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

Radisson Hotel at

Saskatoon, Saskatchewan

****

On Monday, October 3rd, 2005

Volume 79

Inquiry Proceedings

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Mr. Garrett Wilson, Q.C.,	**for** Mr. Serge Kujawa
Mr. Rick Elson, Esq.,	**for** the Saskatoon Police Service
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Ms. Jennifer Cox,	**for** Minister of Justice (Canada), The Hon. Irwin Cotler

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THOMAS DAVID ROBERTS CALDWELL, SWORN

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Transcript of Proceedings

(Reconvened at 1:00 p.m.)

COMMISSIONER MacCALLUM: Good afternoon.

ALL COUNSEL: Good afternoon.

COMMISSIONER MacCALLUM: I did have a few remarks to make, Mr. Hodson, before you start with your witness.

This concerns the discussion of witnesses' evidence by parties with standing and their counsel.

It is trite to observe that it matters what the media reports about evidence in a public inquiry. The issue is not one of free speech or freedom of the press, it is about accurate and balanced reporting. Many members of the public, perhaps most, will not read my report. Their impression of the evidence will be gained from the media. So, to the extent possible, the media should report the facts. Not someone's premature conclusions on the evidence.

For that reason, I have cautioned parties with standing, and their counsel, to refrain from public comment about a witness' testimony while that testimony is ongoing. Recently, that caution has been

ignored. To make such comments risks undue pressure on the witness, which might affect the reliability of his or her evidence.

As well, I have remarked upon the danger of reaching premature conclusions based upon an evaluation of a single witness' testimony, and to that I would add the danger inherent in criticism of someone's actions when that person has not yet been called as a witness. One must be patient. No issue can be said to be fully canvassed until the last witness has been heard.

Some counsel persist in putting argument through witnesses, some of whom with scant knowledge of the matters in question, who are asked to agree with the conclusions urged upon them. Many of these conclusions not only imply, but assert, grave misconduct on the part of the parties -- on the part of the authorities. One expects such arguments to be made on the basis of evidence, when all the evidence has been heard, but instead it is being argued under the guise of examination of witnesses.

When this Inquiry began, I announced that I would not let it become a

platform for the propagation of baseless theories. That is easier said than done, because it is obvious to me that the basis for some of the theories I am hearing lies more in inference than in direct evidence. But, surely, counsel can let me hear the evidence before presenting theory as fact whether in or outside of the hearing room.

Responsibility for the fairness of the proceedings rests squarely with me. What I am saying at this time I say on my own motion, unprompted by counsel for any party, including Commission Counsel. I speak now because I perceive a threat to the integrity of the Commission's work.

Freedom of speech, including freedom of the press, is a *Charter*-protected right and so I cannot control what any party says to the media or how the media chooses to report it, but in the interests of fairness to all, I must decry what I regard as an abuse of the privileges of standing and funding. If parties wish to indulge themselves in running commentary through the media, let them do so as private citizens, not as parties with standing. If

counsel wish to engage in argumentative advocacy while questioning witnesses, let them understand that I am unimpressed.

My findings are based upon the evidence. In a trial setting that is all that matters. But here the mischief lies in argument being reported as fact and, as I began by saying, it matters what the media reports about evidence in a public inquiry.

Mr. Hodson, please call your witness.

MR. HODSON: Thank you, Mr. Commissioner. The next witness is Mr. T.D.R. Caldwell.

THOMAS DAVID ROBERTS CALDWELL, sworn:

BY MR. HODSON:

Q Good afternoon, Mr. Caldwell. Thank you for agreeing to testify before this Commission of Inquiry.

A Thank you, sir.

Q I understand that, although your name is T.D.R. Caldwell, you are generally known as Bobs Caldwell; is that correct?

A That's a contraction of the 'Roberts' part, sir, thank you.

Q And for the record, you are a party with standing

before this Commission, represented by Catherine Knox; correct?

A That's correct, and Silas Halyk as well.

Q And your current age, sir?

A Is 71.

Q And you reside in Saskatoon?

A I do.

Q And you are the individual who was the prosecutor in the criminal proceedings that resulted in David Milgaard's conviction on January 31st, 1970; is that correct?

A That's right, sir.

Q I would like to just briefly go over your curriculum vitae if I could. I understand that you graduated from law school, was it, in 1957 or '58?

A '57, Mr. Hodson.

Q And that you then commenced employment with the Attorney General of Saskatchewan shortly after articles?

A That's right, I articled in Regina, and commenced in 1958 with the then-Saskatchewan Department of the Attorney General.

Q And that was as a prosecutor?

A Yeah. My title was Law Officer, but it was in,

strictly in the prosecutions field.
Q And then I understand, sir, that you worked as a prosecutor until 1962 in Regina, and then moved to Saskatoon?
A That's right.
Q And then were, you were employed as a prosecutor from 1962 until about 1987 in Saskatoon?
A That's right.
Q And so from 1957 or '58 to 1987, approximately 30 years, sir, you would have been a prosecutor employed by the Attorney General of Saskatchewan or its predecessor department; is that right?
A That's right, sir.
Q And then in 1988 I understand that you were employed by the Attorney General of Canada for a period of about 1991; is that correct?
A That's right, sir.
Q And you were Crown counsel; was that your role?
A That was the title, and it was a prosecution function.
Q And I understand that, after that point, you became appointed as a Provincial Court judge for relief duty; is that correct?
A That's right, sir, in 1993.
Q And how long have you held -- do you still hold

that position?
A I do. Umm, it's not -- it's still in effect at the moment. The department are not using persons like myself who were never full-time Provincial Court judges.
Q And so that would it be fair to say, sir, that you are now retired?
A The -- it feels that way, Mr. Hodson.
Q And if we could go back to 1969, to the Attorney General's office, and I want to ask you some questions so that I can get an understanding of how the Attorney General's office operated and who was involved. It's my understanding that there were two individuals that were Attorney General's agents in Saskatoon in 1969; is that correct?
A That's correct.
Q And who was the other individual?
A Delmar Perras.
Q And who did you report to?
A I reported to Serge Kujawa who was, I believe the title was Director of Public Prosecutions at that point.
Q And Mr. Kujawa was in Regina at that point?
A That's right.
Q And do you know who he reported to, Mr. Kujawa?

A Well, it would be the Deputy Attorney General, Roy Meldrum.
Q And at that time, let's just talk about 1969, so there would be two -- two Attorney General's agents; is that what you were called, were you an agent of the Crown?
A That's correct. The -- Jim Kettles didn't like that terminology, and he was able to convince the Department to turn it into Crown Prosecutors, which didn't offend any of us I don't believe.
Q So, and at that time you and Mr. Perras in Saskatoon, where were the other Crown offices in Saskatchewan at that time?
A There was one in Regina, and eventually at other cities, at the -- I do believe Art McMurdo was a Crown prosecutor at Prince Albert at that point.
Q And in Regina do you -- just generally, how many prosecutors were in the Regina office?
A There would be two or three after I left.
Q In 19 -- so in 1969 there would be Mr. Kujawa, and I believe Ken McKay is a name we have seen?
A Yes.
Q Was he a prosecutor, or a solicitor in that office?
A He was, and a man by the name of Bert Barker was,

and Mr. Kujawa when he came in, of course, did also prosecute.

Q And so, as Director of Public Prosecutions, Mr. Kujawa as well handled cases?

A Yes, he did.

Q And he supervised or you reported to him; is that correct?

A That's right.

Q Can you tell us, again back in 1969, was there a geographical area that your office covered; was it Saskatoon and surrounding area?

A I think the terminology 'Judicial Centres' had come in, Mr. Hodson, and our -- and we would be at this Judicial Centre, and covered that territory you had just mentioned, sir.

Q What would you do, would you prosecute cases that maybe originated in Humboldt or Melfort or Prince Albert, and other jurisdictions?

A There were agents with responsibilities. At that point I -- Mr. Tallis actually, I believe, was the agent at and for Humboldt at that time, and Prince Albert would not come in our bailiwick.

Q Let me just expand upon that a bit. So that you were an employee of the Attorney General of Saskatchewan at the time; is that correct?

A That's right.
Q And were there other lawyers who were appointed to act as prosecutor on a case-by-case basis?
A There were. They were called farm-out agents, and when I came here there were possibly a dozen of them, and when governments changed we tended to lose the five or six we had in favour of new ones. And that happened, Mr. Hodson, maybe three times in my tenure.
Q And so, as far as who would be prosecuting criminal cases in Saskatchewan, it would either be an employee of the Attorney General of Saskatchewan or a lawyer retained by the Attorney General on a farm-out to prosecute a particular case?
A That's --
Q Is that fair?
A That's correct.
Q And can you tell us, again in 1969, just generally what types of criminal offences did the Attorney General's office prosecute?
A My memory is that, in terms of trials, we started at approximately the impaired and drunk driver situation and went up. Dangerous driving, cause death by criminal negligence, those are automotive

1 situations, but any, really, summary conviction
2 and indictable offences, especially ones where
3 there was an election available to an accused and
4 he elected what was then District Court or Queen's
5 Bench, those would all come our way.
6 **Q** I see.
7 *A* And of course some there was no election
8 available, they still came our way.
9 **Q** Would it be fair to draw the line at superior
10 court cases; District Court, Queen's Bench, did
11 you do all of those?
12 *A* We did those, but we -- the bulk of our work, I
13 would think, would still be in Provincial Court.
14 **Q** Okay. We have seen some reference to an
15 individual by the name of Ben Wolff --
16 *A* Uh-huh.
17 **Q** -- who I believe was a city prosecutor in 1969; do
18 you -- is that correct?
19 *A* That's right.
20 **Q** And can you tell us what, what did Mr. Wolff do?
21 *A* He was employed by the city and he, I believe, had
22 two or three associates over there. He would --
23 at that time there was, Number 1 Court was the
24 docket court located in the police station, Mr.
25 Wolff would be there every morning and managed the

entire docket process throughout the day, and he would do trials as the time permitted in given days.

Q What was the difference between your position as prosecutor for the Attorney General and Mr. Wolff's position as prosecutor; are you able to tell us?

A Well, he was a city employee, I don't believe they would have the Agent of the Attorney General designation, but there was a great deal of co-operation in terms of assisting each other.

Q It's my understanding that there may in fact have been an agreement between the Attorney General and the City of Saskatoon whereby the city would provide a prosecutor for certain types of offences and for certain stages of proceedings in more serious offences. Does that sound correct?

A That may be, Mr. Hodson, but I don't have personal knowledge of it.

Q And would it be fair to say, and in fact we will see it when we look at the David Milgaard information, that Ben Wolff appeared as prosecutor on the first, I think, three court appearances, and so that would be a murder charge and that would be a charge that normally you, as agent for

the Attorney General of Saskatchewan, would prosecute; is that fair?

A Well, that is correct, but that kind of situation happened frequently. On first and early appearances there was no need for one of the Crown prosecutors to attend.

Q And so is it fair to say that, for criminal matters that you would ultimately be the prosecutor for, that it would not be uncommon for Mr. Wolff to appear as prosecutor on early court appearances?

A Not in the least.

Q And I see on occasion there may even be a police officer as a court officer might appear as the Crown; did that happen from time to time?

A When the category of cases I think was summary conviction on which that could happen, but it certainly did, Mr. Hodson.

Q And then I understand as well that other types of *Criminal Code* offences and other offences of a less serious nature, that Mr. Wolff would prosecute those; is that --

A Generally speaking, yeah.

Q And I take it then when Mr. Wolff appeared on, let's take a murder charge where he would appear

on the first number of appearances, was there a handoff of the file or anything of that nature?

A Ah, the -- when the file was underway, possibly when hearing dates had been set, the files, so-called, I would expect it to come to our office.

Q And so -- and again let's put aside the David Milgaard prosecution for a moment, but if on another criminal matter that Mr. Wolff was appearing as prosecutor for, let's say the court appearances up until the election stage, would you expect him to have a prosecutor's file?

A That I really don't know the answer to. He must have had documents in front of him to be able to cope with bail or things, possibly guilty pleas.

Q So in the case of, let's say where there -- now, we know in the David Milgaard prosecution the volume of materials was significant; is that fair?

A Yup.

Q And if we take a case with perhaps fewer, smaller file materials, would that be a situation where once Mr. Wolff is passing off the prosecution, if I can call it that, to you, he would normally give you his file with the police materials in it?

A Well, I would suspect it would go through the case

prep process. The material he had may well be used in putting together what came to our office.

Q In 1969 it's my understanding that the Saskatchewan Court of Appeal sat only in Regina; is that correct?

A For criminal cases, that's correct, sir.

Q And so did you argue criminal cases before the Saskatchewan Court of Appeal in 1969, 1970?

A On a very rare basis I would go down on cases that I particularly had an interest in. That might have happened three or four times over eight years.

Q And who would normally, on behalf of the Attorney General, argue the appeals?

A Some member of the so-called head office staff in Regina of the department.

Q And so would it be unusual for a different Crown solicitor to argue the appeal from the Crown solicitor who prosecuted the case?

A It could happen. I always felt it was better if whoever prosecuted had the chance to take the appeal, but often -- I, for one, was relieved not to have to pursue some of those very vexing cases when they went there, and I -- Mr. Kujawa, for instance, did this case as an example.

Q And so, and I will get to that a bit later, but after this, after Mr. Milgaard was convicted and he appealed, am I correct that Mr. Kujawa handled the appeal and argued the appeal?

A That's right.

Q And, as I say, I will have some more questions for you later on your involvement in that. You talked about Mr. Del Perras being in the office at the time. What was his, just briefly, what role did he play in the Attorney General's office in Saskatoon?

A Well, he was our only other Crown prosecutor and he would be getting familiar with cases, how the system went, handling cases of an increasing, I guess, complexity over the months.

Q In 1969 do you recall how long Mr. Perras had been practicing for?

A I believe I secured his services at the end of articles in 1965, he came in at that time.

Q And so about four years; is that --

A Something like that, yeah.

Q And he would be junior to you, then, as far as prosecutions?

A Yes.

Q And, briefly, what role did he play on -- in the

David Milgaard prosecution?

A I felt that Mr. Perras prepared the law on the case, he was the person who noticed the new 9(2) provisions, and in discussion with myself and maybe Mr. Kujawa I'm sure he, in effect, did the law end of it.

Q And you are referring to section 9(2) of the *Canada Evidence Act*?

A That's right, sir.

Q And, again, we'll be dealing with that a bit later. So Mr. Perras assisted in researching the law, is that -- on that point?

A That's right.

Q We'll talk a bit about the prosecution filing system. I understand that you would have kept a prosecutor's file; is that correct?

A Yeah, for every case essentially in our office there would be a separate file.

Q And we will be spending some time going through the documents in detail, but just generally, Mr. Caldwell, I take it, if we can kind of identify what would be in the standard prosecutor's file, I take it, number 1, presumably you would get documents from the police; is that correct?

A That's how we would know the case was on,

essentially.
Q And, secondly, there would be documents that you generated, i.e., correspondence, --
A That's correct.
Q -- things of that nature? I presume, as well, there would be preparation notes, your notes of review, questions, etcetera?
A That's correct, and this could be anything from a very brief set of documents on a, say, guilty plea to impaired driving on up, Mr. Hodson.
Q And then as well there would be court documents I presume?
A In the possession of whatever court we were dealing with there would be.
Q For example, you might have a copy of the indictment, the information, things of that nature?
A We would certainly get the information, may possibly construct the indictment in our office. We would always have copies of those.
Q And what was your practice regarding the retention of files once a case was completed?
A Well, when I moved here in 1962 there was -- we simply stored files. There was a male cell block that was totally unused for prisoners, a secure

area, and we had several four-drawer, locked filing cabinets in that area. I had things I guess sitting in our own office for a year plus or minus and then they would be moved out to that area, and in the sixth year, Mr. Hodson, I essentially started culling those files that were six years and older.

Q Let's take a murder file, let's talk specifically about the David Milgaard prosecution. What was your practice as far as retaining the prosecution file for that prosecution?

A Well, my memory, for that one, we retained it, there's a letter I've seen not long ago to Chief Kettles indicating that since there was going to be an appeal, I intended to retain the documents for the moment.

Q Yeah. And we will go through in detail where the file went from time to time.

A Yeah.

Q But if we can just go back to 1971, thereabouts, are you telling us it would have been your practice to retain the entire file?

A At that juncture it would.

Q And was it your practice, again let's just walk through from the moment you open your prosecution

file until the moment you send it away for filing, once the case is concluded did you ever discard or throw any piece of paper away?

A Well, not in this file I did not. In some files I would feel we probably discarded things like file copies of subpoenas and so on that had no more importance, if you would.

Q In the case of the David Milgaard prosecution file, are you telling us, sir, that you would not have thrown anything away?

A That's correct, sir.

Q And once the David Milgaard matter was concluded, once all the appeals, the appeals were concluded and I believe leave to appeal to the Supreme Court was denied, did you retain your file at your office in Saskatoon?

A The file would have -- I believe that's correct, the main file would be still in our office. It never did go back to the police department as I understand.

Q And I understand that in or about 1989, and we'll certainly hear evidence from other people about this, did you make your file available to Mr. Eugene Williams and Sergeant Rick Pearson?

A That's right, sir.

Q And would that be in connection with the section 690 proceedings that Mr. Milgaard had commenced?

A That's correct. I believe Mr. -- Sergeant Pearson was, in effect, working for Mr. Williams.

Q And so physically did they take your file?

A My memory is that they -- I was by then with Federal Justice. We attended, the three of us, over to Canterbury Towers where Provincial Justice or the Department of the Attorney General was physically located and looked in the file on that occasion in that place. It never came over to Federal Justice with me, if you will.

Q Are you aware, and if you are not aware please tell us, as to whether or not Mr. Pearson or Mr. Williams took possession of your file for a time period?

A I'm not aware, sir.

Q And then I also understand, and again we'll be hearing evidence from some other individuals, that Mr. Murray Brown and Mr. Eric Neufeld, who were members of Saskatchewan Justice and involved in the Supreme Court reference, they became in possession of your prosecution file; is that right?

A I understand that's correct.

Q And so I take it at that time, 1989, '90, '91, you were no longer employed by the Attorney General for Saskatchewan?

A That's right, sir.

Q And so as far as -- when you left the employment of the Attorney General for Saskatchewan, did you take any of the David Milgaard prosecution file with you?

A No.

Q And so what happened with it after you left, other than where you saw it, you can't tell us what happened to it; is that fair?

A No, that's right, Mr. Hodson.

Q Did you have occasion to see it? I think you talked about going over to Canterbury Towers with Mr. Pearson and Mr. Williams. Did you have occasion to see it when Mr. Murray Brown and Eric Neufeld had it?

A I don't believe so.

Q And then in 1993 I understand that the RCMP, in the course of their investigation, took possession of the file from the Attorney General for Saskatchewan. Were you aware of that?

A Is that the Flicker operation?

Q Yes.

A I understand that happened.
Q And then the Commission received those files last year in 2004 and I believe you and your counsel have had an opportunity to look at both copies and the original files of what the Commission now has; is that correct?
A That's right, sir.
Q And are the files that we have collected in the order that we received them in the same order, same filing system, as you last had them?
A No.
Q And again, we'll be going through this in more detail, but it's my understanding that some of the documents moved from one folder to another folder; is that fair?
A I came across that once personally.
Q And as well there was a new folder of materials that we'll be hearing from Mr. Murray Brown about, that it appears some of your files may have been taken out and put into a new folder?
A That's my understanding, sir.
Q Mr. Commissioner, I should advise that by the end of Mr. Caldwell's evidence-in-chief I will have prepared a document that I will put to Mr. Caldwell after we've gone through this, and

primarily for your benefit and the benefit of other counsel, that will identify every specific document that Mr. Caldwell acknowledges he would have had back in 1969, 1970 and where it is now, and certainly if counsel wish to question him on that, that will be the starting point.

Now, back in the early '80s, Mr. Caldwell, was there an occasion where you allowed a third party -- or not a third party, someone else to review your prosecution file?

A Yes.

Q And can you tell us about that?

A One thing, Mr. Hodson, a lot of these dates I don't have in front of me, but if you are referring to the Peter Carlyle-Gordge visit?

Q I was going to talk -- was there an occasion with Mr. Gary Young?

A Yes, there was, and I do know about that.

Q And the time frame, at least there's some documents suggest perhaps 1981. Do you know when it was -- tell us what you remember about your dealings with Mr. Young?

A Well, Mr. Young is -- the firm Sherstobitoff, Hrabinsky & Stromberg, Mr. Young was a partner in that firm, he got in touch with me and wanted to

read the, in effect, our file on the murder.
Q Who was he acting for?
A Well, my understanding was that he had been retained by Tony Merchant and that was on behalf of Joyce Milgaard.
Q Okay.
A That was my understanding, and it is, unless it's incorrect.
Q And so Mr. Young contacted you and said on behalf of Mrs. Milgaard he wished to review your prosecution file?
A Yeah. I'm not sure that I knew that sequence then, Mr. Hodson, but I had no difficulty with letting him review the file because I think he was, if you will, retained by Tony Merchant who was at that point I believe working on the case for the Milgaards.
Q So -- and tell us about what transpired?
A I invited Mr. Young to our office and put him in the library, gave him the carton of material and told him to call on me if he needed any explanation of anything, and he took whatever, the day or two or plus or minus to read through the documents, and left without any further, you know, any further questions, etcetera.

Q And did you let him look at your entire file?
A Yes, absolutely.
Q And did you understand that Mr. Young was there on behalf of either Joyce Milgaard or David Milgaard?
A Well --
Q Directly or indirectly?
A Pardon me?
Q Directly or indirectly?
A Yeah, I would feel indirectly, but I stand to be corrected if that's not the case.
Q And then you had mentioned as well a fellow by the name of Peter Carlyle-Gordge?
A That's correct.
Q Tell us what you recall about that?
A Well, Mr. Gordge is a person, I had seen by-lines of his in both the *Toronto Globe and Mail* and *Maclean's* magazine, so he, in my view, was a journalist, which was important. He phoned me and advised me that he was doing a book on western Canadian murders and that believe the name of Maggie Siggins was mentioned as the person who had suggested this. Now, Mr. Wolch's name got into one of my -- in the same capacity, but I don't know which one. I would assume it was Ms. Siggins who did the, who suggested this to him, and no

harm of course if indeed it wasn't her. So he arranged to come to Saskatoon, I believe he was in Winnipeg, attended our office on a weekend and, in effect, I was there doing other things and he essentially read the file.

Q Okay. I will be referring later to a transcript of some interviews of that, but just on the question of your prosecution file, did you provide your complete prosecution file to Mr. Peter Carlyle-Gordge at that time?

A Yes, I did.

Q And to your knowledge, did he spend some time reviewing that file?

A Well, he spent one or more days that weekend and I believe he returned on a second occasion and resumed that, but he was free to spend as much time as he wished on it.

COMMISSIONER MacCALLUM: Do we have a date on that?

A I think there's something, Mr. Commissioner, fairly -- written somewhere that's --

BY MR. HODSON:

Q 1983 I believe is the date, and I'll be referring the witness to that later. There's an interview that suggests it's around that time period, but I

will certainly be going through those notes with the witness, but I think for now, does 1983 sound right?

A It sounds like it.

Q Now, again just going back to efforts to take what the Commission has by way of original documents and trying to reconstruct or identify what would have been on your file back in either 1970 or indeed in 1987 when you left the employment of the Attorney General's office, I think you would agree, and again we'll get into the specifics, that you would have received the document from, that Mr. Ullrich prepared, being the witness summary document and the police summary documents?

A That's one of the main things we received on that file.

Q And I'll go through that in detail. As well as witness statements?

A Correct.

Q And police investigation reports?

A That's right.

Q Lab reports?

A Yes.

Q And some police correspondence?

A Yes, sir.

Q And as well your preparation notes I think have been found, correct me if I'm wrong, but are intact in those files?

A That's my understanding, sir.

Q If we can just go to January of 1969 and the Gail Miller murder, can you recall when and how you became aware of it?

A Well, I must have seen it in the proverbial media, I would assume, and I've said on other occasions, sir, that I was a photographer with the University of Saskatchewan Sheaf newspaper in Greystone yearbook, I often passed through the identification section in the police station which was up one floor from the courtroom, and on one of those occasions the photographs of the body of Miss Miller were essentially lying in the wash or fix trays in that office. I didn't go there with any knowledge of that, but that happened to be, sort of struck me quite graphically of course.

Q And I take it, then, you would have been aware of the murder?

A Yeah, I learned then or within a day or two either way.

Q And would it be a fair assumption at that time, Mr. Caldwell, that if a charge were to be laid for

that murder at some point, that it would likely be you who would be prosecuting the case?

A It would, because I was the senior of the two people, essentially, we had available.

Q Now, again, and I'm asking you to go back to tell us what you recall from late 1968 and 1969, the time period right up until the point that David Milgaard was convicted, were you aware of rapes having been committed in Saskatoon during that time frame?

A Mr. Hodson, at this point I cannot say that I was.

Q And do you have a recollection of that?

A Yes. I've been asked before whether I knew of that and I can't say I did know of it, but for one -- well, anyway, that's my --

Q Okay. We'll go through some documents, but as you, at this moment, Mr. Caldwell, you do not have a present recollection of back in '68, 1969, of knowledge about rapes being committed in Saskatoon?

A No, not in a general sense at all.

Q If we could go to 039103. Can we just pause there. Where was your office located in 1969?

A It was in the court house in -- there's now a courtroom there, it's one floor down from the

sheriff's office.
Q At 520 Spadina?
A Yes, that's right.
Q And did you have occasion to spend time at the police station?
A Yes, you know, we would be over there every second day, or more, appearing in court.
Q And I think you made reference to the fact that when you learned about the Gail Miller murder it was a day you were at the police station; is that right?
A Yeah, on other business, presumably.
Q Okay. And would it be fair to say that, as a prosecutor, you would have frequent contact with members of the Saskatoon City Police?
A Absolutely.
Q And you would know them well; is that fair?
A Yeah, many of --
Q From your dealings with them?
A Yeah, many of them.
Q And would they discuss police matters with you from time to time, was it --
A Well, only in the sense of possible views on some evidence or investigation, not in terms of what was going on at the station or anything like that.

Q And again, if the police were talking about some unsolved rapes at the time, is it possible that they might have brought that up with you?

A Possible.

Q Do you have any recollection of that?

A No, I don't, sir.

Q Look at this article on the screen, Mr. Caldwell, it's a newspaper report December 14, 1968 from the *StarPhoenix*, and we've seen this document on a number of occasions, and it talks about a warning to women not to talk to strangers or walk in dark areas of the city, and they talk about this warning after two instances of alleged rape and one assault were brought to their attention. They took place in the Riversdale area and the assault took place in the university district. They said the alleged assailant first talks to women and then takes them into alleys. Are you able to tell us whether this article is something you would have read at the time or been aware of?

A I may well have, Mr. Hodson, but those kind of general articles, I think I essentially didn't pay much attention to them. I don't recall this one.

Q Okay. And I think we now know that these, the two rapes and the attempted rapes -- and the attempted

rape, were the (V1)-, (V2)----- and (V3)------ offences that Larry Fisher pled guilty to in December of 1971, and if I could ask you today, Mr. Caldwell, do you have a recollection of being aware of or learning about the (V1)-, (V2)----- or (V3)------ rapes back in 1968, 1969?

A No, I don't, sir.

Q And I will be showing to you a little bit later a document that is sent by I think Deputy Chief Corey to Ken MacKay or to the Crown solicitor that references some charges to Larry Fisher. You know the -- I think it's the March 17th, 1971 or March 16th -- you know which letter I'm referring to?

A Yes, I do.

Q That talks about the four charges?

A That's right.

Q Do you have a recollection of that letter?

A Yes. My recollection of that is that I was asked by Ken MacKay to get from Saskatoon City Police any charge or charges they had relating to Larry Fisher and since -- this may have indeed been a letter in which he had mentioned that it's in the hands of our Saskatoon agent, the inquiry had got in my hands that very day, so I thought there was some urgency to it, therefore I phoned Corey as

opposed to manufacturing a letter, and by the look of things the next day he sent whatever materials he had to Ken. The name of our Deputy Attorney General may have been on there as well.

Q Okay. And I'll be dealing with that letter in a bit more detail later, but prior to that letter, then, and prior to that involvement, do you have any recollection of being aware of the (V1)-, (V2)----- or (V3)------ rapes?

A No, I don't, sir.

Q And as well the (V5)-- (V5)--- rape, which was February 21st, 1970, three weeks after Mr. Milgaard was convicted; prior to the letter that we talked about to Mr. MacKay, do you have any recollection of being aware of that incident?

A No, I don't, sir.

Q If we could call up 214161, please. And this is a newspaper article, February 3rd, 1969, from the *Saskatoon StarPhoenix*, this would be three days after Gail Miller's murder, it talks about a reward being offered. Do you recall knowing about that at the time, during the prosecution, that there was a reward offered?

A I know something about the reward being given, in effect, at the end of the prosecution. I don't

recall this particular business of it being offered. I know, however, it existed and was given to a certain individual.

Q During the course of the prosecution of Mr. Milgaard are you able to tell us, and I can refer to some documents a bit later, do you recall being, recall today being aware that the police had offered a reward while you were prosecuting the file?

A I had to know about it at that time because I was consulted or took some part in recommending who should get the thing, Mr. Hodson, I knew that.

Q So based on that you are saying you must have known, but do you have a recollection of --

A Not now I don't.

Q And on this article, and again this is three days after the murder, it says:

> "One of the possibilities being investigated by the police is that the attacker was a rapist who was active in the city last fall."

And there's a few other articles that I'll go to in a moment, but again, back to the time during which you prosecuted Mr. Milgaard, Mr. Caldwell. Were you aware that the police had looked, as a

possibly theory, that the person who committed Gail Miller's murder was the same person who had committed some earlier rapes and that they had pursued that as part of their investigation, that the murderer may have been the rapist. Do you follow, as a theory?

A I don't recall that theory. It may have existed. I don't recall it now that I knew it then, if you will.

Q Okay. So your recollection today is back in 1969, when you prosecuted Mr. Milgaard, you don't think you were aware of this theory that was part of the police investigation?

A I don't think so, sir.

Q If we could go to 039068. Now this is an article February 4, '69, it's a wire story out of Saskatoon, it's in the Regina *Leader-Post*. I stand to be correct but I don't think we found this same story in *The StarPhoenix*. But, again, it talks about a couple things:

> "Police are investigating the possibility that the person who slashed a 20-year-old nurses' aide to death Friday may be the same person who attacked three women here last fall."

Then, if you could scroll down, it said:

"Last fall police said they believed one man was responsible for two rapes and one attempted rape of women on city streets."

And again, information of this nature, are you able to tell us whether you would have been aware of that back in 1969?

A I was -- I would not, of course, have seen the *Leader-Post* at all and, to my recollection now, was not aware of it.

Q Okay. Again, if we can call up 009295. And again, this is the reward document that the chief of police issued on February 14th, I think they announced it earlier. And again, just for the record, I think you've told us that you would have been aware of that at the time based upon something that you have read, but that today you can't recall being aware of it; is that --

A Yeah. I know that, at the conclusion of the trial, I voiced a view as to who I thought properly should get it, sir. That's the earliest I can remember it, but that clearly was at the time of the trial.

Q Now I think the record indicates that around July

of 1969, I think July 8th was the letter that formally engaged you, and I'll deal with that, --

A Uh-huh.

Q -- as the individual to prosecute this case, and I believe your first Court appearance was July 3rd, 1969. Prior to that formal involvement as a, as the individual prosecuting a charge that had been laid, prior to that time would you have followed the police investigation of the Gail Miller murder?

A Only, I would think, in the sense if some investigator wanted to see me and get my views on something. I don't recall the, anything about the day-to-day progress of that, because it would be out of my presence, if you will.

Q And was it the -- let's just talk about general practices back at the time. Umm, would you -- would police come to you for advice on investigations that they were undertaking?

A Occasionally.

Q And what type of advice would they generally be looking to you for?

A I would assume what I or Perras and I thought of a particular piece of evidence, how -- whether or not it was apt to be accepted in Court, whether

they needed more along certain lines, and we certainly were happy to do that.

Q And would one situation be where the police would come to you, either an officer or officers, saying "lookit, here's what we have, do you think it's enough to prosecute or sustain a conviction?"

A That would happen on occasion.

Q Okay. Do you have any recollection of being consulted by the police in the Gail Miller investigation before a charge was laid?

A I don't, Mr. Hodson.

Q Do you know if there was a policy or a practice, at the time, that before the police could lay a charge, a serious charge, for example murder, that a representative of the Attorney General would have to either give an approval or review it?

A I don't think that was the case. As one example, there were murders happening from time to time in -- which were fairly straightforward things -- in which the person would be in Court the day after his arrest with the charge laid, and we would not be consulted in those kind of situations, and that happened from time to time and --

Q And would there be occasions, though, where the

police might come to you to indicate that "lookit, we're going to lay a charge, here's the evidence, tell us what you think"; did that happen?

A That could happen, without any formal referral of the thing to our office, that is.

Q Now we know the information against Mr. Milgaard was sworn on May 26th, 1969; do you have any recollection of dealing with the police prior to that date -- prior to a charge being laid?

A Not a recollection. I would be very surprised if it didn't happen though.

Q And why do you say that?

A Be -- well, first of all this was a, I guess a case, to begin with, when for 30 days the police had no, essentially no clue as to what had happened. When Albert Cadrain came back, it set off a series of events, and I would assume that we were consulted somewhere along that, that road. Does that --

Q Yeah.

A Does that --

Q Would it be possible that the police would sort of keep you updated on the progress, knowing that you would be the prosecutor if they were able to lay a charge?

A I -- we were the ones that -- in the same city who were available, and I would -- if they wanted to come to anyone, in effect, it would have to be us.

Q We've heard evidence from Ray Mackie -- you know Mr. Mackie --

A Yes I do.

Q -- that I think in, at some point in either late April or early May of 1969, he went to Lieutenant Short with some thoughts or theories, and that they, being Mr. Mackie and Mr. Short, went to see you --

A Uh-huh.

Q -- to review the case against David Milgaard, and I think that would have been about May of 1969; do you have any recollection of that happening?

A I don't, Mr. Hodson. I don't doubt for one minute that it did happen but I do not have the recollection.

Q Okay. And I'm paraphrasing here, and I hope I get Mr. Mackie's evidence correct, or it may have been from a document, words to the effect about 'down the right track' or things of that nature, 'but gather some more evidence'?

A Yeah, I don't -- I'm sure that that happened, based on the printed report that many of us have

seen, but the memory I do not recall of them coming there.

Q Okay. If we could call up 006799, please. This is a five-page document that we've seen on a number of other occasions. You are familiar today with this document, are you, Mr. Caldwell?

A Yes.

Q Yes. This is the five-page, it's been called lots of things, I will call it the, I think 'the suspect cansay' was --

A Wasn't there a 'script', is one of the terms I've heard.

Q And do you know, sir, are you able to tell us whether you would have received this file, or this document, back in 1969 when you were prosecuting the case?

A No, sir, I'm sure I didn't.

Q And why do you say that?

A When that -- one of the many things that happened, when the, I believe the reference was going to the Supreme Court, Sergeant Pearson and I went to Regina, because the prosecution file was in the Regina courthouse securely locked up there. We were there to look under the heading of 'disclosure', and we'd got in there under the

right auspices and looked at the material, and this script document was in that file and I, to my knowledge, had never seen it before, --

Q Okay.

A -- and it struck me for that reason. I guess we also found what we wanted about disclosure in that trip.

Q Okay. And you will see, from this note here, that when the Commission received what purported to be your files, sir, a copy of this document was located in there, and I think you are telling us you saw it in there at -- when you and Mr. Pearson went there in 1990-'91 or thereabouts?

A Whenever that was. There was only one such trip so --

Q And do you have a recollection of actually locating this document and seeing it?

A I did. The prosecution file had been what I called re-organized, --

Q Yes.

A -- there were new folders I hadn't seen before, and this, this document stuck out simply as something I hadn't seen.

Q If we could go to 267787, please. This is the information, sir, that charged Mr. Milgaard with

the murder of Gail Miller, and it's dated May 26th, 1969, and it's sworn by Leslie Bocking. Who was Mr. Bocking?

A He was, at that point he was a police officer. He's still in the city. He was at that point, I believe, court officer.

Q Are you able to tell us -- and I will be referring to this later -- I think in the course of the trial, the prosecution of Mr. Milgaard, it was suggested that Mr. Milgaard had also raped Gail Miller; is that correct that that was --

A What I recall of the evidence now, that could be suggested, sir. It may be --

Q Yeah --

A Not so much, I mean 'that a rape had taken place' is the way I would put it, but --

Q Right. And again, I will be referring to that later in the documents, but certainly there was evidence that was tendered and the position of the Crown was that that -- that a rape had occurred to Gail Miller; is that fair?

A I think so.

Q And are you able to tell us whether there was any reason, or who made the decision not to charge Mr. Milgaard with rape, or whether there was even a

decision made not to?

A Umm, it -- I haven't researched this but it seems to me that the *Criminal Code*, at least at one point, provided that you could not join any other count with a count of murder in one -- in one indictment. Now -- and I, again Mr. Hodson, I would want someone to look into that.

Q Yeah.

A At one point I remember convincing a judge of our Queen's Bench Court that I couldn't have had a second count, not on this case, because of that.

And the other thing is that there was a, I guess a practice, if you will, that in effect you could go with the more serious count and not necessarily spell out two or three other ones.

Q Right. We know that, when Mr. Fisher was charged, he was charged with both rape and murder?

A Uh-huh.

Q And, other than what you have told us, are you aware of any reason as to why the charge against Mr. Milgaard, back in 1969, did not include a rape charge?

A No, I'm not.

Q And then I see here, and we'll come back to this a

bit later, it looks like this information was filed in the Court of Queen's Bench September 24th, 1969, and we know from other documents that Mr. Milgaard was committed to stand trial on September 11th, '69.

A Okay.

Q Do I take it, from that, that once Magistrate's Court committed Mr. Milgaard for trial, that the information would get shipped to the Queen's Bench Court?

A Yes, along with any other documents which should go.

Q If we can go to the next page, this is the back page of the original information, and if we can just call up the top part. And we'll see the first appearance is June 2nd, 1969, and that Mr. Wolff was for the Crown and Mr. Milgaard appears to be represented, or unrepresented at the time; is that a fair reading of that?

A That's how I would read it, yes.

Q Yes, and remanded. If you look at this information, it looks like there was seven-day remands, was that the practice at the time?

A I believe that was.

Q And then we'll see the next week, June 9th, it

appears that Mr. Tallis is now appearing, and -- on June 9th, and it's remanded in custody until the 16th, and again Mr. Wolff is appearing for the -- Mr. Wolff is appearing for the Crown?

A That's right. I think we're --

Q Did we lose our sound?

A I think so. You are in mono, if that means anything.

Q Is that better?

A Yeah.

Q Okay.

A That's right, Mr. Hodson.

Q Okay. So Mr. Wolff would be there on, appearing as city prosecutor, but as agent for the Attorney General?

A That would be the un -- the understanding.

Q And would that be the practice at the time?

A Ab -- yes, absolutely. This is typical of what would happen on charges at that time.

Q And then if we can scroll down, I think to right at the bottom, we see that on the 24th, it looks as though this was done in Prince Albert, that a police officer appeared for the Crown?

A That's right.

Q And again, that, anything unusual about that?

A No. It would be the same, I would think, in other centres.

Q And then the next page, please. And we've got July 3rd at the top, if we could call that out, please, that 'Mr. Caldwell for the Crown', and it would appear that this was your first Court appearance for the Crown; is that fair?

A Yes, sir.

Q And 'remanded to July 10th', and then it looks as though this is the Court appearance where the preliminary hearing was scheduled for August 18th; is that --

A I would take it that way.

Q Okay. And then if we can just scroll down, a couple of remands, maybe go to the next page. And I don't propose to go through all of these, but there is references here, for example, to August 18th, and we know that's the date that the prelim started, and then it looks as though that it was adjourned and that it was spread out over the next three weeks. It appears that nine days were set aside for the prelim, but not consecutive, does that sound right?

A That's right.

Q And can you tell us how or why that happened?

A Well Judge H.J. Cumming would be available at any point during that, he was the judge hearing the prelim, I would have been available, I would expect Mr. Tallis would be -- have other commitments that he couldn't necessarily change, so it was a matter of working in something that was reasonably satisfactory to everyone.

Q And, again, the time frame between the charge and the prelim I think of about two months; was that -- was that the usual time frame?

A I would think that was very prompt.

Q Do you remember why or how that happened, was it --

A Well, all things being equal, you're well-advised to get on with cases as soon as possible. If you have the counsel available, the judge would have been available, the accused of course is in custody, so there's various reasons why you would want it to proceed expeditiously. In fact this committal, I think, was done within the same, clearly the same year as the offence occurred.

Q Right. And, again, was there anything that you recall about -- being unusual about the timing or the time frame between the charge and the preliminary hearing?

A I would think it was commendably prompt, sir.
Q Do you recall Mr. Tallis raising any concerns that it was too quick, or too late, or anything of that nature?
A Not at all. He would have been the person, I think, with the other commitments who would have had to be satisfied that he could do it this way, and he, I would suspect, clearly was.
Q Prior to this, prior to the David Milgaard prosecution, had you prosecuted any murder cases prior to that time?
A I had, I should have made a list, but there's something on the order of four or five or six.
Q Prior?
A Yeah, but all in Saskatoon, all starting obviously in '62 onward.
Q And then subsequent, after the David Milgaard prosecution, did you have occasion to do further murder trials?
A I'm sure I did. What did happen, Mr. Hodson, is we got more prosecutors in our offices that I -- they tended to wish to do those things. Within reason, of course, that was fine.
Q If we could just talk a bit about Mr. Tallis, had you, prior to the David Milgaard prosecution had

you dealt with Mr. Cal Tallis on other matters?
A I had. He was one of our professors at the College of Law, and I had prosecuted other cases against him from time to time, mainly in Saskatoon.
Q And was -- I'm sorry?
A Umm, there is a, one case mentioned here in which the two of us, in effect, appeared against a man named Leslie Klassen. Mr. Tallis was prosecuting a murder charge against him, Mr. Tallis went on the Bench, Mr. Perras of our office took over and went -- then moved to Regina to be our boss, William Pinckley, our -- another of our prosecutors, finished that case, which ended up in a conviction for a lesser offence in the -- but more or less parallel to that I ran the dangerous sexual offender matter against Mr. Klassen and it, in that case, was successfully concluded.
Q And, again, at the time, 1969, was Mr. Tallis an experienced defence counsel in your view?
A Absolutely. He was very well-respected, very experienced, and in my estimation, having myself practiced in Regina and Saskatoon, he was regarded certainly as the leading defence counsel in the province.

Q And you also mentioned that, in addition to defence counsel work, that he had done farm-out prosecutions?

A Yes. He had his own Judicial Centre at Humboldt and Mr. Tallis would have been, to start with, the person I would have hoped to get on this case if I couldn't do it. He was, he was much in demand by -- for, if you will, the serious and difficult cases.

Q And again, we'll hear from Mr. Tallis, but to your knowledge, sir, had he been involved in serious cases, murder cases, prior to the David Milgaard matter?

A Absolutely.

Q And, again, it's my understanding that Mr. Tallis was appointed or engaged through Legal Aid, and again we'll hear evidence from him about that, but were you aware that Legal Aid was involved?

A I think only -- I think I was aware.

Q And there's some documents later that talk about Mr. Roberts coming in, and that, that suggest, through the Legal Aid Plan, you had to subpoena some witnesses; do you remember that?

A That's right, that's how I knew it at this point, Mr. Hodson. I undoubtedly knew then, though.

Q And again, at that time as far as your experience as a prosecutor, did you notice anything different about whether a defence was done on Legal Aid or not?

A Well, if you could phone Legal Aid and end up with Mr. Tallis, I think we would recommend that to anyone. That wouldn't always happen, he was a leading counsel. And then, sir, at least now there are, as you know, very, very capable counsel in that plan.

Q But again, as far as whether -- and maybe this is an unfair question -- but as far as your observations and your dealings with Mr. Tallis or on other murder cases where a defendant had a Legal Aid lawyer versus a private lawyer, you as prosecutor, did you notice differences?

A Well, umm, I would -- the -- it, I think, was very fortunate for the accused in this instance that, I guess, his financial state qualified him for Legal Aid and the person he got was Mr. Tallis, which was quite, I thought, remarkable, I mean certainly fine from my point of view.

Q And again, back in 1969-'70, can you tell us what type of professional relationship did you have with Mr. Tallis, prosecutor and defence counsel?

A Excellent. Very open, umm, happy to discuss things, no -- no holding back on my part, certainly, or his, with passing information, etcetera.

Q And again, we'll be hearing from other witnesses on this, but did you -- were you aware, at the time, whether Mr. Tallis had occasions to deal with Saskatoon City Police officers, have a relationship with some or a -- things of that nature; were you aware of that?

A I knew that he was, in effect, a friend of various of them, which I would find when I came up to prosecute and find him talking about hunting with my witness, for instance, but he had a very good standing with them in every shape or form.

Q If we could go to 007063, please. And this appears, from the files, to be the first written contact by Mr. Tallis to you, and the date is June 10th, and I think we saw from the information that Mr. Tallis appeared on the 9th. And is it fair to conclude that, the letter is to you, that he would have known -- and we'll ask him this question when he's here -- but that he would have known that you would be the prosecutor on this case even though you hadn't appeared?

A I think he would have assumed it, and that he would have sent them to me as the person in charge of the office in any event, I would have thought.

Q And it goes on to say that he has:

"... been instructed pursuant to the provisions of the Legal Aid scheme, to defend David Milgaard on a charge of non-capital murder."

So, again, I take it you would have been aware of that at the time?

A Yes.

Q And, if we can scroll down, he says:

"I have not had an opportunity to review the matter in detail but it would assist me if you could let me have copies of any witness statements and related reports on this matter. I realize that I may not be entitled to them as a matter of law but I can assure you that I never try to abuse co-operation of this nature when it is accorded to me."

And again, we will deal with some letters later on where you respond, Mr. Caldwell, but can you tell us generally what was your understanding at this time, June -- June 1969 through to January

1970, of your obligation, whether it be legal or any type of obligation, to disclose information or provide information to defence counsel; just your understanding?

A I said -- oddly enough, it seems to me that the term 'disclosure' essentially hadn't been invented, but we practiced it. As of 1965 when Mr. Perras came in and the case prep office in Saskatoon Police opened, this -- we would commence a practice of opening a file, putting the name of defence counsel in it -- actually that is the case in this case -- and contacting them, which we found was -- saved all kinds of, you know, unnecessary witnesses being called, etcetera. Now -- so we, at this point we were kind of proactive in the disclosure business with -- I think it -- I think this is before the noted *Stinchcombe case* came along, which set out a lot of very, very firm rules. In this case it would be, at this time it would be our practice to disclose things freely to defence counsel on request under almost all circumstances.

Q And I'll deal with the exchange of correspondence as we go. It talks here about 'witness statements and related reports'; was it your practice at the

time, '69-'70, to provide police reports to defence counsel?

A I don't think so. Witness statements were in one category, police reports, I would believe we would go over them in person or by phone with defence counsel. I think there was a fairly stringent policy against actually giving them out.

Q Okay. And do you know why that was?

A Well, umm, I'm -- I'm not sure whose, whose rule that was, I had a -- but I would have no hesitation of going over what was in them.

The exception Mr. Hodson, although they're not strictly speaking police reports, would be lab reports we would quite freely copy and send out.

Q Okay. So the lab reports, and we'll certainly get to that, but on the police reports --

A Yeah.

Q -- let me just go back. It was your understanding at the time, I think your words were, a 'stringent policy'?

A Yeah, probably self-imposed, but we essentially didn't give them out I don't believe.

Q Okay. And then at the bottom it talks about:

"I should perhaps mention that I would

like copies of any psychiatric reports that you may have obtained with respect to this boy."

Had you done -- obtained any psychiatric reports by this time; do you know?

A Umm, I'm not sure that I had a report, but upon -- when Mr. Milgaard was arrested and returned to Saskatoon I had enlisted Dr. Ian MacDonald to go and interview him. Now the practice in that day, it was understood that it was beneficial at least for the Crown to have the, any person in a major capital or death case seen by a psychiatrist for two or three reasons; one being to assess the possibility of a later defence of insanity or drunkenness were two of the headings. I had Dr. MacDonald see him, and I've noticed correspondence, since I received it, essentially a one-sentence letter from Dr. MacDonald at -- that he had done that. And then that was -- that would of course, I think, happen very shortly after Mr. Milgaard arrived back in Saskatoon in custody, and I believe in the Saskatoon Police cells.

Q Yeah. And, again, was it your practice at the time, in a murder case, to obtain this type of report and have an accused seen by --

A Absolutely.

Q If we can go to 007064. And this is your June 23rd letter, so about two weeks after, to Mr. Tallis, and it says -- refers to the letter of June 10th. It says:

> "I have not, as yet, received any statements, reports, etc. in a written form concerning this matter, however, when the file arrives at this office, I will be in touch with you with respect to the question of supplying you with copies of witness statements, etc., and I trust that this will be satisfactory."

I take it from this, Mr. Caldwell, that, as of this date, the police had not yet given you the written materials?

A That's my -- that's how it reads and I believe that's so.

Q Okay. If we could then go to 007065, this is Mr. Tallis' letter of June 25 and talks about the matter being adjourned until July 3rd, and then he says:

> "I would like to speak to the question of a date for the preliminary hearing at that time and perhaps you could appear

or have Mr. Wolff give me some indication of a suitable date."

And can we take it that, from that, Mr. Tallis had requested the date be set on July 3rd?

A Well, to the extent that I don't believe I appeared on the last appearance.

Q Yes.

A He's informing me this is when it's coming up and, when it does, can we get organized to be picking times for the actual prelim to proceed, is the way I read it, sir.

Q Okay. And then if we can go to 007062, and that's your handwriting?

A Yes.

Q And I think this is one of your notes from your correspondence file, just at the top:

"10 a.m. Thurs. July 3, '69 - Cumming, J."

He was the magistrate?

A Yes.

Q And I'm not sure if that's the court reporter, "Sgt. Goa, C.F. Tallis." 'Accused in', what does that say?

A 'In person'. The upper right, Mr. Hodson, is C.P.C., city police court would be what that would

stand for.

Q Okay. And then it says, "Adj. To Mon. Aug. 18th," and, "I say - at Ct. Hse." Do you know what that --

A "9:30 a.m. Ct. Hse - I say - at Ct. Hse." Some things in those days were set to go ahead at the number 1 court in the police station. I don't quite get that, but --

Q Okay. Now Mr. Goa or Sergeant Goa, what role would he be playing?

A Well he was the court officer and, as you know, he appeared here earlier.

Q If we could then go to 007059, please. This is a letter, July 8th, 1969. Maybe just go to the third page of that and we'll see the signature line. It's Deputy Chief of Police Corey -- or Forbes, pardon me.

A That's right.

Q And I'll go through the letter, but at the end he says:

> "May we have your services, please, in conducting this prosecution."

And I'm wondering, was it the practice at the time for the police to generally engage and request your services, or was this simply a

courtesy or a formality?
A Well, this would -- I think Deputy Chief Forbes liked to and did these covering letters and the final paragraph is just a nice way of asking me to take the thing on would be my -- but there was nothing that turned on the language, sir.
Q You were there on behalf of the Attorney General for Saskatchewan?
A Oh, yes.
Q On behalf of Her Majesty to prosecute the charges; is that fair?
A Oh, yes.
Q And so if we can go back to page 1 of the letter. And so this would be -- would this be -- we know July 3rd you appeared in court and five days later the letter. Would this be around the time, then, that you would have been engaged as the prosecutor or --
A Well, I guess formally, formally this letter would represent that. I don't think that -- I mean, that was going to happen in any event.
Q Okay. And we see here we're talking about the prelim date which has been set. If we can go to the next page, and in this letter Mr. Forbes provides you with some of the details; is that --

A Yes.
Q -- fair?
A Yes.
Q And this appears to be the first written document that the police provided you; is that fair?
A I believe so.
Q And we'll be getting to later the Elmer Ullrich summary that he prepared, the police summary and the witness summary which I'll be going through with you. Would that have followed this July 8th letter?
A My belief is that it would have followed as opposed to accompanied.
Q So this would be the first, I guess, letter from the police; is that fair?
A That's right. My understanding, yes.
Q And prior to this time, Mr. Caldwell, would you have had discussions with members of the city police generally to talk about what evidence they had and things of that nature?
A That could well be the case. I would expect that, but I don't recall it, Mr. Hodson, happening.
Q And the Gail Miller murder was a significant event in Saskatoon at the time?
A Yeah. It was a very tragic event and there was a

lot of, you know, interest obviously.

Q And when Mr. Milgaard was charged for that murder, similarly that attracted a lot of attention?

A Certainly.

Q And so can we conclude, from that, that around early June you would have been aware that Mr. Milgaard had been arrested, and I think you already told us that you would likely be the individual prosecuting it?

A Yeah, I agree to all of that.

Q And again, do you think during the month of June and before this letter, you would have inquired of the police to find out the type of evidence they might have in the case?

A You know, at this point, Mr. Hodson, I don't know.

Q Is that something you think would have happened?

A I would say so, but the inquiry might very well have happened from their end, initiated by them to me, as it were.

Q And then if we can just go through parts of it, it says here, and this Deputy Chief Forbes, talks about:

> "... a considerable amount of blood in the snow under and around the body and it appeared as if there had been quite a

1 struggle between the deceased woman and
2 her assailant, as the snow was tramped
3 for a considerable area around the body.
4 The blade of a kitchen paring knife was
5 found under the body and her gloves were
6 in the lane a few feet away. On further
7 searching, the deceased woman's sweater
8 and her right shoe were found tramped
9 into a snowbank some 50 yards away. Her
10 purse was found under a garbage can
11 about one hundred yards away."
12 And then it goes on with some other items where
13 they had -- it talks about other items,
14 "... where they had obviously been
15 thrown as the offender was rifling the
16 purse."
17 So I take it at this point you would have been
18 aware of the police view of what had happened?
19 *A* I would think so.
20 **Q** And then if we can go down to the next paragraph,
21 we see here that the police talk about the time of
22 murder to be about 7:00 a.m., consistent with
23 about what time she left for work, and it talks
24 here about,
25 "She had been in the habit of catching a

bus at either Avenue O or Avenue N on 20th Street at 7:00 a.m. and no doubt she was on her way to catch the same bus on the morning of January 31."

Now, I'll be asking some questions a bit later about this. Do you remember, Mr. Caldwell, there being any discussion about whether she went to Avenue N or Avenue O bus stop back at that time?

A Not at that time, but as you know, later on there were, if you will, two schools of thought on that.

Q When you talk later on, you are talking during the trial of David Milgaard?

A I would think so.

Q And what were those schools of thought?

A Well I, as prosecutor, I felt that the significant evidence that I was able to call pointed at Avenue N which was further south than Avenue O. One or more of these Regina witnesses who had been in the car indicated I believe that it had been stuck near the intersection of N and 20th Street and there were about, I think, something like three references. Another was that later on I think Nichol John pointed out the funeral home, which in fact was known to be at N and 20th. So the evidence I thought I had, I thought, pointed to

Avenue N.

Q And was there another school of thought at the time that thought it might be Avenue O?

A I don't know about at the time, but that certainly was well explored later by various people, and I can't say, Mr. Hodson, that it wasn't of course.

Q Okay. And then scroll down, and then it talks about:

> "The accused, David Milgaard, did not come under Police suspicion until March 2, on which date Albert Henry Cadrain, age 16, of 334 Avenue O South, gave the Police information ..."

And then just scroll down:

> "Cadrain saw what he believed to be blood on Milgaard's clothing and Milgaard made reference to the blood, changed his clothing and was in a great hurry to leave Saskatoon."

And then down at the bottom:

> "All four left for Calgary that afternoon with Milgaard driving at 100 m.p.h. at times."

So again that would be information that you would have got early on from the police as being the

police summary of the evidence that they thought existed; is that fair?

A Well, it's in this letter and I would assume from that that was, you know, could have come from me from other sources as well, but --

Q And then scroll down:

> "The details of this trip which took them to Calgary, Edmonton and Banff and then back to Regina are given in Cadrain's statement and include an alleged suggestion by Milgaard that he and Cadrain should get a gun and kill Wilson and the John girl. There also had been some conversation between the others about "the girl" and Milgaard had admitted that he had "fixed her"."

And again this is something you had known at the time as far as the police view of the evidence?

A I'm sure it was.

Q And the next page, it says:

> "Subsequently, Wilson and Miss John were interrogated, but denied knowledge of the Miller girl or her murder until May 24, on which date Miss John told her story of being an eye witness to

Milgaard's attack on Miss Miller and having seen him actually stabbing her, etc., in the lane referred to, about 7:00 a.m. on January 31. Since then, Wilson has told a similar story which fully corroborates the statement made by Miss John and all three statements are supported by other facts."

If we can just pause there. Actually, I'll finish reading that:

"It appears as if Cadrain reported his information to the Police as soon as he associated it with the Miller case, but evidently Wilson and Miss John were too much afraid of Milgaard to give the correct information in the first place."

Can we take it from that that the first written communication from the police, Mr. Caldwell, you would have been aware that, first of all, that the main evidence, if I can call it that, would have been from Cadrain, Wilson and John, being the three travelling companions of Mr. Milgaard?

A In this letter?

Q Yes.

A Yes.

Q And as well what this letter from the police says, I believe, is that initially Wilson and John denied knowledge of the girl or her murder until a later date?

A In a nutshell, that's right.

Q Right. And so you would have been aware of that right from the outset, that at least Wilson and John had initially denied any knowledge of the murder?

A Yeah, that's what's recited here, and I would have assumed that I knew that.

Q And then as well the police said that evidently Wilson and John were too much afraid of Milgaard to give the correct information in the first place. Would you have been aware of that being again the police view at the time?

A Yes.

Q If we could just spend a moment here on the files then, Mr. Caldwell. You would have been engaged around July 3rd or July 8th. Tell us how you would normally set up your filing system to look after the paper that you would receive on the matter?

A Well, in this case I've seen two or three references by me to the fact that I only made up

approximately six filing folders I believe at the end of the trial, and that sounds odd to me, but I've seen myself being quoted, or, you know --

Q What's odd about that?

A Well, I suppose that during the prelim and maybe the trial I could get by, in effect, with one file folder, briefcases or something, but in this instance it appears to be that I only divided and made up the six file folders well on in the proceedings.

Q Okay. If we could just go through those. I've got the file jackets, 331789, and I think this is file 1, correspondence file; is that right?

A That's correct, sir.

Q And I will be going through some of those documents, and that is where the bulk of your notes and communications would be kept; is that correct?

A Well, they should have been, yup.

Q And then it was closed in 1970 when the file was concluded; is that fair?

A That's right.

Q And then if we can go to 007082, please, or 007081, and again I think this is the inside file cover of that correspondence file; is that

correct?
A That's the inside of the front cover of that file, right.
Q And I'll quickly go through some of these notes. It appears that at the top you've got Mr. Tallis' phone number and Mr. Mackie, Corporal Stewart and C. Short; is that right?
A That's right.
Q Would they have been the, Mackie and Short -- who were the primary police officers that you as prosecutor dealt with or through?
A Well, initially Mackie and George Reid in my memory had been assigned to the file. If I'm not -- my memory is that they in effect worked 30 days in a row, the first day they were off was the day, in effect, that Albert Cadrain presented himself at the station, so Ray Mackie would be one. Corporal Stewart I think is a Regina Crime Lab person --
Q Yes.
A -- Mr. Hodson. Now, Charles Short I think was a lieutenant at that time, was -- tended to be in the station working weekends and afternoons and in the job that Jack Wood would have done as superintendent, so they tended to alternate, and

he had an interest obviously in the case.
Q And --
A Oh, I'm sorry, of course a couple of other people, Detective Karst was a very noteworthy investigator in it. If you want, I can look you down that list and --
Q No, that's fine.
A Okay.
Q I will get to some specifics later, but as far as the prosecutor, did you have one or two officers that could be your contacts with the police to do, for example, follow-up investigation or to get a statement or to get some materials? Who was your go-to person?
A Well, it would have been, at this point, Sergeant Ullrich, because the case prep was up and running.
Q Okay.
A And that was one of the things he did.
Q We'll talk about him in a moment.
A Okay.
Q So again, there's also a note here, no statements, Diewold, McQuhae and a few other names. Do you know what that refers to?
A Yeah, that's a note I made and I expect there will be an expansion on that later in the file.

Q Yeah, okay. And if we can just scroll down, I see you've got Mrs. Cadrain here and a phone number. Do you know, did you have contact with Mrs. Cadrain?

A I don't recall doing so, sir, but I -- you know, I had her phone number, could have done so.

Q And then as well if we could just scroll down a bit, we've got information on blood types and as well I think a map of the Cadrain street?

A Yeah.

Q Would these just be your notes you would jot on the inside file?

A Those are things I would put down to either show someone or have readily available for myself.

Q And then if we could go to 007082, again I think this is the original front cover of your correspondence file, and it appears that you started off having a main file, a correspondence file, brief outline, list witnesses, and I'm not sure --

A Yeah, that's summary, Mr. Hodson.

Q Summary.

A And that's a file folder which initially would have had those five categories, and I reorganized it by making it only the correspondence file later

on.

Q And if we can go to 331790, please, again file 2, this has got the opening address, trial notes, it says mine and Ullrich's, and closing charge, and I believe, did Mr. Ullrich attend the trial with you?

A Yeah. He sat completely through the case and made notes and, as you know, they are in existence in the files here.

Q Right. And 009371, this is file number 3, and just call out that part, it talks main file, summary, autopsy report, lab report, indictment, exhibit chart and photos. The summary, what would that be?

A I think that would be one or both of the Ullrich documents. There was a shorter and longer one as you know.

Q Okay. And so that was kept there. Lab reports, what was your practice, did you normally get all the lab reports?

A Well, you did -- not without some struggles to get them as time went on, but eventually you would get them all.

Q What do you mean 'struggles'?

A Well, things would go to Regina and had to go to

different sections in the lab, and then there would even be instances, I think in this case, where the police brought in items later in the proceedings to be, you know, to be assessed.

Q If we can go to 009371A, please, which I think is the backside, and this just appears to be your note on the file cover, it looks as though, and I'm assuming M, W and J is Milgaard, Wilson and John and you've just got a note of their ages at the date of the offence?

A Yes, that's right, as I understood them.

Q 331786, this is number 4 file and it's got witness statements used. Can you tell us what that --

A That means witness statements that I in fact used in the court case as opposed to not using.

Q And would that be -- for example, a witness who testified, let's take Mr. Beauchamp who testified about the wallet, he gave a statement --

A Should be in there.

Q And so when you have used, that would be for someone who testified?

A That would be my understanding.

Q And I take it, Mr. Caldwell, that it would be unlikely for a statement to be tendered as evidence other than in sort of some unusual

circumstances?

A That's right, but used means, on the face of it, I called that witness and here's his statement in the file number 4.

Q Okay. And then if we can go to 331788, it says your file number 5, and this is witness statements not used?

A Yeah, and those are ones that reached me, may have been initially, may have been as a result of me asking Ullrich for further documents or following up on what Mr. Tallis wanted, but the main heading was that none of them, in effect, were used by me calling the witness.

Q And I'll go through Mr. Ullrich's summaries shortly, but do you have -- do you have a recollection of what witness statements you received initially and whether more came?

A They must have. One of my letters to Mr. Tallis I think indicates that I hadn't received all of them or whatever and I think it's clear that when the, whatever those things were we did receive, we sent them on.

Q Then next 331791, please, this is file number 6, and it's got extra copies of statements and police files not used. Can you tell us what that --

A Yup. Extra copies of statements could refer to statements by the accused. I would want to look at it a little more carefully I think. Police, what is that --

Q It says police files not used.

A Not used means that there should be a number of police documents there that came to me, I didn't call the evidence for whatever reason, and they stayed here I trust.

Q Now, when you called a witness, a civilian witness at the preliminary hearing or the trial, did you use the statement, if there was a witness statement, as a guide?

A I would have the statement and make up my own so-called guide sheet, Mr. Hodson, from it, making sure to highlight salient points I didn't want to miss.

Q And would you rely on the witness statement, though, as an aid to you in the examinations?

A That's -- it was there and it may be before closing examination-in-chief you could look at it and say, just a minute, I didn't cover that item.

Q And then as far as police officers, did they normally provide a written statement?

A Well, police reports were not, you know, tended to

be typed reports as opposed to handwritten --
Q Were the police reports --
A -- statements.
Q Sorry. Were the police reports used by you as a summary of what the police might say or what they did?
A Well, essentially that would be right, and I think there's some examples where, for one policeman, he may have given two or three reports. I may have numbered them one through five pages and I think that's somewhere in the files, but then I would have a guide sheet to make sure that I got what I thought I should get --
Q I see.
A -- from that witness, sir.
Q And then lastly, if we could call up 331785, this is a file folder that is in the, your files that we received, the Commission received, and again meeting file, is that a file that you created back in 1969 or 1970?
A No, sir.
Q And if we can just go to the next page, 331785A, and we will hear evidence, Mr. Commissioner, from Mr. Brown, I think this file folder was created in 1983, or it refers to a 1983 matter. And I take

it, Mr. Caldwell, is that consistent with your understanding of this file, that it was created by Mr. Brown in the early '90s?

A Mr. Brown created certainly in an economical way of re-using file covers, for which I commend him, but it was never part of our prosecution file, Mr. Hodson.

Q And the meeting file that the Commission received, the file folder and the contents of that file presumably would have been put in by someone else other than you?

A The same thing, I'm not even sure there were contents, but the file itself was a total.

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

(Adjourned at 2:44 p.m.)

(Reconvened at 3:05 p.m.)

BY MR. HODSON:

Q Mr. Caldwell, when we adjourned we were talking about what files you had set up and if we could talk for a bit about Elmer Ullrich, we heard evidence from Mr. Ullrich that he was a case preparation officer. Were you involved at all in setting up of that position?

A Yes, I was. I had given a lot of talks to the

police over the years on evidence, arrest, etcetera. There was a course for senior NCOs and as head of that course I was able to consult about two-thirds of them about what they wanted to discuss and a pattern came out of that I would never find out what becomes of my case and a number of identifiable problems. Now, Chief Jim Kettles was in case prep function in Ottawa city police and I spoke to him and he was, as I was, enthusiastic about getting that, that function going, and Elmer Ullrich was the first incumbent. There was usually a junior constable there as an assistant and that's how that came into effect, strangely enough in 1965 as I recall.

Q And what was the purpose then, or what role did Mr. Ullrich play?

A Well, he would take a file, make sure all the investigation reports were in, the lab reports had come back, witness statements had been taken. When he could see anything like that missing, he would pursue it with the investigators.

Q If we could call up 105605, please, and this is a document this is not the version that was found on your prosecution file, but it's a version from the city police binder, but I believe this is the

first page of the three-page summary prepared by Mr. Ullrich; is that correct?

A Well, I'll take your word for it, sir. I assume it is.

Q If we could just maybe go to the next page, and I'll go through this with you, and then to the third page.

A Is the same document in effect in the more, the ones I'm familiar with, including this I take it?

Q Yes.

A Okay.

Q This is -- and I will go through. And I think, so we know what we're talking about, I'll try and refer to this as the Ullrich police summary.

A Oh.

Q In other words, the three-page summary?

A I see that.

Q And we've been through this with other witnesses, and I believe Mr. Ullrich's evidence is that it represented the police's view of the evidence at the time.

A That would be my understanding.

Q And then if we could call up, or go to the next page, to 105608, and then we'll see a document -- this is part of the same document I think, or an

extension, witnesses required re: David Milgaard preliminary inquiry, and then it goes on to talk about, it has a witness name and then refers to statement numbers. You are familiar with this document?

A Yeah. I think, Mr. Hodson, is this not the one that goes for something like 12 or 13 or 14.

Q 21 pages.

A Yes. I am then.

Q So we know what we're talking about we'll call this the witness summary document. And I take it, if we could just scroll down a bit, you'll see here references to statement numbers and page numbers. Can you tell us what those referred to generally?

A Well, I hope that the statement numbers, 81 and 94, would both be ones given by Nichol John for openers. Refer to pages, I'm not exactly sure what that would mean, and clearly this is not a transcript of a prelim we're talking about or anything like that. Maybe that will -- I could come back to that.

Q Yeah. I'll suggest, Mr. Caldwell, that it appears that these page numbers match up to numbers that are on police investigation reports.

A That would make sense to me, sir.

Q Okay. Now if we can call up 006301. And this is not a very good copy, but it's just, it's called at the top Statements Taken on The Gail Miller Case, and then it has a list of statements and just a brief address and information. If we can go to the last page, and we'll see that there's 95 statements, and in this document there's some X's on the documents and I believe those indicate the statements that are referenced in the Ullrich witness summary?

A At a glance, it would look that way, because of the people they recite after the X's.

Q And as far as what you received from the Saskatoon City Police, then, for the purposes of the prosecution of David Milgaard, do you agree, sir, that you would have received all of the witness statements?

A There's 95 listed here? I think it turned out I did, Mr. Hodson.

Q And I believe that's what the records suggest, and as well, three additional statements relating to Mr. Lapchuk, Mr. Melnyk, and Ute Frank later on, so a total of 98 statements; does that sound right?

A That sounds right.
Q Then, as far as the police investigation reports, we have had filed the police investigation reports for the Gail Miller murder investigation that are, I think, close to 500 pages?
A Uh-huh.
Q Did you receive the entire Gail Miller murder investigation police file?
A No, in my view I received the David Milgaard murder prosecution file, and the Gail Miller death investigation file, or whatever the terminology was, was a much much larger and, in fact, growing document, sir.
Q What police reports, police investigation reports, then, did you get; are you able to tell us generally?
A Well the so-called main investigators, the identification section members, anyone who took an active part in it. I couldn't recite them, sir, and I --
Q No, and I -- that wasn't my question.
A Yeah.
Q Maybe put it this way. The 21-page witness summary that Mr. Ullrich prepared -- and we'll go through that --

A Yes.
Q -- and names of witnesses and references page numbers which match up with investigation reports that have your handwriting on them.
A Yeah.
Q And I'm wondering, sir, is it your position that the police reports or the investigation reports you would have received would have been those that were identified in the Ullrich witness summary?
A On the face of it, they would be, and I assume they were.
Q And what about lab reports; do you know what -- whether you would have received all of those?
A I think that would be readily identifiable. I had, as you know, recalled that they seemed to come in in dribs and drabs for various reasons. I would expect I eventually received so-called all of them, sir.
Q And as well on the prosecution file, at least as the Commission received it, there appears to be a set of correspondence where the city police wrote to various other agencies in gathering information, sort of a miscellaneous set of correspondence; do you recall getting documents, generally, of that nature?

A I'm not sure if I got them on the prosecution file. Do you understand they were there?
Q There is a set of correspondence, some of which I'll take you through, --
A Yeah.
Q -- but checking criminal records, for example, and some other police documents that are not investigation reports?
A I would assume I got them, sir.
Q If we can talk just about, once you are engaged as prosecutor, what role did the Saskatoon City Police play, then, once you became the prosecutor?
A Well there'd be a, I would have to set about figuring out the order the witnesses should go in, I would assume that I would have talked to individual investigators about one thing and another. Certainly Ullrich, in any follow-up or looking for lost material, would have gone to him. Umm, there was a sort of an expected order of witnesses in a case like this, which I would have had to determine and get in place subject to people being available and things.
Q And if there was a need to have some further investigation, for example if you determined that a witness ought to be talked to again about a

1 particular point, did you use the police for that?
2 A Well yes, and I would hope through Ullrich, but it
3 may well be a direct with some of the
4 investigators.
5 Q And we'll see references to that as we go through
6 some of the documents, but if you felt an issue
7 needed to be investigated further, would it be
8 fair to say you would go to the city police and
9 follow up?
10 A Well city police, yes, in the sense that it was
11 their case, that's where I'd go.
12 Q And as well, when you, as prosecutor I take it you
13 would interview witnesses before you called them
14 to testify both at the preliminary hearing and at
15 the trial?
16 A Yes.
17 Q And did you normally take a city police officer
18 with you to be present?
19 A In this case, with the sort of major, significant
20 witnesses, I actually noted which officers were
21 there in each instance. You wouldn't necessarily
22 have a police officer there for interviewing
23 essentially minor civilian witnesses, but
24 certainly with those major and/or, you know,
25 dubious or difficult ones, absolutely.

Q And why was that?
A Well because the having a second person there would help me in maybe evaluating what that witness was like, it would cut off the possibility of someone accusing me, for instance, of trying to talk them into giving false evidence, anything of that sort. It was just very handy. And occasionally some of them, I would suppose, made notes of the -- of what happened at the interview.
Q Can you tell us Mr. Caldwell, just again, your understanding at the time of the role of the police in the investigation, and your role as prosecutor, and sort of the dividing line?
A Well they would essentially present me with a hopefully full investigation, I would look at it and, you know, raise things with them that I thought should be pursued, filling in gaps, finding things. And that would, you know, I would do that in consultation with them as opposed to me trying to do it, you know, cross-country myself, if you will. I don't know if --
Q Yeah. I take it though, once the police presented you with their evidence, their package of evidence -- and that would be at the point where they presumably would have reasonable and probable

grounds to lay a charge?
A I would assume so.
Q And then once you took over the case, if I can call it that, would it be more than simply taking that case and presenting it; did you add your own input into it?
A Oh yes, I'd have to look at it and say, you know, what things might look adequately covered, others that need further pursuing, other whole topics they may have not considered that appeared important to me.
Q So it wasn't, it wasn't a case of simply presenting the evidence that they gathered?
A Well, no. I'd start from that and, you know, pursue anything that appeared to be, if you will, missing.
Q And you would review the evidence to determine whether, in your view, it was sufficient; is that fair?
A Yes, certainly.
Q And would you test the evidence and the theories?
A Well that would be something that could be discussed between me and the other counsel in the office, certainly, or me and the investigators.
Q Would you take, for example would you take the

case that the police investigated and take a critical look at it to see if you could find any holes in it, for example?

A I would think so.

Q And why would you do that?

A Well because I used to -- I don't know if it survived in this case -- I used to check off the elements of the information or indictment, five or six or seven things, that I would never close my case until I thought I had some evidence on each of those things. And even such famous things as proving that it was in the Province of Saskatchewan used to crop up now and then, so I would -- had a really careful way of making sure that I had done all those things, strong or otherwise, let's say, before I closed the Crown's case.

Q And would you, sir, do an independent -- your own review of the evidence to satisfy yourself that it should be a case that should proceed to trial?

A Well it, I think that was pretty well inevitable in what I have spoken of here, sir.

Q Okay. So you did do that?

A Well I think so. I may not have described it that way, but I was the one responsible for the case

getting to trial in good or presentable shape, and --

Q And so would, as part of your role as prosecutor, would you identify areas where perhaps more evidence might be needed?

A I certainly would.

Q And would you identify areas where there might be issues, for example, about credibility or proof?

A If -- yeah. I think that, in cases like this, the prosecutor and/or his colleagues would recognize there is, eh, there is credibility may come up here, or a statement to a person in authority, so you'd generally have briefs of law on those things available from your previous doings, but you certainly had to look all that over.

Q And as prosecutor would you agree, sir, that you would identify the areas where -- what evidence should be put before the Court, in other words that was your call?

A Oh, I would think so.

Q Yeah. So you would decide which evidence, or which witnesses should be called and what evidence they should give?

A In the final analysis you would, yeah.

Q And would you also, as prosecutor, then prepare

the witnesses for the giving of evidence, interview them and --

A Yeah. That would range all the way from a very brief interview on very, you know, a significant -- insignificant, if you will, witness all the way up to, you know, some serious effort with witnesses who we might feel were, you know, were needed to be dealt with carefully.

Q And then physical evidence, exhibits, is that your responsibility --

A Yeah.

Q -- to determine what should go?

A Umm, only -- yeah, it would be. Now all this subject, of course, to the judge overruling me when I came to do it.

Q I appreciate that.

A Yeah. No, no, that would be something we'd do.

Q And as well, as prosecutor, would you be the person that would deal with defence counsel, then, once the prosecution was commenced?

A Oh, yes, yeah.

Q And then what about, we've heard some evidence or seen some documents that talk about a Crown theory or a theory; was that part of your job, as prosecutor, to develop a theory of the case?

A Well, you know, I don't recall that terminology, Mr. Hodson, but you had to look at the case and I be satisfied that I think we have presentable evidence on five or six or seven components, all of which we need. I don't really recall the theory being --

Q Well for example in this case, it was a jury case and I will take you to your opening address a bit later, --

A Uh-huh.

Q -- but did you develop a scenario, 'here's what the Crown thinks happened, here's how the crime was committed, and here's the evidence that proves it'?

A Absolutely. That had to be done for the opening address in what was Queen's Bench at that point of course.

Q So maybe 'theory' might not be the right word but you, as the prosecutor, would have a version of events or the evidence that you say 'here's how the Crown believes this crime was committed'; --

A Yeah.

Q -- is that fair?

A And I think almost those words would appear in an opening address.

Q And, again, is it fair to say that it might be a general version, or it might even be a bit more specific, 'here's exactly how it happened' or 'here's generally how it happened or may have happened'?

A Well, I guess part of each, probably. I think, in this instance, it would be a lot of specific suggestions. But all of that, as you know, is couched in language saying -- you have to go by the evidence as opposed to what I think it's going to be, and the judge, of course, reinforces that.

Q Did you ever have a prosecution, Mr. Caldwell, where, at some stage before the trial, you concluded that there was not sufficient evidence?

A I must -- I must have.

Q And not specific, but that's not --

A Yeah.

Q Okay. That happens --

A Oh, it does, --

Q -- from time to time?

A -- Mr. Hodson. One of the routes to that would be at the end of a preliminary hearing the judge would discharge the accused.

Q Okay.

A That's, you know, and not -- one of the --

1 **Q** Okay.
2 *A* And then even if there was a committal I, you
3 know, I could be -- discuss it with defence
4 counsel, and I'm sure there were times when we
5 decided not to go ahead with things.
6 **Q** And so if you, as prosecutor, concluded that --
7 maybe help me out here. What would be the test
8 that you would apply to yourself to say 'this is a
9 case where I wouldn't proceed'?
10 *A* Well there'd be a number of factors, perhaps a
11 very unreliable main or main witnesses who you
12 have decided now that you can't trust, maybe
13 completely missing items, missing witnesses, umm,
14 you'd have to -- wouldn't want to go into the
15 trial without being satisfied you felt you had a
16 good, presentable case, whatever the outcome ended
17 up being, for you to go ahead at that point.
18 **Q** So if you felt that the evidence was not, in your
19 view, sufficient to secure or to support a
20 conviction, would that be a case where you might
21 not proceed?
22 *A* Yeah, it could be, and it also could be one where
23 you might, you know, discuss that with the defence
24 and say "what would you think of a guilty plea
25 for, say, common assault", some intermediary

thing, which might very well be attractive to them.

Q I see. And as far as a prosecutor though, sir, did you have the discretion then, where you felt it appropriate not to proceed, to stay the charge?

A Oh yes, yeah.

Q If we could go to 105605. Sir, before we talked about going to defence counsel, do you recall any discussions with Mr. Tallis in the David Milgaard prosecution of that nature?

A Well not, I don't think, of the -- of that last-mentioned nature, because this wouldn't be a case in which I would expect anyone to -- I would expect it to go ahead as a trial, period, the way the evidence as I knew it was, and there was nothing like that discussed by me and Mr. Tallis.

Q And, again, the document that's on the screen is the police summary, and if I suggested that this would have been prepared sometime in July of 1969, is that fair? I think the preliminary was August 18th, you would have received it before August 18th, is that right?

A I would assume so by the fact that the -- of the date that's shown on the top of this document.

Q And we talked a few moments ago about the Crown's

view of the evidence, or the theory, or the version of events that you thought supported the case; would that sometimes differ from the police theory or the police version?

A I would think it would.

Q And so, when you get the case, the police say 'here's what we think happened and here's the evidence'; is that fair, is that correct?

A That's right.

Q And then you would get it and do your own review and analysis and reach your own conclusions; is that fair?

A I would think you had to do that.

Q And sometimes it might be the same as the police?

A Yeah, very --

Q Is that --

A Quite often, and sometimes different.

Q And so you might reach different conclusions about the case than the police did on certain points?

A Yeah, and you -- and I think you'd have to be alert to kind of tunnel vision on behalf of, we'll say, the investigators and maybe the prosecutors in due course. You should evaluate the thing and watch for, for instance, some policemen who can't stand anyone who is im -- charged with, say with

impaired driving, be just alert to whether they are doing their job properly or not.

Q Okay. So would there be cases where you might disagree with the police officer, then, as far as whether there's sufficient evidence for a charge?

A Yeah, there would have to be.

Q And in that case you, as prosecutor, could take steps, stay the charge, withdraw the charge?

A Yeah, interview the fellow and say "if there's nothing more than this, tell me what you have". Failing that, there would be occasions when those things would be stayed.

Q Okay. I want to go through and just have you tell me the significance of some of these items and what your views were at the time on the case that the police presented to you, if I can call it that.

A Okay.

Q First of all we talk about, or the police indicate that at Aylesbury, Saskatchewan, the group, including Mr. Milgaard, broke into an elevator, stole a flashlight; did that have any significance to you as a prosecutor?

A Not in the sense you can't put that in, or wouldn't, as a count of theft of flashlight or

break and enter of elevator. It's something that, at the time, we believed had happened, and I think there was some suggestion of the flashlight showing up later or something like that, so --

Q Did that influence your view of the case against Mr. Milgaard?

A I wouldn't think so.

Q Pardon me?

A Well, I wouldn't think so, it's something that happened and --

Q And, here, and I think again you are talking to Mr. Milgaard, Mr. Wilson, and Ms. John:

> "Enroute to Saskatoon they talked of committing a break-in or snatching a purse."

Let me just pause there. What significance, if any, did you, as a prosecutor, place on that piece of information?

A Well I -- it's very difficult when we say 'they talked of committing a break-in or snatching a purse', it's difficult to attribute that, in my opinion, to any of them in the sense that it's a 'they' --

Q Let's not get maybe too concerned about the document.

A Okay.
Q Did you subsequently hear from Mr. Wilson and Ms. John the fact that that was a just -- that there was a discussion about snatching a purse?
A I don't believe so.
Q That's --
A Except, Mr. Hodson, to the extent that the evidence we had was as to what happened with Ms. Miller on the street.
Q Right.
A Ah -- yes.
Q Yeah.
A So we can come back to that if you want. In other words the, the inquiry about Peace Hill and the events that that -- that seemed to follow that as far as we knew.
Q The police, just so that we're clear, the police are saying to you in the summary that on the way to Saskatoon -- and forget for the moment the source --
A Uh-huh.
Q -- but that Ron Wilson, Nichol John, and David Milgaard talked of committing a break-in or snatching a purse, and my question was would that be significant to you as prosecutor, that piece of

information, if it can be proven?
A Umm, it's -- in theory it could. I, I don't know what effect it would have with three people unless some, some concrete action did happen out of it. Maybe then you'd go back and say, 'eh, this is evidence of intent'.
Q But didn't you suggest, certainly to the jury, that the murder of Gail Miller started out as a purse snatching?
A I suspect so, but I also think that was solely in the context of Mr. Milgaard.
Q Okay.
A Because the evidence that we had, as it were, was that that exchange on the street and what followed it, I think, was --
Q If your theory, or if your case to the jury is that what started out as a purse snatching of Gail Miller that led to the murder, --
A Uh-huh.
Q -- would this piece of information not have some significance to you; --
A Well --
Q -- the fact that they had discussed it on the trip?
A Well the understanding I had of the evidence was

that neither Wilson nor John, in my understanding, took part in the purse snatching.

Q All right.

A They'd have to -- the concept of parties to the offence, if they did something or failed to do something to assist with that, they could be regarded as parties to the offence.

Q And let -- the fact that Mr. Milgaard, at least according to this note, --

A Yeah.

Q -- the police are saying that en route to Saskatoon Mr. Milgaard --

A Uh-huh.

Q -- and others talked about it, the fact that Mr. Milgaard may have talked about it, was that significant?

A Well only in the sense that, as I understood the evidence, he was the person who got out of the car and approached Miss Miller. Only in that sense.

Q It talks about:

> "Milgaard was observed to have possession of a paring knife which Wilson and John now state appears to have been similar to the murder weapon."

A Uh-huh.

Q And, again, were you aware of that at the time?
A I would have been, yeah.
Q And I'm wondering, it says that:

> "... Wilson and John now state appears to have been similar to the murder weapon."

Does that suggest that before they didn't, or do you know?
A Umm, I don't know if that means that the evidence has progressed to the point where -- I don't really know what to make of that.
Q Okay. It talks about them arriving in Saskatoon approximately 6:30 a.m., and that would have been within half an hour or so of when the murder took place, was that fair?
A I assume so, yup.
Q And would that be important information that they be in the location or in the area where the murder took place?
A Umm, it would be. I think that my own experience has been that times in particular are very tough to tie down, and for good reasons I think, in other words I don't think the witness is extremely smart on what times things happen and you do end up getting quite a variety of times. But

certainly, around the time of the murder and they were there, those are important things.

Q And in fairness, as prosecutor, if you weren't able to establish that Mr. Milgaard was in the vicinity where the murder took place you would not be able to prove the charge; is that --

A That's correct, yes.

Q And if there was evidence that suggested he was elsewhere, again, you wouldn't be able to --

A Yeah. But 'suggested', if there was evidence that had some weight that let's say showed that he was elsewhere, had a good deal of weight to it, that's one thing. But simply that I think in a lot of cases there are different versions of the facts going for perfectly legitimate reasons, based on memory and so on. But if the evidence showed he was not there, that would certainly -- should derail the thing.

Q And then they talk here, and again the police, and it's:

"They ...",

being Wilson, John and Milgaard:

"... are alleged to have been looking for Cadrain's address. This does not seem althogether true as Milgaard is

reportedly to have been staying with Cadrain ..."

A Yeah.

Q And do I take it from that that, at least when the police prepared this summary, they are doubting at least this version of events from Cadrain?

A Yeah, and I:

"This does not seem to be althogether true as Milgaard is reportedly to have been staying with Cadrain ...",

if indeed he was staying with Cadrain on an earlier occasion I, there's nothing sinister about, in my books, in him not being able to find the address quickly --

Q Okay.

A -- being he's a stranger to Saskatoon at, you know, 7:30 in the morning, in the winter, in the cold, etcetera.

Q Would you agree that at least the police, at this point, are saying to you 'this does not seem altogether true'?

A Yeah.

Q They are doubting a bit?

A Yeah.

Q Is that a fair read of that?

A I guess so, but I don't find that of, of any significance at all. I mean I agree with you on the read of it.

Q Okay. If you can just scroll down:

"They are also alleged to have met a female walking on a street from whom Milgaard asked directions and offered her a ride which she refused."

A Uh-huh.

Q And then carried on to the lane and got stuck. That, you knew at the time, was the police theory, and indeed became your version of events, --

A I would think so.

Q -- if I can call it that, at trial?

A Yes.

Q That this woman that they stopped for directions was Gail Miller?

A Oh yes, I would think so, sir.

Q And as far as, I had earlier used the word 'Crown theory' and you said that 'theory' may be the wrong word, is there a better word that you would have used for what you, as Crown prosecutor, were putting forward as 'here's what I am suggesting may have happened based on the evidence'?

A Well I probably said 'theory' several times in my

summing up, but that term just didn't ring a bell with me, but I -- certainly there would have to be a Crown theory on everything, even on the simplest of cases.

Q Right.

A That 'this is what happened, that's our theory, and it produces an offence'.

Q So, again, you would agree then at least the police theory and the Crown theory, then, was that the person they stopped for directions was Gail Miller?

A Absolutely.

Q And they go on, the police, to say:

> "They allegedly continued to the entrance ... where they ...",

got:

> "... stuck. The police have not been able to determine the truthfulness of this."

So do I take it, from that, that the police have been unable to corroborate that version of events?

A I don't know, Mr. Hodson, if that would apply to the whole paragraph. In effect, I would assume 'allegedly became stuck', the 'unable to determine

truthfulness', the way I would read this, would refer to getting stuck only, but that's just my own --

Q Okay. But, again, the -- let's just talk for a minute about corroboration and things of that nature. If Nichol John and Ron Wilson both said they got stuck near a spot, would you normally look for corroboration, in fact someone else to confirm or corroborate?

A Well if you have two witnesses saying a certain thing happened and it's a fairly close account of it, I wouldn't think you would be looking for or needing more corroboration, if any. I, again if -- if -- I just don't know what else to say about that.

Q Okay. It goes on to talk about:

> "... the body of Gail ... Miller was found the top of her nurse's uniform was pulled down to her waist. There was no holes in this part of her clothing. She was wearing a top coat with holes in it. This would suggest that the uniform top and sweater were removed and the top coat put back on."

A Uh-huh.

Q And, again, is that a feature of this case that you remember, Mr. Caldwell, and --

A Yeah, I do remember it. And, Mr. Hodson, I never could fathom that, and I think I ended up stating that in my closing address to the jury, that that was one of the things I simply couldn't understand. Not that it's up to me to solve it, but -- and I believe the trial judge -- as -- may have said similar things. I may have said it in opening and closing.

Q And again, if we could just explore that a bit, would that be a bit unusual, then, that --

A That clothing situation?

Q Yes?

A Yes, it certainly would, and I never had it explained to me in a form that I could suddenly say 'eh, that must have been how it happened'.

Q We've heard some evidence from some people, and whether it's speculation or theory, that the coat, Gail Miller's coat would have to be removed, then her nurse's uniform removed and then her coat going back on before she would be stabbed, at least the stabs in the back, the fatal stab; is that a fair --

A Well, that sounds fair to me.

Q And that would explain how the coat would have stab marks and the uniform wouldn't?
A To my way of thinking it would.
Q And again, coupled with that, Mr. Caldwell, did you consider the fact that it was anywhere from 35 to 40 below that morning?
A Well, we knew that to be the case based on the ident officer's evidence and photograph.
Q Did you ever consider or explore whether or not the rape or the attack or part of it may have occurred in a vehicle as opposed to outside?
A I didn't explore that. I'm not sure it was advanced at the time of the case. I know that later that was in one of these various reviews that was advanced. Some investigator asked me about that and I presume that that would make sense as one explanation.
Q Okay. And again though, as far as the Crown theory at the trial of Mr. Milgaard, I don't believe you put that forward as a theory, that part of the assault took place in their vehicle?
A No, I didn't, because I had no evidence that that was the case and I had no reason of course to believe that. The other thing, Mr. Hodson, is that at that stage there was no, if you will,

second or unexplained vehicle around the scene of the offence. In other words, to my knowledge we were dealing with the Wilson vehicle, I think there may have been one or more other vehicles unconnected, if you will, with the offence.

Q Okay. If we could just pause here, and again this back paragraph about, the last paragraph about talking about the vehicle being stuck and the police not being able to determine the truthfulness of this, would there be a situation where you might go back to the police and say lookit, it would be -- can you check, did anybody unrelated to this incident see the vehicle at that time to corroborate what Mr. Wilson and Ms. John are saying?

A Well, my recall of it is the police had virtually gone door to door in that neighbourhood, I think there's even a chart and some evidence on that, asking the residents what they had seen, as we know asking people who got on the bus if they had seen anything. I thought there had been a very, very complete investigation of that, in effect, without results, and I wouldn't see any -- if some -- I wouldn't see any point in trying to add anything to that, unless someone gave me a

concrete suggestion about it.

Q And how would you know that they did that thorough investigation?

A Well, just by reading all the reports that came to me, looking at the map of that city block and of the neighbourhood, etcetera, and putting it all together.

Q So would you either assume or confirm with the police that they in fact had checked to see if there was anybody who could, one way or the other, comment about what was seen in that alley?

A Well, not in that sense. I thought it was covered in the matters I just told you about. In other words, I don't know where else you would go at that point.

Q Would you have been, relied on the police to find out whether there was any evidence on that one way or the other?

A Well, yeah, I certainly was not an investigator myself and I didn't approve of getting out and, you know, marching around crime scenes, in our office we didn't do that.

Q But would you have said to the police words to the effect, lookit, is there any evidence, anybody that can place that vehicle in that location at

that time?
A Well, without -- maybe I'll have a chance. Without reading the reports again, Mr. Hodson, I think --
Q I don't believe there's any document in writing --
A Okay.
Q -- or I would put it to you.
A If there isn't, my view now is that I felt everything that could be done about that scene and who was at it and what they did as far as I could see had been done, for better or for worse.
Q If we can go down, and the police summary says:

> "Wilson and John in their statements to the police were not definite as to exact locations at all times. It would appear that if they were looking for Cadrain's address they were driving about in the general area of the murder scene and Cadrain's. They appear to have been proceeding south in the 200 blk. Ave. N south when they observed Miller approx. 7:00 a.m. walking south on the west sidewalk. Wilson who was driving pulled to the curb. John sat in the centre front, while Milgaard sat in the right

1 front. Milgaard opened his door and
2 allegedly asked Miller for directions
3 and offered her a ride. Miller refused
4 the ride. Miller apparently was
5 catching a Pleasant Hill bus at Ave. N -
6 20th St. to City Hospital. The three
7 then continued south on Ave. N to where
8 an east-west lane is. Here they
9 allegedly attempted to make a U-turn and
10 became stuck."
11 And goes on about:
12 "When Milgaard and Wilson could not push
13 the car free, Milgaard went towards
14 where they had just spoken with Miller.
15 Wilson states he went towards 20th."
16 And let me just pause there. Again, did that
17 cause you any concern, about the fact that the
18 police are telling you that lookit, Wilson and
19 John in their statements weren't definite to
20 exact locations?
21 A No. Everything you read there, Mr. Hodson, would
22 represent what I then believed to be the evidence,
23 and correct evidence, as best we could know it at
24 that time. There's nothing there that I, when I
25 went into the case, disbelieved or thought was

wrong or incorrect, because all the way down to where you stopped there, that whole paragraph -- I'm sorry -- I took as being my understanding of the facts and, such as they were, the correct facts.

Q And so at this time, Avenue N is where you thought Gail Miller was --

A Yeah. That's interesting because that's exactly what I thought.

Q And then it says:

> "John states she observed Milgaard leading Miller into the east-west lane jabbing at her with the knife and disappear around a corner in the lane."

So I take it you would have been aware that Nichol John, at least according to this summary, had said she saw Milgaard, Mr. Milgaard leading Miller into the east-west lane, jabbing at her with the knife and disappear around a corner in the lane?

A That's right.

Q And I take it around a corner in the lane would have been the T intersection and towards where her body was found?

A That would be my understanding.

Q Did you ever, Mr. Caldwell, at this point, when you got this police summary, or subsequent, consider the question about how, if Ms. John did see Mr. Milgaard leave the car, grab Gail Miller and grab her and stab her, whether or not her nurse's uniform would have to be already down?

A I don't -- I don't think I did. I think this brief set of facts indicates that they -- it says and disappear around a corner in the lane, which I take it refers, of course, both of them. Now, once they were out of sight I had no reason to, I have no earthly idea when that uniform matter happened. I wouldn't think it would have to happen then and there to make sense, if you will.

Q Okay. But if Ms. John saw Mr. Milgaard stab Gail Miller --

A Uh-huh.

Q -- as he approached her --

A Yeah.

Q -- and it says jabbing at her with the knife, certainly if those were the jabbing motions that went through her back coat, you would agree she would have to have her uniform off at the time?

A Well, first of all, jabbing at her with the knife, Mr. Hodson, to me is, doesn't -- it doesn't, if

you will, prove penetration. Jabbing at someone can be very well taken to be poking at someone without making much of, or any headway, as well as it may be the other way, to wit, penetrating things. So the way I took that, understood the jabbing at, wasn't that it was necessarily producing wounds.

Q And so the stabbing that went through the coat and not through the uniform, was it your view that that would have happened after they went around the corner?

A Well, the uniform would have to be down by then and on any view of the evidence there's no evidence it was down at that point is there?

Q I'm sorry?

A Well, the uniform would have to be down for that scenario to happen, but we had no evidence whatever that, as the two of them went westward in that alley, that the uniform top was down, we didn't have that evidence --

Q But --

A -- in my books.

Q So the one scenario, that if the stab marks through the coat happened, and those were the ones that Nichol John witnessed, then would you agree

that her uniform dress would have to be down?
A Well, that's what -- yeah, I was trying to say that.
Q That's one scenario?
A Yeah.
Q And the other is that the stabbing motions she saw did not, were not the stab marks through the coat, those happened later?
A That would be I think the way I took this on the face of it.
Q Okay. And would -- would the first version be that if it was Nichol John who saw the stabbing through the coat, if I can call it that, that's what she's referring to --
A Uh-huh.
Q Then would you have to conclude that her uniform would have to be down before that could happen?
A Well, that's what I was trying to say a minute ago, that would be one explanation of it.
Q And was that a logical or a reasonable one in your view at the time?
A I don't think, when we called Nichol John's evidence and went through the adverse witness routine, you know, with some difficulty in the, before the jury, I think we didn't get into, if

you will, that part of the episode. There was nothing in writing about that as I recall.

Q Well, her -- and we'll get to this later --

A Yeah.

Q -- but she did not repeat --

A No.

Q -- her version of events in evidence and was not cross-examined on that version at the trial, certainly the version where she said she witnessed the stabbing. Is that -- that's fair? That's agreed?

A I ran the 9(2) procedure and it was in the presence of the jury as I recall.

Q But just as far as being questioned, Nichol John being questioned about, at the trial about what she saw and the stabbing, I don't believe that she was cross-examined or examined on that, she said she couldn't remember, she didn't repeat that.

A Oh.

Q Is that fair?

A Yeah, I think that's correct. At the conclusion of that "I don't remember" I think was her answer.

Q And if we can just take a step back and you as prosecutor in looking at this, and again we'll get to her statement a bit later, but she was an eye

witness; is that correct? She was there as an eye witness?

A Certainly in my understanding she was.

Q And that would make her a key witness, if not the key witness?

A Absolutely.

Q Is that fair?

A Yeah.

Q And I'm wondering, though, when you've got this information from the police and her version of events, did you look at it and say, okay, well how could this happen, let's walk through what are the scenarios, is it, given that I think you said it was unusual, stab marks were in the coat and not the uniform?

A It was very unusual and I, in effect, never to my satisfaction figured out how it happened.

Q At the time, sir, did it cause you to doubt in any way Nichol John's version of events?

A I don't think it did. You've indicated how far we did or didn't get with Nichol John before the jury, but I simply at that point, Mr. Hodson, I couldn't conceive of how that happened. No one could come up with an explanation or did and I was simply, you know, left with that as one question.

Q And so was that an unanswered question in your mind?
A Oh, certainly, yeah.
Q And certainly if the stab marks had been through the dress and the coat, if you assume that for a moment --
A Yeah.
Q -- that would be consistent with Nichol John's version of events, saying I saw him stab her, and I appreciate what you said before that stabbing may not be penetration of the coat, but --
A Versus poking?
Q Yes.
A Yeah, that was -- that I agree with you.
Q And then it goes on to say:

> "John states she ran, but is not sure where. Marie Indyk, who was at the north-west corner at Ave. O - 20th St. observed a female, believed to be John, run toward her, stop and just look at her, then walk north an Ave. O. At this time she observed a male walking north on Ave. O. She described this male as being like a ghost, as she could not hear his foot steps, while the female's

steps sounded crisp in the cold snow. It is possible Milgaard was without shoes, as he was sometime later at the Trav-a-leer Motel."

Do you remember looking at that, Mr. Caldwell, the evidence of Marie Indyk and where it might fit in?

A I'm going to inquire whether this is the lady who I initially decided not to call?

Q Yes, it is.

A Okay.

Q Maybe I can just, in fairness, Mr. Caldwell, what the record reflects is that Ms. Indyk gave a statement to the police and we only have the front page of that statement, and I believe that you did as well, there's some reference to that.

A I had, in other words, the no-front-page version of it is what you are saying?

Q You had the same version I think that we had.

A Yeah.

Q And I believe that she was either called at the prelim but not at the trial, or that Mr. Tallis had examined her at the prelim, and I believe that she ended up saying that it was two females that she saw, not a female and a male.

A Yeah. First of all, I'm not sure that that front page ever appeared ever anywhere. I did, I believe, call the lady at the prelim and I believe I had initially intended not to call her at the trial, advised Mr. Tallis of this and at his request I either simply had, you know, called her and let him cross-examine her, if I'm not mistaken here, but she was called I believe at the trial, and does that match your memory of it?

Q Let me put it this way. Was the Crown theory, do you remember if it was the Crown theory that Mrs. Indyk had seen both Nichol John and David Milgaard?

A You know, again, I couldn't --

Q I don't think it was, Mr. Caldwell.

A No.

Q I think Mrs. Indyk indicated on further examination that it was two females.

A Oh.

Q And they were, they may have been older.

A Yeah, and the only -- and the business about -- it is true that Mr. Milgaard was at a motel with, in stocking feet, as you may --

Q Yes.

A -- as you know, but I simply didn't feel I could

make any sense of that, of her evidence, but in fact I'm pleased Mr. Tallis called her and he may well have made valid points with her.

Q When you say he called her, did you call her --

A Yes.

Q -- and make the request?

A I think what it was was is I called her and he cross-examined her, but you might look at that.

Q And would this be a case where you may have, after looking at the evidence and this part of the theory, said I don't think the evidence supports this theory?

A No, it's just that I couldn't understand her account of the thing from any point of view.

Q Go to the next page, please, and then it says:

> "This area is further corroborated by Henry Diewold who observed the headlights of an auto in the lane to the rear of the Westwood Funeral Chapel approx. 7:00 a.m. The lights were still there at approx. 7:10 a.m."

And again, I think the police theory, if I can call it that, suggested that that vehicle was the vehicle -- Mr. Wilson's vehicle; is that correct?

A Well, that may have been their theory. I have --

I really have difficulty remembering the Wilson vehicle being anything but stuck on Avenue N near 20th in the process of trying to U-turn, so that may be correct, sir, but I must say I can't --

Q The fact that Mr. Diewold, and I believe he was called at the trial, witnessed headlights in the back lane close to where Gail Miller's body was found, that would have some relevance one way or the other?

A I would think so. Well, if you could place some meaning on it, subject to sort of the, you know, the weather.

Q Yes.

A The lighting conditions, the fog and all those things.

Q And then it says:

> "John states she does not remember clearly what occurred at this point but seems to recall seeing Milgaard put a ladies purse into a garbage can."

And then talks about the purse being found near where the murdered victim was found in a garbage can, and that:

> "John also sometime later showed Det/Sgt. Mackie the area in which this

took place."
And again, what significance, if any, did you place on that?
A Well, if you have a witness testifying that she saw a person in this factual situation putting a lady's purse in the garbage can, it later turns out in or at the same garbage cans, it could certainly be inferred that it was the purse of Ms. Miller, for one thing, and I'm not so sure if it was identified that way eventually or not.
Q The purse in the garbage can was.
A Yeah, okay. Then that to me would be an important bit of evidence.
Q And again I had asked you, I'm sorry, a bit earlier about the discussion in the car on the way up about a purse snatching, and does that take on more significance in your mind?
A Umm, the purse snatching, in my understanding of the facts, as we then had them, was the work of only David Milgaard, period, not of the two companions in any sense.
Q Okay. But the fact that -- so you are saying the Crown theory was that David Milgaard had snatched the purse, not Ron Wilson and Nichol John?
A Oh, I think that was our theory and I think that's

the evidence we had at that time.
Q So the fact that it was discussed, or he discussed it amongst Mr. Wilson and Ms. John would support that theory that he had snatched the purse?
A Well --
Q Is that fair?
A Well, I don't think the fact that they had discussed it would -- the fact that he, in our understanding of the facts, snatched the purse was, and concealed it was the evidence. I don't think you could -- you could elevate that into them being parties to that offence, and I think that's clear, Mr. Hodson, in the notes that someone or other -- I know you'll get to that.
Q But if you could, the question about solely Mr. Milgaard snatching the purse, I will get to the question about them being parties to the offence --
A Uh-huh.
Q -- the fact that the Crown is saying this started out as a purse snatching and led to a rape and Mr. Milgaard snatched the purse and then raped and then killed her --
A Uh-huh.
Q -- the fact that on the trip up that Mr. Milgaard

was heard to say that they were, they, being the group, or he, were going to purse snatch, would that be significant to you as a prosecutor, the fact that it was discussed?

A I guess you could argue either way, you could say the fact that he mentioned it and no one got up and said I want nothing to do with that would tend to point away from them being parties.

Q No, please, I'm not talking about them being parties.

A Yeah.

Q Solely Mr. Milgaard, the fact that you are saying Mr. Milgaard, our theory is Mr. Milgaard stole a purse that led to a rape and murder and the fact that he mentioned it on the trip up to others about stealing a purse, that in and of itself would be significant; is that fair?

A Well, it would be evidence. I don't know how significant it would be.

Q And the other side of the coin is if they in fact discussed it with Wilson and John and, as you say, they said we want no part of it, one inference would be that maybe they were involved in the purse snatching?

A Well, yeah, but you would have to have some

evidence, sir, to advance that --

Q Okay.

A -- in my estimation.

Q Okay. We'll get to that in a moment.

A Okay.

Q It says next that:

> "Wilson states when he returned to the car he found John in a hysterical state. Wilson got into the car and Milgaard returns. When Milgaard got into the car John moved away from him and Milgaard said something about, "I got her," or "I fixed her"."

And again, is that something that would be of significance to you as a prosecutor?"

A Yeah.

Q Then the report says:

> "It is not clear exactly what occurred here as Wilson and John state two men arrived and assisted in pushing the car free, however the police have failed to identify such persons. Police wonder if this part of Wilson's and John's story is not somewhat shaded to cover their part. One possibility is that Miller

was picked up in the car instead of just spoken to on the first instant. Keeping in mind there was two males and one female in the car at the time and it was about 40 degrees below and very foggy she might have accepted an offer for a ride. It could be possible the assault started in the car, the uniform top and sweater pulled off, perhaps even one boot, then the top coat put on again. Miller could have fled the car at the lane or been forcibly made to leave. It is hard to believe Miller would have removed the top coat in the lane and been allowed to put it on again. If this is true, who buried the sweater and boot."

If I can just go through that in parts --

A Sure.

Q -- Mr. Caldwell. The first part about the men pushing them free, you were aware that those were never, those two individuals were never located?

A I assume that's correct.

Q And did that cause you some concern?

A No. This was 40 below, what, 7:30 a.m. in the

winter in what I seem to recall the -- what am I trying to say here -- almost foggy conditions, which were clear in the photographs, and I would -- I would be surprised if you turned heaven and earth trying to find those fellows, if indeed they existed, that you would succeed.

Q What about the fact that, at least according to this theory, that Mr. Milgaard would have committed the purse snatching, the rape and the murder while his vehicle was stuck and he knew it was stuck?

A And who -- he knew it was stuck?

Q Well, according to Wilson and John, the reason he left the vehicle was to get out and push his vehicle out.

A Okay.

Q And did you consider or think about the fact would it make sense for Mr. Milgaard to go and commit those offences when his vehicle where he would leave the scene was stuck?

A Well, it wouldn't in my view make sense for anybody to commit those offences, period. Now, I would have to say as well that if indeed Mr. Milgaard succumbed to the temptation to carry these things through, I would think considerations

of how he would get away from the scene would be very much in the background. In other words, probably the last thing is to go back to that car if he knows it's not going to move, which is how I take the evidence.

Q Okay. But wouldn't the fact that, if the car couldn't move and the police found a stalled car, I don't know, 50 feet or half a block away from the murdered woman, would that not tend to lead the police to Mr. Milgaard?

A Well, in the sense that both John and Wilson, on our understanding of the evidence, said that he was in the car when it stopped, there were three of them in the car --

Q Yes.

A -- and the car, whoever -- I just would find it very -- I agree with you that it would be very improbable to go back to a stuck car as a method of getting away from that scene.

Q In fact, if the car was not unstuck, in other words, it couldn't be moved, it would still be there when Mary Marcoux found the body; correct?

A Yeah, I assume that's correct.

Q And so again that would, would you agree, would tend to lead the police to look at whose car is

stuck near the murder scene?
A Oh, well, I assume so, and that was -- was that not Wilson's car as I understand it?
Q Well, no, but my question is that if the car had remained stuck, that that would have led the police to Mr. Milgaard instantly, pretty quickly?
A Well, in the sense that it was stationary instead of running around alleys and service stations.
Q Yeah. Let me back up. As prosecutor, when you looked at this, are you able to tell us whether you considered that, and maybe you've already answered that by saying, I think what you said is how he was going to get away would be at the back of his mind, and is that --
A Well, I can't -- first of all, this offence, I can't imagine anyone committing -- someone did, in our understanding now, it was not Mr. Milgaard -- and I, by the way, know very little about what the evidence was against Mr. Fisher -- but I would not expect anybody to commit that offence and then head for the car they used to get to that scene, stuck or otherwise, especially if it were stuck.
Q Okay. Well, would that -- would you not want to get away from the scene?
A Well, that's what I'm saying, but the last way I

would do that is run to a stuck car, or a just barely liberated car.

Q But if the stuck car is in the vicinity of the body, is that not going to lead the police to find you and say why was your car --

A Well, assuming that they find out who the offender was.

Q So they would -- say the police could find out who owned the car, would that not be --

A Oh, yeah, that would be relatively easy to do.

Q So again, just back to when you looked at this, the fact that Mr. Milgaard had committed this offence according to this theory --

A Uh-huh.

Q -- while his, the vehicle he was travelling in was stuck, I mean, it appears you knew about that; is that fair?

A I assume so.

Q And did you consider that as part of sort of poking holes or testing the case a bit to say, well, does that make sense and, if so, what can we make of that, or is that something the jury can deal with?

A Well, you would want to try to understand the evidence that you had in the case. I wouldn't

just say it was something the jury can deal with, but I didn't have an explanation, sir.

Q Okay.

A Sir.

Q And then it goes on to say:

> "Police wonder if this part of Wilson's and John's story is not somewhat shaded to cover their part."

And it would appear from this, and again I referred to an earlier excerpt where the police were doubting a bit the John/Wilson story, does it appear -- or were you aware at the time, Mr. Caldwell, that the police had concerns about what Nichol John and Ron Wilson --

A Well --

Q -- had said?

A Well I suppose to the same extent they would have concerns about any young persons driving through the city at that time, you know, who were more or less transient and -- in other words, I wouldn't be surprised that they would have those concerns about evidence of anyone like that.

Q If, if Ron Wilson and/or Nichol John were involved, if the evidence suggested that they were involved in the offence, let's just talk about

either in --
A Uh-huh.
Q -- any part of it, either parties to the offence or accessories, did that change anything as far as the prosecution was concerned?
A Did -- now you said 'if the evidence was that they were involved in any way'?
Q Yes.
A My view of the evidence then was that you couldn't, in effect, argue that they were involved in the offence because they -- I took the, if you will, final version that we've been talking about here as being correct of the sequence of events.
Q Yeah, and I appreciate -- let me ask it a different way. If -- and let's just talk as the prosecutor in presenting the evidence. Did it change what you could tender as evidence, or who you could call, or what you could ask Ms. John or Mr. Wilson in -- at the trial if they were parties to the offence or accessories?
A No, well, I think that that would be an evidentiary situation where a judge would have to warn the jury that, if they were parties to the offence, their evidence had to be, in effect, at least partially discounted, if I'm making any

sense.

Q Again --

A I don't know whether I've got that correct.

Q So -- and I think there is a note a bit later on that maybe touches on that -- so that if the Crown theory had been, for example, that Ron Wilson and Nichol John were, as the police suggest here, one possibility -- or I shouldn't say 'the police suggest', they suggest it as a possibility -- is that:

> "... Miller was picked up in the car instead of just spoken to on the first instant."

And then I think it goes on to suggest that perhaps that's where the uniform top, or implied that that's where it was taken off, so that part of the offence took place in the vehicle and Wilson and John were in it; --

A Well that --

Q -- would that make them parties to the offence or an argument --

A Well, just, I'll just read that if I may.

Q Yes, please.

A

> "Police wonder if this part of Wilson's and John's story is not somewhat shaded

to cover their part. One possibility is that Miller was picked up in the car instead of just spoken to in the first ..."

instance, I suppose that should be. Now --

Q If you could, actually, if you could go on to there I believe that's where --

A That --

Q And:

"Keeping in mind that ..."

A Yeah.

Q Well anyways, sorry, carry on.

A "... two males and one female in the car at the time and it was about 40 degrees below and very foggy she might have accepted an offer for a ride."

Indeed, she might have. The evidence we had is that she did not accept an offer for a ride. I'll just, if I may, pursue that.

Q Sure.

A "It could be possible the assault started in the car, the uniform top and sweater pulled off, perhaps even one boot, then the top coat put on again. Miller could have ...",

been:

"... could have fled the car at the lane or been forcibly made to leave. It is hard to believe..."

etcetera.

Now, first of all, she certainly could have accepted a ride. Secondly, those two or three other postulations, Mr. Hodson, could -- are certainly reasonable suggestions; (a) we had no evidence that would begin to come near matching them; and (b) if this -- this -- the statement:

"Miller could have fled the car in the lane or been forcibly made to leave. It is hard to believe ...",

she:

"... would have removed the top coat ..."

etcetera. Again, I never had a satisfactory solution to why her clothing ended up the way they were, but of course --

Q Sure.

A -- there was no evidence of that, in my estimation.

Q If we could just pause here.

A Yeah.
Q What the police are saying here is it could be possible the assault started in the car?
A Yup, yeah.
Q And that might explain how the coat came off?
A Yup.
Q The uniform came off?
A And I wouldn't be -- I would say it could be in a car, I never had any idea that it was Wilson's car.
Q Well in your theory that Mr. Milgaard had committed it, though, was it not -- umm, well, let's back up. I don't think the Crown theory was that it was committed in a car?
A No, that's right, so I -- we had no evidence that it was committed in Wilson's car. Now if you moved from Wilson's car, I would say that what happened certainly could be explained by the -- an unknown other person and other car treating her in that fashion.
Q Which would exclude Mr. Milgaard?
A Well, yeah.
Q Yeah. And that wasn't your theory at the time?
A Well that wasn't my theory, and we had a lack of the evidence in that direction, so --

Q Let's just try this again.
A Okay.
Q So what the police are saying, and keeping in mind that they start off saying that:

> "Police wonder if Wilson's and John's story is not somewhat shaded to cover their part."

And so what I read that to say is that 'they may not be telling us everything because of their part'.
A Umm, --
Q And then it goes on to say -- just let me go through this --
A Okay.
Q -- it talks about the assault occurring in the car, --
A Okay.
Q -- and there would be one of two scenarios; one would be that Wilson and John would be in the car when it happened, or two, they would be out of the car or one or both would be in or out; correct? That's --
A I assume so, yeah.
Q Yeah. And if they were in the car when the assault started would that, again, would that lead

you to believe that they might be parties to the offence --

A It --

Q -- or involved?

A It would be some evidence in that direction.

Q And if that were the case would their evidence, then, I think you said the judge would have to caution the jury that --

A Well that would be a whole different factual thing. Now, Mr. Hodson, I agree that:

> "It could be possible the assault started in the car, the uniform top and sweater pulled off, perhaps even one boot, then the top coat put on again. Miller could have ...",

been:

> "... have fled the car at the lane or been forcibly made to leave. It is hard to believe Miller would have removed the top coat in the lane and been allowed to put it on again. If this is true, who buried the sweater and boot."

Now that could all be a perfectly legitimate explanation but we had no evidence that would come near establishing that.

Q Sorry, I put two scenarios.
A Yeah.
Q The second scenario would be that, if it did occur or start in the car, it could have been, I suppose, when Ms. John and/or Mr. Wilson were both out of the car and -- and that -- had no knowledge of --
A Well, it could have been. Again, I don't think that was the evidence that we had, was it, I think. I think the evidence was that when the request was made, "where is Peace Hill", all three of them were in the car I believe.
Q Would it be fair to say though, at least at this point, the police had some concerns about Wilson and John's version?
A Well, yeah, I think that's correct. They are saying 'eh, as this goes along bear in mind this scenario, it could have been, it could have been a possible way the thing happened.'
Q And, if it did happen that way, then Wilson and John would not be telling the truth?
A No, I --
Q Is that fair?
A That -- certainly.
Q And was that a concern of yours when you were

preparing the case for prosecution, that John and Wilson may have been not being truthful to cover up their involvement?

A No. I never believed, on the evidence we had or any other basis, that Wilson and John had taken part in the assault on Miller. And there was no way I could, you know, erect this into them being part of that assault, I mean, based on the evidence we had.

Q And then, if we can just scroll down, it talks here about it -- where the body was found:

"It appeared ..."

to be:

"... there had been quite a struggle between the deceased and her assailant."

And you recall reading about that; do you?

A I must have, yup.

Q And in fact I think you looked at the photographs, you said, shortly after the murder; didn't you?

A Did I which?

Q You looked at the photographs of Gail Miller, the crime scene photographs, shortly after the murder?

A Oh yeah, in the ident section, yeah.

Q Yeah. And, again, would you have thought, Mr. Caldwell, that the assailant might have blood on

his clothing --
A I --
Q -- based upon what you knew of the physical circumstances?
A I would certainly think so.
Q And in fact you knew that Mr. Cadrain had already said in his statement that he saw blood?
A On Mr. Milgaard?
Q On Mr. Milgaard.
A I knew that at some stage of the proceedings.
Q And then, if we scroll down, it talks here about:
"After the offence Milgaard, Wilson and John drove into the 100 blk. Ave. T South where they came upon ..."
the Danchuks?
A Uh-huh.
Q And I think -- it says:
"The three spent some time at the Danchuk residence."
I think it was an hour and a half or something, an hour to an hour and a half, --
A Uh-huh.
Q -- is that right?
A That may well be.
Q And again -- and I think you called both Mr. and

Mrs. Danchuk as witnesses at the prelim and at the trial?

A I trust I did.

Q Yeah. And the fact that they, their evidence was that they didn't notice anything unusual with Mr. Milgaard, I think in his behaviour, or didn't observe any blood on his clothing; did that cause you any concern?

A Well the main concern with that would be that you do not fail to call witnesses because they didn't find incriminating evidence on the accused. On this instance the, I assume the Danchuks were perfectly believable and straightforward people, didn't see -- what was the terminology --

Q I, that was my words, it doesn't say that in this report --

A Yes.

Q -- but I'm summarizing their evidence.

A Yeah.

Q I don't think they saw any blood, or they said they don't recall seeing any blood on the clothing.

A Yeah.

Q And I believe generally, in particular Mrs. Danchuk, that nothing unusual with Mr.

Milgaard's behaviour?

A So what that would do, Mr. Hodson, is I believe they had seen this party of three in the car and so forth, I called the evidence as they had given it to the police, which could be argued was exculpatory towards David Milgaard because there -- you certainly don't simply use evidence, the witnesses who saw blood or, you know, broken noses, this, that, and the other. They saw a relatively normal scene, I called them, which is --

Q Yeah, right, and I appreciate your answer about calling them.

A Yeah.

Q My question is, when you looked at this case and you were trying to put it together as to what might have happened and where the evidence led, how, if at all, did you look at the Danchuk evidence and say, 'well how does that fit that they didn't see the blood'?

A Well I would simply say that they would appear to be credible citizens who I had to call because they were part of the transaction, and the fact that they didn't see anything damning toward Milgaard, by no means could you exclude them or

not call them.
Q No, and I appreciate that, Mr. Caldwell.
A Yeah.
Q But my question is more to your thinking at the time, when you get this information from the police, in trying to put together your case --
A Yeah.
Q -- and making sense of what people saw --
A Uh-huh.
Q -- or didn't see.
A Well that --
Q And whether --
A Yeah.
Q -- I'm sorry -- and whether that -- and I appreciate you called them as witnesses, and I appreciate your evidence that they may have been exculpatory, but in your mind did you ever -- or how did you rationalize or see their evidence?
A Well I, I saw it exactly the way they gave it, and I didn't feel that it detracted from whatever the rest of the Crown's case was. In other words, I didn't feel that the fact that the two of them didn't see, if you will, blood or evidence of an uproar, that wouldn't cause me, sir, to discount other Crown witnesses or evidence that I thought

was legitimate because I -- it clearly -- it happens very often in these situations that three or four witnesses will see things quite honestly that are -- end up being described very differently, but I think honestly so. I don't know if that --

Q Yes, no, --

A Yeah.

Q -- I appreciate your clarifying that. If we could go down to the bottom, second-last paragraph:

> "Wilson and Cadrain observed what appeared to be blood on Milgaard's clothing."

I take it that would be an important piece of evidence?

A I would think so.

Q And I believe, it says:

> "The clothing have not been located.",

and am I -- I think I'm correctly stating, Mr. Caldwell, that there was never any physical evidence obtained to support that; is that fair?

A To?

Q Corroborate the blood on Mr. Milgaard?

A My memory is that you are right, in other words that it says:

"The clothing have ...",

or:

"... clothing have not been located."

If it ever was, I would suggest there was nothing incriminating come out of it, because we did run into situations in this case where suspect clothing had been laundered, etcetera.

Q Yeah.

A But I would take this:

"... clothing have not been located."

Q Okay. If we can go down to the last paragraph it talks about, when they were at Cadrain's house:

"Milgaard had the keys for the car and left stating he wanted to drive a couple blocks."

And then I think the car got stuck, and then it references, this bottom line is cut off in all of our versions.

A Okay.

Q I think what it says is:

"A wallet containing identification in the name of Miller, 2 hospitalization cards and a toque, possibly worn by Milgaard, was found ..."

in the general area of Cadrain's.

A Uh-huh.
Q And, again, was that something that became part of the Crown theory as well, that --
A Yeah, it certainly would be, because the understanding of the facts at that time was that Milgaard was the person who had committed the offence and, on the way to find his friend Cadrain, the assumption would be that he had discarded those items. And this, of course, is well in advance of anyone, or me at least, realizing that Fisher lived there, as you will understand, sir.
Q Okay. Next page, please. And talks about the car being stuck in the morning and Mr. Milgaard stated that, or people stating that he seemed excited, and talks about the tow truck drivers. And you became aware of that information, that that morning --
A Yeah, no doubt.
Q And again, that, was that significant?
A Well it's simply part of that chain of events involving that unreliable car and their attempts to eventually get to the west edge of Saskatoon and leave town. Umm, the:
"... noted he seemed excited.",

I, with all deference, I think it's clear that that's part of his character, or was then. Which is nothing, you know, that's not a knock, it's seen to be --

Q But the part -- I'm sorry --

A Yeah?

Q -- but was not part of the case, from some of the people who observed Mr. Milgaard later that day, that he was anxious to leave?

A I, yeah, I believe that was the case.

Q And would it be fair to infer, from that, that the suggestion there was that he was trying to get away?

A Well certainly, at that point, that would be my understanding of it.

Q And so that evidence from people who saw Mr. Milgaard and said he seemed excited and in a hurry and drove fast; would that be a part of the theory that he was trying to get away?

A That, yes, it would.

Q Yeah. And then, if we go down, it says:

> "Shortly after 7:00 a.m. Milgaard had been in the Trav-a-leer Motel where he obtained a map. At this time he wore no shoes."

And again I'm wondering, Mr. Caldwell, when you got the police evidence and looked at it with a critical eye, which I think you said you would have looked at it, and said "okay, let's see how this all fits together"; is that fair?

A That's correct.

Q As far as the timing, and you may have touched on this already, the fact that there is evidence -- and I believe it was Mr. Rasmussen who ultimately testified from the Trav-a-leer about the time, I guess it depends on what 'shortly after 7:00 a.m.' means?

A Yeah. Well, Mr. Hodson, the -- again without belabouring, what I've found in many cases, that very honest people give estimates of time which are -- simply are not right on the nose with one another, and yet in my view are still all correct, that's a characteristic feature of cases that I have seen simply happens that way, unless you are dealing with some break-in where they record the thing as the guy comes in. So I wouldn't -- were you wondering about the shoe business or --

Q No, I'm wondering about the time.

A Yeah.

Q For example, if Mr. Rasmussen was correct that it

was shortly after 7:00 -- and I mean I think his evidence at trial was that he said could have been as late at 7:30?

A Oh, okay, yeah.

Q If we just back up for a moment.

A Yeah.

Q If Mr. Milgaard was at the Trav-a-leer Motel at 7:05, 7:10, then that would suggest, would it not, that he couldn't have committed the murder?

A Well, viewed in isolation, it could be argued that -- in that way.

Now one of the things that I hope, I thought was helpful or hopeful, is that I had that, I think it's P-2 or P-3, the map of the whole neighbourhood, which Ident Officer Kleiv went around, visited all the places and printed that, and with personal knowledge of where they were I thought could be helpful in understanding the physical layout and where all these places were. But I would never hope to pin that down, Mr. Hodson, to 5, 10, 15 minutes, I never -- I know we have the map in question here as well.

Q Sure. Okay.

And this is probably an appropriate spot to break for the day.

(Adjourned at 4:30 p.m.)

OFFICIAL QUEEN'S BENCH COURT REPORTERS' CERTIFICATES:

We, Karen Hinz, CSR, and Donald G. Meyer, RPR, CSR, Official Queen's Bench Court Reporters for the Province of Saskatchewan, hereby certify that the foregoing pages contain a true and correct transcription of our shorthand notes taken herein to the best of our knowledge, skill, and ability.

_____, CSR
Karen Hinz, CSR
Official Queen's Bench Court Reporter

_____, RPR, CSR
Donald G. Meyer, RPR, CSR
Official Queen's Bench Court Reporter

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