

COMMISSION OF INQUIRY INTO THE MATTERS
RELATING TO THE DEATH OF NEIL STONECHILD

Honourable Mr. Justice D. H. Wright, Commissioner

**SUBMISSION OF THE FEDERATION OF SASKATCHEWAN
INDIAN NATIONS TO THE COMMISSION OF INQUIRY
INTO THE DEATH OF NEIL STONECHILD**

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I. INTRODUCTION

This Commission of Inquiry was appointed by the Government of Saskatchewan and given responsibility under the Terms of Reference to:

Inquire into any and all aspects of the circumstances that resulted in the death of Neil Stonechild and the conduct of the investigation into the death of Neil Stonechild for the purpose of making findings and recommendations with respect to the administration of criminal justice in the Province of Saskatchewan.

Since the death of Neil Stonechild occurred in the City of Saskatoon and the investigation of same was the sole and exclusive responsibility of the Saskatoon Police Service, it is our intention to make this submission in seven parts, namely:

1. An overview of the factual circumstances surrounding the death of Neil Stonechild;
2. An overview of the investigation into the death of Neil Stonechild by the Saskatoon Police Service;
3. The RCMP Task Force Investigation into the death of Neil Stonechild;
4. A review of the practices and policies, or lack thereof, within the Saskatoon Police Service that allowed a miscarriage of justice to occur;
5. Argument;
6. Recommendations to improve the administration of justice in the Province of Saskatchewan.
7. Conclusion

We submit that the evidence brought forward in the Inquiry, can only lead to a single reasonable conclusion with respect to the investigation of the death of Neil Stonechild: that the Saskatoon Police Service was at best grossly incompetent in their conduct of the investigation or, at its worst interpretation, that a member or members and/or management were complicit in burying the investigation to avoid being exposed for causing or contributing to the tragic death of Neil Stonechild.

It is within the conceptual framework and in fear of this terrible possibility that this Inquiry was ordered by the Minister of Justice as the prospect of such grievous police misconduct is gravely troubling. As was stated by Retired Justice Cory in the Sophonow Inquiry in Manitoba in 2001:

It is a fundamental tenet of civilization that no society can exist without a police force. It is the police who must investigate criminal offences and quasi-criminal offences and offences under provincial and municipal statutes. Without police to investigate crimes and see that the law is upheld, society would be chaotic. Police officers play a fundamentally important role in the lives of all Canadians. Quite simply it would be pointless to enact laws for the protection and welfare of society if those laws could not be enforced. The difficult task of enforcement falls upon the police. By careful investigation and fair enforcement of the law, the police are mandated to serve and protect society. It has long been recognized that their work is demanding and requires strict attention to the most minute details. It is equally clear that police training must be thorough and the lessons completely mastered to ensure that all officers attain and maintain a high level of skill in their work.

It is essential that police officers have a high standard of integrity and be diligent in their work at all times. It is only by courage and dedication to providing scrupulously fair and honest investigations and through honest and courteous dealings with all members of society, that police officers can and do become what we have a right to expect from a policing authority.

To be a good police officer requires characteristics of courage, dedication, diligence, and patience. These individual characteristics, however, cannot exist in a vacuum. It is essential that those same characteristics be the backbone and fibre of the policing authority for which individual officers work. Anything less than the highest commitment to the delivery of honorable and fair policing services in our community at all levels, will result in failure after failure at an individual level.

In order to do their work efficiently, police agencies and police officers are given broad and far reaching powers including the powers of search and seizure, the power to arrest and the right to bear arms. To the granting of those broad powers are attached onerous responsibilities.

It is obvious that chief among those responsibilities is the duty of the police to investigate with scrupulous care, integrity and absolute fairness all crimes/complaints which they are assigned. When the police carry out their responsibilities in conformity with these high standards, they have a right to expect the highest respect and recognition for their services. When the police

fall below these high standards which our society has imposed upon them, we, as a society, have a right to expect an acknowledgment of their failure so that steps can be taken to ensure that it never happens again. (My emphasis)

That the Saskatoon Police Service failed Neil Stonechild in their investigation of his death and their responsibilities to his family and to this community is surely beyond dispute. One issue that this Inquiry must confront and which it must address is whether the fact that he was a First Nations youth played any part in the failure of the Saskatoon Police Service to properly investigate the circumstances of his death. Did his race contribute to his death and/or was his race a factor in the way that his death was investigated?

This kind of question is not new to the Saskatoon Police Service and it is not new to Saskatchewan. It bears remembering that this Inquiry was ordered at the urging of the Stonechild family, and the Federation of Saskatchewan Indian Nations as part of a larger review of an unfolding crisis in policing in Saskatoon that started with the discovery of the frozen bodies of two young First Nations men, Rodney Niastus and Lawrence Wegner, in late January and early February, 2000 and the chilling disclosure by another First Nations man, Darrel Night, that he was abandoned near the Queen Elizabeth Power Plant by two members of the Saskatoon Police Service on a bitterly cold night just days before their bodies were found.

It also bears remembering that Coroners Inquests were conducted into the Niastus and Wegner deaths from which jury recommendations were made in respect of the Saskatoon Police Service and that the Commission on First Nations and Métis Peoples and Justice Reform was created by the Government of Saskatchewan. It was mandated to “review the justice system with the intent of

devising solutions to overcome systemic discriminatory practices and address attitudes based on racial or cultural prejudice . . . and to include in its scope for consideration all components of the criminal justice system including but not limited to: **policing**, courts, prosecutions, alternative measures, access to legal counsel, corrections including community corrections, youth justice, community justice processes and victim services.”

It also bears remembering that public inquiries have also been conducted into the treatment of First Nations people in the criminal justice system in Canada on repeated occasions in the last fifteen years. Without exception, the officials presiding at these inquiries have concluded that First Nations people from the Pacific to the Atlantic suffer discrimination which is systemic and pervasive within the system. It was noted by the Royal Commission of Inquiry into the Donald Marshall Junior Prosecution in 1989 and, has been repeated in others, that:

“Systemic discrimination is what happens when a specific act, policy or structural factor, intended or unintended, results in adverse effects from members of certain specific groups.”

We submit that the Saskatoon Police Service intentionally or unintentionally discriminated against Neil Stonechild and his family when he died and that this discrimination continues to this day. It is a pervasive kind of discrimination that few people are comfortable recognizing and even fewer people want to acknowledge. Racism need not manifest itself in ugly name calling or overt stereotyping to be real but it is no less real just because it remains unspoken.

We have some direct evidence of racism and racist attitudes in the Saskatoon Police Service but the general tenor of the witnesses from the police was to deny its existence. Absent racism as an

explanation for the way the Stonechild family was marginalized and lied to following the death of Neil what other explanation is there for the way they were treated?

The Saskatoon Police Service did not conduct itself with honor and integrity between November 29, 1990 after Neil Stonechild's frozen body was discovered on the outskirts of the city and December 5, 1990. Only a cursory investigation was undertaken into his death and the investigation was prematurely concluded as if his life and his family's need for answers did not matter. His family believe they wrote him off as "just another drunken Indian."

It did not conduct itself with honor and integrity after December 5th, 1990 when members of the Stonechild family raised questions about its investigation into his death and their concerns were trivialized and ignored.

It did not conduct itself with honor and integrity when individual members of the Saskatoon Police Service, namely Cst. Ernie Loutitt and Sgt Eli Tarasoff, questioned the thoroughness of their investigation in December 1990 and January 1991. Instead they were told, in effect, to "mind their own business."

It did not conduct itself with honor and integrity on and after March 4, 1991 when the thoroughness of the investigation was questioned publicly by the Star Phoenix . . . to the contrary, the Saskatoon Police Service lied to the Stonechild Family and to the people of Saskatoon whom it had sworn to serve with honor and integrity when its spokesperson said that Neil Stonechild's death had been

thoroughly and competently investigated. Indeed the then Media Liaison Officer of the day, Sgt Dave Scott, was quoted as saying “A tremendous amount of work went into the case . . . investigators pursued every avenue.” Even if someone misled Dave Scott about the “quality” of their investigation and he unwittingly gave false information the responsibility for that incontestable deceit rests on the shoulders of the Saskatoon Police Service as there is compelling evidence before this Inquiry that his contention was wrong.

Reference: Exhibit: P-1
Transcript: Former Chief Dave Scott, Volume 28

II. THE EVIDENCE SURROUNDING THE DEATH OF NEIL STONECHILD

i) Overview

On November 29, 1990 the body of Neil Stonechild, who was born on August 24, 1973, was found in a field near the Hitachi Plant off 57th Street in the City of Saskatoon. This discovery was made by two workmen from Nordic Industries who immediately contacted the Saskatoon City Police Service and the police responded to the call.

Reference: Exhibit P-44 - Occurrence Report dated November 29, 1990
Exhibit P-43 Handwritten notes of Cst. Lagimodiere
Testimony of Richard Harms, Volume 12
Testimony of Rene Lagimodiere, Volume 9, 10

The call was dispatched to Cst. R. Lagimodiere of the Patrol Division and evidence given at the Inquiry suggests that his initial response at the scene was essentially appropriate and accorded with policy and procedure of the day. Indeed his police report, detailing his response to the scene dated November 29, 1990, suggests this to be so. He noted footprints at the scene that he believed to be those of the deceased and which he considered to be several days old and he made a detailed description of the clothing he was wearing and the fact that he was missing one shoe. Without doubt

there is more he could have done to follow the trail of footprints and search for the shoe but it is equally understandable that he relied on the personnel he called to the scene to do this necessary investigation.

Reference: Exhibits P-43, P-44
Testimony of Cst. R. Lagimodiere, Volume 9, 10

The evidence tendered at the Inquiry confirms that, with the exception of the non-attendance of a detective, all appropriate and needed personnel attended at the scene including the Sector Sergeant (Sgt. Michael Petty), two Identification Officers (Cst. Robert Morton and Cst John Middleton), the Canine Officer (Cst. Gregory Robert) and the Coroner (Dr. Brian Fern).

Reference: Exhibits P-43, P-44, P-57, P-58
Testimony of Cst. Robert Morton, Volume 13
Testimony of Sgt. Michael Petty, Volume 13
Testimony of Cst. Gregory Robert, Volume 14
Testimony of Dr. Brian Fern, Volume 10

Evidence at the Inquiry also showed that while there was no identification on the body, police were able to establish that the deceased was Neil Stonechild through a tattoo on his hand, his fingerprint and some information passed on by other officers. Phone numbers found on a piece of paper in his pocket were never checked.

Reference: Exhibit P-61
Testimony of Cst. Robert Morton, Volume 13
Testimony of Retired Staff Sgt. Keith Jarvis, Volume 23, 25, 26, 27

There is clear and compelling evidence which remains uncontradicted that a senior and experienced police officer, then Sgt. Keith Jarvis, was assigned the sole responsibility to investigate the circumstances that gave rise to the death of Neil Stonechild. Mr. Stonechild was a healthy 17 year old male. As common sense corollary to that, one would assume that Sgt. Jarvis would know that

he needed to determine how this young man's death occurred in such a remote location of the city. Indeed he admitted that such was the case. Instead he made a judgement, not supported by any evidence, that this young man got drunk, wandered off, perhaps trying to turn himself in at the Saskatoon Correctional Centre, and froze to death.

Reference: P - 61

ii) The Events of November 24, 1990

November 24, 1990 is the last day that Neil Stonechild was seen alive. There is clear and cogent evidence that on that day Neil Stonechild spent the better part of the afternoon and evening in the company of Jason Roy. At some point during the afternoon or evening while traveling on a Saskatoon City bus they met Lucille Neetz, an old girlfriend of Neil's, and Gary Horse. She told them that she would be spending the evening babysitting at her sister's apartment in the Snowberry Downs Apartment Building on 33rd Street in the City of Saskatoon but she did not tell them the number of the apartment or the building.

Reference: Exhibit P-61 - Statement of Jason Roy dated November 30, 1990
Testimony of Jason Roy, Volume 2, 3, 4, 5
Testimony of Lucille (Neetz) Horse, Volume 5, 6
Testimony of Gary Horse, Volume 6

Sometime in the evening there is cogent evidence that Neil and Jason dropped in to his mother's house and advised her that he was going to a party. He was unlawfully absent from the Pickard Youth Group Home at that time but he told his mother he had promised the group home operator that he would return there after the weekend.

After leaving his mother's home Jason Roy and Neil Stonechild went to the home of friends, the

Binning residence at 3269 Milton Street, where they consumed part or all of a 26 or 40 ounce bottle of Silent Sam Vodka which they had acquired with the assistance of Neil's older brother, Marcel. Neither Roy nor Neil were old enough to enter Saskatchewan Liquor Stores.

Reference: Exhibit P-61 - Statement of Jason Roy dated November 30, 1990
Testimony of Jason Roy, Volume 3, Page 428
Testimony of Marcel Stonechild, Volume 2

Neil Stonechild's presence at the Binning residence during this evening was confirmed by several eyewitnesses. They also confirmed that he was drinking and that he left the residence in the company of Jason Roy to go to the 7-Eleven Store and/or look for Lucille Horse later in the evening on November 24, 1990.

Reference: P - 61 - Statement of Jason Roy
Testimony of Julie Binning, Volume 12
Testimony of Jason Roy, Volume 2, 3, 4, 5
Testimony of Flora Binning, Volume 8
Testimony of Cheryl Antoine, Volume 12

Thereafter there is a multiplicity of evidence before the Inquiry that establishes beyond any doubt that Neil Stonechild and Jason Roy went to Snowberry Downs Apartments in search of Lucille Neetz and in the course of trying to find her they caused sufficient disturbance that Trent Ewart phoned a complaint to Saskatoon Police Service at 11:00 p.m. asking to have Neil Stonechild removed from his apartment building. There is also evidence that only Neil actually attended at the Ewart apartment where Lucille was babysitting that night.

Reference: Exhibit P - 34 - Statement of Trent Ewart dated November 30, 1990
Exhibit P - 36 - Complaint Report dated November 24, 1990
Exhibit P - 61 - Statement of Jason Roy dated November 30, 1990
Exhibit P - 78 - Dispatch Record dated November 24, 1990
Testimony of Jason Roy, Volume 2, Page 354 - 366
Testimony of Lucille (Neetz) Horse, Volume 2, 5, 6
Testimony of Gary Horse, Volume 6
Testimony of Trent Ewart, Volume 7

There is also reliable evidence that Constable Larry Hartwig and Constable Bradley Senger were dispatched to the Ewart complaint at Snowberry Downs and they attended to the location. While both officers denied under oath that they have much independent memory in respect to the call from the statement of Trent Ewart given on November 30,1990, the testimony of Jason Roy that he was stopped by a police car on November 24,1990 and he gave the officers the false name of Tracey Lee Horse, the testimony of Bruce Genaille that he was stopped and questioned by the police near Snowberry Downs as to whether he was Neil Stonechild and the CPIC records for late November 24th - November 25th, 1990 are clear evidence that this is so.

Reference: Exhibit P - 34 - Statement of Trent Ewart dated November 30, 1990
Exhibit P - 61 - Statement of Jason Roy
Exhibit P - 86 - P - 90
Exhibit P- 180 & P- 182 - Notebook of Larry Hartwig
Exhibit P -194 - Notebook of Bradley Senger
Testimony of Trent Ewart, Volume 7
Testimony of Jason Roy, Volume 2, 3, 4, 5
Testimony of Bruce Genaille, Volume 12

There was evidence from Jason Roy at the hearing that he saw Neil Stonechild in the back of the Saskatoon Police Service car that stopped him after he left Snowberry Downs that night and that he reported this event to friends when he got back to the Binning residence that night.

Reference: Testimony of Jason Roy, Volume 2, 3, 4, 5
Testimony of Flora Binning, Volume 8
Testimony of Cheryl Antoine, Volume 12
Testimony of Gary Horse, Volume 6
Testimony of Julie Binning, Volume 12

There is evidence that Jason Roy told Stella Bignell that he saw Neil in the back of a police car that night when he was known to be alive. Her evidence is that he told her this in either spring, summer or fall, 1991 as she testified that it was sometime after the StarPhoenix story was in the paper on

March 4th, 1990 and that there was no snow on the ground when he gave her this information.

Reference: Testimony of Stella Bignell, Volume 1
Testimony of Jason Roy, Volume 2, 3, 4, 5

There is evidence that Jason Roy told Diane Fraser at Kilburn Hall in the fall 1991 and that he also told Brenda Valiaho, what he had seen. They believed him to be suffering guilt and shame because he felt he had let down a friend and tragedy had resulted.

Reference: Testimony of Diane Fraser, Volume 9
Testimony of Brenda Valiaho, Volume 6

There is evidence that in both 1992 and 1995 Jason Roy told Gary Horse that he saw Neil in the back of a police car.

Reference: Testimony of Gary Horse, Volume 6
Testimony of Jason Roy, Volume 2, 3, 4, 5

There is evidence that Jason Roy told Lucille Neetz in 1994 or 1995.

Reference: Testimony of Lucille(Neetz) Horse , Volume 5, 6

There is evidence that Jason Roy told Father Andre Poilievre in 1996 or thereabouts. Father Polievre recalled him to be a very troubled young man who was burdened with guilt because of his belief that he had failed Neil Stonechild on November 24, 1990.

Reference: Testimony of Father Polievre, Volume 7, 8

III. THE SASKATOON CITY POLICE SERVICE INVESTIGATION INTO THE DEATH OF NEIL STONECHILD

i) November 29 - December 5, 1990

Retired Staff Sergeant Keith Jarvis gave detailed and sometimes contradictory testimony in respect of his investigation into the death of Neil Stonechild. On essential points, however, it is clear that he was working as a member on November 29, 1990 and when he reported for the evening shift he was assigned responsibility to investigate the suspicious death of a young man whose frozen body had been found by the employees of Nordic Industries earlier that day.

Jarvis did not attend the crime scene, he did not order further investigation work at the crime scene to search for the deceased's missing shoe, to follow the footprints in the snow or to find clues about how Neil Stonechild ended up frozen to death in that remote area on November 29, 1990.

Although Jarvis attended at the Morgue with the Identification Officer, he did not do a visual examination of the body to look for any signs of injury or foul play. It is noteworthy that civilian witnesses who attended the funeral and viewed the body expressed varying degrees of shock and concern about the injuries to his face and especially the cut on his nose. This, of course, is despite the failure of Jarvis to observe same. It was an elementary part of his job to rule out foul play in this death. One has to wonder why he did not even bother to look at the body.

Reference: Testimony of Stella Bignell, Volume 1
Testimony of Debra Mason, Volume 1
Testimony of Jerry Mason, Volume 1
Testimony of Marcel Stonechild, Volume 2
Testimony of Patricia Picard, Volume 1

Although he attended on Stella Stonechild to inform her of her son's death, Jarvis did not make any followup contact with her or members of her family in the hours or days thereafter to obtain a

written record of any knowledge they might have had about Neil's last known whereabouts or reasons why he might have been in the 57th Street area. In his evidence he suggested that he did not consider it was necessary but his own report of the day reflected the fact that he delivered shocking and upsetting news to this family. One would expect a trained police officer had enough common sense to know that was not the best time to obtain full and adequate investigative information from the family.

Reference: Testimony of Stella Bignell, Volume 1
 Testimony of Marcel Stonechild, Volume 2
 Testimony of Retired Staff Sgt. Keith Jarvis, Volume 23, 25, 26, 27

In his testimony at the Inquiry , Jarvis admitted that he did a lousy job on this investigation. He did not pursue elementary investigative steps and he did not follow proper protocol. Indeed he followed no protocol. The record of his work contained in his reports in Exhibit P-61 show he was suspicious of the cause of death at the outset of the investigation and he attempted to have the file transferred to the Major Crime Section on November 30, 1990 when he was leaving for his scheduled days off shift. That action, on its face, was a good and proper judgement call that was commensurate with the circumstances given the facts available to him at that time.

Inexplicitly and unable to be explained by him, he took the file back when he returned to work on December 4, 1990 although there was no indication that Major Crimes had reviewed it and no explanation as to why Major Crimes did not take it over. He closed the file on December 5, 1990 with no reasonable explanation for the death.

Jarvis had no autopsy report, no drug or alcohol screening report and he had made no contact with

persons named as possible perpetrators of this act of violence or many other persons who might have had information that could have assisted in his investigation.

Upon prematurely closing his file, Jarvis gave no satisfactory explanation to the Stonechild family for Neil's death. Despite the fact that he concluded the file on December 5, 1990 on a number of subsequent dates the family were told that they could not get Neil's personal effects back because the investigation was "ongoing." Yet, it clearly was not "on-going". It was over with less than twenty man hours of investigative work done on it.

Thereafter, there is evidence that Jarvis dismissed repeated entreaties from the Stonechild family about his investigation. He dismissed the concerns of Cst. Ernie Louttit and he dismissed the concerns of Sgt. E. Tarasoff and, if he were to be believed, he was somehow not ever made aware of the story in the StarPhoenix on March 4, 1991 that savagely questioned the competence of his work.

Despite the policy and procedures of the Saskatoon Police Service, the evidence from all officers of any rank above Jarvis is that they either knew nothing about the death of Neil Stonechild or they failed to check the improper decision of Jarvis to prematurely close the investigation on December 15, 1990.

Reference: Testimony of Former Chief Joe Penkala, Volume 19, 20, 21
Testimony of Theodore Johnson, Volume 18
Testimony of Bruce Bolton, Volume 17
Testimony of Dave Wilton, Volume 38
Testimony of Glen Winslow, Volume 18
Testimony of Frank Simpson, Volume 19
Testimony of Donald Montague, Volume 19

Thereafter with the exception of Cst. Ernie Louttitt, Cst. Larry Hartwig and Retired Sgt. Jim Maddin, no member of the Saskatoon Police Service admitted/remembered hearing any discussion or information passed around at Saskatoon Police Service with respect to the death of Neil Stonechild.

Reference: Testimony of Cst. Ernie Louttitt, Volume 15, 16
Testimony of Retired Sgt. James Maddin Volume 29, 30
Testimony of Cst. Larry Hartwig, Volume 40, 41

ii) March 4, 1991

As previously noted, despite the circulation of a story in the Saskatoon StarPhoenix on March 4, 1991 that was highly critical of the Jarvis investigation, almost no one apparently read the paper or heard any discussion of it at the police station.

Reference: Exhibit P - 1
Testimony of Former Chief Joe Penkala, Volume 19, 20, 21
Testimony of Theodore Johnson, Volume 18
Testimony of Bruce Bolton, Volume 17
Testimony of Dave Wilton, Volume 38
Testimony of Glen Winslow, Volume 18
Testimony of Frank Simpson, Volume 19
Testimony of Donald Montague, Volume 19

The exception to this “blindness” was former Chief David Scott who was Media Liaison Officer for the Saskatoon Police Service on March 4, 1991 and who is on the public record of the day.

IV. THE RCMP TASK FORCE INVESTIGATION INTO THE DEATH OF NEIL STONECHILD

The RCMP Task Force was struck in February, 2000 to investigate the emerging allegations of misconduct by the Saskatoon Police Service soon after the bodies of Niastus and Wegner were discovered and Night made his complaint about being dropped off. As attested to by Superintendent

Darrell McFadyen when he gave evidence, the death of Neil Stonechild was soon brought to their attention and a two year investigation resulted in the many questions that confront this Inquiry. I will reference but a few of the key witnesses and their testimony:

1) February 2000 - 2002

i) The Witnesses

a. Jason Roy

Jason Roy is a critical witness in this Inquiry process. He has told people on repeated occasions since November 24, 1990 that he saw Neil Stonechild in the back of a Saskatoon City Police car that late evening. There is evidence that he made this allegation to people at the Binning home when he returned there that night but that he and they were not particularly surprised or alarmed by that as Neil was unlawfully at large from a group home.

There is evidence that he told this same story to others including Stella Bignell, Diane Fraser and Brenda Valiaho in the weeks and months after November, 1990.

There is also conflicting evidence that he gave this same information to Sgt. Keith Jarvis on November 30, 1990, mere hours after Neil's body was found. This has been both confirmed and denied by Jarvis and is a question of credibility that you must assess.

While much effort has been made during the course of these proceedings to discredit Jason Roy, we restfully submit that there is a compelling common thread to all of his statements since November 24, 1990 that give credence to the core memory. Among those features that are compelling, I note only the following:

- Jason Roy told Cheryl Antoine, Julie Binning and Flora Binning that the police had picked Neil up and all three girls confirm this to be true in the evidence before you.
- Jason Roy said he was stopped by Saskatoon Police Service when they had Neil in the car and he gave them a false name and date of birth, Tracy Lee Horse, which they checked in the in-car computer and CPIC records of the day plus the notebooks of Cst. Larry Hartwig and Cst. Brad Senger show this stop to have happened. They queried the name Tracy Horse at 11:56 p.m. on November 24, 1990.
- These same officers were responding to a complaint that Neil Stonechild was causing a disturbance at Snowberry Downs in that time frame. They were therefore looking for him. They queried the name Neil Stonechild in the CPIC terminal at 11:59 p.m. on November 24, 1990 which was just minutes after the Tracey Horse query. Absent seeing Neil in their car Jason Roy had no reason to connect him to the Saskatoon Police Service that night or at any time thereafter.

- Jason Roy called the Saskatoon Police Service on November 30, 1990, the day after Neil's body was found, despite the fact that he knew he was in breach of his probation order and that there was probably a warrant out for his arrest. He agreed to meet with Sgt. Jarvis, the assigned investigator. Jason Roy told the RCMP Task Force in 2000 and he testified at the Inquiry that he came to an understanding with Sgt. Jarvis that he would not arrest him if he agreed to meet and Jason Roy testified that he did meet with him on November 30, 1990 and that he told him he had seen Neil in the police car.

It bears noting, in assessing credibility, that Roy was in Jarvis's company far longer than the time it took to record the statement that he put in the investigative file. It is also noteworthy that the statement ended in a strange and abrupt way without question from Jarvis who was a trained interviewer.

- While it is common ground that this allegation is not in Jason Roy's statement that was subsequently found by Cst. Loutitt in March 2001, Sgt. Keith Jarvis told the Commission investigator that he was told this by Jason on November 30, 1990. I note, of course, that he subsequently retracted this as "after he met with his lawyer" he claims to have realized it was a false memory.
- Jason Roy told a counsellor at Kilborn Hall in the fall 1991 that he

had seen Neil in the back of the police car and because he appeared so troubled by the incident, she referred him to a psychology intern, Brenda Valiaho, for therapeutic support.

- Jason Roy told Brenda Valiaho the same story. Despite efforts by counsel for the Saskatoon Police Service, the Police Association and the individual officers who have standing here, to suggest Ms. Valiaho may have compromised his memory through improper use of therapeutic techniques, other evidence, including that of Dr. Jim Arnold and Dr. John Yuille have effectively put those concerns to rest.
- Jason Roy told others over the years about seeing Neil in the back of the police car and expressed regret and concern that he had done nothing to help him. As earlier noted, he told Gary Horse, Lucille Neetz, Father Poilievre and he says he tried to file a complaint at Saskatoon Police Service and indeed Gary Horse testified he was apparently on his way to Saskatoon Police Service the day he told him about the incident in late 1994 or 1995.

It is acknowledged that there is much to be concerned with in respect of the reliability of all of the present memories of Jason Roy regarding these events but I urge you to remember that the core of his allegation has remained steadfast. As explained by Doctor Yuille it is to be expected with the passage

of time that he has undoubtedly unconsciously added detail to his recollection and that therefore his credibility needs to be carefully considered. Jason Roy is not a learned man and he is easy to attack but one must ask what possible motivation he would have had on November 25, 1990 and in the years thereafter to make up and repeat such a story.

We know for sure he was stopped by Hartwig and Senger on November 24, 1990 and despite the fact that he had been drinking, he had his wits sufficiently about him to not only give a false name, but to also give a correct (false) date of birth. He was sufficiently in control of his faculties that he used the alias of someone who had no criminal record to avoid being busted on his own warrant or record. Indeed he was sober enough that Hartwig and Senger let him continue on his way after they checked him and he got himself home safely.

Jason Roy spoke that night of what turned out to be horrifying and unspeakable. When he told the people at Binnings that early morning that the police picked Neil up, he had no way of foretelling the future import of what he was saying. He assumed Neil would go to Kilburn Hall again and eventually he'd be released. It was no big deal.

It became a big deal only after Neil's body was found frozen to death in a remote area of the city on November 29, 1990.

As we know from evidence before this Inquiry in November, 1990, people then did not talk about “Starlight Tours” or “police drop-off’s” or “un-arresting people.” No one talked about it in 1991 or 1992. No one talked about it openly until the Darrell Night story surfaced in February, 2000. That is to say, no one talked about it except Jason Roy but Jason Roy could not get anyone to believe him. It was and is almost too horrible to contemplate much less to believe.

Certainly no one was willing to do anything about it then and, with respect, no one wants this Commission to do anything about it now, with but a few exceptions.

Yes, Jason Roy’s evidence has problems but Mr. Commission, given the awful knowledge he has lived in fear with for some thirteen plus years, is it any wonder?

b. Stella Bignell

Stella Bignell is a grieving mother who gave compelling and painful testimony to this Commission. She seeks only the truth about her son’s tragic death as she has believed for the past thirteen years that no one in “the system” was ever going to truly and objectively search out the truth for her.

We respectfully submit that there can be no doubt that sometime in 1991 Jason Roy went to her and he told her he saw Neil in the back of a Saskatoon City Police car just before he was found dead. She has a clear memory of that disclosure as does he. It was in a Bingo Hall.

Jason Roy, like others in the community, had many ways to know Stella Bignell was upset by the way Saskatoon Police Service dismissed Neil's death but he had no reason to tell her about seeing Neil in police custody unless it was true. He was only sixteen years old and Neil had been his friend. Why on earth would he bring more pain to an already grieving mother.

c. Julie Binning, Flora Binning and Cheryl Antoine

Julie Binning, Flora Binning and Cheryl Antoine are impressive young women who have moved on with their lives since their teenage years. They corroborated the testimony of Jason Roy that he told them he saw Neil Stonechild in the back of a Saskatoon Police Service car on November 24, 1990. They have not maintained an association with Jason Roy and they have no association with the Stonechild family. They have no reason to give fabricated evidence.

d. Tracey Horse

We respectfully submit, as with the witnesses listed above, Tracey Lee Horse

is one whose evidence is ironclad and credible. He was not stopped by Saskatoon City Police on November 24, 1990 and he has no idea why his name appears in the CPIC data base for that night. He has no reason to lie to this Inquiry. His evidence too corroborates an important aspect of Jason Roy's evidence absolutely as regards the events of November 24, 1990. Recall too that it was Jason Roy who remembered all these years that he had this interaction with the police all those years ago. He reported it to the RCMP Task Force and caused them to inquire about the old CPIC records from that night. We all know his memory was absolutely correct.....surely such memory is inconsistent with the suggestion in his statement that he was so drunk that he blacked out mere moments later.

e. Gary Pratt

We respectfully submit that despite massive efforts by counsel at this Inquiry to project blame onto Gary Pratt for causing or contributing to Neil's death the evidence shows he did not do so. A full review of his evidence will undoubtedly be undertaken by his counsel and it serves no purpose for me to dwell on it except to say it is not a reasonable or credible alternate theory.

ii) The Police Witnesses

a. Staff Sgt. Keith Jarvis

As with Mr. Pratt other counsel will do a detailed review on the Jarvis evidence and his recorded statements. From our perspective we invite you to review the entirety of our cross examination of him. The record speaks for itself. We submit that he was not a credible witness.

Reference: Testimony of Keith Jarvis, Volume 25, 26, 27

b. Cst. Bradley Senger and Cst Larry Hartwig

As with Keith Jarvis, the testimony of these witnesses needs to be reviewed in its entirety in order to fully assess the role that these men may have played in the death of Neil Stonechild.

iii) The Expert Witnesses on Facial Cuts and the Wrist Marks

a. Gary Robertson and Dr. Emma Lew

Many hours were spent examining and cross examining Mr. Robertson and Dr. Lew. They contradict each other on basic findings. We urge you to look at the total picture that Dr. Lew presented and to then look at the physical evidence before you. Logic and common sense militate against the suggestion of Dr. Lew that the cuts on Stonechild's nose were made by twigs or blades of grass and that the wrist marks were caused by clothing.

As she acknowledged in our cross examination, her expert witnesses differ from each other all the time as to the cause and mechanics of injury and "ten different pathologists can give ten different answers to the same question." Each will believe that he is right just as she believes she is right in this case. We ask you to consider her evidence with her own caveat.

Reference: Testimony of Gary Robertson, Volume 21, 22, 23
Testimony of Dr. Emma Lew, Volume 42

iv) The Expert Witness on Blood Alcohol Levels

a. Dr. Stephen Richardson

We remind you that Dr. Richardson offered evidence that is of limited value as he based his opinion on mostly hypothetical evidence. What he could say with certainty however is that the blood alcohol of Neil Stonechild at the time of autopsy may not have been the true blood alcohol level at the time of his death. He conceded, on cross examination, that his blood alcohol level did not lower itself after death but that it could well have increased due to bacterial growth in the body post mortem and other factors.

Reference: Testimony of Dr Richardson, Volume 30, 31

v) The Expert Witnesses on Memory Issues

a. Dr. Jim Arnold and Dr. John Yuille

Given that this Inquiry is directed toward events and witness memories of events that occurred some thirteen years ago many suggestions were made and continue to be made by various counsel about the reliability of memory. Some have urged you and will continue to urge you to conclude that certain actions engaged in by the RCMP in their investigation caused at least one witness, Jarvis, to develop false memories.

There is compelling and persuasive evidence before you, from Dr. John Yuille, who has impeccable

credentials in academic and “real life” research in memory and its function that should put such suggestion to rest. We urge you to remember how Jarvis came to the conclusion that he had “false memories” and to assess the self serving nature of this assertion for him personally and the Saskatoon Police Service generally. We submit it is an absurd assertion that is not borne out by real life or by science and it should be dismissed outright.

We also ask that you consider his evidence in your assessment of the credibility of Jason Roy. He offers a reasonable explanation for the evolving nature of details in his memory of the night of November 24, 1990.

Reference: Testimony of Dr Jim Arnold, Volume 37
 Testimony of Dr. John Yuille, Volume 39

V. PRACTICES AND POLICY IN SASKATOON POLICE SERVICE THEN AND NOW

There is much evidence before you with respect to the policies and practices of the Saskatoon Police Service in investigating sudden deaths in 1990. In some respects it is really an issue without substance for purposes of this Inquiry. What happened in the investigation of the death of Neil Stonechild is not a fault of good or bad policy but is solely the fault of terrible police work by Jarvis at first instance and by all of his superiors up to and including the Office of the Chief of Police. There were policies and practices in place that should have prevented this outrage from happening at first instance and they certainly should have caught it when it did happen. It happened and it did not get caught....the question is why? It is that complete breakdown of the investigative system that

is most troubling because absent wilful misconduct it is impossible to rationalize how it could have happened.

Deputy Chief Wiks gave long and detailed testimony on current day policy and implicit in his evidence is that this would not happen today. Should the people of Saskatoon sleep comfortably now? We submit not.....and most revealing in giving substance to this submission, we suggest is the way the Saskatoon Police Service conducted itself in preparation for this Inquiry. By the most kind interpretation we submit that damage control is still “Job One” at the Saskatoon Police Service.

VI. ARGUMENT

In your opening remarks at the commencement of this Inquiry you quoted, with approval, from the decision of the Ontario Court of Appeal in *Re: Children’s Aid Society of York* [1934] O.W.N. at page 420:

A Royal Commission is not for the purpose of trying a case or a charge against anyone, any person or any institution - but for the purpose of informing the people of the facts of the matter to be inquired into . . .

And at page 421:

It is an inquiry not governed by the same rules as are applicable to the trial of an accused person. The public, for whose service this Society is formed, is entitled to full knowledge of what has been done by it and those who are its agents and officers and manage its affairs. What has been done in the exercise of its power and the discharge of its duties is that which the Commissioner is to find out; so that any abuse, if abuse exists, may be remedied and any misconduct, if misconduct exists, may be put to an end and punished, not by the Commissioner but by the appropriate proceedings against any offending individual . . .

With respect we submit that, you have a duty to examine the evidence of every witness who gave

testimony at this Inquiry to determine if abuse and /or misconduct occurred in or by any member of the Saskatoon Police Service in respect of Neil Stonechild.

You must address yourself to issues of credibility and weight to be given to their testimony but when this analysis is complete we submit you will find there is overwhelming evidence before you that compels the conclusion that the investigation of the death of Neil Stonechild by the Saskatoon Police Service was so bad that it cries out for explanation. It is not just a case that “fell through the cracks.”

We urge you to remember the testimony of then Chief Joe Penkala who was quite adamant that he was never made aware of the death of Neil Stonechild. He testified that it was departmental practice that he met with his Executive Officers every morning to receive a briefing on significant cases of the day (and he was working during the critical dates in issue here).

Reference: Transcript, Volume 21, page 3943 - 3944

He testified that he has a hard time believing that the failure to raise this case at an Executive Meeting was “just an honest mistake.”

Reference: Transcript, Volume 20, page 3776

He was equally adamant that this is a not an issue of whether he was ever told about this case and he just forgot it but that he was never ever told about it.

Reference: Transcript, Volume 19, page 3758

He insisted that this oversight and the overall poor investigation done cannot and should not be blamed on the shift system of the day as it does not account for the way this case was handled by

Jarvis and his superiors within the Service.

Reference: Transcript, Volume 19, page 3777 -3778

Indeed he went so far as to opine that if it was negligence that caused this awful outcome that it was not just negligence by Jarvis but was the negligence of a lot of other people in the Saskatoon Police Service as there was a system of checks and balances in place within the chain of command that was designed to ensure that every investigation was properly and competently done.

Reference: Transcript, Volume 20, page 3882

In other words, officers superior to Jarvis were responsible for doing quality control of his files and they should have caught this poor performance. We submit that the fact that none of them caught it is so incredible as to defy common sense. That, then, requires you to consider that this was not negligence but that it was a deliberate act of wrongdoing by Jarvis and/or others in the Saskatoon Police Service.

In embarking on this consideration, additional to the evidence of Chief Penkala we ask that you look too at the testimony of Jarvis. By his own admission, the evidence of others and his history of assignments during his years with the Service he was considered to be a good and capable police officer. He knew the rudimentary steps necessary to investigate a sudden death file and knew that it was his duty to assess whether foul play was involved. He knew that it was important to look at all available physical evidence including evidence found at the scene and on the body and he knew it was important to look for “missing” evidence such as Neil Stonechild’s shoe.

Yet he did not go to the scene, he did not look at the body despite the fact that he was at the Morgue on the evening it was brought there, he did not examine his clothing or request that it be sent to the RCMP Crime Laboratory to be examined for trace evidence.

He did not try to find out who was connected to the phone numbers found in the deceased's pocket at the time of his discovery and he did not take statements from family members about his last contact with them or any knowledge they might have as to why he was in a remote industrial area of the city.

He did not contact the Group Home operator who was Stonechild's legal custodian at the time he died and he did not make any record of speaking to Cst Hartwig or Cst Senger about the call they responded to involving him in the last hours that he was known to be alive.

He did not locate persons identified by a social worker at Kilburn Hall and in a Crime Stoppers Tip as persons who may have caused Stonechild's untimely death, and he did not wait to get an alcohol and drug screening report from the RCMP Crime Lab on him before closing his file.

He did not look at the scene photos or video and he did not look at the autopsy photos. Indeed the list goes on.

He did not request the assistance of the Street Patrol to find witnesses and he did not request their assistance in finding Danny and Gary Pratt despite the easy availability of this city wide resource.

He did not obtain witness statements from other critical witnesses like Lucille Neetz, Julie Binning, Eddie Rushton or Cheryl Antoine.

By any analysis his actions on December 5, 1990 in summarily writing off this young man and his tragic unexplained terrible death defy logic and common sense. Was it because he was a young First Nations boy that he was so quick to write him off by concluding that he got drunk, wandered off and froze to death while trying to get to the Saskatoon Correctional Centre, an adult detention facility or was that an just a “lame excuse” to get himself and the Saskatoon Police Service out of an investigation that could bring shame and horror to the community and to the Service itself?

In attempting to answer that questions we submit that you must look as well at the evidence of Constable Ernie Loutitt that we have previously highlighted. He gave clear and we submit credible evidence about attempts he personally made to have further investigation carried out into Neil’s death after Jarvis closed the file on December 5, 1990.

He went to the Major Crimes Office and gave them specific information about a suspect or suspects whose company Neil may have been in before his death but he was made to feel that they were dismissive of his input and that they thought he was meddling.

Reference: Transcript, Volume 15, page 2837-2841

He met then with Staff Sergeant Bolton of the Major Crimes Office on January 7, 1991 who referred him to Jarvis. He testified that he went to Jarvis with his concerns and was met with argument and

dismissal from him. Jarvis specifically told him to mind his own business.

Reference: Transcript, Volume 15, pages 2844-2845

Also consider the testimony of Sgt Eli Tarasoff which was highlighted earlier. Like Cst Loutitt, he too went to Jarvis to complain of the sparsity of the investigation into Neil Stonechild's death. He knew Neil Stonechild personally and he did not believe the theory purported by Jarvis was reasonable. Yet no one was willing to consider his input...Jarvis just got mad at him too.

Reference: Transcript, Volume 18, pages 3477-3506

We submit that in assessing the actions of Jarvis particularly and the Saskatoon Police Service generally you must give serious consideration to the evidence before you in respect of the story that appeared in the Saskatoon Star Phoenix on March 4, 1991 and the response of the Saskatoon Police Service in respect of same. We submit that of all that is illogical in the way that the Saskatoon Police Service dealt with this investigation, there is no other piece of evidence that is so compelling in weighing in on the side of the people that urge upon you to find that there was intentional wrongdoing and a cover up. Otherwise why would Scott have addressed the concerns of Stella Bignell in the way he did.

We often hear and sometimes use the old expression that "the long arm of coincidence can only go so far . . .". It is hard to believe that the entire chain of command at Saskatoon Police Service somehow did not know that Jarvis accidentally or intentionally blew off this investigation within days of Neil Stonechild's death and that no one caught on to his actions, be they simply a mistake in judgement or a deliberate scheme when Stella Bignell went to the press on March 4, 1991.

It is equally hard to believe that somehow the situation innocently slid under the radar screen as was urged upon you by former Chief Scott when he testified before you. Recall and consider his press briefing with the author of the story and the assurance he gave to the people of Saskatoon that the concerns of Stella Bignell and her family were unjustified and that all was well.

Finally on this point we submit that you must consider the evidence of Officers Maddin and Hartwig that there were others at the Saskatoon Police Service who were discussing the peculiarity of the death of Neil Stonechild's and the way it was handled. Yet, no one did anything about it then and no one wants to admit hearing about it now.

Once you have considered the actions of the Saskatoon Police in investigating the death of Neil Stonechild we submit that you must go back and consider the "eyewitness" evidence before you about the circumstances of his death. As already outlined, we submit that there is compelling and credible evidence before you from Jason Roy that Neil Stonechild was picked up by members of the Saskatoon Police Service on the late evening of November 24, 1990. As previously referenced in this submission his testimony is corroborated in different parts by various witnesses and by the CPIC records kept by the RCMP in Ottawa.

VII. RECOMMENDATIONS FOR POLICING AND THE ADMINISTRATION OF CRIMINAL JUSTICE IN SASKATCHEWAN

There is perhaps no more compelling indication of the breadth of the crisis in treatment of First Nations people in Saskatchewan and policing authorities than the response to the Helpline

established by the FSIN in February, 2000. The caller numbers were so high and the mistrust of police so pervasive that the FSIN created a Special Investigations Unit with a mandate to:

- Provide callers with a complaint friendly alternative to traditional police agencies to assert their allegations of mistreatment
- Ensure that complaints were thoroughly investigated, and
- Provide complainants with protection from retaliation and discomfort in disclosing their experiences

The FSIN staffed the Special Investigations Unit with First Nations personnel who had background experience in policing and criminal justice and developed working relationships that are respectful of cultural sensitivities and languages.

It was a truly successful initiative because it gave First Nations people a place to turn when the mainstream justice institutions had failed them. They felt safe and supported by the SIU and they came forward to air their many complaints. They are still bringing complaints forward to this date.

Since its creation in April 2000, the SIU has received more than 3000 calls and opened more than 695 files. As of December, 2003, 310 complaints had been made against the RCMP, 265 against local police forces and 120 against other agencies. Approximately 65% of the complaints have been concluded, while the balance are still open investigations.

The FSIN firmly believes in the value and benefit that the Special Investigation Unit offers to First Nations people in Saskatchewan and they are lobbying government for necessary funding to continue this vital service as part of the continuing delivery of appropriate justice services in this

Province. They ask that we urge upon you to find that theirs is a critical agency in the delivery of justice services to First Nations people and that its work must continue.

In addition to continuing and supporting the work of the Special Investigation Unit, we submit that this Inquiry must look to other initiatives in making recommendations for the future administration of justice in Saskatchewan. Among those we ask you to consider the following:

1. Support the continued developmental work of the FSIN Special Investigations Unit to become an independent oversight body, and support the lobby efforts of the FSIN to obtain federal funding to sustain this body;
2. Support the current development of an established province-wide Tribal Police Force and a First Nations Police Commission;
3. Begin a concerted effort to actively recruit First Nations into the RCMP and other Police agencies until the province-wide Tribal Police Force is established;
4. Establish a focus group, jointly mandated by Saskatchewan Justice and the FSIN, and funded by the Province of Saskatchewan to:
 - a. Review and analyze all relevant legislation on police and policing;
 - b. Ascertain areas of overlap and possible linkages; and
 - c. Identify amendment requirements; and
5. Establish a working Committee within the City of Saskatoon, that includes the Saskatoon Tribal Council, Saskatoon Police Services and other related agencies, to review current police policy and procedures and to recommend amendments. A provincial court judge should be appointed to chair this working Committee;
6. Appoint two-three First Nation members to the Saskatoon Board of Police Commissioners. The FSIN will be responsible to appoint the First Nation board members; and
7. Implement a policy that all police officers enroll in Treaty and First Nation cultural education that is designed and delivered by First Nation institutions. All new recruits entering local detachments must receive orientation from the respective First Nation.

VIII. CONCLUSION

We, otherwise, are, somewhat constrained in our overall ability to make recommendations for the future administration of justice in Saskatchewan. The only evidence now before you for consideration in this regard is that which was incidental to the primary issue that confronts you. We are mindful that many other reviews and inquiries have been conducted to examine the troubling questions that plague governments and communities in this country with respect to systemic racism and inequity in policing. We also refer you to sampling of past reports that have evolved from them and commend them for your consideration including:

2. Linn, Patricia(1992a) *Report of the Saskatchewan Indian Justice Review Committee*. Regina: Saskatchewan Justice
3. Linn, Patricia(1992b) *Report of the Saskatchewan Metis Justice Review Committee*. Regina: Saskatchewan Justice
4. Alberta Task Force (1991). *Report of the Task Force on the Criminal Justice System and Its Impact on Indian and Metis People of Alberta*
5. Cariboo-Chilcotin Justice Inquiry (1993). *Report of the Cariboo - Chilcotin Justice Inquiry*. Victoria: Attorney General of British Columbia
6. Hamilton, A.C. and Sinclair, C.M. (1991). *Report of the Aboriginal Justice Inquiry of Manitoba*. Winnipeg: Aboriginal Justice Inquiry of Manitoba
7. Chartrand, P.L.A.H. and Whitecloud, W. (2001) *Final Report of the Aboriginal Justice Implementation Commission*. Winnipeg: Aboriginal Justice Implementation Committee.
8. Commission on Systemic Racism in the Ontario Criminal Justice System(1995a) *Report of the Commission on Systemic Racism in the Ontario Justice System: A Community Summary*. Toronto: Government of Ontario
9. Hickman, T.A. (1989). *Report of the Royal Commission on the Donald Marshall Jr. Prosecution*: Halifax: Government of Nova Scotia

10. Law Commission of Canada (1991). *Aboriginal Peoples and Criminal Justice: Equality, Respect, and the Search for Justice*. Ottawa: Law Commission.
11. Royal Commission on Aboriginal Peoples (1995) *Bridging the Cultural Divide: A Report on Aboriginal People and Criminal Justice*, Ottawa. (1993). *Aboriginal Peoples and the Justice System*. Ottawa. Royal Commission on Aboriginal Peoples.
12. Oppal, The Honourable Justice Wallace T, (1994) *Closing the Gap - Policing and the Community. Report of the Commission of Inquiry on Policing in British Columbia*

We are mindful too that as the evidence in this Inquiry was ongoing *The Commission on First Nations and Métis People and Justice Reform* was engaged in extensive work throughout the province. We submit that it is incumbent on this Commission to consider the findings and recommendations of that Commission. A reconvening of hearings should be considered at that time or alternatively that a further written submission may be made before your final report is released.

On the factual issues before you respecting the circumstances that resulted in the death of Neil Stonechild and the conduct of the investigation into his death we respectfully submit that you should conclude on a balance of probabilities that there is credible and reliable evidence to link the death of Neil Stonechild to misconduct by the Saskatoon City Police. We further submit that this evidence goes beyond mere speculation.....it is persuasive and compelling evidence of truth.

ALL OF WHICH IS RESPECTFULLY SUBMITTED:

DATED at the City of St. John's in the Province of Newfoundland this 6th day of May, 2004

Silas E. Halyk, Q.C.

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M. KNOX) Counsel for the Federation of
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