I think you said, and please correct me if I'm
16 wrong, were you of the view that the Crown and/or
17 the police may not have been aware of this
18 information from the young Cadrain lad?

19 A That's correct.

20 Q And so I think you said you kept it confidential.
21 What was your concern if you had gone out and
22 stirred the pot, and let's say knocked on the door
23 and asked to speak to Mrs. Cadrain or Celine
24 Cadrain or the young Cadrain?

25 A Well, I think there is always the risk of creating



1 a chain of inquiry for the prosecution wing that
2 would be detrimental to David's interests.

3 Q Were you concerned that the Crown, if they did not
4 know about this information, might find out about
5 it and call this person at trial against David?

6 A I was.

7 Q And as far as making inquiries of Celine Cadrain,
8 and that was the sister who I think was home that
9 morning, did the information that you received
10 about the young lad and what he observed, did that
11 cause you to reconsider or to change what you
12 might have done as far as talking to Celine
13 Cadrain?

14 A Well, my understanding from talking to David was
15 that Celine was not up when he went in and it was
16 only after that he had changed his clothes and,
17 you know, changed his trousers at least that he
18 did see her, and I think he went upstairs actually
19 to say hello to her if my recollection is correct,
20 and my recollection also from talking to David,
21 now that you've mentioned it, and maybe I
22 mentioned it earlier, is that Mrs. Cadrain was not
23 actually home when they first arrived there.

24 Q Okay. Just back to steps that you've taken, and I
25 appreciate, sir, that you don't have your file or



1 your notes, but are you able to tell us, either by
2 recollection or whether it's likely based on your
3 practices, that Miss Wilson would have been
4 involved in perhaps gathering other information or
5 contacting other witnesses or potential witnesses?

6 A She may have. That's the one that particularly
7 sticks out in my mind. I think it's likely, but
8 to give you specifics, I cannot do so.

9 Q Would you have -- oh, I'm sorry.

10 A No, go ahead.

11 Q No, you go ahead.

12 A No, I would say but I can't assist you any further
13 than that at this stage.

14 Q This information that you received about what the
15 young Cadrain lad had observed, would you have
16 shared that with David Milgaard?

17 A I believe I did.

18 Q And do you recall any reaction or response he may
19 have had?

20 A Well, throughout he told me, and I can't recall
21 specific reaction, but throughout the whole of
22 this he told me that he had no blood on him, on
23 his person as I said to you this morning, and that
24 includes clothes that were on his person.

25 Q As far as your -- let's just talk about your, we



1 talked earlier about your professional and ethical
2 observations and how you approach a witness.

3 Would the fact that you had this information that
4 another member of the Cadrain household may have
5 observed something that he thought was blood on
6 Mr. Milgaard, would that have changed anything in
7 your mind as far as what tact you could take with
8 Albert Cadrain, for example, on this issue?

9 A No, because I had discussed blood generally with
10 David and, as I told you, the answer that I got
11 throughout was there was no blood.

12 Q So that you could still take the position with
13 Albert Cadrain that he was mistaken or perhaps
14 lying about his observation?

15 A Yes.

16 Q However, did the knowledge that you had that there
17 may have been another person who observed that
18 that may not have been known to the Crown and/or
19 police, would that have influenced the manner in
20 which you approached the blood issue and
21 cross-examined Albert Cadrain on the issue?

22 A Well, I certainly wouldn't want to put questions
23 in such a manner that it would arouse any interest
24 in having that lad called.

25 Q And I mean again, for example, you wouldn't, I



1 take it you wouldn't question him saying "well, if
2 you saw it, how come your brother didn't see it?",
3 or something of that nature?

4 A No, I --

5 Q I'm not sure that would be an admissible question,
6 but --

7 A No, but it would be a risky question in any event.

8 Q Were you mindful of this, then, in how you
9 approached Albert Cadrain and others on the
10 observations of blood on David's clothes while at
11 the Cadrain house; were you mindful of the fact
12 that there may be other evidence out there that
13 was detrimental that the Crown and/or police may
14 not have been aware of?

15 A Yes, I'm quite sure I was conscious of it at that
16 time. I, you know, I can't sort of summon up all
17 the mental processes that I was going through, but
18 I know that's something that I still recall, in
19 terms of getting that information.

20 Q And again, and you may have already stated this or
21 it may be obvious, but if that evidence had been
22 tendered at the trial, then, is that something
23 that you felt was detrimental to David's interest?

24 A Well it's very difficult to argue that the
25 evidence of a youngster is inherently



1 untrustworthy, and it's more difficult to
2 attribute a motive to a youngster of that age.

3 Q And so, and let me just take that a bit further,
4 in challenging Albert Cadrain I think we talked
5 about what tack you could take and I think you
6 said one would be he was mistaken and, two, he was
7 lying?

8 A Yes.

9 Q With a youngster are you saying it's a different
10 tack or a different approach?

11 A I think, in many respects, it poses greater
12 difficulties.

13 Q If we can go to 006972, please. This is the
14 letter of November 14th, 1969 -- I'm just carrying
15 on, Mr. Tallis, with your preparations -- this
16 would be after the preliminary hearing and before
17 the trial, in fact this is two days after you met,
18 I think our chronology shows that you met with Mr.
19 Milgaard on November 12th, 1969 in Prince Albert
20 in the correctional centre, so this is two days
21 later. And you are asking for an extra copy of
22 the preliminary hearing transcript, and you give
23 two reasons, 1 it says you:

24 "... have left my copy of the transcript
25 with David so that he can peruse the



1 same quite carefully while in Prince
2 Albert."

3 So I take it, from that, that you would have
4 given David Milgaard a complete transcript of the
5 preliminary hearing to read while he was in jail?

6 A Yes, I know that I gave him a copy of the
7 transcript, I don't recall, specifically recall
8 writing this letter but I am quite sure that it is
9 so.

10 Q And so would you have asked David to do anything
11 with the transcript?

12 A I'm sure that I appreciated that, having sat
13 through the preliminary hearing, it was
14 unreasonable to expect him to remember everything
15 that was said and done during the course of the
16 preliminary, but I did want him to have the
17 opportunity to read this over so that we could
18 discuss any points that occurred to him.

19 Q Now the records show that you, after the November
20 12th, '69 meeting you met with him again on
21 December 11th, 1969, a month later. Are you able
22 to tell us from your memory or based on what you
23 see from these, from this letter and the file,
24 whether you would have discussed the preliminary
25 hearing transcript with David Milgaard upon your



1 return on December 11th?

2 A I'm quite sure that I did. Without the benefit of
3 this material that you were able to dig up I was
4 always quite sure that I had, I was positive I had
5 visited him before the preliminary hearing, in my
6 mind I was quite sure that I had visited him after
7 the preliminary hearing, when the -- that is after
8 the transcript had been prepared, but until I saw
9 the statements that you produced, and so on, I
10 would not have been able to identify the dates of
11 my visits or give a clear recollection of the fact
12 of the visit. But, having had a look at those, I
13 know that -- and I do recall, on a visit to Prince
14 Albert after I had left the transcript with him,
15 that I did talk about some things in the
16 transcript. I thought, a long time ago, that
17 perhaps I'd talked to him on the phone about it,
18 but I didn't think so, that it was more likely
19 than not that it was in person. So that,
20 essentially, is the way it unfolded.

21 Now I undoubtedly made some
22 notes of the points that he mentioned. There
23 weren't that many because we'd covered the
24 territory, so to speak, earlier, but I did make
25 some notes, and me -- he -- I think he had



1 scribbled out one or two sort of notes on sheets
2 that he gave me.

3 Q And then if we can go down to the second point in
4 this letter, and the second reason for getting an
5 extra copy of the transcript, you say:

6 "I feel that I may want to get
7 independent legal opinions on certain
8 matters and for this purpose I would
9 like to be able to have an extra copy of
10 the material available, for the perusal
11 of counsel."

12 Are you able to tell us what that relates to?

13 A At this stage, no. I may have wanted to discuss
14 admissibility of evidence issues but, at the end
15 of the day, I did not go outside of the office for
16 an independent legal opinion. I know that
17 Mr. J.M. Goldenberg, Q.C., read over that
18 transcript of the preliminary hearing very
19 carefully and I discussed it with him.

20 Q And was he a senior member of your firm, then, at
21 that time?

22 A Yes. Although he wasn't doing any criminal law
23 work at that time he had, as a younger person,
24 done a fair amount of it, and he not only had an
25 interest in this case, but also all the cases that



1 sort of were going through the office. And I, of
2 course, had articulated to him so I, you know, didn't
3 have any hesitation spending the time, and he was
4 always there early in the morning, and it was very
5 easy to get some time together to discuss matters.

6 Q So if we can now go to -- again, just to finish up
7 on your preparation for trial, we're done with
8 that letter, the -- can you tell us, going into
9 trial, and I appreciate that the Crown carries the
10 burden of establishing the case against Mr.
11 Milgaard, but can you tell us what some of your
12 objectives or defence strategies were going into
13 the trial?

14 A Well, to try and summarize it, I guess one of the
15 things that I wanted to do was undermine the
16 credibility or reliability of some of the
17 witnesses that we have mentioned; secondly, to
18 deal with the serological aspect of the evidence
19 because, on balance, I thought that that evidence
20 was of assistance to David.

21 Q Okay. And this would be the secretor evidence?

22 A Yes. I call it the serological chapter, if I may,
23 or section of it.

24 Q And just on that -- and, again, we'll get into
25 that in more detail -- but would that have been



1 one of the key parts of your defence going in
2 would be the serological evidence?

3 A Yes. Combined, of course, or not only that but
4 the physical circumstances of the homicide, and of
5 course another aspect of it was the time factor,
6 trying to work back from the Trav-a-leer Motel,
7 and based not only on Crown's case but what David
8 had told me, the improbability of a crime of that
9 nature being committed in such a short time frame
10 by him, and that was a major focus --

11 Q Was it that you --

12 A -- on the footing that it would be unreasonable to
13 conclude that he could be the perpetrator of this
14 sexual attack and subsequent killing of this young
15 woman. And of course I don't want to be
16 repetitious but, you know, the unique
17 circumstances that I have earlier alluded to are
18 included in that, plus the other factors that I've
19 mentioned, including the time away from the
20 vehicle being very short and, of course, the lack
21 of any tire or spin marks in the area in question,
22 that is spin marks that the police had actually
23 looked for and not found. Now those are, I know
24 I'm not putting these forward in a disciplined way
25 in which I would have had them in my trial brief,



1 but I'm just trying to summon up my recollection

2 --

3 Q Sure.

4 A -- as best I can for you.

5 Q And just on the timing issue, then, again as far
6 as a strategy or an objective going into trial,
7 would I be correct in saying that there'd be
8 really two areas where you could put this forward;
9 one would be the manner in which you
10 cross-examined witnesses and get evidence out that
11 would identify the opportunity or the time frame,
12 number 1; and number 2, what you would submit to
13 the jury in your closing address; is that correct?

14 A Yes. And that would involve, of course, a
15 consideration of the details that I have just
16 mentioned to you.

17 Q Okay. And you also talked about the condition --
18 "the unique characteristics of the homicide", I
19 think were your words, --

20 A Yes.

21 Q -- and in particular the clothing, and I think
22 what you said is that that would, I take it would
23 be a factor in the timing as well, and I presume
24 that that would be that whoever committed the
25 crime would have to take off the coat, take off



1 the dress, put the coat back on, and that it was a
2 bit of an involved scene; is that fair?

3 A Yes.

4 Q And so would that --

5 A I think I summed it up by saying this was not a
6 gunshot case.

7 Q Okay. Then if we can go; what about the
8 observations of people who saw David Milgaard
9 after the alleged incident that did not observe
10 anything unusual about him and, in particular, did
11 not observe any blood on his clothing; was that --

12 A Well that, of course, was a very important aspect
13 of it, and I just allude here to illustrate it by
14 the Danchuk testimony.

15 Q And when you talk about -- your first point, I
16 think, was undermining the credibility of some of
17 the witnesses, and would that -- and I think we've
18 covered this, but this would be to challenge the
19 evidence that was inconsistent with what David
20 Milgaard had told you had happened; is that fair?

21 A Yes, and also inconsistent with the observations
22 of the Danchuks.

23 Q Right. If we can now move to the Court
24 proceedings, and I think everybody in this room is
25 familiar with preliminary hearings and its purpose



1 in the trial, but maybe you could just explain
2 briefly, for the benefit of the record and the
3 public, what was the purpose of the preliminary
4 hearing as compared to the trial, and what was
5 your strategy and objective at the preliminary
6 hearing?

7 A Well the preliminary hearing, of course, involved
8 a consideration of whether there was sufficient
9 evidence adduced by the prosecution to put an
10 accused person on trial. There were two aspects
11 to this that I think bear mentioning.

12 I wanted, where possible, to tie
13 down the witnesses to their testimony. And here I
14 allude to, for example, Wilson's evidence
15 regarding the time that he was away from the
16 vehicle.

17 And then there was also the
18 possibility and the fact of getting helpful
19 evidence from the mouths of witnesses. And here,
20 by way of illustration, I refer to the Danchuks
21 and then the Trav-a-leer Motel, in terms of no
22 sign of blood and matters of that nature, and the
23 police officers not finding any tire spin marks
24 and so on. I don't want to belabour this, but I'm
25 just using that as an illustration.



1 I know that, at that time, there
2 were two schools of thought on a preliminary
3 hearing. There were some counsel who thought you
4 don't ask many questions at a preliminary hearing
5 because you tip your hand as to potential
6 defences, and I know there was one practitioner in
7 the province who seemed to do it in a very
8 successful way, but I think on balance most people
9 tried to pursue the course that I did, that I just
10 mentioned to you.

11 Q And that would be to pin the witnesses down and to
12 --

13 A And to obtain valuable testimony in support of an
14 accused person.

15 Q Would it also give you an opportunity to observe
16 the credibility of the witnesses and determine how
17 you might approach the same witness at trial?

18 A Yes, it's a -- you invariably try to assess the
19 demeanour of witnesses, their motives and so
20 forth, and this is sort of a constant thing that
21 certainly was on my mind.

22 Q If we could --

23 A I mean in this particular case there was every
24 reason to feel, in my mind, that Mr. Rasmussen at
25 the Trav-a-leer Motel and Mr. and Mrs. Danchuk had



1 no potential axe to grind with anybody, and they
2 expressed their recollection to the very best of
3 their ability, and indeed everything the Danchuks
4 told me essentially coincided with what David said
5 on that particular stop.

6 Q If we could go ahead, and what I propose to do
7 with the preliminary hearing and trial, Mr.
8 Tallis, is to try and deal with them on some of
9 the key witnesses, and rather than break it up and
10 do the preliminary hearing and the trial, is to
11 take some of the key witnesses and look at how you
12 questioned them at both the preliminary hearing
13 and at the trial.

14 But, before I do that, can we --
15 I'd like you to tell us -- and let's focus on the
16 trial -- can you tell us what evidence at the
17 trial, witnesses and/or evidence or issues, that
18 you felt were the most damaging to David
19 Milgaard's position at the trial?

20 A I think if I can take my mind's eye back to the
21 trial -- and it, you know, it's not easy after all
22 these years -- I rather think that the -- and if
23 you'd asked me that question then or shortly after
24 the trial I think that the evidence of Nichol
25 John, as it unfolded, was pivotal, not so much



1 with respect to the evidence that she gave, but
2 with respect to the demeanour that I think came
3 across to the presiding judge and probably to the
4 jury. The course of her examination certainly
5 could leave the impression that she was trying to
6 protect her friend, and I think that my assessment
7 was to -- is to -- was to some extent borne out by
8 the, I think the trial judge intervened at one
9 point to find out whether or not, if I may use the
10 term, 'somebody from the defence camp had got to
11 her'. Now I don't know whether you want any
12 further elaboration on that or not?

13 Q No, we will go through --

14 A Because that's just --

15 Q Yes.

16 A -- distilling it as best I can --

17 Q Yes.

18 A -- for these purposes at this time.

19 Q No, and I appreciate that, I was just looking for
20 the key point. And we will go through your
21 examination or cross-examination of her and look
22 at those comments when we deal with her evidence,
23 but when you talk about the demeanour and the fact
24 that, I think you said, the presiding judge's view
25 that someone had got to her, --



1 A Had perhaps got to her.

2 Q -- or perhaps got to her, would this be by way of
3 explanation to the fact that she had given a sworn
4 statement saying that she witnessed the murder,
5 and yet at trial said she couldn't remember that
6 or remember telling the police that; is that what
7 you --

8 A Yes, that's what I am referring to.

9 Q And so I'm --

10 A What I am -- you can --

11 Q Yes.

12 A -- summarize it under the rubric of the Section
13 9(2) application.

14 Q And what about the fact that the jury heard what
15 was in her sworn statement, which she did not
16 adopt, but actually heard the contents and heard a
17 direction from the trial judge to disregard it?

18 A Well, I think that's part and parcel of my
19 assessment that I just gave to you, --

20 Q Okay.

21 A -- that this was a pivotal aspect --

22 Q Okay.

23 A -- of it.

24 Q And --

25 A And others may disagree, but trying to look at it



1 as objectively as I can -- and I know I wasn't
2 looking at it objectively then --

3 Q Okay.

4 A -- I think that would be a fair assessment.

5 Q Okay. And we'll come back to that and spend a bit
6 of time on that. What other pieces of evidence or
7 witnesses that, when you look back, can you say
8 were damaging based on your observations?

9 A Well, I thought that was the most damaging in the
10 context of the case. Now I know Wilson, you know,
11 went out of his way to improve his testimony on
12 the time factor, and even though he'd given
13 evidence under oath at the preliminary hearing
14 where he wasn't rushed or badgered, he literally
15 doubled the time.

16 Q And so again on Wilson's evidence, and we'll deal
17 a bit with that, he, I think, gave evidence that
18 David had made some damning admissions to him; --

19 A Yes.

20 Q -- is that correct?

21 A Yes.

22 Q Were you -- back at the time, was it a concern, or
23 what did you make of the fact that it was David's
24 travelling companions and friends that were giving
25 the incriminating evidence, how -- what was your



1 observation of how that may have played out with
2 the jury, again just based on your observations?

3 A Well trying to look at it as objectively as I can
4 now, I think that this would certainly be a matter
5 that they would weigh and consider, I don't see
6 how they could avoid doing it.

7 Q And in your view, would they weigh it unfavourably
8 against David Milgaard?

9 A Well, I think they did, but this is just
10 speculation --

11 Q Sure.

12 A -- on my part.

13 Q What about the evidence of Albert Cadrain in
14 general, was that -- how did you view that as
15 being sort of --

16 A Well, I think that, you know, I would view his --
17 now, here I'm speculating because who knows what
18 goes on in the minds of the fact finders, but I
19 think his evidence was probably lower down on the
20 ladder, if I may use that term.

21 Q Okay.

22 A And that I thought, you know, his acknowledgement
23 that when initially spoken to by the police and so
24 forth, he just laughed at them at any suggestion
25 that he or -- that anyone in the car, and in



1 particular David, had anything to do with this,
2 and as I recall it, the trial judge, I believe at
3 my request, gave an additional direction in
4 connection with that testimony which I thought
5 probably would carry a fair bit of weight with the
6 jury in assessing his evidence.

7 Q Okay. What about, and I haven't gone through this
8 with you yet which I will do once we get to that
9 part of my examination, but the motel room
10 reenactment evidence of Craig Melnyk and George
11 Lapchuk, and we've heard a fair bit about that,
12 but where, generally where did that fit in, did
13 that cause you concern, some concern, did you
14 believe that that was damaging to David Milgaard's
15 case?

16 A Well, depending on what view the jury took of it,
17 of course it would be damaging, but I think that
18 fact finders would appreciate the unsavoury nature
19 of some of these people and would take that into
20 account, and I think, I've forgotten now about the
21 nature of the charge to the jury, but I think
22 there was some reference to that, and while the
23 names weren't specifically used, I think that a
24 reference was at least inferentially made to
25 people like the Danchuks and Rasmussen as being



1 quite a different class of witness from this type
2 of witness.

3 Q Okay. What I would now like to do, Mr. Tallis,
4 and we'll start with Albert Cadrain, then go
5 through Ron Wilson and Nichol John, but what I
6 want to do is just go through quickly your
7 preparation, what you would have prepared for to
8 cross-examine these witnesses at the prelim and
9 trial, your approach, and we'll go through parts
10 of the prelim, trial and address to the jury to
11 get a sense of what it was you did with respect to
12 these key witnesses, and if we can start with
13 Albert Cadrain, can you tell us, what was your
14 general impression of Albert Cadrain as a witness?

15 A I don't like to belittle any person, but my
16 assessment of him was that he was not too bright.
17 I may be being unfair when I say that, but you've
18 asked me the question.

19 Q Yes.

20 A And that's my candid answer to you.

21 Q And what about as far as credibility, and again
22 I'm just asking for what your, your recollection
23 of what you would have thought at the time, his
24 credibility, let's say, compared to Ron Wilson or
25 some of the other witnesses. Let's start with



1 Wilson, how would you -- were you able to compare
2 that?

3 A I don't think he would be viewed in the same light
4 as Wilson.

5 Q And why not?

6 A Well, I thought, frankly, that Wilson was a
7 treacherous type of person and once again I guess
8 I would have to say that it was a gut feeling
9 about him, and that's not a term that David used
10 to describe him because we had talked about what
11 their motive might be for, you know, doing this,
12 but at the end of the day that was certainly my
13 feeling.

14 Q And as far as your observations of Albert Cadrain
15 when he testified, do you recall having any
16 observations or conclusions about his credibility
17 or what you thought a jury might think of his
18 credibility?

19 A Well, I thought a jury would, you know, a fact
20 finder might well focus on his reliability in
21 light of the, in light of what he said with
22 respect to his first discussions with the police
23 on it, and having got that in front of them, I
24 thought that they might very well feel that that
25 was the more reliable version, but it's very



1 difficult to assess these things. You know, I
2 could be dead wrong on what was important to the
3 jury.

4 **Q** Did you notice any signs of mental instability or
5 mental illness on the part of Albert Cadrain
6 during any part of the preliminary hearing and
7 trial?

8 **A** No, I didn't. Now, I must say that before the
9 trial I did just make a general inquiry as to
10 whether or not he had been involved in any
11 untoward incidents up in the Meota/Jackfish Lake
12 area, but that wasn't based on any gossip or
13 rumours about his mental condition, I just
14 wondered if he had got into difficulty, say,
15 through perhaps use of drugs or anything, you
16 know, any difficulties that he might have been in
17 with the law.

18 **Q** Did you --

19 **A** Just as before, shortly before trial, and I left
20 it until shortly before trial, I made inquiries as
21 to whether or not any of those witnesses had
22 sought the reward money. I thought it was highly
23 unlikely that they would do so, but sometimes
24 greedy people will do strange things and I was
25 initially turned back on the footing that that



1 information was confidential. I have a
2 recollection of speaking to Mr. Caldwell and it's
3 perhaps because whoever I spoke to at the Police
4 Commission office may have asked me what was the
5 position of the Crown on this because I was
6 pressing for the information and as I recall it,
7 it was through his good offices that I ascertained
8 that no application had been made by any of those,
9 I'll call, any of the three friends for the reward
10 money, but I did make that inquiry just on the off
11 chance somebody had taken that step.

12 Q And I take it that there was no -- I think from
13 the record what we have seen is that it was after
14 the conviction?

15 A Yeah. The information I received was that no
16 application had been made by any one of them.

17 Q Did you make any inquiries as to what type of
18 person Albert Cadrain was or what type of family
19 he came from, anything of that nature?

20 A Well, I know my inquiries indicated that his
21 parents were viewed as quite responsible people
22 and -- that's just a vague recollection that I
23 have now, but as far as other details, I cannot
24 recall. Now, one thing I do recall in this
25 connection is that when I got the jury panel list,



1 I immediately started to vet it, make inquiries,
2 but the first thing I noticed going through it was
3 that Mr. Cadrain was on the list.

4 Q That would be Albert's father?

5 A Yes, and I immediately phoned Mr. Caldwell to make
6 sure that, to get a commitment from him that he
7 would use a stand-aside in that connection, but I
8 also followed it up by, I thought that I really
9 didn't want him even with the jury panel on the
10 opening morning when they were all summoned, so I
11 actually went over to the sheriff's office to
12 arrange to have an appointment made with, get a
13 time for an appointment with the judge to deal
14 with this matter. Naturally, once I got a time I
15 would have had Mr. Caldwell notified too, but the
16 sheriff sort of smiled at me as I came through the
17 door and said I think I know why you are here and
18 then before I hardly got anything out of my mouth
19 he said, well, Mr. Cadrain asked to be excused and
20 the judge has already excused him.

21 Q I see.

22 A So that's something that I remember.

23 Q Just again as far as your approach to Mr. Cadrain,
24 you talked about, and we'll see this in your
25 examination of him, or cross-examination of him,



1 the significance that I think you placed upon his
2 discussions with the Regina police before he went
3 into the police station in Saskatoon?

4 A Yes.

5 Q I think that's an area. Did you find out anything
6 or have any notion as to what might -- what might
7 explain Mr. Cadrain's evidence as compared to Mr.
8 Milgaard's information to you that there was no
9 blood, and again, I think yesterday and even this
10 morning we said two possibilities, one is he's
11 mistaken, or two, he's lying?

12 A Well, in light of what he had said initially,
13 naturally I was looking, as I told you, for
14 evidence of some motive for changing his mind.

15 Q And did you come across anything that might --

16 A But in talking with David, I wasn't able to come
17 across anything, you know, in terms of whether
18 there was friction or jealousy or anything like
19 that that had arisen, and I really didn't come
20 across anything else.

21 COMMISSIONER MacCALLUM: Could I ask you --
22 excuse me, sir. What exactly did he say to begin
23 with that was different, that was changed later
24 on? This is Albert Cadrain.

25 A Well, when he was, when he had spoke to the police



1 in Regina, and I think Mr. Hodson has the details
2 of this, he indicated, at least in his testimony,
3 that David had had nothing to do with this killing
4 and that nobody in the car had had anything to do
5 with it and that he literally laughed in their
6 face when they suggested that. Now, I'm not
7 paraphrasing it very well, but I know -- I know
8 it's in there somewhere.

9 MR. HODSON: Mr. Commissioner, I intend to
10 take Mr. Tallis through his questioning of
11 Mr. Cadrain on this issue.

12 COMMISSIONER MacCALLUM: That's just fine,
13 I just wanted to record what it was.

14 BY MR. HODSON:

15 Q And I suppose, Mr. Tallis, when I go back and say
16 there's two options, maybe I stand to be
17 corrected, I suppose one is I said he's mistaken,
18 two is he's lying, I suppose a third option that
19 again would be consistent with what Mr. Milgaard
20 was telling you, if that's assumed to be true, is
21 that perhaps he did see blood or something that
22 looked like blood, but that it was unrelated to
23 Gail Miller, I suppose that would be a possibility
24 as well.

25 A Well, from my discussions with David, there was no



1 blood.

2 Q Okay.

3 A He certainly left open the possibility that there
4 were, that there were spots of some nature on his
5 trousers that may have been caused by the handling
6 of the battery.

7 Q What effect if any did the information that you
8 had from Mrs. Cadrain about the young lad, I think
9 you called it, about his observations of blood,
10 what impact did that have on your thinking on this
11 issue?

12 A Well, I proceeded on the footing that what David
13 told me was correct, but as I indicated to you
14 earlier, I did not want to stir matters up to the
15 point where the prosecution might call this boy.

16 Q Now, and we touched on this a bit earlier, and
17 apart from his interview in Regina, I think the
18 evidence was, and certainly the statement appeared
19 to have come from Albert Cadrain voluntarily; in
20 other words, that he walked into the police
21 station in Saskatoon and said I have information
22 on the murder, I saw blood on David Milgaard that
23 morning and I think he was involved, or words to
24 that effect. Did the fact that he went in
25 voluntarily to the Saskatoon City Police, can you



1 tell us how that factored into how you might
2 approach this witness at the preliminary hearing
3 and the trial?

4 A Well, I have no doubt that I took it into account
5 in drafting my questions. David and I had not
6 been able to really come up with any motive for
7 him doing this, although I think I decided to
8 canvass the fact that he may have considered
9 himself a suspect and that if he was feeling that
10 way, there might be a desire or tendency to shift
11 blame on somebody else, albeit a friend.

12 Q So you say a suspect. Is that viewed by the
13 Regina police or the Saskatoon police or both?

14 A Perhaps by both.

15 Q And so again, are you telling us that that would
16 be --

17 A And, you know, I can't read what was going on in
18 his mind, but he may have thought he was a suspect
19 in light of approaches and questioning.

20 Q And so are you telling us that that fact, being in
21 front of the jury, then might be an explanation as
22 to why he might make up some evidence about a
23 friend to shift the spotlight off of him; is
24 that --

25 A Well, that's, I'm sure, something that I was



1 thinking about.

2 Q If we could go to 018501, and this is a typed
3 version of Albert Cadrain's March 2nd, 1969
4 statement, this is the first statement that he
5 gave to the Saskatoon City Police. There's no
6 record, Mr. Tallis, of any statement or
7 information from Albert Cadrain in the Regina City
8 Police records. I think there is a vagrancy card
9 with some details about the arrest on vagrancy,
10 but we have never located anything by way of what
11 he was questioned about relating to the Gail
12 Miller matter in any of his answers, so this would
13 be his first statement. We've been through this
14 on a number of occasions, I only want to just
15 touch on some parts of this before we get into
16 your cross-examination of him. Is it fair to say
17 that you would have utilized this statement in
18 your preparations for Mr. Cadrain and how you
19 intended to deal with him?

20 A I'm quite sure I used the information, you know,
21 that I had. If I had this statement at the time,
22 I would have used it and I'm sure that I was aware
23 of the contents in any event.

24 Q And going into the preliminary hearing, certainly
25 this would be likely the best indication of what



1 the witness might say at the preliminary hearing;
2 is that fair?

3 A Yes, that's at least a very good, a good starting
4 point.

5 Q And then just touch on a couple of points here,
6 where he talks about David coming to his house the
7 morning of the murder, "That was the first time I
8 had seen him," and then he says:

9 "I had not known about this murder until
10 a few days ago when I came to Regina and
11 then last night when I got my mother
12 told me about it."

13 And so again, would that have been where you
14 learned first about Mr. Cadrain's encounter with
15 the Regina police?

16 A I think probably that that's where I learned about
17 it.

18 Q And then if we can scroll down to the next
19 paragraph, and here's the reference about the
20 blood, he says:

21 "I was getting dressed and I noticed
22 that Hopy changed his pants & shirt.
23 Now I recall that he had blood on his
24 shirt on the front & bottom and also saw
25 blood on his pants."



1 And then goes on to talk about others changing,
2 and it would appear from this statement that
3 David would have been changing his clothes in
4 front of Albert Cadrain, Ron Wilson and Nichol
5 John; is that correct?

6 A Yes, I think that's --

7 Q He says he changed in front of everyone; correct?

8 A Yes.

9 Q If you can then scroll down to the bottom
10 paragraph and in his statement he says:

11 "I can't remember actually what he did
12 with his soiled clothes but I think he
13 put them back in the suitcase and took
14 them out to the car."

15 And again I think that was consistent with what
16 David had told you; is that right?

17 A Yes, but of course David had told me he didn't
18 know ultimately what had happened to the trousers.

19 Q And I think, and correct me if I'm wrong, that
20 David told you he took them out of Cadrain's
21 house; is that correct?

22 A Oh, yes, I think that's correct, but I was just I
23 suppose jumping a little ahead of you, I'm sorry.

24 Q And then if we can go to the top of the next page,
25 in his statement he talks about on the trip after



1 leaving Saskatoon around Calgary:

2 "... a transport came along after some
3 light blinking & Hopy talked to the
4 driver and gave him some packages out of
5 our trunk. Then he gave us a fake push
6 & we went on."

7 Did you ever find out what this was about, or
8 where did that fit in, if anywhere?

9 A From talking to David I didn't think it fit in
10 anywhere. Now, whether there was some kid talk,
11 as I use that term, I can't remember now, but I
12 didn't attach, or David didn't attach any
13 significance to it and I think he certainly
14 questioned whether it took place.

15 Q Okay. And then there's a reference here --
16 actually, what do you mean by kid talk?

17 A Well, just, you know, saying foolish things.

18 Q Amongst friends?

19 A Yeah.

20 Q And then it says:

21 "Later on Hopy got me alone and asked me
22 if I was asleep last night, I said I was
23 pretty sure I knew what was going on.
24 He told me he was in the Mafia."

25 And again, and we touched on this a bit earlier,



1 but what was your sense of this statement? Is
2 that something -- do you remember what David said
3 about that?

4 A I think he said there was nothing to it and
5 probably that it didn't happen, but without my
6 notes I don't recall, but one of the things I do
7 recall was that I didn't think this would be
8 admissible evidence in this particular trial and
9 that led me to challenge its admissibility along
10 the way.

11 Q And did you inquire whether this might have been
12 kid talk as you referred to?

13 A I'm sure I did, and I think David probably told me
14 that, you know, he didn't have any recollection of
15 anything like this being said.

16 Q Okay.

17 A But my focus quickly came on whether or not it
18 should ever be admitted.

19 Q And then the next paragraph, Albert Cadrain is
20 talking about:

21 "... smoking all that grass I don't
22 remember too good."

23 Was this an issue that concerned you about the
24 drug use and the effect that might have on the
25 recollection of some of these witnesses?



1 A Yes. Of course this could cut both ways in front
2 of a jury, you know, the use of drugs obviously
3 was a matter of concern to them because of the
4 question that was asked with respect to the trip
5 and so on and in my discussions with David he
6 certainly minimized any use of drugs early in the
7 trip. The implication of this is that it was
8 later on in Banff and so on, there's no doubt they
9 were using drugs after they got into Alberta, but
10 I had forgotten the details where they were able
11 to access them or get them.

12 Q And again at the bottom here in his statement he
13 says, this is Albert about after he got back from
14 Regina:

15 "I talked to my brother Dennis all
16 night --"

17 Or first of all he says a bit earlier:

18 "... and I think he is involved."

19 He's talking about David and the murder.

20 "I talked to my brother Dennis all night
21 & discussed this. We decided to tell
22 our parents which we did this morning
23 and they told us to come to the police
24 which we did."

25 Can you tell us what if any concerns you had



1 about this part of the statement and, in
2 particular, how it came to be that Albert Cadrain
3 came into the Saskatoon City Police station after
4 talking to his parents?

5 A Well, this was consistent with the information
6 that I had received about them being quite
7 responsible people and of course he having come in
8 on his own like that undoubtedly posed some
9 problems for the defence in terms of the, of his
10 veracity as a witness.

11 Q And would it, am I correct, is what you are saying
12 is he would tend to be more credible coming in on
13 his own rather than if he had been picked up by
14 the police and sort of involuntarily asked to give
15 information?

16 A I think that certainly was the argument that would
17 be made.

18 Q And then if we can scroll down a bit, there's a
19 reference here about:

20 "Hopy talked about a gun once but I
21 never seen one. I never noticed any
22 blood or knives in the car. I never did
23 see into the trunk."

24 And again we may have touched on that, but do you
25 recall discussing this aspect of the statement



1 with Mr. Milgaard?

2 A Yes. Well, there was -- he certainly never had
3 any gun or anything like that.

4 Q Did he --

5 A I don't recall, you know, without my notes, I
6 couldn't recall the responses, but I think that
7 what he told me was that this was just something
8 that didn't happen.

9 Q And again I think the statement indicates that
10 Hoppy talked about a gun --

11 A Yeah.

12 Q -- as opposed to having one, but do you recall
13 that?

14 A I really don't.

15 Q If we can go to 006723, this is a second statement
16 of March 5, '69 that was given three days after
17 his first statement. If we can go to the next
18 page, and in this statement he says:

19 "On the way to Calgary Milgaard talked
20 mad and indicated he was mad because I
21 was with his girl. He told me he wasn't
22 mad."

23 Again, you had talked earlier about conflict
24 amongst David Milgaard and the others. Do you
25 recall whether this part of the statement again



1 was something that you felt might assist you in
2 cross-examining Mr. Cadrain?

3 A Well, David had indicated to me that there was no
4 friction between them over this issue.

5 Q And then again the next page, right at the bottom
6 he says:

7 "The blood I saw on his clothes was on
8 his shirt tail and on his pants going
9 down. I thought at first he had had a
10 virgin."

11 Do you recall anything being made of that or any
12 discussions with David about that subject?

13 A Well, the bottom line with David was that he
14 didn't have any blood on his clothes or person.

15 Q Okay.

16 A We had talked about possibilities of sources and
17 so on, but he said he didn't have any on him.

18 Q If we can scroll down. In this statement Mr.
19 Cadrain, in addition to his observation in this
20 statement, he says:

21 "Hoppi mentioned he had blood on his
22 clothes & had to change. I did not see
23 any blood on his shorts."

24 And, again, do you recall -- and I appreciate
25 what you said, that Mr. Milgaard said he didn't



1 have blood on his clothes, but here Mr. Cadrain
2 is saying -- attributing a remark to Mr. Milgaard
3 acknowledging that he had blood on his clothes?

4 A I'm quite sure that David told me that he did not
5 say this. This is certainly inconsistent with
6 everything he told me.

7 Q If we can then go ahead to 007869. And this is
8 the preliminary hearing transcript, and this is
9 Mr. Caldwell examining, and I just want to touch
10 on a few of his questions before I go into your
11 cross-examination. 007873, question 49, Mr.
12 Caldwell asks, and this is about when David
13 arrived, it says:

14 "Q And who was home at that time?

15 A My little brother Kenney, and my big
16 sister, she was upstairs in bed and I
17 was sleeping on the couch downstairs."

18 Would you have taken from this answer, Mr.
19 Tallis, that Kenny, being the little brother, may
20 have been the person that Mrs. Cadrain had
21 indicated had observed blood on David Milgaard
22 that morning?

23 A I'm sure I did, but I don't recall the name, but
24 the age range that you gave me, if he was in that
25 age range, I would say that that's likely correct.



1 Q And the next page, again just touch on a couple of
2 his answers to Mr. Caldwell, and Albert, here,
3 says:

4 "A Well, they were kind of nervous and
5 running around, I guess, and Hoppy said
6 'I got blood on my clothes and I have to
7 change' - well, first before that, he
8 said, 'we have to -- we got to get out
9 of town, we're going to Edmonton' ...".

10 And then, on the next page, it says here that:

11 "... he changed right in front of all of
12 us."

13 And I think that's fairly consistent with his two
14 statements; would you agree?

15 A Yes, I believe so.

16 Q Yeah.

17 A Without reading right through them.

18 Q Right. And then the next page, at question 71,
19 Mr. Cadrain talks about -- I think these are,
20 again, David's clothing, and he says acid all over
21 the coat:

22 "... the crotch of his pants was all
23 ripped up the back end and he had blood
24 on his shirt and on his pants."

25 And certainly the part about the crotch, or the



1 pants ripped up the back, that would be
2 consistent with what David had told you?

3 A Very much so.

4 Q Then to 007879, question 100 -- and, again, this
5 is all Mr. Caldwell, I will tell you when we
6 switch to your cross-examination -- he asks him
7 about Albert has, Albert Cadrain has testified
8 that the -- David Milgaard's soiled clothing went
9 into his suitcase, out to the car, and then he is
10 asked:

11 "Q Did you see anything done with the
12 suitcase then?

13 A No, it was put in the back of the car,
14 in the trunk of the car and later on
15 on the trip one night, I'm pretty sure
16 David gave the suitcase to a transport
17 driver or something."

18 And I think he may have expanded on that and that
19 may have been related to the fake push part of
20 his statement; do you have any recollection of
21 this, Mr. Tallis, and how you might have dealt
22 with that?

23 A Not, not right offhand.

24 Q 007889. This is just a reference to the driving,
25 and Albert Cadrain is talking about David



1 Milgaard's driving to Calgary, he says:

2 "A Well, there was ice an inch thick on the
3 highway and it was dangerous, he was
4 going as fast as the car could go and
5 the girl was screaming and crying her
6 head off, he still wouldn't slow down,
7 he just tried to go faster."

8 Now I think we've talked about this before, and I
9 think certainly you were going to challenge the
10 admissibility of this evidence, but do you recall
11 whether what Mr. Cadrain says here; can you tell
12 us, would this be consistent with what David
13 Milgaard had told you, or are there some
14 differences?

15 A Well I recall there were differences. He, you
16 know, he said "I like driving fast", but the rest
17 of it I'm sure he challenged.

18 Q If we can then go to 007904. Actually, just go to
19 the previous page. This is where Mr. Caldwell
20 starts examining him about his going to the
21 police, and we have been through most of this, but
22 he talks about working in Regina and I don't think
23 there's any mention there of going to the police
24 or being picked up. I think he talks about being
25 picked up by the police for vagrancy, but not



1 about any discussion about the Gail Miller matter,
2 and then:

3 "Q And after you got home to Saskatoon, did
4 you have occasion when you got here to
5 go to the police department?"

6 And then did you eventually go to see the police,
7 yes. And then the next page, and again talks
8 about him going into the police the next day and
9 giving a statement. So at that, I think that's
10 how that's dealt with, and I'll touch, I'll go in
11 a moment, Mr. Tallis, to your cross-examination
12 on this subject.

13 If we can actually go to the
14 next page, and this is again Mr. Caldwell at the
15 prelim, they are talking about after, I think,
16 Ron and Nichol left the car in Calgary, and:

17 "Q And did you have any conversation while
18 you were in the car with him alone?

19 A Yes, he said, Shorty stay here, so --
20 I want to talk to you. I got to tell
21 you something. They know something,
22 you know, something that I have done.

23 Q Yes.

24 A And he said, I'm in the Mafia gang and
25 I got a gun in the back seat here and



1 I'll show it to you, but he never.

2 Q Mhmn.

3 A And he says you go kill those two off
4 and I'll tell you and I just laughed
5 at him, I didn't believe him and he
6 left it at that."

7 And again just on this, I think this is a bit
8 further than what's in his statement, his
9 statement talks about the Mafia and a gun but not
10 about the comment about going off to kill, I
11 think it's referring to, Ron and Nichol. Do you
12 have a recollection of how you dealt with this
13 information or what you thought of it at the
14 time?

15 A Well, I'm quite sure David told me that there was
16 just nothing to that.

17 Q Did you have any questions, in light of this
18 statement, about Albert Cadrain's credibility?

19 A Well, it certainly concerned me, as to what his
20 motive was for doing what he was doing to a
21 friend.

22 Q Okay. And if we can go to 007907. And, again,
23 this is I think where Mr. Caldwell brings up Mr.
24 Cadrain talking about the murder in Regina, and
25 again this is his question:



1 "Q Now, at any time, from the time when
2 David and the other two came to your
3 house the morning of, through this trip
4 and back to Saskatoon, during any of
5 this time, were you aware of any murder
6 in Saskatoon?

7 A I was in Regina when I was out in jail
8 and they police, they asked me. That
9 was about the same -- they asked me
10 what time I left Saskatoon, you know.

11 Q Mhmn.

12 A And they said that was about the same
13 time as the murder, but I never
14 thought about it.

15 Q Who said that?

16 A The policeman."

17 And then I think you objected regarding the
18 admissibility, presumably, of hearsay evidence.
19 And the next page, there is a reference to the
20 vagrancy charge, and then I think Mr. Caldwell
21 concluded his examination.

22 So then if we can go, if we
23 start here, if we can just scroll down this
24 starts your cross-examination. If we can go to
25 007915, and there is an exchange here, I don't



1 know that we have to go through it all, but you
2 were asking Mr. Cadrain about a skirmish or a
3 fight between Ron Wilson and David Milgaard over
4 the keys and them exchanging bad words, fighting
5 for the keys. And, again, would that be trying
6 to identify whether there was friction amongst
7 these people?

8 A Yes.

9 Q And that had been, I think you've told us, one of
10 the ideas or thoughts you had going into the
11 proceedings, to see whether there would be some
12 motive or some reason that Wilson or John or
13 Cadrain might be upset at Mr. Milgaard; is that
14 right?

15 A Yes.

16 Q And then skip ahead to page 007934, and this is
17 where you question Mr. Cadrain about exactly where
18 he saw the blood and how significant it was, and
19 again we have been through this. You say he was
20 wearing a sweater:

21 "Q ... you saw blood on the shirt?

22 A Yes.

23 Q ... you didn't see any blood on the
24 sweater?

25 A No.



1 Q And the sweater was over the shirt?

2 A Yes."

3 And then the next page.

4 "Q ... as far as the trousers are
5 concerned, you say that there was blood
6 on the front of them?

7 A Yes."

8 And then just scroll down to the bottom, you are
9 talking about how much, and you say it:

10 "A ... a bit of ink and spilling it on
11 you."

12 "A It sprinkles.

13 Q And I gather from what you told my
14 learned friend, that this blood was so
15 obvious when you first saw him that you
16 wouldn't have to really look for it to
17 see it?

18 A Not when he started stripping.

19 Q ... And you saw it on him, did you,
20 right when he came in?

21 A No, I never noticed it when he had his
22 coat on and then I noticed it and he
23 said I got some blood on my clothes."

24 And then I think from reading the transcript, Mr.
25 Tallis, it sounds like Mr. Cadrain is saying he



1 saw blood on the shirt but not on the sweater
2 over top, but on the shirttail and on the front
3 of the pants, but that not a lot of it; would
4 that be -- am I -- is that a fair read of that?

5 A I think that's a fair assessment.

6 Q And so not -- I think he ended up describing it
7 about an inch and a half diameter, I'll see if I
8 can find that, I think that's in there. Was it
9 your sense that there was not, that the way he
10 described it, that there was not a lot of blood
11 that he saw?

12 A That's correct. And, of course, my view was that
13 what he did say he saw was inconsistent with what
14 the Danchuks had said about seeing no blood.

15 Q If we can skip ahead to page 007947 and, again,
16 the question of blood comes up.

17 In reviewing the transcript, Mr.
18 Tallis, it appears that at least on Mr. Cadrain's,
19 and perhaps some of the others, that in
20 questioning him, that you would go from one
21 subject matter to another and then back to another
22 subject matter; was that a technique that you were
23 employing in how you cross-examined him?

24 A Yes. I was employing what I call, for want of a
25 better term, the skipping technique, to try to



1 skip from one area to another, because in my
2 experience sometimes a person who had -- who was
3 sort of programmed with their story in a
4 chronological order would not be able to carry
5 through with it if you employed the skipping
6 technique.

7 Q If we can then go to 007949. And again, this is
8 where you had asked him about seminal stains being
9 observed, and he said:

10 "No, I never noticed any."

11 And I take it that that would be along the lines
12 of that if the, if he had been involved with Gail
13 Miller in a sexual act, that one might expect to
14 see seminal stains on his clothing; is that fair?

15 A Yes.

16 Q If we can go to 007951. Again, this is just
17 asking Albert whether he saw any blood on the dash
18 of the vehicle when they left, and we see this --
19 and I won't bring them up -- but with some of the
20 other witnesses who were in the vehicle about
21 whether they observed any blood or anything
22 unusual in the car. And I take it that that would
23 be evidence that you would try and have in front
24 of the jury along the lines that, if Mr. Milgaard
25 had been involved in this crime and had blood on



1 his clothing as suggested by Albert Cadrain and
2 Ron Wilson, that one might expect to see it
3 elsewhere in the car?

4 A That's correct.

5 Q This might be, before -- we're now turning into
6 the Regina police visit, it might be an
7 appropriate spot to break, Mr. Commissioner.

8 (Adjourned at 2:56 p.m.)

9 (Reconvened at 3:18 p.m.)

10 BY MR. HODSON:

11 Q If we could go back to 007869, which is the
12 preliminary transcript, and go to 007954, I now
13 want to go into the area of your cross-examination
14 of Mr. Cadrain at the preliminary hearing that
15 deals with his visit or stay in the Regina police
16 station and his questioning regarding the Gail
17 Miller murder.

18 Would it be fair to say, Mr.
19 Tallis, that other than what was in his statement,
20 which I showed you, that just has a very brief
21 remark, would you have had any other information,
22 for example from the Regina police or anywhere
23 else, between what went on between Mr. Cadrain and
24 the Regina police?

25 A No.



1 Q So would this questioning at the preliminary
2 hearing, would in part this be, for lack of a
3 better word, discovery-type, trying to find out
4 from him what might have happened to see how that
5 might be used at trial; would that be a fair way
6 to --

7 A Yes. I was speculating as to what might have
8 happened, and so if there was anything --

9 Q So we'll follow through --

10 A -- if there was anything of value to be used at
11 trial.

12 Q So would it be fair to say that there would be
13 less risk in asking a question where you might not
14 know the answer at a preliminary hearing as
15 opposed to trial, that in other words if you got
16 something you didn't expect it's less harmful at a
17 prelim than at a trial, unless of course you bring
18 out information that the Crown didn't know about;
19 is that fair?

20 A Yes, that's correct.

21 Q So here at the bottom, we'll just go through a
22 couple of these, and talking about police officers
23 that came to see him in jail in Regina, and he
24 says:

25 "A There was a bunch.



1 Q You say a bunch of policemen?"

2 Next page:

3 "Q When we're talking about a bunch of
4 policemen coming to see you, can you
5 tell us how many approximately?

6 A They were detectives.

7 Q They were detectives?

8 A Yes.

9 Q By that you mean they were in plain
10 clothes?

11 A Yes.

12 Q But they introduced themselves to you as
13 detectives, did they?"

14 And again, would that be significant, the fact
15 that detectives would be seeing a young fellow
16 picked up on a vagrancy charge?

17 A Yes.

18 Q And then to the next page, he says all of them
19 were in the room with him, how many, and again he
20 says:

21 "There was five anyway."

22 Five. Again, did that, was that information that
23 surprised you, that five detectives would be in a
24 room questioning him?

25 A Well I thought it was quite a number.



1 Q Can you recall whether you had doubts about what
2 he was saying?

3 A No, I rather thought that there probably were a
4 number. Now whether five or not would be
5 accurate, I wasn't able to tell, but I certainly
6 knew that he was consistent in saying that there
7 were many or quite a number.

8 Q And if you can scroll down, at question 458 you
9 ask him about whether he was manhandled or cuffed
10 around, and he says:

11 "A No, but they stripped me."

12 You say:

13 "Q Oh, well that's maybe just as bad. I
14 take it that you were stripped against
15 your will?

16 A No."

17 And then they go on to check him and I think,
18 later on, it's about checking for some drugs.
19 And, again, would that have been significant,
20 this treatment in the police station, as far as
21 your approach to Mr. Cadrain?

22 A Yes. I wanted to try to capture the atmosphere.

23 Q And then the next page, please. And then at the
24 bottom you carry on, it says:

25 "Q You were in a room with these officers,



1 was this in the room where you were
2 staying or what room was it in?

3 A No, in the police station.

4 Q Oh, they came and took you to the police
5 station?

6 A Yes.

7 Q And this had nothing to do with the
8 vagrancy charge?

9 A No.

10 Q It had to do with the Gail Miller
11 murder, as you found out?

12 A No.

13 Q You knew nothing about it?

14 A I didn't know nothing about it.

15 Q I see.

16 A They told me.

17 Q Oh, they told you. You learned about
18 it?

19 A Yah."

20 And then he goes on to talk about when he came
21 home and talked to his brother, and then you go
22 back and say:

23 "Q Yes. We're not talking about that now.
24 When you were down there with the police
25 officers, you learned of the Gail Miller



1 murder, is that correct?

2 A Yes."

3 And then about who mentioned it to you, I think
4 one or two. And then if we can skip ahead to
5 007960. And again, I just want to touch on the
6 highlights, Mr. Tallis, the entire transcript is
7 in on the record for this Inquiry as to what was
8 questioned. But here at 501, and this is again
9 talking about while he was with the -- maybe just
10 scroll up. You will see it refers to being
11 interviewed in Regina by a police officer where
12 you were stripped and interviewed, and then you
13 say:

14 "Q And I take it that on that particular
15 occasion you were questioned with
16 respect to the tragic killing that had
17 taken place in Saskatoon?

18 A Yes.

19 Q and I take it that you were asked why
20 you left Saskatoon ...

21 A Yes.

22 Q In such a hurry?

23 A Yes.

24 Q Isn't that right?

25 A Yes.



1 Q And it was pointed out to you that it
2 was rather strange that you had taken
3 off the same morning?

4 A Yes.

5 Q Is that correct?

6 A Yes.

7 Q And I take it you realized that you were
8 a suspect?

9 A I never took it then, but when I came
10 home, that's when I put the puzzle
11 together."

12 And then top of the next page:

13 "Q You realized that you were a suspect
14 then?

15 A Yes.

16 Q Because of something that your mother
17 said to you, I suppose?

18 A Yes, and she reminded me and I talked
19 to my brother about it.

20 Q I see. Well now, coming back to when
21 you were talking to the police officers
22 in Regina, I presume that you were asked
23 whether you had seen David Milgaard that
24 morning?

25 A No.



1 Q You weren't. Were you asked if you had
2 seen Ron Wilson that morning?

3 A No.

4 Q Well, were you asked who was with you
5 that morning?

6 A Oh, yah, yah, I was asked all this."

7 And he says:

8 "A You're mixing me up.

9 Q Just take your time. You were asked by
10 the police officers in this room in
11 Regina if you had seen David Milgaard
12 that morning?

13 A Say that over again.

14 Q Were you asked if you had seen David
15 Milgaard that morning?

16 A The morning -- He never said David
17 Milgaard, he said who were you with
18 ...

19 Q Who were you with.

20 A When you left town.

21 Q I see. And you told them you were with
22 David?

23 A Yes."

24 And then it goes on about who else was there:

25 "Q Well, were you asked if you had seen



1 anything strange or unusual?

2 A No.

3 Q You weren't? In any event, you didn't
4 make any mention to them at that time of
5 having seen blood on David?

6 A No.

7 Q And did you make any mention to them at
8 that time of David driving like mad?

9 A No, I never, no.

10 Q You never. Well, what did you tell them
11 on that occasion then?

12 A Well, I said, you know, they were
13 trying to put the blame on me, so I
14 looked at them and I laughed, you
15 know, they said it was around your
16 place, so they just left it at that
17 and after, when I got home, I put the
18 puzzle together and I said it could be
19 him and it could not be, but I'll just
20 go in case."

21 And if we can pause there, Mr. Tallis, I think
22 I've read through the significant parts of that.
23 Can you elaborate a bit on where you were going
24 with Mr. Cadrain and what you were trying to
25 achieve with him?



1 A I think the best way I can put it -- and, here,
2 this is trying to reconstruct my mental processes
3 because, as I've told you, it's very difficult to
4 exhume them in detail at this late stage -- but
5 number 1, I was trying to establish the
6 potentially compulsive atmosphere that he was
7 under or that he was in, and the fact that if he
8 considered himself a suspect that might, of
9 course, have affected his decision to go to the
10 police in Saskatoon.

11 But at the same time, and in a
12 sense this may sound a bit contradictory, but I
13 wanted to leave it open to argue that,
14 notwithstanding the compulsory atmosphere that he
15 was in, he did not have -- he did not point to
16 things like blood or other incriminating details
17 when he was clearly asked about this by the police
18 in Regina. So that, in general terms, is the best
19 way that I can put it to you in my reconstruction.

20 Q Okay.

21 A But there may be additional factors, too, that I
22 had in mind that I can't recall at this stage.

23 Q And again, just on the next page, there is a few
24 other little -- or items here where I think Mr.
25 Cadrain said that the police also told him. You



1 say:

2 "When the blame was being put on you,
3 how did they go about doing it."

4 And I think this is talking about the Gail Miller
5 murder:

6 "I mean, you say that they said right in
7 your area, you left town that morning,
8 what else was said to you?"

9 A Well, they said, don't hang around the
10 streets, you know, don't go back to
11 school and go back home and he says
12 don't hang around the streets because
13 you will find yourself dead in an
14 alley."

15 And, again, would that be along the lines as --
16 of you told us, the compulsive or the nature or
17 the atmosphere?

18 A Yes. Now maybe that's not a good term, but it's
19 the one that comes to my mind.

20 Q Go to 007969. And this is again where you
21 questioned him about when he went in in Saskatoon,
22 again this is at the preliminary hearing, and
23 about hearing about it when he got back to
24 Saskatoon. And at 698, if you can actually scroll
25 down:



1 "Q And after your mother had talked to
2 you?",

3 and, again, this is about the murder:

4 "A Yes, because it had reminded me.

5 Q I see. Your memory came back then?

6 A Yes, the blood on the clothes."

7 You say:

8 "Q Yes, but when you were talking to the
9 police officers in Regina

10 A Yes.

11 Q You didn't remember that?

12 A No, you can't think when you're
13 starving."

14 And then the next page:

15 "Q Pardon?

16 A You can't think when you're starving,
17 I guess.

18 Q Well, can you think when you're
19 stripped?

20 A No, maybe that's why."

21 And, again, would that be what you've told us
22 about trying to establish why he wouldn't have
23 told the Regina police about his observation of
24 blood?

25 A Well, as I say, there was sort of two limbs to



1 this. In a sense I was looking at the possibility
2 of having a choice of which path I went down.

3 Q And if we can go to 007977, and here is a mention
4 about the drugs, and you ask him:

5 "And I suggest to you that really in
6 your own mind many things aren't too
7 clear as to what was said and done?

8 A Yes.

9 Q Because of having had grass?

10 A Yes.

11 Q Is that right?

12 A Yes.

13 Q And I take it that you in fact told the
14 police, you have said that you don't
15 remember things very clearly because of
16 the use of drugs?

17 A Yes."

18 So, again, would this be what you told us earlier
19 about his -- the reliability of his evidence?

20 A Yes.

21 Q Now to 007990. Down at the bottom you are asking
22 him about the observations of blood, again, and
23 you say:

24 "Q Were any of your brothers and sisters
25 around when David came in?



1 A Yes, I had a little brother, Kenney,
2 he was up and making noise.

3 Q How old is he?

4 A Three I guess.

5 Q Three?

6 A No, no, six.

7 Q And any others that were around?

8 A Seleen, my big sister."

9 Etcetera. Again, would this have been, this line
10 of questioning, would this be related to the
11 information you had from Mrs. Cadrain about
12 observations that a youngster may have seen blood
13 on David Milgaard that morning?

14 A Well I was trying to tread cautiously, but -- and
15 also exclude the sister, Celine, from having been
16 there at the relevant time.

17 Q And so when you say "exclude her", so that
18 establish that she wasn't there and observed
19 David's clothing before he changed?

20 A That's right.

21 Q Were you concerned that she might come back and
22 say that she did see blood?

23 A Well, there was always that possibility.

24 Q And if she had said that she had not seen blood I
25 think you told us earlier you had concluded that



1 she only saw David Milgaard, according to what he
2 told you, after he had changed his clothes?

3 A That's right.

4 Q Next page. And there's some questions here, I
5 think I can quickly summarize it, where you ask
6 him about whether he had been with Nichol, and he
7 says yes, he went to Regina with the police and
8 was questioned together with Nichol John; do you
9 recall the significance of that information?

10 A Well, I was interested in the circumstances under
11 which he was questioned, and by whom.

12 Q If we can then now go to the -- call up 179259.
13 And we touched on these earlier, on the first day,
14 and I think you told us these would have been your
15 summary notes of the preliminary hearing that you
16 would have used to assist you in examining these
17 witnesses at trial; is that correct?

18 A Yes. But, more importantly, I had that index made
19 of the transcript to have a quick reference to
20 witnesses; and secondly, with respect to each
21 witness -- I think I told you this before -- I set
22 up a separate segment for trial with a draft
23 examination-in-chief, and in -- or a draft
24 cross-examination I should say, and in that
25 particular file I would have the statements,



1 memoranda, and in particular a photocopy of the
2 evidence at the preliminary with the section of
3 the summary, the index summary, really fastened on
4 the -- to the top of that particular segment of
5 the transcript.

6 Q Okay. And if we can go to the next page, and I
7 think you've told us some of this underlining
8 would have been yours, is this handwriting yours
9 here where it says:

10 "Watch this"?

11 A I'm quite sure that would be my handwriting.

12 Q And so, again, this relates to Albert -- a summary
13 of Albert Cadrain's evidence about his
14 conversation with David?

15 A Yes.

16 Q Would that just be a reminder to you about an area
17 to be careful of?

18 A Yes.

19 Q And then if we can go to the last page, 179284,
20 are you able to -- this is your handwriting,
21 'jacket, sweater, police in Regina'?

22 A Now I know the, I'm quite certain that, certainly
23 'jacket, sweater, police in Regina', the phone
24 number, I'm not sure those are my --

25 Q Actually, I think it says 'page 19', --



1 A Yes.

2 Q -- '455'; that may not be yours?

3 A Okay, yes, I'm -- that probably is my handwriting,
4 and then 'no signs of seminal stains', I think it
5 probably is. But on the words 'jacket and
6 sweater' I'm quite clear that that's mine.

7 Q Okay. If we can go ahead to 174908, please, and
8 now this is the transcript of trial?

9 A Yes.

10 Q Based on what you learned from Mr. Cadrain at the
11 preliminary hearing, would that have influenced
12 how you would propose to deal with his evidence at
13 trial?

14 A Yes, and, you know, I take that into account and
15 any other relevant information I was able to dig
16 up and which would be in my trial brief, but I
17 drafted up a cross-examination with the benefit of
18 the preliminary hearing and any other information
19 that I thought was available there.

20 Q And did you -- again, and I appreciate I'm asking
21 you to go back many years, but I think you told us
22 as how you were going to try and deal with
23 Cadrain, to challenge at least the incriminating
24 evidence about the observation of blood. After
25 the preliminary hearing and the information you



1 received at the preliminary hearing about his stay
2 in Regina, did you feel you were better off,
3 neutral or worse off than before the preliminary
4 hearing as far as dealing with his incriminating
5 evidence?

6 A I'm sure at the time I thought I was better off.

7 Q On the basis of what you got out of him?

8 A Yes.

9 Q From the --

10 A Yeah.

11 Q And maybe that's a bad way of putting it, but the
12 evidence that you elicited relating to his stay in
13 Regina and what he did not tell the police there;
14 is that fair?

15 A That's right.

16 Q Now, at the trial, I'll just skip ahead, this is
17 the examination-in-chief, and if we can go to
18 174916, again I don't propose to go through this,
19 but this is where he gives similar
20 evidence-in-chief at the trial about his
21 observations of blood and David changing his
22 clothes.

23 Then if we can go to 174934, and
24 at the bottom, this is Mr. Caldwell examining:

25 "Q Now, once you got out of Saskatoon did



1 you see anything of an item being
2 handled in the car?

3 A Yes.

4 Q What was the item?

5 A A compact.

6 Q What was the first you saw of the
7 compact?

8 A When - I think it was Nichol - she
9 picked it up and says "Whose is
10 this?".

11 And then scroll down to the bottom, it talks
12 about where everybody was sitting, and:

13 "Q Who said what?

14 A David said - no, he just grabbed it
15 and he opened up the window and flung
16 it out.

17 Q And which window?"

18 Can't remember. Now, he did not have this in his
19 statements and nor do I believe did he testify
20 about this at the preliminary hearing, and in
21 light of what Mr. Milgaard had told you about the
22 compact, can you tell us what you could have done
23 with -- let me rephrase that, I'm not asking it
24 very well. The fact that he did not have it in
25 his statement, did not testify to it at the



1 preliminary hearing, one option would be to
2 challenge him on his recollection and say why
3 didn't you have that in your statement, why
4 didn't you say it at the preliminary hearing; is
5 that fair?

6 A Yes.

7 Q In light of the fact that Mr. Milgaard told you
8 that this event happened, did that preclude you
9 from taking that tact with Mr. Cadrain on this
10 point?

11 A Well, I felt I was under an ethical constraint not
12 to suggest a fact which I knew not -- that I knew
13 was not so.

14 Q Then if we can go to 174940, and this, just for
15 the record, I think this is where, this is in the
16 course of Mr. Cadrain's evidence and asked to
17 raise a matter in the absence of the jury, and
18 then the next page, and this is where Mr. Caldwell
19 says:

20 "My Lord, this my learned friend
21 suggested is to be raised in the absence
22 of the jury and I intend to ask the
23 witness about a conversation between him
24 and the accused in Calgary on one of the
25 occasions they were there during this



1 whole circuit."

2 "What does it relate to?"

3 Mr. Caldwell:

4 "It relates to remarks made by the
5 accused to this witness about three or
6 four things including Wilson and John -
7 what should or might be done with them.

8 I can give you the gist of it, My Lord."

9 And then go to the next page, and there's a
10 reference I think to Mr. Tallis, you provided the
11 reference, and this in fact relates to I think
12 the getting a gun, and you recall at the
13 preliminary hearing and in his statement
14 Mr. Cadrain talked about a conversation where he
15 claims David Milgaard told him that Ron and
16 Nichol knew too much, that he had a gun, that he
17 was in the Mafia and that he wanted Albert
18 Cadrain to get rid of them, and it appears here
19 that after reading the questions the judge said:

20 "No."

21 "Your Lordship won't hear me on it?"

22 "I won't allow you to ask the
23 questions."

24 And so that would have been the ruling with
25 respect to that information; is that correct?



1 A Yes.

2 Q Do you recall whether -- would you have filed any
3 brief or cases or anything on this point?

4 A I can't recall specifically, but having read this,
5 I certainly infer that I had told Mr. Caldwell
6 well in advance that I was going to challenge the
7 admissibility and he of course appreciated that
8 and indicated that the jury should retire so the
9 matter could be dealt with. I'm inclined to the
10 view that we followed the practice, or that I did,
11 that when you are going to raise a point of
12 admissibility, sometimes it's conveyed to the
13 judge and if you have authorities on which you are
14 going to rely, you simply have the registrar or
15 clerk take them in to him, and Chief Justice Bence
16 I know was one of the judges that often preferred
17 to deal with it that way because it saved time and
18 in this case I'm quite sure that he had read the
19 authorities on which I was relying and ruled
20 accordingly.

21 Q And, sorry, are you able to tell us either by
22 memory or what your practices were at the time as
23 to whether you either would have or might have
24 submitted authorities on the admissibility of this
25 conversation to Chief Justice Bence prior to this



1 issue being raised in Court?

2 A In looking at the record and so forth, I'm quite
3 sure that I did.

4 Q And would that have been a subject matter that you
5 had briefed?

6 A Yes.

7 Q And would you have obtained cases on this issue or
8 authorities on this issue?

9 A Yes, I'm quite sure that I had.

10 Q Then if we can go to 174950 -- actually, if we can
11 go to 948, go back two pages, so Mr. Caldwell is
12 examining him and he's asked him about,
13 Mr. Cadrain said he first learned about the murder
14 in Regina:

15 "... then, when you got home on the
16 Saturday night --"

17 He's talking about Saskatoon,

18 "-- and went home as you say some of
19 your people were home?"

20 A Yes.

21 Q And without going into any details did
22 you learn something more about it?"

23 And then you said I would like to make some
24 observations, and then the members of the jury
25 leave, if we can go to the next page, and I think



1 that the gist of this is that Mr. Caldwell was
2 going to ask what he learned about the murder and
3 you then object.

4 "... I don't know how far this is going.
5 We have it in evidence now that he
6 learned of it at the Regina City Police
7 and it seems to me that it would be
8 improper to start rehashing it again at
9 this stage."

10 "It seems to me that perhaps at the very
11 best it is open to him to adduce when he
12 first learned of it and he said that was
13 in Regina; but after that it seems to me
14 that there is no purpose and it's not
15 relevant to adduce it."

16 And again just maybe on the next page, you say at
17 the bottom:

18 "Well, I think that the only possible
19 purpose that could be served by it is an
20 attempt to bolster in the eyes of the
21 jury the evidence of this witness and it
22 is tantamount to in effect calling
23 supporting evidence to show - by
24 analogy, suppose a witness is in the box
25 and then you call a doctor or something



1 like that to say - well, this individual
2 isn't bright enough to tell the truth
3 and if he went he or she would tell the
4 truth."

5 And then I think the judge ended up ruling that
6 he would allow some questions on that. Are you
7 able to recall this issue, Mr. Tallis, or
8 elaborate on any of that?

9 A Well, the only thing I can say, having read it, I
10 certainly wanted to contain the scope of this type
11 of inquiry because I did not think that it was
12 properly admissible, and a great deal, I must say,
13 would depend on how far Mr. Caldwell intended to
14 try to go. I wasn't sure of the scope of the
15 proposed inquiry and I wanted to deal with it
16 without having to stand up in the presence of the
17 jury and say I challenge the admissibility of that
18 evidence. I framed my approach as being a point
19 where I would like to make some observations in
20 the absence of the jury.

21 Q And was your concern that Mr. Cadrain would get
22 into what was told to him by others; namely,
23 hearsay about the murder?

24 A Yes, I was.

25 Q And the next page, I think there's only a couple



1 more questions, he's asked:

2 "... when you got home ... did you learn
3 something more about the ... murder than
4 you had learned in Regina?

5 A Yes.

6 Q And did you go to the police and tell
7 them what you knew?

8 A Yes.

9 Q When was that?"

10 The next day, and then that was the end of the
11 examination. Was there anything there in those
12 questions that caused you concern?

13 A Well, I didn't think there was any basis on which
14 the judge would disallow those questions.

15 Q If we can go to 174956, please, and again this is
16 your cross-examination of Mr. Cadrain, and this is
17 where you have him identify the size of the blood
18 that he observed and you say I'm not going into
19 the colour now, you talk about a pen being shaken
20 just like a sprinkle effect:

21 "A Yes.

22 Q . . Rather than blotches? Is that
23 correct?

24 A No - blotches ... a big blotch."

25 And then you say.



1 "Q . . You told me about like a sprinkle?

2 A Yes - well the same thing ...

3 Q Pardon?

4 A Just about the same thing.

5 Q No, no; when I speak of a blotch I mean
6 a big area. You previously described it
7 as sort of a sprinkle effect?"

8 "Q And that's your evidence here under oath
9 today?

10 A Yes.

11 Q And no sign of blood on his shorts. . ?"

12 And then the next page:

13 "A . . I never noticed any."

14 "Q Well, you were right there looking?

15 A Yes.

16 Q And you saw no sign of seminal stains -
17 fresh or otherwise?

18 A I never noticed any."

19 And then:

20 "Q And even a week or two after you got
21 back to Regina you had no recollection
22 whatsoever of seeing any blood on any of
23 David's clothes, did you? Isn't that
24 correct, Witness?

25 A Yes.



1 Q That's the truth?

2 A Yes.

3 Q And as a matter of fact you had every
4 opportunity to recollect that for the
5 police in Regina, didn't you?

6 A I never thought nothing of it.

7 Q No; you were trying to tell them the
8 truth to the best of your ability at
9 that time, weren't you?

10 A Yes.

11 Q And at that time you had no recollection
12 of seeing any blood on David?

13 A No.

14 Q And that was when you were being
15 questioned?

16 A Yes.

17 Q About the Gail Miller murder?

18 A Yes, but I could tell you why."

19 And let me just pause there. Again, that would
20 have been your approach with Mr. Cadrain then, to
21 try and establish that he had no recollection of
22 seeing the blood two weeks after the incident
23 when he was questioned by the Regina police?

24 A Yes.

25 Q And then the next page -- he says I can tell you



1 why, and then the Court says:

2 "Well you go ahead."

3 You say:

4 "I'm not stopping you."

5 And then Mr. Caldwell has a word with you and you
6 confer, you say:

7 "In light of what my learned friend has
8 said to me that ought not to be
9 pursued."

10 Are you able to tell us what that might have
11 referred to, either by recollection or by looking
12 at that?

13 A No, but I infer that probably Mr. Caldwell knew
14 that he would be going into hearsay which he, Mr.
15 Caldwell, thought would probably be inadmissible.

16 Q Okay. And then just down at the bottom, this is
17 you continuing:

18 "Q And did the police question you in
19 connection with this matter before you
20 went to jail?"

21 A Yes.

22 Q And this was in Regina?

23 A Yes.

24 Q And as I understand it they were plain
25 clothes police officers ...



1 A Yes."

2 And then the next page:

3 "Q And it was at this time that you were
4 asked whether you had any - well, you
5 were asked whether or not you had seen
6 any blood on David's clothes that
7 morning . . ?

8 A . . They never asked me.

9 Q You say they didn't ask you?

10 A They asked me like there was a murder
11 somewheres around there - around
12 Avenue "N" or somewheres - and they
13 said "you left about the same time"
14 and all this; but it never rang no
15 bell then.

16 Q I see; well now, as a matter of fact
17 they had you in for questioning because
18 you had left town in such a hurry?

19 A No, because they were --

20 Q I see; but were there about five
21 policemen there with you in a room?

22 A Yes.

23 Q And I take it that you were being
24 questioned about the Gail Miller murder?

25 A Yes, I was questioned.



1 Q And you were endeavouring to tell them
2 the truth to the best of your
3 recollection at the time?

4 A Yes.

5 Q And at that time you had no recollection
6 of this blood that we are talking about
7 here today - isn't that correct?

8 A I don't think so."

9 So again that would be along the same lines as we
10 have discussed?

11 A Yes.

12 Q And then the next page, you question him and go
13 through a series of questions and answers here
14 about the police and you start up:

15 "Q And now, as I understand it, they were
16 going at you pretty hard there, I mean,
17 you weren't being worked over
18 physically?

19 A No.

20 Q But you were being worked over in other
21 ways?

22 A Yes.

23 Q Did they strip you?

24 A Yes.

25 Q And this was in a cell, was it?



1 A No.

2 Q Or in an interviewing room?

3 A Yes."

4 And again, would this be along the lines as you
5 told us when we looked at the preliminary hearing
6 evidence, sort of the coercive atmosphere that he
7 might have been under?

8 A Yes.

9 Q And then to page 174962, and here you ask him
10 again about the Regina police:

11 "Q And inquiries were made of you as to who
12 your companions were?

13 A Yes."

14 And you mentioned Nichol John, Ron Wilson and
15 David Milgaard and he answered yes to each of
16 those. Remember the names of the officers? No.

17 "Q But in any event I take it that it's
18 fair to say that you realized at that
19 time that you were a suspect?

20 A No - well, yes.

21 Q Yes; you did, didn't you?

22 A Yes."

23 And then were there any blood tests or hair
24 samples? In Regina? Yes. And then he says no
25 on the next page.



1 So again I think you told us
2 earlier you were trying to establish that he
3 thought he was a suspect and that that might be a
4 motive for him to turn on his friends; is that
5 correct?

6 A Yes, for shifting blame.

7 Q And then to the next page -- sorry, back to the
8 previous page, and then you say:

9 "Q And as a matter of fact initially you
10 sort of laughed at them when they
11 suggested that anyone in your group had
12 had anything to do with this murder?

13 A Yes.

14 Q And you indicated to them that it just
15 couldn't be as far as you were
16 concerned?

17 A I can't remember, I'm not sure; I
18 can't say.

19 Q Well, you said words to that effect?

20 A Yes.

21 Q And at that time you were endeavouring
22 to tell them the truth to the best of
23 your ability and recollection?

24 A Yes; yes."

25 And so again I think that -- anything to



1 elaborate on that, Mr. Tallis, or is that similar
2 to what we have talked about as far as your
3 approach and using Mr. Cadrain's visit with the
4 Regina police to discredit his later evidence of
5 observation of blood?

6 A Oh, I think you've fairly covered it. The only
7 thing I would make, observation I would make is on
8 the odd spot on this transcript there is some
9 marginal handwriting here and there, that's not my
10 handwriting.

11 Q And I --

12 A And I'm sure that's understood.

13 Q Yes, and in fact the Commission used this version
14 of the transcript, I'm not sure whose version it
15 is, but the handwriting was put on later by
16 someone else, so I appreciate you bringing that to
17 our attention, and I think we can ignore the
18 handwriting on the side.

19 Then again when you get back to,
20 just scroll down, you then talk about his return
21 to Saskatoon and he says, as far as being a
22 suspect:

23 "A Never meant nothing to me anyway.

24 Q I see; it never meant anything to you
25 anyway. Well then, when you got back to



1 Saskatoon you in effect learned that you
2 were still a suspect?

3 A No.

4 Q You didn't?

5 A No.

6 Q You had no idea that you were a suspect?

7 A No.

8 Q And this was never intimated to you?

9 A What does intimate mean?

10 Q Well, it was never suggested to you that
11 you were a suspect?

12 A Yes, it was suggested on the last - on
13 the preliminary hearing; but well,
14 you've got me mixed up."

15 And then the next page, again a bit of an
16 exchange here about whether he was a suspect,
17 and:

18 "Q At the preliminary hearing I suggest to
19 you that you told me that after you
20 returned to Saskatoon you found out you
21 were still a suspect?

22 A No, you told me that.

23 Q No, but just a moment - just a moment -
24 you were asked whether or not you found
25 out you were a suspect and did you not



1 indicate . . ?

2 A . . I said yes then.

3 Q Fine; and you were under oath at that
4 time?

5 A Yes?

6 Q And did that worry you?

7 A No."

8 "Q And didn't it worry you in Regina when
9 you were being interviewed by these
10 people?

11 A No."

12 And then just down at the bottom:

13 "Q I take it that it wasn't worry that
14 would cause you to be forgetful in
15 Regina when the police were
16 interrogating you?

17 A No.

18 Q Well now, you were questioned by police
19 officers from Saskatoon in Regina,
20 weren't you?

21 A They brought me down to Regina for
22 questioning - or just brought me down,
23 I guess.

24 Q Well, when was this?"

25 "A Yes, after I went to the police and told



1 them everything."

2 And again can you explain why you would have
3 brought in this issue about the city police later
4 taking him to Regina?

5 A Well, I was trying, I think there, to establish
6 that he wasn't attributing the interrogation
7 techniques and so on to his, causing his
8 forgetfulness.

9 Q Okay. And then if we can go to 031255, please,
10 and this is the transcript of your address to the
11 jury, Mr. Tallis, and when I was dealing with Dr.
12 Ferris about this I identified, and I'll identify
13 it again, this transcript was prepared in 1992 by
14 a court reporter -- if you can just go to the next
15 page -- and it talks about dots being in there,
16 where several words, a single word or several
17 words were missing in the transcript, so I just
18 want to point that out when I take you to this, in
19 some cases it's not complete, but if we can go to
20 031282, and this is page 24 of your, the
21 transcript of your address to the jury and I just
22 want to go over what you said based on this
23 transcript to the jury about Albert Cadrain's
24 evidence, and you say:

25 "We have a series of events here that,



1 in my submission merit very careful
2 scrutiny, and I suggest to you that they
3 simply cannot be credited when tested
4 reasonably."

5 And that may well be credible. "You see --"

6 A I think it should be.

7 Q Credible.

8 "You see, we have the suggestion at
9 Cadrain's that David was in a rush, and
10 I must emphasize this, a rush to get out
11 of town, and yet we have very clear
12 evidence that this is not the case, and
13 even after the car was fixed. Now my
14 learned friend cannot have it both ways
15 and you must, I suggest, look at the
16 other evidence, look at the factual
17 situation and not simply divorce just
18 one aspect of it from the other."

19 I think this refers to Albert Cadrain's evidence
20 that they were in a hurry, and I didn't take you
21 through the other evidence, but it related to
22 getting the car fixed, looking for Leonard
23 Woytowich, looking for Albert's girlfriend's
24 boots and the trip around town that day. Would
25 that be what you were referring to there?



1 A Yes. I think we probably discussed that yesterday
2 when I was giving evidence and that's certainly
3 what I was referring to.

4 Q And if we can go to the top of the next page, you
5 say to the jury:

6 "Now, one of the areas that I suggest to
7 you must be scrutinized very carefully
8 is the allegation of Cadrain that there
9 was blood on David's clothes, and I am
10 going to put the position as fairly and
11 frankly as I can to you on this. When
12 you are assessing this evidence, I say
13 to you this: Isn't it a strange thing
14 that this boy had no memory, had no
15 memory of that blood not for a few days
16 but for weeks -- and remember that in
17 his case he was questioned by the police
18 in Regina and he does not suggest that
19 he was holding back on them, no
20 suggestion of that. His evidence as I
21 recall was -- and he changed it from the
22 preliminary hearing -- was that he was
23 trying to tell the truth at that time,
24 trying to tell them what he knew, and if
25 I recollect his evidence correctly, he



1 laughed at them, and was quite clear in
2 his mind at that time that nobody in the
3 car had anything to do with this."

4 And scroll down a bit:

5 "Now it is true . . ."

6 And a break in the transcription:

7 ". . . he was a suspect himself, he
8 comes back to Saskatoon and you may well
9 infer that he considered himself a
10 suspect but I say to you ..."

11 And then a break,

12 "... that this is something that
13 warrants very careful consideration ..."

14 And then the next page, you say here:

15 "And as I understand it his position
16 here is, and he was being quite sincere
17 about it, and accordingly I say to you
18 that this is evidence which you are
19 entitled and ought to reject, having
20 regard to the circumstances that were
21 outlined in the case before this court.
22 And in this connection you may remember
23 that he was very clear on this, that
24 when he was being questioned in Regina
25 he had no recollection of any garment,



1 no recollection whatsoever."

2 And I think that's the end of it. So again,
3 would that fairly summarize, Mr. Tallis, what you
4 were, the position you were taking with respect
5 to Albert Cadrain's evidence and how you
6 attempted to either undermine or minimize the
7 effects of that?

8 A Yes, and I think if I recall correctly, later on I
9 was able to persuade the judge to charge
10 additionally on that point, but that's a separate
11 matter.

12 Q Yeah. I will take you -- I decided to do the
13 charge to the jury when we've gone through some of
14 these witnesses and we'll go through some of
15 that --

16 A I understand.

17 Q -- because they overlap a bit, but I think there
18 is mention there and I will certainly bring it up
19 for you when we get to that point.

20 If I can now turn to Ron Wilson.
21 Can you tell us, sir, your -- and you've already
22 talked a bit about Mr. Wilson, but again, your
23 general impressions of him as a witness, not only
24 what he had to say, but how he had to say it and
25 when he said it?



1 A Well, as I said to you earlier, I assessed him as
2 being a treacherous-type person and, looking back,
3 I have no doubt that one of the things that
4 certainly influenced me was how, at the trial, he
5 certainly "improved", if I can put improved in
6 quotation marks, on his testimony on a crucial
7 factor and that is the time element. We've
8 discussed that, so I don't want to belabour it,
9 but that's one of the things that I certainly do
10 recall.

11 Q And did you get any sense, and I think we touched
12 on this earlier, based on what David Milgaard told
13 you about the facts of that morning, I think you
14 told us that Ron Wilson, at least in his latter
15 statements, there was a number of items that I
16 think you said, based on David's version of
17 events, were lies; would that be fair?

18 A Yes.

19 Q And can you tell us, did you explore with David
20 Milgaard, or what did you consider as to reasons
21 that might motivate Ron Wilson to lie?

22 A Well, I think I've outlined the areas that I
23 explored with David and there wasn't anything that
24 one could, that he could directly suggest. I
25 suppose I was the one who was doing the



1 speculating.

2 **Q** Did you get any sense, and let's put aside
3 theories and talk about what you observed
4 throughout the course of the proceedings, did you
5 get any sense that the police may have improperly
6 influenced Ron Wilson or coerced him to give
7 evidence that was not truthful?

8 **A** Well, I think one of the reasons I wanted to try
9 and elicit information from Inspector Roberts was
10 to see what had happened because I knew that Mr.
11 Roberts had administered the polygraph to him, but
12 as I've told you earlier, my assessment of Mr.
13 Roberts was quite negative I guess is the best way
14 I can put it and certainly didn't assist in
15 throwing any light on what had been done in the
16 test or any preliminary questions or
17 post-polygraph questions and so forth.

18 **Q** Was your, if you can tell us your understanding of
19 when Ron Wilson's, and I'll go through these
20 statements with you, but I think what we'll see is
21 an initial statement back on March 3rd, 1969 and
22 then statements, May 23rd and 24th, 1969 that were
23 incriminating of Mr. Milgaard. Do you recall
24 whether you were aware that his incriminating
25 statements came after his polygraph session with



1 Inspector Roberts, would you have been aware of
2 that?

3 A If I wasn't aware, I may have been suspicious
4 because I think that's why I wanted to interview
5 Mr. Roberts.

6 Q And we have not dealt with the motel room
7 reenactment witnesses, Craig Melnyk and George
8 Lapchuk; however, the evidence that is before the
9 Commission is that in fact it was Ron Wilson who
10 volunteered the names of Melnyk and Lapchuk to the
11 police when they were driving him up to the trial
12 in January, 1970 and I think the evidence is that
13 that's how the Crown and the police became aware
14 of it. Were you aware at the time of trial that
15 Mr. Wilson had played a role in having that
16 evidence and information communicated to the
17 authorities?

18 A No, I was not aware of that, or had not heard of
19 it until actually you mentioned that there had
20 been testimony adduced at this Commission Inquiry
21 to that effect.

22 Q And can you tell us, I appreciate you didn't know
23 it at the time, but if you had, would that have
24 influenced you in any way about what you might
25 have thought of Mr. Wilson or how you might have



1 approached him?

2 A Well, I already thought of him as being a
3 treacherous type of person and that certainly
4 would have confirmed it.

5 Q And when you say treacherous, what do you mean by
6 that?

7 A Well, you can use a number of terms, treacherous,
8 shifty.

9 Q Did you have the impression, based on what you
10 observed at the time of trial, that he was out to
11 get Mr. Milgaard or that he was going out of his
12 way to be, give damaging evidence against him, or
13 what were your observations?

14 A Well, he didn't exhibit that tendency in terms of
15 demeanour, but he certainly in my view, in the
16 light of what David had told me about things, I
17 considered him to be treacherous, maybe
18 back-stabbing could be another term, but --

19 Q Did you have any trust in what Mr. Wilson might
20 have to say?

21 A Well, I thought that, particularly after we cut
22 down that time factor in a very significant way, I
23 felt that he really was confirming my assessment
24 of him. Now, I don't like maligning people, but I
25 have to say to you, as I said this morning in all



1 candour, that was my assessment of him.

2 Q And did you have any sense as to why he was doing
3 that or what might have prompted him to do that?

4 A No, I was never able to put my finger on it, one
5 can always speculate, and David was not able to
6 suggest anything like that. There was no
7 suggestion of any drug deals that had gone bad or
8 any friction over girlfriends or anything with
9 him.

10 Q Did you get any sense that Mr. Wilson was a
11 reluctant witness, someone who was there and
12 didn't want to be there?

13 A He didn't come across that way.

14 Q How did he come across?

15 A Well he came across as though he was there and he,
16 I think he wanted to portray that he was there
17 giving evidence that was incriminating, and that's
18 all there was to it.

19 Q As far as your approach in dealing with Mr.
20 Wilson, would it be fair to say that you would
21 have looked at the statements that he provided to
22 the police to give you some background and some
23 idea as to where you might go with him on
24 cross-examination?

25 A Yes. And I had made, while I don't have the



1 details in my head, I had made inquiries, as I
2 told you, in Regina, and in particular I learned
3 somehow that he was coming up in Court on
4 something as well. And while I told you the other
5 day that he wasn't actually testifying, I remember
6 being there for some type of proceeding, and then
7 later getting information, some information about
8 him, which I'm sure I put in the file. And the
9 thing that I remember particularly was the charge
10 of conspiracy to defraud, or something like that,
11 and I was able to get very clear material that
12 David was not the co-conspirator. I think I
13 mentioned this to you earlier, and I felt that I
14 was able to put that question near the end and not
15 overstep the mark, as far as putting David's
16 character in issue.

17 Q Okay. If we could go to -- and I'll take you to
18 that part in the transcript later, Mr. Tallis.
19 006707, please. And this is the front page of the
20 March 3rd, '69 statement, if we can go to page
21 709. So this is Mr. Wilson's, it's a typed
22 version of his statement, it's March 3rd, '69, and
23 it's the first statement that he gave to Inspector
24 Riddell of the RCMP. And I think you've told us,
25 Mr. Tallis, that you would have, number one,



1 received a copy of this statement, we saw a letter
2 August 15th, 1969 from Mr. Caldwell to you
3 enclosing a copy of this; and I think you've also
4 testified that you would have been aware of its
5 contents on August 4th, 1969, or possibly even had
6 another copy of it at that time; is that correct?

7 A Yes.

8 Q And would it be fair to say that you would have
9 spent some time going over this statement, both on
10 your own, and with David Milgaard?

11 A Yes, we certainly discussed all the background
12 that's here.

13 Q And would you have looked at this statement, or
14 reviewed it, with a view to determining how best
15 to use this statement at trial?

16 A Yes.

17 Q And let's just go through parts of it and I'll ask
18 you a bit further on that. Now this is the same
19 day that David Milgaard gave his statement to
20 Mr. Karst in Winnipeg and Nichol John gave her
21 first statement March 11th, 1969. Do you recall
22 either discussing with David Milgaard or trying to
23 ascertain whether or not David Milgaard, Ron
24 Wilson, and Nichol John spoke to each other after
25 their return to Saskatchewan in early February, in



1 other words talked to each other before they gave
2 statements to the police in early March 1969?

3 A I'm sure I talked to him about it, and I think the
4 answer was that they had not, that he told me they
5 had -- that he had not been talking to them.

6 Q Okay. So if we can go down, I just want to go
7 through parts of this, we have been through this
8 before. Mr. Wilson, again, he talks about the
9 Peace Hill district. I think you told us on
10 Thursday that you recalled Pleasant Hill being
11 used by Mr. Milgaard; do you have any recollection
12 of Peace Hill coming up in your discussions with
13 him as being an area where they may have been
14 looking for?

15 A Well I, my recollection is that David used the
16 term "Pleasant Hill", but, you know, that's so
17 long ago, he might have said Peace Hill, but I
18 think it was Pleasant Hill.

19 Q Again, if we could just scroll up, and he talks
20 about arriving in Saskatoon on the morning of
21 January 31, '69 at 5:00 or 6:00 a.m., began
22 driving around looking for Albert's house and then
23 we ended up going down this alley and we came
24 across this car that was stuck in the middle of
25 the day, and I think this is the Danchuks. If you



1 go to the next page, we won't go through all of
2 it, but it does describe -- or the first incident
3 that he describes in the statement is getting
4 stuck at Danchuks, tried for about an hour to get
5 the car out, invited Dave and Nichol into the
6 house. Then to the next page. And then he goes
7 on, I won't go through it, but he goes on to talk
8 about getting their car fixed, then driving to
9 Albert's house, and then at the top -- there is no
10 mention of the Trav-a-leer Motel in the narrative,
11 I won't bother going through it, Mr. Tallis, you
12 can take my word for it as to what's in this
13 statement, we have been through it many times. He
14 then says:

15 "... started talking about this trip and
16 Albert decided to come with us. Dave
17 went out to get his suitcase because he
18 wanted to change his clothes as they
19 were dirty. When he did this, he drove
20 the car around the block so that it
21 would be parked on the same side as the
22 house. At this time the line to my
23 transmission broke."

24 And then, down at the bottom, it says:

25 "The reason Dave changed his clothes was



1 because they were dirty. I changed my
2 pants because I spilled battery acid on
3 them. At no time during the time we
4 were in Saskatoon was Dave Milgaard out
5 of my sight for more than one or two
6 minutes, the one time being when he
7 drove the car around the block. This
8 would be well after daylight. I never
9 knew of Dave to have a knife. I am
10 convinced that Dave Milgaard never left
11 our company during the morning we were
12 in Saskatoon. The coat he was wearing,
13 a brown one, is now at my place as it
14 also has acid burns and the pair of
15 pants he changed is now in my car in the
16 back seat."

17 And at the bottom:

18 "All during this trip there was never
19 any mention about the murder of a girl
20 in Saskatoon. In fact, I didn't even
21 know about this murder until the police
22 told me today."

23 Now I went through, quickly, parts of that, Mr.
24 Tallis. You told us yesterday, when we were
25 dealing with the statement that David Milgaard



1 had given to the police, that in looking at that
2 statement and how you might use it or deal with
3 it, that in addition to what is said in the
4 statement it was also important how it was said
5 and, as well, significant omissions in the
6 statement; do you recall giving that evidence?

7 A Yes, I do.

8 Q And would the same apply when you, as defence
9 counsel for David Milgaard, are looking at the
10 statement of a witness that's going to testify
11 against Mr. Milgaard?

12 A Yes, that's so.

13 Q Now if we can go through Ron Wilson's statement
14 and just what's in it and not in it compared to
15 the version of events and the facts as Mr.
16 Milgaard explained them to you, and again I will
17 state as I stated when I did with David Milgaard's
18 statement, this would be -- I take it you would be
19 familiar, Mr. Tallis, with the fact that police
20 statements -- that police officers have different
21 styles in recording statements; is that fair?

22 A Yes.

23 Q And so if it's a question and answer, or what is
24 in a statement might be based not on what the
25 witness stated, but more on what was asked of him



1 or her; is that fair?

2 A Yes.

3 Q With that caveat in mind, if we go through this
4 statement, what I think we can identify as not in
5 this statement but is a fact that you were
6 instructed by Mr. Milgaard, and I want to ask you
7 whether those would be considered significant
8 omissions. The first one would be the theft of a
9 battery in Regina before they left, and the second
10 one would be the elevator break-in, and it -- it's
11 been said that it might be understandable why a
12 young person in jail might not want to volunteer
13 criminal activity to a police officer. Putting
14 that aside, would the fact that those two items
15 are not in this statement, would that be
16 considered to be a significant omission?

17 A I, in the context that you present, I would view
18 it -- view them as significant omissions.

19 Q And, just in the context, is it fair to say that
20 that omission might be explainable by the
21 circumstances, in other words that Mr. Wilson was
22 in jail and that he might not want to provide
23 incriminating information to the officer; is that
24 fair?

25 A Yes. That's, you know, --



1 Q And that --

2 A -- that's a suggestion that I can't disagree with.

3 Q Now we've heard from some witnesses as well that
4 that goes further, that if this group had been
5 involved in a murder, or one of them had been,
6 they might also not want to volunteer that as
7 well; is that fair?

8 A I suppose that's the other side of the coin that
9 some people might advance.

10 Q And, again, the next point would be the talk of
11 robbery and purse snatching on the trip down. In
12 the later statement from Ron Wilson to the police
13 that's included. I think your evidence was, based
14 on what David Milgaard had told you, I think you
15 told us you couldn't recall him telling you about
16 that discussion on the trip but he did tell you
17 about what he thought when they saw the lady for
18 directions; is that fair?

19 A Yes, yes.

20 Q And, again, the fact that Mr. Wilson -- or that
21 that information is not in the statement; would
22 that be a significant omission in your view as
23 defence counsel trying to decide how to use this
24 statement?

25 A I think that was a significant omission.



1 Q And, as well, the statement does not talk about
2 the vehicle -- maybe we could just have the
3 statement back up for a moment -- does not mention
4 anything about the vehicle, Ron Wilson, David
5 Milgaard, and Nichol John, stopping a woman and
6 asking for directions that morning when they
7 arrived; would you view that as being a
8 significant omission?

9 A Yes, well that was, I would tie that in with the
10 earlier discussion we had a moment ago about
11 looking the lady over.

12 Q Okay. But just the fact that on the trip that
13 morning they actually stopped a lady and asked for
14 directions -- and let's go back a bit, I think,
15 and Inspector Riddell is deceased, he has not been
16 here to testify, but I believe the evidence is
17 that Ron Wilson was being questioned because David
18 Milgaard was considered a suspect, and they were
19 questioning him about their activities this
20 morning -- or that morning to try and determine
21 whether Mr. Milgaard might have been involved in
22 the crime, I think that's the evidence.

23 A Okay.

24 Q So again, in that context, would the fact that
25 this statement, for whatever reason, does not



1 include the reference to the Milgaard, the David
2 Milgaard vehicle stopping a woman and asking for
3 directions in the morning, would that be a
4 significant omission in your view?

5 A To me it was significant.

6 Q And the fact that, after stopping the woman for
7 directions, that their vehicle got stuck and that
8 David Milgaard and Ron Wilson left the vehicle for
9 a time period that I think David described as a
10 short time period, but for a time period; would
11 that be a significant omission from this
12 statement?

13 A Yes.

14 Q Would the fact that, after leaving Saskatoon on
15 that day, that David Milgaard threw a woman's
16 compact or a compact out the window -- and, again,
17 putting aside the reasons as to why that may not
18 be in there -- but would that be a significant
19 omission in your view in looking at this statement
20 as David Milgaard's defence counsel?

21 A Yes.

22 Q There is also no mention in this statement about
23 attending at the Trav-a-leer Motel to get a map;
24 would that be something that you would view as a
25 significant omission?



1 A Yes.

2 Q Now there are a couple of statements in here that
3 are not omissions but statements that may well be
4 at odds with what David Milgaard told you, and I
5 suppose it depends on, if we can go to page 4 of
6 006712, it depends on what Mr. Wilson observed.
7 But there were two where Mr. Wilson says:

8 "I never knew of Dave to have a knife.",
9 and I think you have told us that Mr. Milgaard
10 told you that he did have a knife on the trip?

11 A Yes, I've described that for you.

12 Q And now I suppose it's possible that Mr. Wilson
13 was not aware of that and that might explain why
14 he would say that; is that fair?

15 A Yes.

16 Q And on the previous page Mr. Wilson says:

17 "At no time during the time that we were
18 in Saskatoon was Dave Milgaard out of my
19 sight for more than one or two minutes,
20 ...",

21 then the next page:

22 "... the one time being when he drove
23 the car around the block. This would be
24 well after daylight."

25 And that's the incident at Cadrains. Again, I



1 don't want to get into wordsmithing, but if this
2 is read that "the only time that David Milgaard
3 left my sight was only for one or two minutes and
4 that's when he drove around the block", again,
5 would that be inconsistent with what David
6 Milgaard had told you?

7 A Well we're talking, really, about two different
8 things. David had told me of the stop, we'll say
9 stop number 1, --

10 Q Yes.

11 A -- and then there was the stop at Danchuks, and
12 then later was the driving around the Cadrain
13 alley --

14 Q Yes.

15 A -- after coming. Of course they had gone to the
16 Trav-a-leer, so it was in that context that I
17 would have discussed it with him, and this, of
18 course, doesn't really cover that.

19 Q Right. If we can maybe just have page 3 at the
20 top and just read it again, I think what -- no,
21 sorry, the bottom of page 3 and the top half of --
22 thank you. If this is read, he says:

23 "At no time during the time we were in
24 Saskatoon was Dave Milgaard out of my
25 sight for more than one or two minutes,



1 the one time being when he drove the car
2 around the block."

3 And that's referring to the incident at Cadraains?

4 A Yes.

5 Q And I suppose if that's, if what that statement
6 says is that that was the only time that he was
7 out of my sight, that would be inconsistent with
8 what Mr. Milgaard told you; is that fair?

9 A Yes.

10 Q And I suppose one might also read it by saying "he
11 may have been out of my sight on more than one
12 occasion for one or two minutes, and the one time
13 was when he drove around the block"? And, again,
14 I don't want to get into wordsmithing, but I take
15 it that that would be an issue that might be
16 inconsistent, is that fair, depending on how one
17 reads that?

18 A Yes, depending how you read it. I must say I
19 don't think I read it that way, but --

20 Q And how did you read it?

21 A Well I think I read it as though he was saying, in
22 effect, it was only one stop.

23 Q Okay. And, again, would that be inconsistent with
24 what David Milgaard had told you?

25 A Yes.



1 Q Tell us your concerns about this statement and how
2 you might use it to cross-examine Ron Wilson or
3 even to submit it as evidence at trial?

4 A I thought that that would have been a very risky
5 approach, because if one tried to put it in then
6 it would -- I think the trial judge would have
7 permitted Crown counsel to then refer to the
8 omissions by asking the witness through whom it
9 went in "did he tell you this" or "did he tell you
10 that" in respect to the omissions.

11 The second thing is that, if
12 this statement were put in, there is always the
13 real risk, whether you agree with it or not, that
14 the learned trial -- that learned counsel for the
15 Crown would say "well now did you give a further
16 statement on this", and that the trial judge might
17 order its production and have whatever use made of
18 it as he would think proper, so --

19 Q And were you -- oh, I'm sorry, carry on?

20 A So those are real risks, in my mind, that were in
21 my mind at the time.

22 Q Were you concerned about Mr. Wilson being asked
23 the question by either Crown counsel or the Judge
24 as to the reasons for the omissions in the
25 statement?



1 A Well that would be one of the things that would
2 undoubtedly be very risky, and I -- and I -- in
3 looking back I think there is a good likelihood
4 that would have been permitted.

5 Q And what did you anticipate Mr. Wilson's answer to
6 be?

7 A Well, having characterized him or assessed him as
8 a treacherous type of person, I could see him
9 saying "well I was just trying to protect my
10 friend", and I say that because of my sense that
11 he was a treacherous type of person.

12 Q And --

13 A I wanted to avoid that type of thing at all cost.

14 Q And some have said that -- and including, later,
15 Ron Wilson, and I'll refer to that -- that it was
16 as simple as saying Mr. Wilson's first statement,
17 the March 3rd, '69 statement, was the truth, and
18 the complete truth, and that simply should have
19 been put in, and that would be the end of the
20 matter. Did you view his March 3rd, 1969
21 statement, based on what David Milgaard told you,
22 as being the truth and the complete truth?

23 A Well I knew it lacked significant details, and
24 with the utmost respect to those who have a
25 contrary view, I didn't see it as that simple.



1 Q Okay. We'll maybe pick up on that tomorrow
2 morning.

3 (Adjourned at 4:30 p.m.)
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OFFICIAL QUEEN'S BENCH COURT REPORTERS' CERTIFICATES:

We, Karen Hinz, CSR, and Donald G. Meyer, RPR, CSR,
Official Queen's Bench Court Reporters for the Province of
Saskatchewan, hereby certify that the foregoing pages
contain a true and correct transcription of our shorthand
notes taken herein to the best of our knowledge, skill,
and ability.

_____, CSR
Karen Hinz, CSR
Official Queen's Bench Court Reporter

_____, RPR, CSR
Donald G. Meyer, RPR, CSR
Official Queen's Bench Court Reporter



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