

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
 Sheraton Cavalier Hotel at
 Saskatoon, Saskatchewan

On Thursday, October 27th, 2005
 Volume 86
Inquiry Proceedings

Appearances :

- Mr. Hersh Wolch, Q.C., for Mr. David Milgaard
- Mr. James Lockyer, Esq., for Ms. Joyce Milgaard
- Ms. Lana Krogan , for Government of Saskatchewan
- Ms. Catherine Knox, for Mr. T.D.R. (Bobs) Caldwell
- Mr. Garrett Wilson, Q.C., for Mr. Serge Kujawa
- Mr. Rick Elson, Esq., for the Saskatoon Police Service
- Mr. Chris Boychuk, Esq., for Mr. Eddie Karst
- Mr. Bruce Gibson and Ms. Rochelle Wempe, for the RCMP
- Mr. Eamon O'Keefe, Esq., for Mr. Larry Fisher
- Mr. David Frayer, Q.C., for Minister of Justice
(Canada), The Hon. Irwin Cotler
- Mr. Alexander Pringle, Q.C., for Justice Calvin Tallis
(Retired)

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- Ms. Karen Hinz, CSR , and Official Q.B. Court Reporters
- Mr. Don Meyer, RPR, CSR ,
- Mr. Jerry Wilde, Security Officer
- Mr. Tony Fitzpatrick, Inland Audio Technician

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1 Transcript of Proceedings
2 (Reconvened at 9:03 a.m.)
3 COMMISSIONER MacCALLUM: Morning.
4 ALL COUNSEL: Morning.
09:04 5 MR. HODSON: Mr. Caldwell, or just before I
6 carry on, Mr. Commissioner, I -- a number of
7 weeks or months ago Mr. Wolch advised me that he
8 had a commitment that conflicted with today and
9 he is leaving today at 10:00 for that commitment,
09:04 10 which I was aware of. And I just wanted to
11 advise you of that, that he will be leaving, and
12 that Mr. Lockyer will be responsible for having
13 my water ready here the remainder of the day.
14 THOMAS DAVID ROBERTS CALDWELL, continued :
15 BY MR. HODSON :
16 Q Mr. Caldwell, yesterday we talked about -- we had
17 got to the point, I think, about 1993 or 1992-'93.
18 I just want to go back and touch on a couple of
19 items. Do you recall, back in 1969-1970, in your
09:05 20 dealings with the Saskatoon City Police, whether
21 there was any division or disagreement or anything
22 of that nature amongst the police regarding David
23 Milgaard's responsibility for the murder of Gail
24 Miller?
09:05 25 A Umm, I know, sir, there were one or two of the

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1 Q And was that something that you would have been
2 aware of back at the time of prosecuting the case?
3 A Only very, very slightly, and, you know, I didn't
4 feel that it was any impediment to going on, if
09:06 5 you will.
6 Q Yeah. I think you used the word you thought it
7 was 'healthy'; could you elaborate on that?
8 A Well, yeah, in the sense that in any major and
9 complicated case I can't think that it's negative
09:07 10 to have some -- one or more investigators saying
11 "eh, did you fellas look at this" or "how can we
12 get around that". That kind of thing, I think,
13 would be healthy.
14 Q And so I think you said Mr. Wood, who I think was
09:07 15 superintendent at the time, --
16 A Yeah.
17 Q -- you recall, you have some memory of
18 Superintendent Wood being a person who had at
19 least doubts about Mr. Milgaard's guilt; is that
09:07 20 fair?
21 A Yes, and I knew that, I -- I think it was later on
22 in the case that I was aware of that.
23 Q And you said Mr. Weir; do you remember Mr. Weir
24 being involved in the investigation, or where --
09:07 25 what memory do you have of Mr. Weir's doubts, if I

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1 police officers, as the matter was developing, who
2 entertained doubts that Mr. Milgaard was the, you
3 know, the proper accused, if you will. Those --
4 those were, you know, just points of view they
09:05 5 had. There was certainly no division among the
6 ranks as to the case, if you will, and I would
7 expect the two things I have mentioned to have
8 happened, didn't think that was out of the
9 ordinary, in fact I guess it would be healthy.
09:05 10 Q So --
11 A Pardon me.
12 Q -- you say two or three things happened?
13 A Yeah.
14 Q So there were some officers who, was it had
09:06 15 doubts, or maybe even went further and thought
16 maybe Mr. Milgaard was not the person who
17 committed the crime?
18 A Well, I don't know how thinly I could slice that,
19 but certainly had some doubts and, you know, I
09:06 20 wouldn't think that would be unhealthy.
21 Q And do you remember who those officers were?
22 A Well I know that -- I believe that Gus Weir was
23 one of them, and for some part of the case Deputy
24 Chief Wood was one of them, and that, you know,
09:06 25 that was discussed amongst themselves, etcetera.

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1 can call it that?
2 A Well, really not much more than just the category.
3 I know he was involved, and he testified here, of
4 course. Umm --
09:07 5 Q I'm sorry, but let's just go back, I'm trying to
6 get your memory of events 1969-1970, --
7 A Uh-huh.
8 Q -- not what you subsequently heard police officers
9 say.
09:07 10 A Okay.
11 Q But let's go back. At the time, sir, and I think
12 you've said, yes, there were officers who had
13 doubts back in '69-'70. Do you know whether Gus
14 Weir was someone who you knew, at that time, had
09:08 15 doubts?
16 A Yeah. At that time, Mr. Hodson, I don't think I
17 knew that, I think that was --
18 Q But, with Mr. Wood, was that the case?
19 A Yes, I did learn, because Mr. Wood, you know,
09:08 20 would have talked with other investigators at that
21 time.
22 Q And do you remember the nature of Mr. Wood's
23 doubts, or of any other officer's doubts?
24 A I really don't, sir.
09:08 25 Q And did that, the fact that -- well, I mean

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1 Mr. Woods was the senior, next to the chief and
2 deputy chief, he was the senior police officer at
3 the time; correct?
4 A That's right.
09:08 5 Q Did that cause you a concern, as a prosecutor,
6 that the senior officer in charge of the criminal
7 investigations division had doubts about Mr.
8 Milgaard's guilt?
9 A Not really, because I had to carry on with all
09:09 10 the, you know, features of the case and try to get
11 them all organized, keep them that way. I'd be
12 aware of his, his doubts. It wouldn't affect, you
13 know, my overall conduct I wouldn't suggest.
14 Q And just, let's just talk generally in your
09:09 15 experience as a prosecutor and your dealing with
16 the police on investigations, not necessarily the
17 Gail Miller murder --
18 A Uh-huh.
19 Q -- but other cases. Was it common to have
09:09 20 officers disagree on either points, small points,
21 big points, things of that nature?
22 A It wasn't uncommon to have them disagree. Very
23 often, by the time a case came to prelim or trial,
24 someone had, you know, decided what seemed to be
09:09 25 the accurate version and gone ahead in that

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1 everyone, you know, the leeway to ...
2 really follow the thing up and go and do
3 what they thought they had to do, and
4 there were, there was, you know, there
09:11 5 was one school of thought that didn't
6 believe Milgaard was guilty of course,
7 like in the police department, and
8 others of course ...",
9 and then you went on. And so this is what you
09:11 10 told Mr. Carlyle-Gordge in 1983; is that what you
11 related to us this morning?
12 A Yeah, that would be the same thing, Mr. Hodson.
13 Q And so again:
14 "... one school of thought that didn't
09:11 15 believe Milgaard was guilty of course
16 ..."?
17 A Yeah, essentially that, what I have just told you
18 about.
19 Q If we could call up 150975. And yesterday I went
09:11 20 through this document with you, this is your
21 October 25, 1969 (sic) letter to Mr. Williams,
22 which I think is your first piece of written
23 correspondence that we have. If we can go to the,
24 I think, third page.
09:12 25 COMMISSIONER MacCALLUM: 1969; is it '89?

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1 fashion. So it wasn't unheard of, I guess it was
2 not uncommon, but I didn't -- that's about all I
3 can say.
4 Q And did you have cases where, that you were
09:10 5 prosecuting, where two officers might have a
6 disagreement over what -- what a piece of evidence
7 might be or might mean, things of that nature?
8 A I would expect so, Mr. Hodson. It would take me
9 some effort to recall one of them.
09:10 10 Q I'm not asking specifically.
11 A Yeah.
12 Q Just generally.
13 A Yeah, no, that would be correct, sir.
14 Q And if we could call up 325661, which is the next
09:10 15 page from the Peter Carlyle-Gordge transcript.
16 And I neglected to put this to you yesterday when
17 I went through this document, Mr. Caldwell, and
18 this is the second tape with Mr. Carlyle-Gordge,
19 and I believe you indicated that was likely the
09:10 20 personal meeting?
21 A That's -- yeah.
22 Q And you say:
23 "... was really crazy and ... Jim
24 Kettles was the chief and he ... was
09:11 25 extremely good in terms of giving

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1 MR. HODSON: '89, I'm sorry, 1989.
2 Actually, the next page, please.
3 BY MR. HODSON:
4 Q And you will recall that I went through this part
09:12 5 of the letter. If we could just call out part D
6 and the part below it, please, and I'll just
7 repeat that. It says:
8 "On September 26th, you advised me by
9 telephone that Mr. Wolch had suggested
09:12 10 that on the Provincial file there were
11 either news clippings or police reports
12 to the above effect, and asked me to
13 check and see if this is so."
14 And that was the Other Attacks on Nurses Or Other
09:12 15 Women By Knife-Wielding Assailants, and you will
16 recall we went through that yesterday, Mr.
17 Caldwell?
18 A Yes, sir.
19 Q And I was trying to get any assistance you may
09:12 20 have as to how and where that originated, and why
21 it was that Mr. Williams was asking you, and I
22 suggested that it may have come from -- it may
23 have come from Peter Carlyle-Gordge's review of
24 the file. I have found some documents last night
09:13 25 that may assist us.

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1 A Okay.

2 Q If we could go to 010056 -- or actually, sorry,

3 let's go to 163061. This is a letter of December

4 28th, 1988, from David Asper to Sandra Bartlett at

09:13 5 CBC. Do you know a Sandra Bartlett?

6 A I met her. She was in at CBK Regina and, at one

7 point, was in our office. There was a television

8 feature shot in our office that involved a

9 gentleman who was a Saskatchewan interviewer, and

09:14 10 I -- regrettably died. But before that he had

11 switched networks, if you will, from CBC to CTV or

12 vice versa -- I'm sure his name will come back to

13 me -- with the result that that interview, as far

14 as I could ascertain, never did go to air. But

09:14 15 she was in our office as part of the support team,

16 if you will, when that happened. I'm sure the

17 name will come but --

18 Q Yeah. Did that have anything to do with the David

19 Milgaard prosecution?

09:14 20 A Well yes, it was about that, it was an interview

21 on the case.

22 Q And so who was interviewed; was it you?

23 A Me, yeah.

24 Q And so someone from CBC interviewed you?

09:14 25 A The -- yes. Now he was a Saskatchewan person,

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1 "David's interest in having the Fifth

2 Estate air a story about his case is

3 obviously very keen. However, due to

4 the understandable exigencies of current

09:16 5 affairs programming, his experience to

6 date with the Fifth Estate has been

7 "on-again, off-again". Consequently, we

8 would very much appreciate a firm answer

9 as to whether the producers will go to

09:16 10 air with this story as soon as possible.

11 My instructions are to impose a

12 seven to ten day time limit for this

13 decision to be made. After this time

14 period has lapsed, we will be making

09:16 15 this story available to the media in

16 general. There may be some flexibility

17 in these time frames, but I think that

18 you can understand David's desire to get

19 a firm commitment one way or the other.

09:16 20 I trust that you will find this

21 Application most interesting and look

22 forward to hearing from you."

23 Then I want to go to 225007. And this is a

24 letter of May 1, 1989 from Sandra Bartlett to

09:17 25 David Milgaard, and I think there was an

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1 died young, not Mike McCord but someone in that

2 general league if you will. He came, interviewed

3 me, the feature was filmed, if you will, but I

4 think that's what happened to it maybe.

09:15 5 Q And do you know when that would have been, Mr.

6 Caldwell, and just generally?

7 A Yeah.

8 Q Would it have been --

9 A Well, certainly post all the legal proceedings,

09:15 10 like after the Supreme Court I'm sure.

11 Q Okay.

12 A Hmm.

13 Q Let me just go back, and maybe we'll go through

14 these letters, and this might assist.

09:15 15 A Okay.

16 Q This is a letter December 28th, 1988 from

17 Mr. Asper to Sandra Bartlett, and the December

18 28th, 1988 date is significant because that's the

19 same date, I believe, that Mr. Milgaard filed his

09:15 20 first application to the federal minister. And

21 we'll just go through this letter.

22 A Okay.

23 Q Mr. Asper attaches a copy of the application to

24 the minister, it was sent on December 28th, and

09:15 25 presume will be received the next day. And then:

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1 intervening letter from Mr. Milgaard to Sandra

2 Bartlett, which I don't need to bring up. She

3 writes:

4 "I must first apologize to you for

09:17 5 taking so long to write about the

6 cancellation of the fifth estate piece.

7 I was very disappointed to learn that

8 once again, and it appears final, that

9 the producers had decided not to go

09:17 10 ahead with the item. I know it must

11 have been a blow to you. No matter how

12 hard you try it would be hard not to

13 count on it and imagine what affect it

14 could have on your case."

09:17 15 And it goes on to talk about some other matters.

16 It says:

17 "I can only say that I feel badly,

18 because on many occasions I pushed the

19 fifth estate to take another look at the

09:17 20 story and may have in some way

21 encouraged them to put off making this

22 final decision, making worse, the deep

23 disappointment you must have felt when

24 you heard the news.

09:17 25 Recently, I spoke with David

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1 Asper, and he tells me that the justice
2 department application has passed the
3 first hurdle and the officials there
4 will be taking a detailed look at the
09:18 5 legal material."
6 And it goes on to talk about parole. And then
7 she says:
8 "I have continued to try to contact
9 Nichol Johns - somehow I feel a little
09:18 10 possessed by her. I feel if I just keep
11 trying someday she will talk about the
12 events which she cannot recall."
13 I then want to go to 010056 and this is a letter
14 of August 29th, 1989 and it's from David Asper to
09:16 15 the Minister of Justice at that time, the
16 Honourable Doug Lewis, and then refers to a May
17 8th letter and discussions between Mr. Asper and
18 Mr. Williams and they enclose an affidavit of
19 David Milgaard, and then Mr. Asper writes:
09:17 20 "It has also come to our attention that
21 there may have been reports of an
22 individual harassing or accosting nurses
23 in the vicinity where Gail Miller was
24 murdered in the days or weeks preceding
09:17 25 the murder. Our information comes from

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1 getting on with the rest of the proceedings.
2 Q And why would you let her look through the file?
3 A Presumably because she was the producer of the
4 show and was physically up there.
09:18 5 Q And do you remember what the subject matter was,
6 can you give us some idea of what it was you were
7 being interviewed about? Obviously about the
8 case.
9 A Yeah, the case in general, you know, the --
09:18 10 whatever, how did this happen, why did that
11 happen, those kind of things.
12 Q Do you recall -- I think you said that interview
13 would have taken place at the Saskatoon offices?
14 A At the -- yeah, Saskatoon Crown prosecutors.
09:19 15 Q Where was it located, which --
16 A In Canterbury, Canterbury Tower.
17 Q And was it before or after you left the employ of
18 the Provincial Crown?
19 A I'm sure -- I'm sure I was still employed by them.
09:19 20 That ended in --
21 Q 1987 you told us.
22 A Yes, that's right, '87, because I was still there
23 in the office, I was still in charge of the -- I
24 was still regional Crown.
09:19 25 Q And so sometime prior to 1987 you think is when --

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1 Ms. Sandra Bartlett who is a researcher
2 for C.B.C. in Regina. She indicated
3 that she had reviewed the file of Mr.
4 Caldwell who of course was the
09:17 5 prosecutor in this case. Ms. Bartlett
6 advises that she saw in the file either
7 newspaper clippings or police incident
8 reports showing that various other
9 nurses had been accosted. Indeed, our
09:17 10 information is that another nurse had
11 actually been accosted by a knife --
12 It should be wielding,
13 "-- person but that the attack was
14 interrupted when the nurses boyfriend
09:17 15 arrive on the scene. The assailant
16 apparently fled without further
17 incident."
18 Mr. Caldwell, did you ever show your prosecution
19 file to Sandra Bartlett?
09:17 20 A I think, Mr. Hodson, that this is the same episode
21 that I've just described. I believe she was part
22 of the, if you will, producer or some crew member
23 of that show that was filmed in our office in
24 Saskatoon and I know she was there, I met her and
09:18 25 I'm sure she looked through the file while we were

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1 A That must be it, and I --
2 Q Are you able to give us any -- let's go back. Was
3 it 1980, was it 1986, any -- 1971? Any idea where
4 and when this would have taken place?
09:19 5 A I really can't without -- and I have no, you know,
6 dates, a way to check against. I phoned -- Ken
7 MacKay at that point was our Regina boss, if you
8 will, and I phoned him, told him this TV show had
9 been proposed and his response was to the effect
09:20 10 of you might as well do it because if you don't
11 you'll have no idea of, you know, what the
12 contents are and I went ahead on that footing.
13 Q And was it the Fifth Estate, do you know if
14 that --
09:20 15 A That I'm not sure of, but the interviewer, whose
16 name I'm embarrassed I can't recall, I think
17 shortly after that switched networks --
18 Q Yes.
19 A -- and that was the reason given to me why the
09:20 20 thing never went to air as I understand it.
21 Q I see. So your knowledge is it was never made
22 public?
23 A That's right. At some point I inquired of
24 whatever became of the good old so and so show and
09:20 25 that's what I learned.

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1 Q And again, just on what -- we have gone through
2 your file in detail in this Inquiry. Would you
3 have given Sandra Bartlett access to that?
4 A I'm sure that she sat in our library and looked
09:21 5 through the file while this process was going on,
6 or parts of it at any rate.
7 Q And again, and I think we covered this yesterday,
8 and in your letter to Mr. Williams you went
9 through your file and I think you told us, please
09:21 10 correct me if I'm wrong, that you could not locate
11 any newspaper clippings or police incident reports
12 showing that various other nurses had been
13 accosted?
14 A That's correct, sir.
09:21 15 Q If we can go to 039010, please?
16 A Mr. Hodson, if I come up with that name or anyone
17 in the audience does, I would be delighted --
18 Q I'll see if we can find --
19 A It's a very well-known television journalist of
09:21 20 that day, and a young --
21 Q We'll check and see if we can find some more
22 details about that in the documents.
23 A Very good.
24 Q Next, this is an article by Dan Lett in the
09:22 25 Winnipeg Free Press of May 15th, 1990, and so this

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1 As well, Saskatoon police were
2 given a statement in 1980 from another
3 person who identified the same man, now
4 serving time in Prince Albert federal
09:23 5 penitentiary, as the killer of nursing
6 assistant Gail Miller.
7 A February 1969 Saskatoon
8 police report indicates officers
9 canvassing the neighbourhood where
09:23 10 Miller's body was found interviewed the
11 Prince Albert inmate at 6:49 a.m. while
12 he waited for a bus at a stop used each
13 morning by the victim.
14 Just four days earlier,
09:23 15 Miller's half-naked body was found face
16 down in a snow bank. She had been
17 stabbed 15 times."
18 And just pause there. This is obviously
19 referring to Mr. McCorrison's police report of
09:23 20 February 5, 1969 referring to the February 3rd,
21 '69 meeting of Larry Fisher at the bus stop;
22 agreed?
23 A That's how I take it.
24 Q And just a bit of background here. At the time,
09:23 25 May of 1990 when this article was published, we

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1 would be about a year and a half after the
2 application is first filed with the federal
3 minister, but I think before any formal response.
4 A Okay.
09:22 5 COMMISSIONER MacCALLUM: What was the date,
6 I'm sorry?
7 BY MR. HODSON:
8 Q I'm sorry, the date is May 15th, 1990 and it talks
9 about a cover-up by Saskatoon police, and in the
09:22 10 article Mr. Lett writes that:
11 "Joyce Milgaard, David's mother, said
12 she was told --"
13 Sorry, let me just back up.
14 A Okay.
09:22 15 Q "A February 1969 Saskatoon police report
16 indicates officers --"
17 You know what, I'm going to go right back to the
18 start, Mr. Caldwell.
19 A Very good.
09:22 20 Q It says:
21 "A man now being investigated as a
22 suspect in a 1969 murder, for which
23 Stony Mountain inmate David Milgaard was
24 convicted, was interviewed by Saskatoon
09:22 25 police only four days after the slaying.

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1 heard evidence, and we'll hear more evidence, that
2 at this time people on behalf of Mr. Milgaard were
3 pursuing Mr. Fisher as a suspect for the murder of
4 Gail Miller?
09:24 5 A Yeah.
6 Q Mr. Williams with Federal Justice had been made
7 aware of that and he and Mr. Pearson were also
8 following up on the matter and I think right
9 around this time, in May of 1990, this so-called
09:24 10 second suspect was made known to the media, I
11 think by Joyce Milgaard, that there was another
12 suspect, but a name was not associated with him at
13 that time, it wasn't until June 22nd, 1990 that
14 the CBC identified this inmate at Prince Albert as
09:24 15 being Larry Fisher, so that's, I think, what we've
16 heard or what the documents suggest as far as the
17 time frame.
18 A Okay.
19 Q And so I want to ask you, though, this paragraph
09:24 20 here, and again we're talking about the police
21 report of McCorrison, and it says:
22 "Joyce Milgaard, David's mother, said
23 she was told of the police report by
24 Saskatoon crown attorney T.D.R. (Bobs)
09:25 25 Caldwell, but at the time no one

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1 realized the significance of the event."
2 I'm wondering if you can help us, Mr. Caldwell.
3 Did you ever discuss or give that police report
4 to Joyce Milgaard?
09:25 5 A No, I never had any face-to-face discussions with
6 Joyce Milgaard to my knowledge and I certainly did
7 not give her that report, if indeed it existed.
8 Q And let's just go back and try and see where and
9 when that might have happened. Back in 1969,
09:25 10 1970, I think you've told us that you would not
11 have disclosed the police report to Mr. Tallis; is
12 that fair?
13 A To --
14 Q Mr. Tallis, the police report.
09:25 15 A Oh, I guess -- pardon me.
16 Q And I think you testified that your practice was
17 to disclose witness statements, but that police
18 reports were a different category?
19 A Yeah, that's right.
20 Q I --
21 A Go ahead, sir.
22 Q I think what you said is I might show parts of a
23 police report to defence counsel, I think you told
24 us you couldn't say that you did --
09:26 25 A All right.

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1 Milgaard forces.
2 Q And is that something you knew in 1983 or
3 discovered later?
4 A I would suspect I discovered it later, sir.
09:27 5 Q Then if we can call up 004732.
6 A I'm sorry, yeah, the way Mr. Carlyle-Gordge got
7 ahold of me and, yeah, at that time I wouldn't
8 know that he was part of that camp, if you will.
9 Q And I think there's some documents later that I'll
09:27 10 go through on that subject.
11 A Okay.
12 Q And then here's an article, May 16th, 1990, which
13 is the next day, and it's a CP wire story out of
14 Winnipeg and I suspect it may have picked up on
09:27 15 some of Mr. Lett's report, but again it talks
16 about the man being investigated for the murder
17 and was interviewed by Saskatoon police only four
18 days after the slaying, and if we can scroll down,
19 please, and then it says:
09:28 20 "Joyce Milgaard, David's mother, said
21 she learned of the police report from
22 Saskatoon Crown prosecutor T.D.R. (Bobs)
23 Caldwell. At the time, no one realized
24 the significance of the interview.
09:28 25 Asked Tuesday about latest developments,

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1 Q -- in this case, but I think you also said that
2 you never would have given a police report to
3 defence counsel?
09:26 4 A I believe that's what I said and I believe that's
5 correct.
6 Q And can we conclude from that that you would also
7 not have given the police report at that time to
8 either David Milgaard or Joyce Milgaard; if you
9 wouldn't give it to his lawyer, I presume you
09:26 10 wouldn't give it to them?
11 A Absolutely.
12 Q We then go ahead in 1983 and we looked yesterday
13 at documents where Peter Carlyle-Gordge looked at
14 your file and in fact dictated a note about this
09:26 15 very police report. Do you remember me showing
16 you that?
17 A Yes, sir.
18 Q And I suppose, and again we'll hear from
19 Mrs. Milgaard and Mr. Carlyle-Gordge on this
09:26 20 issue, but is that a possible explanation as to
21 how it may have --
22 A It certainly could be because --
23 Q -- got to her?
24 A -- my understanding is that Mr. Carlyle-Gordge was
09:26 25 working in concert or in assistance with the

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1 Caldwell flatly refused any comment
2 whatsoever."
3 And do you have any reason to dispute that they
4 would have called you for a comment?
09:28 5 A No, I imagine that that's correct.
6 Q And why would you not have commented?
7 A Well, because this -- I believe that at this time,
8 this Winnipeg newspaper, or the person that wrote
9 this article seemed to me to be part of the
09:28 10 opposition team, if you will, and digging for
11 things I simply -- I didn't believe the first part
12 of that and I was not going to expand on it by,
13 you know, by agreeing to it or otherwise.
14 Q Mr. Caldwell, with respect to the McCorrison
09:29 15 report of seeing Larry Fisher at the bus stop on
16 February 3, 1969, would you agree with the
17 statement at the time no one realized the
18 significance of the interview?
19 A Well, at the time McCorrison interviewed Fisher
09:29 20 they certainly didn't, if that's what you are
21 saying.
22 Q Yeah. Just at the time, being February 3rd, 1969,
23 would you agree with the statement that no one
24 realized the significance of the interview?
09:29 25 A The McCorrison to Fisher interview?

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1 Q Yes.

2 A I'm sure that's correct.

3 Q Go to 004752. This is an article again by Dan

4 Lett, Winnipeg Free Press, July 17th, 1990, and I

09:30 5 want to go through parts of this. We've seen this

6 article before, Mr. Caldwell.

7 A Okay.

8 Q And again, July 17th, 1990, just to put it in

9 perspective, let me tell you about a couple of

09:30 10 events that we've already heard evidence about.

11 The application, the first application by Mr.

12 Milgaard was before the Federal Minister of

13 Justice in, I think, June the 20th or June of

14 1990, or thereabouts. Ronald Wilson provided a

09:30 15 statement to Paul Henderson of Centurion

16 Ministries recanting some of his evidence at

17 trial, and you recall we've heard evidence about

18 that, about the recantation?

19 A Yes, sir, in the Inquiry.

09:30 20 Q And so this is an article that would be in the

21 weeks after that. Mr. Lett writes:

22 "A statement given by a star witness in

23 the David Milgaard case that could have

24 discredited his entire testimony appears

09:31 25 to have been withheld from defence

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1 A Okay, that's fine, sir.

2 Q And so there the statement of March 3, 1969, and

3 we have already heard evidence from you and

4 others, Mr. Caldwell, and identified documents

09:32 5 that indicate the March 3rd, 1969 statement was

6 sent by you to Mr. Tallis --

7 A Yes.

8 Q -- prior to the preliminary hearing?

9 A I'm sure that's right, sir.

09:32 10 Q And we've also reviewed the transcript where

11 Mr. Tallis cross-examined Ron Wilson with respect

12 to the March 3rd, 1969 statement.

13 A And I believe, sir, that that was the one to

14 Inspector Riddell; was it not?

09:32 15 Q Yes, it is.

16 A So that all of that I --

17 Q And you recall, I think, the other day, or maybe

18 the last sitting when I went through your closing

19 address to the jury, you also mentioned to the

09:32 20 jury in your closing address the fact that

21 Mr. Wilson had talked to Inspector Riddell in

22 March of '69. Do you recall us going through

23 that?

24 A No doubt I did, sir.

09:33 25 Q And so then if we can go down to the next --

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1 counsel during the 1969 trial, two

2 lawyers close to the case have charged.

3 A statement given by Ron Wilson

4 to RCMP in Regina on March 3, 1969,

09:31 5 denies any knowledge of the brutal

6 murder of nursing assistant Gail Miller

7 in Saskatoon or any involvement Milgaard

8 may have had with the crime."

9 Now, I'll go through the article later, but --

09:31 10 A Very good.

11 Q -- would you have been aware of this allegation or

12 charge against you at the time?

13 A At which time, sir?

14 Q At the time the article was --

09:31 15 A Is it a Winnipeg article?

16 Q I think it was carried elsewhere, but did you

17 become aware at any point, Mr. Caldwell, in 1990,

18 that there was an allegation made by David Asper

19 that you withheld Ron Wilson's first statement

09:31 20 from Mr. Tallis?

21 A I can't say now, sir, I very well may have, and

22 when there's an opportunity I would like to expand

23 on which statement we're talking about here.

24 Q Right. Well, maybe I will go through the article

09:32 25 and then ask you the questions.

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1 actually, let's just go through this for your

2 benefit.

3 A Okay, very good, but just that far, sir, clearly

4 that's the statement to Inspector Riddell.

09:33 5 Q Yes, it is.

6 A Which is just to -- which of course I did, or we

7 or I did not accept as being truthful, and I know

8 we've also been through that, sir, but I can

9 expand if you wish.

09:33 10 Q No, we've been through that.

11 A That's fine.

12 Q And just what I want to get at, Mr. Caldwell, is

13 the issue --

14 A Yeah.

09:33 15 Q -- and to go through whether or not you gave that

16 statement to Mr. Tallis, the disclosure of the

17 statement.

18 A Well, yeah, it's right in my covering letter to

19 Mr. Tallis. There were two statements went to him

09:33 20 which would be the one to Inspector Riddell and

21 the one to Saskatoon city.

22 Q And I want to go through this newspaper article

23 because it talks about an allegation made against

24 you that you failed to disclose that.

09:34 25 A Very good, sir.

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1 Q And then I want to get your response to some
2 questions, but let's go through the article, and
3 it says:
4 "Wilson's first statement --"
09:34 5 That's the one to Riddell,
6 "-- stands in stark contrast with
7 another dated May 23, 1969, in which he
8 gave Saskatoon police officers several
9 important pieces of testimony.
09:34 10 Wilson told police he saw
11 Milgaard with a paring knife before they
12 arrived in Saskatoon ..."
13 Etcetera, and they go through the details of that
14 statement.
09:34 15 Then if we can go up to the top
16 where I've circled there:
17 "However, in a statement taken last
18 month by a Seattle private detective --"
19 That's Mr. Henderson,
09:34 20 "-- Wilson claimed he was pressured by
21 police into testifying against his
22 friend.
23 Wilson said he told the police
24 he knew nothing, but they threatened to
09:34 25 pin the murder on him unless he

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1 statement," Asper said. "It strikes me
2 that it would be serious misconduct for
3 the Crown not to provide that
4 information to the defence."
09:35 5 "It suggests to me that Tallis
6 may never have known about it."
7 Let me pause there.
8 A Very good.
9 Q And would you agree with Mr. Asper's comment that
09:36 10 not providing Ron Wilson's first statement would
11 be serious misconduct for the Crown?
12 A I would.
13 Q And then they go on to talk about:
14 "Ken Watson, a B.C. lawyer representing
09:36 15 Wilson, said he was shocked when he
16 opened a package from the Justice
17 Department containing, among other
18 things, the two conflicting statements.
19 Watson said not only does the
09:36 20 first statement lend credibility to his
21 client's recent recant of his testimony,
22 it suggests a serious omission in
23 information given to Tallis.
24 "I can see no reason (for the
09:36 25 statement to be withheld)," Watson said.

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1 testified against Milgaard.
2 In the period between the first
3 and second statements, Wilson said he
4 was subjected to intense questioning and
09:35 5 polygraph tests.
6 The revelation of the first
7 statement has created serious concerns
8 about whether Cal Tallis, Milgaard's
9 lawyer in 1969 and now a Saskatchewan
09:35 10 Court of Appeal justice, was ever told
11 of its existence.
12 Tallis will not discuss the
13 case.
14 David Asper, Milgaard's
09:35 15 Winnipeg lawyer, noted Tallis made no
16 reference to the first statement in
17 questioning Wilson at either the
18 preliminary hearing or trial.
19 Asper said it is inconceivable
09:35 20 that Tallis, if he had known of the
21 original statement, would have ignored
22 it at the trial.
23 "It is painfully obvious from
24 the transcripts that Tallis did not
09:35 25 direct Wilson to the original

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1 "Any lawyer would have questioned it and
2 it would have been quickly exposed in a
3 court."
4 The original four-page
09:36 5 statement, witnessed by RCMP Insp.
6 J.A.B. Riddell, describes an uneventful
7 trip to Saskatoon the morning of January
8 31, 1969.
9 In the statement, Wilson noted
09:36 10 he never saw Milgaard with the knife, as
11 he later testified, nor did he see blood
12 on his clothes, another damning
13 disclosure at the trial.
14 In addition, Wilson rebuts a
09:37 15 major Crown argument by saying Milgaard
16 did not leave the car for a period of 15
17 minutes when they became stuck. Crown
18 attorney T.D.R. Caldwell argued Milgaard
19 killed Miller in the time he was away
09:37 20 from the car.
21 "I am convinced that Dave
22 Milgaard never left our company during
23 the morning we were in Saskatoon,"
24 Wilson's original statement said.
09:37 25 Wilson, in an interview from

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1 his B.C. home, said he did not remember
2 giving the first statement, but firmly
3 believes Tallis could have broken him on
4 the stand if he had used it at the
09:37 5 trial.
6 "It's all a bunch of crap,"
7 Wilson said of his testimony. "The
8 first one was the one that was supposed
9 to be in court. If they had used it
09:37 10 then, it would all have been over."
11 Wilson said he is now more
12 confident than ever that similar
13 statements must exist for the other
14 witnesses -- Nichol John and Albert
09:37 15 Cadrain -- that would also highlight
16 major discrepancies."
17 And we have been through the statements, we've
18 been through your disclosure with Mr. Tallis, Mr.
19 Caldwell, and you've already stated that the
09:37 20 first statement was given to Mr. Tallis. I don't
21 want to cover that.
22 A Very good.
23 Q What I want to ask you about is what if anything
24 you did about this information in the public
09:38 25 domain that either suggest or imply misconduct on

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1 I think post polygraph, sir, as I recall it, Mr.
2 Hodson.
3 Q Yes.
4 A All right. And it stands in stark contrast to it
09:39 5 because certainly in my view the first statement
6 was incorrect in many respects, I'm not even sure
7 if it recited that they came to Saskatoon, but --
8 Q I believe it did.
9 A Okay. Well, that's progress I guess. Now -- then
09:40 10 the May 23rd statement is the one which I at least
11 conceived of as being his truthful statement to
12 the best of his abilities post polygraph. Now, if
13 I can go to the top of the next --
14 Q Yes.
09:40 15 A -- column, please -- yeah. Now this -- the
16 private detective I believe was one of those
17 Centurion Ministries gentlemen.
18 Q Yes.
19 A Okay.
09:40 20 Q Perhaps -- I think the part that I would like to
21 direct your mind to, Mr. Caldwell, we have heard
22 evidence, and we will hear more evidence, that the
23 March 3rd statement was given to Mr. Tallis --
24 A Right.
09:40 25 Q -- that Ron Wilson was questioned on the statement

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1 your part in failing to provide the first
2 statement of Ron Wilson to Mr. Tallis.
3 A Well, there was so much press coverage going on
4 from various sources, Mr. Hodson, that I
09:38 5 personally -- I personally couldn't, you know,
6 undertake to run around and try and rebut all of
7 it, or maybe even any of it.
8 Q What is your reaction to this article as I read it
9 to you now?
09:38 10 A Well, it's wrong.
11 Q What is wrong with it?
12 A Okay, I can go through that. In the first place,
13 Mr. Wilson's first statement, which was to
14 Inspector Riddell, was sent to Mr. Tallis, and
09:39 15 that's -- it's identified by date and so on in one
16 of my letters to Mr. Tallis, I'm sure you are
17 aware of that, and that's the one that's covered
18 in that second paragraph. Could you possibly blow
19 this up a little, please?
09:39 20 Q Sure.
21 A Okay, that's fine. Okay. So a statement given by
22 Ron Wilson to RCMP in Regina March 3rd, 1969 is
23 the statement to Inspector Riddell and then
24 Wilson's first statement stands in stark contrast
09:39 25 with another dated May 23, the Saskatoon statement

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1 and that it was before the jury in your closing
2 address.
3 A Yeah, and it could, by definition, it could not
4 fit into "was never told of its existence", Cal
09:41 5 Tallis, etcetera, was never told of its existence.
6 It was in his possession.
7 Q Right, and so I have two questions for you.
8 A Okay.
9 Q One, and we'll hear from Mr. Asper on his position
09:41 10 on this, but where he says it is painfully obvious
11 from the transcripts that Tallis did not direct
12 Wilson to the original statement, and again I
13 think, I mean, do you think that is wrong?
14 A Yeah, that I don't know. I didn't go through
09:41 15 Mr. Tallis' cross-examination of Wilson in any
16 detail.
17 Q We did with Ron Wilson and in the transcript
18 Mr. Tallis does go through parts of his interview
19 with Riddell.
09:41 20 A Okay. So that, Mr. Hodson, is just plain wrong,
21 that first part.
22 Q And my question then goes to Mr. Asper saying:
23 "It strikes me that it would be serious
24 misconduct for the Crown not to provide
09:42 25 that information to the defence."

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1 A Right.
2 Q So if you didn't provide it, it would be serious
3 misconduct?
4 A I would think so, that's true, and of course I did
09:42 5 provide it.
6 Q And my question is this, I had showed you an
7 earlier article with again Dan Lett where you
8 refused to comment on the issue about the Fisher
9 police report.
09:42 10 A Uh-huh.
11 Q Do you know if Mr. Lett would have called you and
12 asked you about this?
13 A He -- by that terminology he must have; in other
14 words, I don't think he --
09:42 15 Q No, sorry, not about the earlier report, this
16 report here where it says, or it could be read as
17 saying that you did not deliver Ron Wilson's
18 statement to Mr. Tallis.
19 A No.
09:42 20 Q Just listen, please, Mr. Caldwell, and my question
21 is twofold. One, do you think Mr. Lett would have
22 called you and asked you about this, for your side
23 of it, and if he did, would you have talked to him
24 about it?
09:43 25 A Okay. Number 1, he may well have because he says

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1 A Very good.
2 Q And my question is whether or not you know whether
3 Dan Lett would have called you on this and asked
4 you did you give the March 3rd, 1969 statement to
09:44 5 Mr. Tallis. Do you have any recollection?
6 A No, I did not, Mr. Hodson.
7 Q And if he would have called you, do you think you
8 would have given him any information?
9 A I doubt it because it seemed to me if there would
09:44 10 be no end to that questioning, and further, you
11 know, further questions to me, I doubt very much I
12 would have given it to him.
13 Q And do you think that this --
14 COMMISSIONER MacCALLUM: Just a minute.
09:44 15 I'm not sure that you are getting the question,
16 sir. Maybe I'm not.
17 A No. Thank you.
18 COMMISSIONER MacCALLUM: Lett recorded a
19 very serious allegation against you.
09:45 20 A Right.
21 COMMISSIONER MacCALLUM: That you hadn't
22 given defence counsel a statement that he was
23 entitled to.
24 A Yes.
09:45 25 COMMISSIONER MacCALLUM: Did Lett ever

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1 here he did and I --
2 Q Well, no, he doesn't.
3 A Okay, I'm sorry.
4 Q Unless there's something in there I didn't see. I
09:43 5 read you the entire article.
6 A I'm sorry. If you can just point that out to me.
7 Q Okay. Let's start over, Mr. Caldwell.
8 A Okay.
9 Q The earlier article that I read you about the
09:43 10 Fisher police report, that was the previous
11 article.
12 A Okay.
13 Q Let's bring it back up if you like, 004732, and
14 this is the article of May 16th and it talks about
09:43 15 the Larry Fisher interview at the bus stop, and
16 that's where I read where Caldwell flatly refused
17 any comment whatsoever.
18 A Okay.
19 Q That relates to the Larry Fisher bus stop report.
09:43 20 A Uh-huh.
21 Q Okay?
22 A Yes.
23 Q Now let's go back to 004752, this is a different
24 article, it's a month later and it's on a
09:44 25 different subject matter.

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1 check it with you before he wrote that?
2 A That's the thing, Mr. Commissioner, that I don't
3 know. He appears to say that he did the way I
4 read this.
09:45 5 COMMISSIONER MacCALLUM: Well, how do you
6 see that?
7 A Oh, well, maybe --
8 COMMISSIONER MacCALLUM: Show me where that
9 appears?
09:45 10 A Maybe I've lost this in this article, Mr. Hodson.
11 Do you see that particular --
12 BY MR. HODSON:
13 Q I don't -- I mean, I read through the entire
14 article to you, there's no reference to seeking
09:45 15 information from you --
16 A In this article.
17 Q -- or quoting you in this article.
18 COMMISSIONER MacCALLUM: Okay. Now, we've
19 got that much. You don't remember him, Mr. Lett,
09:45 20 the reporter, contacting you about it?
21 A No, sir.
22 COMMISSIONER MacCALLUM: Okay. Now Mr.
23 Hodson wants to know if he had contacted you and
24 said I have information that you were guilty of
09:45 25 serious misconduct, would you have talked to him

1 about that?

2 A I may have talked to him and emphatically denied

3 it, but equally well I may have said I'm not going

4 to discuss that with you.

09:46 5 COMMISSIONER MacCALLUM: Okay, thank you.

6 A Thank you.

7 BY MR. HODSON:

8 Q And then is it fair to say, Mr. Caldwell, do you

9 think this information, whether it's this article

09:46 10 or this notion of an allegation of serious

11 misconduct on your part in failing to deliver Ron

12 Wilson's statement, do you think that that was

13 something that came to your attention at that

14 time?

09:46 15 A Well, sir, this is a Winnipeg Free Press article?

16 Q This one is, and I'm not sure where else, quite

17 honest, that it was published.

18 A Well, that would be the first caveat, I wouldn't

19 have seen the free press. At this point I can't

09:46 20 tell you whether it came to my attention.

21 Q Did you ever learn, Mr. Caldwell, that someone

22 alleged Crown misconduct on your part in failing

23 to give Ron Wilson's first statement to Mr.

24 Tallis?

09:48 25 A Sir, at this point I have no memory of learning

1 David Milgaard case have enlisted the

2 assistance of the Saskatoon Crown

3 attorney who handled the matter in 1969,

4 and Milgaard's lawyers are crying foul.

09:50 5 Eugene Williams, the federal

6 Justice Department investigator in

7 charge of examining Milgaard's claims of

8 innocence, confirmed in an interview

9 that he has on occasion conferred with

09:50 10 T.D.R. (Bobs) Caldwell, the man who put

11 Milgaard behind bars in 1969.

12 The admission has prompted

13 Milgaard's lawyers, David Asper and

14 Hersh Wolch, to charge Williams with

09:51 15 conflict of interest and file a formal

16 complaint with federal Justice Minister

17 Kim Campbell, asking her to intervene

18 immediately.

19 "If anybody asked me to

09:51 20 illustrate a conflict of interest, I

21 could use the example of Caldwell being

22 involved in the investigation of his own

23 case," Asper said. "He is clearly

24 biased. How could they involve him?"

09:51 25 And then over to the top of the next column.

1 that, I may well have though.

2 Q And, again, is that the type of allegation, Mr.

3 Caldwell, that you might do something about?

4 A Well I'd do something about it, Mr. Hodson, it

09:49 5 would be very offensive, but I don't know. At

6 that stage of proceedings, you know, if I went, in

7 effect, charging after every one of those false

8 allegations, I think I'd -- I would readily get

9 exhausted. I couldn't deal with that, that volume

09:49 10 of that, of things that were being said at that

11 time.

12 Q If we could go to 004745. And this is an article

13 by Dan Lett again in the Winnipeg Free Press

14 August 29 of 1990, and I'm sorry, I can't tell you

09:50 15 whether this was picked up in the Saskatoon paper

16 or not.

17 A Okay.

18 Q It may have been, I don't -- I just have this

19 article.

09:50 20 A Very good.

21 Q And Mr. Lett writes Ex-prosecutor helping probe

22 Milgaard case, Prisoner's lawyers claim conflict.

23 A Okay.

24 Q And then it says:

09:50 25 "Federal investigators examining the

1 "In a separate interview, Caldwell

2 confirmed he had "done some legwork" for

3 the department, lending assistance

4 whenever needed, although he was not

09:51 5 "directly" involved in the

6 investigation.

7 Caldwell has helped track down

8 some people involved in the case and

9 process a request to the Saskatchewan

09:51 10 government for release of the original

11 files, Williams said.

12 "Mr. Caldwell certainly is

13 involved," Williams said. "He was

14 involved in the inception of the case.

15 It would be ludicrous not to consult

16 with the prosecutor on a case that is so

17 complicated.

18 "It would be ludicrous in terms

19 of finding people when you have someone

20 who knows all the people."

21 And over to the right-hand side.

22 "Asper said Williams is clearly in a

23 conflict of interest by involving

24 Caldwell in the investigation instead of

09:52 25 interviewing him as a "witness" who may

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1 have information about Milgaard's claims
2 of innocence.
3 Asper said Caldwell has
4 exhibited extreme prejudice in relation
09:52 5 to the case, going so far as to
6 correspond with the National Parole
7 Board, sending them photographs of the
8 body and recommending that Milgaard
9 never be released.
09:52 10 A National Parole Board
11 memorandum obtained by the Free Press
12 clearly indicates Caldwell wrote to the
13 board on a number of occasions
14 recommending that Milgaard not be
09:52 15 released.
16 Asper also said he found it
17 ridiculous that Williams claimed he
18 needed Caldwell to track down people
19 involved in the original case. Almost
09:52 20 every piece of major evidence in
21 Milgaard's application was brought
22 forward through work done by Joyce
23 Milgaard, David's mother, and a
24 Seattle-based private detective.
09:52 25 Among that evidence was

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1 A No, sir, I do not.
2 Q And again, we'll hear from Mr. Lett, but it
3 appears that he may have talked to you --
4 A Yeah.
09:54 5 Q -- about this issue --
6 A Yeah, he --
7 Q -- in connection with this article?
8 A He may well have, and I assume I would have
9 answered it the way it's quoted in the column,
09:54 10 and, Mr. Hodson, which of course was essentially
11 what I believe we went through yesterday.
12 Q Yes.
13 A Yeah. And then I notice that, the top of the
14 right column, the -- Mr. Williams mentions:
09:54 15 ""I'm grateful for his assistance," ...
16 "But I will not dignify any comments
17 about conflict of interest by commenting
18 on it further."
19 That's referring to any alleged conflict of
09:54 20 interest by me being involved, I take it. Do you
21 see that, sir?
22 Q Yes.
23 A Yeah.
24 Q If I could just go down, and again this is August
09:54 25 of 1990, it says:

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1 testimony from two key Crown witnesses
2 who now claim they were pressured and
3 psychologically manipulated by Saskatoon
4 Police in 1969."
09:53 5 Now a couple of questions, Mr. Caldwell. Number
6 1, I read you the quotes from Eugene Williams and
7 attributed to you about your involvement in the
8 Section 690 process; do you understand?
9 A Yes, yes.
09:53 10 Q Yeah. Are you in agreement with what and how Mr.
11 Williams and you described your involvement in the
12 690 process?
13 A Yes I am.
14 Q Secondly, it would appear that Mr. Lett talked to
09:53 15 you, interviewed you in connection with this
16 article and quoted you; would that be a fair -- do
17 you remember that or is that a fair conclusion?
18 A Umm, well the way the column reads, it would be
19 fair to conclude that he did that, sir.
09:53 20 Q And --
21 A Because he, "in a separate interview Caldwell
22 confirmed", I assume means Lett talking to me as
23 opposed to me to Williams or anything like that.
24 Q I see. So do you have a memory of talking to Dan
09:53 25 Lett?

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1 "However, despite the fact the Justice
2 Department is investigating a possible
3 wrongful conviction, Williams said there
4 is no reason to treat Caldwell as a
09:55 5 witness and investigate his involvement
6 in the case.
7 Williams said Caldwell has been
8 ruled out as a witness because in
9 Milgaard's application to the Justice
09:55 10 Department, there was no specific
11 allegation of prosecutorial misconduct.
12 However, Williams agreed that
13 he could have gotten much of the
14 information himself by contacting the
09:55 15 Saskatchewan Crown's office."
16 Did you have that understanding about --
17 A I --
18 Q Did Mr. Williams ever tell you any of that?
19 A I don't believe so. I'm pleased to see he felt
09:55 20 that way.
21 Q But, well, were you aware at the time, Mr.
22 Caldwell, that Mr. Milgaard's application -- and
23 let me go back. When Mr. Milgaard applied to have
24 his conviction set aside in 1988, and then the
09:55 25 second application I think in August of '91, --

1 A Uh-huh.
 2 Q -- what was your understanding, if any, about --
 3 about what they may have said about your
 4 involvement in the wrongful conviction?
 09:55 5 A I would -- I wouldn't believe any of that would
 6 have reached me, the things that did were the
 7 phone calls and letters from Mr. Williams that at
 8 least we saw most of yesterday I take it.
 9 Q Well, let's just probe for a minute.
 09:56 10 A Yeah.
 11 Q At the time, I think you said in '91 you were done
 12 with Federal Justice?
 13 A Umm, that's right, as of --
 14 Q What I want to try and identify, Mr. Caldwell, is
 09:56 15 what mechanisms or modes there would have been for
 16 you to learn about what allegations were being
 17 made about your conduct, and let me just go
 18 through that.
 19 A Okay.
 09:56 20 Q I think you told us that you had some
 21 communication with Mr. Williams starting in 1989,
 22 looking at the file and providing information?
 23 A Right.
 24 Q And so, so that might be one -- one -- one avenue
 09:56 25 Mr. Williams might have told you "here's what is

1 Saskatchewan Justice, do you recall whether they
 2 would have been in touch with you in 1988 to 1992
 3 telling you "Mr. Caldwell, here's what's been
 4 alleged that you did or didn't do while you were
 09:57 5 under our employ as a prosecutor"; do you recall
 6 them telling you that?
 7 A I very much doubt it. I was among a group of 13
 8 or 15, or whatever, people who were -- who had
 9 their positions abolished by one Order-in-Council
 09:58 10 by the Grant Devine Progressive Conservative
 11 provincial government, and that was May 14th of
 12 1987, and I still had, you know, good
 13 relationships with various individuals in the
 14 department, but I was somewhat at arm's length
 09:58 15 after that for a time, sir.
 16 Q When you say "arm's length" do you mean perhaps
 17 not on good terms?
 18 A Well, certain people in the department I don't
 19 think were fond of me, and I wasn't very pleased
 09:58 20 with how I'd been treated, which resulted in a
 21 lawsuit by the way.
 22 Q And so, as far as that being an avenue where you
 23 might have learned of allegations against you, are
 24 you telling us that you think that might be
 09:59 25 unlikely?

1 being alleged against you"
 2 A Yeah, he might have.
 3 Q And again, I'm not sure, do you have any memory of
 4 that? I think I just asked you about this
 09:56 5 comment; do you have any memory of Mr. Williams
 6 saying "here's what they are saying you did or
 7 didn't do"?
 8 A I don't have any memory of that, Mr. Hodson.
 9 Q Secondly, at that time you were employed by
 09:57 10 Federal Justice as a Crown solicitor?
 11 A That's right.
 12 Q Do you think, in your capacity as an employee of
 13 the Department of Justice, they might have
 14 informed you or did inform you about what
 09:57 15 allegations were being made against you?
 16 A The federal department?
 17 Q Yes.
 18 A I'd be very surprised if they did. I have no
 19 memory of them doing that, and I would have
 09:57 20 thought that would immediately -- would
 21 immediately result in me ceasing to, you know,
 22 offer assistance of the sort we talked about
 23 yesterday.
 24 Q Another mechanism might have been your former
 09:57 25 employer, the Attorney General for Saskatchewan or

1 A Yeah, I think -- I don't think that would have
 2 happened at all.
 3 Q And the last avenue, I think, where you might have
 4 learned about what was being alleged against you
 09:59 5 would be the media; is that fair, in --
 6 A Well, that you couldn't avoid in our case, and we
 7 even -- my wife and I took the pre -- the remedial
 8 step of going to Edmonton for a weekend to get
 9 away from the media uproar in Saskatoon, Mr.
 09:59 10 Hodson, only to find that it was just as bad in
 11 Edmonton, whereupon we returned.
 12 Q And so, again, just the question about you. Is it
 13 fair to say, Mr. Caldwell, that you would have
 14 learned of allegations being made against you
 09:59 15 through the media?
 16 A Yes.
 17 Q Okay.
 18 A It was inevitable, I think. And the one thing,
 19 Mr. Hodson, the bottom of the centre paragraph:
 09:59 20 "However, Williams agreed he could have
 21 gotten much of the information himself
 22 by contacting the Saskatchewan Crown's
 23 office."
 24 I'm sure that, if he did that, they would have
 10:00 25 said "phone Caldwell". I was the one with kind

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1 of on -- you know, practical knowledge of the
2 things we went over yesterday.
3 Q And when you left the employ of the Saskatchewan
4 Justice in 1987 what happened to the prosecution
10:00 5 file?
6 A It would still be in the Saskatoon Crown
7 Prosecutor's office in Canterbury Towers.
8 Q And did you take anything with you from that time?
9 A No, I didn't, sir.
10:00 10 Q If we could call up 077806. This is an article in
11 The StarPhoenix April 18, 1992, and I think this
12 is two days after -- two or four days after the
13 Supreme Court decision wherein Mr. Milgaard was
14 released from prison, and the headline Lawyers ask
10:00 15 why Milgaard wasn't freed in 1970. And my fear of
16 calling this up is that we might get a close-up of
17 Mr. Wolch's picture, but --
18 A Oh oh.
19 MR. WOLCH: Don't you dare.
10:01 20 A I think that was in high school, sir, by the look
21 of it.
22 BY MR. HODSON:
23 Q "David Milgaard is out of jail but his
24 lawyers still want to know why he wasn't
10:01 25 a free man 22 years ago.

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1 "Wolch said those who would ...",
2 let me just back up. In any event the article, I
3 don't need to go through the article, it talks
4 about, again, the information on Larry Fisher
10:02 5 back in 1970. And this quote here says:
6 "Wolch said those who would have been
7 aware of evidence about Fisher are;
8 Eddie Karst, the main investigator in
9 the Milgaard case who took confessions
10:03 10 from Fisher in Winnipeg; Bobs Caldwell,
11 prosecutor at Milgaard's original trial;
12 and Caldwell's superior, Kujawa."
13 And, again, what is your response to that
14 suggestion?
10:03 15 A It's the same, sir, we -- I did not know about
16 those things at that time.
17 Q If we could now go to 162465. And this is a
18 September 9th, '92 communication from David Asper
19 to Joyce Milgaard, and the next page talks about
10:03 20 a -- it's September 9th -- about a draft press
21 release that it appears is drafted by Mr. Asper,
22 and again we will be hearing more evidence about
23 this, but the next page is a draft news release.
24 And there is a couple of things I want to ask you
10:04 25 about here. And again, I have tried, and I'm

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1 "We'd like an answer why David
2 was not exonerated in 1970." Hersh
3 Wolch said Thursday. "Let's find out
4 and hold people accountable."
10:01 5 In October 1970, Larry Fisher
6 confessed to several sexual assaults in
7 Saskatoon which were similar to the
8 attack on Gail Miller. Milgaard was
9 convicted for her murder, but Wolch
10:01 10 wants to know why Fisher wasn't
11 suspected earlier in Miller's killing.
12 Crown prosecutors Bobs Caldwell
13 and Serge Kujawa and chief investigator
14 Joe Penkala all knew about Fisher, he
10:01 15 said."
16 And, again, I just want you to respond to that.
17 We touched on this already, but in this article
18 of April 16, 1992, Mr. Wolch said you all knew
19 about Fisher in October of 1970?
10:02 20 A That's not correct, sir.
21 Q If we could then go to 077811. And this is an
22 article April 22nd, 1992 headlined New evidence
23 available on missing files, and Report clearing
24 city police questioned. This is a StarPhoenix
10:02 25 article. At the bottom, if you call that out:

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1 still seeking to find -- and it may be when other
2 witnesses testify -- where and to what extent this
3 found its way into the media, but I just want to
4 ask you about some of the contents here, because
10:04 5 these subjects are certainly covered in later
6 media reports. And, again, this is September
7 1992. It talks about:
8 "... the fight for David's demand for
9 justice carries on. Following the call
10:04 10 by Mr. Wolch for a formal enquiry in
11 Saskatchewan, an active letter writing
12 campaign has been undertaken."
13 And then, down at the bottom, it talks about:
14 "The core group of volunteers in the
10:04 15 Winnipeg support group have continued
16 the analysis of government files and in
17 addition information has been provided
18 to Mr. Wolch's office covering a wide
19 spectrum including potentially
10:05 20 implicating the current premier of
21 Saskatchewan in his former capacity as
22 Attorney General for Saskatchewan."
23 And I think this is right around the time, Mr.
24 Caldwell -- and we'll hear more evidence about
10:05 25 this --

1 A Yeah, okay.

2 Q -- the Michael Breckenridge --

3 A Oh.

4 Q -- matter, where certain allegations were brought

10:05 5 forward about, I think, misconduct on the part of

6 government officials. If we can go to the next

7 page, it goes on to say:

8 "Some examples of information obtained

9 as a result of further analysis of

10:05 10 government files include:

11 1. A second knife found at the scene of the

12 murder which may have played an

13 important role and which mysteriously

14 went missing at the time of trial was,

10:05 15 in fact, ordered released during the

16 trial by Mr. T.D.R. Caldwell, the Crown

17 Attorney prosecuting David Milgaard.

18 This was a knife that had been seized

19 from the scene of the crime, retained as

10:06 20 an exhibit by police officers and

21 entered as an exhibit by the Crown at

22 the preliminary enquiry."

23 Let me just pause here, and I believe this is

24 talking about the bone-handled hunting knife that

10:06 25 Ian Oliver had?

1 ongoing investigations.

2 Q And as far as your dealings with Mr. Tallis about

3 the knife -- and we touched on this before -- do

4 you remember --

10:07 5 A Yeah.

6 Q -- any dealings with Mr. Tallis about the knife?

7 A I simply have the memory that he knew all about

8 the situation, Mr. Hodson.

9 Q Next, if we could call up 04830 -- I'm sorry, let

10:07 10 me just pause there. You will see:

11 "(Insert the Sidney Wilson/Eugene

12 Williams information.)"

13 And if we call up 048306, this is a memo

14 September 16th, 1992, which I think is right

10:08 15 around the time of the press conference relating

16 to Michael -- I don't know that his name was used

17 at the time -- but about the government official

18 having the information about Mr. Kujawa and

19 Mr. Romanow having the Fisher and Milgaard files

10:08 20 together. And this is a memo, I believe, from

21 Greg Roden, who would have been counsel, one of

22 the counsel for the Milgaard family at the time,

23 and it's Re: T.D.R. Caldwell, Mike Breckenridge,

24 Sidney Wilson, T.D.R. Caldwell/knife evidence.

10:08 25 If we could just call out that first paragraph,

1 A On the fence.

2 Q On the fence, and that --

3 A I'm not sure, sir -- go ahead?

4 Q Yeah. My question is we've heard evidence from

10:06 5 Mr. Oliver about the knife, we've heard evidence I

6 think from you and Mr. Kleiv about the knife, --

7 A Yeah.

8 Q -- are you aware of the knife ever mysteriously

9 going missing at the time of trial?

10:06 10 A No, it didn't. I'm not -- the thing I was going

11 to say, I'm not sure that it was entered as an

12 exhibit at the prelim, that may well have

13 happened.

14 Q I don't believe it was. I stand to be corrected,

10:06 15 but again, --

16 A Yeah. I didn't --

17 Q -- were you aware of any, with respect to that

18 hunting knife, any issue at the preliminary

19 hearing or trial about it --

10:06 20 A About it going missing? I certainly wasn't, and

21 there was -- it was very easy to, to follow where

22 it had gone, from -- between Kleiv, I identification

23 Officer Ian Oliver, there was nothing missing in

24 any sense about it, and I think it was eventually

10:07 25 retrieved by the RCMP as one of these later

1 it says:

2 "Further to your request ...",

3 this is from Greg Roden to Joyce Milgaard:

4 "Further to your request that I

10:08 5 articulate your position with respect to

6 the above noted matters, I would advise

7 as follows:".

8 Now the Mike Breckenridge matters, I don't think,

9 dealt directly with you, Mr. Caldwell, and

10:09 10 just -- I don't need that called out -- but do

11 you -- you are familiar with the Mike

12 Breckenridge allegations?

13 A In a very general way, and I note this particular

14 memo has had his name removed in favour -- could

10:09 15 you blow it up a little, Mr. Hodson, why -- yeah,

16 that's fine.

17 Q Umm --

18 A I --

19 Q No, and my question -- you can ignore the

10:09 20 memorandum, Mr. Caldwell.

21 A Very good.

22 Q My question is very simple: Do you remember any

23 allegation being made against you in connection

24 with what Mr. Breckenridge said?

10:09 25 A None whatever.

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1 Q Yeah. And I believe we'll be hearing from others
2 on this, --
3 A Okay.
4 Q -- I think it relates to what happened to the
10:09 5 file, I think the allegation was that Mr. Kujawa
6 and Mr. Romanow had the Milgaard and Fisher files
7 together in either 1971 or 1973 in a closed-door
8 meeting, I don't believe the allegation included
9 you in that meeting?
10:09 10 A No.
11 Q Do you ever remember being questioned about
12 whether you were in such a meeting?
13 A No, I wasn't and didn't, and it was strictly, I'm
14 pleased to say, a Regina venture, Mr. Hodson.
10:10 15 Q And down at the bottom we talk about Sidney Wilson
16 evidence and the memo states, talks about the:
17 "... Sidney Wilson contacting Hersh
18 Wolch on Monday, February 26th, 1990."
19 It then goes on to say:
10:10 20 "He indicated that this person ...",
21 I'm sorry, Sidney Wilson:
22 "... indicated that this person was
23 Larry Fisher, and that he obtained this
24 information implicating Larry Fisher
10:10 25 from Linda Fisher, Larry Fisher's wife.

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1 hear other evidence on this, but I think -- and I
2 touched on this yesterday -- you will see up
3 here, this is E120, this came from the Saskatoon
4 City Police files --
10:11 5 A All right.
6 Q -- to the Commission, and this is a document that
7 was in, I think E was for correspondence or
8 miscellaneous. And it talks -- let me just back
9 up. Here's where it talks about Sidney Wilson and
10:11 10 it says:
11 "He was not only interviewed by police,
12 but also by Mr. T.D.R. Caldwell ...",
13 and I'm assuming that this may have been the
14 document referred to in Mr. Roden's memorandum.
10:12 15 And you will see this document, it has a date 03
16 01, which I think is March the 1st, 1990, which
17 would be the day after Mr. Williams became aware
18 of it. The fact that Mr. Williams is mentioned
19 in the memorandum suggests that it's likely 1990,
10:12 20 and not 1969 or 1970, but I think that's just my
21 observation
22 A Very good.
23 Q Again, this might explain where there might have
24 been some confusion about your involvement.
10:12 25 If we could go back to 048307,

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1 Sidney Wilson indicated that he went to
2 the police with this information a
3 number of years ago."
4 Now, the next page, the memorandum says:
10:10 5 "There is a police report which
6 indicates that Sidney Wilson was in fact
7 interviewed by the police and by T.D.R.
8 Caldwell, the Crown Attorney who
9 prosecuted David Milgaard at trial. The
10:10 10 date of this interview is not disclosed,
11 however, it must have been at about the
12 time that Sidney Wilson first approached
13 the police with the information he had."
14 Now if we assume Sidney Wilson is Bruce
10:11 15 LaFreniere, based on the evidence we heard -- and
16 I asked you this yesterday -- did you ever
17 interview Bruce LaFreniere?
18 A No.
19 Q And I think if I may, just for the record, you
10:11 20 will see it talks about:
21 "... a police report which indicates
22 that Sidney Wilson was in fact
23 interviewed by the police and by T.D.R.
24 Caldwell ..."
10:11 25 If we could call up 045233. And again, we may

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1 and again back on the issue about your involvement
2 with Sidney Wilson, --
3 A Okay.
4 Q -- and I think you've told us you didn't interview
10:12 5 him; is that correct?
6 A Yes, I did not, and to my knowledge I have never
7 knew anyone by that name.
8 Q Or Bruce LaFreniere?
9 A No. The same, sir, I didn't know him.
10:13 10 Q So the previous paragraph suggests that you did in
11 fact interview him when he approached the police.
12 It says:
13 "This information is significant, but in
14 my opinion does not really add much to
10:13 15 the proven facts. We can already
16 establish that the police department and
17 the Crown Attorney's office suppressed
18 the Larry Fisher evidence in October of
19 1970. Sidney Wilson himself would not
10:13 20 have come forward and been interviewed
21 by Mr. Caldwell until some time after
22 that date. Accordingly, Mr. Caldwell's
23 involvement with Sidney Wilson does
24 nothing more than confirm what we
10:13 25 already know, that is that the Crown and

1 police had information relating Larry
 2 Fisher to the murder of Gail Miller, but
 3 chose not to disclose it."
 4 So, again, to the extent that you were a member
 10:13 5 of the Crown Attorney's office at the time; is
 6 that correct?
 7 A Yes.
 8 Q And, again, I've asked you a similar question
 9 before, but the allegation that you suppressed the
 10:13 10 Larry Fisher evidence in October of 1970 and that
 11 you had information relating Larry Fisher to the
 12 murder of Gail Miller but chose not to disclose
 13 it; how do you respond that?
 14 A Neither of those are true, sir.
 10:14 15 Q And then number 3, Evidence Relating to T.D.R.
 16 Caldwell and the Missing Knife, and again this is
 17 referring to Ian Oliver:
 18 "This is potentially very significant
 19 evidence. I would ask that you discuss
 10:14 20 this matter with Bob Bruce, who has
 21 intimate familiarity with the trial
 22 transcript relating to this issue. It
 23 is clear that Mr. Caldwell did not
 24 advise the Court, at the time that the
 10:14 25 missing knife was the subject of

1 relating to this missing knife back in '92 and
 2 onward?
 3 A Umm, --
 4 Q I can tell you, it's the subject matter of the
 10:15 5 RCMP investigation, --
 6 A Okay.
 7 Q -- and we'll deal with that a bit later about the
 8 knife.
 9 A There were, I think there were up to seven
 10:15 10 complete and partial knives involved in this whole
 11 business. Which trial is he talking about, Mr.
 12 Hodson?
 13 Q David Milgaard's trial.
 14 A Okay. You were asking me if I was aware before?
 10:15 15 Q Just aware, generally, of someone on behalf of
 16 David Milgaard saying you did something wrong --
 17 A Yeah.
 18 Q -- when it came to this hunting knife or a second
 19 knife?
 10:15 20 A Not that specific thing. And I didn't, in a word,
 21 do anything wrong with it, just --
 22 Q No, but just listen, Mr. Caldwell.
 23 A Okay.
 24 Q Did you -- and, again, I can take you through the
 10:16 25 RCMP --

1 testimony, that he had in fact
 2 instructed that the knife be released to
 3 Constable Ian Oliver. Since he gave
 4 those instructions, he must have known
 10:14 5 to whom the knife was released.
 6 Accordingly, it appears that Mr.
 7 Caldwell deliberately mislead the Court
 8 as to the whereabouts of the missing
 9 knife. Obviously a missing knife in a
 10:14 10 case where death was occasioned by
 11 stabbing, is an extremely important
 12 piece of evidence. At this point I
 13 would handle the issue simply by
 14 pointing out that Mr. Caldwell obviously
 10:14 15 had a duty to advise the Court that he
 16 knew where the knife was when the fact
 17 that it was missing was disclosed. He
 18 did not disclose to the Court that he
 19 instructed that the knife be released to
 10:15 20 Constable Oliver. He therefore mislead
 21 the Court. Further investigations are
 22 required to clarify the significance of
 23 this evidence."
 24 And, again, were you aware, apart from what I
 10:15 25 have just read to you, of allegations being made

1 A Okay, sir.
 2 Q Were you aware, at least generally, that someone
 3 was saying you did something wrong when it came to
 4 the hunting knife at the trial?
 10:16 5 A At the trial I was not.
 6 Q No, no. Were you aware in 1990, --
 7 A Oh.
 8 Q -- at any time, --
 9 A Oh, I'm sorry.
 10:16 10 Q -- that someone was saying, Mr. Caldwell, that you
 11 had done something wrong in your dealings with the
 12 hunting knife?
 13 A I expect I learned that, Mr. Hodson, in due
 14 course.
 10:16 15 Q And, again, I will go through some of the RCMP
 16 reports with you.
 17 A Okay.
 18 Q Let me ask you this: Did you deliberately mislead
 19 the Court as to the where, the Court at David
 10:16 20 Milgaard's trial, as to the whereabouts of the
 21 missing knife?
 22 A No.
 23 Q Did you mislead the Court with respect to the
 24 knife?
 10:16 25 A Of any description, no.

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1 Q If we could go to 061256. This is a letter June
2 15th, 1993 from Mr. Wolch to Mr. -- Inspector
3 Sawatzky of the RCMP. It says:
4 "Regarding psychiatric reports from
10:17 5 Yorkton, I am at a loss to understand
6 the value of same. My best guess is
7 that Mrs. Milgaard is distressed that
8 Mr. Caldwell claimed that David had had
9 some major psychiatric problems, when in
10:17 10 actual fact he did not. In my view, Mr.
11 Caldwell grossly exaggerated David's
12 mental condition in his letters to the
13 Parole Board and in his approach to
14 David. The next time I am in
10:17 15 communication with David I will urge him
16 to cooperate in this regard, although as
17 I state, I do not feel it to be a major
18 factor in your investigation."
19 Were you aware generally, Mr. Caldwell, of
10:18 20 allegations against you that you did something
21 wrong when you dealt with the National Parole
22 Board in sending letters about David Milgaard?
23 A I don't know, sir, whether I was. It wouldn't
24 surprise me if that had come to my attention, but
10:16 25 I frankly don't recall it.

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1 A That's right.
2 Q And I think if I can just shorten the process a
3 bit here, I'm just going to quickly go through
4 some letters that suggest that before the
10:18 5 interview your counsel, Mr. Halyk, asked the RCMP
6 to provide an outline of the areas that they were
7 going to question you; is that fair?
8 A That happened, sir.
9 Q Can we go to 061221, again just for the record,
10:18 10 May 6, 1993, asking for a list of the areas you
11 wish to cover, and if we can go to 050111 --
12 sorry, let me just back up, let's go to 061236,
13 this is a letter of May 11th, 1993 from Mr.
14 Sawatzky, Inspector Sawatzky to Mr. Halyk, and I
10:19 15 want to go through parts of this, and he's
16 responding to the May 6th letter concerning areas
17 we wish to discuss with Mr. Caldwell. The RCMP
18 say:
19 "Our investigation surrounds the 1970
10:20 20 murder conviction of David Edgar
21 Milgaard and the alleged coverup of
22 evidence that Larry Earl Fisher was the
23 actual perpetrator. We are charged with
24 the responsibility of examining
10:20 25 allegations of wrongdoing by the

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1 Q In we could then go to 061091. Mr. Caldwell, do
2 you remember back in 1993 the RCMP being asked by
3 the Saskatchewan government to conduct an
4 investigation into alleged wrongdoings by you and
10:16 5 other Crown and police officials?
6 A Yes, sir.
7 Q And in fact I think, and we'll hear more evidence
8 about this, that a fellow by the name of Mr.
9 Fraser, who was the chief crown prosecutor in
10:17 10 Calgary, and another Alberta individual,
11 Mr. McCrank, were two individuals that the RCMP
12 were to report to and they in turn provided a
13 report to the Saskatchewan government?
14 A I learned that as time went on, sir.
10:17 15 Q And we have documents that I want to go through
16 that suggest that the RCMP interviewed you in
17 connection with that investigation. Do you
18 remember that?
19 A Absolutely.
10:17 20 Q And I just want to go through some of the preamble
21 to that interview. 061090, please, and again this
22 is just Mr. Sawatzky reporting to Mr. Fraser with
23 an attached letter from Halyk, and Mr. Halyk
24 represented you at the time; is that right, in
10:18 25 these interviews?

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1 Saskatoon City Police and by the
2 Saskatchewan department of the Attorney
3 General - in particular Mr. Caldwell and
4 Mr. S. Kujawa.
10:20 5 3. In more specific terms, it is
6 alleged that Mr. Caldwell obstructed
7 justice by withholding evidence.
8 Outlined below are the allegations
9 and/or areas of concern we wish to have
10:20 10 Mr. Caldwell address during our
11 interview."
12 Let me just pause there. I take it, sir, you
13 would have been aware of the nature of the
14 allegation against you generally, they were
10:20 15 investigating a criminal offence against you.
16 Did you understand that?
17 A Well, yeah, I must have understood that.
18 Q And it says a), and again these are the RCMP
19 concerns:
10:21 20 "a) That police reports in the Miller
21 murder file link the Miller murder to
22 the sexual assaults being committed in
23 the area. Mr. Caldwell had available
24 all police facts and files and was well
10:21 25 aware that the police saw similarities

1 between the rapes and the murder of Gail
 2 Miller."
 3 I'm just going to pause here.
 4 A Okay.
 10:21 5 Q What I intend to do, Mr. Caldwell, there is a
 6 subsequent interview that you had with the RCMP.
 7 A Yes.
 8 Q It's about an hour and 20 minutes, where you go
 9 through and are asked to specifically respond to
 10:21 10 each of these allegations, and rather than have me
 11 go through that transcript with you, we're simply
 12 going to play the tape, we'll do it after the
 13 break, but before we do, I just want to walk
 14 through the allegations in this letter because
 10:21 15 this is specifically what you are referring to.
 16 A Okay.
 17 Q So just so that you have in your mind what it is
 18 that was on the table, and after we go through the
 19 tape I'm going to come back and ask you to advise
 10:21 20 us whether what you say in that tape is the truth
 21 today and you accept it as the truth today, so if
 22 we can just go through, and this is just to put on
 23 the record and to identify for you what was being
 24 said.
 10:22 25 A Very good.

1 Fisher, was not disclosed to the
 2 defence.
 3 b) that Mr. Caldwell failed to disclose
 4 at the original trial the identity of
 10:23 5 two witnesses (Mr. and Mrs. Merriman)
 6 who were in or had a view of the alley
 7 near the murder.
 8 c) Mr. Caldwell failed to offer in
 9 evidence that Rasmussen, the motel
 10:23 10 manager, says he did not see any blood
 11 on Milgaard, nor did he observe any
 12 unusual demeanour from him.
 13 d) Evidence was withheld from the
 14 defence. Trial jury did not hear all
 10:23 15 the evidence.
 16 e) Statements withheld by Caldwell
 17 proved that Milgaard was not in the
 18 vicinity.
 19 f) Non-Disclosure of evidence that
 10:23 20 Rasmussen, John, Danchuk and Sharon
 21 Williams did not see blood on Milgaard's
 22 clothing.
 23 g) Mr. Caldwell failed to disclose
 24 certain facts, i.e., Simon Doell's
 10:23 25 evidence concerning the bus used by

1 Q The next page, again, call that out, so this is
 2 under a), the allegation that you had available
 3 all police facts and were well aware that the
 4 police saw similarities between the rapes and the
 10:22 5 murder of Gail Miller, and the first is:
 6 "-- Knowledge of Larry Fisher being
 7 apprehended for several of these sexual
 8 assaults was suppressed by Mr. Caldwell
 9 so as not to arouse a concern that
 10:22 10 Fisher may have killed Miller."
 11 Secondly:
 12 "-- The Saskatoon StarPhoenix does a
 13 story on the murder and connects the
 14 murder and the rapes through MO which
 10:22 15 was provided by Saskatoon Police
 16 Department. Given the publicity, Mr.
 17 Caldwell would have been well aware of
 18 the other similar crimes."
 19 Three:
 10:22 20 "-- That a victim by the name of (V4)---
 21 was attacked at 7:07 a.m. the morning of
 22 January 31, 1969. Police reports reveal
 23 the police assumed the same person that
 24 murdered Gail Miller attacked this
 10:23 25 victim. This offence, committed by

1 Miller.
 2 h) That the prosecution file is
 3 incomplete. Various material from the
 4 file has been destroyed. What about the
 10:23 5 "C" file - yellow file folders purported
 6 to have been used by Mr. Caldwell, did
 7 these exist and if so, where are the
 8 missing documents.
 9 i) That the prosecution was in
 10:24 10 possession of a document summarizing
 11 witness evidence of Nichol John and
 12 Ronald Wilson. This document pre-dates
 13 the interviews of John and Wilson, yet,
 14 these two persons had not yet given full
 10:24 15 statements to the police.
 16 -- Mr. Caldwell, denies ever seeing this
 17 summary, yet it has file markings
 18 indicating it was received and filed in
 19 the Crown counsel's office.
 10:24 20 j) that Mr. Caldwell, corresponded on
 21 several occasions between 1970 and 1977
 22 with the National Parole Board regarding
 23 Milgaard's eligibility for parole. In
 24 this correspondence he petitioned to
 10:24 25 have Milgaard denied parole. This is

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1 unusual for a Crown counsel. Did he
2 have that much interest in ensuring
3 Milgaard was never released? Did he
4 write letters on other convicted
10:24 5 persons?
6 -- It is believed that the head of the
7 National Parole Board was, at that time,
8 inviting input from prosecutors e.g.,
9 conference in Banff in this regard. Did
10:25 10 Mr. Caldwell attend this conference, or
11 have access to this information?
12 k) What was the nature of Mr. Caldwell's
13 relationship with Saskatoon City Police
14 investigators in particular, those
10:25 15 involved with the Milgaard
16 investigation?
17 l) That the Saskatchewan Department of
18 the Attorney General (Head Office) had
19 both Mr. Milgaard's file and Mr.
10:25 20 Fisher's file in their possession in
21 October 1970 for appeal purposes. Did
22 Mr. Caldwell provide Head Office with
23 the material described?
24 m) The Milgaard file was full of
10:25 25 references to the Fisher rape and that

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1 one that inflicted the fatal wound to
2 the rear of the right lung, through the
3 coat?
4 p) Wilson recants Milgaard's admission
10:26 5 to him. The motel room incident is not
6 sincere."
7 And then number 4:
8 "These allegations were derived from
9 meetings we had --"
10:26 10 Being the RCMP,
11 "-- with Mr. H. Wolch, Solicitor for
12 David Milgaard, Mrs. Joyce Milgaard and
13 David Milgaard."
14 So again, with that, those are the letter, and in
10:26 15 the course of your interview reference is made to
16 these item numbers, Mr. Caldwell.
17 A Yes.
18 Q Maybe this would be an appropriate spot to break
19 and we can start with the tape.
20 A Yeah. Thank you, sir.
21 (Adjourned at 10:26 a.m.)
22 (Reconvened at 10:46 a.m.)
23 A Mr. Hodson, I wanted to intervene and say that,
24 with the help of a lady in the audience, the name
10:46 25 of the gentleman was Eric Malling.

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1 Mr. Kujawa should have been concerned
2 about Milgaard's guilt in view of the
3 numerous references to Larry Fisher.
4 Did the file material forwarded by Mr.
10:25 5 Caldwell contain references as
6 suggested? Were there other
7 communications, eg., telephone
8 conversations which may have included
9 these references?
10:25 10 n) That Saskatchewan Justice proceeded
11 by direct indictment against Larry
12 Fisher in the Saskatoon rapes. Is this
13 an unusual legal procedure?"
14 It looks like there's two N's, the second N:
10:25 15 "n) What do the Prosecutors do with
16 their files after they had completed
17 court proceedings? Do they pull out or
18 vet correspondence of no importance?
19 Are they eventually entered on
20 microfiche?
21 o) Police officer Kleiv testifies to use
22 of a knife as murder weapon. A bone
23 handled hunting knife was found on
24 bottom stringer of fence within 6 ft. of
10:26 25 the deceased. Could this knife be the

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1 BY MR. HODSON:
2 Q That was the individual who did the interview?
3 A That's right.
4 Q I think then we will proceed with the transcript
10:46 5 and, just for the record, the doc ID of the
6 transcript is 022161, we will have on the screen
7 the transcript and the tape. We will also have
8 the May 11th, 1993 letter which is referred to
9 throughout the interview and I'll maybe provide --
10:46 10 I've provided a paper copy to counsel, I'll
11 provide one to Mr. Caldwell, so with that I think
12 we'll play the tape.
13 COMMISSIONER MacCALLUM: And for the
14 record, this is a transcript of a taped
10:46 15 interview?
16 MR. HODSON: I'm sorry, it is an
17 interview -- let me just tell you who the -- it
18 is conducted on July 21st, 1993 and it is
19 Inspector Murray Sawatsky and Sergeant Dressler
10:46 20 are interviewing Mr. Caldwell, and Mr. Halyk as
21 Mr. Caldwell's counsel is also present during the
22 interview.
23 (TRANSCRIPT OF TAPED RCMP STATEMENT OF T.D.R. (BOBS)
24 CALDWELL)
25 (DATE: 93/07/21)

1 (TAKEN BY: INSP. M. SAWATSKY and SGT. M. DRESSLER)
 2 (BY REGINA R.C.M. POLICE).

3 INSP. M. SAWATSKY: Today is the 21st of
 4 July, 1993 and we're in Saskatoon at the office
 5 of Mr. Halyk. Present in this conversation is
 6 myself, Inspector Sawatsky and Sergeant Max
 7 Dressler, Mr. T.D.R. Caldwell and Mr. Halyk
 8 representing Mr. Caldwell.

9 Gentlemen, we're here today to,
 10 to interview Mr. Caldwell concerning the
 11 allegations which have been made of, obstruction
 12 of justice. And how we would like to handle the
 13 interview today is we would like to first off
 14 talk about your rights and then ask you some
 15 questions, point out what the allegations are
 16 against you and then ask you some questions
 17 concerning your involvement in the, the Milgaard
 18 matter. Max has prepared a bit of a preamble
 19 there to introduce the, the allegations to you.
 20 So what I'll do, Max, is just to turn it over to
 21 you.

22 Before -- before I do that, I
 23 would just like to say that we have sent you
 24 several letters, one of which was dated the 23rd
 25 of June, and in that letter we sent you some

1 thereby obstructing justice contrary to the
 2 provisions of the criminal code. Do you
 3 understand that, Mr. Caldwell?

4 BOBS CALDWELL: Yes, I do. Yeah.

5 SGT. M. DRESSLER: You need not say
 6 anything, of course. Have you had a chance to
 7 consult with counsel, and of course you're not
 8 obliged to say anything.

9 BOBS CALDWELL: Yes, I have had thorough
 10 consultation with counsel and I'm -- understand
 11 that I do not need to say anything.

12 SGT. M. DRESSLER: Do you wish to provide a
 13 statement to us today?

14 BOBS CALDWELL: Yes, I'm happy to do that.

15 INSP. M. SAWATSKY: Okay. So for our
 16 purposes here today the statement then is given
 17 voluntarily under your own free will?

18 BOBS CALDWELL: It absolutely is, both
 19 legally and otherwise, as far as I'm concerned.

20 INSP. M. SAWATSKY: Thank you. Okay, do
 21 you want to -- do you want to discuss this, your
 22 reply to this letter first then?

23 BOBS CALDWELL: It would -- I think that
 24 would be helpful because I've made notes in the
 25 same sequence of questions are...

1 material which was photocopied from the
 2 prosecution file. This material was to assist
 3 you in reviewing and refreshing your memory, and
 4 then on the 11th of May we also sent you a letter
 5 and in that letter we asked you questions and I
 6 understand you have prepared a reply to those
 7 questions which we'll get into, but first, Max,
 8 if you would just go over the, your prepared
 9 documents there.

10 SGT. M. DRESSLER: Certainly. We're
 11 investigating the circumstances surrounding the
 12 murder of Gail Miller which occurred on '69
 13 January 31 at Saskatoon, Saskatchewan and of
 14 which David Milgaard was convicted on '70 January
 15 31. More specifically, our investigation has
 16 focused on certain allegations which include
 17 David Milgaard was wrongly convicted of the said
 18 offence and that Larry Earl Fisher was
 19 responsible for it.

20 You and others may have known
 21 of Milgaard's wrongful conviction and took steps
 22 to suppress that knowledge, including
 23 deliberately withholding evidence favourable to
 24 the defence from Milgaard's counsel, willfully
 25 failing to communicate this knowledge to others,

1 INSP. M. SAWATSKY: Okay.

2 BOBS CALDWELL: ... they're in, and if
 3 anyone wants to pause at the end of any point and
 4 follow up one thing, that's fine too.

5 INSP. M. SAWATSKY: Okay, and I'm -- I'm
 6 referring then to the letter dated the 11th of
 7 May '93, which was written to you by Mr. Halyk
 8 and we can just go into your response then to the
 9 points that are raised in this letter and we will
 10 follow along with you and interrupt you and
 11 question you in the area.

12 BOBS CALDWELL: Written by yourself to Mr.
 13 Halyk.

14 MR. HALYK: Yeah.

15 INSP. M. SAWATSKY: Yeah, sorry, did I say
 16 that backwards?

17 BOBS CALDWELL: Yeah.

18 INSP. M. SAWATSKY: Good, thank you.

19 BOBS CALDWELL: Okay.

20 SGT. M. DRESSLER: Perhaps it might be
 21 appropriate to do a technical check on our tape
 22 recorder. I'll be switching it off.

23 INSP. M. SAWATSKY: Okay, we're back in
 24 business.

25 BOBS CALDWELL: Okay, if you gentlemen

1 would like then, you've both got copies of the
 2 May 11th 1993 letter we just spoke of and the
 3 first question as I see it is paragraph 3(a).
 4 And I would simply give you what I've written by
 5 way of an answer to that, if I may, and that is
 6 this. It starts off by saying police reports in
 7 the Miller murder file. Now, the entire file of
 8 the Saskatoon Crown Prosecutors' Office on the
 9 Milgaard case was contained in one cardboard tote
 10 box approximately 16 by 20 by 12 inches. This
 11 included seven file folders made up by myself and
 12 the transcript of the preliminary inquiry. With
 13 respect to Gail Miller's death, our office had
 14 only the Regina vs. Milgaard file, which stayed
 15 intact in the Crown Prosecutors' Saskatoon office
 16 until, I understand, it was moved to Regina, as
 17 part of the Supreme Court of Canada hearing
 18 process. I searched this file at the request of
 19 Mr. Eugene Williams in 1989 and forwarded copies
 20 of the items set out in my letters to Mr.
 21 Williams of June 16th, 1989, which are -- this is
 22 the letter which I know you people have copies of
 23 all these items, but there's my copy.

24 With that letter went a copy of
 25 the letter to Mr. T.G. Street of the National

1 subsequent appeal to the Saskatchewan Court of
 2 Appeal.

3 Now, the Saskatoon Crown
 4 Prosecutors' file at the time of the preliminary
 5 hearing and the trial and the police reports
 6 therein did not, in my memory, and I'm quoting
 7 here, link the Miller murder to the sexual
 8 assaults being committed in the area. That's a
 9 quote from 3(a) on the first page of your letter.
 10 Since these sexual assaults were being committed
 11 by a person or persons evidently unknown at the
 12 time, no files on them would reach our office as
 13 no one was charged at the time. Eugene
 14 Williams -- oh, sorry bout that, okay. Eugene
 15 Williams requested that I search the file for
 16 other sex assaults or "knife" offences. Now,
 17 this is in page 4 of my letter to Eugene Williams
 18 of October 25th, 1989. And I did not, in the
 19 language again of 3(a), "have available all
 20 police facts and files" and I was not aware that
 21 the police saw similarities between "the rapes"
 22 and the murder of Gail Miller, and I emphasize if
 23 that was the case, if that was the case I didn't
 24 know about it and I have no reason to believe
 25 they did, but that's what I can say.

1 Parole Board dated June 14th, 1972 and a letter
 2 to a Mrs. Nancy Flintoft-Meronek, National Parole
 3 Board, date is August 15th, 1977. And... I just
 4 paused there to say that I was working for the
 5 Federal Department of Justice in Saskatoon at
 6 that time when I had some of these Parole Board
 7 letters retyped because we were working from
 8 ancient carbon copies or photocopies of file
 9 copies which were becoming illegible, so if
 10 anyone's wondering, that's why we have nice crisp
 11 new ones, And of course they were not changed in
 12 that process.

13 Then on October 25th, 1989, I
 14 wrote Mr. Williams and sent it, and sent him a
 15 very comprehensive set of copies of items from
 16 the Crown file, and I know you have that letter
 17 as well. And then October 31st, 1989 I wrote Mr.
 18 Williams again, sent him the autopsy report, a
 19 Wilson statement and two Cadrain statements.

20 Now, at that time of course I
 21 was with Federal Justice and I went and searched
 22 the file at what is now called Provincial
 23 Department of Justice in Saskatoon, and at that
 24 time the file was in the same condition as when
 25 it was closed after the 1970 trial and the

1 Then on -- on March 2nd, 1992 I
 2 was asked by Inspector Quinn at the Saskatoon
 3 Police Department about my knowledge of the
 4 so-called script document, which is appendix B to
 5 my statement to Sergeant Pearson dated March
 6 11th, 1992. Now, at that time I went down to the
 7 Saskatoon Police Department and, for the first
 8 time, I saw the Gail Miller murder file, which is
 9 a set of large binders which were some four or
 10 more feet in width from left to right, so to
 11 speak. I did not then or ever read through that
 12 file, which was obviously much larger than the
 13 Saskatoon Police Department file forwarded to our
 14 office for the Milgaard prosecution. So there's,
 15 in my view, an important distinction between the
 16 Milgaard prosecutors' file that came to us and
 17 the overall Gail Miller murder file which is a
 18 much different proposition.

19 Now, I have no memory now of
 20 any other offences, sexual or otherwise, which
 21 may have occurred in Saskatoon at or near the
 22 time of Gail Millers murder, And I was not aware
 23 that, again a quote here from 3(a) again, "police
 24 saw similarities between the rapes and the murder
 25 of Gail Miller." I was not aware of that if that

1 was the case, and of course I have no knowledge
2 whether that was the case or not.

3 SGT. M. DRESSLER: Just in further to that,
4 did you ever at any time have two files, namely,
5 the Milgaard file or the Fisher file from which
6 you could draw comparison?

7 BOBS CALDWELL: None at all, and later on
8 we'll get into that in greater depth, but I can
9 say to you now that the only time our office ever
10 got what I would call a file was as a result of
11 someone being charged. Fisher was never charged
12 in Saskatoon until the much later, you know,
13 confessions arising out of his Winnipeg arrest,
14 and we never had a Fisher file ever, whatsoever.
15 All that I did was transmit a request from Ken
16 MacKay to Deputy Chief Corey which I think I can
17 expand on a little further down, but we never had
18 a Larry Fisher file. Never had a reason to have
19 a Larry Fisher file, even if he was charged with
20 anything.

21 INSP. M. SAWATSKY: Okay, just -- just a
22 question now, may be an appropriate time. You
23 say you went down to Saskatoon Police Office and
24 that's the first time you saw the police file?

25 BOBS CALDWELL: That's right.

1 have got comments all the way from, well, a
2 certain individual put it together, to well the
3 whole file was taken over, dumped on Mr.
4 Caldwell's desk and he picked out aspects of that
5 file that he wanted for his prosecution. Do you
6 recall that ever happening, Where the file was
7 brought over to you and you were -- went through
8 it and picked out those aspects that you felt
9 would, would help you with the prosecution?

10 BOBS CALDWELL: No. The way this worked
11 and, and it's not an area of which I have a
12 tremendous amount of detailed recollection, but
13 we had in Saskatoon, starting in 1965, a Case
14 Preparation officer at the Saskatoon Police
15 Department and it was still one Elmer Ullrich,
16 U-L-L-R-I-C-H, and is now retired, who took all
17 cases and generally got them into good order,
18 found missing witness statements, found lab
19 reports, got after policemen to take statements,
20 and he quite clearly did that operation on this
21 file. And so I would get a file with the
22 covering letter which we've all seen from the
23 Deputy of that day, something called a brief
24 summary, a much longer summary of pages which is
25 also here, a collection of police reports, a

1 INSP. M. SAWATSKY: And the only time you
2 saw the police file. The first and only time you
3 saw the police file?

4 BOBS CALDWELL: Yeah. I'm making the
5 distinction though between the David Milgaard
6 file, which we the Crown here had, and the Gail
7 Miller murder file.

8 INSP. M. SAWATSKY: Right.

9 BOBS CALDWELL: Which are not the same
10 thing and are vastly different in quantity and
11 scope.

12 INSP. M. SAWATSKY: Right, because the
13 police file would contain material that you
14 didn't need for your prosecution?

15 BOBS CALDWELL: Absolutely, plus I would
16 think a lot of it probably was collected after
17 this trial was all over I would think, You know,
18 in view of the subsequent allegations, etcetera,
19 so I never did see that.

20 INSP. M. SAWATSKY: Okay, I have a question
21 surrounding that, and in the investigation as we
22 have gone so far, one of the questions that we
23 have tried to clarify was how the file was put
24 together to ultimately come over to your office;
25 In other words, who put that together, and we

1 collection of civilian witness statements they
2 used.

3 Now at that point I, of course,
4 would be free to say please get me policeman X,
5 get a report from him, or please go see civilian
6 witness Y, get a statement, or have people come
7 in and see me, any kind of follow-up I wanted the
8 police would and did do, But I never received
9 their entire collection, if you will, of raw
10 material on any file, and certainly not on this
11 one.

12 INSP. M. SAWATSKY: Okay, that's adequate,
13 thank you.

14 SGT. M. DRESSLER: The letter to which
15 you're referring to the Deputy Chief, or from the
16 Deputy Chief to you apparently was dated the 8th
17 of July, 1969?

18 BOBS CALDWELL: If you have it at hand, I
19 wouldn't doubt that. I know I had it somewhere.

20 SGT. M. DRESSLER: I'm presenting a -- I
21 have a copy here, Mr. Caldwell. I've identified
22 it as appendix number 1 to my questions.

23 BOBS CALDWELL: That'd be the one, and
24 there was only one. In other words, the file
25 came over with this and we went from there.

1 SGT. M. DRESSLER: Would the brief then
 2 have been supplied on this date along with the
 3 covering letter?
 4 BOBS CALDWELL: I would assume so, yeah. I
 5 would assume so. There'd be the shorter brief,
 6 the long, exhaustive brief and in, I would assume
 7 the police reports that were identified as being
 8 usable and the civilian witness statements that
 9 were identified at that point by the police as
 10 being ones that I would want to call. And that,
 11 of course, would all be subject to, as you know,
 12 to me changing.
 13 SGT. M. DRESSLER: Can you recall if the
 14 brief in its entirety was supplied to you at, on
 15 one occasion or was it over a period of time?
 16 The reason I ask this is that through
 17 correspondence with Mr. Tallis, there's some
 18 indication that statements were, may have been
 19 provided at different intervals, namely the 23rd
 20 of June, the 9th of September, 1969 and so forth.
 21 Can you recall that at all?
 22 BOBS CALDWELL: I'm sure that happened
 23 because there are letters from me to Mr. Tallis
 24 forwarding things at different dates. That would
 25 seem to me to reflect his request to me, please

1 numbers at the top.
 2 BOBS CALDWELL: Yeah.
 3 SGT. M. DRESSLER: I can tell you what
 4 we've identified those, as being prepared by
 5 Detective Ray Mackie.
 6 BOBS CALDWELL: Okay.
 7 SGT. M. DRESSLER: In -- in his attempt to
 8 draw documents from the file for presentation to
 9 the Prosecutors' Office.
 10 BOBS CALDWELL: Okay.
 11 SGT. M. DRESSLER: Can you recall if
 12 Detective Mackie ever spoke to you regarding this
 13 at all or whether you were informed of this?
 14 BOBS CALDWELL: The numbering thing? I
 15 don't recall the numbering routine at all and if
 16 I had to, you know, I would be of the opinion
 17 that the things I got were not numbered in that
 18 same way. In fact, somewhere earlier on in this
 19 I've been asked about numbers. I don't think
 20 that the material we got had that numbering on
 21 it, but you may -- you may know better than I do
 22 about that.
 23 SGT. M. DRESSLER: Yeah, I may help you out
 24 there. We're looking at what you referred to as
 25 appendix B in your statement to Sergeant Pearson,

1 look up and see if there's a statement, or simply
 2 the unfolding of the file when he learned of
 3 witnesses I didn't know about and I rounded them
 4 up or I indeed learned of witnesses that we
 5 initially didn't have. I know that things went
 6 to Mr. Tallis in a progressive way and the --
 7 just on that statement to Sergeant Pearson has in
 8 it copies of all my letters to Mr. Tallis which
 9 could, you know, roughly be called disclosure.
 10 Not to cut off your question, but that's the way
 11 that -- that is in there in a fairly
 12 comprehensive way I think. So it is true that
 13 things went to him in -- in instalments.
 14 SGT. M. DRESSLER: If I understand
 15 correctly, Elmer Ullrich would have been
 16 responsible for preparing the case and bringing
 17 it to you?
 18 BOBS CALDWELL: That's right.
 19 SGT. M. DRESSLER: In the various documents
 20 that were appended to the file that was presented
 21 to you from the City Police, do you recall the
 22 numbers which were written in the top right-hand
 23 corner pages which alleged to be, we feel are
 24 page numbers. Now I'm presenting our file 93-211
 25 to you and you'll notice that there are some page

1 here's a copy of it.
 2 BOBS CALDWELL: Okay.
 3 SGT. M. DRESSLER: You'll notice the
 4 numbers which appear on the face of the document
 5 along the left margin, and we have corresponded
 6 those numbers to numbers which appear to be the
 7 reddened numbers and I was just wondering if you
 8 have any knowledge of that.
 9 BOBS CALDWELL: I don't -- again, I don't
 10 think that the material we got had that numbering
 11 thing in place on the documents we got and in a
 12 little later on I'll be telling you that if this
 13 is the alleged script thing, we didn't get it,
 14 But I know we'll cover that later.
 15 SGT. M. DRESSLER: Okay.
 16 BOBS CALDWELL: Okay. Now, when I said
 17 that Ullrich prepared the file, of course, he --
 18 he's the one who pulled it together and did the
 19 mechanical business of getting everything in
 20 order of -- obviously he was not an investigator.
 21 That was the detectives with help from the
 22 uniformed people, etcetera.
 23 INSP. M. SAWATSKY: Can I just interrupt
 24 you for one second?
 25 SGT. M. DRESSLER: Sure, yeah.

1 INSP. M. SAWATSKY: You say that you in
2 19 -- whenever you got, received word from Eugene
3 Williams, I think you said you went and located
4 the prosecution file...

5 BOBS CALDWELL: Yeah.

6 INSP. M. SAWATSKY: ... which was in the
7 Saskatoon Justice Building...

8 BOBS CALDWELL: Well, provincial. It's
9 a -- I was working for Federal Justice.

10 INSP. M. SAWATSKY: Okay.

11 BOBS CALDWELL: And it's important, that
12 distinction. Unfortunately someone changed the
13 name of the Department of the Attorney General to
14 the Department of Justice, which now means
15 they're easier to confuse, so I went back to
16 Provincial Justice.

17 INSP. M. SAWATSKY: Gotcha.

18 BOBS CALDWELL: ... where I'd been the
19 prosecutor during this episode to look at the
20 file.

21 INSP. M. SAWATSKY: Okay, when you went
22 back and went through that file, do you recall at
23 any time seeing any correspondence relating to
24 Larry Fisher?

25 BOBS CALDWELL: No. I know there was, now

1 because the Saskatchewan Court of Appeal only
2 sits on criminal cases in Regina, that's the
3 rule, so that 99 percent of the time a lawyer
4 from what we called Head Office would do the
5 actual appeal. In this case Serge Kujawa did it.
6 That's done in Regina. I did not go to Regina or
7 take any active part in the appeal, and for the
8 time being, the -- the carton I've mentioned
9 would simply be closed and put into closed file
10 in wherever our office was physically located, we
11 moved from the court house to Canterbury Towers
12 in '81, And so by the time all this happened I'd
13 been going to Canterbury to look at the file.
14 But once it was closed there were two or three
15 times I'd dealt with it. Do you want me to tell
16 you about those?

17 INSP. M. SAWATSKY: I would, and I guess
18 maybe I, I can help you by asking you a question
19 then. He was convicted, David Milgaard was
20 convicted in 1970 on the 31st of January.

21 BOBS CALDWELL: Yeah.

22 INSP. M. SAWATSKY: That would sort of end
23 your involvement unless there was an appeal.

24 Now, if there was an appeal, which there was,
25 would you then take that file and send it down to

1 I know there was because there's a letter from --
2 from Deputy Chief Corey to, to I think Ken MacKay
3 in Regina after Fisher's arrest, but I don't
4 think that was ever part of our Milgaard file
5 because there was no connection whatsoever with
6 Fisher and the Milgaard matter, or the death of
7 Gail Miller, either one, with the exception of
8 the very brief interview by Sergeant Gerry
9 McCorrison.

10 INSP. M. SAWATSKY: Right.

11 BOBS CALDWELL: Of, you know, one part of a
12 paragraph saying that he was interviewed as a
13 person who used to catch the bus at the same
14 time.

15 INSP. M. SAWATSKY: Okay. After Milgaard
16 was convicted, what would be the last involvement
17 you would have had with the Milgaard file,
18 prosecution file?

19 BOBS CALDWELL: The one at our office?

20 INSP. M. SAWATSKY: Yes, the one at your
21 office.

22 BOBS CALDWELL: Well, I -- the way things
23 operated is that in most cases, including this
24 one, any appeal to the Saskatchewan Court of
25 Appeal was taken by, by our lawyers in Regina,

1 Regina or would you prepare a brief or what would
2 be your involvement in that appeal?

3 BOBS CALDWELL: None of that at all. Like,
4 you've seen and have a copy of my report on
5 completed cases and it of course would be in the
6 Department's file in Regina. What my involvement
7 in the appeal would be, I would undoubtedly be
8 sent a copy of the notice of appeal, I would
9 think by Regina, to say have you got anything to
10 say about this. I expect that I talked to Kujawa
11 by phone over it, over points of law or whatever,
12 but frankly, I've no memory of doing that.
13 However, I wouldn't quarrel with anyone who said
14 I did. I did not go down to Regina, I did not do
15 any kind of brief of law or answer any written
16 correspondence from Kujawa saying what about this
17 point or what about that point. And then he
18 would -- would and did argue it in the Court of
19 Appeal himself. So his name, of course, is on
20 the reported case.

21 INSP. M. SAWATSKY: Okay. Would he -- I
22 guess what I'm after is what would he require to
23 do that? What would you send him? Would he be
24 sent the file down?

25 BOBS CALDWELL: Well, ...

1 INSP. M. SAWATSKY: Or...

2 BOBS CALDWELL: ... as far as I can tell,

3 and I'll just skip ahead because I think that was

4 covered in the questions under --

5 INSP. M. SAWATSKY: Okay, maybe we should,

6 maybe I'm jumping ahead of things here.

7 BOBS CALDWELL: Yeah.

8 INSP. M. SAWATSKY: Maybe we should go back

9 and let you finish ...

10 BOBS CALDWELL: O.K.

11 INSP. M. SAWATSKY: ...your thing and then

12 we can come back to that.

13 BOBS CALDWELL: All right, but if I can

14 just -- I can -- I can tell you that either now

15 or later because it comes up sort of under

16 another heading here.

17 INSP. M. SAWATSKY: Yeah. Well, I've made

18 a note here and I'll make sure...

19 BOBS CALDWELL: O.K.

20 INSP. M. SAWATSKY: ... that we clear that

21 up at some point in time.

22 BOBS CALDWELL: Okay. So did you want me

23 then to resume with the sequence here?

24 SGT. M. DRESSLER: Yes, please.

25 BOBS CALDWELL: Okay. Now, I think I, I've

1 basis.

2 On or about March 16th of 1971

3 I was requested by phone by someone in the

4 Department of the Attorney General, Regina,

5 likely Ken MacKay, to have the Saskatoon Police

6 Department forward any outstanding charges they

7 had against Larry Fisher for guilty pleas in

8 Regina. I phoned Deputy Chief Corey and relayed

9 this request as a result of which he wrote a

10 letter dated March 17th, 1971 to the Department

11 in Regina setting out my request and forwarding

12 the requested information. I did not connect

13 this Larry Fisher in any way with either the

14 Dale -- David Milgaard file or the Gail Miller

15 murder. And, just pausing there, I, until

16 recently, was under the impression that Fisher

17 had given a witness statement, but, by exhaustive

18 research, I've now, I'm satisfied he didn't. So

19 he wasn't called as a witness, he was not part of

20 the 95 who weren't called 'cause he didn't give a

21 statement. So all he was, was a fellow mentioned

22 in passing, 'cause McCorriston happened to

23 interview him. And that of course didn't stick

24 out in my mind.

25 Now, on February 28th of

1 written here, I have no memory now of any other

2 offences, sexual or otherwise, which may have

3 occurred in Saskatoon at or near the time of Gail

4 Miller's murder, I guess nothing else quite

5 registered on me, to the extent that did, And I

6 was not aware that, again using the language of

7 the letter, that "police saw similarities between

8 the rapes and the murder of Gail Miller." I

9 guess I already told you people that.

10 Then I have knowledge of Larry

11 Fisher being apprehended, that's the top of the

12 second page of the letter. Okay. Now, on Larry

13 Fisher, the Saskatoon Crown Prosecutors' office

14 received 95 civilian witness statements of

15 persons who were not called at the trial. I read

16 through these statements twice, once on receipt

17 of the file and again on receiving Mr. Tallis'

18 letter of August 21st, 1969. I did not make any

19 attempt to remember the names of any of these

20 people, but Fisher did not give a statement to

21 the Saskatoon Police Department and was,

22 therefore, of course, not one of the people on

23 this list. And I should add, nor was he one of

24 the civilians who was called by the Crown as the

25 other category, So he didn't make it on either

1 1990 -- and by the way, I know you have this but

2 there's the, the McCorriston police report with

3 the very brief thing about Fisher. On February

4 28th, 1990, while employed by the Canada

5 Department of Justice in the Saskatchewan

6 Regional Office, Saskatoon, I received a

7 telephone request from Eugene Williams to search

8 the Provincial Crown Prosecution file for any

9 mention of a person named Larry Fisher. On

10 searching the file I found the investigation

11 report of Detective McCorriston dated February

12 2nd, 1969, and this one you gentlemen have copies

13 of I know, setting out the interview with Fisher

14 on page 5, and I gave a copy of this document

15 personally to Eugene Williams in Saskatoon on

16 March 22nd of 1990. He and I went over to the

17 Provincial Office. You've got that document.

18 Okay.

19 Now, then to, to continue --

20 SGT. M. DRESSLER: Perhaps I can ask a

21 couple of questions.

22 BOBS CALDWELL: Yeah, okay, sure,

23 absolutely.

24 SGT. M. DRESSLER: Couple of questions, Mr.

25 Caldwell. In respect of Larry Fisher there is a

1 note or a memorandum which I've taken from our
2 file 93-211, page 40 and -- 39 and 40.

3 BOBS CALDWELL: Okay.

4 SGT. M. DRESSLER: Reportedly written by
5 Miss -- or Lieutenant Penkala on behalf of the
6 Chief of Police, and I draw your attention to the
7 last paragraph of page 2 and I'll read the text
8 perhaps.

9 BOBS CALDWELL: Okay.

10 SGT. M. DRESSLER: Our department has two
11 unsolved cases dating back into October and
12 November of 1968, which involved complaints of
13 rape. In both these cases the victim was
14 attacked from behind while walking in the late
15 evening, forced into a lane and under threat with
16 a knife made to undress and submit to
17 intercourse. The victims were always threatened
18 and forbidden to see the attacker who, after the
19 attack, carried away some of the victim's
20 clothing. In these cases the attacker allowed
21 the victims to replace some of the clothing,
22 usually the outer garment or coat.

23 Now as I see, this document is
24 undated, however, it was taken from one of the
25 files which were apparently in your, your

1 BOBS CALDWELL: Yeah, I can. Now, do you
2 want me to continue on this, this scenario here,
3 because I do get to Mr. Graham's statement.

4 SGT. M. DRESSLER: Certainly, please.

5 BOBS CALDWELL: If that's all right, I'll
6 do that then. Okay, now, in -- still on page 2
7 of, of the inspector's letter there's a second
8 paragraph, the Saskatoon Star Phoenix does a
9 story, etcetera. My comment on that is, when? I
10 have no recollection of such a story at or near
11 the time of the murder, and I expand on that by
12 saying I have no recollection of a vast number of
13 things at this point from that era, obviously.

14 Then I have, given the
15 publicity, in the same paragraph, Mr. Caldwell
16 would have been well aware of other similar
17 crimes. I have no recollection of being aware of
18 other similar crimes," or, as mentioned above, of
19 any other crimes at all at that time, period. I
20 mean, I, I remember this case 'cause it was an
21 outstanding and difficult and long-lasting thing,
22 but I couldn't even tell you what other
23 prosecutions I may have done or not at that time,
24 so -- And then the next paragraph starts that a
25 victim by name of Yang -- of (V4)---, etcetera.

1 possession. Do you have any knowledge or
2 recollection of that document?

3 BOBS CALDWELL: Let's just have a look at
4 it. Well, number 1, I don't have any
5 recollection of it ever being part of my
6 materials, if you want to put it that way.
7 Second, it looks to be, and I -- as if it may be
8 a thing that was composed with a view to putting
9 out a public announcement enlisting the aid of
10 the public and giving some of the, you know,
11 things that the police knew about these other
12 offences. So, if it came off our file that's
13 news to me, I wouldn't, you know, wouldn't, I
14 simply can't comment on that, I have no
15 recollection of it ever coming to my attention,
16 and it looks very much to me as if it was
17 constructed with a view, as I say, of putting out
18 a press statement enlisting public help. I don't
19 know if that's of any assistance to you, but is
20 there anything else you want to inquire?

21 SGT. M. DRESSLER: No, that's, that's,
22 thank you very much. Perhaps just in keeping
23 with our discussion, can you recall providing a
24 statement to Mr. W.G. Graham on the 19th of
25 November, '91?

1 Now, I have no recollection of ever learning of
2 this offence and then the quote is, "This offence
3 committed by Fisher was not disclosed to the
4 defence." My comment is, was this offence known
5 to have been committed by Fisher at the time of
6 the offence, i.e., did the victim know Fisher?
7 Was this episode published? I have no
8 recollection now of having heard of this episode
9 at the time. But the way that reads, you see,
10 implies -- I mean, to me the victim would have
11 had to know Fisher personally when it says this
12 offence committed by Fisher. I don't know
13 whether the victim knew him personally and I have
14 no recollection of the episode whatsoever.

15 And then, if you wish, that
16 brings me to B on page 2, that Mr. Caldwell
17 failed to disclose at the original trial the
18 identity of two witnesses, Mr. and Mrs. Merriman,
19 who were in or had a view of the alley near the
20 murder. My comment to that was who are Mr. and
21 Mrs. Merriman? Are they part of the 95 witnesses
22 that we mentioned earlier? Because one of the
23 things I haven't had is the list of the 95
24 witnesses.

25 Now, if you would like, I -- I

1 can tell you that I've, I have since come to the
2 understanding that these were two people who had
3 a view of the alley near the murder scene and are
4 mentioned only in some policeman's investigation
5 report. I -- I wouldn't have called them if they
6 said I -- I looked down the road and didn't see
7 anything, unless it were extremely critical
8 timing involved or they were some way able to say
9 that episode didn't happen. If you'd simply
10 called people who said I lived near there and
11 looked out the door and didn't see anything, the
12 trial would still be going on, We just literally
13 can't do that, and unless you're doing it for
14 oblique motives, I didn't call them, There was
15 no -- so I now understand it that there was no
16 statement from them, period. So if you'd like to
17 ask me about that, I'd be happy to answer that.

18 SGT. M. DRESSLER: There are -- there are
19 the identities of two other individuals which
20 were described in a police report as travelling
21 down the alley the night of the 31st of January,
22 '69 at approximately 10 PM. It may well be that
23 these are the individuals to whom the allegation
24 refers, although it is not clear. The name of
25 one of the individuals was Barbara Best, the

1 examination-in-chief, that would be leading and
2 it would not be allowed because Rasmussen was my
3 witness, so I couldn't lead him by saying was
4 there blood on the accused, did he behave
5 unusually.

6 Now, if the defence did not ask
7 those questions, they could properly argue in
8 summing up that there is no evidence by Mr.
9 Rasmussen that the accused had blood on him or
10 was behaving unusually. I mean, that would be
11 quite proper, But the only way it could be raised
12 is by the defence, in my opinion, and if neither
13 of us raised it, there's no presumption it
14 happened, all of which helps the accused.

15 Now, the next point is that
16 evidence was held -- withheld from the defence.
17 This is item D, the trial jury did not hear all
18 the evidence. Now, my first question is what
19 evidence because I don't know what this refers
20 to, but if I can come back to that. The Supreme
21 Court of Canada held on page 4 of the judgment,
22 and I quote, "We have not been presented with any
23 probative evidence that the police acted
24 improperly in the investigation of the robbery,
25 sexual assault and murder of Gail Miller, or in

1 other was Linda Barron. Barbara Best does appear
2 on one of the index -- in that index of 95
3 witnesses. Can you recall her at all?

4 BOBS CALDWELL: Not in the least. I -- not
5 her name, nothing about her, and indeed not the
6 names of the other 94 people, so. Is that okay
7 for the Merrimans? Now, the next point here is
8 that in C, Mr. Caldwell failed to offer in
9 evidence that Rasmussen, the motel manager, says
10 he did not see any blood on Milgaard, nor did he
11 observe any unusual demeanour from him. Now, if
12 Rasmussen did not mention blood on Milgaard or
13 unusual behavior by Milgaard, the presumption
14 would be that there was none of either. In other
15 words, you don't assume that he'd behaved
16 unusually or that he had blood on him, you assume
17 that he -- that neither of those things happened
18 and that both those things are in his favour.
19 Those are assumed to be normal and that is in
20 favour of the accused. If these two items were
21 not led in chief, the presumption would be that
22 both were regular, i.e., there was no blood,
23 there was no unusual behavior. If I asked any
24 blood, questioned any blood on him or questioned
25 any unusual behavior by him in

1 their interviews with any of the witnesses. Nor
2 has evidence been presented that there was
3 inadequate disclosure in accordance with the
4 practice prevailing at the time."

5 Just allow me a little
6 editorial comment here. I can't answer this
7 without specifics as to what evidence was
8 allegedly withheld from the defence. Now, if you
9 gentlemen can help me with that. That's a
10 meaningless question unless -- unless someone
11 says you did A, B, C or D.

12 INSP. M. SAWATSKY: If I can, if I can
13 maybe help to clarify that. I believe that came
14 forward from Mrs. Milgaard's interview where she
15 talked about other witnesses who didn't see
16 anything and weren't called and I, and my own
17 feelings are that you have adequately explained
18 that when you talked about the Merrimans and
19 those other people that you didn't call because
20 they had no evidence to offer.

21 BOBS CALDWELL: Okay, because it's very --
22 it's very, you know, it's very serious to say
23 that someone withheld evidence from the defence.
24 I'd be very happy to deal with specific
25 allegations, but I can't answer that in the

1 abstract, and if you feel it's been covered I'm
2 happy.

3 INSP. M. SAWATSKY: I'm satisfied it has
4 with your answer to the Merrimans and, Max, do
5 you agree? Do you have any problems with that?

6 SGT. M. DRESSLER: No, I agree, I agree
7 completely. I just wanted to make a note that
8 you've discussed, discussed disclosure in pages 4
9 to 10 of your statement with Sergeant Pearson in
10 terms of specifics.

11 BOBS CALDWELL: Yeah.

12 SGT. M. DRESSLER: Can you offer a comment
13 in respect of disclosure generally with regard to
14 this case? Did you make a conscious effort to
15 ensure "disclosure was made in proper fashion"?

16 BOBS CALDWELL: Yeah, I did. And if we, if
17 you wish I can deal with this now. It may be
18 coming up later, but the first thing I would say
19 was that I quite honestly don't even remember if
20 the term disclosure was in use in those days, but
21 we made an effort in our office to make
22 disclosure to the defence for a whole bunch of
23 reasons. Number one, it's sort of the right
24 thing and ethical to do; number 2, it in some
25 percentage of cases leads to guilt pleas or

1 I have no record of giving them to Mr. Tallis,
2 but it's very clear from his cross-examination at
3 the preliminary hearing and maybe the trial that
4 he had those previous statements by Wilson, some
5 of which were false, some of which were partial,
6 until Wilson eventually gave what I believe to be
7 the true statement after seeing Sergeant Roberts.
8 So there's a good deal of formal recording of
9 what disclosure I made and there was more
10 disclosure I made that, as far as I can see,
11 never got reduced to writing, but it's clear from
12 the transcript that it happened. And then, of
13 course, the letter from Mr. Tallis to me asking
14 me to reread the, all the civilian witness
15 statements. I did that. And ...

16 INSP. M. SAWATSKY: Can I just interrupt
17 you, just gotta change a battery here.

18 MR. HALYK: Okay. Take a break. Smoke
19 break.

20 BOBS CALDWELL: Yeah.

21 SGT. M. DRESSLER: The time is 1422 hours,
22 we're taking a short break.

23 (TURN TAPE OVER)

24 Testing, one, two, three, four. The time is 1430
25 and we're resuming our statement.

1 guilty pleas to other offences or to us not
2 having to call witnesses because things are
3 admitted as facts and all kinds of things.

4 Now, in this case, first of
5 all, you know, regardless of how it came out,
6 it -- it's a very important case to the, our
7 community. Second, it's very important to the
8 accused. Third, I was dealing with Mr. Tallis
9 who, I having prosecuted in Regina from 1958 till
10 '62 and then here onwards, more than simply my
11 opinion, was regarded as the leading defence
12 counsel in the province of that day, and I feel I
13 have personal knowledge of that. I had had a
14 great deal to do with him over the years and he,
15 in turn, had a very great, you know,
16 responsibility in defending this case to be sure
17 he got everything. So I made exhaustive
18 disclosure which, as you mention, is largely set
19 out in the letters that are appendices to
20 Sergeant Pearson, my statement to Sergeant
21 Pearson.

22 In addition to that, I've now
23 concluded that I gave things to Mr. Tallis which
24 never got recorded in so many words, the best
25 example being the various statements by Wilson.

1 BOBS CALDWELL: Okay. I think I was going
2 on about disclosure there.

3 INSP. M. SAWATSKY: That's exactly right,
4 yeah.

5 BOBS CALDWELL: Okay. The statement to
6 Sergeant Pearson as we've noted has, I think, all
7 my letters to Mr. Tallis. They, in turn, set out
8 what statements were enclosed and I -- I know
9 that more was given to him than got recorded, by
10 mainly mentioning to the Wilson business, and
11 anything, of course, that he wanted pursued was
12 done. He, of course, as an example, sat in when
13 we interviewed Inspector Roberts, the polygraph
14 operator, and so, you know, there was no, no
15 spirit of me holding out on him, or vice versa,
16 whatsoever. I -- I can answer anything specific
17 you want, but I certainly made every effort to
18 make full disclosure for -- one of the many, many
19 reasons is you wouldn't want an important case
20 like this which ended up coming off properly to
21 be reversed because you failed to ship some
22 document to somebody. So unless you have
23 anything more, that would be my reply. Is that
24 okay on that? We can come back.

25 SGT. M. DRESSLER: Yes.

1 BOBS CALDWELL: Now, one that I noted here,
2 which totally baffles me, is E, evidence was
3 withheld from the defence, A trial jury did not
4 hear the evidence, I guess we've covered that,
5 pardon me, that's D. Letter E, statements
6 withheld by Caldwell prove that Milgaard was not
7 in the vicinity. Now, I have no earthly idea
8 what that's about, and I hope you can help me.

9 INSP. M. SAWATSKY: I think that what
10 they're talking about there is sort of a
11 continuing from Rasmussen saying that -- and it's
12 been, I think, Mr. Wolch has alleged all along
13 that Milgaard was not there at the time because
14 he was actually at the Trav-a-leer Motel and that
15 that information about him being at Trav-a-leer
16 Motel and Rasmussen being able to testify that
17 was withheld.

18 BOBS CALDWELL: Well, we, we put in all we
19 knew about their sequence of travel around that
20 neighbourhood. As you may realize, that I had
21 this particular map made by the City Police to
22 show all those locations that they went to, the
23 Trav-a-leer, the Belmont Texaco, etcetera, and in
24 all the evidence we were aware of was put in for
25 better or for worse. Now, in all cases like this

1 INSP. M. SAWATSKY: And of course that
2 again sort of excludes them from being there at
3 the particular time, but the Crown's theory
4 alleged they were.

5 BOBS CALDWELL: And it was also 40 below
6 and foggy if I remember correctly, so --

7 SGT. M. DRESSLER: Uh hmm.

8 BOBS CALDWELL: There weren't too many
9 potential witnesses hangin' around. (Chuckles).
10 Anyway, I hope that is a suitable answer.

11 Now, the next one I have is
12 non-disclosure of evidence that Rasmussen, Nichol
13 John, Danchuk, and Sharon Williams did not see
14 blood on Milgaard's clothing. If I may, I'll
15 simply ask you to take my answer about the
16 Rasmussen business being the identical thing.
17 All these people were called as witnesses; I'm
18 not sure about Sharon Williams, maybe not. Okay,
19 but it was open, of course, to the defence to say
20 isn't it true, Mr. X, that you didn't see blood
21 on, on my client's clothing. I can't lead it.
22 If the defence asks the, you know, if they get a
23 positive answer saying yes, there was no blood,
24 that's fine. If they don't, the presumption is
25 there was none. So, I mean, what can I do? I

1 there's never precise agreement on things
2 happening down to the minute, and I know that
3 some people have argued, as an example, there
4 wasn't time for him to do the murder. I didn't
5 write the script. Somebody did it and we put in
6 all the evidence we had and it was open to the
7 jury to decide that he was not in the vicinity,
8 or the Crown got the wrong guy. They decided
9 evidently that he was in the vicinity and did the
10 murder. Now, unless -- I don't know what more I
11 can say on that, unless you have specific
12 questions for me.

13 SGT. M. DRESSLER: I have nothing further
14 to add.

15 BOBS CALDWELL: Okay, because I know in, in
16 criminal cases invariably you can't, you never
17 come down to precision timings, you simply don't.

18 INSP. M. SAWATSKY: Yes, and I think also
19 part of that is the, the several witnesses who
20 say they had a view of the intersection of Avenue
21 N, I believe, Max, and 20th Avenue...

22 BOBS CALDWELL: 20th Street.

23 INSP. M. SAWATSKY: ... never ever saw a
24 vehicle stuck in there.

25 BOBS CALDWELL: Yeah, well ...

1 can't improve on what happened there.

2 INSP. M. SAWATSKY: And then again that --
3 would that evidence in your opinion be in favour
4 of the Crown or favour of the Defence?

5 BOBS CALDWELL: Well, the way it stands, if
6 there's non-disclosure of evidence of -- well,
7 it's very awkwardly worded. Let me put it this
8 way, if no one says there was blood, the
9 presumption is there was no blood, So that's what
10 they ended up was apparently with evidence of no
11 evidence about blood, which, in my opinion, is
12 the same as there being no blood. Mr. Tallis
13 could very properly say you heard witnesses A, B,
14 and C, and you'll notice none of them mentioned
15 blood on his clothing, and that clashes with D, E
16 and F, So he couldn't have had it better than
17 that. Then I have -- is, is that all for that?

18 SGT. M. DRESSLER: Yes.

19 INSP. M. SAWATSKY: Yes.

20 BOBS CALDWELL: 'Kay, now, G, I failed to
21 disclose Simon Doell's evidence re the bus used
22 by Miller. And perhaps you gentlemen could... I
23 have here who is Simon Doell? Perhaps you could
24 help me because I have no memory of that at all.

25 INSP. M. SAWATSKY: Simon Doell is -- do

1 you want to hand him the, that copy of the police
2 report and let him read it? That may... we have
3 a short excerpt from the police report here where
4 Simon Doell is mentioned. I'm not aware that
5 Simon Doell was of those 95 witnesses there of
6 the statements that, that were not, were or were
7 not called but, we have a (unintelligible) I
8 think it's over her, Max, Sorry. That's it right
9 there. And just refer to that document.

10 SGT. M. DRESSLER: I'm showing to you a
11 police report dated February 6th, 1969, with the
12 number 135 in the top right-hand corner and it
13 refers to Mr. Doell, if you wish to review that.

14 BOBS CALDWELL: Okay.

15 INSP. M. SAWATSKY: Particularly, Mr.
16 Caldwell, these last, almost the last paragraph
17 there in the centre portion of the text.

18 BOBS CALDWELL: Okay. Okay, this is a
19 person saying that on occasions he'd been riding
20 on the bus and when Miss Miller got on the bus
21 she always ... something ... on the corner of
22 Avenue N and 20th directly across from the
23 funeral home. He missed her on the bus a couple
24 of times and asked her how she was getting to
25 work. She said she was getting a ride, she did

1 is on Avenue 0, and it's either 130 probably,
2 let's say. Presumably came, what I would call,
3 east on 21st headed, what I would call south on N
4 to catch the bus at 20th, and the funeral home is
5 at, at or about 1402 20th, and quite clearly the
6 episode happened around this lane leading, which
7 was leading to the T alley that's been described
8 so many times. There's no question at all, I
9 mean, that's not a theory to me, that's what
10 happened, I mean there's no evidence pointing
11 away from that, and the business of asking this
12 girl whether she knew where Peace Hill was, there
13 is no Peace Hill in Saskatoon, there's an area
14 called Pleasant Hill, and when she didn't know,
15 that the remark the stupid bitch made by the
16 accused. Sorry, I've digressed a little bit. I
17 guess you could call it the Crown's theory, but I
18 think it's more than a theory. By the time you
19 have the evidence of Wilson and John and the
20 police and where things were found, that the
21 thing happened commencing on -- on, at or near
22 this opening of the alley on N.

23 SGT. M. DRESSLER: I guess what I'm, what
24 I'm getting at, is that, is there anything to
25 suggest that she may have been accosted on Avenue

1 not elaborate on this remark, and that's Morality
2 Officer Dimmitt.

3 The City Police, you know, did
4 an exhaustive job on this investigation to the
5 extent of going and collaring people who were
6 getting on similar buses the next one or two or
7 three mornings, and if I knew about that Simon
8 Doell, if that was his evidence, I wouldn't have
9 called him, Just another guy getting on the bus
10 who may or may not have been with her on any
11 given morning. Like, I can't see that it helps
12 or hurts anybody.

13 SGT. M. DRESSLER: Could this have been
14 connected to the Crown's theory that Gail Miller
15 was walking on Avenue N when the attack took
16 place, or when the sequence of events were
17 initiated? Do you have any recollection of that?

18 BOBS CALDWELL: Well, the...

19 SGT. M. DRESSLER: Perhaps more properly,
20 can you recall the -- the theory at the time?

21 BOBS CALDWELL: Well...

22 SGT. M. DRESSLER: Ah, what's yes...

23 BOBS CALDWELL: ... the Crown's theory, you
24 -- mean, was that she had left her residence,
25 which doesn't show up on this, but it, I believe,

1 0 as she was proceeding to 20th, taken by vehicle
2 around to the lane way? We're not disputing the
3 fact that it occurred at the lane way?

4 BOBS CALDWELL: That was never suggested to
5 me and I'm -- I -- I just, from all the facts I
6 remember, there was no sug ... like, suggestion
7 that the inquiry about Peace Hill took place
8 anywhere but on the road where the car got stuck,
9 all of which is Avenue N.

10 SGT. M. DRESSLER: I guess then in keeping
11 with this Simon Doell entry on the police
12 report...

13 BOBS CALDWELL: Uh hmmm.

14 SGT. M. DRESSLER: ...I guess it, could it
15 be possible that -- that -- with Doell stating
16 that she always got on the bus at Avenue N, that
17 may have influenced the Crown's theory, or do you
18 have any recollection of that?

19 BOBS CALDWELL: Well, no, it wouldn't
20 influence me because I have no memory of ever
21 reading the Doell thing, and because -- let's
22 suppose he had insisted she always got on at
23 Avenue 0, I wouldn't believe him, because the
24 evidence was of the Wilson car coming down Avenue
25 N, the inquiry being made somewhere along here,

1 then getting roughly to the corner, getting
2 stuck, Milgaard heading back toward the girl,
3 Wilson heading away to get help and Nichol John,
4 about whom we could talk at length, being --
5 seeing at least part of Milgaard leading this
6 girl up the alley and stabbing at her with the
7 knife. So it never, ever was suggested by
8 anybody that it, any of this happened on Avenue 0
9 to my recollection.

10 SGT. M. DRESSLER: That answers my
11 question, thank you.

12 BOBS CALDWELL: Okay, okay.

13 INSP. M. SAWATSKY: I think what, what gave
14 rise to that question is the fact that in the
15 reenactment done by Mr. Wolch and Mr. Asper, et
16 al, they're of the view that being so cold
17 there's no reason for her to cross Avenue N, she
18 would have simply gone down Avenue 0 and gone to
19 the Avenue 0 bus stop. So they take issue with
20 the fact that the Crown is saying she went to the
21 Avenue N bus stop and say that in their opinion
22 they feel that it would be more likely for her to
23 go to the Avenue 0 bus stop and that's, that's
24 what gave rise to that Simon Doell...

25 BOBS CALDWELL: Well, I mean, anybody could

1 "missing documents". Now would, can we expand on
2 that, is...

3 INSP. M. SAWATSKY: I can tell you where
4 that came from, where I believe that came from.
5 When we had our meeting with Mr. Wolch he made
6 reference to a C file which he could not give us
7 any more detail as to where he felt it came from.

8 BOBS CALDWELL: Okay.

9 INSP. M. SAWATSKY: But we're speculating
10 as, as a group there, that possibly it was notes
11 that you may have made during prosecution on
12 legal-sized yellow foolscap, which I know a lot
13 of law firms use. Now, I don't know if you did.

14 BOBS CALDWELL: I didn't. I -- I used
15 exclusively three-ring binder paper which you've
16 got lots of examples in the exhibit. I never,
17 ever used that, that yellow stuff that's so
18 common.

19 INSP. M. SAWATSKY: Okay. And Mr. Wolch
20 talks about a C file which he felt may have been
21 a prosecution file.

22 BOBS CALDWELL: Yeah.

23 INSP. M. SAWATSKY: Where he got this term
24 from I don't know because nowhere in our
25 investigation, and we've had, our members have

1 have any view they want, I mean, she, I suppose
2 if she was a physical exercise fan could have
3 gone three or four blocks down 20th to catch the
4 bus. I, I wasn't writing the script and nor, I'm
5 pleased to say, were Mr. Wolch or Mr. Asper. But
6 in any event, aside from facetiousness, there was
7 nothing ever to suggest Avenue 0 as the, as the
8 locale of their encounter with this girl.

9 SGT. M. DRESSLER: Thank you.

10 BOBS CALDWELL: 'Kay. Okay, now I think
11 that gets us to page 3 of your letter, Inspector,
12 and the item H I've got...

13 INSP. M. SAWATSKY: Yes, I agree.

14 BOBS CALDWELL: All right. What I've
15 written down about that is, or noted, is the
16 prosecution file was complete as recently as 1989
17 when I last searched it at the request of Eugene
18 Williams. I did not destroy any material from
19 the file at any time. I don't know what is meant
20 by a "C" file. Our office in Saskatoon, from
21 1962 when I arrived here, till 1987 when I left
22 that office, used only manilla-coloured,
23 legal-sized filing folders. We did not have, nor
24 did I personally use, yellow or any other
25 coloured filing folders, And I don't know of any

1 gone through every single document, have we come
2 upon this file. So whether it's something from
3 Mrs. Milgaard or, or what I don't know. But we,
4 I think, have assumed, all of us, including Mr.
5 Wolch, that it was likely the prosecution file.

6 BOBS CALDWELL: Well, it, it wasn't, and I
7 said a minute ago I used foolscap, which is not
8 three-ring binder size, it's closest to legal
9 size, with a thing called a springback binder,
10 and you've got my original notes, and lots of
11 them in your file, which would illustrate that,
12 and I know I don't need to show you pages of it,
13 but...

14 SGT. M. DRESSLER: Well, would the notes
15 then that are in the file constitute, to your
16 knowledge, all of the notes that were made and
17 then appended your file and held in that fashion?

18 BOBS CALDWELL: I didn't have any other
19 files. Everything I had went into the seven
20 filing folders and into that carton. I didn't,
21 you know, destroy anything, add anything,
22 squirrel anything away. I had certain extra
23 copies of typed documents that you've seen here
24 today that were, that are in multiple copies,
25 including in the Saskatoon Crown Prosecutors'

1 file, so there's absolutely no -- nothing was
 2 destroyed, there were no C files and no yellow
 3 anything as far as I'm concerned.
 4 INSP. M. SAWATSKY: Okay, I guess just to,
 5 to sort of close that issue if we can.
 6 BOBS CALDWELL: Okay.
 7 INSP. M. SAWATSKY: Do you recall or are
 8 you familiar with the term C file or yellow file?
 9 BOBS CALDWELL: Absolutely...
 10 INSP. M. SAWATSKY: Does that mean anything
 11 to you?
 12 BOBS CALDWELL: No, C file. My initial,
 13 I'd been known, of course, to end little notes
 14 with C for Caldwell. No C file though. No, I --
 15 it doesn't mean a thing to me. Absolutely not.
 16 INSP. M. SAWATSKY: That, that might be an
 17 explanation right there with something we can
 18 look at all right.
 19 BOBS CALDWELL: Unfortunately I never did.
 20 I mean, I never created a filing folder with my
 21 initial or name on it in this because everything
 22 I did or dealt with, you fellows have.
 23 INSP. M. SAWATSKY: Okay, that's something
 24 that if we can find more information on we could
 25 always come back to you and try and clarify it.

1 information that may be helpful to you. I'm
 2 holding a copy of those documents in my hand
 3 which I've attached as appendix 2 and which was
 4 referred to in Sergeant Pearson's statement as
 5 appendix B.
 6 BOBS CALDWELL: Okay.
 7 SGT. M. DRESSLER: Through our inquiries we
 8 have determined that on the back of the document
 9 entitled summary was a handwritten drawing. We
 10 have identified that drawing as being completed
 11 by former Chief Joe Penkala.
 12 BOBS CALDWELL: Okay.
 13 SGT. M. DRESSLER: ... and I was wondering
 14 if that has any way, in any way if that helps
 15 refresh your memory.
 16 BOBS CALDWELL: About that document? Not
 17 in the least.
 18 SGT. M. DRESSLER: Thank you.
 19 BOBS CALDWELL: No, not at all. I didn't
 20 know whose writing and drawing that was. It's
 21 obviously not mine, but, no, not at all. And
 22 what I said in the Sergeant Pearson statement I
 23 adopt on that. I'll expand if, if I could, but
 24 there's really not much more I could say.
 25 SGT. M. DRESSLER: I see no need, thank

1 BOBS CALDWELL: Oh, I would, I would be
 2 delighted if you would.
 3 INSP. M. SAWATSKY: But Mr. Wolch wasn't
 4 able to help us anymore than that, he sort of
 5 threw it out and we haven't been able to, to find
 6 anything more to support that.
 7 BOBS CALDWELL: Well, I feel better now,
 8 (chuckles) 'cause I certainly can't help you.
 9 Then the next thing I have, if that was all on
 10 that, gentlemen, is this letter I prosecution was
 11 in possession of a document summarizing,
 12 etcetera. Now, here's -- my answer to that is
 13 this: Is this the alleged "script" document? If
 14 so, it's covered in my statement to Sergeant
 15 Pearson above. Now, I did not, to quote this,
 16 "deny ever seeing this document," I described
 17 finding it in my statement to Sergeant Pearson.
 18 I don't know what's meant by, and then another
 19 quote, "file markings indicating that it was
 20 received and filed at the Crown Counsel's
 21 office." Now you'll see, of course, in Sergeant,
 22 in Sergeant Pearson's statement what I said about
 23 finding it in Regina, which, unless you want to,
 24 I won't repeat all that.
 25 SGT. M. DRESSLER: I just have some

1 you.
 2 BOBS CALDWELL: 'Kay, thanks. And then the
 3 next paragraph, let's see...
 4 SGT. M. DRESSLER: I think we're onto J
 5 now.
 6 INSP. M. SAWATSKY: J.
 7 BOBS CALDWELL: Yeah, but tell me, I still
 8 don't understand, going back to I, yeah. It has
 9 file markings indicating it was received and
 10 filed at the Crown Counsel's office. Can you
 11 help me with that?
 12 SGT. M. DRESSLER: I have no knowledge of
 13 those markings.
 14 BOBS CALDWELL: But they're not in anything
 15 that, that either I have or the R.C.M.P. has.
 16 SGT. M. DRESSLER: I've located nothing in
 17 our files which suggests any markings...
 18 BOBS CALDWELL: Yeah.
 19 SGT. M. DRESSLER: ... stating they were
 20 received by the Crown's office.
 21 BOBS CALDWELL: So, so, you know, that to
 22 me is incorrect and...
 23 INSP. M. SAWATSKY: That again is an
 24 allegation of Mr. Wolch and we again haven't been
 25 able to see that.

1 BOBS CALDWELL: And it doesn't appear on
2 any of the documents you've, you've rounded up or
3 had access to?

4 SGT. M. DRESSLER: I have never seen
5 anything to that effect.

6 BOBS CALDWELL: Okay, that's fine. Then if
7 I can go to J, re National Parole Board, I wrote
8 three letters to the National Parole Board all in
9 my capacity as Crown Prosecutor on the Milgaard
10 trial, all on our office letterhead. Now, the
11 first of those, June 14th, 1972, I wrote Mr. T.G.
12 Street and it's your document 198P536-540, that I
13 had read the booklet about the parole system and
14 noted they welcomed reports from judges,
15 magistrates and police. I quoted the citation of
16 the Court of Appeal judgment, on Milgaard that
17 is, noted that leave to appeal to the Supreme
18 Court of Canada has been refused, set out the
19 facts, enclosed the Court of Appeal judgment,
20 photographs, and reviewed the nine factors set
21 out in the booklet and my views on each of those.
22 I said I had read Milgaard's psychological
23 history; I quoted Dr. Ian McDonald's opinion, and
24 I said I had never written the Board before in my
25 13 years as a prosecutor.

1 of the trial and was motivated by my view of my
2 duty as the Crown Prosecutor at the trial and
3 following it. I don't recall writing the board
4 on other convicted prisoners because I never had
5 a case to prosecute which arose from such a
6 senseless and vicious rape and murder as occurred
7 here with the victim, a stranger to the accused,
8 being left to bleed and freeze to death in the
9 dark on a 40 below morning in a back alley. I
10 did attend a course at Banff, Alberta in
11 September of 1974 at which Mr. Outerbridge
12 addressed the registrants of the course. This
13 was the Federation of Law Societies Criminal
14 Procedure Refresher Course. Now, that answer is
15 intended to deal with item J and I'd welcome any
16 questions you may have, now or later.

17 SGT. M. DRESSLER: Just two short
18 questions. Did Saskatoon Police Department
19 members provide input into the letters that you
20 wrote?

21 BOBS CALDWELL: No, no.

22 SGT. M. DRESSLER: Did you ever discuss
23 writing the Parole Board with any of the
24 Saskatoon members as you recall?

25 BOBS CALDWELL: I don't recall doing that

1 Second letter, I wrote Mr.
2 William J. Outerbridge, and it's your document
3 198 page 541 and 542, September 27th, 1974, and
4 advised him of my letter to Mr. Street. I
5 suggested getting a release from Milgaard to
6 allow Dr. Ian McDonald to forward Milgaard's
7 psychological history to the National Parole
8 Board.

9 Now, third, August 15th, 1977,
10 pages 545 and 546, I think those are your
11 numbers. I wrote Nancy F. Meronek, in reply to
12 her letter to me of August 5th, 1977. I sent her
13 a set of the photographs and told her that I had
14 not changed my views. I mentioned the Threinen,
15 which is T-H-R-E-E-I-N-E-N case, as the most
16 striking recent example of the inadvisability of
17 granting freedom to dangerous persons.

18 Now, just pausing there, I
19 showed you gentlemen these letters earlier, so --
20 and I know you have copies of them.

21 INSP. M. SAWATSKY: Yes, we do.

22 BOBS CALDWELL: Yeah, okay. Now, my
23 interest in insuring "Milgaard was never
24 released" was based on my comprehensive knowledge
25 of the Gail Miller murder at and around the time

1 because I, you know, there was no necessity for
2 me to talk to policemen about it, 'cause I had
3 the whole file, like, of course, I was still with
4 the Provincial Crown, and this was nothing that
5 they generated or inspired. It was, you know, my
6 own idea caused by the things that are mentioned
7 in the letters and I -- I really would have felt
8 very, very guilty indeed had I not brought these
9 things to the attention of the Board in the event
10 that Milgaard had been released and killed
11 someone, And again, we had this so graphically
12 set out by the Threinen episode here that I've
13 never felt anything but absolute gratification
14 that I took it on myself to, to write those
15 letters. And it was an index of how terrible a
16 case I thought this was that I really don't think
17 I ever wrote any such letter previous to those in
18 1970 or '71 or whenever they were, and right up
19 til '87 when I left that office; In other words,
20 I did a couple of dangerous sexual offenders, I
21 don't believe I wrote on those. So this was an
22 index of, of how gravely I viewed this thing in
23 terms of danger to, you know, the public. But
24 no, the police were not involved.

25 SGT. M. DRESSLER: Thank you.

1 BOBS CALDWELL: Now, is there anything else
 2 on that J right now or, okay. So in K, the
 3 question on my relationship with the
 4 investigators, I knew all the investigators who
 5 were called as Crown witnesses on the Milgaard
 6 prosecution. I commenced work in Saskatoon as
 7 agent of the Attorney General in February of 1962
 8 and I had met all these investigators in the
 9 course of previous prosecutions. Those called at
 10 the trial were T.H. Kleiv, J.H. Parker, G.T.
 11 Reid, J. Penkala, L.R. Grant, G.R. McCorrison,
 12 R.E. Fleming, K.S. Mackie, E.A. Karst, R.W.
 13 Mackie and J. Oleksyn. I knew all those officers
 14 in their capacity as policemen and in mine, as
 15 agent of the Attorney General. Anything you want
 16 to ask me to amplify on that at all, you're
 17 welcome.

18 INSP. M. SAWATSKY: The only thing that I
 19 have by way of clarification is that I was told,
 20 and there's no documentation to present that, but
 21 -- or present to refer to, that you were involved
 22 with their union or their association as lawyer.

23 BOBS CALDWELL: (Laughs).

24 INSP. M. SAWATSKY: Now, could you just
 25 tell us about that?

1 know, eminent counsel as -- the one I recall was
 2 Mr. Tallis, succeeded by Mr. Halyk, did act for
 3 the association. So that's utter nonsense, of
 4 course.

5 SGT. M. DRESSLER: Did your relationship or
 6 could your relationship with the police be
 7 construed as a conflict in terms of compromising
 8 your position as an agent for the Attorney
 9 General, To your knowledge?

10 BOBS CALDWELL: Well, that would have to
 11 arise out of me being their lawyer for their
 12 association wouldn't it? So, no -- no and no.
 13 If that's what that means, it didn't happen, so
 14 it couldn't have any bearing on anything. I
 15 mean, I'm amazed that anyone would think it was
 16 possible because I was a full-time provincial
 17 civil servant and certainly couldn't practice law
 18 in any shape or form.

19 SGT. M. DRESSLER: Thank you.

20 BOBS CALDWELL: 'Kay. Now, letter L, I'll
 21 tell you my views on that, and that is that the
 22 Saskatchewan Department of the Attorney General
 23 must have had a file of its own (a sneeze) on the
 24 Milgaard prosecution, if for no greater reason
 25 than corresponding with the Saskatoon Crown

1 BOBS CALDWELL: Yeah, I sure will.

2 MR. HALYK: That's me.

3 BOBS CALDWELL: Well, first, first
 4 (chuckling) of all, I've never practiced law
 5 privately, period.

6 MR. HALYK: You know what the confusion is,
 7 because at that time Cal Tallis was the
 8 association lawyer.

9 BOBS CALDWELL: Yeah.

10 MR. HALYK: And then after Cal left, I took
 11 over as the association lawyer.

12 INSP. M. SAWATSKY: Okay.

13 MR. HALYK: But anyway, so that may be the
 14 confusion, is Tallis.

15 INSP. M. SAWATSKY: All right.

16 BOBS CALDWELL: I'd like to adopt my
 17 learned friend's submission here. But...

18 MR. HALYK: Not Caldwell (chuckles).

19 BOBS CALDWELL: I never practiced law
 20 privately. I articulated in Regina and went with
 21 the department in 1958, came here in '62, didn't
 22 have any clients whatsoever, and specifically
 23 including any police association, clearly I
 24 couldn't do that, wouldn't do it and didn't do
 25 it, and as Mr. Halyk points out, various, you

1 Prosecutors about the case, and also appearing in
 2 the Court of Appeal and the Supreme Court of
 3 Canada on the original appeal where leave to
 4 appeal was refused shortly after the Court of
 5 Appeal case. That, of course, is not the recent
 6 Supreme Court hearing we're talking about. I do
 7 not know whether, what I call head office, in
 8 other words, Regina, obtained the Saskatoon Crown
 9 Prosecution file from our Saskatoon offices for
 10 "appeal purposes" and in the absence of some
 11 written record of that occurring, I doubt that it
 12 happened.

13 Head office would have my
 14 Report on Completed Cases dated February 12th,
 15 1970, the trial transcript, the notice of appeal,
 16 and any correspondence which might have taken
 17 place between the Saskatoon office and the Regina
 18 Prosecutions Branch.

19 Now, as to whether I provided
 20 Head Office with "Mr. Fisher's file," I have here
 21 see answers above, and that refers back to what I
 22 said about Fisher earlier in this interview. My
 23 office did not have a file on Mr. Fisher. He was
 24 not identified as the perpetrator of any
 25 Saskatoon offences until later he confessed to

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1 them in Manitoba, whereupon they were disposed of
2 by guilty pleas in Regina, and this is expanded
3 on in my statement to -- to Mr. Graham. I had no
4 "material" to provide head office.
5 Now, is there anything about
6 that -- that paragraph you want to pursue at this
7 point? Because it talks both about Milgaard's
8 file and Fisher's file. We never had a Fisher
9 file.
10 INSP. M. SAWATSKY: And I think you've
11 adequately answered did Mr. Caldwell provide head
12 office with the material described.
13 BOBS CALDWELL: Didn't have anything to
14 provide them. In fact, what did go didn't come
15 through our office, it went from the Deputy Chief
16 of Saskatoon direct to the Regina Department of
17 Justice head office.
18 INSP. M. SAWATSKY: Right.
19 BOBS CALDWELL: Didn't -- there's no point
20 in, or reason for it to come through our office,
21 and it didn't. And that is clear, of course,
22 from the letters that you have.
23 INSP. M. SAWATSKY: Yes.
24 BOBS CALDWELL: Is there anything else then
25 on that L one?

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1 you had by way of file material. Max, does that
2 satisfy you?
3 SGT. M. DRESSLER: Certainly.
4 BOBS CALDWELL: Yeah, because it's very
5 important to, to, you know -- again, remember
6 that we had a Queen against Milgaard file, That
7 was not the same as the Saskatoon Police/Gail
8 Miller murder file. Neither of those was the
9 same as Regina's Queen against Milgaard file,
10 which would basically have my report and any
11 appeal documents and stuff in it, And we had no
12 Fisher file, oh, of any description. So those
13 are all in little different compartments and
14 can't be kinda mentally pushed all in together,
15 'cause they physically weren't that way.
16 SGT. M. DRESSLER: Perhaps while we're just
17 dealing with this, I may ask this question, which
18 might be appropriate. Did you at any time
19 discuss the case that you were proceeding against
20 Milgaard with Mr. Kujawa and, if so, the
21 circumstances?
22 BOBS CALDWELL: The Milgaard?
23 SGT. M. DRESSLER: Milgaard file itself.
24 BOBS CALDWELL: I'm sure I did. My -- for
25 instance, an example, I'm sure I must have phoned

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1 INSP. M. SAWATSKY: No, Max, nothing from
2 your point, okay.
3 BOBS CALDWELL: Okay. Well then the M, M
4 situation on the beginning of page 4 of your
5 letter, Inspector. I have written here simply,
6 this question appears primarily for Mr. Kujawa.
7 Having said that I'll -- again, I think it's what
8 the investigators have to bear in mind, that we
9 had a R. vs Milgaard file; the police had a very
10 large Gail Miller murder file. We never had any
11 file on Fisher, period, and I would think a lot
12 of those answers, I can't speak for Mr. Kujawa,
13 but certainly he'd be in the same position with
14 respect to that M, but is there anything specific
15 you want to ask me about that?
16 INSP. M. SAWATSKY: I think you've probably
17 answered that in the fashion you described your
18 file, Saskatoon Police file, and then the file
19 that Regina would have.
20 BOBS CALDWELL: Yeah.
21 INSP. M. SAWATSKY: And I guess the -- the
22 assumption has been that there could have been
23 some crossing of those files, So I really think
24 that you probably addressed this very early on
25 when you explained the file procedure and what

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1 him when the Lapchuk/Melnyk thing happened
2 because that, you know, kinda surprised me very
3 much, and I am sure I would have phoned him and
4 said this has just happened, what's your view on
5 whether we can lead with this evidence, etcetera.
6 I may have talked to him about certain other
7 points of evidence, The -- the section 9(2)
8 adverse witness thing. Frankly, I don't remember
9 doing that, because in our offices Del Perras,
10 who was the only other member of the office, he
11 essentially worked on the, a lot of the points of
12 law and he and I would discuss those, but I'm
13 sure I did talk to Kujawa about one thing or
14 another, but not a whole lot more detail than
15 that, I'm afraid.
16 (TAPE PAUSED)
17 MR. HODSON: This is probably an
18 appropriate spot to break for noon.
19 COMMISSIONER MacCALLUM: Thank you. 1:30.
20 (Adjourned at 12:03 p.m.)
21 (Reconvened at 1:38 p.m.)
22 MR. HODSON: Mr. Commissioner, before we
23 start up the tape again I must -- I originally
24 thought it was an hour and 20 minutes, and much
25 like my estimates in my own examination I am in

1 error and we have about another hour of the
 2 interview, so we'll proceed with that.
 3 COMMISSIONER MacCALLUM: Thank you.
 4 (TAPE RESUMES)
 5 INSP. M. SAWATSKY: Okay, we've still got,
 6 looks like a few minutes of tape, so maybe -- we
 7 may be able to finish off here, depending on the
 8 amount of conversation ...
 9 BOBS CALDWELL: Okay, sure.
 10 INSP. M. SAWATSKY: ... and then take a
 11 break, but, if not I'll -- I'll alert when
 12 nearing the end.
 13 BOBS CALDWELL: Okay. Well then I have, if
 14 you're through then with M. from my aspect of it,
 15 still this -- this M. still talks about were
 16 there other communications, telephone
 17 conversations, for instance, which may have
 18 included these references. Again, my Milgaard
 19 file was not full of references to -- to the
 20 Fisher rape or rapes or, I don't even see them as
 21 that, I see them as, at that point, unsolved
 22 sexual crimes which had not been attributed to
 23 Fisher. So there's a big jump being made of
 24 assumption there, and it's -- certainly Kujawa
 25 and I never talked about Fisher in any aspect

1 Yeah, he came to my residence.
 2 SGT. M. DRESSLER: And when would have that
 3 occurred?
 4 BOBS CALDWELL: Umm, well, I thought it
 5 would be stickin' right out on the top of the ...
 6 according to my, my notes, November 19th, 1991.
 7 SGT. M. DRESSLER: Okay.
 8 BOBS CALDWELL: Yeah, I got that from
 9 somewhere. Oh, I'm sorry, it's -- it's the very
 10 first thing in the statement. On November 19th,
 11 1991 I interviewed T.D.R. Caldwell at his home
 12 855 University Drive. That's Mr. Graham's sort
 13 of opening thing and my statement takes up
 14 another couple of full pages, And you have that.
 15 SGT. M. DRESSLER: Okay. I wasn't given
 16 access, or I didn't have access to the first
 17 page, but that clarifies it. Those are all the
 18 questions that I have about that.
 19 BOBS CALDWELL: Okay. If you want that
 20 you, you can have I today from me with no
 21 problem, I'll photocopy it.
 22 SGT. M. DRESSLER: Okay, thank you.
 23 BOBS CALDWELL: But you do have my
 24 statement to Graham?
 25 SGT. M. DRESSLER: Yes I do.

1 whatever, because his existence hadn't been, he
 2 had not been identified, you know, aside entirely
 3 from the fact that we weren't paying attent ...
 4 any attention to anything but this prosecution at
 5 that point. So anyway, you can come back if
 6 you'd like.
 7 Now the N., letter N. this that
 8 Saskatchewan Justice proceeded by direct
 9 indictment against Larry Fisher in the Saskatoon
 10 rapes, is this an unusual legal procedure? I
 11 gave my views on that to Mr. W.G. Bill Graham,
 12 who's Executive Director of the Saskatoon Police
 13 Commission. I think that should be Saskatchewan.
 14 In a statement I gave Mr. Graham November 19th,
 15 1991, when he was investigating the alleged
 16 concealment of files concerning Larry Fisher, a
 17 copy of this statement is in the material sent
 18 with Inspector Sawatsky's letter to Mr. Halyk of
 19 June 23rd, 1993, and I adopt what I told Mr.
 20 Graham lock, stock and barrel, but I'm happy to
 21 expand on it if there is anything specific you'd
 22 like to go into. This is --
 23 SGT. M. DRESSLER: Where was the statement
 24 given?
 25 BOBS CALDWELL: At my house. To Graham?

1 BOBS CALDWELL: Okay, okay, that's good.
 2 So, now, do you want to expand on the question of
 3 the way the Fisher things were dealt with? As
 4 far as I'm concerned it's -- there's nothing
 5 whatever sinister about it.
 6 INSP. M. SAWATSKY: Yeah, and I think when
 7 we wrote you that we were interested more in the,
 8 in the procedure, and actually I think that has
 9 been answered by another witness, and I think we
 10 now realize that you probably played no role in
 11 that. Do you recall if you would have played any
 12 role in, in that, and I ...
 13 BOBS CALDWELL: In the Fisher thing.
 14 MR. HALYK: Direct indictment.
 15 INSP. M. SAWATSKY: In the direct
 16 indictment?
 17 BOBS CALDWELL: Oh, none, none whatsoever.
 18 Because, you see, the only way our office would
 19 be involved is if Fisher had been charged. The
 20 Saskatoon Police didn't have -- they had a bunch
 21 of unsolved sexual offences with no accused for
 22 them. Now, our office would not get those
 23 nameless offences 'cause no one was charged. If
 24 it -- in another scenario, suppose they had
 25 arrested Fisher here and he confessed all this,

1 we would have one or more Fisher files. But
 2 there was nothing, there was no point in -- our
 3 office knew nothing about him because he was an
 4 unknown one or more offenders at that time. So
 5 ...

6 SGT. M. DRESSLER: When did you become
 7 aware that Fisher had been charged by Saskatoon
 8 City Police; can you recall?

9 BOBS CALDWELL: Well the only thing I would
 10 ever know about it is -- is that letter from
 11 Corey to -- it would be Ken MacKay phoning me
 12 saying "please get the City Police to ship in
 13 anything they have on Larry Fisher". But, of
 14 course, in -- and that was, that was March of
 15 '71, just let me look here a minute. MacKay
 16 phoned me within a day or so of when Corey sent
 17 the letter, because I have a letter from MacKay
 18 to the Winnipeg lawyer for Fisher complaining
 19 about lack of action, in which MacKay says "our
 20 agent in Saskatoon is looking after this".
 21 That's all within two or three days of each
 22 other. So in -- what that means is he phoned me
 23 and said "get Corey to send us all the Fisher
 24 stuff".

25 SGT. M. DRESSLER: Uh hmm.

1 BOBS CALDWELL: I wouldn't think I would
 2 know that because, I mean, they can't lay charges
 3 until they know the identity of the accused.
 4 They only learned the identity of the accused
 5 because the -- he was, you know, what,
 6 apprehended in Winnipeg and said "I want to clean
 7 this stuff up".

8 SGT. M. DRESSLER: I might be able to help
 9 you here. We're aware that City Police laid
 10 charges against -- four rape counts against
 11 Fisher in December of 1970.

12 BOBS CALDWELL: Uh hmm.

13 SGT. M. DRESSLER: And then it was
 14 subsequent to that that he was returned to
 15 Saskatchewan and he faced the direct indictment
 16 later that, in 1971. Do you have any knowledge
 17 of those 1970 charges?

18 BOBS CALDWELL: No, except what I learned
 19 as a result of this whole process. Like, again,
 20 you see, they would, we had -- we had no accused
 21 physically, we had no court date, we had no file.
 22 It was totally the opposite of the usual way of
 23 operating because, because presumably the City
 24 Police somehow learned that Fisher was the right
 25 guy and laid charges. But had Fisher been

1 BOBS CALDWELL: So, I mean, the -- the
 2 Fisher stuff never physically came through our
 3 office. I ended up with a carbon copy of the
 4 Corey letter to MacKay. And this, of course, is
 5 out of your documents. Like he'd send me that
 6 carbon copy and it would be presumably filed, or
 7 is it? Just a minute, I just want to make sure
 8 it is. No, I thought it was copied to us but it
 9 wasn't, so I didn't even get that.

10 SGT. M. DRESSLER: Did you ever speak to
 11 Mr. Fisher's lawyer, Mr. Greenberg?

12 BOBS CALDWELL: Absolutely not. Because he
 13 would presumably understand that this was a
 14 Regina operation. Now in your file that says
 15 Fisher/Kujawa, there's a -- all that
 16 correspondence is in there in which, in which the
 17 Winnipeg lawyer was, in effect, nagging our
 18 Regina Head Office to get moving on this thing.
 19 He didn't know, there was no reason for him to
 20 deal with us, because he was already dealing with
 21 Regina and we didn't have anything to, to deal
 22 with. We didn't have a file.

23 SGT. M. DRESSLER: Were you aware that
 24 Saskatoon City Police had laid charges prior to
 25 the direct indictment being sought?

1 physically in Saskatoon, arrested here, we'd have
 2 been involved in court dates, getting ready for
 3 the file, etcetera, etcetera. Not a bit of it in
 4 this instance, because we weren't asked to
 5 process or look after it. And the way it was
 6 done was unusual, but there's not a thing about
 7 it that's sinister in my estimation, and I think
 8 I explained all that to Graham.

9 SGT. M. DRESSLER: Thank you.

10 INSP. M. SAWATSKY: I just see we're at the
 11 point now where, how you handled your files, and
 12 that sort of thing. And I think it would be an
 13 appropriate time to take another break and well
 14 turn the tape over.

15 BOBS CALDWELL: Very good.

16 INSP. M. SAWATSKY: The time is now 3:15.

17 (TAPE B)

18 SGT. M. DRESSLER: The statement resumes at
 19 15:20.

20 INSP. M. SAWATSKY: Okay. Mr. Caldwell, we
 21 were at our second point and there, I see that
 22 we've duplicated ourselves, and what do
 23 prosecutors do with their files, that particular
 24 paragraph?

25 BOBS CALDWELL: Okay. What I can tell you

1 about that is that, at the time of the Milgaard
2 trial, my office retained all files intact for
3 five years and discarded run-of-the-mill files,
4 such as .08's, etcetera, in the sixth, sixth
5 year. We retained all files on murders,
6 manslaughters, cause death by criminal
7 negligence, sexual offenses with a view to, later
8 on, dangerous sexual offender applications, and
9 files, of course, on those applications
10 themselves; inquests following unsolved murders
11 and other important files permanently, and that
12 practice was still going on when I left the
13 office in 1987.

14 Now in the Milgaard file, I did
15 not remove or destroy any correspondence or other
16 material whatever. Prior to my leaving, there
17 was no entry of files on microfiche taking place
18 in our office in Saskatoon. I don't know what
19 the present situation is. That's item N. and I
20 would be happy to expand on that if there's
21 anything.

22 INSP. M. SAWATSKY: Yeah. I guess the only
23 question that arises in my mind, if your policy
24 was to destroy files after five years, is there
25 any particular thing or can you give a reason as

1 I'm misreading this. I do not know whether this
2 knife was tested in any way, that's the
3 bone-handled knife that's referred to. The
4 broken blade of the knife was found near the body
5 and a matching handle found nearby, which items
6 were initially one knife, and I -- we know that
7 there's a photo somewhere of a physical match of
8 those two. And that was the murder weapon. The
9 bone-handled knife, I -- I suppose, in the course
10 of snow melting if you scoured around you could
11 find half a dozen unexplained knives in a city
12 block, who knows. That one I have no knowledge
13 of.

14 SGT. M. DRESSLER: Okay, perhaps I can help
15 you out, too, to refresh your memory. The
16 bone-handled knife of which we speak was found by
17 Kleiv and Oliver on the 28th of February '69 on a
18 fence, a fence stringer ...

19 BOBS CALDWELL: Uh hmm.

20 SGT. M. DRESSLER: ... adjacent or near to
21 the body, at 221 Avenue N. South. The knife was
22 held until 1970, January 28th, by Kleiv when it
23 was turned over to Constable Oliver, and I'll
24 show you the file, quote, "... upon instructions
25 from Mr. Caldwell agent for the Attorney

1 to why you held onto this particular file?
2 BOBS CALDWELL: Because, what I told you is
3 it was the exception. Like I destroyed
4 run-of-the-mill files in the sixth year, but what
5 I said was that we retained these other files
6 permanently, In other words everything for five
7 years, in the sixth year the .08's and ordinary
8 stuff would go out, but -- but permanently
9 retained murders, manslaughters, cause death by
10 crim. neg., dangerous sexual offenders, inquests
11 following unsolved murders, other important files
12 permanently. So you could go back there now, I
13 mean, I hope, and find important files of mine
14 going back to 1962. So Milgaard wasn't retained
15 as an exception, it was retained as part of the
16 rule that we hung on to murders, among many other
17 important things.

18 INSP. M. SAWATSKY: Okay, thank you,
19 that's -- that's clear.

20 BOBS CALDWELL: Okay. Then, anything else
21 on that? 'Kay.

22 Then item O, I have here I do
23 not know whether this knife, which is the
24 bone-handled hunting knife that's being discussed
25 here, was found near the body -- or pardon me,

1 General." I'm showing you a police report, file
2 number E22 or page number E22, my Appendix 4,
3 which appears to be a completed by Kleiv, I -- I
4 think, with certain notations, and I'll read
5 them. "... the knife found at 12:30 P.M.,
6 February 28th, 1969 at the scene was turned over
7 to Constable Ian Oliver at 9:28, or 9:20 A.M.
8 January 28th, 1970, upon instructions from Mr.
9 Caldwell, agent for the Attorney General."
10 Do you have any recollection of that knife at
11 all?

12 BOBS CALDWELL: No, I don't, but I don't
13 dispute that this is what happened. You know,
14 this is in print at that time by one of the
15 Police Officers in the Ident. Section and I
16 wouldn't dispute that in the least but I
17 certainly don't recall it.

18 SGT. M. DRESSLER: Can you speculate as to
19 your reason for returning it?

20 BOBS CALDWELL: Returning it?

21 SGT. M. DRESSLER: Ordering it returned
22 if -- if, in fact, the print is correct.

23 BOBS CALDWELL: Well, it simply says
24 "turned over to Ian Oliver on instructions from
25 Caldwell", I don't see anything about it being

1 returned to any individual. Is that what you
 2 mean?
 3 SGT. M. DRESSLER: Or just ...
 4 BOBS CALDWELL: See, I don't see any
 5 mention there of ...
 6 INSP. M. SAWATSKY: Turned, just turned
 7 over to the police member.
 8 SGT. M. DRESSLER: Yes, turned over to
 9 Constable Oliver; do you have any knowledge of
 10 that at all?
 11 BOBS CALDWELL: No. It could be in, in one
 12 of those exhibit charts you and I looked at this
 13 morning of mine, but I don't have any knowledge
 14 of it, but Oliver was presumably one of the
 15 Ident. Members, or a uniformed one, one or the
 16 other. Can't recall the thing now, but it, but I
 17 don't attach any importance to it, or
 18 significance.
 19 SGT. M. DRESSLER: Okay, thank you.
 20 BOBS CALDWELL: Unless you have some theory
 21 that I don't know about.
 22 SGT. M. DRESSLER: No, I'm not -- no, I'm
 23 not suggesting that.
 24 BOBS CALDWELL: Yeah. I just don't have
 25 any present recollection of why, but it's

1 he's, he's one of the investigators assisting
 2 with this on the -- with Mr. Wolch's firm.
 3 BOBS CALDWELL: As far as I'm concerned,
 4 it's some knife that showed up when the snow
 5 melted, and someone was careful enough to bring
 6 it in and not just to throw it away, Never got
 7 into the trial I'm sure, and was never seriously
 8 advanced. The only thing that I can think of is
 9 that someone might try and erect that into there
 10 being a second party to the offence, someone else
 11 helping. There was no sniff of evidence like
 12 that. And, as you know, in -- with respect to
 13 this statement by Nichol John, that would have
 14 even been helpful to the Crown if such a thing
 15 existed. In other words, there was never any
 16 indication that Milgaard had a second person
 17 assisting him, Nichol John or Wilson or anyone
 18 else. I couldn't see anyone who was a party to
 19 the offense, or potentially a party to the
 20 offense. That would be where, I suppose, the
 21 importance of another knife would come in. The
 22 only problem is there was no evidence to support
 23 it, so ... But I -- I -- I would certainly deny
 24 that it, that knife, had anything to do with
 25 inflicting any of the wounds whatever, I mean

1 obviously been hung onto by a policeman as
 2 opposed to A. thrown out or B. given back to the
 3 householder or something.
 4 SGT. M. DRESSLER: There was some, a
 5 speculation on the part of Mr. Wolch, or I
 6 believe Mrs. Milgaard, that this may have had
 7 something to do with the murder.
 8 BOBS CALDWELL: Uh hmm.
 9 SGT. M. DRESSLER: To your knowledge, was
 10 that ever the case?
 11 BOBS CALDWELL: No.
 12 INSP. M. SAWATSKY: I, I think in, in the
 13 reviewing of the pathologist report, Mr. Bruce
 14 who is a worker or a helper with the Wolch firm,
 15 was of the opinion that that knife could have
 16 inflicted the fatal blow which, I guess in his
 17 opinion, was maybe deeper than the others and
 18 therefore this is longer. Do you recall any
 19 discussions along those lines or, or --
 20 BOBS CALDWELL: No. Well Dr. Emson
 21 testified at some length, I think, about the
 22 knife, characteristics of the cuts, and so on.
 23 And I don't, I don't know who Mr. -- what did you
 24 say his name was?
 25 INSP. M. SAWATSKY: His name is Bob Bruce,

1 that's just out of left field.
 2 And Dr. Emson very, very
 3 carefully examined the wounds. He purchased a, a
 4 knife that was similar to the broken knife, and
 5 he in fact made test cuts in another cadaver to
 6 assess what kind of, you know, cuts this knife
 7 would make. He did that, absolutely, I'm not the
 8 slightest bit facetious about that, 'cause he
 9 thought that might well be asked him, and he came
 10 to court prepared to, not only prepared to
 11 testify on that, but he had the knife that he
 12 used for that purpose in his possession. That
 13 didn't happen to be raised, of course, we -- we
 14 didn't raise it, and there's no reason to. But
 15 if there'd been a serious attack on -- attempt to
 16 involve another knife, another person, different
 17 kinds of cuts, he had -- he was ready for that
 18 and, and had evidence to that effect.
 19 INSP. M. SAWATSKY: That evidence then, I
 20 assume, really wasn't disputed by the defence?
 21 BOBS CALDWELL: No, or otherwise we would
 22 have been into that area, you see.
 23 INSP. M. SAWATSKY: Thank you. I -- I
 24 think that clears that area.
 25 SGT. M. DRESSLER: Uh hmm.

1 BOBS CALDWELL: Okay, if that's all for 0,
 2 is it, from your point of view?
 3 INSP. M. SAWATSKY: Yes.
 4 SGT. M. DRESSLER: Uh hmm.
 5 BOBS CALDWELL: Okay then. Letter P, I was
 6 not at the Supreme Court of Canada hearing, the
 7 recent one, but I understand that Wilson recanted
 8 his recantation and explained that he thought he
 9 was supposed to be "my own" quote here "part of
 10 Dave's team", unquote, or words to this effect,
 11 and that he, in the end, essentially adopted his
 12 trial evidence. This is what I understand about
 13 Wilson.
 14 INSP. M. SAWATSKY: I think you're correct
 15 there, and we, at this particular time, have
 16 answered that question --
 17 BOBS CALDWELL: Okay.
 18 INSP. M. SAWATSKY: -- because we located
 19 that transcript and it was misfiled, not in
 20 order. It was, you know, the A, B, C, D, and all
 21 of a sudden this last transcript was not D. or E.
 22 or whatever, it should have been after the other
 23 one, it was way back at the end, and just
 24 recently we've located that and I think we have
 25 answered that.

1 suggest to you this appears to be a meaningless
 2 editorial comment. Now I would be happy to
 3 explain to you what I know about the motel room
 4 thing if you want to deal with it now.
 5 SGT. M. DRESSLER: Perhaps we can. You
 6 discuss it on pages 7 and 17 of the statement
 7 provided to Peter Carlyle-Gordge, and then on
 8 page 10 of Sergeant Pearson's statement. Now as
 9 I understand it, two witnesses were called at
 10 trial, namely Mr. Melnyk and Mr. Lapchuk, Ute
 11 Frank was identified and interviewed; to your
 12 knowledge did that occur?
 13 BOBS CALDWELL: Apparently so, yeah. Now I
 14 was just gonna see if I can find my handwritten
 15 or typed summary. Do you have it at hand and,
 16 the, it's just entitled Lapchuk/Melnyk or
 17 something like that.
 18 SGT. M. DRESSLER: I don't have access to
 19 that right now, no. But what I do have is a
 20 handwritten note which -- it originates from our
 21 file 93-207, page 1, my Appendix 3, which -- that
 22 may be of some assistance.
 23 BOBS CALDWELL: Okay. I'm just looking for
 24 the -- it might just be an idea if I could take a
 25 minute to find this, it won't take long, do you

1 BOBS CALDWELL: Was that from the Supreme
 2 Court hearing?
 3 INSP. M. SAWATSKY: Yes.
 4 SGT. M. DRESSLER: Yes.
 5 BOBS CALDWELL: Okay. So I wasn't there
 6 and I'm only going by, you know, press reports
 7 etcetera, but if your assessment of that
 8 essentially is the same as mine, you know, we're
 9 just one recant short in this question. In other
 10 words, as I understand it, Wilson ended up going
 11 back and adopting his trial evidence, and for
 12 what it's worth, once Wilson and Nichol John
 13 started telling the truth at the time they saw
 14 Inspector Roberts I was not of the view,
 15 certainly in Wilson's case, that he was holding
 16 anything back. Nichol John, I think, told a lot
 17 more of the truth and failed, of course, finally
 18 to tell the truth about seeing the killing go on,
 19 which is another topic we may or may not want to
 20 (unintelligible). But, in any event, that's all
 21 that thing means, we're one recantation short in
 22 this statement. So if you're happy with that
 23 Wilson thing I'll leave it at that then.
 24 The other thing there though,
 25 the motel room incident is not sincere, I simply

1 want to shut the machine down for a minute?
 2 SGT. M. DRESSLER: Sure. The time is
 3 15:34, we'll take a short break.
 4 BOBS CALDWELL: Okay, thanks.
 5 MR. HALYK: ... give him the hard
 6 questions... he's getting too relaxed ...
 7 BOBS CALDWELL: ... listen, we still have
 8 to go and do this thing. You guys haven't
 9 forgotten that, eh?
 10 INSP. M. SAWATSKY: No, no we haven't.
 11 BOBS CALDWELL: O.K., that's good.
 12 SGT. M. DRESSLER: The statement resumes at
 13 15:42.
 14 BOBS CALDWELL: Okay, I think we were
 15 talking about the motel room reenactment thing.
 16 INSP. M. SAWATSKY: That's right.
 17 BOBS CALDWELL: The motel room incident is
 18 not sincere. I can't comment on this, an
 19 editorial. But I did make notes at the time, of
 20 which I have a photocopy here and I think you
 21 have the original of this, that Sunday, January
 22 18th, Saskatoon Police learned for the first time
 23 of an alleged admission by Milgaard in Regina to
 24 killing a nurse in Saskatoon. Now the same date
 25 that they advised me of this, I advised Mr.

1 Tallis, in other words I obviously phoned him
 2 that Sunday night at home, or wherever he was, as
 3 to what I knew of it up 'til that point, and that
 4 depending on the interviews, I might call these
 5 witnesses. The same date I arranged for the
 6 investigator to go to Regina, Monday, January
 7 19th, and interview these people. This was done
 8 Monday, January 19th and on Tuesday, January
 9 20th, I received three statements from these
 10 persons and Wednesday, January 21st, I delivered
 11 carbon copies of all three statements to Mr.
 12 Tallis, advised him that I would interview the
 13 witnesses as soon as possible, and may call
 14 evidence from one or more at the trial. And I
 15 had two of them to Saskatoon, Friday, January
 16 23rd and interviewed them, and advised Mr. Tallis
 17 Saturday, January 24th that I would plan on
 18 calling these two late in the Crown's case. This
 19 doesn't give the date, but it was the year of the
 20 trial, which was '70, I hope. So, and the way
 21 that police learned about it is that they went
 22 down to Regina to bring back Wilson and or Nichol
 23 John, and -- and whoever the police officers who
 24 were escorting these two were, I think it was
 25 Wilson who told one or more of them, may have

1 being in the hotel, she says she started taking
 2 T.H.C. in the room by needle and then by mouth,
 3 and I didn't make any more notes. But what I
 4 know that means is that she then stated I,
 5 basically "I don't know anything, I was too far
 6 on, gone to be any use", so I didn't call her and
 7 ethically, in my view, there's absolutely nothing
 8 wrong with that. Because you don't simply call a
 9 witness to say "I, yeah I was there, but I can't
 10 tell you anything about the important part, i.e.
 11 the reenactment".

12 Now, I understand that
 13 subsequently, at the Supreme Court hearing, she
 14 basically testified that she -- about the
 15 reenactment in very graphic terms, and I believe
 16 she said that she did -- she didn't do any of
 17 this because she was terrified of Milgaard. And
 18 that was a, that was a characteristic of many of
 19 these witnesses, including Wilson, including
 20 Nichol John, were very much afraid of Milgaard,
 21 because they were aware of his, you know, very,
 22 very sudden temper, violent actions, and so on.
 23 So I can certainly relate to, to why Ute Frank
 24 wouldn't, wouldn't come clean with me and/or
 25 testify.

1 been one or two policemen and we could figure out
 2 who if we worked on it, in fact you probably know
 3 who it is, but I don't. But in any event, that's
 4 how that thing cooked up, so I ascertained that I
 5 could call the witnesses as far as the law is
 6 concerned, because I had just now learned of this
 7 information. And I, when I interviewed the two
 8 male witnesses, I specifically told them that I
 9 didn't want them leaning either way in this,
 10 that -- don't care if they like Milgaard or hate
 11 him, they've got to tell the truth, and I don't
 12 want them leaning for him, leaning against him,
 13 tell the truth. And I thought they were, one of
 14 them was better than the other, but I thought
 15 they were quite good witnesses. And I've since
 16 examined -- produced by you, Sergeant, this, this
 17 is a photocopy of, of what are my own notes of
 18 interviewing Ute Frank, and in the file which you
 19 gentlemen have is the original of this, if you
 20 will. But these are my handwritten notes. So
 21 this, there's no date on this, but it indicates
 22 to me that I interviewed her undoubtedly around
 23 the time I interviewed the two boys, got a whole
 24 lot of kind of background-type things from her,
 25 and as soon as they -- we get her to the stage of

1 The other witness Debra Hall,
 2 there are two or three other names mentioned
 3 here, Bob Harris and Garry Silzer, but Debra
 4 Hall, in my understanding now, was simply not
 5 around Saskatchewan at the time of the trial. I
 6 think subsequently it's been ascertained that she
 7 was in Eastern Canada or something. Now I'm
 8 happy to expand on any of that that you, you
 9 gentlemen may have questions about.

10 SGT. M. DRESSLER: Do you know if Mr.
 11 Tallis interviewed Ute Frank?

12 BOBS CALDWELL: Somewhere I thought it had
 13 come to my attention that he did, but -- and,
 14 quite frankly, I thought it had come from your
 15 investigation or your file. So I have to leave
 16 it at that. I, obviously I haven't talked to Mr.
 17 Tallis, but my impression is that he did. And it
 18 may, indeed, be from some notes I have of my own
 19 somewhere.

20 SGT. M. DRESSLER: Was there any deliberate
 21 attempt, at any time, to conceal any of the
 22 evidence from any of these individuals, to your
 23 knowledge.

24 BOBS CALDWELL: The evidence?

25 SGT. M. DRESSLER: Any of the evidence that

1 you learned as a result of your inquiries over
2 the re-enactment?
3 BOBS CALDWELL: From?
4 SGT. M. DRESSLER: In other words, is there
5 anything that you learned that you did not
6 disclose, or --

7 BOBS CALDWELL: Oh, yeah. Not at all. We
8 had, I think we had witness statements from
9 Lapchuk and Melnyk. Ute Frank, all we've got is
10 my notes. So there's nothing that I held back
11 whatsoever. In fact I was very startled by this
12 happening the night before the trial started, I
13 was, you know, very much surprised. But the fact
14 of the matter is that in law, if that's the first
15 I've heard about it, I can still go ahead and
16 call it. But what that made me do, of course,
17 was be exceptionally diligent to get it to Mr.
18 Tallis right away, and keep him as informed as I
19 was, so I didn't hold a thing back, in fact went
20 to the opposite extreme. And I didn't call her
21 because she didn't have damaging evidence, I
22 called her 'cause -- I didn't call her because
23 she flatly said "I've got nothing to tell you
24 from this point on" and you simply don't call
25 people like that.

1 door, and his mother said "where have you been,
2 you should've, you should hear what happened the
3 day you left". And when she described the murder
4 the, sort of, lights came on in Albert's brain
5 and he made his way down to the police station.
6 So there's a, a long period where the police were
7 working diligently, but virtually had nothing to
8 work with.

9 Now, the first round of
10 statements given by these people to Inspector
11 Riddell in Regina, my memory tells me it was all
12 three, Milgaard, Hall -- or pardon me -- Wilson
13 and John, were false, period. And my memory is,
14 and, and I'll have to leave it at that, that they
15 were simply all false, and as the rest of the
16 investigation went on, you could very clearly
17 tell that they were false. For instance, saying
18 they hadn't been in Saskatoon or had just driven
19 through, or I don't even remember the details.
20 But there's a lot of other supporting evidence
21 against which you could judge them and very
22 quickly figure out they were not correct.

23 Then, initially, Wilson was not
24 truthful with the Saskatoon Police, but when the
25 time came when Inspector Roberts was called in

1 SGT. M. DRESSLER: Okay.
2 INSP. M. SAWATSKY: I just have one ...
3 BOBS CALDWELL: Sure.
4 INSP. M. SAWATSKY: ... just one question
5 about the statements. If one were to ascribe to
6 the theory or -- or -- and I guess not the
7 theory, to the allegation that Saskatoon Police
8 coerced the witnesses into saying what they
9 wanted them to say through a series of
10 statements, of course you were presented with all
11 the statements from these people, from -- from
12 Wilson and from Nichol John; could you tell me,
13 for this interview, why the statements, or the
14 third statements or the fourth statements from
15 these people, the last, the final statements, why
16 you believed them over the statements where they
17 said "no, nothing happened"?

18 BOBS CALDWELL: Oh yeah, absolutely,
19 well -- and, and forgive me if I'm not in exact
20 details on this, but to begin with it was 30 days
21 before the Saskatoon Police got a very
22 substantial lead on, on the guilty party. And
23 that happened when Albert Cadrain finished this
24 trip all around Alberta, went to jail seven days
25 in Regina for vagrancy, came home, walked in the

1 and -- and interviewed Wilson and John at the
2 Cavalier Motor Hotel, it's my belief that what
3 Wilson finally came around to then was, was a
4 truthful statement, and I never changed my mind
5 about that. In other words, Wilson was afraid
6 and young and a drug user and all those bad
7 things, but I think when he was through with
8 Roberts he told the truth as he perceived it.

9 Now I think to a large extent
10 Nichol John also did, except for the fact that my
11 belief is that she saw the killing take place --
12 and we can expand on that later -- but -- because
13 of the statement she made to Mrs. Miller, to Mary
14 Marcoux and to Albert Cadrain after -- or during
15 the prelim., which I have described and I'll
16 describe again, but, she never did come through
17 and say that. But largely then, from then on, I
18 thought she told the truth with that rather
19 important exception.

20 Milgaard, of course, never did
21 give truthful statements, and the statement he
22 gave to the Saskatoon Police, the warned
23 statement, which I know you have, and it has
24 sketches in the back of it and so on, simply was
25 not, it couldn't be true, measured against what,

1 what the Crown knew and the police knew as the
2 thing went on chronologically. Like a lot of
3 things were, you know, proven by witnesses with
4 no axe to grind, no -- no motive, no this, no
5 that, and as you looked at their statements you
6 could very readily tell that the early ones were
7 just simply untrue.

8 I can't, if you want I'd look
9 at them and give you details, but that's why I,
10 why I knew the earlier ones were untrue and then,
11 as we got further and further along, the -- the
12 true ones started coming out because they
13 virtually had no choice other than to be truthful
14 when all this surrounding body of information was
15 there. So that's how I would explain that.

16 Of course Milgaard, I never did
17 put in his statement because it never was true,
18 whether there was one or more of them, and I was
19 under no obligation to do that, obviously. Does
20 that answer your ...

21 INSP. M. SAWATSKY: Yes, it does, and I
22 think that the thrust of my question being that,
23 as a prosecutor, you would not -- you -- I guess
24 you have a duty or an obligation to put it in
25 what you believe are truthful statements or

1 witnesses in this case, is that I became
2 satisfied, with the exception of Nichol John's
3 failure to recite that she saw the killing, I was
4 satisfied that she also and Wilson totally had
5 come around to what they conceived to be the
6 truthful statements. But they were belated
7 proceedings and only because of Inspector
8 Roberts' assistance with the polygraph.

9 INSP. M. SAWATSKY: One other aspect that I
10 wanted to cover is that, for the record and for
11 the purpose of this statement, I want it known
12 that we met you this morning, and that this
13 morning when we did meet you, we provided you
14 with the remainder of the prosecution file which
15 has been housed in Sask. Justice, and that file
16 was entrusted to us. And the reason we brought
17 it with us this morning was to allow you to
18 review documents, your notes from the trial,
19 exhibit list and things like this, to help
20 prepare you for this interview this morning -- or
21 this afternoon.

22 BOBS CALDWELL: Yes. Well that was very
23 helpful, and I did go through that probably 10
24 inches high of material this morning, and that's
25 the first time I've seen it intact, if you will,

1 truthful witnesses, and at some point in time you
2 must have decided that the first statements were
3 not truthful but that the last statements were?

4 BOBS CALDWELL: Yeah.

5 INSP. M. SAWATSKY: And I guess you're,
6 you're -- what I want you to answer to me, and
7 then I think you did adequately, is the fact that
8 you believed the third statements for various
9 reasons?

10 BOBS CALDWELL: Yeah, because you could
11 measure them against a whole body of known facts,
12 now not -- you weren't simply going on do I
13 believe this person or not, you measure their
14 statement against all kinds of surrounding
15 evidence by the neighbours and the people who
16 helped them tow and push cars, and the service
17 station guys, and all kinds of things that
18 weren't subject to -- to argument, they were
19 simply, you know, known facts. And, of course,
20 you're not obligated ever, as a prosecutor, to
21 call witnesses whom you don't believe. You
22 certainly are obligated to let the defence know
23 they exist, and "here's what the guy said, I
24 don't believe it but you use it". But that's
25 what happened with respect to the very important

1 since -- since I closed the file in, in Justice.

2 When I saw it in Regina with
3 Sergeant Pearson, it had been dismembered and
4 some of it was in Ottawa and so on, so that was
5 very helpful, and some of the things I've said
6 here are based on refreshing my memory from that
7 collection of material, so I appreciate you
8 mentioning that.

9 INSP. M. SAWATSKY: I just want to take a
10 moment and go over my notes here and see if I
11 have any other questions, and Max, if you just
12 want to do the same.

13 SGT. M. DRESSLER: I have a number that are
14 still remaining which may touch on the various
15 areas that we've already alluded to. It's been
16 alleged that Mr. Tallis' performance at trial and
17 at prelim. was somewhat less than adequate. Do
18 you have any comments on that?

19 BOBS CALDWELL: Yeah, that's outrageous and
20 totally incorrect, and it offends me beyond
21 words. I -- I started prosecuting in Regina in
22 1958. I think I'll send my eminent counsel to
23 get me some coffee here, we don't really need him
24 (chuckles). In any event, I did prosecute in
25 Regina from '58 'til the beginning of '62, and of

1 course by the time of this I'd been steadily
 2 prosecuting in Saskatoon 'til '70, 1970 I guess.
 3 And he was, not just in my estimation, but he was
 4 recognized as the leading defence counsel in the
 5 province and I had, I had assisted him with
 6 prosecutions, because he had his own ... thank
 7 you ... he had his own agency of the Attorney
 8 General at Humboldt, Saskatchewan, in other
 9 words, he had a judicial centre that he worked
 10 at. I had done serious criminal cases with him
 11 defending, and he had done a lot of very
 12 heavy-duty defence work, and he took this case
 13 on, which, you know, I can imagine some eminent
 14 counsel saying "I'm just too busy". Interviewed
 15 everybody, had a long prelim that was spread out
 16 over several days, adjourn, come back, do some
 17 more, had a two-week trial in -- you know -- did,
 18 as far as I'm concerned, his usual extremely
 19 thorough, careful job. You can see that in the
 20 things that he simply requested from me. Look
 21 over those 95 things again and there was a good
 22 degree of co-operation between us. And he
 23 followed the instructions, I believe, of the
 24 Milgaards themselves in not calling a defence,
 25 got signed documentation to that effect, and

1 on why the decision was made not to call the
 2 accused, but if I were defending him I think that
 3 would weigh heavily with me.
 4 Now is there any specific thing
 5 that you'd like to go into, any specific things
 6 that he was supposed to have done, not --
 7 SGT. M. DRESSLER: No, not at all.
 8 INSP. M. SAWATSKY: It was a very general
 9 comment made to me by Mrs. Milgaard, and when I
 10 asked her to clarify and give me some details,
 11 she was unable to do it. But what she did, and
 12 I, I told this to Mr. Tallis because I feel that
 13 both of you gentlemen have a right to know that
 14 that accusation was made of you, and Mrs.
 15 Milgaard said that she had been told by
 16 someone -- and she didn't name that person --
 17 that a comment was made by either yourself or by
 18 Mr. Tallis, and I think it was more leaning
 19 towards yourself, --
 20 BOBS CALDWELL: Okay.
 21 INSP. M. SAWATSKY: -- that "Mr. Tallis and
 22 I have worked to put people away before together,
 23 worked together before to put people away". Now
 24 I think you have a right to know that was made
 25 and to answer to that if you wish.

1 they, I believe, made the choice knowing how his
 2 practice would be. And there would be those very
 3 competent lawyers who would not have called a
 4 defence in this case for fear that this
 5 particular accused would have blown up in, ten
 6 minutes into cross-examination. I have no
 7 knowledge of what Mr. Tallis, you know, views
 8 are, or the Milgaard family, decided, but, I
 9 mean, he did a, an extremely good job on this
 10 case. You can do an extremely good job on a jury
 11 trial and have it go the other way than you
 12 hoped, and this happened to be one where, despite
 13 his efforts, the accused was convicted, and
 14 obviously in my opinion properly convicted. But
 15 after being fairly prosecuted and extremely well
 16 defended, the most outrageous aspect of this
 17 whole thing to me is the badmouthing of Mr.
 18 Tallis done by the Milgaard troops in the
 19 meantime, which is something, of course, he's not
 20 in a position to get up and to publicly answer,
 21 and I take great delight in answering on behalf
 22 of the Bar that that's just a totally false
 23 accusation. I'd certainly deal with any
 24 individual things that anyone claims were not
 25 done properly. And again, we have no knowledge

1 BOBS CALDWELL: Well, if we ever did that,
 2 we were both working on one accused. (Chuckles).
 3 We were not, we were not in the defence, defence
 4 verses prosecutor thing. Like Mr. Tallis and I,
 5 in fact, worked on different aspects of a, of a
 6 guy who was a dangerous sexual offender named
 7 Leslie Klassen. Now I, my dates thing doesn't
 8 bring back whether that was before or after this,
 9 but he started prosecuting Mr. Klassen for what
 10 we thought was a murder, and he got appointed to
 11 the Bench, and another gentleman, Del Perras,
 12 took over. Mr. Perras left to go to Regina to be
 13 our boss, and another one of my colleagues, Bill
 14 Pinckley, took that file over, and eventually
 15 there was a conviction for manslaughter. In the
 16 parallel thing, I was doing the dangerous sexual
 17 offender, and Klassen was found to be a dangerous
 18 sexual offender. So that would be an example of
 19 where Mr. Tallis and I worked together on one,
 20 locking one person up.
 21 That may well be the, the thing
 22 that I'm being quoted for, and if, if I am, I'm
 23 pleased to acknowledge that, because there was
 24 nothing wrong with any of that, obviously.
 25 But in this case he was

1 defending, I was prosecuting, we had a good
 2 professional business-like and arm's-length
 3 relationship where nobody was trying to pull
 4 anything over on anybody. I didn't operate that
 5 way either, and I wouldn't dream of jeopardizing
 6 a case like this by taking some shortcut or
 7 sticking something under a table, I wouldn't do
 8 that in this case or any other case. I didn't do
 9 that in this case, and I would not do it to Mr.
 10 Tallis or anyone else. I mean, I didn't operate
 11 that way, he didn't operate that way. So he did
 12 his job and I did mine, which doesn't mean we
 13 have to be up fist-fighting in court over it at
 14 all to do, both of us to do our jobs properly.
 15 So the only (chuckles) the only -- the quotation
 16 you've given me, I think, comes out of the famed
 17 Leslie Klassen case, and if that's where it came
 18 from I'm delighted to endorse it. But it
 19 certainly doesn't apply in any way to Tallis and
 20 I cooking this case up, because that's simply
 21 beyond the pale.

22 SGT. M. DRESSLER: Are you familiar with a
 23 man by the name of Sidney Wilson?

24 BOBS CALDWELL: No, and I've tried to
 25 ascertain whether he exists in relation to being

1 SGT. M. DRESSLER: Who was the primary
 2 investigator in the file?
 3 BOBS CALDWELL: Well there's -- that's a
 4 little hard to answer. I think initially you'll
 5 find that it was assigned, it may have been to
 6 George Reid and one other person, would it be Ray
 7 Mackie or Keith Mackie or someone -- maybe Ray
 8 Mackie, and there was sort of a formal
 9 assignment. And as I recall, the first two
 10 fellas who got the file actually worked for 30
 11 days, and the first day they had off was the day
 12 that Albert Cadrain walked into the Police
 13 Station, and we may get into that in a minute, I
 14 realize. But they would be the nominal, the ones
 15 nominally charged with it, but then, you know,
 16 many of the other detectives, of course, would
 17 take a very significant part in it, McCorriston
 18 for one, Ed Karst I think.

19 SGT. M. DRESSLER: Did you ever deal with
 20 these investigators while the investigation was
 21 ongoing? And I'm, in terms of a chronology,
 22 Milgaard was identified on or about March 2nd of
 23 1969, once Cadrain came to the ...

24 BOBS CALDWELL: Uh hmm.

25 SGT. M. DRESSLER: ... attention of police.

1 the one who pointed at Larry Fisher, presumably.
 2 As far as I know he doesn't exist, by the way,
 3 but maybe I'm skipping ahead.

4 INSP. M. SAWATSKY: I think that pretty
 5 well ends it. But just to sort of recap here on,
 6 on, on the note that, the reason that brought us
 7 here, is at anytime have you destroyed any
 8 documents that were in your possession regarding
 9 this file?

10 BOBS CALDWELL: No, I haven't. And, just
 11 without cutting that off, I want to be sure that
 12 you fellas have made sure to examine this second
 13 list. I think we have largely covered it, but
 14 the one that's attached to the other letter. No,
 15 I haven't destroyed any documents with respect to
 16 the file of any description. It was often the
 17 case to, say, throw out the original subpoenas
 18 after such and such a time but I, I simply
 19 didn't, and in keeping with the policy I
 20 explained to you earlier, like the file like this
 21 and any other murder was absolutely kept at our
 22 office intact, as far as I'm concerned,
 23 indefinitely. And once I left, of course, I have
 24 no idea what happened after '87, but while I was
 25 there they were kept.

1 BOBS CALDWELL: That was in Saskatoon ...

2 SGT. M. DRESSLER: That's correct?

3 BOBS CALDWELL: Yeah.

4 SGT. M. DRESSLER: Did you provide legal
 5 advice, or did you participate at all in the
 6 investigation in terms of direction, or giving
 7 advice in that regard?

8 BOBS CALDWELL: Well, frankly, I don't
 9 remember, and I could well have done that without
 10 any notes being made on, you know, in my file
 11 that so and so showed up or I told him this or
 12 that. It -- one would assume that, that if I
 13 was, I don't even know if I was sort of seized
 14 with the file at that point. At some stage of
 15 the game it became my file, and -- but, I
 16 wouldn't be surprised if police came over saying
 17 what do you think of this or ...

18 SGT. M. DRESSLER: Uh hmm.

19 BOBS CALDWELL: ... what should we do. But
 20 odd as it may sound I don't recall that, but you
 21 certainly wouldn't surprise me if someone said
 22 "yeah, here's some proof that he did".

23 SGT. M. DRESSLER: Are you aware of any
 24 police members, at any time, being guilty of
 25 improper conduct in terms of their dealing with

1 witnesses, I'm suggesting coercing witnesses or
 2 abusing or threatening them in any way?
 3 BOBS CALDWELL: Not -- absolutely not. I
 4 don't know if, in your investigation, you've met
 5 people like Karst and Charlie Short and John
 6 Oleksyn and Ray Mackie. Really what -- these
 7 were kind of, you know, professional policemen in
 8 Saskatoon. I'm just looking at my list of
 9 witnesses here. If you knew these people, if I
 10 may say personally, the way I certainly did,
 11 you'd have to -- you'd have an awful tough time
 12 selling me that that had happened, 'cause I knew
 13 a lot of them very well through other cases. And
 14 the attempts that have been made to, to suggest
 15 that people like Charlie Short was rude to Wilson
 16 or locked him up over night or something are
 17 absolutely ridiculous. Like that isn't the way
 18 the Police Department operated, these are senior,
 19 mature men, it isn't the way I operated, and
 20 neither the Police Department nor myself would
 21 condone that if we knew it was going on. And the
 22 police were very much appreciative of, you know,
 23 the way our office worked here, and were very ...
 24 they wouldn't do anything to jeopardize their
 25 relationship with us and I simply don't know of

1 chance to nail him. This is three Regina young
 2 people coming through the city trying to pick up
 3 a fourth person, Cadrain, and -- and being in and
 4 out of the city in a few hours. So, you know,
 5 it -- it isn't -- no one could possibly erect
 6 that into the Saskatoon City Police finally
 7 getting a chance to nail a guy who's been
 8 annoying to them because they didn't have a clue
 9 who he was until 30 days later when Cadrain came
 10 back.
 11 Now, secondly, I was obviously
 12 in the same position, I didn't know, you know,
 13 this accused from Adam. And there was no,
 14 there's no -- there's no one to exert pressure on
 15 anyone. You can put all the pressure you wanted
 16 on me if I didn't have a case to go to court or
 17 we didn't know who the accused was. And there's
 18 certainly a very proper sentiment in the
 19 community that whoever did this should be brought
 20 to justice, but that doesn't mean you go out and
 21 grab the nearest candidate and jam everything
 22 around so it'll fit him. And I know that,
 23 earlier on, that the other side attempted to
 24 float the idea that the whole city's in a panic
 25 and they just had to have a victim and they chose

1 any of that, and there've been Herculean efforts
 2 made to try to invent some of that. It simply
 3 hasn't come off.
 4 And the Supreme Court, of
 5 course, held that there was no prob ... probative
 6 evidence of any of that happening. I also don't
 7 know of any.
 8 SGT. M. DRESSLER: I see our tape is in
 9 need of changing, we'll switch sides at -- time
 10 is 16:10.
 11 BOBS CALDWELL: Okay.
 12 (TURN TAPE OVER).
 13 UNKNOWN: ... sitting down and...
 14 SGT. M. DRESSLER: Testing 1, 2, 3, 4.
 15 Statement resumes at 16:13. Mr. Caldwell, were
 16 you aware if the police, and in fact yourself
 17 perhaps, were under pressure from any source or
 18 sources in order to identify and prosecute anyone
 19 for this offence? Was there any pressure to your
 20 knowledge?
 21 BOBS CALDWELL: Well, no there wasn't. I
 22 mean, first of all no one in Saskatoon knew David
 23 Milgaard existed, that's for openers. This isn't
 24 some local guy whose been a pain in the rear end
 25 to the police for years and they've finally got a

1 poor David. Well, we didn't know who poor David
 2 was until Cadrain came back, and I think it was
 3 some months later that he was eventually arrested
 4 after an awful lot more investigation, if I'm not
 5 mistaken. I think he was arrested actually in
 6 B.C. And there was no, I mean, no one put
 7 pressure on me to do anything in this case except
 8 a proper prosecution. I mean, I suppose I could
 9 have said it, if things were a little different,
 10 "I don't think this thing can go on, we don't
 11 have the evidence". I, at some stage of the
 12 game, obviously decided it should go on and we
 13 did have the evidence. So no one was in a
 14 position to pressure me and nobody was in a
 15 position to pressure the police. For one thing,
 16 they had to, in a, in a manner of speaking,
 17 answer to me, like they had to come to me with
 18 evidence, say "what else do you think we need" or
 19 "what do you think of this witness", and they,
 20 you know, respected my directions, if you will,
 21 or decisions on things. So it wasn't a case of,
 22 of pressure at all, but -- there's no use the
 23 mayor phoning the Police Department saying
 24 "accuse some, get somebody arrested for this
 25 murder o we can lose it and get on with other

1 business", you know. So --

2 SGT. M. DRESSLER: Are -- were you aware of
3 any split within the police ranks as to whether
4 Milgaard was responsible for the offence?

5 BOBS CALDWELL: Well I think there were
6 different theories. I, it's, again, it's not a
7 split. I mean there's a fair number of policemen
8 around, and there were ones who I would suggest
9 were possibly skeptical about him being the right
10 accused at one stage of the game, and as things
11 went on and on and on I assume they were
12 converted, others who very early on presumably
13 felt he was the right one, and in my opinion they
14 proved to be correct. But the fact that
15 different policemen had different views on how
16 good the case is or maybe this is the right guy
17 can't be characterized as a split in the Police
18 Department.

19 I mean if you have one sore
20 head policeman who's mad because he missed a
21 promotion and still doesn't think this guy is
22 guilty, that doesn't matter to me.

23 SGT. M. DRESSLER: Uh hmm.

24 BOBS CALDWELL: That's not a split in the
25 Police Department. And so no, no split,

1 behind garbage trucks and going through the
2 contents of garbage cans to find Gail Miller's
3 purse, I thought they did a sensational job, and
4 I was very anxious to -- that that be properly
5 publicized. So he, I just opened up a file with
6 the, my dealings with him so I could find it, and
7 he, he wrote me February 22nd saying "thanks for
8 your help last weekend", so presumably the week
9 before February 22nd of '83 he was in Saskatoon
10 and up in my office talking with me. And then he
11 wrote me again saying he'd be back on Friday
12 morning, and I got another phone memo saying,
13 call me if March 11th is not convenient, so I
14 guess he was back here on March 11th. I haven't
15 dug into my old office diaries but that would, I
16 could confirm you that those dates, but he was
17 apparently here twice.

18 And I allowed him to read parts
19 of the file and then to interview me about the
20 case, all on the understanding, strictly, that he
21 was writing a book on Western Canadian murders.

22 Now I also know that at least
23 on one of those occasions I agreed to him
24 tape-recording our conversation, which he said
25 would just help him with writing the article, and

1 certainly differences of opinion among
2 investigators as -- as to whether this was the
3 right guy at an early stage.

4 SGT. M. DRESSLER: I'd like to have you
5 reflect on an interview you provided to Mr. Peter
6 Carlyle-Gordge; can you remember that interview?

7 BOBS CALDWELL: Yeah, I sure do.

8 SGT. M. DRESSLER: When did it occur?

9 BOBS CALDWELL: Well this is an odd
10 situation. I had seen Mr. Carlyle-Gordge, his
11 bylines, in both Maclean's magazine and the Globe
12 and Mail, so I knew that he was a journalist.
13 And he got in touch with me, it appears in 1983;
14 advised me that he was doing a book on Western
15 Canadian murders, and that he had been put onto
16 the Milgaard case as a very interesting case,
17 clearly it was, by Mr. Wolch in my memory. So I,
18 of course at that time, was of the view that this
19 case was irrevocably finished -- and I'll know
20 better than that another time -- but I thought it
21 was all over and done with so, in any event, I
22 was happy to talk to him. And my objective in
23 this exercise was to -- to -- to give credit to
24 the Police Department, who I thought did a
25 terrific job starting absolutely nowhere, walking

1 I didn't think that was sinister. So we have,
2 you've given Mr. Halyk and myself a transcript,
3 which I have in front of me, and I've also
4 supplied you gentlemen with a tape recording of a
5 C.B.C. Sunday Morning interview in which I heard
6 my own voice coming out of the speaker, and
7 unquestionably it was the tape made by
8 Carlyle-Gordge either, either appended to one end
9 of this typed interview or conceivably done on
10 the second occasion without my knowledge, but I'm
11 willing to assume it was the former. But I was
12 not too delighted to hear this because, of
13 course, I never agreed to him doing anything with
14 that tape other than using it to help him write
15 his article. So that's my sort of jumping-off
16 point.

17 SGT. M. DRESSLER: The tape begins almost
18 in mid-sentence, as it were, and then ends
19 unexpectedly. Can you recall the types of
20 conversation or -- or what led up to this tape
21 being used?

22 BOBS CALDWELL: Well, I think that -- I
23 haven't played the cassette which I gave you
24 gentlemen to take with you, I have a duplicate of
25 it at home. I think it, it will be found to

1 either be on the front end or the back end of the
 2 typed part, probably the front because the back
 3 end ends up with me asking him about his project
 4 and how it's coming. Sounds like a natural
 5 ending. But it would just be in the -- this
 6 would take place as a result of him saying "well,
 7 you know, tell me the things you think are
 8 fascinating about the case". And I did that,
 9 there were three or four things I thought were
 10 very interesting, like it ending one year to the
 11 day after the killing and things like that.
 12 So -- so then what's happening is that we're just
 13 chatting, and quite clearly I hadn't checked
 14 on -- I hadn't got the whole case in detail back
 15 into my mind, obviously, although I did write
 16 some salient things from it before I talked to
 17 him which I have in my file, just dates of trials
 18 and how many witnesses and things. So, this is
 19 just a chat with him in which, when I read it
 20 now, I see that I -- I really hadn't made any
 21 attempt to, you know, to redigest the whole file,
 22 obviously. But I'd certainly answer anything you
 23 want to know about the contents of it.

24 SGT. M. DRESSLER: No, I don't think we
 25 need to address that. There's one point. Do you

1 say "I knew someday something like this would
 2 happen".

3 SGT. M. DRESSLER: Had you become involved
 4 in the investigation or in the, in the
 5 prosecution, when that visit occurred?

6 BOBS CALDWELL: Well, I can't -- I don't
 7 know the date of the visit at this point, and I,
 8 I can't answer that yes or no, I can't recall,
 9 but maybe you could -- if you could give me some
 10 more information?

11 SGT. M. DRESSLER: We have no record as to
 12 the date.

13 BOBS CALDWELL: Well it, that, that is in a
 14 police report. Do you mean the date they went to
 15 Langenburg?

16 SGT. M. DRESSLER: We do not have the
 17 police report.

18 BOBS CALDWELL: That is -- that exists. I
 19 don't have it either, but that police report
 20 exists with -- because at the time when -- I
 21 simply, you know, I can see it in my mind's eye.
 22 I don't think I physically have a copy of it.

23 INSP. M. SAWATSKY: Would that have been on
 24 the prosecution file, or do you think that was on
 25 the police report or, or a note given to you, or

1 recall, during the police investigation,
 2 Detective Karst and Lieutenant Short, or
 3 Lieutenant Short, rather, travelling to
 4 Langenburg and Yorkton district --

5 BOBS CALDWELL: Yeah.

6 SGT. M. DRESSLER: -- to speak to the
 7 Milgaard family?

8 BOBS CALDWELL: And I recall what happened
 9 too.

10 SGT. M. DRESSLER: Can you briefly outline
 11 the circumstances as to -- to when it occurred
 12 and what your knowledge is of it?

13 BOBS CALDWELL: Okay. What I remember of
 14 it, and I don't remember the exact purpose of
 15 them going, but what I remember is that when some
 16 of the details of the murder were recited to Mr.
 17 Milgaard Senior, him saying words to the effect
 18 of "I knew someday something like this would
 19 happen". Now Short and/or Karst recorded that,
 20 put it in the police reports, and the next thing,
 21 of course during the great publicity run up to
 22 the hearing he, of course, denied saying that.
 23 He said "oh, I really didn't mean that", but I
 24 remember that, today, from then. It was such a
 25 striking thing for the father of this fellow to

1 something like that?

2 BOBS CALDWELL: Well, it got to me, and
 3 therefore I would assume was -- got to me because
 4 it was on the prosecution file.

5 INSP. M. SAWATSKY: We haven't been able to
 6 find that.

7 BOBS CALDWELL: Okay, well, I can assure
 8 you it exists.

9 INSP. M. SAWATSKY: Okay.

10 BOBS CALDWELL: And I would think of
 11 checking with the City Police, whoever you've
 12 been dealing with there. I think they've got
 13 everything cross-indexed by investigators.

14 INSP. M. SAWATSKY: We have their entire
 15 file, we'll look again for it.

16 SGT. M. DRESSLER: We'll look into that.

17 BOBS CALDWELL: Okay. It exists for sure.

18 INSP. M. SAWATSKY: Okay.

19 BOBS CALDWELL: And, but, is that all you
 20 wanted to ask me about? That stuck out so
 21 vividly in my mind to have the father say "I knew
 22 someday something like this would happen", you
 23 know.

24 SGT. M. DRESSLER: I guess what were trying
 25 to do is, is find a date as near as possible,

1 whether it was pre or post-charge. Do you have
 2 any knowledge to that?
 3 BOBS CALDWELL: No.
 4 SGT. M. DRESSLER: In that regard?
 5 BOBS CALDWELL: No, I don't. I think, when
 6 was the charge, was it not more like June or --
 7 SGT. M. DRESSLER: The charge was laid May
 8 27th.
 9 BOBS CALDWELL: Yeah, okay, so it was
 10 actually sworn some little time after the murder,
 11 and so that trip may well have been before or
 12 after the thing was sworn.
 13 SGT. M. DRESSLER: A point in respect of
 14 the polygraph examination which was conducted on
 15 Ron Wilson. I have here, it appears to be
 16 handwritten notes by your hand, from our file
 17 93-204, it looks as though dated the September
 18 3rd, 1969, where it discusses Inspector Roberts.
 19 Could you please examine this --
 20 BOBS CALDWELL: Yeah, sure.
 21 SGT. M. DRESSLER: -- and offer some
 22 comments?
 23 BOBS CALDWELL: 'Kay. Okay. This looks,
 24 at a glance, as if I phoned him, there are a
 25 couple of phone numbers here, and I'll just

1 subpoenaed to court. This is Roberts talking
 2 about their practice. Chief's orders. Chart
 3 doesn't have questions. So it doesn't have
 4 questions written on it, I guess its just a graph
 5 of lines that Roberts, at least, can understand.
 6 Clothes from blank ask Wood, this would be, this
 7 would be Superintendent Wood, and back to same
 8 guy. I don't know what that means. Something to
 9 do with, it may be something to do with things
 10 Wilson said in his examination. Are you -- oh,
 11 this must be questions that he used on Wilson;
 12 are you holding back anything re Gail Miller?
 13 Did you ever intentionally hurt anyone? Have you
 14 lied to any questions on this test? I have a
 15 note here, yes. This must be Roberts explaining
 16 to me his technique, is what I would gather.
 17 Wilson questions re the Gail Miller murder; are
 18 you deliberately holding back any info re that?
 19 Have you lied to any question on this test?
 20 Could refer to Did you ever hurt anyone or to the
 21 question whether he was holding back. Wilson
 22 didn't see it, Wilson didn't do it. Do you know
 23 for sure who did it, yes. I presume this is what
 24 he asked Wilson, what Wilson answered, and I
 25 presume he concluded that Wilson neither saw it

1 show -- tell you what I can about it.
 2 INSP. M. SAWATSKY: Are you able to find
 3 it?
 4 BOBS CALDWELL: Yeah, no, this is fine.
 5 Thanks. Okay. This is Inspector Roberts,
 6 Calgary City Police, their number, his home
 7 number, the Detectives' number, 3rd of September,
 8 '69 it looks like. There's a chart that remains
 9 in R., that being Roberts' possession, re the
 10 interviews. Did on Wilson, not on John. Now I,
 11 I presume that means the chart but I can't tell
 12 that at a glance. Interpretation of the chart.
 13 He could read the chart and could look at it.
 14 Will call back at 1:30 our time. Now I don't
 15 know who, who the 'he' is, if that's -- that's
 16 sort of, he could -- oh, I'm sorry, he could send
 17 the chart and he could look at it. So maybe,
 18 maybe, maybe someone else, such as Tallis, had a,
 19 had a -- lined up some polygraph operator and
 20 wanted him to look at Wilson's if it worked. But
 21 when it says he, he could send the chart, he
 22 could look at it, I don't know who the 'he' is,
 23 the second he. He's gonna call back re Wilson
 24 lying on two questions. Wilson lied on two
 25 questions. Now don't let out charts unless

1 nor did it from that. Wilson told Roberts that
 2 in Calgary Dave told him "I took her purse, I
 3 poked her with knife a few times". So that's
 4 things that Roberts told me. So that looks like
 5 one phone call to me.
 6 SGT. M. DRESSLER: Were you satisfied that
 7 a polygraph examination had been conducted on
 8 Wilson?
 9 BOBS CALDWELL: Well I assume it was, I --
 10 the polygraph thing, my memory is that, that I
 11 wasn't a party to arranging that, my memory is
 12 that it was arranged and done by the police and I
 13 was told about it either, you know, once it was
 14 underway or when, in fact, it was even over.
 15 Because, you see, I didn't get into this business
 16 of, of becoming a half investigator, like I never
 17 did like that thing with the prosecutor going
 18 along with policemen, looking at scenes, getting
 19 in the way and stuff like that, so I kinda tried
 20 to keep my distance. I know they arranged all
 21 that, I know it came off, I believe he tested
 22 both Wilson and John. And it was at that time
 23 that in my, you know, understanding of
 24 everything, that we ended up with the truthful
 25 version of everything, with the one exception

1 that John in fact saw the killing but she never
 2 would say in court. Does that answer you?
 3 SGT. M. DRESSLER: Yes, it does. Yes, it
 4 does.
 5 BOBS CALDWELL: Okay, 'Kay.
 6 SGT. M. DRESSLER: Now this be -- this may
 7 be somewhat of a duplication now. It has been
 8 alleged that all references to Larry Fisher being
 9 arrested in Winnipeg in 1970 were kept secret
 10 from investigators and from victims. The
 11 apparent reason, of course, so as not to arouse
 12 suspicion that Fisher may have murdered Gail
 13 Miller. Do you have any knowledge of this?
 14 BOBS CALDWELL: From investigators and from
 15 victims?
 16 SGT. M. DRESSLER: From the victims.
 17 BOBS CALDWELL: No, I don't, but -- but the
 18 way the -- and I'm not, you know, critical of the
 19 Police Department -- but the way it operated
 20 there was no, there was absolutely no formal
 21 mechanism in place to advise victims of the
 22 outcome of cases unless a particular, I suppose,
 23 prosecutor phoned and said "hey, that guy was
 24 convicted", or unless a very conscientious
 25 investigator phoned to say he was convicted. But

1 of joint 'cause 'I missed a trip to Winnipeg'.
 2 You know, that simply happens. And the next day
 3 the similar thing happened, I suppose the guy
 4 would have found out about it and all the victims
 5 would have been advised, but... Does that, does
 6 that answer you?
 7 SGT. M. DRESSLER: Yes, it does.
 8 BOBS CALDWELL: Okay.
 9 SGT. M. DRESSLER: Now I have here a police
 10 report, page B176 dated August 26th, '69, and I
 11 wonder if you could just review it ...
 12 BOBS CALDWELL: Okay.
 13 SGT. M. DRESSLER: ... and to refresh your
 14 memory and see if you have any knowledge of that
 15 event.
 16 BOBS CALDWELL: Okay. I guess that's
 17 Ullrich, by the look of it, because it's been
 18 yellow-lined and it photocopies so badly, but
 19 that is Ullrich?
 20 SGT. M. DRESSLER: Yes.
 21 BOBS CALDWELL: Okay.
 22 MR. HALYK: While he's looking at that,
 23 we'll be getting a copy of this state...
 24 transcript, will we?
 25 INSP. M. SAWATSKY: Yes. Just like we did

1 there was no, there was no sort of community
 2 services unit to, to go after people and say
 3 "here's how your case came out". So they could
 4 not be -- it wouldn't surprise me in the least if
 5 none of the victims were notified, and I would
 6 attribute nothing sinister whatever to that,
 7 'cause it was simply a hit and miss operation.
 8 Now as far as to investigators,
 9 I think there's been one or two investigators
 10 here expressing great amazement that Karst went
 11 to Winnipeg to, to interview, was it Wilson -- or
 12 pardon me, Fisher. Karst himself didn't remember
 13 going there, which I can understand, I mean, you
 14 know, he was a busy -- he was one of the very
 15 well-regarded investigators. He and a guy named
 16 Tom Vanin used to do many of the murder
 17 investigations 'cause they were very, very good.
 18 Karst is a very fatherly figure, and Karst didn't
 19 remember going, I don't know how he would -- how
 20 he would then, you know, phone up all the
 21 investigators who should know and say "hey, I
 22 went to Winnipeg". I attach nothing sinister to
 23 Karst not remembering he went to Winnipeg, and
 24 nothing sinister to whoever some other
 25 investigator may have been who had his nose out

1 for the other witness.
 2 MR. HALYK: And, by the way, I could
 3 indicate to my knowledge Mr. Caldwell has not
 4 read that interview and it hasn't been provided
 5 to him ...
 6 BOBS CALDWELL: We deliberately...
 7 MR. HALYK: ... intentionally, so --
 8 BOBS CALDWELL: ... deliberately didn't do
 9 that and, Mr. Halyk, and I agreed on that, and
 10 I'm -- you know, would rather be that way, so --
 11 so.
 12 Okay, now this episode I
 13 remember, and I've read it in police reports say
 14 in the last year or so now. I couldn't have told
 15 you by memory that it was Ray Mackie and Ullrich
 16 and myself who were there, but it obviously was,
 17 and Ullrich was a meticulously careful policeman,
 18 like, he was just utterly reliable and careful.
 19 And in fact I recited this episode about the
 20 bathtub in one of my letters to the Parole Board.
 21 Were you aware of that? And I couldn't remember,
 22 in recent years when I looked at the, looked at
 23 that letter, where I'd got that information, and
 24 I somehow or other found out that that's where it
 25 came from. But Cadrain told us that, and I mean

1 that, I put that in my, I guess my longest letter
2 to the Board, if I'm not mistaken.

3 SGT. M. DRESSLER: Do you recall what
4 prompted the, this meeting between you and
5 Cadrain and the police members?

6 BOBS CALDWELL: Well what was the date of
7 it?

8 SGT. M. DRESSLER: August 26th, '69, or
9 August 25th, 1969.

10 BOBS CALDWELL: Okay. '69? Well that was
11 after the offence, I presume the prelim. was,
12 was -- was it over? I don't know.

13 SGT. M. DRESSLER: The prelim. was in
14 September.

15 BOBS CALDWELL: Okay.

16 SGT. M. DRESSLER: It began August 18th,
17 '69 ...

18 BOBS CALDWELL: Okay, well.

19 SGT. M. DRESSLER: ... and proceeded
20 through.

21 BOBS CALDWELL: Yeah, it kept, it went on
22 in bits and pieces. Now this would be just as
23 one of the interviews with Cadrain, I have no
24 special thing, but that absolutely happened
25 because, again, that's a thing you don't forget,

1 statement, which you have. That statement really
2 deals with three separate things, the -- the
3 first is the Nichol John episode about "I don't
4 know why he didn't kill me too, I was right there
5 and saw it all, but I'm not going to say
6 nothing". Now, the second thing it deals with is
7 disclosure at great length, and the third is the,
8 what I've been calling the script document we
9 were over earlier, the alleged script.

10 When I got to Ottawa, it was
11 the day that Albert Cadrain finished testifying,
12 I phoned Mr. Williams, who was the person who had
13 asked me to come to Ottawa and I'd been dealing
14 with all along on the case, and he said, "We've
15 decided not to use you", and I phoned and had a
16 long chat with Murray Brown to find out how
17 things were looking. The only thing I can kind
18 of assume is that if, if the defence had any say
19 in it, my memory tells me that Brown, in effect,
20 said to Hersh Wolch "if you call Caldwell to go
21 through the disclosure thing I'm certainly going
22 to get out of him the Nichol John statement about
23 seeing everything". Now, and I don't know who
24 really made the decisions, if the judge finally
25 says yes or no or it's a majority vote, or if

1 Cadrain saying that Milgaard had done this. I
2 was just gonna take one second to find where,
3 where I incorporated that in -- yeah, the letter
4 to Mr. Street, June 14th, '72 and the Parole --
5 or the National Parole Board, last paragraph on
6 page 3 and into page 4 deals with that episode.
7 Want to just glance at that? Very bottom of that
8 page.

9 See, recently when I was
10 rounding this material up and getting it into
11 order, I'd -- I couldn't recall that the, the
12 details of that, but that police report by
13 Ullrich is how it happened. And no special --
14 unless, I don't know why we were interviewing
15 Cadrain unless it was just part of the whole
16 business of getting ready for the, for the
17 prelim. or his part in it.

18 SGT. M. DRESSLER: Now, I understand that
19 you were called to the Supreme Court in 1992 to
20 testify, however, you did not testify?

21 BOBS CALDWELL: That's right, yeah.

22 SGT. M. DRESSLER: Do you have any idea as
23 to why you were not -- why you did not testify?

24 BOBS CALDWELL: Well the thing that
25 preceded that was me giving Sergeant Pearson my

1 anyone who wants to call anyone can do it
2 regardless. But the bottom proverbial line was
3 that I wasn't called. Now quite frankly, at the
4 time, I was kind of relieved. Since then I'm --
5 I have nagging afterthoughts that that was a very
6 important chunk of evidence. And under the rules
7 they were using in that court, which were
8 hearsay, rumours, beer-parlour second-hand
9 gossip, it obviously could have gone in, okay,
10 there was no question of that. And it would be
11 my view that it would be a damning piece of
12 evidence against Milgaard. And -- but no one
13 ever told me, like in so many words, "you weren't
14 called because of A. or B. or C", but I certainly
15 wasn't.

16 And I might say, just while
17 were on that, that this morning we were looking
18 at my N.B. for Trial handwritten sheets, and
19 there was a duplication of two pages, and my
20 original handwritten note of this was -- was --
21 do you remember was on one of those. And the
22 reason there'd be two pages, I've been thinking
23 since, is that once I wrote that out on that
24 blank sheet with the number I would then have
25 wanted to preserve it separately, that's why

1 there was another number 14 or whatever the
2 number was, because I wrote that just as quick as
3 I could right on the handiest thing, grabbed the
4 N.B. for Trial thing and write it down. And
5 that's why, that's why that was done the way it
6 is.

7 SGT. M. DRESSLER: One last question. Are
8 you familiar with a gentleman by the name of
9 Bruce LaFreniere?

10 BOBS CALDWELL: No.

11 SGT. M. DRESSLER: Those are all the
12 questions I have.

13 BOBS CALDWELL: Okay. Should I know Bruce
14 LaFreniere?

15 SGT. M. DRESSLER: No, it's just a simple
16 question.

17 BOBS CALDWELL: Okay.

18 INSP. M. SAWATSKY: I have no more
19 questions. Either of you gentlemen have any
20 further comments?

21 MR. HALYK: No.

22 BOBS CALDWELL: Well, I don't. I mean I,
23 what I would like to invite you gentlemen to do
24 is, if time goes on and you find something that
25 should have been covered, I'd -- we'd be

1 MR. HODSON: Mr. Commissioner, I'm not sure
2 what your -- it's almost 3:00, I could carry on
3 for about another 10-15 minutes, just with a
4 couple points on this statement.

02:59 5 COMMISSIONER MacCALLUM: Sure.

6 MR. HODSON: I will not finish with Mr.
7 Caldwell today, although I do not have much left,
8 or if you would like to take a break I think
9 we're close to finishing time anyway. So, Mr.
10 Caldwell, are you --

11 COMMISSIONER MacCALLUM: Okay.

12 MR. HODSON: And I'll just maybe touch on
13 the -- is that fine, Mr. Caldwell?

14 A Yes, thanks, very much.

02:59 15 BY MR. HODSON:

16 Q Let's -- just a couple questions while we have the
17 statement fresh in our minds. Is there anything
18 in that statement -- and there is a supplementary
19 statement that I will read to you either later
03:00 20 today or Monday where there is a follow-up
21 question of Mr. Schellenberg and the statements of
22 Mr. Milgaard's father and the script document --
23 but apart from the supplemental statement is there
24 anything in that RCMP statement we heard that you
03:00 25 now take issue with as being the truth at the time

1 delighted to hear from you, and we'll do our best
2 to answer it as --

3 MR. HALYK: One thing about Mr. Caldwell,
4 he always listens to counsel, he checked with me
5 before he said that.

6 BOBS CALDWELL: Yeah. (Chuckles).

7 MR. HALYK: No. On the record, we could
8 indicate that absolutely, that's the intention of
9 Mr. Caldwell and I will not in any way try to
10 obstruct that intention, and that is to
11 co-operate. If things come up that you want
12 verification about, just let us know, and write
13 to us or come back.

14 BOBS CALDWELL: Yeah, we -- I have nothing
15 to hide on this thing and I, you know, really
16 appreciate the very, very careful job that you
17 people are evidently doing, along with other
18 colleagues, in going/turning every last stone,
19 and I'd be extremely delighted to, to help with
20 that. Having gone this far, if I can be of any
21 use, I'd be pleased to hear from you.

22 SGT. M. DRESSLER: Thank you, gentlemen.

23 INSP. M. SAWATSKY: Thank you.

24 SGT. M. DRESSLER: Statement ends at 16:43.

02:59 25 (END OF TAPED TRANSCRIPT)

1 or the truth today?

2 A No, I believe it -- it was the truth as I saw it
3 then, and now. I couldn't see anything that I
4 wanted to stop and change the "yes" to "no" so I
03:00 5 think it represents truth in my books.

6 Q And at that time, Mr. Caldwell, that was 1993,
7 that was before the DNA results came out in 1997?

8 A I assume so, yup.

9 Q And, at the time of the interview with the RCMP,
03:00 10 was it your belief that David Milgaard had
11 committed the murder of Gail Miller?

12 A Yes, it was, sir. You pointed out the date of the
13 DNA, which is helpful to me because I wouldn't
14 have known it, but yes, I would have believed
03:01 15 that.

16 Q And again, and I think it was set out in the
17 interview, the purpose of this interview as stated
18 by Mr. Sawatzky and Mr. Dressler was the -- a
19 criminal investigation into alleged wrongdoing by
03:01 20 you?

21 A That's my understanding, sir.

22 Q I just want to ask you to comment on a couple of
23 points. If we could go to 022175, and this is
24 part of the statement, and you will recall I think
03:01 25 yesterday we were going through your dealings with

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1 Eugene Williams and when it was you did certain
2 things and I was trying to find a document, or I
3 had asked you the question about when, when it was
4 that Eugene Williams asked you to look through
03:01 5 your prosecution file for the name Larry Fisher,
6 --
7 A Uh-huh.
8 Q -- and your evidence was that you thought that
9 that was the first thing you had done, or near the
03:01 10 start, and I think that was around October of '89.
11 A Yes.
12 Q And I note your answer here, Mr. Caldwell, you
13 say:
14 "On February twenty—eighth,
15 nineteen—ninety, while employed by the
16 Canada Department of Justice in the
17 Saskatchewan Regional Office, Saskatoon,
18 I received a telephone request from
19 Eugene Williams to search the Provincial
20 Crown Prosecution file for any mention
21 of a person named Larry Fisher. On
22 searching the file I found the
23 investigation report of Detective
24 McCorrison dated February second ...
25 and this one you gentlemen have copies

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1 Q And I think the allegation is that, given what the
2 Crown theory was as to what happened in the back
3 alley that morning, if someone was looking in the
4 area where the Wilson vehicle was supposed to be
03:03 5 and these events were supposed to take place, that
6 a witness who saw nothing might well be important;
7 do you follow?
8 A Yes, I do, sir.
9 Q And you say -- and let me just back up. They put
03:04 10 to you specifically, I think, two people, Mr. and
11 Mrs. Merriman and Marie Indyk. We've already
12 dealt with Marie Indyk.
13 A Yes.
14 Q But on the Merrimans, if I could call up 002102,
03:04 15 and this is a police report of Officer McCorrison
16 and this is a police report that was in your file,
17 in the prosecution file, and I think it was in the
18 prosecution file perhaps for other reasons -- or
19 pardon me, that -- you will recall, when we went
03:04 20 through the Ullrich witness summary, that he would
21 identify a police report page number when he had a
22 specific piece of evidence, so I think this report
23 was in for some other reason, at least on the face
24 of it. But there is a reference here that
03:05 25 McCorrison, on February 5 at 6:55 a.m.:

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1 of I know ...",
2 and then you say:
3 "... and I gave a copy of this document
4 personally to Eugene Williams in
5 Saskatoon on March twenty—second of
6 nineteen ninety. He and I went over to
7 the Provincial Office. You've got that
8 document. Okay. Now, then to, to
9 continue."
03:02 10 And I'm wondering, Mr. Caldwell, if you are able
11 to -- does that assist your recollection or your
12 reconstruction of events as to what might have
13 happened?
14 A Yes. This was much earlier, or nearer the event,
03:02 15 and I would think, Mr. Hodson, that the one I'm
16 looking at here would be correct in terms of
17 differences from what I said yesterday.
18 Q If we could go to 022178. And you were asked,
19 here, about the suggestion that you may have
03:03 20 failed to disclose relevant evidence to the
21 defence from witnesses or people who, for lack of
22 better words, saw nothing, but were perhaps
23 looking at where they should have seen something,
24 if you follow?
03:03 25 A Yes.

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1 "... interviewed Mrs. Margaret Merriman
2 of 226 Avenue N South who works at the
3 Cafeteria at the Star Phoenix. In the
4 morning of Jan. 31/69 she ordered a taxi
03:05 5 to be at her home at 6:55 A.M. and
6 watched out her front window for a few
7 minutes while awaiting the arrival of
8 the taxi, however she saw nor heard
9 anything and was unable to offer any
03:05 10 information."
11 And, again, if we could just -- so if we look at
12 that address, 226 Avenue N North, if we could
13 call up I think it's map B?
14 A It's, I think that said 'South', Mr. Hodson, if
03:05 15 I'm right, but --
16 Q Umm, the?
17 A The address.
18 Q I thought it was, if we could maybe go back, I
19 thought it was 'North'.
03:05 20 A Okay.
21 Q Oh, I'm sorry, you are right, Avenue N South.
22 Okay. If we can go back to map B. Anyway, we
23 heard her evidence at this Inquiry -- and I'm
24 sorry, is there -- maybe it's map -- map C? No.
03:06 25 Map A? I'm running out of maps. Yes, there is

1 the Merriman home right there, 226 Avenue N South.
 2 A Okay.
 3 Q And we see the T alley here; correct?
 4 A I -- that's right.
 03:06 5 Q And Gail Miller's body was where the X was.
 6 A Right.
 7 Q And the evidence of Ron Wilson was I think that
 8 the vehicle was stuck there where I have the X, a
 9 little bit north of 20th Street, I think Nichol
 03:06 10 John said the car was stuck going up the incline
 11 behind the funeral home; do you recall that?
 12 A Yeah, all that, sir.
 13 Q And Mrs. Merriman lived here, and in the police
 14 report that I just read, what the police report
 03:06 15 said is that she looked out the front window
 16 waiting for a taxi around 6:55 a.m. for a few
 17 minutes and didn't see anything. When she
 18 testified before this Inquiry I think she said,
 19 and I'm going by my recollection, I think she said
 03:07 20 it could have been up to 10 or 15 minutes around
 21 6:45 to 6:55 a.m., and that she would have been
 22 looking out her front window at that entrance-way
 23 to the T alley, I think was her evidence, --
 24 A Okay.
 03:07 25 Q -- and that she saw nothing. And this was on the

1 do you have any recollection of looking at this
 2 document at the time and considering its
 3 significance?
 4 A I do not, Mr. Hodson.
 03:08 5 Q And again, looking at it now and in light of what
 6 Mrs. Merriman has said, would you agree that there
 7 might be some significance to what she didn't see
 8 the morning of the murder?
 9 A Yes, I would agree that when it's put to me in
 03:09 10 this fashion with the map, with the police report,
 11 there could have been, could and might have been
 12 some significance of what she did or didn't see.
 13 Q And if, at the time in 1969, you would have
 14 recognized the significance, what, if anything,
 03:09 15 would you have done with it?
 16 A Well I assume -- I -- number 1, I had -- did this
 17 go to Mr. Tallis or do we know that?
 18 Q This is a police report -- let me just clarify.
 19 A Okay.
 03:09 20 Q You testified no police reports went to Mr.
 21 Tallis, she did not provide a witness statement.
 22 A Okay.
 23 Q The only information, at least that we have been
 24 able to find on the files, are the two police
 03:09 25 reports that identify discussions with her, and I

1 morning of the murder. And again, based on
 2 that -- and I'm not sure, let's just go back to,
 3 if I could call up the police report 002102. Now
 4 that was on your file. I should add that, Mr.
 03:08 5 Caldwell, there was a second police report of
 6 Officer Reid, I think of March 27th or
 7 thereabouts, where he interviewed Mr. Merriman and
 8 had similar information --
 9 A Okay.
 03:08 10 Q -- except that Mr. Merriman said that he had
 11 trouble seeing, and in fact I think Mr. Merriman
 12 was blind or close to blind at the time, but he
 13 indicated that he and his wife were looking out
 14 the window for a taxi and saw nothing, or words to
 03:08 15 that effect.
 16 A All right.
 17 Q That police report does not appear to be part, or
 18 that report is not part of Ullrich's brief, and it
 19 appears that it was not on your file and may not
 03:08 20 have been given to you.
 21 A Okay, sir.
 22 Q So this report, though, I think has your -- you
 23 see that handwriting at the top?
 24 A Yeah, that's definitely my initials and numbering.
 03:08 25 Q Okay. So is this -- can you tell us, at the time,

1 stand to be corrected, but I think the only record
 2 on the prosecutor's file about the Merrimans is
 3 this entry right here in the police report.
 4 A Okay. And you are asking what, sir?
 03:10 5 Q The question of whether -- if you would have
 6 realized the significance of this piece of
 7 information -- I think you've told us that that
 8 might be important -- if you had appreciated that
 9 at the time what would you have done with it?
 03:07 10 A I should have -- I should have passed -- (a),
 11 called her presumably as a witness, or (b), passed
 12 the information along to Mr. Tallis in one form or
 13 another, probably a letter in absence of there
 14 being a statement, sir.
 03:08 15 Q Now, when we went back, and I don't want to cover
 16 this ground in too much detail again, remember
 17 Mr. Tallis asked you to go through the witness
 18 statements and review them and identify in
 19 accordance with the Dallison case any witness
 03:08 20 statement that had evidence that might tend to
 21 exculpate the accused, or words to that effect?
 22 A I recall that.
 23 Q And I think you read through the witness
 24 statements; right?
 03:08 25 A I undoubtedly did.

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1 Q Did you read through the police reports as well to
2 see if you could pick out anything in the
3 investigation reports?
4 A Under the heading of that request, Mr. Hodson, I
03:08 5 don't think I would have because he asked me to
6 look at witness statements and I did do that. I
7 think that's clear.
8 Q And then if we can go back to the transcript of
9 the interview, 022178, and again just your comment
03:09 10 here where you say:
11 "I, I wouldn't have called them if they
12 said I, I looked down the road and
13 didn't see anything, unless it were
14 extremely critical timing involved or
03:09 15 they were some way able to say that
16 episode didn't happen."
17 So we've dealt with the Merrimans and I think,
18 sir, correct me if I'm wrong, that in light of
19 what Mrs. Merriman said, that she may have been
03:09 20 looking at the exact spot where the Wilson
21 vehicle was according to Nichol John?
22 A Yes.
23 Q That that might have been significant?
24 A It may well have, sir.
03:09 25 Q There was also a reference in the police reports,

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1 expect Mr. Tallis to do or is that something you
2 felt that you, was in your court to deal with?
3 A You mean to do in the sense of him going and
4 interviewing people?
03:10 5 Q Well, for example, when Mr. Tallis says do you
6 have any witness information or statements that
7 might help the accused, let me put it that way --
8 A Okay.
9 Q -- the fact that people in that area didn't see
03:11 10 the Wilson vehicle and didn't see anything in that
11 alley might be considered helpful, would you agree
12 with that?
13 A Yes, that's right.
14 Q And yet when I read your comment here, you seem to
03:11 15 be saying, well, lookit, I would never call a
16 witness to say I didn't see anything, so therefore
17 they are not important to you; correct?
18 A Yes.
19 Q But they might be important to Mr. Tallis?
03:11 20 A Yes, I understand that, sir.
21 Q And I'm trying to understand how it was that this
22 information -- was there a reason that it was not
23 provided to Mr. Tallis, was it because of the
24 practices of disclosure of the day or what?
03:11 25 A Well, the only way one could, I suppose, disclose

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1 although I can't say that these were all on your
2 file, that in the days following the Gail Miller
3 murder the police interviewed many, many people in
4 and around that area and, in particular, people
03:09 5 who were at the bus stops, including Larry Fisher?
6 A Yes.
7 Q They canvassed homes, did a door-to-door search to
8 get anybody in the area to say what did you see
9 that was suspicious that morning, and I think in
03:10 10 summary, for the most part, it was a number of
11 people saying at around that time I didn't see
12 anything unusual.
13 A Yeah.
14 Q And my question, just take a step back as a
03:10 15 prosecutor, how would you have -- how would -- it
16 appears you didn't give any of that information to
17 Mr. Tallis.
18 A Okay.
19 Q Is that fair, like --
03:10 20 A I assume that's right, sir.
21 Q And the fact that we have a bunch of people who
22 were talked to by the police that didn't see
23 anything.
24 A Yeah.
03:10 25 Q And back at that time was that something you might

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1 it to Mr. Tallis would be to dictate a memorandum
2 embodying all the results of all those
3 door-to-door checks by various policemen and send
4 him a letter, you know, along with addresses,
03:12 5 names and all that sort of thing. That would be
6 something I don't ever recall doing, you know, in
7 my time, but that's the only way I can envision
8 doing it based on what you are asking me, sir.
9 Q Right. And I guess, let's just try and go back,
03:12 10 and I think we can take it as a given that -- I
11 mean, we've gone through everything you did
12 provide to Mr. Tallis?
13 A I think that's right.
14 Q And I think we can say that this type of
03:12 15 information was not in there.
16 A I'm sure that's right.
17 Q And I'm just trying to probe to find out the
18 reason -- the reason or reasons that it may not
19 have been, and again, at that time, in 1969, based
03:12 20 upon your understanding of your responsibility as
21 a prosecutor, is this the type of information --
22 you tell us, what -- where is the line, what type
23 of information did you think you had a duty to
24 disclose to Mr. Tallis when he made the request?
03:12 25 A Well, the things which I did do, which was go

1 through all those statements, read them and write
 2 them, and I think I sent him two or three that
 3 looked promising, if I'm not mistaken, and I
 4 believe I'm right in that, Mr. Hodson, I don't
 03:13 5 have it in front of me, but I believe I did send
 6 him the two or three statements from that
 7 collection that might show some promise of helping
 8 the accused.
 9 Q Yes.
 03:13 10 A Okay. Now, the next step would be I can't say
 11 that I read all those police reports we've just
 12 been talking about, or reread them, but the only
 13 way I could convey that, the results of that to
 14 him would be to dictate a kind of a running
 03:13 15 summary about what the police had found, which
 16 could certainly be done.
 17 Q And was there a reason you didn't do that in this
 18 case?
 19 A Nothing that I've ever done up until that point in
 03:13 20 any case, sir, in my memory.
 21 Q If there had been -- let me just put out another
 22 point. I think certainly the Margaret Merriman
 23 information about what she didn't see and the
 24 evidence of the others that was gathered in the
 03:14 25 days following the murder before the police had

1 hands -- let me put it this way. If there had
 2 been a statement taken by Margaret Merriman on May
 3 25th, '69 after the police had gathered the
 4 information from Wilson and John that put the
 03:15 5 Wilson vehicle near that back alley and
 6 Mrs. Merriman had stated in that statement that I
 7 was looking out at the entrance to the T alley
 8 behind the funeral home where the police tell me
 9 Nichol John's vehicle -- or where Nichol John says
 03:15 10 their vehicle was between 6:45 and 6:55 a.m. and I
 11 didn't see anything, in that scenario do you think
 12 you would have given --
 13 A I think I would have, because in that scenario,
 14 Mr. Hodson, you had some of what, let's say, we
 03:15 15 thought were correct facts about vehicles and
 16 people that hadn't existed earlier. I would hope
 17 that against that background I would either look
 18 myself or be told to look at the Merriman
 19 statement and at that point I would think it would
 03:16 20 be meaningful and I would ship it off to
 21 Mr. Tallis because it was sort of a frame of
 22 reference for it then, if you will.
 23 Q And so I guess I'm trying to understand then, what
 24 we know from Mrs. Merriman now is that's what she
 03:16 25 saw at that time and I think she also said that

1 any theory, they didn't have David Milgaard as a
 2 suspect --
 3 A Okay.
 4 Q -- and they didn't have any information about
 03:14 5 where the Wilson vehicle might be, that didn't
 6 come until arguably May 23rd.
 7 A Okay, thank you.
 8 Q So at that time, and what I'm trying to get at,
 9 May 23rd, and I asked this question of some of the
 03:14 10 police officers, on May 23rd and 24th the police
 11 get information that puts Mr. Milgaard's vehicle
 12 in the vicinity of the funeral home.
 13 A Uh-huh.
 14 Q And I think I asked a couple of the officers, did
 03:14 15 anybody go back and look at the previous reports
 16 and say okay, does what we now got, what we now
 17 have received from Nichol John and Wilson as to
 18 where the vehicle was, does that fit with the
 19 information that we gathered in the week following
 03:14 20 the murder about what people saw. Do you follow
 21 me?
 22 A Yes, sir.
 23 Q And I think the answers were, well, someone must
 24 have done it, or words to that effect, and again,
 03:15 25 I'm trying to understand, once it gets into your

1 there may have been some visibility issues, but
 2 she did say she was looking in that area during
 3 those time periods. I'm trying to understand what
 4 would have caused you to send it to Mr. Tallis and
 03:16 5 what wouldn't have. You've now said if it was in
 6 that statement of May 25th, that would have
 7 twiggged your mind and you would have sent it. Do
 8 we take it from that that reading it in the police
 9 report didn't -- wasn't enough to twig your mind
 03:16 10 to the issue?
 11 A I must think that it wasn't enough, Mr. Hodson,
 12 because it didn't produce that result.
 13 Q I see.
 14 A And as they say, if I had it to do over, I think I
 03:17 15 may have realized that it was significant and
 16 should have shipped it off at some point or other,
 17 which clearly I didn't. There was a witness
 18 statement from this lady?
 19 Q No, there was not.
 03:17 20 A Okay, I'm sorry.
 21 Q The only information that I think was on your file
 22 was that one paragraph in McCorrison's police
 23 report.
 24 A Yeah, okay. If -- well, yeah, the absence of a
 03:17 25 witness statement would tend to make it an uphill

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1 struggle I think from my point of view, but if
2 that had carefully come into focus, I think I
3 should have sent off the information somehow.
4 Q And just 022181, I just want to -- you mention in
03:17 5 the interview with the RCMP that you have no
6 record of sending Mr. Tallis Ron Wilson's first
7 statement.
8 A Yeah. I think that's wrong, sir, because --
9 Q Right.
03:18 10 A Yeah.
11 Q At least --
12 A I'm sorry?
13 Q There's a record, the letter, there is a letter
14 where you have sent that and I just --
03:18 15 A Yeah.
16 Q Is that a mistake?
17 A Yes, that is. At some point I hadn't got the two
18 or more Wilson statements sorted out in my mind,
19 so this is incorrect.
03:18 20 Q And then 022187, talking about Simon Doell, and he
21 is the fellow who I think in a police report said
22 that he saw Gail Miller take the bus at Avenue N.
23 A That's correct.
24 Q And you were asked the question on the previous
03:18 25 page -- maybe just go back to the previous page --

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1 A But I think, Mr. Hodson, he did say N; did he not?
2 Q He did, Simon Doell said N.
3 A Okay.
4 Q Gail Miller's roommates for the most part said O,
03:20 5 but the question I have here is you say if you
6 would have had people saying, insisted she always
7 got on the bus at Avenue O, you wouldn't believe
8 them because the evidence was of the Wilson car
9 coming down Avenue N. I'm just wondering if --
03:20 10 why you wouldn't believe them instead of saying,
11 well, if they are right, maybe Wilson is wrong.
12 A As to where the car was, sir?
13 Q Yes. Well, no, for example, you are saying
14 because Wilson puts the car on Avenue N --
03:20 15 A Yes.
16 Q -- therefore, anybody who says she caught the bus
17 on O, you wouldn't believe them because you say
18 she was on N?
19 A That's in a nutshell.
03:20 20 Q Right. And my question is what's the flip side,
21 why don't you say, well, maybe I should believe
22 the people who say she walks down Avenue O and
23 maybe she wasn't on Avenue N and maybe Wilson and
24 John are wrong.
03:21 25 A Well, Mr. Hodson, I think there were, I think

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1 could it be possible that with Doell stating that
2 she always got on the bus at Avenue N, that may
3 have influenced the Crown's theory, or do you have
4 any recollection of that, and I think what the
03:19 5 allegation relating to Simon Doell is is this,
6 that the Crown theory was Avenue N, that's where
7 Gail Miller was.
8 A That's correct.
9 Q And that Simon Doell corroborated that by saying
03:19 10 that Gail Miller was on, caught the Avenue N bus,
11 that there was other evidence from other witnesses
12 that put her at Avenue O and that you didn't
13 disclose the Simon Doell evidence to the defence
14 so they could challenge his Avenue N statement. I
03:19 15 think that's, if I can summarize that, and I just
16 want to go through what your response is. You
17 say, well, no it wouldn't influence me because I
18 have no memory of ever reading the Doell thing and
19 because let's suppose he had insisted she always
03:19 20 got on at Avenue O I wouldn't believe him, because
21 the evidence was of the Wilson car coming down
22 Avenue N. So let me pause there. Now, Simon
23 Doell didn't say Avenue N, but a number of other
24 people did say -- pardon me, Simon Doell didn't
03:19 25 say Avenue O, but a number of other witnesses did.

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1 maybe even yesterday we went through three or four
2 factors which led me to, if you will, accept the
3 Avenue N version, whether it was right or not. I
4 don't recall there being a, you know, a very
03:21 5 substantial competing Avenue O theory and maybe
6 you could help me with that.
7 Q There was, I mean, we called in this Inquiry right
8 at the very outset Gail Miller's roommates who
9 said, I think for the most part that, that Avenue
03:21 10 O is where she would normally take the bus, and I
11 don't think anybody said positively that that had
12 to be where she took the bus, but that's what they
13 believed, and I'm just trying to understand, Mr.
14 Caldwell, a couple of questions; one, why you
03:21 15 would say that if anybody said O it didn't fit
16 your theory, therefore, you wouldn't believe them?
17 A I think that is an unfortunate choice of
18 terminologies. I think that -- I think that,
19 without going through the reasons why I believed
03:22 20 it was an Avenue N based enterprise, and I don't
21 doubt what her roommates said, I had forgotten
22 that, as to what route she usually took -- I
23 just -- I wouldn't change that, Mr. Hodson, unless
24 I felt there was evidence, if you will, to support
03:22 25 that, to put it at the other corner.

1 Q I see.

2 A I don't know if I can -- if that's --

3 MR. HODSON: That's fair enough.

4 Mr. Commissioner, this might be an appropriate

03:22 5 spot to break. There's one more item on the RCMP

6 interview, but I will not finish it this morning,

7 there's some other documents I need to go

8 through, so I can maybe pick that up on Monday at

9 1:30.

03:23 10 COMMISSIONER MacCALLUM: 1:30, and we move

11 to the Radisson.

12 MR. HODSON: Radisson.

13 COMMISSIONER MacCALLUM: Michelangelo room.

14 (Adjourned at 3:23 p.m.)

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1 OFFICIAL QUEEN'S BENCH COURT REPORTERS' CERTIFICATES:

2 We, Karen Hinz, CSR, and Donald G. Meyer, RPR, CSR,

3 Official Queen's Bench Court Reporters for the Province of

4 Saskatchewan, hereby certify that the foregoing pages

5 contain a true and correct transcription of our shorthand

6 notes taken herein to the best of our knowledge, skill,

7 and ability.

8

9

10

11

12 _____, CSR

13 Karen Hinz, CSR

14 Official Queen's Bench Court Reporter

15

16

17

18 _____, RPR, CSR

19 Donald G. Meyer, RPR, CSR

20 Official Queen's Bench Court Reporter

21

22

23

24

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