# Commission of Inquiry <br> Into the Wrongful <br> Conviction of David Milgaard <br> before 

THE HONOURABLE MR. JUSTICE EDWARD P. MacCALLUM
and
Testimony before the Commission
sitting at the
Radisson Hotel at
Saskatoon, Saskatchewan

On Tuesday, November 8th, 2005
Volume 92
Inquiry Proceedings

## Commission Staff:

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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. R | Rochelle Wempe, for the RCMP |
| Mr. | David Frayer, Q.C., | for Minister of Justice |
|  |  | (Canada), The Hon. Irwin Cotler |
| Mr. | Alexander Pringle, Q.C | C., for Justice Calvin Tallis |

(Retired)

THOMAS DAVID ROBERTS CALDWELL, CONTINUED

- BY MS. KNOX

18535

## 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 25 th. 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 $24 t h, ~ D a v i d$ 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 25 th 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 25 th 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

19th, or sooner, with David Milgaard to be interviewed as a prospective witness;
(2) Mr. Wolch will file a notice of motion with the Commission returnable on a date satisfactory to Commission Counsel, together with affidavits in support of his application for David Milgaard to be excused from testifying on medical or psychological grounds;
(3) Mr. Milgaard will undertake to abide by the Commissioner's ruling on the above motion. If he is found to be fit he will testify or lose his standing;
(4) The hearing of evidence will proceed as scheduled. Until the motion is decided, the scope of cross-examination by counsel for David Milgaard and counsel for Joyce Milgaard may be restricted upon application by other parties or by other counsel for parties with standing. I understand that a short adjournment is requested before we return to the hearing of evidence.

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(Adjourned at 9:25 a.m.)
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(Reconvened at 9:43 a.m.)

THOMAS DAVID ROBERTS CALDWELL, continued:
BY MS . KNOX :
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. And in 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
office to the prosecutors office in Regina, but in a sub-office, if $I$ may use that phrase, that they used for this as a special project in the basement of the courthouse rather than at their regular offices in the tower that they worked in? That's correct, Ms. Knox, it was never in storage. I noticed that terminology myself. It was being used by the two Regina Crown prosecutors in preparation for the Supreme Court matter you just mentioned and their sort of on-site office, if you will, in the basement of the Regina courthouse was where it was.

And the only significance of the courthouse being that there was an office belonging to the Crown prosecutors there and not that it had any formal need to be in the courthouse when you went back to look at it?

Not at all, ma'am.

Okay. Now, sir, I'm now going to such touch on some areas that were raised with you in
cross-examination by Mr. Lockyer in particular, and to some extent by Mr. Wolch, about disclosure and the suggestions in the public that you withheld information from the defence which would have been helpful in the -- in prep -- preparing
for the charges against Mr. Milgaard. Would it be fair to summarize that what you have said is that you gave disclosure in accordance with the standards of the day as you understood them?

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Q

A

Q Yeah, that's certainly the case, ma'am.

And that being, as I suggested to you yesterday, the standards of 1969?

That's right, I did that within what were the prevailing standards of that date.

Yeah. And through the evolution of time, not just in this file, with the knowledge you have, you've indicated $I$ think quite fairly in your evidence that had it you to do it over again knowing as much now, or much more now than you did then, you would have given other things, in fact this day the whole file would be given to defence counsel? As I understand the law today, that latter statement would be correct. The previous statement you've made, $I$ would give it, of course with the underlying need that $I$ had to have it before $I$ could give it.

Of course. And --
COMMISSIONER MacCALLUM: I'm sorry, the entire police file would be given?

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:
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"?
of the Crown supplying classes of material to the defence by, I think by general approval of both Crown and defence counsel, as $I$ recall at the time.

Okay. Now I'm not gonna go through every reference that was made to the things that you actually gave or that you didn't give by Mr. Lockyer, Mr. Hodson, and by Mr. Wolch, but there is a number of letters on your file that reference actual hard copies of statements that you were giving to Mr. Tallis; you recall --

I --
-- those letters?
I do.
Okay. And those letters went between June 10th, when he first contacted you, right up until January during the course of the trial, in fact, as Melnyk, Lapchuk and the Ute Frank statements became available?

That is my recollection, ma'am.
Okay. Now, sir, it was suggested by Mr. Wolch that, as we look at those letters, some of that disclosure came very late to Mr. Tallis. And I want to ask you, again, to take your mind back to 1969 and ask whether it was a practice or a --
used within your office that, on occasion, defence counsel were given access to statements of witnesses and/or clients but not necessarily always giving copies of them right out the gate?

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$Q$

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$Q$ I would think that's right. And that, I would strongly believe that the statement which did go out of my office virtually during or immediately before the preliminary hearing, the way that letter was worded $I$ would strongly suspect that Mr. Tallis had seen and/or read the document, Ms. Knox, in my office before that because it certainly was a late-blooming, you know, letter with -- clearly $I$ didn't have a lot of time to disclose it before $I$ did. That would be my sort of best estimate of --

But to your best memory, going back to the practices in 1965 when you came through to 1969-1970 and forward, was it a practice that defence counsel could in fact come to your office, indeed on occasion were invited to your office, to come look at the files?

Yeah, absolutely.
Now, having said that, there might well be things that you could not always give them, you might not necessarily always open up the whole file, but
certainly the mere fact that documents years later referenced statements being delivered on a certain date does not mean that that was the first contact with or the first access counsel had to the file?

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$Q$

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$Q$ Okay. Mr. Wolch, and I think fairly, said to you at one point last week that statements -- there is a letter from you August 21 st $I$ think, or -- and $I$ can bring it up if you need it -- but it's a letter in August saying "here are the statement of certain key witnesses", and it was right as the
preliminary inquiry was about to start or had just started; do you remember those questions?

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Yeah. That's the one $I$ was trying to refer to, Ms. Knox, a moment ago, and $I$ do recall it. Okay. And those were statements of key witnesses? Absolutely.

In fact, if $I$ could just have a moment, I'll tell you. Yes, it's a letter of August 15th, the document number is 007042 , you sent the statements of Albert Cadrain, Ron Wilson, both his three sort of statements, and Nichol John. And it was suggested to you that that's, "eh, that's cutting it pretty close in time to get ready for a preliminary inquiry, a preliminary inquiry is pretty important"; do you recall those questions? I do recall them, ma'am.

And, sir, I've taken the time to go through and look at the schedule, and at various points in times we've brought up the dates that the preliminary inquiry was held, and there was an initial session set for August 18 th, then through the course of your file jacket it records that there were a number of starts, adjournments, and then it would continue on a later date. In fact your file jacket -- that $I$ can't read the Bates
number on -- but certainly indicated that there was a sitting on March 18 -- sorry -- Monday, August 18 th, it then adjourned to Thursday the 21st, went a bit on Friday the 22 nd, adjourned then until Wednesday the 27 th, went on Thursday the 28th, adjourned then until Thursday, September 4 th, went on September 4 th and 5th, adjourned to the 10th of September, and concluded, as the record will show, with submissions on the 11 th of September; do you remember that as being generally the chronology?

A

Q

A

Q
I'm sure that's right, ma'am.
As Mr. Lockyer said to you, "trust me, I'm reading from the record", even though $I$ can't give the number.

Very good.
Sir, with particular reference to the particular witnesses referred to in that statement where you, or that letter where you sent the statements on August 15th to Mr. --

Mr. Tallis.
-- Mr. Tallis -- thank you -- a review of the transcript of the preliminary inquiry indicates that, of those key witnesses, they weren't in fact on the stand early in the Inquiry. During that
first week, the 18th, 19th, $20 t h$, the only sitting days were the 21 st and 22 nd, and those witnesses -- and there is a list of them who testified -- were peripheral, but key witnesses, in fact Ronald Wilson testified on the 27 th of August, so 12 days after your letter, his evidence continued the morning of the $28 t h$, the Thursday; Albert Cadrain testified the afternoon or late morning/afternoon of the $28 t h$ if the record is correct, so that again would be 13 days after the statement was provided to Mr. Tallis; and Nichol John testified not until September 4th?

Yes, I'm sure those dates are correct, Ms. Knox, and were not, you know, instantly after the transmission of the statements, which is, you know, a relief in a sense. I'm sure that the defence counsel, as $I$ said, I'm sure was aware of the contents, if you will, of the statements at an earlier time.

Okay. And, sir, can you think of any circumstance, knowing Mr. Tallis as both defence counsel and Crown, that he would have proceeded to and concluded a preliminary inquiry on a charge of non-capital murder without knowing what his client had said, given that he had given two statements
on the 3rd of March of 1969 and the 18th of April, 1969 ?

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No, I'm sure he wouldn't have. And it would have, of course, been open to him, if there was a short interval before testimony, to approach me about changing the order of the witnesses. We could have put some of these, you know, clearly important ones, further down, if that assisted. And in fact, Mr. Caldwell, documentation in your file suggests, does it not, that a number of these adjournments were at the request of Mr . Tallis? You've made a notation 'Cal N/A' at various points in time or --

That --
-- or 'C/T', not -- 'N/A' at various points in times, so there were some accommodation of his schedule during the course of the preliminary inquiry?

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$Q$
A
$Q$
,
That's correct. I was essentially available for any of the dates, and Mr. Tallis clearly ran into unforseen or difficult to change other commitments, and we -- we accommodated that, Ms. Knox, as I recall.

And included are, as a source for the dates of the various witness' testimony, included in the
materials that you found when you went back to your file in 1989-1990 was a, you'll agree with me, a large, brown, expandable folder that was referred to in some places by you as folder number 7 but in fact it was your, the Crown copy of the original transcript, or -- of the preliminary inquiry from which these dates can be ascertained? I'm sure that's correct, ma'am.

Mr. Commissioner, this is a calendar I have prepared with some assistance from my staff, I have shown it to Mr. Hodson and to Mr. Wolch yesterday in passing, I -- if anybody would wish a copy of it, it certainly can be made available. I had my staff retrieve the calendar for 1969, for the months of July, August, September -- yes, September -- so that the key months are there, and certainly if anybody wishes to have a copy of it --

COMMISSIONER MacCALLUM: We'll put it on CaseVault; should it go on CaseVault?

MR. HODSON: Yes.
MS. KNOX: Certainly, it can. It lists the dates that various witnesses appeared and gave their testimony at the preliminary inquiry, and 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:

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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?

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Q

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Q

A

Q $\square$ It's a letter directed to the Department of Justice January 29th, 1972 and -MR. HODSON: '92.

BY MS. KNOX:

Q

Q
'92, sorry, and if we go to the last page, 157296,
it doesn't have a signature, but the signing
person would have been Mr. Asper as counsel for
Mr. Milgaard on the ref -- as one of the counsel
for Mr. Milgaard on the reference.
Uh-huh.
You are aware of that, of course?
Yeah, that's right.
Now if we could go back to page 1, please, 157294,
I want to highlight number 1 -- well, first off,
the request that's in the letter --
COMMISSIONER MacCALLUM: Excuse me, I just don't have you on the speaker, thank you.

BY MS. KNOX:
Thank you. Now, sir, what it indicates is this is a letter being sent to Mr. Rob Frater, who the record shows was one of the counsel appearing for the Federal Government on the reference and involved in preparing the materials to be filed, and what Mr. Asper is indicating:
"Further to our discussion with respect to a "miscellaneous volume" that you propose to file ...", there's certainly materials that they want included?

A

Q

A
$Q$

A
Q

A

Q

A
$Q$

A
Q Okay. Now, sir, would you agree with me that what this letter suggests is certainly, at the time of preparation from, or the reference in the Supreme Court of Canada, all these statements that you
indicated you didn't recognize the significance of in 1969 were in the possession of counsel for Mr. Milgaard, and certainly active steps were being taken to have them placed before the Judges of the Supreme Court of Canada for consideration?

Yeah, I think that's inescapable from the wording of the letter, Ms. Knox.

Okay. Now Mr. Lockyer had indicated in his questions that he wasn't sure, I'm referring specifically to the statement of (V9) (V9)----, whether that one was before Supreme Court of Canada, and $I$ think in fairness to him he only dealt with that one, he didn't go through the whole list.

All right.
I wonder, now, if we could bring up document ID number 142273. And, sir, again these are materials you wouldn't necessarily be familiar with, but $I$ understand from the record that this is a cover page for one of the documents of materials that got filed in the case of reference in the Supreme Court of Canada, as is indicated in the heading here, --

A
I --
-- and the reference with respect to Mr. Milgaard.

And if we could go to the next page, 142274 , which I believe should be an index. Now referring you to the index -- and I didn't mark this one nearly as clearly -- number 9, if we could bring out number 9, the name, the last name is taken out presumably for protection of her identity, but the "statement of (V9)", who I believe the record will show would be (V9) (V9)----, was in fact filed as part of the reference?

I would assume, again from that wording, that that must have happened, Ms. Knox.

In your best efforts to remember everything you ever knew about this file in 1969 and subsequently do you know of any other (V9), other than (V9) (V9)----, who gave a statement on February 6th, 1969 ?

A
I don't recall another name '(V9)' cropping up anywhere in my --

Okay. Now I'm looking here, I thought (V4)----(V4)--- was in this list as well, could we go to the next page please? Ah, maybe it's not that index.

Mr. Commissioner, there are -- I
didn't do a thorough canvass in the interests of time, and Commission Counsel can address the
matter more thoroughly, but there certainly are indications that the statement of (V4)---- (V4)--was before the Supreme Court of Canada. I'm not sure that we have been able to confirm that statements --

MR. HODSON: She testified.
MS. KNOX: Oh, I'm sorry, she testified in
fact? (V4)---- (V4)--- testified, so her
statement didn't need to be filed, I'm not sure that we've been able to --

MR. HODSON: Was filed, I believe her statement was filed.

MS. KNOX: Her statement was filed and she testified. I'm not sure, yet, if we have been able to confirm that the statements of (V6)--(V6) - and (V11) (V11)-- were actually filed as part of the reference, and I'll leave it to others to sort that out.

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
those latter two statements were not in the reference, and if not why not.

COMMISSIONER MacCALLUM: All right, thanks. BY MS. KNOX:

Okay. But certainly, Mr. Caldwell, when you were requested in 1989 to check the file and find if, out if there were any references to sexual assaults on other women in the time frame, the letter that Mr. Asper wrote in 1992 that we've just looked at would verify comfortably for you, and for all of us, that by January 1992 not only had you transmitted them to Mr. Williams but ultimately, and before the reference and before the determination by the Supreme Court of Canada that your practice of disclosure in 1969 was adequate given the standards of the day, were in the hands of Mr. Milgaard's counsel, and some of it, at least, was in the hands of the Justices of the Supreme Court of Canada?

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

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
didn't recognize the significance, they've used the language that you suppressed them, that you withheld them, all of which implies an intentional, conscious decision on your part, that there's something here that might be helpful, but I'm going to be the bad guy, I'm not giving this out because it might help him beat the rap. Did you ever at any point in time contemplate, think or have such awful thoughts cross your mind as you were preparing for the prosecution of Mr .

Milgaard?
A

Q
No, I did not, Ms. Knox, think of those things and consider them and, among other things, carry them out. None of that happened, whatever.

Mr. Lockyer said to you at page 17751 of the transcript in your --

COMMISSIONER MacCALLUM: Page number what? MS. KNOX: 17751.

COMMISSIONER MacCALLUM: Thanks.
BY MS. KNOX:
-- that the circumstantial evidence suggested, and
I'm looking at line 7, the circumstantial evidence that -- he talks about the circumstantial evidence that the Commissioner has to deal with where you are concerned would suggest that you had 7
suppressed them because you didn't want them to go to Mr. Tallis?

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No, ma'am, $I$ do not know of any circumstantial evidence which would indicate those things, if you will, in my direction. I hope that's what your
-- circumstantial evidence that would support the suggestion by Mr. Lockyer that you intentionally suppressed these statements to keep them from Mr. Tallis as opposed to acted in innocent but unfortunate oversight in your review of the file in 1969?

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

I'm dealing with the ages that I've been in active practice in criminal law.

A The process called profiling was, I'm sure, not in active use at that time. I do recall years and years later these various police forces I think attempted to train particular personnel to do that job, but it was certainly not in effect and I don't think the terminology was being used, Ms. Knox, about the era which you are asking me about.

Yeah. Sir, would you agree with me that maybe as early as -- that it was maybe as early as the late '80s, or more likely into the '90s, that policing agencies began to recognize within their own structure and as a process for their investigations that patterns could be discerned and you could anticipate, if you will, certain repeating patterns of behaviour in particular cases?

A
Yes, I'm sure that did develop, and my best recollection would be the time lines, the ones that you've suggested, ma'am, would be that late in the history of prosecutions, if you will, or policing.

Taking your mind back to what you knew when you
went through law school, what you knew as a prosecutor in Regina, what you knew when you first came to the office in Saskatoon as the chief prosecutor, by 1969 did you have anything in your head that caused you to have a light go on, as it were, or a flag to go off when you found circumstances such as a series of indecent assaults in an area where a vicious rape and murder had just occurred?

Ms. Knox, I'm sure that that did not happen to me in that era whatsoever, it would have been memorable, and $I$ simply have no recollection of that happening, you know, aside entirely from this file otherwise.

Sir, as it has been suggested to you by Mr. Lockyer with some vigorousness, and I think to a lesser degree by Mr. Wolch, that even if you didn't sort of trigger to the pattern with (V11)--, (V9)---- and the others, the (V4)----(V4)--- statement should have made bells, whistles 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.

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.

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 $I$

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Q
have some questions for you with respect to the allegation.

Very good. I've read through it again now, Ms. Knox.

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?
Yes, I do.

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
the streets of Saskatoon that very morning chasing after women; right?" Was the question.
"That's what you must have said to yourself?"

His question, and you say:
"I don't recall."

Now if we could bring back the (V4)---- (V4)--statement, please. Sir, if I could bring out this part of the statement, please, and direct -perhaps bring it more closely starting right here. Sir, I asked you to read over what the allegation was in that statement and I'm going to summarize it and you can add to it or disagree with it.

A
Very good.
But if you look at the description of what
happened to her that (V4)---- (V4)--- gave that

Mr. Lockyer urges upon you to say should have screamed at you that this was the same person that just stabbed, raped and murdered a young nurse and left her body in the alley, what (V4)---- (V4)--said happened is this man came -- the man was walking towards her, as they met she moved slightly away to give him room to pass on the
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. I
screamed and threw my books down. He quit. I picked up my books and started walking again. I looked back and he was
following me. I then started to half run and next time $I$ looked back he was gone. I could not see him."

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
the sidewalk. When this man or male met me he lunged at me, ran his hands, or possibly used only one hand, up and down my legs. I screamed and threw my books. He quit. I picked up my books and started walking again. I looked back and he was following me. I then started to half run, as I read this, and the next time I looked back he was gone. I could not see him. That is certainly not a commendable action by whoever that male was, but it would be a very brief indecent assault, Ms. Knox, in my view, or arguably a common assault, certainly nothing that credible about his actions. I don't, at a glance, see the temperature in this, but presumably if it was the same morning it would be the same temperature, so that was an episode where this lady was -screamed and, in effect, dissuaded the brief attack is the way $I$ would characterize it, and of course it's absolutely not comparable in any way, shape or form to what happened to Miss Miller.

If we could scroll up to the top of that
statement, if you could look at the top of the statement in front of you, $I$ want to bring out this part now.

A Okay.

Now, we've spent a lot of time talking about the geography of downtown Saskatoon, and I don't particularly want to go there to any length, but this lady described in her statement as you were reading it at the request of Mr. Tallis that you look at all the civilian witness statements, that this attack happened on Avenue $H$.

I see that.
And she described that it happened at 7:07 in the morning and that she was just, she was precise about her time because she just checked her watch and she knew it was 7:07 a.m.?

I see that.
When you were looking at this statement, did it ever cross your mind for a minute that gee, I wonder if the same guy is out doing this at minus 40 in the morning, once you saw the time, and the preciseness of time, 7:07, and once you saw the location, Avenue $H$, and $I$ know that Mr. Wolch and others have argued and debated whether Larry Fisher might have had access to a car and stuff like that --

A
Uh-huh.
-- but could you think of any way physically, without great difficulty, if I may, that the
person who somehow killed Gail Miller between 6:45, because we know she was in her house at 6:45, and 8:30 when her body was found, but somehow between 6:45 could have killed Gail Miller in the manner that she was killed, with the degree of viciousness and obvious time that went into it, and be at Avenue $H$ by 7:07 in the morning? No, that in my view would be out of the question. We were talking about Avenue $N$ by my theory or $O$ by some other people's and Avenue $H$ is several blocks, what $I$ would call east of that, madam. Yeah. Now, sir, Mr. Caldwell, for completeness of the record, you know that (V4)---- (V4)--- did testify in the Supreme Court of Canada, she did testify that Larry Fisher was her assailant. He has never been convicted of that offence, but all that being aside, and given all that happened after in terms of what (V4)---- (V4)--- may have said, that in fact it was Larry Fisher, based on what information you had in front of you when you were doing the review, was there anything about this that caused you to, as Mr. Lockyer suggested, caused you to think that you needed to disclose it or, alternatively, that you were going to suppress it because it might assist in the defence of David

Milgaard?

A

Q

I did not think $I$ needed to disclose it and $I$ had no concept whatever that $I$ was suppressing it to assist anybody, neither of those things were what I did, ma'am, as a result of, out of the review we've been speaking of.

Mr. Lockyer suggested to you, as he continued through that line of questioning, and particularly at page 17768, that you must now appreciate that if you had disclosed (V4)---- (V4---'s 1969 statement to Mr. Tallis, it would have or could have -- he said would have at question 13 -- would have blown your case potentially to smithereens against Mr. Milgaard.

I see that here.
Now, sir, given the evidence that you had, which you believe to be truthful, and I'll just list some of it, you had the eye witness testimony, or the eye witness statements at the time you reviewed these of Mr. Cadrain, that Mr. Milgaard had come to his house, he had seen blood on his clothes, he changed his clothes there. You recall you had that evidence in your file?

Yes.
Which is believed to be truthful. You had the
evidence that for strange reasons by some standards Mr. Milgaard, after changing his clothes, had left the house and driven around the neighbourhood, although it was minus 40 -- we won't get into the fact the car broke down, that's another detail -- and that within weeks after that in the area of that very house where David Milgaard had been and who Albert Cadrain said had blood on his clothes, Gail Miller's IDs were found?

A
$Q$

A

Q

That's all true.
You had the May 23 rd statement of -- May $23 r d$, 24 th statement of Ron Wilson that David Milgaard had essentially told him that he had got a girl or he had stabbed a girl and took her purse, etcetera, etcetera, so you didn't have an eye witness account, but you have somebody who says right after it happened he told me he did it? That's correct as well.

Okay. On this point, sir, $I$ want to, for a moment, direct your attention to another information that you had apart from the statement, the written statement of Ron Wilson on May $23 r d$, 24 th with respect to what Ron Wilson had said, and if $I$ could, Mr. Commissioner, I want to bring up a
document that was in Mr. Caldwell's file, document 009264 , and, Mr. Caldwell, this is a document that clearly has -- was in your file, you can see your handwriting on it?

A
$Q$

A
Q

Q

Yup.
And in my colour copy that I'm looking at it has your peculiar fountain pen ink?

Yeah, thank you, but it was in my file clearly.
This was a five page report, or six page report that goes to 009269 , is the total number of pages, six page report, prepared by Mr. Karst on May 25th, 1969 which was post the May $20 t h$ trip to Regina to talk to Ron Wilson?

Yes.
Okay. And without going through it in great detail, it has been suggested many times that you should have been alert to the fact that Mr.

Roberts, the polygraphist from --
Calgary.
-- Calgary, induced, through circumstances that were probably questionable, induced Ron Wilson to give incriminating false testimony, or false information about David Milgaard. You know those suggestions, I'm not going to go through the transcript and find them --

A Very good.

Q
that en route to Saskatoon Wilson confessed, and I'll use that term loosely, but confided in the detective that when he had told Inspector Riddell back on March 3rd that they came to Saskatoon, they, you know, they did a couple of things, they went to this house, after they got stuck they went to the motel, there was some stuff he left out, including the fact that they had done a break and enter at an elevator along the way. You see that?

A Yeah, that's correct.
He also confided in him that they had discussed along the way, they being he and Mr. Milgaard and Ms. John I guess, rolling someone, purse snatching, doing break and enters?

I see that here.
You had that information available to you in your assessment?

A That's correct.

Your file subsequently contained documentation from an RCMP officer, a Constable Weafer, that the break-in had occurred, a flashlight had been taken
and indeed ultimately Ron Wilson turned over the flashlight stolen from that elevator didn't he? That's all correct, ma'am. And again, so $I$ don't lose where I'm going here, all this information in your possession preceded contact with the polygraph operator and the polygraph machine on May $23 r d ?$ That's right, Ms. Knox.

COMMISSIONER MacCALLUM: Not the recovery of the flashlight though.

MS. KNOX: The information. Yeah, I should correct that. The information that it had happened, that they had stolen a flashlight -COMMISSIONER MacCALLUM: Yes.

BY MS. KNOX:
-- was told to Detective Karst, it was after, on May $25 t h$ or thereafter, after the polygraph exercise when he was driven back to Regina, your file indicates that he turned over the flashlight that he said they had taken from the elevator? Yeah, that's the correct sequence as $I$ have it, Ms. Knox.

Q okay.

And had it then.

Okay. And $I$ won't take you through all of the
rest of this report, but it goes on for pages, through page 009265, 009266 through to 009267 , and it is halfway down the page that the polygraph operator, Friday, May $23 r d$, became introduced?

A

Q

A

Q Yes, I see that here. So you had part of three pages of information given to Detective Karst by Ron Wilson that in aspects was not favourable to Mr. Milgaard prior to any contact with Mr. Roberts?

That's certainly right.
And whatever may have happened with Mr. Roberts, Ron Wilson has at various times given various versions and whether there was an improper interview done is a matter that I'll leave for others to assess, but certainly you, as the prosecutor looking at all this information, and looking at the suggestion from Mr. Lockyer that he made last week at page 17746, that Miss (V4---'s statement would have blown your case to smithereens, would this information, in addition to Ron Wilson's May 23rd, May 24 th statement have been factors that you had to consider if for a moment it crossed your mind, and I accept your evidence that it didn't, that there was a problem because of (V4---'s statement?

A
All that information we've just gone over would of course be in my mind and $I$ did not accept Mr. Lockyer's proposition as set out in these pages because $I$ felt, $I$ think $I$ 've said somewhere here, that $I$ would look at the case and felt it was substantial regardless of that, to put it very awkwardly, Ms. Knox.

The other factors that you had, even if for a moment the (V4)--- statement was an issue, were that Nichol John had given an eye witness statement, she said $I$ saw him do it, I saw him grab her, jab at her with a knife, pull her down the alley, etcetera; right?

Right.
Okay. And you had at that point in time as well the suggestion that David Milgaard had possession of her compact in a car he was driving in en route to -- or what was believed to be her compact in a car he was driving in en route to Calgary some hours later?

Yeah, that's correct.
So apart from everything else in terms of Mr. Lockyer's suggestion that the (V4)--statement could have, would have, if you disclosed it, blown your case to smithereens, as you recall
the facts as you believed them to be in 1969, do you see any way if you had thought if I disclosed this statement to Mr. Tallis it's going to be my case to smithereens, that that would make any kind of rational, logical sense at that time?

No, absolutely not, because $I$ felt that it was a strong case as $I$ knew it at that time and $I$ didn't think any action $I$ did would "blow my case to smithereens" or indeed fail to do as the case may be, $I$ didn't feel it would have that effect, Ms. Knox, with my knowledge at that time.

COMMISSIONER MacCALLUM: Ms. Knox, at one point you said the suggestion came at 17768 and another time 746. Which is it, please?

MS. KNOX: It would be 17768. It goes on for a number of pages, Mr. Commissioner, probably through -- yeah, probably through to the end of 17773.

COMMISSIONER MacCALLUM: Thanks.
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.

A
Ms. Knox, just as a matter of interest, on that very page is what $I$ was trying to recall when it
wasn't on the screen, my answer number 19 was:
"What $I$ am saying to you, sir, is I wouldn't decide things based on that, I would decide them based on what $I$ knew or thought $I$ knew about the evidence as the matter went on."

So that was sort of a nutshell description of what $I$ would do based on his hypothetical question to me.

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.
-- 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?

I do.
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
had doubts about the case in the early stages, and
I mean the case against Mr. Milgaard, come to revise that opinion to your knowledge?

That $I$ don't know, Ms. Knox.

Okay.
I didn't, in effect, hear any more about it I guess at some point --

Okay.
-- in the process.
But you were aware, when you talked about there being two schools of thought, that in February they had nothing to go on, in March they got a lead, it took them a while to develop that lead through April and May, so certainly there were lots of weeks and months for the police to have varying and differing and changing opinions about the viability of Mr. Milgaard as the suspect and ultimately the person believed to be the perpetrator?

There certainly were, ma'am.
And with respect to the references that were made in the course of your cross-examination to the early comments expressed by Mr. Riddell, or

Inspector Riddell after he interviewed Ron Wilson in March of 1969, by Detective Karst after he
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?

A
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.

Q healthy sign because any hypothetical police officer who simply locks on it has to be this way and nothing will dissuade him is, you know, is of limited value as a witness. I certainly had other cases in which officers came around to believing theories, $C$ or $Z$ or whatever it may have been, but based on discussions among themselves and with me, and of course mainly to the accumulation of new evidence.

Yeah, and sir, in your experience in working with police officers you've indicated there were times when they came around to realize that they'd been wrong in assessing somebody as not a viable suspect, there's equally times when police officers -- or have you had the experience of police officers going out the gate thinking this is the guy who did it, they investigate it for a
while and then have to basically say, "whoops, wrong about that one" and move to another theory? That certainly happened from time to time with me for sure.

That's what policing is all about, isn't it, it's legwork, investigation, figuring out, having hypotheses, figuring out whether they are right, wrong, or whether you are totally out in left field sometimes?

Yes. And it would be a very sad state of affairs, I think, if -- and I -- if all policemen simply locked onto their particular theory and stuck with it through thick and thin. Among other things, one would tend to find them not being used so much as witnesses or investigators, would be my thought.

As a prosecutor, what, you would describe it as a not-uncommon occurrence that you would have police officers who had to acknowledge that they were wrong sometimes in believing somebody, sometimes in not believing somebody?

A Yeah, I'm sure --
Q Or, as we'd say to them in Newfoundland, "like how could you be so stunned?"

A Yeah, I'm sure.

Q

A
$Q$

A

Q

Q

A
Q

A
$Q$
BY MS. KNOX:
Mr. Caldwell, I'm going to take you back to something $I$ thought $I$ had finished with but it's a result of having a room full of armchair lawyers, --

Very good.
-- everybody suggests how you could do your job better every chance they get, but if $I$ could bring up 006404 again.

Thank you.
Bringing you back to the statement of (V4)----(V4)---, this is a statement that actually wasn't given by her until 5:45 that evening, some hours after the event, but that's a minor point.

A
Mr. Commissioner, I'm about to move to a new area, this may be the appropriate time to break.

I'm sure that happened, Ms. Knox.
As a prosecutor did you ever say, like I've done,
"how could you be so stunned?"
I think one of my colleagues said it to me, when $I$ think back, but $I$ know what you mean.

Thank you.
(Adjourned at 10:43 a.m.)
(Reconvened at 11:01 a.m.) Uh-huh.

Q

A

I didn't direct your attention to the last paragraph of her statement that she gave that evening about what had happened to her at 7:07 that morning, and you will see she gave a description of the person who was her assailant on Avenue $H$ that morning at 7:07?

I see that.
If you could just take a quick read through it, and $I$ don't have anything in it so much that $I$ want to ask you about, but it's what's not in it.

Yes, I read the last paragraph, ma'am.
Yes. And effectively what she's giving is a physical description of the person who ran his hands up her legs and ran away, or -- and then followed her a bit after she had threw her books down and screamed; right?

That's correct.
Now anywhere -- nowhere in that description is there any indication that he was disheveled in his appearance, or particularly that he had blood on him or anything that would suggest that just moments earlier, within between 6:45 and 7:07, he would have been involved in a vicious rape and murder?

There's nothing to that effect, Ms. --

Q
Okay. Was it your theory, based on the crime scene as you knew it through the photographs, descriptions, and so forth, that the assailant likely would have ended up with some blood on him, or some evidence that he had been engaged in a vicious assault with multiple stab wounds and extensive bleeding from the victim?

Yes, I would think that would be inescapable, ma'am.

Okay. And again, in following through or going back to Mr. Lockyer's suggestion that you should have recognized that this was the thing that would have blown the theory of Mr. Milgaard being the perpetrator to smithereens, would the -- does the absence of anything that would physically suggest he might have been anywhere near the Gail Miller scene perhaps play in your decision-making as well?

I'm sure it would, because on any construction of the facts you would have expected the Gail Miller assailant to be very much involved with blood and undoubtedly disheveled, possibly injured, who knows, but none of that, of course, appears in this final paragraph.

So there is no -- nothing triggering in the
description that would allow you, even though it's Avenue $H$, it's a distance away, it's a different description, saying, "yeah, but he has got evidence that he might have been into a, you know, a serious bad scuffle, he's got some signs that, you know, if he has got blood on him or anything like that $I$ should think about this as a possibility", albeit it might be, at that time in your thought processes, a remote one?

No, it did not occur to me in any sense of that set of possibilities, ma'am.

I just want to follow on with some of the other suggestions that were made to you during the course of cross-examination as instances of the portrayal of how, either benignly, intentionally -- or most often suggested intentionally you dropped the ball with respect to your assessment of this file and your assessment of the evidence against Mr. Milgaard. And I want to refer you to questions that you were asked by Mr. Lockyer starting at page 1 -- or not starting at, but particularly at page 17793. Now it's during this series of questions -- and it's other places as well, I'll just focus on this for our purposes -- but during this series of questions

Mr. Lockyer was examining you or cross-examining you about the fact that you had on your file a document, a letter from Joe Penkala dated February 5th, 1969 to Crime Index, that suggested the possibility of a connection between unsolved rapes in Saskatoon and the very vicious murder that had occurred six days earlier?

Uh-huh.

You remember that?

I do.

And basically the letter, in his letter he, in the last paragraph, as was pointed out to you by Mr. Lockyer, he raised the possibility of the connection and wanted -- this was going to Crime Index in Ottawa $I$ believe?

That was what $I$ think the final, you know, that -that's where it seemed to be headed from what we've learned in the Inquiry, Ms. Knox, I --

Right. And from the letter -- we can bring up the letter if you would like to see it, I thought I recorded the document number but $I$ guess I didn't readily at hand. In any event it's a letter, as he said to you at question 22 , that was written on February 5th, 1969 , and he suggests to you that it should have had some real significance for you in
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?

A
$Q$

A
$Q$ Right.

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, --

And - -
-- 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?

A Yeah. As time went on, in the manner you have spoken of, things did come in, new witnesses were found, statements were taken, etcetera. The file wasn't, you know, static from the same date that Lieutenant Penkala's letter was written by any means, and $I$ can imagine that that may have affected my views.

COMMISSIONER MacCALLUM: What date was the Penkala letter?

MS. KNOX: February 5th, 1969. Maybe somebody can help me with the doc. ID, I'm --

COMMISSIONER MacCALLUM: So what other evidence are you referring to that would have been in his mind at that time?

MS. KNOX: No, no, my question to him was over time, as the evidence came in, did it overtake the theory of the Penkala letter?

COMMISSIONER MacCALLUM: Oh, all right.

MR. HODSON: You want the Penkala letter?

MS. KNOX: Yes.

MR. HODSON: 009298 .

MS. KNOX: Thank you, Mr. Hodson.

MR. HODSON: 299 is the --

BY MS. KNOX:

Q
February 5th, 1969, and the document ID 009298,
with a cover page directed to the Commissioner of the RCMP Crime Index Section. If we could go to the next page, please, and there is generally a description of the murder. And if we could go to the last page, 009300 should be the last paragraph, if we could bring that up. Okay. And it basically, $I$ think this was reviewed by Mr. Lockyer with you, that basically in a general way he is saying that there are two unsolved cases dating back to October-November, which we now know to be the (V1)-, (V2)----- I think would be the two incidents that he is referring to, but generally he is giving a general description of unsolved crimes on February 5th, '69?

That's how $I$ read it, ma'am.

Okay. No references, for your benefit or as triggers for your memory if you read this in February ' 69 or sometime after in July when the file came in, nothing to trigger who -- what these cases were by name or identification tag?

Yeah, or indeed what their status was at that point, --

Q Okay.

A -- for that matter.

But by the time you received the letter of
engagement on July 8th, 1969 and subsequently the portions of the file, including summary lists of witnesses, witness statements and so forth that came from Mr. Ullrich, you had what you considered to be an eyewitness account -Yes.
-- of the actual killing by Mr. Milgaard; -That's right.
-- you had what you considered to be a truthful confession, in effect, by Mr. Milgaard to Ron Wilson; --

A
Q

A

Q

A
this, ma'am.
Now, as he proceeded through it -- and I'm finished with that document -- as he proceeded through his examination of you, Mr. Lockyer introduced to you or questioned you about the notion that you had an independent function to perform, you weren't the blind follower of the police, you in effect had a duty, as we all agree, to be independent of the police and to be the gatekeeper, as it were, within the system; and you agreed with him that that's a laudable and appropriate function for Crown offices to perform? Yes, I did.

Now just as a minor detail, shifting your mind back to 1969, the language he visited upon you, and which you agreed with, was not language that was used, again within the part -- in the systems that you worked in, policing, justice, judges, in 1969, but certainly the concepts were live?

Yeah, the concepts were very valid. The term 'gatekeeper', as it happens Ms. Knox, I believe I first heard in this Inquiry, but $I$ certainly don't quarrel with the concepts that he advanced. Okay. Mr. Lockyer urged upon you that, in another way that you had dropped the ball in 1969-1970, is
you didn't critically assess whether or not the changing statements of Nichol John, Ron Wilson from March 3rd and March 11th, in her case, to March (sic) $23 r d-24 t h$ when they did the interview with Mr. Roberts, but that you didn't do a critical analysis of 'how come this happened'; and you remember him asking you those questions? I'm sure he did.

Okay. Now, and he suggested to you in various forms and fashions through the course of his examination of you, as did Mr. Wolch, that you should have been on top of the possibility of police compulsion in getting these new statements


I'm sure he did as well.
And in various forms or fashions, there are a multiple of them throughout the transcripts of the examination of you by both of them, suggested that a good prosecutor would have known to be alert to that possibility?

That's a motherhood statement, ma'am, which I can't disagree with in that sense.

I believe it was Mr. Pringle who referred you to a comment in your address to the jury that you said that those good jurors would know better than to
think that the police officers would be up to no good, like trying to intimidate Nichol Wilson (sic) by putting her in a cell to make her scared; do you remember saying that?

I'm sure I said something to that effect.
Okay. And $I$ want, again, to take your mind back, to the extent that it's possible, to the times that you were working in in 1969 and 1970. Back in those days -- and $I$ think $I$ referred to it yesterday in a -- in -- at one point -- back in those days would it be fair to say that the concept of corruption in police practices, either intentional or otherwise, would have not been the ordinary subject of discussion or expectation by police, defence counsel, by courts, that generally the concept of us all being parties in a law and order society was a pretty solid concept?

A
That's right. We were in a small province in terms of population, in a medium-sized city, the -- there was, I think, some -- almost a presumption of regularity that attached to police activities. There certainly was not the prevailing, seemingly more today than then, situation where, in which every, every investigation and investigator, every second one
was assumed to be corrupt or have bad motives, it -- the -- that was not the frame of mind, and the police department here, in this city, certainly had the confidence of the public. If -- if some negligence, corruption, etcetera, you know, appeared with respect to some investigation, that, that was a novelty, and it would certainly be followed up, Ms. Knox, in my view.

Okay. In the relationship that you had with Ron Wilson, with Nichol John, as you were preparing for the preliminary inquiry and as you were preparing for the trial, was there anything that you remember, taking your mind back to 1969 , that would have caused them to think that, if they had concerns or they felt like they were intimidated by the police or anything like that, that they couldn't come to you?

A
No, I wouldn't think they -- I don't know where they would get that idea, because $I$ was the person they were dealing with in terms of what would happen to them in the preliminary hearing and trial, and $I$ was the person who essentially decided who was called and in what order, and dealt with matters of making sure you are here from Regina and 'don't get lost', all that, and I
didn't have any visible resentment of what $I$ was doing from them. I -- they may well have wished they were doing something else at the time, but certainly from day-to-day $I$ seemed to be able to cope with them. And I didn't use any, you know, menacing or threatening tactics whatever, because I don't do that, plus, of course, that may very well have caused them to abandon ship, as it were, to leave, get lost, so --

In addition to the fact that they had opportunities, had they been experiencing any unease apart from the unease of having to be a witness in Court proceedings, in addition to the fact that they had the opportunity to express it to you personally, a review of the record and the -- your file confirms that you had contact with Ron Wilson's mother, so even if he couldn't sort of come to you and say "geez, mum, I got myself in a pickle here", or come to you and say "geez, sir", he could have said "gee, mum" and mum could have come to you?

Yeah, I'm sure that's on the file, ma'am. Yeah. And she was a witness, in fact, at the preliminary inquiry, --

Yeah.

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Q And so if, you know, worst-case scenario she is a little scared of you, she could have talked to her parents and presumably her parents wouldn't have the same angst about coming in to see the

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$Q$

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$Q$

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prosecutor or --
prosecutor or --
I don't see why. Mr. John existed, and they knew of me, and there was no backlog of sort of ill will that $I$ was aware of, Ms. Knox.

Okay. Now much has been made, through the course of your cross-examination, of the little notes that you prepared which became subject of investigation and ultimately, at least in part, an issue in discussions between counsel at Supreme Court of Canada, --

Uh-huh.
-- but the little document that you prepared for -- during the course of the preliminary inquiry. And I've -- I'll bring up a version of it, 301015. And I am referring to, of course, to the recording you made of the report to you that Nichol John had said, in the witness room at the preliminary inquiry sometime in late August or early September, in which she testified in September if I recall my calendar, but she had said in the presence of one of the Millers -- your note says Mrs. Miller, Peggy Miller testified here that she was actually the one present, her mother wasn't, --

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? Uh-huh.

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
will, in that way.
Yeah. Effectively, an unprovoked utterance by her --

Yeah.
-- that was very harmful to Mr. Milgaard -Yeah, absolutely.
-- without anyone in the room pressuring her or threatening her or doing anything?

No.
It was a civilian witness room?
That's correct. And these three people, and I accept that $I$ evidently got Mrs. Miller when it's in fact Peggy Miller, the others $I$ believe were -are and were correct, --

Okay.
-- something set her off to say that.
Yeah. And again, during your cross-examination last week, much was made of the fact that you didn't raise it in questioning her, or anything of that nature, but aside from that, in terms of your state of mind, your belief in the strength of your case, would it be fair to say that this would have been significant because it confirmed, effectively, what she told Mr. Roberts in the interview that she did with him on May 24 th, 1969 ?

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.

And the statement, although he denies having given it to police, from her social worker that for some reason he was talking to her about a murder, because according to the police documents he said to them that she had told him that she was not personally involved in a murder sometime after she came back off that trip?

Yeah, all those things are true, they are all in the file, and all those things had an effect on me in terms of her evidence, if you will.

And your belief that she was truthful when she said to Mr. Roberts that she'd seen him kill -Yeah, --
-- or stab Gail Miller?
-- absolutely, that was my belief then, and none of those things, of course, detracted from it, Ms. Knox.

Yeah. It was suggested to you, during the course of your cross-examination, that if you had taken a critical look at her statement there were various things that should have alerted you to the improbability of it, including the fact that she said she saw David Milgaard, when he grabbed Gail Miller, stab at her with a knife as he was puling her into the alley; do you remember Mr. Wolch or

Mr. Lockyer suggesting that?
Uh-huh, I expect so.
And them saying to you that "well, the cuts in her body were through her coat but they weren't
through her uniform, so that was impossible, because if he had done it there the cuts would have -- and effectively, I don't know if they followed this to its logical conclusion -- but the cuts would have gone through the uniform; do you remember that suggestion?

Yeah, I know that line.
It couldn't have worked because she said she saw him stab at her in the alley?

Yeah.
Was there anything of the state of Gail Miller's coat or, and $I$ don't know if anybody investigated it, $I$ found one place where it was said by Mr.

Asper, in fact, in a press interview, that there were six cuts in the back of the coat. Did you have any reason that you had to assume or believe that because Nichol John said she saw him stabbing at her with the knife as he pulled her into the alley, that that would have meant that the knife was penetrating her coat and penetrating her body?

Not in the least. The terminology "stabbing at"
in my vocabulary, one of the -- could include stabbing at and not having the blows land, all the way up to having them pierce the body of the person.

But stabbing, stabbing doesn't necessarily mean that every time somebody gets jabbed with a knife it penetrates all their layers of clothes, goes into the body or anything of that nature -Not at all.
-- in your experience as a prosecutor does it? Not at all, and again the terminology "stabbing at" to me quite legitimately can mean the same thing as "stabbing at" and not having the knife actually, if you will, land.

Mr. Caldwell, as a caution, I didn't bring up her statement again, and $I$ should remember it, I've read it so many times, I'm not sure that the term "stabbing at" is her term, she may have said "stabbing", but even if she used the word "stabbing" as opposed to stabbing at, stabbing doesn't necessarily require penetration of all of the garments of clothing and the body for her to have observed a knife being jabbed?

No .
be a little careful about what exactly was said. May we have the statement, please?

MS. KNOX: Certainly.

COMMISSIONER MaCCALLUM: It would be the one of May the 24 th?

MS. KNOX: It would be the May 24 th
statement, yes, if we could have it brought up.

MR. BOYCHUK: 006646 .

MR. HODSON: 006645 .

BY MS. KNOX:

Okay, Mr. Caldwell, we now have up Nichol John's statement and I'm going to have to beg the indulgence of the group because I didn't go through it and mark --

MR. HODSON: Next page.

BY MS. KNOX:

Q
Next page, please. Okay. At the top of page 006648 , part way through her statement she says: "I saw him grab her purse, I saw her grab for her purse again. Dave reached into one of his pockets and pulled out a knife. I don't know which pocket he got the knife from. The knife was in his right hand.

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                                    I don't know if Dave had a hold
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of this girl or not at this time. All I recall seeing is him stabbing her with the knife." Okay.

Okay. So that's the language that she used, but again to go back to, and drawing on what you knew in 1969 in terms of the mechanics of injury, the use of knife in crimes and what you know subsequently through your years as prosecution, that stabbing somebody always required that there be penetration of the clothes?

Oh, no, clearly the terminology here is stabbing, the word "at" is not there, contrary to my memory of it, but stabbing someone could, in my experience, rank anywhere from not contacting the person or their clothing to the opposite extreme of having a blade penetrate the, whatever layers of clothing there were and lodge itself in the person's body, so there was a whole range of possibilities in my experience, ma'am.

And continuing with what she said at that point in time and the objective data that you had to assess what may have happened here:
"The next $I$ recall is him taking her around the corner around the alley and I
think $I$ ran after that."
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
statements about the elevator break-in and things like that, did that play any part in your assessment of what was the truthful statement as you came to believe it, or the truthful statements as you came to believe them, following May $23 r d$, May 24 th, 1969 ?

Yeah. The fact of, let us say, mistaken or wrong evidence about, for instance, what was and wasn't taken from the elevator wouldn't cause me to derail or discount later statements which $I$ had every reason to think were more complete and truthful, Ms. Knox, those kind of differences could happen without them triggering me saying because she didn't notice, say, the flashlight, I'm not going to believe anything she said. But more importantly, Mr. Caldwell, is the fact that they were things that were not quite legally proper that were omitted from their first statements, did that influence you in thinking 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
fact that they stole the battery before they left Regina.

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Well, that phenomenon isn't rare by any means of having people who are colleagues to some extent in what is going on, be reluctant to come out with, you know, truthful, umm, descriptions of what they really knew all along, so the fact that that happened, Ms. Knox, would not cause me to say therefore $I$ don't believe what they did say later when $I$ felt that what they said later was true and supportable by various other means.
$Q$
Okay. Sir, in addition to the fact that, and $I$ suggested to you that those weren't the days when it fell off the tip of her tongue to be suspicious
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 $23 r d$, May 24 th 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
the city the very person who took those statements
that you were relying on so much as being accurate, being Inspector Roberts, you arranged for him to come in, you had him interviewed by both yourself and Mr. Tallis together concerning the part he played in the questioning of the witnesses and presumably the circumstances giving rise to those statements that are so much the point of contention in this Inquiry.

All of that happened, Ms. Knox, as set out in this letter.

And is -- the records in your file, and it has been canvassed with Mr. Hodson by you, in fact you had subpoenaed Mr. Roberts to be available for the trial to give evidence if it was -- it appears if it was considered necessary by Mr. Tallis, but certainly you and he both took the steps of talking to this expert in a new field of science, as it were, in criminal justice, and presumably to get a take on the bona fides of what he did, what he got and how he got it, as it were?

That all occurred, Ms. Knox, and I felt all that was, you know, certainly proper from my point of view.

Sir, in his course of his cross-examination, at
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.

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 --

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Yes, I agree with that. There was, I think, a continuing attempt, if not success, in improving
methods of interviewing witnesses and eventually of course calling their evidence, and some of that would be affected, of course, by decisions coming down from higher courts saying you did that wrong, please do it this way in the future, and I'm sure prosecutors made the attempt to follow through on that.

And you've indicated that you've had some involvement in changing police practices after you came to the Saskatoon office. Did you have any involvement in teaching, for example, at the Police College in Regina, teaching officers about how to take statements so that they got good, accurate recounting of events from witnesses uninfluenced by other knowledge they had or beliefs they held about what may or may not be the actual case?

I did a small amount of lecturing at Regina at "F" 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
institution of the case prep office for the very kind of, you know, difficulties officers thought they were having, so that did go on, not limited to what you've stated, but of course quite a broad range of subjects.

Okay. Sir, I'm going to suggest to you that well beyond the 1969,1970 time frame that you were operating in and that Sergeant Mackie was operating in, Lieutenant Short and others, Detective Karst who interviewed witnesses in these cases, that curriculums were instituted in police colleges to teach police officers how to properly take a statement, the art of effective statement taking?

I'm sure that happened.

I'm going to suggest to you that even in -- well, certainly in Saskatoon, in particular, experts were brought in, there's one guy who has an Israel name that $I$ can't remember now, but experts were brought in to teach police officers how to properly and effectively take statements, not to suggest that they had been intentionally doing it wrong --

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No.
-- but to help them learn from the lessons of
others? .

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$Q$

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I'm sure that happened as time went on, Ms. Knox.
And I'm going to suggest to you that as time went on there evolved a community of experts, psychologists and others, who teach the art of effective statement taking and point out to professionals like prosecutors, police officers and others in the system, including involving themselves in some judicial training, about the pitfalls of all the assumptions that we used to make about how we were doing our jobs and our inherent belief that we were doing it right, without realizing that sometimes we were doing some damage with respect to the accuracy of information that we were getting from witnesses, including eye witnesses and doing that?

I know that that has been a growth industry in every, I say that respectfully, over the last number of years because of the very flaws that have been discovered in cases as to the way the statements were taken.

Mr. Caldwell, you and $I$ haven't discussed this before, but $I$ hope you mean growth industry in the most positive sense.

Yeah.

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Because I was part of the growth industry in another jurisdiction.

Yeah, $I$ did mean that in a complimentary way, ma'am.

But basically it was learning from mistakes made benignly as opposed to with sinister actions on the part of others?

Oh, that's quite right. There were -- some of the subject matter involved young people, others, sexual assault victims, and there were unquestionably court findings that indicated that the way they went about case $X$ was not right and here's how it should be done in the future, and certainly this involved high, you know, high rate, trained personnel giving the instructions as opposed to, you know, your fellow officer, whatever. I certainly know that happened. I'm going so suggest to you that you are right in talking about some of it being about interviewing sexual assault victims and victims of violence, but it extended beyond that, I'm going to suggest to you, even to getting eye witness accounts, for example, without planting unintentionally into the conversation pieces of information that would unknowingly influence the recollections, recall of
even eye witnesses.
Oh, I'm sure that that's a very proper area, and it has been studied and presumably it has improved.

Okay. Now, sir, in 1969 when you were dealing with these officers, and I've just listed some of them, Sergeant Mackie, Detective Karst, Lieutenant Short and others who were part of the investigation, Mr. Ullrich in helping you, assisting you with Court, did you at any point in time ever either accidentally or by their design become aware of any kind of action or thought processes on their part that would fall into what Mr. Lockyer referred you to last week as either tunnel vision or noble cause corruption, where they believed they got the right guy and they will go to any lengths to get him, even perjury, massaging evidence or anything of that nature?

No, nothing like that came to my attention.
Those -- the officers who were involved in this file I'm sure knew $I$ had a very taxing job to get the case through the Court system in proper shape and I'm sure that they would be very conscious and avoid -- the last thing any of them would want to do was try to sneak something by me, Ms. Knox,
because $I$ was a relatively new arrival in Saskatoon and $I$ just, $I ' m$ sure there was a mutual respect there and $I$ didn't detect any hint of that thing that you mentioned, whatever.

You've made reference a number of times to the fact that in 1969 Saskatoon was a small community? Uh-huh.

All of these officers were senior officers in the field of policing in this small community?

The ones we've mentioned were.
And you were a senior prosecutor in a small community at that time, and I'm just stating some obvious facts here.

Yeah, that's correct.
You certainly had a family, a wife and children. Some of them, if not all of them presumably, had families who lived in this community; would you agree with that?

The police officers all lived in the community, I did, and we, between us, had, needless to say, various children.

Q If you had done either, for any purpose, the things that have been suggested about you over the years, you personally as the prosecutor, the police officers as the police officers, if you had
done any of the things suggested knowing that you were causing an innocent man to be convicted, you would have had two realities that you all would have had to live with, wouldn't you, one being that you put an innocent boy in jail?

Both those things would be intolerable and, in my case, even though we now know the result of the case was incorrect, none of those worries or
troubles affected me over the years, whatever, because up until the, in effect, the DNA evidence came out, I was -- my conscious was fine, I was sure that the right person had been convicted, and so none of that, Ms. Knox, took place or got back to me in any way, shape or form.

MS. KNOX: Sir -- and, Mr. Commissioner, I'm noting the time, it's about 10 minutes to 12. The next area that $I$ intend to go into is the one that's going to take some time because it's the subsequent contact that Mr. Caldwell had with the National Parole Board.

COMMISSIONER MacCALLUM: Yes.
MS. KNOX: I can start and go into it for 10 minutes or we can break and I might be a little bit more efficient when we come back this afternoon. I'm at your discretion.

COMMISSIONER MacCALLUM: Well, if efficiency will make up for the 10 minutes, Ms. Knox, I'm happy to break here.

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.)
(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. Okay.

But to expand on the point that $I$ was making this morning, certainly Nichol John's family made --
had contact with the police as well as with you, as we know because her father was outside the office, if she had shared concerns, or they had concerns that she was being improperly treated in any manner or coerced into giving information that wasn't in fact --

Yeah.
-- believed or apparently accurate at the time? Yes, the -- they know where and when $I$ was, Ms. Knox.

Okay. Sir, the next area $I$ want to go is of course, as I've said, the involvement that you had with the National Parole Board and the contacts you made with them over the years with respect to Mr. Milgaard. And you have been questioned at length at that and at one point in time Mr. Lockyer, I believe, suggested to you that, by your actions and your interventions with the parole board over the years, you not only gave them information that was incorrect, but in fact you became, in effect, Mr. Milgaard's greatest tormentor during the course of his sentence; do you remember that being suggested to you?

I do.

Okay. And it's also been suggested that your
motivations were doing -- for doing that are questionable, and driven by a zeal to keep him in jail, with the suggestion that knowing, as you knew, or it's suggested you knew that in fact he was an innocent man?

Yeah, yes.
You remember those suggestions being made in the public arena, and to some extent in these hearings at various points in time, do you know not?

I do, Ms. Knox.
Okay. Mr. Caldwell, Mr. Hodson indicated during his last area of questioning with you that the Commission had been successful in obtaining the parole board document that you were relying on in your correspondence and as the reason for your contact with the board in 1972; do you recall that?

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Okay. That document has now document ID 332055 and $I$ have it brought up on the screen. And, as Mr. Hodson didn't canvass any of it in detail with
you, I want to direct your attention and Commission's attention to parts of it. And if we could turn to the third page of the document, which would be 57, 0057 , the Introduction sets out the purpose of the book, and I take it you would have read that when you came into possession of the book and, to some extent, been guided by it in your decision to make contact with the National Parole Board in 1972?

A No doubt I did, Ms. Knox. And essentially what the booklet is, it's an invitation, it says judges, magistrates and the police, to -- or it's an invitation for them to become involved by, first off by acquiring an understanding of the policies and operations of the board to promote a better understanding of the board work, and in -- significantly from your point of view -- to increase coordination between board, the board and others in the field of corrections so that we can realize our mutual aims, the protection of the public and the rehabilitation of the offender?

A
Yeah, I would have seen and read that and thought that was, you know, a legitimate concern as it were.

Okay. And if we could go to the next page, please, and I'll refer you to just a small piece starting here, the dual purpose of the board. And I take it you would have read, as well, this section that says the dual purpose of parole is to assist in reformation and rehabilitation so that he can be, an offender can become a law-abiding citizen, but also to ensure there is no excessive risk to society?

I would. That's a double-barreled proposition, as you see, and I undoubtedly perused that.

And again, moving on to further down the page in the second column, you would have reviewed the policy statement as contained in this document, the suggestion that parole is not a question of interfering with the sentence of the Court, it's a matter of mercy or clemency, the board believes that parole is important to assist in rehabilitation, and they list a number of factors, and $I$ direct your attention to (d) and (e) in talking about the factors they consider and referring to an inmate; where his reform and rehabilitation will be aided by parole and when his risk -- or when his release would not mean an excessive risk to society?

And, sir, in reading through this and other parts of this document -- and I'm not going to take you through all of it -- was it apparent and clear to you that the parole board operated on a policy of risk assessment, if $I$ can use their language, and that they considered treatment, rehabilitation to be a very important aspect of their mandate, but also that such had to be weighed in terms of the protection of the public?

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Okay. And sir, again in terms of going through the book, if we go to the next page -- sorry, if $I$ can go back a page, please, and if $I$ could go now to 59 -- I'm sorry, my copy doesn't have all the page numbers and $I$ want to draw out this particular part right here. It talks about the eligibilities for an inmate serving a life sentence, and specifically said an inmate serving a life sentence for non-capital murder must serve ten years, and anyone serving a life sentence must serve seven years.

So in 1972 -- I draw this to
your attention only for the obvious question -- in

1972, when you were writing to the parole board and you were saying "you have in your custody a young man who $I$ believe has some serious psychological problems and he is a big risk to society", this was being done in the context of there being a number of years for them to engage in their processes of assessment, treatment, and, if possible, rehabilitation; was it not?

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You weren't riding up to the gate when this kid was about to come out and say "hold your horses, you shouldn't be lettin' this guy out", but you'd let him sit there for seven years or six years before you drew your concerns to their attention, you acted years in advance of his earliest eligibility date?

That's correct. And $I$ would have seen that as being ten years in this instance, ma'am, minus the things they mention there, so that $I$ knew they had a good, lengthy period in which they could act. And, all things being equal, I would think the earlier my concerns got to them, regardless of how they evaluated my concerns, the better it would be for -- for the operation of the system.

Okay. If we could go to the next page, please,
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.
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?

A I see that.

Q

A

## Q

A

So effectively, when you were doing the part that you did, you weren't doing it with any expectation that you could mislead or change the picture of David Milgaard's parole situation vis-a-vis his family and any support he might have had from employers or anything of that nature; were you? No, no, I was putting to them what $I$ believed was valid information, at what $I$ thought would, in a timely fashion, in short as early as possible within reason, Ms. Knox.

Okay. And I'll just highlight here, in terms of your assumption or your presumption that it was appropriate for you to do this, in fact throughout this manual the board is expressing appreciation for -- they refer to police, magistrates and judges, but $I$ presume you considered yourself to be of that ilk -- but they express appreciation for officials in jobs such as yours, the police, the courts, who would take the time to assist them in having the full picture of an offender so that they can make the best possible decisions both in terms of treatment and release considerations -Yeah.
-- if those become factors?
That's how $I$ took it, and interestingly there's
not a heading for prosecutors, but certainly somewhere along the continuant from police to courts $I$ would have felt confident that they would, you know, welcome assertions from prosecutors.

Okay. If we could scroll down, then, to the heading that is down at the bottom of the screen, and under the category of Judges and Magistrates, which you considered yourself to come into or to be part of the group in an extended kind of way, you indicated in your evidence earlier that you were looking at and considering nine criteria that they had outlined --

That's right.
-- as to the basis of the reports, and I take it you are referring to this part of their booklet that says 'when we asked for reports you, having taken on the task, or self-appointed of doing the report, that you follow -- you do certain criteria. And if we could go to the top of the next column, please, and outline these items (a) to (i)?

Yeah.
Would these be the criteria that you were considering when you drafted your letter in 1972?

A
$Q$

Whether the offence was deliberate; the offender's reputation, family background, and work record in the community you were invited to comment on?

The effects of the offence on the victim and in restitution, which clearly wouldn't have been a factor here; the reaction of the public, if any, to the offence?

That's so.
Whether violence was involved in the commission of the offence?

That's so.

A Right.

Q
You were invited in (h) to talk about alcohol or drugs, if you had knowledge; and clearly the last one would be for a judge, what you had in mind when you gave the sentence you did, which I presume you didn't attempt to proffer, but it didn't matter anyway, --

No.
-- it was a statutory required sentence?
I'm sure that's correct.
And then going to the last paragraph, this paragraph here directed at judges but in the tenor of you writing the report, you -- do you recall seeing that the board said -- invited or expressed a view that 'some judges', particular -- 'or magistrates, particularly in rural areas, are able to give us a great deal of information about a man's family and background and his reputation in the community which might not have been obtained from other sources. We want as much information about the inmate as possible, and we are most grateful to sentencing authorities for their assistance in this matter.'

So again, in terms of the
criticisms you have been subjected to about the
information you put in, would it be fair to say that, when you sat down to write this report using this document or this booklet and this invitation as a guide, you were being invited to step outside the rules of evidence and the -- just what happened in the courtroom, and to give a broader base of information, if you had it, including nebulous things by way of proof like reputation, a man's reputation in the community?

That's true. The first sentence there, Ms. Knox, which concludes, 'which might not have been obtained from other sources' would be a broadening of possible, you know, sources of information, which they clearly invited, whatever use they made of it. And then the terminology, 'we want as much information about the inmate as possible' and on, to me, conveyed just that.

And again $I$ assume that you read the full booklet and you didn't figure you were closer to the judges and magistrates, but you were closer to the police, I want to, I'll scroll you through the section about, that's directed to police, and if we could go to the bottom paragraph at the bottom of page 4, they indicate to police, and $I$ presume 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.

A
$Q$

A
$Q$
Is see that, ma'am.
Again, sir, an invitation to step outside criminal convictions, proven evidence in the Court and to be more encompassing in passing on your knowledge 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 police or corrections people, referring to police reports specifically here, the board said, and I quote:
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 example. But again, did you read from this that 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
information contained there, and the identification of the importance of having previous records from any institutional personnel that had dealings with this individual, could be helpful for the assessment of individual group counselling, need for medical psychiatric treatments, and it goes through a whole list of factors here --

Uh-huh.
-- but that would have been read by you?
It would, and those of course would all be very legitimate concerns of the parole board as $I$ see it.

And again $I$ 'll highlight some specifics when we go to your letter, but would this have been a factor in your preparation for doing your 1972 letter that caused you to contact Dr. McDonald?

Do you mean initially?
No, in 1972 --
Yeah.
-- you made contact, and just to refresh your memory, if we could bring up for the moment document 006845 , and if $I$ could bring out the first paragraph of that, this is a letter dated June 5th, 1972 by Dr. McDonald to you from his
office at University Hospital where he identifies himself as a professor and then the head of psychiatry, and Dr. McDonald documented in his letter that you had recent telephone conversations with him and that you had asked for a diagnostic label for Mr. Milgaard?

A
$Q$

That's clear there, yes.
Okay. And he indicated that he had reviewed his file, which was based only on the one interview that he had done that we heard about, plus he had reviewed a number of institutional reports; the Yorkton Psychiatric Centre, number 1, the Munroe Wing of the Regina -- in Regina, sorry.

Yeah.
Number 2, and the Child Guidance Clinic of Greater Winnipeg.

Yeah.
So he had looked at records from various sources, and last day Mr. Wolch referred you to records from the Yorkton Psychiatric Centre only, but clearly there were records existing in 1972 from other institutions where Mr. Milgaard had attended
and been assessed, treated or whatever the appropriate language is, given that we no longer have the record.

Those, Ms. Knox, were the things $I$ was referring to in a general way, the chart, so-called, which Dr. McDonald undoubtedly had assembled at the time when $I$ asked him to interview Mr. Milgaard, and all those sources, of course, would be invaluable to a person like himself in, among other things, being asked for a proper title for the situation of the accused, so that those are all extremely, I would think, important raw material.

And would that marry well with the document that we were going through that you had from the National Parole Board that pointed out to police, judges and magistrates the importance of having past institutional records where there was any psychiatric, psychological history and that kind of thing?

A
Yeah. It would be, in any of these kind of situations, I'm sure that a psychiatric person is far, far better off with reliable material on the background of the accused as previous treatments than simply, in effect, seeing him cold without any of that, Ms. Knox, that would all be very valuable in my opinion.

Okay. While we're in this particular paragraph of the document, given the order that Dr. McDonald
wrote it, it was suggested to you by Mr. Wolch that you had over-inflated Mr. Milgaard's past history of psychological, psychiatric problems that made him out to be a much worse character than he was, and $I$ refer you to the sentence from Dr. McDonald that gave you a diagnosis, and would you agree that what he told you a couple of weeks prior to you writing the parole board in 1972 was that it was his considered opinion that this young man was suffering from a severe behaviour disorder which he thought would best be described as sociopathic personality?

That's what he concluded and put in the letter. Okay. And, sir, is that the label that you gave to the National Parole Board when you attempted to summarize what your understanding was of the psychiatric situation of Mr. Milgaard in 1969, 1970 prior to his incarceration? Ms. Knox, I'm not certain if, or that $I$ used that exact title. It wouldn't surprise me if $I$ had because it was coming from the person with the knowledge to assess those things and, you know, try to name people accurately as to their condition.

Okay. If $I$ could take you to the second paragraph
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 sources of
information, apart from his one interview, that caused him to give that label, but he invited you to invite the parole board to check it out themselves, if $I$ could shorthand summary what he was offering there?

Yeah, that's what he did, and of course that -he's, $I$ think, one step better than simply saying this is what $I$ say he is, thanks for talking to me, because it left it to the board to get all those legitimate sources of raw material on the gentleman and to come to their own conclusion is the way $I$ would put it, Ms. Knox.

Okay. I now want to go to document 006840. Now, sir, this is your file copy of the letter that you then wrote to the parole board nine days after Dr. McDonald wrote his letter and we've had it reviewed a number of times, you start on your introduction to the chairman by saying you have had an opportunity to read the booklet that I've just been referring you to?

A Yes.
$Q$
Our document 332055. You indicate that you are writing him in respect of Mr. Milgaard and you give some information with respect to the events, the circumstances of the offence, and generally
offer fairly detailed information about the events in Saskatoon the early morning of January 31st?

A
$Q$ That's correct.

You include in it information that was led in evidence of trial about the reenactment of the stabbing in a motel room some months later, May, '69, if we go to the next page of your letter. Yes.

Sorry, page 842, I'm on the third page. Okay.

I can talk faster than they can flick documents. Okay. But you talk about the reenactment of the stabbing, and these are familiar so I'm going through them fairly quickly. I want to refer you to the paragraph that Mr. Wolch referred you to and others have, you indicate or you state that in preparing the case you had the privilege of reading his entire psychiatric history which was very well documented since his early youth, and you said he had been in constant trouble since kindergarten days, and the file even contains predictions by social workers who had examined Milgaard, that he would one day kill someone. Yeah.

Now, sir, I want to just stop and walk you through
some of that information if $I$ may, again because of challenges made as to your accuracy and interpretation. We have available, and it has been marked as an exhibit, the records of, various records from the Yorkton Psychiatric Centre, you reviewed them last week?

That's right.
And I'm referring, Mr. Commissioner, to the document starting 325181 , it has a series of reports with different dates on Mr. Milgaard. The ones I have are November 14th, 1966 , February 11th, 1967, a social history done November 14th, 1966 that's quite lengthy, and a number of other pages that are headed social history, and I refer you particularly to document 325182 . This is the continuation of social history, but $I$ draw to your attention, because it is a continuing chronology, if one follows it through and looks at the dates at the top on the right-hand side of the pages, of difficulties, assessments that are ongoing during Mr. Milgaard's time at the Yorkton Psychiatric Centre.

Yes.

I'm just going to proceed forward. At 325190 we have a continuation, but on a different date,

December 29th, 1966, all still on their letterhead or the form social history. The next page, 325191, we have a document headed, in format, social history, but bearing the date January 18th, 1967.

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$Q$

Okay. Now, Mr. Commissioner, Mr. Wolch expressed a concern last day that we don't unnecessarily put information into the public record about Mr. Milgaard, and particularly about his family and
this is a summary recording on February 13th, 1967, so moving forward in time there's documentation of contacts, difficulties, visits with family and various problems as they developed with Mr. Milgaard?

That's right.
Okay. So when you were referring to having an extensive history, there's documentation still existing that dates from November 14th, 1966 through February, 1967?

Yeah, that's right, Ms. Knox.
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 $2--\quad$ I guess I'm not going to succeed.

MR. WOLCH: I took that as an invitation.

MS. KNOX: I said I was hoping to do it without getting you out of your chair, but to try to balance a fair record in respect of Mr. Caldwell and his actions of 1972, 1974 and 1977, but not to cause unnecessary pain, embarrassment or harm to Mr. Milgaard or his family, and I guess I need to be guided as to how to do that.

COMMISSIONER MacCALLUM: You are only considering the Yorkton records at this point?

MS. KNOX: The only records we have are the Yorkton records.

COMMISSIONER MacCALLUM: Yeah, okay. Mr. Wolch?

MR. WOLCH: Mr. Commissioner, the comment that Mr. Caldwell wrote was a prediction that Mr. Milgaard might kill in the future, that was explored to some degree and length. I invited Mr. Caldwell to find any reference to that, keeping in mind that later --

COMMISSIONER MacCALLUM: And violence I think was --

MR. WOLCH: And violence, yes, that and any sign of violence he could find. He was given overnight to go through, take his time and find any reference to violence in any of the reports,
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
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 $I^{\prime} m$ 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
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
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 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 lst 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

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 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

National Parole Board to the detriment of Mr. Milgaard --

COMMISSIONER MacCALLUM: That's the issue, right.

MS. KNOX: -- and he has the right to have the record corrected if in fact that's wrong, and I will be asking to address you with that.

COMMISSIONER MacCALLUM: Of course.
BY MS. KNOX:
Okay. Then if I could ask to have brought up again this Yorkton psychiatric record starting at page 325181. Mr. Caldwell, you have reviewed these last week, and $I$ know you don't remember them, but if you will allow me to guide you I want to go through some of the pieces of the information that you would, you believe, have reviewed in 1969-1970 --

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$Q$


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Okay.
That's right.
I want to start, then, with what appears to be an intake admission form dated November 14 th, 1990 -I'm sorry, 1966, sorry -- I'm wishing my life away, even my past. Reason for admission, would you agree that basically what it documents is long history of disturbed behaviour particularly in the area of school refusal?

That's the top sentence and appears to be --
And this is an assessment being done by Dr.
Andrews, if we look to the bottom of that page, who is identified as a psychiatrist. Dr. Andrews up here is a psychiatrist, the notation at the bottom of the page would appear to suggest that he may be the author of this summary?

Yeah, I -- that's how it looks to me, ma'am. Okay. And then if we go to the next page, 325172, there is what appears to be a part of a discharge summary -- no, 325172, yes. We have, and $I$ say 'discharge summary' not because that language appears on the paper, but we have here a date admitted November 14 th, 1966 , date discharged February 11th, 1967?

Q
A

And again, just in terms of the information you had in 1969-'70 and what you had in '72 when you talked to Dr. McDonald and wrote the board, the reason for his referral to the psychiatric institute at that age, or that young age, was that he had been referred by the educational psychologist and his physician, Dr. Betnoff (ph)? Appears so.

Description of the problem, presenting problems at school, home, and in the community?

I see that, Ms. Knox.
Okay. And there's information about his family that you had in your possession, then, that I don't think necessarily we need to go through. If we go to the next page, 325176, information about the marriage and his siblings that, again, that $I$ don't think we need to be involved in.

325177, the top part is a personal history that, again, $I$ don't particularly need -- think we need to be involved in, but if we go to the bottom part of the page, onset of behaviour problems. And without getting into a great deal, would you agree that what was
suggested in these records and what is -- may have been the basis for your saying, at page 3 of your letter, that in preparing the case you had the privilege of reading the entire file which is well documented since early youth and you documented he had been in constant trouble since kindergarten days?

This, these paragraphs would be part of me leading up to that conclusion, ma'am.

Yeah, it's simply a way of tracing it back?
Yeah.
And again, not meaning to besmirch the family, but by the age of four years some problems started in kindergarten, he had to be -- and it indicates he was enrolled at the age of five but had to be withdrawn as he created a greater disturbance than his teachers could tolerate. And, in fairness, what they described is he was full of life, constantly annoying, teasing others, problems evident at home, disobedient, hyperactive, etcetera?

A Yeah, I see that, Ms. Knox.
COMMISSIONER MacCALLUM: The second, the last word in the second line which is obliterated, anybody know, "gradual 'change'"
probably?
I assume, sir, it would be 'change'.
COMMISSIONER MacCALLUM: Yeah, okay, thank you.

MS. KNOX: Yeah, it's obliterated in my copy as well, but likely a good guess, Mr. Caldwell, of what appears to be 'C-H'.

BY MS. KNOX:
Again, not to besmirch his character, but he, you know, five years old he ended up before the principal and he was immediately referred to the child guidance clinic where he was -- where it was decided he should be placed on some medication which proved to be equally ineffective?

I see that last paragraph.
Again, would that have played a part in your summary in your letter of history of involvement of problems from an early age?

It would. It's one more thing that would draw one's attention to how things were going for him as a very young child.

Next page, 325178 starting at the top of the paragraph, the family moved to St. Boniface, changed schools, adjustment also unsatisfactory, 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?

I see that.

It talks about him stealing occasionally, not
going to Court, it was removed -- it was
recommended his family move out of town, out to 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 was out there. Then it goes on to say his family 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?

A
Yes, I would have seen this, and it would sensibly belong in that category, Ms. Knox, in my opinion. Next paragraph, relationship with his father, it
talks about his father being strict, probably understandably, easier to manage when he is home, and this part he had indicated to somebody apparently that his ambition was to grow bigger than his dad so that he could beat him up? Yeah, I see that.

Okay. Would that have been a factor in your assessment or your reference to the National Parole Board in terms of this boy's difficulties in terms of appropriate behaviours and concerns about his future?

I would think, Ms. Knox, that I'd characterize that as simply, you know, loose talk which might very well be said by persons of that age --

Q
A
Q
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Q
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Q

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A

Q

A Yeah.
-- with no --
Not particularly sinister?
Yeah.
Just another factor --
Yeah.
-- for -- in your weighing of the information you were proffered?

That's right, that's all $I$ would assess -- assign to it, ma'am.

Relationship with mother, again probably normal
kid behaviour for a 14-year-old given that he was 14. No particular significance, $I$ take it, paid by you to that, with the reference that he picks on her, presuming that to be talking back or something like that?

A

Q

A

Q

A
$Q$

A
Q
Okay. Present situation, again nothing alarming in isolation but just a, what $I$ would suggest to you, a continuing indication contained in the file
charged with theft; again not particularly
sinister?

No, I wouldn't say that at all.
of difficulties managing him and areas that need to be addressed, and as documented from this early age through psychiatric psychological intervention in his future probably?

That's right. That second-last sentence, he resents being disciplined and refused to accept guidance, would catch one's attention. But, again, that's a factor, if you will, -Yeah.
-- and no more than that $I$ would say.
Okay. And the notation by his parents, or by -attributed to his parents, whether accurate or not, at his age that they -- and I'm talking about this part here -- that they wouldn't object if he was removed from home situation though they were careful to add, and $I$ want to emphasize this, that they would agree to anything that was best for him?

Uh-huh.
So perhaps a recognition in 1969, in a time when it wasn't as well documented and supports weren't readily available for families with a child who was hyperactive, acting out, you know, beyond control, that they might need help but they would do what was best for him?

That, that's certainly how it appears.
Okay. The comments as contained in the next section, talking about some of the reasons why he may be having the difficulties and just going through a -- including problems adjusting, at paragraph 3 here, because of frequent changes of his school, the acknowledgment he is bright, alert, can do work well if he wants to and can academically perform.

Going on to the next page, possibility he could make favourable progress if opportunity provided. Again, in terms of your assessment, there were a number of recommendations made by the psychiatric social worker at that time indicating, in summary, that they felt required, cer -- that there was a need for a lengthy period of treatment in a residential facility centre, or that they could best be provided in a treatment facility for emotionally disturbed children?

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

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?

A Yeah. One of -- that would be one step, Ms. Knox, which possibly we had hoped hadn't happened, but at that stage it appeared that the people in that field seemed to think that was essential for him, that last paragraph.

Okay. If we could go to the next page, please, 325182. This is a document still under the heading social history, but clearly a different one because it has a separate date, and it is a, identified as a summary recording, talks about a group meeting on November $23 r d$ between Dr. Andrews, the regional -- or the educational psychologist for Yorkton-Melville Public Health Region, and the worker who is writing this report who is -- long-winded -- Allan Hagan, a psychiatric social worker, and it's signed by him at page 325189 .

I see that.
And again sir, without taking you through all of the details or all of the paragraphs of the report, it was recorded by these gentlemen, or this gentleman, that the purpose for the meeting was discussed at this meeting with some of the boy's rather disturbing behaviour as well as observations of this boy while at the Yorkton

Psychiatric Centre. Also discussed extensively were the results of Mr. Tomasheski's (ph) personality and psychological tests, that he had done some testing in Langenburg High School November 7th, also did testing at the psychiatric centre, and they refer to seeing the file for explicit information re psychological tests?

I see that.
And in the material that you had available to you, and which was part of your knowledge base when you wrote these letters to the board, do you know whether you had had opportunity to see the more explicit information re psychological tests that was referred to there?

A
I'd be surprised if $I$ had, Ms. Knox, if -- because I would have expected it to be attached to or part of this report so $I$ can't say that $I$ did that. Okay. Sir, again just, as I say, there's some discussion about the case and then it indicates it was unanimously agreed, in view of past history of acting out, present -- can't read that word very well --
MS. McLEAN: 'Less that desirable'.

BY MS. KNOX:
Q -- less that desirable, thank you -- less that
desirable social situation we recommend the Department of Welfare -- we recommend to the department the following; that he not be returned to the community of Langenburg at the present time; the Department of Welfare consider permanent wardship as it is unlikely there is any possibility of this boy's behaviour being modified, is the language here, to any extensive degree within the home situation; that they keep -- the next recommendation is that they keep him at the psychiatric centre on an inpatient basis for a number of months with the hope that he might benefit -- and I'm skipping -- from a structured, consistent milieu that we could attend -- they could provide, have him go to school by day, sleep at the centre by night?

A

Q e

$\square$ And then eventually, if he does well in the psychiatric centre under that regime, that if the Department of Welfare accepts the recommendations that he become a permanent ward, effectively they'd put him in a foster home and they would continue, he would continue to be monitored, but getting him back in school being a primary goal. And then it just talks, the next part of it just
talks about his refusal to attend school.
A
$Q$ Uh-huh.

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?

It was, Ms. Knox.
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. If 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,
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 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?


A
Q

That's how I read this.
Okay. 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. But I 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 24 th of November, or as a result of a 24 th 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
estimation --
Would you --
-- as I read the file.
Would it fall into or be supportive of the statement you made in your letter that he has been in constable -- in constant trouble since kindergarten days?

This, well this is, $I$ think the timing is well beyond that, but this would be where he was in that continuum at this time, as $I$ read it.

Okay. Starting back to the difficulties in kindergarten, he continued to present troubles, advanced to an age where, according to the town constable, there was conflicts with the law, not the subjects of charge, but nonetheless ongoing conflicts with the law?

A
Q
That's exactly how $I$ assessed it, ma'am.
Okay. He talks, and then just the discussions
about, if $I$ could go to the bottom of the page,
meetings with both parents at the psychiatric
centre to talk about planning for David -- if we
could go to the next page please -- and Mr.
Milgaard mentioning, for example, if he had money
he would send the boy away to military school or
Notre Dame College to accomplish the smartening-up
that he felt that his son required, a discussion of many -- of plans offered and possibilities in terms of trying to deal with his behaviour that made it impossible for them to continue to cope with him at home; would that be a fair summary of what's contained here?

That's how I read that paragraph, ma'am.
Uh-huh. The bottom of the page, if we could go to the last full paragraph on the page, documenting interviewing David and talking to him about going to a residential treatment centre for emotionally disturbed children as a possible way to attempt to assist him in dealing with his behaviours?

I -- I see that in about the fourth line, that's discussed.

Okay. And going to the next page, please, and skipping paragraphs; some discussion by way of summarization by the staff and with, regarding the educational psychologist as well as the hospital staff, regarding their contact and interactions with Mr. Milgaard, that being David Milgaard, and our recommendation -- or their recommendation of permanent wardship, night hosteling, and efforts to try to put some structure around him to keep better control of him and to try to modify his
behaviours?
A
Yeah, that's the -- that's the subject they are reviewing there, and it appears to be a further behaviour, $I$ would think, of concern to the authorities at that time, without a doubt.

Okay. And reference to a further meeting taking place with, again with parents at RPC five or so days later, November $30 t h$, and again further exploring what could be done to attempt to manage this unmanageable young adolescent, as he was assessed as being at that point in time both by his parents and by the authorities?

I see that as well, and I -- that appears to make sense from my reading of the paragraph.

Okay. And again in reference to your indication to the parole board that he had been in constant trouble since his kindergarten days, going through this chronology which presumably came from his parents in that meeting or through school records, if they got the school reports, without going into each of them a listing of continuing difficulties in school from kindergarten, referencing again that he was rejected from class because of his unruly mischievous behaviour, he didn't return; 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
$Q$

A
$Q$

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$Q$
 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
"just kill me and get it over with", and her impression that he hates himself, she indicated that prior to making the remark he actually picked up a knife, offered it to her, apparently as a request to have her use the knife on him?

Yeah, Ms. Knox, the language there was that David hates himself, and the rest was as you read it. I think you said "she" -I'm sorry.
-- but, clearly, it was David in the third line there.

But again, in terms of the letter that you are writing and the characterization that you are doing, this would be indicative of some significant -- it's a concern about self harm more than harming anybody else, but indication, as you document in your letter, that he had a very troubled history?

Yes, it's -- it would catch the attention, I think, of anyone with any knowledge in this area, and I didn't, $I$ was certainly a layman in terms of psychiatric matters, --

Q
Uh-huh?
-- but this would certainly catch my attention and
I would attempt to, not word for word, but cover
it in my views on him when $I$ did write the letter. Yeah. Documented here, and not so much anything negative, but the expression by his principal that he has excellent reading ability and that he is not producing what he is capable of, so in other words the assessment by teachers or a principal that he is capable of a lot more but for whatever reason is just not able to perform, be it because of his psychological difficulties, his unhappiness in terms of his life situation or whatever, but generally documenting that there are things causing problems for him in terms of his academic performance?

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?

A

Q
Yeah.
If we could go down to this paragraph here, "to date", and this is a summary, again, of his
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?

A 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?

A

Q
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 $29 t h, \quad 66$, again by Mr. Hagan the social worker?

A
I see that paragraph which does set that out.

January 17th, there's another entry in this record of his performances saying Court had to be postponed again because the Department of Welfare worker was ill, his behaviour being manipulative and mischievous, is how they are describing it, acceptable in school, written exams and then goes on to talk about again in, I suppose, somewhat benign behaviour for a young man, he is agitating to get out of hospital, feels it's not the appropriate place, and in many respects they note he might be right about that?

Yeah, I see that.
They, however, say despite the recognition that it might not be the right place for him, it was their feeling that he could not possibly at this point in time function outside of as much structuring as we can possibly give him in this setting. They talk about the option of -- or his idea of wanting to go to foster care, but concerns that he needs more structure perhaps than foster care would provide at that point in time.

I see that as well, ma'am.
So that would be the assessment knowledge that you had of him up until January 17th, 1967 when you were writing this letter?

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, $\mathrm{K}-\mathrm{N}-\mathrm{O}-\mathrm{W}-\mathrm{L}-\mathrm{E}-\mathrm{S}$ 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
extremely frightened about the prospect of having him return to, having David return to Langenburg. This anxiety has probably intensified more recently because his behaviour has been unacceptable at times and he has been threatened with discharge from the hospital if his behaviour doesn't improve. So $I$ guess a fair reading of frightened here would be more frightened about how she's going to manage as opposed to any suggestion that she would be afraid of him, but certainly this would have been information that was in your mind or available to you when you wrote your letter to the parole board in 1972?

Yes. I would have taken the frightened reference the same way you did, Ms. Knox, and I certainly would have known of this at the time of my letter. Okay. And then the worker goes on to document that contrary to the reports, like the one we saw on December 29th, '66, things aren't going as well as she had indicated, and again, in fairness, we can scroll through this, but talking about manipulation as opposed to scary behaviours, if $I$ can use that word?

A $Q$

Yes, that's how $I$ would take this as well.
Yeah. And a final conclusion by Mr. Hagan, the
psychiatric social worker, that they need to talk about putting him in, or doing future planning for him, talking with the Department of Welfare, the parents, Dr. Andrews, the psychiatrist and himself to discuss what would be best to be done for him?

Yeah, I see that, and that of course would be in his interest as implicit in that.

Okay. Next page, 325173. That's 193, if I could have 173, please, a summary report that I referred to earlier, summary recording, February 13th, 1967. So again a continuing chronology of his care and work with him in the psychiatric facility?

Yes.
And generally summarizing that it has been fairly acceptable in terms of him gaining impulse control, some anxiety around his Court dates, but they are working to, or they've been working to basically keep him on an in-patient basis providing his behaviour met what they describe as minimal standards?

Yes, I see that.
So that would have been knowledge you had from reviewing the file?

Oh, absolutely.

Q
Okay. Some discussion about the Court hearing and parents talking about agreeing to temporary wardship and David expressing a dislike of the psychiatric centre and his disagreement with an 11 month temporary wardship, saying he would prefer the four month, but again, not a big deal given that he's now 15 or thereabouts --

Yeah.
-- that a young boy would be bucking at those kind of restrictions?

I wouldn't think so.
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


A
$Q$
physically without more details?
I see that, Ms. Knox.
Okay. The morning of February loth, conference with the child welfare worker, Ms. Gramiak, who is obviously back from being sick, the regional director Dr. Andrews, the psychiatrist, the ward supervisor, whoever Mr. Webber is, and the psychiatric social worker, he's refusing to attend school, his increased provocative behaviour over the past few days were seen as an attempt to get himself discharged, not in his best interest, and then they talk about planning for him, but again, these ongoing difficulties would be ones that $I$ take it were in your purview of knowledge when you were writing your letter to the parole board? Yeah, they were.

You talk about him having continuing trouble from kindergarten?

They were, Ms. Knox, as well.
The last page, 325174, again talking about, discussing management plans for him in terms of what he does, where he goes, discussion about him leaving the ward on February 10th, not a big deal, further discussions about his performance being evaluated over a one month period, and unless they
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 --

A

Q

A

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
it in my knowledge as we progressed here.
Okay. Sir, in terms of the records of places where you might have seen the prediction by the social worker that you and Dr. McDonald recalled, you in 1972, Dr. McDonald in 1993, I refer you to the last part of this where there is the determination that the psychiatric centre will basically cease their involvement because the Department of Welfare is now the major agency to be involved with him, this being as of February, 1967.

A
Q

A
That's the page we're on, 174 is it, ma'am?
Yes, talking about February -- the description of the February 13 th case conference $I$ think is the language, of 2005 .

Okay.
COMMISSIONER MacCALLUM: I don't think I got your question. So in terms of the records, where you and Dr. McDonald might have seen what?

MS. KNOX: Seen the reference, or the prediction or the statement by his social worker that if he doesn't get some help, some day he's going to kill somebody.

COMMISSIONER MacCALLUM: Oh, okay.
MS. KNOX: Dr. McDonald, if you recall,

Mr. Commissioner, in his letter 006845 talked about various places where records would exist; the Yorkton Psychiatric Centre, the Munroe Wing, Regina, or the Child Guidance Clinic of Greater Winnipeg, and he also made reference to the Department of Social Welfare with regard to Mr. Milgaard's staying in a correctional school in Regina, he said in the spring of 1976 , but it's perhaps more likely 1977 given the timing of this discussion, but certainly there would be records kept by the Department of Welfare that would have been or could have been available to you in 1969, 1970 where you might have seen that comment if it wasn't in the records of the -- or the additional records of the Yorkton Psychiatric Centre that we know we don't have, like his psychological testing, that there was reference to being referred to the Munroe Wing or the Child Guidance Clinic, among other places.

Yeah.
BY MS. KNOX:
Q
So there were a variety of places on the record 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
they provided for him as he was described as being an emotionally disturbed adolescent at that time?

A
$Q$ I understand that, ma'am.

Okay. Sir, going back to your letter of -Commissioner MacCALLUM: Ms. Knox? MS. KNOX: Oh, coffee break. COMMISSIONER MacCALLUM: Thank you. (Adjourned at 2:50 p.m.)
(Reconvened at 3:17 p.m.)
BY MS. KNOX:
Mr. Caldwell, if we could bring up again the document, your June 14th, '72 letter, 006840 , and if we could go to 842, please. I've reviewed with you some of the information that you've put in the letter, including this paragraph that you read the entire psychiatric history which we know was more extensive and that we have remnants of?

Yes.

You also indicated that, starting at this paragraph here, having been intimately involved in this case from the time of killing until final disposition, $I$ of necessity came to know a great deal about the personality of the accused Milgaard. Would you be talking in that, or referencing information you came to know as a
result of the police investigation separate and apart from that which was contained in his adolescent psychiatric records at Yorkton, Winnipeg and other places where the records were available?

Yeah, I would think I would have included what I learned through the investigation, Ms. Knox, in that heading.

Okay. So would it be fair to suggest to you that likely you were reflecting on other information you got from witnesses interviewed by the police who had been friends of his in -- limited to those who had given testimony in Court -- but generally some background information about him, his lifestyle, in particular in the weeks, months and years after he left Langenburg and was on his own as a run-away for part of the time and just on his own as a teenager living what was described at some point $I$ think, including by him, as the hippie lifestyle?

Yeah, that would be my -- where that originated. Okay. And, sir, without going through all of them in any great length, I'm going to refer you to, indeed, the statement that was taken from David Milgaard on March 3rd, 1969, document number

00565 .
COMMISSIONER MacCALLUM: 0056 --
MS. KNOX: -- five.
COMMISSIONER MacCALLUM: Not enough numbers.

MS. KNOX: 000 .
COMMISSIONER MacCALLUM: Oh, 000, okay.
MS. KNOX: 565.
COMMISSIONER MacCALLUM: All right.
MS. KNOX: This, Mr. Commissioner, is the original statement, handwritten version taken in Winnipeg March 3rd, 1969, and we can bring up another version if it's easier for staff, this was one that was later discovered in the boxes at the public prosecutions office at the Commission offices. I'm happy to use any version that you can --

BY MS. KNOX:

And so you remember seeing the original version of this, the handwritten statement taken from him in Winnipeg, it goes on for a number of pages --

A Yeah.
Q -- has attachments, drawings and various things to it?

A I do, Ms. Knox.

Q
If we could go to the second page of that document, please, and I'll read the question at the bottom of the first page, we don't need go back, he's asked have you got a record of any kind, and I direct you to Mr. Milgaard's answer

A

A
where he says sexual immorality, trafficking, stolen cars, break and enter, was deported from the United States, maybe Seattle, on probation out of Vancouver, now transferred to Saskatchewan, trouble in Ottawa too. So this is out of the mouth of David Milgaard on March 3rd, 1969 that he's had some conflict that's not shown up in the Yorkton record, but would be subsequent to his discharge from there in 1967, and if you believe, or if you take his record as accurate, subsequent to his discharge in 1967 and before his charge for the death of Gail Miller in May of 1969.

That's how I read this, ma'am.
So again if you can take your mind back to 1969, 1970, and to 1972 when you are writing the parole board, would this have been the kind of information that either directly or indirectly was in your store of knowledge or your store of belief about David Milgaard?

Yeah, that -- I would have read this. It would
be, you know, in my mind in that respect at that point and $I$ would think that not all of it, if $I$ may put it this way, would have been discounted by -- at that time, if indeed that did happen. Okay. And I, just in fairness to Mr. Milgaard, the reference to sexual immorality, that sort of sounds a little disturbing, but $I$ remind you, and I direct you to his April 18th, 1969 statement where he was asked for some clarification, and he indicated that that was a charge that resulted from him being in a hotel with an under-aged girl, so while it sounds a little ominous, and that's contained in his April 18th statement, I don't think we need to bring it up, document 000555 at 000557 -- yeah, sorry, Mr. Wolch is reminding me he was under age himself, so it's not about sexual assault or him acknowledging that he had been convicted or charged with sexual assault or anything --

Yeah.
-- it's about him and a young girl running off to a motel and getting caught by the police and both being under age.

A I'm glad that that was explained. I wouldn't have remembered all that without the --

Q
I'm trying to keep Mr. Wolch in his seat. Also in your store of information, if $I$ may refer to it that way, would there have been a recollection of or the ability for you to review or refresh your memory the witness statement of Sharon Williams given to Constable Malanowich in Winnipeg on March 20th, 1969?

Yeah, that would have -- that would, in my view, have been in my mind as well.

And I'm corrected by counsel for the Saskatoon Police Service it was actually in Alberta, and at the top of the document, the document number 006500 for the record, it indicates the statement was taken at St. Albert, Alberta.

A
Yeah. I knew that it was Alberta and I should have spoken up.

And, Mr. Caldwell, $I$ put in front of you a copy, a colour photocopy of the original of that statement. I don't intend to take you through it, it comprises 14 pages in total. If $I$ can summarize that which is contained in it, would it be fair to say that it is a fairly long litany of questionable conduct, sometime criminal misconduct that might not and indeed appears not too often have been the subject of charge by Mr. Milgaard in
his relationship with her, but indications by her of being hit by him on at least one occasion, him playing with a gun, at one point in time referring to her that he was going to have her as his prostitute, and just generally not very socially acceptable behaviour from anyone, and particularly from a young person of that age in a relationship with a young woman?

A
Yeah, that's my approximate memory of it, Ms.
Knox, and I'm sure there was detail to that general effect.

But certainly when you were doing your assessment or your summary for the National Parole Board, this would have been the kind of information still in your store of knowledge about the young man who had been convicted of the offence?

A

Q That's right, because Miss Hall came to light as part of the trip to Alberta, etcetera, as a witness or a potential witness. Whether or not she was called, she was interviewed.

And, sir, at one point in time $I$ would suggest to you that there was some consideration of calling her as a witness because she was interviewed by Inspector Roberts according to a letter that he wrote to Chief Kettles on June 19th, 1969, the
document number being 009302 ?

A
$Q$

Uh-huh, yeah, I recall that happening, ma'am. I don't think she was called, was she?

No, she wasn't called as a witness, but certainly the information contained in her statement appears to have been investigated. He indicated in fact, Mr. Roberts in his letter indicated that he interrogated her with the use of the polygraph for about three and a half hours and it was his opinion that she did not have any information that would assist the prosecution and she makes the statement about, he reports a statement she made about something Mr. Milgaard said to her, but certainly the Sharon Williams statement from March $29 t h--M a r c h 20 t h, 1969$ appears to have gotten some consideration and been given some evaluation which $I$ point to the letter only to suggest that it wasn't one that got lost in the shuffle, as it were.

Yeah, I appreciate that, and this letter does exist, does indicate that she doesn't seem to have information that's useful, if you will, in the prosecution, but certainly she gave quite a long and detailed statement as I recall.

Recounting much about Mr. Milgaard as she knew him
over a number of months, travelled with him to B.C., Ontario, various lifestyle choices, sale of drugs, theft of goods and various things like that, some coercive sexual behaviours?

That's the general way $I$ recall that letter -pardon me, statement $I$ should say.

So again when $I$, taking you back to your, and we don't need to bring the letter up, but the statement you made in your June 14 th, 1972 letter at 006842 , having been intimately involved in the case, you, of necessity, came to know a great deal about the personality of the accused Mr. Milgaard, would this be the kind of information that you believed gave you some insight into the personality of Mr. Milgaard?

Yeah, I certainly would. I would be considering people other than Crown witnesses if they appeared to have, you know, relevant and/or serious information.

You didn't put in your letter about would it have been in your mind at all do you think the information you got about that motel room scene where, by whatever description of it, some pretty significant drugs were being used at a party in May of 1969, some people were being injected with, according to Debbie Hall and others, THC, which I think somebody said to us was horse tranquillizer, there was sexual activity between Mr. Milgaard and Ute Frank in a room in front of a group of people, again, just in terms of your general impression or the information that you were attempting to convey about what you had come to know about this young man as you then believed it to be?

Yes. I would have, you know, known and/or remembered that particular set of allegations, and it would be something $I$ would have in mind when $I$ did write the letter.

Okay. I'm going to take you through a series of other information that was in your possession just quickly. In the police reports that were made available to you in what we know was in your possession, do you recall a report of Detective Karst, I believe it was an April 18th, '69 report, where he went down to Regina in the company of

Staff Sergeant Edmondson to interview and make inquiries about Nichol John and Ron Wilson. The document number, Mr. Commissioner, is 009254, and I want to refer you just to a small portion of it. The report is three pages and can be read for itself, but again, in terms of your suggestion to the board, the parole board, that you had some sense of the personality of this man that they were dealing with and would have to assess in terms of future risk to the public, did you recall or would you have considered some information that you had gotten through Detective Karst from Nichol John that she admitted to having sexual relationships, she considered him to be more of an animal nature than you would expect of a human was the language used in the report.

A
I saw that report and certainly that would be one of the things in my mind when $I$ did write the letter; if not word for word, certainly the information contained therein.

And, sir, was there information based on what Nichol John said as was summarized by Detective Karst in this report, that at one point in time in Regina she had been either raped or forced to engage in sexual acts with Mr. Milgaard, not
necessarily with her consent?
I'm sure that that is in the file and $I$ attempted to, a few days ago, Ms. Knox, to refer to that as one of three or four items that we were discussing at that time, so --

Okay. Sir, if $I$ could then take you to a report dated May 25 th, 1969 , we referred to it before, document 009264, and if we could go to page 009268 of that document, and if $I$ could bring out the last paragraph, please. Sir, what Detective Karst reported here is that during his contact with Ron Wilson during those days he reported, it was reported -- sorry, I'll read what he said, he said:

> "Inquiries have been made in Regina in regards to Milgaards whereabouts, however, no one had any information to offer with regards to his present employment or residence, in fact, it was revealed to me by the Wilson youth that Milgaard assaulted another girl in Regina and that he was being sought by various members of the Criminal Element in that Centre, and if the Police didn't get to Milgaard before they do, they
didn't need to worry about him."
Again, was this information that was in your store of knowledge and which may have contributed to your opinion as you framed it and offered it to the parole board about the personality and risks that Mr. Milgaard might represent? That certainly would be, Ms. Knox.

Okay. Mr. Caldwell, I'm going to come back to those reports briefly, but $I$ want to go back and get myself through this letter that I'm taking you through so I can close down the parole board issue. The June 14th letter, going back to page -- full document 006840 , going back to 006842 , and moving on to the next paragraph without going through various other illustrations of information you may have had, you reported to the board that Milgaard was examined by Dr. McDonald, who was the professor and head of department, and you reported at the top of page 4, the opinion given to you in Dr. McDonald's June 5th letter, that he was suffering from, and the words are exactly as, or almost exactly as Dr. McDonald wrote them, that he is suffering from a severe behaviour disorder best called a sociopathic personality, and you also gave them
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,
that they go get the records and check it out for themselves, would you have misquoted, intentionally misquoted anything from a record that you believed they were going to go look for? No, I would not. And Ms. Knox, I think it's been gone over before, but that document existed, somebody brought it to my attention, and the -- it clearly is not in the materials we've looked at here in the last few days that came from Dr. McDonald, I've -- and others have read them very carefully. But $I$ certainly wouldn't have done what you just -- I expected that document would have still been in the file and it clearly, at least at this time, isn't.

Sir --
How -- I'm sorry, is that all?
Yeah. Given your expectation that the document would be in the file, given your invitation that they would go look for the file --Uh-huh.
-- in light of the direction that you gave to them, $I$ now ask you or refer you to your second letter to the National Parole Board, document number 006835. And, sir, this letter has been reviewed previously by Mr. Hodson, it's the letter
where you indicated you were writing a new chairman now, the previous one having been T.G. Street, Q.C. Uh-huh.

You are writing Mr. Outerbridge, who has become chairman by 1974 , you reference hearing him talk in Banff regarding the National Parole Board and him having, I guess, repeated what you had read in the booklet that we've referred to, which was the guide for judges, magistrates and police, that they welcomed input, you reminded him or you brought to his attention the letter that you had sent to Mr. Street two years earlier, effectively? That's right.

And, again, this 1974 would have been six years in advance of Mr. Milgaard's parole date, as you understood it, so six years for this material to be investigated, responded to by him and others as deemed necessary?
That's the timing $I$ would understand, ma'am.
Okay. Now sir, again going back to my earlier
question as to whether you would have
intentionally put into your March -- your June
2nd, '72 letter something which wouldn't be borne
out by the records, I direct you to the part of
your letter to him where you reminded him, first off, that you had wrote the letter to Mr. Street, you talked to him about Mr. -- about Dr. McDonald, appeared to have confirmed that Dr. McDonald still, two years later, all the psychiatric history in his file, and that Dr. McDonald had told you that, if the parole board got a signed release from Mr. Milgaard, that he would send the information in his file, he would then be in a position to forward all materials to you for placement on your file so they will be available on your file when he finally -- or the question of his parole came up?

That's correct. That sequence of events took place in that order, and it indicated that he would have to have the signed release to forward the materials, which I'm sure was standard procedure, and if all that worked out, the board would have that material on their file when the question of parole did come up.

Yeah. And more importantly perhaps, in terms of whether you were acting with good faith when you started this exchange of communication and whether you were attempting to accurately report the background and the situation as you understood it,
you would agree with me that you went on to urge him that he should attempt to obtain the release, get the materials himself -- "himself" being the National Parole Board -- so they could have first-hand what you had documented in your letter of June 14th, 1972; --

A
Q
A

2

A

Yeah, I was, and through two or three of these
letters, and making it -- you know, encouraging them to do, in effect do their own research on it, Ms. Knox, in the way that this is set out here.
information that you gave to them; you in fact were encouraging them to go to the horse's mouth, were you not? Meyer CompuCourt Reporting $\overline{\text { e \& Saskatoon since } 1980}$ (ified Professional Court Reporters serving P.A., Regina \& Sast
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particularly troublesome, sinister, and that you were misleading the board, in effect, in the

Q
Okay. If I could then bring out document 006830, I believe is the doc. ID. Sir, I'm now referring you to another letter that's on the file that you were directed to as part of the theory that you were, in part, Mr. Milgaard's biggest tormentor, this is the August 5th letter, 1977, to you from the National Parole Board?

I see that.
Okay. And we're edging closer to Mr. Milgaard's eligibilities for release, we're now into 1977, so seven years in, his first eligibility being ten years. But at this point in time, in 1977, would you agree with me it is the parole board soliciting further input from you as opposed to you doing a "I did it in '72, $I$ did it in 74 , he is getting closer towards a release date, $I$ must hammer him again" kind of reasoning or philosophy, if $I$ could shorthand it that way?

That's, that's exactly correct, they are approaching me for a process to take place which in -- as $I$ see it would better enable them to assess the person in question, and as opposed to the other way around, and clearly this would be a, you know, a conventional way of dealing with it, Ms. Knox, as I see it for -- on their part.

What Ms. Flintoft Meronek, if that's her name, said to you in her closing paragraph is that he had recently applied and they would appreciate any information that you could provide concerning him that could assist them, and they -- if I could bring up document 006831. In fact, that is a letter to Dr. McDonald the same date -Okay.
-- and it has, it's advising him that they have now obtained the authorization that you suggested they get in 1972 and 1974 , and they want to get the records so they can make objective judgement, as it were, about his history in terms of their consideration of his day parole release application; would you agree with that?

Yeah, that's what that letter sets out.
Okay. And then finally in terms of your correspondence, so that the record is complete and to remind us all, there is document 006822 . And this, of course, is the letter that you wrote back in response to Ms. Flintoft Meronek's invitation of August 5th, 1977 where you set out again, or you indicate you set out your views in 1972, you were giving her what you had sent then, a copy of the judgement, the -- you gave her the information
about the Supreme Court of Canada refusal, an extra copy of the booklet of photographs, and I -and basically said your views in 1972 remained as you had documented them in that letter. And you go on to talk about, at page 2, the fact that there had, since you wrote that letter in 1972, Mr. Milgaard had escaped from custody, referring I believe to Dorchester prison in Atlantic Canada where there was a brief escape by him some years earlier?

A

Q Yeah. So again, in terms of preparing, compiling information, and the suggestion that you were being overzealous, you were being vindictive, you were setting out to prevent Mr. Milgaard from getting parole, you were misleading the parole
board, whatever permutation or interpretation you want to put on the questions asked of you, was that in fact what you were doing?

A Oh, not at all. I didn't know how they operated, but $I$ would have assumed that that information would have been disclosed to him as part of the interviewing process.

And particularly, I would suggest to you, given
You never asked them to keep it a secret or --
your suggestion to him -- to them that they get his authorizations to go seek out the very records you were alerting them to?

Yeah, that's how $I$ see it, ma'am, now. Okay.

And I'm sure that's how I meant it at that time. Okay. Now I'm going to go very briefly back, if staff will bear with me, to document 332055. And if $I$ could go to page 6 which would be, I think, 067 of the document with the Bates numbers, 332067 -- ah, there we are. If I could bring up this part about Inmate Interview and have that brought up. I may have referred to this already, but in the vein of whether you would -- saw it or would have expected that your information might be kept secret, as has somehow been suggested, that you were sort of hiding in the bushes and doing stuff to foil his release; based on what was in this booklet about Inmate Interview would you have expected that staff would be working with him and would be talking with him about information that they were considering in assessing whether or not he was a good candidate for release, helping him prepare his post-release plans, assess his parole risk, etcetera, etcetera; would you have

A

Q
anticipated that that's the kind of thing that would be the subject of inmate interviews as an example?
-- that part of the investigation and part of the assessment would have involved them working with his family, his work record, and various things like that?

Oh, I would certainly expect that, because those would be legitimate sources of trying to estimate
how he would do once he was out of custody.
But certainly you wouldn't, $I$ would assume as a prosecutor in the system learning and knowing the role and function of the parole service as it developed and became identified within the corrections community, you wouldn't have expected, number 1 , that they would keep any information you sent to them secret based on anything in this booklet?

No, I --

And, number 2, you would have anticipated that, in order for it to be of any benefit as their general philosophy in this booklet, it would help them to know, to help them to assess how best to deal with him, that surely it would be shared with him? Yeah. Number 1 is a "no", and in the second I would certainly expect, Ms. Knox, that it would be shared with the patient, or prisoner, or however you wish to describe him.

So no Machiavellian design on your part?
Yeah.

A genuine belief that this gentleman, at that time, was properly convicted and represented a potential risk in the absence of treatment and intervention within the parole service?


A

Oh, well Mr. Commissioner, the general heading was sort of released -- prisoners released prematurely who might go on to, you know, get -- commit serious mischief. I think I mentioned the headline accompanying the Threinen matter was Must system wait until killer strikes, and that was clearly unrelated to our case, but it made an impression on me and others here at the time that one should be very careful about releasing people, you know, if you will, without very careful checks on them.

COMMISSIONER MacCALLUM: Yes.

A Yes. Thank you, sir.
COMMISSIONER MacCALLUM: Okay.
BY MS. KNOX:
Now, Mr. Caldwell, $I$ want to move briefly into an area where you were subjected to criticism and accusations by Mr. Lockyer that you were conveniently changing your memory and changing evidence that you'd given at an examination for discovery, and that's with respect to the references in your meeting with Mr. Carlyle-Gordge in 1983, in March of 1983, that he should have "omit references" in any -- the book that you believed he was doing, to other rapes where Mr. Milgaard was suspect but which hadn't been brought home to him effectively, either by confrontation or by charge?

A
$Q$ All right, ma'am. Okay. And I'm referring, Mr. Commissioner, to there are a number of documents, the easiest quick reference is 332052 . I'm not gonna ask to have all these records brought up because they have been dealt with fairly recently and are fresh in most of our minds, unless someone wishes me to do so, but sir --

MS. KNOX: This is the four-page points of note that Mr. Caldwell prepared in advance of his meeting with Mr. Carlyle-Gordge --

COMMISSIONER MacCALLUM: Right.

MS. KNOX: -- in March, and he went through, it's a four-page document.

BY MS. KNOX:
On the last page of that document he references "suggest omit", and the last one of those would be this entry right here that $I$ want to talk to you a little bit about, and hopefully get some clarification. You indicated, in the course of your examination for discovery -- or you were asked about this and it was suggested to you by Mr. Rodin that what you were talking about was the references in your file to the rapes that we now know to be (V2)----- and (V1)-; you remember that?

A

Q
I do, and I'll expand on that, but it had nothing to do with that topic, Ms. Knox.

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
word, --
Okay.
-- or sexual behaviours where co-operation was induced through the use of drugs as with the Calgary incidents that are described by Albert Cadrain.

Uh-huh.
In the May -- the April -- the August 26th statement, which for the record is doc. ID 007028 , or with Ute Frank in the hotel room as described by her and others in the statements that were given to the police in January of 1970, remember those, --

I do.
-- where there was the ingestion of drugs and then sexual activity, I've just referred you to some reports in the police report that we know you had, in particular the April report of doctor -- of Mr. Karst, Detective Karst' discussion with Ron Wilson, and the document ID -- or sorry, with Nichol John, the document ID on that being 009254 , where she talked about sexual activity with Mr. Milgaard and used the language that he was more like an animal than you'd expect as a -- from a person?

A Yes.
Q Remembering that one?
A

Q BY MS. KNOX:

And I refer you, again, to the report that we just spoke about briefly where Ron Wilson reported in May to -- and in a May 25 th report, or a May 21 st to 25 th time he spent with Detective Karst, that David Milgaard was supposed to have assaulted another girl in Regina and if the tough guys got to him before the police did there wouldn't be a need to worry?

I recall that a few moments ago.
And the document $I D$ on that one again being 009268. Sir, I also refer you, just as a, as one of -- one reference, to document 007050 . These
are your notes that you prepared in advance of the preliminary inquiry, according to other dating on them, but if we could bring out photo -- item number 15, please. You wrote a question, you were listing things that you had to do in preparation for the preliminary inquiry, and you wrote 'What known re M. assaulting another girl in Regina (Karst p. 392)', and then you wrote, 'This was Nichol John in park previous summer and in Champs Hotel, Wascana Hotel', and I can't read that last part?

A

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

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

1983?
Yeah. Ms. Knox, it was those four or five matters that we just went over a moment ago -- and then you've directed my attention, if you will, back to them now -- those were the things $I$ was referring to with respect to Mr . Carlyle-Gordge. They all related to Mr. Milgaard as opposed to anyone else, and certainly as opposed to Larry Fisher, he was -- had nothing to do with this, this venture whatever. And $I$ think there's even a -- well, that's, it's the same collection of three or four or five items that $I$ was -- this item 15 is an example thereof, I would say.

And Mr. Caldwell, in drawing out the portions I draw out $I$ draw them out to be illustrative, -Yeah.
-- there may be others, --
Yeah.
-- but that within your file and within your preparation you were directed to and had to give thought and consideration to other acts, potentially, of rape --Uh-huh. -- that were not the subject of charge or as, to use your language, brought home to him, as it
were, in any form either by police interrogation or otherwise?

A
That's right. I was conscious of them in two different ways, the way $I$ was attempting to impress on Mr. Carlyle-Gordge for one, and the other way was the general collection of things involving Mr. Milgaard and sexual activities, whether or not they -- you know, however far they went, whether they were by force or weren't, clearly none of them resulted in charges or convictions the way $I$ see this, but -And just briefly to touch on before I've finished, it was suggested to you that that explanation by you doesn't make a lot of sense because you recounted stuff like Albert Cadrain at -- Albert Cadrain's story about the bathtub incidents in Regina --

Uh-huh.
-- in your correspondence to the National Parole Board, and what would be the big whoop, as it were, if Mr. Carlyle-Gordge put it in a book; you indicated that you saw those two things as different, the parole board being a government agency with a mandate, a statutory mandate, if $I$ can use language to describe their function,
whereas Mr. Carlyle-Gordge was just a writer, a member of the general public under the guise of a writer as it turns out, but it was your belief that he was just writing for general consumption by the public if he wrote a book?

Yeah. And those things, Ms. Knox, were in no way comparable one to the other. The National Parole Board matters, that was a professional organization looking for legitimate input from people like prosecutors, the Carlyle-Gordge matter was an entirely different, and indeed turns out to be a fraudulent venture, --

Okay.
-- which was passed off on me.
Aside from your subsequent learning about the fraudulent nature of his venture, or his representations as to his purposes for coming to see you, were what you were attempting to articulate in your response to that suggestion to Mr. Lockyer or to Mr. Wolch and what you are attempting to articulate today be that you would have a concept of qualified privilege, as it were, in dealing with the National Parole Board, but that certainly wouldn't apply to a general publication for consumption if Mr. Carlyle-Gordge
were to write a book?
A

Q
Okay. And, sir -- I apologize, Mr. Commissioner, I am moving stuff away so that I'll know when I'm done and $I$ won't revisit it.

Maybe a little bit more a scatter-shot approach to some issues that I identified when $I$ kept making notes to be used in your redirect. You were asked at length by Mr. Wolch and canvassed at length with respect to your interaction with Craig Melnyk and George Lapchuk in around the time of the trial commencing in 1970; you remember those exchanges with him? Yes.

And his suggestion to you, at one point, that your being in touch with the prosecutor in Regina could mean -- because your file documents, and $I$, we can bring up 006910 for those who may need their memory refreshed -- but could mean that you were letting the prosecutor know that these guys were helping you out, or somehow might have been an
entree to them getting special treatment down the road even if you didn't request it from your colleague, Mr. Piragoff; do you remember those questions or those suggestions?

Umm, I recall those questions.
And you being, it's suggested to you that you should have been really, really, really careful, because even if you didn't come right out and say it, these two characters with their criminal past might have kind of expected that there'd be some favour on the up -- the back side of that enterprise?

Yeah. I, Ms. Knox, think they couldn't have got that impression from me. I found the two of them very, you know, legitimate persons, I warned them at length that $I$ didn't want them leaning either for or against Mr. Milgaard, and that they had to tell the truth.

My communication to Mr. Piragoff
was to find out the dates of their Regina Court 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
our case. I'm sure they were subpoenaed by this time.

Now I, I can't imagine, $I$ mean $I$
simply don't agree that, because I phoned
Mr. Piragoff in this fashion, undoubtedly talked to these two about what $I$ found about the date, there's -- I can't imagine them even reading into that that "oh, and by the way, there'll be something in this for me". That would be, you know, exceedingly improper, and of course Mr. Piragoff wouldn't be part of that and, clearly, he would be offended by it as well. It seems to me that Mr. Brown, this was eventually put to Mr. Murray Brown as a possibility, and he was --

Okay, and I don't think you should repeat what Mr. Murray Brown said, --

No, that's fine.
-- we will be hearing from him. But I bring you back to that because Mr. Wolch looked at it and put it to you as a, perhaps an indication of something less than proper or maybe something sinister here --

A Yeah.
prosecutor, let him know that these guys were helping out on a really important case?

A
Q

Yeah.
And $I$ just want you to, if $I$ can, in your file you documented pretty closely the history of contact with these guys; didn't you?

I'm sure I did.
Your file documents, and you've testified, that they didn't come forward and offer their services as witnesses; Ron Wilson, as a by-the-by in a conversation with a police officer en route to Saskatoon the night before the trial, happened to mention these characters?

That's correct.
So whatever their backgrounds, whatever, whether they be rounders or not, they didn't come looking to help out the Crown's case?

Absolutely. And they did, in my memory of this matter, gave consistent evidence at the various levels, the trial, the -- and various things that have happened in the meantime. And one of the -Okay. Aside from whether they gave consistent evidence, --

Okay.
-- I'm going to be a little bit like Mr. Lockyer
and say "stay with me here and we'll get through this faster" --

A
Q

Mr. Commissioner, this calendar can be put on CaseVault as well.

A Very good.

Q
$23 r d$ is a Friday and the notes would indicate that was your first meeting with them in person.

That's --
You have their statements, you've sent them to Mr. Tallis, you are meeting with them.

Yeah, that timing sounds right to me because it was the end of that week.

Mr. Caldwell, do you remember today by any chance in the world the dates that you needed these gentlemen to testify given how your evidence was unfolding and that these were late additions to your witness list?

A
I don't remember it, and $I$ would think it would depend on how the rest of the trial was progressing in terms of, you know, slowness, speed or what have you.

If $I$ were to suggest to you that as the trial was unfolding, and the transcript indicates that in fact these gentlemen both testified on January 28th, would that come as any surprise to you? Not at all. That's roughly five days after the Friday, so that is, what, about the next Wednesday plus or minus?

Yeah. You indicated to Mr. Wolch earlier in your
cross that this reference to Regina $-\quad R-E-G$ is Regina.

A
$Q$

Yeah.
-- and that you read this to mean that Melnyk was required to be in Court in Regina on Wednesday the 28th, Thursday the 29th?

That's right.
Lapchuk was required to be there on the 26 th for plea.

Yeah.
If they were required to be in Regina for, Melnyk was required to be in Regina for the $28 t h$ and you needed him to be in Saskatoon for the 28 th, is it possible that all you were doing was just calling Mr. Pirogoff to say I've got a jury here, I ain't getting an adjournment, $I$ need you to free this kid up to be here on the 28 th because I've assessed him, I've interviewed him and I think his testimony should properly go before the jury?

I don't recall that happening, but certainly a possibility, Ms. Knox, because I had to be careful not to get them in the two situations we just went over, for sure.

Okay. But the --
The warrant for not showing up in Regina, or
equally so if by chance they didn't show up in Saskatoon, which they did.

Yeah. I'm not going to take you through the rest of the documents with respect to them, but again Mr. Wolch was saying you should have been really cautious with these guys because they've got records, they've got rounders, they've got charges pending, you know, you really need to be careful they don't get a favour from him, and while you indicated in your answers to him you weren't cognizant of it, may $I$ suggest to you that your file indicates that perhaps you were, because in particular with them you would stress with them the importance of not slanting their evidence, being truthful and doing nothing other than giving truthful evidence, don't try to help him, don't try to harm him, go straight down the middle here, do your duty as good citizens as it were? That's roughly the talking to $I$ gave to them and, you know, that seemed appropriate at the time to me.

Q
And would it seem particularly appropriate, or perhaps the reason you did that was because they did have records and they did have charges pending?

A 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.

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

Q
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,
fear, nothing, it was just a gratuitous offer by her for no apparent reason, unless one would assume it was the truth legitimately back then?

I had no other explanation $I$ could attach to it than that, Ms. Knox.

Okay. Now, sir, you were canvassed both by Mr. Lockyer to some degree, and certainly by Mr. Wolch, about your responses, reactions to the suggestion that was being made whenever it became known to you that David Milgaard was protesting his innocence. You recall that area being canvassed with you?

Yes.
It was suggested to you that there must have come a point in time when if you were bona fide in your actions in 1969, '70 and 1971 as you have indicated in police statements since and in your testimony before this Inquiry where you would have looked at what was developing and said, my God, is it possible that $I$ was wrong? Uh-huh.

And in fact it was suggested to you why didn't you assist the Milgaard camp, if $I$ can use that phrase, and $I$ don't use it pejoratively, it appears in the literature frequently and in
various documents --

A
Q

A

No, no.
-- 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 questions?

I do, and I think I gave an answer to that 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 alert. I don't know when they occurred in
relation one to another, and --

Mr. Caldwell, if you'll bear with me, I may be able to assist you.

Okay, good.

As to when you became aware that it was a moving-forward campaign with some strength, I'm going to bring up document 159446 if I may. Very good.

COMMISSIONER MacCALLUM: 462?

MS. KNOX: 159446 is the document $I$ was requesting.

COMMISSIONER MacCALLUM: 153446 ? Thank you.

MS. KNOX: 153446. My apologies.

BY MS. KNOX:

Mr. Caldwell, this is a document in your files which we subsequently gave to the Commission, it has your name on it and has some handwriting on it that $I$ think is yours, of a press conference or a CTV news story, CTV National news story on October 15th, 1989?

A
Yes. The hand -- the printing and writing in the right column is in fact mine, the right-hand column.

That's what I thought. Now, this -- so since we
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?

I'm sure that's correct.
Okay. And, Mr. Caldwell, without going through it 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. The 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 Milgaard. Many of those involved in the original 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

Milgaard gets another day in Court, and there's a note, and this was done by Pamela Wallin, CTV, your note, "It makes it sound as if I'll be deciding the case"?

Yeah, or $I$ would be deciding the case.
Okay. Sir, in 1989 obviously you became aware of this kind of media attention, and was that a concern for you, and there's nothing direct there in terms of accusation, but there's that implicit, you know, these guys are guys in high places and we're just the little people trying to fight the system, if $I$ can paraphrase, and $I$ hope not disrespectfully.

Yeah. I undoubtedly became aware of it. I may indeed have been involved in the process of retaining counsel, or maybe that happened -- it certainly alarmed me, Ms. Knox.

Enough that you had it, and you made a copy of it, make comment on it, sometime around or after October 15th, 1989?

Mr. Caldwell, if $I ' m$ remembering your dates correctly, you were then still in the employ of the Department of Justice federally as this indicates, but continued employment only for about
another year?

A
$Q$

A

Q
A
$Q$

What was this date again?
October, 1989. October 15th, 1989 is the date of the press transcript.

Yeah, I believe my employment there ceased, I would suggest, October 1st, Ms. Knox, if I'm right.

Okay.
Yeah.
The next document $I$ 'm going to bring up, and again this is one that $I$ believe at some point you had an awareness of, 001543 , a newspaper article from the Saskatoon StarPhoenix dated October 20th, 1989, and, Mr. Caldwell, I'll direct your attention again, the headline of course, "Milgaard's mom sure he'll be freed," talking about the progression in attempting to deal with her son's continuing incarceration and conviction. I want to direct your attention to the article starting about here.

And $I$ do this out of fairness to Mrs. Milgaard because it's a broader issue. If we could go to the next column, please. She's basically commenting about the way the media dealt with her
son. This part $I$ want to draw your attention to, $\$ 2,000$ reward offered by the police, induced is the word, Crown witness Albert "Shorty" Cadrain to testify against her son, Joyce said. Now, sir, in 1989 when you read that, and these are the words coming from Mrs. Milgaard as quoted in the press, did you have knowledge that in fact that that was clearly a wrong statement?

Yeah.
Given what you knew of Shorty Cadrain at the time of the trial and how the reward, was that eventually given to him because he was invited to apply for it after the trial was over?

Yeah. I had knowledge that that was incorrect. Mr. Cadrain applied for the reward. I was one of the people who thought he should get it. I believe $I$ spoke with our city solicitor Brosi Nutting and $I$ was clearly in favour of that and, as it happens, I'm pleased to say he did get the reward because of how the case looked at that time.

Okay. And, sir, in terms of you, and there's some evidence before the Commission that Superintendent Wood actually went to Father Murphy, who was the 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 $I^{\prime} m$ 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 $I^{\prime} m$ referring to -- but
that might have been a motivation for the impetus by the police to get his application in before the deadline expired, as an example?

A

Q the file, wrong information?

That's correct. It would have certainly upset me and clearly Albert's testimony was all concluded by the time any reward was given in this instance.

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 1 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. It
was single-edged. Asper said it would have been helpful if it could have been shown that the second knife presented by the Crown wasn't the murder weapon. Sir, you read this in the Saskatoon paper presumably, you had it on your file. Was this correct information?

Not according to me, madam.
And in terms of your file and the file records with respect to the handling of exhibits, did any knife disappear before the preliminary inquiry?

No, it did not in my recollection of how the trial proceeded and the prelim.

And, sir, I remind you that in the course of the evidence offered at this preliminary -- sorry, at this Inquiry, this public Inquiry, that there's evidence that in fact the knife that appeared to be the one that you were, or was being suggested was lost before the preliminary inquiry was present, either present at or was available at the preliminary inquiry, that in fact Mr. Tallis had one of your identification officers recalled toward the end of the preliminary inquiry, as was shown in the transcript, and he asked some questions about it?

And the records, according to police reports that have been put to others by Mr. Hodson, showed that that knife was still available at the time of trial?

That is also correct.
And, sir, in reviewing your file, there was various documentation on your file with respect to you having a police officer establish the chain of continuity of that knife, or the various knives, for purposes of ensuring that you had accurate information if questions were given, and I'm referring to document 009423 .

A

Q
A
Q

A
$Q$
I'm sure that's right. Is that that exhibit chart, Ms. Knox?

No, that's a handwritten note in your file. Oh, very good.

Likely the handwriting of former Chief Penkala, who had really nice handwriting.

Okay.
But tracing and providing information with respect to various knives that were the subject of fines during the course, and in fact there were a lot of knives, for the neighbourhood there were a number of knives found out there, most of them innocently explained, but in response to the suggestion in
this newspaper article on the third page of the Saskatoon paper in March, 1990, where most people knew you were the prosecutor, that a knife had disappeared, did you know in your heart from your knowledge when you read that article that that was absolutely wrong?

A
Q

A

Q

A
(Adjourned at 4:30 p.m.)

OFFICIAL QUEEN'S BENCH COURT REPORTERS' CERTIFICATE:
We, Karen Hinz, CSR, and Donald G. Meyer, RPR, CSR,
Official Queen's Bench Court Reporters for the Province of Saskatchewan, hereby certify that the foregoing pages contain a true and correct transcription of our shorthand notes taken herein to the best of my knowledge, skill, and ability.
$\qquad$ , CSR

Karen Hinz, CSR
Official Queen's Bench Court Reporter
$\qquad$ , RPR, CSR

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

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