

**The Commission of Inquiry into
the Wrongful Conviction of
David Milgaard**

[Honourable Mr. Justice Edward P. MacCallum, Commissioner]

**SUBMISSION ON BEHALF OF T.D.R. CALDWELL, Q.C. TO
THE COMMISSION OF INQUIRY INTO THE WRONGFUL
CONVICTION OF DAVID MILGAARD**

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I. INTRODUCTION

1. As a society generally and as practitioners in the field of criminal law we, in recent years, have come to realize that a troubling number of people in Canada have been wrongfully convicted of crimes they did not commit. This emerging knowledge has brought about a zealous and laudable campaign by citizens and committed lawyers to free those who are still serving prisoners from continuing imprisonment and to uncover the reasons that underlie these wrongful convictions. Unfortunately, in doing so, some of those private individuals and practicing members of provincial law societies have become, at times, that which they accuse police and Crown counsel of being.....they have become blinded by their own kind of tunnel vision. In their quest to right wrongful convictions they are quick to make accusations that there was intentional wrongdoing on the part of the State and they almost invariably seek to assign malevolence and blame to police investigators and Crown Prosecutors where blame and malevolence often should not and cannot be assigned.
2. In so doing they ignore a stark truth in our system of justice. It is an unfortunate but undeniable reality that in an adversarial system of criminal justice all participants can do their jobs in good faith but nonetheless a wrongful outcome can still occur. In the U.S.A. v. Burns (2001) 151 C.C.C. (3d) 97 (SCC) the Court stated (at page 106) that “legal systems have to live with the possibility of error.....” but it does not follow that there need be deliberate wrongdoing to have error occur.
3. We respectfully submit that the evidence before this Inquiry has shown that the case against David Milgaard is one of those cases where there was no deliberate wrongdoing. With the benefit of hindsight it is clear that mistakes were made but we submit that the evidence at this Inquiry has, as have other reviews of this case, shown that they were honest mistakes made by honest people who acted in a good faith belief that David Milgaard had killed Gail

Miller. This was a case that was largely dependant on the reliability and truthfulness of Alert Cadrain and the then purported eyewitnesses, Ronald Wilson and Nicol John and other circumstantial evidence.

4. We submit that the evidence at this Inquiry has shown that the investigation, trial and appellate work done was not the work of men who knowingly or even carelessly worked to convict an innocent man. It was the result of investigative work by well intentioned police officers who had a sincere and honest belief that they charged the right man and the conscientious work of a Crown Prosecutor who had an equally sincere and honest belief that he was prosecuting the right man. Thus too is the evidence with respect to Mr. Kujawa who argued the appeals. It falls short of the often grandiose claims of misconduct, dishonesty and conspiracy that were advanced by Joyce Milgaard, David Milgaard and counsel on their behalf in the print, radio, and television media, in books and movies, in the Supreme Court of Canada, in Project Flicker, and in many public forums and, at times, before this Commission of Inquiry.
5. More specifically, we respectfully submit that the evidence at this Inquiry has fully and completely, and one hopes finally, absolved T.D.R. Caldwell of the many allegations and accusations of deliberate and intentional wrongdoing that have been leveled against him for many years. Mr. Caldwell testified that he has come to learn that he made some mistakes in this case and had he to do it over again there are some things he would do differently. That insight comes with the benefit of hindsight and with the overarching knowledge that he now knows David Milgaard did not kill Gail Miller. It is an admission of honest mistakes which fall far short of misconduct.
6. As a preliminary commentary, it is my submission that what the evidence in these hearings does clearly is identify the need for advocates for persons who may have been wrongfully convicted, be they ordinary citizens such as Joyce Milgaard, reporters such as Dan Lett,

organizations such as Centurion Ministries or barristers and solicitors like Mr Asper and Mr Wolch to take a long hard look at the role they play for them. Through the course of this Inquiry it has been shown time and again that it is imperative that advocates and commentators take the time to learn the “true facts” of a case before they speak out to accuse that there was wrongdoing. They must act with honor and integrity to ensure that the process of review does not get consumed by and potentially derailed by mis-statements of fact, reckless allegations and red herrings. The harm that misrepresented facts and often baseless accusations cause to the professionals in the justice system is harm that is extremely hard to undo and in some cases can never be truly undone. When it is unwarranted harm, it is also harm that undermines public confidence and faith in the justice system when it does not deserve to be undermined.

7. It is perhaps best illustrative of this point that many of the people who accused Mr Caldwell of a wide assortment of wrongdoing over the course of many years “recanted” their allegations in the course of their sworn testimony at this Inquiry. Some even apologized to him on the record. Readily to mind come Joyce Milgaardⁱ, David Asperⁱⁱ, and Paul Hendersonⁱⁱⁱ. Unfortunately their mea culpas in this forum received little public attention or media circulation as compared to the media frenzy that their accusations created and perpetuated when they made them.
8. Sadly, despite their acknowledgment that they now know they wrongly attacked and maligned Mr. Caldwell in the ways that they did, many in the general public and the legal community will forever remember T.D.R. Caldwell as the Crown Prosecutor in Saskatchewan who knowingly prosecuted an innocent man for murdering Gail Miller. They will likely also remember the allegations that he conspired with others to keep Mr Milgaard’s innocence a secret when the identity of her real killer became known to him. Few will ever know or remember that, in fact, T.D.R. Caldwell is the Crown Prosecutor who preserved the very physical evidence that exonerated David Milgaard through DNA testing on July 18,

1997 and led the arrest and conviction of the man who killed Gail Miller more than twenty eight years after her tragic and violent death.

9. Mr. Caldwell testified that he deeply regrets the harm done to David Milgaard and the anguish that his family endured because of his wrongful conviction. He is aware that an apology can never undo that harm or give back the years lost but he was quick to offer it as soon as results of the DNA evidence was made public. He took part in a press conference on July 21st, 1997 where he expressed his regret for the part he unwittingly played in his wrongful conviction^{iv}. There was no more he could do then for David Milgaard and there is no more that he can do now except to say he remains sorry for what happened to him and his family.

10. In his conclusion in the Guy Paul Morin Inquiry Report released in Ontario on April 9, 1998, Mr. Justice Kaufman wrote:

"As several Crown counsel told me during the inquiry, prosecuting someone who turns out to be innocent is a Crown Attorney's "worst nightmare." I accept that no Crown counsel involved in this case and no police officer involved in this case ever intended to convict an innocent person. Although I have sometimes described the human failings that led to the conviction of Guy Paul Morin in very critical language many of the failings I have identified represent serious errors in judgement, often resulting from a lack of objectivity, rather than outright malevolence."

11. We can but imagine that this is also a fear of every defence counsel who represents an accused person, every judge who presides over a criminal trial and every police officer charged with the duty to investigate crimes. The evidence before this Commission and the memory of my client is that the Saskatoon Police Service worked long and hard, in apparent good faith, in this investigation and the investigating officers came to believe that they had found the man who killed Gail Miller. Tragically for David Milgaard, his family and for the Miller family they were wrong but their wrongful belief as to the identity of her killer does not make them guilty of misconduct. Mr. Caldwell's decision to prosecute Mr Milgaard

based on the evidence the police presented to him does not associate my client with “wrongdoing” or make him guilty of misconduct.

12. We respectfully submit that there is no evidence that Mr. Caldwell ever “intended to convict an innocent person” – he was simply doing his job to the best of his ability and in accordance with the standards and traditions of practice at the time. He believed he was doing the right thing and it is his evidence that he was firmly of the belief that David Milgaard killed Gail Miller until the DNA evidence proved him wrong. There is no evidence that he was ever given any real and reliable reason to doubt his belief in his guilt prior to the Section 690 application that was filed on December 28, 1988 or thereafter based on the outcomes of the RCMP investigations and the Reference to the Supreme Court. To the contrary, we submit, he was given much reason to give little weight to Mr Milgaard’s claim of innocence.

II. THE TERMS OF REFERENCE OF THE INQUIRY

13. On February 20, 2004 the Lieutenant Governor by Order in Council established the Commission of Inquiry into the Wrongful Conviction of David Milgaard under the *Public Inquiries Act*, Saskatchewan. The terms of References, as set out, are:

The Commission of Inquiry appointed pursuant to this Order will have the responsibility to inquire into and report on any and all aspects of the conduct of the investigation into the death of Gail Miller; and the subsequent criminal proceedings resulting in the wrongful conviction of David Edgar Milgaard on the charge that he murdered Gail Miller. The Commission of Inquiry will also have the responsibility to seek to determine whether the investigation should have been re-opened based on information subsequently received by the police and the Department of Justice. The Commission shall report its findings and make such recommendations as it considers advisable relating to the administration of criminal justice in the province of Saskatchewan.

14. In a Position Paper on the Terms of Reference dated June 1, 2004, which was directed to

counsel, we were given some direction as to the scope and meaning of these Terms of Reference. We were clearly advised that the Commission sees itself as having two distinct functions: one is to ascertain facts and the other is to give advice to the Minister relating to the administration of criminal justice in the province of Saskatchewan.

15. As counsel for T.D.R. Caldwell, I am mindful that my submission must relate only to my client's interests and to the Commission's Terms of Reference and I am instructed by my client to confine my submission to that first part of the Commission's mandate which is to ascertain facts. It is his view and my concurrence that it is not necessary or appropriate for me, as his counsel, in his present capacity as a private citizen, to venture into making submissions on what advice the Commissioner should give to the Minister as to the administration of criminal justice in Saskatchewan once he has made his factual findings.
16. Other counsel for parties with a broader mandate for participation at this Inquiry due to the interests engaged for their clients will undoubtedly speak to those issues in very able fashion.
17. Consequently, this submission will address what I will categorize as Terms 1, 2 and 3 only of the Commission's mandate which I will break down as follows:

Term 1: The conduct of the investigation into the death of Gail Miller

Term 2: The subsequent criminal proceedings resulting in the wrongful conviction of David Milgaard for the murder of Gail Miller

Term 3: Should the investigation have been re-opened based on information subsequently received by the police and the Department of Justice officials?

18. Even with these restrictions it is difficult to formulate a submission for Mr Caldwell that will be "as concise as practicable" Prior to the commencement of the Inquiry many allegations

had been made and were still being made by counsel for David Milgaard and counsel for Joyce Milgaard with respect to Mr Caldwell. However, as the documentary record unfolded and witnesses were called to testify many of the assertions with respect to his conduct were demonstrated to be without factual foundation.

19. As his counsel, I am left unable to clearly ascertain what will now be asserted by other counsel as indicia of wrongdoing or error by him that may have contributed to the wrongful conviction of David Milgaard or impeded efforts to have his case re-opened. For all practical purposes I am persuaded that I must take the position that the only real way to ensure a concise but full submission is to await the submissions of counsel for Mr Milgaard and Joyce Milgaard. As the right to reply to the submissions made by other counsel is being afforded to counsel this submission will be limited and seek only to illustrate how some of the more widely proclaimed allegations against my client have been shown to be groundless.

III. THE ARGUMENT

1. TERM ONE.....THE CONDUCT OF THE INVESTIGATION INTO THE DEATH OF GAIL MILLER

i. The Role of the Crown

20. The Marshall Inquiry Commissioners stated at Volume I, page 211 of their Report: “a full and clear understanding of the proper roles and relationships of and between the Attorney General, Crown prosecutors and the police is essential and fundamental to a fair system of justice”. We submit that it is also imperative that these roles be understood in considering the circumstances surrounding the criminal proceedings against David Milgaard and factors and issues which may have been contributed to his wrongful conviction.
21. Crown Prosecutors represent the interests of society in the prosecution of crime. They present to the Court relevant available evidence in relation to an offence. The Crown does not represent a single individual or ideology. Rather, it must consider the interests of victims, accused persons, witnesses and the public as a whole. Crown Prosecutors are officers of the Court and members of their provincial law societies, to both of which they have professional

and ethical obligations. They are also employees and agents to their Attorneys General, and as such, exercise the Attorney General's powers and discretion.

22. Crown Prosecutors are not investigators or agents of the police. They give legal advice to police when requested but they do not direct police action.
23. Crown Prosecutors are not judges or jurors. They do not determine admissibility of evidence. They prosecute pursuant to the exercise of an Attorney General's *executive* power. While the role of the Crown Prosecutor has been described as "quasi-judicial", this is in the context of exercising balance and objectivity in fairly prosecuting a charge and it was this role that Mr Caldwell was mandated to carry out in this case.
24. To prosecute a charge laid by the police in 1969, the Crown Prosecutor had to be satisfied that there was a reasonable likelihood of conviction based upon admissible evidence, and that the prosecution was in the public interest. Then, as now, disagreement over the admissibility of evidence and the weight to be given it did not stop the Crown from prosecuting.
25. The Crown Prosecutor did not need to have a personal belief in the guilt of the accused. Rand, J's oft-quoted statement of *R. v. Boucher* [1955] S.C.R. 16 was the governing statement of the law at that time and to this day remains the seminal definition of the role of the Crown. Justice Rand stated at paragraph 26:

"It cannot be over-emphasized that the purpose of a criminal prosecution is not to obtain a conviction, it is to lay before a jury what the Crown considers to be credible evidence relevant to what is alleged to be a crime. Counsel have a duty to see that all available legal proof of the facts is represented: it should be done firmly and pressed with legitimate strength but it must also be done fairly. The role of the prosecutor excludes any notion of winning or losing; his function is a matter of public duty than which in civil life there can be none charged with an ingrained sense of the dignity, the seriousness and the justness of judicial proceedings."

26. The roles of the police and the Crown were as separate and distinct in 1969 as they are today. Unlike their American counterparts, Crown Prosecutors in Canada are not elected officials who run campaigns based on law and order platforms with endorsements from their

local police forces. Rather, they were independent, not only of the police, but of victims, political pressure and public opinion and continue to be so.

27. Crown Prosecutors in Saskatchewan, like the prosecutors of some other Canadian provinces, did not screen the laying of charges in 1969. (In New Brunswick, Quebec and British Columbia prosecutors now pre-screen charges.) In Saskatchewan, the decision to lay a charge was made by the police alone, and it was not interfered with by the law officers of the Crown. Thus it is today as it was in 1969 when David Milgaard was investigated and charged with the murder of Gail Miller.
28. Sometimes police sought legal advice during an investigation, which a Crown Prosecutor could properly provide and the Saskatoon Police Service may well have done so in this case. There is evidence from retired Det. Sgt. Raymond Mackie that Lt. Charles Short and he met with Mr Caldwell in mid May, 1969^v. Mr Caldwell testified he has no memory of the meeting but he does not doubt that it took place^{vi}. By then David Milgaard was the prime suspect in the murder of Gail Miller and on May 26, 1969 an Information was sworn charging him with first degree murder^{vii}. He was arrested in Prince George, British Columbia and returned to Saskatoon soon thereafter but Mr. Caldwell, Q.C., played no part in that decision-making.
29. It was not the role or function of the Crown Prosecutor in 1969 to do investigation work and, as now, it was important that they not be seen to be investigating. It was Mr Caldwell's job to provide advice to the police with regard to legal matters and only if they called upon him. Whether he gave legal advice to the police officers who came to see him or they simply had informal disclosure was not raised as an issue and therefore it is assumed it is of no real importance in these proceedings.
30. In any event, there is no evidence before this Commission that the Saskatoon Police Service sought a formal legal opinion from my client before they made their decision to charge Mr Milgaard with murdering Gail Miller. For his initial appearances before the Court upon his arrest and return to Saskatoon the documentary record makes clear that Mr. Caldwell had no involvement. The record shows that a City Prosecutor, Mr Wolff, appeared for the Crown for the earlier court dates. The accuracy of the record is confirmed by the memory and

testimony of Mr Caldwell^{viii} and Mr Tallis^{ix} as to the early unfolding of this case in the Provincial Court^x and was not subject to challenge by any party to this Inquiry.

ii. The File Provided by Saskatoon Police Service

31. Correspondence between Mr Caldwell and Mr Tallis on June 23, 1969^{xi} record that as of that date Mr Caldwell did not yet have “any documentation” from the police on the Milgaard file. It was by letter from the Chief of Police to Mr Caldwell in July 1969^{xii} that there begins the paper trail of forwarding some material from the Miller murder investigation file to the Crown Prosecutor’s office. It is Mr Caldwell’s evidence that he never received the full file of the investigation of the “Miller murder” but that he received only portions of it that were seen to relate to David Milgaard. This is borne out by a statement that Sgt Ray Mackie made in a taped interview with Peter Carlyle Gorge in 1983^{xiii}.
32. This assertion by Mr Caldwell and Det Sgt Mackie finds further support in correspondence between Mr Tallis and Mr Caldwell after the Preliminary Inquiry commenced. By letter dated August 21, 1969^{xiv} Mr Tallis requested that he be provided with disclosure of all witness statements and any other evidence that could assist in his defence of Mr Milgaard. The record is clear that Mr. Caldwell did not have the information that Mr. Tallis was seeking and he had to request it from the police.
33. Illustrative of this is a letter dated September 9, 1969^{xv} when Mr Caldwell wrote back to Mr Tallis to advise he had now obtained and reviewed all witness statements taken by the police and was forwarding those that might be of assistance to him.
34. We respectfully submit that the evidence is clear that only parts of the investigation materials into the death of Gail Miller were forwarded to the Crown for the prosecution of David Milgaard. We recognize this is contrary to the recollection and testimony of Elmer Ullrich^{xvi} who was the Court Preparation Officer for the Saskatoon Police Service in 1969 but we respectfully submit that the best record of what Mr. Caldwell, Q.C., received is to be found in his closed files. He maintained the Crown file on conclusion of the case and it was available for the Section 690 reviews, the Supreme Court of Canada Reference, Project Flicker and is now in the custody of this Commission. It is the Milgaard Prosecution Files

#1 to #6^{xvii}. It is acknowledged that these files are not entirely as Mr Caldwell set it up at the conclusion of the Milgaard trial due to the fact that it was dis-assembled and re-assembled for the Supreme Court of Canada Reference and Project Flicker but he is adamant he kept everything that he had for the trial in his concluded files.

35. The file does not contain certain RCMP reports that have been introduced as documents in this Inquiry. It is a matter of some significant consistent testimony that the investigation into the death of Gail Miller was primarily the function of the Saskatoon Police Service with assistance from the RCMP. As already referenced, it was neither the role nor duty of the Crown Prosecutor to be involved in the investigation and there is no evidence before this Inquiry that should lead you to conclude that T.D.R. Caldwell received any written reports from the RCMP officers who were involved in the file.
36. We submit that the evidence before this Commission is clear and uncontradicted with respect to his knowledge of, or input, into the RCMP involvement in the investigation. As was the practice in Saskatchewan then and now forensic science work for Saskatoon Police Service was carried out by the RCMP Crime Lab in Regina. The Crime Lab reported back to Saskatoon Police Service as is evidenced in the forensic RCMP Lab Reports found in the remaining portion of the Miller murder file that was found at the Saskatoon Police Service.^{xviii} Other RCMP Lab Reports were found on the Milgaard Prosecution File that was kept by Mr Caldwell (some bear original date stamps from the Saskatoon Police Service) but copies were not found in the Saskatoon Police Service files. We submit this is of little import at the end of the day as Mr. Tallis testified he received copies of all of the laboratory reports from Mr Caldwell^{xix}. We reference it only to further illustrate that Mr. Caldwell did not, as Officer Ulrich testified, get the whole Miller murder file from him.
37. What is equally clear from the evidence is that Continuation Reports prepared by RCMP Officers Riddell, and Rasmussen who, along with Officer Edmondson, provided some investigative assistance to the Saskatoon Police Service were not provided to the city police and they were not provided to the Prosecution Service in Saskatoon. Their very existence was not known to Mr. Caldwell until he saw them at this Inquiry.
38. There is an abundance of uncontradicted evidence that the reporting practice for the RCMP

in 1969 was to the office of the Attorney General in Regina. While one may question the practice and point to the obvious problems it was open to, as so clearly demonstrated in this case, that is a matter that was beyond the knowledge and ambit of Mr. Caldwell. He did not, receive the Rasmussen^{xx} and Riddell^{xxi} Reports of May 7, 1969 and May 22, 1969. Whether those reports would have impacted the course of the prosecution is highly speculative given their content and is a question that no one can answer just as no one can, some thirty six years later, reasonably say whether the reports might have helped prevent this wrongful conviction. Certainly, we recognize, it may be a fault in the system in 1969 that will elicit comment but Mr Caldwell had neither knowledge of or control over it.

39. It is therefore a matter that I leave to be more fully addressed by counsel for the Attorney General, the Saskatoon Police Service and the RCMP should they feel that such commentary is necessary for your consideration.

2. **TERM TWO.....THE SUBSEQUENT CRIMINAL PROCEEDINGS RESULTING IN THE CONVICTION OF DAVID MILGAARD**

xxxiv. The Prosecutor as Advocate

40. Encompassed in carrying out his (or her) role as defined by *Boucher*, supra, the Crown Prosecutor is an advocate, whose duty is to place before the trier of fact all available evidence believed to be credible and relevant to the alleged crime, and to press that evidence to its legitimate strength. This dichotomy in the Crown role was aptly described by the Supreme Court of Canada in *R. v. Cook*, [1997] 1 S.C.R. 1113, at paragraph 21 (albeit some twenty-seven years after Mr. Milgaard's trial):

Nevertheless, while it is without question that the Crown performs a special function in ensuring that justice is served and cannot adopt a purely adversarial role towards the defence (Boucher v. The Queen, [1955] S.C.R. 16 ; Power, supra, at p. 616), it is well recognized that the adversarial process is an important part of our judicial system and an accepted tool in our search for the truth: see, for example, R. v. Gruenke, [1991] 3 S.C.R. 263, at p. 295, per L'Heureux-Dube J. Nor should it be assumed that the Crown cannot act as a strong advocate within this adversarial process. In that regard, it is both

permissible and desirable that it vigorously pursue a legitimate result to the best of its ability. Indeed this is a critical element of this country's criminal law mechanism: *R. v Bain* [1992] S.C.R. 91.....

41. The Crown Prosecutor is not obligated to call every bit of available evidence, providing he or she assumes the risk of not doing so. L'Heureux-Dube, J. writing for the court in *Cook*, supra, quoted from a then recent decision of LeBel J.Q. in *V.(J)* in this regard at paragraph 39:

Crown counsel, of course, while bound by strict duties so as to ensure the preservation of the integrity of the criminal justice system, however must operate in the context of an adversarial procedure. Once he has satisfied the obligation to disclose the evidence, it is for him, in principle, to choose the witnesses necessary to establish the factual basis of his case. If he does not call the necessary witnesses or evidence, he exposes the prosecution to dismissal of the charge for having failed to establish its case completely and in accordance with the reasonable doubt rule...

42. It is to be noted that the evidence is clear in this case that Mr. Caldwell called as witnesses even those requested by Mr. Tallis....more will be said on this later in the submission.

ii. The Duty to DiscloseIn 1969 - 1970

43. The latter part of the 20th century saw the addition of a very important duty on the Crown, that being the duty to disclose to an accused all relevant evidence gathered by the police and the Crown whether it will be used at trial or not. This positive and continuing duty of disclosure was set out in *R. v Stinchcombe*, [1991] 3 S.C.R. 326, and has been reinforced and commented on in many subsequent cases. Today there is rarely dispute or indeed discussion as to the parameters of the duty to give full and continuing disclosure to or on behalf of any person who is accused of committing a criminal offence in Canada.

44. One must be mindful here however that this Commission is mandated to examine historical events that precede *Stinchcombe* by more than twenty years. Ultimately judgement must be

passed on the duty of a Crown Prosecutor with respect to disclosure in the time period from the death of Gail Miller on January 31, 1969 forward to the conviction of David Milgaard on January 31, 1970. The governing principles with respect to the obligation to disclose at that time were generally accepted as set out in the case of *Dallison v. Caffery* (1964) All E. R. 610 which was referred to by Mr. Tallis in his letter to Mr. Caldwell, Q.C., dated August 18, 1969^{xxii}.

45. In his evidence before this Inquiry Mr Tallis testified that he was afforded every respect and courtesy by the police, Mr Wolff of the City Prosecutors Office and by Mr Caldwell in this case. It was his memory that he has early access to key witness statements and crime laboratory reports and that he would have been able to read materials on the file including police reports even though the practice of the Crown was not to provide copies to defence counsel in those days.^{xxiii}
46. This accords with the memory and testimony of Mr Caldwell. He was very clear in his testimony that he took great pains to ensure he did nothing to give Mr. Tallis grounds for appeal in the event of conviction. He recalled that he believed that he had given him all information that he thought had to be disclosed and seeking out any information that he asked of him or witnesses he wanted to have made available at both the preliminary inquiry and the trial.^{xxiv}
47. Beyond the fact that Mr. Caldwell did not receive the Rasmussen and Riddell Report one must look to the evidentiary record and the exhibits to determine what he did receive in 1969 and what he disclosed to Mr. Tallis. Though a series of letters he documented the materials he provided to him prior to trial.^{xxv} He also kept his original file notes that show he kept his “door open” to Mr. Tallis even to the point of including him in meetings with investigating police and bringing in witnesses who he made available for him to question outside the confines of Court.^{xxvi}
48. Mr. Caldwell subpoenaed witnesses who Mr. Tallis wanted to hear from at the preliminary inquiry^{xxvii} and he arranged for him to meet with the polygraph operator, Inspector Art Roberts, who had to be flown in from the Calgary Police Service^{xxviii} before the preliminary inquiry and he had him available for the trial. We submit that it is apparent from the

transcripts and his cross examination of witnesses that Mr. Tallis had knowledge of witness statements that there is no record he ever received copies of. One need look only to his questioning of Adeline Nzycal at those proceedings to know this to be the case.

49. The record indicates that Mr. Tallis asked Mr. Caldwell to arrange to have David Milgaard brought to the City early to assist him in his preparation for the preliminary inquiry. Mr. Caldwell testified he has no present day memory of doing so but he is certain that he generally extended all courtesies requested of him.^{xxix}
50. As referenced previously, Mr. Caldwell testified that he respected Mr. Tallis as a very capable senior criminal trial lawyer and he firmly believed that he did all that he should, in light of the disclosure standards of the time, to ensure that David Milgaard received a fair trial. He testified he did not want to open the possibility that a conviction would be vulnerable to being overturned on appeal^{xxx} and that he was particularly cautious in this regard because he was dealing with Mr. Tallis.
51. The record shows that Mr. Caldwell maintained a practice of continuing disclosure to Mr. Tallis leading up and during the trial. Their exchanges of correspondence and the transcripts from the Preliminary Inquiry and trial show there was much sharing of information to him^{xxxi}.
52. His concern with continuing disclosure is evidenced in his letter dated January 14, 1970 regarding a potential new witness, Maurice Cerato whom the police took a statement from after new information was received about clothing owned by Mr. Milgaard that might have blood evidence and other from correspondence with respect to his intended witnesses at trial.^{xxxii}
53. It is further evidenced by his file notes and correspondence regarding the sudden and unexpected finding of significant new incriminating information from potential new witnesses on the very night before the trial was to commence. These, of course, were the “motel re-enactment” witnesses, Craig Melnyk^{xxxiii}, George Lapchuk^{xxxiv}, and Ute Frank^{xxxv}.
54. The Crown file contains the extensive original hand written notes made by Mr. Caldwell because of his concern about the unexpected arrival of these potential witnesses at that late

date. He documented that he made telephone contact with Mr. Tallis on the very night he became aware of them. He noted that he was unsure whether he would seek to call their evidence and he was cautious to make no reference to them in his opening address the following day as he did not know how he would deal with them, if the information he had received would be confirmed by them, whether they would be credible witnesses. ^{xxxvi}

55. Thereafter on January 1970 he wrote a detailed letter to Mr. Tallis in which he confirmed their earlier telephone discussion on this subject, outlined again how he became aware of these witnesses and the potential evidence they might offer. He enclosed their statements and set out his intended course of action^{xxxvii}.
56. Both Mr. Tallis^{xxxviii} and Mr. Caldwell^{xxxix} testified about these events at this Inquiry and the impact it had on their trial preparation. Their evidence painted a very different picture than had been asserted by the Milgaard advocates for many years including at this Inquiry when those witnesses (except Mr. Lapchuk) were crossed examined by Mr Wolch and counsel for Mrs Milgaard. They were agreed that Mr. Caldwell disclosed the fact that both Melnyk and Lapchuk had criminal records and that they had charges then pending in Regina. This was information that was canvassed in the presence of the jury^{xi} and indeed Justice Bence cautioned the jury about the risk of relying on their evidence, given their criminal history, in his charge to the jury^{xii}. This was information that could have been easily obtained had Mr Asper or Mr Wolch talked to Mr Tallis or my client or asked to see the Crown's file.
57. With respect to a third witness in the motel room, Ute Frank, contrary to widely made claims by advocates and counsel for Mr. Milgaard, her statement was disclosed to Mr. Tallis and she was made available by the Crown to be interviewed by him after Mr. Caldwell had decided he would not call her as a Crown witness^{xiii}. This too was information that was readily available to counsel from Mr. Tallis and Mr. Caldwell and the Crown file.
58. Also contrary to assertions that she was a potential witness whose testimony would have helped discredit Melnyk and Lapchuk and "aided" Mr. Milgaard in his defence, Mr. Tallis testified that she was a witness, he feared, who could substantially harm his client's cause and enhance the credibility of Melnyk and Lapchuk. He did not want the Crown to call her as a witness and he chose not to call her as a witness for the defence. Again this was readily

available information to counsel had they talked to Mr. Tallis or sought Mr. Caldwell's file.

59. There was a further allegation that the Crown failed to call another exculpatory witness who had been in the motel room, one Debra Hall. Much time was spent in the first Section 690 Review application, in the Supreme Court of Canada, in the public media and at this Inquiry addressing Ms. Hall and the claim that the Crown did not call her as a witness because she would have "helped" David Milgaard. The reality has proven to be far different. The record, that was readily available to counsel as it was in the possession of Mrs Milgaard (she had the witness statements that were in Mr. Tallis's file) or could have been obtained by contact with Mr. Caldwell or Mr. Tallis, show that the presence of Mr. Hall in the motel room was known to the defence. That fact was contained in the statement of Craig Melnyk^{xliii} which was provided to Mr. Tallis on January 21st, 1970.
60. What was also written in that statement was that Ms. Hall was not in Regina on January, 19th, 1970. The police were told she had run away and was believed to be in B.C. She was not around for them to question. The Crown could not have called her as a witness as she was missing in action with her whereabouts unknown and the trial was already in progress.
61. Mr. Tallis testified that he knew about Debra Hall but he did not want to call her as a defence witness after he talked to Ute Frank. Subsequent events show that she would have corroborated that the motel re-enactment had happened - hers was only a difference in interpretation as to whether David Milgaard was serious when he claimed to have stabbed Gail Miller. As her evidence showed at this Inquiry her testimony would have been potentially devastating to Mr. Milgaard at trial as she reported words said by David Milgaard that were even more damaging than what the other witnesses testified he had said about how he killed Gail Miller.^{xliv}
62. There are then the allegations that Mr. Caldwell failed to disclose the existence of certain neighborhood witnesses like the Merrimans whose evidence could have assisted the defence. A review of his file shows he had the Investigation Report that referenced contact with Mrs. Merriman^{xlv} but he did not have the Investigation Report regarding Mr. Merriman's conversation with the police some weeks after the death of Gail Miller.^{xlvi}

63. Mr. Caldwell testified that he did not recall the information but he is certain he would not have attributed any significance to the police note which was embedded in a lengthy Investigation Report regarding Mrs. Merriman's observations of the alley just as he did not do so to other small pieces of information scattered in police reports of their contacts with many people during their canvass of the neighborhood where Gail Miller lived and died.^{xlvii} He did not see the evidence as potentially exculpatory and deliberately suppress it to help ensure David Milgaard was likely to be convicted of a crime he did not commit. Undoubtedly he was influenced in this view by the fact that he had one witness who was asserting that she saw David Milgaard stabbing a girl, another who said he told him he had hurt a girl in Saskatoon that morning, a third witness who said he had seen blood on David Milgaard's clothes and a trail of Gail Miller's belongings leading to the house that David Milgaard visited the morning she was killed.
64. Mr. Caldwell did call witnesses like Walter Danchuk^{xlviii}, Sandra Danchuk^{xlix} and Mr. Rasmussen^l who offered evidence that was potentially exculpatory. He called a witness, Maria Indyk^{li} as a Crown witness at the trial at the request of Mr. Tallis to allow him to preserve the right to address the jury last in summation^{lii}. Again this hardly speaks to him being a Crown Prosecutor who was trying to convict an innocent man.
65. Surely his overall action throughout the course of this trial are telling proof that he fully and sincerely complied with the obligations to disclose as it was then and tried to be fair in presenting evidence to the Court. Certainly that was the view expressed by the Supreme Court of Canada on the Reference in 1992 as they were satisfied that the Crown gave adequate disclosure to the defence and Mr. Milgaard received a fair trial.^{liii} It was also the view of the RCMP and Alberta Justice after Project Flicker in 1993.^{liv}

iii. Knowledge of a Sexual Predator in the Neighborhood

66. The Milgaards and their counsel have long asserted that Mr. Caldwell had knowledge that a "serial" rapist was operating in the area where Gail Miller was murdered in the months prior to her death and that he deliberately withheld knowledge of those crimes from defence counsel^{lv}.

67. Mr. Caldwell vehemently denied such heinous misconduct in his testimony before this Inquiry as he has done in the prior investigations by others including the RCMP in the Supreme Court of Canada Reference and in Project Flicker. He asserts that he did not make any such connection^{lvi} and he also testified that he does not recall being aware of any atmosphere of fear of a sexual predator in the city of Saskatoon at that time.^{lvii}
68. Like Mr. Caldwell, Mr. Tallis also testified he had no memory that there were warnings out to women or that it was a time of fear on the west side of the city when Gail Miller was murdered. He does not recall seeing any newspaper stories or anyone coming to him to share such stories or rumors with him.^{lviii}
69. In his testimony, Mr. Caldwell did not dispute that there were statements in the package of witness statements that he obtained from the Saskatoon Police Service that were from women who were indecently assaulted in the west side area. Without exception, these statements had handwritten police notations in red ink that they were not connected to the Gail Miller^{lix} murder and he testified he made no such connection. It was Mr. Caldwell who took those statements from his file and forwarded them to Eugene Williams when he was doing the Section 690 review after the name of Larry Fisher surfaced just as he sent along other material on his file that speak to his bona fides as the trial Prosecutor.^{lx}
70. Also contained in his file was a laboratory report that referenced sexual assault victim which he clearly marked –“DIFFERENT FILE – OMIT.” He testified it was his assumption that this report had simply been misfiled. He left it on the file and sent it to Mr Williams....which action is hardly suggestive of a man who was deliberately suppressing evidence that he knew could be helpful to Mr. Milgaard in 1969.^{lxi}
71. It is perhaps unnecessary to state the obvious – had Mr. Caldwell being engaged in a deliberate suppression of evidence, why on earth would he have kept this documentation in his file? He could have destroyed it and no one would have been the wiser. Not only did he keep it, he made it available to anyone with proper authority who sought to review his file after the trial was over, including the Fifth Estate.^{lxii} It was there for counsel for Mr. Milgaard to see had they taken the time to look at his file as evidence by the memos and letters in Gary Young’s file.^{lxiii}

72. There is then the “script document” that Mr. Caldwell has denied ever seeing until 1992 in Regina. He is adamant that it was never on his prosecution file. He has a specific memory of the first time he saw it. He was in the company of Sgt. Rick Pearson who had come to question him about the origin and authorship of the document during the Supreme Court of Canada Reference.^{lxiv} He described finding it in a file folder that was not one of his file folders...it was in a file he had never seen before which was labeled: “Art Robert’s-Polygraph”. That file folder^{lxv} is one that was created by Murray Brown, according to his testimony at this Inquiry.^{lxvi}
73. We submit that in reality little turns on this document as regards Mr. Caldwell. It has been heralded by counsel for Mr. Milgaard and Joyce Milgaard as proof of deliberate wrongdoing by the police and the Crown but there is no evidentiary basis for that characterization. It is merely a police working document that was prepared by Det. Sgt. Mackie and is of the kind used by police investigators on a routine basis in major case files as attested by Retired Inspector Sawatsky. There is no evidence to suggest Mr. Caldwell had any part in preparing it and we submit his evidence that he never saw it prior to 1992 is credible evidence that should be accepted. Even had he seen it was not a reason to doubt the integrity of the police officers who did the investigation.

iv. The Conduct of the Trial

74. A criminal trial is an adversarial process in which the prosecution, defence and judiciary have separate and distinct roles. Simply put, it begins with the Crown prosecutor’s opening statement containing its theory and an overview of its case, followed by the calling of the evidence for the prosecution. Then, the defence presents its opening statement should they wish consisting of its theory and an overview of its evidence, followed by the calling of defence witnesses should they chose to do so. Throughout, the presiding justice makes evidentiary and other rulings as required, and generally maintains order. Then, each counsel addresses the jury in final argument, after which the judge sums up and directs the jury as to its proper considerations. The jury retires, deliberates, and then returns a verdict. The accused has rights of appeal if he does not accept the decision of the jury and David Milgaard exercised those rights.

75. The transcript of the trial of David Milgaard is intact and has been available for examination and review by this Inquiry as is the transcript of evidence given at the preliminary inquiry. During the trial the presiding judge made rulings on evidentiary issues and on how Nicol John should be examined on the statement she gave to police. He did not accept the joint submission of Mr. Tallis and Mr. Caldwell on how it should be done. One must be mindful that new ground was broken in this trial on how one should examine a hostile witness and the case became a textbook study for practitioners and future law students. Both the Saskatchewan Court of Appeal and the Supreme Court of Canada refused to overturn Mr. Milgaard's appeal from conviction on this ground of appeal.
76. Prior to the Inquiry much was said about other issues at the trial and about the presentation of some evidence, particularly with respect to the evidence about semen stains that were found in the snow beneath Gail Miller's bodyⁱ and the evidence of the secretor status of David Milgaard.ⁱⁱ
77. With respect to the semen stains, in media outlets far and wide and in correspondence to justice officials Mr. Asper, Mr. Wolch and Mrs. Milgaard claimed it "may have been dog urine", or "was dog's urine" or to quote Mr. Asper as he was heard in an excerpt on the US news program A Current Affair – it was "Fido's Urine".ⁱⁱⁱ
78. We know this was a wrongful representation of the reality. It was a misrepresentation/interpretation of a report done by Dr. Peter Markenstyn at the behest of Mr. Asper^{iv} – which report would never have been written with this speculative theory had Dr. Markenstyn been given the full transcript of the testimony of the hair and fibre expert, RCMP Officer Cpl. V. Molchanko, when he testified at Mr. Milgaard's preliminary inquiry.^v
79. In his evidence before this Commission Dr. Markenstyn was shown the portion of the transcript evidence that Cpl. V. Molchanko gave on a voir dire at the trial. He testified that he found seven human pubic hairs in the frozen lumps of semen. The evidence was ruled inadmissible by the trial judge because the scientific technology respecting hair sample analysis was such that the witness could not say the hair was from Gail Miller or David Milgaard. As a consequence the Crown could not elicit this testimony from Cpl. V. Molchanko in front of the jury. However it was information that was known or should have been known to Mr. Asper, Mr. Wolch and Mrs. Milgaard. They had the transcripts of both

the preliminary inquiry and the trial and one assumes they had or (they could have had) the RCMP Lab Report. Dr. Markenstyn testified the pages of the voir dire evidence were not sent to him but had counsel for Mr. Milgaard made this information known to him he would never have speculated that the substance in the snow could have been dog urine .72

80. With respect to the issue of secretor status and the use of blood evidence Mr. Caldwell was roundly accused by Mr. Asper and others of misrepresenting it to the jury. The criticism hinged in large part on an opinion obtained from Dr. James Ferris based on his review of an incomplete trial record. Mr. Asper did not send him the opening and closing remarks that Mr. Caldwell made to the jury. Dr. Ferris testified that he therefore did not examine the full record of the trial before formulating his expert opinion which turned out to be incorrect.⁷³
81. The Milgaard group had this information before they consulted Dr. Ferris. The evidentiary record that is clear that Peter Carlyle Gorge obtained a copy of Mr. Caldwell's opening address to the jury and his closing address to the jury from him in 1983.⁷⁴ It is also clear that Mrs. Milgaard got those documents from him and gave them to Mr. Asper. There is evidence on the record that they had a discussion about it's existence in their file materials.⁷⁵
82. It is also documented that Mr. Milgaard was advised by Mr. Tallis in 1972 that he could get official copies of the addresses to the jury and the judge's charge to the jury upon request to the Court.⁷⁶ It is not clear whether this was done.
83. Further there is the evidence in the record of the telephone conversation noted above between Joyce Milgaard and David Asper on an unknown date in 1990 - 1991 where she is heard questioning whether all transcripts were sent to the expert witness. She reminded him that she had given the copies of Mr. Caldwell's opening and closing address to him and told him he should read it. She also queried whether he had sent it to their experts.⁷⁷
84. Mr. Asper was quite cavalier in dismissing the significance of having the record of what Mr.

Caldwell said to the jury and yet he chose to castigate him for improper use of evidence in the trial.^{lxxviii}

85. To the contrary view, his expert, Dr. Ferris testified at this Inquiry that had he been provided with a copy of Mr. Caldwell's opening address and closing remarks to review before he formulated his report for the Milgaards he would not have had any concerns or misgivings about what was said to the jury and he would not have given the opinion that he did to the Milgaard group.
86. It follows that his report would not have been so vulnerable to being challenged and proven wrong on the Section 690 review and it would not have been fodder to attack Mr. Caldwell professionalism, his intelligence and his integrity. Indeed, like others, Dr. Ferris apologized for his public criticism of Mr. Caldwell and for the fact that his report was used by other to besmirch him during his testimony before this Inquiry.^{lxxix} He accepted full responsibility for his error but like Dr. Markenstyn he was given inadequate and incomplete information to found his expert opinion.
87. Then too there was the very public criticism of Mr. Caldwell for the way he managed witnesses such as Albert Cadrain, Ron Wilson and Nicol John^{lxxx}. We submit that, without exception, allegations that he intimidated or improperly influenced these witnesses have been shown to be baseless accusations. He assessed them to be credible witnesses and in doing so relied to some degree on facts that were not part of the police reports or trial record such as the utterance by Nicol John in the witness room at the preliminary inquiry that she saw David Milgaard kill Gail Miller.
88. At the end of lengthy testimony in the Supreme Court of Canada and in this Inquiry both Nicol John and Ron Wilson maintained that they were not intimidated or coerced by police to give false testimony against David Milgaard and that they were never told not to talk to Mrs. Milgaard after the trial was over. Equally, as to the very public allegation that he put an obviously mentally ill Albert Cadrain on the stand and led evidence from him this is wrong. It has been refuted by many in Mr. Cadrain's family. It was investigated by Inspector Sawatsky in Project Flicker and in evidence at this Inquiry and we submit it has been shown to be baseless.

89. These and other such allegations that were made over the years were more fully addressed in my Cross Examination of Joyce Milgaard^{lxxxix}, David Asper^{lxxxii}, Peter Carlyle Gorge^{lxxxiii} and Paul Henderson^{lxxxiv}. I do not intend to repeat their responses in a detailed way in this submission. The record speaks for itself. When all was said and done we submit it has been demonstrated that, among many things, these witnesses now agree that:

- 1) Mr. Caldwell did not hide or get rid of the real murder weapon^{lxxxv}
- 2) Mr. Caldwell did not intimate witnesses or coach them to lie^{lxxxvi}
- 3) Albert Cadrain had no obvious mental health problems at the time of trial^{lxxxvii}
- 4) Mr. Caldwell did not hide the existence of Debra Hall and Ute Frank from Mr. Tallis^{lxxxviii}
- 5) The police did not tell witnesses not to talk to Mrs. Milgaard when she went public^{lxxxix}
- 6) Mr. Caldwell did not “pay for” the evidence of Craig Melnyk and George Lapchuk^{xc}
- 7) Mr. Caldwell did not mislead the jury about semen stains^{xcii}
- 8) Mr. Caldwell did not misrepresent “blood” evidence to the jury^{xciii}
- 9) Mr. Caldwell did not withhold Ron Wilson’s first statement from Mr. Tallis^{xciii}
- 10) Mr. Caldwell did not deliberately withhold potentially exculpatory information^{xciv}

90. During her cross examination Joyce Milgaard admitted that she knowingly and deliberately gave false information to the media about Mr. Caldwell and about other parties involved in this case.^{xcv} She excused herself on the ground that her son was innocent, yet in jail.

91. This explanation is problematic because the false information continued after David Milgaard got out of jail. She did the media press conference with Michael Breckenridge on September 18, 1992 that was based on easily proven false information. Joyce Milgaard admitted that she put information in her book, *A Mother’s Story* in 1999, about Mr. Caldwell that she knew was false. The record shows that at other times she was clearly careless with the truth as was demonstrated in media clips the Commission has reviewed.^{xcvi} At the end of her cross examination Mrs. Milgaard was left only claiming that she could not give my client a “complete wash” because of letters he wrote to the National Parole Board about her son. For him this was great progress but it still does not clear his good name in the public arena.

v. The Appeals to Saskatchewan Court of Appeal and Supreme Court of
Canada

92. There is no dispute that Mr. Caldwell had no active role in the appellate work on the Milgaard file. It is his uncontradicted testimony that he had no knowledge of the Larry Fisher guilty pleas that took place in 1971. There is but a single documentary reference to him in connection with Larry Fisher and that is when he passed on a request for information from Ken Mackay to the Saskatoon Police Service to see if they had any files on Fisher as he could find none in the Crown office. We submit that there is no contradictory evidence in the documentary record or in testimony from anyone at this Inquiry.

3. TERM THREE...SHOULD THE INVESTIGATION HAVE BEEN RE-OPENED BASED ON
INFORMATION SUBSEQUENTLY RECEIVED BY POLICE AND DEPARTMENT OF JUSTICE

i. The Role of T. D. R. Caldwell Post Trial

93. The documentary evidence and the testimony before this Inquiry shows that for all intents and purposes Mr. Caldwell had little involvement in an issue of whether the police or Justice officials should have re-opened the Milgaard investigation.

94. What the record does show is that on any occasions he was asked to allow access to his file on behalf of Joyce Milgaard he readily agreed to do so. Indeed he maintained what is best described as an "open file" policy for anyone who presented with legitimate purpose seeking to review the Crown's file. Counsel and advocates for Mr Milgaard have characterized his willingness to have his work on the file examined and discussed in public and media forums in disparaging terms, i.e. with Peter Carlyle Gorge, but they do not acknowledge the obvious.... he always acted as a man who clearly believed he had nothing to hide. He was always confident in the belief he had done good work and achieved a just outcome in the prosecution of David Milgaard. It was with that belief that he made sure the trial exhibits were not destroyed by the Court.

95. The first time he received a request for the file was from Gary Young in late 1982 - early

1983. Both Mr. Young's file and Mr. Caldwell's file show open discussion between them and his offer of full access to Mr Young. While their memories differ as to whether Mr. Young actually came to the Crown office to review the file he testified he knew he would be made welcome if he decided to do so. One is left to wonder whether Mrs. Milgaard would have continued to work with Mr. Young had Peter Carlyle Gorge not contacted her and gave her the sinister view of police and Crown that she thereafter held.^{xcvii}

96. In 1983, when Peter Carlyle Gorge, representing himself as a reporter from Macleans Magazine who planned to write a book, requested access to the Milgaard file he was openly and warmly received by Mr. Caldwell. He and Mr. Caldwell both testified that he was given unfettered access to the file without supervision by anyone. He asked for and received materials from the file and he dictated extensive notes from the files. He was accommodated for two weekend visits to Mr. Caldwell's office and offered further access if he needed it. He was given help and encouragement to locate and speak to investigators and witnesses and there is evidence from Det. Sgt. Ray Mackie's contact with Peter Carlyle Gorge in 1983 that Mr. Caldwell reassured him it was fine to speak with him about the investigation. Again, we submit these were not the actions of one who has things to hide.
97. Sandra Bartlett and staff from the Fifth Estate were given access to the file. She reported to Mr. Asper that she saw material on the file about attacks on other women around the time Gail Miller was killed. We submit that it is clear Mr. Caldwell did not vet the file to hide anything from her or her colleagues—again not the actions of a man who had engaged in wrongdoing.
98. We submit that it is regrettable that neither David Asper or Mr. Wolch sought access to Mr. Caldwell's file when they were retained by Mrs Milgaard in 1986. Had they done so much that "went wrong" in their applications for review might have been prevented and many people like Mr Caldwell might have been spared their public campaign of mis-information and wrongful accusation.
99. In response to my questioning on cross examination, Mr. Asper testified that had he this file to do over again the first person he would call is T.D.R. Caldwell. Had he contacted Mr. Caldwell or Mr. Tallis or Gary Young or had he taken up the offer then Chief Penkala of the

Saskatoon Police Service made to him in 1987 it may well be that this Inquiry would never have been necessary. It opens all kinds of possible things that might have happened with faster and better outcomes for all.^{xcviii}

100. In every query made of Mr Caldwell and every task asked of him by the RCMP, be it Sgt. Pearson or Inspector Sawatsky, Eugene Williams of Justice Canada or those charged with the duty to assist the Supreme Court of Canada in the Reference in 1992 Mr. Caldwell extended full and complete co-operation and courtesy. His file was a virtual goldmine of historical record as to the witnesses, disclosure and trial issues had anyone on behalf of Mr. Milgaard taken the time to look at it.

ii. Larry Fisher

101. Mr. Caldwell has testified that he knew nothing of Larry Fisher at the time of trial, except as one of many persons spoken to in the neighborhood canvas. He did not have reason to be suspicious of him any more than he should have been suspicious of the hundreds of people that the police spoke to after the murder.
102. He also testified that he did not become aware of Fisher's rape convictions in Winnipeg or Saskatoon in 1971 and he was never made aware of Linda Fisher's visit to the Saskatoon Police Service in August, 1980 or the statement she gave. The record is clear that he never spoke to Linda Fisher, or any person about her, contrary to claims made on behalf of Mr. Milgaard.

iii. The National Parole Board

103. While it is not within the Terms of Reference of the Inquiry as I read them, the issue of correspondence that Mr. Caldwell sent to the National Parole Board about Mr. Milgaard is one that was subject of evidence before the Inquiry and one for which he has been extensively criticized by the Milgaard group.
104. Mr. Caldwell testified that he wrote to the Board after reading a pamphlet that invited persons in the justice system to offer information about prisoners. He spoke of the booklet

by name in his letters to the Board on June 14, 1972 and August 15, 1997.^{xcix} It was obtained from the archives of the National Parole Board and filed as a document in this Inquiry.^c It supports his assertion of his rationale for contacting the Board in this case.

105. We respectfully submit that there is no evidence before you to suggest Mr. Caldwell was prompted by improper motive or malice when he corresponded with the National Parole Board. He made no request that his communications be kept secret. He invited the Board to solicit other information that he believed would be corroborative of his information particularly from Dr MacDonald. One must assume that he was aware that the Board would have to seek an authorization from David Milgaard to get his medical file material about his history as a youth in the Yorkton area and that David would be privy to his letter.^{ci}
106. We submit that Mr. Caldwell did nothing wrong by contacting the Board. In the Project Flicker investigation Inspector Sawatsky and Alberta Justice canvassed this aspect of the allegations against him and it was concluded it was not blameworthy conduct.^{cii} They referred to the *Corrections and Conditional Release Act* which seeks such input even to this day.^{ciii}

IV. RECOMMENDATIONS

107. As previously stated, I am instructed by my client and guided by the Commissions Guidelines for Submissions in concluding that I should offer no representations under this heading and I decline to do so.

V. CONCLUSION

108. Mr. Caldwell welcomed the opportunity afforded through this Inquiry to clear his name which has been besmirched by the many erroneous and sometimes intentionally false allegations against him. We hope that this goal has been reached by the evidence presented in the documents and through witness testimony.
109. As his counsel I wish to express our sincere appreciation for the open, fair and balanced approach that has been maintained throughout these hearings. A special expression of

appreciation must go to Commission Counsel and staff, who throughout these hearings, have conducted themselves with fairness and honor. We are confident that this same balance, fairness and honor will reflect in the final report.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Dated at the City of Saskatoon in the Province of Saskatchewan this 14th day of November, 2006.

CATHERINE M. KNOX
Counsel for T.D.R.Caldwell, Q.C.

ENDNOTES

1. Joyce Milgaard, Transcript of Cross Examination on June 12, 2006, Vol. 161, pg 33100-33255 and June 13, 2006, Vol. 162, pg 33263 - 33387 (inclusive)
2. David Asper, Transcript of Cross Examination on April 28, 2006, Vol.141, pg 28630; and elsewhere
3. Paul Henderson, Cross Examination on May 3, 2006, Vol. 144, pg 29328, line 25 - 29368, line 13
4. Doc ID 332039

Transcript of Press Release by T.D.R. Caldwell and Serge Kujawa on July 21, 1997 which accompanied a live press conference that date

Joyce Milgaard Transcript on Cross Examination on June 12, 2006, Vol. 161, pg 33101, line 2 -pg 33107, line 7

5. Detective Sgt. Raymond Mackie, Transcript of testimony on June 15,2005, Vol.54, pg 10418, line 12 - pg 10430, line 12, pg 10459, line 5- 12; pg 10719, line 6 - 10758, line 4
 6. T.D.R. Caldwell, Transcript of testimony on October 3, 2006, Vol. 79, pg 15798, line 17 - 22 and elsewhere
 7. Doc ID 267787
- Information sworn on May 26, 1969
8. T.D.R. Caldwell, Transcript of testimony on October 3, 2005, Vol. 79, pg 15746, line 14 - 15750, line 6, pg 15781, line 13 - pg 15783, line 24 and elsewhere
 9. Mr. C. Tallis, Transcript of testimony on February 2, 2006, Vol. 117, pg 23714, line 11 - 23727 and elsewhere
 10. Doc ID 267787

Information sworn on May 26, 2006 charging David Milgaard with endorsements for Court Appearances on June 2, 1969; June 9, 1969; June 16, 1969 , July 3, 1969 and July 10, 1969 when preliminary inquiry was set as August 18, 1969. Record shows Mr.

Wolff appeared as prosecutor of record on first three dates. Mr. Caldwell appeared for the first time on July 3, 1969 and again on July 10th, 1969 to set the date for the Preliminary Inquiry.

Doc ID 065492; 009313; and 007063

11. Doc ID 007061

Letter dated June 23, 1969 to Mr. Tallis from T.D.R. Caldwell in response to his June 10, 1969

12. Doc ID 007059

Letter dated July 8, 1969 from Deputy Police Chief Forbes to T.D.R. Caldwell providing summary of case and requesting "his services in conducting the prosecution"

13. Doc ID 325616

Transcript of Interview between Peter Carlyle Gorge and Raymond Mackie in 1983

Peter Carlyle Gorge, Transcript of Cross Examination on January 18, 2006, Vol. 108, pg 21741 -pg 21932

Detective Sgt. Raymond Mackie, Transcript of testimony on June 15, 2005, Vol. 54, pg 10521 - 10524

14. Doc ID 007037

Letter dated August 21, 1969 from Mr. Tallis to T.D.R. Caldwell requesting additional disclosure and referencing their meeting the previous day

15. Doc ID 007011

Letter dated September 9, 1969 from Mr. Caldwell to Mr. Tallis regarding his of August 21, 1969

16. Retired Det. Elmer Ulrich, Transcript of videotaped testimony on September 12, 2005, Vol. 68, pg 13418 - pg 13525 inclusive

T.D.R. Caldwell, Transcript of testimony of on October 3, 2005, Vol. 79, pg 15812, line 8 - 15823, line 4 and elsewhere

17. Doc ID 006751 - 007081 Prosecution File #1 [File Cover: Doc ID 331789]
Doc ID 007084 - 007311 Prosecution File #2 [File Cover: Doc ID 331790]
Doc ID 009340 - 009431 Prosecution File #3 [File Cover: Doc ID 009731]
Doc ID 006231 - 006298 Prosecution File #4 [File Cover: Doc ID 331786]
Doc ID 006300 - 006540 Prosecution File #5 [File Cover: Doc ID 331788]
Doc ID 009218 - 009338 Prosecution File #6 [File Cover: Doc ID 331791]

18. Doc ID [Saskatoon Police Service Binder E]

RCMP Crime Lab Reports in Miller file (pg E27- E49) at Saskatoon Police Service included dates March 12, 1969, March 27, 1969, April 11, 1969, April 18, 1969, April 21, 1969, April 23, 1969 (Serology), April 23, 1969 (Firearms), April 29, 1969, May 5, 1969, August 12, 1969, October 31, 1969, January 20, 1969

Doc ID 009374

RCMP Crime Lab Reports in Milgaard Prosecution Files included dates: March 12, 1969; March 27, 1969; April 11, 1969; April 18, 1969; April 21, 1969; April 23, 1969 (Serology); April 23, 1969 (Firearms); April 29, 1969; May 5, 1969; May 21, 1969; May 27, 1969; August 12, 1969 and October 31, 1969 (re parka), January 20, 1969 (re Cerato pants)

Doc ID 007074

Letter to Mr. Tallis from Mr. Caldwell dated January 15, 1970 confirming all lab reports to date provided to him as well as other issues

19. Mr. Tallis, Transcripts of testimony from February 2, 2006, Vol. 116 to February 21, 2006, Vol. 124 inclusive

Doc ID 007074

Letter to Mr. Tallis from Mr. Caldwell dated January 15, 1970 [Also referenced in Endnote 18]

20. Doc ID 250597

RCMP Report dated May 7, 1969 regarding Miller Murder from Sgt. Rasmussen found in Attorney General's office in Regina

21. Doc ID 065399 or Doc ID 054694

RCMP Report dated March 20, 1969 regarding Gail Miller murder from Inspector Riddell found in Attorney General's office in Regina - noted in error in my submission to be dated May 22, 1969

22. Doc ID 007037 [Also referenced in Endnote 14]

Letter from Mr. Tallis to T.D.R. Caldwell, Q.C., dated August 21, 1969 [There is an error in my submission in this part as to the date of this letter – I noted it to be August 18, 1969]

23. Mr. Tallis, Transcript of testimony on February 2, 2006, Vol. 117, pg 23724, line 25-22770, line 11 and elsewhere

Mr. Tallis, Transcript of testimony on February 6, 2006, Vol. 118, pg 23864, line 21 - 23865 February 21, 2006, Vol. 124, pg 24937, line 3 - 9 and elsewhere

24. T.D.R. Caldwell, Transcript of testimony on October 3, 2005, Vol. 79 to November 9, 2005, Vol. 93 inclusive

25. Doc ID 007042

Letter to Mr. Tallis from Mr. Caldwell dated August 15, 1969 sending witness statements of Albert Cadrain (March 2), Ron Wilson (March 3, May 23 and May 24), Nicol John (March 11 and May 24) as well as Autopsy Report

Doc ID 007038

Letter to Mr. Tallis from Mr. Caldwell dated August 20, 1969 sending second witness statement of Albert Cadrain dated March 5, 1969 and copies of RCMP Crime Laboratory Reports to date

Doc ID 007037

Letter from Mr. Tallis to Mr. Caldwell dated August 21, 1969

Doc ID 007011

Letter to Mr. Tallis from Mr. Caldwell dated September 9, 1969

Doc ID 039533

Letter to Mr. Tallis from Mr. Caldwell dated January 12, 1970

Doc ID 007074

Letter to Mr. Tallis from Mr. Caldwell dated January 15, 1970

Doc ID 039537

Letter to Mr. Tallis from Mr. Caldwell dated January 19, 1970

26. Doc ID 048305

Memo to his file by Mr. Tallis dated September 8, 1969 documenting and detailing meeting with Mr. Caldwell to review file and discuss witnesses

Doc ID 168034

Mr. Caldwell made note of his contact with police officers regarding questions Mr. Tallis had raised in preliminary inquiry and noted meeting was planned for the following day

Doc ID 007073

Handwritten notes of Mr. Caldwell regarding a meeting with Mr. Tallis on Saturday, January 17, 1970 to discuss witnesses, proposed evidence, trial issues and possible admissions of fact

Doc ID 007078

Undated handwritten notes of Mr. Caldwell in Prosecution file listing dates he sent disclosure to Mr. Tallis and items sent to him

27. Doc ID 007011

In his letter dated September 9, 1969 to Mr. Tallis, Mr. Caldwell confirmed he had added Shirley Wilson and Inspector Art Roberts to the witness list for the Preliminary Inquiry in accordance with his request for same.

28. Doc ID 168034

Confirmation that Inspector Art Roberts would meet with Mr. Tallis is set out in the September 9, 1969 letter [referenced in Endnote 27]

Doc ID 006817A

Letter to A. S. Boyd from Mr. Caldwell dated October 2, 1969, re: confirmation of Inspector Roberts meeting with Mr. Tallis

29. Mr. C. Tallis , Transcript of Testimony from February 2, 2006, Vol. 117 to February 21, 2006, Vol. 124

Doc ID 025305

Doc ID 335405

30. T.D.R. Caldwell, Transcript of Testimony from October 3, 2005, Vol. 79 to November 9, 2005, Vol. 93

31. Doc ID 007042, 025305, 007038, 007037, 048305, 168035, 007076, 007074, 007075, 105561, 039537, 007070, 007074, 007069 ,039533, 000792

32. Doc ID 007074

Memo of telephone call to Mr. Tallis regarding Maurice Cerato on January 14, 1970 with follow letter on January 15th

33. Doc ID 178215

Statement of Craig Melnyk dated January 19, 1970

34. Doc ID 002129

Statement of George Lapchuk dated January 19, 1970

35. Doc ID 054371

Statement of Ute Frank dated January 19, 1970 [Transcribed by hand in 1993]

36. Doc ID 007069

Hand written notes by Mr. Caldwell regarding new witness

Doc ID 006910

Handwritten notes by Mr. Caldwell on criminal records of Melnyk and Lapchuk

37. Doc ID 007070

Letter to Mr. Tallis from Mr. Caldwell on January 31, 1970 regarding the motel room re-enactment [also in Endnote 31]

38. T.D.R. Caldwell, Transcript of testimony from October 3, 2005, Vol. 70 - November 9, 2005, Vol. 93

39. T.D.R. Caldwell, Transcript of testimony from October 3, 2005, Vol. 70 - November 9, 2005, Vol. 93

40. Doc ID 002134

Trial transcript of testimony of Craig Melnyk (pgs 1010 - 1040) with cross examination on criminal history at pgs 1031 - 1035

41. Doc ID 006175

Judges Charge to Jury at pg 006178, - 006180; and 006205 - 006209

42. Mr. Tallis, Transcript of testimony from February 2, 2006, Vol. 117, - February 21, 2006, Vol. 124

Doc ID 006298

Handwritten notes by Mr. Caldwell of meeting with Ute Frank (undated)

Doc ID 009353

Letter to Mr. Tallis from Mr. Caldwell on January 12, 1970

43. Doc ID 009136

Statement of Craig Melnyk at page 1 referenced Debra Hall being in the motel room. This fact was also contained in the other witness statements taken that date, specifically:

Doc ID 002129

Statement of George Lapchuk at page 1 named Hall as being in the room but said he does not speak to her present day whereabouts

Doc ID 054371

Transcribed (by hand) version of Ute Frank statement which she gave in January 19, 1970 with reference to Debra Hall being in Motel room

Doc ID 001285

Debra Hall confirmed she was not in Regina in January, 1970.

Transcript of examination of Debra Hall by Eugene Williams on November 6, 1989 wherein she stated starting at 001289 Q15-Q28 that she ran away in June 1969 and was gone for more than one year

44. Mr. Tallis, Transcript of testimony from February 2, 2006, Vol. 116 - February 21, 2006, Vol. 124

Doc ID 001285

Transcript of interview of Debra Hall by Eugene Williams on November 6, 1989 at pages 001320, Question 238 to 001323, Question 259

45. Doc ID 106212

Investigation Report regarding police contact with Margaret Merriman on February 5, 1969

46. Doc ID 106649

Investigation Report by Detective Sgt. Reid regarding police contact with Arthur Merriman and others on March 26, 1969 during "further house checks" in neighborhood

47. T.D.R. Caldwell, Transcript of testimony from October 3, 2005, Vol. 79 - November 9, 2005, Vol. 93

48. Doc ID 007011 [also referenced in Endnote 15]

Letter to Mr. Tallis dated September 9, 1969 sending statements of Walter and Sandra Danchuk

Doc ID 006550 [or Doc ID 087613]

Statement of Walter Danchuk dated March 5, 1969

Doc ID 288382

Transcript of Preliminary Inquiry testimony of Walter Danchuk (pgs 217 - 246)

Doc ID 288359

Transcript of trial testimony of Walter Danchuk (pg 662 - 684)

49. Doc ID 108399 [or Doc ID 006621]

Statement of Sandra Danchuk dated March 5, 1969

Doc ID 007499

Transcript of Preliminary Inquiry testimony of Sandra Danchuk (pgs 685 - 694)

Doc ID 005655 [or Doc ID 211541]

Trial transcript of Sandra Danchuk (pg 247 - 270)

50. Doc ID 025490

Statement of Robert Rasmussen dated June 12, 1969

Doc ID 007468

Preliminary Inquiry transcript for Robert Rasmussen (pg 171 -180)

Doc ID 046551

Trial transcript of Robert Rasmussen (pg 1067 - 1073)

51. Doc ID 076643

Trial transcript of Maria Indyk (pg 1176 - 1188 and pg 1189 - 1205) (read back of Mrs. Indyk's testimony of the previous day at request of jury)

52. T.D.R. Caldwell, transcript of testimony from October 3, 2005, Vol. 79, to November 9, 2005, Vol. 93pg

Mr. C. Tallis, Transcript of testimony from February 2, 2006, Vol. 117 to February 21, 2006, Vol. 124

53. Doc ID 003975

Reference to Supreme Court of Canada dated April 14, 1992

54. Doc ID 023167

Project Flicker Report dated January 13, 1994

Doc ID 032805

Report of Alberta Justice dated August 15, 1994

55. Doc ID 162685

Letter to Minister of Justice (Sk) from Hersh Wolch dated August 27, 1992

Doc ID 004064

Letter to Minister of Justice (Can) from Hersh Wolch dated September 16, 1992

Allegations were made that Mr. Caldwell deliberately withheld knowledge of a “serial” rapist in many other forums

56. [Also referenced in Endnote 24]

57. [Also referenced in Endnote 24]

58. [Also referenced in Endnote 19]

59. Doc ID 112392A

Letter to Eugene Williams with police statements 38, 39, 40, 63 and 67

Doc ID 006400

Statement of D. F. dated February 4, 1969 and others marked “Indecent Assault - Not Connected” as forwarded to Mr. Williams

60. Doc ID 016105

Letter to Eugene Williams from Mr. Caldwell dated October 25, 1989 sending file materials to him

Doc ID 112393

Letter to Eugene Williams from Mr. Caldwell dated October 31, 1989 sending additional material from file

61. Doc ID 009386

Laboratory Report marked “Different File - Omit” by Mr. Caldwell

62. Doc ID 225007

Letter to David Asper from Sandra Bartlett, CBC dated May 1, 1989

63. Doc ID 331926

Memo to his file by Gary Young dated February 2, 1981 that Mr. Caldwell agrees to let him review Milgaard file. Other file materials from 331838 - 331992.

64. Doc ID 003975

Decision in Reference to Supreme Court of Canada dated April 14, 1992

65. Doc ID 339088

File folder labeled Art Roberts - Polygraph

66. Murray Brown, Transcript of testimony on September 18, 2006, Vol. 184, pg 38670, line 23 -38574, line 12

67. There are numerous newspaper, T.V., and other media reports on this issue as well as correspondence and reports.

68. There are numerous newspaper, T.V., and other media reports on this issue as well as correspondence and reports.

69. Doc ID 230173

Video clip from "A Current Affair" on August 31, 1990 (Videotape #112, video time 17:00 - 23:14)

70. Doc ID 026321

Report of Dr. Peter Markenstyn dated June 4, 1990

71. Doc ID 008311

Transcript of Corporal Victor Malchanko testimony at the Preliminary Inquiry for David Milgaard (Vol. 3, pg 119 - 153)

Doc ID 176706

Transcript of Corporal Victor Malchanko testimony at the trial for David Milgaard

72. Cross examination of Dr. Peter Markenstyn by Bruce Gibson on June 14, 2006, Vol. 163, pg 33717 - 33721

Cross examination of Dr. Peter Markenstyn by Marshall Hopkins on June 14, 2006, Vol. 163, pg 33729, line 6 - 33731, line 3

My cross examination of Dr. Peter Markenstyn on June 14, 2006, Vol. 163, at pg 33747, line 13 - 33753, line 23

Doc ID 008311

Transcript of testimony of Corporal Victor Malchanko at Milgaard's preliminary inquiry [as referenced above in Endnote 71]

Doc ID 176706

Transcript of testimony of Corporal Victor Malchanko at Milgaard's trial [as referenced]

Doc ID 026321

Report of Dr. Markenstyn dated June 4, 1990

Doc ID 025562

RCMP Laboratory Report by Corporal Victor Malchanko dated March 27, 1969

73. Dr. James Ferris, Transcript of testimony on January 31, 2006, Vol. 115, pg 23344 - 23357 and February 1, 2006, Vol. 116, pg 23362 - 23414, line 13 - pg 23415, line 6; pg 23462, line 18 - pg 23446, line 9; pg 23475, line 13 - pg 23478, line 4; pg 23487, line 1 - pg 23549, line 24

Doc ID 025909

Article by Dan Lett in Winnipeg Free Press dated August 15, 1989 with headline/byline referring to the Dr. Ferris Report: "Proves Innocence"

Doc ID 155497

Letter from Patricia Alain to Eugene Williams dated August 8, 1989 regarding the validity of Dr. Ferris' conclusion in his report of September 13, 1988

74. Doc ID 332045

Letter to Mr. Caldwell from Peter Carlyle Gorge dated February 22 (1983?) thanking him for his "help last weekend..." and discussing timing of a follow up visit with a handwritten note by Mr. Caldwell at the bottom of page reads "25-2-83-sent opening and closing and plans to him"

75. Doc ID 336391 (tape) Doc ID 336054 (transcript)

Transcript of telephone conversation between Joyce Milgaard and David Asper on unknown date at page 33106

Joyce Milgaard, Transcript of testimony on June 12, 2006, Vol. 161, pg 33183, line 19 - 33210, line 25

76. Doc ID 004939

Letter to David Milgaard from Calvin Tallis dated March 29, 1971

77. Doc ID 336785

Transcript of telephone conversation between Joyce Milgaard and David Asper on unknown date at pg 336792 - 336798

Cross examination of David Asper, Vol. 141, April 28, 2006, pg 28791, line 6 forward

78. My cross examination of David Asper on April 28, 2006, Vol. 141

79. Transcript of testimony of Dr. James Ferris on January 31, 2006, Vol. 115, pg 23344 - pg 23356, line 10 and February 11, 2006, Vol. 116, pg 23361 - 23617 at pg 23574, line 18 - 23576, line 15

80. There were multiple news stories on this issue that form part of the document data base
81. My cross examination of Joyce Milgaard on June 12, 2006, Vol. 161, pg 33100 - 33255 and June 13, 2006, Vol. 162, pg 33263 - 33387
82. My cross examination of David Asper on August 28, 2006, Vol. 173, pg. 35787 forward
83. My cross examination of Peter Carlyle Gorge on (January 18/2006) Vol. 108, pg 21741 - 21932
84. My cross examination of Paul Henderson on May 3, 2006, Vol. 144, pg 29262 - 29368
85. Doc ID 009423

Handwritten notes in Prosecutor's file re: continuity of knife exhibit seized February 28, 1969

Doc ID 162192

Media report in December, 1980 by Mrs. Milgaard wherein it is stated: "She said she would like information about unsolved mysteries relating to the crime, including the disappearance of one of the knives found from a police locker"

Doc ID 332404

Newspaper story in Star Phoenix dated March 15, 1990 with Joyce Milgaard and David Asper that murder weapon went missing at trial

Doc ID 108185

Testimony of Identification Officer Thor Kliev at Preliminary Inquiry at pg 108255 - 108261 and pg 108271

Doc ID 177176

Testimony of Lt. Joseph Penkala at trial at pg 177214 and 177220

Joyce Milgaard, Transcript of testimony on June 12, Vol.161, pg 33109, line 14 - pg 33141, line 1 (inclusive)

86. Cross examination of Ron Wilson on April 12, 2005, Vol. 38 pg 7459 - 7542

87. Doc ID 325508

Medical Records of Albert Cadrain

Joyce Milgaard, Transcript of testimony on June 12, 2006, Vol. 161, pg 33171, line 12 - 33182, line 12

88. References as set out in Endnotes 33 - 40

89. Joyce Milgaard, Transcript of testimony on June 12, 2006, Vol. 161, pg 33141 - 33171 inclusive

90. Doc ID 057439

Star Phoenix newspaper article dated August 21, 1991 with the headline: "Two Milgaard Witnesses Paid, Lawyer Suggests"

T.D.R. Caldwell, Transcript of testimony on October 3, 2005, Vol. 79 - November 9, 2005, Vol. 93

91. Dr. Peter Markenstyn, Transcript of testimony on June 14, 2006, Vol. 163 pg 33538 - 33764

92. Dr. James Ferris, Transcript of testimony on January 31, 2006, Vol. 115, pg 23344 - 23356 and February 11, 2006, Vol. 116, pg 23362 - 23617

93. Doc ID 007042

Letter to Mr. Tallis from Mr. Caldwell on August 15, 1969 forwarding Ron Wilson's March 2nd statement

Doc ID 007869

In transcript of testimony of Albert Cadrain at preliminary inquiry Mr. Caldwell advised Court that this statement was given to Mr. Tallis (at page 586 of transcript Mr. Caldwell stated: "I might mention I supplied my learned friend with the two statements made by this witness, two made by Wilson, two or three as the case may be, this one has two pages added the day after it started and two made by Ms. John ahead of the witnesses being called")

94. T.D.R. Caldwell, Transcript of testimony from October 3, 2006 , Vol. 79 - November 9, 2006, Vol. 93
95. Cross examination of Joyce Milgaard on June 12, 2006, Vol.161, pg33100 - 33255 and June 13, 2006, Vol. 162, Pg 33263 - 33387
96. Doc ID 004204

Transcript of Press Conference with David Milgaard, Joyce Milgaard and Herch Wolch regarding Michael Breckenridge. Allegations of Corruption by Senior Justice Officials dated September 19, 1992

Doc ID 269317

A Mother's Story - The Fight to Free My Son David by Joyce Milgaard and Peter Edwards

Doc ID 230173

Excerpt from "A Current Affair" on August 31, 1990

Joyce Milgaard, Transcript of testimony on June 13, 2005, Vol. 162, pg 33388 - 33532 and elsewhere

97. Doc ID 213319

Letter from Joyce Milgaard to Jim and Jackie (no last name) dated January 12, 1981

98. Doc ID 163101

Letter to Herch Wolch from David Asper dated September 29, 1987

99. Doc ID 067384

Letter to National Parole Board by Mr. Caldwell dated July 14, 1972

Doc ID 006835

Letter to National Parole Board by Mr. Caldwell dated September 27, 1974

Doc ID 332500 - 04

Letters between Mr. Caldwell and National Parole Board on August 5 and August 15, 1977

100. Doc ID 332055

A National Parole Board public information pamphlet titled "An Outline of Canada's Parole System for Judges, Magistrates and Police"

101. Joyce Milgaard, Transcript of testimony on June 13, 2006, Vol. 162, pg 33222, line 23 - pg 33356, line 3

102. Doc ID 023167

Project Flicker Report dated January 13, 1994 at pg 108 - 110

Doc ID 032805

Alberta Justice Report dated August 15, 1994

Doc ID 040137 - 040142

Reference John Bissett and National Parole Board re: The Corrections and Conditional Release Act, Section 4(1) referred to in Project Flicker at Vol. 1, pg 108 - 110

103. Corrections and Conditional Release Act (1992, c.20) at:

Section 101

The principles that shall guide the Board and the provincial parole boards are:

a) that the protection of society be the paramount consideration in the determination of any case;

b) that the parole boards take into consideration all available information that is relevant to a case, including the stated reasons and recommendations of the sentencing judge, any other information from the trial or sentencing hearing, information and assessments provided by correctional authorities

and information obtained from victims and the offender

c) that the parole board enhance their effectiveness and openness through timely the exchange of relevant information with other components of the criminal justice system.....