

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 Friday, February 10th, 2006

Volume 122

Inquiry Proceedings



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Mr. Aaron Fox, Q.C., **for** Mr. Eddie Karst
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 (Canada), The Hon. Vic Toews
Mr. Alexander Pringle, Q.C., **for** Justice Calvin Tallis
 (Retired)



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1 **Transcript of Proceedings**

2 (Reconvened at 9:05 a.m.)

3 COMMISSIONER MacCALLUM: Good morning.

4 ALL COUNSEL: Morning.

5 **CALVIN FORRESTER TALLIS, continued:**

6 **BY MR. HODSON:**

7 Q Morning, Mr. Tallis.

8 A Morning.

9 Q When we adjourned yesterday we were talking about
10 the factors that went into your advice to Mr.
11 Milgaard about whether or not he should testify,
12 and I just want to cover a few more areas there.
13 As well, I think when we went through your
14 interview, when we went through your interview
15 with Mr. Milgaard and went through what he told
16 you, I think as well you provided some commentary
17 about how some of that information might be
18 prejudicial to him if he were to testify, but I'm
19 wondering if we can just try and capture that.

20 Start off with first of all, and
21 you've already talked about this, but your
22 assessment of how David Milgaard would handle
23 questions not only from you but from the
24 prosecutor, and apart from the substance of the
25 answers -- and I think you've already told us that



1 on a number of them his answer would be "I don't
2 know" in trying to explain why he did things --
3 but apart from the substance, what was your
4 assessment of how -- the manner in which you
5 thought he would answer some tough questions,
6 that -- how the jury might view that, and did you
7 do a mock cross-examination of him to try and get
8 a sense of how he might be perceived by the jury?

9 A Well I did not engage in a robust
10 cross-examination of him, and my questioning was
11 conducted with what I will call civility, because
12 I think that fairly describes it. But I did
13 realize, from the questions I asked and indicated
14 that would be asked of him, that he would come
15 across as having difficulty in answering the
16 questions, and of course answers like "I don't
17 know" or "I don't remember", while perfectly
18 truthful, can convey a different impression, and I
19 thought that when taxed in a robust
20 cross-examination it could well portray that type
21 of situation. Once again -- and I hesitate to use
22 the term -- but from my experience at the time I
23 did have gut reactions to things -- and I think
24 probably most counsel would either use that word
25 or different words to convey the same meaning --



1 but that, essentially, is the advantage that I had
2 at that stage, in trying to make the assessment
3 with him. And of course, as I've already told
4 you, I discussed the options that were available
5 to him, and then the rest followed from that. I
6 don't know whether that answers your question in
7 sufficient detail or not, --

8 Q Yes it does.

9 A -- but I don't want to be too long-winded.

10 Q No, and I think it raises an interesting point,
11 that you have a client who is innocent, telling
12 you he is innocent, and you are proceeding on that
13 basis, and that you have no doubt would tell the
14 truth when he testified, I think you've told us
15 that; correct?

16 A Yes.

17 Q You had no reason --

18 A Well the best illustration of that is, you know,
19 the purpose in stopping the lady, you know, what
20 did he have in mind, and he would have said "well
21 I must say that I looked her over with a view to
22 robbing her or snatching her purse", but I've gone
23 through that with you.

24 Q So again, just back on the point, that someone who
25 tells you he is innocent, and is presented to tell



1 the truth and you believe he will tell the truth,
2 but that at the end of the day his evidence, I
3 think you are telling us, would end up hurting his
4 own case and helping the Crown case by him telling
5 the truth?

6 A Yes. Yes. I always thought that, as a counsel,
7 one had a duty to explain the options to a client,
8 but more than explaining the options, as I said
9 yesterday, I thought a person in that situation
10 was entitled to my frank assessment of the
11 situation. And that, of course, was based on my
12 knowledge of the components of the case and, also,
13 my knowledge of the type of questions that would
14 be put to him, and that was largely based on my
15 general experience as well as my experience in
16 that particular setting.

17 Q If we can then move on as well, and I just want to
18 touch on each of these in this area, we've talked
19 about them already, but you also told us that you
20 felt there was a risk that, if David Milgaard
21 testified, that he might, despite your efforts and
22 his efforts, but that he might put his character
23 in issue through inadvertently bringing his
24 character into issue by answering a question with
25 words like "well, I'm not the type of person who



1 would do that". I think you described, and I
2 think you told us that that was a risk, that if
3 that were to happen it would open up an area where
4 you felt damaging evidence would then be presented
5 through your own witness, Mr. Milgaard, but
6 possibly opening up an area for the Crown to call
7 some other evidence; is that fair?

8 A Yes. I think I've generally covered that earlier,
9 but if you'd like me to go into it --

10 Q No, I think unless you would want to add anything
11 to that --

12 A No, I don't think I can usefully add anything to
13 what I told you earlier in these proceedings.

14 Q And in addition to what you knew I think you told
15 us, based on what you knew from your interview
16 with Mr. Milgaard, that in and of itself caused
17 you pause? I think, in other words, that you felt
18 that, if character were an issue, it would be
19 damaging; is that fair?

20 A Yes. And I thought that this can be opened up by
21 answers to questions on cross-examination, and --

22 Q Now we know in this Inquiry what Mr. Caldwell had
23 in this area by way of information, and I think
24 I've shown some of it to you, and I think it's
25 fair to say that he had information about David's



1 background that you didn't have. And would that
2 be something, at the time, that you might have
3 anticipated or thought about, knowing that Dr.
4 McDonald had interviewed Mr. Milgaard, that Mr.
5 Caldwell might well have his own damaging
6 information that you are not aware of?

7 A Yes. And David had, I think, been quite candid
8 with me about his difficulties, and that includes
9 any conflict with the law.

10 Q If we can then turn to the drug use, and you've
11 talked about that a bit, and I think what you have
12 told us, that it was a two-edged sword, on the one
13 hand if you could use it to discredit Wilson,
14 John, and Cadrain, that would be fine, but the
15 risk was that the jury might, knowing that David
16 was in the same group as these people, might, even
17 though there was no evidence of alcohol and drug
18 use on the morning of the murder, might somehow
19 associate the drug use with him?

20 A Yes.

21 Q And I take it, if you called Mr. Milgaard to
22 testify, that you would expect Mr. Caldwell to
23 spend some time with his drug use, much as you did
24 with the Crown witnesses?

25 A I think that that's a fair assessment on your



1 part.

2 Q And I take it there'd be a risk, then, with the
3 jury drawing an adverse inference about the type
4 of person Mr. Milgaard was, and I think you made a
5 comment earlier about trying to keep out some of
6 this extraneous evidence, because the real issue
7 was whether or not he had committed the crime as
8 opposed to what type of person he was?

9 A That's correct.

10 Q I now want to go through, and I think you told us
11 when we went through this that there would be --
12 or when you gave advice to Mr. Milgaard, you told
13 him that he would end up confirming some facts
14 that were incriminating that had been led in the
15 Crown's case; is that correct?

16 A Yes.

17 Q And I just want to go through those. I think
18 there's -- I've got nine points here. The first
19 one would be the discussion about travelling from
20 Regina to Saskatoon, the discussion in the car
21 between Ron and David about breaking and entering
22 and robbing, or break and enters and purse
23 snatchings to finance the trip, and I think you've
24 told us you don't remember David telling you that?

25 A No. And I would have taken the position that, I'm



1 sure, that this was off limits.

2 **Q** Okay. But putting aside, putting that aside for
3 the moment, in fact I think you were able to keep
4 that out; is that --

5 **A** That's right.

6 **Q** So assuming --

7 **A** And that's why I made the comment "off limits",
8 because my argument would have been that since it
9 has been ruled inadmissible as part of the Crown's
10 case, I would have argued that it ought not to be
11 a subject of cross-examination.

12 **Q** If Mr. Milgaard had testified --

13 **A** But, you know, there was no guarantee that it
14 might be ruled completely inadmissible, there is
15 always the possibility that it would have been
16 permitted on the issue of credibility, but I'm
17 just alerting you to the fact that I was alive to
18 this --

19 **Q** I think -- yeah.

20 **A** -- consideration.

21 **Q** And I think you may have told us that, if you
22 called David, you would lead the evidence about
23 what he thought about the robbing or the purse
24 snatching when they approached the woman?

25 **A** Yes.



1 Q Is it possible that that evidence might have
2 opened up discussions earlier in the trip about
3 their intentions?

4 A I think that it might well have.

5 Q So just on this point, the fact that -- and again,
6 I appreciate you don't recall David confirming or
7 denying this, but if in fact he had -- in other
8 words that there was no dispute that he and Ron
9 Wilson discussed break and enters and purse
10 snatchings, if Mr. Milgaard was called and if the
11 evidence was otherwise admissible, I take it that
12 he may end up confirming what Mr. Wilson had to
13 say about the subject --

14 A Well --

15 Q -- and making what was otherwise inadmissible
16 admissible?

17 A Well I'm not sure that, I can't say that he would
18 have gone that far without the benefit of my notes
19 now, but the mere asking of the question creates
20 an atmosphere that is not helpful.

21 Q Okay. If we could now turn to the issue of the
22 knife, I think you've told us that Mr. Milgaard
23 would confirm that he had a knife, although a
24 different knife than the one identified by Wilson
25 and John, --



1 A Yes.

2 Q -- and that, also, he couldn't find the knife, in
3 other words he couldn't produce the one that he
4 had in the car?

5 A No, he didn't know what had happened to it.

6 Q And so I guess in some respects, although he would
7 say it was a different knife, he would confirm for
8 the jury that he had a knife and perhaps lend some
9 credibility to Wilson and John when they say they
10 observed a knife?

11 A Yes, I am sure this would have been an area for
12 robust cross-examination, if I may use that term
13 again.

14 Q And then, third, he would confirm that he and the
15 people in his car stopped a woman for directions
16 in an area in the vicinity -- and I use that term
17 and I'll come back to that -- in the vicinity of
18 where Gail Miller's body was found. And I think
19 what you have told us is that he couldn't deny
20 that it was in that area, and that it was
21 generally on the west side between 20th and 22nd
22 Street, and he wouldn't be able to say it wasn't
23 there; is that fair?

24 A Yes. We couldn't, we just couldn't pinpoint the
25 avenues.



1 Q And if Mr. Caldwell had taken out a map and, much
2 as you did, and asked him to point out where they
3 went, that he went through 20th to 22nd Street, up
4 and down the avenues, would you have a concern
5 that the jury might conclude that he was in the
6 vicinity of Avenue N and Avenue O?

7 A Well that, of course, was part of my concern, and
8 I knew that questions would be directed to that
9 area.

10 Q And then, number 4, he would confirm that their
11 vehicle got stuck after -- and, again, whether it
12 was blocks or shortly after -- but after they met
13 the lady for directions, he would confirm that
14 part of Wilson and John's evidence, and that he --
15 and that that location would be, again, in the
16 vicinity of where Gail Miller's body was found?
17 In other words he couldn't deny that it was there,
18 he couldn't say it was, but again between 20th and
19 22nd Street and on one of the avenues; is that
20 fair?

21 A Yes. "Vicinity", I used it in a very general
22 sense.

23 Q Yeah. And that he would dispute, however, Mr.
24 Wilson's evidence that he was gone for 10 or 15
25 minutes and he would say "for a short while", so



1 he would confirm that he left the car but he would
2 dispute for how long; correct?

3 A That's right.

4 Q Number --

5 A His evidence would have been that it was a very
6 short time.

7 Q Number 5, he would confirm the evidence of Wilson
8 that two men came along and helped pushed out
9 their car; is that correct?

10 A Yes.

11 Q 6, he would confirm that he would -- that he did
12 in fact drive Wilson's car around the block and
13 alley at the Cadrain house on a couple of
14 occasions, and I think you've told us his answer,
15 his explanation would be "I like to drive"?

16 A That's correct.

17 Q And 7, again there might have been an issue about
18 admissibility of this, but in the event that it
19 became admissible for some reason, that he was
20 driving fast between Saskatoon and Calgary?

21 A Yes. I mean his explanation was, you know, he
22 liked to drive fast.

23 Q And then eight, that he would confirm the evidence
24 of Wilson and John that he in fact did throw the
25 compact out of the car and his answer would be I



1 don't know where it came from and I don't know why
2 I threw it out?

3 A That's right.

4 Q And then lastly on the motel reenactment, he would
5 say, he would confirm that he was there with those
6 people, that he was stoned and that he couldn't
7 deny doing what was attributed to him, but that if
8 he did those things, he would say he would have
9 been joking; is that correct?

10 A Yes.

11 Q So again on those points, and again there may be
12 some others, but I think that was what you ended
13 up telling us earlier on when we went through the
14 interview, I think you've told us your concern
15 there is that he would end up, through his own
16 evidence, confirming a significant -- significant
17 facts that were put forward as the Crown's case.
18 I think you told us that some of them, or perhaps
19 even all of them, might be viewed as suspicious by
20 the jury; is that fair?

21 A Yes, and I would, I think I used the term that it
22 would tend to perhaps strengthen the Crown's case,
23 that was my assessment, that all of this, having
24 regard to the questioning that would take place in
25 cross-examination would probably tend to



1 strengthen the Crown's case by reason of some of
2 the evidence being confirmatory of significant
3 matters that had been advanced by the Crown.

4 Q And just on that point, given that your tact with
5 Wilson, John, Melnyk and Lapchuk and even Cadrain
6 was to say that they were unsavoury characters,
7 therefore, jury, view their evidence with some
8 doubt, would the fact that your own client, if he
9 testified and confirmed some of that, would that
10 undermine, to some extent, your ability to say
11 these people shouldn't be believed?

12 A I think so.

13 Q We talked about the police statements, you brought
14 that up yesterday, that the first statement David
15 gave the police, it's 305273, and I think you
16 referred yesterday to your concerns about some of
17 the answers that he gave in that statement:

18 "Q Were you in Saskatoon this year?

19 A Maybe.

20 Q When would you have been in Saskatoon?

21 A I'm not sure."

22 And I think you told us that his evidence would
23 be that he knew he was in Saskatoon and he knew
24 when he was there; is that correct?

25 A Yes, I already -- I mentioned that to you I think



1 earlier.

2 Q And just generally on the statement, I think you
3 told us you had concerns that he would be
4 cross-examined, I think, in a robust manner about
5 not only what he said to the police, but how he
6 said it and also what he didn't tell the police;
7 is that fair?

8 A That's correct.

9 Q And is it fair to say, we went through the
10 statement in detail, that you had concerns that
11 his initial statement to the police of March 3rd,
12 1969 might end up being damaging evidence against
13 him because of what he said, how he said it and
14 what he didn't say?

15 A That's correct.

16 Q Now, next I want to turn to the, just the last
17 point, and that would be if Mr. Milgaard testified
18 what evidence he would add to the mix; in other
19 words, what evidence would he give that was not
20 presently before the jury that might be damaging,
21 and the two points I think that you brought up
22 were, number one, that David Milgaard told you
23 when he approached the woman that he had thoughts
24 of robbing the woman or snatching her purse, or
25 words to that effect, when he approached her.



1 Now, that evidence did not come out at trial;
2 correct?

3 A That's correct.

4 Q And if Mr. Milgaard would have been called, I
5 think you told us you would lead that because
6 undoubtedly it would come out in Mr. Caldwell's
7 cross-examination and you would want to take the
8 sting out of it?

9 A Yes.

10 Q And so again, and I think you've told us that that
11 evidence would not be helpful to Mr. Milgaard's
12 case?

13 A No, and I thought that that would be explored or
14 expanded upon in the context of what had been said
15 about lack of money and so forth, but here again,
16 I don't want to repeat what I've already told you.

17 Q Sure. And the other point I think you told us,
18 and again there may be others that fall into this
19 category of evidence that he would add to the mix,
20 were the pants that he changed out of that morning
21 that allegedly had the blood on them and the fact
22 that he was not able to find them and the fact
23 that he couldn't find his knife, for example, that
24 that would be something that would be before the
25 jury that Mr. Caldwell would be allowed to



1 cross-examine him and say, well, you know, why
2 don't you have the pants, you know, do you have
3 your other clothes, where are these pants and the
4 knife, etcetera, and may be an inference that he
5 had them and wasn't providing them; is that fair?

6 A Yes, that's a fair assessment, and I'm sure was a
7 factor that I considered.

8 Q And I suppose we then weigh, or you did, I think,
9 told us you then weighed that, the risks with the
10 benefits, and I take it the benefits of having him
11 testify would be that the jury would hear him get
12 on the stand and say I did not kill Gail Miller?

13 A That's correct.

14 Q Which would be an important thing to have your
15 client say?

16 A Oh, yes. That's why these decisions are never
17 easy and this one wasn't easy, and that is, wasn't
18 easy for him, and yet I felt that I couldn't shirk
19 my duty or abdicate my duty to discuss it with him
20 and give him advice on the matter for his
21 consideration.

22 Q And I think you told us earlier that based on
23 these factors, you had sort of come to the
24 conclusion, weighing everything that your advice
25 was, that he should not testify, that he would



1 damage his case?

2 A Yes, and he would strengthen the Crown case in
3 some material respects, so I guess we're talking
4 about the same thing really.

5 Q And at that time, Mr. Tallis, I think you've told
6 us you had been through a number of trials, jury
7 trials before, and presumably would have had to
8 face this same decision in those cases?

9 A Yes. I can't tell you the number of times I faced
10 it, but I know that I had had to face it quite a
11 few times, both before and after this.

12 Q I understand at around this time, or actually
13 maybe even a year or two prior, the Supreme Court
14 heard a reference regarding the *Steven Truscott*
15 case; is that correct?

16 A Yes.

17 Q And had you looked into that case at all and did
18 that in any way influence your thinking with
19 respect to this matter?

20 A I had taken more than a passing interest in the
21 *Truscott* case long before I was ever briefed on
22 this and I recall that I read the book by Madam
23 LeBourdais I believe her name is, I may be
24 mispronouncing it, but I'm not doing it
25 disrespectfully, I read that book, and then I also



1 read the decision of the Supreme Court of Canada
2 on the reference, and from reading that particular
3 report and noticing that Mr. Truscott had been
4 called to give evidence before the Court, I
5 appreciated what can happen with respect to a
6 witness, and particularly a relatively youthful
7 witness. I say that because without revisiting
8 the actual case and going through the details, I
9 recall that I believe a majority of the judges of
10 the Supreme Court of Canada disbelieved him on the
11 basis of his testimony and pointed out a number of
12 matters which, in my view, taken individually,
13 didn't amount to that much, but when looked at
14 globally or collectively led to the finding of
15 disbelief.

16 Now, of course each case is
17 different, but I just mentioned that to you when
18 you were going through this matter with me because
19 I was very aware, with respect to matters of this
20 kind, and I have no doubt, on reflection, that I
21 couldn't help but notice that his lead counsel on
22 that inquiry, or reference, was one of the giants
23 of the Canadian criminal bar, Mr. Arthur Martin,
24 who I didn't know personally at that time, but
25 later got to know.



1 Q Okay. Is there anything else, before I move on,
2 Mr. Tallis, that you wish to add about the
3 decision and the advice you gave to Mr. Milgaard
4 regarding testifying?

5 A I think that I've covered pretty well everything
6 in my discussions with you.

7 Q If we could then go onto --

8 A There's just one thing I would add.

9 Q Yes.

10 A And this certainly wasn't a factor in any real
11 sense of the word, but you do lose the last word
12 to the jury if you call evidence, but that in no
13 way really affects an assessment of this nature
14 where you have a person that can, in good
15 conscious, give evidence, but I just mention that
16 because that is a factor that I knew some counsel
17 placed great stock in it. I viewed it as sort of
18 a very subsidiary consideration in this case.

19 Q Okay. If we could call up 153470, please, and
20 this is a document that we have not looked at yet
21 and this is your summation at the preliminary
22 hearing, your argument that you made at the
23 conclusion of the evidence going in before
24 Magistrate Cumming to have the case dismissed, and
25 I just want to go through parts of it.



1 If we can go to the next page,
2 and I take it, Mr. Tallis, that the points you
3 would have been making here at the preliminary
4 hearing would be similar arguments that you would
5 then also be making at trial?

6 A Yes. I haven't viewed it in that context, but I'm
7 sure you are quite correct. I think I glanced
8 over this, but never really read it, if you know
9 what I mean.

10 Q Sure. We'll maybe just go through it, and number
11 one --

12 A I don't recall preparing this submission, but just
13 looking at it, it's obvious to me that it's
14 something that I had prepared in advance; in other
15 words, it wasn't an off-the-cuff submission at the
16 end of the preliminary hearing because most
17 preliminary hearings don't involve that much in
18 the way of submissions where there is some direct
19 evidence.

20 Q In fairness, I think this may be a transcript of
21 your verbal submissions.

22 A I see, but I must have --

23 Q You may well have had a written submission as
24 well.

25 A Yeah, I must have had something written out.



1 Q Okay. If we can just --

2 A Maybe even typed out.

3 Q So here, number one that you raise is the time
4 element:

5 "I ask you to consider that in weighing
6 that matter."

7 And then you go on about the time, 20 to 7, and I
8 think essentially saying again, and you've
9 alluded to this earlier, that this offence could
10 not have been committed by Mr. Milgaard during
11 the time frame that it was alleged to have -- or
12 that it could have happened; is that fair?

13 A Yes, I think that's a fair reading of.

14 Q Number two, you say that you have Wilson's
15 evidence that his car was never in the east-west
16 alley or the one running north and south, and then
17 Diewold's evidence that the car was in there for
18 10 minutes at the relevant time, and I think what
19 you are saying there is that that couldn't have
20 been Ron Wilson's car because he was driving it
21 and he testified it was never in there, and the
22 Crown's case was that that car must have been,
23 that the perpetrator of the crime must have been,
24 or likely was in that car; is that correct?

25 A Yes.



1 Q And then again you go back to the time element
2 about the girl obviously had been handled quite a
3 lot, and then I think again you've touched on
4 that.

5 And then to the next page, you
6 raised the secretor issue at the preliminary
7 hearing as a basis to have the case dismissed, and
8 you say:

9 "The seminal fluid that was tested by
10 Mr. Painter indicated that person in the
11 initial test was group A, but a
12 secretor, as distinct from a
13 non-secretor. The Crown suggests the
14 possibility that some of the accused's
15 blood is in the seminal fluid. This
16 possibility is put forward to diminish a
17 piece of evidence, a piece of scientific
18 evidence which initially would
19 completely eliminate David. The Crown
20 can't be heard to say there's a
21 probability it was his blood in the
22 seminal fluid. The doctor suggests it
23 could be from the onset of menstrual
24 flow, or from a vaginal irritation, or
25 possibly from the accused, if he is



1 bleeding himself internally, or
2 externally."

3 So at the preliminary hearing is it fair to say
4 that you were trying to rely on the frozen semen
5 and the secretor issue argument to say that David
6 was eliminated as a suspect and that the case
7 ought to be dismissed at the preliminary hearing?

8 A Yes.

9 Q On that basis?

10 A Yes.

11 Q Next if we can go to 031255 -- there's nothing
12 further on that document -- 031255. This is the
13 affidavit that accompanied your address to the
14 jury and it appears that it was January, the week
15 of January 13, 1992 this was done. It's my
16 understanding that the typed version of your
17 address to the jury was typed up in January of
18 1992 from some shorthand notes and it was done for
19 the purposes of the Supreme Court reference and
20 your giving evidence there; is that correct?

21 A Yes, it was certainly prepared for the Supreme
22 Court reference. I didn't take it as being
23 prepared for the purpose of my evidence.

24 Q Okay, sorry. That it was prepared for those
25 proceedings?



1 A Yes. I must say, one of the court reporters
2 phoned me to see if I had a copy of my jury
3 address, but of course I explained that I didn't
4 have one, and secondly, even though I know that I
5 had it drafted out, I tried, and I think I usually
6 succeeded, in not reading a jury address, you have
7 the points there and try to deal with it in a much
8 more extemporaneous fashion looking directly at
9 the jury rather than reading it with your head
10 down on the lectern.

11 Q If we could go to 031265. I just want to go
12 through parts of this, Mr. Tallis, we've already
13 referred to some parts, and the entire document is
14 in as an exhibit. Just down at the bottom, this
15 is page 7 of your address, you talk about the time
16 element, and I take it, Mr. Tallis, that that
17 would have been -- if I were to ask you what were
18 some of your main arguments before the jury as to
19 what you were putting forward to persuade them
20 that David ought to be acquitted, would the time
21 element be one of them?

22 A Yes, it was, and, you know, that was focused on
23 throughout the trial as well.

24 Q And then the next page, and I appreciate that
25 there's some breaks in the transcript, but you



1 start off:

2 "First of all --"

3 And this is on the time element,

4 "-- you have the deceased located in one
5 site and you have a key and comb located
6 ... you have purse and contents. You
7 have a sweater and boot. You have a
8 cosmetic bag, or you could call them
9 contents of a purse.

10 Now, I want to refer to that
11 because if my learned friend is correct
12 in the theory that he has propounded as
13 to how these things got in these various
14 places."

15 And just pause there. And we've already heard
16 this in evidence, that various items belonging to
17 Gail Miller were found in and around the alley,
18 the sweater was buried, a boot was buried, the
19 purse was in a garbage can and some other things
20 were found in and around that. You say:

21 "You have, in my submission, a . . . time
22 element and of course you have this
23 business of allegedly taking the boot,
24 taking the sweater and burying them in a
25 particular spot, a somewhat pointless



1 thing in my own opinion.

2 If the motive is . . . why
3 worry about a boot being buried where it
4 was, why worry about a sweater being
5 buried where it was, but these things,
6 in my submission, involve a great deal
7 of time, much more time than my learned
8 friend suggested to you.

9 And there is nothing to
10 indicate here that this . . . was . . .
11 or buried or anything like that to the
12 site. There is no zigzag pattern of
13 foot marks or anything like that leading
14 up to the places, and this is something
15 that we ask you to analyze very
16 carefully . . ."

17 So pause there. That would be a summary then of
18 your, of that point. Can you elaborate on
19 anything there, Mr. Tallis?

20 A No. I think that indicates that it was certainly
21 a focus on the time element, and lack of time I
22 guess I should say in which to commit the
23 homicide.

24 Q And then here's where you deal with the cosmetic
25 bag, or the compact.



1 A Yes.

2 Q And you say:

3 "Now, my learned friend in his very able
4 way, said I anticipate counsel for
5 the . . . will say something about the
6 bag."

7 Let me just pause there. At that time Mr.
8 Caldwell would have known that you didn't
9 cross-examine any of the witnesses about --

10 A Yes.

11 Q -- the cosmetic bag and may have sensed that you
12 had a problem in how you approached that; is that
13 fair?

14 A I don't know what was going on in his mind, I just
15 don't. I may have sensed something at that time,
16 but --

17 Q Anyway, you say:

18 "Now, members of the jury, I think you
19 would be surprised if I did not. And in
20 that connection, I am not going to
21 bother opening the exhibits, you can do
22 this. But I do suggest to you that you
23 take this little cosmetic bag or
24 container and examine what is in there."

25 And this is Gail Miller's, one of the exhibits.



1 "You won't find just one lipstick or two
2 lipsticks, the duplication which my
3 learned friend suggested. You will find
4 several. As I say, I am not going to
5 open it all up and wave them in front of
6 you. And then in addition to that you
7 will find another little container,
8 plastic with a sort of . . . on the back
9 of it and there is a form of the
10 cosmetic here in this area, and perhaps
11 my friend was out of order in suggesting
12 that you defer to the female member of
13 your jury on matters of this kind. I
14 gather throughout the course of the
15 trial that some of the male participants
16 here were as not as informed as they
17 might have been on matters of this kind.
18 But . . . I invite you to consider that
19 very carefully, and also consider the
20 question of the purse, the contents of
21 the purse, and then ask yourselves, when
22 you examine that, bearing in mind the
23 alleged dimensions of this other
24 so-called compact is it reasonable, is
25 it probable that there was in fact



1 another compact or cosmetic bag as is
2 alleged in this particular case?"

3 And so would that be a fair summary then of your
4 approach to the evidence that David Milgaard
5 threw a cosmetic bag or compact out of the car?

6 A Yes, and it essentially too was a response to the
7 way Mr. Caldwell I think had gone about it.

8 Q If we can go to the next page, and again here's
9 where you talk about the condition of the body and
10 the clothing and there are -- I think I can just
11 go down to the -- here at the start involves --
12 no, go back to where you were, please, and you
13 say:

14 "A most unique situation, and I never
15 recall ... in a situation where anything
16 like this was found. But ... look at
17 those photographs, consider the position
18 of the clothes, the clothes themselves
19 ... that it points unalterably to the
20 fact that someone got the coat off the
21 that girl ... got the coat off, got the
22 dress down off the arms and after this
23 ... then the stabbing must have taken
24 place and the ... the stabbing in the
25 back must have been, in my submission,



1 have taken place after the coat had been
2 put back on, and this is why I suggest
3 to you it is such a unique situation."

4 And then you talk about the slash marks, and then
5 over to the next page, then carry on:

6 "Now you may say, well, these things
7 were ... larger, and you may well say
8 that to yourself and you may be saying
9 that to me now, silently, but I say this
10 to you, because once again we must go
11 back to the time element ... among other
12 things, and I ask you to bear them in
13 mind because these are matters which
14 you, as men and women of the world can
15 consider and apply your common sense to.
16 They are things that are there. And
17 there are other factors which I suggest
18 are important in connection with the
19 time element."

20 Then you go on to talk about the boot being a
21 distance from the body of significance. So again
22 this would be back to the point that -- and
23 you've touched on this a bit earlier, that
24 whoever killed Gail Miller would have had to take
25 her coat off, take her dress down, have her coat



1 back on, raped her presumably, somewhere in there
2 put the coat back on and then stab her and then
3 grab the sweater and the boot, bury it in the
4 snow, put the purse in the garbage can, is that
5 fair, and you are trying to say compare that with
6 the time that David Milgaard would have been away
7 from the vehicle?

8 A That's correct, raising the impossibility of it
9 having been committed as alleged or, at the very
10 least, the improbability of it having been done in
11 the manner alleged.

12 Q Then the next page, again you just make reference
13 to the angle of the stab marks, that they are
14 consistent with having been inflicted by a
15 right-handed person, and evidence before the Court
16 was David was left-handed; is that correct?

17 A Yes.

18 Q And again on the next page, this is again you are
19 referring to some of Dr. Emson's evidence:

20 "I don't think he could, on the
21 evidence, it is unreasonable to suggest
22 that such a dreadful thing could happen
23 in such a short period of time."

24 Again, back to the time element.

25 Then down at the bottom of the



1 page you talk about the weather I think and the
2 condition of the body and the theory that the
3 attack took place where the body was found and
4 you say:

5 "... this may cause you a great deal of
6 concern in deciding whether or not you
7 can find beyond a reasonable doubt that
8 this sexual attack started and was
9 finished there."

10 And again, if it had not started and finished
11 there, that would eliminate David Milgaard as a
12 perpetrator based on the evidence against him; is
13 that fair?

14 A Yes.

15 Q And then the next page, once again you mention
16 back to the time factor which is of the utmost
17 importance, and then to the next page, you spend
18 some time here:

19 "... let's deal with the conduct of
20 David on the morning in question."

21 And then I think this is based upon the evidence
22 that was adduced from the Danchuks and the
23 Rasmussens and the service station people; is
24 that correct?

25 A Yes.



1 Q And you call them "average, everyday citizens,"
2 you don't say that disrespectfully, "who go about
3 their daily work," and:

4 "... these are not the people who really
5 looked for things therefore they don't
6 see them. Now, just ask yourself, is
7 that reasonable?"

8 I think you are referring to Mr. Caldwell's
9 comments?

10 A Yes.

11 Q And:

12 "I invite you to consider the
13 observations of Mr. Rasmussen ..."
14 The type of man, etcetera, and the Danchuks, and
15 I think you end up comparing the Rasmussens and
16 the Danchuks of the world to Wilson, John and
17 Cadrain and Melnyk and Lapchuk and saying believe
18 the Danchuks and Rasmussens over what these other
19 people say; is that fair?

20 A Yes. I think that was a fair assessment of the
21 appeal to them.

22 Q And the next page, I don't think we need to go
23 through it, but again you spend some time about
24 the Danchuks and their observations. And then
25 onto the next page you say, and this is with



1 respect to the Danchuks:

2 "Now, first of all I invite you to
3 consider this pretty carefully because I
4 suggest when a stranger comes to your
5 door, comes to your place at 7:30 in the
6 morning, 8:00 in the morning with a
7 group and you have never seen them
8 before, you take a pretty careful look.
9 And if they say they're from out of the
10 city, you perhaps then scrutinize a
11 little more carefully."

12 And then just at the bottom:

13 "Well I suggest to you that their
14 appearance at the Danchuks leads to this
15 conclusion, that there is no suggestion
16 that David appears unusual; nothing
17 unusual about his demeanour or about his
18 speech, nothing -- and this is quite
19 important -- nothing unusual about the
20 other two. And Mrs. Danchuk, as I
21 understand it, said that they were
22 dressed like school kids."

23 What would be your, the reason for bringing up
24 the fact that there was nothing observed unusual
25 about Ron Wilson and Nichol John?



1 A Well the -- this was essentially the observations
2 that the Danchuks had made. I think that that was
3 a fair assessment of their testimony. And David,
4 was acting no differently than the other two,
5 essentially, and so they were collectively kids
6 with nobody standing out like a sore thumb, if I
7 may use that term.

8 Q Would you be trying to draw an inference that, if
9 Nichol John had just witnessed a murder or if Ron
10 Wilson had just been told that she had witnessed a
11 murder and that she had been hysterical ten
12 minutes earlier, that the Danchuks might have
13 noticed something?

14 A Well, yes. And, you know, their demeanour was
15 described I think by the Danchuks in the way in
16 which they did and there was nothing untoward that
17 they observed, even though Mr. Danchuk, I think,
18 was somewhat curious as to what they were doing
19 there that hour of the morning, --

20 Q And --

21 A -- particularly when he found out that they were
22 from out of town.

23 Q Now we'll go through the next page, and I won't
24 read through it.

25 A You know, and I mention that because I think it



1 was one of the truck operators, tow truck
2 operators or something, he had made a note of
3 their number, number -- licence number. And all
4 I'm saying, in effect, is that there was nothing
5 that aroused the suspicion of Mr. and Mrs.
6 Danchuk.

7 Q And if we can go to the next page -- and I won't
8 read through it -- but there is a number of pages
9 here, Mr. Tallis, where you talk about the
10 Danchuks in particular, with -- and Mr. Rasmussen;
11 would that have been an important part of your
12 defence, then, to the jury, their observations?

13 A Yes. I thought that their evidence was
14 independent and untainted evidence and I thought
15 they came across that way as witnesses.

16 Q And then again, go to the next page, again talks
17 about Rasmussens and Danchuks. Then to the next
18 page. You say:

19 "There is no suggestion in this
20 particular instance that David was
21 anything but polite and soft-spoken. I
22 think Walter Danchuk was close to all
23 three of them, if I recollect the
24 evidence, and as I recall he said he
25 sort of wondered what they were doing.



1 That is that I invite you to just ask
2 yourselves, put yourselves in Walter's
3 shoes and say, well, maybe I ought to
4 ask what these people are doing here.
5 Nothing unusual, no scratch marks, no
6 signs of blood, and of course he
7 confirms no indication of the use of
8 alcohol or anything like that."

9 And then, of course, you go on to the garage
10 people. Then the next page, similar argument
11 about what was observed there. If we can skip
12 ahead, I've covered your submissions on Wilson,
13 John, and Cadrain. 031287, please. Again, I
14 don't propose to read through it, but this is
15 your submission here where you tell the jury
16 that, based on I think the evidence from Wilson,
17 that the toque David was wearing was a different
18 colour than the blue toque, therefore it wasn't
19 his. We've covered the secretor issue that --
20 addressed to the jury on that, so I think we've
21 covered -- actually, go to 031305. You again go
22 through what the evidence was from the police
23 officers about David's cooperation with them.

24 So I take it, Mr. Tallis, that,
25 even though you did not call David Milgaard as a



1 witness, that you attempted to or were able to
2 get evidence out from other witnesses about his
3 conduct that morning and his conduct with the
4 police; is that fair?

5 A Yes.

6 Q And that in your address to the jury you would
7 highlight that, that even though David didn't
8 testify, here is what others said about his
9 conduct and his cooperation; is that correct?

10 A Yes.

11 Q If we could go to 006175, this is the charge to
12 the jury. And I think you've told us on a couple
13 of occasions that you would have made submissions
14 to the trial judge during the course of the trial,
15 or near the end, about specific directions or
16 instructions you might be seeking from him?

17 A Yes. And the practice -- and I, it probably
18 happened that, even before the charge was given,
19 that we were asked to submit any authorities on
20 areas where we wanted -- that we wanted included
21 in the charge. I can't recall it specifically now
22 but, having read over the charge, I think that
23 there were likely some aspects of it where that
24 was done.

25 Q If we go to 006179. We have been through parts of



1 this, I think with Mr. Caldwell, and there is a
2 part here about the credibility of witnesses, and
3 consider their:

4 "... age, education and apparent
5 intelligence or lack of it."

6 And then here, consider the:

7 "... matters of character, background,
8 the type of life that a person has been
9 leading. His record as a citizen are
10 again matters that you will take into
11 consideration."

12 And the next page:

13 "I will deal a little more extensively
14 with the particular witnesses at a later
15 point during my remarks but it must be
16 obvious to you that the evidence of a so
17 called upright reputable citizen is to
18 be preferred of that of a person who has
19 been leading a dissolute life, a life of
20 crime, or has been acting in such a
21 reprehensible manner that you may
22 consider that his evidence is suspect."

23 Again, that would bear on the point, I think you
24 had said earlier, about comparing the Danchuks
25 and the Rasmussens of the world to the Melnyk,



1 Wilson, John and Cadraings?

2 A Yes. This sort of falls under the rubric of an
3 unsavoury witness or unsavoury character
4 direction, and I'm sure that's one point that, one
5 way or the other, I had asked for a submission on
6 it before the charge was delivered, and I'm sure
7 that I had in my brief some case authorities on
8 that, if not case authorities a text reference.

9 Q If we can go to 006192, please. And in years that
10 followed the completion of the criminal
11 proceedings there was some commentary about Avenue
12 N versus Avenue O and this issue, Mr. Tallis, and
13 here is what the judge says to the jury:

14 "There is of course some speculation as
15 to which route she took on her way in
16 all likelihood to catch a bus. If you
17 look at the sketch P.1 you will see that
18 she had probably three alternative
19 routes. I think Mr. Caldwell suggested
20 two. His theory was that she came down
21 Avenue "N". The house in question,
22 which was 130 Avenue "O", is situated at
23 the corner of 21st Street and Avenue
24 "O". She could have come down Avenue
25 "O", she could have come down Avenue



1 "N", she could have skirted through this
2 alleyway and out at the blind end - the
3 "T" end; it wouldn't have saved her any
4 time, it wouldn't have saved her any
5 distance to go down the alley, as I see
6 it. According to the evidence she could
7 have picked up a bus on 20th at either
8 "O" or "N". Now, if she was the girl
9 who was walking along the street when
10 the car with Wilson and the accused and
11 John stopped to make an inquiry - if she
12 was the girl if you accept the evidence
13 of John and Wilson that it was on a
14 street, then you would conclude I
15 suggest that it was either Avenue "N" or
16 Avenue "O" that she was walking on. But
17 of course there is nothing conclusive to
18 demonstrate that in fact she Gail Miller
19 was the one who ..."

20 was:

21 "... walking down the street."

22 And, again, did you have any difficulty with that
23 direction?

24 A Well that, of course, was an area that was related
25 in a sense to the time factor, but as far as



1 taking objection to it, there are some beneficial
2 portions in it that I don't think I would have
3 wanted to end up undoing at the time.

4 Q And what would that be?

5 A Well, particularly the statement to the jury that
6 there was:

7 "... nothing conclusive to demonstrate
8 that in fact she Gail Miller was the one
9 who ..."

10 was:

11 "... walking down the street."

12 And I think that's the most significant portion
13 --

14 Q It -- I'm sorry?

15 A -- significant portion of it.

16 Q It was suggested by some later in, reviewing this
17 matter, and in particular counsel on behalf of
18 David Milgaard, later counsel, that the evidence
19 either was clear or should have been clear that
20 she walked down Avenue O, and would have walked
21 down Avenue O, therefore the Crown's case about
22 where they got stuck and where she got stopped is
23 all wrong because it couldn't have been on N
24 because she walked down Avenue O. And then -- I'm
25 over-simplifying it but I think are you aware, Mr.



1 Tallis, of that contention later, that -- the
2 significance of Avenue O versus Avenue N?

3 A Well, I'm just trying to reflect back. I don't
4 think this was a situation where the judge would
5 have changed his direction on it.

6 Q Yeah. And putting aside the judge's direction for
7 a moment, --

8 A Yeah.

9 Q -- and I think you've touched on some of this, did
10 you view there to be -- or what significance did
11 you place on the fact that Gail Miller lived on
12 Avenue O, that the bus stop that she I think
13 arguably normally went to was on 20th and O, it
14 was 40 below, and yet the Crown's theory seemed to
15 place her on Avenue N, or perhaps in the alleyway,
16 as opposed to Avenue O?

17 A Well I noticed, from my original or early memo, I
18 grasped that the most likely route would be down
19 Avenue O. But, of course, I don't have any
20 subsequent memoranda or notes to refresh my memory
21 on following -- on follow-up considerations.

22 Q And --

23 A But I do recall, as I told you, checking, and even
24 making my own sketch and whatnot, about whether or
25 not there was a back door that one could go out



1 of. So I certainly thought that a -- and this is
2 to a large extent speculative -- that it would be
3 down -- she could go down the alley, as has been
4 mentioned, and to a large ex -- to -- and the
5 question of whether or not she was -- would cut
6 over to Avenue N was possible, but it too was
7 speculative.

8 Q Okay.

9 A I knew that people did walk down the alley
10 because, as I told you earlier, I had interviewed
11 a lady who had been down the alley that morning,
12 but it was not at the relevant time frame, so she
13 wasn't of any assistance.

14 Q Go to 006197. This is where the judge deals with
15 Nichol John, and we spent some time yesterday
16 going through her evidence and how it was dealt
17 with by the judge. He says here:

18 "I want to deal at this time
19 specifically with the evidence of this
20 girl Nichol John. You heard her in the
21 witness box. You must have got some
22 impression of the type of character she
23 is, the kind of a person who would go on
24 this particular kind of a trip in the
25 first place, the kind of a girl who



1 would admittedly do the things that she
2 did in and around Regina, the fact that
3 she was a user of drugs - those are the
4 kind of things I referred to before
5 which you will take into consideration
6 in assessing a person's evidence. What
7 kind of a person are they? Are they
8 likely to be telling the truth? Are
9 they likely to be lying? But I want to
10 deal with it specifically and for the
11 purpose of trying to avoid making any
12 errors I have had a large portion of her
13 evidence typed out by the court
14 reporter, because as you will recollect
15 I gave permission to Mr. Caldwell to
16 cross-examine her on a statement that
17 she allegedly gave to the police and I
18 told you at the conclusion of that
19 evidence that anything that she did not
20 adopt at the time she gave the evidence
21 in the witness box in that statement was
22 not evidence against the accused."

23 Now again at this point, Mr. Tallis, as far as
24 this direction and the credibility or lack of
25 credibility of Nichol John, are you able to tell



1 us whether, from Mr. Milgaard's perspective, you
2 were better off to have her credible or not
3 credible in light of her evidence?

4 A Well of course, if she'd maintained her position
5 at the preliminary hearing that she didn't
6 remember anything or didn't see anything, that's
7 one thing, but as it unfolded, of course, I've
8 explained to you that she certainly created the
9 impression here that at -- at trial, that she was
10 holding back, and I think the presiding trial
11 judge felt that way. And, as I said yesterday, I
12 think he assessed the words "I don't remember" as
13 not an honest "I don't remember".

14 Q Yeah. So is it fair to say, and we talked a bit
15 about this yesterday, that if the jury were to
16 find that Nichol John was not credible in her
17 evidence, that the likely or perhaps the only
18 alternative would be that the "I don't remember"
19 was not truthful and that the un-adopted statement
20 was really what happened?

21 A I think there is always that risk.

22 Q Now if we go to the next --

23 A And, as we were talking yesterday, it probably --
24 it may well have been -- could be used to enhance
25 the credibility of Wilson in the eyes of some.



1 Q Now if we can go to the top of this page --
2 actually, no, next page -- and I won't read
3 through this but I just want to touch on the judge
4 then -- if we can call out the top part, please --
5 tells the jury, and he says:

6 "... there were certain things which
7 were read to her which she did admit.
8 She admitted that she gave a statement,
9 she admitted that it was in writing, she
10 admitted that she had the opportunity of
11 reading it over, she admitted that it
12 was in narrative form, she admitted that
13 she signed every page of it. She told
14 you the kind of a room she was in when
15 she gave the statement. I'm only going
16 to pick out those parts of her testimony
17 where she admitted that she had made a
18 statement to the detective sergeant and
19 admitted that those were true, because
20 as I say you must disregard anything
21 that she did not accept as being the
22 truth. This question was put to her:",
23 and then for the next five or five or six pages
24 the judge actually read out the questions and
25 answers where she adopted the parts of her



1 statement and adopted the fact that she had told
2 the police. Now I suppose one view of that might
3 be that she was confirming for the jury "here is
4 the only evidence that you should listen to", I
5 suppose another theory might be that, with
6 reinforcing with the jury that "lookit, she
7 remembered all of these things, that it might be
8 unlikely to accept that she didn't remember the
9 others"; do you remember having a view on that at
10 all about this part of the charge?

11 A I don't specifically remember that now, but having
12 read it over at your request I'm certain, I'm
13 inclined to the view that it would have had the
14 latter effect that you mentioned.

15 Q And so, in other words, that pointing out for the
16 jury that a good part of the statement she
17 remembered, she remembered the room, she
18 remembered saying it, she remembered observing it,
19 but that certain parts of the statement she
20 couldn't, and that that might be somewhat
21 suspicious; is that fair?

22 A Yes. It goes back to our discussion yesterday
23 about "selective memory". I mean that's not --
24 that's a phrase I was using to try and capture the
25 impression that may have been left.



1 Q If we can go to 006205. And here is where the
2 judge talks about Melnyk and Lapchuk and that
3 evidence, and if we can go to the next page, and
4 then I think this is Melnyk he's talking about:

5 "And in considering that witness's
6 evidence you will recollect that he has
7 had considerable trouble with the
8 authorities, that he was convicted of
9 theft in the spring of that year and
10 given a suspended sentence, that he is
11 presently charged with armed robbery in
12 Regina, that he hopes he will be able to
13 establish an alibi and have the charges
14 withdrawn, that he himself uses and used
15 drugs, although he hadn't done so for a
16 time previous to this particular
17 incident, and that his evidence first
18 came to light as a result of a
19 conversation he had with Wilson about
20 two weeks ago. Of course Wilson knew
21 that he was going to be giving evidence
22 in this case, he knew the story that he
23 expected to tell at the trial of the
24 accused and presumably he was discussing
25 the incident with Malnyk and Malnyk said



1 that he Malnyk then volunteered this
2 information which he gave in the witness
3 box, so it seems to me the obvious
4 conclusion is that Wilson must have gone
5 hot-tailing it off to the police and
6 told them about it and that's how the
7 police were able to trace these men down
8 and of course once they got the lead it
9 wouldn't be too difficult to find that
10 Lapchuk also was involved in it."

11 And we talked a bit about this yesterday,
12 about -- and I think the judge brought out this
13 evidence in questioning, and I think you said
14 that that tended to undermine the position you
15 were trying to take, that Melnyk or Lapchuk had
16 made a deal with the police or Crown or hoped to
17 make a deal with the police or Crown; is that
18 fair?

19 A Yes, and I think I covered that yesterday.

20 Q Yeah. Then the next page. And then here is where
21 the judge, I think, sums up:

22 "You may ask yourselves what would be
23 the motive in these persons of dubious
24 character inculcating the accused, which
25 they endeavored to do. You have to



1 consider whether the fact that they are
2 both now charged with crimes might have
3 something to do with it. They might
4 have been trying to ingratiate
5 themselves with the police, they might
6 not. They might be telling the truth in
7 this particular instance, they might not
8 be telling the truth. That's entirely
9 for you to determine."

10 So, again, I think you had mentioned that the
11 character of these people, you asked the judge to
12 bring out in the direction, and it appears that
13 he did to some extent?

14 A Yes, I recall that, and I think that that was an
15 aspect of the charge that was favourable.

16 Q Go to page 006209. At the bottom of the page, we
17 touched on this yesterday as well, this is the
18 hunting knife. Again he says:

19 "There is evidence that the accused had
20 two knives, a hunting knife and a paring
21 knife. We haven't heard much about the
22 hunting knife if he did have two knives.
23 It might occur to you to wonder why he
24 didn't use the heavier knife if he did
25 use a knife at all instead of the paring



1 knife. If the accused did commit the
2 murder I suggest to you that the
3 evidence is such that you might conclude
4 ...",

5 actually, let me pause there about the time.
6 Just back on the hunting knife, based on that
7 comment there, do you see any advantage to you in
8 introducing the hunting knife that was found in
9 the back alley near Gail Miller's body about a
10 month after the murder?

11 A No, I think I --

12 Q You --

13 A -- explained that to you yesterday.

14 Q Now here is where the judge talks about time:

15 "If the accused did commit the murder I
16 suggest to you that the evidence is such
17 that you might conclude that it was
18 somewhere between a quarter to seven and
19 ten minutes past seven - if he did -
20 because the girl was ready to leave the
21 house at between twenty-five to seven
22 and a quarter to seven and they arrived
23 at the motel at about seven ten."

24 And let me just pause there. I think, actually,
25 the evidence of Mr. Rasmussen was that it could



1 have been as late as 7:30, and so this time
2 window of 6:45 to 7:10, in fact I think what he
3 says is they arrived at the motel at about 7:10,
4 so in other words it would be probably 7:05 given
5 that they'd have to travel to the motel; is that
6 fair?

7 A Yes, depending on the, you know, depending on the
8 speed they drove and whether they actually -- I
9 don't think that they knew where the Trav-a-leer
10 Motel was, they happened to see it and pulled in
11 there.

12 Q Okay.

13 A There was no suggestion that David knew where it
14 was.

15 Q Now in your address to the jury you talk about the
16 time element on a number of occasions. If we look
17 at what the judge says here, and let's talk about
18 the two end posts, if I can call it.

19 A Yeah.

20 Q He says 6:45 is when she was ready to leave, so I
21 suppose unless the perpetrator -- well, let's go
22 back and take the Crown theory that it's David
23 Milgaard. Unless David Milgaard is standing at
24 her front doorstep, there would be a time frame
25 between 6:45 and when she left and walked down the



1 street, so that if we try and narrow down, based
2 on this direction to the jury, the time frame that
3 the actual crime could be committed, that it's --
4 you'd have to add some minutes to 6:45; is that
5 fair?

6 A Yes.

7 Q And if it is the woman that was encountered for
8 directions, and the fact that they then drove,
9 whether it's a half a block or a bit, got out,
10 tried to push the car out, I think the evidence
11 was for a couple of minutes, and then David left
12 the car, you might add another two to five
13 minutes? In other words what I am trying to do is
14 narrow the time frame --

15 A Yes.

16 Q -- for when David Milgaard could have contact with
17 her, so we might be 6:50, 6:55, is that fair,
18 maybe even 7:00 that he would first have the
19 opportunity -- and, again, if we assume she was
20 the woman that was asked for directions, the first
21 time after that that David Milgaard could have
22 contact with Gail Miller would be maybe, what,
23 6:55, 7:00, based on his --

24 A In that neighbourhood, yes.

25 Q And then the time that they would have had to



1 leave to go to the Trav-a-leer might be, to get
2 there at 7:10, might be 7:05, maybe even earlier?

3 A Yes, depending on factors that we can't be sure of
4 in terms of the driving and how, you know, how
5 fast they were driving, and the fact that they
6 were not specifically going to the Trav-a-leer but
7 ended up there because it was open.

8 Q Let me just pause here for a moment. Would --
9 and, again, did you have any quarrel at the time,
10 back in 1970 at the time of trial, with respect to
11 this window that the judge put in the charge to
12 the jury; in other words, would that be in
13 accordance with what you thought the time window
14 might be?

15 A Yes, I thought the -- that, on balance, the
16 direction was favourable.

17 Q Right. In fact, he could have gone 7:20 or 7:30
18 based on Rasmussen's evidence, could he not?

19 A Yes.

20 Q So, on that basis, I want to focus on your time
21 element argument. You then have -- and, again, I
22 appreciate it depends on how many minutes you add
23 on each side -- but it looks like the longest
24 opportunity might be 6:55 to 7:05; is that fair?

25 A Yes, yes.



1 Q And, arguably, you might be able to shrink that
2 window to nothing; is that fair?

3 A Yes.

4 Q And that would be the impossibility argument --

5 A Yes.

6 Q -- if it's nil, and the improbability argument if
7 it's maybe 10 minutes?

8 A Yes.

9 Q Is that fair?

10 A Yes.

11 Q And that's where we get back to the condition of
12 the body, the removal of the coat, putting the
13 coat back on, the stabbing, the rape, the burying
14 of the boot, the sweater, etcetera. And I think
15 that's the point that you were trying to make with
16 the jury, was it, that, based on this time window,
17 this could not have happened; is that fair?

18 A Yes, I was trying to make that point, not only
19 with the jury but also with the judge.

20 Q And so --

21 A Because I had the question of the charge in mind.
22 One always likes to get as favourable a charge as
23 you can, and --

24 Q And this --

25 A -- in the conduct of a trial, you try to achieve



1 that.

2 **Q** And for your time element argument, I think you've
3 already told us this, this charge would be
4 considered favourable; is that fair?

5 **A** I -- that is my assessment.

6 **Q** Then to go to 006 --

7 **A** And I think, also, I -- in fairness, I should say
8 that the manner and tone of the direction in this
9 respect came across as favourable.

10 **Q** Now on, just on the time frame, would you have --
11 you talked about making submissions to the judge.
12 Do you recall or are you able to tell us, based on
13 what you -- from observing this, whether you would
14 have gone into the judge and argued about what
15 time window ought to be put to the jury?

16 **A** I can't say that, now, without -- you know, it
17 just, it would be unfair to all concerned if I
18 were to try to reconstruct that at this stage, I
19 just don't know.

20 **Q** If we can go to 006211, please. I want to just
21 touch on this part of the charge. If we can go up
22 one line higher, please, it says:

23 "The Crown has advanced one theory ...",
24 and this is talking about the multiple stabbings,
25 and the judge says:



1 "One would have thought ...",
2 or pardon me, let me back up:
3 "... advanced one theory to you that she
4 may have been stabbed and either
5 rendered unconscious or killed and
6 afterwards raped. One would have
7 thought that if that was so that whoever
8 did the raping would be pretty well
9 covered with blood; and if those were
10 the circumstances and the accused had
11 done it surely the Danchuks even though
12 they weren't looking for blood would
13 have seen blood if there had been a
14 profusion of it, because how could a
15 person be in contact with a woman like
16 that, bleeding as she must have been
17 bleeding, and not become himself fairly
18 well covered with blood? And how was it
19 that the coat was on her arms and yet
20 her dress was pulled down? Of course
21 there is always the possibility that she
22 was threatened with a knife, raped and
23 afterwards killed; there is always that
24 possibility; whether you consider it or
25 not is entirely up to you. But the fact



1 remains is that she was killed and the
2 fact remains is that somebody had sexual
3 relations with her and the fact remains
4 that her body was in such a condition
5 that there is evidence from which you
6 might conclude in addition to the fact
7 that she had sperm in her vagina, that
8 she was raped at that particular spot
9 and it wasn't something that may have
10 happened back home with somebody with
11 whom she consented to have intercourse."

12 And then it goes on to describe it and the
13 wounds, so it would seem to be from this that
14 this would be a favourable direction with respect
15 to your argument about the Danchuks not observing
16 any blood?

17 A Yes, I'm sure that the learned trial judge had
18 picked up on that point based on the evidence that
19 was pursued during the testimony of the witnesses
20 and I think that it was an aspect that I had
21 canvassed in my address to the jury.

22 Q Okay. If we can go down to the bottom of the --
23 actually, go to the next page, the bottom, he
24 says:

25 "Some of the evidence which was adduced



1 I suggest is not of very much assistance
2 to us. The fact that the wallet was
3 found near Cadrain's is not evidence
4 really which you could link up with the
5 accused. Whoever robbed her may have
6 thrown it anywhere, and the fact that it
7 was three doors away from Cadrain's
8 doesn't, I suggest, implicate the
9 accused to any degree at all. Anybody,
10 any person might have dropped it in that
11 particular locality."

12 And then it goes on to talk about it. I take it
13 that would be a favourable direction to Mr.
14 Milgaard about the wallet?

15 A Yes. I have to say that on balance, at the time I
16 thought this was quite a favourable charge.

17 Q Then to page 006216 --

18 A You'll see the toque he mentioned as being of no
19 consequence.

20 Q Right. Sorry, yeah, I should have mentioned that
21 as well.

22 A That's another aspect of that same point.

23 Q Right, I think he told the jury to disregard the
24 toque and the wallet as in any way being evidence
25 linking Mr. Milgaard to the crime.



1 Now, here's where he talks about
2 the motel room and he says:

3 "In the first place you must consider
4 whether the witness who gave evidence
5 that a statement was made is telling the
6 truth. If you come to the conclusion
7 that he wasn't telling the truth or that
8 you have a doubt as to whether he was
9 telling the truth, then you must
10 disregard that entirely."

11 So in other words, if the jury doubts Melnyk or
12 Lapchuk, they must disregard it entirely.

13 "If you come to the conclusion, however,
14 that one of the witnesses or all of the
15 witnesses were telling the truth when
16 they said that the accused said such and
17 such a thing - if you come to the
18 conclusion that they were telling the
19 truth, you must go further and determine
20 whether or not in fact the accused was
21 telling the truth, because it could only
22 be accepted as evidence against the
23 accused if you concluded that he did
24 make the statement and that in making
25 the statement he was telling the truth.



1 Sometimes persons make statements which
2 are completely untrue - for various
3 reasons. Persons have been known to
4 admit to things that they didn't do;
5 persons have been known to boast about
6 things that they didn't do. And so in
7 order to consider that evidence you
8 would have to find not only that the
9 statement was made or the statements
10 were made but that the person who made
11 the statement was in fact telling the
12 truth."

13 And I take it that would be a favourable
14 direction with respect to the motel room
15 evidence?

16 A Yes.

17 Q And then the next page --

18 A I wonder if we can break at this point?

19 MR. HODSON: Sure, yeah.

20 *(Adjourned at 10:25 a.m.)*

21 *(Reconvened at 10:49 a.m.)*

22 BY MR. HODSON:

23 Q Go back to 006217, and just again, this was
24 talking about the charge to the jury and the motel
25 room reenactment, he says:



1 "There is evidence, however, that the
2 accused was under the influence of drugs
3 when he was alleged to have made these
4 statements in the motel. Now, being
5 under the influence of drugs would he be
6 more likely to create a bit of a
7 sensation by admitting something that
8 wasn't true? Would he be more likely
9 under the influence of drugs to have his
10 inhibitions removed and be more careless
11 about guarding his tongue? Those are
12 all matters that you will have to
13 consider in determining whether or not
14 if you do believe these witnesses that
15 the accused did make those statements,
16 whether the accused in fact was telling
17 the truth when he made the statements."

18 So in other words, the fact that Mr. Milgaard was
19 on drugs at the time he allegedly made these
20 statements could cut both ways, it might mean
21 he's more truthful, it might mean he's more
22 likely to lie; is that fair?

23 A That's correct.

24 Q And that would be -- did you consider that a
25 favourable charge?



1 A Under the circumstances, I would have considered
2 it a favourable direction.

3 Q Then go to 006219 --

4 A And I just should add that when I say that, I'm
5 very conscious of the tone of the direction.

6 Q Well, you were there and heard it. Can you tell
7 us that --

8 A And when I was there I thought the tone was a
9 favourable tone.

10 Q And here, after he's finished his charge, he asks
11 for suggestions, the jury is out, and you make
12 some suggestions here, I'll just go through a
13 couple of them, and I think you are talking about
14 when Gail Miller left her house:

15 "... that the only thing left for her to
16 put on were her shoes and with the
17 utmost deference to your Lordship's
18 recollection may I suggest that the
19 evidence in fact establishes that she
20 did not have her shoes on; she was
21 dressed in her uniform and her hair was
22 combed back but on the contrary the
23 evidence points to the fact that she did
24 not have her coat on or gloves or
25 anything like that."



1 And I take it this would be trying to add a few
2 minutes to the 6:45, or reducing the window?

3 A Yes. I thought that was a reasonable suggestion
4 based on the evidence.

5 Q 006220, the next page, you bring up a point here,
6 in the charge to the jury the judge had talked
7 about things that inculcated the accused and you
8 say:

9 "I suggest that some areas of Your
10 Lordship's charge must be amplified and
11 I say it for this reason. When we come
12 to - to going into the facts of the case
13 Your Lordship started out with a
14 reference by saying - what are the facts
15 that in effect incriminate the accused?"

16 And then the word inculcate, and then there's a
17 discussion, and I don't think we need to go
18 through, but I think what you said to the judge
19 is lookit, I think you should go and highlight
20 those facts which exculpate the accused; is that
21 correct?

22 A Yes.

23 Q And then to page 006223, and at the top, again
24 this is you making reference about emphasizing the
25 exculpatory and that:



1 "... one would expect to find blood in
2 some substantial quantity."

3 I think on Mr. Milgaard.

4 "But I suggest, My Lord, that in
5 considering that aspect of the case,
6 Your Lordship should also have made
7 reference by way of exculpatory facts to
8 the conduct and demeanour of the accused
9 as seen by independent witnesses.

10 Rasmussen . . ."

11 And then down at the bottom, and then:

12 "No, no immediately afterwards - his
13 conduct at the hotel, his conduct at
14 Danchuks."

15 Etcetera. So it would appear that you are asking
16 him to go back and re-emphasize that as being
17 exculpatory?

18 A Yes, or add a little to what he had said in his
19 direction.

20 Q And then if we can go back to 006225, and there is
21 also a reference to the time element in there, so
22 after this discussion -- go to 006225, please. So
23 the jury returns and the judge says:

24 "Members of the jury, I have been asked
25 to draw certain things to your attention



1 which I am very glad to do."
2 And then scroll down, it talks about:
3 "First of all I dealt with evidence
4 which I referred to as being the type of
5 evidence which you might consider as
6 inculpatating or incriminating the
7 accused. You recollect I went through
8 the various things such as the evidence
9 of these witnesses about some blood on
10 his clothing, the evidence with respect
11 to the statements that he is alleged to
12 have made and so on. And then I went on
13 and brought out matters and drew them to
14 your attention which were indicative of
15 the fact that he didn't commit the
16 crime, this is exculpatory matters, but
17 I didn't refer to them as exculpatory, I
18 didn't refer to them as matters which
19 you could consider which were the
20 opposite of incriminating, and you will
21 recollect that after I was through with
22 a certain number of observations I went
23 on and I said there was no scratches on
24 his face, the type of characters who
25 were giving this evidence was such that



1 you would have to scrutinize it very
2 carefully, the fact that there was no
3 profusion of blood on him and the fact
4 that a person who would have sexual
5 intercourse with a woman after she had
6 been stabbed would likely have blood on
7 him, the fact that Danchuks saw no blood
8 - those are all intended to be by way of
9 exculpatory, those things which you can
10 consider which indicated the accused was
11 not - and apparently I didn't indicate
12 it plainly enough to you to show that I
13 was trying to place before those facts
14 which you would consider in discounting
15 any suggestion that these other matters
16 were incriminating."

17 Scroll down:

18 "And that's what I intended to do - I
19 intended to try and give the picture as
20 it was from the point of view of the
21 Crown and then endeavour to draw to your
22 attention those facts which would
23 indicate or might indicate to you that
24 the accused had nothing to do with this
25 offence."



1 And scroll down, you say:

2 "I also referred to the time that the
3 girl Adeline Nyczai saw the deceased in
4 the house and I used the words that
5 Nyczai had said that she was ready to go
6 to work but she didn't have her shoes
7 on. Now you will recollect this
8 evidence better than I did. I know that
9 she said "ready to go to work" but she
10 also said she did not have her shoes on,
11 and I also believe this - and again it
12 will be a matter of your recollection -
13 that she didn't have her coat on and she
14 didn't have her gloves on and there's
15 nothing to indicate that she in fact did
16 leave the house immediately after Nyczai
17 saw her. She might have left there ten
18 minutes later, she might have gone back
19 into the room and done something or
20 other; the only evidence is that Nyczai
21 did hear a door closing or footsteps or
22 something like that but there is nothing
23 to pin it down as to the fact when she
24 in fact did leave the house."

25 So again, only the time factor there, that would



1 be a favourable direction because it would move
2 the 6:45 possibly later?

3 A Yes.

4 Q Shrink that window we talked about earlier?

5 A Yes.

6 Q And I take it minutes, would it be fair that
7 minutes being reduced on that window were
8 important? I think we were dealing with --

9 A Yes, I think minutes counted.

10 Q And then scroll down, please, you say:

11 "I also referred to the evidence of
12 Wilson when he said that John was
13 hysterical when he returned and I also
14 referred to John's evidence in which she
15 had admitted that she had moved over
16 towards Wilson when the accused got in
17 the car. But you will also bear in mind
18 this - that if she was hysterical as a
19 result of something happening, if she
20 was afraid of the accused you would have
21 thought that she would have taken the
22 first opportunity to leave the car and
23 not get back in it again; in other
24 words, she wouldn't have continued on
25 with the other two on their little jaunt



1 up to Edmonton, she wouldn't have
2 remained with them if she had been that
3 upset or that hysterical or that
4 concerned about it; if she was afraid of
5 the accused and she had ample
6 opportunity to get out of the car and
7 stay out of the car at the various
8 places they stopped around Saskatoon."

9 And I take it that that would be a favourable
10 part of the charge to Mr. Milgaard?

11 A Yes, in my view it was.

12 Q Then to the next page --

13 A And I should add that, as I said before, I was
14 very conscious of the tone in which this was
15 delivered and I considered it to be a favourable
16 type of tone under the circumstances.

17 Q And again just to go back, and this is the
18 follow-up charge, if I can call it that, after the
19 judge heard your submissions on the earlier pages,
20 and starts here:

21 "Some considerable time was taken by
22 counsel and by me too in dealing with
23 this matter of time and the question as
24 to when the deceased left the house may
25 be of very considerable importance to



1 you in determining whether or not the
2 accused could have had the time to rape,
3 murder and steal, or whether the time
4 was such that it was too short for him
5 to have been able to do all these things
6 which as you will recollect one of the
7 police officers said in connection with
8 the coat - well, this would all take
9 some time. So you bear in mind the time
10 factor, I suggest, Members of the Jury,
11 very seriously in determining whether or
12 not the accused could have done the
13 things with which he is charged - could
14 have done the thing with which he is
15 charged.

16 Also there is no evidence of
17 his actions that morning after arriving
18 at the motel - I think the motel was the
19 first place where he saw anybody who
20 might have seen his condition other than
21 the two occupants and other than the
22 people who helped push the car - and we
23 haven't got their evidence - and in the
24 Danchuk house and in the Cadrain house -
25 that there was nothing about his manner



1 or speech or conduct which was anything
2 other than normal. In other words,
3 there was nothing from which you might
4 conclude that he was upset about
5 anything or had a guilty conscience or
6 he had done something that was wrong.

7 I referred briefly to Cadrain's
8 evidence. You will recollect that he
9 went to the police after he returned to
10 Saskatoon but that he was first
11 questioned by the police in Regina and
12 he admitted that at that time he had no
13 recollection of anything unusual in the
14 appearance of the accused, no
15 recollection of any blood on him, and I
16 think no recollection of a rip in the
17 trousers at that time when he was being
18 questioned, and he said that he was
19 trying to tell everything that he
20 remembered truthfully and that he had no
21 recollection of those things.

22 Thank you."

23 So that's the end of his charge. So again,
24 Mr. Tallis, would those parts would you have
25 considered to be, both in substance and in tone,



1 favourable directions to the jury?

2 A Yes, I did, and one of the reasons, in addition to
3 the obvious, that I asked for the additional
4 direction, or directions, is that I was certainly
5 of the view at that time that jurors tend to place
6 significant weight on the observations or
7 directions of a presiding trial judge, and this of
8 course was a favourable approach in most respects
9 and essentially were the last words that the jury
10 heard; in other words, the last direction was from
11 the judge, and this supplementary direction
12 covered quite a number of points that in my view
13 were helpful to David's cause.

14 Now, I'm trying to give you my
15 recollection going back to the time and I think
16 that it's quite reflective of the position I felt
17 I was in at that time. I suppose I can sum it up
18 by saying this, at the end of that supplementary
19 set of directions, I was pleased that I had asked
20 for those additional directions because I don't
21 think -- and because I know that the judge did not
22 in any way denigrate or belittle the positions
23 that I had put forward when inviting him to
24 address those aspects of the case. I hope I'm
25 making myself clear on this, and I'm trying to



1 divorce it from any subsequent experience I had as
2 a trial judge.

3 Q Uh-huh. Just on the point, and you touched on
4 this a bit earlier, but I would like you to just
5 elaborate about, we talked a fair bit when we were
6 going through some of the key evidence about what,
7 sort of your strategy and what questions you would
8 ask witnesses, what questions you would not ask
9 and the impressions of the jury, and I think
10 obviously that is one audience that you are
11 playing to as defence counsel, if I can use those
12 words, in how you conduct the trial and the
13 questions you ask and don't ask.

14 What about the trial judge, you
15 talked a bit about the importance of the direction
16 to the jury. Can you tell us what, again in this
17 trial as defence counsel, what your objectives
18 were as far as the trial judge and, in particular,
19 with respect to the charge to the jury at the end
20 of the evidence?

21 A Well, as I've indicated to you, perhaps not as
22 clearly as I should have, I thought at that time
23 that the trial judge played a pivotal role in any
24 jury trial and, so there's no misunderstanding, I
25 still feel the same way.



1 I know that the burden -- the
2 element of persuasion focuses on the jury as the
3 fact finders, but I always think that when you are
4 dealing with matters, whether of admissibility or
5 with respect to the final instructions by the
6 presiding judge, it is important to realize that
7 there is an element of persuasion involved in that
8 aspect of the case, and frankly that's what I was
9 trying to do here, not only with respect to the
10 main charge, but when that charge was finished I
11 did feel that it was in David's best interests for
12 me to endeavour to persuade the presiding judge to
13 amplify some of his directions and include one or
14 two other items in it. I'm sorry, I'm afraid I'm
15 being too long winded here.

16 Q No, that's fine. If we can then just go to the --
17 the jury was out, I think the transcript reflects
18 they were out over night and maybe were in
19 deliberations for 10 or 12 hours, does that -- I
20 stand to be corrected on that, but --

21 A I know that they were out a long time and I have a
22 general recollection that they deliberated late
23 into the evening and then returned the following
24 morning for deliberations.

25 Q And again --



1 A You will have the record, so I don't dispute the
2 record.

3 Q I think what you said is correct, I'm not sure how
4 many hours, but they were in at least, I think, 10
5 hours, maybe I'm overstating that, but more than a
6 couple of hours. Do you recall, based upon your
7 experience at the time, was that an unusual amount
8 of time for the jury to be out or did you read
9 anything into the fact that they were out that
10 time frame?

11 A I don't think I did. I thought that it was
12 certainly a lengthy period of time and from that
13 I'm sure I concluded that they were giving the
14 matter very conscientious and careful
15 consideration.

16 Q If we can now go to the, 006851, I think the
17 verdict was handed down on January 31, 1970, and
18 this is the Notice of Appeal dated February 10,
19 1970. Can you tell us how -- maybe just go to the
20 next page on this document -- about what happened
21 after the verdict and before this Notice of Appeal
22 was filed and what happened?

23 A Well, I can't recall all the details, but of
24 course I discussed the matter with David. We had
25 not achieved the hoped-for result, but I'm not



1 sure whether it was that very day, I rather think
2 it was, but if not, the following day I discussed
3 with him an appeal, I recommended an appeal and
4 got his instructions to prepare and serve and file
5 a Notice of Appeal and that I did.

6 I personally drafted up this
7 Notice of Appeal which you have shown me and at
8 the time I considered the section 9(2) point to be
9 a significant one, and also the question of
10 whether or not the verdict was unreasonable. I
11 know that challenging a verdict as unreasonable
12 has always been an uphill battle, but this is one
13 of those cases where I thought that it was a point
14 of sufficient merit to pursue.

15 I recall, of course, the point
16 about the blood group evidence with respect to
17 Wilson. I suppose that was, in a sense, a
18 subsidiary point, but I wanted to make it
19 abundantly clear on any appeal that our case never
20 was that we were suggesting that Wilson had killed
21 the girl or had anything to do with this crime,
22 our position was that the evidence did not support
23 a conviction of David, so that sort of gives you a
24 bit of the background which I've distilled as best
25 I can without all my file notes.



1 The second thing is I know I
2 felt strongly enough about the appeal that I spoke
3 to my colleagues and I think, I'm sure -- well, I
4 know I drafted the appeal and probably launched it
5 before I had the authorization from Legal Aid.
6 The transcript was a very lengthy transcript and I
7 knew that that of course would be a significant
8 disbursement based on, you know, prevailing costs,
9 but my position, and I had the full support of my
10 partners, was that we would carry the appeal to
11 the Court of Appeal whether or not any
12 authorization came from Legal Aid.

13 Now, as it turned out, the Legal
14 Aid committee, as I recall it, and I don't
15 remember the members who attended the meeting, but
16 they asked me to attend, I think probably Mr.
17 Heidgerken had phoned, and I did attend, I was
18 asked to outline essentially the basis upon which
19 the appeal was being taken, and the authorization
20 then came for the limited funding that was
21 permissible, but in particular that would cover
22 the transcript. In other words, it could be
23 ordered without any regard for what the cost of
24 that would be.

25 Q And so if Legal Aid had not -- let me just back



1 up. Your earlier Legal Aid authorization then was
2 only, in effect, until the end of trial; is that
3 correct?

4 A That's right. The practice there was to have the
5 steps authorized by the committee. Now, I can't
6 remember the sort of guidelines that they had, but
7 I seem to recall that someone on the committee was
8 interested in the section 9(2) point, and of
9 course since that was relatively new legislation,
10 it seemed to carry the day.

11 Q Was it, in cases where you defended an accused at
12 trial on Legal Aid, did it necessarily follow that
13 they would also approve to provide funding for a
14 subsequent appeal or did you have to go back to
15 the committee?

16 A My recollection is you had to go back.

17 Q And was it a -- were there cases to your
18 recollection where you might not get funding on
19 the appeal?

20 A I think there were. I seem to recall at least one
21 case where they said no because they didn't feel
22 there was sufficient merit to it.

23 Q And so just back to your decision then when you
24 filed the appeal, if Legal Aid funding had not
25 been provided, is it your evidence that you and



1 your firm then would have covered the costs of the
2 transcript and other costs related to the appeal?

3 A Yes.

4 Q If we can just go through the grounds quickly
5 here, you talked about 9(2), and we've covered
6 that, and I take it that's the issue we talked
7 about yesterday, --

8 A Yes.

9 Q -- that it should have been done in the absence of
10 the jury, and that's the point we discussed
11 yesterday; is that correct?

12 A That's correct.

13 Q Go to the next page. The blood type you talked
14 about, Ron Wilson, and I think you were saying
15 that your position was you didn't want the jury to
16 think that you were pointing the finger in any way
17 at Ron Wilson --

18 A Yes.

19 Q -- I think; is that correct?

20 A Yes.

21 Q Number 3 is the, I believe the motel room
22 reenactment witnesses, and you say they:

23 "... erred in admitting their evidence
24 when it was of no real probative value
25 and yet was highly prejudicial ...";



1 can you expand at all on that?

2 A Well on -- I think that that was drafted when I
3 was probably in a rather partisan frame of mind
4 and, later, I think I realized that that was not a
5 point that I could really make any headway in an
6 appeal.

7 Q And if we can scroll down, point number 4, this is
8 the in regards:

9 "... to the nature and character of the
10 evidence adduced on behalf of the
11 prosecution, the verdict of the jury is
12 unreasonable and cannot be supported on
13 the evidence."

14 Can you tell us, what were the -- what parts of
15 the case were you suggesting gave rise to this
16 suggestion that the verdict was unreasonable?

17 A Well, this focuses particularly on the time
18 factor, and we've discussed that.

19 Q Okay.

20 A Unless you want me to elaborate?

21 Q No, I'm just -- just the subject. So the time
22 element, again, --

23 A Yes.

24 Q -- that the verdict is unreasonable because, based
25 on the evidence, --



1 A Yes.

2 Q -- I think your words were that the accused, it
3 was impossible for him to have committed the
4 offence, or highly improbable given the time
5 frame?

6 A Yes.

7 Q Is that a fair --

8 A Yes.

9 Q What about the secretor issue; was that part of
10 this --

11 A It was also, that was included under that 'verdict
12 is unreasonable', during the course of the
13 argument in the Court of Appeal that was discussed
14 as well.

15 Q And so that would be the basis that the physical
16 evidence actually excluded Mr. Milgaard --

17 A Yes.

18 Q -- as the perpetrator?

19 A Yes.

20 Q And then point 5, I think, amplifies the Section
21 9(2), and we talked about this yesterday.

22 A Yes.

23 Q "That the learned trial judge's error in
24 admitting cross-examination of the
25 witness, Nichol John by Crown counsel in



1 the presence of the jury, before any
2 declaration was made as to her being
3 adverse, was so prejudicial to the
4 Appellant ...",

5 etcetera. So that is what we talked about
6 yesterday?

7 A Yes. That could have been rolled in with the
8 first point, but I guess I decided to reiterate
9 it.

10 Q Now we've heard some evidence that -- we're done
11 with this document -- that at this time there was
12 no requirement to file a factum with the Court of
13 Appeal; is that correct?

14 A That's quite correct, the rules of procedure with
15 respect to criminal appeals did not require the
16 filing of a factum or written argument, and for
17 many years the practice was not to do so. I think
18 it probably -- well, I don't want to weary you
19 with notions here -- but I think it stemmed from
20 the practice in England where it was strictly oral
21 argument, and later on -- but this is much, much
22 later, well into the '80s -- that there was a
23 practice direction issued, as distinct from a Rule
24 of Court, directing that written argument or a
25 factum be filed in criminal appeals. Now even



1 before that direction, some counsel had started to
2 file a written outline of their argument, and so
3 forth, but in this era that we're talking about
4 that was not done.

5 Q And we, in fact, have made efforts to check the
6 Court of Appeal file and there is no record of
7 anything being filed by either you or Mr. Kujawa;
8 does that accord with your recollection?

9 A Oh, I'm quite sure that's correct, because at that
10 time that was the practice.

11 Q So the Court of Appeal would have the transcript;
12 is that correct?

13 A That's correct.

14 Q And would they have any of the physical exhibits;
15 do you recall?

16 A I can't recall now, but I think the practice was
17 that the exhibits were sent down if the Court
18 requested it.

19 Q Just to call up 066603, just go through some
20 correspondence regarding the setting of the date,
21 presumably you would have to wait for the
22 transcripts of the trial to be typed up before the
23 appeal could be heard; is that fair?

24 A Yes.

25 Q And here's a letter September 17th, 1970, you



1 write to Mr. Kujawa, and at that time I think he
2 was the individual with the Attorney General's
3 office that argued appellate matters generally; is
4 that correct?

5 A Yes. Now I don't know whether he was the Director
6 of Public Prosecutions at the time, or the
7 equivalent, but certainly he was very senior and
8 did most of the appellate work.

9 Q And had you dealt with Mr. Kujawa prior to this
10 case?

11 A Yes.

12 Q And can you describe the working relationship you
13 had with him?

14 A I thought we had an excellent professional working
15 relationship. He lived in Regina, and of course I
16 lived here, so our contact was of a professional
17 nature, but, to my way of thinking, it was
18 excellent.

19 Q And as far as the date, there's just a couple of
20 documents here, it looks like you write to him in
21 September about a date. And then 066602, this is
22 an internal memo September 22nd about a call from
23 you, and I don't want to get hung up on the
24 details but it looks as though you are talking
25 about a date in early part of November 1970. And



1 then 066594 is a letter October 7th to Mr. Kujawa
2 confirming the date, it's November 6th, 1970 at
3 10:00 a.m., and you thank him for your assistance
4 in picking a date which suits your convenience.
5 And do you recall whether there was any effort by
6 Mr. Kujawa to delay the hearing of the appeal? I
7 think the evidence shows --

8 A I do not recall any such thing. I think that the
9 date was worked, you know, that we knew that the
10 Chief Justice would fix the date, but he was
11 always very accommodating in my experience and
12 often -- I probably said to Mr. Kujawa that "would
13 you be good enough to check with the Chief
14 Justice, since you are in Regina, and let us have
15 some suggested dates".

16 Q And, again, --

17 A That was certainly the practice in those days, and
18 --

19 Q From this correspondence it looks like in
20 mid-September you asked for a date to be set, and
21 then by agreement it looks like it may have been
22 scheduled to fit your schedule, is that correct,
23 on November 6th?

24 A Obviously I was available for that time, and it's
25 nice to know well in advance when a case is being



1 heard, and certainly that was the practice in
2 those days, the Chief Justice was certainly
3 receptive to fixing dates and fixing them well in
4 advance. Now, once fixed, you were expected to be
5 ready to go on that particular date.

6 Q If we can go to 009340, please. This is the Court
7 of Appeal judgement of Chief Justice Culliton on
8 behalf of the Court, it's dated January 5, 1971,
9 but I believe argument did in fact take place on
10 November 6th, 1970. Can you tell -- and this was
11 a five-judge panel of the Court, is that correct,
12 Culliton -- or pardon me -- Chief Justice Culliton
13 and Justices Woods, Brownridge, Maguire, and Hall?

14 A I think that was the whole Court at the time.

15 Q The whole Court?

16 A The full Court.

17 Q Yes. Was that unusual, to have the full Court sit
18 on an appeal?

19 A Well, I think that in significant cases it was,
20 and in this particular case of course the Section
21 9(2) point was involved. I can't speak for The
22 Court at that time, but I think that's probably a
23 consideration that went into having the full Court
24 sit.

25 Q Can you tell us, Mr. Tallis -- and I appreciate



1 we're going back 35 years, 36 years -- but can you
2 give us your general recollection of the appeal,
3 what was argued? We do not have the benefit of
4 any factums or a transcript of that, we have their
5 decision, but can you give us, to the best of your
6 abilities, what you recall about the appeal
7 itself, and perhaps your observations about where
8 -- what the Court may have been interested in,
9 things of that nature?

10 A I can fairly say that the Section 9(2)
11 interpretation and application attracted a good
12 deal of attention and comment during argument. As
13 far as details of it, at this stage I cannot go
14 into it, but on that particular aspect of the case
15 Mr. Kujawa -- first of all, at the conclusion of
16 the appellant's argument, Mr. Kujawa was called
17 upon. It was not a case where The Court said "we
18 do not need to hear from you, Mr. Kujawa", so that
19 was an indication that they treated the matter
20 seriously.

21 And when dealing with the
22 Section 9(2) argument, Mr. Kujawa did not resile
23 from the position that had been taken by Mr.
24 Caldwell on the issue of a voir dire, in other
25 words hearing the matter in the absence of the



1 jury. So, essentially, the Court agreed with the
2 position, with in effect the joint position that
3 we had taken at trial and the submission which I
4 made with respect to the matter. And I recall in
5 my brief, because I had prepared a brief, drawing
6 the analogy to the situation of where you have a
7 voir dire with respect to the admissibility of a
8 confession, and the fact that the burden was on
9 the Crown to call all the material witnesses,
10 because that was what had been going on, in my
11 mind, at the trial.

12 So from that developed the,
13 ultimately in the judgement, the seven steps I
14 think you put to me yesterday, and the question
15 arose as to whether or not -- and I'll use the
16 term -- whether or not this was 'reversible
17 error'. And in using that term I am referring to
18 the section of the *Criminal Code* that deals with
19 that concept. And as far as the details of the
20 argument on that, I don't remember, but I know
21 that was a point that Mr. Kujawa took during his
22 submission.

23 Now with respect to the
24 unreasonable verdict aspect -- and here I don't
25 want to be too long-winded and be repetitious -- I



1 recall that, and I don't know which member, I
2 recall one Member of The Court was very interested
3 in the time factor, so I traced through this
4 limited time frame, as well as referred to the
5 serological aspect of it, in dealing with the
6 unreasonable verdict aspect. Now I believe Mr.
7 Kujawa took a contrary position but, in his usual
8 way, he did not use any strident language on it,
9 so we ...

10 And on the point with respect to
11 Wilson, I really can't say exactly what was said
12 in the discussion about taking of the blood type
13 or grouping from him, but of course that was dealt
14 with in the decision. So I really can't tell you
15 much more than that without my notes.

16 Q And do you recall -- maybe, actually if we could
17 go to page 009355, and this is just where the
18 Court is reciting the facts and they spend a
19 couple of pages where they actually repeat,
20 verbatim, the evidence of Mr. Melnyk, do you
21 recall -- and actually to the next page and the
22 page after. Do you recall whether that was a
23 significant issue that the Court of Appeal had
24 raised or had concerns about?

25 A You know, I can't recall now. It's obvious to me,



1 reading it, that it was on their mind and it may
2 well have been raised.

3 Q If we could then go to 066582. And this is a
4 letter February 9th, 1971 to Mr. Heidgerken, and
5 it appears that you are seeking Legal Aid approval
6 to seek leave of the Supreme Court of Canada; is
7 that correct?

8 A Yes.

9 Q And, again, on the interpretation of Section 9(2),
10 and then you say that:

11 "... it could probably be handled by an
12 agent in Ottawa at much less expense."

13 A Yes.

14 Q Do you recall, and I think the application was in
15 fact handled by Mr. Crane in Ottawa; do you recall
16 how that came about?

17 A No, I really don't, other than to tell you that,
18 number 1, I had encouraged David to pursue it, and
19 when Legal Aid was turned down I indicated to him
20 that it was still open to appeal on this point
21 probably in person, and I think I likely said "The
22 Court would probably appoint somebody on a leave
23 application". But then my recollection is
24 somewhat frail in this area, as it may be in
25 others, because in my discussions with David --



1 and this was by phone, I don't think it was by
2 letter -- he told me that he was getting advice
3 and assistance from a Mr. King, I think it was.
4 And at that time I understood this person to be a
5 lawyer who had either been involved in cases in
6 Alberta or British Columbia, and I didn't know the
7 gentleman, and, you know, I didn't think it
8 appropriate that I start asking David a lot of
9 questions about it. Now, years later I found out
10 that he wasn't a lawyer, but --

11 Q Who was he?

12 A Well I think I was informed that David had met him
13 in prison, but then there was some indication that
14 at least somewhere along the line, whether it was
15 when he got out of prison or whether it was
16 before, that he was a criminologist who was
17 helping lawyers draft up appeals, and that
18 included Supreme Court materials. I know that
19 David, I think, sent to me a draft of the points
20 of appeal just in point form and asked, you know,
21 what my view was of it, whether it was a fair way
22 to put it, and I recall telling him that I, you
23 know, I was reluctant to interfere with what his
24 counsel was now doing. And he said, well, that he
25 just really would like my assessment, my opinion,



1 as to whether or not it covered the points. I
2 think what he was really asking for was a second
3 opinion on it, and I recall telling him that I
4 thought that the draft that I had received from
5 him adequately raised the primary point, and that
6 was the Section 9(2) issue.

7 Now I think there were other
8 points included, but -- so that's, that's
9 essentially what I recalled, because it wasn't
10 until years later that I found out who Mr. King
11 was. And I, I mean I'm not sure of all the
12 details of his practice and whether or not he had
13 an association with law firms, but I think that's
14 what was intimated to me, as I say, many years
15 later.

16 Q Okay. If we could just, on this letter -- and,
17 again, this is your February 9th, 1971 letter to
18 the committee where you are seeking approval to
19 take the 9(2) issue to the Supreme Court -- you
20 say:

21 "I would also point out that I think
22 that Mr. Kujawa would co-operate in
23 facilitating this matter if you feel it
24 should be pursued."

25 Can you explain that comment?



1 A I can't give you the genesis of that paragraph,
2 but it tells me that I probably asked Mr. Kujawa,
3 after the judgement came down, what his position
4 would be, and I don't think I would have said that
5 to Mr. Heidgerken unless I had had a signal, one
6 way or another, that Mr. Kujawa would cooperate in
7 facilitating this matter if it could be pursued.

8 Q And --

9 A And that was indicative of the relationship that I
10 had with him on a professional level.

11 Q Can you explain that?

12 A Well, I never had any hesitation in raising
13 matters of that nature with him, and that started
14 with even picking the date for an appeal. And
15 there were occasions where, I can recall in
16 particular one where I was asked to undertake an
17 appeal, I hadn't been trial counsel, and my
18 research and uncovering of information indicated
19 that at best the -- that there ought to have only
20 been a conviction for a relatively minor offence.

21 Q This is a different matter, not the Gail Miller
22 matter; correct?

23 A No, nothing whatsoever.

24 Q Carry on, yeah?

25 A And so, as a result of that, he looked into it



1 with the information that I had, I had the appeal
2 pending, but I suggested that if what I gave him
3 was verified, my instructions were that we would
4 agree to the appeal, and sentence being set aside,
5 and that a conviction entered for a much less -- a
6 much lesser offence, and in that particular case,
7 involving a young person, that's what happened.

8 Now I use that to describe the
9 working relationship that I had with him on a
10 professional level, and that happened on other
11 occasions too, but I can't specifically recall. I
12 think there was one other, now that I mention it,
13 that I specifically recall.

14 But in any event, the upshot was
15 that we appeared in front of The Court, made a
16 joint submission, and indicated that if The Court
17 approved this criminal litigation could be put to
18 an end with the following relief, and the Court
19 adopted that approach. But it meant that the
20 appeal did not have to be argued in the usual way,
21 and that was because he had followed up on my
22 request to check out what I believed to be the
23 case, and I don't want to belabour it but that was
24 -- that's why I can say that there were various
25 times I received what I would call significant



1 cooperation from him.

2 Q From Mr. Kujawa?

3 A Yes.

4 Q And so this --

5 A And, I must say, I always thought that The Court
6 welcomed that type of thing.

7 Q So in this case, and again based on this comment,
8 are you telling us that you -- I think you said
9 that you believe you would have talked to Mr.
10 Kujawa after the judgement of the Court of Appeal
11 and got some sense that he might support the issue
12 going to the Supreme Court?

13 A From reading that paragraph, which I do not
14 remember writing and I do not remember the
15 background to it, I think that's a fair and
16 reasonable inference.

17 Q If we could then go to 002351. And, again, this
18 is the memorandum of argument filed in support of
19 Mr. Milgaard's application for leave, and I think
20 Brian Crane filed that; were you involved at all
21 in the preparation of this memorandum?

22 A No. I think that the first time I saw -- I have
23 ever -- I don't think I saw it before you directed
24 my attention to the document.

25 Q And then 002359 of this, this is in the



1 application, it reads:

2 "It is submitted that subsection (2) of
3 s. 9 of the *Canada Evidence Act* is not
4 an exception to the general rule that a
5 witness must be declared adverse before
6 cross examination by the Crown is
7 permitted in front of the jury. The
8 section only makes it clear that the
9 trial judge may take into consideration
10 the circumstances of a prior
11 inconsistent statement in determining
12 whether a witness is adverse, which
13 question the authorities prior to the
14 amendment had left in doubt. All cross
15 examination, it is submitted, prior to
16 the finding adversity, must be held in
17 the absence of the jury.

18 The Court of Appeal suggests
19 that in this case there could have been
20 no prejudice to the accused but in fact
21 had counsel for the accused been
22 permitted to cross examine Nichol John
23 as to the circumstances in which the
24 statement had been made the trial judge
25 might well have determined that leave to



1 cross examine before the jury would not
2 be given and that the witness would not
3 be declared adverse. In any event such
4 cross-examination was not permitted at
5 any stage either in on the voir dire or
6 in the presence of the jury prior to the
7 finding that the witness was adverse.
8 In these circumstances it is impossible
9 to say that there has been no prejudice
10 to the accused."

11 Now I appreciate these are another lawyer's
12 submissions, but would that be consistent with
13 the position that you put forward before Chief
14 Justice Bence and before the Saskatchewan Court
15 of Appeal on this issue?

16 A Very much so.

17 Q And then if we can go to 053142, this is the
18 decision of the Supreme Court of Canada, it says:
19 "'Leave to appeal is refused. In making
20 this decision we express no view as to
21 whether before granting the leave to
22 cross-examine provided for in s. 9(2) of
23 the *Canada Evidence Act*, the Court is
24 required to conduct a *voir dire* as to
25 the circumstances in which the statement



1 in writing was obtained.'"

2 And I think we talked a bit yesterday, but the
3 Court of Appeal decision in the *Milgaard* case
4 ended up being followed in many other provinces,
5 and indeed in Saskatchewan, for some time, and in
6 fact still is the law today; is that fair, --

7 A Yes.

8 Q -- with maybe some modification later?

9 A Yes. And I think that in a later case, the
10 Supreme Court may have approved of the procedure,
11 but I, you know, I'm not briefing things like that
12 now, but I'm sure that there are lawyers here that
13 are quite familiar with those more recent
14 authorities.

15 COMMISSIONER MacCALLUM: Was that 053142.

16 MR. HODSON: Yes.

17 COMMISSIONER MacCALLUM: Okay, thanks.

18 BY MR. HODSON:

19 Q I'm done with that document. If we can now move
20 into a different area. You have testified that
21 after you finished your involvement in this case,
22 and in particular after you were appointed as a
23 judge of the court in 1976, that you did not read
24 any further materials on this matter, nor did you
25 follow events in the media, and similarly, when



1 you testified at the Supreme Court of Canada, I
2 think you told us you considered yourself to be
3 bound by, with the exclusion of witness order, and
4 therefore read nothing or very little in
5 preparation of your testimony?

6 A That's correct.

7 Q And would it be fair to say that until such time
8 as you and I got together for the purposes of the
9 Commission work, and I provided you with some
10 information, that your reading on the matter or
11 knowledge of the matter, apart from what you knew
12 at the time of trial, would be minimal?

13 A That's correct.

14 Q And so in other words, you would not have -- and
15 it goes without saying that at the time of trial
16 you obviously wouldn't have been aware of the
17 information you didn't have; correct?

18 A That's correct.

19 Q And then in subsequent years is it fair to say
20 that you wouldn't, you wouldn't, either through
21 the media or other sources, become aware of some
22 of that information; is that fair?

23 A Probably, but, you know, I wasn't involved in it
24 and accordingly didn't really pay any attention to
25 it.



1 Q Now, for the purpose of the Commission's work, I
2 provided you with some documents and asked you to
3 read some police reports and witness statements
4 that the Commission has, they are from the police
5 files in 1969 and from Mr. Caldwell's, in some
6 cases from his files, and they appear to be at
7 least documents and information that you did not
8 have or did not have knowledge of, or may not have
9 had knowledge of when you defended Mr. Milgaard in
10 1969 and 1970.

11 Now, some of the information in
12 the documents are on what's been called the Gail
13 Miller police file; in other words, their original
14 police file, some are not. Some of the documents
15 are found on Mr. Caldwell's file, some are not. I
16 want to ask you some questions about the
17 information in these documents and, in particular,
18 whether, if you would have had this information,
19 it would have assisted your defence or altered
20 what you would have done at the time on behalf of
21 Mr. Milgaard, I will ask you what you would have
22 done with this type of information and how it may
23 assisted your work, and before we get into it, I
24 want to point out just a couple of caveats.

25 The first is that I appreciate



1 and point out that there is a vast amount of
2 information that's before this Commission about
3 what may have been in existence in 1969 and 1970
4 and the Commission has heard a lot of evidence to
5 date about that, and I don't think it's fair or
6 appropriate to ask you to go back and digest all
7 of this information that you didn't know about and
8 then come back 36 years later and tell us
9 everything you would have done differently with
10 all of that knowledge, but what I propose to do is
11 provide you, and I have provided you with key
12 pieces of information, and I'll try and summarize
13 them for you and ask for your general insights as
14 to what you think you would have done with the
15 general information, keeping in mind that you've
16 not gone through this in detail.

17 The second caveat that I want to
18 point out before I get into this area is that the
19 issue of disclosure and what the police had, what
20 the prosecutor had and what was and maybe should
21 have been disclosed to you is a matter the
22 Commissioner will deal with in due course based
23 upon all of the evidence and after hearing all of
24 the witnesses and I do not want to put you, by my
25 questions, in the position of providing opinions



1 on the conduct of the police and/or the prosecutor
2 as to what they did or didn't do or should have
3 done. However, I would like to find out from you,
4 when we go through this information, putting aside
5 who had it or who could have given it to you,
6 putting aside that issue, but whether the
7 information we go through is the type of
8 information that you contemplated receiving when
9 you made the request back in June, July and August
10 of 1969 when we went through the letter and, in
11 particular, the *Dallison* case, whether this is the
12 type of information that was in your mind at the
13 time as being information that might assist you.

14 So with that, and I will go
15 through some of these documents, and I think,
16 Mr. Tallis, I can probably summarize some of them
17 fairly quickly. We, as a Commission, have been
18 through all of them to date and I think you've had
19 a chance to read them over at least once; is that
20 fair?

21 A Yes, I read them over some time ago when it was
22 expected that I might be called at an earlier
23 date.

24 Q And so if we could call up, the first one is
25 106175, and this is a police report of February



1 2nd, 1969 of Detective Sergeant Reid and this is
2 two days after the murder, and this is just the
3 one that mentions Mr. Campbell, the service
4 station operator, and you alluded to this earlier,
5 had actually phoned the police I think on February
6 2nd to report his encounter with the vehicle and
7 Mr. Wilson, Mr. Milgaard and Ms. John on the
8 morning of January 31 at the Danchuks, and again
9 we have -- and in this they actually have the
10 license number of the car, down here, if we can
11 scroll down, further, so he actually phoned in,
12 gave the license number of the Wilson vehicle and
13 sort of explained to -- advised that of the three
14 young, he says fellows in the car, he only saw one
15 of them.

16 "Reason that Mr. Campbell reported this
17 to our department is that he wondered
18 ... what were they doing in the alley."

19 Now, again, is this, can you just tell us
20 generally, and forget whether you get the actual
21 report or you get the information, is this
22 information, do you think it might have been --
23 would you have used this in any way?

24 A Well, I think it would have been helpful.

25 Q Okay. In what respect?



1 A Well, it could well lead you on a chain of
2 inquiry. Standing in isolation it maybe doesn't
3 look to be that significant in the way things
4 unfolded, but taken together, I think that with
5 other things it could have taken on additional
6 significance.

7 Q And I suppose one might say that if Mr. Campbell
8 and/or the Danchuks were suspicious of this group,
9 that they might have a keener eye of observation;
10 is that --

11 A Yes.

12 Q If we can go to 009245, I'm going to go through
13 some reports now, and maybe let's, we can just
14 deal with this a bit generally. There are a
15 number of police reports prepared by the Saskatoon
16 City Police that provide some detail of their
17 dealings with Albert Cadrain, Nichol John, Ron
18 Wilson and David Milgaard and in some cases, I
19 think your words the other day were that some
20 people provide statements through their mouth or
21 words to that effect, and I think what we see in
22 some of these reports, the police would write down
23 what the main players would have said to them.

24 Generally speaking, would that,
25 the information in reports about how the police



1 dealt with Wilson, John, Cadrain and Milgaard, be
2 helpful to you?

3 A Yes, it would.

4 Q And can you elaborate on that a bit?

5 A Well, as I said to you the other day, whether a
6 person chooses to write in statement form or write
7 with his or her mouth is still something of
8 importance because the information that is
9 imparted is the significant point.

10 Q And now would it be fair to say that the
11 information may be both helpful and may be
12 damaging; is that --

13 A That's right.

14 Q I just want to go through parts of this. This
15 first one is a report of Sergeant Malanowich and
16 this deals with Sharon Williams who was, I think
17 you were aware, was the young lady that David
18 Milgaard was going to see in Edmonton; correct?

19 A Yes.

20 Q And there's a lengthy statement. I think you've
21 had an opportunity to review the statement of
22 Sharon Williams?

23 A Yes.

24 Q And then as well, and we've been through that a
25 number of times, I don't propose to go through it,



1 but again, Malanowich adds in this statement,
2 attributes that Mr. Milgaard:

3 "... got violent and forced her and she
4 admits it is at these times that she
5 thought he was abnormal and a violent
6 type of person."

7 Again, that type of information in the Sharon
8 Williams' statement, if that had been provided to
9 you, can you tell us, would that have been of
10 assistance to you?

11 A Well, it would assist in this way, it's the type
12 of thing you want to know in advance because it
13 tells you some aspects of the case that you may
14 have to meet, and I use the term "may have to
15 meet".

16 Q And back on the question of again the *Dallison*
17 case, was this the type of information that you
18 contemplated you might get?

19 A Well, if I -- the answer is yes, and I think that
20 information that enables a person to defend a case
21 covers both, anything that tends to show the
22 person's innocence, but also anything that might
23 be used against him or her.

24 Q If we can go to 106640 --

25 A And you see in this one too that she was asked to



1 look, to see if there was any blood on any of his
2 clothing or anything and she looked in his
3 suitcase at the motel and so forth, but I don't
4 think there was anything of that nature observed.

5 Q Okay. I see it's -- actually, we'll do one more
6 document, 106640, this is a March 22nd, 1969
7 report of Lieutenant Short and it talks about:

8 "On March 18/69 Det. Karst & myself took
9 Albert Cadrain to Regina and were in
10 touch with the Regina City Police there
11 and later proceeded to the Regina gaol
12 and interviewed Ron Wilson again,
13 however, nothing further was learned
14 from him and we also found his home and
15 talked to Mrs. Wilson where there was
16 some discrepancies found in the clothing
17 that these boys both Wilson & Milgaard
18 were wearing when they left Regina.
19 Also female Nichol John was located in
20 the hippie house in Regina and she was
21 after considerable persuasion brought to
22 the Regina gaol and interviewed by Karst
23 and myself and was placed in a room with
24 Cadrain and allowed to discuss this
25 matter and it was learned from her after



1 this discussion that through
2 interrogation that she was of the
3 opinion that Cadrain was telling the
4 truth and that everything he said was
5 exactly what had happened on this trip.
6 She was of the opinion that Milgaard was
7 of a dangerous character and that he had
8 forced her to have intercourse etc.
9 Several times and she was afraid of him.
10 It is my opinion that Milgaard is a
11 dangerous person and it is known that he
12 had a record as a juvenile for several
13 serious offences and although at this
14 time we did not locate Milgaard it is my
15 opinion that he should be located and
16 probably followed and kept under close
17 contact for some time in hopes of
18 learning something further in regards to
19 this person's activities while in S'toon
20 with Nichol John and Wilson."

21 Again, would that be information, Mr. Tallis,
22 that would be of use to you in your defence of
23 Mr. Milgaard?

24 A Yes.

25 Q And in what way?



1 A Well, several aspects; number 1, it's indicative
2 of the case that the Crown may try to present with
3 respect to his propensity for violence, if I may
4 summarize it that way, but more important, I think
5 that it also is relevant when you consider the
6 background or circumstances under which Nichol
7 John and Wilson told the investigating officers
8 various matters after having initially denied
9 there was any involvement by anybody in the car.

10 MR. HODSON: This is probably an
11 appropriate spot to break, Mr. Commissioner. I'm
12 wondering if we might come back at one o'clock
13 with the idea that we may still try to get
14 Mr. Tallis done today.

15 COMMISSIONER MacCALLUM: Yes.

16 (*Adjourned at 12:01 p.m.*)

17 (*Reconvened at 1:07 p.m.*)

18 BY MR. HODSON:

19 Q Mr. Tallis, before lunch we were going through
20 some police reports and statements, information
21 that you did not have, and I was asking you some
22 questions about what you might have done with it.
23 If you can call up 009254. And again, this falls
24 in the category of a police report that outlined
25 their dealings with some of the key witnesses, and



1 this is Detective Karst, and I think I read
2 earlier the one from Lieutenant Short about the
3 trip with he and Mr. Karst, this is Mr. Karst's
4 report, I'll just read parts of this. And again,
5 so this is April 18th, '69, the report, and it
6 talks -- actually, sorry, I may have misspoke,
7 this is a different occasion than what Lieutenant
8 Short was talking about.

9 So this is Monday, April 14th,
10 would be a month after Nichol's first statement
11 and about five weeks before the May 24th statement
12 to Mr. Karst and Staff Sergeant Edmondson went to
13 make inquiries about John and Wilson, if we can
14 call out that paragraph, and this is Mr. Karst
15 saying with the assistance of Ken Walters we
16 located the Nichol John girl, interviewed and:

17 "Further investigation of this girl when
18 she was interviewed gave one the feeling
19 that she was telling the truth and she
20 emphatically stated she could not recall
21 any time while they were in the City of
22 Saskatoon during the morning of the
23 murder at which time Wilson or Milgaard
24 had left the vehicle in which they were
25 driving long enough to commit this



1 offence. She denied that Milgaard had
2 left their vehicle at any time to go to
3 a bathroom or go for a cup of coffee
4 which she could recall. This girl did
5 however state that she felt Milgaard was
6 capable of an offence of this nature and
7 admitted having sexual relations with
8 him at different times and that he was
9 more of the animal nature than you would
10 expect of a human."

11 And then next page, and this is again after
12 talking to, Ron Wilson's mother was interviewed,
13 and:

14 "She did however state, though that the
15 both youths, Wilson and Milgaard had
16 changed clothing at her residence on the
17 night of Jan. 30 before leaving for
18 Saskatoon, as they had spilled acid on
19 them while working on the battery in the
20 car in which they were trying to start."

21 And then here:

22 "Although there are many unanswered
23 questions with regard to Milgaard's
24 activities on that particular morning,
25 if one is to believe the girl, Nichol



1 John, and it appears that she is very
2 convincing with her story, then there is
3 no way in which Milgaard can be
4 connected with this crime."

5 Let me just pause there. I did cover two
6 subjects. Let's talk about the latter one and
7 Nichol John. Would information in this police
8 report have been of assistance to you in
9 defending Mr. Milgaard?

10 A I think it would have.

11 Q And can you tell us how you might have used this
12 type of information?

13 A Well, for one thing, it might have led one on a
14 chain of inquiry into certain areas and also have
15 been relevant to the circumstances giving rise to
16 the later incriminating statements.

17 Q So in the section 9(2) *voir dire* hearing we talked
18 about yesterday, and I suppose if Chief Justice
19 Bence would have followed the procedure that the
20 Court of Appeal later set out in that type of *voir*
21 *dire*, is this something that you might have
22 elicited before the Court?

23 A Yes, and I think it would have also been helpful
24 with respect to those circumstances where -- let's
25 put it this way, helpful in respect to probing the



1 role of Mr. Roberts.

2 **Q** Okay. And then the information from Ron Wilson's
3 mother, and again we touched on this a bit
4 earlier, I think you may have had some inkling of
5 that when she was called at the preliminary
6 hearing; is that fair?

7 **A** Yes.

8 **Q** And I think you told us that this was not helpful
9 evidence because it suggested, if it was true,
10 that there would not have been acid on Mr.
11 Milgaard's pants --

12 **A** Yes.

13 **Q** -- on the morning at Cadraings' house?

14 **A** That's right, and David said the only possibility
15 was that he might have had some spots arising from
16 battery acid.

17 **Q** If we can now scroll down a bit, and here we talk
18 about on April 18th, it talks about Mr. Milgaard
19 being interviewed and giving blood samples and it
20 says:

21 "Milgaard was interviewed at length by
22 various members of this department
23 however seems to be no way to shake that
24 youth's story. He denies emphatically
25 having any blood on his clothing when



1 changing them and when confronted with
2 the statement that Cadrain stated he did
3 have blood on his trousers he stated
4 that Cadrain was a lyer."

5 Would that information have been helpful to you?

6 A Well, this is the kind of information that you
7 like to have because you never -- you never know
8 what it will lead to, but certainly it is
9 background information that one would want to
10 have.

11 Q And then if we can scroll down a bit:

12 "With regards regards to the above
13 information it now appears that further
14 questioning of Cadrain is warranted with
15 regards to the blood as both youths
16 Milgaard and Wilson along with the girl,
17 Nichol John deny that Milgaard had any
18 blood on his clothing, while Cadrain
19 emphatically states that he observed
20 this blood. There is also the fact to
21 take into consideration that when the
22 Cadrain youth first attended at the
23 Police Station some becomes ago to
24 advise us of his information he denied
25 that he knew anything of this murder in



1 Saskatoon until he returned home approx.
2 1 month later when his mother advised
3 him of same. However this was found to
4 be untrue when speaking to the Regina
5 City Police we were advised by them that
6 they had advised Cadrain of this murder
7 and in fact questioned about same when
8 they had him in custody at that point
9 some 2 weeks prior to coming to
10 Saskatoon. Also it should be noted that
11 the dead girl's wallet and contents were
12 found near the Cadrain residence which
13 could be implicating for either Cadrain
14 or Milgaard in that case as they were
15 both known to be in the area."

16 And then a blood sample was taken, and the next
17 page:

18 "Effort should be made in the near
19 future to interrogate both or all 3 of
20 the Cadrain youths along with the
21 parents to ascertain whether their
22 stories coincide when all are taken at
23 separate times and apart from one
24 another."

25 And then it goes on to talk about a statement of



1 Leonard Woytowich. Would that type of
2 information have been of assistance to you,
3 Mr. Tallis?

4 A Yes, and I particularly note the comments with
5 respect to Cadrain knowing, or having been
6 informed about certain aspects of this matter, and
7 although he did indicate at trial that he, that he
8 was trying to tell the truth when he first spoke
9 to the police and denied any involvement, this
10 type of thing would have opened up a much greater
11 scope for cross-examination at the preliminary
12 hearing without tipping your hand, so to speak, in
13 certain areas.

14 Q If we can go to 009264, this is a May 25, 1969
15 police report from Detective Karst and it details
16 events starting on May 21 in Regina. This report
17 details Detective Karst's dealings with Ron Wilson
18 primarily on the dates May 21, 22, 23 and I
19 believe 24, so that would be the two days prior to
20 Inspector Roberts, the day of and the day after,
21 although I'm not sure that it covers the day
22 after, so before we go through it, I take it
23 generally speaking a police report dealing with
24 how Ron Wilson was dealt with during that time
25 frame that he was with Inspector Roberts, would



1 that be viewed --

2 A Yes.

3 Q -- as important? So here we have:

4 "On Wednesday, May 21st, D/Sgt. Mackie
5 and myself and Cst. Walters attend at
6 1769 Cornwall Street ... where Nichol
7 John's Social Worker was interviewed."

8 Nichol John, I think referred to Nickey.

9 "The interview was taped for further
10 use, and although the Social Worker
11 interviewed "Mr. Don Robertson", stated
12 there were certain interviews he had had
13 with this girl since he has worked with
14 her, since the time of the alleged
15 offence in Saskatoon, which is of a
16 confidential nature, he is not prepared
17 to divulge to us, he, however, did say
18 that she stated she was not personally
19 involved in a murder."

20 Again, would that type of information be of
21 assistance to you?

22 A Yes.

23 Q And in what way?

24 A Well, once again, it was background information
25 that, depending on the contents, might well give



1 rise to at least a probing at the preliminary
2 hearing to see what would be of value for use at
3 trial, and often the -- well, I'm sorry, I'm
4 thinking -- I'm getting ahead of myself.

5 Q You are talking about the Ron Wilson?

6 A Yes.

7 Q We'll maybe scroll down so we have -- starting
8 here at the top of the page, please, so:

9 "At 2:00 PM, May 21st, Ronald Wilson was
10 interviewed ..."

11 And Mackie, Walters, Dike were present along with
12 Detective Karst:

13 "This conversation also being taped and
14 presently in my possession.

15 During this conversation with
16 Ronald Wilson, he admitted attending in
17 Saskatoon with Milgaard and Nickey on
18 the early morning of January 31st and in
19 contradiction to his original and other
20 interviews, he admitted that Milgaard
21 had left the car when they became stuck
22 at approx. 6:45 that morning, while
23 looking for the Cadrain residence. All
24 Wilson would state at this time was that
25 Milgaard appeared to be puffing and



1 running, slightly out of breath when he
2 returned to the vehicle, and he admitted
3 that he had since thought that this was
4 the time that Milgaard was probably
5 involved in a murder."

6 Would that information be of assistance to you,
7 Mr. Tallis?

8 A Yes. Well, my attention is particularly attracted
9 to the fact that this oral statement was recorded
10 and the tape recorded conversation would probably
11 not only be in more detail than the actual report,
12 but also indicate whether it was question and
13 answer or narrative, and of course that would be
14 very helpful depending on its contents for
15 purposes of, at least of cross-examination at the
16 preliminary hearing. What use could be made at
17 trial would depend upon what was elicited during
18 that phase.

19 Q And then the next page at the top:

20 "En route to Saskatoon, Wilson divulged
21 to me that on that trip on Jan. 31st
22 with Milgaard and Nickey the two boys
23 had discussed B.&E.'s, along with
24 rolling someone and purse snatching as a
25 source of money, as their financial



1 position at this time was not one with
2 which they could do any amount of
3 travelling, as they anticipated going to
4 Edmonton and Vancouver."

5 And then it goes on to talk about the elevator
6 break-in, he says he does not recall a knife
7 missing from the premises, and I think this is
8 where the police first learned of the elevator
9 break-in. Would this type of information have
10 been helpful to you?

11 A Well, I think that it's the type of information
12 that would be useful for the reasons I've already
13 given.

14 Q Okay. If we could scroll --

15 A I of course knew about some of this, but it was
16 from David's perspective and statements to me.

17 Q So scroll down here, so this is now on the trip
18 back from Regina, so this would be May 21, which
19 would be two days before his statement of May
20 23rd, he says:

21 "He also stated at this that he could
22 not recall a knife being in the car nor
23 did he see Milgaard bring one from the
24 elevator. On further questioning, he
25 thought that possibly Milgaard could



1 have picked up a knife from the Champs
2 Hotel where they had eaten earlier that
3 day where Nickey had been employed,
4 however, could shed no further light on
5 that aspect."

6 Would that information be helpful to you?

7 A Yes, essentially for the reasons that I've
8 mentioned.

9 Q Scroll down.

10 "Wilson pointed out the area of Avenue P
11 and Avenue M and N around 22nd St. West,
12 as an area which is similar to the
13 location where the girl was seen walking
14 on the street that early morning when
15 they approached her to ask directions,
16 however, he was unsure of the exact
17 block. Nor could he point to the exact
18 location where the car had become
19 stalled, where Milgaard had left the
20 vehicle to go for help."

21 Again, would that information have been helpful?

22 A Yes.

23 Q Next page. So then this is the next morning, May
24 22nd, the day before the polygraph, and they drive
25 Mr. Wilson around the city or parts of the city.



1 And then:

2 "Wilson's account of what transpired
3 that morning was roughly as follows.
4 The three of them drove into the city
5 and drove around for a short while when
6 they met a girl in the area described
7 above, asked directions for Peace Hill.
8 The asking done by Milgaard who was on
9 the passengers side of the vehicle where
10 the pedestrian was. This girl stated
11 she didn't know and was unable to assist
12 them, however, Milgaard had asked
13 whether she would like a lift or ride to
14 where she was going, to which she
15 declined. Upon driving away, Milgaard
16 had made the remark to the effect, "The
17 stupid bitch". They drove a short
18 distance further and while making a
19 turn, the vehicle became stuck, as they
20 had no reverse gear. At this time
21 Milgaard left for help, returning
22 approx. 15 minutes later puffing and
23 running, however, Wilson states that he
24 saw no blood, etc., or anything on
25 Milgaard at this time."



1 They drove around the city, got the map, and then
2 went to the Danchuks. Now, again, would this
3 information be helpful, Mr. Tallis?

4 A Yes, for the same reasons that I've mentioned.

5 Q Go to the next page. We're now to Friday, May
6 23rd, which is the day of the polygraph.

7 Mr. Karst writes:

8 "... I attended at 608 Cavalier Hotel in
9 the company with Inspector Wood, Lt.
10 Short, D/Sgt. Mackie, Cst. Chartier and
11 Morrison and at 3:00 PM, I called at
12 room #610 of the Cavalier where Wilson
13 picked out a knife which was out of a
14 group of five, which Insp. Roberts had
15 shown him as being similar to the one he
16 states he had seen en route from Regina
17 to Saskatoon on the morning of Jan.
18 31st, this being a reddish brown colored
19 bone handled type paring knife.

20 Wilson was then brought to the
21 Police Station and at 3:30 PM, a
22 statement was taken from him with
23 regards to the above described incident
24 adding to the original that he had seen
25 this knife in the car during the trip,



1 which he previously denied. Also added
2 in his statement was that when Milgaard
3 returned to the car after being stuck,
4 the first time, he stated something to
5 the effect that, 'I fixed her', and when
6 Wilson questioned him on this Milgaard
7 declined to make any further comment.

8 Also in this statement Wilson
9 states he had seen blood on Milgaard's
10 trouser when changing his clothes ...
11 This he had previously denied."

12 Next page, I'll just highlight some of the parts
13 here, he talks about:

14 "Nickey seemed very nervous ...",
15 Wilson -- and actually what Mr. Karst is doing
16 is, I think, reciting parts of Mr. Wilson's May
17 23rd statement which we have been through:

18 "... also recalls Nickey finding a
19 ladies compact ...",

20 the statement goes on to talk about the incident
21 in Calgary. Again, let me pause there. Would
22 that information have been of assistance to you
23 in the defence of Mr. Milgaard?

24 A Well this was particularly of significance in
25 connection with probing of the role of Mr.



1 Roberts.

2 Q And in what regard, what -- can you --

3 A Well I'm thinking of it in the context of the
4 additions that had been made by -- or further
5 details that had been given by Wilson, for example
6 in the discussions, and --

7 Q And for --

8 A And of course, if this was tape recorded, the
9 whole manner of the taking of the statement and
10 what was actually said would have been very
11 significant from the standpoint of preparing for
12 the preliminary hearing.

13 Q At the trial did you, and/or at the preliminary
14 hearing, were you aware, apart from the written
15 statements that Ron Wilson provided of May 23rd
16 and 24th, 1969, and apart from what you elicited
17 from him or other witnesses; were you aware of the
18 sequence of the interviews and what Mr. Wilson may
19 have told the police officers on given dates or
20 given times both before and after the polygraph
21 session?

22 A No, I don't believe I was. This was something
23 that I tried to elicit the details from Mr.
24 Roberts about what, you know, his actual
25 participation or what he actually did and -- but



1 we've already been through that so I don't want to
2 burden you again with it.

3 Q 106676. And this is the May 29th report of
4 Sergeant Mackie who dealt primarily with Nichol
5 John on May 22, 23, 24. There's parts of this:

6 "... May 22nd, Nichole John was returned
7 to Saskatoon ...",

8 and goes on to talk about her, was:

9 "... transported to 20th Street ...
10 where she was driven around the area and
11 she stated that she recalled the brick
12 wall on the east side of the ... Funeral
13 ...",

14 home, recalled two garbage cans where the purse
15 was found, this is where she says that the lid on
16 the left-hand garbage can was tipped, she also
17 recalled something of the church, and then driven
18 around. And then, actually, just scroll down a
19 bit further. Again, would that, the driving
20 around, would that information be of assistance
21 for the reasons you stated the other information?

22 A Yes.

23 Q And then at the bottom:

24 "At approx. 10:00 PM, I proceeded to the
25 Cavalier Hotel where Supt. Wood, Lt.



1 Penkala and I interviewed Insp. Roberts
2 of Calgary Police, in regards to this
3 file, so that he would be able to
4 interrogate Ronald Wilson and Nichole
5 John for us on the 23rd."

6 Would that have been helpful information?

7 A This would have been very relevant to the
8 information I was trying to get from Inspector
9 Roberts.

10 Q If we could now go to 106108, please. I'm going
11 to now move to matters not related directly to the
12 David Milgaard witnesses, if I can call them that.
13 This is a January 31st, it should be 1969, police
14 report, it's the day of the murder, and Constable
15 Gabruch talked to the bus driver that morning for
16 the bus that Gail Miller normally took, and:

17 "... Husulak ...",

18 the bus driver:

19 "... stated that around Ave. 0 and 20th
20 St. he would ordinarily have a male
21 passenger at Ave. 0 and 20th St. who
22 appeared to be a construction worker
23 wearing red hat and approx. 20 years
24 old, however this morning the gentleman
25 was not around."



1 And if we can go to 106189. That information;
2 would that be something, on its own, that might
3 be of assistance to you?

4 A Well I think, in combination with other things, it
5 certainly would be a matter of interest.

6 Q This is a report of February 3rd, Detective
7 Sergeant Reid, so on the Monday at 6:50 he
8 interviewed the bus driver:

9 "... regarding a construction worker
10 wearing a red hat. Mr. Husoluk states
11 the person got on the bus just the past
12 trip and made a mistake as the person
13 was wearing a red ski cap and not a red
14 hat. This person according to the bus
15 driver was checked out by Det.
16 McCorrison this date."

17 And then if we can go to
18 106212, and this is Detective McCorrison's
19 report about the events of February 3rd as well,
20 and they did, at 6:17 that morning they checked
21 out Avenue O and 20th, one Tony Humen.

22 "Humen was identified by transit driver
23 John Husulak ... as the person he had
24 referred to as the person who usually
25 wears a red or orange hard hat and who



1 he believes had not caught this bus on
2 Jan. 31st. Humen at this time was
3 wearing a red ski cap and stated he
4 never wears a hard hat.",
5 and then goes on to talk about the interview.
6 Again, would that information be of assistance to
7 you?

8 A Yes, it would be. You know, coupled with other
9 information it could well be helpful, and
10 particularly, with background information like
11 that, you could pursue certain avenues of
12 questioning.

13 Q And the next page, 106213. This is the same
14 report and the same morning, McCorriston writes:
15 "6:49 ... checked in 300 Blk. Ave. O.
16 South, Larry Fisher, 334 Ave. O South.
17 Works at Masonery Contractors ...
18 Wearing yellow hard hat. Stated last
19 Friday he caught bus at 6:30 a.m. at
20 Ave. O. and 20th. Street. He states
21 there waas no one else around at that
22 time and he had no information to
23 offer."

24 Now, we now know more about Larry Fisher than
25 they might have known on the morning of February



1 3rd, '69, but would that information be of
2 assistance to you at that time?

3 A Well the address or place of residence, I think,
4 could well have triggered a chain of inquiry.

5 Q Being the same address as the Cadrain --

6 A Yes.

7 Q -- house? And what about the fact of catching the
8 bus that morning at --

9 A Well, as well.

10 Q Okay.

11 A But I think the initial link would, in one's mind,
12 would probably be the address.

13 Q If we can go to 106215. Sorry, 106215, the doc.
14 ID is 212. And this is a report of Detective
15 McCorriston, and this is February 5, which would
16 be five days after the murder, 6:55 a.m. in the
17 200 block Avenue N South, and we know:

18 "... interviewed Mrs. Margaret Merriman
19 of 226 Ave. N. South ..."

20 And her house, Mr. Tallis, would be right beside
21 the east-west alley. The east-west alley behind
22 the funeral home, if you go a bit further east,
23 her house would be on the corner of Avenue N and
24 that same east-west alley; do you --

25 A Yes.



1 Q I can show you the map if you like, but it would
2 be --

3 A No, no, I accept what you say.

4 Q And it says:

5 "On the morning of Jan. 31/69 she
6 ordered a taxi to be at her home at 6:55
7 A.M. and watched out her front window
8 for a few minutes while awaiting the
9 arrival of the taxi, however she saw nor
10 heard anything and was unable to offer
11 any information."

12 And then, just in that
13 connection, 025148. And this is a March 27th
14 report by Detective Sergeant Reid, and this is
15 interviewing Mr. Arthur Merriman, Mrs. Merriman's
16 husband. And he says:

17 "... on Jan. 31st, 1969, they left for
18 work by Taxi, leaving at approx. 6:55
19 AM. It should be noted that this
20 persons' residence they can look down
21 the T lane rear of Westwood Memorial and
22 Mr. Merriman advises that his eyesight
23 is not too good but they were looking
24 out this window waiting for the taxi to
25 arrive and nothing unusual was observed



1 pertaining to persons or vehicles, and
2 Mr. Merriman is unable to offer any
3 further additional information which may
4 be of assistance to us in connection
5 with this occurrence and at the time he
6 was interviewed his wife was not at
7 home."

8 Would that information from the Merrimans have
9 been of assistance to you?

10 A Well I would say, looking at what I knew and what
11 I was looking for, that this statement is of
12 particular significance because of the time factor
13 that we've already been going through.

14 Q And, as well, perhaps where they were -- where
15 their house was located?

16 A Oh yes, well, I'm making that assumption --

17 Q Yes.

18 A -- that --

19 Q If we could go to 024936. I'm sorry, the doc. ID
20 is 935, this is the second page. And this is a
21 report of Detective Sergeant Mackie, and this is
22 -- talks about Dennis Elliott, and this may have
23 been in his statement and it may have been that
24 you were aware of this, Mr. Tallis, but I'll just
25 read you this part. Dennis Elliott was the fellow



1 who drove Gail Miller home the night before her
2 murder, and he says:

3 "... he recalls that when he had taken
4 Miller home he recalled a 1963 or 64
5 Pontiac with redist bottom, light
6 colored top, with considerable damage to
7 left rear fender or quarter panel.
8 There was a lone occupant in this
9 vehicle who watched them and when he
10 looked towards this vehicle the man in
11 the vehicle looked away quickly. To his
12 knowledge Gail was not aware of this
13 vehicle. After he walked Miller to the
14 house at 130 Ave. O. S. this vehicle was
15 still present and the operator watching
16 him when he returned to his vehicle, and
17 he felt that he was about 10' away from
18 this person on the street when he
19 returned to get into his vehicle."

20 And described the male person there. Do you
21 recall if you would have been aware of this piece
22 of information at the time of trial?

23 A I don't recall if I had a statement from Dennis
24 Elliott or not.

25 Q Do you recall any mention of the fact that there



1 was a car in front of Gail Miller's house at 2:00
2 in the morning the night before the murder?

3 A You know, I think that I may well have, but the
4 source I can't tell you at this stage.

5 Q Okay. I think we saw some documents where Mr.
6 Caldwell sent you Mr. Elliott's statement, and I
7 --

8 A Well that's what I, that's why I was asking, I may
9 well have received the statement and that's where
10 it would come from then.

11 Q 009334. This is a report of Officer Dimmitt's
12 February 6th. It talks about one Simon Doell,
13 former address, etcetera:

14 "He moved out previous to the murder.
15 He states that on occasions he had been
16 riding on the Bus and when Miss Miller
17 got on the bus she always as on the
18 corner of Ave. N and 20th St. directly
19 across from the Funeral Home. He states
20 that he missed her on the bus a couple
21 of times and upon asking her how she was
22 getting to work she stated that she was
23 getting a ride to work ..."

24 And, again, this talks about her catching the bus
25 at Avenue N --



1 A Yes.

2 Q -- and 20th Street; would this information have
3 been of any assistance to you?

4 A Well, once again, it was background information
5 that might well have been of assistance.

6 Q 106234, this is a report of Detective Bennett
7 February 6th, '69, and it says:

8 "Also interviewed was a Mary Gallucci
9 ... who stated that she takes the bus at
10 Ave. O and 20th Street every day. She
11 stated that on Thursday morning, Jan.
12 31st, ...",

13 and I think, from some other notes it, I think it
14 has been suggested that the date should have read
15 January 30th:

16 "... she recalls a girl get on the bus
17 at the above with her. She describes
18 thais girl as follow Younger girl, dark
19 hair, wearing white dress and stockings,
20 Dark coat ...",

21 goes on:

22 "She has seen her on the same bus before
23 but does not think seen on Wed. There
24 was also a young man get on the bus with
25 ... who was a construction worker



1 wearing blue jeans and a hard hat,
2 possibly yellow. This man comes from
3 Ave. O South of 20th Street. He has
4 been getting on the bus at the same time
5 since that day. She does not think that
6 she could identify."

7 Again, would that information have been of
8 assistance to you?

9 A Yes, I believe so, for the reasons that I have
10 earlier mentioned.

11 Q Now 106547, please. This is a report of Constable
12 Wilton February 15th, 1969, and it refers to a
13 phone call from a fellow named Sidney Sargent, and
14 you have had a chance to read through this, Mr.
15 Tallis. And this is a fellow who called the
16 police and states that:

17 "... on the morning of the murder he
18 left ...",

19 his office at 7:00 a.m., drove north on Avenue N
20 to 20th where he had to come to a stop, said to
21 be between 7:00 and 7:05.

22 "He observed a woman standing at the bus
23 stop at the south curb wearing a blue or
24 what appeared to be a blue coat similar
25 to a nurse's cape. This woman also wore



1 white nylons, a white dress, and may
2 have been wearing a hat. Before
3 proceeding from the stop sign Sargent
4 states he saw a young male person, age
5 18-20 years, staggering in a southerly
6 direction on Ave. N towards 20th St. He
7 described the person as approx. 6'2",
8 skinny, blondish hair. He wore blue
9 jeans and a kacki coat. The youth was
10 staggering as though drunk however may
11 have been walking in this manner if he
12 had been wearing leather shoes. Sid
13 Sargent did not pay any more attention
14 to the 2 persons and then drove away.
15 He delayed contacting the Police on this
16 matter as he believed the information
17 was of little importance."

18 Can you tell us whether this information would
19 have been of assistance to you?

20 A Well, I think that that could well have been very
21 significant --

22 Q Can you tell us how?

23 A I was just --

24 Q Oh, sure.

25 A Did he identify --



1 Q And I should -- sorry -- I should add that
2 Mr. Sergeant, after this report, did not talk to
3 anybody about this matter until he testified at
4 the Inquiry, and he advised the Inquiry that he
5 identified the woman as Gail Miller, whom he had
6 known. And I think he also described before the
7 Inquiry that her -- that she was a, not right at
8 the corner, a bit away, and as well that --
9 something unusual about her clothing, and I can't
10 recall exactly what he said, but something about
11 how her clothing was arranged. So there's nothing
12 in the report other than the identification of a
13 nurse's cape or -- yes, of a nurse's cape, so
14 there's nothing in the police report that says he
15 identified the woman as Gail Miller, however when
16 he testified here he did.

17 A Yes, well you probably mentioned that to me, but
18 this, to me, would be something quite significant.

19 Q Can you explain how you might have used this or
20 what you might have done with it?

21 A Well a great deal would have depended upon what
22 Mr. Sargent actually said, and with the additional
23 information that you have been able to dig up,
24 that, of course, would focus on the location of
25 Miss Miller at least before she was killed.



1 Q And I take it that, if you were able to have
2 someone observing her at the corner of Avenue N
3 and 20th Street between 7:00 and 7:05 a.m. alive
4 and standing at the corner, that that might
5 eliminate Mr. Milgaard as a suspect?

6 A Yes. It supports the time element that we've
7 talked so much about and, given the even narrower
8 time frame, I think it strongly supports the
9 impossibility, or at the very least improbability,
10 of him doing anything to her or, indeed, having
11 anything to do with her.

12 Q Okay. And if we put aside and take just what's in
13 the police report at the time, and putting aside
14 the fact of what he has told this Commission of
15 Inquiry now, if it was simply that he had
16 identified a woman wearing a blue, or what
17 appeared to be a blue coat similar to a nurse's
18 cape, etcetera, just with that description without
19 the further identification of it being Gail
20 Miller, would that information have been of
21 assistance?

22 A Yes. Well the clothes that are mentioned there
23 would certainly indicate the nature of this girl's
24 occupation and would, I think, spawn a potential
25 link with the victim in this case.



1 Q Okay. I now want to move to some sexual assaults
2 and indecent assaults, and this Commission has
3 heard a fair bit of evidence and we've gone
4 through all these statements and, in fact, heard
5 from some of the victims, and what I have done for
6 you, Mr. Tallis, is I have provided you with the
7 statements of these victims and asked you to read
8 them. And I've categorized them in three
9 categories, and this is how I wish to go through
10 them. The first set are the, what I call the
11 non-Fisher indecent assaults, and they are the
12 assaults that -- or attempted assaults that
13 occurred in and around January 1969 that were on
14 the Gail Miller file, none of them identified
15 Larry Fisher as the assailant, and in fact I think
16 when looking at the descriptions in those assaults
17 -- and at that time I think the evidence we heard
18 that Larry Fisher wasn't known as the assailant of
19 the other rapes at that time -- but certainly
20 those rapes have never been visited upon Mr.
21 Fisher, he has not been convicted of them, and I
22 think in fact he denies them. So there is the
23 non-Fisher assaults, if I can call them that.

24 The second grouping is the
25 (V4)---- (V4)--- assault which occurred on the



1 same morning of the murder, again which Mr. Fisher
2 has not been convicted of or charged with.

3 (V4)---- (V4)--- has for some time, including at
4 this Commission of Inquiry, testified that Larry
5 Fisher was her assailant, Larry Fisher has denied
6 that, and so again no charges there.

7 And the third group are the four
8 assaults, sexual assaults, one indecent assault,
9 that Larry Fisher confessed to and was convicted
10 for, and those are the (V1)-, (V2)-----,
11 (V3)----- assaults that occurred before Gail
12 Miller's murder, and the (V5)-- (V5)--- assault
13 that occurred after the murder. And there is a
14 publication ban in effect for the names of the
15 victims, Mr. Tallis, so we are free, in this room,
16 to use the names, they will not appear on the
17 record or outside this room. And so you have had
18 a chance to go through those and look at them;
19 have you?

20 A Yes, you provided the material to me --

21 Q Yeah.

22 A -- and I read it over. I'm sure I didn't read it
23 over with the degree of care that you have read it
24 over, but I'm generally familiar with those --

25 Q Sure.



1 A -- reports and statements.

2 Q So I want to deal first with what I call the
3 non-Fisher assaults, and the first one is the
4 (V9)---- one of 106111. And, again, we have been
5 through these a number of times so I'll just touch
6 on the high points so that you know we're on the
7 same page as to what we're talking about. This
8 was an assault, and it's actually reported on
9 January 31, '69 -- these are all, I think, on the
10 Gail Miller murder file and it would appear that,
11 after the murder, some of these women called the
12 police in light of the Gail Miller murder. And:

13 "... about 2-3 weeks ago his wife had
14 been indecently assaulted by a young man
15 while she was walking in mid block on
16 Ave Q between 22nd and 21st Sts., the
17 time was approx. 7:30 to 7:45 a.m.

18 Description of youth is that he
19 was wearing a blue parka with the hood
20 up and he was approx. 5'5" tall.

21 Mr. (V9)---- said that they had
22 not made any complaint to the police
23 about this matter but thought this
24 should be given to the police now as
25 information in their investigation of



1 the murder which had since taken place."

2 And again, if we can just go to 106249, this is a
3 bit more detail, and it's probably easier to go
4 to this than the statement. And it talks about:

5 "... the 100 blk. Ave. Q. S., she was
6 approached by a young man who grabbed
7 her by her arms from behind and ran his
8 hands over her body at which time she
9 struggled and hit him in the face with
10 an elbow and he then ran."

11 And so again perhaps, Mr. Tallis, I can just go
12 through all four, then come back and ask you some
13 general questions, or do you want to deal with
14 them one by one?

15 A No, I think you can, you know, go through them and
16 then deal with them generally.

17 Q Okay. The next one is 024891, are you able to get
18 024891? Actually, we'll bring up her statement,
19 006486. This is the (V6)--- (V6)- statement, the
20 statement is February 18, 1969, and it's an
21 incident at the Hi-Low Mart, which is over in the
22 Greystone area just off of 8th Street. A fellow
23 came up -- and I'll just quickly go through this:

24 "... came up from behind me. He was so
25 sudden I never heard him. His first



1 approach was to grab me by the private
2 part."

3 I then said don't -- or he then said:

4 "... I don't want to hurt you. These
5 were the only words he said."

6 And then to the next page. I think there was a
7 bit of a struggle and then he ran off. Actually,
8 there is a -- scroll down, please. I think there
9 was a struggle, felt a bump:

10 "... I then screamed as loud as I could.
11 My assailant then got an arm around my
12 throat. At this time the man in the car
13 came running around the corner and
14 stood. My assailant now took his arm
15 away and sort of had a hold of my coat
16 by the side."

17 Next page. And then I think that he went off.
18 Go to the next page, description here; eyes,
19 large and dark; complexion a little dark or
20 olive; black; 5 feet 2 inches to 5 feet 6 inches;
21 middle 30s, may have had a thin moustache.

22 Next if we can go to 106191,
23 and this is a report relating to (V11) (V11)--,
24 complaint regarding a suspicious man following
25 her, described as wearing a siwash sweater, about



1 30 years old, approximately five foot nine, and I
2 think that is the -- right, that is the last of
3 those.

4 So you've had a chance to look
5 at those. Can you tell us whether those
6 statements in and of themselves, put aside the
7 other sexual assault information that we're going
8 to come to with respect to Mr. Fisher, but these
9 assaults, this information, would you have been
10 able to use this in any way?

11 A Well, I've thought about it in the light of what
12 you asked me and trying to assess it as
13 objectively as I can, I think that this is
14 information that one would possibly set you on a
15 chain of inquiry, but either standing alone or
16 collectively but excluding the other items, I'm
17 not sure that one could have been successful in
18 having that evidence admitted to show that this
19 crime was probably committed by a third person,
20 albeit one who is not identified. I wouldn't rule
21 it out, but I don't want to elevate it to
22 something that may not have been admissible on an
23 application. Now, I can go further than that --

24 Q Sure.

25 A -- but I think it would be better to deal with it



1 in the context of the others.

2 Q Sure, we'll maybe come back to that when we get to
3 the other assaults.

4 I now want to deal with the
5 (V4)---- (V4)--- matter, 106110, and this is the
6 January 31, '69 report. We've had -- we've been
7 through this a number of times at the Commission
8 and Ms. (V4)--- testified, but she said that at
9 7:07 a.m. on the morning of January 31, 1969:

10 "... she was on her way to catch her bus
11 on 22nd St. to the University she was
12 assaulted by a male person. This person
13 came out of a yard (after taking her
14 back there) 201 Ave. H So., and walked
15 towards her."

16 And I think it's seven blocks from where Mr. Gail
17 Miller's body was found is where she identifies
18 it.

19 "This male person then grabbed her and
20 ran his hand up and down her legs. She
21 screamed and this person then moved
22 back. She had laid or thrown her books
23 down and she picked them up and
24 continued on North to 22nd ST., She did
25 look back and he was following her. She



1 quickened her pace and the next time she
2 looked back he was gone."

3 And then her description is -- scroll down,
4 please -- not young or old, possibly near 30
5 years of age, height five feet five inches or six
6 inches, and etcetera, black or dark hair, not too
7 long, wearing a three-quarter or one-half length
8 suede coat, dark brown in colour. Coat could
9 have had a fur collar.

10 And then if we can go to her
11 statement, 006404, this is her statement of the
12 same date, she describes the incident again at
13 7:07 a.m., and I think her evidence before the
14 Inquiry was that she had -- actually, maybe I'll
15 just scroll down. She says I was walking -- no,
16 go back to where you were, please.

17 "I had just checked my time so know it
18 was 7:07 a.m."

19 -- when the assault, or shortly before the
20 assault, and you've had a chance to look at this
21 and consider it, Mr. Tallis. Can you tell us
22 whether this information would have been of
23 assistance to you in the defence of Mr. Milgaard?

24 A I think it would, particularly in the light of
25 what I now know about the other ones that you are



1 about to deal with, but this one may stand on a
2 slight -- I would have argued, I think, that this
3 one stands on a slightly different basis, and that
4 is that it involved an assault on this bitterly
5 cold morning at the time that she mentioned and I
6 think it might well have been admitted as sort of
7 a free-standing piece of testimony, if I may use
8 that term. I realize there could well be an
9 argument over it, but reflecting on it, as you
10 have asked me to, I think that that is a tenable
11 argument, and having regard to the circumstances,
12 including the location and the weather conditions
13 on the day in question, we get -- put it this way,
14 I'm not attempting to be an expert in statistical
15 causation or anything like that, but if you have a
16 sexual predator at that time, and one would have
17 no reason to doubt this lady's description, one
18 could argue that the likelihood of having two
19 sexual predators in the same area who conducted
20 themselves in this way on a bitterly cold morning
21 in January raises some very serious questions.

22 Q And is it evidence that you think you would have
23 tried to put before the jury then for that
24 purpose?

25 A Yes, bearing in mind the additional items that I



1 know you are coming to.

2 Q Right.

3 A Very much so.

4 Q And can you tell us how you might have argued to
5 the jury that this might exclude Mr. Milgaard or
6 raised a reasonable doubt about his guilt?

7 A Well, there's no suggestion that he was the
8 attacker, and the manner of this attack, the time
9 of it and the general location I think would be
10 relevant considerations to raise.

11 Q Can you tell us how --

12 A But I think that knowing what I now know based on
13 what you have shown to me, I would view this as
14 part of the package that you showed it to me --
15 that you showed to me.

16 Q Right. And you are referring to the rapes that
17 Mr. Fisher was convicted of?

18 A Yes. You've mentioned their names, (V1)-,
19 (V2)-----, and is it (V5)---?

20 Q Yes.

21 A Okay. Those are the ones I'm thinking of in
22 particular.

23 Q Can I just ask you to comment on one point on the
24 (V4)---- (V4)--- statement that we've heard some
25 evidence and some different views on and how you



1 might have dealt with the time factor. If her
2 timing is correct, at 7:07 a.m., and the window of
3 opportunity I think for the death of Gail Miller I
4 think was 6:45, or perhaps 6:50 to 7:05 I think is
5 where we got it, do you foresee, or how would you
6 have dealt with that? In other words, if you are
7 saying to the jury when Mr. Milgaard was in the
8 vicinity he did not have enough time to have
9 committed this thing, can you tell us how you
10 might explain to the jury that this other
11 perpetrator could have committed both?

12 A Well, so much would depend on what Miss (V4)---
13 said in testimony at the time and of course the
14 accuracy of watches or whether they are out a
15 little and so forth would enter into it, but as I
16 say, coupled with the others, I think it would
17 make a much more compelling case for its
18 admission. I think the key would be getting the
19 testimony admitted on behalf of the defence or,
20 better still, persuading the Crown to call it once
21 you became aware of it.

22 Q Would the statement of (V4)---- (V4)--- and the
23 information in the police report, was that the
24 type of information that you contemplated
25 receiving when you made your request back in June,



1 July and August of 1969 for information from the
2 Crown?

3 A Yes, it would be, because that type of information
4 could be very helpful in defending a case and
5 pointing to the innocence of the person charged.

6 Q If we can go to 039527, we'll now go to the, I
7 call them the Fisher assaults, they are the four
8 that -- three sexual assaults and one indecent
9 assault Mr. Fisher confessed to and pled guilty
10 to. 039527. And this is a newspaper article of
11 December 14th, 1968 and the dates of the -- there
12 were three assaults before Gail Miller's murder, I
13 think the dates were October 21st, November 14th
14 and November 28th I believe, or in that time
15 frame. The first two were actual rapes, the
16 one -- and those two rapes were on Avenue O,
17 Avenue F, in that area, and 18th Street. The one
18 at the end of November, the (V3)----- one, was an
19 indecent assault over by the university area, and
20 this is a newspaper article talking about a
21 warning to women not to talk to strangers and
22 says:

23 "... after two instances of alleged rape
24 and one assault were brought to their
25 attention ... took place in the



1 Riversdale area and the assault took
2 place in the university district.

3 They said the alleged assailant
4 first talks to women and then takes them
5 into alleys."

6 Do you have a recollection of being aware of this
7 news article at the time?

8 A I have no recollection of having read it or having
9 it brought to my attention.

10 Q If you can take your mind back to again the time
11 you were engaged by Mr. Milgaard and going through
12 those proceedings, and in fact let's say the six
13 months prior, do you have any recollection of
14 being aware of these rapes having occurred?

15 A No, I don't.

16 Q Would you as defence counsel in the bar -- would
17 these matters be discussed -- or how prevalent
18 would matters like these rapes be in the
19 community? Are you able to shed any light on
20 that?

21 A Well, I certainly don't recall any talk about
22 them.

23 Q What about --

24 A And --

25 Q Oh, I'm sorry.



1 A And I recall, you know, after I was retained
2 making inquires, general inquiries, and
3 particularly of one person who, because of his
4 background, seemed to know most everything that
5 was going on over there, didn't, in any way --

6 Q Over where?

7 A On the west side.

8 Q I see.

9 A Didn't raise it with me at all, and that was my
10 purpose in talking to him. Now, I have to say the
11 (V6)- incident, I don't recall any talk of it in
12 our immediate community and that wasn't far from
13 where I lived at the time.

14 Q Okay. We've heard some mention of it being
15 described as a serial rapist on the loose in the
16 city with heightened awareness of people. Do you
17 have any recollection of that?

18 A I don't recall that, and I'm quite sure that if
19 that had come to my attention, I would remember
20 it.

21 Q At the time you defended David Milgaard, did you
22 have any knowledge of unsolved rapes or assaults
23 in the two or three months prior to her death in
24 Saskatoon?

25 A No, I didn't.



1 Q Did you have any knowledge or information that the
2 police, both the Saskatoon City Police and the
3 RCMP who were assisting them, had, during the
4 initial part of the investigation, suspected that
5 the unknown rapist may have been the perpetrator
6 of Gail Miller?

7 A No. You've directed my attention in materials to
8 comments in some of the reports and I certainly
9 did not have any indication of that.

10 Q If you had been aware just generally that one of
11 the initial theories of the police was that this
12 unknown rapist may have been the murderer of Gail
13 Miller, is that something as defence counsel you
14 would have done something with?

15 A Yes, I'm sure I would have asked Mr. Caldwell
16 about it or, you know, somebody in his position.

17 Q If we can call up 065399, this is an RCMP report
18 of March 20th, 1969, and just a bit of background.
19 This report, although prepared in March of 1969,
20 the evidence we've heard is that it was not on the
21 Saskatoon City Police files, nor was it on Mr.
22 Caldwell's file, and in fact I think post
23 conviction it was located in 1993, and you've had
24 a chance to read through these RCMP reports; is
25 that correct?



1 A Yes.

2 Q If we can just go to the page 065401, please, and
3 I think the evidence we heard from, in particular,
4 Corporal Rasmussen, as he then was, of the RCMP,
5 who was involved, what he testified to was that
6 the RCMP provided assistance to the city police
7 for part of the investigation and these reports
8 were reports to his superiors and basically
9 reflected what they had learned from the Saskatoon
10 City Police, or that had been part of the
11 Saskatoon City Police investigation as opposed to
12 being reports of an RCMP investigation, okay?

13 A Yes.

14 Q And with that, paragraph 10, this report says, it
15 talks about the two rapes and one attempted rape:

16 "In each case the attacker forced the
17 girls down an alley at knife point where
18 he forced them to undress before
19 committing the offence. In the
20 attempted rape, the attacker was scared
21 off by the approach of car headlights.
22 One of the victims claims that she can
23 still identify her attacker while the
24 other two are only able to give a brief
25 description of him. In view of the



1 similar methods used in committing these
2 offences, there is a good possibility
3 that they were all committed by the same
4 individual and this fact is not being
5 overlooked during this investigation."

6 Again, would that type of information be of
7 assistance to you in your defence of Mr.
8 Milgaard?

9 A Yes. I wasn't aware of the contents of this
10 report until you showed it to me.

11 Q And so I guess the -- actually, let me go to
12 another report here and then I'll ask you some
13 questions, 250597, and next page, this is a May
14 7th, '69 report of Corporal Rasmussen. If you
15 could go to 250603, the bottom:

16 "It is mentioned during the late fall of
17 1968 the local police department had
18 reports of two rapes and one attempted
19 rape. These investigations were
20 conducted by the City Police with
21 negative results. Persons involved were
22 as follows."

23 And then those are the three rapes, (V1)-,
24 (V2)----- and (V3)-----.

25 "In these three instances the M.O. was



1 similar in that the male approached his
2 victim from the rear, covered their
3 mouth with his hand and pointed a knife
4 into their back, forcing them down the
5 lane. The descriptions of the assailant
6 given by all three were very similar and
7 it appeared that the same person was
8 involved. The assailant would force his
9 victim to undress at knife point and
10 always managed to stay in the shadows or
11 behind them in order that his identity
12 would not be detected. He would then
13 have the victim lie on her coat at which
14 time intercourse would take place. In
15 the (V3)----- case, the assailant was
16 scared away as a result of lights of a
17 vehicle approaching down the lane."

18 And then scroll down, it then goes on to talk
19 about they had some lab reports or some physical
20 evidence with respect to the (V1)- rape and they
21 actually did a check of the panties and
22 agglutinogens of type A were found on the blue
23 panties and plaid jacket. In other words, I
24 think from the test the perpetrator of the (V1)-
25 rape appeared to be an A secretor.



1 And then again the paragraph,
2 scroll down:

3 "As a result of the foregoing, it is
4 felt there is a strong possibility the
5 three rapes and the murder are directly
6 connected. In view of this, extensive
7 interrogation was conducted with
8 (V2)----- with negative results."

9 And etcetera.

10 If that -- I'll just check, I
11 don't think we need to go -- you've had a chance
12 to read each of the statements from (V1)-,
13 (V2)----- and (V3)-----?

14 A Yes, I did.

15 Q And we've been through them, and in particular how
16 they describe the attacks.

17 A Yes.

18 Q You recall that, about being undressed and the
19 back alleys referred to in these reports?

20 A Yes. I think this RCMP report that you've read
21 generally summarizes the similarities.

22 Q Can you tell us, Mr. Tallis, what you would have
23 done if you would have been provided with this
24 information?

25 A Well, after I read this material over, I felt that



1 this would form the evidentiary foundation for the
2 admission of this type of evidence to demonstrate
3 or at least support David's position that he
4 didn't do it. First of all, I do not think there
5 would have been any dispute over the fact that
6 David was not in the city at material times when
7 these sexual assaults took place and, as I
8 understood the law at that time, and I think it
9 still is the law, if "A" is charged with murder,
10 it is open to him to demonstrate that it was, in
11 fact, or was likely committed by another person.

12 In this case, I'm sure I would
13 have felt that there was a very compelling basis
14 on which to admit the testimony even if the
15 defence had to call it. Naturally it would have
16 been better if one could persuade the prosecution
17 to call it, but if not, then one would seek to
18 adduce it as part of the defence, and if there was
19 an argument over its admissibility, that, I
20 presume, would have been conducted in the absence
21 of the jury, and in order to determine the issue
22 it may well be; indeed, I think it would have been
23 prudent to call these ladies as witnesses, but at
24 the end of the day I think that a strong and
25 persuasive argument could be made that this was



1 relevant and probative evidence with respect to
2 the issue of whether or not the crime was
3 committed by some other person, albeit
4 unidentified.

5 I think the RCMP report
6 summarizes the significant similarities that
7 attracted the attention of experienced
8 investigating officers and I don't think that I
9 can really usefully add much more than by
10 referring to that. I guess the more I reflect on
11 it, the more I feel that this is very compelling
12 evidence, pointing to the conclusion that a third
13 person, albeit unidentifiable by name, committed
14 this crime that was in issue.

15 Q And is the information on these assaults, is that
16 the type of information that you contemplated
17 receiving when you made your requests of the Crown
18 in the summer of 1969?

19 A This is -- this evidence I think is much more
20 compelling in terms of admissibility than even
21 some of the previous instances that you mentioned.
22 Not that one would avoid including them in the
23 materials submitted, the testimony submitted on a
24 *voir dire*, and of course in my view this is the
25 type of evidence, or testimony, that points to the



1 innocence, or potential innocence of an accused
2 person and certainly is information that I had in
3 mind one would receive under the principles, for
4 example, articulated in *Dallison*, in the *Dallison*
5 case and other English cases that I thought were
6 respectable authority at that time.

7 Q Would you have, and again I appreciate I'm asking
8 you to look back with new information and
9 speculate a bit, but would -- would the fact that
10 the police, as you mentioned, seem to connect the
11 rapes to the murder, at least at the initial part
12 of the investigation, would you try and elicit
13 that evidence from the officers?

14 A Well, in terms of the admissibility, I would
15 certainly try to.

16 Q Subject to admissibility?

17 A Whether I would be allowed to do that, but I know
18 that Corporal Rasmussen and, I think it's Staff
19 Sergeant Edmondson, were very experienced RCMP
20 investigators.

21 Q If we could go to 004102, this is an April 15th,
22 1969 police report, and this relates to the Gail
23 Miller murder investigation. Actually, if we can
24 go to the top, it says:

25 "Regarding this file, on April 7th, I



1 called at 210 Ave. N. So., the home of
2 Miss (V1)-'s aunt ..."

3 And (V1)--- (V1)- was the very first rape victim:

4 "To show her some pictures ... and was
5 transported to the Police station. At
6 the Police station Miss (V1)- was shown
7 a group of 19 photos - snapshots of
8 various people picked at random.

9 Amongst these photos was included one of
10 one David Milgaarde (this last photo was
11 obtained from D/Sgt. R. Mackie). Miss
12 (V1)- looked at these photos which were
13 all placed on the desk at one time, and
14 immediately picked out the photo of
15 David Milgaarde and one other male
16 person whos identity at this time is not
17 known to me. She stated that she had
18 definitely seen both these persons
19 around before somewhere however couldn't
20 remember where or when. She could not
21 identify any of these persons as the one
22 who may have raped her."

23 And etcetera. Would this information, coupled
24 with the other information, have been of
25 assistance to you, Mr. Tallis?



1 A Well, that's the type of information I would have
2 contemplated receiving.

3 Q Again, 105520, this is a February 27th, 1969
4 report by Identification Officer Penkala, and this
5 is February 27th, and this was on the Gail Miller
6 file and it's talking about the items related to
7 the murder and says:

8 "The similarity of our departments
9 occurrence numbers 10173 and 10910 --"

10 Both 68,

11 "-- complaints of rape, with this murder
12 investigation, lists the following items
13 which are reported missing, identifiable
14 and could be of evidential value."

15 And those are the (V1)- and (V2)----- rapes. And
16 then the next page, it goes on to list some
17 information from those rapes.

18 And then as well 009298. This
19 is a letter from Mr. Penkala to the Crime Index.
20 If we can go to the next page, actually go to
21 009299, this is his report about the murder on
22 February 5. And go to the next page. It says,
23 'Our Department has two unsolved cases dating
24 back into October and November' -- call that out,
25 please -- 'of 1968 which involve complaints of



1 rape. In both these cases the victim was
2 attacked from behind while walking in the late
3 evening, forced into a lane and, under threat
4 with a knife, made to undress and submit to
5 intercourse. The victims were always threatened
6 and forbidden to see the attacker who, after the
7 attack, carried away some of the victim's
8 clothing. In these cases, the attacker allowed
9 the victims to replace some of the clothing,
10 usually the outer garment or coat.'

11 Would this information have
12 been of assistance to you, Mr. Tallis, in the
13 defence of Mr. Milgaard?

14 A Yes, well, my earlier comments about the RCMP
15 report apply with equal force to this.

16 Q And would you -- is this the type of information
17 you contemplated receiving when you made your
18 request to the Crown?

19 A Yes, this is very material information.

20 Q I now want to turn to the (V5)-- (V5)--- matter,
21 261590. And this is February 21, 1970, three
22 weeks after Mr. Milgaard has been convicted, and
23 this is a rape that occurs around Avenue V and
24 20th Street. And, again, you have had a chance to
25 review this information, Mr. Tallis?



1 A Yes.

2 Q Can you tell us -- and, again, I guess I have to
3 ask you the question; presumably, if you would
4 have known about the other rapes prior to the
5 trial of Mr. Milgaard, there might have been a
6 different result. If we go to -- let's take the
7 situation where you do not know of the other
8 rapes, the situation that existed, and that after
9 Mr. Milgaard is convicted -- actually, let me
10 rephrase that. After Mr. Milgaard was convicted
11 on January 31, 1970, would you have still been
12 alert to other information that might assist you
13 in his appeal or in furthering his position?

14 A Yes.

15 Q And can you tell us what you might have done if
16 you had been made aware of this information about
17 the (V5)-- (V5)--- rape in the month after the
18 conviction?

19 A Well if this particular rape and the others that
20 hadn't been brought to my attention were brought
21 to my attention, that would make an even more
22 compelling argument for admission of this type of
23 evidence on the appeal, and I think that we are
24 now talking about an application to admit fresh
25 evidence on the appeal. But I think that this



1 particular incident strengthens the argument that
2 the evidence of these sexual assaults that we've
3 been talking about, the three plus this one, we'll
4 call them the four, is even more compelling when
5 we consider admitting, an application to admit
6 that evidence to show that the crime was or was
7 likely to have been committed by a third person,
8 albeit unidentified. It is particularly
9 significant in this case that there could be no
10 suggestion that David Milgaard was in Saskatoon at
11 the time of the (V5)-- (V5)--- rape.

12 Q So can you tell us what -- again, post-conviction,
13 if you became aware of the (V5)-- (V5)--- rape,
14 and let's say at that time you also became aware
15 of the previous three, can you tell us what you
16 would have done?

17 A Well I would have launched an application to
18 adduce fresh evidence on the hearing of the
19 appeal --

20 Q Okay.

21 A -- and endeavoured to get affidavits from the
22 people involved, and if they were unwilling to
23 swear affidavits, then of course I would ask to
24 have them called as witnesses either before a
25 Commissioner appointed by the Court or before The



1 Court.

2 The usual practice through the
3 years in Saskatchewan has been for the witnesses
4 to be examined before the Court of Appeal as
5 distinct from appointing someone to take their
6 evidence on commission.

7 Now I should also say that I
8 think, in this type of case, that given the
9 information that you have provided to me I would
10 probably have approached Mr. Kujawa, if he was
11 going to be handling the appeal, and asked to have
12 him verify the information that I have obtained --
13 had obtained. I know it was veri -- would be
14 verifiable, because he would have to go to the
15 police to get confirmation of it, and invite him
16 to consider whether or not he would agree to a new
17 trial being ordered on the basis of that
18 information.

19 Q And, based on your prior dealings with Mr. Kujawa,
20 had you -- again, not specifically like this --
21 but was that the type of thing you had done in the
22 past with him?

23 A I had.

24 Q And can you tell us how you found him to deal with
25 when you did that?



1 A Well I found him to be cooperative.

2 Q This might be an appropriate --

3 A And without going into details of occasions, I
4 have no -- I would have, at that time, had no
5 doubt that he would have cooperated. He might not
6 have agreed with me after his inquiries and so
7 forth, but by the same token I know that he would
8 have given it anxious consideration.

9 Q This might be an appropriate time to break, Mr.
10 Commissioner.

11 *(Adjourned at 2:28 p.m.)*

12 *(Reconvened at 2:52 p.m.)*

13 BY MR. HODSON:

14 Q Mr. Tallis, we'll just carry on with, I think
15 where we finished up was the (V5)-- (V5)---
16 matter. Just on the question of Larry Fisher,
17 when did you first learn of a fellow by the name
18 of Larry Fisher?

19 A I think the, where it was first brought to my
20 attention in a significant way, and maybe really
21 in the first occasion, was when I was in the
22 Supreme Court hearing. It may have been mentioned
23 in passing to me before that during the course of
24 discussions with counsel for Mr. Milgaard before
25 the hearing, but that's the time that I recall my



1 attention particularly being drawn to it.

2 Q And that's in 1992; correct?

3 A Yes. I think Mr. Brown asked the question of me,
4 and I don't think anybody else did at the time.

5 Q Okay. I'll just go through, and again just for
6 the purposes of the record, and we've heard
7 evidence on this, that after the (V5)-- (V5)---
8 rape of February 21, 1970 Mr. Fisher had moved to
9 Winnipeg, and I think the evidence before the
10 Commission has been that he was not a suspect in
11 any of the Saskatoon rapes, or there was three
12 rapes and one indecent assault; that on August
13 2nd, 1970 he committed a rape in Winnipeg of
14 (V7)--- (V7)---; and then on September 19th, 1970,
15 he committed a rape on (V8)-- (V8)--- and he was
16 caught at that time and arrested. And I've
17 provided you with those two statements, you have
18 had a chance to look at the particulars of the two
19 Winnipeg rapes I believe?

20 A Yes.

21 Q And then he was in custody, and then on October
22 21st and 22nd, 1970 he confessed to two of the
23 rapes in Saskatoon, namely the (V3)----- and the
24 (V5)--- rape.

25 A Yes.



1 Q So that's on the record in October 22nd, 1970.

2 A Yes.

3 Q December 30th, 1970 the Saskatoon City Police laid
4 four charges here in Saskatoon against Mr. Fisher
5 for the four, (V1)-, (V2)-----, (V3)-----,
6 (V5)---, the informations were sworn. At that
7 time Mr. Fisher was in custody in Winnipeg and he
8 was not brought back to Court on those charges.
9 He then in May of 1971, through his legal counsel
10 Mr. Greenberg in Winnipeg, pled guilty to the two
11 charges in Winnipeg and received a sentence of I
12 believe 13 years, was sent to Prince Albert
13 Penitentiary. Mr. Greenberg had had
14 correspondence and communication with Mr. Kujawa
15 in 1971, Mr. Greenberg has testified before this
16 Commission that in effect he had a deal for
17 pleading Mr. Fisher out in Saskatchewan with
18 respect to the four charges, and in December of
19 1971 direct indictments were laid in Regina and
20 Mr. Kujawa appeared, Mr. Greenberg appeared, and
21 Mr. Fisher was brought down from Prince Albert to
22 Regina, plead guilty, and got a concurrent
23 sentence. Are you generally familiar with those
24 facts from what -- the information that I have
25 provided to you?



1 A Yes, I think that you set it out very succinctly
2 to me, but accurately.

3 Q Now I want to talk about what -- and I take it,
4 did you know any of that, did you know any of
5 these goings-on with Mr. Fisher in 1970 or 1971?

6 A No.

7 Q Now the -- Mr. Fisher's confession for the two
8 Saskatoon rapes was October 21st-22nd, 1970, and
9 the appeal I think you argued November 6th, 1970.
10 And you may have already dealt with this when you
11 answered about the other rapes, presumably if you
12 -- I think you told us that if, before the appeal
13 was argued, you learned of these unsolved rapes,
14 you would have brought a fresh evidence
15 application; fair, correct?

16 A Yes.

17 Q If they became solved rapes before the appeal was
18 argued, presumably the same application, but now
19 with a perpetrator?

20 A Yes.

21 Q Let's go to the scenario if you learned of this
22 information, either about the rapes themselves
23 and/or the fact that Mr. Fisher had confessed to
24 two of the four of them, let's say you had learned
25 about that after you argued the appeal in early



1 November 1970 but before judgement was rendered by
2 The Court, which was January 5 of 1971; can you
3 tell us what you would have done if you became
4 aware of that information?

5 A I've reflected on it in the light of your request,
6 and I'm quite satisfied that the procedure I would
7 have followed would have been to contact Mr.
8 Kujawa and the Registrar of The Court to indicate
9 that I wished to make an application in the light
10 of new information that had been brought to my
11 attention. Since judgement had not been delivered
12 it would have been open to me to ask for the delay
13 of delivery of judgement. I did not know when the
14 judgement would have been -- would have come down,
15 or was going to come down, but since the matter
16 had not been disposed of and no formal judgement
17 roll issued it is, of course, open to counsel to
18 apply for a rehearing. And on such a rehearing
19 usually you, if a new matter of that nature comes
20 to light, the opportunity to get a new hearing, I
21 think, would be greater, that is a rehearing.

22 In this case I'm sure, if it had
23 been brought to my attention in the way in which
24 you have mentioned it, I would clearly have
25 outlined to Mr. Kujawa the nature of the



1 application that I was bringing, with details, and
2 of course, quite apart from preparation of the
3 relevant material in affidavit form or otherwise,
4 I would have asked him, I think, to verify what I
5 don't think would be disputed facts as far as the
6 nature of these assaults and the, by that time,
7 the perpetrator of them, and invite him to
8 consider his position and let me know while I was
9 getting things ready.

10 Q Based upon your dealings with Mr. Kujawa, are you
11 able to tell us what you think he might have done
12 in that scenario?

13 A I know that he would have given it careful
14 consideration, based on my previous professional
15 dealings with him.

16 Q Can --

17 A And what I said to you earlier in that connection
18 applies with equal force to this scenario.

19 COMMISSIONER MacCALLUM: Mr. Hodson, I
20 missed something, I'm sorry; that you gave two
21 dates, October 21-22, 1970, that was what?

22 MR. HODSON: That was the dates that Larry
23 Fisher confessed to the (V3)----- and (V5)---
24 assaults. He confessed on the 21st in Winnipeg
25 and on the 22nd to the statement that he provided



1 to Mr. Karst.

2 COMMISSIONER MacCALLUM: Thanks.

3 BY MR. HODSON:

4 Q Let's now go to the scenario where it's after
5 January 5, 1971, after the appeal has been
6 dismissed by the Saskatchewan Court of Appeal, but
7 the appeal to the Supreme Court, or the
8 application for leave, is still alive, and again,
9 you became aware of the, either the rapes
10 themselves and/or the fact that Larry Fisher had
11 confessed to two of them. Would the same apply,
12 would you do the same thing there, but with
13 respect to an application to the Supreme Court?

14 A Yes. Assuming that I was acting on it, I
15 certainly would have, and if something like that
16 had come to my attention I would have passed it on
17 to David and his advisors.

18 I know that I was very conscious
19 of a case that I recall by the name of *The Queen*
20 *versus Horsburgh*. I'm not sure of the exact year
21 of it, but that was a case in which the Supreme
22 Court had ruled that the evidence of, in that
23 case, recanting young people was properly
24 admissible as fresh evidence. This recantation
25 had arisen after the process through the courts,



1 and I think the same principle would probably be
2 applied with respect to this type of evidence, in
3 other words it was fresh evidence, and
4 particularly the Winnipeg cases would, in my
5 argument, add strength to that type of
6 application.

7 Q So in a case where, let's use the example where
8 Mr. Milgaard's appeals are exhausted, in other
9 words after his application for leave to appeal to
10 the Supreme Court; is that the horseman (ph)
11 situation you are talking about?

12 A No, no, no.

13 Q No? So --

14 A It's a question of the admissibility of evidence
15 on the appeal.

16 Q Oh, okay.

17 A In this case that would be an additional ground of
18 appeal on which leave would be sought.

19 Q If we go to the scenario -- and, again, I
20 appreciate that you did not act for Mr. Milgaard
21 at the Supreme Court -- but again, if you were
22 acting for him at the time that all of his appeals
23 had expired, let's go to 1971, and you had been
24 made aware of either the rapes themselves and/or
25 the fact that Mr. Fisher had either confessed to



1 them or been convicted of them; can you tell us
2 what you would have done?

3 A I really haven't, you know, had to give that
4 mature consideration, but I know that I would
5 certainly have pursued it both procedurally and
6 substantively. I cannot tell you, at this stage,
7 how I would have tried to get it back before The
8 Court.

9 Q But would you have gone to Mr. Kujawa or Mr.
10 Caldwell?

11 A Oh yes, I mean that's a given, I would have
12 certainly gone to him and invited some sort of a
13 joint approach. But, quite apart from that, I
14 would certainly have looked into whether or not
15 one could renew the application in some way, but I
16 have to say that I haven't briefed that at any
17 time in my career, so I better leave --

18 Q Okay.

19 A -- matters of that nature to somebody who has.

20 COMMISSIONER MacCALLUM: This is -- you are
21 speaking of when leave was denied?

22 MR. HODSON: Yes. After that.

23 COMMISSIONER MacCALLUM: Oh yeah.

24 BY MR. HODSON:

25 Q And I appreciate that maybe I'm asking you to



1 speculate on a situation where you, in fact, were
2 not even engaged, --

3 A Yeah.

4 Q -- but were you aware or are you aware, Mr.
5 Tallis, or let me tell you that what we have heard
6 in this Inquiry, of allegations that have been
7 made by David Milgaard and his mother and his
8 lawyers, that Serge Kujawa, Mr. Caldwell, and
9 others connected Larry Fisher as the killer of
10 Gail Miller at a time, perhaps October 1970, and
11 before Mr. Milgaard's legal avenues had been
12 exhausted, and the allegation is that they
13 connected Mr. Fisher as the killer and
14 deliberately conspired to withhold this
15 information from you and from others; do you have
16 any knowledge or information to support or refute
17 that allegation?

18 A I simply have no knowledge of what that is based
19 on.

20 Q No, and I appreciate that, and I'm just asking
21 you. That allegation was made, and I'll go to
22 some documents a bit later; is there anything,
23 when you look back in your dealings with Mr.
24 Kujawa or Mr. Caldwell or others, that would
25 either support or refute the suggestion that they



1 knew Larry Fisher was the real killer of Gail
2 Miller and deliberately conspired to withhold that
3 information from you?

4 A Well, I can think of nothing in my dealings with
5 them that would suggest or point to them
6 deliberately or conspiring -- I guess conspiring
7 involves deliberation -- conspiring to withhold
8 that information from me or --

9 Q Based upon your dealings with Mr. Caldwell and Mr.
10 Kujawa, would you expect that if they had
11 information at the time before Mr. Milgaard's
12 appeals had expired that suggested David Milgaard
13 was not the guilty party and that Larry Fisher
14 was, that they would advise you of that?

15 A Yes, I certainly would never have suspected
16 anything like that, because I knew each one of
17 them to be a person of high personal and
18 professional integrity.

19 Q I just want to ask you a couple questions about,
20 we've heard some evidence about the practice and
21 procedures back in 1970 and '71 regarding direct
22 indictments, and we heard from Mr. Greenberg who
23 was Larry Fisher's lawyer. But if we can go back
24 to 1971, Mr. Fisher plead guilty in Manitoba, was
25 sentenced, went to Prince Albert, and then made an



1 arrangement to plead guilty on the four
2 Saskatchewan charges, and I think the evidence of
3 Mr. Greenberg was to the effect that either he
4 requested it or somehow it came up to do it by
5 direct indictment, and one of the reasons would be
6 to avoid a preliminary hearing, committal, and a
7 couple of Court appearances. Do you recall
8 whether, at that time, arranging to have a direct
9 indictment to plead out to an offence; was that
10 something that happened from time to time, was
11 that unusual, or can you comment on that?

12 A I don't recall anything specific on that, but
13 where you were bringing somebody in from another
14 province to plead out on something, I don't think
15 that would be unusual. Usually it would be done
16 to facilitate matters, as you have outlined, but
17 to sort of tell you whether or not there was any
18 policy laid down on that, I have no recollection
19 of anything like that. Usually, things like that
20 were handled as a matter of discussion between
21 counsel acting for the accused person and counsel,
22 like whoever was handling the prosecution file.

23 Q We have also -- and, again, the direct indictment
24 that was filed in this case was in Regina, the
25 offences took place in Saskatoon, and there has



1 been some evidence or some documents suggesting
2 that Mr. Fisher -- that it may have been for
3 convenience, and that Mr. Fisher, or that
4 prisoners from Prince Albert may have been
5 transported to the Regina Court as opposed to the
6 Saskatoon Court on a more frequent basis. Do you
7 have any knowledge of the practice, back in 1971,
8 regarding prisoners from the penitentiary
9 appearing in Regina courts versus Saskatoon
10 courts?

11 A Not specifically, but I can tell you that in those
12 years -- and I think that's, it's, the practice
13 still prevails -- criminal sentence -- criminal
14 appeals, excluding say regulatory offences, are
15 only heard in Regina.

16 When I was a member of the bar,
17 there was pressure to have appeals heard here in
18 Saskatoon, and while I was in practice here the
19 local bar persuaded the, I think the Court of
20 Appeal and probably government officials, but
21 particularly the Court of Appeal, that it was
22 desirable to have The Court sit here. The result
23 of those discussions ended up with The Court
24 sitting here on civil appeals, as it still does,
25 but criminal appeals were not heard here. Because



1 the feeling was that the prisoners were brought
2 from Prince Albert to Regina, and I don't know
3 whether it was because of facilities, better
4 facilities there for handling a number of
5 prisoners that would come in on, often on sentence
6 appeals but also on conviction appeals. So, in
7 any event, I can tell you, without any
8 reservations, that civil appeals were heard here
9 as a result of those discussions, but criminal
10 appeals continued to be heard in Regina, and as
11 far as I know they still continue to be heard
12 there to the exclusion of Saskatoon. I think I've
13 made it clear to you --

14 Q Yes.

15 A -- that there might be regulatory matters that
16 come before The Court here, but even the summary
17 conviction appeals under the *Criminal Code* under
18 points of law, and so forth, go before The Court
19 in Regina.

20 Q It's my understanding that in those cases of
21 either criminal conviction appeals, or criminal
22 sentence appeals, that an accused in custody would
23 generally be in attendance at the appeal?

24 A They are -- the Court, so far as I know, has
25 always taken the position that they are entitled



1 to be there in person. If they signify that they
2 do not wish to attend then usually their -- that
3 request is granted. But the usual practice has
4 been, over a long period of years, for the accused
5 to be there as of right, that is the accused or
6 Appellant. I'm talking about the Court of Appeal
7 on criminal matters, but I can't speak with
8 respect to other matters.

9 Q Okay. So as far as the suggestion, and I think it
10 is in one of the RCMP reports that we have seen,
11 that in 1971, that there were regular
12 transportation by air of prisoners from the Prince
13 Albert Penitentiary to the Regina courts to deal
14 with matters, versus Saskatoon; is that -- would
15 you agree with that, is that --

16 A That, that, I think that's an accurate statement.

17 I recall the odd time when
18 prisoners enjoyed having the ride down by plane
19 from Prince Albert, would come in and then abandon
20 their appeal at the last minute, smile somewhat
21 graciously.

22 Q Okay. If we can go to 032805 and go to page
23 032819, and here is the allegation that I had
24 referred to earlier, at least one of them. It
25 says:



1 "It is alleged that Mr. ... Kujawa
2 sought a direct indictment against Larry
3 Fisher and prosecuted Fisher in Regina
4 to avoid publicity and thereby continue
5 the cover-up of the miscarriage of
6 justice against Milgaard."

7 And if I haven't, didn't fairly summarize that
8 before, again, do you have anything in addition
9 to what you have already said to add in response
10 to that suggestion? Presumably, you are one of
11 the people that he was seeking to avoid publicity
12 of this matter from.

13 A No, I can't add anything to what I've already told
14 you.

15 Q If we can scroll down, there was also an
16 allegation made -- scroll down further right to
17 the bottom of the page -- actually, go to the full
18 page. That's good there, just that part. This
19 is -- what I'm reading from is an August 15th
20 report of the Alberta Justice based on allegations
21 of criminal offences that were made on behalf of
22 the Milgaard group against various officials, and
23 one of them, it is alleged that Serge Kujawa, then
24 the director of public prosecutions for
25 Saskatchewan, K. Lysyk and R. Romanow connected



1 the Milgaard file with the Fisher file and knew
2 that there was a miscarriage of justice, and I
3 think this relates to an allegation that at the
4 time Mr. Kujawa was working on the appeal that you
5 had filed and you had argued against him that he
6 also had the Fisher files at the same time and
7 that he in fact had connected Larry Fisher as the
8 culprit who committed the Gail Miller murder, but
9 took steps to deliberately cover that up. Is
10 there anything in your dealings with Mr. Kujawa
11 during the appeal that suggested to you that he
12 might have been aware of Larry Fisher as the
13 killer of Gail Miller and that he took any steps
14 to cover that up?

15 A None whatsoever.

16 Q The good news is, Mr. Tallis, I'm on my last
17 binder.

18 I now want to go to talk about,
19 move into the 1980s and your dealings with
20 subsequent counsel for David Milgaard, and the
21 first was Gary Young and we've talked a bit about
22 him and I think you've told us that he contacted
23 you and that you made arrangements, or agreed to
24 have your file from your former law firm made
25 available for him to look at; is that correct?



1 A Yes. My attitude was that it should be made
2 available to him. I didn't know what was there at
3 the time when I was talking to him, but I had
4 known him for many years and I knew his colleagues
5 and partners quite well and I had no hesitation
6 in, number one, talking to him, and number two,
7 indicating that, to make available to him what
8 there was.

9 Q And do you have a recollection of what you would
10 have talked to him about? Did you talk about any
11 of the details?

12 A I don't think we went into anything much in the
13 way of details because that wasn't the purpose of
14 the discussion, although I think he -- I think he
15 raised with me what I thought, whether there was
16 any possibility of, or prospects of having the
17 matter reopened one way or the other, and while
18 this is just something very vague in my mind, it
19 was a theme that sort of ran through, I think,
20 some of my thinking. I thought that the history
21 of these re-openings or references indicated that
22 there was an uphill struggle for someone in that
23 position, and I'm sure I referred to likely cases
24 such as *Truscott, Latta*, and there may have been
25 another one, in particular I think I mentioned the



1 *Horsburgh* case because that dealt with the
2 situation of where witnesses recanted and whether
3 or not recantations might form the basis for a
4 reopening. Now, this is just something very
5 general and something that I have a very vague
6 recollection.

7 Now, if Mr. Young were to say,
8 well, that I don't think that I did talk to him
9 about that, I certainly couldn't quarrel with it,
10 but I'm trying to give you my best recollection,
11 and my best recollection of course is just very
12 vague.

13 Q And at that time, Mr. Tallis, again I think this
14 is the early 1980s, are you able to tell us what
15 -- and maybe it's not limited to the 1980s, it
16 might have even been in the '70s when you were
17 done the case -- as far as an area that might be
18 pursued to have the case reopened, did you have
19 any thoughts as to what might be fertile ground
20 for someone to pursue?

21 A The fact that I have the *Horsburgh* case in my mind
22 would indicate I certainly would never have ruled
23 out witnesses recanting.

24 Q Okay. And can you think of anything else that
25 might have been --



1 A I can't think of anything else that we might have
2 discussed, but it may well be that there were
3 other things mentioned in passing. This was all
4 by telephone and I was living in Yellowknife at
5 the time, so it's a good many years ago.

6 Q If -- now, I think we heard from Mr. Young that he
7 acted for about four months and then Mr. Merchant
8 acted?

9 A Yes.

10 Q And you had some dealings with Tony Merchant as
11 well did you?

12 A Yes. Mr. Merchant somewhere along the way, and
13 this was when I was still in Yellowknife, phoned
14 me, or either there was a message requesting me to
15 phone him, so I did talk to him briefly on the
16 phone, but I can't recall the gist of that
17 conversation other than the fact that apart from a
18 few other things, he mentioned that he was
19 involved, recently had been retained by I think
20 Mrs. Milgaard and probably David, I'm not sure
21 just how he framed that, but anyway, I certainly
22 became aware of it, and this would likely be in
23 the -- likely be sometime in the fall, late summer
24 of 1981 I believe. I could be wrong on my time
25 frame, but --



1 Q And --

2 A And then later on after we moved to Regina he was
3 in touch with me and I met with him along the way,
4 he came over to see me and we had a discussion at
5 the time. Not a lengthy one, but I certainly
6 remember him coming.

7 Q And at that time did you and were you prepared to
8 provide to both Mr. Young and Mr. Merchant much
9 the same information that you provided to this
10 Commission of Inquiry, your recollection of what
11 you did at that time, what David Milgaard had told
12 you, things of that nature?

13 A Well, I hadn't really had time to reflect on it
14 or, you know, read all the material that you've
15 asked me to read, but I know that I've always
16 emphasized that, you know, the sanctity of
17 solicitor/client privilege, and I don't recall
18 whether Mr. Merchant had any waiver or
19 authorization from David at that time, I just
20 don't recall, but I know that I emphasized to him
21 that I certainly was not in the practice of
22 discussing a client's business or a former
23 client's business in a public forum without some
24 type of waiver. In other words, I took the
25 position that any waiver, or any waiver was



1 something the client decided, not his former or
2 present lawyer.

3 Q And I think from the documents it would appear
4 that I don't believe David Milgaard had signed a
5 waiver for you, I believe Mr. Merchant indicated
6 that he was prepared to or he did, but I don't
7 believe there was a waiver signed.

8 A Well, I don't recall. He may have -- he may have
9 had something of that nature, so I -- but I did
10 discuss a few details in light of the contents of
11 the Court of Appeal decision, but I indicated to
12 him that to go into it in greater detail, I would
13 certainly have to take some time to reflect on it,
14 and at that time I still had hopes of getting
15 access to what I would call the complete file, or
16 finding it, and in particular, finding my notes
17 and trial brief.

18 Q Would -- and again, if you would have been
19 provided with a waiver of privilege signed by
20 David Milgaard, and Mr. Merchant would have asked
21 you to do so, would you have gone through your
22 file for Mr. Merchant and Mr. Milgaard and told
23 them again much of what you've told this
24 Commission of Inquiry?

25 A Oh, I would have done my very best to do so,



1 and -- but bearing it mind it would take a great
2 deal of time to review everything, but
3 unfortunately I was never able to locate the file
4 or any of my notes or anything like that and that
5 still hampers me to this day.

6 Q But putting --

7 A You have managed to dig up things that I never had
8 access to.

9 Q As far as the discussions between you and David
10 Milgaard, and in particular what he told you about
11 the events of January 30 and 31, 1969, would that
12 have been information that, again assuming a
13 waiver had been signed, that you could have and
14 would have provided to Mr. Young, Mr. Merchant and
15 indeed later Mr. Wolch and Mr. Asper?

16 A Certainly I would have talked to them about it,
17 and if I had had my file, then of course I would
18 have gone over it in great detail in terms of my
19 notes. I'm sure that my handwritten notes had
20 been typed into memoranda and you have one or two
21 examples here that illustrate the way I generally
22 did it.

23 Q Now, let's -- and just as far as Mr. Merchant, I
24 think there was some suggestion somewhere that,
25 where he said or someone reported that you maybe



1 had not given him as much as he might have wanted,
2 and is it your evidence that that would be because
3 he did not have a waiver signed by David Milgaard?

4 A That may well be, but I thought that he understood
5 very clearly that I was quite prepared to
6 co-operate with him.

7 Q If we can then go ahead, 153486, I take it at a
8 later point you were contacted by either Mr. Wolch
9 and/or Mr. Asper; is that correct?

10 A Yes.

11 Q And this is a letter, May 10th, 1989, from Mr.
12 Wolch to you, and just sort of read the first
13 part, and:

14 "For the last several years we have been
15 representing David Milgaard in an
16 attempt to have his case reopened. We
17 have somewhat stumbled along attempting
18 to find new evidence or issues to
19 persuade the Department of Justice that
20 David was in fact innocent of the murder
21 of Gail Miller. Up until recently most
22 of what we were able to obtain would
23 amount for the most part to a rearguing
24 of the case itself."

25 And from that opening paragraph, are you able to



1 tell us whether this would have been your first
2 contact with Mr. Wolch or might there have been
3 an earlier one?

4 A What date is this?

5 Q This is May the 10th -- go back to the full page.
6 May 10th, 1989.

7 A I think this is probably the first contact,
8 although I couldn't rule out a phone call that may
9 have been made as a matter of courtesy.

10 Q Can you tell us generally, as far as dealings with
11 Mr. Wolch and Mr. Asper, what -- and again, they
12 did in fact provide you with a waiver of
13 solicitor/client privilege, I'll get to that, I
14 don't think there's any issue that that was
15 obtained -- can you tell us what information you
16 were prepared to provide them and what were you
17 prepared to do for them and what in fact you did
18 do for them and did provide them?

19 A Well, number one, I know that I met with Mr. Wolch
20 and Mr. Asper on one occasion during which we had
21 a discussion and I know that I met with Mr. Wolch
22 on another occasion, I remember arranging to meet
23 him at my office at the courthouse on, I believe
24 it was a Saturday or Sunday morning when he was
25 going to be in town to deal with matters in



1 relation to it, so we met privately, that is,
2 there wasn't anybody else there, although I think
3 there were other counsel around the building, and
4 I believe he told me he was examining documents or
5 something that had been brought over to the
6 courthouse or -- anyway, I didn't get the details
7 of that, it wasn't any of my business, but we had
8 our discussion.

9 Q So how many in-person meetings then would you have
10 had?

11 A Well, I think -- I'm quite sure there were at
12 least two, but I stand to be corrected if there
13 were more than that, and of course I should add
14 this, that I recall that on the evening before I
15 was giving testimony in the Supreme Court of
16 Canada, Mr. Wolch did speak to me by phone and
17 came over to my room for a short period of time.

18 Q And apart from that meeting at the hotel in
19 Ottawa, can you tell us approximately how much
20 time you would have spent with Mr. Wolch and Mr.
21 Asper then in these previous two meetings? Were
22 they lengthy, detailed meetings?

23 A You know, I don't actually recall how long they
24 were, but I know the meeting on the Saturday that
25 I had with Mr. Wolch was not a rushed meeting, if



1 you know what I mean, and I don't recall any rush
2 on the other one, but --

3 **Q** And do you recall what areas you would have
4 discussed?

5 **A** I know that two areas that were of particular
6 importance to Mr. Wolch involved I think areas
7 that the Supreme Court were primarily interested
8 in and that is, number one, what was the
9 background to him not testifying, why did he not
10 testify, and that of course involved whether or
11 not certain advice had been given to him. The
12 other significant matter that I recall being
13 raised was whether or not he ever admitted to me
14 that he committed the crime, and so those areas
15 were canvassed, plus some other details, because I
16 know that we discussed them at some length, but I
17 can't really tell you how long at this time.

18 **Q** And again, on the decision to testify, I mean,
19 would it be fair to say that -- or try and compare
20 what you've told us, this Commission, about what
21 went into the decision to advise him not to
22 testify, would you have given him that much
23 information, less or can you tell us what --

24 **A** I think we essentially covered that area much in
25 the way that I have here, probably here you've



1 asked me more detail, but certainly we covered it,
2 you know, to the extent it was covered in the
3 Supreme Court of Canada.

4 Q Would you have advised Mr. Wolch of what David
5 Milgaard had told you about the events of January
6 30 and 31?

7 A I'm quite sure I did.

8 Q And the motel room reenactment?

9 A I think that I did, because I had read over the
10 Court of Appeal decision before he came and
11 reflected on it, but I can't say right at this
12 stage all the details that we discussed. I
13 wasn't, you know, recording the meeting or
14 anything like that.

15 Q Now, this letter of May 10th talks about the
16 report of Dr. Ferris, indicating that Dr. Ferris'
17 report indicates:

18 "... that David would appear to have
19 been innocent of the crime. His
20 conclusions were basically founded on
21 the analysis of the semen found at the
22 scene and David's blood grouping."

23 Do you recall having any discussion with Mr.
24 Wolch or Mr. Asper about this issue?

25 A I don't, and I don't recall seeing the report that



1 they refer to.

2 **Q** Do you have a recollection of discussing anything
3 about the position you took at the preliminary
4 hearing and trial about the secretor issue, if I
5 can call it that?

6 **A** We may well have, but of course at that time I
7 didn't have any of the materials, so I would
8 certainly be relying on what they had read in the
9 preliminary hearing and at trial if indeed we did
10 get into any discussion of it.

11 **Q** Go to 153499, please, and this is October 18th,
12 1989, five or six months later, this is from Mr.
13 Asper, and here he's looking for your files
14 relating to this case if you still have them, it
15 talks about a waiver, and if we go to the next
16 page, please, and here's a waiver, October 16th,
17 1989. I take it that was received by you
18 authorizing you to share whatever information you
19 had?

20 **A** I'm sure it was.

21 **Q** Then 153494, this is a December 6th, 1989 letter
22 from you to Mr. Asper, it refers to having spoken
23 to Mr. Wolch about it previously, and you say:

24 "You will appreciate that --"

25 Go back to the full page, please.



1 "-- I do not have any of my old files.
2 However I did ask a former colleague to
3 check and see if the old file is in
4 existence. Since there have been quite
5 a number of changes since I left
6 practise, including a merger, I doubt
7 that the file is still in existence.
8 However, I will let you know as soon as
9 I have some word about it."

10 So it looks like at this time you are of the view
11 that your file is gone; is that fair?

12 A Yes. I know that I set in motion inquiries and
13 searches on my own --

14 Q And then if we can go to --

15 A -- quite a bit before that actually, but I never
16 really gave up hope of finding significant
17 portions of it or even all of it until later. I
18 was primarily interested in trying to find my
19 notes and my trial brief which had all the
20 relevant memoranda and so forth, but I turned
21 everything upside down that I had taken with me or
22 stored out at the farm.

23 Q If we can go to 153506, and this is April 17th,
24 1990, a letter to both Asper and Wolch:

25 "I have pursued inquiries and searches



1 with respect to my old files pertaining
2 to this matter. The only thing that has
3 been located is a copy of the
4 preliminary hearing broken down into
5 segments. Although you probably have
6 perused a copy of it I am forwarding
7 this material to you in case it is of
8 any assistance.

9 Nothing else has been located
10 and I hold out little prospect of any
11 further portions of the file being in
12 existence."

13 Again, it would appear at this point that you
14 concluded the file was not to be located?

15 A That's right.

16 Q Now, these segments of the preliminary hearing
17 broken down into segments, would that have been
18 your summary notes that we looked at or would it
19 be actually --

20 A No, no, we're talking about the actual preliminary
21 hearing, and I think it was, when I sent it to
22 them, I think it had already been restored, so to
23 speak.

24 Q If we can go to 153512, this is a letter August
25 15th, 1990, so again a few months later, from Mr.



1 Wolch, I'll just go through parts of it, it says:

2 "I am really not aware as to how
3 informed you are as to the various
4 developments in the David Milgaard case.
5 I believe the news media in Saskatchewan
6 have been reporting much of what is
7 happening quite regularly, but suffice
8 it to say there have been a number of
9 starting developments since we were last
10 in communication. Since we last spoke
11 the key witnesses have recanted their
12 evidence and we also believe that we
13 know the identity of the true
14 perpetrator of the crime."

15 As far as following the news media, I think
16 you've told us that you would not have been
17 reading what was in the paper about this case?

18 A No, I didn't follow it, no.

19 Q And then he goes on to say:

20 "Ronald Dale Wilson was possibly the
21 main Crown witness in the case. We were
22 recently surprised to learn that he had
23 in fact made two separate statements to
24 the police; the first being in March of
25 1969, and the second in May of 1969. We



1 enclose herein photocopies of these two
2 statements. The statements are
3 obviously substantially different."

4 Scroll down:

5 "As we review the transcripts from the
6 preliminary hearing and the trial we
7 note that but for three or four very
8 general questions at the preliminary
9 hearing, Wilson was never confronted
10 specifically with his earlier statement.
11 We wonder whether you were ever provided
12 with a copy of the earlier statement or
13 whether the trial tactic used with
14 Wilson did not include challenging him
15 on his earlier statement. Mr. Caldwell
16 has apparently told a member of the
17 media that he discharged his duty of
18 disclosure by providing the defence with
19 three or four out of approximately one
20 hundred witness statements. If you were
21 not provided with a copy of Wilson's
22 earlier statement then we would consider
23 this to be a serious non-disclosure."

24 Do you have any recollection of getting this
25 letter and responding?



1 A I'm sure I got the letter and I think that I
2 probably phoned Mr. Wolch and told him that, you
3 know, I didn't have my file material or
4 correspondence or anything, that I simply didn't
5 have any recollection of the statement that he was
6 referring to.

7 Q Okay.

8 A I could be wrong in that, but I think that I did
9 indicate that to him, and certainly without my
10 file and something like this just landing on my
11 desk, I wouldn't be able to say offhand.

12 Q Okay. I now want to turn to the Section 690
13 proceedings which you testified at, and I think
14 you initially were contacted, I think you said in
15 an earlier letter that you would have been aware
16 that David Milgaard had applied to the Federal
17 Minister of Justice for, to review his conviction;
18 is that fair?

19 A Yes.

20 Q If we can call up 333322. I should point out for
21 counsel, I'm not sure, this may have been a
22 document that we recently received from Federal
23 Justice and I'm not sure if the documents are up
24 on CaseVault yet. If they are not, they are in
25 the process of being put up, so if counsel are



1 trying to find -- I'm not sure if that one falls
2 in that category. No, that's the wrong document.
3 333322. This is an October 23rd, 1989 memorandum
4 of Eugene Williams to the file:

5 "I telephoned Mr. Wolch following my
6 conversation with His Lordship, Mr. ...
7 Tallis to discuss a formal meeting to
8 discuss Mr. Milgaard's trial. Mr. Wolch
9 did not object to me talking to Judge
10 Tallis, counsel to Milgaard at trial and
11 upon appeal."

12 And if we can go to 157030, it refers to a
13 telephone conversation to set up a meeting with
14 Mr. Williams, and I take it at some point that
15 you -- actually, let me just call up 15 -- go to
16 page 3, 157032. Here's the waiver of
17 solicitor/client privilege April 29th, '89 filed
18 with that. And can you confirm, Mr. Tallis, that
19 you would have then followed up and had a meeting
20 with Mr. Williams?

21 A Yes, I'm sure I did.

22 Q Do you have a recollection of meeting with him?

23 A Yes, he met with me in Regina.

24 Q Then 157044.

25 COMMISSIONER MacCALLUM: Is that part of



1 030?

2 MR. HODSON: I'm sorry, the last -- yes, it
3 was.

4 BY MR. HODSON:

5 Q This is February 23, 1990, and this is an
6 undertaking conveyed verbally by Mr. Williams and,
7 here, by Mr. MacFarlane. And it is basically an
8 undertaking was provided:

9 "... to receive your responses to
10 questions concerning your former client,
11 David Edgar Milgaard, which you reserved
12 for further consideration, on a
13 confidential basis."

14 And he goes on to say it can only be used in
15 certain circumstances. Do you recall how that
16 undertaking came about?

17 A I think it was one that was offered, or that was
18 their standard practice, it wasn't something that
19 I solicited.

20 Q Okay. And then scroll down:

21 "Mr. Williams has also undertaken that
22 the information received will not be
23 provided to the applicant, his counsel,
24 or made public in any manner. Further,
25 the Department of Justice will oppose



1 any application for the release of that
2 information."

3 So that's something that came from Federal
4 Justice?

5 A That's right.

6 Q And just for the record, Mr. Commissioner, both
7 Mr. Tallis -- or Mr. Tallis has agreed to waive or
8 relieve Federal Justice from that undertaking, so
9 we do in fact have the interview notes of that.
10 If I can go to 335388. And this is Mr. Williams'
11 memo to file about his meeting with you, and I
12 think you have had an opportunity to review these,
13 Mr. Tallis; is that correct?

14 A Yes.

15 Q And in fact, if we can go to 335390, there is a
16 list of questions --

17 A Yes.

18 Q -- that they provide. And go to the next page.
19 And I don't think we need to go through the
20 memorandum, I think it's consistent with what you
21 have told us, and I --

22 A Yes.

23 Q Can you tell us that --

24 A I should just tell you, I don't -- I have no doubt
25 that I received that, I don't specifically recall



1 it. But the one that I worked from is a later one
2 that you have where he sent a memorandum to
3 Mr. MacFarlane, and that was the one that was sent
4 to me I think at the request of Mr. Wolch, he
5 wrote to Mr. -- or contacted Mr. MacFarlane to
6 make sure that I had a copy prior to meeting with
7 Mr. Wolch.

8 Q And I think 335386, this is the --

9 A Yes, that's the one that I recall specifically,
10 and I know that I had that and had made some
11 scratch notes and whatnot on it when I met --
12 before I met with Mr. Wolch.

13 Q And so this memo would be accurate as far as what
14 you would have told Mr. Williams?

15 A Yes. It had to be fleshed out a little, but I
16 certainly discussed it with Mr. Wolch, and
17 actually I think he politely asked me whether or
18 not I minded him looking at it, so I invited him
19 to look over my shoulder as I was sitting at my
20 desk, and I actually had some notes on it that I
21 would call "fleshing out". Because I had had --
22 Mr. MacFarlane had asked me whether or not I
23 received it, he knew apparently that Mr. Wolch was
24 going to meet with me, and I told him that I had
25 received a copy of this interoffice memorandum and



1 that I would -- was glad to have it available for
2 my meeting with Mr. Wolch, and I indicated that
3 since I was likely to be giving evidence
4 ultimately on this, that I would have to flesh it
5 out somewhat.

6 Q So just on the time frame, this is May 11th, 1990,
7 --

8 A Yes.

9 Q -- I think your testimony at the Supreme Court was
10 in March of 1992?

11 A Yes, okay.

12 Q This meeting with Mr. Wolch, when would that have
13 been?

14 A Oh --

15 Q In re -- would it be closer to the time of your
16 meeting with Mr. Williams or closer to the Supreme
17 Court reference?

18 A Closer to the Supreme Court. I think that
19 Mr. MacFarlane mailed this out to me as a result
20 of a request from Mr. Wolch. I can -- I could be
21 wrong about that, but --

22 Q Did --

23 A -- Mr. Wolch could certainly confirm that, I'm
24 sure.

25 Q Can I just ask this; your meeting, when



1 Mr. MacFarlane sent this to you and you were
2 reviewing it, was it to prepare yourself for the
3 giving of evidence at the Supreme Court reference?

4 A I think that it was --

5 Q And so we know that --

6 A -- because I thought that there was a copy of the
7 letter that I had received, I don't -- I can't
8 locate it, but I thought that there was a copy
9 that came to -- of a letter that Mr. Wolch had
10 written to Mr. MacFarlane asking that he make sure
11 that he sent a copy of the memorandum, or whatever
12 it was, to me so that I would have it when I was
13 meeting with him, that is meeting with Mr. Wolch.
14 But I -- I'm --

15 Q If we call up 157238, this may answer it, 157238.
16 I think actually the doc. ID might be 157236. Go
17 to page 238. This is a January 6th, 1992 letter
18 from Mr. Wolch to Mr. Williams, this would be a
19 couple of weeks before the Supreme Court reference
20 is going to start, and if you can call that out
21 please. And then received a copy of a letter to
22 you of December 30th, 1991 -- sorry, let me back
23 up. 3 -- well, let's finish this letter and then
24 we'll go back. It's referring in this letter:

25 "I wish to avoid any misunderstandings."



1 And then you say:

2 "I might add that in your letter I do
3 not quite understand your comment 'other
4 notes that I had made of our
5 conversation were not transcribed or
6 summarized elsewhere'. Does this mean
7 you have other notes of your interview
8 and that the notes that are being
9 forwarded to His Lordship are simply an
10 edited version of what His Lordship told
11 you?

12 We would strongly suggest that
13 if Justice Tallis approves of the notes
14 of the interview that you immediately
15 forward same to us so we can determine
16 whether or not David Milgaard will
17 release privilege in a general sense.",
18 and asks for a copy of the notes. If we can call
19 up 335402. This is the December 30, 1991 letter
20 from Mr. Williams to you:

21 "A copy of my summary that covered a
22 portion of our discussion accompanies
23 this letter. Other notes that I had
24 made of our conversation were not
25 transcribed or summarized elsewhere.



1 If after reviewing the summary,
2 there are clarifications that are
3 necessary, please advise."

4 So it would appear -- is this what you're -- does
5 this assist your memory, Mr. Tallis?

6 A No, I don't specifically recall that particular
7 letter, but I'm sure that I -- it must have come
8 in, but I think it helps furnish a background to
9 why Mr. MacFarlane mailed me a copy of the
10 interoffice memoranda between him and Mr.
11 Williams.

12 Q So they -- go back to 335386. And, again, this is
13 where we started; is it likely that this
14 memorandum of May 11th, 1990, the internal
15 memorandum, is what was sent to you on December
16 30, 1991 by Federal Justice?

17 A I think that's right.

18 Q Okay. This is probably an appropriate --

19 A And I --

20 Q Oh, I'm sorry?

21 A Go ahead. Because that's the memorandum from
22 which I worked when I was talking to Mr. Wolch.

23 Q Okay. That's probably an appropriate spot to
24 break, and unfortunately I'm not done, but I'm
25 very close, Mr. Tallis. And I think, Mr.



1 Commissioner, subject to discussions with
2 Mr. Pringle here, that we will resume with Mr.
3 Tallis when we resume on February 20th. We're off
4 next week.

5 COMMISSIONER MacCALLUM: Thank you.

6 (*Adjourned at 3:57 p.m.*)

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1 OFFICIAL QUEEN'S BENCH COURT REPORTERS' CERTIFICATES:

2 We, Karen Hinz, CSR, and Donald G. Meyer, RPR, CSR,
3 Official Queen's Bench Court Reporters for the Province of
4 Saskatchewan, hereby certify that the foregoing pages
5 contain a true and correct transcription of our shorthand
6 notes taken herein to the best of our knowledge, skill,
7 and ability.

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11
12 -----, CSR

13 Karen Hinz, CSR

14 Official Queen's Bench Court Reporter

15
16
17
18 -----, RPR, CSR

19 Donald G. Meyer, RPR, CSR

20 Official Queen's Bench Court Reporter



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