

SiRT

SERIOUS INCIDENT
RESPONSE TEAM

Summary of Investigation

SiRT File # 2014-037

Investigation Regarding the Death
of Clayton Miller

May 4, 1990

Ronald J. MacDonald, QC
Director
April 16, 2015

EXECUTIVE SUMMARY

Opening Comments:

This case deals with the many questions that have been raised regarding the death of Clayton Miller in the 25 years since the weekend of May 4 to 6, 1990. The circumstances of the incident begin with many youths attending an outdoor party in New Waterford, Nova Scotia, on the evening of May 4, and end when Clayton's body was found on the afternoon of May 6 in a stream near an area known as the "Nest" in New Waterford, Nova Scotia.

It is hoped this report can help bring clarity to those many questions that have circulated for so long.

This investigation was commenced in late October, 2014 as a result of information received from the RCMP that suggested a member of the Cape Breton Regional Police Service (CBRPS), Cst. Darren Drinovz, may have information regarding this matter that had not been disclosed. If the information was true it could mean that current police officers were parties to an ongoing and current conspiracy to obstruct justice. In order to adequately investigate that allegation, it was necessary to examine all of the facts relating to the Clayton Miller matter, and determine whether any police officer played any role in his death.

SiRT reviewed information received from the RCMP, the Cape Breton Regional Police Service (CBRPS), and from Mr. and Mrs. Miller.

The Facts of May 4, 1990:

On the evening of May 4, 1990, about 40 to 60 New Waterford youths gathered at a party outdoors in New Waterford at the Nest. Because of complaints received, six members of the New Waterford Police (NWP), raided the party shortly before 10 p.m. The youths scattered. Ten were arrested, five males and five females. They were taken back to the station. Three males were placed in cells for a period of time. Clayton Miller did not come home that night.

On Sunday, May 6, 1990, Dale MacKinnon, who went to the Nest with Clayton on the Friday night, went back to the Nest with a friend to look for Clayton. They found him lying in a stream to the east of the Nest, deceased. The boys ran to get help. Police and Clayton Miller's parents were called. A forensic examination of the scene was conducted after the body was removed. Clayton Miller's hat was found within a few metres of where his body lay.

Many people contend that members of the NWP killed Clayton Miller. This investigation addresses many different theories that circulated over the years in relation to those contentions.

Primary Issue:

1. Did Cst. Darren Drinovz have information regarding the death of Clayton Miller in May of 1990 that he was currently withholding?

Cst. Drinovz was not at the raid, but returned while on duty the next day, Saturday, May 5, 1990, to look for alcohol left behind. He testified at a Fatality Inquiry held in the fall of 1990 that at that time he walked about 100 feet down the stream from a culvert near the Nest but did not see Clayton Miller's body. From that position, he would not be able to see the body. The current allegation was that he had additional information about the body and the fact it was not present on May 5, 1990.

On December 3, 2014, Cst. Drinovz was interviewed by SiRT. His evidence was credible, and convincing. It was consistent with previous statements. Based on the interview it was not possible to conclude that Cst. Drinovz had any information that would suggest any wrongdoing by any police officer related to the death of Clayton Miller.

Consequential/Related Issues:

2. Questioning of Cst. Drinovz cut off by Judge at the Inquiry:

It has been alleged that during the cross-examination of Cst. Drinovz at the Inquiry that counsel for the Miller family was prevented by the court from asking Cst. Drinovz important questions about whether he saw the body on May 5, 1990. This was seen as an example of the "cover-up" that was in place.

A tape from the Inquiry of the relevant cross examination was held by the Millers. It was reviewed by SiRT. There was no evidence of any interference by the judge in the questioning of Cst. Drinovz by counsel. In fact, the tape disclosed a comment by the judge that specifically allowed such questioning.

3. The investigation by the Nova Scotia Police Commission.

In a meeting with Dr. Bowes and myself, the Millers spoke about an investigation conducted by Ed MacNeil of the Nova Scotia Police Commission in late 1990. They contended that Mr. MacNeil had discovered facts suggesting NWP wrongdoing with respect to Clayton Miller.

SiRT was able to review the private notes Mr. MacNeil had made during his investigation, which the Millers had obtained from a family member. In addition, the Millers had conversations in 1990 and 1991 with Mr. MacNeil, which they recorded. Those conversations were reviewed by SiRT as well.

A review of the MacNeil notes, and recorded conversations, did not disclose any information to support the contention that Ed MacNeil had found evidence that suggested members of the NWP played any role in the death of Clayton Miller.

4. Was now Chief of the CBRPS Peter MacIsaac involved on the night of May 4, 1990?

The Millers, in their meeting with SiRT and Dr. Bowes, suggested that Peter MacIsaac, then a constable with the NWP and now the Chief of the Cape Breton Regional Police Service, was called into work that night and was thus involved in the matter.

It is the case that Peter MacIsaac was called out that evening. However, records show it was in relation to a complaint of a “kid” checking people’s newspaper tubes on Acadia Street. MacIsaac made a patrol in his own vehicle but the individual matching that description was not seen. That was the extent of the matter.

Fundamental Issues:

The following are three aspects to the long standing allegations that the police were responsible for the death of Clayton Miller. Particular attention was given to these aspects of the investigation.

5. Clayton Miller was killed by an outside human force:

There have been various allegations made under this heading:

a. Did Police Officers beat Clayton Miller at the Nest when the Police arrived to raid the party, as alleged by a 17-year-old female (Female 1)?

In 1990 Female 1 alleged that on the night of May 4, 1990 she went to the Nest on her own. She indicated she was with Clayton Miller and they hid together when the police arrived at the Nest. She stated that several NWP officers beat Clayton up, and put him in the back of one of the police officer’s private vehicles. She then recalled being somewhere with Clayton and a man with a trench coat and briefcase, and later in a building with a dirt floor and single overhead light. She then was at a home with friends and asked a friend to call the Millers, to let them know Clayton was at the police station.

This was investigated by the RCMP in 1991. They spoke to several friends of Female 1, who all confirmed that Female 1 was with them during all relevant parts of the evening. She did not go to the Nest, never saw Clayton Miller that night, and wanted the friend to call Clayton, as she liked him, not Clayton’s parents.

After the RCMP informed Female 1 again of this additional evidence, she recanted her previous story. The story from Female 1 was conclusively refuted over 24 years ago.

b. Did Cousin 1 and 2 beat Clayton Miller on the night of May 4, 1990?

Over the years various stories circulated that two cousins beat Clayton Miller on the night of May 4, 1990 at the Nest.

There are two aspects to this story. The first relates to statements made to Male 1 and his then girlfriend, later wife, Female 2, by Cousin 2. The second involves suggestions made that Cousin 1 burned clothes in the garage of Male 2 around the time of Clayton Miller's death.

Statements of Female 2 and Male 1 made over the years were reviewed. Those showed while Cousin 2 spoke of a beating involving a "kid", they were not able to say what day they heard the story, who the specific victim was, and they were not told it happened at the Nest but at the "Park". Therefore it is not possible to know when or where this incident occurred, or who the victim was.

In a related story, in 2002 and 2003 two other males, Male 2 and 3, were interviewed by the RCMP regarding allegations that, on separate occasions, they had been to the home of Male 4, who told them he burned the clothes of Cousin 1 who had admitted to the beating of Clayton Miller. The statements of these two males contained the same significant impossible fact, and were not reliable. In addition, Male 4, who was supposed to have burned the clothes, said the story was untrue.

In the end, the repeated medical opinions of the absence of injuries to Clayton Miller make this version of events impossible, as Clayton Miller was not beaten by anyone.

c. Does the forensic medical examination of Clayton Miller support an allegation he was killed by an outside human force?

Three physicians who examined Clayton Miller's body after it was taken to the New Waterford Consolidated Hospital on the afternoon of May 6, 1990, saw no bruising or other injury to Clayton.

Similarly, the opinions of two pathologists who exhumed Clayton's body in 1993 found no evidence of any external or internal injury. Dr. Bowes has reached the same conclusion based on his review of the file.

The consensus cause of death is hypothermia.

The opinions of Kathleen Dwyer's opinions do not challenge the opinions of the forensic pathologists.

Clayton Miller was not beaten to death, and did not die as the result of the application of force.

6. Clayton Miller was lodged at police cells in New Waterford at some point on Friday night, May 4, 1990.

Over the years comments by people and media reports have suggested that Clayton Miller was in NWP police cells on the night of May 4, 1990. However, none of the ten young persons arrested at the Nest on May 4, 1990, saw Clayton Miller at any time being dealt with by police, and none saw him at the NWP station.

The story that Clayton Miller was at the NWP cells on May 4, 1990, originated from a written statement given by just one girl (Girl 1) on November 10, 1990 to the Millers. She and her friend, both 15 at the time, had consumed a large amount of vodka. She says they briefly saw a black and white monitor at the station that showed someone sitting in a cell. The description of the person was very generic. From that one view, dramatic conclusions were made to say this unidentified person was Clayton Miller.

The evidence proved nothing other than Girl 1 saw one of the three young males who had been arrested and placed in cells.

Additionally, reports were received from people who have said they had other people tell them that Cst. Abraham made comments to those other people that he saw Clayton Miller at the NWP station on May 4. However, the people to whom these comments were supposed to be made deny they ever occurred. Cst. Abraham also denies the statements. This information is unsubstantiated compound hearsay, and provides no useful evidence.

All the evidence proves that Clayton Miller was never present at the NWP station May 4, 1990.

7. Clayton Miller had to have been killed by others and then moved to the position where he was found on May 6, 1990, because several people can conclusively say that on May 5, 1990 his body was not present where it was later found.

Over the years many have claimed that Clayton Miller had to be moved after he died because his body was not in the stream on May 5 as several people were there and did not see it.

The most discussed evidence in this regard is from two males, Gerald Coady and Baxter Thorne. Others also say they were near the Nest on May 5, 1990. This investigation has determined that none of those persons were in a good position to see Clayton Miller's body.

Both Thorne and Coady have said they went to the Nest and travelled along the stream to the place where Clayton's body was found on May 6 and his body was not there. They continue to maintain those positions in recent statements given to SiRT.

However, in both cases in their original statements to police they indicate that when they visited the area near the Nest they did not walk anywhere near the area where Clayton Miller's body

was found. Their subsequent statements did not explain their initial positions, and lack reliability. In particular, they both denied ever making the initial statements to police when it is obvious those statements were in fact made. In addition, the most recent statement by Thorne was inconsistent with both his and Coady's previous statements.

There is no evidence that any person was in position to see Clayton Miller's body on May 5, 1990.

What actually happened to Clayton Miller on May 4, 1990?

There is no evidence that the NWP had anything to do with Clayton Miller on the weekend of May 4 to 6, 1990, until his body was located by Dale MacKinnon.

SiRT recently took a statement from Dale MacKinnon. That together with other statements given by him to police and others, as well as all evidence available from those present that evening, leads to the following conclusions:

- i. Clayton Miller was highly intoxicated while at the party at the Nest. He was likely on the verge of passing out when the police arrived.
- ii. Clayton spent the majority of his time with his friend, Dale MacKinnon.
- iii. When the police arrived they both ran. Dale ran ahead of Clayton. They ran northerly, down a high bank, through alders, and across the stream. At that point Clayton stopped as he had lost his hat. He turned and ran a different direction than Dale, who kept running.
- iv. Clayton ran back to the stream, where he fell. He passed out, partly in the stream. The hat he sought was in the alders, only a few metres away from where he fell.
- v. He lay there, and passed away as a result of hypothermia. He was found by Dale MacKinnon on Sunday afternoon when MacKinnon returned looking for his friend.

Conclusions:

Clayton Miller was not beaten or killed by anyone. His death was a tragedy, and one which has affected his family deeply. While there is nothing this report can do to change that, what it can do is assure the public that as an independent body, we have determined that Clayton Miller's death was an accident. There are absolutely no grounds to consider any charges against any police officer.

**The Serious Incident Response Team
Director's Report**

**Investigation Regarding the Death
of Clayton Miller**

May 4, 1990

Opening Comments:

This case is unlike any other that the Serious Incident Response Team, SiRT, has dealt with since its inception. It deals with the many questions that have been raised regarding the death of Clayton Miller on the weekend of May 4 to 6, 1990, and in particular, whether a charge is warranted against any police officer in relation to his death. The circumstances of the incident begin with many youths attending an outdoor party at a place known as the “Nest” in New Waterford, Nova Scotia, on the evening of May 4, 1990, and end when Clayton’s father and mother, Gervase and Maureen Miller, go to an area near the Nest where Clayton’s body had been found by others, on the afternoon of May 6, 1990.

Given the unique nature of this investigation, this Director’s Summary will take a different form than previous Summaries. It will deal with a broad set of facts and commentary in relation to a matter that has been a part of the justice system in Nova Scotia for almost 25 years. It would perhaps be unrealistic to expect this report to bring complete closure to the matter after all that time. After all, this case is one, that beyond all else, involves deep personal loss suffered by the Miller family. Perhaps, however, this report can help bring clarity to those many questions that have circulated for so long.

The mandate of SiRT is broadly stated under s. 26A of the *Police Act*:

“There is hereby established a Serious Incident Response Team to provide oversight of policing by providing independent investigation of serious incidents involving police in the Province.”

Often the most relevant aspect of a SiRT investigation is to determine whether charges should be laid against a police officer. However, reports that stem from our investigations are also designed to inform the public on what the investigation has discovered about the alleged serious incident involving police. In that way, the public is able to more fully understand the background to a matter, providing important context to the specific decisions relating to charges.

This investigation was commenced in late October, 2014 as a result of information received from the RCMP that suggested a member of the Cape Breton Regional Police Service (CBRPS), Cst. Darren Drinovz, may have information regarding this matter that had not been disclosed. The reliability of the received information was unknown. It was determined that if the information was true it may mean that current police officers were parties to an ongoing and current conspiracy to obstruct justice. That possible current offence was the basis for commencing this investigation.

However, it was quickly determined that in order to adequately investigate that matter SiRT could not simply focus on the present. While, as will be discussed below, we determined an important step in the investigation would be to question Cst. Drinovz, it was critical that we also

be in a position to understand the entire file to ensure we were able to test Cst. Drinovz's evidence against what the facts the file might disclose. In simpler terms, we could not just take his word for it. In the end, in order to determine if there may be an ongoing conspiracy to cover up a crime from 25 years ago, we needed to determine whether there was a crime committed 25 years ago. While this presented SiRT with a daunting task, it was clearly in the public interest for this work to be undertaken.

Thus the essence of this investigation, as with any SiRT investigation, was twofold: the first was to try to reach conclusions about what really happened to Clayton Miller; the second was to explain why those conclusions have been reached. Once we reached conclusions about what happened, we could speak to the particular questions of whether any police officer was responsible or involved in the death of Clayton Miller, leading to the ongoing need to "cover up" the existence of that involvement. It is hoped that the contents of this report will be considered carefully and fairly, and the information be used to inform everyone about a matter that has been the subject of ongoing public dialogue for almost a quarter century.

It is important to keep in mind when reading this report that SiRT is an independent investigative agency, charged with investigating serious incidents involving police. We derive our mandate from the Nova Scotia *Police Act*. We have reached our conclusions based on the facts and information we refer to below. We must approach every investigation in the same manner: not trying to prove anything, but rather trying to find out what happened. Over our three years in existence, SiRT has dealt with many cases where police were found to have committed no wrongdoing, and in other cases we have charged police officers with offences, by percentage more than any similar unit in Canada. We look at files with one goal: determine the facts, and make the call.

This report contains a discussion of facts that the public may not have been aware of before. Some of these facts are new, but many have been available for years. This report will not discuss why those may not have been previously available. Rather, it will disclose those facts that are relevant to the report's conclusions.

This investigation has not been carried out in isolation. Dr. Matt Bowes, Chief Medical Examiner for the Province of Nova Scotia, had commenced a review of this case in September of 2014, at the request of the Minister of Justice, the Honourable Lena Metlege Diab. Information had come forward from a Kathleen Dwyer, which suggested that a review of photographs of Clayton Miller's body gave conclusive evidence of trauma that had not been discovered previously. It was subsequent to the announcement of Dr. Bowes' involvement that the information that has led to SiRT's involvement surfaced. Dr. Bowes assistance throughout this matter has been critically important.

Before embarking on a discussion of the facts, the reader will note that generally names of individuals involved will not be used. Exceptions to that are circumstances where using the

name is clearly in the public interest, or where the individual has been acting in a public capacity. There are also a few cases where individuals have consented to the use of their name. Additionally, police names are sometimes used as permitted under the Serious Incident Response Team Regulations made under the provisions of the *Police Act*.

Facts:

The information provided to SiRT by the RCMP suggested that Cst. Drinovz was able to conclusively say that on Saturday, May 5, 1990, when he visited the Nest, the body of Clayton Miller was not in the location where it was found on Sunday, May 6, 1990. The impact of this is that if true, Mr. Miller's body must have been placed in the Sunday location sometime between the time the officer visited the area on May 5 and when it was located early Sunday afternoon.

This information also implicitly suggested that other officers with the CBRPS, and previously with the New Waterford Police (NWP), may also have information in relation to the Clayton Miller matter, and, perhaps, been responsible for his death.

SiRT commenced this investigation by receiving approximately 17,000 pages of information, in electronic format, from the RCMP. This information was invaluable to provide context to the investigation, explain its background, and provide avenues for further investigation. This RCMP file contained an immense amount of information that stemmed from several previous investigations conducted over the last 25 years by that agency. Previous investigations and other activity in relation to this matter can be summarized as follows:

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| May 4, 1990 | New Waterford Police Department officers respond to complaints of a party in a wooded area known as 'The Nest' at Colliery Lands Park. 10 youths are taken to the police station for underage drinking. |
| May 5, 1990 | Miller Family files a missing persons report with the New Waterford Police Department. Their son has not returned home since the previous day. |
| May 6, 1990 | Mr. Miller's body is found face-down in a stream near 'The Nest'. RCMP are asked to assist with the investigation. |
| May 7, 1990 | First autopsy performed on Mr. Miller's body at the New Waterford Consolidated Hospital by Pathologist Dr. Ikejiani. |
| May 15 & 17, 1990 | RCMP officers meet with family to review investigation results. Investigators conclude the death is the result of tragic circumstance, and that foul play was not a factor. |
| Jul 5 & 10, 1990 | Miller Family files multiple complaints against the New Waterford Police Department and several officers, including allegations of harassment, intimidation, and that police were responsible for Mr. Miller's death. |
| Sep 13 & 14, Nov 2 | Fatality Inquiry is held, Judge Hughes Randall presiding. |

1990

- Nov 21, 1990 Fatality Inquiry report released – finds “no culpable negligence on part of anybody which resulted in the death of Clayton Miller.” Inquiry maintained that cause of death was accidental.
- Dec 3, 1990 Report conducted for the Nova Scotia Police Commission into Miller Family’s July 1990 complaints against the New Waterford Police Department and several officers is released; concludes that “allegations against police officers were unfounded and without merit.”
- Jan 15 & 16, 1991 At the request of the Mayor of New Waterford and the Chair of the Nova Scotia Police Commission, Deputy Solicitor General requests RCMP independently investigate all criminal allegations against the New Waterford Police Department, including the murder of Mr. Miller.
- May 14, 1991 RCMP report into 14 criminal allegations against the New Waterford Police department and its officers is released; report finds no evidence of foul play in the death of Mr. Miller and no evidence that members of the NWP contributed to his death.
- Jun 25, 1991 Attorney General orders second RCMP investigation into Mr. Miller’s death. An inspector from New Brunswick is selected to lead the investigation.
- Aug 2, 1991 Report released by investigator appointed by New Waterford Police Commission to investigate complaints against the force. Complaints range from failure to ensure Mr. Miller’s safety, possibility of contributing to Mr. Miller’s death, failure to conduct a proper forensic investigation at the scene and of the body, and interference with pathologist’s investigation. The report concludes there was no negligence or criminal culpability.
- Dec 17, 1991 Miller Family files two complaints with RCMP Public Complaints Commission alleging RCMP officers conspired with the New Waterford Police Department to hide facts related to Mr. Miller’s death.
- Jun 30, 1992 RCMP release report into their second investigation; report finds no evidence to support allegations.
- Jun 15, 1993 RCMP Public Complaints Commission Chairman’s Final Report is released; concludes no basis in fact that RCMP colluded with New Waterford Police Department and held that the complaints are unsubstantiated.
- Sep 2, 1993 Minister of Justice denies request for second public inquiry.
- Nov 3, 1993 Miller Family requests that Mr. Miller’s body be exhumed.
- Nov 19 & 23, 1993 Minister of Justice agrees to request for exhumation.
- Dec 23, 1993 Province announces that Dr. John Butt has been retained to perform a second autopsy and will share all information with the family’s pathologist, Dr. Michael Baden.

- Feb 9, 1994 Second autopsy report released by Dr. Butt concludes the cause of death to be accidental hypothermia. Dr. Butt states that photos of the body confirm prone position in which the body was found after death and the presence of minerals that are the same as the site where the body was found; no evidence of choking or strangulation, significant injury to the body, or blood of significant blunt trauma.
- May 17, 1994 Dr. Baden, the Miller Family's pathologist, releases his report. He concludes Mr. Miller's death was due to exposure to the cold and of consequent hypothermia which developed over a period of hours; no evidence of asphyxia. Dr. Baden concludes that the "possibility that Mr. Miller died elsewhere and was then brought to the stream cannot be ruled out"
- May 27, 1994 Minister of Justice advises that the matter is considered closed.
- Dec 15, 1998 Forensic Pathologist Dr. Louis Roh, at the request of a member of the Miller Family, issues a report. Dr. Roh concludes that Mr. Miller did not die from emphysema, nor hypothermia, that his blood-alcohol content was not high enough to cause Mr. Miller to lose control of his body/consciousness, and the body was not in the water over two days. He suggests "compression of the neck" was a more likely explanation of Mr. Miller's death.
- Feb 2, 1999 Minister of Justice reiterates that matter is considered closed and that there is no new evidence to support the conclusions reached by Dr. Roh.
- 2000 – 2004 Reports of new information related to the case are investigated by the RCMP, including an individual who came forward with allegations of new evidence that Mr. Miller was at the New Waterford police station on May 4, 1990.
- Aug 6, 2004 RCMP advise the Miller Family that they have reviewed the most recent information and have concluded no fact or substance to alter the original findings that Mr. Miller's death was accidental or that there was negligence or malfeasance. RCMP advise they are satisfied the investigation was through and complete, and that no further investigation is required.
- Sep 11, 2014 Chronicle Herald reports that a retired nurse is questioning the findings of the autopsy after reviewing reports and photos.
- Sep 19, 2014 Nurse Kate Dwyer sends the Minister of Justice a report she compiled about the autopsy results of Mr. Miller. Nurse Dwyer takes issue with a number of the findings.

Minister of Justice sends report to Dr. Matt Bowes, Chief Medical Examiner and asks him to review the report. Both Minister of Justice and Dr. Bowes are in touch with the Miller family.
- Oct 9, 2014 Dr. Bowes and other Medical Examiner's Office staff travel to New Waterford to look at the area Mr. Miller's body was found.

Oct 29, 2014 SiRT assumes investigation related to information regarding Cst. Drinovz
Jan 23, 2015 Dr. Bowes and Ron MacDonald meet with the Miller family.

None of the previous reviews or investigations uncovered any evidence to suggest there were any grounds to consider that any NWP member was responsible for the death of Clayton Miller. Nevertheless, as Director of SiRT I assumed this investigation with a view to conducting a thorough and complete review of the file, to determine independently what I believe occurred with respect to Clayton Miller. From that, I would be able to determine if any criminal charges were warranted in this matter.

In this matter SiRT has interviewed 10 civilian witnesses, visited the scene of the “Nest” on more than one occasion, met with the parents of Clayton Miller, and, importantly, reviewed a vast amount of information regarding the matter that has been created over the last 25 years. This included a transcript of evidence of the Fatality Inquiry called to consider the matter, heard in September and November, 1990, as well the information gathered in the several previous RCMP investigations noted above. SiRT also interviewed Cst. Drinovz, and reviewed original file information received from CBRPS.

In addition, SiRT carefully reviewed a great deal of material made available by Mr. and Mrs. Miller. This included tapes of evidence from the inquiry, books of material created by the Millers over a 10 years period, 39 tapes of interviews conducted primarily by Mr. Miller of many witnesses, a number of affidavits sworn by witnesses at the request of the Millers, private notes made by Ed MacNeil, formerly of the Nova Scotia Police Commission, and a number of photographs. The tapes of interviews have all been transcribed, and comprise 665 pages of information.

It must be noted that SiRT has not gone back and interviewed every witness disclosed by the review who might have something to say about this case. Most do not have any direct evidence in relation to this investigation. More importantly, in any criminal investigation it is imperative to have the best evidence. Thus we sought out that evidence. Most often that comes from statements and comments made close in time to the event. We have spoken to some people, but in most cases the original evidence was the most compelling, and was relied upon.

This was done for two reasons: firstly, as noted, it is likely a much better representation of what occurred. Memories are impacted by the passage of time, and by exposure to the comments and opinions of others. The latter is quite evident in this file.

The second reason is important: in any criminal matter, to prove an offence, one must meet certain evidentiary burdens. Past recorded evidence, if different from today’s evidence, is likely to significantly impact the useful reliability of more current evidence that differs. Thus where compelling evidence from the past exists, without a persuasive reason to distrust it, it not only can be relied upon, it should be relied upon, when one is attempting to prove if a criminal

offence occurred or is ongoing.

The Facts of May 4, 1990:

In order to give an overview of the matter and provide context to the discussion that follows, the basic facts of the matter will be reviewed. This is only an overview, against which a more thorough discussion of the “contested” aspects of the matter will be discussed.

On the evening of May 4, 1990, many youths of New Waterford planned to meet at the Nest, an area on the west side of New Waterford, in an area which is quite bare, and covered with old mine tailings. This was a fairly typical gathering, common to Nova Scotian youth, where many underage young persons gathered to consume alcohol. In this case, the gathering was quite large, with estimates of the number of attendees running in the 40 to 60 range. This was essentially a large outdoor party, held on a Friday night. The party focused around a fire set at the Nest, although it appears youth were positioned in various locations within a radius of as much as a few hundred feet. Attached as Appendix A is a photograph of the Nest area. The location of the fire is noted by the word “Fire”. Attached as Appendix B is a map of the larger area, which encompasses the Nest and surrounding streets.

By 9:30 p.m. the crowd had grown large, and the NWP received two telephone complaints about the party. Cst. Drinovz, who was off duty at the time and walking his dog nearby, spoke to some on duty officers who were driving near the area and alerted them to the party as well.

As a result, six members of the NWP planned a response to the complaints. They decided to conduct what might be considered a typical “raid” on the party. The plan was to arrest those drinking illegally, and to break up the gathering.

Normally there would not be six officers available for such a “raid”, but 10:00 p.m. was shift change, which permitted the use of officers coming on duty and those about to go off duty. The police met at the NWP office on Plummer Avenue. They left for the Nest sometime after 9:45 p.m. and before 10:00 p.m. One vehicle, a police car, driven by Cst. Kevin Gillis, drove to Wanda’s Lane, a dead end street to the south of the Nest, and dropped off Cst. Michael Abraham and Cst. Michael Checchetto. Those officers then walked toward the Nest. Their path of travel is shown on appendix A.

The other vehicle was the police van, driven by Cst. Neil MacKenzie. He drove Cst. Paul Muise and Cst. Danny MacGillivray to the end of Park St., to the south east of the Nest, and dropped them off. Csts. Muise and MacGillivray then also walked toward the Nest, and as they did they met up with Csts. Abraham and Checchetto. Their path of travel is also shown on appendix A.

After dropping the officers off, Cst. Gillis drove his vehicle from Wanda St. around to the Colliery Lands Park, to the North East of the Nest. Cst. MacKenzie drove the police van to the

same place. The two vehicles drove in together, with only their headlights on. They stopped to the north of the Nest, across a culvert, shown in the picture, at a point marked PV's on Appendix A. They then walked toward the fire from there.

Once the youth realized the police had arrived, they began to scatter in different directions. At this point the police had contact with several, and arrested 5 people, 3 males and two females. They were all placed in the police van which then left the area. The van dropped the 5 youths off at the NWP station. Prior to leaving, the fire was put out and what alcohol was found was collected. The police did not return to this point that evening. The police car left earlier than the police van after receiving a call on the radio from Cst. Abraham, who had chased after some youths who ran off to the west of the Nest, into the woods. It drove toward Wanda Lane and Victoria St., where Cst. Checchetto got out and walked along the tracks toward Emerald St. Cst. Gillis then drove the car to the end of Emerald St. Cst. Gillis got out and several youths were walking toward him. Csts. Abraham and Checchetto also came toward Cst. Gillis. Five more youths, two males and three females, were arrested at this point, and eventually placed in the police van which had come to this scene after dropping off the other youths. They were also transported back to the station. These youths would have arrived at the station approximately 20 – 30 minutes after the first five. This marked the end of the police involvement at the Nest that evening.

In total, 10 youths were brought back to the NWP station. The NWP log book identified them all. Three males were charged under section 87(1) of the *Liquor Control Act*, and held for a while in cells. Two females were also charged with the same offence, and then released to their parents. The other two males and three females were not charged with any offences and were released after being warned to stay away from the Nest.

Clayton Miller did not come home Friday night. This had happened before, but he would usually call to say where he was. As Saturday wore on without his return, the Millers contacted the police to indicate Clayton was missing. They also called around to friends to try to locate Clayton, without success.

Dale MacKinnon went to the Nest with Clayton on the Friday night. He heard on Saturday that Clayton had not returned home but figured he may have gone into Sydney to see a girlfriend. Dale was also recovering from his alcohol consumption on Saturday. On Sunday, May 6, when Clayton had still not returned, Dale went back to the Nest with a friend to look for Clayton. They found him lying in a stream to the east of the Nest, deceased. The boys ran to get help, and Police and Clayton Miller's parents were called. Clayton's parents arrived at the scene not long after the police. Mr. Miller went to his son and clutched him to his chest. The body was moved before any forensic work could be done. Police explain this error in practice as done for compassionate reasons.

Forensic examination of the scene, after the body had been removed, discovered Clayton's hat

within a few metres from his body. It was on the south side of the stream, stuck in some alders.

What occurred during the 40 or so hours between the party and Clayton Miller's body being found has been the subject of a great many theories over the last 25 years. This report will now review those that are the most significant, and come to a conclusion of whether there are any grounds to consider any charges against any police officer.

Initially SiRT's involvement in the matter was not made public in order to protect certain investigative avenues. On January 15, 2015, after contact was made with Maureen Miller, SiRT publically announced its involvement in the matter. Subsequently, a meeting was held with Mr. and Mrs. Miller, in Sydney, to review their views and receive any information they may have with respect to the death of their son. Dr. Bowes was present at the meeting as well. Importantly, during the meeting with the Millers, they were asked what they believed happened to their son on the weekend of May 4 to 6, 1990. While each parent had a slightly different answer for this question, in essence their theory of what occurred is as follows:

That during the evening of May 4, at the Nest, Clayton Miller was first beaten by two males, who were cousins, (Cousin 1 and Cousin 2), and left lying on the ground with significant injuries. They then believe he was found by police during the raid, and likely beaten some more. They believe that Clayton was then taken to the police cells and that later police realized that Clayton was not doing well, and may actually have taken him to hospital. Staff at the hospital indicated they were unable to do anything for Clayton, at which point police took him from the hospital and held him. The police eventually killed him and early in the morning of Sunday, May 6, brought him back to the area of the Nest and left his body near where he had been found on the night of May 4, in the stream. They believe that the reason for Clayton's eventual murder was to cover up the earlier actions of the police.

In the discussion below, this report will address many different theories and issues that have been raised over the years, some of which will deal directly with the allegations made by the Millers.

Typically in any report I release as Director of SiRT I do not deal with matters that do not, after evaluation, have any impact on my final conclusions. However, this case is different. I have determined that it is important to specifically address some theories that have been the subject of public discussion to ensure the public is able to fully evaluate all the facts relevant to those theories, and, effectively, relevant to the ultimate findings of this report.

Primary Issue:

- 1. Did an officer with the Cape Breton Regional Police have information regarding the death of Clayton Miller in May of 1990 that he or she was currently withholding?**

This was the issue that resulted in SiRT becoming involved in this matter. The reality of the

matter was that in order to effectively examine whether it was true one had to interview the person suspected of withholding that information. Prior to doing that, it was critical that SiRT investigators thoroughly understand the file. Thus time was spent reviewing the RCMP material and Fatality Inquiry transcript prior to conducting an interview.

Certain safeguards were employed, which included not disclosing the investigation to the particular officer until such time as the interview would be conducted.

As stated, the officer in question was Cst. Darren Drinovz. At the Inquiry, he had testified that on May 5, 1990, he returned to the Nest in the evening to look for alcohol that may have been left behind by the youths from the night before. He testified that he walked about 100 feet up the stream but did not see Clayton Miller's body. 100 feet would not have put him in a position to see the location where the body was found on Sunday, May 6, farther down the stream. The current allegation was that he had additional information about the body and the fact it was not present on May 5, 1990.

On December 3, 2014, Cst. Drinovz was interviewed at the Cape Breton Regional Police offices. I was present with the SiRT primary investigator, who conducted the bulk of the interview. Given the public interest in this matter, I determined that my presence at certain interviews in this matter was important.

Cst. Drinovz's evidence was consistent with his previous written reports and inquiry testimony. In particular, he confirmed that on May 5, 1990, he went back to the Nest area, on his own, around supper time, and looked for any liquor that may have been left behind. He went down to the culvert, and then walked along the edge of the stream. He went to the point where the alders hang over the stream. (This would be at the point where the stream makes its first turn to the right. That is approximately 100 feet from the culvert.) He said at this point he had not seen any liquor. To continue, he would have to walk up the stream in the water, which would get his feet wet, so he stopped and went back to his car. He later learned where the body was, around the turn in the stream and down some distance. He did not walk down to where the body was. At that time he was only looking for left over liquor, and stopped given that to walk farther would mean he would get his feet wet. As he explained, in understandable terms, he does not like wet feet.

During the interview, Cst. Drinovz was asked direct and probing questions, in particular about whether he had any information that would in any way implicate anyone in the death of Clayton Miller. He was adamant in stating that there would be no way he would be able to live with such knowledge for 24 years and not come forward. Simply put, he had no such information in spite of the rumours that said he did.

Cst. Drinovz gave his statement in a very straightforward and credible manner. His statement was consistent with evidence given in the past. What he had to say was logical, and it made sense when he said that he did not continue down the stream past the spot where he was able to

walk along the bank without being significantly impeded by the alders. As noted below, in one of his statements Gerald Coady also testified that at a similar point it was not possible to continue to walk along the stream bank. This is also very evident from viewing the photographs of the scene.

Based on this interview it was not possible to conclude that Cst. Drinovz had any information that would suggest any wrongdoing by any police officer related to the death of Clayton Miller.

However, our investigation did not stop there. As discussed above, in order to determine whether what Cst. Drinovz had to say made sense in the context of the entire matter, SiRT continued with a review of the complete file to allow us to reach a conclusion whether there was any evidence to suggest wrongdoing by police.

Consequential/Related Issues

2. Questioning of Cst. Drinovz cut off by Judge at the Inquiry:

For many years it has been publically alleged that during the cross-examination of Cst. Drinovz at the Fatality Inquiry that counsel for the Miller family was not allowed to ask Cst. Drinovz additional questions about the fact he did not see the body on May 5, 1990. This was seen as an example of the “cover-up” that was in place, which in this sense goes so far as to allege involvement of persons beyond just the NWP, perhaps including other members of the justice system.

Cst. Drinovz had initially finished his testimony, but was recalled by NWP counsel when it was determined that he had misunderstood a question in relation to his return to the Nest on May 5, 1990. On his recall, counsel asked him to give specific evidence about his return trip to the Nest when he searched for liquor on his own. Cst. Drinovz gave further that evidence on the point. It was confirmed by counsel at the Inquiry that the constable had included the same information previously in a report he prepared prior to the Inquiry and which had been disclosed to all counsel.

It would appear the cross-examination that was supposed to have been “cut off” followed this additional questioning by NWP counsel, as this was the critical questioning of Cst. Drinovz on this point. This questioning was carried out by counsel for the Miller family, and reviewed the fact that Cst. Drinovz had returned to the site of the Nest on the evening of May 5, 1990. In the official transcript, it reads as follows:

Q. Arising from that Your Honour, I'd like to know what, if any, observation he made concerning the body of Clayton Miller?

A. What observation I made concerning the body?

Q. When you went back to the culvert area at 6:40 in the afternoon, did you make any observation of Clayton Miller's body in the brook?

A. No I did not.

Q. But you explored the area looking for beer?

A. Part of the area yes.

Q. The area around the culvert?

A. Yes.

Q. And you came in from which direction?

A. I came from. ...from up at the Park Street area. From over this way.

Q. OK, so you walked along that area?

A. No I drove.

Q. You drove?

A. The police car.

Q. The police car. And did you park up by the culvert?

A. Ah yes I did.

Q. You got out of the car?

A. Yes I did.

Q. And looked around?

A. Yes.

Q. Did you go down to the brook?

A. Yes I did.

Q. How far up the brook did you walk?

A. I walked in an easterly direction approximately a hundred feet.

Q. Could you show me where with the pointer?

A. I parked here and I got out and I went right down here, and I started at the culvert and I came back here approximately a hundred feet.

Q. And you didn't see the body of Clayton Miller?

A. No I did not.

Q. No further questions.

As can be seen, counsel for the Miller family asked Cst. Drinovz many questions, and he acknowledged that he searched the stream for beer left behind by the youth the night before. He confirmed that he went up the stream about 100 feet, and that when doing so he did not see Clayton Miller's body. At that point the official transcript shows the questioning ended.

The allegation of interference from the judge would appear to be alleged to occur after his last response, thus preventing counsel from asking any further questions. Some versions of this story suggest the NWP police chief approached the bench and spoke to the Judge, prior to the Judge making the purported ruling. It has been suggested this was an effort by the police chief to prevent the court from hearing the truth about the fact Clayton Miller's body was not present on Saturday, May 5.

There is nothing in the official transcript to suggest the judge made any such ruling, and no purported exchange between the judge and the chief is referred to or captured. The allegation of interference would mean that the transcript not only contained an error, but given the significance of the omission, could only mean that the omission was deliberate. That is a serious allegation.

SiRT sought copies of the tapes of the Inquiry prior to the meeting with the Millers but they could not be located. However, the Millers had obtained copies of the tapes shortly after the

inquiry and still had them. They were provided to SiRT. While not complete, they did contain this important segment of the inquiry.

Listening to the tapes demonstrates the following:

- i. There is no intervention by the judge at any time during this cross examination. Instead, the questioning ends with a short pause by counsel, and she states: “No further questions.” This appears to be a typical end of questioning. The judge makes no comments to counsel.
- ii. Similarly, there is no evidence from the tape of any discussion between the judge and the NWP chief at this time.
- iii. Importantly, there is an omission in the transcript, but not one that supports the theories that suggest counsel was prevented from asking questions. In fact, it is to the contrary.

At the outset of this cross-examination, counsel begins by directing a question to the Judge. The transcript fails to record an answer from him. The transcript thus reads:

Q. Arising from that Your Honour, I'd like to know what, if any, observation he made concerning the body of Clayton Miller?
A. What observation I made concerning the body?

If one only reads the transcript, it gives the impression that the judge did not answer and the witness picked up on the question and the matter was permitted to proceed. However, in fact the judge did answer the initial question from counsel that was directed to him.

He said: “Fine”

Thus the transcript should read:

Q. Arising from that Your Honour, I'd like to know what, if any, observation he made concerning the body of Clayton Miller?
The Court: Fine.
A. What observation I made concerning the body?

When reviewed with this information, the evidence shows that not only was counsel not blocked from asking Cst. Drinovz questions about Clayton Miller's body, but it would appear she was specifically permitted to do so.

It is unfortunate these theories that have circulated for so long regarding this matter. When it is reported that counsel was prevented from asking questions that go to the very heart of the matter,

it is likely to create an impression in those hearing the statements that indeed there may be something wrong regarding the death of Clayton Miller. However, the facts do not support the theory. It is unfortunate this information was not publically available earlier.

3. The investigation by the Nova Scotia Police Commission.

In their meeting with Dr. Bowes and myself, the Millers made reference to the investigation conducted by Ed MacNeil of the Nova Scotia Police Commission in late 1990. This was in response to complaints made by the Millers against the NWP in July, 1990 related to the death of their son and other allegations against the force. It was the Millers' suggestion, consistent with comments found in other sources, that Mr. MacNeil had discovered facts suggesting NWP wrongdoing with respect to their dealings with Clayton Miller.

In particular, they referred to comments made by Mr. MacNeil in a telephone conversation that he was coming down with the RCMP to take over the NWP. It was also suggested that he knew that Clayton Miller had been in an NWP cell on May 4, 1990. Additionally, Mr. MacNeil was supposed to have made comments to the effect his findings were being covered up as he was being taken off the investigation. They also referred to private notes he had made, which they were in possession of, and they felt were important evidence in this regard.

SiRT was able to review the private notes Mr. MacNeil had made as they were contained in the material forwarded to SiRT by the Millers. These notes apparently were kept by Mr. MacNeil, and after his death were made available to the Millers by a family member. In the interview the Millers say proof of the comment that the NWP was going to be taken over was contained within these notes. Upon review, there was nothing in these notes to support any of the suggestions made by the Millers.

In addition to these notes, the Millers had conversations in 1990 and 1991 with Mr. MacNeil, which they recorded. Those conversations were reviewed by SiRT as well.

A review of the tapes demonstrates no evidence to support a finding that Ed MacNeil believed his work was being covered up, or that the RCMP were coming in to take over the NWP. The tapes do contain some statements made by Mr. MacNeil that are now repeated by the Millers. However, when considered in context they do not support the interpretation placed on them by the Millers.

For example, the Millers suggest that Mr. MacNeil was prevented from continuing his investigation in early 1991 by the NWP because of the information he was uncovering. To the contrary, his discontinuance was due to operational practice. The Miller's complaints to government included the suggestion that the NWP were responsible for Clayton's death. As a result the RCMP commenced a criminal investigation. In such a case, the Police Commission's investigation was put on hold. This was not out of the ordinary. The RCMP investigation covered not only allegations related to Clayton's death, but many others as well. In the end a criminal charge was laid against an officer for an unrelated matter.

Indeed, in a conversation with Mr. Miller, Mr. Miller tells Ed MacNeil that he is going to make a complaint about him. Clearly they were not satisfied with his work, and it therefore seems unlikely that he ever gave them any information in support of their theory that the NWP killed their son.

Having reviewed the tapes of conversations the Millers had with Mr. MacNeil, and his private notes, there is nothing to suggest that he made any findings or discoveries that suggested the NWP played any role in the death of Clayton Miller.

4. Was now Chief of the CBRPS Peter MacIsaac involved on the night of May 4, 1990?

The Millers, in their meeting with SiRT and Dr. Bowes, suggest that Peter MacIsaac, then a constable with the NWP and now the Chief of the Cape Breton Regional Police Service, was called into work that night and was thus involved in the matter.

Many youth were interviewed about what occurred the night of May 4, 1990, both at the time or later by the RCMP. All of the officers involved who later testified at the Inquiry about the evening were identified by witnesses. No one, not the youths nor any police officer, ever mentioned Peter MacIsaac as having anything to do with the matter.

It is the case that Peter MacIsaac was called out that evening. However, records show it was in relation to a complaint of a “kid” checking people’s newspaper tubes on Acadia Street. MacIsaac made a patrol in his own vehicle but the individual matching that description was not seen. That was the extent of the matter.

This is an example, unfortunately, how an innocuous piece of information, without support from other known facts, has been given more serious significance.

Fundamental Issues:

There are three fundamental aspects to the long standing allegations that the police were responsible for the death of Clayton Miller:

1. Clayton Miller was killed by an outside human force.
2. Clayton Miller was at the NWP jail cells on Friday night, before being removed by police.
3. Clayton Miller had to have been killed by others and then moved to the position where he was found on May 6, 1990, because several people can conclusively say that on May 5, 1990, his body was not where it was found on May 6, 1990.

The SiRT investigation gave particular attention to these aspects of the investigation. Each is reviewed below.

1. Clayton Miller was killed by an outside human force:

There have been various allegations made under this heading, all of which have been examined carefully and completely. I start with a review of what has been perhaps the longest standing of all the allegations:

a. Did Police Officers beat Clayton Miller at the Nest when the Police arrived to raid the party, as alleged by a 17-year-old female?

This allegation is an example of one of the many theories that have existed over the course of the many years, which has not benefitted from a thorough public discussion of the facts. Indeed, the 17-year-old female's (Female 1) story has been repeated by various media, including very recently. The critical facts found below were not contained in that most recent media report.

Female 1's version of the facts was that on the night of May 4, 1990 she went to the Nest on her own. She indicated she was standing with Clayton Miller and that they had started to walk out when the police arrived at the Nest. She said the two of them hid in the bushes until things calmed down, at which point they started to leave. At that point she indicated that Cst. Paul Muise of the NWP grabbed Clayton by the arm, and pushed him to the ground. She stated that that Cst. Muise and Cst. Mike Checchetto began to kick him while he was on the ground, and that Cst. Wayne Crowe began to hit Clayton in the face. She said the next thing she remembered is being by Cst. Crowe's private car that had Clayton in the back. She tried to get him out but was unable to. Her next memory was waking up somewhere and there were a few people standing around her. A man in a trench coat walked in, and he had a briefcase. After that, her next memory was being with Clayton in a building that had dirt for a floor, a window, and a single light overhead. After that, she recalled being at a friend's house. She says she asked the friend to call the Millers, to let them know Clayton was at the police station.

In 1991 two RCMP officers from "H" Division, (Nova Scotia) were tasked with investigating many aspects of the Clayton Miller case. These officers were stationed on the mainland, and were not connected to the NWP. While they were police officers, at the time they represented the most independent form of police investigation available for a matter such as this. That is: bringing in an independent police agency to conduct the investigation. A review of the investigation demonstrates it to have been thorough and fair.

In this case the RCMP investigators spoke to several friends of Female 1. They all confirmed the following facts:

- a) Female 1 was with them during all relevant parts of the evening.
- b) Female 1 did not go to the Nest. She, along with four other friends, sat in a car about 1200 ft. away, watching as the police were at the Nest. None were able to say whether Clayton Miller was there or not.

- c) They left, and did not have any contact with Clayton or any police.
- d) Later in the evening, the friends were at the home referred to by Female 1. However, she did not ask her friend to call Clayton Miller's parents. Rather, she asked her to call Clayton. She liked Clayton, and wanted to speak with him.

Two of the witnesses interviewed by the RCMP in 1991, Lillian Aucoin-MacLellan and Shelly MacPherson, contacted SiRT on January 28, 2015. They have requested that SiRT use their names in this report. Both were aware of statements on the internet and on social media which reiterated the story from Female 1. They called to ensure that SiRT knew of their statements given to the RCMP. They both confirmed the contents of those statements were true.

Ms. MacPherson indicates in her statement that she was babysitting at a home near the Nest when Female 1 and others arrived on the night of the raid around 11:45 p.m. Female 1 was in a good mood, kept talking about how much she liked Clayton, and wanted Shelly to call Clayton for her. She never asked her to call Clayton's parents, nor did she mention seeing Clayton that night. In her 1991 statement Lillian Aucoin-MacLellan confirmed the same facts, and indicated that Female 1 told her that she had not seen Clayton Miller that evening. Both women are upset about the reporting of those facts and wanted to ensure their accounts regarding this story were known.

Taken together, the several witnesses interviewed by the RCMP in 1991 contradicted every relevant aspect of Female 1's story. The RCMP again met with Female 1, in the presence of her father, for another interview. She first reiterated her original version to them. The investigators then shared the evidence gathered from the other witnesses. At that point, Female 1 recanted her story, and acknowledged she had not seen Clayton Miller at the Nest. It should also be noted that in late 1990, Ed MacNeil made arrangements for Female 1 to take a polygraph examination. She failed that test.

Female 1 was charged with public mischief in relation to her story in 1991. The charge was later dismissed as the Crown did not proceed. The Crown Attorney in the matter was quoted in the press in September of 1991 as saying that the charge required two parts: proof of a lie to police and also that the lie caused the police to enter into an investigation. He is quoted as saying although the investigation clearly showed Female 1's statement could not be true, the investigation was not brought about solely by her statements. As a result, the charge did not proceed. The Crown did not comment on that part of the relevant Criminal Code section which indicates the offence is also committed where a false statement causes police to "continue an investigation."

It is unfortunate that reporting of these allegations has never benefitted from a complete airing of the evidence from all the witnesses, and does not include reference to the press report noted above. In a situation like this, when stories such as this circulate, no one benefits. Stories such

as this can give members of the public the impression that “something happened”. That can give fertile ground for the growing of other scenarios based greatly on rumour or supposition. In those situations, critical analysis of the facts often suffers.

The bottom line is that the story from Female 1 was conclusively refuted over 24 years ago. What she said happened that night simply did not happen.

b. Did Cousin 1 and 2 beat Clayton Miller on the night of May 4, 1990?

Over the years various stories circulated that two cousins beat Clayton Miller on the night of May 4, 1990. Although not relevant to whether there was any criminal activity on the part of a police officer, as these facts form an integral part of the allegations made against the police they will be reviewed.

Given the findings of Dr. Bowes, fully discussed in the next section, it is quite reasonable to conclude that there is no possibility that Clayton Miller was beaten. This makes a discussion of this version of events perhaps unnecessary. However, as this story has circulated for many years, and forms part of the Miller’s overall theory on how their son died, I felt it appropriate to review the facts associated with the matter to some extent. . That review is also instructive as it gives general background on the nature and quality of the “evidence” that has circulated regarding Clayton Miller’s death.

There are two aspects to this story. The first relates to statements made to Male 1 and Female 2 by Cousin 2. The second involves suggestions made that Cousin 1 burned clothes in the garage of Male 2 around the time of Clayton Miller’s death.

A Chronicle Herald story from September 29, 2014, suggests that Cousin 2 came to the home of Female 2 and Male 1 on the night of May 4, 1990, and talked about how he and Cousin 1 beat up a kid at the Nest that night. The article also says the beating took place at Colliery Lands Park. It then discusses how other family members called police about the information after Clayton Miller’s body was found.

One aspect of the matter can be verified: on May 8, 1990, the NWP received an anonymous call from a female caller that Cousin 1 and 2 were in a fight at the Nest on May 4, 1990.

As a result of that tip, the police picked up both cousins, and took them to the NWP station to be interviewed. The interviews were conducted by two members of the Reserve Mines Detachment of the RCMP. Both cousins cooperated, and the RCMP were convinced both had alibis for the night of May 4, 1990, and had not been involved in beating Clayton Miller.

Nevertheless, the story continued. In October, 1995, Female 2 gave a statement to an investigator working for the Millers. It was taken over the phone, while Female 2 was in the presence of Mrs. Miller.

Female 2 describes how Cousin 2 came to her and Male 1's home, intoxicated and upset. He described how he and Cousin 1 had "put a beating" on a kid.

However, Cousin 1 did not name the kid, and did not say it occurred at the Nest. Rather he said it occurred "up near the Park". The Park refers to the Colliery Lands Park, and includes a broad area of land much larger than the Nest. Officers at the Inquiry referred to parts of the Park where there were town maintenance sheds, and other developed recreational areas. She said her and her husband just "figured that" it was at the Nest.

Nor was Female 2 able to say what night of the week it was. In her statement she says:

"It was a weekend. It was a weekend, but, um, it might have been a Saturday night. I'm not even sure."

Indeed, she was unable to say how long ago the conversation had taken place.

The physical actions were described as the kicking of the "kid" over and over in the face, primarily by Cousin 1.

The next day Cousin 2 told her he was kidding and that the beating never happened.

Male 1, then Female 2's boyfriend, and later her husband, gave a statement to the RCMP about the matter. In that statement he gives little further detail. Cousin 2 but did not say where or how the fight occurred. He was unsure if this occurred around the time of the police raid on the Nest.

Based on these statements, if this fight ever occurred involving Cousin 1 and 2, it is not possible to know when or where it occurred, or who the victim was.

In a related story, in 2002 and 2003 two other males, Male 2 and 3, were interviewed by the RCMP regarding allegations that, on separate occasions, they had been to the home of Male 4, who told them he burned the clothes of Cousin 1 who apparently admitted to the beating of Clayton Miller on May 4, 1990. The clothes were supposed to be covered in blood, right down to the socks and underwear, according to one of the versions. Both Male 2 and 3 say Cousin 1 was accompanied by another male during this, but they state it was Male 1, then the husband of Female 2, the man above who Cousin 2 talked to. Both men, perhaps surprisingly, indicated they used the same method to obtain the information from Male 4: by asking questions and having him say yes or no to those questions until they guessed who did what.

Male 4 was interviewed by the RCMP, and denied completely that this ever occurred. Indeed, Male 4 recently contacted SiRT on his own. He expressed frustration with the fact that the story about him burning clothes still circulates. He confirmed that did not occur, and that what he told the RCMP in 2003 was true. The first time Male 4 ever heard of a story regarding burning clothes was in fact when Mr. Miller approached him, prior to 2002, asking if he burnt the clothes

of different individual, which also did not happen.

Male 4 noted that facts surrounding the Miller matter had been posted in the community, and felt Male 2 and 3 may have gained information from those facts. He also says he would have discussed the case with those men on occasion over the years, and wondered if they may simply have put together different memories and other information to come up with their versions.

These statements are unreliable. They suggest Male 1 was involved, which is clearly incorrect, and both contain the same unusual “question until he said yes” method. In any event the statements are hearsay where the main witness denies that any such thing was ever said, giving them no value.

Both cousins were interviewed by the RCMP in 2003, and denied the allegations. Cousin 1 confirmed his alibi on the night in question. Of interest were his comments that during several discussions with Mr. Miller in the early 1990s, at one point Mr. Miller attempted to convince him to admit that he had been fighting with Clayton that night and that the police then picked him up. He indicated that Mr. Miller came to his home frequently and eventually became upset with Cousin 1 as he would not admit to doing something he did not do.

In the end, the most important facts are the repeated medical opinions of the absence of injuries to Clayton Miller. Simply put, those make this version of events **impossible**. A discussion of Dr. Bowes report and the multitude of medical opinions occurs next in this report.

If Clayton was beaten as suggested, not only would there be injuries, those injuries would be significant. These stories suggests significant bloodletting, and repeated kicks to a prone person’s face, along with being knocked unconscious. Clayton Miller’s body had no cuts, bruises, broken bones, or signs of concussion. Given the scientific evidence, **if** someone was beaten by the Cousins on the weekend of May 4 to 6, 1990, (and there is no reliable evidence to suggest even that) it clearly was not Clayton Miller.

In the end, this story, at its outset, involved a drunken individual claiming a kid was beaten somewhere in New Waterford perhaps near the time that Clayton Miller died. That story somehow evolved into the more complex story that names the victim, concludes when and where it happened, and discusses an elaborate attempt to cover up evidence. That evolution occurred without any substantive or firsthand evidence.

In addition to the above, in our meeting with the Millers, Dr. Bowes and I were given a recent email, which is purportedly from a female who knew Cousin 1 (Female 3). This contains previously undisclosed information, presumably held by Female 3 for 24 years. In it she tells a very long story about Cousin 1, and that on Monday, May 7, 1990, he admitted to her that he beat Clayton Miller badly that weekend, repeatedly punching him in the face. It was so bad his hands were all marked up.

It is not possible for this statement to be an accurate recollection. The police never noted any markings on Cousin 1's hands when they interviewed him the next day, and, again, the medical evidence demonstrates Clayton Miller was not beaten in this way.

It is hard to determine where these various versions of events comes from. A review of this file and other available open source information demonstrates there is a group of people who are strongly of the view that Clayton Miller was beaten and murdered. Social science tells us that in the right circumstances people's memories can be impacted by information received by others, causing them to have honest beliefs about false facts. The evidence, for example, of accused persons falsely admitting to crimes they clearly did not commit is commonplace.¹ It may be a similar phenomenon was operating here with some of those who believe that Clayton Miller was murdered.

c. Does the forensic medical examination of Clayton Miller support an allegation he was killed by an outside human force?

This report has discussed the forensic evidence in brief terms above. I will now review in some detail the many medical and forensic examinations of Clayton Miller's body, in particular with respect to their findings in relation to the existence of any injuries that might be consistent with the application of outside force. The discussion of actual cause of death is, of course, left to Dr. Bowes' expertise.

After Clayton Miller's body was taken to the New Waterford Consolidated Hospital on the afternoon of May 6, 1990, the first physician to see Clayton was Dr. John Stevens. He sent a letter to the NWP after his examination of the body. This report described an x-ray taken of Clayton's skull, which was noted to be normal. Dr. Stevens testified at the Inquiry. He indicated that when he examined the body there were no fractures and no gross bruising evident on the body. Indeed, he saw no bruises at all. He did note a couple of linear marks below the angle of the jaw. He didn't wish to call them scratches as they were very superficial. He had the lungs and chest x-rayed, in addition to the skull. Those showed no fractures.

Dr. Roach, the Medical Examiner, examined the body at the hospital as well, on the afternoon of May 6, 1990. He noted no serious injuries, broken bones, major abrasions or major lacerations. He did note a few very minor pin point abrasions around the neck and a small abrasion on the left tibia (lower leg). He stated there were no signs of any bruising or injuries to Clayton.

Dr. Roach ordered that an autopsy be performed. This was conducted by Dr. Ikejiani. Importantly, he too found no external injuries, and no bruising at all. He said there was no

¹ See for example: [Constructing Rich False Memories of Committing Crime](#), Julia Shaw and Stehen Porter, *Psychological Science*, 1 – 11, 2015, where in a highly suggestive interview people can generate in their own minds rich false memories of committing crime, which contain the same kind of complex descriptive and multisensory components as true memory accounts.

external evidence of any sort of struggle. The autopsy also found no evidence of internal injury. In particular, he found no evidence of pressure being put on the neck, as there was no external bruise and no injury to the carotid artery in the interior of the neck. As for the small pin prick type marks on the neck, he placed no significance on those other than perhaps being caused when Clayton Miller fell in the water.

It should be noted that in their meeting with Dr. Bowes and myself, the Millers suggested that Dr. Ikejiani had made comments to them in relation to police brutality in his home country that they believe he made to suggest that Clayton's death was caused by the police.

The Millers, more than once, met with Dr. Ikejiani and recorded the conversations. We have been able to review those interviews from tapes of many interviews given to SiRT for examination. There is no question from those conversations that Dr. Ikejiani did not believe that Clayton Miller died from any force from the police. In one conversation he tells Mr. Miller that he saw how in the paper Mr. Miller was accusing the police of foul play. Dr. Ikejiani said that implied that he was lying too, and that hurt him. He would not lie about a dead person. He also said in the same conversation that if the body was exhumed it would find nothing.

It is clear that Dr. Ikejiani did not believe Clayton Miller died from any foul play.

At the inquiry, another doctor, Dr. Glasgow, was called to give evidence about cause of death. During his evidence he was cross examined about whether the pictures taken of Clayton Miller's dead body showed any signs of injury. In particular, he said the photos of the hands and nose areas did not show any signs of injury.

In December of 1993 the body was exhumed and examined by two forensic pathologists, Dr. John Butt, hired to act on behalf of the Province of Nova Scotia, and Dr. Michael Baden, a pathologist retained by the Miller family.

The details of their findings regarding cause of death are outlined by Dr. Bowes. Both doctors agree that Clayton Miller died from hypothermia, caused by exposure to cold over a period of hours.

The autopsy found no evidence of any blunt injury of any kind, and no evidence of any skull fracture or any fractures of the ribs or long bones. In addition, there was no evidence of any injury to the neck. While the photographs seemed to show a small bruise on the right cheek, with what may have been a bruise to the lower left leg, there was no evidence of trauma that could have led to Clayton Miller's death.

The Miller's own pathologist, Dr. Baden, agreed with these findings. He did suggest a possibility that the body may have been moved after death, although did not offer any conclusive opinion in that regard.

In September of 2014, Nova Scotia's Minister of Justice received a letter from Kathleen Dwyer, which made a number of allegations regarding Clayton Miller's cause of death. As a result, Dr. Bowes was requested by the Minister to evaluate Ms. Dwyer's opinions and prepare a report in the matter.

Dr. Bowes' report is detailed. Like SiRT, he has spent a great deal of time reviewing the tremendous amount of material related to this case. In the end, he has completely discounted the opinions of Ms. Dwyer. He has concluded that the cause of death was as stated by Dr. Butt and Dr. Baden, and has observed that Dr. Baden's discussion of the possibility that the body was moved has been overstated. In addition, he has applied new scientific knowledge which helps to prove Clayton Miller died from hypothermia.

As an investigative unit, SiRT must examine the evidence that is credible and reliable to determine the cause of Clayton Miller's death. In such case, reliance is best placed on medically trained personnel, particularly on highly trained forensic pathologists. Their scientific and objective opinions must carry the day, particularly where, as here, there is such broad consensus and where the findings seem consistent with the known facts. Certainly it would be impossible to consider any type of criminal prosecution which was based on a set of facts that ran contrary to their opinions, considering the now broad concurrence there is in the matter.

More importantly, one must also consider the nature of the evidence suggested to run contrary to the objective, scientific findings.

Kathleen Dwyer was trained as a nurse. While that training gives her important professional qualifications, she now offers opinions which are best offered by a forensic pathologist. However, there is no evidence that she has any qualifications necessary to offer these opinions. Certainly, based on the information that is available it would not be possible to qualify her as an expert in these areas in a criminal trial.

In addition, to offer an expert opinion one must be able to approach a matter from an objective perspective. SiRT's investigation has included accessing material available on Facebook. This includes several posts made by Ms. Dwyer, and a video of a presentation she made to persons gathered in support of the Miller family that appears to have been made in November of 2014. A review of this material and the video raises significant questions about Ms. Dwyer's objectivity in this matter.

Further, an examination of Ms. Dwyer's conclusions do not appear to withstand a lay person's scrutiny. For example, she concludes, based on what appears to be a copy of a photo of the left side of Clayton Miller's head that he has a gash on his head that looks to be the size of the top of his left ear. Better copies of that photo demonstrate that what Ms. Dwyer is looking at indeed is his left ear. The fact she draws this conclusion, with the knowledge that the several medical doctors noted above, who saw Clayton Miller's body in person, never saw such a significant

gash, considerably challenges the reliability of all her commentary.

The opinion of an American pathologist hired by the Millers, was offered in a letter dated December 15, 1998. His letter is three pages long, and lists the information he relied upon. That list of ten items included three photographs of Clayton Miller's body, the autopsy reports of Dr. Ikijeni, Butts, and Baden, and statements from Gerald Coady and Baxter Thorne.

His discussion of the evidence is very brief, and the entire discussion of his conclusions is one 13 line paragraph. He assumes Clayton's blood alcohol level was only .12, when expert evidence indicated that at the time the police raided the party it would have been much higher than that. In addition, he assumes the evidence offered by Coady and Thorne is accurate (see discussion of their evidence below).

He did not agree with hypothermia as being the likely cause of death. However, without citing any evidence in support of the conclusion, he then suggests that death was more likely caused by a choke hold.

This doctor's opinion relies on few facts, some of which are not accurate, and he did not have hands on evidence as did the other pathologists. In the end, this opinion offers nothing useful in this case.

In sum, there is an abundance of medical evidence that demonstrates that Clayton Miller's body had no evidence whatsoever of any trauma or physical violence. Three doctors observed his body immediately after his death, two others partook in the body's exhumation, and Dr. Bowes has spent months reviewing a tremendous amount of available evidence. Their evidence is conclusive: Clayton Miller was not beaten to death, and did not die as the result of the outside application of force.

For years various reports have referred to Clayton Miller as having been badly beaten, or have made reference to other significant injuries. For that reason it is important this be said: The evidence is clear, and indeed, has been for almost 25 years: Clayton Miller did not suffer any injury prior to his death. Hopefully these types of reports will now end.

2. Clayton Miller was lodged at police cells in New Waterford at some point on Friday night, May 4, 1990.

Over the years many comments by people and media have suggested that Clayton Miller was in NWP police cells on the night of May 4, 1990.

The basis for this seems to have come from primarily one source, augmented by other comments. Those are reviewed here.

- i. Was Clayton Miller seen in NWP cells by any of the other young persons arrested on May 4, 1990?

To begin on this issue, it must be noted that a review of all police documentation, including statements, notes, and reports, as well as Inquiry transcripts of all police officers, does not show that any police officer had any dealing with Clayton Miller in any way on the night of May 4, 1990.

Ten young persons were arrested that evening at or near the Nest, as noted at the outset of this report. They were arrested in two groups of five: five gathered near the fire, five later arrested near Emerald St. The second five were likely arrested about 20 to 30 minutes after the first.

The names of all 10 arrested persons were recorded in the NWP records. They do not include Clayton Miller.

Gerald Coady was one of the first five persons arrested, placed in the NWP police van, and taken to the NWP station. He identified a male he knew and a male he did not know, as well as two girls he did not know, as being in the van with him. Coady knew Clayton Miller and had seen him earlier in the evening.

The other male and the two females are identified in the file, and listed in the NWP records.

In his statement to the RCMP on March 8, 1991, Coady discusses how he was taken back to the station, dealt with in the office, and then placed in a cell by himself. The two other males were put in another cell. He never saw Clayton Miller. He estimates he was at the station for about 20 minutes before the other five arrested persons arrived.

The second group consisted of two other males, and three females. Clayton Miller was not in this group.

Coady's evidence was confirmed in statements given by the other males to the RCMP in 1991. They also confirmed they saw only each other in cells. No one saw Clayton Miller at the NWP station. They were held for a few hours and then released. The male from the second group did not see Clayton Miller at any time after the police arrived at the Nest.

From summaries of a statement taken from third male arrested in the first group he makes no mention of Miller at the NWP either.

In a statement from the other male in the second group, who was not placed in a cell, given to the NWP on May 8, 1990, he notes the only time he saw Clayton was at the Nest when he first got to the Nest. In his testimony given at the inquiry he repeats this. Similarly, in a statement he gave to the Millers, dated June 9, 1991, he does not identify Clayton as being present at the NWP station.

According to statements on file from the two females arrested in the first group, one did not see Clayton Miller at all that night, and the second only saw him when she first arrived at the Nest. They give no evidence about Clayton being at the NWP station.

One of the three females, arrested by Emerald Street, gives no evidence of seeing Clayton Miller that evening. She was only held a very short time as she was not drinking and was not charged.

Two of the females arrested in the second group were charged. Several stories surrounding this evening suggest both of these girls saw Clayton Miller at the NWP station that night. However, there is nothing within the police nor Miller files that one of these girls saw anything.

In the end, the story that Clayton Miller was at the NWP cells on May 4, 1990, seems to have originated from a written statement given by just one of these two girls (Girl 1) on November 10, 1990 to the Millers.

In that statement Girl 1 relates what occurred on the night of May 4, 1990, in a version similar to what she stated in her statement to the NWP on May 8, 1990, but with greater detail. However, she adds a description of what occurred when she arrived at the NWP station.

After describing the drive back to the station, in which she states that she and her friend were “really giving them (the arresting officers) a hard time...”, she says that she and the other girl were sitting near the desk. Cst. Paul Muise sat at the desk, and they continued to “give him a hard time.” He was getting “mad” at them because of that. After a few minutes they noticed a monitor of a cell. They could see someone in it, and were trying to get closer to it so they could figure out who it was. She then said: “As soon as we noticed it Paul Muise went and turned it off so we could not see it anymore.” From her description, she only saw the person in the monitor for a very brief period of time, on a monitor that she said was black and white.

In spite of that brief view she was able to describe the person as being about average build, maybe taller than her, looking limp with their head hanging down, hands lying in their lap and one leg bent a little bit. She could not see the person’s face. The person was dressed casually, wearing a sweater, the colour of which could not be determined given it

was a black and white monitor.

Shortly after the monitor was turned off her parents came and took her home.

This description of the person in the cell is consistent with a fairly typical appearance of most persons who are sitting on a bench in a cell awaiting their release. From that very mundane description, drawn from a very brief view, dramatic conclusions have been made to say this unidentified person was Clayton Miller. Indeed some reports of what Girl 1 saw report that the person was wearing a red sweater just like Clayton's, which is clearly wrong.

Unfortunately those reports fail to consider or discuss that at the time two or three known males were already lodged in cells. Nor do those reports consider that the opportunity Girl 1 had to observe was very short, and was done on a night where she admits to having consumed a pint of vodka as a 15 year old girl.

The reports have gone as far to suggest that when Cst. Muise turned off the monitor he did so for nefarious reasons, as if he was hiding something. In the circumstances, where two 15 year old girls were trying to observe someone in a police cell, Cst. Muise had an obligation to protect the person's privacy.

It is impossible to conclude anything from this evidence that in any way suggests Clayton Miller was at the NWP station on May 4, 1990. Instead, the evidence is simply consistent with the known facts: Three other youths were in cells that night, and she saw one of them.

- ii. Did Cst. Michal Abraham see Clayton Miller at the NWP station on May 4, 1990?

In December of 2000, a woman, (Female 4) prepared an affidavit for the Millers. This document stated that sometime in 2000 she recalled a conversation she had with her brother-in-law (brother-in-law) in 1994. She recalled her brother-in-law visiting, and sitting near the pool. In the affidavit she states that brother-in-law, who knew Cst. Abraham, during a general discussion about the Miller matter, made a comment about something Abraham once said. The comment she recalled was a brief one: that Cst. Michael Abraham said that nothing was out of the ordinary on the shift "that night", and that "Clayton was there and he was fine". She also related the brother-in-law had told her that Abraham had told him that there had been lots of meetings and whisperings at the NWP which he assumed related to Clayton Miller.

In 2001 Cst. Abraham was interviewed by the RCMP, and denied having ever made any such comments. Brother-in-law was also interviewed and denied ever hearing any such comments or saying anything to his sister-in-law about such things.

Female 4 was also interviewed. She indicated to the RCMP she was very close to the Millers, and based on what she knew believed that the NWP murdered Clayton Miller.

In the circumstances, the information provided has no evidentiary value. It is compound hearsay, and cannot be used in any fashion in order to prove that Clayton Miller was present at the NWP station on May 4, 1990.

In a similar vein, information was received in 2007 by the RCMP which led to another investigation. Male 5 swore an affidavit, again on behalf of the Millers, dated June 16, 2006. In that affidavit Male 5 states that a woman who used to work as a jail guard had told him that while she worked in that capacity she was told by police officer, Michael Abraham, that on the Friday night Clayton Miller went missing, Clayton Miller was in a jail cell when Michael Abraham was present.

The RCMP attempted to follow up by interviewing Male 5 about what he said in his affidavit on April 3, 2007. Male 5 refused to provide the RCMP investigators with a formal statement as he did not have any trust in the police. He said that anything he had to say about the matter was contained in his affidavit, and related primarily to a statement the jail guard had made to him. He indicated that he had no direct knowledge about what happened to Clayton Miller, and he felt the parents deserved to know the truth about what happened to their son. Male 5 also noted that after he gave the affidavit to the Millers the jail guard terminated her friendship with him.

The RCMP obtained an interview with jail guard. She confirmed that she had once worked as a jail guard for the Regional Police, and the RCMP for a number of years, but never worked at all for the NWP. She knew Male 5, but considered him a gossip. He used to deliver eggs to her house, and on one occasion had explicit photos of Clayton Miller's deceased body. A short time later Mrs. Miller arrived at her door saying that Male 5 said the jail guard had information about Clayton's death. The jail guard told her she had no such information. She also noted that while she knew Cst. Abraham, and had worked with him, she never discussed the Miller case with him, and she believed that Male 5 fabricated the evidence contained in the affidavit.

The Male 5 affidavit is yet another example of multiple hearsay evidence, which is not supported by the other persons in the chain of the hearsay. Indeed, this evidence is best characterized as rumour and speculation, and may well be fabrication.

Having reviewed all material, there is no evidence to suggest that Clayton Miller was present at the NWP station on May 4, 1990. In fact, the evidence proves, without doubt, that he was not present.

Unfortunately, over the years great reliance has been placed on multiple hearsay and supposition,

which has led people to assume findings they consider to be conclusive. This has occurred often in the face of directly contrary evidence. The dialogue that has flowed from that has led many to a misunderstanding of the facts of this case.

3. Clayton Miller had to have been killed by others and then moved to the position where he was found on May 6, 1990, because several people can conclusively say that on May 5, 1990 his body was not present where it was later found.

There has been a great deal of discussion over the years, continuing to this day, that various people can say they were in the area of the Nest on May 5, 1990, and in a position to see Clayton Miller's body but did not see it. This has led many to the conclusion that Clayton Miller's body must not have been in the location where it was found until after that Saturday, and thus had to have been moved by some person or persons. Needless to say this would be significant, and thus a great deal of time has been spent by SiRT reviewing all of the evidence that impacts on this matter, and additional statements have been taken.

Before commencing a discussion of the relevant facts, it is important to understand two fundamental issues: a) If a person is not specifically looking for a body, is it unusual to overlook one that might be visible?; b) What were the features of the terrain in the area that could impact the visibility of the body?

- A) If a person is not specifically looking for a body, is it unusual to overlook one that might be quite visible?

Social Science research in this area refers to a phenomenon known as "inattention blindness". Researchers have documented the fact that people will often not see things they are not paying attention to, even when those objects are in very plain view.

One study discusses that the consequences can range from comic, as in the example where a paving crew paved over a dead deer in the road that was directly in front of them, to the tragic, where a US naval submarine struck a Japanese trawler, killing many people, even though it was in sight of the periscope sweep that had been made just prior to the accident.²

Another study documents that in controlled tests, people walking while talking or texting on a cell phone walk past a tree that has money hanging from a branch without noticing the money.³ This is so even though they have to move their head to avoid the branch. Indeed, even where people are not using a cell phone at the time, about 80% still do not notice the money.

² What You See Is What You Set: Sustained Inattention Blindness and the Capture of Awareness, Most, Scholl, Clifford, Simmons, *Psychological Review* 2005, Vol. 112, No. 1, 217–242

³ Failure to see money on a tree: inattention blindness for objects that guided behavior, *Ira E. Hyman Jr. **, Benjamin A. Sarb and Breanne M. Wise-Swanson, *Frontiers in Psychology*, April 2014, Vol. 5, Article 356

Simply put, if a person is not specifically looking for something, they may not see it even if it is in fairly plain view. Common sense tells us this, and research experience confirms it. Where the ability to observe the object is compromised, the likelihood of noticing it is even smaller.

B) What were the features of the terrain in the area that could impact the visibility of the body?

It is critical to understand the features of the terrain where Clayton Miller was found. Attached to this report is an overhead photo of the area, Appendix A. In this photo, the Nest is located to the lower left side of the photo, which is west of where the body was located. The fire at the Nest is noted by the word "Fire". Clayton Miller's body is marked with an X.

The stream that Clayton's body was found in runs approximately west to east. The culvert, slightly to the north-east of the fire at the Nest, is a common reference point to all witnesses. It is also a way to cross from one side of the stream to the other and was clearly used for such purpose by vehicles and pedestrians at the time.

If one were to follow the stream to the east from the culvert, the first approximate 30 to 35 metres (100 feet) show a relatively wide stream. However, at the end of that portion of the stream, it takes a noticeable turn to the right, then straightens again, and narrows considerably. It then continues another approximate 30 to 35 metres, and turns again slightly to the right. The best evidence places Clayton's body across the stream some several metres past this second turn, as shown with the X. The body was found a total of approximately 90 to 100 metres from the culvert.

The topography of the area is important. If one were to again travel from the culvert to where the body was located, on the left hand side (north) of the stream there is a fairly high bank, several metres high. It lowers to a lower bank, at about the same spot where the stream first turns to the right. The bank remains more or less at that height from that point to the site of the body.

On the right hand side (south) of the stream the bank is also several metres high, likely higher than the first part of the north bank, and remains so the entire length of the stream to the site of the body. It goes down fairly steeply, leading to the side of the stream where there is a relatively level area of some several metres. The area widens from a metre or so at the spot of the first turn in the stream, to several metres where the body was found. A Photo marked as Appendix C is included, taken from the east, which gives some appreciation for the topography.

In addition to the topography, it is important to understand the vegetation. The photograph, Appendix A, was taken in 1990, after leaves grew. On May 6, 1990, there were no leaves present. However, the vegetation is almost exclusively thick alder bushes, at least two metres in height.

Again, travelling east along the north side of the stream there is no vegetation at all, until one hits the first turn to the right. Then thick vegetation grows right to the edge of the stream, and continues another 30 to 35 metres, going bare again for approximately 10 – 15 metres prior to the body's location. On the south of the stream, the vegetation begins almost at the culvert, and continues in thick fashion, at the edge of the stream continuously to the site of the body.

There can be no doubt that the vegetation, even without leaves, would significantly impact a person's ability to view the stream where the body was located, from either side of the stream, especially the farther to the west a person was positioned.

In addition, the vegetation would make walking along the edge of the stream, out of the water, either extremely difficult or almost impossible. This would be the case whether there were leaves on the branches or not. Simply put, after the first turn in the stream, it would be extremely difficult to walk along either the north or south edge of the stream for the next 30 – 35 metres, unless one walked in the water.

At the time of Clayton Miller's death, there was a path on top of the north bank, some several metres to the north of where the north bank begins to descend toward the stream, starting at the bottom of the high bank 30 – 35 metres east of the culvert, and running some many metres to the north of and parallel to the north edge of the stream, on the lower bank, and past where the body was located. As can be seen on the photo, this path loops around several metres past that location, and returns west. It is a loop, not leading anywhere.

Witness evidence:

As discussed, there have been several persons said to have been in the area who did not see the body. The most significant accounts are discussed below:

- i. Mr. and Mrs. AB: Mr. and Mrs. AB were reported to the RCMP by Mr. Miller to have walked past the area where Clayton's body was found. This was investigated by the RCMP in the spring of 1991. Both Mr. and Mrs. AB were spoken to, and Mr. AB gave a statement. Both confirmed that they walked from past the "Town Sheds" toward the Nest on May 5, 1990. They then crossed over the culvert. Mr. AB stopped on the culvert, and may have looked easterly up the stream. They then continued south. He was shown a photograph of where the body was located. He did not walk in that area until after the body was found. He had told Mr. Miller that he stood on top of the culvert and looked in the direction of the body and did not see anything. Mr. Miller apparently reported this as Mr. AB walking in the area of the body. Mrs. AB confirmed the information of where they walked.

It is clear from the terrain that it would be highly unlikely one could see Clayton's body from that vantage point even if they were specifically looking for it. In April, 1991, the

RCMP investigator walked the area where the Mr. and Mrs. AB had walked. His report indicates that “If one were looking for a body there would be an extremely remote possibility” that one could see the body from that location.

This evidence is not capable of leading to a finding that Clayton Miller’s body was not present on May 5, 1990. Simply put, where they walked the body could not practically be seen, and, in any event, they were not looking for it.

- ii. Female 5 gave a statement in 1994 to an investigator working for the Millers. She had also given a written statement directly to them. In her statements she related that she had been to the Nest on the afternoon of May 5, 1990, with two other women and a young girl. They walked to the Nest, and were in the area of the fire. At one point a daughter of one of the woman began to run toward the high (south) bank that overlooks the stream. She ran after the young girl, and explained to her that it was dangerous to run in that area because of the high bank. She said she was there for a few minutes in that position, and did not see Clayton Miller’s body.

This information was passed along to the RCMP. In January of 1996 the matter was investigated again by the RCMP. The investigator spoke with Female 5. They went to the scene, and Female 5 confirmed the terrain was primarily the same as it was in 1990. She showed the officer approximately where she stood on the Saturday, May 5, 1990, and also her location on the Sunday when she went to the area having heard that Clayton’s body was found. The first location she identified was only 17 metres east of the culvert. The Sunday location was another 28 metres farther east. Based on her position, it seemed to the investigator that it would have been very difficult to see Clayton Miller’s body.

The investigator then positioned himself on the north (far) side of the stream, approximately where Clayton Miller’s body was found. He knelt there, with a coat which had a bright red top portion. Another officer stood 5 metres closer to that position than the Saturday position identified by Ms. MacLean, and took pictures of the kneeling investigator. Both investigators concluded it would be unlikely anyone in that position would have noticed the investigator where he was kneeling if their attention was not focused on him. Pictures were taken of the investigator as he knelt. It is very difficult to make him out through the vegetation.

In addition, Clayton Miller’s body was lying down in the stream, with his head at the south edge of the stream. In that position, the investigators determined it would not have been possible to see the body.

Female 5 confirmed that the other two women did not come over to her position, and would not have been able to see the stream from where they stood.

There is nothing within the evidence of Female 5 that would support a finding that Clayton Miller's body was not present on Saturday, May 5, 1990.

- iii. Male 6 and Male 7: Male 6 was interviewed by Mr. Miller about three weeks after Clayton Miller's body was discovered. The interview was recorded and the transcript has been reviewed. During the interview Mr. Miller uses a great number of leading questions, a fact referred to by Male 6 when interviewed by the RCMP in 1995.

Male 6 described going back to the Nest early on the Saturday morning, like others, to look for alcohol. Male 7 went with him. He confirmed for Mr. Miller that no one saw Clayton's body.

Subsequent to speaking with Mr. Miller, Male 6 and Male 7 accompanied Mr. Miller to the Nest to show where they were. They reported, in statements taken in 1995 by the RCMP that based on where Mr. Miller told them the body was, they should have seen the body as it was within a few metres of the path they took to cross the stream. However, it was noted that Mr. Miller did not tell them where the body was until they told him where they had walked.

When taken to the Nest by the RCMP to show where he had been, Male 6 showed the officers the path he and Male 7 took across the stream. It was about 10 metres from the culvert. He also showed the position where Mr. Miller said Clayton's body was found. This was about 21 metres from the culvert.

Based on this, it was quite clear that the position of the body used by Mr. Miller was well west from the actual location of the body. Male 6 indicated he was nowhere near the position where the body was actually located.

Male 7 does not describe crossing the brook, but rather being up on the bank about 50 feet from where Mr. Miller described the body. Even had that been the location of the body, he acknowledged that he was looking for beer, and could not say with certainty that he would have noticed the body. Of course, the position he describes for the body was the one told to him and Male 6 by Mr. Miller, which appears to have been inaccurate.

Based on these statements from Male 6 and Male 7, they would not have been in a position to see Clayton Miller's body. There is nothing in their evidence which could support a conclusion that Clayton Miller's body was not present on May 5, 1990.

There is an important side issue relating to Male 6. As noted, SiRT has been able to transcribe the tape of Mr. Miller's interview with Male 6. Mr. Miller reported to the RCMP that Male 6 had told him that Male 6 was interviewed by the police about Clayton's death on May 5, 1990. That of course would suggest the police knew about his

death before the body was found. Male 6 says that never happened. The transcript of his interview does not contain that comment. There is no support for Mr. Miller's contention in this regard within the file and his material.

- iv. Gerald Coady and Baxter Thorne: It is clear that over the years that those who contend Clayton Miller was murdered by police have put forward the accounts of Gerald Coady (Coady) and Baxter Thorne (Thorne) as being the best evidence that that Clayton Miller's body was not present in the stream on May 5, 1990.

Both Thorne and Coady have maintained over the years that on May 5, 1990, they went to the Nest and travelled along the stream to the place where Clayton's body was found on May 6 and his body was not there. They continue to maintain those positions in recent statements given to SiRT. These accounts have been relied upon by many as proof that the body must have been moved, and therefore there was foul play involved in the death of Clayton Miller. According to those theories, they are a significant piece of the puzzle showing Clayton was killed by police.

Needless to say, a careful review of this evidence is critical to a consideration of this case. Thus, the evidence of each witness is reviewed in its entirety below:

Gerald Coady: Coady was at the party at the Nest Friday night, May 4, 1990. He saw Clayton Miller briefly, and did not think he was drinking. It is important to note that Coady at the time was not a high school student, as were most of the persons present. Rather, he was 26 years old.

He was charged by police for a liquor offence that night, and gave his first statement in this matter on May 7, 1990, at 9:40 a.m., the day after Clayton Miller's body was found. In that statement he was asked by Sgt. Dwyer of the NWP if he went back to the area of the party on Saturday morning. He answered as follows:

“Yes, in the evening about 5:30 p.m. both me and Baxter Thorne went down by the fire and the Culvert to see if any beer was still there.”

He was then asked:

“Did you look or walk along the brook back towards Park St.?”

This would be in an easterly direction along the stream toward where Clayton's body was found. He answered:

“No. We stayed over in the Culvert.”

He was also asked how he and Thorne went into the Park, and stated they had walked in

from Wanda's Lane and down to where the fire was burning the night of the party. This is from the west.

These answers are significant. They are taken when the matter was very fresh in Coady's mind. They specifically deal with the issue of where he travelled, and they conclusively demonstrate that there would be no possibility for either Thorne or Coady to have been anywhere near where Clayton Miller's body was found. In his own words, they "stayed over by the Culvert".

It is also important to note that Coady indicates that he was there in the evening, which should be compared with statements made later on.

In January, 1991, after complaints made by the Millers, an investigator from the Nova Scotia Police Commission took a statement from Coady. In that statement Coady states that he and Thorne walked the brook looking for their beer. He said that according to a photo, presumably where he had been shown where the body was, that he walked past the location of Clayton Miller's body. He also acknowledged being questioned by Sgt. Dwyer of the New Waterford Police on May 7, 1990.

In early 1991, the matter was re-investigated by the RCMP. During that investigation, Coady was re-interviewed by the RCMP, taken to the scene, given a polygraph examination, and re-interviewed again. The findings of that investigation were released at the time in the press.

Prior to his first statement to the RCMP, on March 8, 1991, Coady was taken to the Nest and showed where he walked. A photo, which is on file, was marked with a line to show where he walked when he went looking for the beer. It shows Coady walking a path along the south side of the stream to the first right hand turn in the stream, then crossing over the stream to the north bank, and walking on top of the north bank to the east past the location where Clayton Miller's body was found. He then indicates he went down the bank, through vegetation, across the brook, then farther east along the stream, then returned back across the stream and then west along the bank to the top of the culvert. This would be a total distance likely over 500 metres. Needless to say, this is significantly different than his first statement to the NWP.

In his initial statement to the RCMP, taken later on March 8, 1991, Coady states that he and Thorne walked over to the Nest at about 12:30 p.m., not 5:30 p.m. They looked for their beer in the tunnel (culvert) where they had stored it the night before. They then went to the other end of the culvert and still found no beer, but did find their empty box.

Coady then said that he and Thorne walked down the stream looking for the beer. He indicated there is a place where you cannot walk by the stream, so they went on top of the

hill and walked down a “little more”. (Note use of this word would seem contrary to the distance noted in his drawing.) He says that Thorne walked where he walked.

He then acknowledged that he was interviewed by Sgt. Dwyer on May 7, 1990, but denies telling him anything about being at the Nest on Saturday or talking about looking for beer at all. He says Dwyer must have found out about it from someone else because he never told him. It is important to note the he did not just deny saying he did not walk down the brook in answer to Sgt. Dwyer’s question, or suggest the Sergeant was mistaken. Rather, he denied that he said anything at all about going back to the Nest on Saturday. According to him, therefore, Sgt. Dwyer made up those questions and answers.

This denial of having ever even talked to Dwyer about those issues would appear to be Coady’s attempt to explain the significant difference in his evidence on this critical point.

Because of those inconsistencies Coady was asked by the RCMP if he would take a polygraph examination. He agreed.

Two days later the polygraph was conducted. The issue in the test was whether Coady walked as far up the stream as he stated to the RCMP. He failed the test.

After the test, he gave another statement to the polygraph operator. In this statement he is asked again about telling Sgt. Dwyer that he did not go up the stream. He again says he did not say that to Sgt. Dwyer.

He is also shown a photograph of the stream. Unfortunately it is unclear which photo was used. He says that he went up the stream to “almost the little turn”. It is unclear which turn he meant. If it was the first turn to the right, then he would have been well west of the position of Clayton’s body.

Later that day, a further statement is taken by the RCMP from Coady. In this he was asked how far he walked down the brook, and he answers:

“A couple of hundred yards, I’m so screwed up I really don’t know, honest to God.”

And later, it is suggested to him that he does not have a clue where he crossed the brook, and answers:

“Maybe, yeah.”

In a transcription of an oral statement Coady gave to the Millers, which appears to have been not long after the polygraph examination, Coady tells the Millers he did not change his statement with the RCMP.

Importantly, however, Coady does say to them that he told the RCMP that it was possible he did not walk as far down the stream as he had previously said. From the conversation it would appear the Millers believe that the Halifax RCMP investigating at that time were covering up what really happened to Clayton.

On December 29, 1993, Coady gave a written statement to a private investigator working for the Millers. The questioning by the investigator was quite leading at various points during the interview. Coady's position remains similar to before. He states that he actually walked in the stream bed from the culvert until the vegetation got too thick. Then he walked along the top of the bank, and later returned to the stream bed and walk further. He said that in spite of the "thick vegetation" he refers to, that his view of the stream was never obstructed. He is able to say where the body was based on what Mr. Miller told him. Baxter Thorne was with him throughout.

In 2000, Coady signed an affidavit dated October 29, 2000 which again repeats his previous statements saying he would have seen the body on May 5, 1990. However, on this occasion he refers to the trip back to the Nest he made with the RCMP. This was on March 8, 1991. He says in this affidavit that the polygraph was conducted a few months later. It was actually conducted on March 10, 1991. He also refers to the statement he gave to Sgt. Dwyer on May 7, 1990. He says Sgt. Dwyer read it back to him and he signed it. However, he states that what he understands is in that statement is false.

The last statement SiRT is aware of was taken by a SiRT investigator from Coady by phone. He currently works in Alberta and returns home on occasion. He continues to maintain his version of events noted in his later statements.

Many claim that Coady offers convincing evidence that Clayton Miller's body was not present in the stream on May 5, 1990. This is based on where he said he walked that day. However, he gave one version of events May 7, 1990, and several months later, after contact with the Millers, gave different versions, on several occasions, over many further years.

There are two significant differences in these statements: On May 7, 1990 he said he returned around 5:30 p.m., while in subsequent statements he said it was between 11:00 a.m. and 1:00 p.m. More importantly, on May 7 he was asked, in an open ended question, whether he went east down the stream from the culvert, and denied doing so. In later statements, he relates a relatively intense "search" of the stream for his beer.

This latter difference is very significant. It is a complete contradiction on the most significant aspect of his statement. His explanation for this difference does not give an explanation. Nor does he say he was misunderstood nor made a mistake. He also does not suggest that the police wrote what he said down wrong. These types of explanations

are what is usually seen when a person is actually misquoted or mistaken in a statement. Rather, his position is that he never said that to the police.

This substantial contradiction has a significant impact on the weight which can be given to Coady's evidence on whether Clayton Miller's body was present in the stream on May 5, 1990.

Baxter Thorne: Thorne also gave several statements over the years.

His first statement, to law enforcement or otherwise, appears to have been given to RCMP investigators on March 11, 1991.

Interestingly, the content of his first statement is somewhat similar to Coady's May 7, 1990 statement. He discusses being at the Nest on May 4, but did not see Clayton Miller. He says on May 5, he and Coady were driven to Tucker's Field, by a friend of their's, a fact Coady does not discuss. He and Coady ran up to the Nest to look for their beer hidden in the culvert. They looked on the west side, and then went up and over to the other side where they found the empty beer case near the entrance to the culvert. He said he walked down the brook a little ways, and Coady walked a "little further", then they turned around, went back to the car and were driven home.

The RCMP had taken Thorne to the scene just prior to taking the statement. He too showed them where he walked, which was also recorded on a photo, matching the one attached as Appendix A. It shows he walked just along the northern edge of the stream, stopping before the first turn to the right. He then went up the south bank, returning back south across the culvert to the car. From where he says he walked on this day, he would not have been able to see where the body was positioned. The distance he walked was noted to be about "30 to 40 feet" in the RCMP report.

Thus, both Thorne and Coady, based on their evidence in their first statements given to law enforcement, were clearly not in a position to see the area of the stream where Clayton Miller's body was found on May 6, 1990.

Thorne's next statement appears to have been one recorded by the Millers on June 10, 1991. The recording shows Mr. Miller meeting with Thorne at an unknown location, and then accompanying him back to the Miller residence where Mrs. Miller was also present.

From the recording it would seem that Mr. Miller and Thorne went to the scene prior to arriving at the Miller residence. During the interview, Mrs. Miller was writing up a written statement that Thorne later signed. This statement was contained in the materials provided by the Millers.

During the interview Thorne relates what happened on May 5, 1990. Mr. Miller

intervenes in the statement on several occasions. Thorne describes going to the Nest, and looking in the culvert for the beer. He then says in the recorded interview that they walked down the stream, Coady by the stream and he along the bank.

Mrs. Miller then asks him the following, as she is writing the statement:

“Ok. Stream...Gerald...walked...along...the...stream...while I...walked...on..... The high bank or the low bank?” Mrs. Miller was seeking clarification from Thorne regarding which bank he was on.

Thorne responds: “The high bank.”

At this point an interesting exchange occurs, when Mr. Miller intervenes in this way:

“Wait, hold it, so I can, I know, I want you to read this over, I can’t... “Around 12 to 1 pm, Saturday, May 5th, Gerald Coady and I got a ride up to the nest (with a friend). (He) stayed in the car. Gerald and I walked down to the culvert, looked through it and then walked over it. When we arrived on the other side of the culvert, we found our case. We checked for our beer, and the case was empty and broken up. We walked down the stream. Gerald walked along the stream while I walked along the” (at which point Mr. Miller stops reading and starts speaking) edge, roughly four feet above the water’s edge.”

Mrs. Miller responds: “Along...ok, say that again.”

And Mr. Miller states: “Along the edge...edge...roughly four feet above the water’s edge. I know this is his statement, but I got a better idea of, uh, like...with he showing me, I can explain it better, you understand what I’m saying? He’s gonna read it. Well, what I’m getting at is that big high side...he was down on the low side, ok?”

The exchange continues:

Mrs. Miller: “Ok.”

Mr. Miller: “And, Gerald was down on the edge, and he was walking beside him on that little bank.”

Mrs. Miller: “Ok, I know where that’s at. Ok, roughly four feet...”

Mr. Miller: “Along the water’s edge.”

A short time later, Thorne tries to identify how far they walked, and says:

“Ok, well, we walked down like maybe, I don’t know how many feet to tell you, but...”

Mr. Miller: “That’s what confuses people. They’re asking them feet eh? Now, that guy gave the statement yesterday...”

Thorne: “ I don’t wanna say 12 feet ‘cause then its probably gonna be 50 feet, (??) you know.”

Mr. Miller: “...he walked down. You could tell him he walked down in a line with the last path.”

Thorne: “The last path, yeah. Down over the culvert on the road. Say that.”

Mr. Miller: “He walked down along the water’s edge...”

Mrs. Miller: “I walked, I’m writing for him, remember.”

Mr. Miller: “Ok. Along the water’s edge until he was in line with the last path that crosses the brook in that area. Some kids can’t explain it Maureen. If they wanna question this because we were in on it, let them; and the three of us can be together when they question us. I’m trying to explain it for him. He’s gonna read it and go over it. He told me up there and showed me; that’s how I know, ok?”

Mrs. Miller: “Mmm.”

Mr. Miller: “Just like, people try to confuse kids and ask them about distance. Like, one of the statements yesterday, I couldn’t get in on that statement yesterday because he was off by a few feet.”

Mrs. Miller: “I was in line with the last path.”

As a result, the final written statement says as follows: “We walked down the stream. Gerald walked along the stream while I walked along the edge, roughly a few feet along the water’s edge until I was in line with the last path that crosses the brook in that area. We looked in the water there for our beer and when we couldn’t find any we walked back to the culvert and we walked back to (our friend’s car) that was parked at Wanda’s Lane.”

The final version of this statement captures facts which appear to originate from Mr. Miller, not Thorne: that Thorne walked within a few feet of the water and that he went as far as the last path that crosses the brook.

In addition, this interchange also contains a reference to a path crossing the stream which was close to where the body was located. This is similar to what Male 6 had said. As noted, according to Male 6’s evidence as captured by the RCMP that path was only 10.5

metres from the culvert, in a position where one would not be able to see the actual location where the body was found.

On December 29, 1993, Thorne gave a statement, represented by a typed document held by the Millers, to their private investigator. The first part of this statement is similar to the initial statement given to the RCMP. He talks about walking a bit down the stream, with the stream to his right, with Coady waking a bit further. On an unknown photo, he noted that he walked down the stream to where the stream starts to make a bend. He also says he was taken later and shown where the body was located. He says he could see up the stream bed, and that the body would have been within a 10 feet of where he was.

An issue with this evidence, is that it is not possible to confirm where it was he was told the body was located. As we know, previously Male 6 was shown a position by Mr. Miller which was inaccurate, and much closer to the culvert than the actual position. Based on this statement, if Thorne stopped where the stream makes the first turn to the right, as he showed the RCMP at the site, and as he appears to state to the private investigator, it would not be possible to see the body located at least 50 more metres up the stream, and around at least one bend. In the end, this statement is essentially the same as the statement given to the RCMP. Those investigators confirmed based on the site visit that the body would not be visible from where Thorne stated he was.

Interestingly, he states in his statement to the private investigator that he never talked to any police about this matter. This is in spite of him speaking to the RCMP in 1991, giving a statement and attending the site with them. He also referred to speaking with the RCMP in his 1991 recorded interview given to the Millers.

On October 17, 2000, Thorne signed an affidavit, given to the Millers, in which he describes very briefly where he walked. He gives little detail. He does say he would have seen the body. However, this is based on where he thought the body was located based on what he was told. He again denies ever talking to police in 1991.

On January 21, 2015, Thorne was interviewed at his residence by the SiRT primary investigator. I was present during this interview. Thorne's evidence was significantly different from previous evidence.

He indicated that he walked much farther east down the stream than previously. Based on this statement he went well beyond the first right hand bend, and over 100 metres down the stream. This would be beyond the actual location of Clayton Miller's body. He states that the entire time he walked directly beside the water, within a few feet, never walking up on the bank. He says that he walked farther down the stream than did Coady, with Coady waiting up on the bank for him.

There are three significant differences between this statement and his previous statements: a) the difference in distance is substantial, and completely different from what he showed the RCMP; b) he talks about walking directly beside the water. This would be impossible, as the vegetation past the first turn grows right to the water's edge. Cst. Drinovz referred to this, and Coady said essentially the same thing. c) He contradicts his own evidence about where Coady went on May 5, and contradicts Coady's evidence in this regard, when he says Coady waited for him up on the bank.

In addition, he again states that he never spoke to the police about this matter. He was asked about this, and shown a copy of the statement he gave to the RCMP. He continued to deny giving the RCMP a statement. He said the signature was not his. He was shown the signature placed on the 2000 affidavit, which looks almost identical to the one on the 1991 statement. He continued to deny giving the statement.

It is not possible to give any weight to Thorne's evidence when he says he was in a position to have observed the actual position of Clayton Miller's body on May 5, 1990.

In fact, the evidence that can be relied on is that given to the RCMP, which was similar to the evidence given to the Miller's investigator. Based on that, it is clear Thorne was not in a position to observe the location of Clayton Miller's body on May 5, 1990. Following from that, given that Coady did not walk much further, he too would not have been in a position to see the body.

Conclusions regarding Coady and Thorne evidence: The practical reality of the landscape in the area of the Nest and the culvert is that Clayton Miller's body was found down a steep bank on the south side of the stream, in an area well removed from the area of the Nest. It was located over 100 metres away from the culvert. If one were to return to look for beer you thought may have come lose from your case under the culvert, it would make sense to look around the area of the culvert, and perhaps a short distance away. The easiest task would be to travel perhaps as far as the first turn. After that the vegetation is such that one would have to walk in the water to continue down the stream.

Both Thorne and Coady gave initial statements that are consistent with what seems practical. On later occasions they give statements that are contradictory with their initial statements, and contradictory with each other. These contradictory statements occur after contact with the Millers. Mr. Miller's comments during the taking of Thorne's statement cannot be ignored.

Interestingly, both Thorne and Coady offer no explanation for their initial statements to police. Instead, they simply deny those statements were made, in the face of obvious evidence to the contrary. This alone raises significant issues with the reliability of their evidence.

This investigation is attempting to determine whether there is any evidence of a criminal wrongdoing. Evidence used to support a criminal offence must be cogent, reliable, and consistent. Based on the significant issues a careful review of the evidence of Coady and Thorne raises, their evidence is incapable of leading to the conclusion that Clayton Miller's body was not in the stream on May 5, 1990.

- v. Recently received evidence: In their interview with Dr. Bowes and I, the Millers passed along information they recently received regarding people in the area of the Nest on May 5, 1990. Mr. Miller indicated that he had recently spoken with a local man, Male 8. Male 8 was reported to have recently talked to Mr. Miller and said that "he would never forget it", that on the Saturday morning "everyone was getting together to go down and search the Nest for Clayton Miller, he was missing." Male 8 was also supposed to have said that "the streets were lined with cars and there was a crowd of people there."

This account is not supported by any other evidence received from the many witnesses over the last 25 years. As a result, SiRT contacted Male 8 to arrange to obtain a statement from him.

The SiRT primary investigator contacted Male 8 by phone in late January. He indicated he only spoke to Mr. Miller a little while ago. He was unsure if it was a Saturday or Sunday when he went down to the Nest. He noted there were around 20 people around. He could not remember any names but was going to gather some names prior to giving SiRT a statement. The investigator made plans to talk to him in Sydney the following week but weather prevented that trip.

Male 8 was contacted by phone again in March to arrange an interview. At this time he indicated he did not recall who else was there that day, and said although he would be interviewed he did not remember much about it. It was agreed he would be interviewed by investigators who were on their way to Sydney. Male 8 did not attend for his interview as scheduled.

Since that date several attempts were made to contact Male 8, without success.

There is nothing of significance that can be drawn from this source.

Conclusions regarding evidence of May 5, 1990: It is an accepted reality that people, even many people, will not notice something they are not expecting or looking for. Clayton Miller's body was in a location where it appears no person walked on Saturday, May 5, 1990. Even if someone may have been in a position to have observed Miller's body from a distance, none were looking for it. It is not surprising, and indeed would be expected, that no one observed Clayton Miller's body that day.

Simply put, there is no reliable evidence which is capable of supporting the conclusion that Clayton Miller's body was not present in the stream on May 5, 1990. Indeed, the best evidence suggests that no one was in a position to see the body that day.

Conclusions regarding police involvement with Clayton Miller:

At this point, it is appropriate to comment on what evidence there might be showing any police involvement with Clayton Miller on the weekend of May 4 to 6, 1990.

A review of all the material in this matter demonstrates there is no evidence that police had anything to do with Clayton Miller between the night of May 4, 1990, and when his body was discovered on May 6, 1990. Even if one were to accept, in a hypothetical exercise, that Clayton Miller was not in the stream on May 5, 1990, there is no evidence whatsoever that would suggest the NWP had any contact with him.

One must also consider the suggestion that the NWP killed Clayton Miller from another perspective. Does it make logical sense? Even if one was to ignore the conclusive evidence that Clayton had no injuries to his body and suffered no trauma, the scenario suggested does not withstand logical scrutiny.

The suggestion is that Clayton was first beaten by Cousin 1 and 2, and then picked up by the police. They may have beaten him some at that point. It is then suggested that members of the NWP realized how seriously injured he was, and decided that instead of obtaining medical help for him, they would kill him to cover up their mistake, and then dump his body early in the morning of May 6. One version additionally suggest Clayton was taken to the hospital, but when it was realized he was too ill to survive, the police removed him from the hospital.

Looking at these suggestions, it is fair to ask: how possible is it that the hospital would agree to the release of a critically ill person? In addition, is it likely that the hospital personnel would be co-opted into a plan to cover up the young man's death?

The suggestion the police chose to kill Clayton instead of having him treated at the hospital seems highly unlikely. If indeed they were intending to cover up an error, it would have made much more sense to simply lie about when and how Clayton's injuries were caused, rather than significantly compounding their error by murdering him.

And even if one were to resolve that logical conundrum, and somehow accept the possibility the police took Clayton's life, it would not be logical for them, when trying so hard to hide their errors, to place the body back near the nest allowing it to be eventually discovered. Surely if they were prepared to kill an innocent young person to cover up their supposed mistakes, they would be prepared to take significant steps to dispose of the body in a place where it would not be discovered.

On top of the above, one must consider what would have to be a fortuitous coincidence that where they placed the body was the very spot that Dale MacKinnon and Clayton Miller crossed the stream on the night of May 4, 1990 as they ran from the police.

Which leads to the last aspect of this report:

What actually happened to Clayton Miller on May 4, 1990?

Clayton Miller went to the party that night with his two friends, one of whom was Dale MacKinnon.

Dale MacKinnon (MacKinnon) has given several statements in the matter. The first was on May 6, 1990, between 5 and 6 p.m., given to the NWP. This would be within a few hours of him finding his good friend deceased in the stream. MacKinnon was not truthful in this statement. He essentially said he last saw Clayton at 9 p.m. on the 4th, and left at that time, before the police arrived. He denied that he or Clayton had anything to drink. This was a statement given by a scared 16 year old boy which avoided any evidence that might have gotten him or anyone else in trouble for drinking. In the initial portion of his next statement he explained that he was scared and “didn’t want the family to turn against him.”

Within a few days, two police officers, a member of the NWP and the RCMP, took a second statement from MacKinnon. His mother was present, that interview was videotaped, and it covered matters relatively thoroughly. The original videotape was still held by the CBRPS. The interview involved discussion between the police and MacKinnon, followed by the taking of the actual written statement. The written statement, found in the RCMP and CBRPS files, does not contain all of the relevant evidence disclosed by MacKinnon at the time. He disclosed other facts during the initial part of the interview as well. This review of his evidence refers to the entirety of what he had to say.

MacKinnon also testified at the Inquiry in September of 1990, and gave another statement to the RCMP on March 10, 1991, during their investigation at that time.

After the 1991 statement, MacKinnon’s name does not arise often in the material as a witness or person interviewed. The file materials demonstrate that the Millers came to believe that MacKinnon was untruthful about his recollections of what happened the night of May 4, 1990.

The SiRT investigation has not demonstrated any reason to consider that MacKinnon’s evidence subsequent to his May 6, 1990 statement to be anything but his best effort to recall what happened on that night.

The primary SiRT investigator and I travelled to Alberta and met with MacKinnon on March 9, 2015. We took another statement from him. During that interview he presented as a credible witness, again simply attempting to do his best to recall what occur in May of 1990.

A review of the three statements from May 10, 1990 to March 3, 1991, were essentially consistent. Taking all three together allows one to get from MacKinnon an explanation of what occurred on the weekend of May 4 to 6, 1990.

On the Friday night, MacKinnon was home, where Clayton Miller and their other friend came to meet him. They left there, and were intending to go to the Nest for the planned party. However, before they left, MacKinnon stole a 40 oz. bottle of rum, which he estimates to have been half full. The rum had been stored in a closet in his room by his older brother, who at that time was living at home but sleeping on the couch. It was in one of MacKinnon's boots, covered by clothing. MacKinnon had found it earlier. He snuck it out of his house in his jacket.

The boys first went to a field near the Nest, arriving there around 7:30 p.m. MacKinnon states that he and Clayton drank all the rum, straight, splitting it approximately half and half. They drank the alcohol within 30 to 45 minutes. At that point they made their way to the Nest, arriving around 8:30. The other friend did not go to the Nest, as he was concerned about someone who might be there.

MacKinnon describes seeing a few other boys they knew on the way in, and describes that for the most of the evening he and Clayton sat on a hill not far from the fire that was burning during the party at the Nest.

He indicates that he was very intoxicated. He described Clayton's state in the May 10, 1990 statement as being pretty well drunk, staggering a little bit, and not feeling good, although he did not see him get sick. At the inquiry he indicated he could not recall Clayton's state very well. In the 1991 statement he described him as feeling pretty good, although not as bad as he was.

MacKinnon indicates that he and Clayton were together on the hill most of the evening, until the police arrived. He says that he does not recall seeing the police, but everyone was running and screaming and continued to do so as he ran from the area. His recollection of exactly what he did at this point is not perfect, but those recollections include his description of running in a relatively northerly direction toward the stream, down the hill, through alders, he believes through the brook, then toward Park St, going back through the brook, where he fell and got muddy, and onto Park St. where he briefly went to a Park St. residence.

He recalls sitting with Clayton when the police came. He ran, and although somewhat vague, seems to recall Clayton running as well. He was not certain where Clayton ran.

This aspect of what occurred can be augmented by what he said to others shortly after they fled the Nest.

When he arrived at the Park St. home, the owner noted he was wet, and covered in mud, like he had fallen flat. She heard him outside of her door, and went out and saw him, and told him he

couldn't stay there. She went inside for moment, and when she came out he was gone. She recalls MacKinnon telling her that "the cops are chasing us."

MacKinnon then went downtown in New Waterford and went to a beverage room to meet his brother. In a statement given to the RCMP in 1991, the brother also recalls him to be wet and muddy. MacKinnon went to his brother's house where when the brother got home later MacKinnon was asleep on the couch. The next morning they discussed what had occurred the night before. The brother recalled that MacKinnon told him that he had been at the Nest until the cops raided it at which time he and Clayton ran. He did not know where Clayton was however.

Similarly, MacKinnon's female cousin, also interviewed in 1991, saw him at the beverage room and drove him to the brother's home. She noted him to be full of mud and soaked. MacKinnon told her he had been at a party at the Nest until the police raided it. She indicates that MacKinnon told her he was separated from Clayton when they ran.

These statements would appear to confirm that Dale MacKinnon and Clayton Miller were together at the time the police raided the nest, and started off running from the police together.

While MacKinnon has expressed uncertainty about exactly where Clayton was when they ran, this is not surprising. He was drinking, and he seems to have been quite panicked by the raid.

However, when examined, all of his statements confirm that his best recollection is that Clayton ran with him, at least for some distance.

In his May 10, 1990, statement MacKinnon said he went to the particular location in the brook where he found Clayton's body because it was around the area where he crossed the brook.

Similarly, in his 1991 statement, he said he went to that area of the brook to look for Clayton because that was where he ran through the brook and he figured Clayton ran there too.

Importantly, in his most recent statement, given to SiRT in March, 2015, MacKinnon was asked whether he recalled anything about Clayton running back for his hat. At that point MacKinnon said that jogged his memory, and he did in fact recall seeing Clayton at one point after they started to run. He said he and Clayton were north of the stream, after having crossed it the first time. Clayton said he lost his hat, and the last time he saw him was he was running back toward the brook where they crossed.

This would be where his body was found on May 6, two days later.

It is important to remember that Clayton's hat was found on the south side of the stream in the alders, on what would be the line of travel both MacKinnon and Clayton Miller took running down the bank from where they were sitting.

MacKinnon, in the 1991 RCMP statement, indicated to the RCMP where he ran. He ran from where he and Clayton had been seated and through the stream in the same area where Clayton Miller's body was found, and where Clayton's hat was located.

A young woman, Female 6, was at the party that night. She spoke with Dale MacKinnon and Clayton Miller earlier. According to a statement she gave to the NWP on May 10, 1990, when the police came, she ran in a southerly direction away from the Nest toward the racetrack. She described Clayton as running behind her (from the north). She described him as running along the bank of the stream, and he was yelling for his hat. She said that if he ran in her direction, he would cross the brook and then have to go up the hill towards where she was, on the south side of the brook at that time. Thus the last time she saw him Clayton he would have been on the north of the brook, looking for his hat.

No one watched every step Clayton Miller took as he ran from the police. However, the available evidence points to him having run with MacKinnon, across the stream, onto the north side, and then running back looking for his hat. His body was found in the area MacKinnon said was where he crossed the brook. The hat was found on the south side of the brook with a few metres of where the body was.

The estimates of the number of people at the party varies. But a number anywhere from 40 to 60 does not seem to have been unreasonable. There may have been more.

Many other young persons saw Clayton Miller at the Nest that evening, and had close enough contact to speak to his state of sobriety. Almost all considered him to be highly affected by alcohol. Their comments were as follows:

- "Pretty drunk"
- "Really drunk and kept falling down"
- "Drunk"
- "Really drunk"
- "Drunk"
- "Really drunk"
- "Drunk"
- "Drunk"
- "Did not see him drinking"
- "Staggering drunk"
- "Staggering"
- "Staggering"
- "Falling down drunk, at the stage of passing out"

- “Drunk”
- “Not loaded, but not sober”.

These comments are consistent with the blood alcohol level detected in Clayton Miller’s blood. That level was found to be 120 mg by RCMP analysis of blood taken at the autopsy. That compares to the legal driving level of 80. However, that level would be at the time of death. The body metabolizes alcohol at a certain rate per hour. In other words, the level would drop for each hour Clayton was alive after the raid. At the Inquiry the forensic alcohol expert, William Westenbrink, gave estimates on likely blood alcohol levels for Clayton at the time of the raid which would be quite a bit higher. This was based on his weight and amount he had to drink.

He did note that because Clayton Miller was a very inexperienced drinker, that even with levels at 120 he would be extremely intoxicated. Those symptoms would include staggering, loss of gross motor functions, dizziness, confusion, a state of stupor, and possible passing out.

When the RCMP did their 1991 investigation, they discovered that both blood and urine of Clayton Miller had been analyzed by the Provincial Pathology Lab. The blood analyses gave the same result of 120 mg. as determined by the RCMP expert. The urine gave a result of 265 mg. (Alcohol concentrates in urine in different amounts than blood.)

These two numbers allowed Mr. Westenbrink to give more particular estimates regarding the possible levels of alcohol in Clayton Miller’s blood. Based on that new information Clayton’s blood alcohol levels could have been as high as 180 to 220 mg. Needless to say, this would have meant he was even more highly intoxicated, and the symptoms listed by the expert now included those listed previously, in addition to impaired consciousness and sleep.

Clayton Miller was not the only person that night who was this highly intoxicated. When recording his interviews with other young persons who were at the Nest on May 4, Mr. Miller included an interview with two other young men. One of those was at the Nest that night. He told how, when the police came, he ran to a place in order to defecate. He passed out, propped up against a fence, with his pants down. He was later found by his friends, asleep in that position.

A few witnesses can give evidence on where Clayton Miller was positioned near the time of the police arrival. Male 9 recalls him being up the hill, which is consistent with what MacKinnon said.

Male 10 was another young man present that night who gave a few statements. He says he ran into MacKinnon and Clayton Miller, and in his first statement given to the NWP on May 8, 1990, says he then started to leave and saw the first police car. When he left Miller and MacKinnon they were walking toward the edge of the brook. In a statement given to the RCMP in March of 1991 he suggests he last saw Clayton and MacKinnon about 15 minutes before the police arrived, but confirmed they were together on the hill near the brook.

These other witnesses give evidence that is corroborative of what MacKinnon has to say.

One thing cannot be stated too clearly: no one, at any time, on Friday, May 4, 1990, or anytime thereafter, can say they saw Clayton Miller in the company of, or indeed anywhere near, any police officer.

This is incredibly important: as it again confirms there is **no evidence** to say that the police had anything to do with Clayton Miller on the night of May 4 at the Nest.

Thus, Clayton Miller and MacKinnon were together throughout the evening. They started drinking together, and stayed near each other as the party at the Nest continued. They were both very intoxicated. When the police arrived, Miller and MacKinnon ran from the police, MacKinnon in the lead. They ran in a northerly direction toward the brook from their spot up the hill from the fire. They went down the high bank, through the thick alders on that side of the stream, and through the stream. During this Miller lost his hat. When they got to the northerly side of the stream, Miller stopped and was looking for his hat. He ran back toward the brook. He was likely panicked and confused, and was definitely very intoxicated, on the verge of passing out. It would appear he ran back along the line of travel he and MacKinnon had just taken. What exactly occurred at or near the brook will never be known. However, the preponderance of evidence is entirely consistent with him falling. Passing out at this point was also entirely consistent with his level of intoxication. Unfortunately, the combined effects of alcohol and the cold caused him to remain there until he passed away. He died in the stream only a few metres from the very hat that caused him to return that spot.

This conclusion is consistent with the witness accounts, with the physical evidence, with the forensic examination of the body, and simple common sense.

Unfortunately, Clayton Miller died as the result of excessive drinking on a cold night.

Conclusions:

Perhaps the most unfortunate aspect of this case is the fact that in spite of all the evidence, and conclusive evidence that Clayton Miller was not beaten by anyone, comments to the contrary have continued from over the years from supporters of the theory that Clayton Miller was murdered. Media reports have made similar comments. Currently, social media is flooded with comparable contentions.

As an individual responsible for making decisions on whether there are any grounds to conclude whether criminal charges are warranted against police, I can say, beyond any doubt, that there is a complete lack of evidence available to prove that Clayton Miller died as a result of the application of force to his body by anyone, including any police officer. Indeed, there is no

evidence that police had any contact with Clayton Miller at all on the weekend of May 4 to 6, 1990, until his body was discovered on the afternoon of May 6.

In 1994, an editorial in the Cape Breton Post, after release of the results of the exhumation, stated as follows:

“The police and justice authorities have taken the case of Clayton Miller as far as they reasonably can, and indeed have gone the extra mile. The consistent conclusion of these investigations is that no other person is at fault for the unfortunate death of the New Waterford 17-year-old nearly four years ago. For some, such as Clayton’s parents, the case may never be over. But for the public there should come a point where the reasonable conclusion is drawn and accepted. That point has been reached.”

Clayton Miller was not beaten or killed by anyone. The doctors of the day said that at the time. Two well respected forensic pathologists repeated those conclusions in 1994. Dr. Bowes repeats those opinions, and confirms death by hypothermia based on newly understood science. The evidence does not support any other suggestions about his cause of death.

SiRT has examined the facts of this matter thoroughly. We have looked behind rumours and speculation for evidence, and what can be proven. We are convinced, that there is absolutely no evidence that any police officer caused Clayton Miller’s death. Rather, the evidence proves his death was caused by the unfortunate mixture of youth and alcohol.

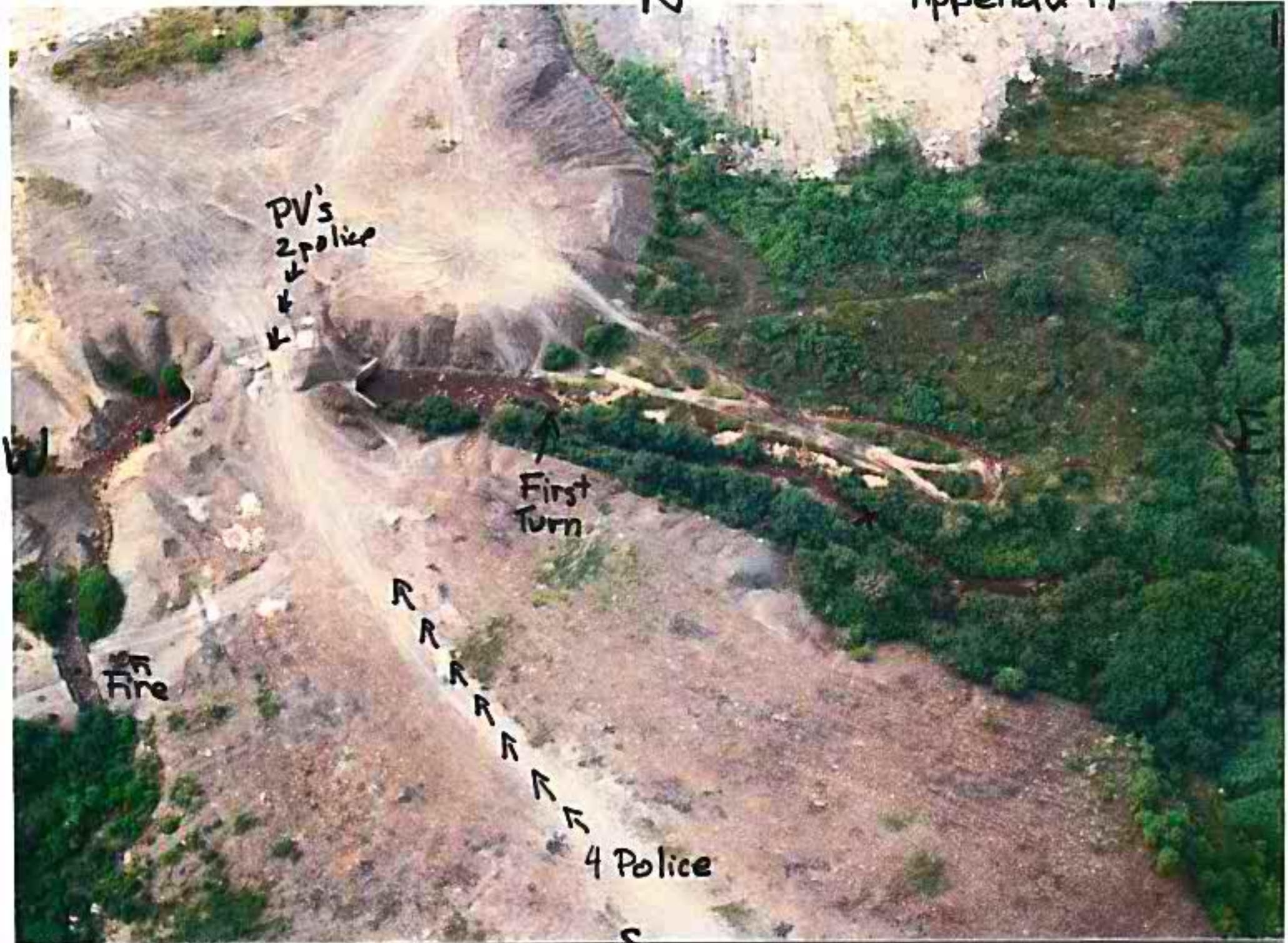
Clayton Miller’s death was a tragedy, and one which has affected his family deeply. That is understandable. While there is nothing this report can do to change that, what it can do is assure the public that as an independent body, with no allegiance to anything other than the truth, we have determined that Clayton Miller’s death was an accident. There are absolutely no grounds to consider any charges against any police officer.

To adopt the quote from the above editorial, there comes a point where it is time for the reasonable conclusion to be drawn and accepted.

That point has surely now been reached.

APPENDICES

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2 police
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First
Turn

Fire

4 Police

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