Commission of Inquiry

Into the Wrongful

Conviction of David Milgaard

before

THE HONOURABLE MR. JUSTICE

EDWARD P. MacCALLUM

# Transcript of Proceedings

and

Testimony before the Commission sitting at the Radisson Hotel at Saskatoon, Saskatchewan

On Tuesday, November 8th, 2005

Volume 92

Inquiry Proceedings



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# Appearances:

Mr. Hersh Wolch, Q.C., for Mr. David Milgaard

Ms. Joanne McLean, 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. David Frayer, Q.C., for Minister of Justice

(Canada), The Hon. Irwin Cotler



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# INDEX OF PROCEEDINGS

THOMAS DAVID ROBERTS CALDWELL, CONTINUED

- BY MS. KNOX 18535

DESCRIPTION:



# Transcript of Proceedings

(Reconvened at 9:18 a.m.)

COMMISSIONER MacCALLUM: Good morning.

ALL COUNSEL: Morning.

COMMISSIONER MacCALLUM: Mr. Wolch, I understand that Commission Counsel and you have reached an accommodation relative to my order of October the 25th. The substance of that arrangement will appear at the conclusion of my remarks but, for the benefit of present company, I will offer the following background.

On October the 24th, David
Milgaard appeared on television stating
unequivocally that he would not appear as a
witness at the Inquiry and that the Commission,
in effect, would be discredited in the public eye
should we subpoena him. I watched a broadcast of
his remarks in which he appeared to speak with
confidence and with full command of his
faculties.

On October the 25th I told his counsel, Mr. Wolch, that I found such an attitude of defiance by a party with standing to be unacceptable. Without repeating my reasons in full, let me just say that demanding and

receiving a public inquiry and then refusing to be a part of it, even as a witness, is in my view an abuse of the privileges of standing. I proposed suspension of standing and funding until Mr. Milgaard appeared as a witness with leave to apply for reinstatement should he give a suitable undertaking to appear. Mr. Wolch expressed concern about fitness and could not tell me if his client would appear. I allowed him a week to get instructions. He asked for two and I gave him two.

He now proffers an opinion by a clinical psychologist that calls into question his client's psychological health. The fitness of this witness to testify and the related question of the scope of examination are issues which we can and will deal with in good time, but they did not even arise before this witness publicly announced his refusal to come and be examined, and effectively dared the Commission to do anything about it.

Unless and until Mr. Milgaard changes his attitude he does not deserve standing. If he wants to apply to be excused from testifying on psychological grounds, let him



do so in a respectful and procedurally appropriate manner, through counsel and with evidence.

I think it is fair to say that most counsel have conducted their examinations, to date over some 19,000 pages of transcript, on the basis that David Milgaard would testify.

That has been my assumption. Had I known he would not testify I might have restricted the scope of cross-examination of some witnesses whose counsel legitimately expected him to respond to accusations being leveled at their clients.

It is not too late, even if Mr. Milgaard does not testify, to remedy the unfairness visited upon parties who counted upon him giving evidence under oath. I can simply discount or ignore suggestions or accusations made to them which called for evidence only Mr. Milgaard could give. But if his standing is continued in the face of his refusal to testify, how am I to deal with objections to accusations which call for a response from Mr. Milgaard. It could be managed on an ad hoc basis, dealing with each objection as it arises, with, I am sure,



some disruption to the flow of evidence. It could be managed by denying to counsel for David Milgaard and Joyce Milgaard the right to cross-examine certain witnesses at all.

I include Joyce Milgaard's counsel because they have insisted upon questioning witnesses on matters which engage the son's interest as opposed to the mother's, apparently seeing no distinction.

There has been a change in circumstances since October the 25th in that Mr. Wolch has now some evidence in support of an application for his client to be excused from testifying. Prima facie, it is evidence of sufficient gravity that it merits formal consideration. To allow for that, I am prepared to grant a further extension to permit Mr. Wolch to show cause why his client should be allowed continued standing and should be excused from testifying. Commission Counsel and Mr. Wolch have arranged a meeting with Mr. Milgaard on the 19th of November.

As a condition of an extension being granted:

(1) The meeting must take place on November



1		19th, or sooner, with David Milgaard to
2		be interviewed as a prospective witness;
3	(2)	Mr. Wolch will file a notice of motion
4		with the Commission returnable on a date
5		satisfactory to Commission Counsel,
6		together with affidavits in support of
7		his application for David Milgaard to be
8		excused from testifying on medical or
9		psychological grounds;
10	(3)	Mr. Milgaard will undertake to abide by
11		the Commissioner's ruling on the above
12		motion. If he is found to be fit he
13		will testify or lose his standing;
14	(4)	The hearing of evidence will proceed as
15		scheduled. Until the motion is decided,
16		the scope of cross-examination by
17		counsel for David Milgaard and counsel
18		for Joyce Milgaard may be restricted
19		upon application by other parties or by
20		other counsel for parties with standing.
21	I underst	tand that a short adjournment is
22	requested	d before we return to the hearing of
23	evidence	•
24	(Adj	ourned at 9:25 a.m.)
25	(Rec	onvened at 9:43 a.m.)

### THOMAS DAVID ROBERTS CALDWELL, continued:

BY MS. KNOX:

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Thank you, Mr. Commissioner. Mr. Tallis -- sorry, looking at my wrong notes -- Mr. Caldwell, yesterday when we concluded I had asked you some questions about the suggestion put to you by Mr. Lockyer that you are -- have either convenient memory or that you are being dishonest in your recollection about whether you saw the script document back in 1969-'70. And we went through the other opportunities that others would have had to see it in your file had it been on your file, as he suggests, contrary to your evidence. asking you those questions I referenced with you the fact that at a point in time during either the Supreme Court of Canada reference or the Section 690 review, like 1991-'92, you had to go to Regina to look at your file. And just for clarification, there was a reference to it being in storage in Regina, which is the centre for government storage, but it is correct, is it not, that that file never went into any storage outside the premises of the Crown attorney's office until the late '80s/early '90s here in Saskatoon, and it went directly from the Saskatoon prosecutions



1 office to the prosecutors office in Regina, but in a sub-office, if I may use that phrase, that they 2 3 used for this as a special project in the basement of the courthouse rather than at their regular 4 5 offices in the tower that they worked in? Α That's correct, Ms. Knox, it was never in storage. 6 I noticed that terminology myself. It was being 8 used by the two Regina Crown prosecutors in 9 preparation for the Supreme Court matter you just 10 mentioned and their sort of on-site office, if you 11 will, in the basement of the Regina courthouse was 12 where it was. 13 0 And the only significance of the courthouse being 14 that there was an office belonging to the Crown 15 prosecutors there and not that it had any formal need to be in the courthouse when you went back to 16 17 look at it? 18 Not at all, ma'am. Α 19 Now, sir, I'm now going to such touch on 20 some areas that were raised with you in 21 cross-examination by Mr. Lockyer in particular, 22 and to some extent by Mr. Wolch, about disclosure 23 and the suggestions in the public that you 24 withheld information from the defence which would 25 have been helpful in the -- in prep -- preparing



1		for the charges against Mr. Milgaard. Would it be
2		fair to summarize that what you have said is that
3		you gave disclosure in accordance with the
4		standards of the day as you understood them?
5	A	Yeah, that's certainly the case, ma'am.
6	Q	And that being, as I suggested to you yesterday,
7		the standards of 1969?
8	A	That's right, I did that within what were the
9		prevailing standards of that date.
10	Q	Yeah. And through the evolution of time, not just
11		in this file, with the knowledge you have, you've
12		indicated I think quite fairly in your evidence
13		that had it you to do it over again knowing as
14		much now, or much more now than you did then, you
15		would have given other things, in fact this day
16		the whole file would be given to defence counsel?
17	A	As I understand the law today, that latter
18		statement would be correct. The previous
19		statement you've made, I would give it, of course
20		with the underlying need that I had to have it
21		before I could give it.
22	Q	Of course. And
23		COMMISSIONER MacCALLUM: I'm sorry, the
24		entire police file would be given?
25		MS. KNOX: As he had it, deemed to be



relevant, and I believe under the requirements of Stinchcombe that was basically the parameter, much more material than was required in 1990 -- 1969, police officers' notebooks, any reports that may have relevant, whether inculpatory, exculpatory, if we look at the language of Justice Sopinka as Mr. Elson referred to it in yesterday's proceeding.

#### BY MS. KNOX:

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And Mr. Caldwell, given that you continued in practice in 19 -- only until 1987, so you were pre-Stinchcombe, would it be fair to say that even as between 1969 and 1987, when you left the office as an active lead practicing Crown prosecutor, that there was increasing latitude in what was provided to counsel, that as a community of prosecutors, defence counsels and courts, we went through an evolution, the evolution not being completely successful because, of course, we had to have the stern direction from Mr. Justice Sopinka in Stinchcombe in November, I believe, of '92 that said "this is what you must give"? I'm sure, Ms. Knox, that what you said is correct in that, as that period of time went on, I would think there would be more latitude or -- in terms

1		of the Crown supplying classes of material to the
2		defence by, I think by general approval of both
3		Crown and defence counsel, as I recall at the
4		time.
5	Q	Okay. Now I'm not gonna go through every
6		reference that was made to the things that you
7		actually gave or that you didn't give by
8		Mr. Lockyer, Mr. Hodson, and by Mr. Wolch, but
9		there is a number of letters on your file that
10		reference actual hard copies of statements that
11		you were giving to Mr. Tallis; you recall
12	A	I
13	Q	those letters?
14	A	I do.
15	Q	Okay. And those letters went between June 10th,
16		when he first contacted you, right up until
17		January during the course of the trial, in fact,
18		as Melnyk, Lapchuk and the Ute Frank statements
19		became available?
20	A	That is my recollection, ma'am.
21	Q	Okay. Now, sir, it was suggested by Mr. Wolch
22		that, as we look at those letters, some of that
23		disclosure came very late to Mr. Tallis. And I
24		want to ask you, again, to take your mind back to
25		1969 and ask whether it was a practice or a

1 used within your office that, on occasion, defence 2 counsel were given access to statements of 3 witnesses and/or clients but not necessarily 4 always giving copies of them right out the gate? 5 Α I would think that's right. And that, I would strongly believe that the statement which did go 6 out of my office virtually during or immediately 8 before the preliminary hearing, the way that 9 letter was worded I would strongly suspect that 10 Mr. Tallis had seen and/or read the document, Ms. Knox, in my office before that because it 11 12 certainly was a late-blooming, you know, letter 13 with -- clearly I didn't have a lot of time to 14 disclose it before I did. That would be my sort 15 of best estimate of --16 But to your best memory, going back to the Q 17 practices in 1965 when you came through to 18 1969-1970 and forward, was it a practice that 19 defence counsel could in fact come to your office, 20 indeed on occasion were invited to your office, to 21 come look at the files? 22 Yeah, absolutely. 23 Now, having said that, there might well be things 24 that you could not always give them, you might not 25 necessarily always open up the whole file, but



1		certainly the mere fact that documents years later
2		referenced statements being delivered on a certain
3		date does not mean that that was the first contact
4		with or the first access counsel had to the file?
5	А	No, it did not mean that, ma'am, and Mr. Tallis
6		would be an example of someone, of course, who
7		would be welcome in that sense in our office.
8	Q	Mr. Caldwell, there was a practice by some crowns
9		that I worked with where they had a sort of an
10		informal rule that you could look at the
11		statement, but a copy wouldn't be given until
12		after the witness testified, and thereafter a copy
13		would be given; was that practice used in
14		Saskatoon at all to your memory?
15	А	I don't recall that dividing line, I my memory
16		would be that the, if the statement was going to
17		be given it would be essentially as soon as I
18		could mechanically do it in the sense of having it
19		and copying it, getting it to the other person.
20	Q	Okay. Mr. Wolch, and I think fairly, said to you
21		at one point last week that statements there is
22		a letter from you August 21st I think, or and I
23		can bring it up if you need it but it's a
24		letter in August saying "here are the statement of
25		certain key witnesses", and it was right as the
		•



1		preliminary inquiry was about to start or had just
2		started; do you remember those questions?
3	А	Yeah. That's the one I was trying to refer to,
4		Ms. Knox, a moment ago, and I do recall it.
5	Q	Okay. And those were statements of key witnesses?
6	A	Absolutely.
7	Q	In fact, if I could just have a moment, I'll tell
8		you. Yes, it's a letter of August 15th, the
9		document number is 007042, you sent the statements
10		of Albert Cadrain, Ron Wilson, both his three sort
11		of statements, and Nichol John. And it was
12		suggested to you that that's, "eh, that's cutting
13		it pretty close in time to get ready for a
14		preliminary inquiry, a preliminary inquiry is
15		pretty important"; do you recall those questions?
16	A	I do recall them, ma'am.
17	Q	And, sir, I've taken the time to go through and
18		look at the schedule, and at various points in
19		times we've brought up the dates that the
20		preliminary inquiry was held, and there was an
21		initial session set for August 18th, then through
22		the course of your file jacket it records that
23		there were a number of starts, adjournments, and
24		then it would continue on a later date. In fact
25		your file jacket that I can't read the Bates
	1	



1		number on but certainly indicated that there
2		was a sitting on March 18 sorry Monday,
3		August 18th, it then adjourned to Thursday the
4		21st, went a bit on Friday the 22nd, adjourned
5		then until Wednesday the 27th, went on Thursday
6		the 28th, adjourned then until Thursday, September
7		4th, went on September 4th and 5th, adjourned to
8		the 10th of September, and concluded, as the
9		record will show, with submissions on the 11th of
10		September; do you remember that as being generally
11		the chronology?
12	A	I'm sure that's right, ma'am.
13	Q	As Mr. Lockyer said to you, "trust me, I'm reading
14		from the record", even though I can't give the
15		number.
16	A	Very good.
17	Q	Sir, with particular reference to the particular
18		witnesses referred to in that statement where you,
19		or that letter where you sent the statements on
20		August 15th to Mr
21	A	Mr. Tallis.
22	Q	Mr. Tallis thank you a review of the
23		transcript of the preliminary inquiry indicates
24		that, of those key witnesses, they weren't in fact
25		on the stand early in the Inquiry. During that



1		first week, the 18th, 19th, 20th, the only sitting
2		days were the 21st and 22nd, and those
3		witnesses and there is a list of them who
4		testified were peripheral, but key witnesses,
5		in fact Ronald Wilson testified on the 27th of
6		August, so 12 days after your letter, his evidence
7		continued the morning of the 28th, the Thursday;
8		Albert Cadrain testified the afternoon or late
9		morning/afternoon of the 28th if the record is
10		correct, so that again would be 13 days after the
11		statement was provided to Mr. Tallis; and Nichol
12		John testified not until September 4th?
13	А	Yes, I'm sure those dates are correct, Ms. Knox,
14		and were not, you know, instantly after the
15		transmission of the statements, which is, you
16		know, a relief in a sense. I'm sure that the
17		defence counsel, as I said, I'm sure was aware of
18		the contents, if you will, of the statements at an
19		earlier time.
20	Q	Okay. And, sir, can you think of any
21		circumstance, knowing Mr. Tallis as both defence
22		counsel and Crown, that he would have proceeded to
23		and concluded a preliminary inquiry on a charge of
24		non-capital murder without knowing what his client
25		had said, given that he had given two statements



1		on the 3rd of March of 1969 and the 18th of April,
2		1969?
3	А	No, I'm sure he wouldn't have. And it would have,
4		of course, been open to him, if there was a short
5		interval before testimony, to approach me about
6		changing the order of the witnesses. We could
7		have put some of these, you know, clearly
8		important ones, further down, if that assisted.
9	Q	And in fact, Mr. Caldwell, documentation in your
10		file suggests, does it not, that a number of these
11		adjournments were at the request of Mr. Tallis?
12		You've made a notation 'Cal N/A' at various points
13		in time or
14	A	That
15	Q	or 'C/T', not 'N/A' at various points in
16		times, so there were some accommodation of his
17		schedule during the course of the preliminary
18		inquiry?
19	A	That's correct. I was essentially available for
20		any of the dates, and Mr. Tallis clearly ran into
21		unforseen or difficult to change other
22		commitments, and we we accommodated that, Ms.
23		Knox, as I recall.
24	Q	And included are, as a source for the dates of the
25		various witness' testimony, included in the
		Movey CompuCourt Penarting



1 materials that you found when you went back to your file in 1989-1990 was a, you'll agree with 2 3 me, a large, brown, expandable folder that was referred to in some places by you as folder number 4 5 7 but in fact it was your, the Crown copy of the original transcript, or -- of the preliminary 6 inquiry from which these dates can be ascertained? 8 I'm sure that's correct, ma'am. Mr. Commissioner, this is a calendar I have 10 prepared with some assistance from my staff, I 11 have shown it to Mr. Hodson and to Mr. Wolch 12 yesterday in passing, I -- if anybody would wish a 13 copy of it, it certainly can be made available. 14 had my staff retrieve the calendar for 1969, for 15 the months of July, August, September -- yes, 16 September -- so that the key months are there, and 17 certainly if anybody wishes to have a copy of it 18 19 We'll put it on COMMISSIONER MacCALLUM: 20 CaseVault; should it go on CaseVault? 21 MR. HODSON: Yes. MS. KNOX: Certainly, it can. It lists the 22 23 dates that various witnesses appeared and gave 24 their testimony at the preliminary inquiry, and 25 subject to my best efforts it should be accurate,

but it can be cross-referenced with the transcript from the preliminary inquiry.

#### BY MS. KNOX:

Now, sir, it was suggested to you by Mr.

Lockyer -- and I'm referring to the transcript at page 17744 and forward -- but you responded in respect to some questions he was making or some suggestions he was making to you about the problems with the disclosure that you gave in 1969 by saying that the Supreme Court of Canada were satisfied that that disclosure was in accordance with standards of the day; do you recall that?

Yes, I am -- expect I said that.

Now, sir, the questioning then went on at some length with respect to various statements that you forwarded to Eugene Williams in October 1989 when you first reviewed the file, and those were the statements of women who had made allegations of assault, sexual assault, indecent assaults, whatever the language of the day was appropriate for the charging sections, but you recall him asking you about statements of (V11) (V11) (V11)--, which for reference is at doc. ID number 006400 is one version of it; remember him asking you about that one?

1	A	Yes.
2	Q	(V9) (V9), document reference 006402?
3	A	Yes.
4	Q	(V4) (V4), document reference 006404?
5	A	Yes.
6	Q	(V6) (V6)-, document reference 332265?
7	А	Yes.
8	Q	And there was another statement that you sent on a
9		(V13)- (V13), that I don't have a copy readily
10		in front of me, but and he queried or suggested
11		he didn't know whether or not these statements
12		were before the Supreme Court of Canada
13	А	Okay.
14	Q	when they made the pronouncement in their
15		decision that disclosure had been in accordance
16		adequate in accordance with the standards of the
17		day. I'm going to ask to have brought up document
18		157294, please. And Mr. Caldwell, I'm not sure
19		that you have seen this document, but I draw your
20		attention to it.
21	А	All right.
22	Q	It's a letter directed to the Department of
23		Justice January 29th, 1972 and
24		MR. HODSON: '92.
25	]	BY MS. KNOX:



1	Q	'92, sorry, and if we go to the last page, 157296,
2		it doesn't have a signature, but the signing
3		person would have been Mr. Asper as counsel for
4		Mr. Milgaard on the ref as one of the counsel
5		for Mr. Milgaard on the reference.
6	А	Uh-huh.
7	Q	You are aware of that, of course?
8	А	Yeah, that's right.
9	Q	Now if we could go back to page 1, please, 157294,
10		I want to highlight number 1 well, first off,
11		the request that's in the letter
12		COMMISSIONER MacCALLUM: Excuse me, I just
13		don't have you on the speaker, thank you.
14		BY MS. KNOX:
15	Q	Thank you. Now, sir, what it indicates is this is
16		a letter being sent to Mr. Rob Frater, who the
17		record shows was one of the counsel appearing for
18		the Federal Government on the reference and
19		involved in preparing the materials to be filed,
20		and what Mr. Asper is indicating:
21		"Further to our discussion with respect
22		to a "miscellaneous volume" that you
23		propose to file",
24		there's certainly materials that they want
25		included?



		——————————————————————————————————————
1	А	Uh-huh.
2	Q	And you will note the first one he lists is the
3		statement of $(V4)$ $(V4)$ dated January 31st,
4		1969?
5	A	Yes.
6	Q	Number 4 in his list, the witness statement of
7		(V11) (V11) dated February 4, 1969?
8	А	Yes.
9	Q	Number 7 in his list, the witness statement of
10		(V9) (V9) dated February 6, 1989?
11	A	'69 I believe.
12	Q	'69, I'm sorry, I'm having a little trouble with
13		my dates here. There is a reference to a witness
14		statement that I haven't brought up, but of a
15		(V13)- (V13), who I think also had made some
16		allegation of an improper approach by a male
17		individual?
18	A	All right.
19	Q	And then the ninth that was referred to, the
20		witness statement of (V6) (V6) (V6)-?
21	А	I see that, ma'am.
22	Q	Okay. Now, sir, would you agree with me that what
23		this letter suggests is certainly, at the time of
24		preparation from, or the reference in the Supreme
25		Court of Canada, all these statements that you

1		indicated you didn't recognize the significance of
2		in 1969 were in the possession of counsel for Mr.
3		Milgaard, and certainly active steps were being
4		taken to have them placed before the Judges of the
5		Supreme Court of Canada for consideration?
6	A	Yeah, I think that's inescapable from the wording
	A	
7		of the letter, Ms. Knox.
8	Q	Okay. Now Mr. Lockyer had indicated in his
9		questions that he wasn't sure, I'm referring
10		specifically to the statement of (V9) (V9),
11		whether that one was before Supreme Court of
12		Canada, and I think in fairness to him he only
13		dealt with that one, he didn't go through the
14		whole list.
15	A	All right.
16	Q	I wonder, now, if we could bring up document ID
17		number 142273. And, sir, again these are
18		materials you wouldn't necessarily be familiar
19		with, but I understand from the record that this
20		is a cover page for one of the documents of
21		materials that got filed in the case of reference
22		in the Supreme Court of Canada, as is indicated in
23		the heading here,
24	A	I
25	Q	and the reference with respect to Mr. Milgaard.

1		And if we could go to the next page, 142274, which
2		I believe should be an index. Now referring you
3		to the index and I didn't mark this one nearly
4		as clearly number 9, if we could bring out
5		number 9, the name, the last name is taken out
6		presumably for protection of her identity, but the
7		"statement of (V9)", who I believe the record will
8		show would be (V9) (V9), was in fact filed as
9		part of the reference?
10	A	I would assume, again from that wording, that that
11		must have happened, Ms. Knox.
12	Q	In your best efforts to remember everything you
13		ever knew about this file in 1969 and subsequently
14		do you know of any other (V9), other than (V9)
15		(V9), who gave a statement on February 6th,
16		1969?
17	А	I don't recall another name '(V9)' cropping up
18		anywhere in my
19	Q	Okay. Now I'm looking here, I thought (V4)
20		$(\mathrm{V4})$ was in this list as well, could we go to
21		the next page please? Ah, maybe it's not that
22		index.
23		Mr. Commissioner, there are I
24		didn't do a thorough canvass in the interests of
25		time, and Commission Counsel can address the



1 matter more thoroughly, but there certainly are 2 indications that the statement of (V4)---- (V4)---3 was before the Supreme Court of Canada. I'm not sure that we have been able to confirm that 4 5 statements --MR. HODSON: She testified. 6 MS. KNOX: Oh, I'm sorry, she testified in 8 (V4)---- (V4)--- testified, so her 9 statement didn't need to be filed, I'm not sure 10 that we've been able to --MR. HODSON: Was filed, I believe her 11 12 statement was filed. 13 MS. KNOX: Her statement was filed and she 14 testified. I'm not sure, yet, if we have been 15 able to confirm that the statements of (V6)---16 (V6) - and (V11) (V11) -- were actually filed as 17 part of the reference, and I'll leave it to 18 others to sort that out. 19 20

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MR. HODSON: Yeah, I have reviewed the indexes and cannot find any references to the (V6)- and (V11)-- statements being in the Supreme Court reference. I expect to be getting the remainder of the Federal Justice documents shortly and will certainly pursue that, and then we will hear evidence in due course about if



1 those latter two statements were not in the 2 reference, and if not why not. 3 COMMISSIONER MacCALLUM: All right, thanks. BY MS. KNOX: 4 5 Q But certainly, Mr. Caldwell, when you were requested in 1989 to check the file and find if, 6 out if there were any references to sexual 8 assaults on other women in the time frame, the 9 letter that Mr. Asper wrote in 1992 that we've 10 just looked at would verify comfortably for you, 11 and for all of us, that by January 1992 not only 12 had you transmitted them to Mr. Williams but 13 ultimately, and before the reference and before 14 the determination by the Supreme Court of Canada 15 that your practice of disclosure in 1969 was 16 adequate given the standards of the day, were in 17 the hands of Mr. Milgaard's counsel, and some of 18 it, at least, was in the hands of the Justices of 19 the Supreme Court of Canada?

Yes, Ms. Knox, that is again, I think, inevitable from the wording I've seen here.

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Okay. Now, sir, just a final point because at various points in time both Mr. Wolch and Mr. Lockyer repeated to you or suggested to you that as opposed to your evidence that you simply

1		didn't recognize the significance, they've used
2		the language that you suppressed them, that you
3		withheld them, all of which implies an
4		intentional, conscious decision on your part, that
5		there's something here that might be helpful, but
6		I'm going to be the bad guy, I'm not giving this
7		out because it might help him beat the rap. Did
8		you ever at any point in time contemplate, think
9		or have such awful thoughts cross your mind as you
10		were preparing for the prosecution of Mr.
11		Milgaard?
12	А	No, I did not, Ms. Knox, think of those things and
13		consider them and, among other things, carry them
14		out. None of that happened, whatever.
15	Q	Mr. Lockyer said to you at page 17751 of the
16		transcript in your
17		COMMISSIONER MacCALLUM: Page number what?
18		MS. KNOX: 17751.
19		COMMISSIONER MacCALLUM: Thanks.
20	ВҮ	MS. KNOX:
21	Q	that the circumstantial evidence suggested, and
22		I'm looking at line 7, the circumstantial evidence



are concerned would suggest that you had

that -- he talks about the circumstantial evidence

that the Commissioner has to deal with where you

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1		suppressed them because you didn't want them to go
2		to Mr. Tallis?
3	А	Yeah, I see that.
4	Q	Other than suggestions made by persons on behalf
5		of Mr. Milgaard, and I mean suggestions as opposed
6		to evidence, do you know of any circumstantial
7		evidence that exists in respect of this file
8		anywhere that would suggest that you deliberately,
9		intentionally, willfully suppressed those
10		statements so that Mr. Tallis wouldn't get his
11		mitts on them?
12	A	That again, Ms. Knox, did not happen in any shape
13		or form.
14		COMMISSIONER MacCALLUM: I think the
15		question was do you know of any circumstantial
16	BY 1	MS. KNOX:
17	Q	circumstantial evidence that would support the
18		suggestion by Mr. Lockyer that you intentionally
19		suppressed these statements to keep them from
20		Mr. Tallis as opposed to acted in innocent but
21		unfortunate oversight in your review of the file
22		in 1969?
23	А	No, ma'am, I do not know of any circumstantial
24		evidence which would indicate those things, if you
25		will, in my direction. I hope that's what your
		Movey CompuCourt Poporting



question is.

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2 I think that's basically it, sir. Sir, 0 3 Mr. Lockyer went on at page 17758 to suggest to you that with these statements in your file you 4 5 should have been on your toes and off at the gatekeeper, that you should have been alerted to 6 there might be a problem here. Yesterday I asked you to take your mind back and try to answer some 8 9 of my questions in the context of what the social 10 values were, the knowledge of the community, or 11 knowledge of perpetrators of crime were in 1969 12 and much reference has been made to Mr. Fisher 13 being Saskatoon's first and perhaps only serial 14 Sir, back in 1969, relatively fresh out 15 of law school and into practice, I think by then 16 you were 10 years at the bar, was there any 17 conceptualization or discussion within the 18 policing, prosecuting and judicial community about 19 offenders who acted in patterns who you could 20 profile, to use the language of today with the FBI 21 profiling and CSI Miami and all the others, and 22 you could predict, based on patterns of behaviour, 23 as we've come to know it in the media, the 24 literature, and in fact in law in the last 10 or



15 years, and I use that number loosely because

1		I'm dealing with the ages that I've been in active
2		practice in criminal law.
3	A	The process called profiling was, I'm sure, not in
4		active use at that time. I do recall years and
5		years later these various police forces I think
6		attempted to train particular personnel to do that
7		job, but it was certainly not in effect and I
8		don't think the terminology was being used,
9		Ms. Knox, about the era which you are asking me
10		about.
11	Q	Yeah. Sir, would you agree with me that maybe as
12		early as that it was maybe as early as the late
13		'80s, or more likely into the '90s, that policing
14		agencies began to recognize within their own
15		structure and as a process for their
16		investigations that patterns could be discerned
17		and you could anticipate, if you will, certain
18		repeating patterns of behaviour in particular
19		cases?
20	Α	Yes, I'm sure that did develop, and my best
21		recollection would be the time lines, the ones
22		that you've suggested, ma'am, would be that late
23		in the history of prosecutions, if you will, or
24		policing.
25	Q	Taking your mind back to what you knew when you



1 went through law school, what you knew as a 2 prosecutor in Regina, what you knew when you first 3 came to the office in Saskatoon as the chief prosecutor, by 1969 did you have anything in your 4 5 head that caused you to have a light go on, as it were, or a flag to go off when you found 6 circumstances such as a series of indecent assaults in an area where a vicious rape and murder had just occurred? 10 Ms. Knox, I'm sure that that did not happen to me 11 in that era whatsoever, it would have been 12 memorable, and I simply have no recollection of 13 that happening, you know, aside entirely from this file otherwise. 14 15 Sir, as it has been suggested to you by 16 Mr. Lockyer with some vigorousness, and I think to 17 a lesser degree by Mr. Wolch, that even if you 18 didn't sort of trigger to the pattern with 19 (V11)--, (V9)---- and the others, the (V4)----20 (V4)--- statement should have made bells, whistles

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and lights go off for you because of what it contained, and do you recall, and I'm summarizing, and if I'm being unfair I apologize, but I'm trying to get you off the stand before we go into the fifth week, but essentially that's the essence



of what has been said to you, what has been said in the media and what has been said a multiple number of times regarding the (V4)---- (V4)--- statement, is even if you didn't see any importance to all the others, how the heck could you not have made the connection with (V4)---- (V4)---, and in that vein I'm going to ask to have brought up again 006404.

Now, Mr. Caldwell, you pointed out to Mr. Lockyer that one of the factors that might have played into your judgment was the notation in the top corner that I've marked, and in the police file on the original, I'm just going to show you my colour photocopy because I know you like colours.

A Thank you.

- In the original that's written in red ink, right, so it kind of stands out from the body of the statement.
- Mr. Commissioner, on the original in fact it is written in red ballpoint ink which we can see which we can't see on the screen version.
- Q Okay. And this is a short one page statement, Mr.

  Caldwell. I wonder if you can take a brief minute
  to peruse through the content of it and then I



	have some questions for you with respect to the
	allegation.
A	Very good. I've read through it again now,
	Ms. Knox.
Q	Okay. Before I ask you questions with respect to
	the content of the statement, Mr. Lockyer said to
	you that once you've and I'm referring,
	Mr. Commissioner, to page 17763 of the transcript,
	Mr. Lockyer said to you:
	" this lady was attacked in the same
	minus 40 degrees seven blocks from
	where Gail Miller was murdered, she was
	sexually assaulted by a stranger; that's
	what you read if you read this
	document?"
	Do you see that in the questions he put to you?
A	Yes, I do.
Q	And you say certainly. And then he says:
	"So the unique aspect of the murder of
	Gail Miller had suddenly lost its
	uniqueness completely, it now seems that
	since you didn't disclose this, that you
	must have said to yourself there were
	two unique people which is, means
	they are not unique roaming around
	Q

1 the streets of Saskatoon that very 2 morning chasing after women; right?" Was the question. 3 4 "That's what you must have said to yourself?" 5 His question, and you say: 6 "I don't recall." Now if we could bring back the (V4)---- (V4)---8 9 statement, please. Sir, if I could bring out 10 this part of the statement, please, and direct --11 perhaps bring it more closely starting right 12 here. Sir, I asked you to read over what the 13 allegation was in that statement and I'm going to 14 summarize it and you can add to it or disagree 15 with it. 16 Very good. Α 17 But if you look at the description of what 0 18 happened to her that (V4)---- (V4)--- gave that 19 Mr. Lockyer urges upon you to say should have 20 screamed at you that this was the same person that 21 just stabbed, raped and murdered a young nurse and 22 left her body in the alley, what (V4)---- (V4)---23 said happened is this man came -- the man was 24 walking towards her, as they met she moved 25 slightly away to give him room to pass on the



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sidewalk. When he met her he lunged at her and she said:

> "He ran his hands, or possibly used only one hand, up and down my legs. screamed and threw my books down. Не I picked up my books and started quit. walking again. I looked back and he was following me. I then started to half run and next time I looked back he was I could not see him." gone.

Sir, does that description of the assault that occurred to (V4)---- (V4)--- that morning, that a man came towards her, he lunged at her, ran one of his hands up her leg, she screamed, she threw her books, he ran, in any way, other than the fact that it's downtown Saskatoon and it's minus 40, compare in any respect whatsoever with the horrible circumstances of the assault that occurred some blocks away sometime in the same time period to Gail Miller?

No, it does not, Ms. Knox. I clearly seen this statement earlier on and probably during the Inquiry. The lady had this male person come out of a yard, walk south toward her. As she said, as we met I moved over toward the fence, or inside of



1		the sidewalk. When this man or male met me he
2		lunged at me, ran his hands, or possibly used only
3		one hand, up and down my legs. I screamed and
4		threw my books. He quit. I picked up my books
5		and started walking again. I looked back and he
6		was following me. I then started to half run, as
7		I read this, and the next time I looked back he
8		was gone. I could not see him. That is certainly
9		not a commendable action by whoever that male was,
10		but it would be a very brief indecent assault,
11		Ms. Knox, in my view, or arguably a common
12		assault, certainly nothing that credible about his
13		actions. I don't, at a glance, see the
14		temperature in this, but presumably if it was the
15		same morning it would be the same temperature, so
16		that was an episode where this lady was
17		screamed and, in effect, dissuaded the brief
18		attack is the way I would characterize it, and of
19		course it's absolutely not comparable in any way,
20		shape or form to what happened to Miss Miller.
21	Q	If we could scroll up to the top of that
22		statement, if you could look at the top of the
23		statement in front of you, I want to bring out
24		this part now.
25	A	Okay.

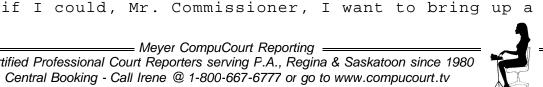
1	Q	Now, we've spent a lot of time talking about the
2		geography of downtown Saskatoon, and I don't
3		particularly want to go there to any length, but
4		this lady described in her statement as you were
5		reading it at the request of Mr. Tallis that you
6		look at all the civilian witness statements, that
7		this attack happened on Avenue H.
8	А	I see that.
9	Q	And she described that it happened at 7:07 in the
10		morning and that she was just, she was precise
11		about her time because she just checked her watch
12		and she knew it was 7:07 a.m.?
13	А	I see that.
14	Q	When you were looking at this statement, did it
15		ever cross your mind for a minute that gee, I
16		wonder if the same guy is out doing this at minus
17		40 in the morning, once you saw the time, and the
18		preciseness of time, 7:07, and once you saw the
19		location, Avenue H, and I know that Mr. Wolch and
20		others have argued and debated whether Larry
21		Fisher might have had access to a car and stuff
22		like that
23	A	Uh-huh.
24	Q	but could you think of any way physically,
25		without great difficulty, if I may, that the



1		person who somehow killed Gail Miller between
2		6:45, because we know she was in her house at
3		6:45, and 8:30 when her body was found, but
4		somehow between 6:45 could have killed Gail Miller
5		in the manner that she was killed, with the degree
6		of viciousness and obvious time that went into it
7		and be at Avenue H by 7:07 in the morning?
8	A	No, that in my view would be out of the question.
9		We were talking about Avenue N by my theory or O
10		by some other people's and Avenue H is several
11		blocks, what I would call east of that, madam.
12	Q	Yeah. Now, sir, Mr. Caldwell, for completeness of
13		the record, you know that $(V4)$ $(V4)$ did
14		testify in the Supreme Court of Canada, she did
15		testify that Larry Fisher was her assailant. He
16		has never been convicted of that offence, but all
17		that being aside, and given all that happened
18		after in terms of what $(V4)$ $(V4)$ may have
19		said, that in fact it was Larry Fisher, based on
20		what information you had in front of you when you
21		were doing the review, was there anything about
22		this that caused you to, as Mr. Lockyer suggested
23		caused you to think that you needed to disclose it
24		or, alternatively, that you were going to suppress
25		it because it might assist in the defence of David

1		Milgaard?
2	А	I did not think I needed to disclose it and I had
3		no concept whatever that I was suppressing it to
4		assist anybody, neither of those things were what
5		I did, ma'am, as a result of, out of the review
6		we've been speaking of.
7	Q	Mr. Lockyer suggested to you, as he continued
8		through that line of questioning, and particularly
9		at page 17768, that you must now appreciate that
10		if you had disclosed (V4) (V4's 1969
11		statement to Mr. Tallis, it would have or could
12		have he said would have at question 13 would
13		have blown your case potentially to smithereens
14		against Mr. Milgaard.
15	A	I see that here.
16	Q	Now, sir, given the evidence that you had, which
17		you believe to be truthful, and I'll just list
18		some of it, you had the eye witness testimony, or
19		the eye witness statements at the time you
20		reviewed these of Mr. Cadrain, that Mr. Milgaard
21		had come to his house, he had seen blood on his
22		clothes, he changed his clothes there. You recall
23		you had that evidence in your file?
24	Α	Yes.
25	Q	Which is believed to be truthful. You had the
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1 evidence that for strange reasons by some standards Mr. Milgaard, after changing his 2 3 clothes, had left the house and driven around the neighbourhood, although it was minus 40 -- we 4 5 won't get into the fact the car broke down, that's another detail -- and that within weeks after that 6 in the area of that very house where David Milgaard had been and who Albert Cadrain said had 9 blood on his clothes, Gail Miller's IDs were found? 10 That's all true. 11 Α 12 You had the May 23rd statement of -- May 23rd, 13 24th statement of Ron Wilson that David Milgaard 14 had essentially told him that he had got a girl or 15 he had stabbed a girl and took her purse, 16 etcetera, etcetera, so you didn't have an eye 17 witness account, but you have somebody who says 18 right after it happened he told me he did it? 19 That's correct as well. 20 On this point, sir, I want to, for a 21 moment, direct your attention to another 22 information that you had apart from the statement, 23 the written statement of Ron Wilson on May 23rd, 24 24th with respect to what Ron Wilson had said, and



1		document that was in Mr. Caldwell's file, document
2		009264, and, Mr. Caldwell, this is a document that
3		clearly has was in your file, you can see your
4		handwriting on it?
5	А	Yup.
6	Q	And in my colour copy that I'm looking at it has
7		your peculiar fountain pen ink?
8	А	Yeah, thank you, but it was in my file clearly.
9	Q	This was a five page report, or six page report
10		that goes to 009269, is the total number of pages,
11		six page report, prepared by Mr. Karst on May
12		25th, 1969 which was post the May 20th trip to
13		Regina to talk to Ron Wilson?
14	А	Yes.
15	Q	Okay. And without going through it in great
16		detail, it has been suggested many times that you
17		should have been alert to the fact that Mr.
18		Roberts, the polygraphist from
19	А	Calgary.
20	Q	Calgary, induced, through circumstances that
21		were probably questionable, induced Ron Wilson to
22		give incriminating false testimony, or false
23		information about David Milgaard. You know those
24		suggestions, I'm not going to go through the
25		transcript and find them
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1	A	Very good.
2	Q	they are replete through these proceedings.
3		Sir, additional to the statement you had where he
4		went before a justice of the peace and he swore it
5		to be truthful of May 23rd, May 24th, you also had
6		the recounting of Detective Karst of what Ron
7		Wilson had said to him prior to any contact with
8		Art Roberts didn't you?
9	A	I did.
10	Q	And I'm going to refer you, if we first could look
11		at just this part of the report here which I think
12		is a recounting of the events of May 20th, the
13		first day you had contact with him, and
14		essentially Mr. Wilson back in Regina four days
15		before he met, or three days before he met Mr.
16		Roberts, was giving some information to Detective
17		Karst that was at variance to what he had told in
18		his May 3rd statement March 3rd statement to
19		the RCMP officer Inspector Riddell?
20	A	That's correct.
21	Q	Okay. And you can see that Detective Karst
22		recounted that he brought him back to Regina or
23		sorry, to Saskatoon. If I could go to the next
24		page, please. You also had information, which I
25		presume you believed to be accurate and reliable,
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1		that en route to Saskatoon Wilson confessed, and
2		I'll use that term loosely, but confided in the
3		detective that when he had told Inspector Riddell
4		back on March 3rd that they came to Saskatoon,
5		they, you know, they did a couple of things, they
6		went to this house, after they got stuck they went
7		to the motel, there was some stuff he left out,
8		including the fact that they had done a break and
9		enter at an elevator along the way. You see that?
10	A	Yeah, that's correct.
11	Q	He also confided in him that they had discussed
12		along the way, they being he and Mr. Milgaard and
13		Ms. John I guess, rolling someone, purse
14		snatching, doing break and enters?
15	A	I see that here.
16	Q	You had that information available to you in your
17		assessment?
18	A	Yes, I did.
19	Q	You had the confirmation along the way by
20		Detective Karst that in fact there had been an
21		elevator break-in on the date in question?
22	A	That's correct.
23	Q	Your file subsequently contained documentation
24		from an RCMP officer, a Constable Weafer, that the
25		break-in had occurred, a flashlight had been taken

		<u>-</u>
1		and indeed ultimately Ron Wilson turned over the
2		flashlight stolen from that elevator didn't he?
3	А	That's all correct, ma'am.
4	Q	And again, so I don't lose where I'm going here,
5		all this information in your possession preceded
6		contact with the polygraph operator and the
7		polygraph machine on May 23rd?
8	А	That's right, Ms. Knox.
9		COMMISSIONER MacCALLUM: Not the recovery
10		of the flashlight though.
11		MS. KNOX: The information. Yeah, I should
12		correct that. The information that it had
13		happened, that they had stolen a flashlight
14		COMMISSIONER MacCALLUM: Yes.
15		BY MS. KNOX:
16	Q	was told to Detective Karst, it was after, on
17		May 25th or thereafter, after the polygraph
18		exercise when he was driven back to Regina, your
19		file indicates that he turned over the flashlight
20		that he said they had taken from the elevator?
21	А	Yeah, that's the correct sequence as I have it,
22		Ms. Knox.
23	Q	Okay.
24	А	And had it then.
25	Q	Okay. And I won't take you through all of the
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1 rest of this report, but it goes on for pages, through page 009265, 009266 through to 009267, and 2 3 it is halfway down the page that the polygraph 4 operator, Friday, May 23rd, became introduced? Yes, I see that here. 5 Α So you had part of three pages of information 6 Q given to Detective Karst by Ron Wilson that in aspects was not favourable to Mr. Milgaard prior 8 9 to any contact with Mr. Roberts? 10 Α That's certainly right. 11 And whatever may have happened with Mr. Roberts, 12 Ron Wilson has at various times given various 13 versions and whether there was an improper interview done is a matter that I'll leave for 14 15 others to assess, but certainly you, as the 16 prosecutor looking at all this information, and 17 looking at the suggestion from Mr. Lockyer that he 18 made last week at page 17746, that Miss (V4---'s 19 statement would have blown your case to 20 smithereens, would this information, in addition 21 to Ron Wilson's May 23rd, May 24th statement have 22 been factors that you had to consider if for a 23 moment it crossed your mind, and I accept your 24 evidence that it didn't, that there was a problem



because of (V4---'s statement?

1	А	All that information we've just gone over would of
2		course be in my mind and I did not accept
3		Mr. Lockyer's proposition as set out in these
4		pages because I felt, I think I've said somewhere
5		here, that I would look at the case and felt it
6		was substantial regardless of that, to put it very
7		awkwardly, Ms. Knox.
8	Q	The other factors that you had, even if for a
9		moment the (V4) statement was an issue, were
10		that Nichol John had given an eye witness
11		statement, she said I saw him do it, I saw him
12		grab her, jab at her with a knife, pull her down
13		the alley, etcetera; right?
14	А	Right.
15	Q	Okay. And you had at that point in time as well
16		the suggestion that David Milgaard had possession
17		of her compact in a car he was driving in en route
18		to or what was believed to be her compact in a
19		car he was driving in en route to Calgary some
20		hours later?
21	А	Yeah, that's correct.
22	Q	So apart from everything else in terms of
23		Mr. Lockyer's suggestion that the (V4)
24		statement could have, would have, if you disclosed
25		it, blown your case to smithereens, as you recall

1 the facts as you believed them to be in 1969, do 2 you see any way if you had thought if I disclosed 3 this statement to Mr. Tallis it's going to be my 4 case to smithereens, that that would make any kind 5 of rational, logical sense at that time? No, absolutely not, because I felt that it was a Α 6 strong case as I knew it at that time and I didn't think any action I did would "blow my case to 8 9 smithereens or indeed fail to do as the case may 10 be, I didn't feel it would have that effect, 11 Ms. Knox, with my knowledge at that time. 12 COMMISSIONER MacCALLUM: Ms. Knox, at one 13 point you said the suggestion came at 17768 and 14 another time 746. Which is it, please? 15 MS. KNOX: It would be 17768. It goes on 16 for a number of pages, Mr. Commissioner, probably 17 through -- yeah, probably through to the end of

COMMISSIONER MacCALLUM: Thanks.

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MS. KNOX: There's a series of questions between those pages. The topic at times repeated itself, but certainly it was canvassed there with some degree.

Ms. Knox, just as a matter of interest, on that very page is what I was trying to recall when it



1 wasn't on the screen, my answer number 19 was: 2 "What I am saying to you, sir, is I 3 wouldn't decide things based on that, I would decide them based on what I knew 4 5 or thought I knew about the evidence as the matter went on." 6 So that was sort of a nutshell description of what I would do based on his hypothetical 9 question to me. 10 BY MS. KNOX:

And for certainty in the record, with respect, where the reference was made to the case being blown to smithereens if you disclosed the (V4)--- statement, the actual full page reference is 17768.

Sir, again I'm going to, and I apologize, I'm jumping around a bit, and I'll probably give you a bigger headache that you've had most other days --

A Not at all.

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-- but again looking at the suggestions being made to you, it was suggested by Mr. Lockyer, based on his review of the documentation, various things that you have said over periods of time, that, and you agreed with him, that there was a time when

there was what has been referred to, and I think you referred to it in your taped interview with Carlyle-Gordge on March 12th, 1983 when there were two schools of thought within the police station. Do you remember Mr. Lockyer asking you those questions?

A I do.

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And, sir, when you answered those questions, you agreed with him that there had been two schools of thought with respect to the case and I, in reviewing your, his questions and your answers, it's not clear to me whether, as time progressed and the case developed, i.e., the items of -well, first off, Albert Cadrain came in, the items belonging to, some months later -- or some weeks later the items belonging to Gail Miller, like her ID, were found by the little boys near the Cadrain house or on the path that David Milgaard would have travelled to get to the Cadrain house, as Nichol John, Ron Wilson and other pieces of information came to the police and as the, whether rightly or wrongly, as the polygraph device, the new science was used and it pointed to the guilt of Mr. Milgaard, to your knowledge did Inspector Woods or Superintendent Woods or whoever may have



1		had doubts about the case in the early stages, and
2		I mean the case against Mr. Milgaard, come to
3		revise that opinion to your knowledge?
4	A	That I don't know, Ms. Knox.
5	Q	Okay.
6	A	I didn't, in effect, hear any more about it I
7		guess at some point
8	Q	Okay.
9	A	in the process.
10	Q	But you were aware, when you talked about there
11		being two schools of thought, that in February
12		they had nothing to go on, in March they got a
13		lead, it took them a while to develop that lead
14		through April and May, so certainly there were
15		lots of weeks and months for the police to have
16		varying and differing and changing opinions about
17		the viability of Mr. Milgaard as the suspect and
18		ultimately the person believed to be the
19		perpetrator?
20	A	There certainly were, ma'am.
21	Q	And with respect to the references that were made
22		in the course of your cross-examination to the
23		early comments expressed by Mr. Riddell, or
24		Inspector Riddell after he interviewed Ron Wilson
25		in March of 1969, by Detective Karst after he
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interviewed Milgaard, and I believe after he interviewed Nichol John in April of 1969, did evidence develop which they believed to be truthful which cast doubt on their early assessments of the credibility of these individuals, and by that I mean evidence such as the realization that along the way they had broken into an elevator at Craik (sic), along the way they had plans to do purse snatching, along the way a number of other events that happened of questionable bona fides?

Yeah, I was impressed by the fact that those

Yeah, I was impressed by the fact that those various investigators honestly felt, believed in the truthfulness of some of the Crown witnesses as time went on. I was impressed by the fact that they, the two or three investigators said this person seems believable or we've got to look into other avenues, and I gave them every credit for that, and that's recorded in the file what they did. Now, as the case developed, I would be satisfied that those investigators must have come around to a different point of view because there was a great deal more evidence to work with as time went on, Ms. Knox, would be my response to you.



1	Q	Sir, as a prosecutor then of 10 years' experience
2		and by the time of your end of service in 1987
3		with the prosecutors' office, was it uncommon to
4		have police officers make changes or to revise
5		their opinions about suspects, evidence,
6		possibilities as they developed cases and theories
7		were explored, investigated and pursued?
8	А	It certainly did happen, and to me that would be a
9		healthy sign because any hypothetical police
10		officer who simply locks on it has to be this way
11		and nothing will dissuade him is, you know, is of
12		limited value as a witness. I certainly had other
13		cases in which officers came around to believing
14		theories, C or Z or whatever it may have been, but
15		based on discussions among themselves and with me,
16		and of course mainly to the accumulation of new
17		evidence.
18	Q	Yeah, and sir, in your experience in working with
19		police officers you've indicated there were times
20		when they came around to realize that they'd been
21		wrong in assessing somebody as not a viable
22		suspect, there's equally times when police
23		officers or have you had the experience of
24		police officers going out the gate thinking this
25		is the guy who did it, they investigate it for a



1		while and then have to basically say, "whoops,
2		wrong about that one " and move to another theory?
3	А	That certainly happened from time to time with me
4		for sure.
5	Q	That's what policing is all about, isn't it, it's
6		legwork, investigation, figuring out, having
7		hypotheses, figuring out whether they are right,
8		wrong, or whether you are totally out in left
9		field sometimes?
10	А	Yes. And it would be a very sad state of affairs,
11		I think, if and I if all policemen simply
12		locked onto their particular theory and stuck with
13		it through thick and thin. Among other things,
14		one would tend to find them not being used so much
15		as witnesses or investigators, would be my
16		thought.
17	Q	As a prosecutor, what, you would describe it as a
18		not-uncommon occurrence that you would have police
19		officers who had to acknowledge that they were
20		wrong sometimes in believing somebody, sometimes
21		in not believing somebody?
22	A	Yeah, I'm sure
23	Q	Or, as we'd say to them in Newfoundland, "like how
24		could you be so stunned?"
25	А	Yeah, I'm sure.
	1	

1	Q	Mr. Commissioner, I'm about to move to a new area,
2		this may be the appropriate time to break.
3	А	I'm sure that happened, Ms. Knox.
4	Q	As a prosecutor did you ever say, like I've done,
5		"how could you be so stunned?"
6	А	I think one of my colleagues said it to me, when I
7		think back, but I know what you mean.
8	Q	Thank you.
9		(Adjourned at 10:43 a.m.)
10		(Reconvened at 11:01 a.m.)
11		BY MS. KNOX:
12	Q	Mr. Caldwell, I'm going to take you back to
13		something I thought I had finished with but it's a
14		result of having a room full of armchair
15		lawyers,
16	А	Very good.
17	Q	everybody suggests how you could do your job
18		better every chance they get, but if I could bring
19		up 006404 again.
20	А	Thank you.
21	Q	Bringing you back to the statement of $(V4)$
22		(V4), this is a statement that actually wasn't
23		given by her until 5:45 that evening, some hours
24		after the event, but that's a minor point.
25	A	Uh-huh.
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1	Q	I didn't direct your attention to the last
2		paragraph of her statement that she gave that
3		evening about what had happened to her at 7:07
4		that morning, and you will see she gave a
5		description of the person who was her assailant on
6		Avenue H that morning at 7:07?
7	A	I see that.
8	Q	If you could just take a quick read through it,
9		and I don't have anything in it so much that I
10		want to ask you about, but it's what's not in it.
11	A	Yes, I read the last paragraph, ma'am.
12	Q	Yes. And effectively what she's giving is a
13		physical description of the person who ran his
14		hands up her legs and ran away, or and then
15		followed her a bit after she had threw her books
16		down and screamed; right?
17	A	That's correct.
18	Q	Now anywhere nowhere in that description is
19		there any indication that he was disheveled in his
20		appearance, or particularly that he had blood on
21		him or anything that would suggest that just
22		moments earlier, within between 6:45 and 7:07, he
23		would have been involved in a vicious rape and
24		murder?
25	A	There's nothing to that effect, Ms



1	Q	Okay. Was it your theory, based on the crime
2		scene as you knew it through the photographs,
3		descriptions, and so forth, that the assailant
4		likely would have ended up with some blood on him,
5		or some evidence that he had been engaged in a
6		vicious assault with multiple stab wounds and
7		extensive bleeding from the victim?
8	A	Yes, I would think that would be inescapable,
9		ma'am.
10	Q	Okay. And again, in following through or going
11		back to Mr. Lockyer's suggestion that you should
12		have recognized that this was the thing that would
13		have blown the theory of Mr. Milgaard being the
14		perpetrator to smithereens, would the does the
15		absence of anything that would physically suggest
16		he might have been anywhere near the Gail Miller
17		scene perhaps play in your decision-making as
18		well?
19	А	I'm sure it would, because on any construction of
20		the facts you would have expected the Gail Miller
21		assailant to be very much involved with blood and
22		undoubtedly disheveled, possibly injured, who
23		knows, but none of that, of course, appears in
24		this final paragraph.
25	Q	So there is no nothing triggering in the



1 description that would allow you, even though it's 2 Avenue H, it's a distance away, it's a different 3 description, saying, "yeah, but he has got evidence that he might have been into a, you know, 4 5 a serious bad scuffle, he's got some signs that, you know, if he has got blood on him or anything 6 like that I should think about this as a 8 possibility", albeit it might be, at that time in 9 your thought processes, a remote one? 10 Α No, it did not occur to me in any sense of that 11 set of possibilities, ma'am. 12 Q I just want to follow on with some of the other 13 suggestions that were made to you during the course of cross-examination as instances of the 14 15 portrayal of how, either benignly, 16 intentionally -- or most often suggested 17 intentionally you dropped the ball with respect to 18 your assessment of this file and your assessment 19 of the evidence against Mr. Milgaard. And I want 20 to refer you to questions that you were asked by 21 Mr. Lockyer starting at page 1 -- or not starting 22 at, but particularly at page 17793. Now it's 23 during this series of questions -- and it's other 24 places as well, I'll just focus on this for our 25 purposes -- but during this series of questions



1		Mr. Lockyer was examining you or cross-examining
2		you about the fact that you had on your file a
3		document, a letter from Joe Penkala dated February
4		5th, 1969 to Crime Index, that suggested the
5		possibility of a connection between unsolved rapes
6		in Saskatoon and the very vicious murder that had
7		occurred six days earlier?
8	А	Uh-huh.
9	Q	You remember that?
10	А	I do.
11	Q	And basically the letter, in his letter he, in the
12		last paragraph, as was pointed out to you by Mr.
13		Lockyer, he raised the possibility of the
14		connection and wanted this was going to Crime
15		Index in Ottawa I believe?
16	А	That was what I think the final, you know, that
17		that's where it seemed to be headed from what
18		we've learned in the Inquiry, Ms. Knox, I
19	Q	Right. And from the letter we can bring up the
20		letter if you would like to see it, I thought I
21		recorded the document number but I guess I didn't
22		readily at hand. In any event it's a letter, as
23		he said to you at question 22, that was written on
24		February 5th, 1969, and he suggests to you that it
25		should have had some real significance for you in
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terms of zeroing in on the common perpetrator theory, is the essence of what the theory of his suggestion is in this line of questions?

Now, sir, we've all agreed, and your file discloses, that you -- the February 5th, 1969 letter was in your file, in fact I believe it's on -- in the file that you labeled file number 1, Correspondence, --

A And --

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-- and it's on your correspondence tag if I'm remembering correctly. But allowing for the fact that this was a document written February 5th, five days after the murder, and that through the course of March with Albert Cadrain, April with Nichol John, April through May with Nichol John, Ron Wilson, the little boys who found the ID for Gail Miller and others, that a fairly significant body of evidence developed that pointed toward David Milgaard as the perpetrator; would that have caused you to, similar to post -- there being two schools of thought about whether Milgaard was a viable suspect, that in effect the evidence would overtake the speculation that Lieutenant Penkala had engaged in on February 5th, '69?

1	A	Yeah. As time went on, in the manner you have
2		spoken of, things did come in, new witnesses were
3		found, statements were taken, etcetera. The file
4		wasn't, you know, static from the same date that
5		Lieutenant Penkala's letter was written by any
6		means, and I can imagine that that may have
7		affected my views.
8		COMMISSIONER MacCALLUM: What date was the
9		Penkala letter?
10		MS. KNOX: February 5th, 1969. Maybe
11		somebody can help me with the doc. ID, I'm
12		COMMISSIONER MacCALLUM: So what other
13		evidence are you referring to that would have
14		been in his mind at that time?
15		MS. KNOX: No, no, my question to him was
16		over time, as the evidence came in, did it
17		overtake the theory of the Penkala letter?
18		COMMISSIONER MacCALLUM: Oh, all right.
19		MR. HODSON: You want the Penkala letter?
20		MS. KNOX: Yes.
21		MR. HODSON: 009298.
22		MS. KNOX: Thank you, Mr. Hodson.
23		MR. HODSON: 299 is the
24	BY N	MS. KNOX:
25	Q	February 5th, 1969, and the document ID 009298,



1		with a cover page directed to the Commissioner of
2		the RCMP Crime Index Section. If we could go to
3		the next page, please, and there is generally a
4		description of the murder. And if we could go to
5		the last page, 009300 should be the last
6		paragraph, if we could bring that up. Okay. And
7		it basically, I think this was reviewed by Mr.
8		Lockyer with you, that basically in a general way
9		he is saying that there are two unsolved cases
10		dating back to October-November, which we now know
11		to be the $(V1)-$ , $(V2)$ I think would be the
12		two incidents that he is referring to, but
13		generally he is giving a general description of
14		unsolved crimes on February 5th, '69?
15	A	That's how I read it, ma'am.
16	Q	Okay. No references, for your benefit or as
17		triggers for your memory if you read this in
18		February '69 or sometime after in July when the
19		file came in, nothing to trigger who what these
20		cases were by name or identification tag?
21	А	Yeah, or indeed what their status was at that
22		point,
23	Q	Okay.
24	A	for that matter.
25	Q	But by the time you received the letter of



1		engagement on July 8th, 1969 and subsequently the
2		portions of the file, including summary lists of
3		witnesses, witness statements and so forth that
4		came from Mr. Ullrich, you had what you considered
5		to be an eyewitness account
6	A	Yes.
7	Q	of the actual killing by Mr. Milgaard;
8	A	That's right.
9	Q	you had what you considered to be a truthful
10		confession, in effect, by Mr. Milgaard to Ron
11		Wilson;
12	A	That's, that's correct.
13	Q	and without belabouring the point you had a
14		whole trail of external evidentiary matters that
15		connected Mr. Milgaard to a house where Albert
16		Cadrain said he saw him with blood on his clothing
17		within a short period after the murder?
18	A	That's true as well, Ms. Knox.
19	Q	So what Mr. Penkala posited in this February 5th
20		letter was, as I suggested in, or paraphrase to
21		the Commissioner just then, like the two schools
22		of thought overtaken by the evidence which,
23		wrongly it turns out but in 1969 which you
24		believed to be true?
25	A	Yeah, that's exactly how I would characterize



1 this, ma'am. 2 Now, as he proceeded through it -- and I'm Q finished with that document -- as he proceeded 3 4 through his examination of you, Mr. Lockyer 5 introduced to you or questioned you about the notion that you had an independent function to 6 perform, you weren't the blind follower of the 8 police, you in effect had a duty, as we all agree, 9 to be independent of the police and to be the 10 gatekeeper, as it were, within the system; and you 11 agreed with him that that's a laudable and 12 appropriate function for Crown offices to perform? 13 Α Yes, I did. Now just as a minor detail, shifting your mind 14 15 back to 1969, the language he visited upon you, 16 and which you agreed with, was not language that 17 was used, again within the part -- in the systems that you worked in, policing, justice, judges, in 18 19 1969, but certainly the concepts were live? 20 Yeah, the concepts were very valid. 21 'gatekeeper', as it happens Ms. Knox, I believe I 22 first heard in this Inquiry, but I certainly don't 23 quarrel with the concepts that he advanced. 24 0 Mr. Lockyer urged upon you that, in another 25 way that you had dropped the ball in 1969-1970, is



1		you didn't critically assess whether or not the
2		changing statements of Nichol John, Ron Wilson
3		from March 3rd and March 11th, in her case, to
4		March (sic) 23rd-24th when they did the interview
5		with Mr. Roberts, but that you didn't do a
6		critical analysis of 'how come this happened'; and
7		you remember him asking you those questions?
8	A	I'm sure he did.
9	Q	Okay. Now, and he suggested to you in various
10		forms and fashions through the course of his
11		examination of you, as did Mr. Wolch, that you
12		should have been on top of the possibility of
13		police compulsion in getting these new statements
14		May 23rd-May 24th; do you remember that?
15	A	I'm sure he did as well.
16	Q	And in various forms or fashions, there are a
17		multiple of them throughout the transcripts of the
18		examination of you by both of them, suggested that
19		a good prosecutor would have known to be alert to
20		that possibility?
21	A	That's a motherhood statement, ma'am, which I
22		can't disagree with in that sense.
23	Q	I believe it was Mr. Pringle who referred you to a
24		comment in your address to the jury that you said
25		that those good jurors would know better than to
		Meyer CompuCourt Reporting ————————————————————————————————————



1 think that the police officers would be up to no 2 good, like trying to intimidate Nichol Wilson 3 (sic) by putting her in a cell to make her scared; 4 do you remember saying that? 5 Α I'm sure I said something to that effect. Okay. And I want, again, to take your mind back, 6 Q to the extent that it's possible, to the times that you were working in in 1969 and 1970. 8 9 in those days -- and I think I referred to it 10 yesterday in a -- in -- at one point -- back in 11 those days would it be fair to say that the 12 concept of corruption in police practices, either 13 intentional or otherwise, would have not been the 14 ordinary subject of discussion or expectation by 15 police, defence counsel, by courts, that generally 16 the concept of us all being parties in a law and 17 order society was a pretty solid concept? 18 That's right. We were in a small province in Α 19 terms of population, in a medium-sized city, the 20 -- there was, I think, some -- almost a 21 presumption of regularity that attached to police 22 activities. There certainly was not the 23 prevailing, seemingly more today than then, 24 situation where, in which every, every 25 investigation and investigator, every second one



1 was assumed to be corrupt or have bad motives, it 2 -- the -- that was not the frame of mind, and the 3 police department here, in this city, certainly had the confidence of the public. If -- if some 4 5 negligence, corruption, etcetera, you know, 6 appeared with respect to some investigation, that, that was a novelty, and it would certainly be 8 followed up, Ms. Knox, in my view. In the relationship that you had with Ron 10 Wilson, with Nichol John, as you were preparing for the preliminary inquiry and as you were 11 12 preparing for the trial, was there anything that 13 you remember, taking your mind back to 1969, that 14 would have caused them to think that, if they had 15 concerns or they felt like they were intimidated 16 by the police or anything like that, that they 17 couldn't come to you? 18 No, I wouldn't think they -- I don't know where Α 19 they would get that idea, because I was the person 20 they were dealing with in terms of what would 21 happen to them in the preliminary hearing and 22 trial, and I was the person who essentially 23 decided who was called and in what order, and 24 dealt with matters of making sure you are here 25 from Regina and 'don't get lost', all that, and I



1		didn't have any visible resentment of what I was
2		doing from them. I they may well have wished
3		they were doing something else at the time, but
4		certainly from day-to-day I seemed to be able to
5		cope with them. And I didn't use any, you know,
6		menacing or threatening tactics whatever, because
7		I don't do that, plus, of course, that may very
8		well have caused them to abandon ship, as it were,
9		to leave, get lost, so
10	Q	In addition to the fact that they had
11		opportunities, had they been experiencing any
12		unease apart from the unease of having to be a
13		witness in Court proceedings, in addition to the
14		fact that they had the opportunity to express it
15		to you personally, a review of the record and the
16		your file confirms that you had contact with
17		Ron Wilson's mother, so even if he couldn't sort
18		of come to you and say "geez, mum, I got myself in
19		a pickle here", or come to you and say "geez,
20		sir", he could have said "gee, mum" and mum could
21		have come to you?
22	A	Yeah, I'm sure that's on the file, ma'am.
23	Q	Yeah. And she was a witness, in fact, at the
24		preliminary inquiry,
25	A	Yeah.

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1	Q	not required for trial, but certainly you
2		arranged, you spoke with her, arranged for her to
3		come here, she was here, and we have a transcript
4		of her evidence at preliminary inquiry?
5	А	Yeah, I think
6	Q	So you had contact with her?
7	А	No, that's correct.
8	Q	And similarly with Nichol John, although I
9		couldn't find the reference last night, you had
10		contact with at least Nichol John's father. I
11		believe it was he who, at one point, gave you the
12		name of Maurice Cerato as a possible person who
13		might have some material of evidentiary value?
14	А	Yeah, I must have had direct contact with that
15		gentleman, Mr. John that is.
16	Q	And at least one occasion he drove his daughter
17		here for her interview with you
18	А	Yeah.
19	Q	because you recall him being parked outside the
20		courthouse?
21	А	Yeah, that definitely happened.
22	Q	And so if, you know, worst-case scenario she is a
23		little scared of you, she could have talked to her
24		parents and presumably her parents wouldn't have
25		the same angst about coming in to see the $lacktriangle$

1 prosecutor or --2 I don't see why. Mr. John existed, and they knew Α 3 of me, and there was no backlog of sort of ill 4 will that I was aware of, Ms. Knox. 5 Q Okay. Now much has been made, through the course 6 of your cross-examination, of the little notes that you prepared which became subject of investigation and ultimately, at least in part, an 8 9 issue in discussions between counsel at Supreme 10 Court of Canada, --11 Α Uh-huh. 12 -- but the little document that you prepared for 13 -- during the course of the preliminary inquiry. 14 And I've -- I'll bring up a version of it, 301015. 15 And I am referring to, of course, to the recording 16 you made of the report to you that Nichol John had 17 said, in the witness room at the preliminary 18 inquiry sometime in late August or early 19 September, in which she testified in September if 20 I recall my calendar, but she had said in the 21 presence of one of the Millers -- your note says 22 Mrs. Miller, Peggy Miller testified here that she 23 was actually the one present, her mother 24 wasn't, --25 Α Oh, okay.

Q	Mary Marcoux and Albert Cadrain, but Nichol
	John, for no apparent reason, she was sitting as a
	witness waiting, said, 'I don't know why he didn't
	kill me too, I was right there, I saw it all but
	I'm not going to tell anybody'. Now sir, back in
	1969 and through January of 1970 when you were
	preparing your case for trial you were assessing
	whether you had truthful statements from Ron
	Wilson and, in particular, from Nichol John?
A	Uh-huh.
Q	Did this spontaneous utterance as it were, in an
	environment not connected to you, do you recall,
	play any part in keeping you comfortable that
	Nichol John actually saw David Milgaard kill Gail
	Miller?
A	Well it would, it would lend me a degree of
	comfort, because the what she said, of course,
	would indicate that in fact she, 'I saw it all but
	I'm not going to say nothing', that would, I
	thought, be significant because it appears to
	indicate that she did see the murder take place.
	And this is in a setting, if you will, where I
	don't think she expected to be overheard and I
	of course did not overhear her but certainly
	that went into my, you know, conscience, if you
	A Q

1		will, in that way.
2	Q	Yeah. Effectively, an unprovoked utterance by
3		her
4	А	Yeah.
5	Q	that was very harmful to Mr. Milgaard
6	А	Yeah, absolutely.
7	Q	without anyone in the room pressuring her or
8		threatening her or doing anything?
9	А	No.
10	Q	It was a civilian witness room?
11	A	That's correct. And these three people, and I
12		accept that I evidently got Mrs. Miller when it's
13		in fact Peggy Miller, the others I believe were
14		are and were correct,
15	Q	Okay.
16	A	something set her off to say that.
17	Q	Yeah. And again, during your cross-examination
18		last week, much was made of the fact that you
19		didn't raise it in questioning her, or anything of
20		that nature, but aside from that, in terms of your
21		state of mind, your belief in the strength of your
22		case, would it be fair to say that this would have
23		been significant because it confirmed,
24		effectively, what she told Mr. Roberts in the
25		interview that she did with him on May 24th, 1969?
	ı	



That's right, it -- when she says, 'I didn't know why he didn't kill me too, I was right there and saw it all, but I'm not going to say nothing' would be the same, if you will, set of facts in a different language than she did tell Mr. Roberts when he examined her after he examined Wilson, and clearly not on the polygraph, but it certainly fit exactly with my understanding of the true state of her knowledge, Ms. Knox.

Uh-huh. And as a, of lesser significance but nonetheless information that you had in your frame of reference with regard to that, you had -- and I un -- and you believed, evidence from or statements from Ron Wilson that she was frightened of, physically frightened, withdrawing from, not wanting to be near him in the sense that she moved away from him in the car after she supposedly saw this event and that she continued to be frightened and upset en route and on the trip from Saskatoon, to Calgary, to Edmonton; and also some suggestion, did you not in your file, through witnesses who were interviewed but not called, like Barbara Best (sic) in Regina, that after she came back she was obviously bothered by something?

A Yes.

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1	Q	And the statement, although he denies having given
2		it to police, from her social worker that for some
3		reason he was talking to her about a murder,
4		because according to the police documents he said
5		to them that she had told him that she was not
6		personally involved in a murder sometime after she
7		came back off that trip?
8	А	Yeah, all those things are true, they are all in
9		the file, and all those things had an effect on me
10		in terms of her evidence, if you will.
11	Q	And your belief that she was truthful when she
12		said to Mr. Roberts that she'd seen him kill
13	А	Yeah,
14	Q	or stab Gail Miller?
15	А	absolutely, that was my belief then, and none
16		of those things, of course, detracted from it, Ms.
17		Knox.
18	Q	Yeah. It was suggested to you, during the course
19		of your cross-examination, that if you had taken a
20		critical look at her statement there were various
21		things that should have alerted you to the
22		improbability of it, including the fact that she
23		said she saw David Milgaard, when he grabbed Gail
24		Miller, stab at her with a knife as he was pulling
25		her into the alley; do you remember Mr. Wolch or
		Meyer CompuCourt Reporting ————————————————————————————————————



1		Mr. Lockyer suggesting that?
2	Α	Uh-huh, I expect so.
3	Q	And them saying to you that "well, the cuts in her
4		body were through her coat but they weren't
5		through her uniform, so that was impossible,
6		because if he had done it there the cuts would
7		have and effectively, I don't know if they
8		followed this to its logical conclusion but the
9		cuts would have gone through the uniform; do you
10		remember that suggestion?
11	Α	Yeah, I know that line.
12	Q	It couldn't have worked because she said she saw
13		him stab at her in the alley?
14	А	Yeah.
15	Q	Was there anything of the state of Gail Miller's
16		coat or, and I don't know if anybody investigated
17		it, I found one place where it was said by Mr.
18		Asper, in fact, in a press interview, that there
19		were six cuts in the back of the coat. Did you
20		have any reason that you had to assume or believe
21		that because Nichol John said she saw him stabbing
22		at her with the knife as he pulled her into the
23		alley, that that would have meant that the knife
24		was penetrating her coat and penetrating her body?
25	А	Not in the least. The terminology "stabbing at"
		Meyer CompuCourt Reporting ————————————————————————————————————



1		in my vocabulary, one of the could include
2		stabbing at and not having the blows land, all the
3		way up to having them pierce the body of the
4		person.
5	Q	But stabbing, stabbing doesn't necessarily mean
6		that every time somebody gets jabbed with a knife
7		it penetrates all their layers of clothes, goes
8		into the body or anything of that nature
9	A	Not at all.
10	Q	in your experience as a prosecutor does it?
11	A	Not at all, and again the terminology "stabbing
12		at" to me quite legitimately can mean the same
13		thing as "stabbing at" and not having the knife
14		actually, if you will, land.
15	Q	Mr. Caldwell, as a caution, I didn't bring up her
16		statement again, and I should remember it, I've
17		read it so many times, I'm not sure that the term
18		"stabbing at" is her term, she may have said
19		"stabbing", but even if she used the word
20		"stabbing" as opposed to stabbing at, stabbing
21		doesn't necessarily require penetration of all of
22		the garments of clothing and the body for her to
23		have observed a knife being jabbed?
24	A	No.
25		COMMISSIONER MacCALLUM: I think we should



1 be a little careful about what exactly was said. 2 May we have the statement, please? Certainly. 3 MS. KNOX: It would be the 4 COMMISSIONER MacCALLUM: 5 one of May the 24th? MS. KNOX: It would be the May 24th 6 statement, yes, if we could have it brought up. 8 MR. BOYCHUK: 006646. 9 MR. HODSON: 006645. 10 BY MS. KNOX: 11 Okay, Mr. Caldwell, we now have up Nichol John's 12 statement and I'm going to have to beg the 13 indulgence of the group because I didn't go 14 through it and mark --15 MR. HODSON: Next page. 16 BY MS. KNOX: 17 Next page, please. Okay. At the top of page 0 18 006648, part way through her statement she says: 19 "I saw him grab her purse, I saw her 20 grab for her purse again. Dave reached 21 into one of his pockets and pulled out a 22 knife. I don't know which pocket he got 23 the knife from. The knife was in his 24 right hand. 25 I don't know if Dave had a hold

1		of this girl or not at this time. All I
2		recall seeing is him stabbing her with
3		the knife."
4	А	Okay.
5	Q	Okay. So that's the language that she used, but
6		again to go back to, and drawing on what you knew
7		in 1969 in terms of the mechanics of injury, the
8		use of knife in crimes and what you know
9		subsequently through your years as prosecution,
10		that stabbing somebody always required that there
11		be penetration of the clothes?
12	A	Oh, no, clearly the terminology here is stabbing,
13		the word "at" is not there, contrary to my memory
14		of it, but stabbing someone could, in my
15		experience, rank anywhere from not contacting the
16		person or their clothing to the opposite extreme
17		of having a blade penetrate the, whatever layers
18		of clothing there were and lodge itself in the
19		person's body, so there was a whole range of
20		possibilities in my experience, ma'am.
21	Q	And continuing with what she said at that point in
22		time and the objective data that you had to assess
23		what may have happened here:
24		"The next I recall is him taking her
25		around the corner around the alley and I



think I ran after that."

Α

So what happened to her in the alley, whether her coat got pulled off, her uniform pulled down, all of those would be possible to have happened as part of this attack on her by David Milgaard if Nichol John's rendition of what she saw was correct without her seeing it because after the brief struggle and him pulling her into the alley, she had no view of what might have happened, could have happened, did happen, or, as we know now, in fact it didn't happen as between Mr. Milgaard and Miss Miller?

That's how I read this, Ms. Knox, exactly.

Okay. Now, again, sir, and I'm still jumping around a bit here, but in the suggestion to you that you should have been alert to, you should have done a critical analysis of statements, you should have realized that something was wrong here, did the fact that some of what was given in the news statements squared better with facts than what had been given in the first statements, and I'm thinking of, and we can talk about dishonesty or omissions because the right questions weren't asked or whatever, but the fact, for example, that neither one of them disclosed in their original

1 statements about the elevator break-in and things 2 like that, did that play any part in your 3 assessment of what was the truthful statement as 4 you came to believe it, or the truthful statements 5 as you came to believe them, following May 23rd, May 24th, 1969? 6 The fact of, let us say, mistaken or wrong Α evidence about, for instance, what was and wasn't 8 9 taken from the elevator wouldn't cause me to 10 derail or discount later statements which I had 11 every reason to think were more complete and 12 truthful, Ms. Knox, those kind of differences 13 could happen without them triggering me saying 14 because she didn't notice, say, the flashlight, 15 I'm not going to believe anything she said. 16 But more importantly, Mr. Caldwell, is the fact Q 17 that they were things that were not quite legally 18 proper that were omitted from their first 19 statements, did that influence you in thinking

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that, and I'm going to paraphrase or coin a phrase here that we often use, that basically in March of 1969 they were snowing the police a bit, and it was the little things from the start, it was suggested to you, like, all three of them said the same things. Well, all three of them omitted the



1		fact that they stole the battery before they left
2		Regina.
3	А	Yeah.
4	Q	All three of them omitted the fact that they did a
5		break-in at the elevator, those kinds of things.
6	A	Yeah.
7	Q	The things they admitted, although Mr. Lockyer
8		said there's no indication that these guys got
9		together and planned their story, somehow they all
10		conveniently managed to leave out that which was
11		not very favourable to them, not in the context of
12		the murder, but just in the context of their
13		conduct that night?
14	А	Well, that phenomenon isn't rare by any means of
15		having people who are colleagues to some extent in
16		what is going on, be reluctant to come out with,
17		you know, truthful, umm, descriptions of what they
18		really knew all along, so the fact that that
19		happened, Ms. Knox, would not cause me to say
20		therefore I don't believe what they did say later
21		when I felt that what they said later was true and
22		supportable by various other means.
23	Q	Okay. Sir, in addition to the fact that, and I
24		suggested to you that those weren't the days when
25		it fell off the tip of her tongue to be suspicious



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of the police or anything of that nature, that you were operating in an age of more trust and good faith in a large part due to the fact that generally police, particularly in small communities, were very reliable, did their very best to do their job, sometimes made mistakes, but often more because of innocent mistakes as opposed to the kind of malfeasance that officers in this town are being accused of in this case, but is it not a fact that also in addition to the fact that, as Mr. Lockyer suggested, and Mr. Wolch may have suggested, you didn't do a real critical analysis of what happened in those May 23rd, May 24th interviews that caused the change, that in fact that's not quite right, and I'm going to ask to have brought up document 006818, and this is a letter directed by you to Mr. Boyd, the administrative officer for your department, October 2nd, 1969, it's regarding the Miller file, and the significance of the letter is not so much the content, sir, but it is, to refresh your memory, that in fact at the request, or at the suggestion perhaps is a better way to phrase it, at the suggestion of Mr. Tallis in his capacity as counsel for Mr. Milgaard, you did in fact get into



1		the city the very person who took those statements
2		that you were relying on so much as being
3		accurate, being Inspector Roberts, you arranged
4		for him to come in, you had him interviewed by
5		both yourself and Mr. Tallis together concerning
6		the part he played in the questioning of the
7		witnesses and presumably the circumstances giving
8		rise to those statements that are so much the
9		point of contention in this Inquiry.
10	A	All of that happened, Ms. Knox, as set out in this
11		letter.
12	Q	And is the records in your file, and it has
13		been canvassed with Mr. Hodson by you, in fact you
14		had subpoenaed Mr. Roberts to be available for the
15		trial to give evidence if it was it appears if
16		it was considered necessary by Mr. Tallis, but
17		certainly you and he both took the steps of
18		talking to this expert in a new field of science,
19		as it were, in criminal justice, and presumably to
20		get a take on the bona fides of what he did, what
21		he got and how he got it, as it were?
22	A	That all occurred, Ms. Knox, and I felt all that
23		was, you know, certainly proper from my point of
24		view.
25	Q	Sir, in his course of his cross-examination, at



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one point, with some objection from me, Mr. Lockyer referred you to, and Mr. Wolch did too, to lessons we've learned over the years as a result of the inquiries into the criminal justice system, realizations that some of the things that we've done, albeit in good faith in the past, weren't necessarily the right things, and you were referred to the Morin Inquiry, for example, and the failure to disclose a statement, how it would have made a difference in terms of the charges against Mr. Morin and others, but would it be fair to say that, and I want you to go back again if you can to 1969, that over the years between 1969 and 1987 when you left practice, that just as there was continuing and evolving attitudes and practices within police departments, prosecutors' offices about, for example, how we dealt with women who were victims of sexual violence, the rape cases, we also came to realize through the course of time and lessons learned, both in our jurisdiction and others, that sometimes what we believed to be the state of the art in how we did our work, and which we used in absolute good faith, wasn't necessarily always the state of the art?

A Yeah, I'm sure that happened from time to time, clearly.

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We talked yesterday a bit about the evolution of legislation and practices around rapes and rape offences, the change in the law to better accommodate the reality of the circumstances that women find them in, the notification of victims about what happens to their cases. I'm going to suggest to you that another area that we came to learn that we weren't always wise in our practices in was interviewing techniques that we used as --I say we, but as police officers in interviewing witnesses and suspects, as prosecutors in the way we interviewed witnesses in preparation for presenting their evidence in Court, and sometimes in the ways we presented their evidence in Court, just as we came to learn that sometimes those guys sitting up there on the bench didn't always have a good appreciation of the way people think, the way they react to situations and how vulnerable they may be to suggestion, be it subliminal or otherwise. Would you agree with me that that was --

Yes, I agree with that. There was, I think, a continuing attempt, if not success, in improving



1 methods of interviewing witnesses and eventually 2 of course calling their evidence, and some of that 3 would be affected, of course, by decisions coming 4 down from higher courts saying you did that wrong, 5 please do it this way in the future, and I'm sure prosecutors made the attempt to follow through on 6 that. And you've indicated that you've had some 8 involvement in changing police practices after you 10 came to the Saskatoon office. Did you have any 11 involvement in teaching, for example, at the 12 Police College in Regina, teaching officers about 13 how to take statements so that they got good, 14 accurate recounting of events from witnesses 15 uninfluenced by other knowledge they had or 16 beliefs they held about what may or may not be the 17 actual case? 18 I did a small amount of lecturing at Regina at "F" Α 19 Division, often to RCMP members. 20

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Division, often to RCMP members. Once I moved to Saskatoon I lectured a very large number of times, the number, for instance, 30 plus sticks in my mind, to Saskatoon police sections, let's say, morality detectives, this, that and the other, at their request, and as I mentioned earlier, one of these lectures is actually what led to the



1		institution of the case prep office for the very
2		kind of, you know, difficulties officers thought
3		they were having, so that did go on, not limited
4		to what you've stated, but of course quite a broad
5		range of subjects.
6	Q	Okay. Sir, I'm going to suggest to you that well
7		beyond the 1969, 1970 time frame that you were
8		operating in and that Sergeant Mackie was
9		operating in, Lieutenant Short and others,
10		Detective Karst who interviewed witnesses in these
11		cases, that curriculums were instituted in police
12		colleges to teach police officers how to properly
13		take a statement, the art of effective statement
14		taking?
15	A	I'm sure that happened.
16	Q	I'm going to suggest to you that even in well,
17		certainly in Saskatoon, in particular, experts
18		were brought in, there's one guy who has an Israel
19		name that I can't remember now, but experts were
20		brought in to teach police officers how to
21		properly and effectively take statements, not to
22		suggest that they had been intentionally doing it
23		wrong
24	А	No.
25	Q	but to help them learn from the lessons of
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1 others? 2 I'm sure that happened as time went on, Ms. Knox. Α 3 And I'm going to suggest to you that as time went on there evolved a community of experts, 4 5 psychologists and others, who teach the art of effective statement taking and point out to 6 professionals like prosecutors, police officers 8 and others in the system, including involving 9 themselves in some judicial training, about the 10 pitfalls of all the assumptions that we used to make about how we were doing our jobs and our 11 12 inherent belief that we were doing it right, 13 without realizing that sometimes we were doing 14 some damage with respect to the accuracy of 15 information that we were getting from witnesses, 16 including eye witnesses and doing that? 17 I know that that has been a growth industry in Α 18 every, I say that respectfully, over the last 19 number of years because of the very flaws that 20 have been discovered in cases as to the way the 21 statements were taken. 22 Q Mr. Caldwell, you and I haven't discussed this 23 before, but I hope you mean growth industry in the 24 most positive sense. 25 Α Yeah.



1	Q	Because I was part of the growth industry in
2		another jurisdiction.
3	А	Yeah, I did mean that in a complimentary way,
4		ma'am.
5	Q	But basically it was learning from mistakes made
6		benignly as opposed to with sinister actions on
7		the part of others?
8	A	Oh, that's quite right. There were some of the
9		subject matter involved young people, others,
10		sexual assault victims, and there were
11		unquestionably court findings that indicated that
12		the way they went about case X was not right and
13		here's how it should be done in the future, and
14		certainly this involved high, you know, high rate,
15		trained personnel giving the instructions as
16		opposed to, you know, your fellow officer,
17		whatever. I certainly know that happened.
18	Q	I'm going so suggest to you that you are right in
19		talking about some of it being about interviewing
20		sexual assault victims and victims of violence,
21		but it extended beyond that, I'm going to suggest
22		to you, even to getting eye witness accounts, for
23		example, without planting unintentionally into the
24		conversation pieces of information that would
25		unknowingly influence the recollections, recall of

1 even eye witnesses. 2 Α Oh, I'm sure that that's a very proper area, and 3 it has been studied and presumably it has 4 improved. 5 Q Now, sir, in 1969 when you were dealing with these officers, and I've just listed some of 6 them, Sergeant Mackie, Detective Karst, Lieutenant Short and others who were part of the 8 9 investigation, Mr. Ullrich in helping you, 10 assisting you with Court, did you at any point in time ever either accidentally or by their design 11 12 become aware of any kind of action or thought 13 processes on their part that would fall into what 14 Mr. Lockyer referred you to last week as either 15 tunnel vision or noble cause corruption, where 16 they believed they got the right guy and they will 17 go to any lengths to get him, even perjury, 18 massaging evidence or anything of that nature? 19 No, nothing like that came to my attention. 20 Those -- the officers who were involved in this 21 file I'm sure knew I had a very taxing job to get 22 the case through the Court system in proper shape 23 and I'm sure that they would be very conscious and 24 avoid -- the last thing any of them would want to



do was try to sneak something by me, Ms. Knox,

1		because I was a relatively new arrival in
2		Saskatoon and I just, I'm sure there was a mutual
3		respect there and I didn't detect any hint of that
4		thing that you mentioned, whatever.
5	Q	You've made reference a number of times to the
6		fact that in 1969 Saskatoon was a small community?
7	A	Uh-huh.
8	Q	All of these officers were senior officers in the
9		field of policing in this small community?
10	A	The ones we've mentioned were.
11	Q	And you were a senior prosecutor in a small
12		community at that time, and I'm just stating some
13		obvious facts here.
14	A	Yeah, that's correct.
15	Q	You certainly had a family, a wife and children.
16		Some of them, if not all of them presumably, had
17		families who lived in this community; would you
18		agree with that?
19	А	The police officers all lived in the community, I
20		did, and we, between us, had, needless to say,
21		various children.
22	Q	If you had done either, for any purpose, the
23		things that have been suggested about you over the
24		years, you personally as the prosecutor, the
25		police officers as the police officers, if you had
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1		done any of the things suggested knowing that you
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		were causing an innocent man to be convicted, you
3		would have had two realities that you all would
4		have had to live with, wouldn't you, one being
5		that you put an innocent boy in jail?
6	А	Absolutely.
7	Q	But the other would have been for all of you that
8		you would have had to go home and sleep at night
9		knowing that you left a vicious rapist and killer
10		loose in a community where you, your families and
11		your children lived wouldn't you?
12	A	Yeah, that would be the other side of that same
13		coin in my view, ma'am.
14	Q	And the continuation of that side of the coin
15		would have been every night when you went to bed
16		you would have had to sleep or try to sleep
17		knowing that maybe tonight is the night he's going
18		to strike again?
19	A	Yeah.
20	Q	We haven't protected our community, we've lied to
21		our community and we've exposed them to continuing
22		and perhaps greater risk?
23	A	Both those things would be intolerable and, in my
24		case, even though we now know the result of the
25		case was incorrect, none of those worries or
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1 troubles affected me over the years, whatever, 2 because up until the, in effect, the DNA evidence 3 came out, I was -- my conscious was fine, I was 4 sure that the right person had been convicted, and 5 so none of that, Ms. Knox, took place or got back 6 to me in any way, shape or form. MS. KNOX: Sir -- and, Mr. Commissioner, 8 I'm noting the time, it's about 10 minutes to 12. 9 The next area that I intend to go into is the one 10 that's going to take some time because it's the 11 subsequent contact that Mr. Caldwell had with the 12 National Parole Board. 13 COMMISSIONER MacCALLUM: 14 I can start and go into it for MS. KNOX: 15 10 minutes or we can break and I might be a little bit more efficient when we come back this 16 17 afternoon. I'm at your discretion. 18 COMMISSIONER MacCALLUM: Well, if 19 efficiency will make up for the 10 minutes, Ms. 20 Knox, I'm happy to break here. 21 MS. KNOX: Yeah, I can get rid of a whole

bunch of stuff that I no longer need and be better organized for the afternoon.

COMMISSIONER MacCALLUM: Good.

(Adjourned at 11:49 a.m.)

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(Reconvened at 1:31 p.m.)

MS. KNOX: Thank you, Mr. Commissioner.

BY MS. KNOX:

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Mr. Caldwell, I had indicated before the break that I was going to go, move to the area of your in -- contact with the National Parole Board in 1972 and forward, and I will go there immediately, but this morning I had said to you that somewhere in your file I remembered an indication you had had contact with, and conversation with, Nichol John's father. I wonder if I could bring up document 007074, please. And I think -- I just want to make the record correct, I suppose, in this regard -- I think what I was recalling was the letter that you wrote to Mr. Tallis dated January 15th, 1970, where what you in fact indicated to him was that Nichol John's father had called Detective Karst, and the incident or the person being referred to there is Maurice Cerato, and I had mistakenly, in my review of the material, attributed that phone call as having been received by you.

A Okay.

But to expand on the point that I was making this morning, certainly Nichol John's family made --



1 had contact with the police as well as with you, 2 as we know because her father was outside the 3 office, if she had shared concerns, or they had concerns that she was being improperly treated in 4 5 any manner or coerced into giving information that wasn't in fact --6 Yeah. Α 8 0 -- believed or apparently accurate at the time? 9 Yes, the -- they know where and when I was, Ms. Α 10 Knox. 11 Q Sir, the next area I want to go is of 12 course, as I've said, the involvement that you had 13 with the National Parole Board and the contacts 14 you made with them over the years with respect to 15 Mr. Milgaard. And you have been questioned at 16 length at that and at one point in time 17 Mr. Lockyer, I believe, suggested to you that, by 18 your actions and your interventions with the 19 parole board over the years, you not only gave 20 them information that was incorrect, but in fact 21 you became, in effect, Mr. Milgaard's greatest 22 tormentor during the course of his sentence; do 23 you remember that being suggested to you? 24 Α I do. 25 Okay. And it's also been suggested that your



1		motivations were doing for doing that are
2		questionable, and driven by a zeal to keep him in
3		jail, with the suggestion that knowing, as you
4		knew, or it's suggested you knew that in fact he
5		was an innocent man?
6	A	Yeah, yes.
7	Q	You remember those suggestions being made in the
8		public arena, and to some extent in these hearings
9		at various points in time, do you know not?
10	A	I do, Ms. Knox.
11	Q	Okay. Mr. Caldwell, Mr. Hodson indicated during
12		his last area of questioning with you that the
13		Commission had been successful in obtaining the
14		parole board document that you were relying on in
15		your correspondence and as the reason for your
16		contact with the board in 1972; do you recall
17		that?
18	A	I do.
19	Q	And the book, as you indicated in your letter in
20		1972, was entitled an outline of canada's parole
21		system for judges, magistrates, and the police?
22	A	That's correct.
23	Q	Okay. That document has now document ID 332055
24		and I have it brought up on the screen. And, as
25		Mr. Hodson didn't canvass any of it in detail with
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1 you, I want to direct your attention and Commission's attention to parts of it. And if we 2 3 could turn to the third page of the document, which would be 57, 0057, the Introduction sets out 4 5 the purpose of the book, and I take it you would have read that when you came into possession of 6 the book and, to some extent, been guided by it in your decision to make contact with the National 8 9 Parole Board in 1972? 10 Α No doubt I did, Ms. Knox. 11 And essentially what the booklet is, it's an 12 invitation, it says judges, magistrates and the 13 police, to -- or it's an invitation for them to 14 become involved by, first off by acquiring an 15 understanding of the policies and operations of 16 the board to promote a better understanding of the 17 board work, and in -- significantly from your 18 point of view -- to increase coordination between 19 board, the board and others in the field of 20 corrections so that we can realize our mutual 21 aims, the protection of the public and the 22 rehabilitation of the offender? 23 Α Yeah, I would have seen and read that and thought 24 that was, you know, a legitimate concern as it 25 were.

1	Q	Okay. And if we could go to the next page,
2		please, and I'll refer you to just a small piece
3		starting here, the dual purpose of the board. And
4		I take it you would have read, as well, this
5		section that says the dual purpose of parole is to
6		assist in reformation and rehabilitation so that
7		he can be, an offender can become a law-abiding
8		citizen, but also to ensure there is no excessive
9		risk to society?
10	A	I would. That's a double-barreled proposition, as
11		you see, and I undoubtedly perused that.
12	Q	And again, moving on to further down the page in
13		the second column, you would have reviewed the
14		policy statement as contained in this document,
15		the suggestion that parole is not a question of
16		interfering with the sentence of the Court, it's a
17		matter of mercy or clemency, the board believes
18		that parole is important to assist in
19		rehabilitation, and they list a number of factors,
20		and I direct your attention to (d) and (e) in
21		talking about the factors they consider and
22		referring to an inmate; where his reform and
23		rehabilitation will be aided by parole and when
24		his risk or when his release would not mean an
25		excessive risk to society?

1	A	I see those.
2	Q	And, sir, in reading through this and other parts
3		of this document and I'm not going to take you
4		through all of it was it apparent and clear to
5		you that the parole board operated on a policy of
6		risk assessment, if I can use their language, and
7		that they considered treatment, rehabilitation to
8		be a very important aspect of their mandate, but
9		also that such had to be weighed in terms of the
10		protection of the public?
11	A	Yeah, I certainly understood that to be the case,
12		Ms. Knox.
13	Q	Okay. And sir, again in terms of going through
14		the book, if we go to the next page sorry, if I
15		can go back a page, please, and if I could go now
16		to 59 I'm sorry, my copy doesn't have all the
17		page numbers and I want to draw out this
18		particular part right here. It talks about the
19		eligibilities for an inmate serving a life
20		sentence, and specifically said an inmate serving
21		a life sentence for non-capital murder must serve
22		ten years, and anyone serving a life sentence must
23		serve seven years.
24		So in 1972 I draw this to
25		your attention only for the obvious question in

1 1972, when you were writing to the parole board and you were saying "you have in your custody a 2 3 young man who I believe has some serious psychological problems and he is a big risk to 4 5 society", this was being done in the context of there being a number of years for them to engage 6 in their processes of assessment, treatment, and, if possible, rehabilitation; was it not? 8 9 Α It --10 You weren't riding up to the gate when this kid 11 was about to come out and say "hold your horses, 12 you shouldn't be lettin' this guy out", but you'd 13 let him sit there for seven years or six years 14 before you drew your concerns to their attention, 15 you acted years in advance of his earliest 16 eligibility date? 17 That's correct. And I would have seen that as Α 18 being ten years in this instance, ma'am, minus the 19 things they mention there, so that I knew they had 20 a good, lengthy period in which they could act. 21 And, all things being equal, I would think the 22 earlier my concerns got to them, regardless of how 23 they evaluated my concerns, the better it would be 24 for -- for the operation of the system. 25 If we could go to the next page, please, Q



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I see that.

there is a category that I will have brought out here under the heading Investigations and Reports. Now I'm not going to refer to the particular page number but at one point it was suggested to you last week during your questioning that -- and I'll take you through your letters in a moment -- but when you wrote your letters you, at one point, said that you knew of no resource in the community that would assist him, and you were challenged to say "but you knew about his family, you knew his family supported him, you didn't say anything like that to the parole board"; do you remember, in a summary way, being asked those questions? Yeah, that's right. Α And, sir, when you were doing your letter in 1972 I take it you would have read and had knowledge of the process of parole assessment, that the parole board does, as it says here, that they do a -investigations, they do personal interviews with the inmate and his family, these are done by the board's own staff, they don't rely on third-party reports, and they look at reports from courts, police, institution and social agencies that have dealt with him?



1	Q	So effectively, when you were doing the part that
2		you did, you weren't doing it with any expectation
3		that you could mislead or change the picture of
4		David Milgaard's parole situation vis-a-vis his
5		family and any support he might have had from
6		employers or anything of that nature; were you?
7	A	No, no, I was putting to them what I believed was
8		valid information, at what I thought would, in a
9		timely fashion, in short as early as possible
10		within reason, Ms. Knox.
11	Q	Okay. And I'll just highlight here, in terms of
12		your assumption or your presumption that it was
13		appropriate for you to do this, in fact throughout
14		this manual the board is expressing appreciation
15		for they refer to police, magistrates and
16		judges, but I presume you considered yourself to
17		be of that ilk but they express appreciation
18		for officials in jobs such as yours, the police,
19		the courts, who would take the time to assist them
20		in having the full picture of an offender so that
21		they can make the best possible decisions both in
22		terms of treatment and release considerations
23	A	Yeah.
24	Q	if those become factors?
25	A	That's how I took it, and interestingly there's $lacktrian$

1 not a heading for prosecutors, but certainly 2 somewhere along the continuant from police to 3 courts I would have felt confident that they 4 would, you know, welcome assertions from 5 prosecutors. If we could scroll down, then, to the Q Okay. 6 heading that is down at the bottom of the screen, 8 and under the category of Judges and Magistrates, 9 which you considered yourself to come into or to 10 be part of the group in an extended kind of way, 11 you indicated in your evidence earlier that you 12 were looking at and considering nine criteria that 13 they had outlined --14 That's right. Α 15 -- as to the basis of the reports, and I take it 16 you are referring to this part of their booklet 17 that says 'when we asked for reports you, having 18 taken on the task, or self-appointed of doing the 19 report, that you follow -- you do certain 20 And if we could go to the top of the 21 next column, please, and outline these items (a) 22 to (i)? 23 Α Yeah. 24 0 Would these be the criteria that you were 25 considering when you drafted your letter in 1972?



		_
1	A	Yes, Ms. Knox, they were. I think I even recited
2		each one, in effect, as a separate paragraph, and
3		what my views were on each of them, if I'm not
4		mistaken.
5	Q	And sir, for the record, what they were asking was
6		for you to give your impressions of the inmate and
7		his attitude and demeanour at the time of the
8		sentence?
9	А	Right.
10	Q	A complete picture as presented at trial, and the
11		circumstances of the offence, not just the
12		evidence at trial but the circumstances of the
13		offence?
14	А	Correct.
15	Q	The effects of the offence on the victim and in
16		restitution, which clearly wouldn't have been a
17		factor here; the reaction of the public, if any,
18		to the offence?
19	А	That's so.
20	Q	Whether violence was involved in the commission of
21		the offence?
22	А	That's so.
23	Q	Whether the offence was deliberate; the offender's
24		reputation, family background, and work record in
25		the community you were invited to comment on?
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		<b>o</b>
1	A	Right.
2	Q	You were invited in (h) to talk about alcohol or
3		drugs, if you had knowledge; and clearly the last
4		one would be for a judge, what you had in mind
5		when you gave the sentence you did, which I
6		presume you didn't attempt to proffer, but it
7		didn't matter anyway,
8	A	No.
9	Q	it was a statutory required sentence?
10	Α	I'm sure that's correct.
11	Q	And then going to the last paragraph, this
12		paragraph here directed at judges but in the tenor
13		of you writing the report, you do you recall
14		seeing that the board said invited or expressed
15		a view that 'some judges', particular 'or
16		magistrates, particularly in rural areas, are able
17		to give us a great deal of information about a
18		man's family and background and his reputation in
19		the community which might not have been obtained
20		from other sources. We want as much information
21		about the inmate as possible, and we are most
22		grateful to sentencing authorities for their
23		assistance in this matter.'
24		So again, in terms of the
25		criticisms you have been subjected to about the



1		information you put in, would it be fair to say
2		that, when you sat down to write this report using
3		this document or this booklet and this invitation
4		as a guide, you were being invited to step outside
5		the rules of evidence and the just what
6		happened in the courtroom, and to give a broader
7		base of information, if you had it, including
8		nebulous things by way of proof like reputation, a
9		man's reputation in the community?
10	А	That's true. The first sentence there, Ms. Knox,
11		which concludes, 'which might not have been
12		obtained from other sources' would be a broadening
13		of possible, you know, sources of information,
14		which they clearly invited, whatever use they made
15		of it. And then the terminology, 'we want as much
16		information about the inmate as possible'
17		and on, to me, conveyed just that.
18	Q	And again I assume that you read the full booklet
19		and you didn't figure you were closer to the
20		judges and magistrates, but you were closer to the
21		police, I want to, I'll scroll you through the
22		section about, that's directed to police, and if
23		we could go to the bottom paragraph at the bottom
24		of page 4, they indicate to police, and I presume
25		you read this, that we would like to know the



	circumstances of the offence, what part the
	offender played, we would like to know if the
	offender was cooperative when apprehended, you may
	be able to tell us something, and if we could go
	to the next stage, about the man's general
	reputation in the community and if he has been in
	trouble previously. You may also know the
	offender's work record and family background, all
	this information is useful.
А	Is see that, ma'am.
Q	Again, sir, an invitation to step outside criminal
	convictions, proven evidence in the Court and to
	be more encompassing in passing on your knowledge
	be more encompassing in passing on your knowledge base?
A	
А	base?
A Q	base? That would, Ms. Knox, be the only way I could take
	base?  That would, Ms. Knox, be the only way I could take that paragraph. I'm sure I took it that way.
	base?  That would, Ms. Knox, be the only way I could take that paragraph. I'm sure I took it that way.  Okay. Now, sir, I want to take you to the next
	base?  That would, Ms. Knox, be the only way I could take that paragraph. I'm sure I took it that way.  Okay. Now, sir, I want to take you to the next part, and still under the umbrella of the police,
	base?  That would, Ms. Knox, be the only way I could take that paragraph. I'm sure I took it that way.  Okay. Now, sir, I want to take you to the next part, and still under the umbrella of the police, do you recall reading, or would you have read, if
	base?  That would, Ms. Knox, be the only way I could take that paragraph. I'm sure I took it that way.  Okay. Now, sir, I want to take you to the next part, and still under the umbrella of the police, do you recall reading, or would you have read, if you don't recall, that in expressing the
	base?  That would, Ms. Knox, be the only way I could take that paragraph. I'm sure I took it that way.  Okay. Now, sir, I want to take you to the next part, and still under the umbrella of the police, do you recall reading, or would you have read, if you don't recall, that in expressing the invitation or encouraging the participation of



"If there was no official version of the

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offence, the inmate is able to present his version without fear of contradiction. This would thwart any attempt to have him face the reality of the offence and hinder reformation and rehabilitation."

And then they talk about sexual assaults as an But again, did you read from this that example. they were wanting to know everything that they could so that they could meaningfully engage in assessment and treatment with a view to rehabilitation if that was an appropriate alternative once all risk factors had been assessed for offenders such as Mr. Milgaard? Yeah, I would agree with that. The way that opens for, "If there was no official version of the offence, the inmate is able to present his version without fear of contradiction, " is to point out, I think, the danger that exists if the board had, in effect, no known facts to go by, and that would be one of these situations they must have been faced with, not in this case, but in general, Ms. Knox. Okay. Going to the next column, and under the heading institutions, while clearly you were not an institution, would the direction or the



1		information contained there, and the
2		identification of the importance of having
3		previous records from any institutional personnel
4		that had dealings with this individual, could be
5		helpful for the assessment of individual group
6		counselling, need for medical psychiatric
7		treatments, and it goes through a whole list of
8		factors here
9	A	Uh-huh.
10	Q	but that would have been read by you?
11	A	It would, and those of course would all be very
12		legitimate concerns of the parole board as I see
13		it.
14	Q	And again I'll highlight some specifics when we go
15		to your letter, but would this have been a factor
16		in your preparation for doing your 1972 letter
17		that caused you to contact Dr. McDonald?
18	A	Do you mean initially?
19	Q	No, in 1972
20	A	Yeah.
21	Q	you made contact, and just to refresh your
22		memory, if we could bring up for the moment
23		document 006845, and if I could bring out the
24		first paragraph of that, this is a letter dated
25		June 5th, 1972 by Dr. McDonald to you from his

1 office at University Hospital where he identifies 2 himself as a professor and then the head of 3 psychiatry, and Dr. McDonald documented in his 4 letter that you had recent telephone conversations 5 with him and that you had asked for a diagnostic label for Mr. Milgaard? 6 That's clear there, yes. Α And he indicated that he had reviewed his 0 Okay. 9 file, which was based only on the one interview 10 that he had done that we heard about, plus he had reviewed a number of institutional reports; the 11 12 Yorkton Psychiatric Centre, number 1, the Munroe 13 Wing of the Regina -- in Regina, sorry. 14 Yeah. Α 15 Number 2, and the Child Guidance Clinic of Greater 0 16 Winnipeg. 17 Yeah. Α 18 So he had looked at records from various sources, Q 19 and last day Mr. Wolch referred you to records 20 from the Yorkton Psychiatric Centre only, but 21 clearly there were records existing in 1972 from 22 other institutions where Mr. Milgaard had attended 23 and been assessed, treated or whatever the



have the record.

appropriate language is, given that we no longer

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1	А	Those, Ms. Knox, were the things I was referring
2		to in a general way, the chart, so-called, which
3		Dr. McDonald undoubtedly had assembled at the time
4		when I asked him to interview Mr. Milgaard, and
5		all those sources, of course, would be invaluable
6		to a person like himself in, among other things,
7		being asked for a proper title for the situation
8		of the accused, so that those are all extremely, I
9		would think, important raw material.
10	Q	And would that marry well with the document that
11		we were going through that you had from the
12		National Parole Board that pointed out to police,
13		judges and magistrates the importance of having
14		past institutional records where there was any
15		psychiatric, psychological history and that kind
16		of thing?
17	А	Yeah. It would be, in any of these kind of
18		situations, I'm sure that a psychiatric person is
19		far, far better off with reliable material on the
20		background of the accused as previous treatments
21		than simply, in effect, seeing him cold without
22		any of that, Ms. Knox, that would all be very
23		valuable in my opinion.
24	Q	Okay. While we're in this particular paragraph of
25		the document, given the order that Dr. McDonald



1		wrote it, it was suggested to you by Mr. Wolch
2		that you had over-inflated Mr. Milgaard's past
3		history of psychological, psychiatric problems
4		that made him out to be a much worse character
5		than he was, and I refer you to the sentence from
6		Dr. McDonald that gave you a diagnosis, and would
7		you agree that what he told you a couple of weeks
8		prior to you writing the parole board in 1972 was
9		that it was his considered opinion that this young
10		man was suffering from a severe behaviour disorder
11		which he thought would best be described as
12		sociopathic personality?
13	А	That's what he concluded and put in the letter.
14	Q	Okay. And, sir, is that the label that you gave
15		to the National Parole Board when you attempted to
16		summarize what your understanding was of the
17		psychiatric situation of Mr. Milgaard in 1969,
18		1970 prior to his incarceration?
19	А	Ms. Knox, I'm not certain if, or that I used that
20		exact title. It wouldn't surprise me if I had
21		because it was coming from the person with the
22		knowledge to assess those things and, you know,
23		try to name people accurately as to their
24		condition.
25	Q	Okay. If I could take you to the second paragraph



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of the doctor's letter, and keeping in mind again
the information you had from the National Parole
Board that they liked having prior psychological,
psychiatric histories because it could help them
assess the appropriate treatments, this paragraph
where he says if the parole authorities are
interested in following up this case, they might
be advised to contact, number 1, Yorkton
Psychiatric Centre, which has a fairly voluminous
file on him, Munroe Wing also have some valuable
information, and of course the Winnipeg Child
Guidance Clinic has reports of evaluations done in
November, 1960 when Mr. Milgaard was in primary
school, so three sources he repeats again, and
then he goes on to say the Department of Social
Welfare provided information to him, by
implication of his language here, with respect to
Mr. Milgaard's stay in the correctional school in
Regina in the spring of 1966 and this might also
be useful?
Uh-huh.
So essentially what Dr. McDonald did for you is he
gave you a diagnostic label?
That's correct.
He gave you and he gave you the gaveger of

He gave you -- and he gave you the sources of

1		information, apart from his one interview, that
2		caused him to give that label, but he invited you
3		to invite the parole board to check it out
4		themselves, if I could shorthand summary what he
5		was offering there?
6	A	Yeah, that's what he did, and of course that
7		he's, I think, one step better than simply saying
8		this is what I say he is, thanks for talking to
9		me, because it left it to the board to get all
10		those legitimate sources of raw material on the
11		gentleman and to come to their own conclusion is
12		the way I would put it, Ms. Knox.
13	Q	Okay. I now want to go to document 006840. Now,
14		sir, this is your file copy of the letter that you
15		then wrote to the parole board nine days after
16		Dr. McDonald wrote his letter and we've had it
17		reviewed a number of times, you start on your
18		introduction to the chairman by saying you have
19		had an opportunity to read the booklet that I've
20		just been referring you to?
21	А	Yes.
22	Q	Our document 332055. You indicate that you are
23		writing him in respect of Mr. Milgaard and you
24		give some information with respect to the events,
25		the circumstances of the offence, and generally

1 offer fairly detailed information about the events 2 in Saskatoon the early morning of January 31st? 3 That's correct. Α You include in it information that was led in 4 5 evidence of trial about the reenactment of the 6 stabbing in a motel room some months later, May, '69, if we go to the next page of your letter. 8 Α Yes. Sorry, page 842, I'm on the third page. 10 Okay. I can talk faster than they can flick documents. 11 12 Okay. But you talk about the reenactment of the 13 stabbing, and these are familiar so I'm going 14 through them fairly quickly. I want to refer you 15 to the paragraph that Mr. Wolch referred you to 16 and others have, you indicate or you state that in 17 preparing the case you had the privilege of 18 reading his entire psychiatric history which was 19 very well documented since his early youth, and 20 you said he had been in constant trouble since 21 kindergarten days, and the file even contains 22 predictions by social workers who had examined 23 Milgaard, that he would one day kill someone. 24 Α Yeah. 25 Now, sir, I want to just stop and walk you through



1 some of that information if I may, again because 2 of challenges made as to your accuracy and 3 interpretation. We have available, and it has been marked as an exhibit, the records of, various 4 5 records from the Yorkton Psychiatric Centre, you reviewed them last week? 6 That's right. Α 0 And I'm referring, Mr. Commissioner, to the 9 document starting 325181, it has a series of 10 reports with different dates on Mr. Milgaard. The 11 ones I have are November 14th, 1966, February 12 11th, 1967, a social history done November 14th, 13 1966 that's quite lengthy, and a number of other 14 pages that are headed social history, and I refer 15 you particularly to document 325182. This is the 16 continuation of social history, but I draw to your 17 attention, because it is a continuing chronology, 18 if one follows it through and looks at the dates 19 at the top on the right-hand side of the pages, of 20 difficulties, assessments that are ongoing during 21 Mr. Milgaard's time at the Yorkton Psychiatric 22 Centre. 23 Α Yes.



At 325190 we

have a continuation, but on a different date,

I'm just going to proceed forward.

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1		December 29th, 1966, all still on their letterhead
2		or the form social history. The next page,
3		325191, we have a document headed, in format,
4		social history, but bearing the date January 18th,
5		1967.
6	A	I see that.
7	Q	Next page, 325192, again same document form, but
8		bearing the date January 19th, 1967.
9	A	I see that, ma'am.
10	Q	And if we go to 325173, we have a heading that
11		this is a summary recording on February 13th,
12		1967, so moving forward in time there's
13		documentation of contacts, difficulties, visits
14		with family and various problems as they developed
15		with Mr. Milgaard?
16	А	That's right.
17	Q	Okay. So when you were referring to having an
18		extensive history, there's documentation still
19		existing that dates from November 14th, 1966
20		through February, 1967?
21	A	Yeah, that's right, Ms. Knox.
22	Q	Okay. Now, Mr. Commissioner, Mr. Wolch expressed
23		a concern last day that we don't unnecessarily put
24		information into the public record about Mr.
25		Milgaard, and particularly about his family and
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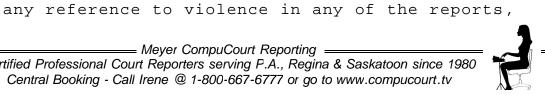
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other members of his family, and I start with the assurance that I'm not trying to do that, but as I review the questioning that was done of Mr. Caldwell by Mr. Wolch, and in particular the suggestions that he was somehow motivated by, I'm not sure malfeasance is the right word, but it wasn't exactly with good faith that he was contacting the parole board starting in 1972, I become concerned that there needs to be a full airing of what it was that Mr. Caldwell had in 1972 to the extent that we still have records existing so that it can be objectively determined whether he was overstating in his efforts to summarize, with the caveat that he was giving an invitation to the parole board go get the record yourself, don't -- you know, he wasn't restricting or attempting to say to them this is 100 percent the picture, he said this is my summary effectively, you go look at the records yourself and identify the sources for them as we will see through the letter, so my concern is, well, number 1, to get through this examination without getting Mr. Wolch out of his chair, but number 2 -- I guess I'm not going to succeed.

MR. WOLCH: I took that as an invitation.



1	MS. KNOX: I said I was hoping to do it
2	without getting you out of your chair, but to try
3	to balance a fair record in respect of Mr.
4	Caldwell and his actions of 1972, 1974 and 1977,
5	but not to cause unnecessary pain, embarrassment
6	or harm to Mr. Milgaard or his family, and I
7	guess I need to be guided as to how to do that.
8	COMMISSIONER MacCALLUM: You are only
9	considering the Yorkton records at this point?
10	MS. KNOX: The only records we have are the
11	Yorkton records.
12	COMMISSIONER MacCALLUM: Yeah, okay. Mr.
13	Wolch?
14	MR. WOLCH: Mr. Commissioner, the comment
15	that Mr. Caldwell wrote was a prediction that Mr.
16	Milgaard might kill in the future, that was
17	explored to some degree and length. I invited
18	Mr. Caldwell to find any reference to that,
19	keeping in mind that later
20	COMMISSIONER MacCALLUM: And violence I
21	think was
22	MR. WOLCH: And violence, yes, that and any
23	sign of violence he could find. He was given



overnight to go through, take his time and find

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keeping in mind that reports summarize previous reports, if you get a late report you are looking at earlier reports, and just bring to our attention any degree of violence. He was unable to find anything, as I recall, of any -- I could be corrected. I'm not sure what the purpose is of My Friend now raising other things in reports that Mr. Caldwell himself has scrutinized not in the witness chair, but with the degree of patience and timing where he wasn't rushed, and couldn't find anything.

So to now go through, I'm not sure what, that he couldn't find is, I think, unduly difficult for my client to have that put in the public domain. I thought that by giving the witness a chance to say something that would substantiate an opinion that this young man was violent beyond the offence he's convicted of, and I sat quietly when My Friend talked about Dr. McDonald's report, keeping in mind that Dr. McDonald acted on the premise that David had committed the crime, and that was -- Dr. McDonald was interviewing him as the person charged with the offence, so I put it then, if there is something in there, Mr. Caldwell, that you can

look at, point it out.

Now, I'm not sure what My

Friend is going to do that won't be going into

things that Mr. Caldwell himself didn't think

that the criteria, given his review, and once

it's spoken it's in the public domain and may

affect Mrs. Milgaard, the family or whatever, so

that's my concern.

COMMISSIONER MacCALLUM: At the moment there's a publication ban of course.

MR. WOLCH: I'm not sure -- will that go to the questions and answers as well, sir?

COMMISSIONER MacCALLUM: Well, we haven't finished with the issue of the publication ban, it was only a tentative measure designed to guard the records from public scrutiny until we could address the thing more fully.

MR. WOLCH: Well, then, Mr. Commissioner, what I might ask, we can address that later, but I would ask you, sir, I don't want to be jumping up and down, but I would ask you, if you see questions that don't reflect on that, that perhaps you might lead My Friend out of those areas. I don't want to jump up and down and say no, that's talking about a childhood prank or



something like that, but if you see that we're going into areas that don't justify saying the man is a predictable psychotic killer comparable to David Threinen that he couldn't find himself, I mean, I think there's a quantum leap to saying somebody was naughty in kindergarten to saying somebody was a potential killer, but I put myself in your hands, Mr. Commissioner. I simply would like you to protect my client in this area, if you please.

COMMISSIONER MacCALLUM: Do you have anything to add?

MS. KNOX: Mr. Commissioner, Mr. Wolch in his view of what this, or I think what I'm hearing him say is the only real issue about this is whether there's any indication of violence in the Yorkton psychiatric records and I would suggest to you that when you take the totality of the letter and the views expressed by my client in 1972, 1974 and 1977, which were essentially a replication of his 1972 letter, that he didn't restrict himself to saying to the parole board this is a violent young man. What he in fact was saying to the parole board is this is a very troubled young man, this is a very troubled young

man who has had ongoing problems. He documented at page 3 of his letter that the problems were, and to use his language, were well documented since his early youth, he has been in constant trouble since kindergarten, and the file even contains predictions by social workers who examined Milgaard that he will one day kill somebody, so there's two things encompassed in that paragraph, and if I can sort of take them piecemeal, what he was saying to him is this is a young man who has a history of being a very disturbed young boy.

Now, as I say that, and I was thinking in the car coming back today, because I'm really uncomfortable here, and I asked Mr. Caldwell often this past day and a bit to go back to 1969, and in deference to Mrs. Milgaard and her husband and attempting to cope in 1969 with a child such as David, we didn't have labels like ADD, we didn't have the drugs, we didn't have the understanding that, of what can happen to children, we're dealing again in 1969 standards, but my client was dealing in 1969 standards, and Mr. Wolch makes the point that Dr. McDonald was operating in doing his diagnosis from the belief



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that he was a killer. My client was operating from the point of view in 1972 that he was guilty of the offence, properly convicted, reviewed all the way to the Supreme Court of Canada, and my discomfort when I read the transcript of how this area was treated and the suggestions that, without reason, and in a very misleading way, if I can summarize, he took on a role with the National Parole Board to the detriment of David Milgaard such as he had never done before in his career, and apparently or maybe had never done since, but it was not deserved, it was not fair, and I guess at the end of the day in legal argument what I'm going to be asking you to do is put side by side the booklet of direction from the National Parole Board, the correspondence that he wrote, the files that we have, such that they still exist, being only the Yorkton psychiatric files, which corroborate much of the conclusions that he drew in the, in his letter to the board.

In terms of violence, My

Learned Friend is right, there's only one actual

reference to direct violence in the Yorkton

Psychiatric Centre where it was said that he



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acted out physically towards staff as a way of manipulating them into getting himself out of there; however, if you look in the other records, and appreciating that we are on a publication ban here, there were continuing and constant reports from teachers, starting as early as kindergarten, that this was a boy who was beyond school control, there were continuing reports from Mrs. Milgaard and Mr. Milgaard that he was beyond parental control, that the teachers used words like, at one point in time they said that he was -- and, I mean, he was removed from kindergarten, he wasn't allowed back, he was removed from another number of grades and he wasn't allowed back, he was moved from school to school, his parents sought to get help for him, but repeatedly and consistently and almost without abatement he evidenced many behaviours of a troubled, troubled child, that troubled behaviour continued into his adolescence, and it was Mr. Caldwell's point when he was writing to the board that they had to be aware of and they should go get the records because we have one of those rare opportunities in life where we had a looking glass documented into the history of acting out

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behaviour, some of which was on the, bordering on being serious enough that he got asked to leave kindergarten, at one point in time there was suggestions that his mother said to the social worker that she used to get so frustrated -- and I mean no disrespect or embarrassment -- that she used to have to take herself away from him because she feared for what she might do, that his father became so frustrated with him that he had to get away from him because of the inability to cope with the continuing acting out to the degree that he acted out, so that's all in this psychiatric record, and I would submit to you it was all part of what caused the language of the documentation that he did, and I will get to the question about the, a social worker predicting that he might do that.

Although we don't have other records existing in the psychiatric file that Dr. McDonald had, and I understand Dr. McDonald will testify that what we have are the remnants of his file, we do have in CaseVault the results of an interview done with Dr. McDonald in 1993, and I ask that you bring up document 044628.

This is a chronology of an investigation report



or a continuation report from the RCMP project  $\hbox{Flicker in 1973, and I'll wait until it comes up.}$ 

COMMISSIONER MacCALLUM: 1993?

MS. KNOX: 1993.

COMMISSIONER MacCALLUM: When was the interview of Dr. McDonald?

MS. KNOX: The first page indicates they start to attempt to contact him March 10th -March 1st, 1993, if you look at the document here, and there's a chronology of his history and various things like that, and it comprises a number of pages, but I wanted to direct your attention and counsel for Mr. Milgaard to the pages, or the notations at 044626, and again this is a continuing summary of the interview done with Dr. McDonald on the 1st of March, and I direct you to this paragraph in Dr. McDonald's interview.

Dr. McDonald recalled from the Yorkton Psychiatric Centre file on Milgaard a reference to the effect that if he, Milgaard, doesn't get help he is going to kill someone.

Now, that's Dr. McDonald reporting to the police in 1993 as having, he having seen in the file what Mr. Caldwell documented in his letter to the



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National Parole Board on January -- on June 14th, 1972, so though we don't have the record, and one can cast stones at Mr. Caldwell, his bona fides in writing the letter, what he documented in the letter, we do have what I would suggest to you is independent corroborative evidence from the mind of Dr. McDonald that he saw, and like Mr. Caldwell he remembers that what they thought at that point in time in 1970, 1971, 1972 was an amazing predictive power. They were all wrong, but that does not change the fact that they both have a memory of that information being in the file in 1972, so it's with that caveat or with that, or that issue that I want to explore this area and to go in, to some extent, the material that was available.

COMMISSIONER MacCALLUM: Yes, thanks, Ms.

Knox. Mr. Wolch of course put the documents into evidence and I will see them whether -irrespective of the degree to which they are discussed today. Mr. Wolch, as I understand his position, has not asked that I ignore the documents or that we should not consider them today, only that they should be treated with a degree of sensitivity given the age of the



subject at the time, and given the fact that they may deal with matters extraneous to what most concerns us in this hearing.

To get down to the specific issue, it was raised during the course of Mr. Caldwell's examination in which it was put to him that he predicted in his letter to the National Parole Board that Mr. Milgaard was violent and therefore a danger to society. I think the witness answered that no, I didn't use the word violence, I used other words, and Mr. Wolch replied, well, he may not have said violence, but it certainly can be implied from the tenor of your letters, which, to use my own words, were vindictive or gratuitous and unnecessary.

Mr. Wolch then put into evidence the Yorkton records to show that although there was no -- to show in fact that there was no reference to violence in those records except for that one case you've mentioned.

Now it's Mr. Caldwell's turn, he says perhaps there's no specific record of violence, but it certainly can be implied from the tenor of the records. That is a valid



position and it is one you should be allowed to explore. The publication ban is a separate issue, it is still in effect and at this moment I would be inclined to make it permanent, but with this caveat, you know, I can say that things are subject to a publication ban at this moment, but that doesn't mean they are not going to be the subject of mention in any report I might write, I hope everybody understands that, but just to spare the victims the embarrassment of things which really don't -- which really are not relevant to the Inquiry.

MR. HODSON: Sorry, if I could just

MR. HODSON: Sorry, if I could just clarify, Mr. Commissioner; so the publication ban, certainly with respect to the documents, will not go up on the web site or become public, and what about the transcript of the examination of Mr. Caldwell by Ms. Knox where this subject is dealt with, are we to then -- which we can -- certainly not put -- those portions of the transcript will effectively be in camera --

COMMISSIONER MacCALLUM: Yes.

MR. HODSON: -- and they will not be put on Commission's public web site; is that -- am I -- COMMISSIONER MacCALLUM: Well let's leave



the -- yes, that would have to follow, I mean what's the point of keeping the documents out if you aren't going to keep the recitation of them out.

MR. HODSON: And we will do that, I just want to clarify what we should do.

commissioner MacCallum: I want to emphasize that I haven't reached the end of the road here yet and I'll hear final representations about the publication ban once we get into the documents, all right, and I'll -- but remind me if I forget to make specific reference to the hearing record as well.

MS. KNOX: Okay. And, Mr. Commissioner, I appreciate that question raised by Mr. Hodson, because I was about to say that while I, as I said, I don't want to do anything unnecessarily to besmirch or in any way cast blame where blame shouldn't be casted, or take it out of the context of having judgements made of Mr.

Milgaard, Mrs. Milgaard and others in 1990 -- or in 2005 for things that happened in 1966-1967, at some point in time there is an assertion out there in the public domain now that my client was gratuitously punitive in sending materials to the

1 National Parole Board to the detriment of Mr. 2 Milgaard --3 COMMISSIONER MacCALLUM: That's the issue. 4 right. 5 MS. KNOX: -- and he has the right to have the record corrected if in fact that's wrong, and 6 I will be asking to address you with that. 8 COMMISSIONER MacCALLUM: Of course. 9 BY MS. KNOX: 10 0 Okay. Then if I could ask to have brought up again this Yorkton psychiatric record starting at 11 12 page 325181. Mr. Caldwell, you have reviewed 13 these last week, and I know you don't remember 14 them, but if you will allow me to quide you I want 15 to go through some of the pieces of the 16 information that you would, you believe, have 17 reviewed in 1969-1970 --18 Certainly. Α 19 -- and which were in Dr. McDonald's possession in 20 1972 when you contacted him and had conversations 21 with him as shown in his letter of June 5th, 1972, 22 and subsequently got that medical opinion for --23 from him that I have just referred you to in 24 document 006845; correct? 25 Α Yes.



		Page 18660
1	Q	Okay.
2	A	That's right.
3	Q	I want to start, then, with what appears to be an
4		intake admission form dated November 14th, 1990
5		I'm sorry, 1966, sorry I'm wishing my life
6		away, even my past. Reason for admission, would
7		you agree that basically what it documents is long
8		history of disturbed behaviour particularly in the
9		area of school refusal?
10	А	That's the top sentence and appears to be
11	Q	And this is an assessment being done by Dr.
12		Andrews, if we look to the bottom of that page,
13		who is identified as a psychiatrist. Dr. Andrews
14		up here is a psychiatrist, the notation at the
15		bottom of the page would appear to suggest that he
16		may be the author of this summary?
17	A	Yeah, I that's how it looks to me, ma'am.
18	Q	Okay. And then if we go to the next page, 325172,
19		there is what appears to be a part of a discharge
20		summary no, 325172, yes. We have, and I say
21		'discharge summary' not because that language
22		appears on the paper, but we have here a date
23		admitted November 14th, 1966, date discharged
24		February 11th, 1967?
25	A	That's



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1	Q	See those dates?
2	Α	That's how I read it.
3	Q	So what the record would, on its face, indicate
4		now, and would have suggested to you, is that they
5		had a number of months involvement with Mr.
6		Milgaard as a patient at that psychiatric
7		institute in his adolescence?
8	A	Yes, that's how it reads, ma'am.
9	Q	Okay. And, again, we'll just highlight small
10		parts of it; they refer to a long history of
11		school behaviour, talk about theft of a truck and
12		the police involved, but not a particularly
13		disturbing offence for a young boy?
14	A	No, I see that.
15	Q	There is a progress and treatment where they talk
16		about using behaviour therapy, a slow decrease in
17		his acting out and manipulative behaviour up to
18		his Court appearance, and then again a minor
19		detail not particularly predictive of anything, he
20		broke the rules right after Court?
21	А	Yeah, I see that as well.
22	Q	Okay. Now, sir, the next document, starting
23		325175, is what I referred to earlier as this is a
24		file social history commenced on November 14th,
25		1966?
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1	A	I see that.
2	Q	And again, just in terms of the information you
3		had in 1969-'70 and what you had in '72 when you
4		talked to Dr. McDonald and wrote the board, the
5		reason for his referral to the psychiatric
6		institute at that age, or that young age, was that
7		he had been referred by the educational
8		psychologist and his physician, Dr. Betnoff (ph)?
9	A	Appears so.
10	Q	Description of the problem, presenting problems at
11		school, home, and in the community?
12	A	I see that, Ms. Knox.
13	Q	Okay. And there's information about his family
14		that you had in your possession, then, that I
15		don't think necessarily we need to go through.
16		If we go to the next page,
17		325176, information about the marriage and his
18		siblings that, again, that I don't think we need
19		to be involved in.
20		325177, the top part is a
21		personal history that, again, I don't particularly
22		need think we need to be involved in, but if we
23		go to the bottom part of the page, onset of
24		behaviour problems. And without getting into a



great deal, would you agree that what was

1		suggested in these records and what is may have
2		been the basis for your saying, at page 3 of your
3		letter, that in preparing the case you had the
4		privilege of reading the entire file which is well
5		documented since early youth and you documented he
6		had been in constant trouble since kindergarten
7		days?
8	A	This, these paragraphs would be part of me leading
9		up to that conclusion, ma'am.
10	Q	Yeah, it's simply a way of tracing it back?
11	A	Yeah.
12	Q	And again, not meaning to besmirch the family, but
13		by the age of four years some problems started in
14		kindergarten, he had to be and it indicates he
15		was enrolled at the age of five but had to be
16		withdrawn as he created a greater disturbance than
17		his teachers could tolerate. And, in fairness,
18		what they described is he was full of life,
19		constantly annoying, teasing others, problems
20		evident at home, disobedient, hyperactive,
21		etcetera?
22	A	Yeah, I see that, Ms. Knox.
23		COMMISSIONER MacCALLUM: The second, the
24		last word in the second line which is
25		obliterated, anybody know, "gradual 'change'"



1		probably?
2	A	I assume, sir, it would be 'change'.
3		COMMISSIONER MacCALLUM: Yeah, okay, thank
4		you.
5		MS. KNOX: Yeah, it's obliterated in my
6		copy as well, but likely a good guess, Mr.
7		Caldwell, of what appears to be 'C-H'.
8	BZ	MS. KNOX:
9	Q	Again, not to besmirch his character, but he, you
10		know, five years old he ended up before the
11		principal and he was immediately referred to the
12		child guidance clinic where he was where it was
13		decided he should be placed on some medication
14		which proved to be equally ineffective?
15	А	I see that last paragraph.
16	Q	Again, would that have played a part in your
17		summary in your letter of history of involvement
18		of problems from an early age?
19	А	It would. It's one more thing that would draw
20		one's attention to how things were going for him
21		as a very young child.
22	Q	Next page, 325178 starting at the top of the
23		paragraph, the family moved to St. Boniface,
24		changed schools, adjustment also unsatisfactory,
25		school principal refused to allow him to attend



unless the parents arranged for professional help,
he constantly teased and molested other students
to such degrees that teachers were afraid that
they would retaliate, and their concern was partly
for his own protection?

A I see that.

Q It talks about him stealing occasionally, not
going to Court, it was removed -- it was
recommended his family move out of town, out to

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the country, they moved 20 miles away. And there was an incident that's of no significance in terms of any propensity for future trouble with his brother. He managed to pass his grades when he Then it goes on to say his family was out there. moved to Langenburg, slightly more settled first year, first -- past term again troublesome, misbehaving general, not paying attention, manages to pass grades, again talking more about in-school behaviour, but nonetheless again your reference to a documentation of difficulties in school since an early age would appear to be borne out by this that would have been available to you? Yes, I would have seen this, and it would sensibly

Yes, I would have seen this, and it would sensibly belong in that category, Ms. Knox, in my opinion.

Q Next paragraph, relationship with his father, it

1		talks about his father being strict, probably
2		understandably, easier to manage when he is home,
3		and this part he had indicated to somebody
4		apparently that his ambition was to grow bigger
5		than his dad so that he could beat him up?
6	A	Yeah, I see that.
7	Q	Okay. Would that have been a factor in your
8		assessment or your reference to the National
9		Parole Board in terms of this boy's difficulties
10		in terms of appropriate behaviours and concerns
11		about his future?
12	A	I would think, Ms. Knox, that I'd characterize
13		that as simply, you know, loose talk which might
14		very well be said by persons of that age
15	Q	Yeah.
16	А	with no
17	Q	Not particularly sinister?
18	А	Yeah.
19	Q	Just another factor
20	А	Yeah.
21	Q	for in your weighing of the information you
22		were proffered?
23	A	That's right, that's all I would assess assign
24		to it, ma'am.
25	Q	Relationship with mother, again probably normal
		The state of the s



1		kid behaviour for a 14-year-old given that he was
2		14. No particular significance, I take it, paid
3		by you to that, with the reference that he picks
4		on her, presuming that to be talking back or
5		something like that?
6	A	Uh-huh. I would characterize it that way as well.
7	Q	Relationship with siblings, not of particularly
8		concern, doesn't have close friends, described by
9		his father as smart aleck, which again is not
10		unusual for a 14-year-old, but has a chip on his
11		shoulder?
12	A	Yeah. That is something that I would certainly
13		wouldn't surprise me of any person of that age.
14	Q	As was pointed out by Mr. Wolch if we go to the
15		next page, 326179 under the category involvement
16		with the law, nothing particularly sinister,
17	A	Uh-huh.
18	Q	minor infractions, break-in at a local rink,
19		mixes with a poor crowd, one of his friends
20		charged with theft; again not particularly
21		sinister?
22	A	No, I wouldn't say that at all.
23	Q	Okay. Present situation, again nothing alarming
24		in isolation but just a, what I would suggest to
25		you, a continuing indication contained in the file



1		of difficulties managing him and areas that need
2		to be addressed, and as documented from this early
3		age through psychiatric psychological intervention
4		in his future probably?
5	А	That's right. That second-last sentence, he
6		resents being disciplined and refused to accept
7		guidance, would catch one's attention. But,
8		again, that's a factor, if you will,
9	Q	Yeah.
10	А	and no more than that I would say.
11	Q	Okay. And the notation by his parents, or by
12		attributed to his parents, whether accurate or
13		not, at his age that they and I'm talking about
14		this part here that they wouldn't object if he
15		was removed from home situation though they were
16		careful to add, and I want to emphasize this, that
17		they would agree to anything that was best for
18		him?
19	Α	Uh-huh.
20	Q	So perhaps a recognition in 1969, in a time when
21		it wasn't as well documented and supports weren't
22		readily available for families with a child who
23		was hyperactive, acting out, you know, beyond
24		control, that they might need help but they would
25		do what was best for him?

1 That, that's certainly how it appears. Α The comments as contained in the next 2 0 3 section, talking about some of the reasons why he may be having the difficulties and just going 4 5 through a -- including problems adjusting, at paragraph 3 here, because of frequent changes of 6 his school, the acknowledgment he is bright, alert, can do work well if he wants to and can 8 9 academically perform. 10 Going on to the next page, 11 possibility he could make favourable progress if 12 opportunity provided. Again, in terms of your 13 assessment, there were a number of recommendations 14 made by the psychiatric social worker at that time 15 indicating, in summary, that they felt required, 16 cer -- that there was a need for a lengthy period 17 of treatment in a residential facility centre, or 18 that they could best be provided in a treatment 19 facility for emotionally disturbed children?

Yeah. And it does, as you've mentioned, specify

residential treatment centre.

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Yeah. And did that, sir, play a part, again, in the characterization of this boy or this young man, as you wrote it for the National Parole Board in 1972, given the criteria that they had set out?

1	A	Yeah. One of that would be one step, Ms. Knox,
2		which possibly we had hoped hadn't happened, but
3		at that stage it appeared that the people in that
4		field seemed to think that was essential for him,
5		that last paragraph.
6	Q	Okay. If we could go to the next page, please,
7		325182. This is a document still under the
8		heading social history, but clearly a different
9		one because it has a separate date, and it is a,
10		identified as a summary recording, talks about a
11		group meeting on November 23rd between Dr.
12		Andrews, the regional or the educational
13		psychologist for Yorkton-Melville Public Health
14		Region, and the worker who is writing this report
15		who is long-winded Allan Hagan, a
16		psychiatric social worker, and it's signed by him
17		at page 325189.
18	А	I see that.
19	Q	And again sir, without taking you through all of
20		the details or all of the paragraphs of the
21		report, it was recorded by these gentlemen, or
22		this gentleman, that the purpose for the meeting
23		was discussed at this meeting with some of the
24		boy's rather disturbing behaviour as well as

observations of this boy while at the Yorkton

1		Psychiatric Centre. Also discussed extensively
2		were the results of Mr. Tomasheski's (ph)
3		personality and psychological tests, that he had
4		done some testing in Langenburg High School
5		November 7th, also did testing at the psychiatric
6		centre, and they refer to seeing the file for
7		explicit information re psychological tests?
8	A	I see that.
9	Q	And in the material that you had available to you,
10		and which was part of your knowledge base when you
11		wrote these letters to the board, do you know
12		whether you had had opportunity to see the more
13		explicit information re psychological tests that
14		was referred to there?
15	A	I'd be surprised if I had, Ms. Knox, if because
16		I would have expected it to be attached to or part
17		of this report so I can't say that I did that.
18	Q	Okay. Sir, again just, as I say, there's some
19		discussion about the case and then it indicates it
20		was unanimously agreed, in view of past history of
21		acting out, present can't read that word very
22		well
23		MS. McLEAN: 'Less that desirable'.
24	ВУ	MS. KNOX:
25	Q	less that desirable, thank you less that



1 desirable social situation we recommend the 2 Department of Welfare -- we recommend to the 3 department the following; that he not be returned 4 to the community of Langenburg at the present 5 time; the Department of Welfare consider permanent wardship as it is unlikely there is any 6 possibility of this boy's behaviour being 8 modified, is the language here, to any extensive 9 degree within the home situation; that they 10 keep -- the next recommendation is that they keep 11 him at the psychiatric centre on an inpatient 12 basis for a number of months with the hope that he 13 might benefit -- and I'm skipping -- from a 14 structured, consistent milieu that we could 15 attend -- they could provide, have him go to 16 school by day, sleep at the centre by night? 17 Α Yes. 18 And then eventually, if he does well in the 19 psychiatric centre under that regime, that if the 20 Department of Welfare accepts the recommendations 21 that he become a permanent ward, effectively 22 they'd put him in a foster home and they would 23 continue, he would continue to be monitored, but 24 getting him back in school being a primary goal. 25 And then it just talks, the next part of it just



1 talks about his refusal to attend school.

A Uh-huh.

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- And Mr. Caldwell, again, this was the kind of information that was in your store of knowledge when you were writing the letter to the parole board?
- A It was, Ms. Knox.
  - Q Okay. And I don't think we need to go through the rest of that page.

325183, again under the label social history talking about a home visit with Mrs. Milgaard, ah, umm, the rain (ph) job, subjects discussed, her agreement that David shouldn't return to the Langenburg community but that she was at a loss to suggest how they, as a family, could finance sending him to another centre, some discussions about difficulties. Ιf we go to the next paragraph down here, and I referred to them in my submissions, she spent some time recounting difficulties they have had in the past as sometimes she had to lock herself in her bedroom after his acting out became so intensive she felt or feared she might actually strike out at him, at other occasions Mr. Milgaard had screamed at her to get the boy out of his sight,

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in quotations, "I'll kill that boy if you don't get him out of my sight", and she is at the point where she feels there is a possibility that her husband might lose control, in fact, as he fears, and do some harm. And -- but it does go on to note, again in fairness to Mrs. Milgaard, trying to cope as she was, that she was requesting help in handling him, that the house is running better with him out of there, but this wasn't a question of abandonment, it was just parents reaching a point where they couldn't cope.

And, again, would this have been part of what was in your store of knowledge when

And, again, would this have been part of what was in your store of knowledge when you were writing the National Parole Board?

It would be, Ms. Knox.

Okay. If I could go to the next page, 325184, and I'll skip some parts of it, it's basically a discussion about Mrs. Milgaard's willingness to cooperate in a treatment plan and that they -- the opinion expressed about him being removed from the home and the community so that he -- his -- and they say so that the job of curing him of his present behaviour and attitude can be accomplished. So a recognition by his parents that he needed help beyond what they could give



him effectively?

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A That's how I read this.

Now, sir, Mr. Wolch, in putting -- in questioning you, suggested to you that, when you were writing this report about this boy, he really didn't have any significant criminal record, he only in fact had one conviction, unlike others that you were dealing with as witnesses. direct your attention to the paragraph, if we could go back to that page 325184, direct your attention to information documented in this report on the 24th of November, or as a result of a 24th November visit, 1966, to the town constable in Langenburg. And sir, although this information is not information that's of criminal convictions, in the direction given to the -- to you as you were authoring this letter for the parole board they invited you, did you not -- they not, to document other involvements in inappropriate, sometimes potentially illegal behaviour, that had not necessarily been subject of charge or conviction? Yeah, I'm sure that's so. And clearly, Ms. Knox, as I read this, it did not result in a conviction, but it would certainly fall into the category, if you will, of worrisome developments, in my



1		estimation
2	Q	Would you
3	А	as I read the file.
4	Q	Would it fall into or be supportive of the
5		statement you made in your letter that he has been
6		in constable in constant trouble since
7		kindergarten days?
8	A	This, well this is, I think the timing is well
9		beyond that, but this would be where he was in
10		that continuum at this time, as I read it.
11	Q	Okay. Starting back to the difficulties in
12		kindergarten, he continued to present troubles,
13		advanced to an age where, according to the town
14		constable, there was conflicts with the law, not
15		the subjects of charge, but nonetheless ongoing
16		conflicts with the law?
17	А	That's exactly how I assessed it, ma'am.
18	Q	Okay. He talks, and then just the discussions
19		about, if I could go to the bottom of the page,
20		meetings with both parents at the psychiatric
21		centre to talk about planning for David if we
22		could go to the next page please and Mr.
23		Milgaard mentioning, for example, if he had money
24		he would send the boy away to military school or
25		Notre Dame College to accomplish the smartening-up $\P$

1		that he felt that his son required, a discussion
2		of many of plans offered and possibilities in
3		terms of trying to deal with his behaviour that
4		made it impossible for them to continue to cope
5		with him at home; would that be a fair summary of
6		what's contained here?
7	A	That's how I read that paragraph, ma'am.
8	Q	Uh-huh. The bottom of the page, if we could go to
9		the last full paragraph on the page, documenting
10		interviewing David and talking to him about going
11		to a residential treatment centre for emotionally
12		disturbed children as a possible way to attempt to
13		assist him in dealing with his behaviours?
14	A	I I see that in about the fourth line, that's
15		discussed.
16	Q	Okay. And going to the next page, please, and
17		skipping paragraphs; some discussion by way of
18		summarization by the staff and with, regarding the
19		educational psychologist as well as the hospital
20		staff, regarding their contact and interactions
21		with Mr. Milgaard, that being David Milgaard, and
22		our recommendation or their recommendation of
23		permanent wardship, night hosteling, and efforts
24		to try to put some structure around him to keep
25		better control of him and to try to modify his



1 behaviours? 2 Yeah, that's the -- that's the subject they are Α 3 reviewing there, and it appears to be a further behaviour, I would think, of concern to the 4 5 authorities at that time, without a doubt. And reference to a further meeting taking 6 Q Okay. place with, again with parents at RPC five or so days later, November 30th, and again further 8 exploring what could be done to attempt to manage 10 this unmanageable young adolescent, as he was assessed as being at that point in time both by 11 12 his parents and by the authorities? 13 Α I see that as well, and I -- that appears to make 14 sense from my reading of the paragraph. 15 And again in reference to your indication 0 16 to the parole board that he had been in constant 17 trouble since his kindergarten days, going through 18 this chronology which presumably came from his 19 parents in that meeting or through school records, 20 if they got the school reports, without going into 21 each of them a listing of continuing difficulties 22 in school from kindergarten, referencing again 23 that he was rejected from class because of his unruly mischievous behaviour, he didn't return; 24 25 going to grade 1, no major difficulties; later



	part of grade 4, difficulties developing again and
	a psychologist interviewed intervened I'm
	looking, Mr. Commissioner at the top of 325187
	but just going through basically a chronology of
	his school; generally acceptable, looking at
	number 4, in grade 5; in between grade 5 and grade
	6, looking at item number 5, his mum did take him
	to see a psychiatrist, took him on five different
	occasions, and it was then, in grade 5, that the
	recommendation came that he be moved they move
	to a smaller town to try to allow him to better
	adjust to school, and there it is documented that
	his behaviour was thought to have been acceptable
	when they were living in a small town
A	I think, ma'am, that's 'unacceptable
Q	'Unacceptable'? Thank you.
A	if I'm not mistaken. I see where you are,
	though, in that paragraph.
Q	The psychiatrist's idea of taking him to a smaller
	town turned out not to be the best idea,
	obviously?
А	No.
Q	And then the documentation of David's remark to
	his mother just prior to being dismissed from the
	Langenburg high school, where he referenced to her

1		"just kill me and get it over with", and her
2		impression that he hates himself, she indicated
3		that prior to making the remark he actually picked
4		up a knife, offered it to her, apparently as a
5		request to have her use the knife on him?
6	A	Yeah, Ms. Knox, the language there was that David
7		hates himself, and the rest was as you read it. I
8		think you said "she"
9	Q	I'm sorry.
10	A	but, clearly, it was David in the third line
11		there.
12	Q	But again, in terms of the letter that you are
13		writing and the characterization that you are
14		doing, this would be indicative of some
15		significant it's a concern about self harm more
16		than harming anybody else, but indication, as you
17		document in your letter, that he had a very
18		troubled history?
19	A	Yes, it's it would catch the attention, I
20		think, of anyone with any knowledge in this area,
21		and I didn't, I was certainly a layman in terms of
22		psychiatric matters,
23	Q	Uh-huh?
24	A	but this would certainly catch my attention and
25		I would attempt to, not word for word, but cover $\P$



1		it in my views on him when I did write the letter.
2	Q	Yeah. Documented here, and not so much anything
3		negative, but the expression by his principal that
4		he has excellent reading ability and that he is
5		not producing what he is capable of, so in other
6		words the assessment by teachers or a principal
7		that he is capable of a lot more but for whatever
8		reason is just not able to perform, be it because
9		of his psychological difficulties, his unhappiness
10		in terms of his life situation or whatever, but
11		generally documenting that there are things
12		causing problems for him in terms of his academic
13		performance?
14	А	That's how that last paragraph reads.
14 15	A Q	That's how that last paragraph reads.  Okay. If we could go to the next page, 325188,
15		Okay. If we could go to the next page, 325188,
15 16		Okay. If we could go to the next page, 325188, and I'm gonna skip some things about his sister
15 16 17		Okay. If we could go to the next page, 325188, and I'm gonna skip some things about his sister and his brother, there's some discussion about the
15 16 17 18		Okay. If we could go to the next page, 325188, and I'm gonna skip some things about his sister and his brother, there's some discussion about the Court hearing with respect to that charge that he
15 16 17 18 19		Okay. If we could go to the next page, 325188, and I'm gonna skip some things about his sister and his brother, there's some discussion about the Court hearing with respect to that charge that he originally had when he went into the psychiatric
15 16 17 18 19 20		Okay. If we could go to the next page, 325188, and I'm gonna skip some things about his sister and his brother, there's some discussion about the Court hearing with respect to that charge that he originally had when he went into the psychiatric centre, hearings being delayed because of
15 16 17 18 19 20 21		Okay. If we could go to the next page, 325188, and I'm gonna skip some things about his sister and his brother, there's some discussion about the Court hearing with respect to that charge that he originally had when he went into the psychiatric centre, hearings being delayed because of difficult judge's difficulties, nothing to do
15 16 17 18 19 20 21 22	Q	Okay. If we could go to the next page, 325188, and I'm gonna skip some things about his sister and his brother, there's some discussion about the Court hearing with respect to that charge that he originally had when he went into the psychiatric centre, hearings being delayed because of difficult judge's difficulties, nothing to do with him?

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behaviour within the Yorkton Psychiatric Centre as being recorded by Mr. Hagan, the psychiatric social worker. He wrote to date his behaviour on the ward extremely manipulative, generally quite hyperactive, responds very negatively to feminine direction -- female direction, but well to male supervision, and then he talks about some of that being anxiety provoked by the postponement of his Court appearance to January 17th, '67? Uh-huh. It talks about him being allowed to go home for Christmas in the next paragraph if circumstances do not change drastically, and that concludes the report, then, with the expectation that he will go home for Christmas of -- as long as things continue to be okay or within reason in the next couple of weeks? I saw that. If we could go to the next page, 325190, and there's just a brief summary of a follow-up on his home visit, that he had done well, as reported by Mrs. Milgaard in his visit home, this is a report dated December 29th, '66, again by Mr. Hagan the social worker? I see that paragraph which does set that out.



1	Q	January 17th, there's another entry in this record
2		of his performances saying Court had to be
3		postponed again because the Department of Welfare
4		worker was ill, his behaviour being manipulative
5		and mischievous, is how they are describing it,
6		acceptable in school, written exams and then goes
7		on to talk about again in, I suppose, somewhat
8		benign behaviour for a young man, he is agitating
9		to get out of hospital, feels it's not the
10		appropriate place, and in many respects they note
11		he might be right about that?
12	А	Yeah, I see that.
13	Q	They, however, say despite the recognition that it
14		might not be the right place for him, it was their
15		feeling that he could not possibly at this point
16		in time function outside of as much structuring as
17		we can possibly give him in this setting. They
18		talk about the option of or his idea of wanting
19		to go to foster care, but concerns that he needs
20		more structure perhaps than foster care would
21		provide at that point in time.
22	A	I see that as well, ma'am.
23	Q	So that would be the assessment knowledge that you
24		had of him up until January 17th, 1967 when you
25		were writing this letter?

A That's right, Ms. Knox.

The next page, please, 325191, January 18th, 1967, this morning there was another crisis with David on the ward, reading from here, immature, impulsive behaviour, it talks about him annoying staff more than anything, and an interview with Dr. Andrews and the worker, some concerns again or some recognition that his acting-out behaviour might be because of anxiety about Court, a notation that they talked to the police constable in Langenburg -- and next paragraph, please -- and talked to his teacher and at that point in time his behaviour is at an acceptable level in the classroom, and that being January 18th, 1967.

Next page, please, 325192, on the social heading history literature -- oh, sorry -- about a report dated, or a running record, I suppose, chronology, next day entry being January 19th, 1967, talking about a home visit with his mom, she's anxious, can express concern about a future, talking about the possibility of having him go to the Knowles School, K-N-O-W-L-E-S for the record, in Winnipeg, I'm not sure what that is, but documented by the worker. It is obvious to this writer that she's



1		extremely frightened about the prospect of having
2		him return to, having David return to Langenburg.
3		This anxiety has probably intensified more
4		recently because his behaviour has been
5		unacceptable at times and he has been threatened
6		with discharge from the hospital if his behaviour
7		doesn't improve. So I guess a fair reading of
8		frightened here would be more frightened about how
9		she's going to manage as opposed to any suggestion
10		that she would be afraid of him, but certainly
11		this would have been information that was in your
12		mind or available to you when you wrote your
13		letter to the parole board in 1972?
14	А	Yes. I would have taken the frightened reference
15		the same way you did, Ms. Knox, and I certainly
16		would have known of this at the time of my letter.
17	Q	Okay. And then the worker goes on to document
18		that contrary to the reports, like the one we saw
19		on December 29th, '66, things aren't going as well
20		as she had indicated, and again, in fairness, we
21		can scroll through this, but talking about
22		manipulation as opposed to scary behaviours, if I
23		can use that word?
24	А	Yes, that's how I would take this as well.
25	Q	Yeah. And a final conclusion by Mr. Hagan, the



1		psychiatric social worker, that they need to talk
2		about putting him in, or doing future planning for
3		him, talking with the Department of Welfare, the
4		parents, Dr. Andrews, the psychiatrist and himself
5		to discuss what would be best to be done for him?
6	А	Yeah, I see that, and that of course would be in
7		his interest as implicit in that.
8	Q	Okay. Next page, 325173. That's 193, if I could
9		have 173, please, a summary report that I referred
10		to earlier, summary recording, February 13th,
11		1967. So again a continuing chronology of his
12		care and work with him in the psychiatric
13		facility?
14	А	Yes.
15	Q	And generally summarizing that it has been fairly
16		acceptable in terms of him gaining impulse
17		control, some anxiety around his Court dates, but
18		they are working to, or they've been working to
19		basically keep him on an in-patient basis
20		providing his behaviour met what they describe as
21		minimal standards?
22	А	Yes, I see that.
23	Q	So that would have been knowledge you had
24		from reviewing the file?
25	А	Oh, absolutely.
	li .	



		Fage 10007
1	Q	Okay. Some discussion about the Court hearing and
2		parents talking about agreeing to temporary
3		wardship and David expressing a dislike of the
4		psychiatric centre and his disagreement with an 11
5		month temporary wardship, saying he would prefer
6		the four month, but again, not a big deal given
7		that he's now 15 or thereabouts
8	А	Yeah.
9	Q	that a young boy would be bucking at those kind
10		of restrictions?
11	А	I wouldn't think so.
12	Q	Okay. Next paragraph, and this is the part that
13		was referred to when you were reviewing the file

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Okay. Next paragraph, and this is the part that was referred to when you were reviewing the file with Mr. Wolch, talking about events after his Court appearance, that his behaviour became more difficult, provoking in nature, that they attempted to overlook it again because of their perception of it being anxiety due to Court.

However, Thursday, February 9th it was obvious he was attempting to provoke discharge and again they talk about him obviously having a hope that if he pushed the envelope enough, they would kick him out of there and he could go to a foster home, but they indicate that his behaviour approached the intolerable when he struck out at nursing staff

1		physically without more details?
2	А	I see that, Ms. Knox.
3	Q	Okay. The morning of February 10th, conference
4		with the child welfare worker, Ms. Gramiak, who is
5		obviously back from being sick, the regional
6		director Dr. Andrews, the psychiatrist, the ward
7		supervisor, whoever Mr. Webber is, and the
8		psychiatric social worker, he's refusing to attend
9		school, his increased provocative behaviour over
10		the past few days were seen as an attempt to get
11		himself discharged, not in his best interest, and
12		then they talk about planning for him, but again,
13		these ongoing difficulties would be ones that I
14		take it were in your purview of knowledge when you
15		were writing your letter to the parole board?
16	А	Yeah, they were.
17	Q	You talk about him having continuing trouble from
18		kindergarten?
19	А	They were, Ms. Knox, as well.
20	Q	The last page, 325174, again talking about,
21		discussing management plans for him in terms of
22		what he does, where he goes, discussion about him
23		leaving the ward on February 10th, not a big deal,
24		further discussions about his performance being
25		evaluated over a one month period, and unless they



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are satisfied that he can maintain behaviour sufficiently good to show he can function at a foster home setting, they would -- and I'm looking here, he would possibly be transferred to a more structured setting such as would be available in a residential treatment centre for disturbed boys of David's age. They talked about various institutions that might -- if we go to the bottom of the page, the comments and suggestions, there's discussion about various institutions that might be adequate and the conclusion is if the foster home doesn't work out for him in terms of his willingness to be compliant with expectations, the only reasonable therapeutic recommendation would be a residential treatment centre at either the Knowles School for Boys in Winnipeg -- now we know what that is --Uh-huh. -- or at Brown's Camp at Moose Jaw, Saskatchewan, and I would take it that Brown's Camp would be some sort of a structured boys school or treatment facility of some type? Yeah, I would assume so. I have not heard the name, but that's neither here nor there, but I agree with what's said here, and I certainly had

1		it in my knowledge as we progressed here.
2	Q	Okay. Sir, in terms of the records of places
3		where you might have seen the prediction by the
4		social worker that you and Dr. McDonald recalled,
5		you in 1972, Dr. McDonald in 1993, I refer you to
6		the last part of this where there is the
7		determination that the psychiatric centre will
8		basically cease their involvement because the
9		Department of Welfare is now the major agency to
10		be involved with him, this being as of February,
11		1967.
12	A	That's the page we're on, 174 is it, ma'am?
13	Q	Yes, talking about February the description of
14		the February 13th case conference I think is the
15		language, of 2005.
16	А	Okay.
17		COMMISSIONER MacCALLUM: I don't think I
18		got your question. So in terms of the records,
19		where you and Dr. McDonald might have seen what?
20		MS. KNOX: Seen the reference, or the
21		prediction or the statement by his social worker
22		that if he doesn't get some help, some day he's
23		going to kill somebody.
24		COMMISSIONER MacCALLUM: Oh, okay.
25		MS. KNOX: Dr. McDonald, if you recall,



1		Mr. Commissioner, in his letter 006845 talked
2		about various places where records would exist;
3		the Yorkton Psychiatric Centre, the Munroe Wing,
4		Regina, or the Child Guidance Clinic of Greater
5		Winnipeg, and he also made reference to the
6		Department of Social Welfare with regard to Mr.
7		Milgaard's staying in a correctional school in
8		Regina, he said in the spring of 1976, but it's
9		perhaps more likely 1977 given the timing of this
10		discussion, but certainly there would be records
11		kept by the Department of Welfare that would have
12		been or could have been available to you in 1969,
13		1970 where you might have seen that comment if it
14		wasn't in the records of the or the additional
15		records of the Yorkton Psychiatric Centre that we
16		know we don't have, like his psychological
17		testing, that there was reference to being
18		referred to the Munroe Wing or the Child Guidance
19		Clinic, among other places.
20	A	Yeah.
21	BY I	MS. KNOX:
22	Q	So there were a variety of places on the record
23		known to us where you could have seen that because

all of those agencies would have had social workers in some capacity given the kind of service

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1 they provided for him as he was described as being 2 an emotionally disturbed adolescent at that time? 3 I understand that, ma'am. Α 4 0 Sir, going back to your letter of --5 Commissioner MacCALLUM: Ms. Knox? MS. KNOX: Oh, coffee break. 6 COMMISSIONER MacCALLUM: Thank you. 8 (Adjourned at 2:50 p.m.) 9 (Reconvened at 3:17 p.m.) 10 BY MS. KNOX: Mr. Caldwell, if we could bring up again the 11 12 document, your June 14th, '72 letter, 006840, and 13 if we could go to 842, please. I've reviewed with 14 you some of the information that you've put in the 15 letter, including this paragraph that you read the 16 entire psychiatric history which we know was more 17 extensive and that we have remnants of? 18 Yes. Α 19 You also indicated that, starting at this 20 paragraph here, having been intimately involved in 21 this case from the time of killing until final 22 disposition, I of necessity came to know a great 23 deal about the personality of the accused 24 Milgaard. Would you be talking in that, or 25 referencing information you came to know as a



1		result of the police investigation separate and
2		apart from that which was contained in his
3		adolescent psychiatric records at Yorkton,
4		Winnipeg and other places where the records were
5		available?
6	A	Yeah, I would think I would have included what I
7		learned through the investigation, Ms. Knox, in
8		that heading.
9	Q	Okay. So would it be fair to suggest to you that
10		likely you were reflecting on other information
11		you got from witnesses interviewed by the police
12		who had been friends of his in limited to those
13		who had given testimony in Court but generally
14		some background information about him, his
15		lifestyle, in particular in the weeks, months and
16		years after he left Langenburg and was on his own
17		as a run-away for part of the time and just on his
18		own as a teenager living what was described at
19		some point I think, including by him, as the
20		hippie lifestyle?
21	A	Yeah, that would be my where that originated.
22	Q	Okay. And, sir, without going through all of them
23		in any great length, I'm going to refer you to,
24		indeed, the statement that was taken from David
25		Milgaard on March 3rd, 1969, document number



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1		00565.
2		COMMISSIONER MacCALLUM: 0056
3		MS. KNOX: five.
4		COMMISSIONER MacCALLUM: Not enough
5		numbers.
6		MS. KNOX: 000.
7		COMMISSIONER MacCALLUM: Oh, 000, okay.
8		MS. KNOX: 565.
9		COMMISSIONER MacCALLUM: All right.
10		MS. KNOX: This, Mr. Commissioner, is the
11		original statement, handwritten version taken in
12		Winnipeg March 3rd, 1969, and we can bring up
13		another version if it's easier for staff, this
14		was one that was later discovered in the boxes at
15		the public prosecutions office at the Commission
16		offices. I'm happy to use any version that you
17		can
18	BY I	MS. KNOX:
19	Q	And so you remember seeing the original version of
20		this, the handwritten statement taken from him in
21		Winnipeg, it goes on for a number of pages
22	A	Yeah.
23	Q	has attachments, drawings and various things to
24		it?
25	A	I do, Ms. Knox.
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1	Q	If we could go to the second page of that
2		document, please, and I'll read the question at
3		the bottom of the first page, we don't need go
4		back, he's asked have you got a record of any
5		kind, and I direct you to Mr. Milgaard's answer
6		where he says sexual immorality, trafficking,
7		stolen cars, break and enter, was deported from
8		the United States, maybe Seattle, on probation out
9		of Vancouver, now transferred to Saskatchewan,
10		trouble in Ottawa too. So this is out of the
11		mouth of David Milgaard on March 3rd, 1969 that
12		he's had some conflict that's not shown up in the
13		Yorkton record, but would be subsequent to his
14		discharge from there in 1967, and if you believe,
15		or if you take his record as accurate, subsequent
16		to his discharge in 1967 and before his charge for
17		the death of Gail Miller in May of 1969.
18	A	That's how I read this, ma'am.
19	Q	So again if you can take your mind back to 1969,
20		1970, and to 1972 when you are writing the parole
21		board, would this have been the kind of
22		information that either directly or indirectly was
23		in your store of knowledge or your store of belief
24		about David Milgaard?
25	A	Yeah, that I would have read this. It would



1		be, you know, in my mind in that respect at that
		be, you know, in my mind in that respect at that
2		point and I would think that not all of it, if I
3		may put it this way, would have been discounted
4		by at that time, if indeed that did happen.
5	Q	Okay. And I, just in fairness to Mr. Milgaard,
6		the reference to sexual immorality, that sort of
7		sounds a little disturbing, but I remind you, and
8		I direct you to his April 18th, 1969 statement
9		where he was asked for some clarification, and he
10		indicated that that was a charge that resulted
11		from him being in a hotel with an under-aged girl,
12		so while it sounds a little ominous, and that's
13		contained in his April 18th statement, I don't
14		think we need to bring it up, document 000555 at
15		000557 yeah, sorry, Mr. Wolch is reminding me
16		he was under age himself, so it's not about sexual
17		assault or him acknowledging that he had been
18		convicted or charged with sexual assault or
19		anything
20	А	Yeah.
21	Q	it's about him and a young girl running off to
22		a motel and getting caught by the police and both
23		being under age.
24	A	I'm glad that that was explained. I wouldn't have



remembered all that without the --

1	Q	I'm trying to keep Mr. Wolch in his seat. Also in
2		your store of information, if I may refer to it
3		that way, would there have been a recollection of
4		or the ability for you to review or refresh your
5		memory the witness statement of Sharon Williams
6		given to Constable Malanowich in Winnipeg on March
7		20th, 1969?
8	A	Yeah, that would have that would, in my view,
9		have been in my mind as well.
10	Q	And I'm corrected by counsel for the Saskatoon
11		Police Service it was actually in Alberta, and at
12		the top of the document, the document number
13		006500 for the record, it indicates the statement
14		was taken at St. Albert, Alberta.
15	A	Yeah. I knew that it was Alberta and I should
16		have spoken up.
17	Q	And, Mr. Caldwell, I put in front of you a copy, a
18		colour photocopy of the original of that
19		statement. I don't intend to take you through it,
20		it comprises 14 pages in total. If I can
21		summarize that which is contained in it, would it
22		be fair to say that it is a fairly long litany of
23		questionable conduct, sometime criminal misconduct
24		that might not and indeed appears not too often
25		have been the subject of charge by Mr. Milgaard in



1		his relationship with her, but indications by her
2		of being hit by him on at least one occasion, him
3		playing with a gun, at one point in time referring
4		to her that he was going to have her as his
5		prostitute, and just generally not very socially
6		acceptable behaviour from anyone, and particularly
7		from a young person of that age in a relationship
8		with a young woman?
9	А	Yeah, that's my approximate memory of it, Ms.
10		Knox, and I'm sure there was detail to that
11		general effect.
12	Q	But certainly when you were doing your assessment
13		or your summary for the National Parole Board,
14		this would have been the kind of information still
15		in your store of knowledge about the young man who
16		had been convicted of the offence?
17	А	That's right, because Miss Hall came to light as
18		part of the trip to Alberta, etcetera, as a
19		witness or a potential witness. Whether or not
20		she was called, she was interviewed.
21	Q	And, sir, at one point in time I would suggest to
22		you that there was some consideration of calling
23		her as a witness because she was interviewed by
24		Inspector Roberts according to a letter that he
25		wrote to Chief Kettles on June 19th, 1969, the
	I	



1		document number being 009302?
2	А	Uh-huh, yeah, I recall that happening, ma'am. I
3		don't think she was called, was she?
4	Q	No, she wasn't called as a witness, but certainly
5		the information contained in her statement appears
6		to have been investigated. He indicated in fact,
7		Mr. Roberts in his letter indicated that he
8		interrogated her with the use of the polygraph for
9		about three and a half hours and it was his
10		opinion that she did not have any information that
11		would assist the prosecution and she makes the
12		statement about, he reports a statement she made
13		about something Mr. Milgaard said to her, but
14		certainly the Sharon Williams statement from March
15		29th March 20th, 1969 appears to have gotten
16		some consideration and been given some evaluation
17		which I point to the letter only to suggest that
18		it wasn't one that got lost in the shuffle, as it
19		were.
20	A	Yeah, I appreciate that, and this letter does
21		exist, does indicate that she doesn't seem to have
22		information that's useful, if you will, in the
23		prosecution, but certainly she gave quite a long
24		and detailed statement as I recall.
25	Q	Recounting much about Mr. Milgaard as she knew him

1		over a number of months, travelled with him to
2		B.C., Ontario, various lifestyle choices, sale of
3		drugs, theft of goods and various things like
4		that, some coercive sexual behaviours?
5	A	That's the general way I recall that letter
6		pardon me, statement I should say.
7	Q	So again when I, taking you back to your, and we
8		don't need to bring the letter up, but the
9		statement you made in your June 14th, 1972 letter
10		at 006842, having been intimately involved in the
11		case, you, of necessity, came to know a great deal
12		about the personality of the accused Mr. Milgaard,
13		would this be the kind of information that you
14		believed gave you some insight into the
15		personality of Mr. Milgaard?
16	A	Yeah, I certainly would. I would be considering
17		people other than Crown witnesses if they appeared
18		to have, you know, relevant and/or serious
19		information.
20	Q	Okay.
21	A	And I undoubtedly did that in her statements.
22	Q	Specifically in your letter you referred to the
23		stuff that Albert Cadrain told you about the
24		bathtub episodes in Calgary?
25	A	That's correct.
		•



1	Q	You didn't put in your letter about would it have
2		been in your mind at all do you think the
3		information you got about that motel room scene
4		where, by whatever description of it, some pretty
5		significant drugs were being used at a party in
6		May of 1969, some people were being injected with,
7		according to Debbie Hall and others, THC, which I
8		think somebody said to us was horse tranquillizer,
9		there was sexual activity between Mr. Milgaard and
10		Ute Frank in a room in front of a group of people,
11		again, just in terms of your general impression or
12		the information that you were attempting to convey
13		about what you had come to know about this young
14		man as you then believed it to be?
15	А	Yes. I would have, you know, known and/or
16		remembered that particular set of allegations, and
17		it would be something I would have in mind when I
18		did write the letter.
19	Q	Okay. I'm going to take you through a series of
20		other information that was in your possession just
21		quickly. In the police reports that were made
22		available to you in what we know was in your
23		possession, do you recall a report of Detective
24		Karst, I believe it was an April 18th, '69 report,
25		where he went down to Regina in the company of

Staff Sergeant Edmondson to interview and make 2 inquiries about Nichol John and Ron Wilson. 3 document number, Mr. Commissioner, is 009254, and 4 I want to refer you just to a small portion of it. 5 The report is three pages and can be read for itself, but again, in terms of your suggestion to 6 the board, the parole board, that you had some sense of the personality of this man that they 8 9 were dealing with and would have to assess in 10 terms of future risk to the public, did you recall or would you have considered some information that 11 12 you had gotten through Detective Karst from Nichol 13 John that she admitted to having sexual 14 relationships, she considered him to be more of an 15 animal nature than you would expect of a human was 16 the language used in the report. 17 I saw that report and certainly that would be one Α 18 of the things in my mind when I did write the 19 letter; if not word for word, certainly the 20 information contained therein. 21 And, sir, was there information based on what Q 22 Nichol John said as was summarized by Detective 23 Karst in this report, that at one point in time in 24 Regina she had been either raped or forced to 25 engage in sexual acts with Mr. Milgaard, not



1 necessarily with her consent? 2 I'm sure that that is in the file and I attempted Α 3 to, a few days ago, Ms. Knox, to refer to that as one of three or four items that we were discussing 4 5 at that time, so --Sir, if I could then take you to a report 6 Okay. Q dated May 25th, 1969, we referred to it before, document 009264, and if we could go to page 009268 8 9 of that document, and if I could bring out the 10 last paragraph, please. Sir, what Detective Karst reported here is that during his contact with Ron 11 12 Wilson during those days he reported, it was 13 reported -- sorry, I'll read what he said, he 14 said: 15 "Inquiries have been made in Regina in 16 regards to Milgaards whereabouts, 17 however, no one had any information to 18 offer with regards to his present 19 employment or residence, in fact, it was 20 revealed to me by the Wilson youth that 21 Milgaard assaulted another girl in 22 Regina and that he was being sought by 23 various members of the Criminal Element



in that Centre, and if the Police didn't

get to Milgaard before they do, they

24

1 didn't need to worry about him." Again, was this information that was in your 2 3 store of knowledge and which may have contributed to your opinion as you framed it and offered it 4 5 to the parole board about the personality and risks that Mr. Milgaard might represent? 6 That certainly would be, Ms. Knox. Α Okay. Mr. Caldwell, I'm going to come back to 0 9 those reports briefly, but I want to go back and 10 get myself through this letter that I'm taking you 11 through so I can close down the parole board 12 The June 14th letter, going back to 13 page -- full document 006840, going back to 14 006842, and moving on to the next paragraph 15 without going through various other illustrations 16 of information you may have had, you reported to 17 the board that Milgaard was examined by Dr. 18 McDonald, who was the professor and head of 19 department, and you reported at the top of page 4, 20 the opinion given to you in Dr. McDonald's June 21 5th letter, that he was suffering from, and the 22 words are exactly as, or almost exactly as Dr. 23 McDonald wrote them, that he is suffering from a severe behaviour disorder best called a 24 25 sociopathic personality, and you also gave them



Q

the information from Dr. McDonald in his letter to you about how they could go and get the records themselves so that they could satisfy themselves in their role with respect to future release and institution treatment options necessary for Mr. Milgaard, that the information being offered was accurate?

Yes, Ms. Knox. I used the language there Dr.

McDonald points out that if your offices are
interested in following up this case, and then I
recited those four or five sources of information
which evidently he had had at the time, so that I
clearly made it open to them to, you know,
research this on their own, which would be, of
course, perfectly proper in my --

Yeah. And in your earlier page 3 where you had said to them that you had read the entire file, or the entire psychiatric history which was well documented, and you conclude in one of your paragraphs at the middle of the page, which we've already referred to, by referring them to a prediction by a social worker who had examined him that he would one day kill somebody, sir, would you have, knowing the invitation that you were going to extend to the board on the next page,

1		that they go get the records and check it out for
2		themselves, would you have misquoted,
3		intentionally misquoted anything from a record
4		that you believed they were going to go look for?
5	A	No, I would not. And Ms. Knox, I think it's been
6		gone over before, but that document existed,
7		somebody brought it to my attention, and the it
8		clearly is not in the materials we've looked at
9		here in the last few days that came from Dr.
10		McDonald, I've and others have read them very
11		carefully. But I certainly wouldn't have done
12		what you just I expected that document would
13		have still been in the file and it clearly, at
14		least at this time, isn't.
15	Q	Sir
16	A	How I'm sorry, is that all?
17	Q	Yeah. Given your expectation that the document
18		would be in the file, given your invitation that
19		they would go look for the file
20	A	Uh-huh.
21	Q	in light of the direction that you gave to
22		them, I now ask you or refer you to your second
23		letter to the National Parole Board, document
24		number 006835. And, sir, this letter has been
25		reviewed previously by Mr. Hodson, it's the letter

1		where you indicated you were writing a new
2		chairman now, the previous one having been T.G.
3		Street, Q.C.
4	А	Uh-huh.
5	Q	You are writing Mr. Outerbridge, who has become
6		chairman by 1974, you reference hearing him talk
7		in Banff regarding the National Parole Board and
8		him having, I guess, repeated what you had read in
9		the booklet that we've referred to, which was the
10		guide for judges, magistrates and police, that
11		they welcomed input, you reminded him or you
12		brought to his attention the letter that you had
13		sent to Mr. Street two years earlier, effectively?
14	A	That's right.
15	Q	And, again, this 1974 would have been six years in
16		advance of Mr. Milgaard's parole date, as you
17		understood it, so six years for this material to
18		be investigated, responded to by him and others as
19		deemed necessary?
20	A	That's the timing I would understand, ma'am.
21	Q	Okay. Now sir, again going back to my earlier
22		question as to whether you would have
23		intentionally put into your March your June
24		2nd, '72 letter something which wouldn't be borne
25		out by the records, I direct you to the part of
	d .	



1 your letter to him where you reminded him, first 2 off, that you had wrote the letter to Mr. Street, 3 you talked to him about Mr. -- about Dr. McDonald, appeared to have confirmed that Dr. McDonald 4 5 still, two years later, all the psychiatric history in his file, and that Dr. McDonald had 6 told you that, if the parole board got a signed release from Mr. Milgaard, that he would send the 8 9 information in his file, he would then be in a 10 position to forward all materials to you for 11 placement on your file so they will be available 12 on your file when he finally -- or the question of 13 his parole came up? 14 That sequence of events took Α That's correct. 15 place in that order, and it indicated that he 16 would have to have the signed release to forward 17 the materials, which I'm sure was standard 18 procedure, and if all that worked out, the board 19 would have that material on their file when the 20 question of parole did come up. 21 And more importantly perhaps, in terms of Yeah. 22 whether you were acting with good faith when you 23 started this exchange of communication and whether 24 you were attempting to accurately report the



background and the situation as you understood it,

1		you would agree with me that you went on to urge
2		him that he should attempt to obtain the release,
3		get the materials himself "himself" being the
4		National Parole Board so they could have
5		first-hand what you had documented in your letter
6		of June 14th, 1972;
7	A	Yeah,
8	Q	would you agree?
9	А	that's right. It would be that much better, if
10		you will, a set of material, not different but
11		authentic or straight from the file, than what I
12		had put in the letter.
13	Q	But, Mr. Caldwell, I take it you would agree with
14		me this would be entirely inconsistent with the
15		suggestions being made to you, particularly by
16		Mr. Wolch, that you were doing this to be
17		particularly troublesome, sinister, and that you
18		were misleading the board, in effect, in the
19		information that you gave to them; you in fact
20		were encouraging them to go to the horse's mouth,
21		were you not?
22	А	Yeah, I was, and through two or three of these
23		letters, and making it you know, encouraging
24		them to do, in effect do their own research on it,
25		Ms. Knox, in the way that this is set out here.



1	Q	Okay. If I could then bring out document 006830,
2		I believe is the doc. ID. Sir, I'm now referring
3		you to another letter that's on the file that you
4		were directed to as part of the theory that you
5		were, in part, Mr. Milgaard's biggest tormentor,
6		this is the August 5th letter, 1977, to you from
7		the National Parole Board?
8	A	I see that.
9	Q	Okay. And we're edging closer to Mr. Milgaard's
10		eligibilities for release, we're now into 1977, so
11		seven years in, his first eligibility being ten
12		years. But at this point in time, in 1977, would
13		you agree with me it is the parole board
14		soliciting further input from you as opposed to
15		you doing a "I did it in '72, I did it in '74, he
16		is getting closer towards a release date, I must
17		hammer him again" kind of reasoning or philosophy,
18		if I could shorthand it that way?
19	А	That's, that's exactly correct, they are
20		approaching me for a process to take place which
21		in as I see it would better enable them to
22		assess the person in question, and as opposed to
22		the other way around, and clearly this would be a,
23		

Ms. Knox, as I see it for -- on their part.

1	Q	What Ms. Flintoft Meronek, if that's her name,
2		said to you in her closing paragraph is that he
3		had recently applied and they would appreciate any
4		information that you could provide concerning him
5		that could assist them, and they if I could
6		bring up document 006831. In fact, that is a
7		letter to Dr. McDonald the same date
8	A	Okay.
9	Q	and it has, it's advising him that they have
10		now obtained the authorization that you suggested
11		they get in 1972 and 1974, and they want to get
12		the records so they can make objective judgement,
13		as it were, about his history in terms of their
14		consideration of his day parole release
15		application; would you agree with that?
16	A	Yeah, that's what that letter sets out.
17	Q	Okay. And then finally in terms of your
18		correspondence, so that the record is complete and
19		to remind us all, there is document 006822. And
20		this, of course, is the letter that you wrote back
21		in response to Ms. Flintoft Meronek's invitation
22		of August 5th, 1977 where you set out again, or
23		you indicate you set out your views in 1972, you
24		were giving her what you had sent then, a copy of
25		the judgement, the you gave her the information $\P$

1		about the Supreme Court of Canada refusal, an
2		extra copy of the booklet of photographs, and I
3		and basically said your views in 1972 remained as
4		you had documented them in that letter. And you
5		go on to talk about, at page 2, the fact that
6		there had, since you wrote that letter in 1972,
7		Mr. Milgaard had escaped from custody, referring I
8		believe to Dorchester prison in Atlantic Canada
9		where there was a brief escape by him some years
10		earlier?
11	A	Yeah. That's that's, in effect, an update as I
12		see it, Ms. Knox, to what I did previously.
13	Q	And, sir, when you are writing that letter to her
14		I take it you are writing that with the full
15		knowledge that she is requesting the psychiatric
16		reports from Dr. McDonald, because her letter to
17		him of August 5th, 1977 was copied to you,
18		according to the bottom of the page?
19	А	I would have known that, at the time, for that
20		reason.
21	Q	Yeah. So again, in terms of preparing, compiling
22		information, and the suggestion that you were
23		being overzealous, you were being vindictive, you
24		were setting out to prevent Mr. Milgaard from
25		getting parole, you were misleading the parole
		•



1		board, whatever permutation or interpretation you
2		want to put on the questions asked of you, was
3		that in fact what you were doing?
4	A	Yeah. Not at all. I was trying to proceed in an
5		orderly pardon me orderly fashion dealing
6		with the parole board in those letters because I
7		had knowledge about the Mr. Milgaard, and about
8		the local situation here, and the I was, as far
9		
		as I can see here, in effect attempting to assist
10		the board who might very well have profited from
11		what I told them, Ms. Knox, the way I thought.
12	Q	Mr. Caldwell, as I reviewed all the letters and
13		have gone through them again today with everyone
14		in the room, I don't see anywhere in those letters
15		that you ever requested or anticipated or expected
16		that your submissions to the board in 1972, 1974,
17		or 1977 wouldn't be shared with Mr. Milgaard; did
18		you?
19	А	No. Did
20	Q	You never asked them to keep it a secret or
21	Α	Oh, not at all. I didn't know how they operated,
22		but I would have assumed that that information
23		would have been disclosed to him as part of the
24		interviewing process.
25	Q	And particularly, I would suggest to you, given $\P$



1 your suggestion to him -- to them that they get his authorizations to go seek out the very records 2 3 you were alerting them to? 4 Yeah, that's how I see it, ma'am, now. Α 5 Okay. Q And I'm sure that's how I meant it at that time. 6 Α Now I'm going to go very briefly back, if Q 8 staff will bear with me, to document 332055. 9 if I could go to page 6 which would be, I think, 10 067 of the document with the Bates numbers, 11 332067 -- ah, there we are. If I could bring up 12 this part about Inmate Interview and have that 13 brought up. I may have referred to this already, 14 but in the vein of whether you would -- saw it or 15 would have expected that your information might be 16 kept secret, as has somehow been suggested, that 17 you were sort of hiding in the bushes and doing stuff to foil his release; based on what was in 18 19 this booklet about Inmate Interview would you have 20 expected that staff would be working with him and 21 would be talking with him about information that 22 they were considering in assessing whether or not 23 he was a good candidate for release, helping him 24 prepare his post-release plans, assess his parole 25 risk, etcetera, etcetera; would you have

1		anticipated that that's the kind of thing that
2		would be the subject of inmate interviews as an
3		example?
4	А	Certainly. That's what they say they do, and I
5		had no reason to second guess or doubt that,
6		ma'am.
7	Q	If we could just scroll down, please, to the
8		paragraph on community investigation and again,
9		I think I may have touched on this, I'm getting
10		more tired perhaps than you are but it was
11		suggested to you that it was somehow wrong or it
12		was Machiavellian, or less, a little bit less than
13		put maybe somewhat improper that, in writing your
14		report, you never mentioned his family supports.
15		And would you have known, assuming that you are
16		you have read this document, as you tend to want
17		to read every document that we put in front of
18		you,
19	A	Uh-huh.
20	Q	that part of the investigation and part of the
21		assessment would have involved them working with
22		his family, his work record, and various things
23		like that?
24	А	Oh, I would certainly expect that, because those
25		would be legitimate sources of trying to estimate
		Movey CompuCourt Paparting

1		how he would do once he was out of custody.
2	Q	But certainly you wouldn't, I would assume as a
3		prosecutor in the system learning and knowing the
4		role and function of the parole service as it
5		developed and became identified within the
6		corrections community, you wouldn't have expected,
7		number 1, that they would keep any information you
8		sent to them secret based on anything in this
9		booklet?
10	A	No, I
11	Q	And, number 2, you would have anticipated that, in
12		order for it to be of any benefit as their general
13		philosophy in this booklet, it would help them to
14		know, to help them to assess how best to deal with
15		him, that surely it would be shared with him?
16	A	Yeah. Number 1 is a "no", and in the second I
17		would certainly expect, Ms. Knox, that it would be
18		shared with the patient, or prisoner, or however
19		you wish to describe him.
20	Q	So no Machiavellian design on your part?
21	A	Yeah.
22	Q	A genuine belief that this gentleman, at that
23		time, was properly convicted and represented a
24		potential risk in the absence of treatment and
25		intervention within the parole service?

1	A	That's correct. And again, without repeating the
2		Threinen matter, by that time this had occurred
3		and was a real concern to, you know, citizens of
4		Saskatoon I suppose, including myself as a
5		prosecutor. Although I was not involved in the
6		Threinen matter to any extent, that would have
7		caught my attention, without a doubt.
8	Q	Okay. Now, sir, since
9		COMMISSIONER MacCALLUM: That is released
10		prisoners were a big concern, did you mean?
11	A	I'm sorry?
12		COMMISSIONER MacCALLUM: Released prisoners
13		had become a big concern, had they?
14	A	Oh, well Mr. Commissioner, the general heading was
15		sort of released prisoners released prematurely
16		who might go on to, you know, get commit
17		serious mischief. I think I mentioned the
18		headline accompanying the Threinen matter was Must
19		system wait until killer strikes, and that was
20		clearly unrelated to our case, but it made an
21		impression on me and others here at the time that
22		one should be very careful about releasing people,
23		you know, if you will, without very careful checks
24		on them.
25		COMMISSIONER MacCALLUM: Yes.
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1 Α Yes. Thank you, sir. 2 COMMISSIONER MacCALLUM: Okay. 3 BY MS. KNOX: 4 Now, Mr. Caldwell, I want to move briefly into an 0 5 area where you were subjected to criticism and accusations by Mr. Lockyer that you were 6 conveniently changing your memory and changing 8 evidence that you'd given at an examination for 9 discovery, and that's with respect to the 10 references in your meeting with Mr. Carlyle-Gordge 11 in 1983, in March of 1983, that he should have 12 "omit references" in any -- the book that you 13 believed he was doing, to other rapes where Mr. 14 Milgaard was suspect but which hadn't been brought 15 home to him effectively, either by confrontation 16 or by charge? 17 Α All right, ma'am. 18 And I'm referring, Mr. Commissioner, to 19 there are a number of documents, the easiest quick 20 reference is 332052. I'm not gonna ask to have 21 all these records brought up because they have 22 been dealt with fairly recently and are fresh in 23 most of our minds, unless someone wishes me to do 24 so, but sir --



Which one is that?

COMMISSIONER MacCALLUM:

1 MS. KNOX: This is the four-page points of note that Mr. Caldwell prepared in advance of his 2 3 meeting with Mr. Carlyle-Gordge --4 COMMISSIONER MacCALLUM: Right. 5 MS. KNOX: -- in March, and he went through, it's a four-page document. 6 BY MS. KNOX: On the last page of that document he references 8 0 9 "suggest omit", and the last one of those would be 10 this entry right here that I want to talk to you a 11 little bit about, and hopefully get some clarification. You indicated, in the course of 12 13 your examination for discovery -- or you were 14 asked about this and it was suggested to you by 15 Mr. Rodin that what you were talking about was the

know to be (V2)---- and (V1)-; you remember that?

I do, and I'll expand on that, but it had nothing

to do with that topic, Ms. Knox.

references in your file to the rapes that we now

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Okay. Sir, there was some reluctance to accept your answer in that regard, and I've just taken you through a series of references in your file about David Milgaard that would fall under the category of, in some instances, sexual -- or coercive sexual behaviours, let's use that

1 word, --2 Α Okay. 3 -- or sexual behaviours where co-operation was 4 induced through the use of drugs as with the Calgary incidents that are described by Albert 5 Cadrain. 6 Uh-huh. Α In the May -- the April -- the August 26th 8 Q 9 statement, which for the record is doc. ID 007028, 10 or with Ute Frank in the hotel room as described 11 by her and others in the statements that were 12 given to the police in January of 1970, remember 13 those, --14 Α I do. 15 -- where there was the ingestion of drugs and then 16 sexual activity, I've just referred you to some 17 reports in the police report that we know you had, 18 in particular the April report of doctor -- of 19 Mr. Karst, Detective Karst' discussion with Ron 20 Wilson, and the document ID -- or sorry, with 21 Nichol John, the document ID on that being 009254, 22 where she talked about sexual activity with Mr. 23 Milgaard and used the language that he was more 24 like an animal than you'd expect as a -- from a



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person?

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1	А	Yes.
2	Q	Remembering that one?
3	А	I do.
4	Q	And from
5		COMMISSIONER MacCALLUM: I thought she said
6		that, I thought she said that to Karst, did she
7		say that to Wilson?
8		MS. KNOX: Sorry, no, I she said it to
9		Detective Karst.
10		COMMISSIONER MacCALLUM: Yes, okay.
11		MS. KNOX: I'm getting my words are
12		getting ahead of me. My next one is Mr. Wilson.
13	BY M	MS. KNOX:
14	Q	And I refer you, again, to the report that we just
15		spoke about briefly where Ron Wilson reported in
16		May to and in a May 25th report, or a May 21st
17		to 25th time he spent with Detective Karst, that
18		David Milgaard was supposed to have assaulted
19		another girl in Regina and if the tough guys got
20		to him before the police did there wouldn't be a
21		need to worry?
22	А	I recall that a few moments ago.
23	Q	And the document ID on that one again being
24		009268. Sir, I also refer you, just as a, as one
25		of one reference, to document 007050. These



1 are your notes that you prepared in advance of the 2 preliminary inquiry, according to other dating on 3 them, but if we could bring out photo -- item 4 number 15, please. You wrote a question, you were 5 listing things that you had to do in preparation for the preliminary inquiry, and you wrote 'What 6 known re M. assaulting another girl in Regina (Karst p. 392)', and then you wrote, 'This was 9 Nichol John in park previous summer and in Champs 10 Hotel, Wascana Hotel', and I can't read that last 11 part? 12 Α Yeah, the -- it would be 'previous summer and 13 previous afternoon or evening'. 14 Yeah. 15

A And then the last line, 'Champs Hotel or Wascana Hotel', is what that would stand for.

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I draw this document to your attention because again, as with the Sharon Williams statement of March and the indication that you had it assessed, or the police had it assessed by Mr. Roberts, the polygraphist; would this entry, as an example, indicate to you that you were alert to suggestions of other coercive sexual activity involving Mr. Milgaard, that he wasn't charged with, when you were talking to Peter Carlyle-Gordge in March of

1		1983?
2	А	Yeah. Ms. Knox, it was those four or five matters
3		that we just went over a moment ago and then
4		you've directed my attention, if you will, back to
5		them now those were the things I was referring
6		to with respect to Mr. Carlyle-Gordge. They all
7		related to Mr. Milgaard as opposed to anyone else,
8		and certainly as opposed to Larry Fisher, he was
9		had nothing to do with this, this venture
10		whatever. And I think there's even a well,
11		that's, it's the same collection of three or four
12		or five items that I was this item 15 is an
13		example thereof, I would say.
14	Q	And Mr. Caldwell, in drawing out the portions I
15		draw out I draw them out to be illustrative,
16	Α	Yeah.
17	Q	there may be others,
18	A	Yeah.
19	Q	but that within your file and within your
20		preparation you were directed to and had to give
21		thought and consideration to other acts,
22		potentially, of rape
23	Α	Uh-huh.
24	Q	that were not the subject of charge or as, to
25		use your language, brought home to him, as it
		4



1 were, in any form either by police interrogation 2 or otherwise? 3 I was conscious of them in two Α That's right. 4 different ways, the way I was attempting to 5 impress on Mr. Carlyle-Gordge for one, and the other way was the general collection of things 6 involving Mr. Milgaard and sexual activities, 8 whether or not they -- you know, however far they 9 went, whether they were by force or weren't, 10 clearly none of them resulted in charges or 11 convictions the way I see this, but --12 Q And just briefly to touch on before I've finished, 13 it was suggested to you that that explanation by 14 you doesn't make a lot of sense because you 15 recounted stuff like Albert Cadrain at -- Albert 16 Cadrain's story about the bathtub incidents in 17 Regina --18 Uh-huh. Α 19 -- in your correspondence to the National Parole 20 Board, and what would be the big whoop, as it 21 were, if Mr. Carlyle-Gordge put it in a book; you 22 indicated that you saw those two things as 23 different, the parole board being a government 24 agency with a mandate, a statutory mandate, if I 25 can use language to describe their function,



1 whereas Mr. Carlyle-Gordge was just a writer, a member of the general public under the guise of a 2 3 writer as it turns out, but it was your belief that he was just writing for general consumption 4 5 by the public if he wrote a book? Α Yeah. And those things, Ms. Knox, were in no way 6 comparable one to the other. The National Parole Board matters, that was a professional 8 9 organization looking for legitimate input from 10 people like prosecutors, the Carlyle-Gordge matter 11 was an entirely different, and indeed turns out to 12 be a fraudulent venture, --13 0 Okay. 14 -- which was passed off on me. Α 15 Aside from your subsequent learning about the 16 fraudulent nature of his venture, or his 17 representations as to his purposes for coming to 18 see you, were what you were attempting to 19 articulate in your response to that suggestion to 20 Mr. Lockyer or to Mr. Wolch and what you are 21 attempting to articulate today be that you would 22 have a concept of qualified privilege, as it were, 23 in dealing with the National Parole Board, but 24 that certainly wouldn't apply to a general



publication for consumption if Mr. Carlyle-Gordge

1 were to write a book? Yeah, I certainly would feel that way about the 2 Α 3 communications to the National Parole Board, 4 because they were solicited and legitimate, as 5 opposed to the Carlyle-Gordge enterprise, which was, I guess, neither of the above. 6 And, sir -- I apologize, Mr. Commissioner, Q I am moving stuff away so that I'll know when I'm 8 9 done and I won't revisit it. 10 Maybe a little bit more a 11 scatter-shot approach to some issues that I 12 identified when I kept making notes to be used in 13 your redirect. You were asked at length by 14 Mr. Wolch and canvassed at length with respect to 15 your interaction with Craig Melnyk and George 16 Lapchuk in around the time of the trial commencing 17 in 1970; you remember those exchanges with him? 18 Yes. Α 19 And his suggestion to you, at one point, that your 20 being in touch with the prosecutor in Regina could 21 mean -- because your file documents, and I, we can 22 bring up 006910 for those who may need their 23 memory refreshed -- but could mean that you were 24 letting the prosecutor know that these guys were 25 helping you out, or somehow might have been an

1 entree to them getting special treatment down the road even if you didn't request it from your 2 3 colleague, Mr. Piragoff; do you remember those 4 questions or those suggestions? 5 Α Umm, I recall those questions. And you being, it's suggested to you that you 6 Q should have been really, really, really careful, because even if you didn't come right out and say 8 9 it, these two characters with their criminal past 10 might have kind of expected that there'd be some favour on the up -- the back side of that 11 12 enterprise? 13 Α I, Ms. Knox, think they couldn't have got 14 that impression from me. I found the two of them 15 very, you know, legitimate persons, I warned them 16 at length that I didn't want them leaning either 17 for or against Mr. Milgaard, and that they had to 18 tell the truth. 19 My communication to Mr. Piragoff 20 was to find out the dates of their Regina Court 21

cases and -- because there, in my view there was a, certainly a danger that they might not be in Regina when they should be, and get arrested or something like that for not showing up, and/or might not be in Saskatoon when they should be on



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1		our case. I'm sure they were subpoenaed by this
2		time.
3		Now I, I can't imagine, I mean I
4		simply don't agree that, because I phoned
5		Mr. Piragoff in this fashion, undoubtedly talked
6		to these two about what I found about the date,
7		there's I can't imagine them even reading into
8		that that "oh, and by the way, there'll be
9		something in this for me". That would be, you
10		know, exceedingly improper, and of course
11		Mr. Piragoff wouldn't be part of that and,
12		clearly, he would be offended by it as well.
13		It seems to me that Mr. Brown,
14		this was eventually put to Mr. Murray Brown as a
15		possibility, and he was
16	Q	Okay, and I don't think you should repeat what
17		Mr. Murray Brown said,
18	A	No, that's fine.
19	Q	we will be hearing from him. But I bring you
20		back to that because Mr. Wolch looked at it and
21		put it to you as a, perhaps an indication of
22		something less than proper or maybe something
23		sinister here
24	A	Yeah.
25	Q	in the notion that you would contact a
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		1 age 10129
1		prosecutor, let him know that these guys were
2		helping out on a really important case?
3	А	Yeah.
4	Q	And I just want you to, if I can, in your file you
5		documented pretty closely the history of contact
6		with these guys; didn't you?
7	А	I'm sure I did.
8	Q	Your file documents, and you've testified, that
9		they didn't come forward and offer their services
10		as witnesses; Ron Wilson, as a by-the-by in a
11		conversation with a police officer en route to
12		Saskatoon the night before the trial, happened to
13		mention these characters?
14	А	That's correct.
15	Q	So whatever their backgrounds, whatever, whether
16		they be rounders or not, they didn't come looking
17		to help out the Crown's case?
18	А	Absolutely. And they did, in my memory of this
19		matter, gave consistent evidence at the various
20		levels, the trial, the and various things that
21		have happened in the meantime. And one of the
22	Q	Okay. Aside from whether they gave consistent
23		evidence,
24	A	Okay.
25	Q	I'm going to be a little bit like Mr. Lockyer $\P$



		rage 10700
1		and say "stay with me here and we'll get through
2		this faster"
3	А	Okay.
4	Q	and again dealing with your note made 23rd of
5		January, 1970, you first got notice about them,
6		you got the call on a Sunday night, you sent the
7		police down on a Monday, you got the statements
8		back on Wednesday, you got in touch with Mr.
9		Tallis and you said "I'm going to have these
10		characters down here and interview them"
11	А	Uh-huh.
12	Q	"and I'll let you know if I'm going to call
13		them"?
14	А	Yeah.
15	Q	And 'characters' being my word, no pejorative
16		intent.
17	А	Yeah.
18	Q	23rd of January, 1970, and again as with the
19		preliminary inquiry in attempting to place
20		behaviours, 23rd of January, 1970 was a Friday.
21	А	I'm sure you are right.
22	Q	You will trust me on the calendar?
23	Α	Yeah.
24	Q	Mr. Commissioner, this calendar can be put on
25		CaseVault as well.
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		Page 18731 —————
1	A	Very good.
2	Q	23rd is a Friday and the notes would indicate that
3		was your first meeting with them in person.
4	A	That's
5	Q	You have their statements, you've sent them to
6		Mr. Tallis, you are meeting with them.
7	A	Yeah, that timing sounds right to me because it
8		was the end of that week.
9	Q	Mr. Caldwell, do you remember today by any chance
10		in the world the dates that you needed these
11		gentlemen to testify given how your evidence was
12		unfolding and that these were late additions to
13		your witness list?
14	A	I don't remember it, and I would think it would
15		depend on how the rest of the trial was
16		progressing in terms of, you know, slowness, speed
17		or what have you.
18	Q	If I were to suggest to you that as the trial was
19		unfolding, and the transcript indicates that in
20		fact these gentlemen both testified on January
21		28th, would that come as any surprise to you?
22	А	Not at all. That's roughly five days after the
23		Friday, so that is, what, about the next Wednesday
24		plus or minus?
25	Q	Yeah. You indicated to Mr. Wolch earlier in your

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1		cross that this reference to Regina R-E-G is
2		Regina.
3	A	Yeah.
4	Q	and that you read this to mean that Melnyk was
5		required to be in Court in Regina on Wednesday the
6		28th, Thursday the 29th?
7	A	That's right.
8	Q	Lapchuk was required to be there on the 26th for
9		plea.
10	А	Yeah.
11	Q	If they were required to be in Regina for, Melnyk
12		was required to be in Regina for the 28th and you
13		needed him to be in Saskatoon for the 28th, is it
14		possible that all you were doing was just calling
15		Mr. Pirogoff to say I've got a jury here, I ain't
16		getting an adjournment, I need you to free this
17		kid up to be here on the 28th because I've
18		assessed him, I've interviewed him and I think his
19		testimony should properly go before the jury?
20	A	I don't recall that happening, but certainly a
21		possibility, Ms. Knox, because I had to be careful
22		not to get them in the two situations we just went
23		over, for sure.
24	Q	Okay. But the
25	А	The warrant for not showing up in Regina, or
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1 equally so if by chance they didn't show up in 2 Saskatoon, which they did. 3 I'm not going to take you through the rest 0 4 of the documents with respect to them, but again 5 Mr. Wolch was saying you should have been really cautious with these guys because they've got 6 records, they've got rounders, they've got charges 8 pending, you know, you really need to be careful 9 they don't get a favour from him, and while you 10 indicated in your answers to him you weren't 11 cognizant of it, may I suggest to you that your 12 file indicates that perhaps you were, because in 13 particular with them you would stress with them 14 the importance of not slanting their evidence, 15 being truthful and doing nothing other than giving 16 truthful evidence, don't try to help him, don't 17 try to harm him, go straight down the middle here, 18 do your duty as good citizens as it were? 19 That's roughly the talking to I gave to them and, 20 you know, that seemed appropriate at the time to 21 me. 22 And would it seem particularly appropriate, or 23 perhaps the reason you did that was because they 24 did have records and they did have charges 25 pending?



Yeah. They were not simply, you know, teenagers inexperienced in these matters. They did have, both the above, in case one, one or other of them, and that -- there would be no need to give that talk to a couple of, we'll say, Saskatoon (sic) teenagers who happened to be witnesses on the trial, Ms. Knox.

Okay. Sir, I'm going to go back to the transcript for a minute and try to cruise my way through the rest of this. In the cross-examination of you by Mr. Lockyer he suggested to you that you had to look at various statements, and I'm referring to his examination of you, transcript page 17911 into 912, and he's talking to you about Nichol John starting at the bottom of the page, talking about Nichol John and how you should have been alert to the fact that she recanted, that her -- her second statement basically was a recantation of her first and then you had troubles with her in Court, not that she recanted, but he identified for you her first statement was completely exculpatory, second statement was entirely incriminating and her third statement is that she doesn't remember. Do you recall that being asked of him?

A I do.

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And you and he talked about her three statements. I've already referenced for you today, and I ask you if you would agree with me, that in fact what you had and what wasn't referenced by Mr. Lockyer in that line of examination was the fourth statement from her that she gave in the preliminary inquiry hearing room where she said I don't know why he didn't kill me too, I was right there and I saw it all, but I'm not going to say anything.

A Yeah, I understand that, and that could and would be regarded as a fourth statement in that sense.

And would that -- and I think I covered with you this morning, he suggested to you that these changes, the second statement that was incriminating might have been because she was intimidated by being left in a cell, she was shown horrible pictures and bloody clothes, she might have been intimidated by Mr. Roberts, she might have been intimidated in the courtroom because of police and various things like that and her only recourse was to say she didn't remember, but you agreed with me this morning, and I repeat to you, or ask if you agree with me, that the statement in the witness room had no apparent intimidation,



1		fear, nothing, it was just a gratuitous offer by
2		her for no apparent reason, unless one would
3		assume it was the truth legitimately back then?
4	A	I had no other explanation I could attach to it
5		than that, Ms. Knox.
6	Q	Okay. Now, sir, you were canvassed both by
7		Mr. Lockyer to some degree, and certainly by Mr.
8		Wolch, about your responses, reactions to the
9		suggestion that was being made whenever it became
10		known to you that David Milgaard was protesting
11		his innocence. You recall that area being
12		canvassed with you?
13	А	Yes.
14	Q	It was suggested to you that there must have come
15		a point in time when if you were bona fide in your
16		actions in 1969, '70 and 1971 as you have
17		indicated in police statements since and in your
18		testimony before this Inquiry where you would have
19		looked at what was developing and said, my God, is
20		it possible that I was wrong?
21	А	Uh-huh.
22	Q	And in fact it was suggested to you why didn't you
23		assist the Milgaard camp, if I can use that
24		phrase, and I don't use it pejoratively, it
25		appears in the literature frequently and in
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1 various documents --

A No, no.

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2 -- but why wouldn't you have gone to them and said hey guys, just in case I made a mistake here let me help you. Do you recall being asked those guestions?

I do, and I think I gave an answer to that Α yesterday. There are a couple of additional reasons why I wouldn't have, I guess, happily gone to that camp. Number 1, Ms. Knox, is that I did not have any information or secrets up my sleeve that were not known to them whatsoever, I simply didn't, and second, of course at some stage of the game they had sued myself, Mr. Kujawa, Detective Karst, Lieutenant Short, I believe the City of Saskatoon and the province, and Serge Kujawa at some stage of the procedures. Now, the items Mr. Wolch put to me, five or six considerations, I attempted to explain that I don't know at this time, Ms. Knox, in what order those things happened; in other words, he may have put them to me in the order they really did happen, he may not have, I couldn't tell from that, you know, that summation of things that should have put me on my I don't know when they occurred in alert.



		rage 10730
1		relation one to another, and
2	Q	Mr. Caldwell, if you'll bear with me, I may be
3		able to assist you.
4	A	Okay, good.
5	Q	As to when you became aware that it was a
6		moving-forward campaign with some strength, I'm
7		going to bring up document 159446 if I may.
8	A	Very good.
9		COMMISSIONER MacCALLUM: 462?
10		MS. KNOX: 159446 is the document I was
11		requesting.
12		COMMISSIONER MacCALLUM: 153446? Thank
13		you.
14		MS. KNOX: 153446. My apologies.
15	ВУ	MS. KNOX:
16	Q	Mr. Caldwell, this is a document in your files
17		which we subsequently gave to the Commission, it
18		has your name on it and has some handwriting on it
19		that I think is yours, of a press conference or a
20		CTV news story, CTV National news story on October
21		15th, 1989?
22	A	Yes. The hand the printing and writing in the
23		right column is in fact mine, the right-hand
24		column.
25	Q	That's what I thought. Now, this so since we $\P$



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have your handwriting on it, it would be safe to assume that at some point in time you either heard the story on the national news or you got the media transcript and you read and reviewed the story because you put notations on it?

A I'm sure that's correct.

Q Okay. And, Mr. Caldwell, without going through it in its entirety if we could go to page 153449

in its entirety, if we could go to page 153449, and there's a -- the essence of it is about Mr. Milgaard being wrongfully convicted, some input from Mrs. Milgaard about the system and where David is now as in the earlier pages. reporter says the key question still remains, and there's some things blacked out, and I'm not sure what they are, they were in the version that we got, about the evidence that convicted David Many of those involved in the original Milgaard. case will not comment. It talks about the investigating police officer is now the chief of police, the defence counsel now sits on the Court of Appeal, ironically the body that will hear the case if it's retried -- and from your point of view, the next top page, and the Crown attorney of the day now works for the Federal Justice Department, a black-out again, that will decide if



1		Milgaard gets another day in Court, and there's a
2		note, and this was done by Pamela Wallin, CTV,
3		your note, "It makes it sound as if I'll be
4		deciding the case"?
5	A	Yeah, or I would be deciding the case.
6	Q	Okay. Sir, in 1989 obviously you became aware of
7		this kind of media attention, and was that a
8		concern for you, and there's nothing direct there
9		in terms of accusation, but there's that implicit,
10		you know, these guys are guys in high places and
11		we're just the little people trying to fight the
12		system, if I can paraphrase, and I hope not
13		disrespectfully.
14	A	Yeah. I undoubtedly became aware of it. I may
15		indeed have been involved in the process of
16		retaining counsel, or maybe that happened it
17		certainly alarmed me, Ms. Knox.
18	Q	Enough that you had it, and you made a copy of it,
19		make comment on it, sometime around or after
20		October 15th, 1989?
21	А	That's right.
22	Q	Mr. Caldwell, if I'm remembering your dates
23		correctly, you were then still in the employ of
24		the Department of Justice federally as this
25		indicates, but continued employment only for about

1		another year?
2	A	What was this date again?
3	Q	October, 1989. October 15th, 1989 is the date of
4		the press transcript.
5	A	Yeah, I believe my employment there ceased, I
6		would suggest, October 1st, Ms. Knox, if I'm
7		right.
8	Q	Okay.
9	A	Yeah.
10	Q	The next document I'm going to bring up, and again
11		this is one that I believe at some point you had
12		an awareness of, 001543, a newspaper article from
13		the Saskatoon StarPhoenix dated October 20th,
14		1989, and, Mr. Caldwell, I'll direct your
15		attention again, the headline of course,
16		"Milgaard's mom sure he'll be freed," talking
17		about the progression in attempting to deal with
18		her son's continuing incarceration and conviction.
19		I want to direct your attention to the article
20		starting about here.
21	А	Very good.
22	Q	And I do this out of fairness to Mrs. Milgaard
23		because it's a broader issue. If we could go to
24		the next column, please. She's basically
25		commenting about the way the media dealt with her
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1 This part I want to draw your attention to, son. 2 \$2,000 reward offered by the police, induced is 3 the word, Crown witness Albert "Shorty" Cadrain to 4 testify against her son, Joyce said. Now, sir, in 5 1989 when you read that, and these are the words coming from Mrs. Milgaard as quoted in the press, 6 did you have knowledge that in fact that that was 8 clearly a wrong statement? 9 Α Yeah. 10 Given what you knew of Shorty Cadrain at the time of the trial and how the reward, was that 11 12 eventually given to him because he was invited to 13 apply for it after the trial was over? 14 Α I had knowledge that that was incorrect. 15 Mr. Cadrain applied for the reward. I was one of 16 the people who thought he should get it. 17 believe I spoke with our city solicitor Brosi 18 Nutting and I was clearly in favour of that and, 19 as it happens, I'm pleased to say he did get the 20 reward because of how the case looked at that 21 time. 22 And, sir, in terms of you, and there's some 23 evidence before the Commission that Superintendent 24 Wood actually went to Father Murphy, who was the 25 parish priest in Albert Cadrain's parish, after



the trial was over and asked him to intercede with the Cadrain family who were his parishioners to suggest that Albert reply. I don't know if you were here for that evidence. I think I'm summarizing it fairly concisely.

I believe I was, and I believe that's all correct.

Now, sir, I don't know if we can bring up the reward poster, the document number -- actually, I don't have a document number, I pulled it out of your file, but I'm going to suggest to you the reward poster, the last sentence of it said:

"The Board of Police Commissioners would be the sole arbiter as to whom the reward shall be paid and in what proportion should there be one claimant. The offer of this reward, unless renewed, shall expire at midnight, February 2nd, 1970."

And I was wondering as I was mulling over these documents on the weekend whether the input by Superintendent Wood to go to the priest to invite Albert to make the application might have been because there was a limit -- this is a different reward we have up on screen, but thank you for trying to get me the one I'm referring to -- but



1		that might have been a motivation for the impetus
2		by the police to get his application in before
3		the deadline expired, as an example?
4	A	That could well be the case.
5	Q	And again in terms of the suggestion being made in
6		the public media that Albert Cadrain was induced
7		to give false testimony for financial reward, you
8		are aware that there was information, and there
9		was information offered at this Inquiry, there was
10		information offered by Dennis Cadrain to Peter
11		Carlyle-Gordge in 1983 that Albert had no interest
12		in money; in fact, when he got the money after the
13		trial was over he actually gave it to his father?
14	А	I think I heard that evidence in the Inquiry.
15	Q	Okay. So would that kind of knowledge, if all
16		that was in your knowledge base in October of
17		1989, have influenced how you perceived,
18		approached the campaign that was being organized
19		with respect to the possible innocence that you
20		were seeing in the public domain what you knew to
21		be, or believed to be based on what you knew of
22		the file, wrong information?
23	A	That's correct. It would have certainly upset me
24		and clearly Albert's testimony was all concluded
25		by the time any reward was given in this instance. $lack$



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I'm next going to ask if we can bring up 332404, and, sir, this is a cover, or a cover story, a third page story in the Saskatoon StarPhoenix, March 15th, 1990, referring to the ongoing efforts to -- for the 690 review I think at that time. The date appearing here -- it's on the Court steps of the court house here in Saskatoon, and, sir, this is a document that I pulled from your file that you were maintaining as your personal file between 1990, 1991, and if I could go to page 2, please, 332405, and, sir, I want to bring out the paragraph here if I may. This is in the context of Mr. Asper and Mr. Milgaard giving a release, or an interview to the public talking about going over transcripts and exhibits from the trial and talking about the application to have the case re-examined by the Department of Federal Justice, but in their information that they are giving and putting on the public record there's this paragraph that reads there's also the question of a missing knife, a double-edged, bone-handled knife, and it gives a description, found near the body on the day of the murder. It disappeared before the preliminary hearing. A second knife was found in the spring when the snow melted.



1		was single-edged. Asper said it would have been
2		helpful if it could have been shown that the
3		second knife presented by the Crown wasn't the
4		murder weapon. Sir, you read this in the
5		Saskatoon paper presumably, you had it on your
6		file. Was this correct information?
7	А	Not according to me, madam.
8	Q	And in terms of your file and the file records
9		with respect to the handling of exhibits, did any
10		knife disappear before the preliminary inquiry?
11	A	No, it did not in my recollection of how the trial
12		proceeded and the prelim.
13	Q	And, sir, I remind you that in the course of the
14		evidence offered at this preliminary sorry, at
15		this Inquiry, this public Inquiry, that there's
16		evidence that in fact the knife that appeared to
17		be the one that you were, or was being suggested
18		was lost before the preliminary inquiry was
19		present, either present at or was available at the
20		preliminary inquiry, that in fact Mr. Tallis had
21		one of your identification officers recalled
22		toward the end of the preliminary inquiry, as was
23		shown in the transcript, and he asked some
24		questions about it?
25	A	That's correct.

1	_	
1	Q	And the records, according to police reports that
2		have been put to others by Mr. Hodson, showed that
3		that knife was still available at the time of
4		trial?
5	A	That is also correct.
6	Q	And, sir, in reviewing your file, there was
7		various documentation on your file with respect to
8		you having a police officer establish the chain of
9		continuity of that knife, or the various knives,
10		for purposes of ensuring that you had accurate
11		information if questions were given, and I'm
12		referring to document 009423.
13	А	I'm sure that's right. Is that that exhibit
14		chart, Ms. Knox?
15	Q	No, that's a handwritten note in your file.
16	A	Oh, very good.
17	Q	Likely the handwriting of former Chief Penkala,
18		who had really nice handwriting.
19	A	Okay.
20	Q	But tracing and providing information with respect
21		to various knives that were the subject of fines
22		during the course, and in fact there were a lot of
23		knives, for the neighbourhood there were a number
24		of knives found out there, most of them innocently
25		explained, but in response to the suggestion in
		Certified Professional Court Reporters serving P.A. Regina & Saskatoon since 1980



1 this newspaper article on the third page of the 2 Saskatoon paper in March, 1990, where most people 3 knew you were the prosecutor, that a knife had disappeared, did you know in your heart from your 4 5 knowledge when you read that article that that was absolutely wrong? 6 I certainly did. Α 8 Q I had promised you you would be finished, 9 but I see I'm not going to make it. 10 Α That's fine. 11 I have this last area to finish which I anticipate 12 won't take more than 15 minutes, half hour, and 13 I'll be concluded. Mr. Hodson keeps reminding me 14 that he estimated three days and he went for 10, 15 but I promise I won't. 16 Thank you, ma'am. Α (Adjourned at 4:30 p.m.) 17 18 19 20 21 22 23 24 25



1	OFFICIAL QUEEN'S BENCH COURT REPORTERS' CERTIFICATE:
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 my knowledge, skill, and
7	ability.
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11	
12	, CSR
13	Karen Hinz, CSR
14	Official Queen's Bench Court Reporter
15	
16	, RPR, CSR
17	Donald G. Meyer, RPR, CSR
18	Official Queen's Bench Court Reporter
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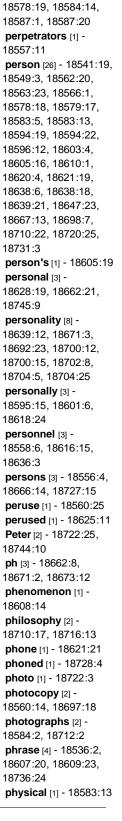
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