

BERNARDO INVESTIGATION REVIEW

Report of
Mr. Justice Archie Campbell

June 1996

Table of Contents

Letter of Transmittal	vii
Glossary of Abbreviations	ix
Terms of Reference	xi
Chapter 1–Introduction	1
Chapter 2–The Metropolitan Toronto Police Investigation	5
The Scarborough Rapes	5
The Organization of the Investigation	6
Peaks and Valleys	8
Investigative Strategies and Techniques	9
The Proactive Phase	11
Composite Drawings	12
Victim Support	13
Profiling	13
Suspect Development and Investigation	14
Other Suspects	16
Bernardo as a Suspect	17
Should Irwin and Munro Have Done More?	30
The Bernardo Tips in Context	32
The Scarborough Rapes Stop	32
The Maintenance Phase: The Investigation Winds Down	34
The GRT Inquiry	38
Conclusion	39
Chapter 3–The Centre Of Forensic Sciences	43
The Issue	43
Pre–DNA Conventional Serology	43
The Opening of the DNA Lab	45

Johnston and Irwin Discuss DNA Testing	46
Irwin's Understanding of CFS Position	47
Johnston's Understanding of Police Position and CFS Priorities	48
Newall's Understanding of CFS Priorities	48
Lucas' Understanding of CFS Priorities	49
Summary of Understandings Before Bernardo's Sample Obtained	50
From the DNA Discussion to Bernardo's Serology Results	50
Bernardo Sample Submitted to CFS	52
From Bernardo's Serology to the DNA Resubmission	53
Johnston's Training Profile	58
From Resubmission to Test Results April 2, 1992 to February 1, 1993	60
Analysing the Delays	63
Conclusion on Overall Delay	65
The Present and the Future	67
 Chapter 4–The Secret Killing Of Tammy Homolka	 71
The Early Morning of December 24, 1990	71
The Post Mortem Examination	76
Mitchell Concludes the Investigation	78
The Coroner's Report	79
The Medical Cause of Death	81
The Final Reports	82
The Re–Investigation of Tammy Homolka's Death	84
Analysis: Dr. Rosloski's Role	87
Analysis: The Police Investigation	88
Analysis: The Pathologists and the Burn	93
Impact on the Bernardo Investigations	93
The Coroner's System	94
 Chapter 5–The Henley Island Attack	 99
The Attack	99
 Chapter 6–Stalking	 105
The 1991 Summer Stalking Incidents: P. E.	106
The March 1992 Stalking Incident: K. A. and S. A.	109

The April 1992 Re-Sighting by K. A.	110
The Belated Unearthing of the Stalking Incidents	111
Conclusion	113
Chapter 7–The Green Ribbon Task Force Investigations	117
Leslie Mahaffy's Abduction and Murder	117
Joint Force Investigation.	117
Cement and Paint Investigations.	118
Records Investigation	120
Possibly Connected Disappearances.	121
Stalking Incidents	122
The Abduction of Kristen French.	123
The Murder of Kristen French	124
Investigative Jurisdiction	124
The Camaro.	126
Kristen French Body Site and Post Mortem Examination	132
Provincial CISO Task Force	133
Investigation of Suspects	134
Media Relations	136
Bernardo as a Suspect.	143
Bernardo's Suspect Rating Discrepancy	151
The I. L. Tip and Systems Management	154
Profiling	156
Exhumation of Leslie Mahaffy	159
Conclusion	159
Chapter 8–Identification, Arrest, Questioning	163
Initial Steps	163
The February 8, 1993 Meeting	166
Initial Preparation	166
The Legal Situation.	167
Search Warrant Preparation	168
Arrest and Interview Plans	169
The Media Leak	171
Interview Preparation	173

The Arrest	176
The Interview Plan	177
The Interview Failure	178
The Right to Counsel Problem	181
The Recording Bungle	183
No One In Charge, No One Accountable	183
Continuing Hostility	187
The Relationship Improves	189
Conclusion	191
Chapter 9–The Search Of 57 Bayview Drive	195
The Search of 57 Bayview Drive	195
Chronological Overview	195
Were the Tapes in the House?	205
The Physical Location of the Tapes	208
The Issues	209
Mindset: Likelihood of Existence and Probable Location	210
Mindset: <u>Charter of Rights</u> Minimization Principle	211
Tear the House Apart?	214
Cut a Hole in the Ceiling?	216
Mindset and Approach	216
Conclusion	218
Chapter 10–The Jane Doe Videoclip	221
Chapter 11–Sexual Assault Victim Concerns	225
Sexual Assault Victim Interviews	225
Specific Victim Concerns	231
Conclusion	235
Chapter 12–CISO: The Criminal Intelligence Service Of Ontario	237
CISO As A Funding Mechanism	237
CISO Funding Of The Green Ribbon Task Force	240
The Financial Cost of the Bernardo Investigations	242
CISO As An Organizational Model	243

Chapter 13—A Strategic Defence Against Serial Predators	247
The Need for a Strategic Defence Against Serial Predators	247
Lessons From Existing Systems	254
The Fire College Proposals	264
Bernardo Case: Systemic Problems	267
Early Recognition and Linkage	269
A Co-ordinated Case Management Proposal	283
Standard Case Management Procedures	293
Information Management	296
Training	305
Cost Issues	315
Central Mandating and Local Autonomy	316
Implementation	317
Chapter 14—Summary Of Recommendations	319
Chapter 15—Chronology	329
Chapter 16—Summary	333
Appendix 1. The Review Team	357
Appendix 2. Investigative Techniques in Scarborough Rape Case, Extract from Metropolitan Toronto Police Report	359
Appendix 3. FBI Profile of Scarborough Rapist	365
Appendix 4. Extracts from CFS Report Summary of CFS Activities in the “Bernardo Homicides”	375
Appendix 5. CFS Statistics: Turnaround Time for DNA Tests	379
Appendix 6. Review of the Niagara Regional Police Service Investigation into the Death of Tammy Lyn Homolka.	381
Appendix 7. Extracts from Chief Coroner’s Report	397

Appendix 8. Letter dated May 30, 1996, to Mr. Justice Archie Campbell, the Bernardo Investigation Review, from James T. Cairns, M.D., Deputy Chief Coroner for Ontario	401
Appendix 9. Media Article—Beaulieu	409
Appendix 10. Article on Present NRPS Media Policies	415
Appendix 11. Profiling Extract From GRT Search Warrant	423
Appendix 12. Extracts from GRT Report: Search of 57 Bayview Drive	435
Appendix 13. The Kidnapping and Murder of Leslie Mahaffy and Kristen French Search of the Crime Scene 'A Case Review'	439
Appendix 14. Letter To Victims	451
Appendix 15. Questions To Victims	453
Appendix 16. Information Sheet: Bernardo Investigation Review	457
Appendix 17. Police Forces Involved in the Bernardo Investigation From CISO Proposal Documents	459
Appendix 18. Extracts from Recommendations by Coroner's Juries	461
Appendix 19. Extracts From Fire College Proposals	477
Appendix 20. Extract from Major Case Management Manual, Second (1995) Edition, Canadian Police College.	485
Appendix 21. Letter dated March 21, 1996, to Mr. Justice Archie Campbell, of the Bernardo Investigation Review, from Sergeant Robert Hotston, Criminal Investigation Division, Peterborough Community Police Service.	497

Letter of Transmittal

Glossary of Abbreviations

CFS..... Centre of Forensic Sciences

CFS..... Report Review of the Activities of the Centre of Forensic Sciences in
the Bernardo Case, January 24, 1996

Chief Coroner Report.. Report into the Investigation of the Death of Tammy Homolka, January
10, 1996

CIB..... Criminal Investigation Branch

CISO..... Criminal Intelligence Service of Ontario

CPC..... Canadian Police College

C.P.I.C...... Canadian Police Information Centre

CPR..... Cardio Pulmonary Resuscitation

DNA..... Deoxyribonucleic acid

FBI..... Federal Bureau of Investigation

GRT..... Green Ribbon Task Force

GRT..... Report Debriefing Report of Niagara Regional Police Service Members
Concerning the Green Ribbon Task Force, December 14, 1995

MAIT..... Multi Agency Investigative Team

Metro..... Metropolitan Toronto Police Service

Metro Report	A Review of the “Scarborough Rapist” Investigation by the Metropolitan Toronto Police Service
NRPS	Niagara Regional Police Service
NRPS	Report Review of the Niagara Regional Police Service Investigation into the Death of Tammy Lyn Homolka, April 1996
OACP	Ontario Association of Chiefs of Police
OPC	Ontario Police College
O.P.P.	Ontario Provincial Police
ORACLE	Computer Information System used by NRPS
PCR	Polymerase Chain Reaction (DNA profiling technique)
R.C.M.P.	Royal Canadian Mounted Police
RFLP	Restriction Fragment Length Polymorphism (DNA profiling technique)
SAS	Sexual Assault Squad
TTC	Toronto Transit Commission
ViCLAS	Violent Crime Linkage Analysis System

Terms of Reference

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and concurrence of the Executive Council, on December 13, 1995, orders that:

WHEREAS it has been determined that it is desirable to appoint by order in council an individual to review various aspects of the investigations that led to certain charges being laid against Paul Bernardo;

AND WHEREAS it is desirable to set out the terms of reference for such a review in an order in council;

NOW THEREFORE the Honourable Mr. Justice Archie G. Campbell be appointed to conduct such a review;

AND THAT Mr. Justice Campbell's mandate be as follows:

- (1). to review the role of the Green Ribbon Task Force and its investigation into the deaths of the victims, and the Metropolitan Toronto Police Service investigation into the Scarborough sexual assaults;
- (2) to review the involvement of the Centre of Forensic Sciences and the analysis of samples submitted for DNA testing regarding the Scarborough sexual assaults;
- (3) to review the issues concerning the autopsies performed on Tammy Homolka and the police and coroner's investigation into her death;
- (4) to review the role of the Provincial Government in the provision of funding for the Green Ribbon Task Force;
- (5) to provide a written report to the Solicitor General and Minister of Correctional Services by March 31, 1996, comprised of an identification of issues and recommended policies or procedures that would improve the responses of the

police, the Centre of Forensic Sciences and the Coroner's Office to effectively and efficiently deal with crimes of the nature investigated.

AND THAT Mr. Justice Campbell's review will consist of a review of internal reports produced by the agencies involved and additional review of the agencies involved, if required.

AND THAT all Government Ministries, Boards, Agencies and Commissions, shall assist Mr. Justice Campbell to the fullest extent in order that he may carry out his review, and that he shall have authority to engage, subject to Ministry and Government policies and procedures with respect to the engagement of consulting services, such counsel, investigators, expert technical advisers, research and other staff as he deems it proper at rates of remuneration and reimbursement to be approved by the Ministry of the Solicitor General and Correctional Services in order that a complete and comprehensive report may be prepared and submitted to the Solicitor General and Minister of Correctional Services.

Recommended

“R.W. Runciman”
Solicitor General and Minister
of Correctional Services

Concurred

“R.W. Runciman”
Chair of Cabinet

Approved and Ordered

Dec 13 1995
Date

“H.N.R. Jackman”
Lieutenant Governor

Chapter 1—Introduction

Between May of 1987 and December of 1992, Paul Bernardo raped or sexually assaulted at least eighteen women in Scarborough, Peel, and St. Catharines and killed three women in St. Catharines and Burlington.

Paul Bernardo is a unique type of criminal, a determined, organized, mobile, sadistic serial rapist and killer who demonstrates the ability of such predators to strike in any Ontario community. The tragic history of this case, and similar cases from other countries, shows that these predators pose a unique challenge to the systemic investigative capacity of local law enforcement agencies throughout North America and Europe. The Bernardo case proves that Ontario is no exception.

This is a review of the work done by local and provincial law enforcement and forensic agencies during the Bernardo investigations.

The Bernardo case, like every similar investigation, had its share of human error. But this is not a story of human error or lack of dedication or investigative skill. It is a story of systemic failure.

It is easy, knowing now that Bernardo was the rapist and the killer, to ask why he was not identified earlier for what he was. But the same question and the same problems have arisen in so many other similar tragedies in other countries.

Virtually every interjurisdictional serial killer case including Sutcliffe (the Yorkshire Ripper) and Black (the cross-border child killer) in England, Ted Bundy and the Green River Killer in the United States and Clifford Olsen in Canada, demonstrate the same problems and raise the same questions. And always the answer turns out to be the same—systemic failure. Always the problems turn out to be the same, the mistakes the same, and the systemic failures the same.

What is needed is a system of case management for major and interjurisdictional serial predator investigations, a system that corrects the defects demonstrated by this and so many similar cases. A case management system is needed that is based on co-operation, rather than rivalry, among law enforcement agencies. A case management system is needed that depends on specialized training, early recognition of linked offences, co-ordination of interdisciplinary and forensic resources, and some simple mechanisms to ensure unified management, accountability and co-ordination when serial predators cross police borders.

There were times during the separate investigations of the Scarborough rapes and the St. Catharines rapes and murders that the different police forces might as well have been operating in different countries. As one Metro investigator said about the way the Scarborough rapist looked in 1992, before Bernardo was identified:

This boy is better than we might give him credit for, or he's fallen through the cracks.

Because of the systemic weaknesses and the inability of the different law enforcement agencies to pool their information and co-operate effectively, Bernardo fell through the cracks.

The Bernardo case shows that motivation, investigative skill, and dedication are not enough. The work of the most dedicated, skilful, and highly motivated investigators and supervisors and forensic scientists can be defeated by the lack of effective case management systems and the lack of systems to ensure communication and co-operation among law enforcement agencies.

Some of the systemic weaknesses have been identified and corrected in Ontario through changes in investigative procedures and advances in the application of forensic science. Other systemic weaknesses urgently require correction in order to guard against a tragic repetition of the problems that arose in the Bernardo investigations.

Ontario has, in its existing law enforcement agencies, the essential capacity to respond effectively to another case like this, but only if certain components of those agencies are strengthened and only if systems are put in place to co-ordinate and manage the work of the different agencies.

There must be a public recognition that these problems are not just problems for the police and law enforcement communities. They are problems for the community as a whole. A commitment to correct them is necessary in order to guard against another case like this.

Chapter 2–The Metropolitan Toronto Police Investigation

1 The Scarborough Rapes

Between May 4, 1987 and May 26, 1990, a violent sadistic predator sexually assaulted fourteen young women in Scarborough and one in Mississauga. The victims were in their teens or early 20's and were returning home at night, often between a bus stop and their home.

The modus operandi of the predator included stalking, then attacking from behind, dragging the victim into a driveway or bushes, punching and beating, raping anally and vaginally, taking trophies such as jewellery or an article from the victim's purse, sometimes personal identification. Some of the rapes were accompanied by death threats, oral intercourse, tightening a ligature or electrical cord around the victim's neck, digital penetration, biting, threat of further violence, death threats, gagging, cutting clothes and underwear with a knife, smashing the victim's head on the ground, forcing the victim to say she loved the attacker, forcing the victim to utter words of self-deprecation, threatening to return later to the victim's house and rape and kill her, and cutting the victim with a knife. In some of the cases the attacker made it clear that he had been stalking or observing the victim for some time and described her bed time routine, seen by the attacker through her window.

The first attack was on May 4, 1987 and the second on May 14, 1987. Superintendent Joe Wolfe, the commander of #4 District and later the head of the Task Force and the Sexual Assault Squad, saw that a link was apparent from the second attack onwards. The attacks were in the same general area, the time and circumstances of the attacks and the modus operandi of the rapist were similar.

Because of the way they were interviewed by the police, some of the earlier victims did not, at first, disclose the full details of the attacks. As time went on, the level of disclosure by the victims

improved as police training improved in areas such as victim sensitivity and sexual assault investigation. This issue will be addressed in the police training section of the review.

The victims did not all get a good look at the attacker who generally had his face covered. There was some variance in physical descriptions although many of the victims described him as around 5'10" and 160–179 pounds.

2 The Organization of the Investigation

The Scarborough rapes were investigated by the local detective office in 43 Division until November 1988 when a task force was formed under the Inspector of the 43 Division CIB office, referred to in the media as the Scarborough Rape Task Force. The investigations were later taken over by the newly formed Sexual Assault Squad which began as a permanent unit in April of 1989.

Until the formation of the Sexual Assault Squad, different investigators would handle the same case from time to time without any continuity. Although the unit commander remained constant from 1987 to 1992, over fifteen different officers were in charge of the separate investigations at one time or another until the appointment of Superintendent Wolfe, who introduced an element of continuity:

- Q. From our discussions with the victims, there was a recurring stated observation that no one particular officer was in charge of their case? Discuss this.
- A. When I formed the Sexual Assault Squad I demanded that. At the time of the Task force it was Sgt. Ward. It was a problem because there was 10 different attacks and 20 different officers. My order was that no one contacted the victim unless they speak to Sgt. Ward. When I was in charge of the Sexual Assault the victim was priority number 1. We created a call back time for the officer to all the victims on a regular basis. I went so far that I sent questionnaires to the victims to see how they were treated.

- Q. Once the linkages were made between the sexual assaults did the priorities of the scene and witness management change?
- A. Certainly. It was a full blown investigation. The same as you would do in a homicide. We notified the Communications Bureau and told them that if a sexual assault occurs in Scarborough then the Sexual Assault Squad is called out. Dog teams called out. Officers were told to shut down the area and don't let anyone out.¹

Superintendent Wolfe described the workload pressures on the Sexual Assault Squad from the beginning of its formation:

- A. They ended up at HQ. One room for analysts and one for investigators. We requested 27 officers and got 6. We hoped to set aside a formal period of training because we realized we didn't know enough about sexual assault. Dalziel became in charge of training. This was the early forming of the squad. We didn't get the training time because sexual assaults continued to occur. There was a serial rapist in 14 division and another in 55 Division where a kid named B... was attacking women with a gun. We caught him. I had four investigators at that time.

...

.. Discuss your resources during your investigation. Did you feel you were adequately resourced?

No. There were never enough people in the Sexual Assault Squad. I said we needed 26 people in 1989 and here it is 1996 and there are only 27 officers. Never enough people.

It is difficult to speculate whether the Scarborough rape investigation might have progressed differently, particularly after the end of 1990 when it started to wind down, if the Metro Sexual Assault Squad had a higher level of staffing. Because the level of staffing was low and the number of sexual assaults was high, the squad's ability to concentrate resources on any one case was strictly limited. Although enormous resources were devoted to the Scarborough rape cases during the proactive phase of the investigation, the resources dried up after the rapes stopped in May of

1. All quotes, unless otherwise identified, are taken from notes made during interviews by investigators for this review, and are not necessarily verbatim.

1990 and it is apparent that the Scarborough rape investigation was put on the back burner because of the competing pressure of other cases and other priorities. This point will be addressed later in the report when describing how difficult it is to catch the mobile serial predator who crosses police boundaries and gets a free start in a second neighbouring community because the first community has no local incentive to pursue him vigorously once their attacks stop and the case becomes cold.

By the end of 1990 the Sexual Assault Squad had grown to one staff inspector, three staff sergeants, eight or more sergeants, and two constables.

The Scarborough rapist was not the only rapist faced by the Sexual Assault Squad. Metro police had about two thousand reported sexual assaults a year, with a clearance rate in the range of 70%. The Sexual Assault Squad dealt with the more difficult and serious cases, including a number of other serial rapists over and above the Scarborough rapist. The investigation of a stranger sexual assault requires significant investigative resources. As Inspector Warr, a senior supervisor of the Sexual Assault Squad, said:

...there's a lot of work in a stranger sexual assault; there's no quick fix for those, they're long tedious jobs.

3 Peaks and Valleys

After each Scarborough rape the investigation would intensify. Then, as leads ran out and the investigators had no more they could usefully do on that case, the attention to that case diminished. One investigator described the peaks and valleys during the periods between the rapes:

- Q. When did things wind down?
- A. Every time he committed an assault then you would have a lot of people working with you. Then you would have a break for awhile. We would talk to Forensics and

discuss suspects. It had a lot of peaks and valleys during the course of the investigation.

Q. How long would it run for before officers would have to go back to their general assignment?

A. It could have been months. I can't remember. We established hot lines and received literally thousands of calls. We had to check the suspects. There were officers specifically assigned to investigate tips out of town or local.

One investigator likened it to a dolphin, surfacing with a leap, then diving out of sight, then reappearing again with another leap:

Q. At what point did the investigation begin to wind down?

A. It was like a dolphin really. You had an attack and we went in full bore. You also had other attacks around. I don't want to diminish the severity of these attacks but by the same token there were hundreds of other attacks taking place and we were trying to solve them.

Q. How many with the same priority?

A. Several. We had the guy on the beaches. He was peeping and then masturbating on the front doors. We had the one with the semen in the condom. The Ninja. We had the guy in High Park. He had been working a long time. We did one, who was attacking elderly women in 53 Division...extreme violence with the elderly. Another guy was the subway rapist. Another guy was in relation to Peel..., the Mississauga Rapist. Our guys were working back and forth with Peel.

4 Investigative Strategies and Techniques

It is clear that from time to time Metro devoted enormous resources to the Scarborough rape investigation and applied a wide variety of investigative techniques, summarized in an extract from the Metro report set out in Appendix 1.

The techniques included surveillance of suspects, stake-outs at predetermined locations, police dogs, laser examination of the victims and their property for fingerprints, vehicle registration

searches and investigation of cars noted in the area of the rapes, public appeals for information, canvassing TTC employees about potential suspects who frequented the public transit system, a telephone hot line for tips from the public, the use of composite sketches, the use of posters and billboards, offender profiling techniques, forensic analysis of the knots used to tie up victims, blood and semen testing, linguistic analysis of suspect statements, photo line-ups, voice line-ups, community presentations to elicit evidence, the execution of search warrants on several suspects, examination of shoe prints by means of plaster casts and investigation with shoe manufacturers, the offering and advertising of rewards, and other techniques which are not in the public interest to divulge in this report.

None of those techniques produced success during the active phase of the investigation. The bottom line is that the police had very little to go on. The attacker was not known to the victims and until the end, none of them had a good enough look at his face to produce a good composite likeness. As one investigator said, the police were looking for a needle in a haystack:

- A. ... you're dealing with a person who has absolutely no connection to his victim as opposed to a murder investigation where you can look and 99% of the time you can find some connection in the background. So you're dealing with a total stranger to the victim. You're dealing with a situation where the victim did not get a chance to look at the suspect. So you're looking for a needle in the haystack, because you're looking in an area of millions of people.
- Q. In a case like that, you're better off to develop pro-active techniques rather than identifiers?
- A. Yes. So they did the decoys. They did the mass press releases, community meetings, the TTC changed their procedures to allow women to get off wherever they wanted rather than just at specific stops. There were a lot of things like that were done to try and combat this fellow. And you're dealing with a person who had no criminal record.

This proactive phase of the investigation will be described next.

5 The Proactive Phase

Some of these techniques such as mobile surveillance, stake-outs and decoys, were proactive techniques, designed to apprehend the rapist before he committed another rape.

We set up surveillance, followed women on the buses, decoys on the buses, met with community groups,

...

I know a lot of time and effort went into surveillance. I don't mean on suspects. I mean proactive measures. Women walking or on a bus. They would eliminate suspects through interviewing and checking alibis. They used police officers as decoys. Huge media blitz to get out the dangers. The poster of the fair haired Scarborough Rapist was plastered everywhere for a long time.

Rapid response teams stood by to flood any area where a stalker was reported or a decoy was approached or attacked. Inspector Dalziel described the proactive phase of the investigation:

- A. Because we were looking at attacks in specific areas...we looked at the breakdown of attacks and were of the opinion that there were women out there that weren't reporting the attack. So we set up in this grid pattern. If we got a suspicious person call, the crew would move into the area and stop everything that moved. We set up rapid response units in a grid pattern.

...

We even sent police women to the college to train them how to survive this guy's attack if he reached them. We put them out as decoys. Taught them how to defend themselves sufficiently long enough to get away from him. If they could get away from him the back-up teams could be in a position to get to him.

- Q. When did this happen?

- A. This started in November 1988. We made the decisions as a team. We had a meeting every morning. Recommendation is that you have to have a minimum of two case managers. So they can cover the shifts of everyone. Our people were running long hours.

Q. How many people involved in this investigation?

A. It varied. We could have, at one given time, you could have in excess of 20 people. That would drop down during holidays or sick leave or other times. Depends on if we were in the reactionary mode, proactive mode, maintenance mode.

After an attack that day or that night we would start doing door-to-door giving out an inquiry form. Part of that was to let people know it happened in their area. Also tried to expand the suspect pool. Proactive. We held meetings in the schools.

One particular incident that occurred during the proactive phase of the investigation is worth mentioning. On May 25, 1988, a Metro plainclothes officer staking out a Scarborough bus stop unsuccessfully chased a suspect who was hiding under a tree near the bus stop. The Metro report notes that this suspect is now believed to have been Bernardo. On May 29, 1988, a young woman was stalked and raped in Mississauga in circumstances generally similar those of the Scarborough rapes. Peel investigators were immediately in touch with Metro to examine the similarities. They concluded correctly that the Mississauga rapist was probably the Scarborough rapist and it indeed turned out that it was Bernardo. If the suspect chased by the Metro officer four days earlier was indeed Bernardo, this demonstrates that serial predators will move their base of operation to avoid a tightening police cordon. Community awareness and police activity in a predator's home range may drive him to further hunting grounds in order to avoid the tightening police cordon. This is a significant point to remember when considering the overall provincial interest in the apprehension of serial predators, an interest that transcends the local concerns of individual communities and police forces.

6 Composite Drawings

Composite drawings are a mixed blessing. If accurate they can help identify the suspect. If inaccurate they can mislead and can influence witnesses. One investigator said:

I hate composites because as soon as you put one out you get swamped with calls.

That being said, they can be enormously useful, as demonstrated by the composite produced after the last Scarborough rape.

Police artists were used to help victims and witnesses record their recollection of the rapist's face. The victim of the last rape on May 26, 1990 got a good look at the attacker. Unlike most of the other victims, she had a chance to see his face under reasonable lighting conditions for more than a fleeting second. The composite from her description was similar to the composite produced from one of the earlier victims and it turned out in the end to be a good likeness of Bernardo.

7 Victim Support

Victim support, and sexual assault training, are discussed in a separate chapter.

8 Profiling

In November of 1988 the FBI Behavioural Sciences Unit developed a criminal profile of the Scarborough rapist, based on the evidence available to Metro and the use of profiling analysis, behavioural psychology techniques, criminal histories, and specialized law enforcement experience in serial predator investigations.

The profile, set out in Appendix 2, described the rapist as a Scarborough resident with a background of assaultive behaviour, driven by anger, escalating in violence, angry at all women, motivated to control, humiliate and degrade women, sadistic, explosive in temper and prone to rage if not obeyed instantly, who had probably battered women in the past.

As with every profile of its type, it emphasized that the profile itself was limited by the information available and was no substitute for investigative work.

The investigators were all aware of the profile and they kept it at the back of their minds, particularly in relation to the two common sense propositions that the rapist probably lived in Scarborough and was a sexual deviant, probably with a history of assaultive behaviour on women.

9 Suspect Development and Investigation

Concurrently with the proactive phase, and continuing for some time afterwards, the investigators developed potential suspects on the basis of information from other police sources and from the public, and from records of known sexual offenders in the area. There was no lack of information from the public:

At first I was going through the information on the hot line. We were getting thousands of calls. The information would be put on a supplementary report. At first I just took information from the phone.

The information phoned in about potential suspects resulted in hundreds and hundreds of investigative leads and an enormous amount of investigative follow up. They almost swamped the investigation, but the leads had to be followed up and investigated:

We had 5 lines and you couldn't hang up because they never stopped ringing. We got 3–4,000 tips. They were categorized, if they lived in the area they get an A.

...

Officers would talk to suspects and try and get saliva. Check any alibis. Focus put on people in Scarborough, cars, sexual history. If they had an alibi we would attempt to verify it. It was left the individual investigator. The Detective Sergeant would discuss each suspect. We had the community swamping us.

...

Metro's system of suspect classification in the Scarborough rape investigations was highly subjective. Although every suspect ranking system has to be subjective in the sense that it

depends on investigative judgment and discretion, there was a lack of order in the Metro suspect classification. As one of the supervising officers said:

- Q. Who do we speak to to find out what Bernardo's ranking was?
- A. Who knows, everyone was reading them and ranking them. First they go to analyst, and then it comes to me. If it had been named before the analyst would tell me. You could send out a guy to investigate a tip on John Smith and then you would get 4 more calls on John Smith. Sometimes John Smith would be talked to a couple of times but you would marry all his tips and put them in the same file. We relied on the computers to make the linkages. But if the names were spelled differently then that was a problem. Unless an investigator picked up on the same name.

The suspect classification system gave the individual officers wide personal discretion to categorize a suspect as A or B or C or D or E. As noted below, everyone was reading the reports and ranking the suspects. There was also a suspect rank of A1 reserved for high risk sex offenders. An A suspect was an excellent prospect because of his age in the 20's and similarity to the composite or residence in Scarborough or a sexual assault history or any combination of those and further investigative facts. B suspects might not live in Scarborough but would fit a couple of those criteria. C suspects were all others except for D's and E's or F's cases which would not justify investigative resources—for instance a supposed sighting on a bus in Thunder Bay a month earlier of someone who looked like the composite.

By October 25, 1990 there were about 930 suspects. The Metro report refers to an estimate of approximately 1,500 suspects at the time of the contact between Metro and GRT in May of 1992, although this number seems high because there is no indication that a significant number of suspects were added once the investigation started to wind down after the end of 1990. And one of the GRT officers, as noted below, thought that Detective Irwin of the Metro Sexual Assault Squad in January of 1993 referred to a number of suspects in the range of 3,000. Because there was no consistent case management system it is impossible to know exactly how many suspects there eventually were.

10 Other Suspects

All of the tips and investigative work resulted in a list of suspects. As previously noted, the lack of an effective case management system makes it impossible to determine whether there were 930 or 1,200 or more of them. About fifteen of them stood out as high interest suspects for one reason or another and some were put under surveillance. Some looked so good as suspects that they were identified by rape victims as the Scarborough rapist and arrested, only to be released after they were cleared through further investigation.

One of them was called in by a police officer in Waterloo who reported that the suspect always carried a knife and had a lifetime ambition to watch someone die. Another, with a record for kidnapping and sexual assault, was called in by someone who knew him and felt that he would sexually assault again, and was also called in as a look-alike for one of the composites. One of them was reported by a woman who was suspicious of him. He was identified in a photo line-up by a number of women he had followed in the Guildwood area of Scarborough, and he admitted that he had sexual problems. Another was called in as a suspect and one of the victims thought he was possibly the attacker but she could not be 100% sure. Another was identified by a confidential informant and arrested but released after he gave biological samples. Another man, a very good suspect, had been driving around bus stops with his lights off. He carried a knife and aerial photographs of the area in his car and displayed an unusual interest in and knowledge of the Scarborough rape investigations. Another man was called in as a suspect, and then arrested after he was identified in a line-up by one of the victims who said he was the man who attacked her.

These suspects, although they were eventually cleared, absorbed significant resources and diverted the attention of the investigators as long as they were viable suspects. The investigation, like any other investigation of its kind, was full of false leads and promising suspects who were eventually cleared.

11 Bernardo as a Suspect

Bernardo's name first emerged as a potential suspect in January 1988 after the fifth Scarborough rape. Sergeant Kevin McNiff, an officer at the Toronto Island mini–station who had no connection with the investigation, was approached by a family friend:

[I. F.] called me up...She was telling me the troubles she was having with Bernardo. That he had borrowed money off her and she was hopeful that I would help her get the money back. The longer we talked the more information came out. She was reluctant to talk to me about the personal stuff. She told me the things laid out in the report. Probably a bit more. It was an informal conversation over a meal.

Although the young woman approached Sergeant McNiff for advice on how to get her money back from Bernardo, Sergeant McNiff realized from Bernardo's behaviour that Bernardo was an obvious candidate for investigation in the Scarborough rape cases and he filed a report on January 5, 1988, although it was mistakenly dated January 5, 1987:

METROPOLITAN TORONTO POLICE SUPPLEMENTARY REPORT

<i>Concerning type of Original Report</i>	<i>Date of Original Report</i>	<i>Date of this Report</i>
SEXUAL ASSAULT	22 Jan 1988	5 Jan 1987

Possible Suspect: Paul Kenneth BERNARDO, 24 yrs.

21 Sir Raymond Dr., (Guildwood & Galloway)

M/W, 6", 180 lbs., light brown collar length hair, clean shaven, mole under nose, slightly crooked nose, unk. eyes, no accent; no scars/tattoo.

wears: right hand gold ring with 3 diamonds; possibly a high school ring with red stone.

drives: white capri unk. lic.

knife: stiletto type (blade not folding) in dark leather case

Info from: Sgt. McNiff 2753 of 52 Division (Island Station) local 2035 ...
VIA–[I. F.], 18 yrs., [address, telephone number]

Ms. [F.] is a daughter of friends, and as a result of the information detailed in the following supplementary, asked to see the writer to obtain advice. Her desire was to learn how to end the relationship, and to get some money back that was owed. It was the writer who linked the a/m person to being a suspect to the sexual assaults, rather than any revenge factor in Ms. [F.]

NOTE: details are sketchy–the writer was not taking notes and was not speaking to Ms. [F.] from the point of view of a police officer.

In the early part of 1987, [I. F.] met and started dating Bernardo. They had a normal relationship, with probably sexual relations though this was not stated by [F.]

Bernardo is described as manipulative and aggressive. His behaviour progressed from gesturing to slap her in a joking manner, to threatening to do so, to giving her light taps, which became harder and harder.

On at least one occasion in November, when they were in his car, he wanted her to have sex with him. He pulled out the knife, and wanted to have an orgasm while he held it to her throat: she states she did not have sex with him this way.

In late November, the two were out for the evening, and on the way home, he drove to an isolated factory area. He had been smacking her, and yelling at her. They had an argument, and Ms. [F.] wanted to leave the car, but he wouldn't let her. He worked himself into a frenzy, and was looking for the knife, but didn't find it. At one point, he started talking to himself, and banging his head on the steering wheel saying: "Why do I do this, why?" She got out the car and hid from him. He spent some time looking for her, making promises and threats. She wandered until she found the home of a friend. This was the last time she saw the man. (Prior to the final escape, she had gotten away once, he had caught her, punched and kicked her and rolled her in the mud bringing her back to the car.)

On an earlier occasion, Bernardo had driven [F.] and her girl–friend to a house in Markham, the home of the Van Smirnoffs. The girls were taken to the basement of the home, where two other young men were waiting: the girls thought they were going to a party. It is this officer's opinion that the men had the intention of having group sex. It was only that the girls wanted to get out (despite threats and assault) and the fact the mother of the house was awoken that this did not occur.

Ms. [F.] asked this officer for advice. Despite having been taken to Scarborough General twice for injuries, she did not want charges laid. Her main desire was to have money returned to her she had lent to Bernardo; further she was afraid he would come back and force himself on her. To date, he has not done so.

For purposes of your enquiries, from Ms. F.'s statements, the parents of Bernardo and Van Smirnoffs do not seem like normal parents in that they allow things to go on in their home that normal parents would not. Bernardo is negative on CNI, CPIC, MANNIX.

On Occurrences: 1) Mischief Under—Sept 29/87, #128464/87, 43 Div, PC 495 Suspect L... C... went to his house (Ms. F. was inside) and broke his windows believing him to be two—timing her. Obviously he was.

2) Assault—Mar 14/86, #30997/86, 43 Div., PC 1485/495 Suspect M...T... punched him in the face, telling him to stay away from T...'s girlfriend (this is what Bernardo told [F.]).

3) Assault—Jul 26/86, 55 Div., #96411/86 Bernardo, Van Smirnif, and S... C... were assaulted. Writer has no details on this matter.

The McNiff report showed that Bernardo lived in Scarborough and that he was a violent knife—wielding sexual sadist with a pattern of frenzied sexual assaults. It seemed obvious to Sergeant McNiff that he should be investigated as a possible suspect for the Scarborough rapes:

- Q. What factors did you consider when you submitted your report naming Bernardo as a suspect for the Scarborough rapes?
- A. Seemed obvious to me. From what she was telling me he demonstrated a manipulating, dominating relationship, he liked violence, liked to carry a weapon, seemed to have fantasy of rape. That along with his age and general description.... he may have been the character doing the rapes.

We now know that I. F. had more to say about Bernardo's violent sexual sadism than she told Sergeant McNiff at the time.

Sergeant McNiff called the Scarborough task force number, spoke to a detective, and forwarded the report to the task force. The next contact he recalls was a telephone call just before Bernardo's arrest in February 1993 from an officer who wanted to interview I. F..

The three page report was apparently received on January 22, 1988. At some undetermined time it was entered in the manual alphabetical index book that belonged to the investigation of the fifth rape, which had occurred on December 23, 1987:

BERNARDO, PAUL (Poss. Suspect) Pg. 133, 133A, 133B

There is no apparent record of any contact between the Scarborough investigation and Sergeant McNiff. It appears that there was, from the time he submitted his report until Bernardo was identified five years later as the Scarborough rapist, no attempt to get in touch with him or with his informant.

If the Scarborough rape investigators had followed up by interviewing I. F., and if she had then revealed as much as she later revealed about Bernardo's violent sexual sadism, the investigators would have had more early evidence pointing to Bernardo as a possible rape suspect. Because there was no case management system in place to ensure the systematic review and appropriate follow up of investigative leads, there was no follow up on the McNiff report. The significance of this inaction is best summarized by Sergeant McNiff:

A report like this shouldn't disappear in a hole... it is very discouraging.

It may be worthy of note that someone called Sergeant McNiff after Bernardo was identified and told him that if he had put in his report on time, the delay in identifying Bernardo would not have happened. Nothing could be further from the truth. Sergeant McNiff did exactly what he should have done. His analysis of I.F.'s story, and his instinct for its significance, turned out in hindsight to be 100% right. It is ironic that anyone should be critical of him for the lack of case management

systems to ensure that someone looked at his report, took note of his astute observations, and followed up on his lead.

The next time Bernardo's name came up was on June 27, 1990. A Royal Bank teller called the police after the fifteenth and last Scarborough rape which had occurred on May 26, 1990. As noted above, the victim of that rape got a good look at the attacker's face and the composite drawing produced under her direction turned out to be a good likeness of Bernardo. The report of that tip reads as follows:

METROPOLITAN TORONTO POLICE SUPPLEMENTARY REPORT

Date of this Report

27 Jun 1990 1300

Info from: Ms M... Royal Bank, Ellesmere Road & Neilson Road

The above party called S/Insp. J. Wolfe at the S.A.S. office and gave the following info.

One Paul BERNARDO 21 Sir Raymond Drive West Hill DOB 27 Aug 64 is a dead ringer for the photo in the papers of the Scarb. Rapist.

The caller also reports that he had not been seen at the Bank since the last rape until June 27/90. When seen on June 27/90 he had changed his hair style, the caller also reported that this party was a student at the Scarbor. Campus of the U. of T. and that he looks about 21/2 yrs. old.

P.C. Buchanan #1897

Superintendent Wolfe took this call himself because he happened to be in the office when it came in. He described how the call, which was like two thousand other calls, would have been processed:

I picked up the phone because no one else was around. The info would go into the stack and the reader would file it ABC and the criteria was did he live in Scarborough, look

alike, so he ends up in the A box. Detective Sergeant gets the tip and it is given to an investigative team. It should be marked on the super duper computer when it is cleared. We waited for the “spit” samples. If they were a non-secretor, then we go out and get blood. It was like 2,000 other calls.

At the time this tip came in, two or three other suspects had a high priority and one of them looked very good as a suspect. Because of the work on the other suspects and because there was nothing that made this tip stand out among thousands of others, no action was taken on it at the time.

Bernardo's name next surfaced on September 12, 1990. Constable Madden reported a tip phoned in by Tina Smirnis, the wife of one of Bernardo's family friends:

METROPOLITAN TORONTO POLICE SUPPLEMENTARY REPORT

Concerning type of Original Report

Date of this Report

SCARBORO REPORT

12 Aug 1990

Informant—Tina (Nurse)

- knows from second hand information, suspect would date one woman and have one or two girls on the side
- would wait till a girl would have too much to drink then would take advantage of her
- resembles composite
- called in on the L.... A... case—never interviewed
- further invest. required

Suspect: Paul Kenneth Bernardo 64–08–27 21 Sir Raymond Dr. M/W 6'
185 lbs. blonde hair blue eyes 20–40 CPIC & CNI

M. Madden 3944

It should be noted that “Tina” did not leave her full name or her telephone number or address.

Constable Madden has no recollection of the call or his report. He believes he got it from the hot line. As he says,

I took hundreds of those calls and submitted hundreds of those reports.

It is clear from the reference to C.P.I.C., the Canadian police information computer system, that he queried Bernardo to see if he had a criminal history or was wanted by the police, and Bernardo's name came back negative.

The reference to the L. A. case is obviously a reference to the fifth rape, which took place on December 23, 1987 and probably a reference to the McNiff report, referred to above, which had been received but not followed up. The one thing that is clear is that there was no system that automatically put together all the tips called in about one suspect. This was the third separate tip about Bernardo and the three tips were scattered throughout the files and index books with no way to ensure they were put together in the same file or properly cross-referenced. As one investigator said:

A. Back then everything was on paper. It was a paper driven process. There was paper everywhere. It was a nightmare. There were walls and walls of stuff.

Q. What did that mean to you as an investigator?

A. It wasn't very helpful.

It appears that nothing was done about the tip from Tina Smirnis. There was no way to contact her because she did not leave her full name or telephone number. But an effective case management system would immediately have told the investigators that it was the third unrelated tip about the same suspect, and this might at least have provided some incentive to take a hard look at him.

Tina persisted by phoning again to ask if anything had been done. Detective Irwin explained the sequence of events:

Q. Then what happens is that Smirnis is sort of the catalyst who phones and reports something to Madden in about a paragraph, and then beyond that it's not until Smirnis phones and persists and says that, you need to do more, or has anything been done?

...

Q. Why would she phone and say you have to do more?

A. Tina had phoned initially the 12th of September...

Q. When did you know it was Tina Smirnis?

A. I think it's when she phoned and made arrangements to come in and see us and give us the information...

...

...sometime around probably just before September 26th, which is the date on this hand-written note by me on foolscap, I think Tina had contacted me and said that they wanted to come in...

If Tina Smirnis had not been persistent, there is no guarantee that she would have been interviewed in the foreseeable future because there was no system to show that her tip was the third separate unrelated tip about Bernardo:

It may be that she called and made an inquiry that prompted me to sort of look and see what there was. I believe it was her who called us and said could you tell me what the status is. And there hadn't been anything done with either one, I think she was persistent and OK, you and your husband come in and see us then, and they came in.

On September 26, 1990, Tina and Alex Smirnis, as a result only of Tina's persistence, came into the Sexual Assault Squad office for an interview. They brought a picture of Bernardo and a videotape of him taken at a wedding. Detectives Irwin and Munro interviewed them and Irwin made hand-written notes:

....

BERNARDO

- Alex Smirnis grew up with Paul Bernardo
- very close family friends with Alex's family
- grew up with each other in Guild
- Paul does/has done some accounting for Alex's family–family restaurant
- Alex and Paul known each other since birth
- distinctive voice
- photo & video from their wedding
- 24 Sir Raymond
- 21 Sir Raymond
- lives with parents
- engaged–relocating to St. Catharines
- relocating is out of Paul's nature & sudden

...

- New Years Eve–1987–I...–Morningside/Lawrence (s/e) `swatted her'–said guys I want some privacy–might have beaten the shit out of her
- always young girlfriends–small petite–not bright
- Fiancé–18 years old–still in school
- started dating more than one girl–was dating an oriental girl from U of T and in his home with another girl (I...)
- Sept. 1987–oriental broke Paul's windows (occurrence on file)
- Carla–current girlfriend–met at Howard Johnson's on Progress–first night they slept together
- Paul always wanted a pure wife–his morals have gone by the wayside
- Carla says that if you wanted to know anything about girls–ask Paul–he knows
- Paul has said to Alex's brother about raping girls–out driving around and commented about getting the girl walking along the street and raping her
- Carla–2–2 1/2 years together–short, petite, light coloured hair–subservient
- dated another girls while dating Carla

...

- Paul–sly–manipulative–trendy–preppy dresser
- Cars–Capri, white, 1980–81 (parents) Ken Bernardo (father)
- instigator
- braggart
- talk about having sex in his suit with his briefcase in his hand–and his wife in house clothing
- very domineering
- rough sex–had joint relationship with sisters–Paul talked about having anal sex a few times
- not into conventional sex
- carries a knife in a car
- didn't like people going in his room
- at one point involved in Christian Broadcasting on TV
- scouts
- interest in money & girls
- extended credit
- leather jackets
- photos–4 years ago in red sweater
- 3 years ago in wedding
- 14 months ago–video
- Spring '87–professional worm picker at night
- 240SX Gold–since '89 leased
- past 1/2 years accounting
- insecure
- non–smoker
- left handed?
- drinks to fit in

Florida: Mar. '89–girl passed out–taken up to room

- Paul raped her while she was passed out
- A's brother walked in on him. He said wait, he'd be done in a minute–then they could jump on (Van Smirnis & Gus)

...

In hindsight the salient features of the interview were that Bernardo was relocating to St. Catharines suddenly although relocating was out of his nature, that he talked when driving around about getting a girl walking along the street and raping her, that he was manipulative and expressed unusual sexual fantasies, that he is into unconventional sex, carried a knife in his car, and raped an unconscious woman.

At some point after the Smirnis interview Irwin came across the McNiff report that had been sitting in the files, apparently unnoticed, for over two and a half years. Irwin recalls that the Smirnis' may have said that Bernardo had been investigated before, but in any event he had some good cause to look through the old investigation records for something else about Bernardo:

The McNiff report, as I recollect, came to our attention in speaking to the Smirnis', and in dealing with that, when they leave we go and start searching, there wasn't a central filing system for all the cases. So here is the current one for May 1990, which is an index that we've seen in your documentation here, and the binders, where you don't touch the white copies, and there's the working files. But then there is the old investigations that are on a HOLMES computer database that's really archaic and no one, that's not loaded properly and the analysts are the only ones that can get into it, and then the documents are sort of mixed in whatever groups in a couple of drawers in another part of the office. So the quick answer is, search what you can search and then go look in the old manual index. And lo, and behold, Bernardo, he does show up. And I think it was the Smirnis' who said he was investigated previously. I may be mistaken, but for some reason I had good cause to go look in those old investigations.

This first surfacing of the McNiff report, over two and a half years after it was put in, tells us something about the lack of a computerized case management information system. The search through the indices and the binders and the old files and drawers, on the hunch that Bernardo's name might be buried somewhere in the mass of paper, demonstrates very clearly the need for an effective computerized case management information system.

The interview with Bernardo did not take place until November 20, 1990, about two months after the Smirnis interview. The reason for the delay was that the investigators were busy with other duties. The Scarborough rapes had stopped and the task force was no longer a dedicated unit. As Detective Irwin said, it was back to business as usual:

It's from September to November that we go knocking on his door that's with probably annual leave, it's our call rotation at this point in September, it's not a task force, it's not dedicated to the Scarborough rape investigation, it's back to business as usual.

Although they read the McNiff report before interviewing Bernardo, they did not speak to McNiff or interview I. F. In a more fully resourced investigation with a structured case management system one might expect a greater degree of preparation before interviewing a suspect who had been suggested by three separate unrelated sources, one of them an experienced police officer. It would be speculation to suggest that better preparation would have made any difference in the end. But the entire history of the McNiff report suggests that there are many reasons to note the lack of an effective case management system during the Bernardo investigation.

Irwin and Munro called at Bernardo's parents' house on November 19th. Bernardo was out and they left their cards with his father. The next afternoon he telephoned and said he would come right down to see them. He came to the police station about 4:25 p.m.. From about 4:35 p.m. until about 5:10 p.m., he was interviewed by Detective Irwin and Detective Munro who made the following report:

METROPOLITAN TORONTO POLICE SUPPLEMENTARY REPORT

<i>Concerning type of Original Report</i>	<i>Date of Original Report</i>	<i>Date of this Report</i>
SEXUAL ASSAULT	26 May 1990	20 Nov 1990

Occurrence 621 Midland Avenue

Firm, Name and Type of Business:[R. L.]

On Tuesday November 20th/90 at about 4:30 p.m., the undersigned interviewed Paul BERNARDO re the Sexual Assault on [R. L.]

BERNARDO lives with his parents at 21 Sir Raymond Dr. in Guildwood Village. He stated that he has lived there for the last 24–25 years. He went to Sir Wilfred Laurier High School in the Guildwood Village.

He is currently engaged to one Karla HOMOLKA 20 yrs. of age. He plans to move to St. Catharines Ontario with HOMOLKA within a month. He and HOMOLKA have just recently started a Self Development Company. Prior to this he worked in the accounting field with Price Waterhouse Co. When the undersigned asked him why his name would come up in the Scarborough Rapist case, he said that he felt that he looked like the composite drawing, and that he had a baby face like the drawing.

He could not remember specifically what he was doing on the weekend of [R. L.]'s assault, but believed that he was most likely with his girlfriend. He has been going out with Karla HOMOLKA for the past 3 years. BERNARDO very willingly supplied hair samples for PGM, a blood sample and a saliva sample. He appeared very nervous during the interview but was very co-operative. Samples to be submitted to CFS on Nov. 21/90

Munro Det. 2245

At that time, as noted in the chapter on CFS and Metro, the standard procedure was to get at least a saliva sample from each suspect. Some suspects were also asked for hair and blood, although some were reluctant to give blood and relatively few blood samples were obtained. Bernardo was one of the few suspects from whom blood was obtained, and he was the first suspect that Munro asked for blood:

Q. What keyed you to ask for blood?

A. I am not certain. Whether it was his behaviour, or his face being familiar to the composite. Steve didn't have any problems that I asked for it. It was a combinations of things.

Whatever the reason that Munro requested blood from Bernardo, it turned out in hindsight that his investigative instincts were correct.

Bernardo was classified as a B suspect. As noted above under suspect development, there was no objective system to classify suspects. A B classification was simply an approximate way to denote a viable suspect who was not in the highest priority category.

12 Should Irwin and Munro Have Done More?

The question naturally arises, should Irwin and Munro have done more? There are other things they could have done, such as following up on the McNiff lead and interviewing I.F. Detective Sergeant Smollett, who was in a supervisory position in the Sexual Assault Squad, suggests that the information in the McNiff report, known to Irwin and Munro before the interview with Bernardo, did not necessarily make Bernardo a better suspect:

- A. That report didn't contain all the information that happened to that girl. In all fairness to Irwin. Those reports didn't make Bernardo a better suspect. That document tells a story like many others.
- Q. What did all this information mean to you with respect to suspect prioritization?
- A. In the McNiff document for example I could name you just about every other serial offender. If you didn't know this document pertained to Bernardo you could fit anyone of them in here. Hindsight is a great thing. There is nothing in here that is similar fact evidence to Bernardo. When you know more details of what happened to that young girl. But again there is boxfuls of supplementary reports that look better. Most officers were convinced it was [I. O.][another suspect]. They spent a lot of money and time and effort on [O.]

Even if it would have been better for Munro and Irwin to speak to Sergeant McNiff and to interview I. F. before the Bernardo interview, it is speculative to say whether that would have advanced the investigation. It certainly would not have produced anything as conclusive as the DNA test requested from the CFS. Having obtained the DNA sample, they had obtained the best available evidence, which would give a conclusive result one way or the other. They knew at that point that if the case was going to be solved it would most likely be solved by forensics. As Detective Munro said:

Basically the general consensus from the commander was this case was going to be solved on Forensics. We had better suspects we were working on. At that time we had no direct evidence to link him to the case but perhaps he would be identified forensically....At that point no one had been able to identify him. Witnesses couldn't identify him so hopefully forensics could identify him.

As Detective Irwin said:

The position at the time was it's a DNA, forensic case, if we get the samples they'll do their work presumably they will do it with some expedience, I guess, and we'll have the results. He's only one of several.

Irwin and Munro got Bernardo's blood and hair and saliva for DNA testing and they knew that was the clincher. DNA was the ultimate investigative technique. No other investigative technique, nothing else they could have done, could compare to the conclusive DNA result that would tell them whether Bernardo was the Scarborough rapist.

If Bernardo had refused to give forensic samples, the McNiff report and I. F. would have been very relevant leads to follow. Even if they had probed more into I.F.'s potential evidence, it is difficult to say how far that would have advanced the investigation. There were at the time many suspects who looked better than Bernardo, even with the addition of whatever extra information I.F. might have given them. As noted above there were other suspects with criminal records for violent sexual offences and suspects who had been identified (it turns out inaccurately) by various rape victims. With Bernardo's DNA sample, the investigators had the best evidence they would ever get.

Even in hindsight it cannot be said, in the absence of a case management system, that there is anything more they should have done, under existing procedures, after they got Bernardo's DNA sample, other than attempt to expedite the DNA testing. The delay in the DNA testing, and the fact that there was no system in Metro in place to follow up at a higher supervisory level on the DNA testing during the two year delay, is an issue to be addressed in the chapter on CFS and Metro.

13 The Bernardo Tips in Context

The investigation of Bernardo as a suspect has to be put in the context of what was happening in the overall Scarborough rape investigation at the time. As noted in the next two subheadings, the Scarborough rapes stopped after the May 26, 1990 rape and the investigation started to wind down. The chronology of the DNA work, discussed below in the CFS chapter, is crucial to an understanding of Bernardo's place in the overall investigation. That chronology demonstrates that Irwin submitted about 5 suspects including Bernardo, for DNA testing at the end of 1990 and that the forensic work went into a black hole, with Metro waiting for the under-resourced CFS to get to the Scarborough rape samples and the CFS, at the same time, waiting for Metro to do more investigative work.

By the time Bernardo was interviewed the Scarborough rapes had stopped, the investigation was winding down, the task force was no longer a dedicated unit and, as Detective Irwin said, it was back to business as usual.

The implications of this approach to serial predator investigations, which tend to wind down in the first area of attack once the undetected predator starts to operate in some other community, will be discussed below.

14 The Scarborough Rapes Stop

The last Scarborough rape was on May 26, 1990. After three full years and fifteen rapes, the pattern of attacks suddenly ended.

Why did the rapes stop in Scarborough?

It is a commonplace that escalating sadistic serial predators do not stop. One investigator said:

He seemed to disappear off the face of the earth. We all thought “where did he go?”. We knew people just didn't stop.

Another thought he was dead, or in jail, or out of the country:

- Q. When the attacks stopped what did you think happened to this guy. Where did you think he went?
- A. Number one, he was dead. Number two, he was in jail. Number three, he had gone away—a seaman, and on the boats or something like that.

Some thought that he might still be in Ontario or Canada and some effort was made to get in touch with other police forces:

- Q. Did you ask how or where he might have gone?
- A. Yes, we talked with other forces.... contact[ed] the other analysts in the other departments.

There was, however, no systematic way to scan the rest of the country, the rest of the province, or the rest of the Golden Horseshoe for fresh outbreaks of the same pattern of sadistic violence. As we now know, Bernardo moved to St. Catharines in January of 1991 and kept raping and his pattern continued to escalate until, predictably, he murdered. Shortly after moving to St. Catharines he raped a young woman on Henley Island within a mile of his new home in St. Catharines. As noted below in some detail, the Henley Island rape was an exact carbon copy of the Scarborough rapes. It was so strikingly similar that an experienced investigator familiar with the details of the Scarborough rapes and the Henley Island rapes would immediately recognize them as the work of the same predator. But there was at that time no computerized system such as ViCLAS, described below, to put that kind of information together in the same place. Although there was a system in place to ensure that the Metro force got a copy of the Niagara zone alert, there was no case management system in the Metro force to ensure that sexual assault investigators addressed their minds to this highly relevant information that would immediately have suggested that the Scarborough rapist had moved his operations to St. Catharines.

Because the Scarborough rapes had stopped, the investigation of the Scarborough rapist was no longer such a high priority for the Metro police. Their first priority was to protect the residents of Metro. When the case got cold and it started to look like the Scarborough rapist was no longer an immediate threat to the residents of Metro whose taxes support the Metro force, the case took a lower priority. There was no system in place to recognize that the Scarborough rapist was still operating almost next door. There was no system in place to recognize a wider public interest in tracking down the predator, wider than the interests of Metro taxpayers but just as high in priority for the residents of other communities at risk from this mobile serial predator.

Policing in Ontario is primarily a local responsibility. The Toronto police investigate Toronto crimes and the Niagara police investigate crimes in Niagara. There are some very effective co-operative systems like CISO—the Criminal Intelligence Service of Ontario, discussed below, which supports the wider public interest in cases that cross police borders. But as noted in the recommendations, there was not then, and there is not now, any organized system that transcends police boundaries and protects the members of other communities against the serial rapist who moves away from his starting place to prey in new locales. When Bernardo stopped raping in Toronto and started raping and killing in St. Catharines, he might as well have moved to another country.

15 The Maintenance Phase: The Investigation Winds Down

As noted above, one investigator likened the Scarborough rape investigations to a dolphin, surfacing with a leap, then diving out of sight and reappearing with another leap.

Inspector Dalziel described above the three modes of the investigation, the reactionary mode, the proactive mode, and the maintenance mode.

When the investigators ran out of leads after a rape there was little productive work they could do. When the rapes stopped completely after May 26, 1990 the proactive work, such as the decoys and patrols and stake-outs and grid pattern stand-by response, no longer made sense.

As explained below in the section on the CFS, a great deal of the investigative work consisted of obtaining saliva and blood samples from potential suspects, then screening and eliminating them through conventional laboratory blood work. Once the CFS developed a capacity to test for DNA, the police asked for DNA testing on the small number of suspects who were not excluded by conventional blood work. The delays in that process are discussed below. It was obvious by the end of 1990 that the predator would not be caught by proactive investigative measures. It became clear that the case, if solved, would be solved by DNA. It became a forensic case. As Detective Irwin said:

Ultimately the decision was made that it was a forensic case and that we'll let forensics do their side of it and we'll continue whenever we have further suspects and/or the inconclusives, we will get further samples, put them in, waiting for the DNA. Again appreciating that we were in the call cycle doing other investigations, other serial offenders.

After the end of 1990, the Scarborough rape investigation decelerated. As discussed in the chapter on the CFS, no additional forensic samples were submitted to the CFS during the next year and a half. From a forensic point of view, the investigation appeared dormant until March of 1992 when Detective Irwin was given responsibility for the Scarborough rape investigations and resubmitted a number of DNA samples to the CFS on April 2. This chronology is set out in chart form in the chapter on the CFS. It is mentioned here simply to show that the Scarborough rape investigation started to wind down after the last rape on May 26, 1990 and had a brief revival in April of 1992. Metro had enough other current rapes to keep it busy. There was no institutional reason for Metro to give a high priority to the investigation of a cold case.

Inspector Marrier transferred into the Sexual Assault Squad in August of 1992 and started reviewing some of the old cases including the Scarborough rape investigation. Because there were other things to do in the office it was not until December of 1992 that he actually started to formulate a plan to proceed further with the Scarborough rape investigation:

...there were quite a number of things going on within the office initially, so it wasn't until late December, into December 1992 that we actually started to formulate a plan on proceeding with that investigation further and trying to spark some interest within the community and get people to come forward with, hopefully, some new information to help us proceed.

Inspector Marrier indicates that he asked Detective Irwin and his partner to follow up on the status of all CFS exhibits and determine their status and to report back to him on how he was making out:

Q. And how would you describe your role in the investigation?

A. I didn't take an active role as such, I was the officer in charge of the Sexual Assault Squad and initially the investigation was given to Detective Irwin and his partner to, because they had been previously involved in the case, to start to work up a bit of a profile of things that we would want to do in the future. And one of the things that I asked him to do was to follow through on all CFS exhibits and see what the status of those were. Whether there was still some information that was outstanding and to report back to me on how he was making out.

Although Staff Inspector Marrier recalls that he asked for an update on the Scarborough rapist forensic work from Detective Irwin in December, 1992, there does not appear to be any contemporaneous documentation or activity to suggest that this in fact happened. As noted in the section on the CFS it appears that Metro, apart from resubmitting the DNA samples in April of 1992, did nothing to accelerate the pace of the DNA testing. It seems clear, from the recollection of Detective Sergeant Smollett that there was simply no case management system in place to ensure follow up, establish time lines, and drive the investigation forward:

- Q. When did you first become involved in the Scarborough rape investigation?
- A. Officially when I was promoted to D/Sgt. Dec. 91 it was still an ongoing open file. Steven Irwin and Heather Clark (Kaiserward) were still basically the officers in charge of the investigation. It was in a 5 drawer filing cabinet. They had a lot to do just to get a semblance of order to it. It had become a little dishevelled and out of order. Early part of 1992 they spent a month or more just putting the thing back in order. When I first became aware of an active suspect it was February first 1993.
- Q. What was being done between August 1991 and April 1992 with the investigation and the submissions? (Irwin assigned as officer in charge in April of 1992) Why the delay?
- A. Specifics I can't tell you. I do know that every so often Irwin would speak to Kim Johnston at the CFS. As far as the specifics I wouldn't know exactly who he would see.
- Q. Were you aware of the testing?
- A. I believe he was getting further requests for submissions.
- Q. Who would have been monitoring Steve Irwin's work at that time period?
- A. I would have been ultimately responsible but I wasn't monitoring by way of a weekly report. He would verbally keep me informed. Any new tips or suspects. I wasn't in a position timewise or knowledge of the case to take a look at it. As far as a close monitoring of it I didn't.
- Q. Was there a structure in the unit with regard to time lines?
- A. Reviews were done at the monthly meetings. I never maintained a log per se saying he assigned this case on such a date. I don't think it would work with such a close unit. It would appear that you are keeping a thumb on them too much. You have to trust these people. We hope they are all motivated.
- Q. There is a delay that goes from November '90 until April '92. Can you explain that?
- A. Can't help you with that. I don't know.

This passage demonstrates that motivation, investigative skill, and dedication are not enough. The work of the most dedicated, skilful, and highly motivated investigators and supervisors can be

defeated by the lack of an effective case management system to ensure follow up and effective liaison with other agencies such as the CFS.

One of the most obvious case management issues that emerges from the Scarborough rapist investigation is the apparent lack of any supervisory machinery to ensure that the case is systematically monitored at a senior level. There is no indication, during the two years after Metro submitted Bernardo's DNA sample to the CFS, of any inquiries from a supervisory level about the status of the DNA testing or the reasons for the delay. Neither is there any indication of communication from Irwin's superiors to the management of the CFS. The lack of a system to ensure such monitoring and follow up appears to be a serious weakness in our present system of dealing with serial predator investigations. Even though Metro had no incentive to follow up on a cold case, the wider public interest requires a system to ensure that such cases are followed up and that the work of the investigators and the scientists is effectively co-ordinated. Without such a system, serial predators can move at their whim to a new community assured of a completely fresh start in their pattern of sexual violence.

16 The GRT Inquiry

As noted in the chapter on the GRT investigation of the murders of Leslie Mahaffy and Kristen French, investigators from GRT called the Metro Sexual Assault Squad in May of 1992 after interviewing Bernardo and learning that he had been previously interviewed by Metro and had been given a DNA sample. The contact between Metro and GRT is set out in some detail in that chapter. The area of controversy, of course, is whether Metro told GRT everything it should have told them about Bernardo and whether GRT asked Metro everything they should have asked about Bernardo.

Whatever might be said about the fact that the two investigations did not pool their information effectively because there was no case management system in place to ensure that the information from the two investigations came together, it is far from clear that any communication problem

had a direct effect on the course of the investigation. The DNA sample was in for testing and it would prove whether or not Bernardo was the Scarborough rapist. It is a matter of pure speculation, whether or not better communication between the forces would have led to any investigation that would prove more useful or conclusive than the long awaited DNA test.

17 Conclusion

Excellent investigative work was done by the Metropolitan Toronto Police Force during the Scarborough Rape investigations. The difficulties faced by the investigators were enormous. Finding the rapist was like finding a needle in a haystack. There were thousands of tips including tips about suspects who looked very promising, to the extent that they devoured very significant investigative attention and resources.

The Sexual Assault Squad resources were less than requested and there was a tremendous volume of competing cases, although the Metro force devoted enormous resources to the case during the proactive phase of the investigation. After the Scarborough rapes stopped it became a cold case and very little attention or investigative resources were dedicated to it.

There was no lack of hard work, dedication, and investigative skill by individual officers. The investigative strategies were sound but the investigation was hampered by systemic weaknesses. There was no single person in charge at the beginning and until Superintendent Wolfe took over there was very little continuity of investigators.

Conspicuous by its absence was any system whereby senior officers monitored and followed up the investigation and set time lines and ensured follow up. Although the DNA submission went into a black hole no alarm bells went off, even when it was returned untested by the CFS because there was no monitoring or supervisory system in place to ensure follow up with the CFS and high level co-ordination when necessary.

There was no information system to ensure that all the tips called in about one suspect were put together and followed up when appropriate. The McNiff report was ignored for over two and a half years. It is discouraging that a report from an experienced officer should disappear into a hole like that. Even after other tips about Bernardo started to come in they were not put together. They were scattered throughout the files and index books and binders and desk drawers in a paper driven process described by one investigator as a nightmare. The final Smirnis tip about Bernardo, the third unrelated tip about the same suspect, was only followed up because of the persistence of the caller because there was no system to show immediately that it was the third separate tip about the same suspect. There was no consistent organized system for suspect classification and elimination.

The problems that arose from lack of a case management system show that motivation, investigative skill, and dedication are not enough. The work of the most dedicated, skilful, and highly motivated investigators and supervisors can be defeated by the lack of an effective case management system.

Communication between police forces was inadequate. There was at that time no ViCLAS automated crime linkage system in place. There was not even any system to ensure that the zone alert from the Henley Island rape was considered by the Metro investigators, a zone alert that would have suggested strongly to any experienced investigator that the Scarborough rapist was operating in St. Catharines. There was no system to put that information together with the fact that Bernardo, one of the Scarborough rape suspects, had moved to within a mile of the strikingly similar Henley Island rape. There was no system in place to recognize that the Scarborough rapist was still operating almost next door. There was no system to ensure full communication between Metro and GRT when GRT inquired about Bernardo as a Scarborough rape suspect. So far as Bernardo was concerned, the Metro force and the GRT might as well have been operating in different countries.

The chase of a suspect from a stakeout on May 25, 1988, now believed to be Bernardo, and the rape by Bernardo four days later in Mississauga suggests that serial predators will move their base of operation to avoid a tightening police cordon.

When the Scarborough rapes stopped, the investigation wound down and Metro put it on the back burner because of competing workload from other recent sexual assaults. There was no provincial system in place to recognize that serial predators are mobile, and to ensure that the investigation was continued vigorously after the local police force no longer considers it a priority. There was no system in place to recognize a wider public interest in tracking down the predator, wider than the interest of Metro taxpayers but just as high in priority for the residents of other communities at risk from the mobile serial predator.

When Bernardo stopped stalking and raping in Toronto and started stalking and raping and killing in St. Catharines and Burlington he might as well have moved to another country for a fresh start.

Chapter 3–The Centre Of Forensic Sciences

1 The Issue

The Centre of Forensic Sciences (“the CFS”) provided the crucial DNA evidence that led to Bernardo's identification and arrest. Its commendable work in the forensic analysis of hair and fibre, blood traces, chemistry, handwriting, and toxicology, is summarized in Appendix 3.

The issue for this review is the delay in testing Bernardo's DNA sample. Although samples of Bernardo's blood, hair, and saliva were submitted to the CFS on November 21, 1990, the first DNA test was not completed until February 1, 1993, over two years later. This first test showed a one probe DNA match between Bernardo's sample and the Scarborough rapist semen sample and identified him as the probable Scarborough rapist.

This tragic delay of over two years requires detailed examination.

To analyze the reasons for the delay it is necessary to set out, from the records and the recollection of the participants, a factual chronology of the work that was done and the delays that arose.

2 Pre–DNA Conventional Serology

Until the DNA laboratory opened in July of 1990, the CFS could only do conventional serology tests with the ABO and PGM blood systems. These systems could not identify an assailant. But they could, with a suitable evidence sample from the victim and a suitable sample from a known suspect, eliminate suspects whose blood type did not match that of the assailant.

Throughout 1987 and 1988, Metro police submitted forensic samples from rape victims to the CFS and eliminated a number of suspects by conventional serology tests which showed that the rapist was either a B secretor, an O secretor, or a non–secretor.

In December of 1988, Det. Sgt. Tom Dalziel, after consulting with the CFS took samples from three rape victims to a private New York laboratory for DNA testing. Although a chemical test indicated the presence of sperm, the private lab was unable to detect sperm and therefore unable to produce what the police were looking for, the DNA profile of the Scarborough rapist. There were concerns about the reliability of the private lab and the police did not return to it.

At the December 27, 1988 attack scene, the assailant left a scarf containing nasal mucous. The scarf was originally examined for hair and fibre. The mucous was apparently unnoticed or thought insignificant at that time, when the CFS did not have DNA testing capacity. After Bernardo's arrest the police re-examined the scarf in September of 1993 and it was found after testing to contain his DNA.

In January 1989, the CFS completed the ABO serology tests of the samples from the November 16, 1988 rape. Because the victim was a non-secretor, the investigators got the break they were looking for. They were able for the first time to determine that the rapist was a non-secretor. Because only 20% of the male population are non-secretors, this helped screen and eliminate suspects.

Throughout 1989 and 1990, the police submitted more samples from victims and suspects and the CFS continued to eliminate suspects through serological tests.

On July 5, 1990, Detective Irwin met with Kim Johnston, the CFS analyst assigned to perform the serological work, and they discussed the conventional serology ABO saliva testing results from the forty suspects still not excluded.

On July 27, 1990, the conventional serology tests were completed in the May 26, 1990 rape, which turned out to be the last of the Scarborough rapes. As noted below, the extreme violence of the attack suggested to experienced investigators that the rapist was escalating in violence and might kill his next victims.

The samples from this rape, unlike the earlier rapes, were adequate and appropriate for PGM analysis. The PGM test showed that the rapist, as well as being a non-secretor in the ABO system, was 1+ or 1+1- or 2- 1+ in the PGM system, which is more discriminating than the ABO system. This combination of PGM and ABO results permitted the field of suspects, already narrowed to 20% of the male population by the ABO non-secretor finding, to be narrowed even further by the PGM test. This meant that the suspect belonged to two-thirds of that 20% or in other words, about 13% of the male population.

3 The Opening of the DNA Lab

In July of 1990, the CFS, after considerable planning and preparation, started to accept DNA cases. The preparation included the assignment of Pamela Newall in 1987 to develop the DNA lab, the hiring in 1987 of a Ph.D. in molecular biology on a two-year contract, the purchase of about \$100,000 of major equipment in 1988, the development and validation during 1988 and 1989 of testing protocols and population databases, and the hiring of a technician in 1989.

The RFLP (restriction fragment length polymorphism) DNA testing then in use was very discriminating in the sense that it could produce very strong evidence, in some cases to a virtual certainty, that the rape semen came from the suspect. Unlike the newer and faster PCR (polymerase chain reaction) technique used today, the older RFLP technique was very slow and time consuming. It involved the painstaking preparation of samples and a series of successive radioactive genetic probes, each of which took at least three to six days or longer, by means of exposure on X-ray film.

A full seven-probe series of tests would typically take ten to twelve weeks although they could in exceptional circumstances be run within eight weeks. One scientist could process about thirty to thirty-five cases a year. It was important to build the lab carefully, establishing protocols and maintaining quality control. There was a limit to the speed at which the lab, without impairing

quality control, could expand and add new scientists and technicians. The rate of expansion of the DNA lab from the original one scientist and one technician will be shown below.

Results for investigative purposes could be obtained long before the end of the seven probe series of tests. The first probe could be completed within two weeks of the commencement of tests. The first test alone, a one probe match, would not be enough by itself to support a conviction in court and might not provide legal grounds for an arrest. But it could tell the investigators that they had the right man and a suspect could thus be identified within two weeks of the commencement of tests.

In the fall of 1990, when Johnston and Irwin discussed DNA tests for the Scarborough rape cases and when the police submitted Bernardo's sample to the CFS, the DNA unit consisted of only one scientist, Newall, and one technician. Johnston in the summer of 1990 had started her DNA training, which normally took one year. Because of Johnston's workload, including the Scarborough rape serology, her training of other scientists and technicians in the biology section, and her work on CFS accreditation, her DNA training took two years and was essentially completed by the end of June 1992 except for an extra test which she completed later that year. As noted below it was only after the substantial completion of Johnston's training that Bernardo's sample was logged into the DNA unit under Johnston's name on July 12, 1992.

4 Johnston and Irwin Discuss DNA Testing

On September 25, 1990, Detective Irwin went to the CFS and discussed with Johnston the progress of suspect elimination by conventional ABO and PGM serology. The PGM tests had eliminated one of the most likely suspects who had been investigated intensively. Their discussion of DNA testing is reflected in Detective Irwin's memorandum of the meeting:

The next step required to narrow the number of suspects is to collect a blood sample, dried, on a piece of cotton, and the size of a "loonie" coin, from all suspects that are non-secretors. The sample is sufficient for the PGM typing test, and DNA tests when required.

Kim advised that this was the first time that a sample of semen was obtained that the PGM typing test could be done.

IN SUMMARY THIS NARROWS THE FIELD TO 64% OF NON-SECRETORS (WHICH MAKES UP 20% OF THE POPULATION).

Any suspect that is of the right PGM blood type should be requested to be DNA tested.

DNA testing will be done on the approval of Mr. Lucas, Director of CFS, only.

...

Irwin noted that Johnston introduced him to Pam Newall, the scientist in charge of DNA testing and training:

The topic of DNA testing was discussed and both Kim and Pam felt that the Scarborough Rape cases were appropriate for testing, and seemed enthusiastic about actually doing DNA tests in these cases. They did emphasize that Mr. Lucas had to approve any cases that were to be DNA tested.

5 Irwin's Understanding of CFS Position

Irwin understood from the September 25, 1990 meeting that the lab wanted the police to narrow the field of suspects further by more police investigation, and by getting more samples suitable for PGM testing because the CFS did not have the capacity to do hundreds of DNA tests on suspects who could be eliminated more quickly by PGM testing. He knew that only Pam Newall could do DNA tests at that time. But he understood from Johnston that she was being trained to do DNA analysis and she felt that she would be able to be qualified and continue to the point that she would be able to do the tests as well. He assumed that Johnston and Newall would approach Dr. Lucas who would approve the DNA testing almost as a rubber stamp.

6 Johnston's Understanding of Police Position and CFS Priorities

Ms. Johnston's recollection of the September 25, 1990 meeting is less precise. She describes it variously as a formal meeting and as an informal meeting. She does recall that she introduced Irwin to Newall in the hall way and that Newall thought that DNA testing would be done in the Scarborough rapes and would be given a high priority. Johnston thought that the police would screen out more suspects on the basis of PGM results and submit further samples of hair or blood because PGM testing could not be done from saliva samples. She thought the police would then submit the more likely suspects for DNA testing. Because DNA testing was so new and because of the workload already being handled, the DNA unit would be tied up if 80 samples were put in all at once. The idea was to prioritize the testing and not overload the DNA unit.

Johnston understood that Dr. Lucas would have the final say based on the criteria he had laid down, described below. If she felt DNA should be done on a certain case she would go to Lucas for approval. Johnston understood that she, as the case scientist, was the one who had to decide whether DNA was going to be done and what kind, although Lucas was the final decision maker on the basis of the criteria he had given to the police and the lab. She said she was sure that someone went to Lucas and said they wanted to do DNA on those cases and that he had a knack of knowing what was going on in the lab without anyone telling him; that he read all the submission forms and often spoke to the investigators, that he seemed to absorb information out of the air and that he was aware of all the cases and the links between them.

7 Newall's Understanding of CFS Priorities

Ms. Newall met with Irwin many times before and after September 25, 1990 but does not recall the hall way meeting or any discussion with Irwin in 1990 about the Scarborough rapist as a DNA case. She is, however, certain that she did not get any Metro police submissions for DNA testing of Scarborough rape suspects until 1992 and this is confirmed by Johnston's recollection that she did not discuss suspects with Newall.

Newall's understanding of the DNA approval procedure was different from Irwin's and Johnston's. Newall, the head of the DNA lab, understood that the initial decision that a case was suitable for DNA was made by the serologist, in this case Johnston, and the police officer, in this case Irwin, according to the following criteria established by Dr. Lucas in July of 1990:

- (a). A crime of violence in which there is a known suspect or accused and identification is a significant issue, or
- (b). Crimes of violence which are suspected to be part of a series.
- (c). Appropriate case and comparison samples are available.
- (d). Court date at least three months away.

Newall thought the analyst (Johnston) was in total control of her samples and the analyst was the only one aware of what was written on the police submission form. If the police submitted samples that fit those criteria the analyst would tell Newall and Newall, not Lucas, would decide if it was appropriate to do DNA testing. Newall said that she made the decision as to what cases to do and in what order. Newall would discuss with Johnston what Johnston, who knew the urgency and importance of her own cases, was putting in and together they would make the decision as to who would do the tests. Lucas had written the guidelines for the criteria in July of 1990 and after the guidelines were written Lucas did not go to Newall about what cases to do.

8 Lucas' Understanding of CFS Priorities

Dr. Lucas agrees with Johnston that in the beginning he had control over what DNA cases the lab would do because he did not want the CFS to get overwhelmed and he did not want to raise expectations of DNA testing that the lab did not have the capacity to do. Although Newall would be involved in the decision, she needed Lucas' approval and he depended on her advice but not exclusively. As time went on the section head, Norman Ericson, and Newall began to make those decisions. But Dr. Lucas was still making those decisions in April of 1992, as noted below in connection with the later resubmission of the samples on April 2, 1992.

Lucas, although he tried to read the file copy of all the submission forms that went to the CFS, does not think he was made aware of a DNA request in 1990 or 1991. His first recollection of a request for DNA testing in the Scarborough rapist case was the resubmission in April of 1992, described below.

9 Summary of Understandings Before Bernardo's Sample Obtained

To summarize the understandings about the DNA approval process, Irwin thought that Johnston or Newall would ask Lucas for his approval for DNA testing for the Scarborough rape cases and that Lucas would approve it almost as a rubber stamp. Johnston thought that Lucas would have the final say and that she would go to Lucas for approval if she felt that DNA should be done, and that in any event, Lucas read all the submission forms and was aware of all the cases and the links between them. Newall thought that it was up to Johnston to ask Newall for DNA testing and that Newall, not Lucas, would decide if it was appropriate to do DNA testing. Lucas understood that he had control over what DNA tests would be done.

As noted below, these different understandings were never resolved. For a year and three months the police waited for the CFS to do DNA tests, and the CFS waited for the police to do further investigative work. Although it was recognized at the time that the Scarborough rapist was going to kill someone, there was no system in place to ensure that the case was followed up and pursued vigorously. There was no system in place to demand and to co-ordinate a high priority response from all agencies involved in the investigation.

10 From the DNA Discussion to Bernardo's Serology Results

Irwin, after the September 25, 1990 meeting, proceeded on his understanding that the lab wanted the police to narrow the field of suspects further by getting more samples suitable for PGM testing.

Irwin developed a list of 20 suspects already found to be non-secretors by the CFS and a list of 21 suspects where the results of the secretor tests were inconclusive and a second saliva sample was required for CFS examination. As a result of the September 25 meeting, he told all the officers collecting samples that they not only wanted saliva, they now wanted pulled head hairs and, if possible, dried blood. And for some of the suspects who had been determined to be non-secretors, they would have to return to get pulled head hairs. Irwin told the investigators that a blood sample or pulled head hair, preferably blood, would be required for DNA tests if the suspect turned out to be the right PGM type. The police got more samples from suspects and submitted them to the CFS along with samples they had obtained before.

This work is best shown in table form:

Submitted	Suspects	Samples	Tests Required
90 Oct 5	1	saliva	secretor status
	5	hair	DNA-PGM
90 Oct 15	5	saliva	secretor status
90 Oct 23	18	saliva	secretor status
90 Oct 31	12	saliva	secretor status
90 Nov 9	12	saliva	secretor status
90 Nov 21	1*	saliva & hair	secretor status If subject is non sec. then pgm typing and DNA
	1	saliva, hair, & blood	secretor status If non sec. then pgm type If non sec. then DNA
90 Nov 21	16	saliva	secretor status
90 Nov 21	1*	saliva, hair, & blood	Secretor status PGM if Non-Secretor DNA if Non-Secretor
		saliva	secretor status

Submitted	Suspects	Samples	Tests Required
90 Nov 22	13	saliva	secretor status
90 Dec 4	1	saliva	secretor status
90 Dec 21	2	saliva & hair	ABO secretor status Hair comparison
	2	saliva	ABO secretor status

*. **Bernardo** [Emphasis added]

To summarize the police submissions to the CFS between September 25, 1990 and the end of the year, samples were submitted from 92 suspects, most of them for conventional serology. Five of the 92 suspects, including Bernardo were also submitted for DNA testing if they had the right serology.

11 Bernardo Sample Submitted to CFS

Bernardo was one of five suspects submitted for DNA tests, if his serology was right. The Metro police submission to the CFS with the Bernardo samples on November 21, 1990 contains the following

EXAMINATION REQUESTED

SUSPECTS:

Paul BERNARDO

Saliva Sample

Secretor Status

Hair Sample

PGM if Non-Secretor

Blood Sample

DNA if Non-Secretor

[emphasis added]

Bernardo's conventional serology was completed on December 13, 1990. The test showed he was a non-secretor with a PGM type of 1+ and therefore a suitable candidate for DNA testing.

We do not know exactly when Johnston told Irwin that Bernardo was a non-secretor in the target PGM group. It was the practice of CFS because of the high priority assigned to the serology testing in this case, to provide lab results orally to the investigators as they were developed, and then to follow up later with a written report. Irwin thinks he was probably told of the Bernardo serology results in early 1991 but he said he would not be surprised if it was as early as December 1990. Irwin agreed that as early as December 1990 Metro had a list of at least 5 suspects, including Bernardo, who were non-secretors within the right PGM group.

The important fact for the CFS is that on December 13, 1990 the tests showed that Bernardo had the right serology for a DNA test and the police had requested a DNA test if he had the right serology.

12 From Bernardo's Serology to the DNA Resubmission

The Metro Police and the CFS, in their reports to this review, say that Metro submitted Bernardo's samples to the CFS for conventional serology analysis on November 21, 1990. This is accurate. But it is also important to note that Bernardo was submitted on November 21, 1990 for DNA testing if he had the right serology. On December 13, 1990 the tests showed he had the right serology. Thus, on December 13, 1990 the CFS had a written request from Metro police to test Bernardo's sample for DNA. It is therefore more accurate to say that Metro police submitted Bernardo's samples to the CFS for DNA testing on November 21, 1990 or, at the latest, December 13, 1990.

Despite this request for DNA testing, effective December 13, 1990, Bernardo's sample was not analyzed until February 1, 1993.

It appears that Bernardo's DNA submission went into a black hole at the end of 1990, from which it only emerged a year and three months later on April 2, 1992 when the police renewed their request for DNA testing.

No one assumed responsibility for pushing Bernardo's test forward although it was clear that the Scarborough rapist was a violent escalating serial predator. There was no system in the Metro police department at a supervisory level to monitor the progress of the case, to ask why the DNA tests were not done, and to follow up with a high level request to give the case a higher priority. Nor was there any corresponding system in place at the CFS. There was no system to co-ordinate the work of the police and the CFS. There was ineffective communication between the police and the CFS and within the CFS. The DNA request went into a black hole because there were no case management systems in place to ensure the test got a higher priority.

Irwin thought the case would eventually be solved by DNA. He thought that either Newall or Johnston would ask Dr. Lucas to approve the DNA tests. But in fact, because of the misunderstandings noted below, no one asked Dr. Lucas to approve the tests during the fifteen and a half month period before April 2, 1992. Although Irwin cannot recall specifically, it appears that he did not hear back, nor did he ask, whether or not Lucas had approved the DNA testing. He thought the CFS would do the tests as soon as they could. As well as his continuing work on the Scarborough rape case, he and the Sexual Assault Squad had other cases to deal with, including other serial rapists. The Scarborough rapes had stopped, it was a cold case, and there was no system in the Metro force to monitor it, review its progress, and drive it forward.

Irwin's written submission for DNA testing on Bernardo's sample went to Kim Johnston. Johnston did not send the DNA submission either to Newall or to Lucas and she spoke to neither of them about it. She did not discuss suspects with Newall, nor did Newall ask her about suspects. As Johnston said, she had her cases to do and Newall had her cases to do. Johnston said they were planning on doing DNA at some time and thought the police would narrow down the number of suspects through serology and checking alibis and legwork.

As noted above, Newall does not recall the September 25, 1990 conversation with Irwin. She did not receive the DNA submission from Johnston and Johnston did not discuss the submission with Newall. Newall was unaware of the request for DNA testing until 1992. It was Newall's position,

although the samples were received for DNA testing in 1990, that it did not become a DNA case until April 2, 1992 or until July 12, 1992 when it was logged into the DNA unit under Kim Johnston's name.

As noted above, Lucas, although he tried to read the file copy of all the submission forms that went to the CFS, does not think he was made aware of a DNA request in 1990 or 1991. His first recollection of a request for DNA testing in the Scarborough rapist case was the resubmission in April of 1992.

These understandings and misunderstandings will be summarized below.

After the end of 1990, the Scarborough rapist investigation decelerated. The Scarborough rapist had not struck since May 26, 1990 and there were other urgent sexual assault cases to investigate, including other serial rapists. Over the next six months the police did not submit any suspect samples to the CFS in the Scarborough rape case. There was some renewal of activity between June 20, 1991 and October 17, 1991. Eight suspects were submitted for testing, two of them for DNA testing if the serology was right but they were excluded by serology testing.

On October 17, 1991, Kim Johnston summarized the serology work on the suspects submitted for the last Scarborough rape. There were 218 of them, broken down as follows:

43 suspects	cannot be eliminated
158 suspects	eliminated
17 suspects	inconclusive results

Adding the suspects submitted for other Scarborough rapist victims, there were 79 suspects remaining from those submitted to the CFS for testing.

PGM results were not available for all the suspects still in the running. But there was a narrow group of 5 suspects still in the running with the right PGM group. Bernardo was one of these five and he had been since December 13, 1990.

On December 13, 1990, Bernardo was one of five suspects who had the right serology. On October 17, 1991, Bernardo was still one of five suspects who had the right serology. Nothing had changed. Although this ten month delay was supposed to be for the purpose of narrowing down suspects for DNA testing, nothing had been narrowed down. There were an identical number of suspects, with the right serology, ready for DNA testing.

On November 6, 1991, the CFS returned to the Metro Police most of the items submitted in connection with the Scarborough rape investigations, except for frozen samples from three cases including the last rape, which contained enough semen for DNA analysis. The CFS returned the material because they had completed and had reported on the serology tests and it was the administrative procedure of the CFS to return samples after tests were completed and reported. Irwin understood from Johnston that the suspects with the right serology would have to be resubmitted for DNA testing. Johnston understood that the police would reduce the number of suspects to the more likely ones so that DNA analysis could be performed on a more manageable number of samples.

Although the CFS in November of 1991 had samples from five viable suspects including Bernardo with the right serology for DNA testing and a request for DNA testing, the same number they had in 1990, they returned these samples to the police instead of testing them for DNA. This pointless exercise will be noted again below.

After the CFS returned the samples to the police in November of 1991, not much happened in the Scarborough rape investigation. It was over a year and a half since the last Scarborough rape and new sexual assaults and rapes kept coming in, brutal one-time attacks and also serial attacks such as the High Park rapist and the transit rapist. Although the police would continue to submit further

samples and suspects when they had them in the Scarborough rape case, they did little active investigation. They regarded it as a forensic case. They were letting the CFS do its work and waiting until the CFS was ready to do the DNA.

In March of 1992, Detective Irwin was assigned responsibility for the investigation of the Scarborough rapes. On March 27, he submitted a suspect sample for conventional serology testing.

On April 2, 1992, Irwin resubmitted samples from five of the remaining 79 suspects for whom there were samples, including Bernardo, "For DNA comparison to samples retained by Kim Johnston." The samples retained by Johnston were semen samples of the Scarborough rapist taken from the victims.

The samples Irwin resubmitted were those, including Bernardo, that had not been eliminated through conventional serology testing. There was one difference between these samples and those submitted in 1990 for DNA testing if the serology was right. One of the 1990 suspects had been eliminated through an alibi check and one more suspect had been added.

But four of the five suspects, including Bernardo, were the same ones submitted in 1990. And there were, as in 1990, five suspect samples.

The important fact is that little had changed since 1990. Although the CFS was waiting for the police to narrow down the suspects before DNA testing, there were still five suspects, including Bernardo, submitted for DNA. The police had not narrowed down the number of suspects submitted for DNA. This fifteen month delay at the CFS cannot be attributed to police investigative work.

During that 15 months the samples originally submitted for DNA including Bernardo's were returned to the police, only to be resubmitted after five months during which nothing was done to narrow the number of suspects or prioritize them for DNA testing.

During this fifteen month delay, Johnston at the CFS thought the police were doing investigative work to narrow down the suspect population. The police, on the other hand, believed the case would ultimately be solved by DNA and they were waiting for the CFS to get ready to do the DNA testing. Neither Lucas nor Newall knew that Johnston had Scarborough rape suspect samples with the right serology waiting for DNA analysis. The CFS was waiting for the police and the police were waiting for the CFS.

This miscommunication between Metro and the CFS and within the CFS reflects the difficulties encountered during the start up period of the DNA lab when it was not yet up to full strength. It reflects the lack of a system in the CFS during this start up period to ensure that Johnston communicated with Newall and Newall with Lucas about pending requests for DNA testing. It reflects the lack of any system within the Metro police department to ensure that the case was monitored and reviewed and vigorously followed up even though the rapes had stopped in Metro and the case was cold. It reflects the lack of any system to ensure that violent escalating serial sexual predators got the immediate attention of senior people with the authority to co-ordinate a high priority response to such an obvious public danger.

13 Johnston's Training Profile

In late November and early December 1990 Kim Johnston, as part of her DNA training, was required to develop a DNA profile from actual case material. She selected the Scarborough rape case and used part of the semen sample from the last Scarborough rape (May 26, 1990) to develop a DNA profile. She completed this DNA profile of the Scarborough rapist in early 1991 with the sizing of the autorads, the last step in the process. Although the testing was done for training and

not investigative purposes, it was a 5 probe genetic profile of the Scarborough rapist, the very kind of profile the police tried unsuccessfully to get from the New York laboratory in 1988.

Although done for training purposes and probably not admissible as evidence in court, the profile had obvious and enormous investigative value although the police were never made aware of it. Newall checked the sizing of the autorads and the scientific validity of the profile as part of Johnston's training requirement. Newall kept the profile on her office wall and compared it to DNA suspect samples in other cases as she worked on them. If she was working on a suspect in a murder case, for instance, and the suspect matched Johnston's DNA profile of the Scarborough rapist, it would “kick back” to the Scarborough rape sample and identify the suspect as the probable Scarborough rapist.

Johnston said although she would not want to use that DNA profile to convict someone, it did demonstrate to her that when she could do it for real they could get a DNA profile from it. If Newall had found the match then it would have been taken from Johnston's hands and someone else would have been responsible for doing the test:

A. If Pam found the match then it would have been taken from my hands and someone else would have been responsible for doing the test.

Q. You had samples, why not compare the suspect samples you already had?

A. What Pam does is out of my hands.

Q. Did you discuss your suspects with Pam?

A. No.

Q. Why?

A. I was still processing stuff. She had her cases to do and I had my cases to do. What is the point in telling her when I haven't eliminated some of them...

It is at the very least ironic that the CFS had developed the DNA profile of the Scarborough rapist by early 1991 but never compared it with what we now know to be the other half of the puzzle, the Bernardo sample already in the possession of the CFS, submitted by the police for DNA testing in 1990.

It also demonstrates a failure to communicate between Johnston and Newall, who apparently did not enjoy a close or co-operative working relationship with each other, and the lack of any system to ensure that those involved in such cases share their information with each other.

14 From Resubmission to Test Results April 2, 1992 to February 1, 1993

When the police resubmitted the DNA samples on April 2, 1992 the workload of the lab was heavy. As noted above, there was only one technician and one scientist available to do DNA work. The typical processing turnaround time for DNA analysis from start to finish was six to seven months. The DNA caseload was exploding rapidly and the CFS did not have enough resources to do DNA tests within a reasonable time. The following table of DNA staff and caseload data was provided by the CFS in its report to this review dated January 24, 1996:

Year	Qualified Staff	Cases Accepted	Cases Reported	# of Loci	Typical Turnaround Times *
1990	1 Sci.; 1 Tech.	14	2	7	7 to 9 months
1991	1 Sci.; 1 Tech.	33	23	7	6 to 7 months
1992	3 Sci.; 3 Tech.	62	46	9	4 to 6 months
1993	3 Sci.; 4 Tech.	115	76	10	PCR–1 to 3 months RFLP–4 to 5 months
1994	5 Sci.; 5 Tech.	169	134	10	PCR–1 to 3 months RFLP–5 to 7 months

Year	Qualified Staff	Cases Accepted	Cases Reported	# of Loci	Typical Turnaround Times*
1995	6 Sci.; 7 Tech.	315	221	19	PCR—1 to 3 months RFLP—5 to 7 months

*. This apparently refers to the internal laboratory turnaround time once the case has cleared through the backlog. Actual waiting time from police submission of the sample to receipt of the test results is much longer.

The expression “turnaround time” apparently refers to the internal laboratory testing once the case has cleared through the backlog. The actual waiting time for a police force from the time they submit the sample until the time they receive the result may be much longer. As noted below, this actual waiting time for DNA testing in Ontario is still long having regard to the crucial importance of DNA in the investigation and prosecution of rapists and murderers.

When the CFS received the resubmission of the Scarborough rape suspect samples in April of 1992, Dr. Lucas, because of the heavy workload of the only two qualified DNA examiners, assigned the case to Kim Johnston although she was not ready to start the tests because she had not yet finished her training. He considered her the logical person to do it because she was almost finished with her DNA training and was already familiar with the cases from her previous serology work. This choice of Kim Johnston resulted in a delay of three months until July 12, 1992 when the five suspect samples and three victim samples were logged into the DNA unit under her name.

On July 12, the DNA unit already had 26 previously accepted cases and Johnston on that day also logged in three homicide cases and an unrelated sexual assault. As Johnston pointed out, there were other cases with at least equal priority. Priorities had to be juggled and they could not just set aside everything for one case. The actual processing of the samples did not begin until October 29, 1992, a further delay of three and a half months. This delay was apparently typical at that time because of the limited capacity of the lab, the workload of previous cases, and the higher priority given to cases with court dates or more urgent homicide cases. During 1992, the typical

turnaround time for DNA cases was four to six months from the date of acceptance in the DNA unit.

On October 29, 1992, the Scarborough rape cases finally came to the top of the queue where they had been waiting since April 2, 1992. When the DNA actually began on October 29 it was found that the samples from the suspects other than Bernardo were insufficient and the police resubmitted samples on November 12, 1992.

On November 17, tests showed that there was still not enough DNA to go ahead with two of the suspect samples and Johnston requested more samples from Metro although Metro has no record and Irwin has no recollection of this call. Johnston continued her work on the victim samples and on January 18 she called Metro again to see if the additional samples would be forthcoming and was told they would not be. The tests went ahead without the additional samples and Johnston confirmed this with Irwin on January 26.

The tests proceeded and on February 1, 1993, the first autorad was developed. It excluded the other suspects. It showed a one probe match between Bernardo and three of the Scarborough rape victims, identifying him as the probable rapist. The tests continued and further DNA probes and further matches provided the grounds to arrest Bernardo.

15 Analysing the Delays

The four periods of delay, reviewed above in detail, are summarized in the following chart:

THE FOUR PERIODS OF DNA TESTING DELAY			
START	FINISH	REASONS	DELAY
90 Dec 13	92 Apr 2	Police waiting for CFS CFS waiting for police Limited lab capacity No system to manage, co-ordinate and expedite	15 ½ mo.
92 Apr 2	92 Jul 12	Waiting for Johnston's training & other work Limited lab capacity No system to manage, co-ordinate and expedite	3 ½ mo.
92 Jul 12	92 Oct 29	Waiting to come to top of queue Limited lab capacity No system to manage, co-ordinate and expedite	3 ½ mo.
92 Oct 29	93 Feb 1	Testing & waiting for more samples Limited lab capacity No system to manage, co-ordinate and expedite	3 mo.

As noted above there was a fifteen month delay after the serology test on December 13, 1990 showed that Bernardo had the right serology for DNA testing. That fifteen month delay was a black hole. For a year and three months the police waited for the CFS to do DNA tests and the CFS waited for the police to do investigative work. There was no management or supervisory system in place in the Metro force or the CFS to ensure that the case was pursued vigorously.

The three month delay between the resubmission of Bernardo's sample on April 2, 1992 and the time it was logged into the DNA unit on July 12 under Kim Johnston's name was due to the decision to assign the case to Kim Johnston and delay the testing until she had completed her training. One can understand the reasons for the decision at the time, because of her familiarity

with the case from her serology work. But it was in hindsight a mistake having regard to the fact that the case had already been waiting for over a year and three months, although this was not known to the director because there was no supervisory liaison between the Metro force and the CFS to press at a supervisory level for a higher priority for the DNA test.

The three and a half month delay after Kim Johnston logged Bernardo's sample in to the DNA lab on July 12, 1992 and before the start of tests October 29 was due to the very limited capacity of the DNA lab in its start up period to meet a very heavy workload and because there was no system in place in either the Metro force or the CFS to identify this as a priority case that should go to the top of the list.

The entire period from April 2, 1992 to October 29, 1992 was spent waiting for the Scarborough rape cases to get to the top of the queue because there was no system in place to ensure that serial predator cases got to the top of the queue right away.

The three month wait between the beginning of the tests on October 29, 1992 and the development of the one probe match on February 1, 1993 was caused partially because of the delay between November 17, 1992 and January 18, 1993 when Metro did not respond to the request for additional samples and Johnston did not check back to see if they were coming. However work was being done on the victim samples during that time and the entire period cannot be attributed to that delay.

It might be noted that a Manitoba court held that a four month adjournment in 1990 for the purpose of DNA testing was not unreasonable. See *R. v. Jack* (1992) 70 C.C.C. (3d) 67 per O'Sullivan J.A. at pp. 91–92. But if there had been a system to recognize the unique significance of this case, to co-ordinate the work of the police and the CFS, to make sure there was no delay in sample resubmissions, and to leapfrog the case ahead of others, the result could have been obtained within two weeks of the start of tests.

16 Conclusion on Overall Delay

The overall delay is summarized in the following chart:

THE OVERALL DNA TESTING DELAY			
START	FINISH	REASONS	DELAY
90 Dec 13	93 Feb 1	Limited DNA testing capacity in start up period of CFS lab Time consuming RFLP testing, since replaced by faster PCR tests No supervisory management system in Metro force to monitor case and follow up vigorously No corresponding system at CFS to ensure highest priority for serial predator cases No system to ensure high level co-ordination among all agencies involved in serial predator investigations and drive these cases forward	25 1/2 mo.

The overall delay between December 13, 1990 and February 1, 1993 was over two years and one month. If the five suspect samples including Bernardo's had been given the highest priority on December 13, 1990, the DNA match to Bernardo could have been found in early January 1991.

The CFS test of Bernardo's DNA sample on February 1, 1993 led to his arrest and prevented him from raping or killing again.

The tragic converse of this fact is that Bernardo, during the 25 1/2 months his DNA was waiting to be tested, raped four young women and raped, tortured, and murdered two others. In hindsight, it is clear that these rapes and murders could have been prevented if Bernardo's DNA sample had been tested by the CFS within 30 or even 90 days of the December 13, 1990 serology test.

The underlying reason for the delay was the limited capacity of the DNA lab during its start up period to conduct the labour intensive and time consuming RFLP DNA tests in a timely fashion in

face of a heavy workload. This was compounded by the lack of any supervisory system within the Metro police department to ensure that the case was monitored and followed up vigorously at a higher level, and by communication problems between the CFS and the Metropolitan Toronto Police and within the CFS itself.

At the heart of the tragedy was a systemic failure. There was no system to recognize that the Scarborough rapist was going to kill someone and to give the case a high level of co-ordination among all agencies involved in the investigation. For Metro and the CFS it was business as usual. The people working on the case had no mandate or direction to set everything else aside and stop the Scarborough rapist before he killed someone. After he stopped raping in Toronto, he naturally became a lower priority in Toronto. There was no system to recognize that a serial predator like Bernardo is not just a problem for Toronto but also for every other community he may move to when things get too hot for him at home. There was no system to recognize a wider public interest, in the apprehension of a serial sexual predator, beyond the parochial interests of one particular community.

It was known that serial predators don't usually stop unless they are dead or in jail. As one observer put it:

We all thought “where did he go?”. We knew people just didn't stop.

And it was obvious that he was likely to kill. One observer said:

Anyone could look at what [he] was doing and recognise he was going to kill someone.

Yet there was no system in place to drive this case forward to the top of the priority list or to leapfrog it ahead of other serious sexual assault and murder cases. There was no case management system in the Metro force to supervise this cold case and drive it forward vigorously. There was no strategic co-ordination of the work of the different agencies involved in the investigation. No one assumed the responsibility to push Bernardo's DNA test ahead because there was no system

to prioritize and urgently drive forward the investigation of this violent escalating mobile serial predator.

17 The Present and the Future

The CFS since the Bernardo case has improved its capacity to respond to cases of particular public danger. To take one example: by reprioritizing DNA tests in a co-ordinated investigation with the Metro police, assisted by the Chief Coroner's office, the CFS was able to link a puzzling series of apparently unconnected murders in a high profile case that led to a recent arrest. This is a good example of how the problems encountered in Bernardo can be overcome by interdisciplinary teamwork.

The Centre of Forensic Sciences has also come a long way in its DNA testing capacity since the start up period when the Bernardo delays occurred. Increased staffing, and redeployment of staff from serology to DNA, coupled with the newer generation of DNA testing techniques including PCR, have cut the average internal laboratory processing time from 4–6 months to 1–3 months. It is now possible in a high priority case to compare a single sample to a pre-existing DNA profile in as little as two days on an emergency basis. Although this disrupts the processing system and contributes to delay in other cases, it can be done on an emergency basis.

But there is still a considerable backlog and the average waiting time for a police force between the time they submit a sample to the CFS until the time they receive the results is closer to the range of five to eight months. This turnaround time is still unacceptably long considering the crucial significance of DNA evidence in rape and murder cases.¹

The pressure on DNA testing capacity of the CFS has increased in the wake of the new Criminal Code provisions that came into force last summer. This demand will increase even more

1. For the most recent turnaround statistics from the CFS see Appendix 4.

dramatically with the proposed federal legislation expected this fall to create a national DNA database of convicted offenders.

The objective of the CFS is to complete 90% of its cases, including DNA cases, within 30 days. There is no scientific way to demonstrate that 30 days is the right turnaround time, or to demonstrate that a turnaround longer than 30 days represents an unacceptable hazard to public safety. However, it is clear that a reasonable turnaround time somewhere in that range is essential for public safety, having regard to the crucial importance of DNA to the identification of rapists and murderers.

Because DNA is one of the most conclusive ways to identify the guilty and to clear the innocent, it is essential that Ontario maintain a capacity to produce timely DNA tests using the newest technology.

Although the cost of maintaining this capacity in the face of exploding demand for DNA testing will be significant, the cost of not doing so is enormous. Without this increased capacity, serial predators may remain undetected and continue to rape and murder. Without this capacity innocent people may remain under suspicion and under charge. Having the capacity can save enormous financial cost because a single DNA test can dispense with the necessity for a million dollar police investigation. Having regard to the improving standards for DNA testing capacity, failure on the part of the government to maintain a reasonable capacity could expose it to massive civil lawsuits.

Two issues should be touched on briefly, privatization and chargeback.

The privatization of forensic law enforcement DNA testing, although mooted from time to time, has not to my knowledge been seriously advanced as an option for Ontario. The issue has therefore not been studied during the course of this review. It should be noted however that any significant privatization of law enforcement DNA testing could have a potential negative effect on

the use of DNA by law enforcement agencies and by the courts. Considerations against any significant degree of privatization include the potentially higher cost of the testing itself; the cost to law enforcement agencies which might result in underuse of DNA testing capacity; privacy issues in relation to sensitive personal genetic material; the difficulties inherent in the potential splitting of a large series of single case samples between different labs; law enforcement confidentiality issues in the highly interactive work between police investigators and forensic scientists, and the difficulties for investigators and Crowns in working with an array of separate labs and scientists with varying degrees of expertise, court experience, and credibility. The same considerations of course apply to the privatization of forensic work other than DNA.

The idea of a chargeback system, to require individual police forces to pay for forensic testing, has not to my knowledge been seriously raised as an option. But it is worth pointing out that a chargeback system, although perhaps superficially attractive from a purely financial point of view, could have a serious negative impact in practical terms on forensic DNA testing as well as all other areas of forensic testing. It would lead to a budget-driven underuse of DNA rather than an need-driven use determined by real investigative requirements. It would create a disincentive for investigators to use DNA testing in cases where it really should be used to identify the guilty and to clear the innocent.

To meet the additional workload created by the Criminal Code amendments and to reduce the DNA testing delay to a reasonable turnaround time in the range of 30 days, additional funds for the CFS are urgently required.

The recent announcement of the expansion of the CFS testing capacity, from 26 scientists to 52 scientists, and the increase in testing capacity from 400 cases a year to two thousand cases in the next few years, is encouraging and it demonstrates a welcome recognition that public safety must receive a high priority even in times of fiscal restraint.

From a financial point of view, the Bernardo case demonstrates that delays in DNA testing can cost millions of dollars in the investigation of offences that could be prevented by timely DNA testing. Again from a financial point of view, there is a rapidly developing body of law around the potential legal liability of government for failing to provide a reasonable standard of public protection, an area of liability which could prove very expensive to the government if reasonable standards are not met.

And most importantly, the Bernardo case demonstrates that delays in DNA testing can imperil personal safety and cost lives. Any reluctance, to continue to spend the public funds necessary to maintain a reasonable turnaround time for DNA tests must give way to a consideration of the financial and human cost of failing to do so. The planned expansion of the DNA lab at the Centre of Forensic Sciences demonstrates that this has now been recognized.

It will be difficult for the government to continue to commit the necessary funds to achieve and maintain a reasonable turn-around time in the range of 30 days for DNA testing. But the Bernardo case, in terms of the government's obligation to provide a reasonable standard of public protection, demonstrates that the public will remain at unnecessary increased risk from violent serial predators unless a reasonable turnaround standard is maintained for DNA testing.

Chapter 4–The Secret Killing Of Tammy Homolka

1 The Early Morning of December 24, 1990

At 1:18 a.m. on the morning of December 24, 1990, a 911 call was made from the Homolka house in St. Catharines. Constable Weeks of the NRPS arrived at about 1:25 a.m.. He found Mr. and Mrs. Homolka coming downstairs, unaware of what was happening. Karla Homolka and Paul Bernardo were in a basement bedroom with ambulance personnel and firefighters who were trying to resuscitate Tammy Homolka, Homolka's fifteen year old sister. Her skin was very, very gray and Weeks noticed a mark on her face.

We know now that Homolka earlier that day agreed to procure Tammy for Bernardo as a Christmas present. Bernardo put Halcion in Tammy's drink and Homolka, as part of her pre-arranged plan with Bernardo, served it to her. After Mr. and Mrs. Homolka and their other daughter Lori had gone to bed, Bernardo and Homolka gave Tammy more Halcion concealed in her drinks. When Tammy passed out in the basement recreation room, Bernardo undressed her. Homolka put a cloth soaked with Halothane over her unconscious sister's face while Bernardo raped her vaginally without a condom. Homolka then performed sexual acts on her sister and Bernardo again raped her vaginally and anally. They videotaped a significant part of the sexual activity. Just after Bernardo stopped raping Tammy she vomited, choked, and stopped breathing. They tried artificial respiration, dressed Tammy and moved her to the adjacent bedroom. Homolka flushed the remaining Halothane down the toilet and hid the Halothane bottle, the cloth, and the Halcion container in the basement shelves near the laundry room. At some point, they called 911. Homolka said that Bernardo took the tape from the video camera and may have hidden it in the basement behind the pickles. Bernardo said that he left the tape in the camera and Karla hid the tape between the bed and the wall after they got back from the police station later that day.

Weeks left the basement and went with Homolka and Bernardo upstairs to the kitchen. They told Weeks that Tammy ate dinner at about 5 p.m. and then, after 8 p.m., drank a glass and a half of

champagne, two pina coladas, and sips and parts of other drinks until about a half an hour before she had trouble breathing. They said they were on a sofa in the recreation room watching a movie while Tammy, who said she had trouble seeing, was sitting on the other couch. Bernardo and Homolka said they fell asleep and woke up to the sound of Tammy vomiting and having trouble breathing. They said they put her on the floor then moved her to the bedroom where the light was better and Bernardo performed artificial respiration and told Homolka to call 911.

Sergeant Ravenek, who had arrived after Weeks, went to the hospital with Mr. and Mrs. Homolka. Weeks remained to secure the scene and get statements from Bernardo, Homolka, and Lori. Just as Weeks began to take Bernardo's statement, Bernardo without any prompting volunteered the information that there were absolutely no drugs involved in the incident.

Bernardo's statement was interrupted by a call from the hospital advising Weeks that Tammy had died.

Tammy had arrived at St. Catharines General Hospital at 1:45 a.m. with no vital signs and was pronounced dead at 2:03 a.m..

The doctors in emergency recorded that she had been drinking then vomited twice after difficulty in breathing. They noted a second degree burn on Tammy's left cheek and upper lip and a small burn on her left shoulder.

In photographs of Tammy's body, the burn leaps out very strikingly as a livid and dramatically prominent mark covering a good part of the left side of her face.

Mrs. Homolka told the medical staff that Tammy had a history of asthma but was not on medication.

After Weeks took the call from the hospital he told Bernardo, Homolka and Lori that Tammy had died. Lori and Homolka cried and consoled each other. Bernardo began to cry, pulled his knees up to his chest and hugged his knees while he was sitting on the couch and started to rock back and forth, shaking his head and throwing his head back and pulling his hair while shouting very loudly "No, no."

Lori left the basement to go to her room. Weeks followed to check on her and found her on the bedroom floor crying and talking on the phone.

Weeks returned to the basement, heard a washing machine, and saw Homolka in the laundry room beside the washing machine holding the vomit stained throw cover or blanket and the vomit stained towel. One small corner of the throw cover was already in the water of the washing machine before Weeks stopped her.

At 2:30 a.m. Sergeant Ravenek returned followed by Detective Constable Ken Mitchell of the CIB. Weeks told Mitchell of Bernardo's unsolicited comment about drugs and Homolka's attempt to wash the blanket but Mitchell from his experience did not think the behaviour strange for people under stress of that kind.

Weeks, learning from Ravenek that the marks on Tammy's face were burns, asked Bernardo about it. Bernardo said it might be a rug burn from moving Tammy into the bedroom.

At about 2:50 a.m. Ravenek took Bernardo, Homolka and Lori to the police station for statements and Mitchell left for the hospital. Before leaving, Bernardo changed his pants and Weeks examined them and found nothing out of the ordinary.

The coroner, Dr. Joseph Rosloski, arrived at the St. Catharines General Hospital at 2:37 a.m.. As he entered the emergency department, he met one of the ambulance attendants who had attempted to resuscitate Tammy. The attendant told Rosloski about a delay in calling the ambulance to the

scene and said he thought there was something fishy about the case and the length of time it took to call for help. This issue will be discussed below.

Rosloski and Mitchell viewed the body at about 3:00 a.m. with Constable Nadine Wallace. Tammy wore green sweat pants, white socks and a mauve-coloured blouse removed by the medical staff during the resuscitation attempts. She was not wearing a brassiere. Although Dr. Rosloski recalls that she was wearing white panties, it seems more likely, from the observations of Constable Wallace and Detective George Onich, an identification officer, and the written reports and photographs made at the time, that she was not wearing any panties.

Both Rosloski and Mitchell were immediately impressed by the sharply defined red area around Tammy's mouth, extending over a large area of her cheek to her left earlobe. A similar mark measuring 3 by 1.5 cm. was present on the tip of her left shoulder. The marks were second degree burns. There were no burns on her clothing.

Dr. Rosloski thought the burns may have come from cocaine freebasing. Mitchell, because of the presence of facial hairs in the burn area, doubted the possibility of an open flame burn. Mitchell said it appeared to be a caustic burn which had come from some substance within her body and asked Rosloski if stomach acid could cause this, but Rosloski was unable to tell him. Mitchell later that day consulted a standard medicolegal textbook that suggested that the coagulating action of regurgitated gastric juices could cause tanning of the face and skin of the neck and simulate antemortem burning.

The extent to which the possibility of sexual assault was discussed in this preliminary meeting is unclear. Constable Wallace recalls that Dr. Rosloski thought that sexual activity and drugs may have been involved and that the death was suspicious. Rosloski recalls that he asked Mitchell whether it was “possible that there was anything sexual going on here” and that Mitchell said he didn't think so.

After viewing the body, Dr. Rosloski issued a coroner's warrant for a post mortem examination and asked for tests for alcohol and drugs, in particular cannabaloids, cocaine, amphetamines, acetaminophen, aspirin and narcotics. He asked that the burn area on her face be examined in order to determine what caustic materials or chemicals may have caused the burn. He noted in his warrant that Tammy Homolka was a "mild asthmatic", that she had been at a house party with alcohol in use, that she vomited repeatedly and then had a cardiac arrest. The warrant indicates that home CPR was done for 15–20 minutes prior to calling for help and refers to a large burn on the face, around the mouth, and on the left shoulder. There is no reference to possible sexual activity and no request for the taking or biological testing of vaginal substances.

Mitchell went to the police station about 4 a.m. to take statements from Homolka and Bernardo. By this time Sergeant Ravenek had taken Karla Homolka, Lori Homolka and Bernardo to the station at 2:50 a.m. Ravenek had already taken a statement from Lori Homolka in which she confirmed that Homolka, Bernardo and Tammy had started drinking at 8:00 p.m.. Lori said that she went to her bedroom at 8:45 p.m. and stayed there until the emergency personnel arrived. She said Tammy was not a drinker and would only have wine on special occasions.

Homolka and Bernardo were questioned separately by Mitchell. It has been suggested that someone should have ensured that Bernardo and Homolka were kept separate and apart before the interview. There is no directive that requires that all witnesses involved in a sudden death, (or any investigation for that matter) particularly family members, should be immediately separated. It may or may not be prudent to do so and it cannot be stated categorically that it is an error not to do so, particularly when they have already been together before the arrival of the police.

Homolka said she, Lori and Tammy all had asthma although she and Tammy had grown out of their asthma attacks and only had asthma attacks if they did strenuous exercise in the cold. Homolka said she did not believe Tammy was having an asthma attack that night. Bernardo and Homolka told Mitchell essentially what they had told Weeks. When asked about the burn on Tammy's face Homolka, said she didn't know what the red mark was, but that Tammy was moved

around with her face against the rug and dragged a bit when Bernardo and Homolka were getting Tammy into Homolka's bedroom.

George Onich, the identification officer, arrived at the hospital at 4:24 a.m., to photograph the body and noted the burns on Tammy's face, including her lips and left cheek. He noted that the small facial hair was not burned or singed in any way and that the burns were clearly defined, an indicator that the burns were chemical in nature, as opposed to burns caused by flame or open heat.

Onich then went to the Homolka house at 5:55 a.m. where he met Weeks, who had already searched the bathroom, recreation room and bedroom and found nothing significant. Weeks had looked around the laundry room but didn't move anything or look under anything there. Onich photographed the scene and looked around for ether based liquids or anything caustic. As Weeks noted in his report later that day, he and Onich were unable to locate anything at the scene to explain the burn although it does not appear that the search was extensive and Onich did not mention it in his report. Onich took the vomit-stained towel and throw cover and stained tissues from a waste paper basket and left at 7:17 a.m. for police headquarters where he spoke to Mitchell. After speaking to Mitchell he called the Homolka house to release the officers from the scene. Weeks, who had left the house at 7:28 a.m., thought the scene was to remain secure until the post mortem results were available. Mitchell's decision, to release the scene before the post mortem examination was completed, will be referred to below.

2 The Post Mortem Examination

Before the autopsy, Rosloski called Dr. Gordon Powell, the Regional Coroner. Dr. Powell's notes show that Rosloski said Tammy was a mild asthmatic who allegedly had 4 champagne drinks before vomiting repeatedly and collapsing at a party, that CPR was begun 15–20 minutes before calling 911, that there were burns on the left cheek and around the mouth, that there was a question about an attempt to destroy evidence, and that the police were investigating charges. But

as noted below, by the time the autopsy was done and the day was over, the police had terminated any active investigation on the understanding that it was an accidental death.

Dr. John Groves, a pathologist, performed a full forensic post mortem examination on Tammy at the Hamilton General Hospital beginning at 12:40 p.m. on the day of her death. Constable Onich was present. Groves knew from the coroner's warrant that Tammy was a mild asthmatic and that there were concerns about alcohol, possible drugs, and the unexplained burn on her face.

Groves in his report made no reference to any findings in relation to asthma.

Because Tammy had a sanitary napkin loose between her legs but no belt and no underwear, Onich asked Groves during the autopsy to see if there was any trauma associated with sexual assault. Groves found no sign of trauma and the report notes that the vagina and vulva were normal. Onich had no indication that there had been a sexual assault and did not ask for any further examination such as the collecting and biological testing of vaginal material. This issue will be discussed in further detail below.

Groves at the end of the autopsy concluded that the cause of death was asphyxia caused by the aspiration of vomitus.

Rosloski recalls that Groves phoned him after the autopsy and told him that the cause of death was aspiration of stomach contents. Mitchell noted a 5 p.m. conversation with Rosloski in which the cause of death was attributed to asphyxiation due to aspiration of vomit. There was no reference to drugs although Rosloski thought there might be some public concern about the death of a young girl who had been drinking, and a reporter from the St. Catharines Standard phoned the Regional Coroner on December 27 in relation to a story on teenage drinking. As noted earlier, Dr. Rosloski had asked for alcohol and drug tests and Dr. Groves asked the CFS to conduct tests for alcohol, cannabis, cocaine, amphetamines, sympathomimetic, acetaminophen, ASA, and narcotics. Although those tests were not reported until February 11, it was already known from a

test at the Hamilton General Hospital that Tammy's blood alcohol level was 3 mmol/L or 13 milligrams per hundred millilitres, about one sixth of the permissible driving limit. It will be noted that the later report from the CFS indicated “traces” of alcohol, which generally refers to a quantity less than 10 milligrams per hundred millilitres.

3 Mitchell Concludes the Investigation

Mitchell concluded in his report on December 24 that Tammy's death was accidental and that there was no basis for further investigation pending the results of the toxicology tests:

Toxicology tests on samples retrieved by the Pathologist will be conducted at a later date and pending these results and at this point in time Dr. Rosloski is satisfied as is the investigating officer that this was an accidental death due to asphyxiation as a result of aspiration. There is no violation of the Provincial Liquor Licenses Act and it is the opinion of the investigating officer that we would be hard pressed to prove any criminal violation along the lines of Criminal Negligence in the manner in which she was allowed to consume this alcohol. With regards to the burns on the facial area of the deceased, I am confident that toxicology reports and examination of stomach contents will note that this was due to gastric juices from the vomitus.

This report marks the effective conclusion of Mitchell's investigation.

It should be noted he concluded, after speaking to Bernardo and Homolka, that they did not wait 15–20 minutes before calling 911:

There has been some concern expressed by Dr. Rosloski to the fact that there is a possibility the sister and boyfriend of Carla waited some 20 minutes in calling 911 for assistance and in that time they attempted to resuscitate and revive the deceased. From speaking with them and their general demeanour during the interviews, I do not believe this is the case. I believe that they made every reasonable and quick attempt to administer mouth to mouth resuscitation. Carla by her admission did make two presses on her sister's chest in an attempt to do C.P.R. and then quit as by her own words she did not know how to do it and she did not want to hurther.

911 was summonsed according to Carla and her fiancé within two to three minutes of them finding her in difficulty. This 20 minute discrepancy could very easily have arisen from the fact that they thought and made mention to police officers on the scene that it took 20 minutes for help to arrive. Although this was not the case to a person in a panic situation, time seems to stand still. There is no indication that Carla and her fiancé Paul did not show every concern for Tammy's well being once they discovered her in difficulty.

Mitchell accepted Bernardo and Homolka's statement that they called the ambulance within 2 to 3 minutes of Tammy's distress, and rejected as a misunderstanding the suggestion that they waited 15–20 minutes. The extensive ambulance report notes that the bystanders (obviously Bernardo and Homolka) said Tammy may have been without vital signs 15–20 minutes prior to calling the ambulance and that the bystander (obviously Bernardo) performed CPR approximately 10–15 minutes before calling 911.

Bernardo and Homolka told the ambulance personnel that they waited 15–20 minutes before calling the ambulance but they told Mitchell it was only three minutes. He thought that Rosloski got the information from the Homolka family and accepted the Bernardo–Homolka version without interviewing the ambulance personnel. Mitchell never checked with Rosloski about the source of the information about the delay and he never learned that the ambulance attendants, who had made their own extensive internal reports that referred to the delay, were the source of the information. Mitchell never checked with the ambulance attendants and he never learned of the very stark contradiction between what Bernardo and Homolka told him and what they told them. It appears in hindsight that Mitchell, although he knew from Rosloski that there was suspicion about the delay before calling the ambulance, too easily accepted Bernardo and Homolka's story without checking a readily available and highly credible source of information that would have starkly contradicted them on a material issue.

4 The Coroner's Report

Groves remained concerned about the cause of the burn to Tammy's face. He noted in his request to the CFS on December 27 for drug and alcohol testing that the immediate cause of death was

aspiration of stomach contents, that the burn was unexplained, that there was no history of drug abuse, that the family situation appeared stable, and that the police did not consider the circumstances suspicious.

On January 8, 1991, Rosloski completed his Coroners Investigation Statement. He described it as a final report, as opposed to a preliminary report. Under “Medical Cause of Death” he wrote:

Aspiration of vomitus

Asthma

This is a convenient place to note that Dr. Rosloski had learned from Tammy's family doctor that she was a mild asthmatic and used a ventolin inhalator.

Under “Death Factor” he checked off:

Natural Disease

Under “By What Means” the choices were natural, accident, suicide, homicide, and undetermined. Dr. Rosloski checked off:

Natural

Dr. Rosloski checked the category “Alcohol involvement” but not the category “drug involvement” although the toxicology report had not yet come back from the CFS. After a brief outline including the history of mild asthma, the evidence of drinking, and the vomiting and lapsing into unconsciousness, he turns to the burn:

Examination of the cadaver revealed areas of apparent burns to L side of face & around lip; the mechanism of this burn remains unclear but may have come from vomit from which she was lying in.

There were apparently many rumours with this case and the media had become interested in the circumstances of this case.

5 The Medical Cause of Death

Some explanation is required of Dr. Rosloski's description of the medical cause of death as:

Aspiration of vomitus

Asthma

The Chief Coroner in his report to this review suggests that Dr. Rosloski, based on his investigation of the asthma issue, concluded that Tammy must have aspirated vomit secondary to an asthma attack:

In the interim period, Dr. Rosloski had checked with the family doctor and had discovered that Tammy was an asthmatic who was prone to over-use her ventolin inhaler. When he received the negative toxicology report he then concluded that she must have had a severe asthma attack on the night of her death and had aspirated vomit secondary to this asthma attack.

Although the Chief Coroner attributes to Dr. Rosloski a reasonable chain of logic, Dr. Rosloski takes strong exception to that interpretation. In his interview for this review, Dr. Rosloski volunteered eight separate times that he did not state in his report that Tammy had an asthma attack. When asked why he wrote asthma under the cause of death, he said:

I do not know how Tammy died, and I have a legislative duty and obligation and whatever there is to fill out those form 16s, OK? I do not know how Tammy died but to this day I am not of the mind to eliminate a pre-existing respiratory lung condition that predisposes someone to sudden death as not germane to her death.

The propriety of this approach to the determination of cause of death will be discussed below.

When asked what was the connection in his mind between asthma and the cause of death he said:

- A. Pre-existing illness which makes you susceptible to sudden death. Death certificates are filled out in that regard ..
- Q. By ingesting vomit? What's the connection between the asthma and the ingestion of vomit was my question.
- A. That gets very technical. And I think I see where you are going with it.
- Q. ... not going any further with that question.
- A. Well, I think I see the logic of it and to be honest, I am really hard pressed to give you an answer.

When asked whether asthmatics are more prone to inhaling their vomit than non-asthmatics, Dr. Rosloski pointed out that he was not an expert in respirology. This is a convenient place to note that Detective Mitchell recalls that Dr. Rosloski told him that asthmatics throw up for no reason and that asthma caused the vomiting. Dr. Rosloski did not recall saying that to Mitchell, and Rosloski said in his interview that he did not think that asthmatics throw up for no reason.

6 The Final Reports

After completing the coroners investigation statement on January 8, 1991 Rosloski had some discussion with the new Regional Coroner for Niagara, Dr. Bonita Porter, on January 23. She noted the name of one of Dr. Rosloski's other patients, a neighbour of the Homolkas who had spoken to him about the case, and the fact that Dr. Rosloski had been contacted by the reporter who was interested in a story on teenage drinking. He did not mention any concerns about the burn and Dr. Porter did not see a picture of it until the later reinvestigation. Because the death was classified as due to natural causes, Dr. Porter did not scrutinize it with any degree of real attention and just noted that the cause of death was consistent with the autopsy result, aspiration of vomit. Dr. Rosloski recalls that he later spoke to Dr. Porter about the burn on Tammy's face, apparently during the course of another conversation, but Dr. Porter has no recollection of this. Dr. Rosloski certainly did not say anything to Dr. Porter that caused her to question his conclusion as to the

cause of death and there is no reason to think that Dr. Porter should have done anything other than she did.

This is a convenient place to note that the NRPS Inspector in charge of the Detective office authorized the disposal on January 21, 1991 of vomit–stained clothing, kleenex, and a towel because of their smell in the exhibit room. Before doing so he checked with the officers involved in the case and with the coroner to make sure that they would not be needed as evidence.

Dr. Groves continued to be troubled by the extensive second degree burn on Tammy's face. Before completing his written post mortem report he wrote on February 8 to the Chief Provincial Forensic Pathologist, Dr. John Hillsdon–Smith. Dr. Groves described the case, including the burns, said that neither he nor his colleagues in forensic pathology were able to explain the burns, and asked for Dr. Hillsdon–Smith's help.

Dr. Hillsdon–Smith replied on February 21:

This is indeed an interesting case. Firstly I agree with you that the appearance and distribution of the facial lesions represent a chemical burn. The absence of any corrosive lesions in the mouth, pharynx and larynx would indicate to me that the skin burns are of a topical nature and not the result of splashing. The colour of the burns is consistent with being caused by a strong caustic alkali.

I note from your letter that the deceased started to vomit in the presence of her two friends. One possible scenario is that the friends attempted to wipe vomit from her face using a rag inadvertently soaked in some domestically available caustic alkali. This would in part explain the local nature of the burns.

The cause of death would appear to be asphyxia due to inhalation of vomit after having consumed alcohol.

Thank you for letting me review this case. I may seek an opinion from a dermatopathologist at some later date.

It appears that no opinion was sought from a dermatopathologist.

By February 25 when Groves completed his formal post mortem report, the CFS had already reported that there were traces of alcohol but none of the specified drugs were detected. Dr. Groves reported:

In the absence of any other significant pathology the cause of death is attributed to asphyxia secondary to inhalation of stomach contents. The lesions in the skin of the face and lips are unexplained but the appearances are those of a chemical burn which occurred antemortem. A letter from Dr. John Hillsdon–Smith, the Ontario Provincial Forensic Pathologist, stating his opinion is included.

The report makes no reference to asthma.

On April 5, 1991, Mitchell reported Rosloski's opinion that death was due to asthma, that Dr. Groves listed cause of death as asphyxia due to aspiration of stomach contents, that there were no signs of violence to the body or any medical cause developed as a result of the post mortem, and that the burn although unexplained, appeared to be caused by a caustic substance from within the body. Mitchell concluded:

On the instructions of the Coroner this case is concluded.

7 The Re–Investigation of Tammy Homolka's Death

After Bernardo's arrest for the Scarborough rapes, the Chief Coroner Dr. Young and Deputy Chief Coroner Dr. Cairns re–opened the coroner's investigation into Tammy's death. Inspector Bevan and the GRT worked along with them with a view to a charge of manslaughter.

During the next few months, Homolka provided the police with a dramatically different version of the facts and she disclosed the details of Tammy's death reviewed at the beginning of this chapter.

Tammy's body was disinterred and a second post mortem examination took place at the Metro Toronto Morgue on July 20, 1993. The autopsy was performed by Dr. D. King and Dr. N.

McAuliffe, in the presence of Dr. Young, Dr. Cairns and Dr. Groves. This time the doctors knew what to look for.

The second Post Mortem Examination Report, completed April 28, 1994 concluded that:

- (a). Apart from lung changes suggestive of mild bronchitis Tammy Homolka was in good health.
- (b). There was evidence of the aspiration of gastric contents.
- (c). There was evidence of patchy “burn-like” injury to the skin of the face, mainly the left cheek and around the mouth and a small area on the back of the left shoulder. There was no evidence that whatever had caused the burns had been ingested or swallowed. In the experience of the pathologists present, vomitus does not cause skin injury. The burns were consistent with chemical burns produced by an irritant or corrosive fluid. These injuries were not abrasions caused by the face being dragged and rubbed on a rough surface.
- (d). The burns had most probably been sustained shortly before or at the time of death.
- (e). Toxicology analyses revealed traces of alcohol in the blood and the presence of Triazolam, a hypnotic, was found in a number of organs. Triazolam is commonly known as Halcion.
- (f). While death may result from asphyxia due to the aspiration of stomach contents this rarely occurs in the absence of another pre-disposing or proximate condition or causative factor, e.g alcohol intoxication or stupor of other cause, especially in an otherwise healthy young person. Although the second post mortem did reveal two areas of contusion in the left angle of the jaw and beside the right eye their significance could not be determined and Dr. McAuliffe referred at trial to trivial injuries probably related to resuscitative measures.
- (g). There are indications of other possible factors that could have caused stupor or unconsciousness, i.e. the presence of a hypnotic drug (Triazolam) and the possible application of some substance (probably fluid) to the face, especially the mouth and nose area. It is possible that death could have resulted directly from the toxic effects of one or both of these substances.
- (h). The possibility of death resulting from asphyxia from smothering during the application of some fluid to the face also has to be considered.

The second post mortem did not demonstrate a precise mechanism of death. It did however provide the evidence to classify the death as a homicide on the basis that Tammy died of aspiration of stomach contents while unconscious due to the administration of Halcion and Halothane.

The discovery of the Halcion in Tammy's body confirmed an important part of Homolka's story to the police. The Centre of Forensic Sciences was able to detect Halcion because they were specifically asked to look for it. Halcion was not included in the routine screening procedure at the time of Tammy's death.

Although Halothane was specifically looked for, it was never detected. It is a volatile anaesthetic agent that evaporates quickly. Experts from the toxicology section of the Centre of Forensic Sciences indicated that even if they had been aware that Halothane had been used when they did the first toxicology examination, they would not have expected to detect its presence.

Dr. Raymond Matthews, an expert in anaesthesia, was retained after the second post mortem examination to give an opinion on the effects of Halothane. He noted that Halothane is not easy to administer to an unsedated patient but it would be quite possible to administer it to someone who was premedicated with a little alcohol and Halcion. Halothane would induce general anaesthesia, relaxing all muscles, and put the victim at great risk, if they vomited, of aspiration of the vomit into the lungs. Dr. Matthews reported that it was unlikely in his opinion that Halothane was the cause of the lesion on Tammy's face. During his testimony at the Bernardo trial Dr. Matthews poured Halothane on his hand and rubbed it on his face to demonstrate that it does not burn. He testified that Halothane alone would not cause the burn and Halothane and vomit together would not cause the burn.

It was impossible to tell from the second autopsy alone whether Tammy had been sexually assaulted. Although a thorough examination of the vagina and the rectum as well as vaginal swabs and washings failed to produce any evidence of a sexual assault at the second autopsy this

negative finding does not rule out sexual assault. It is unknown whether vaginal swabs and washings would have revealed any such evidence had they been done in 1990. Although the vaginal and rectal tissues were not torn this does not negate sexual assault because the Halcion and Halothane acted as relaxants.

8 Analysis: Dr. Rosloski's Role

It should be noted that Dr. Rosloski performed his duties to a high standard in many respects. He attended promptly at the scene, notified at 2:23 a.m. and arriving at the hospital at 2:37 a.m.. He discussed the situation with Mitchell and ordered a full forensic autopsy in the Hamilton forensic pathology unit instead of the local hospital. He wrote out a detailed warrant for the post mortem examination to assist the pathologist including a request for a toxicology screen. He followed up with a telephone call to discuss the case with the pathologist, telephoned Regional Coroner Powell to inform him of the case and ordered a toxicology screen. He followed up with Tammy's family doctor to obtain her past medical history, before making a final conclusion.

On the other hand, Rosloski submitted a final report without waiting for the toxicology report, although in the result the report turned out to be negative. He submitted a final report of a death by natural causes in the face of a dramatic and unexplained burn covering a good part of Tammy's face. Although the burn was obviously not the cause of death, and it is unexplained to this day, it was inappropriate for Dr. Rosloski to submit a final investigation report showing death by natural causes when there was a puzzling and unexplained second degree burn over almost half the left side of the deceased's face particularly when, as he agrees, he did not know how she died.

It is equally significant that he listed asthma as a cause of Tammy Homolka's death without any evidence that asthma caused or contributed to the death in any way. Although he is correct in his repeated insistence that he did not record an asthma attack as the cause of death, he did record asthma as a cause of death. It is difficult to understand why he thinks the difference so significant. Even after a lengthy interview with him one is still left to wonder exactly what was in his mind

when he recorded asthma as a cause of death. It is clear from his answers that he did not base it on any medical understanding that asthmatics are more prone to inhale their vomit than non—asthmatics. He perhaps sums it up best himself in his eventual answer to the question, what was the connection in his mind between asthma and the cause of death:

...to be honest, I am really hard pressed to give you an answer.

It appears that Dr. Rosloski, faced with a puzzling and unexplained death, felt it his duty to come up with some kind of a tidy answer and he fell back on asthma as a cause of death without thinking it through as clearly as he might have and indeed without knowing how she died.

It was inappropriate for Dr. Rosloski to submit a final report showing death by natural causes when there was a dramatic and unexplained second degree burn over much of Tammy's face, inappropriate to report that she died by means of natural causes when he did not know how she died, and inappropriate to list asthma as a cause of death when he had no evidence that asthma caused or contributed in any way to her death.

This is all said with the benefit of 20–20 hindsight and it should be noted that Dr. Rosloski, apart from the mistakes noted above, performed his duties conscientiously and put a significant degree of effort into the investigation. As noted below, it was at that time acceptable for a coroner to list aspiration of vomit as a cause of death but that practice has been changed and aspiration of vomit is no longer accepted by the coroner's office as a cause of death without a good explanation of the underlying cause.

9 Analysis: The Police Investigation

Detective Mitchell was initially suspicious of drug involvement and he knew that toxicology tests would be conducted on Tammy's remains. He left his file open until the results came back negative and he had his final communication with Dr. Rosloski in April. The suspicious

circumstances such as Bernardo's emotional reaction to the news of Tammy's death, his blurted denial of drug involvement, and Homolka's washing of the blanket, may have tended to support the drug suspicion. But Mitchell, after Dr. Rosloski's finding of death by natural causes, did not appear to maintain suspicion of drug involvement. In any event he was in the hands of the scientist and the pending toxicology report so far as further drug suspicions were concerned. In the face of Dr. Rosloski's conclusion of death from natural causes, and in the absence of any positive drug findings, Mitchell had no evidence of any criminal involvement in Tammy's death.

The burn remained unexplained. Mitchell stuck to his textbook theory that the burn was caused by the vomit. Although the pathologists discounted that theory, the theory was plausible enough to commend itself to Dr. Rosloski who included it in his January 8 report noted above. It is difficult to be critical of Mitchell for sticking to a theory that had been accepted as plausible by the Coroner.

There are two things that Mitchell, in hindsight, might have done differently. The first was his decision to release the scene before the result of the post mortem examination. Many seasoned investigators strongly recommend that the scene should remain secure until the conclusion of the autopsy. However there is no specific rule to this effect, and it is sometimes impractical to do so. Having regard to the result of the autopsy, it is hard to say that it would have made any difference if the scene had been preserved until the conclusion of the autopsy.

The second thing in hindsight that Mitchell might have done differently, as noted above, was to check Bernardo and Homolka's story that they called the ambulance within two to three minutes of Tammy's distress, instead of waiting 15 to 20 minutes as they told the ambulance personnel. Although he knew there were suspicions about the delay in calling the ambulance he never checked with the ambulance people and never learned of the stark contradiction between the story Bernardo and Homolka told the ambulance people and the story they told him. Again it is hard to say whether this would have made any difference. If pursued, it may have raised more drug suspicions, but as noted above, Mitchell was in the hands of the scientists and toxicological tests

so far as drug evidence was concerned and in the absence of positive test results, he would still have had nothing to go on.

Even if further checking had led him to question Homolka and Bernardo more closely, it is difficult to say that the result would have been different. He had no evidence against them, and no leverage to work with. It is purely speculative to suggest that further questioning of either Bernardo or Homolka would have revealed the truth about Tammy's death.

So far as Mitchell is concerned, although there are things he might have done differently, I cannot conclude that the result would have been different.

Constable Weeks wrote to the Chief Coroner during the Chief Coroner's internal review of these issues by the Chief Coroner's office, and raised a number of issues which became the subject of an internal review by the NRPS. In his letter to the Chief Coroner Constable Weeks listed eight impressions he formed about the circumstances of Tammy's death: (1) the fact that Tammy's parents were unaware of the emergency; (2) the red mark on Tammy's face which he thought mysterious; (3) Bernardo's blurted drug remark; (4) the fact that Tammy was moved to the bedroom, his "best speculation" being that they moved her there to keep her sleeping parents from hearing what was happening; (5) Bernardo's overdramatized reaction to the news of Tammy's death; (6) Homolka's attempt to wash the evidence; (7) the fact that he (Weeks) had found the movie in the basement video player only half-viewed, which he found suspicious since Bernardo and Homolka and Tammy had gone into the basement at 11 p.m. and the movie was not completely viewed two hours and twenty minutes later; and (8) the fact that someone must have turned off the television set before rendering assistance.

Weeks did not like the way Mitchell had responded to his observations during the initial investigation and Weeks said at one point that he thought Mitchell was acting like a defence counsel because Mitchell did not share his concerns.

During the course of the NRPS internal review Weeks indicated that he did not think he had told Mitchell at the time about the half viewed film or his suspicions about the turning off of the television set. Weeks indicated that he did not at the time of the investigation have any suspicions of sexual assault or manslaughter, but that he was left with unanswered suspicions and he found Mitchell condescending to him:

...these are not glaring outrageous unanswered questions, they are more like just an uneasy feeling

...

...my guessing certainly didn't even approach sexual assault or murder, or manslaughter...they might have given her drinks after they had been told not to or something minor that was causing them now to give off this, this suspicious emanation...or maybe that there was some recreational drugs

...

...I never once came close to thinking it was a murder or manslaughter or a sexual assault...

...

I was upset that we had failed to realize, that we missed something...I didn't have the feeling that it would have been different if...Mitchell had listened to me

...

What I'm accusing him [Mitchell] of having done that night is pretty minor...he was a little condescending with me and left me with the impression that what I had to say wasn't important in reaction to a fraction of the information I gave him. That's it...

To summarize Weeks' position, he had suspicions at the time amounting to uneasy feelings but no suspicions of sexual assault or homicide, and he felt that Mitchell was condescending and didn't listen to him seriously, but did not think the result would have been different had Mitchell listened to him more seriously.

The report of the internal review, included as Appendix 5, of the Niagara Regional Police Force was received on June 13, just when this report was being finalized and after the conclusion of the investigation by the review investigators. While that internal review provides more detail in some areas than this review and less in others, the essential facts are the same in both reviews. The most notable differences concern the information that Weeks gave to Mitchell. After so many years it is not surprising that there is some lack of agreement as to what was said when. The information provided by the internal NRPS review has not altered any of the conclusions that I have reached. The internal review concluded that there was no breach of the policies and general orders of the force during the investigation of Tammy Homolka's death and that there was nothing the NRPS officers could have done to alter the outcome of the investigation.

I cannot say that there was any breach of duty by NRPS officers. It is clear however that there was bad communication between Weeks and Mitchell and Weeks did not communicate all his suspicions to Mitchell. It is also clear that there was a major discrepancy between the 15–20 minute wait before the 911 call that Bernardo described to the ambulance drivers and the 2–3 minute wait he described to Mitchell, a major discrepancy that Mitchell did not investigate although he knew there were suspicions about the delay. He accepted Bernardo's explanation of the discrepancy too easily, without checking readily available sources of highly credible information that would have starkly contradicted Bernardo.

Had Weeks' private suspicions or Bernardo's contradiction about the 911 call been followed up, there would have been further questioning of Bernardo and Homolka although, as noted, it is speculative to suggest that further questions of them would have led to the truth. It is also possible that if the death had been recorded as undetermined this would have led to greater suspicion of Bernardo by Detective Nesbitt in his May 1992 investigation of Bernardo although, again, it is speculative to suggest this would have led to a different result.

10 Analysis: The Pathologists and the Burn

The question of the unexplained burn, although it was picked up by Dr. Groves and referred to Dr. Hillsdon–Smith, was left hanging without any resolution and, as noted, there was apparently no follow up with a dermatopathologist although that was raised as a possibility by Dr. Hillsdon–Smith. The work of the pathologists on the burn was done in apparent isolation from the coroners and other investigators and without any attempt at a collaborative or team or interdisciplinary approach. It appears that the role of the pathologists was somewhat isolated and certainly not fully integrated into the death investigation system. This may have accounted in part for the lack of follow up in respect of the burn and the fact that the case was closed without any explanation for the burn.

11 Impact on the Bernardo Investigations

It would be guesswork to speculate what might have happened differently if Tammy's death had been treated more suspiciously and reported differently. If the Halothane bottle and Halcion container had been found, that would have focused further inquiries on Bernardo and Homolka, and had the videotape of the sexual assault on Tammy been seized, that obviously would have exposed the homicide. But short of that, and in the absence of any basis to conduct a forensic search of the Homolka house, further questioning of Homolka and Bernardo would probably have led nowhere having regard to their proven ability as smooth and accomplished liars, the lack of any evidence with which to confront them and the lack of any leverage in the hands of the police. It seems unlikely, for the same reasons, that a coroner's inquest would have yielded anything different although it might have focused more attention on the medical mystery of the unexplained burn and driven Homolka and Bernardo to further explanations. It was not a suitable case for an inquest because the cause of death had been determined to the satisfaction of the coroner and there was no public interest issue to be addressed through the evidence and the potential recommendations of a coroner's jury.

Had Tammy's death been classified as unexplained, as it would be now, it would have come to the attention of the Green Ribbon Task Force when they did a Niagara police records check of Bernardo after the Haney tip in early May of 1992, and this might have heightened their scrutiny of him as a possible suspect. There is, however, no reason to believe that Metro at any stage of its investigation would have learned about Bernardo's involvement in an undetermined death in St. Catharines.

12 The Coroner's System

A number of changes have been made by the Chief Coroner's office in the system of death investigation as it existed at the time of Tammy Homolka's death.

These changes, outlined in Appendix 6, consist of:

- training and reinforcement in the need for coroners to “think dirty” in the face of suspicious circumstances,
- a greater emphasis on training, updating and case studies,
- emphasis on the category of undetermined death in those cases where coroners are not fully satisfied as to the cause of death,
- a direction that aspiration of stomach contents is not in and of itself a recognized cause of death,
- team reviews and interdisciplinary evaluations of all undetermined cases or cases where the local coroner has unresolved concerns,
- the development of a standard investigation manual,
- the integration of Ontario's forensic pathology service into the office of the Chief Coroner,
- the upgrading of forensic pathology training and education programmes.

All of these initiatives are relevant in the sense that they strengthen the particular areas—training, interdisciplinary teamwork, and cause of death determination that came into play in the investigation of Tammy Homolka's death.

One aspect of the death investigation system that has been strengthened in recent years is a new emphasis on the investigation of what is sometimes called “intimate femicide”—the killing of women by their spouses, boyfriends, or partners. This emphasis has been reflected in memoranda and directions from the Chief Coroner. The circumstances of Tammy Homolka's death raise an aspect of that new emphasis in relation to the use of rape kits during post mortem examinations.

No rape kit was administered in the post mortem examination of Tammy Homolka although the possibility of sexual activity was briefly considered. Given the overwhelming circumstances of innocence surrounding the sudden death the police and the coroner concluded that there was no sexual activity and definitely no sexual assault and decided that vaginal swabs and washings were not required.

We know now that Tammy was sexually assaulted by both Bernardo and Homolka. It is not certain that a rape kit would have revealed this fact had one been administered at the time of the post mortem examination. Had a rape kit been administered and vaginal swabs and washings tested positive however it is clear that the investigation into the death of Tammy Homolka would have taken a different course.

In encouraging coroners to “think dirty”, Dr. Young's memorandum of June 6, 1994 concerning the investigation of potential female homicides committed by intimate partners emphasized the complexities of investigating female deaths and reminded coroners to approach all such investigations with a suspicious mind.

There will be occasions when this approach necessitates the administration of a rape kit. It is difficult, if not impossible, to set out guidelines to cover every situation in which it will be

appropriate to test for a sexual assault and to distinguish them from the vast majority of cases where such a test is inappropriate. Coroners in learning to “think dirty” however should be made aware of the fact that sexual assaults may not always be obvious and that innocent circumstances do not negate the possibility that a sexual assault has occurred.

Dr. Rosloski, at the time of the investigation, had not had the benefit of attending an education course for new coroners. A special three-day course for new coroners is now required before they embark on their duties. The course stresses the need for a team approach comprising all the different agencies and disciplines involved in a death investigation, and the need for coroners to “think dirty”—i.e. to approach a death investigation with an eye for suspicious circumstances and a requirement that suspicious circumstances be adequately explained.

During the investigation of Tammy Homolka's death there was no coming together of all the disciplines involved in the case—the police, the coroners, and the pathologists. Although there was a lot of isolated communication there was no merging of the work of the different disciplines. A team meeting of the police, the coroners, the pathologists would have provided an opportunity to focus on the significance of the unresolved issues such as the unexplained burn and the conflict about the delay before the emergency call was made. The integration of the pathologists office into the death investigation system under the Chief Coroner, and the new emphasis on teamwork and interdisciplinary review of troublesome cases, is a timely response to this systemic problem.

As for the specific problems that arose in the determination of Tammy Homolka's death, Dr. Young's memorandum of August 16, 1995 to all coroners and pathologists, said in part:

“Aspiration of stomach contents” in and of itself is NOT a recognized cause of death. In most cases where aspiration of stomach contents is found it is a terminal event due to the underlining cause of death which may be either from a natural disease process or some other cause such as head injury or alcohol/drug intoxication.

Accordingly, “aspiration of stomach contents” should only be considered as secondary to some underline etiology and great care should be taken to investigate the nature of the

underlying condition before coming to a conclusion. This will often necessitate ordering a complete drug screen and if no good explanation can be established for the aspiration of stomach contents it can be established then the cause of death should be recorded as “No Cause of Death Found” and the by what means should be recorded as “Undetermined”.

Do not hesitate to contact your Regional Coroner, the Chief Coroner's Office or Dr. David Chiasson for advice when analysing this type of case.

The emphasis on the category of “undetermined”, and the direction that aspiration of stomach contents is not in and of itself a cause of death, is another appropriate response designed to prevent a future death like Tammy Homolka's from being misclassified.

So far as the inability to detect Halcion in Tammy is concerned, the Chief Coroner's office advises that the Centre of Forensic Sciences, as a result of advances in drug detection will be able to test for Halcion on a drug screen in the near future, and coroners have been advised of the drugs and poisons that will be picked up on a general drug screen, as well as their ability to request testing for any other specific drug if they are aware of or suspect its use.

The need for more teamwork and more communication between separate agencies is a theme that appears again and again throughout the Bernardo case, in respect of police and coroners and pathologists and everyone engaged in investigative work. The office of the Chief Coroner has taken a lead in promoting this kind of interdisciplinary co-operation. One excellent example of its value is the recent Mark McAvoy inquest, described in Appendix 7. That case, where a young man's death in 1991 was originally found to be suicide but was reopened, reinvestigated, and found in 1996 to be murder. The 1996 Coroner's jury recommended that a system be developed for cases of sudden death in which there are unresolved forensic issues, modelled on the approach taken by the Chief Coroner's office in that case. As noted below, I agree fully with that recommendation which, if in place at the time of Tammy Homolka's death, may have prevented the errors that occurred.

Chapter 5–The Henley Island Attack

1 The Attack

At 5:30 a.m. on Saturday April 6, 1991, a fourteen year old student left her home in the Port Dalhousie area of St. Catharines to walk to rowing practice on Henley Island, a short distance from her home. Walking south on Henley Island Drive, she looked back and saw she was being followed by a man about fifteen metres behind her, on the same side of the street. She felt uneasy and started to walk faster. Suddenly she heard footsteps approaching behind her. Before she could turn around, a man put his hands over her nose and mouth tightly and told her to shut up. He pulled her across the street, through a ditch to a path, into the woods and violently sexually assaulted her in an attack that lasted thirty minutes. We now know that the attacker was Bernardo and that he had moved to St. Catharines to a house at 57 Bayview Drive, less than a mile from the Henley Island attack.

For the victim of the attack, as with Bernardo's other victims, those thirty minutes were the beginning of a painful and confusing nightmare.

The sexual details of the attack and the exact words used by the attacker were strikingly similar to those used by the Scarborough rapist. These details were so obviously alike that an experienced investigator with detailed knowledge of the Scarborough attacks would immediately conclude that the Henley Island attacker was probably the Scarborough rapist. One of the Scarborough rape investigators said that when he first read a report of the Henley Island attack, almost two years after the event:

That is the first time I knew of that attack. When I read the report I had no doubt he [the Scarborough rapist] was the culprit.

The linkages were immediately apparent to Inspector Bevan when he attended the Metro Sexual Assault Squad office on February 8, 1993 and saw the flow chart showing the factual details of the Scarborough cases:

On February 8th, 1993 while I was still in Toronto...in the SAS office, on one large wall they had a huge flow chart showing the cases and all the similar facts...I looked at that and said to myself there's Henley Island, it fits in like a glove. ...

Looking at the...board...up on the wall...all the connections of what was said and what was done by the culprit...I just knew. About the order of the attack, what was said, it was a carbon copy and of course, the proximity to his house.

It was not just a carbon copy of the Scarborough rapes. One of Metro's Scarborough rape suspects, unbeknownst to the Niagara Police or the GRT, lived within a mile of the attack scene. Unfortunately, there was no system in place to ensure that these vital pieces of information, all readily available in the hands of various police forces, were ever put together in a way that they could be used by the investigators.

The Henley Island attack was investigated by Detectives Cameron and Typer of the Niagara Region Police Force. On April 8, 1991, they sent a C.P.I.C. zone alert to their own force and to the police forces in Hamilton–Wentworth, Halton, Metropolitan Toronto, Burlington, Peel, Haldimand–Norfolk, and the O.P.P..

A C.P.I.C. zone alert is a short message transmitted through the centralized police computer to alert police forces, in a particular geographic zone, to a specific public danger:

Zone Alerts should be transmitted where urgent matters exist that may pose a danger to members of the public or police officers in a specific geographic area. Again, Zone Alerts messages must be brief and to the point. Specific details concerning the occurrence or lists of property should not be included in the alert.

The zone alert is a danger alarm, not an analytical investigative tool like ViCLAS to demonstrate links between sexual attacks. A zone alert can, however, be a very useful investigative tool if it

suggests, as this one did, that a particular predator has moved his operations to a neighbouring community.

The zone alert contained a ten-line summary of the attack and the suspect's description, with a request that any police department with similar occurrences contact the Niagara investigators:

On Saturday, April 6, 1991 at 0530 hrs., a sexual assault (rape) of a fourteen year old female took place in the area of the Henley rowing complex, St. Catharines. The suspect is described as male, white, 20 years of age, 6 feet tall, 180 lbs, muscular build, reddish-blond hair, short on top and long in the back. The male vaginally penetrated the victim from the rear, then forced her to perform oral sex. He eventually ejaculated in her mouth. After completing the sex act, he ordered the victim to remove the rest of her clothing. He then ordered her to crouch down by a tree for five minutes. The male then left taking, with him, the victims red rowing jacket "Simcoe Crew". The male wore "isotoner" style black gloves and had crumpled black nylons in his possession. These were not used to tie up the victim or disguise his face.

Any department with similar occurrences please contact the undersigned.

Sgt. E. Typer #8080

Cst. I. Cameron #1942

Cst. J. Whittel #8424

The zone alert is quoted in full because it shows, even in its brief outline, a striking similarity between the Henley Island rape and the Scarborough rapes. Any experienced investigator familiar with the Scarborough rapes would immediately have seen a potential link.

No replies to the zone alert were received.

The Niagara police located a witness who saw a man following a girl near the time and place of the attack. The Metro police facilities were used to produce a computer composite drawing of the man seen by the witness. This composite was distributed on a flier to all police forces in southern Ontario.

As a result of the composite, Sergeant Cameron received two calls from Metro police officers about suspects who resembled the composite, one of whom had just been released from jail, but Cameron after investigating these suspects was satisfied they were not involved.

The Henley Island zone alert went to the Metro force where it would have been distributed in the ordinary course to the Metro divisions and detective offices. However, it appears unlikely that the Henley Island zone alert was ever considered by the Scarborough investigators. None of the investigators interviewed during the course of this review recalled the zone alert. No copy of the Henley Island zone alert has been found in the Scarborough rape files although this may not be significant having regard to records retention schedules and the lack of a single coherent filing system for the Scarborough rape cases.

There was no system in place to ensure that use was made of the Henley Island zone alert, which strongly suggested that the Scarborough rapist was operating in St. Catharines. There was no system in place to ensure that carbon copy attacks outside Metro were scanned to see if the serial predator had taken up elsewhere. There was, in short, no system in place to recognize the clear link between the Scarborough rapes and the Henley Island rape.

The Niagara investigators were particularly worried about the attack because it was not the kind of sexual assault usually encountered in St. Catharines and they were concerned that the rapist would strike again. It was unclear to the investigators whether the rapist was an opportunistic attacker or a predator. But he appeared to be particularly vicious and potentially dangerous.

The officers were fairly confident that the rapist was a local man. Ironically they turned out to be right, because Bernardo by that time had moved to Port Dalhousie and lived within a mile of the attack site. There was no system to bring to their attention the fact that one of Metro's Scarborough rape suspects lived right there. There were no indicators of a travelling predator. He walked to the scene and walked away, he appeared to be stalking locally. Investigations concentrated in the neighbourhood.

The investigators developed suspects from leads called in by other officers and members of the public and the investigation of local sex offenders. One man with a record for sexual assault fit the description but turned out to have been in jail at the time of the assault. Another suspect had attacked a woman on Henley Island just a few yards from the scene of the April 6 rape, but he was cleared during the course of the investigation.

Another man, suspected of using a similar method of operation when attacking another young woman was arrested for that assault when recognized in a park by the victim of that assault. Although he resembled the composite he did not fit the description given by the Henley Island victim. She was unable to identify him and he turned out to be unconnected with the Henley Island attack.

There was some friction between the investigators and the victim and her family, based in part on differences of opinion about the viability of certain suspects, partly on the victim's view that the officers were insensitive to her concerns, and partly on a concern, acknowledged by the Chief of the force, that the family had from time to time been inadequately informed as to the progress of the inquiry. It might be noted that a representative of the regional sexual assault centre wrote to the Chief to commend the officers and to say she was impressed with their attitude, sensitivity, consideration, patience, and their general treatment of the victim.

The investigation continued actively until the fall. Although the officers had a heavy caseload they treated it as a priority case and worked on it full time for about two full weeks, until they had to take on some additional cases. They later returned to the investigation full time when the victim thought she saw her assailant on a bus, although a man she picked out of a photo line-up turned out not to be the attacker. The investigators followed buses for weeks and staked out a number of bus stops. But the investigation of this incident led nowhere. At one point, the victim picked, out from a photo line-up, a man who turned out to be innocent. Eventually the police ran out of leads and the investigation wound down.

The Henley Island case does not raise any concerns about the quality of the local criminal investigation. The problem is that there were no systems to ensure that the obvious link to Scarborough was recognized and to ensure, once local leads were exhausted, that the scope of investigation widened beyond local boundaries. Had there been such a system in place, the investigators, after exhausting local leads would have asked where the predator came from and where he might go next. They did what they could with the systems then in place, including the C.P.I.C. zone alert, but for reasons that will be addressed below that system was not supported by procedures to ensure that investigators got its benefit.

Had the ViCLAS system been in place and fully used at that time, it would immediately have suggested a link between the Scarborough and Henley Island rapes. It would have enabled the separate investigations to pool their resources and focus the two investigations in the direction of the common attacker.

But there were no systems in place to compel recognition of the link. So far as the Scarborough rape investigation and the Henley Island rape investigation were concerned, Metro Toronto and St. Catharines might as well have been in different countries.

Chapter 6–Stalking

Bernardo was a predator who stalked his victims.

After he stalked and raped the young women in Scarborough between 1988 and 1990 and after he stalked and raped a young woman on Henley Island on April 6, 1991, and after he stalked and raped and murdered Leslie Mahaffy in June of 1991, but before he stalked and raped and murdered Kristen French in April of 1992, Bernardo stalked and terrified three young women in St. Catharines. The pattern is clear from the following chart:

1988–90	Scarborough and Mississauga	Bernardo stalks and sexually attacks fifteen young women
90 May 26	Scarborough	Bernardo stalks and sexually attacks last young woman in Scarborough
90 Dec 24	St. Catharines	Bernardo kills Tammy Homolka
91 Apr 6	St. Catharines	Bernardo stalks and rapes young woman on Henley Island
91 Jun 15	St. Catharines	Bernardo stalks, rapes, kills Leslie Mahaffy
91 Jul	St. Catharines	Bernardo stalks young woman to her home
91 Aug 9	St. Catharines	Bernardo stalks same young woman to her home again. Reported to police, Bernardo identified, no report filed
92 Mar 30	St. Catharines	Bernardo stalks two young women to their home. Reported to police, wrong licence #
92 Apr 16	St. Catharines	Bernardo stalks, abducts Kristen French
92 Apr 18	St. Catharines	Earlier stalking victim sees Bernardo, phones police, wrong licence #
92 Apr 19	St. Catharines	Bernardo kills Kristen French

Stalking was a hallmark of his method. The young women he stalked in St. Catharines took the initiative to report Bernardo's stalking to the NRPS. Regretfully, the police did not take Bernardo's

stalking seriously. There was no investigative follow up. The police information about Bernardo's stalking was not properly reported and not properly organized and not retrieved although it was potentially significant to the investigations of the murders of Leslie Mahaffy and Kristen French.

1 The 1991 Summer Stalking Incidents: P. E.

The first stalking incident took place around 2 a.m. on a Sunday morning in late July of 1991¹. P. E., a young woman in her early 20s had just finished work and was driving home. On Carlton Street near Bunting in north St. Catharines, she noticed a gold–coloured sports car approaching from the opposite direction. After the car passed she saw him do a U–turn in her rear view mirror. He went through a red light to keep up with her. She turned down a side street to see if he was following her. The car followed her. She turned into another street and again the car followed. Again she turned into another street and started to drive to her boyfriend's house to get help, and yet again the car followed. She decided not to wake up her boyfriend and continued driving to her home. When she got out of her car in the driveway, the gold sports car drove slowly by the front of her house. She was, of course, very frightened.

About a week later, on Friday, August 9, 1991, at approximately 2 a.m., P. E. spotted the same car on Carlton near Vine. She recognized the car as a gold Nissan 240 SX and wrote down the licence number as 660HFH. There was a plastic tinted lens over the rear licence plate. After she drove around the car, which was stopped in front of her signalling a left turn, she saw in her rear view mirror that the driver did a U–turn on Vine street and came back towards her. She drove onto a nearby residential street and the car followed. She turned into yet another street, and again the car followed her. She drove into her boyfriend's driveway, and ducked down out of sight. Her boyfriend was not home.

1. The narrative of these incidents is based on witness statements and police reports confirmed and supplemented by interviews conducted by review investigators.

After the gold–coloured sports car drove slowly past her boyfriend's home, the young woman drove back towards Vine Street where she noticed that the car was following her again. She drove to a video store parking lot on Scott Street where she spoke to the owner for about half an hour. The gold car was parked beside her car in the parking lot for about 10 minutes, then drove off. After she thought he had left the area, she drove west on Scott Street to go to Lake Street where she turned left and saw him come around Lake Street right behind her. She drove to Pleasant Street, right on Ontario street, by all the doughnut shops to see if she could see her boyfriend there, then all the way down to Lake by Meadowvale and back to the video store, where she hoped to see her boyfriend, and then to her boyfriend's house. The gold sports car followed her all the way. As she arrived, her boyfriend drove up.

She was in the driveway telling her boyfriend what happened when she looked over and saw a man in the bushes two houses away. She pointed him out and he ran towards a nearby street. The young woman and her boyfriend followed in his car and came upon the gold sports car, parked nearby. It was empty. The engine was still warm. The licence number was 660HFH, the same number she had written down earlier that evening. They drove around in search of the driver, heard someone's tires squeal, went back to where the car was parked, and found it gone.

Although there is no direct identification evidence it is clear from the circumstances that the stalker on both occasions was Bernardo.

The young woman and her boyfriend reported the incident to a uniformed officer on Lake Street, now known to be Constable Townsley, at 3:00 a.m. She recalls that she said:

What are you waiting for, for him to rape or kill someone? He said he would talk to him.

The officer recorded the licence number in his notebook, ran a C.P.I.C. vehicle check, and found that the car was registered to Paul Bernardo, 57 Bayview Drive, St. Catharines. The officer immediately drove to 57 Bayview Drive where he found the car, Gold Nissan 240 SX, licence

number 660HFH, parked in the driveway, with no one in or near it, and the house in darkness. The officer took no further action by way of follow up or inquiry or investigation or reporting. Although he indicated that he would normally file a general occurrence report for this kind of complaint, no report can be found on the Niagara Regional Police Service computerized ORACLE system. It is clear that he did not file a report.

Why did the officer not, at the very least, file a report?

His explanation is that he forgot; that he received a call to assist at an accident in Niagara on the Lake and became involved in that incident, that Bernardo had come up “clean” on C.P.I.C., that he was not on any observation list or flagged as a suspect, and that there are lots of complaints where someone is following someone else. Although the officer thinks that such things are taken more seriously now than then, he is of the view that Bernardo had committed no offence in following the young woman that night¹. His understanding of stalking is when an ex-boyfriend continues to follow an ex-girlfriend or continuously calls her or when an ex-girlfriend is found near the residence of an ex-boyfriend and follows him.

Apart from television news, the officer had no knowledge of the Scarborough rape investigation. He does not recall being aware of the joint force investigation into Leslie Mahaffy's death and had no instructions to be on the lookout for any particular type of conduct. He had some awareness of the stalking rape a few miles away at Henley Island four months before and he recognized it as an offence that was out of character for the area.

That was not the only time that P. E. reported Bernardo's stalking to the Niagara Regional Police. On the evening of January 24, 1992, she mentioned it in a pizza place to P.C. Juanita McLean, a

1. Under the law as it then stood, before the new stalking amendments to the Criminal Code, Bernardo's conduct that night might have constituted the minor summary conviction offence of watching and besetting or trespass by night. Although the precise limits of the new stalking amendments are still unclear, it is doubtful that his conduct would be an offence even today, because of the wording of the Criminal Code stalking provisions and the judicial decisions that have given it a narrow interpretation.

police officer she knew casually. McLean got the impression, correctly, that P.E. had already reported the matter to the police. She went out to her police vehicle and queried C.P.I.C. on the licence number given to her by P. E. and on the registered owner, Bernardo. Later that night McLean drove by 57 Bayview, which was in darkness. She did not file a report because P. E. mentioned the incident casually and McLean assumed, correctly, that it had already been reported to the police.

More will be said about the significance of Bernardo's stalking of this young woman and the light it sheds on the police attitude towards stalking and on the management of information within the NRPS. It should be noted, when analysing this stalking incident, that it took place a few miles away and four months after the Henley Island stalking and rape, a month after the identification of Leslie Mahaffy's remains, and about eight months before the abduction of Kristen French.

2 The March 1992 Stalking Incident: K. A. and S. A.

In the early morning of Monday March 30, 1992, K. A. and S. A., two sisters in their early 20's were talking over coffee in a doughnut shop at Lakeshore and Lakeport Roads in St. Catharines. They noticed a gold-coloured sports car pass the doughnut shop going east on Lakeshore Road. The car went past about six times. Shortly afterwards the younger sister noticed a video camera at the nearest window, directed at the area below her waist. The car disappeared and then returned. On driving away from the doughnut shop they noticed the gold sports car parked in a nearby driveway, facing the doughnut shop with its lights out.

The sisters drove over the bridge to Port Dalhousie and stopped at their parents' house, where the younger sister lived. As the older sister got out of the car the gold sports car drove by with the lights out and turned into a nearby street. Realizing that the gold sports car had been following them with its lights off, she would not let her younger sister get out of the car. She drove onto the nearby street and around the block where she found the gold sports car parked near their parent's house with no one visible in the driver's seat. As the sisters drove by the car they tried to note the

licence plate, which was not clearly legible. Stopping behind the car, they tried to read the licence plate but it appeared very dirty. They drove by and around the block once more. When they returned, the car was gone. Each time they passed the car they discussed and made a mental note of what they believed the licence number to be. They went into their parents' house and wrote down the licence number as 660NFM or 660MFN. They were, of course, unnerved by the incident.

Although there is no direct identification evidence it is clear from the circumstances that the stalker was Bernardo.

The next day, March 31, the younger sister, S. A., went to No. 11 Division of the NRPS and reported the incident to a civilian desk clerk who filled out general incident report number 32834. The report refers to the videotaping and the following of the sisters by a Gold two door Mazda, possibly a GXL or RX7, with a dirty licence plate, difficult to read, possibly 660 NFM or 660 MFN. The plates were queried on C.P.I.C. and neither plate came back to a Mazda. S. A. was told to call the station if there was any further information, and to quote report number 32834. The civilian clerk filled out an “information” report on March 31. The next day it was quite properly upgraded to “suspicious person” report by the reader who prepared the report for data entry. The information was added to the ORACLE computerized information system of the Niagara Region Police Service on April 5, four days after it was received.

3 The April 1992 Re–Sighting by K. A.

Ever since they were stalked at the end of March, the two sisters remained on the lookout for the gold sports car. On Saturday, April 18, 1992 at about 6:00 p.m., the older sister, K. A., spotted the car travelling east out of Port Dalhousie. The older sister was driving west. She recognized it and recorded the licence plate as 660HFM. There was a man driving the car, about twenty five to thirty five years old, and no passengers that she could see. She did a U–turn and followed the car. She was right behind it at Lock and Main Streets and thought the back plate, covered with a

plastic tinted cover, was 660 HFM. The car turned left on Main and she followed. It appeared to speed up and she wondered if the driver had recognized her. He turned right onto Ann Street and she continued along one block further to Elgin Street where she turned right towards Bayview Drive. She saw the car on Bayview but once she got to Bayview she lost sight of it. She drove around and checked the side streets but could not find the car.

Although there is no direct identification evidence it is clear from the circumstances that the driver of the car was Bernardo. We now know that he was returning to 57 Bayview Drive on what was probably the last night of Kristen French's life.

The young woman went to her parents' house and called the police, quoting the report number 32834 to identify the report her sister had made three weeks before. She gave the police the information about the new sighting, the information about the original stalking three weeks before, and a description of the car as a 240SX.

This new information was not taken seriously. It was never cross-referenced to the original report. It was never recorded in a report. The information never reached the GRT or any response unit in the Niagara force. The information simply went into a black hole.

4 The Belated Unearthing of the Stalking Incidents

The pathway of this information to the Green Ribbon Task Force after Bernardo's arrest provides some insight into the management and communication of information within the NRPS and the communication of information between the NRPS and the GRT.

On February 19, 1993, the young woman involved in the two stalking incidents mentioned it to Constable Munro of the Niagara Regional Police who submitted a six page general occurrence report on February 19 with a direction to forward a copy to the Green Ribbon Task Force.

On February 20, Constable Dougan received a phone call from a young woman who said a co-worker had been told by a friend that she was stalked by Bernardo in November of 1991 and the information went to Sergeant Nesbitt of the GRT for follow up.

On February 22, Sergeant Ford of the GRT followed up Constable Munro's report, interviewed P. E., and obtained a written statement from her. This was the first time that any member of the Green Ribbon Task Force was made aware of the stalking incident reported by P. E. to the police in August of 1991.

On March 15, Sergeant Nesbitt of the Green Ribbon Task Force was assigned to follow up Constable Dougan's report. He was unaware that P. E. had already been interviewed by Sergeant Ford of the GRT three weeks before. Sergeant Nesbitt interviewed P. E. on March 18, only to learn that she had been interviewed by Sergeant Ford three weeks before.

The apparent confusion in this aspect of the investigation, once the earlier stalking incidents started to come to light after Bernardo's arrest, shows how the lack of an effective case management system can delay and confuse the investigative follow up of information supplied to the police.

Sergeant Nesbitt followed up by means of a C.P.I.C. off-line search to determine which officer had queried Bernardo on C.P.I.C. on August 9, 1991.

As a result of this C.P.I.C. off-line search, the Green Ribbon Task Force learned for the first time that P. C. Townsley had taken a stalking complaint from P. E. on August 9, 1991, that he had queried Bernardo's licence plate on C.P.I.C., queried Bernardo on C.P.I.C., and attended at Bernardo's house where he saw the Nissan 240 SX, licence number 660HFH, in the driveway, and took no further action.

5 Conclusion

It is impossible to calculate the impact on the Mahaffy and French investigations of the non-reporting and other problems associated with the NRPS response to the Bernardo stalking in St. Catharines, in the summer of 1991 and the spring of 1992.

P. E. keeps thinking that if the police had followed up her stalking report maybe Kristen French would still be alive:

I keep thinking that if he had pursued it maybe Kristen would be alive. I keep thinking about that all the time.

That question, whether Kristen French would be alive if the stalking incidents had been followed up, is unanswerable. There are too many unknowns.

It is certainly clear that the stalking incidents would have been of considerable interest to the GRT because Inspector Bevan specifically requested that the task force be notified of all such reported incidents and a considerable effort was made to do so:

- A. One of the things we began to look at right away was any stalking related behaviours...anything that could be tied to suspicious people, suspicious vehicles, stalking, sexual assaults, abductions, basically it was a historic type search.
- Q. ...what type of individuals would you look at first?
- A. ...Somebody with either a history of stalking, abduction or sexual offence.
- Q. Would you put stalking first?
- A. Well in that it was a pointer for us, we were very interested in anyone who might have been out at that time, found in suspicious circumstances, in areas where Leslie or like victims would have been found.

The most significant problems were that Constable Townsley did not report the August 1991 stalking incident and that the re-sighting of Bernardo on April 18, 1992 was apparently not taken seriously when the call was received by the police. Underlying those problems was the more fundamental problem that stalking, until recently, was not taken very seriously either by the police or by the public.

Public and police awareness, that stalking is a serious problem and a potential hallmark of the serial predator, has increased in recent years. Many police forces have developed special training packages on the significance of stalking and the Niagara force is apparently in the process of preparing a training video on stalking. An excellent training package, “Criminal Harassment, Prosecuting the Stalker”, has been developed for the Ontario Police College with the help of the behavioural sciences section of the OPP.. A recent memorandum from Chief Waddell to police commanders in the Niagara force emphasized the need to ensure that service calls such as the P. E. stalking incident are properly reported. The Ontario Policing Standards Manual now contains a guideline directing police governing authorities to ensure that:

- all officers are familiar with the new criminal harassment provisions of the Criminal Code
- a process is in place to contact the O.P.P. behavioural sciences section for assistance including threat assessment and offender profiling
- written procedures are in place for the investigation of criminal harassment incidents, victim assistance, and charging and arrest procedures
- criminal harassment complaints are monitored to ensure compliance with police service policy and procedures

and a highly detailed and comprehensive set of guidelines and procedures are set out to guide the police response to stalking and other criminal harassment complaints.

Although stalking is now taken more seriously, and is increasingly recognized as one of the hallmarks of the serial predator, much remains to be done by the way of police training and by

way of raising public consciousness about its seriousness. As noted above it is questionable, having regard to the wording of the Criminal Code stalking amendment and its restrictive judicial interpretation, whether Bernardo's stalking of the young women in St. Catharines would be caught by the Criminal Code stalking amendments, although the judicial interpretation of those provisions is not yet completely settled.

Having noted the underlying reasons why Bernardo's stalking of the young women in St. Catharines was not taken seriously by the NRPS, and having noted that there have been general improvements in police response to stalking since then, it remains to be said that the Niagara Region Police Service should have been more responsive to Bernardo's stalking of the young women in St. Catharines in the summer of 1991 and the spring of 1992, and to his re-sighting on April 18, 1992. The incidents themselves deserved more attention because of the justified fear of the victims and the inherent danger implicit in the stalking. The incidents deserved even more attention at a time when the local police force was looking for Leslie Mahaffy's killer, just four months after a vicious stalking rape a few miles away on Henley Island. Although it is impossible to calculate the impact upon the Bernardo investigations of this lack of attention, it is obvious that the information would have been of interest to the GRT investigations because that was the very kind of information they had tried to obtain from the Niagara Regional Police Service.

Chapter 7–The Green Ribbon Task Force Investigations

1 Leslie Mahaffy's Abduction and Murder

In the early morning hours of June 15, 1991, Bernardo abducted Leslie Mahaffy at knife point from outside her home in Burlington in Halton Region. While holding her captive in his house at 57 Bayview Drive in St. Catharines with the assistance of Homolka, he raped and murdered her. After cutting up her body and encasing the body parts in concrete, he and Homolka dumped them in Lake Gibson in the Niagara Region. The Leslie Mahaffy investigation began as a missing person investigation by the Halton Regional police on June 15, 1991. On June 29 body parts encased in concrete were discovered in Lake Gibson in the Niagara Region and the Niagara Region Police Service commenced a homicide investigation. Because of the condition of the body and the manner of its disposal, it was over a week before the body was identified.

2 Joint Force Investigation

On July 10, 1991, a joint homicide investigation was commenced by the Niagara Regional Police Service and the Halton Regional Police Force with Staff Sergeant Vince Bevan of NRPS as the lead investigator.

Although Leslie Mahaffy had disappeared in Burlington in Halton Region, the homicide investigation followed the usual Ontario practice and the investigation was conducted by the police force—the NRPS—that had jurisdiction where the body was found. Although it took a few days to sort out the respective responsibilities of the two forces, there were throughout the Mahaffy and French investigations, no jurisdictional problems between the Niagara and Halton forces. In the French investigation, where Kristen French disappeared in Niagara Region and her body was discovered in Halton region, the usual practice was reversed in order to produce a more effective joint investigation. More will be said later about interjurisdictional problems between

police forces, and about the difficulties that can arise in the absence of a clear protocol as to police and Crown jurisdiction where crimes cross county boundaries. No such problems arose between the Niagara and Halton forces. The two forces supported each other fully at all times and did not allow jurisdictional boundaries to interfere with their investigations.

3 Cement and Paint Investigations

The body site provided little evidence and the only available investigation lead was the concrete, apart from the body itself. The cement was examined forensically for any biological trace evidence and an intensive investigation was directed towards the cement source. Experts retained by the police determined that the fine aggregate in the cement contained minerals unique to the Niagara area. It was traced to a cement product made in Wainfleet and sold as Beaver Lumber Cement or Kwik Mix cement. The estimated quantity of cement used was seven to fifteen bags. Local cement sales were investigated through credit card receipts, cheques, delivery slips and store receipts although it was difficult to trace cash sales where no customer name was recorded. Fourteen hundred people were interviewed during the cement purchase investigation and a media appeal was launched for information about the cement purchase but no significant leads were obtained up to the time of Bernardo's arrest.

It was only in May of 1993, that the police learned from Homolka about Bernardo's purchase of the cement and his return of the unused portion. Homolka's information led to a St. Catharine's Beaver Lumber Store where investigators went through the return slips and found a refund voucher made out to Bernardo on June 17, 1991. The NRPS debriefing report on the Bernardo investigations recommends that it be made a standard investigative procedure, when looking for the identity of a purchaser, to examine the return and exchange records as well as purchase records:

During an investigation in which documents are sought to determine the identity of the purchaser of a product, it is the proposal of the Debriefing Team that investigators examine all transaction records relating to the product for the time in question, including

cash and credit card purchase receipts, and return and exchange records, as any of these might yield the identity of the purchaser.

In hindsight it is clear that this sensible procedure, if followed in the Leslie Mahaffy investigation, would have added another name to the fourteen hundred others that emerged during the cement investigation. It is difficult to speculate, in the absence of a computerized case management information system (discussed below), what impact this would have had on the investigation. Certainly if there were a fully operational recognition system and an integrated case management structure in place at the time, of the kind proposed in this report, the connection could have been made between Bernardo's return of the cement, his residence within a mile of the Henley Island rape, his statement to Irwin in November of 1990 that he was moving to St. Catharines, and the stalking incidents earlier reported to the NRPS, discussed above. In the absence of such a system one cannot say whether the discovery of Bernardo's cement return would have had any effect on the investigation. As noted in the recommendation section, there is no single quick fix for our present system of investigating serial predators. What is needed is a systemic case management approach that taps into every available technique and resource and source of information and organizes the information in a way that it can be recognized and used by investigators.

Traces of paint on the cement were examined at the Centre of Forensic Sciences, where its chemical composition was determined. An unusual type of acrylic resin was identified which led the investigators to the U.S. manufacturer of the resin, a paint manufacturer in Ajax. This led the investigators to a the sole user of the paint, a manufacturing company in Newmarket with 600 employees and its Richmond Hill cleaning company, many of whose employees lived in the Halton area. The investigators started from a list of 1900 potential interviewees. This process was time consuming and it produced no successful leads.

This is a convenient place to note that the fire department was initially used in the Leslie Mahaffy body recovery. Although the NRPS diving team was used to some extent during the course of the investigation including the search and recovery of parts of the saw used to dismember Leslie Mahaffy, the diving team was a specialized resource that could have been used to greater and

better effect. A case management approach of the kind recommended in this review, an approach that systematically identifies and uses to best effect all available specialized resources, would have ensured a more effective use of the diving team.

4 Records Investigation

A search of local police records was undertaken for reports of suspicious people and vehicles, stalking, sexual assaults, abductions, and local sex offenders, and follow up investigations were conducted. For instance, a search was done of the NRPS computerized ORACLE records system:

Q. With regards to police reports. What info would you extract from ORACLE?

A. Cue up the persons name and then individually I would look at each occurrence after I snapped that page. I would ask for the information.

Q. How about for a crime category?

A. We dealt with Mr. Crowley on this. We extracted every incident that he could get his hands on that named Camaro, anyone involved in prowling, trespass by night, sexual assault, I know we covered that. I can't remember specifically all the report types. We ended up with a lot of reports that ended up with the Staff Sergeants had to read them.

Q. How would ORACLE capture the info.?

A. Can't rely on ORACLE unless you had name and address. I am not aware of any function of ORACLE that would give me a particular type of offence in a specific geographic location, Camaro's, suspicious person, trespass by night. Anything that would cover that area. This was not just a one time visit. We would go back all the time and look for different reports. He was very accommodating.

Although these investigations were labour-intensive and time consuming, they did not result in any leads to Bernardo. One reason they did not result in any leads was because the NRPS had not recorded, in their system, the reports by young women that Bernardo had been stalking them.

As noted in the preceding chapter, Bernardo stalked a young woman in St. Catharines during the course of the Mahaffy investigation in July and August of 1991. In one of the incidents a NRPS officer went to Bernardo's home and identified in his driveway the car driven by the stalker, registered to Bernardo, but the officer neglected to file a report about Bernardo's stalking. This incident and Bernardo's later stalking activities, although the victims notified the NRPS, never came to the attention of the homicide investigators.

5 Possibly Connected Disappearances

The investigation of Leslie Mahaffy's murder was complicated by two other murders and a disappearance. These turned out to be unconnected to Bernardo or the Mahaffy killing but they should be mentioned briefly here because it appeared at the time that they might be connected. Because of that possibility, the only prudent course of action was to investigate them in connection with Leslie Mahaffy's disappearance. Although the other murders and the disappearance turned out to be unconnected, they had to be investigated for possible connections and this diverted attention and investigative resources.

During the Leslie Mahaffy investigation in July 1991, it appeared that there might be a connection between her death and the disappearance of Julie Stanton from Durham Region. Peter Stark, then suspected and later convicted of Julie Stanton's death, had lived in the Niagara area and hair recovered from the cement in Lake Gibson was similar to his. Although later work, including DNA comparison and alibi investigations all cleared Stark of any involvement in Leslie Mahaffy's murder, this became apparent only after the dedication of significant resources to this lead.

During the Leslie Mahaffy investigation in August of 1991, a young Burlington woman, Nina DeVilliers, disappeared while jogging. Her body was later found in a creek in Napanee and her killer, Jonathan Yeo, then raped and murdered a woman in Moncton, New Brunswick and returned to Ontario, where he committed suicide during a police chase in Hamilton. The search of

his farm involved 27 officers and a number of samples were removed from the premises but forensic examination disclosed no links to the Mahaffy investigation. Although Yeo turned out to be uninvolved in Leslie Mahaffy's murder, it took a significant diversion of investigative attention and resources to establish this.

The Yeo case is also worth noting because some of the recommendations of the coroner's jury, referred to below, have a direct bearing on the investigation of serial sexual predators.

Because there was at the time no computerized system such as ViCLAS, discussed below, to identify and link crimes committed by sexual predators, there was nothing to connect the Mahaffy investigation to the Scarborough rapes or the Henley Island rape.

During the course of the Leslie Mahaffy investigation in November of 1991, Terri Anderson disappeared after experimenting with L.S.D.. The Leslie Mahaffy investigators were consulted and the investigation of her disappearance was later taken over by the Green Ribbon Task Force. Terri Anderson's body was discovered in Port Dalhousie Harbour on May 23, 1992. There was no evidence of foul play and an autopsy showed that death was consistent with drowning. Although she was originally part of the G.R.T. investigation, it turned out that there was no evidence then or later to link her to Bernardo.

These three investigations, although they turned out to have no link with the Leslie Mahaffy or Kristen French killings, diverted significant time and attention from the investigation of those killings.

6 Stalking Incidents

In hindsight the next significant event was the stalking incident on March 30, 1992 when Bernardo surreptitiously videotaped two sisters at a doughnut shop in St. Catharines. He then followed them to their parents' home, near his, in Port Dalhousie. As noted in some detail in the

chapter on stalking, the sisters reported the incident to the police but the reported licence plate was two letters different from Bernardo's plate. Although GRT investigators requested from central records all reports of all such incidents, this report was never supplied to them and it did not surface until after Bernardo's arrest. More will be said about this later.

7 The Abduction of Kristen French

On Thursday, April 16, 1992, at about 3 p.m., Kristen French was abducted as she walked home along Linwell Road from Holy Cross Secondary School in St. Catharines. The following description is taken from the court information document used to obtain the first search warrant:

Witnesses have advised that Kristen was seen walking east on Linwell Road towards her home on Geneva Street. At a point near the Grace Lutheran Church, witnesses have placed Kristen on the north sidewalk of Linwell Road a few minutes after 3:00 p.m.. At this time a witness also observed a cream coloured Camaro type vehicle partly on the south side of Linwell Road facing in an easterly direction. It is believed there were two persons in this vehicle and the driver was speaking to Kristen. The witness could not be specific about the conversation but believes the driver may have been asking for directions. A few minutes later other witnesses advised of seeing a similar type vehicle in the parking lot of Grace Lutheran Church. A male person was seen bending into the rear seat of the vehicle from the open passenger door and there appeared to be a struggle taking place and the male person was trying to force the door shut.

The Camaro identification will be discussed below.

The investigation of the abduction scene produced dozens of items, most of which turned out to be insignificant. One significant item was Kristen French's shoe. Another thing found was a torn-off portion of a Toronto road map showing a part of Scarborough, which was subjected to fingerprinting and other forensic testing.

8 The Murder of Kristen French

After Bernardo and Homolka abducted Kristen French, they took her to 57 Bayview Drive where Bernardo raped and tortured her and Homolka sexually assaulted her.

On the evening of Saturday April 18, Bernardo left Kristen French in Homolka's captivity and drove out to get take-out food. On his way back about 6:00 p.m. he was spotted by one of the sisters he had stalked in March. As described in more detail in the chapter on stalking she turned her car around and followed Bernardo's car, but lost him on Bayview Drive near his house. She phoned the police and reported the second sighting together with the police report number of the earlier stalking incident. As described above in the Chapter on Stalking, the NRPS took no action in response to this call. It appears that the employee who took the call made no record or report of this sighting.

On April 18, 1993, Easter Sunday around noon, Bernardo murdered Kristen French by strangling her with an electric cord. After Easter dinner at Homolka's parents' house, Bernardo and Homolka returned to 57 Bayview and drove Kristen French's body to the Burlington area where they dumped her about 18 feet from the edge of Sideroad #1, east of the Guelph Line in Halton Region.

9 Investigative Jurisdiction

As noted above, Bernardo abducted Leslie Mahaffy from Burlington in Halton Region and dumped her body in Niagara Region, then did the opposite by abducting Kristen French from St. Catharines in the Niagara Region and dumping her body near Burlington in Halton Region, about two kilometres from Leslie Mahaffy's burial site.

As noted throughout this report, organized serial predators are very aware of police boundaries. They deliberately make use of police boundaries in order to confuse the authorities and escape

detection. They also are prone to leaving the bodies of their victims, as a symbolic act, in an area of some significance.

It is not clear which motivation drove Bernardo to dump the body of Kristen French near Leslie Mahaffy's home and burial site. It may have been a symbolic act, and it may have been to confuse the authorities. To the extent Homolka can be believed, part of his motivation was to confuse the authorities:

And Paul wanted her to be dumped in Burlington because he said that he wanted to confuse the cops, like then they wouldn't know if the guy was from Burlington or from St. Catharines. So he picked the spot. And he also said that, later on he also said that he wanted that spot because—because it was so close to where Leslie was buried and close to her house.

....

He knew that the police didn't know if Leslie's killer had come from St. Catharines or Burlington, because she had been picked up in Burlington and dumped in St. Catharines or Thorold, whatever.

He thought—he figured that they'd probably connect the two girls somehow, how, I don't know. But he figured that if he dumped her in Burlington, and that was a St. Catharines girl being dumped in Burlington, then the police wouldn't know where the killer came from.

There is in this statement of Homolka an eerie echo of the well known comment about the Ted Bundy case:

Jurisdictional boundaries and the inability of law enforcement agencies to communicate with each other allows transient killers to avoid identification and capture.

As noted above, the Halton and Niagara forces did not allow police boundaries to interfere with their investigations when the body of Kristen French was found on April 30, 1992. Detective Sergeant Waller of the Halton Force was the initial CIB officer at the body site. He immediately called Inspector Bevan who went to the body site. It took Inspector Bevan of Niagara and

Inspector Les Graham of Halton approximately two minutes to agree that the GRT would assume responsibility for the investigation, instead of the Halton force which would ordinarily conduct the investigation because the body was found within its borders. This is a good example of how police forces can work effectively together when a co-operative framework and a co-operative mindset are already in place.

10 The Camaro

The investigators devoted enormous effort to the search for the car described by witnesses in the abduction area as a Camaro, or a Camaro or a Firebird, or a Camaro-type car. An appeal for public assistance was made for information about a cream or off-white 1982 or newer Camaro or Firebird style car as a possible suspect vehicle. Some media reports omitted the word “style” and simply referred to a Camaro or Firebird. Photographs and billboards of a Camaro were used to elicit information.

There were about 125,000 Camaros registered in Ontario in 1992. About 37,000 of them were 1978 to 1981 models of which about 4,700 were registered in the Niagara–Halton–Hamilton area. A special Camaro computer database was created and an effort was made to locate these cars, starting in the Niagara area. In addition to tracking down the cars and their owners, a photograph of a Camaro was distributed and members of the public were encouraged to bring their vehicles in to be checked. About 10,000 cars were eliminated at 16 checkpoints and given an orange windshield sticker to show they had been eliminated.

The Camaro investigation was based on evidence from a number of witnesses. Out of the thirty five witnesses in the area whose attention had been attracted to a car, seventeen described it as a Camaro. Some of these seventeen were quite definite that it was a Camaro because they or a friend owned or had owned a Camaro. Six described it as a Camaro or a Firebird and four described it as a Camaro style vehicle. One witness saw a cream-coloured Camaro with a male driver in the parking lot of Holy Cross School about 2:45 p.m. on the afternoon Kristen French

was abducted. One witness familiar with Camaros saw a cream-coloured 1980 model Camaro travelling west on Linwell about 3:05 p.m., east of Grace Lutheran Church and west of Geneva Street, driven very slowly as if looking for someone. Another witness saw a light cream Camaro style vehicle between 3:00 and 3:15 p.m. going very fast west on Linwell west of Grace Lutheran Church. Another witness, a driving instructor, saw a dirty-white or cream-coloured Camaro, Firebird, or Berlinetta speeding out of the Grace Lutheran Church parking lot around 3:00 p.m., almost causing a collision and after hypnosis picked out a 1978 Camaro from a set of vehicle photographs as being the closest. Another witness saw a man bent into a car, struggling, in the church parking lot around 3:00 p.m.. It was a two-door, ivory or cream-coloured car in the style of a Camaro, Trans-AM, or Z-28 and the style of the back window of the car looked like a Camaro compared to a Trans Am. Another witness saw a man in the parking lot closing the passenger door of a light-coloured car with difficulty, as if meeting resistance from inside. Another witness saw a car similar in style to a Camaro stopped on the south side of the street apparently asking directions from a girl in a Holy Cross uniform on the north side of the street on Linwell near the Grace Lutheran Church.

It turned out that the car driven by Bernardo at the time of the abduction was a Nissan, not a Camaro. Why did a number of witnesses, one of whom had worked for General Motors for 17 years, and some of whom grew up with or owned Camaros, refer to a Camaro instead of a Nissan?

The first possible reason is that witnesses who thought they saw a Camaro at the scene were correct because there probably was a beige two-door 1979 Camaro in the area at the time, driven erratically by a man of considerable interest to the police, who was stalking his girlfriend. He was investigated as a suspect but eventually cleared. It is likely that at least some of the witnesses saw this Camaro at the time and associated it with the abduction.

The second reason is that some witnesses who saw Bernardo's Nissan mistakenly thought it was a Camaro because of the similarity between the two vehicles. As noted above one witness who clearly did see part of the abduction, thought the car was a cream-coloured Camaro, or Trans Am

or Z-28, and after looking at pictures thought the style of the back window looked like a Camaro as opposed to a Trans Am. That witness, when later shown a picture of Bernardo's Nissan, could not say that it was the same car she had seen in the church parking lot. Although it was in fact the same car that she had seen in the abduction, she thought that the rear window and the roof and the colour were different, thus demonstrating the inherent frailty of memory and identification by honest witnesses who are doing their best to recall what they saw. This is a major inherent problem in every case with eyewitness identification and the Bernardo case was no exception. As one investigator said about the decision to focus on the Camaro:

...you have to put some faith into what your witnesses say, and your investigation is only as good as the witnesses you can locate surrounding your crime scene.

The third reason is that the public appeal for information about the Camaro might have predisposed uncertain witnesses in favour of a Camaro, and some of the investigators may have predisposed witnesses to a Camaro identification by showing Camaro pictures to witnesses who had merely described the car as a Camaro-type vehicle or to witnesses who were unfamiliar with car makes. Some of the witnesses were shown photographs of other car makes and Inspector Bevan took steps to see that interviewers showed witnesses pictures of vehicles other than Camaros in order not to influence their recollection. It appears however, although it is not entirely clear, that some witnesses were shown pictures of different models and years of Camaros only. There was no standard interview or statement-taking technique for the interview of witnesses who might potentially identify the car. The different investigators each did it their own way based on their previous experience and the practice that was accepted at the time. One investigator noted in hindsight that it would make sense for everyone to conduct the same type of interview. One investigator said:

I remember thinking if I only had a vehicle photo book with all types of vehicles.

...

With hindsight I felt there should have been much more attention paid to how it became so certain it was a Camaro. They shouldn't have concluded it was a Camaro but should have focused on Camaro-type vehicle. The body style of a 240 is similar to a body style of a Camaro. There should be a photo identification book in case this happens again.

Other officers commented on the possibility that the public appeal for information about the Camaro, coupled with the interview techniques, might have predisposed witnesses to identify the car as a Camaro:

Where they screwed up initially was that they took pictures of Camaros around and some of the witnesses bought into it and others said that it was just a sportscar. It brings up the idea to not influence you with just Camaros. The photos were a series of Camaros from different years and different colours. There was never a variety of vehicle. I guess they could be faulted for that.

...

I guess in your own mind you can get subjected to the type of vehicle we were looking for. I certainly wouldn't have been the one to broadcast it on billboards because there was no proof of it. I was keyed to that style and frame and year of car.

This raises two issues for case management systems; first, the desirability of a standard interview technique to ensure that the recollection of the witness is not influenced by the questions put or pictures shown by the investigator; and second, the need within the investigation for a communication and management system to ensure that the standard procedures are in fact followed by individual investigators.

In hindsight, it was a mistake to put so many eggs into the Camaro basket. In hindsight, the false Camaro path might have been avoided by the use of more consistently neutral techniques including a neutral vehicle photo line-up, closer analysis of the witness statements, a more careful consideration of the evidence that it might have been a Camaro-type car instead of a Camaro, and a more strategic analysis of the consequences of pouring so many investigative resources and so much public attention into the search for one particular make of car, instead of a more generically described car.

The Camaro became for some time the major focus of the investigation. As one investigator said:

All roads led to the Camaro.

One investigator described in negative terms the impact on the overall investigation of the strong focus on the Camaro:

...they got themselves into a endless loop. A big mess. People associated the GRT with the Camaro. That took over the investigation. People were driving their cars through the checks. And then getting a sticker on their car saying it had been checked. Anyone could do that. You could never check the cars properly. You would need a forensic team to do the examinations. It became a problem. We couldn't get out of the Golden Horseshoe for looking at the Camaros. There were thousands in the area.

Why did the investigation focus so exclusively on the Camaro?

The dominant reason was that it was the only thing the investigators had to work with. They had nothing else. The decision to focus on the Camaro was made almost immediately after the abduction when it was hoped that Kristen was still alive. It appeared to the investigators that the best way to get her back alive was to focus on the one lead they had. The Camaro lead was the only thing they had to go on. Had there been other evidence, or better evidence, there would not have been such a strong and exclusive focus on the Camaro. As one investigator said:

I knew that there was a very good possibility it wasn't a Camaro but I knew it was all we had so that is what we worked on.

Another investigator said:

I don't think anyone was totally confident it was a Camaro but the probability was that it was.

The Camaro, in hindsight, gives us two lessons for future investigations. The first lesson is the importance of statement-taking techniques and statement analysis. These techniques emphasize

the protection of the witnesses' recollection from any source of contamination, including contamination by direct or indirect suggestions from the interviewer¹. They include the use, in the identification of vehicles and persons, of investigative aids such as neutral photo line-ups of vehicles and people.

The second lesson, in hindsight, is the importance in major case management of strategic resource allocation and review. Even after the beige 1979 Camaro was found a few days into the investigation and the suspect cleared, the Camaro investigation continued to eat up a multitude of investigative resources and support from the public and other investigative agencies. Even in hindsight it is hard to say it was wrong at the time to continue the Camaro investigation after the beige 1979 Camaro was found. With 4,700 Camaros registered in the general area it was obviously possible that there were two different Camaros seen by the witnesses.

A remarkable number of serial predator investigations, including the Yorkshire Ripper case in particular, have followed similar false paths at enormous investigative cost and ultimate prejudice to the investigation. Major investigative directions like the Camaro, once embarked upon, take on a life of their own. They can become irreversible. They divert investigative resources and strategic attention from other avenues of search. They can lead to a mindset which eliminates or downgrades suspects who should not be eliminated or downgraded. This became a potential problem in the Bernardo case when some officers started to exclude suspects on the basis that they did not have a Camaro and it was necessary to ensure that they used the Camaro as one investigative tool only:

Some guys in the investigation were eliminating people because they didn't have a Camaro. Steve McLeod hit the roof. He told them that you didn't eliminate people solely based on the fact they didn't have a car.

-
1. There are some obvious exceptions to this principle; there may be cases, where other leads are exhausted or the safety of the public or a victim are at stake, where officers need to elicit evidence accepting the risk that it may not stand up in court because the cost of having it excluded as evidence is outweighed by the need to use the evidence to further the investigation.

Some of the problems that arose in the Camaro investigation are addressed by major case management systems of the kind developed at the Canadian Police College and supported by many senior investigators in the Ontario police community. These systems emphasize the need for more methodical analysis and strategic planning (on issues such as the expansion of the search and the investigative value of the checking done in the sticker programme) before embarking on or continuing major commitments such as the Camaro investigation. It emphasizes the use of consistent neutral interview techniques for potential identification witnesses and consistent criteria for suspect classification and elimination. More will be said about this issue in the sections on major case management systems.

11 Kristen French Body Site and Post Mortem Examination

As noted above the Halton and Niagara police worked well together from the beginning in both the Leslie Mahaffy and Kristen French cases, and despite the potential jurisdictional problems it took only about two minutes at the Kristen French body site to agree that the GRT would take the lead. Things did not work quite as smoothly with the forensic pathology. Dr. King, the regional forensic pathologist, attended the body site and expected to do the post mortem in Hamilton. Because the body was taken to the O.P.P. in Toronto where special equipment was available to determine if fingerprints were obtainable from the body, the post mortem examination was done in Toronto by Dr. McAuliffe the next day. Dr. King was waiting for the body in Hamilton and he felt that the body should have been sent back to him so he could conduct the autopsy. There were also some differences of opinion at the body site between Dr. King and the police as to what tests and examinations should be conducted immediately at the site and what tests should be deferred until the body arrived at the laboratory and done later at the post mortem examination. There was some later controversy between Dr. King and the police about the method of preserving an excised shoulder wound. There were some differences between the police and the pathologists about the potential significance of insect activity associated with the body and the procedures to be taken with that evidence. The police, although they appreciated the work of the Chief Coroner

in making facilities available, were concerned that Dr. McAuliffe did not commence the post mortem until the next day.

There is no indication that any of these matters affected the thoroughness or competence of the post mortem examination or that they affected the investigation. They do, however, underline the importance of a smooth working relationship between the police and the forensic pathologists from the very outset of the investigation. Because the evidence from the body site and the post mortem examination can be crucial, and because the procedures taken at that critical time are irreversible, it is essential that a co-operative relationship between the police and the forensic pathologists should be in place at the very beginning of the investigation. The body site and the autopsy room are not the places to give effect to differences of opinion or differences of approach between forensic pathologists and police investigators. The groundwork has been laid, through the reorganization of Ontario's forensic pathology service, for a more effective and consistent working relationship between police investigators and forensic pathologists. As noted in the recommendation section, an effective system for the investigation of serial predators requires that a very high degree of mutual understanding and co-operation be in place between the police and the forensic pathologists before the investigation begins.

12 Provincial CISO Task Force

On May 15, 1992, the joint Niagara–Halton task force investigating the Mahaffy and French murders became a provincially funded joint forces operation under the auspices of CISO and the Terri Anderson investigation was formally added to its mandate. It was called the Green Ribbon Task Force after the green ribbon of hope campaign started by Kristen French's school when she was abducted. Originally comprised of 28 officers from Halton and Niagara, other Ontario police forces contributed investigators and the task force grew to 40 officers from 11 different police forces.

13 Investigation of Suspects

There were no known suspects at the beginning of the investigation. Attention focused at first on sex offenders who had demonstrated a propensity and capacity for similar offences. Information was sought from other police forces and prison and parole agencies locally and throughout the province. A hot line was set up on April 21 to receive tips and information from the public. At the beginning of the investigation the hot line received an average of sixty calls an hour and the regular police phone number was flooded with calls from citizens who had spotted Camaros and were calling the police with details. Over 41,000 tips were received. The volume was overwhelming and the investigators were swamped. The suspect list grew to over 3,000 people.

The suspects included a sex offender who lived near Kristen French's body site, eliminated when it was established that he was serving a prison sentence at the material times. The man who discovered the body was eliminated after his story was investigated. An informant said that a man from the Burlington Beach Strip area had admitted he was involved in the abduction. After surveillance of the suspect and the execution of a search warrant the informant admitted he had lied when he said the suspect had confessed to him. Another suspect who resembled one of the composite drawings of the main suspect was investigated but cleared. Extensive investigations were conducted as a result of a tip from an inmate in Millbrook Reformatory who said a friend had admitted to killing Kristen French, but the "friend" could not be located and it became apparent that the informant made up the story to gain some status with his fellow inmates. A 911 caller said he heard a conversation between two men who considered disposing of Kristen French's body in a construction site near the QEW and the 403 but changed their mind and went up Highway 5 or 6. The caller was identified and interviewed and forensic comparisons were made of his voice and the 911 call. It eventually became clear that he had overheard some kind of conversation and embellished it on the basis of media reports. Another lead was developed from a telephone tip about a St. Catharines sex offender who showed an unusual interest in the police investigation but an investigation, including the execution of a search warrant, satisfied the investigators that he had no involvement in the killing. These are only a few of the suspects that

emerged from the 41,000 tips and the investigative work itself. The lead investigators read thousands and thousands of tip sheets and reports, to see if they had any potential value as leads.

Whenever a potential suspect emerged from a tip or investigative lead he was checked to see if he was already on the suspect database. If on the database, the new information was given to the investigator assigned to the suspect. If not on the database, he was entered in it and a file was made up and his background checked for criminal history and reported incidents. An investigative priority value was then established:

Code	Suspect Designation	Number of Suspects
1	Good	598
2	Fair	1,021
3	Unlikely	1,280

An additional 276 suspects were not classified numerically due to insufficient information.

There was a subjective element in the rating—for instance a person with a history of sex crimes living in the area at the time would rate higher than a person with a minor drug record who didn't live in the area. The file was then assigned to an officer who would investigate the suspect and then assign an elimination status number and put it on the file folder or in the body of the concluding report. The suspect elimination codes went from A to D:

Code	Suspect Designation
A	CONCLUSIVE ELIMINATION Supported by conclusive independent evidence (i.e. incarcerated)
B	ELIMINATED Supported by independent evidence

Code	Suspect Designation
C	PROBABLE ELIMINATION No longer considered suspect despite absence of supporting evidence
D	STATUS UNKNOWN Interviewed but cannot substantiate alibi
BLANK	OPEN Not yet interviewed

14 Media Relations

It is common ground that the relations between the Green Ribbon Task Force and some media organizations were bad. In some respects media relations bordered on the disastrous.

The problem had two roots.

The first root of the problem was the Niagara Regional Police media policy, since changed, that was in place during the Green Ribbon Task Force investigations.¹ There is more than a grain of truth in the oversimplified description of the then Niagara policy:

“Halton's policy was to tell the media everything, Niagara's policy was to tell the media nothing.”

The second root of the problem was that the GRT did not have a full time media officer. Inspector Bevan had responsibility for media relations, an impossible job for any task force commander. A task force commander may need to be available to the media from time to time, but it is a fundamental mistake for the person in charge of a major serial predator investigation to have the daily, hourly, minute–by–minute responsibility of dealing with the media. That is particularly true

1. See Appendix 8 Media Relations and the Green Ribbon Task Force and Appendix 9 Niagara Regional Police Service General Order #019: An Analysis by Sergeant Gary Beaulieu.

in an investigation described as a media feeding–frenzy. It is a full–time and very specialized job for a police media officer to balance the legitimate need for public information, through a fiercely competitive industry, against the need to preserve victims, witnesses, and working investigators from undue obstruction and harassment, and to protect the integrity of the investigation.

The dual impact of the NRPS media policy and the lack of a qualified full–time media liaison officer was devastating.

Employees of the media industry have commented on the problem, as have officers who served on the Green Ribbon Task Force. The Honourable William Colter commented extensively on the issue in his 1993 Report of the Niagara Regional Police Force Inquiry.¹

Although a great deal could be said in detail about the pathology of the relationship between the media and the GRT, the main problems and the obvious solutions for future investigations are best told in the words of those involved and this section is largely a reproduction of comments made by others.

Chief Judge Colter stressed the legitimate demands of the media for public information and the legitimate interest of the police in controlling the release of information that could obstruct the investigation. He pointed out that increased openness in all public organizations is an irreversible trend and a reasonable public expectation. He also pointed out that police–media relationship is a two–way street. He said that the police–media difficulties in the GRT investigations emphasize the need for a full time media relations officer:

Much of the “bad press” could probably have been avoided by a Media Relations Officer who was not burdened with the pressures of the investigation and who understood media attitudes and the inherent rivalry between competing media forms.

1. See Appendix 10 for extracts from the Colter report about the former media policy of the Niagara Regional Police and its impact on the GRT investigations.

His conclusion is echoed by a number of officers involved in the investigation:

They felt the door was being closed in their face and if you do that to the media they will go out and get their own information. Vince could not be the lead investigator and the media relations officer. Media relations is a full time job.

...

It should never have been Vince. As lead investigator you should never be the media relations officer. You have other things to worry about. It put him in a bad position.

...

Media has to be handled by one person. There was such a change over of persons dealing with the media. If they had one person doing the media releases I think it would have been so much better. Even if they just released a small bit of information to keep them happy. Because we weren't giving them anything they began to dig around and that is what caused us problems.

...

If the spokesperson is good enough then it helps. It all boils down to the relationship between the media person and the media. I think the media person has to take a wealth of courses. I don't think the problems will stop but I think they can be controlled a lot better.

As noted below, this analysis is shared by Inspector Bevan.

The real media explosion started when Kristen French was abducted. The NRPS gave two initial press conferences, one by Staff Sergeant Murray MacLeod and one by Inspector Bob Clarkson. After those press conferences the then Chief of Police directed Inspector Bevan that in future he would be the only officer to deal with the media, although Inspector Bevan had reservations because it was his view that he could not head the investigation and look after media relations at the same time. It turned out that he was right.

Other officers took over the media function temporarily from time to time including Sergeant Cary Smith from the Halton Force who was replaced after a difference between him and the GRT

about how much investigative information from the body site and the post mortem examination should be released to the press, and Inspector Mike Locke from the Niagara force. But the media responsibility devolved for most of the investigation on Inspector Bevan. Although he knew it was unsatisfactory for the task force commander to handle media relations and he was aware of the problems with the Niagara media policy, he was stuck with the job:

I was painfully aware of all that having come through the Colter inquiry, and unfortunately then I find myself in this particular situation and I find there is precious little I can do about it because I had to be the one taking the point...I could see myself making mistakes and there was just at that point no way around it.

...

So unfortunately I was stuck with it...I can't do both jobs.

The bad relations between the GRT and the media are a commonplace of accounts written by media employees. One of them described the threat by one media employee to “shit” on Inspector Bevan's head if he did not publicize the graphic details of the dead girls' bodies:

“Vince, do you realize that if another dead girl shows up the media is going to come down here and shit on your head—and I'll be the first one! Are you prepared to accept that?”

“Bevan's fiery eyes shot back at Cairns as if to say, “You do your job, I'll do mine.” The interview was obviously over. The division was obvious. The chasm was widening by the minute and there was no stopping it.”¹

Things went from bad to worse. The irreparable rift between the GRT and a large part of the media came with the CHCH Hamilton television programme “The Abduction of Kristen French”. Inspector Bevan accepted the CHCH offer to do the programme in order to enlist public support. He also did so to drive a wedge between the killer and his partner because profiling techniques suggested there was a dominant member of the abduction team and a more easily influenced

1. Scott Burnside & Alan Cairns, Deadly Innocence, New York: Warner Books, 1995 at p.55.

partner who might be encouraged to assist the authorities if made aware of the true danger involved in staying with the dominant partner.

The decision to co-operate so fully with one segment of the media and not with others was resented by the rest of the industry. As one investigator said:

I give Vince Bevan credit. That was a model production. It led to a lot of information. I would recommend any force to pursue that avenue. But it did upset the other media outlets because they were excluded. In terms of investigation it was a model idea. With respect to media relations it was bad.

The lack of an effective media policy and a media relations officer trusted by both the police and the media led to increasing friction and increasing problems, to the point that it actually interfered with the work of the investigators:

It almost killed us. They were pushing suspects on to us that were cleared or not involved at all but we had to investigate them .

...

There was one day that the media would stake us out and follow us. They were also monitoring our cellular phones in the command van.

...

They were interfering in the investigation. We would interview someone and they would interview the guy after us. The guy would then tell the media something different and then we would have to re-interview.

...

The source of these problems is easy to find. If the police do not give the media what they need to do their stories, the media will find their own way to do their job, and they will have nothing to lose by doing it their way instead of the police way. As one reporter described the GRT investigations:

“Very early in the investigation, the cops did something to the media that is the worst thing you can do in a case like this: they gave them nothing to lose. They cut them off from information so completely that the media said, “Well fuck you, I’ll go get the story myself.”¹

As noted above, that is exactly what the media did.

The answer to these problems for future serial predator investigations is to adopt a more open media information policy and to appoint a full-time media liaison officer experienced in media liaison, knowledgeable about the investigation and the officers involved, and trusted by both the media and the police.

Part of the solution is media training for the senior investigators selected to command serial predator investigations. The Canadian Police College has addressed this problem in its training course and its major case management manual. As noted below in the recommendations on training, there is a need for a made in Ontario training package for senior police case managers with a media module based on the CPC course to reflect the Ontario media environment.

Training is not enough. It is essential to have a reasonably open media policy in relation to information so long as—and this must be emphasized—it does not obstruct the work of the police or interfere with the integrity of the investigation. And hands-on experience is just as necessary as training. As Inspector Bevan observed:

- Q. In terms of training, on media specifically, I am familiar with the CPC guidelines. Are they sufficient for our needs right now?
- A. I think they go a long way to improve it. The problem you have to understand going in is that the media is in a very competitive business that's becoming more and more competitive. So I don't think there is any teacher better than experience. We can go there and talk about all these concepts and give all these examples, but

1. Hamilton Spectator reporter Nick Dobbin quoted in Chatto, J. “The Bernardo Industry”, Toronto Life, May 1994 at pp.51-58

until somebody has been through the mill, they are not going to understand the dynamics of the situation when they deal with the media.

It may be that police media policies and training and experience are not enough and that the media itself bears some responsibility. It appears, as suggested in the NRPS debriefing report, that some members of the media contributed to the strained relations:

Some members of the media contributed to the strained relations. Their demands were constant and at times they maintained a vigil outside the Task Force office attempting to interview potential witnesses or following investigators to appointments to seek out new information.

The media relations during this entire investigation remained strained. The Task Force members were of the opinion that they were supplying what was required, while the members of the media themselves felt they were being treated unfairly and were not having their questions answered.

Reference will be made below to a very serious problem when the planned arrest of Bernardo was put at jeopardy because of a leak to the media.

My terms of reference do not include an investigation of the media or a critique of media handling of serial predator investigations. I simply observe, as did Chief Judge Colter, that police–media relations are a two way street.

The police are frustrated by what looks to them like a lack of accountability in the media. The police see no sanctions imposed against journalists for over–zealous reporting that obstructs the investigation, obstruction that ranges from:

- interfering with witnesses
- broadcasting answering machine messages so as to jeopardize voice identification procedures
- printing photographs so as to jeopardize identification line–ups

- tailing officers and interfering with their work as they go about their jobs
- threatening to release leaked information so as to put arrest plans at risk
- harassing victims and their families
- cruelly printing a sketch of a victim\witness that identifies her and exposes her to acute embarrassment at school

The sanction, of arresting a journalist for the criminal offence of obstructing justice, is a very extreme step that police are most reluctant to take. It is too blunt an instrument except in the very clearest of cases and it is therefore ineffective as a practical sanction against media conduct that interferes in a practical way with the conduct of police investigations without clearly infringing the Criminal Code.

It would be a significant public service for the media to develop a set of professional standards to guide the conduct of those who cover criminal investigations.

15 Bernardo as a Suspect

Bernardo first came up as a suspect during GRT investigation as a tip from O.P.P. Constable Rob Haney of the Beaverton Detachment, an acquaintance of the Smirnis family, as a result of information about Bernardo from Van Smirnis, who wished to remain anonymous at that time. Constable Haney phoned the information in on May 2, 1992, first to the Halton force and then to the GRT. The Halton tip was recorded as follows:

PC Haney received info from anonymous party re Paul K. Bernardo 27 Aug. 64 from 57 Bayview Dr. St. Catharines. Mr. Bernardo was a suspect in the Scarborough rape cases & lived in Scarborough. He has been seen hitting women & raped a girl in his basement while his wife was upstairs. He has a Nissan 240SX, yellow, 660HFH. He is attracted to small women with short hair. He attended Scarborough College.

The GRT tip was recorded as follows:

Male is very violent and hostile–short hair–shaves hair on back of head–wavy and curly on top–appears intelligent and perceptive–admits to beating wife–has hit girls on three occasions.

went to Scarboro College

has been questioned by Metro for Scarboro Rapist. Aggressive toward women. Raped a girl in basement of house. Can only grow hair on chin.

21 Sir Raymond Richmond

2 years ago moved to St. Cth.

likes small petite women, short hair

Scar. Rapist susp. clothing

good tan. had been in Florida and had tan. Once rape takes place he disassociate with friends and family for a few weeks.

Drives 89 Nissan 240. Yellow. 660HFH

has contacted Halton–up to top

As a result of this tip Bernardo was interviewed at his house at 57 Bayview Drive in St. Catharines on May 12, 1992 by Sergeant Brian Nesbitt and Constable Scott Kenney. Before the interview Nesbitt conducted a background check on Bernardo, including a check on the C.P.I.C. system, which showed no prior criminal record history or reported criminal activity by Bernardo. Nesbitt did not check with Metro police for more information about Bernardo before conducting the interview. Although it would have been more thorough for him to do so, because he was acting on a tip that referred to the Metro investigation, there is no indication that his failure to check with Metro before the interview had any effect on the outcome of the interview or the investigation.

The report of the interview is as follows:

On 92.05.12 investigating officers attended at 57 Bayview Dr., and interviewed PAUL BERNARDO, dob 64.08.27. Paul BERNARDO had been called in as a possible suspect by P.C. Rob HANEY, BEAVERTON O.P.P. (705) 426 7366.

Paul BERNARDO had been questioned during the investigation of the Scarborough Rapist.

Paul BERNARDO resides at 57 Bayview Dr., with his wife KARLA (maiden name HOMOLKA). They were married on June 29, 1991. Karla works at the Martindale Animal Clinic as an Animal Health Technician. Paul is an Accountant but presently unemployed. When questioned about his whereabouts on April 16th, he stated he would not likely have been home as he is writing the lyrics for a song.

Paul BERNARDO does not own a Camaro. The only vehicle registered to the BERNARDO'S is a 1989 Nissan 240 licence 660 HFH (Ont) 2 dr. yellow.

Paul BERNARDO advised he was called in on the Scarborough Rapist investigation and asked to supply hair samples, to which he complied. He appeared slightly nervous while being interviewed but was willing to answer all questions.

Call was put in to Metro Toronto Sexual Assault Squad to S/Insp. Joe Wolfe or Det. Steve Irwin. (Re: Scarborough Rapist Inv.).

Nesbitt described the interview:

We had the information he had been called in to Metro on the Scarborough Rapist. What threw me off, when I asked him "have you ever been in trouble?" he said immediately "no I haven't but I was called in on the Scarborough Rapist investigation and gave samples" and they showed him the composite and he said "I have to be honest I do look like the composite." He was quite open and honest about it. We went through his history of when he got married... Knowing when Leslie was abducted and the week previous he was getting married. It didn't sound logical that he would be out abducting her and cutting her up and then getting married. He was well groomed and it was a well kept house... I looked at the car and here you got a new model Nissan. I am under the impression we were looking for an older car. My partner had a Camaro and we agreed it didn't look like a Camaro. It was a month after the abduction and you are asking what you are doing on April 16th. He couldn't recall but he believed he was home... His wife was working and he picked her up... I called Metro the next day because after his interview we interviewed a couple of other people... He appeared slightly nervous. That was normal because it was such a serious offence. That didn't put in a lot of weight. Most were nervous.

After the interview with Bernardo, Nesbitt and Kenney continued to interview other possible suspects who had been phoned in on tip sheets. When he returned to the station, Nesbitt ran Bernardo again on C.P.I.C. and checked him on the NRPS ORACLE information system which showed that he had made an assault complaint as a result of an altercation in a bar in Niagara Falls, that he had reported a break-in at his home, and that he had been a witness at the sudden death of Tammy Homolka which was at that time classified as an accident.

On May 13, the day after the interview, Nesbitt called the Metro sexual assault squad, learned that Detective Steve Irwin was handling the investigation, and left a message for him to call Nesbitt about Paul Bernardo.

On May 20, Detective Irwin returned the call. Nesbitt told Irwin about the tip from Constable Haney and about the interview with Bernardo on May 12. Nesbitt asked for any further information Irwin could provide about the Metro investigation of Bernardo.

Nesbitt recalls that Irwin said Bernardo was just one of many suspects from whom they had collected blood, hair and saliva samples and they talked briefly about their cases and the magnitude of suspects:

He just told me that Bernardo was just one of the suspects called in on their investigation.

Detective Irwin recalls the same conversation:

- A. I then speak to him and he asks us for whatever information we have on Paul Bernardo, that he's come up in their investigation. I then explain that Bernardo is a suspect, that we took samples from him and that they're in, we're waiting for DNA. I then, I think he probably asked me for whatever information we had. I went to our white binders.

Q. Do you say to him, they're in for DNA?

A. I believe he's a suspect in the Scarborough rapes. He's not eliminated, we're waiting for DNA. And then I retrieve, when he asks me to give him whatever information. I retrieve the master, the white copies in the binders to do with the 1990 case, pull out what's in there and fax it off to him.

Detective Irwin then faxed to Sergeant Nesbitt the report of the Metro interview with Bernardo of November 20, 1990, the report of the call from the Royal Bank teller saying that Bernardo was a dead ringer for the composite drawing generated by the last Scarborough rape, and the Madden report, with a fax cover sheet saying:

Comments: More info is available—if required (Photos/Video)

The photos referred to in the fax cover were a photo of Bernardo and a video from a Smirnis' family wedding that contained a 30 to 60 second clip of Bernardo speaking to the camera.

Although Irwin knew of the McNiff report and the Smirnis interview he did not fax that material because they were not in the binders he was working with. As noted earlier, the Metro investigative information about Bernardo was scattered throughout a number of different files, binders, and manual index books. This issue will be pursued below in the section on computerized case management information systems.

Irwin knew at the time that Bernardo was one of a handful of Scarborough rape suspects who were not eliminated:

... I was familiar that he was one of the handful of people who were not eliminated. I would go, it's not a matter that they weren't eliminated, but that they were included because there were some who were eliminated but not by forensics, so he is not eliminated but we are waiting for DNA. And that conversation continued when I met Nesbitt face to face.

The face to face meeting between Nesbitt and Irwin in January of 1993 at the Canadian Police College will be referred to below.

The telephone discussion between Irwin and Nesbitt did not adequately convey to Nesbitt the fact that Bernardo was one of only five Scarborough rape suspects submitted for DNA testing.

On the basis of his interview with Bernardo, the information from C.P.I.C. and the Niagara Region ORACLE information system, the conversation with Irwin and the faxed material from Metro, Nesbitt recalls that he classified Bernardo as a 3C suspect, meaning unlikely suspect, probable elimination:

Q. He is classified as a 3C. Why is that?

A. After we spoke to Metro and our investigation was over I don't believe we considered him a high suspect. No past record, he was getting married the same time Leslie's body was surfacing, his vehicle, his house, and what info we got from Metro.

There are many plausible reasons why Bernardo was classified as an unlikely suspect for probable elimination. The tip did not directly implicate Bernardo in the Leslie Mahaffy or Kristen French killings, there was no other evidence to connect him to the killings, he had no criminal history, Tammy's death was officially recorded as a death from natural causes, he appeared open and cooperative with the police interviewers, he did not own a Camaro which would have put him in a higher category of suspect, and he had voluntarily given blood and hair and saliva samples for DNA testing which would, once done, conclusively determine his suspect status in the Scarborough rape cases.

One thing Nesbitt did not do was check Bernardo's Easter weekend alibi with Homolka, which was the expected standard procedure for suspect classification. In hindsight, however, that probably would not have advanced the investigation directly because she had, in concealing her sister's homicide, demonstrated herself to be a plausible and convincing liar.

When putting Nesbitt's interview with Bernardo in context, it should be noted that it is common in serial predator investigations for the police to interview the killer several times without connecting him to the deaths. Predatory psychopathic killers can be very plausible and appear very innocent. They do not typically reveal themselves during police interviews. It is a commonplace of such investigations that the Yorkshire Ripper was interviewed by the police at least 9 times during the course of his six year series of 7 attacks and 13 murders. The GRT investigators were keenly aware of that spectre. As one of them said:

We were all told and lived with the fear that we would interview the culprit and not know. We all lived with that fear.

This fact was stressed to the investigators by Inspector Bevan:

We used the Bundy thing over and over again. How he was interviewed several times before someone caught on, and how when you are dealing with a psychopath, it is not only in their nature, it's their practice to win interview situations like this, so you don't go in there expecting to find someone with it stamped on their forehead....because they're probably going to be very congenial with you and look totally normal and the whole situation is going to look normal to you... Nobody wanted to be the person who spoke to this guy and missed him... I'm not attaching any kind of blame or onus on the people who spoke to him and didn't pick up on the fact that he was the one because he was pretty good.

That being said, there is a reason that so many serial predators including Bernardo are able to slip through the police net, even after they are interviewed by the police. The reason is that the state of the art of major case management is not yet well developed. The elements of an effective system are at hand, in the form of case management computer systems like CASEFILE! and early linkage systems like ViCLAS, the nascent case management systems like the CPC, and the enormous power of DNA and other forensic resources when adequately resourced and effectively coordinated. Although the elements of an effective system are at hand in Ontario, including a cadre of first class investigators, the elements have not yet been put together and harnessed into an overall working system to protect the public against serial sexual predators. More will be said about this in the recommendations chapter.

Had such a system been in place at the time of the Bernardo investigations; had Nesbitt and the GRT known of Bernardo's stalking activities, reported to the NRPS but not recorded; or had the stalking activities come to light through a C.P.I.C. off-line search; or had the ViCLAS system been in place to link the Scarborough rapes with the Henley Island rape near Bernardo's house; or had an effective system of inter-force communication made Nesbitt aware that Bernardo was one of only 5 Scarborough rape suspects submitted for DNA; or had a computerized case management information system ensured that Nesbitt had access to and reviewed the McNiff report and the Smirnis' notes that showed Bernardo was a violent knife-wielding sexual sadist, or had Nesbitt interviewed Karla Homolka and completed a statement analysis of her statement; and had Tammy Homolka's death been classified according to present Coroner's Office standards, his scrutiny level of Bernardo and the result of his interview might well have been different.

To complete the chronology of the Irwin-Nesbitt communication, they were both present at the Canadian Police College in Ottawa. Nesbitt was in the audience at a sexual assault seminar given by Irwin at the Canadian Police College in Ottawa on January 18, 1993 when Irwin referred to the number of suspects in the Scarborough rape case. Nesbitt thought at the time that Irwin had referred to over 1,500 or 3,000 suspects, that samples had been taken from hundreds, and that Irwin during a discussion afterwards said Bernardo was just one of the suspects. Irwin recalls that he told Nesbitt that he was waiting for DNA results on Bernardo.

There was some feeling in the Niagara Force that Irwin's confrontation with Nesbitt in January of 1993 prompted Irwin to narrow down his suspects, focus on Bernardo, send him in to CFS as a suspect, and produce the DNA match on February 1. On this theory, the timing of Irwin's confrontation with Nesbitt and the DNA match to Bernardo is more than coincidental. It is clear however from the CFS records and the chronology set out in the CFS chapter that the timing was in fact coincidental, and that the pace of the DNA work was not affected by the confrontation between Nesbitt and Irwin.

Any difference between the unassisted recollections of Irwin and Nesbitt about their conversations years ago, that seemed relatively neutral at the time but have since become highly charged, is understandable. There is no particular reason that either of them should remember the precise details of the conversations. In the absence of contemporary documentation there is no way of sorting out at this time whose recollection should be preferred. Neither does it matter a great deal.

It is true that Irwin could have sent more background information to Nesbitt and could have given him more information about Bernardo's suspect priority status, and Nesbitt could have elicited more details from Irwin and could have followed up on the offer, noted on the fax, that more information was available.

But the problem that arose between Nesbitt and Irwin was not a problem personal to them. It was a systemic problem. Each of them was faced with the lack of information systems to ensure that they both had the relevant information available to them about their mutual suspect and the lack of supporting case management systems to focus their attention more closely on viable investigative links between separate serial predator investigations. As one investigator said:

Sharing of information is important. Someone must ensure that information is shared. On a major investigation like this you have to have someone ensuring that every bit of information was given.

16 Bernardo's Suspect Rating Discrepancy

As noted above, Nesbitt recalls that he classified Bernardo as a 3C suspect—unlikely suspect, probable elimination.

The Niagara Region debriefing report says Bernardo was classified as a 3C suspect:

...consultation with investigators in Metro Toronto handling the Scarborough Rape cases revealed that BERNARDO was one of 1,500 suspects in the matter, and confirmed that he had co-operated fully with Metro Toronto investigators by providing hair, blood and saliva samples. Consequently on May 20, 1992 he was given the status of 3/C, which is interpreted as "An Unlikely Suspect" (3) and "Probable Elimination" (C).

Bernardo's suspect file folder lists him as a 3C suspect and Nesbitt recalls that he was a 3C suspect.

But the suspect database lists him as a 1C suspect and this is confirmed by a computer print out from the suspect database.

Constable Larry Wilson, the R.C.M.P. analyst in charge of the suspect rating system, recalls that he had ranked Bernardo as a 1, not a 3. He recalls that Bernardo's file folder jacket designated him as a 1 and that he was listed in the computer database as a 1. His recollection in respect of the computer database is confirmed by the computer print-out from the database which shows Bernardo as a 1C, although the suspect file folder shows him as a 3C. It is Wilson's opinion that Bernardo's suspect rating was downgraded to a 3 after he was identified as the Scarborough rapist, possibly in order to soften the blow that he had been interviewed by the GRT without detection:

I guess it lessens the blow if it is listed as a 3C as opposed to a 1C. That is only my opinion if it was Brian Nesbitt who changed the rating. I have no idea.

Wilson recalls that on the evening of the day that Metro identified Bernardo to Inspector Bevan as the Scarborough rapist (February 8, 1993) Bevan called Murray McLeod and Steve McLeod and Wilson into his office and asked Wilson and Murray McLeod to pull all the information about Bernardo.

Wilson recalls that Nesbitt already had the file and that there was a heated discussion between Nesbitt and Murray McLeod about it. Wilson thinks that someone had tipped off Nesbitt about Bernardo's identification.

Nesbitt on the other hand recalls that Steve McLeod told him that “Bernardo was the guy” and that he (Nesbitt) looked for Bernardo's file with a lump in his throat and found that it had already been taken out by the Staff Sergeant. Nesbitt denies that he had the file that day and denies any discussion with Murray McLeod about it. Murray McLeod agrees with Nesbitt in this respect. Nesbitt denies any knowledge that Bernardo was the prime suspect prior to being informed by Steve McLeod.

So far as Bernardo's suspect classification is concerned, Nesbitt recalls that he designated him as a 3C and did not change that classification.

As a result of investigation and inquiries by this review, an internal review of this matter was conducted by the Niagara Region Police Service in 1996. It concluded that the Bernardo file was in its proper place when retrieved by Murray McLeod and that there was no heated discussion between McLeod and Nesbitt on February 8, 1993 although they did have a heated discussion on another occasion that Wilson might have associated with that evening instead.

The internal review concluded that Nesbitt classified Bernardo as 3C and Wilson classified him as a 1C, that no changes were made to either of the conflicting classifications, and that the discrepancy remained until the case was solved.

These conclusions appear sound, particularly because of the highly subjective nature of the suspect classification system, the fact that particular classifications were often the subject of disagreement, the lack of any effective case management system to ensure that such discrepancies did not arise, and the lack of any effective audit system to ensure that discrepancies were addressed and corrected if they did arise.

While I agree with the conclusion of the NRPS internal review that Bernardo's suspect classification was not altered, it is unsettling to learn that Bernardo after his interview by the GRT on May 12, 1992 was classified for the rest of the investigation as a good probability suspect and

also as an unlikely suspect, both at the same time. Having regard to the masses of information being processed at the time without an adequate computerized case management system and without a more consistent suspect classification system, this discrepancy is perhaps not surprising. It is however a discrepancy that brings home very clearly that Inspector Bevan and the Green Ribbon Task Force were seriously hampered during the Bernardo investigation by the lack of an adequate computerized case management system and by the lack of a consistent suspect classification system as part of an overall major case management system.

17 The I. L. Tip and Systems Management

I. L., a Brock university student, met Bernardo in August of 1991 when he and Van Smirnis helped with some drywall work at a house I. L. shared with a friend of Smirnis. After the dry wall work they ended up at Bernardo's house at 57 Bayview where I. L. stayed overnight after a few drinks and Bernardo spoke emotionally about Tammy Homolka's death. On May 31, 1992, I. L. visited Smirnis at his video store in Youngstown. Smirnis started talking about the murder of Kristen French and suggested that Bernardo could have done it. He said that Bernardo had been questioned in the Scarborough rapist case, that he had a pattern of sexual violence against women, and that he owned a light yellow beige–coloured Camaro.

I. L. went to the Niagara Region Police Station on Church Street and spoke to Constable Thomas Manney who made a supplementary report:

[I. L.] attended 68 Church St. STC on 92 05 31 at 1817 hours to make police aware of a person he “suspects” may be been involved in the abduction and subsequent murder of Kristen French.

[I. L.] reports that an acquaintance, named Paul Bernardo, of 30 Bayview Drive in St. Catharines has been asking some questions lately about the French matter. [I.L.] reports that Bernardo was a one–time suspect in the Scarborough rapist affair.

Further, Bernardo has recently attempted to have his name changed (to Teal).

[I. L.] reports that Bernardo drives a Chevrolet Camaro (new model however) that is gold in colour.

[I. L.] reports that he is “just suspicious” about Bernardo, and states that he has no real evidence to connect Bernardo to the French slaying. Nevertheless, a report was completed so that those entrusted with the task can evaluate this information as they see fit.

The I. L. report was sent to the GRT where it generated a tip sheet, was loaded onto the computer at some point, and eventually found its way into the Bernardo suspect file. Because of the large number of tips and suspect files and the chaotic condition of the information systems at the time, it is unclear when the I. L. tip got into the hot line database and the Bernardo suspect file.

Because of the lack of hard information and lack of specificity in the tip, it may have been many months before it made its way through the huge backlog. Whatever happened to the tip, it is clear that it never came to the attention of any of the three staff sergeants in charge of directing follow up investigations, it was never assigned for follow up, and I. L. was never investigated until Bernardo was identified in February of 1993.

The I. L. tip contained no hard information pointing to Bernardo. It was based on apparently unfounded suspicion and was, by itself, of little value. Although any reference to Bernardo leaps out at the reader today, this tip in the context of 40,000 tips and over 3,000 suspects does not even in hindsight appear significant.

What is significant is the confusion and lack of sophistication of the case management information systems used by GRT at the time, discussed more fully in the recommendations on case management information systems. Although the GRT may have used some of the best systems then available, they were inadequate because of their inability to process in a timely fashion, and to cross-reference, all the various pieces of information that might when put together point to a particular suspect. The I. L. tip and the Haney tip, both of which originated with Van Smirnis, were never put together.

It is vital for investigators to be able to put together all the bits and pieces of information that might point to a particular suspect. It is vital for investigators to be able to control and analyze and cross-reference the masses of information that flow to them in serial predator investigations.

The investigators in the Bernardo investigations did not have that ability because they did not have an adequate case management information system, a topic that will be addressed below.

This is equally true of both the Metro and the GRT investigations. As noted in respect of the information Irwin sent to Nesbitt, Metro's suspect information was scattered throughout various files, binders, manual indices, and computer systems. The Bernardo evidence was not available to the investigators in a complete or readily accessible form. As one investigator said about the Bernardo investigations:

That is where the case management was a problem. The connections have to be made.

Even when the two investigations did start to talk to each other about the same suspect, they had no way to put together all the information that each of them had about the same suspect. When one thinks about the McNiff report and the Madden report and the Royal Bank teller tip and the stalking incidents and the Haney tip and the I. L. tip, one wonders how many times Bernardo had to be reported to the police before the information was put together in one place. The various police agencies, scattered through the different investigations, had more than enough information to make Bernardo a first rate suspect if all the information was put together systematically in a form that was recognizable and accessible to the investigators. But there was no such system in place and Bernardo continued to slip through the police net.

18 Profiling

Criminal profiling, pioneered by the FBI behavioural science unit at Quantico Virginia, is a tool for the investigation of serial rapes and murders. Based on an analytical framework draw from

law enforcement experience, databases, case histories, and scientific research, profiling seeks the behavioural characteristics of an unknown offender from an examination of the known facts of the crimes. Popularized through books like *Mind Hunter* and movies like *Silence of the Lambs*, profiling has had dramatic success in many cases, including high profile and run of the mill cases. Inspector Bevan secured advice from a range of sources including the FBI and the Penetanguishene forensic psychiatry unit. The FBI profile figured prominently on the CHCH television show mentioned above.

It is a commonplace of profiling that a profile is only as good as the eyewitness accounts and the other evidence that goes in to the profile. For instance, the fleeting eyewitness glimpses of the church parking lot suggested that two men were involved in the abduction of Kristen French, as opposed to a man and a woman, and this found its way into the profile.

Because of the well-known limitations of profiling the GRT investigators, although they discussed the profile and had it in the back of their mind, did not use it as a tool to eliminate suspects. As one investigator noted:

- Q. What priority did Green Ribbon place on this profile?
- A. I believe generally it was an investigative aid. It certainly wasn't exclusive.
- Q. What role did the profile take when trying to eliminate suspects?
- A. You would consider it but wouldn't eliminate anyone.

Another investigator said:

- Q. What role did the FBI profile play in the investigation?
- A. I don't think anything major. It is not going to name you a suspect or make an arrest. It gives you an area to look at. If you have a suspect it gives you something to work with. It is an investigative tool. It was a real wide ranging description. It was a nice little tool. I guess in reality it did fit but Paul didn't think it fit. The age

and the previous offender, detrimental to his mate, yes. Going to get worse. yes. They weren't really off but we never categorized our suspects to fit or not fit the profile. Just something everyone had in the back of their mind.

Inspector Bevan noted:

Q. What role did the profile take in trying to eliminate suspects?

A. The profile played, as far as instructions were given to investigators, it was significant because we couldn't make it clearer to our people that it was someone who was fairly smart, fairly organized, would have a methodical way of going about things. Different stresses that we could look for and apply. To that extent, as far as the occupation and things like that, I was always sort of lukewarm on how they could arrive at that and it can be reliable. And that's where the Bundy thing came up because we were dealing with somebody who was pretty smart and who would in an interview try to outwit you.

...

Q. And what's your view on case manager's use of either geographic or behavioural profile and the influence it should have on an investigation?

A. I think it's nice to have stuff. It really comes into play when you're dealing with suspects. Once you've identified a couple of different suspects or a particular suspect, how to deal with that person. Right now that's where I would have the greatest faith in that whole process. As far as going out on a fishing trip, it has limited usage.

Q. Tell us about your offender, who was the type of person you were looking for?...

A. We knew we were dealing with a sexual sadist. We knew we were dealing with somebody who would be an avid consumer to know what was going on with the investigation, where we were, what leads we had, what leads we were following as a priority. That was something that we built in to our witness interviews. We alerted the investigators that when you go and find someone who is very interested in what you are doing, why you are talking to him, what else are you doing. That's one of the flags we should be paying attention to...

To summarize, Inspector Bevan and the GRT investigators recognized the strengths and limitations of profiling; they used it as an investigative technique and kept it at the back of their mind but did not use it to eliminate suspects.

After the two investigations came together in February of 1993 profiling was used to support the GRT search warrant application, on the basis of evidence pooled from both investigations. This profiling evidence, extracted from the search warrant application, is set out in Appendix 11 as a good example of the state of the art and the evidentiary value of profiling in serial predator investigations.

19 Exhumation of Leslie Mahaffy

In June of 1992, Leslie Mahaffy's remains were exhumed. Further post mortem examination revealed a mark on the ankle that could have been part of a ligature and also deep tissue bruising on the back, not apparent at the first autopsy, that could only be detected by cutting into the underlying tissue. This evidence provided a somewhat stronger evidentiary link between the Leslie Mahaffy and Kristen French murders because of the similarity of the bruising, and further forensic testing detected the presence of Halcion in Leslie Mahaffy's remains.

20 Conclusion

The GRT investigation was characterized by tremendous dedication and a great deal of investigative skill, hampered by the lack of adequate case management systems.

It is a model of co-operation between police forces, originally Niagara Region and Halton Region, and ultimately a dozen police forces working together co-operatively under unified leadership.

The paint and cement investigations displayed great investigative ingenuity hampered by the lack of a standard system to ensure that the cement cash return slips were checked as a matter of course.

The Camaro turned out in hindsight to be a red herring. But the Camaro sightings at Kristen French's abduction scene were the only things the investigators had to work with. Although it was appropriate for the investigation to focus on the only evidence that was available, the lack of standard interview techniques may have affected the extent to which the investigation focused on a Camaro instead of other similar cars. The decision to extend and continue the Camaro investigation, and the usefulness of the checking of Camaros through the windshield sticker programme are issues which, in hindsight, might have been addressed differently had there been a system in place to ensure, in advance, the capacity to deal effectively with the information received from the Camaro investigation.

Although it did not effect the thoroughness or competence of the post mortem examination, the working relationship between the police and the forensic pathologists could have reflected more teamwork and inter-disciplinary co-ordination.

The relations between the GRT and the media industry were very bad, because of the inadequate NRPS media policy then in force, the lack of a full-time media liaison officer, and frustration by the GRT officers with the conduct of some media representatives that appeared to them to border on obstruction of the investigation.

The suspect classification and elimination system was essentially sound but there was no machinery in place to ensure its consistent application. One glaring example of this problem is the confusion as to whether Bernardo was classified as a 3C suspect or a 1C suspect throughout the investigation. Another example, although there is no indication that it would have affected the outcome, is the fact that Detective Nesbitt did not attempt to check Bernardo's alibi for Easter

weekend and that he did not contact Metro police for suspect information about Bernardo before interviewing him.

The communication between GRT and the Metro Service about Bernardo was inadequate. Metro could have given GRT more information and GRT could have asked Metro for more information. There was no case management information system to ensure the effective communication of suspect information between the two police forces.

The information management systems available to the GRT were inadequate. The investigation was overwhelmed with tips it could not handle because the public appeals for information were not linked with the planned capacity to handle the volume of public response. Like Metro, the GRT had no case management information system to ensure that tips like the I. L. tip and the Haney tip were put together so the investigators could see, when a tip came in, that there had already been another tip about the same suspect.

These problems were compounded because NRPS personnel did not report Bernardo's stalking or resighting and this potentially important information never came to the attention of the GRT.

Not only were the case management information systems within Metro and the GRT inadequate, but they had no way to put together the information they had both received about the same suspect. One wonders how many times Bernardo had to be reported to the police before all the police information about him was put together in one place. It was only after his arrest that all the information about him, readily available in the hands of both police forces, was put together. An effective system puts this information together during the investigation, not after the arrest. As noted above, Metro and the GRT might as well have been working in different countries so far as Bernardo was concerned, and Bernardo slipped through the net.

It is guesswork to speculate on what might have happened differently had there been an effective case management and information system in place during the GRT investigation, combined with

similar systems within the Metro force and effective communication between the various law enforcement agencies. Certainly if these systems had been in place at the time the connection could have been made between:

- Bernardo's statement to Irwin in November of 1990 that he was moving to St. Catharines
- the striking similarities between the Scarborough and Henley Island rapes
- his residence within a mile of the Henley Island rape
- the McNiff, Smirnis, Royal Bank, Madden and I. L. tips
- appropriate follow up investigation on these tips
- the stalking incidents earlier reported to the NRPS
- Bernardo's return of the cement

All this information was readily available but there was no system to put it together and it got lost in the overall mass of investigative information. What is clearly needed is a systematic case management approach that taps into every available technique and resource and source of information and organizes the information in a way that it can be recognized and used effectively by investigators.

So far as leadership is concerned, Inspector Bevan did what he could with the systems available to him. He is to be commended for his first rate skills as an investigator, his team–building ability, and his tireless dedication and commitment to the work of the task force.

The issues raised by the CISO support of the GRT investigation, the Niagara stalking incidents, and the search of 57 Bayview Drive are addressed in separate chapters.

Chapter 8–Identification, Arrest, Questioning

1 Initial Steps

It was the morning of February 1, 1993, when Metro police got the first DNA test result from the Centre of Forensic Sciences, a one probe DNA match that pointed to Bernardo as the Scarborough rapist. Over the next two weeks, further DNA tests were completed and further genetic matches strengthened the case against him.¹

A flurry of activity began immediately within the Metro force to review all information in their possession about Bernardo. Within a day, teams of Metro officers were assigned to keep him under twenty–four hour mobile surveillance which showed that he was cruising nocturnally in St. Catharines and Toronto, and stalking young women who were waiting for buses or walking alone at night.

A decision was made within the Metro force not to notify the GRT or the Niagara Regional Police Service for the time being that Bernardo had been identified as the Scarborough rapist and was under mobile surveillance in Niagara, even though the GRT had earlier inquired about Bernardo as a suspect in the Leslie Mahaffy and Kristen French murders.

The reasons for not informing GRT immediately are unclear. Staff Inspector Marrier seemed to think that the decision to inform GRT came with the second DNA probe match which “was confirming evidence that Bernardo was in fact our suspect”:

- A. And once we received what we felt was confirming evidence that Bernardo was in fact our suspect, of course, then we would notify Niagara Regional because he was living in their area. That he was someone we were interested in.

1. Second probe match February 8, third probe match February 15, fourth probe match February 22, fifth probe match March 8, sixth probe match March 22, seventh probe match March 29, eighth probe match April 19, ninth probe match April 26, tenth probe match May 3.

Q. And when did that happen?

A. The specific date by recollection, I can't tell you. If you've got, I know it wasn't too long after we received the, after we received the results of the second probe.

Inspector Marrier's recollection appears incorrect because the first probe, received on February 1, was the confirming evidence that Bernardo was the Metro suspect, a good enough suspect for twenty-four hour Metro mobile surveillance within the jurisdiction of the Niagara Regional Police Service. His recollection that the second DNA probe match led to the notification of GRT is incorrect because it was on Friday, February 5, that Metro made arrangements to meet with Inspector Bevan, and it was only on February 8 that the CFS test produced the second DNA probe match to Bernardo.

It seems likely that the decision, not to inform GRT until a week after Metro got the first DNA probe, was influenced by an attitude that he was Metro's suspect and Metro's case came first even though he was also a GRT murder suspect and living in the Niagara region. The general mindset of some Metro officers was that Metro had the evidence and Metro would call the shots. As one Metro investigator put it:

In this case, when Green Ribbon first became involved with us, when we were first informing them and learning from them what we could, my perception was, we have the evidence, we'll call the shots, they don't have it.

In hindsight it is now clear that the decision led to later bad feelings between GRT and Metro. There was a feeling in the GRT and the Niagara force that it was not appropriate for Metro to withhold the fact that it had identified a GRT murder suspect as the Scarborough rapist and that Metro was maintaining mobile surveillance in Niagara on a dangerous, high profile, sadistic rapist without informing the police force that had jurisdiction in the area. These feelings are understandable and it is hard to say they are unreasonable. As one Metro officer said in hindsight:

- Q. Describe the decision making process to involve Green Ribbon Task Force in your investigation.
- A. Didn't make any sense to me. There was a whole raft of occurrences I wanted to get. Bruce said to me that Marrier didn't want me to contact GRT. The next knowledge was Boothby had a meeting on the 8th.
- Q. What was decided to bring them into the investigation?
- A. Mobile was getting bubbled¹ everyday by Niagara. Felt it would be silly not to notify Niagara.
- ...
- Q. Describe the decision making process with regard to conducting surveillance on Bernardo in the Niagara region prior to notifying Niagara Regional Police or GRT.
- A. I hate sounding like a Monday morning quarterback. I never understood why Bevan and the boys weren't notified. They would have given us info that would have helped. I wasn't privy to that info.

Another officer expressed the same concerns:

- Q. The decision to incorporate Green Ribbon, notify Green Ribbon. How do we handle that?
- A. Well, I think that was a mistake. Plain and simple. I don't know who actually made that call. I don't know if it was just not considered, but I think it was a mistake. I think once you move into some other region, territory, then you've got to involve that area. You can't operate in another region anonymously and then leave, it's impossible, and then why would you do it? And it's not like Green Ribbon was not existing and we didn't know it was there, like it was national news. So I just think that was a mistake. It should not have happened. The first call should have been to the Green Ribbon Task Force, and then you know, set up whatever needs to be done.

It appears, in hindsight, that it was a mistake for Metro not to notify GRT immediately that one of their murder suspects was under twenty-four hour mobile surveillance in St. Catharines as the

1. Checked out by a police cruiser equipped with an emergency roof bubble light.

prime suspect for the Scarborough rapes. Certainly the joint investigation later paid a price for it, in a diminished level of trust between the two forces.

2 The February 8, 1993 Meeting

On Friday, February 5, 1993, Staff Superintendent David Boothby (field investigations), phoned Inspector Bevan and asked him to come to a meeting in Toronto the next Monday.

On Monday, February 8, Bevan came to Toronto and met with Boothby, Deputy Chief Charles Maywood (detective operations), Inspector Robert Strathdee (intelligence operations), Staff Inspector Steve Marrier (Sexual Assault Squad) and Detective Sergeant Bruce Smollett (Sexual Assault Squad).

Bevan was told that Metro had DNA evidence identifying Bernardo as the Scarborough rapist, that Metro had Bernardo under surveillance in Niagara region and was continuing its investigation with a view to arresting Bernardo. As noted above, Inspector Bevan, on learning some of the details of the Scarborough rapes, immediately realized that Bernardo was probably the Henley Island rapist.

3 Initial Preparation

During the course of the next week, Metro conducted an initial interview with Homolka, although she was at that stage hostile and unco-operative. There was some initial contact with her counsel in order to secure her co-operation as a witness and it began to appear that she had direct knowledge of the murders and was potentially a crucial Crown witness if an arrangement could be made to secure her co-operation and testimony.

Discussions began with Crown attorneys in Toronto and Niagara Region and intense work began on the preparation of search warrants for Bernardo's house at 57 Bayview Drive in respect of the Scarborough rapes and the murders of Leslie Mahaffy and Kristen French.

4 The Legal Situation

There was an underlying dilemma because the more legally serious charges of murder took priority over the legally less serious charges of rape. A confession to murder after an arrest for rape could be open to a serious court challenge. The same potential problem applied to the search warrants, because evidence of murder obtained from a search for rape evidence would entail similar legal and practical problems. There was strong evidence against Bernardo on the Scarborough rapes. But at that stage, two months before the evidence agreement with Homolka and before the circumstantial “similar fact” evidence had been developed in the search warrant documentation, there was virtually no evidence against him in respect of the murders. Because of this potential legal problem it was important that any arrest, questioning, and search for murder evidence be conducted either before or simultaneously with the arrest, questioning and search in respect of the rapes.

Until the evidence of the Scarborough rapes had been sifted and analyzed and put together in the search warrant documentation with the forensic and circumstantial evidence available in the murders of Leslie Mahaffy and Kristen French, there was really no evidence against Bernardo for the murders. One Metro officer, when asked what evidence there was against Bernardo on the murders at that stage (before the search warrant documentation), replied:

Absolutely nothing. Other than he was a serial rapist and living in St. Catharines.

5 Search Warrant Preparation

The preparation of the search warrants was a huge job, particularly the cobbling together, from all the evidence, of some basis for reasonable legal grounds on the murder charges. As noted in the chapter on the search of 57 Bayview, it was essential that the search warrants be court-proof because there was, apart from the circumstantial “similar fact” evidence in the search warrant documentation itself, virtually no evidence against Bernardo for the murders. The most promising source of real evidence was the house and it was essential that any evidence obtained from the house be legally admissible in court. Because the Scarborough rape cases had been cold for so long and because there was no case management information system, the Scarborough rape evidence was scattered throughout a large number of disorganized boxes and files. It was extremely time consuming to pull together all the evidence bearing on the Scarborough rapes and to organize it in such a way that the fact patterns of the Scarborough rapes could be put together with “similar fact” evidence about Bernardo and the murders to support a search warrant for the murders. These unusual factors required several days of work and the painstaking preparation of several hundred pages of search warrant documentation.

The search warrant preparation did not begin until the weekend of February 13–14. This is a convenient place to note that days of precious time could have been saved if a system had been in place throughout the investigation to maintain a detailed running synopsis of the investigation that could be quickly adapted as a core document for the basis of the search warrant preparation.

On the morning of Sunday, February 14, a concern was raised as a result of the surveillance on Bernardo's house. He had taken a young woman home with him and it was thought necessary, in order to ensure her safety, to move in immediately and arrest Bernardo prematurely on an emergency basis before the search warrant documentation was completed. But the young woman left the house, the emergency was averted, and work continued on the search warrant.

6 Arrest and Interview Plans

This search warrant work continued, by teams of GRT and Metro investigators with the advice of senior Crown law officers at the GRT Beamsville command centre during the week of Monday, February 15. By Wednesday, February 17, it looked as though the massive search warrant documentation would be completed within a few days. Although some officers were frustrated by the lengthy search warrant preparation, and in a hurry to make a quick arrest, a plan was agreed upon. The plan was to complete the search warrant documentation, obtain the two search warrants, arrest Bernardo in St. Catharines, take him to the Halton Regional police headquarters midway between Toronto and St. Catharines where there was an interview videotaping facility, then execute simultaneously in St. Catharines the search warrant in relation to the murders, and the search warrant in relation to the rapes.

The plan was to arrest Bernardo at his home for the sexual assaults and the murders, caution him, give him his rights to counsel and allow him to phone a lawyer from his house. A team of interviewers was chosen, Detective Sergeant Beaulieu from the GRT and Detective Irwin from Metro. A back-up interview team was designated. The interview of Bernardo at Halton Regional Headquarters was to be videotaped and observed on monitors in a nearby room by a number of senior police officers, experts in forensic psychology and profilers, in order to give advice during the live monitoring of the interview. A high quality digital audio tape was to be made for possible use in a later voice identification line-up.

So far as the interview was concerned, it was not expected that Bernardo would confess. Experience with sadistic predators suggested that he would try to “beat the interview”, but if he got talking he might say things that would assist the investigators. Inspector Bevan explained the interview strategy:

- Q. How important was a statement to you at that time, from Bernardo?
- A. Well there a couple of things that were key about the interview to be done with Bernardo. First of all I thought he would say things that were going to be significant in a subsequent investigation. Also we were planning on asking him things about the house to try and detect some sensitivity to certain areas that would be useful when we got into that house and began to search. You know, asking things about what happened in certain rooms or to see if in one room as opposed to another we could detect some deception or obvious discomfort with particular questions. I felt based on discussions with this expert panel that we had drawn together, and that was Ron McKay, Peter Collins, Chuck Wagner, those were the three principals at that particular point in time. You know, based on experience with this type of offender and knowing what we knew about Bernardo, at that point in time, I was of the view that an interview with him should be approached in a certain way to get him talking because when he got talking I thought he would be trying to beat the interview, and just out of that exchange we might get things that would be useful. I didn't think going in that he was out and out going to admit things. But I thought he would say things during the interview that could be used to further our position.

The strategy was to manage the interview process to maximize the chance of getting some valuable investigative information that would lead to other evidence in the house or elsewhere, even though an actual confession was considered unlikely.

The plan to consult with forensic psychiatric and profiling experts in advance of the interview was sound, and it required effective briefing of the interview team by the experts.

This strategy required careful preparation by the interview team. It also required compliance with the legal requirements for a valid arrest and interview. Because there was no direct evidence against Bernardo in respect of the murders, it was crucial that any evidence uncovered as a result of the interview be admissible in court and important that Bernardo's questioning comply with the legal requirements for admissibility in court of the after-acquired or derivative evidence. Inspector Bevan thought, correctly, that any derivative evidence would be admissible so long as the legal requirements were met in the arrest and interview process:

- Q. What was your feeling on the admissibility, Bernardo gives a statement based on the way the plan was going to happen, what was your assessment of admissibility?
- A. The advice given to us if he elected to give a statement, assuming that his Charter of Rights had been met, we had a pretty good shot at getting that statement in, or even if we didn't, the derivative evidence out of it would be of use to us.

It was for that reason that the arrest and interview strategy included the legal requirements on arrest and questioning, of the usual cautions and warnings and rights to legal counsel.

Another key part of the arrest strategy was timing. It was important to go into the house simultaneously on both search warrants. As Inspector Bevan said:

We thought the key was getting into the house with the search warrant, so we wanted to try to tie the arrest with our ability to lawfully get into the house and take control of what we thought were the crime scenes.

As Staff Inspector Marrier, the ranking Metro officer on site, said:

We were hoping... that we were going to gather as much information as we could with respect to Bernardo. We were hoping that Green Ribbon would be able to further their investigation to get some concrete evidence against him as well, prior to us ever having to make an arrest, and that it would only be at that point that we were fully comfortable that we had all the information we needed to proceed, that he would be arrested. But that's not what happened.

7 The Media Leak

That is not what happened because the arrest plans were leaked to the media on Wednesday, February 17. The media apparently learned not only that there was going to be an arrest, but also who was going to be arrested. There was a suggestion that one media organization intended to broadcast Bernardo's name.

This forced the hand of the police. They could not afford to let Bernardo hear or see a media report of the imminent arrest. They could not give him an opportunity, as a result of the media leak, to destroy evidence or take other steps to defeat the investigation and the arrest.

Although the search warrant documentation was not completed, and the arrest and interview teams were not prepared, the arrest had to take place immediately. The media leak destroyed the strategy of timing the arrest simultaneously with the execution of both search warrants. The media leak also destroyed the interview strategy to the extent that it depended on careful preparation. The interview team did not have time to prepare effectively. The media leak precipitated the arrest before it was properly planned. Detective Irwin described the timing of the arrest:

When the knock came to the door while we're in our first initial briefing to discuss what is going to happen in the interview process, he comes in, knock knock, door opens, Bevan, Marrier over his shoulder, "Get your suits on, he's going to be arrested."

...

What happens is, we're just in the process of discussing, who should arrest? should it be a female officer? What do you think the reaction would be, what do we gain, what do we lose? 14:55 we're in there, 15:15, Inspector Bevan in the room advises we're going to arrest Bernardo now. Media presence. Concern of their interference. Bernardo to be arrested for sexual assaults and murders. Arresting officers Symonds GRT and Kelly from SAS. Instructed to attend Halton police force, Beaulieu and I. We grab our suits. We spend the time from Beamsville to Halton headquarters how we're going to interview Paul Bernardo.

Detective Smollett described the impact of the media leak on the preparation for Bernardo's interview:

- Q. How did they prepare for this interview?
- A. Well they weren't unfortunately able to properly prepare. We had hoped and made arrangement for them to sit down with Collins, McKay, behavioural people. When we arrested him on the 17th we started noticing news trucks setting up out back. We knew there was a leak. They only had 3–4 hours to prepare. I wish they had more time.

- Q. What was the strategy for the interview process?
- A. Original game plan involved arresting him in the early morning hours or the evening type hours. That came from speaking to Peter Collins and Ron McKay...

The media leak was obviously made by a police officer. It is unproductive to speculate at this late date about the motivation and identity of the officer who was disloyal enough to jeopardize the arrest and interview plans. An investigation at this stage would be fruitless. It is however worth mentioning that the leak had a very detrimental effect on the investigation and that the officer responsible for the leak is probably guilty of a police service offence and quite possibly guilty of the Criminal Code offence of obstruct police, or breach of trust.

8 Interview Preparation

Detective Smollett thought that Beaulieu and Irwin had three to four hours to prepare. They may have had that much time individually, but in terms of joint team preparation they had only minutes. Although Beaulieu had an opportunity to do some preparation on his own, he tried unsuccessfully to meet with Irwin to work out a joint interview plan. Irwin however was working on the search warrant. He had no time for Beaulieu, although he did have time to take strategic advice from Metro officers which he never disclosed to Beaulieu. Although the media leak could not have been expected (except to the officer responsible for the leak) the interview was expected. Although the interview was expected, no senior officer took steps, before the media leak, to see that it was adequately prepared for. No officer in a position of authority took steps before the media leak to see that the interview team met together, prepared adequately, and worked out a team strategy for the team interview. The fundamental problem was that there was no one in charge and no one accountable.

The interview team had only been together for minutes when they were told on the afternoon of February 17 that the arrest was about to take place. Detective Beaulieu recounted the lack of opportunity to meet with his team-mate before the arrest:

- A. I found out my partner was going to be Irwin. I sought him out and introduced myself to him. I told him it was very important that we sit down and discuss strategy. He basically said he working on the warrant and as soon as he was free we would sit down. From then until Monday [February 14] I worked constantly on getting information on Bernardo and the Scarborough rape cases. I approached Irwin half a dozen times over that two day period. I became concerned because he was always busy. It looked to me the arrest was set for the Friday 19th. I knew we had surveillance on him and had been given the authority to arrest in case he did something. I was on pins and needles because I wasn't prepared.

...

- Q. What preparation did you conduct?

- A. I got as much info regarding Bernardo as I could over the weekend. I kept everything. I still have that info. It consisted of info from the search warrant, concerning the Scarborough rapes, all of the occurrence reports that Niagara had generated. Brian and Scott's interview, their report, I can't remember everything but I do have it all. I analyzed the surveillance reports. Friends, background, interview of Karla's parents, with all that background it was great but I had not discussed strategy with Irwin. We had resource personnel made available to us like Ron McKay, Chuck Wagner, Dr. Peter Collins from the Clarke Institute in Toronto. Those people were around during that weekend. They were available for me to consult with but I didn't want to consult with them without Steve being present. I did have a discussion with them but I tried not to discuss strategy until I sat down with Irwin. It wouldn't make much sense to hear from them until Irwin agreed.

- Q. What did you discuss with Detective Irwin prior to the interview?

- A. He finally had time for the meeting on Feb. 17 at 2:56 p.m.. We weren't there but minutes when Vince walked in and said he was to be arrested now. This was the worst day of my life.

At that stage there were no specific strategies. I asked what he was being arrested for? I wasn't sure if he was being arrested for the Scarborough rapes or for the murders of Leslie and Kristen.

Detective Irwin confirms that he had no time for preparation with Detective Beaulieu:

- A. ... from the Friday night to the Wednesday night, every waking moment was spent in preparing the search warrant. The interview had but an hour of my time to prepare.

...

I'm getting three hours sleep every night doing a search warrant and when I meet Gary Beaulieu Friday night, which would be presumably the 12th of February, it's for 10 minutes because we're both told it's going to be a joint forces interview process.

- Q. We now know this was one of the biggest cases in Canadian history. You're selected to conduct the interview, how do you prepare yourself for this interview that you knew you were going to get into?
- Q. Unfortunately I really wasn't in a position to do much because I was the only person in sexual assault involved with the Scarborough rape investigations... So now I'm the guy who has to sit and type up the search warrant... We arrive Friday night [February 12], I meet Gary Beaulieu who we have been told will be a joint interview, joint forces, he and I will be the principal interrogators, investigators, interviewers. Brief, hi Gary how are you, Hi Steve how are you? ... He reads up on the Scarborough rapes, I still don't know what their dates and time, which one was it Kristen in 1991. I'm confused and I don't know the details. I know a little bit about it, whatever I caught from the media.

It is difficult, as one reads about this lack of preparation, to refrain from asking immediately if there was anyone in charge or accountable, or any sense at all that this was a rather important interview that required at least some minimum degree of planning and co-operation between the police forces involved. It will become clear below that there was no one in charge, no one accountable, no effective co-operation between the police forces, and no co-ordination of their work so far as the interview was concerned.

Although no officer in a position of authority ensured that the interview team ever met together to work out a common strategy, Staff Inspector Marrier ensured that Irwin took advice about the interview from officers in the Metro force:

- Q. You mention that you have made some suggestions as to where Steve could seek out some counsel as to how that interview might take place. Can you expand on that?
- A. Yeah, I simply said there were others within MTP that had worked in homicide and very specialized squads that probably interviewed people similar to the type of character that he was going to be interviewing, and that he might want to talk to some of those individuals and see if there were any guidance that they could give him, any words of wisdom, advice or so forth.
- Q. Steve Reesor?
- A. And Steve Reesor was one of the ones he talked to, yes.

Staff Inspector Marrier thus ensured that Irwin, although he had no time to spend even a few minutes with his interview partner Beaulieu, took the time to get advice from Metro officers about the conduct of the interview, advice that Irwin never disclosed to Beaulieu or shared with him even though they were conducting the interview jointly as a team. For Irwin to go into the interview with an undisclosed interview agenda, an agenda he had never disclosed or shared with his interviewing partner, was a prescription for disaster.

This astounding and dangerous lack of co-operation will be discussed below.

9 The Arrest

As noted above, the plan was for the arresting officers to give Bernardo his rights and an opportunity to phone counsel from his house when arrested, in order to comply with legal requirements and ensure that any evidence acquired as a result of Bernardo's interview would be admissible in court.

Although that was the plan, it was not carried out. Bernardo, when he came to the door of his house was arrested by the Metro officer on the rape charges, his rights were read to him, and he was asked if he wanted to call a lawyer from his house. That was according to plan. But when he

took up the offer and said he did want to call his lawyer from the house, he was told he could not, but he could call a lawyer when they got to the police station. That was not according to plan. After the GRT officer made the arrest for murder and read the same cautions and asked the same question, Bernardo said that he would call a lawyer from the station. As indicated in the Metro report:

He was arrested without incident however, he was not allowed to call counsel as it was felt proper security could not be maintained if privacy was given. Therefore, he was transported to Halton Regional Police Headquarters with the understanding he that could contact counsel upon arrival.

Although Bernardo said he would call a lawyer from the station, this legally crucial information was not conveyed to the interview team, apparently because there was no one in charge of the whole operation.

10 The Interview Plan

This was not the only part of the plan that was not carried out.

To the extent that there was any plan for the interview of Bernardo, it was agreed that Beaulieu would open with questions about the murders, followed by Irwin with questions about the rapes. As Inspector Bevan said:

Q. Who was to take the lead?

A. Gary [Beaulieu] was supposed to start the interview. He was supposed to ask the questions about the homicides.

As Detective Smollett of Metro said:

The interview was supposed to begin with the murders to deal with the more serious charges first. Obviously as time went on there was not a lot of success in the actual interview.

11 The Interview Failure

Although it was the agreed plan that Beaulieu would open by questioning Bernardo about the murders and then Irwin would question about the rapes. No one in the Metro force brought it home to Irwin that the plan should be followed. The unfolding disaster of the interview is best told in the words of Detective Beaulieu:

Q. Who was the lead interviewer?

A. Never discussed but I expected because we were going with the murders first that I would talk. I had the questions ready. When Bernardo got to the interview room, I literally didn't have .. I wasn't prepared. Suddenly we are faced with this man in front of us. As soon as the door closed Detective Irwin started. I was taken aback by the whole process. I decided I could sit and listen or walk out. I chose to stay. There is no doubt about it was the worst day of my life. I didn't understand what happened with the video. There was a whole gallery of people watching the video. To know there was so many people watching was intimidating. There had to have been 10–15 people. The way it was going. I apologised to Bob Waller and said I had no idea it was going to be this way.

I understood it was to be the cautions, the consent and the video went on. It didn't happen because Steve Irwin opened with a tirade and I just let him go. What I didn't know then but I now know, he spent the previous night on the phone with Steve Reesor discussing strategy. None of that was discussed with me. He went in with a predetermined strategy and it didn't include me. I could stay or walk out. I didn't think I could afford to walk out so I stayed.

...

Within minutes of the interview he suggested to Bernardo he was responsible for crimes that I didn't even know he was suspected in. He mentioned McWilliams in the interview and I almost fell off the chair. I wanted to stick with what we knew was true and not throw other things at him...

Detective Irwin agreed that the original plan was to talk to Bernardo about the murders first:

- Q. You are presumably going to talk about the murders first?
- A. Yes.
- Q. What were going to be the first words spoken?
- A. I think that we introduce ourselves. That I re-familiarize him with me because we've met previously when he provided the samples to Munro and I, and then ..
- Q. So you were going to take the lead?
- A. I think yes, and this is probably a better reference, I believe that the discussion was that I will do the introduction. We'll go through that. We worked as part of the plan, Bernardo when arrested in his house would deal with the Charter issues, the right to counsel in the house, get done, over with, there's no issue and then we'll go from there. That didn't happen and that ultimately comes out early in the interview.

Although it is acknowledged that the agreed plan was not followed, it is difficult to pin down exactly why this happened. Staff Inspector Marrier, the ranking senior officer in authority on the site, does not recall why it happened:

- Q. What was going to be the strategy for the interview process when Bernardo was brought into the interview room with Beaulieu and Irwin? What was their strategy, how were they going to approach Bernardo?
- A. I can't recall what was discussed as to what their strategy would be.
- Q. Do you know ..
- A. I know what was discussed between them who would conduct the interview and who would be the passive partner.
- Q. Who was that?
- A. I can't recall, but my mind seems to tell me that Beaulieu was the one that was the one who was going to carry the investigation, and it turned out that it was Irwin that carried the investigation. There were lines of communication that ..

- Q. Do you know why that happened? Why it flipped?
- A. No. I don't. I know they were going to, they were going to discuss their specific cases, and I believe it was Beaulieu who was going to start off with the murders, and then over to Irwin to do the other ...
- Q. Sexual assaults?
- A. Yeah. And that's if my recollection is correct. Yeah. And the rationale behind that, I can't recall the discussion specifically, but I suspect we were dealing with a more serious case first, and that would be the reason for it.
- Q. Sure. And that was the plan, so if it changed, it was a decision that was made on the spur of the moment?
- A. Yes.
- Q. By Steve Irwin?
- A. By whoever, ok.
- ...

It is difficult to imagine anything more detrimental, to a joint operation conducted by two police forces, than for the officers from one force to follow a undisclosed agenda and suddenly change the agreed plan in midstream. Nothing could be clearer, from the above account of the unfolding disaster, than the lack of any system to ensure that ego clashes and turf competition between police forces, natural and everyday facts of police life, do not get in the way of effective law enforcement.

Staff Inspector Marrier did not think the fiasco was significant enough to follow up or inquire into:

- Q. Did you ever discuss with Steve how it came to be that he took over the lead in the interview?
- A. No I didn't.

- Q. OK. What was the rationale behind Steve and Gary not getting together after the interview and discussing the interview?
- A. I wasn't aware that that had not occurred until some time later.
- Q. Have they come to grips with this thing in the aftermath?
- A. I can't answer that, I don't know.

Although no one was accountable and no one was in charge, there was no lack of people ready to give advice. A crowd of senior officers and an assorted gallery of forensic experts monitored the interview from an adjoining room and offered their advice from time to time as to how the interview should be conducted. Although the original plan was sound, to consult with forensic experts about the interview, the plan was not properly executed. The interview team did not have any effective prior briefing from the experts and the atmosphere surrounding their participation was, to quote one of the officers involved, was like a circus:

Perhaps the word I would use is circus in relation to there were so many people involved in influencing what was going on.

Another officer described it even more graphically as similar to two dollar Tuesday at Cineplex:

I never understood the cast of thousands that were present. It was like two dollar Tuesday at the Cineplex.

About the content of the interview itself there is little to be said except that it began badly, degenerated into an argument, continued badly, and ended badly. Nothing of value was ever gained from the interview.

12 The Right to Counsel Problem

But that was not the end of it, there was more. There were still more problems to come. As noted above, everyone involved in the process knew how important it was to meet the legal

requirements for a valid arrest and interview, in order to ensure that any evidence discovered, directly or indirectly, as a result of the interview could be used against Bernardo. Although everyone knew how important it was to meet the legal requirements, no one in a senior position made sure that it was done. The plan to let Bernardo make a phone call from his house was not followed. But that was not all. As indicated in the Metro police report, that failure was compounded by incorrect legal advice given to the interview team by Staff Inspector Marrier:

The interview started and they did not come out of the room for some time. Throughout the interview Bernardo repeated his request to speak to counsel. At some point some considerable time after the start of the interview, the interviewers left the room. There was discussion about the accused's repeated request for counsel and they were advised that they should continue. There was a mistaken belief, relayed to Detective Irwin by Staff Inspector Marrier, that case law allowed for this scenario until a demand was made by the subject. The profiling experts encouraged the continuation of the interview, realising that it was inadmissible in evidence, and so far had been totally exculpatory, to allow more material for them to assess Bernardo's personality.

The interview continued until after midnight (Bernardo had been arrested at about 4:00 p.m.) with no change. Bernardo appeared to take control of the interview and it deteriorated into an argument between Bernardo and Detective Irwin.

As noted above, some effort had been made to comply with the legal requirements of the arrest and interview so that any evidence acquired as a result of Bernardo's interview would be admissible in court. Staff Inspector Marrier, by giving grossly incorrect legal advice to the interview team, undermined that work and effectively ensured that no evidence discovered as a result of the interview could ever be used against Bernardo.

The interview itself, as noted in the Metro report, was unproductive and degenerated into an argument. Nothing of any value was learned during the interview or as a result of it.

13 The Recording Bungle

Although the interview was supposed to have been videotaped, there was confusion as to who was in charge and who was accountable. About six hours into the interview a “second” tape was started, on the impression that the first tape would be coming to an end. It was only after the interview was over that it was discovered that no original tape had been put in the first recorder in the monitoring room. In the result only one and a half hours of the eight hour interview were recorded. This degree of disorganization, and the lack of any system to ensure the performance of a simple task like the loading of a video camera, is difficult to fathom.

Other problems arose with the special digital audio tapes, mentioned above, that were made for the purpose of conducting a later voice line-up of Bernardo. About six hours of the interview was recorded on these audio tapes but it turned out that they were not suitable for voice line-up purposes. Questions were raised later about the fact that Detective Irwin received the audiotapes on February 22 and retained them in his possession in a gym bag or suit bag without disclosing them until he was asked for them at the end of May. This embarrassed the Crown because the defence was initially informed, on the basis of information from Irwin, that no such audiotapes existed. It was raised as an issue during an unrelated trial in which Irwin was a witness and it became a matter of controversy and embarrassment within police circles. Irwin explained that he realized the tapes were not suitable for a voice line-up, the purpose for which they were made, and he forgot he had them in his bag. An internal review by the Metro force proved inconclusive and in the result no action was taken in respect of Irwin's nondisclosure of the audiotapes. Although this incident was embarrassing, regrettable, and unimpressive, it did not appear to affect the investigation of Bernardo.

14 No One In Charge, No One Accountable

Added to the ego clashes and turf competition was the fact that no one was in charge and no one accountable. Inspector Bevan, having reached an agreement with Metro on how the interview

would proceed, thought that it was safe for him to leave Halton headquarters and attend to other urgent work connected with the investigation.

Q. Ultimately, did any one person have the authority to determine the laying of the charge, not the laying of the charge per se, but the interview process? If I was to say to you who could have changed the direction as to the type of interview style that was going to be done, was there any one person who had control of that, was in charge of that?

A. I thought we had an agreement on a plan on how that thing was going to happen, and we were totally unaware that there was another plan out there.

Q. So the bottom line is no, there wasn't?

A. No. I had full faith in Bob Waller being there to represent our interests and I had—probably unfortunately in hindsight—I shouldn't have taken the route that I did but I felt I had other responsibilities that night and I could leave what was happening there under the control of other people.

Although Inspector Bevan thought it was safe for him to leave because he had an agreement with Metro he was wrong because, as noted above, the Metro force officers proceeded with their own agenda. Bevan only learned of this after it was all over:

When the interview door closed, another agenda surfaced in the interview room and Steve seemed to have taken over in so far as asking the questions in relation to the homicides, and that was not part of the plan.

...

You see, unbeknownst to me, and to the rest of us I suppose, during the time when the expert panel was supposed to be there preparing the interview, Steve of course was spending a lot of time as the affiant for the search warrant, getting the search warrant paper into shape. At the same time, Steve was spending a lot of time on the telephone taking advice on how to approach, as to how to approach the interview, from somebody else from Metro, and we were not privy to that until much later on. That he was given advice on how to approach this guy, and of course had we known that was the case, we would have tried to negotiate further on that.

Detective Beaulieu did not know who was in charge:

Q. Who was in charge Marrier or Bevan?

A. I don't know. I would say Vince but he wasn't there so that would make Marrier in charge but I don't work for Marrier. The last thing I would do as a supervisor is interrupt an interview. Anything that happened in that room the responsibility was mine and Steve's.

Although Beaulieu attempts to take full professional responsibility for his part in the disastrous interview, he was put in an impossible position that was not of his making. It is not fair to hold Beaulieu responsible for the problems that created the mess. The mess was created because Beaulieu's attempts to prepare for the interview were frustrated, because no senior officer in a position of authority ensured that there was an agreed team interview strategy and adequate joint preparation by the interview team, because no one was in charge, and because the Metro officers were following their own undisclosed agenda.

Staff Inspector Marrier, although he was the ranking officer in authority on site, accepts no responsibility and no accountability:

Q. If the interview was not going according to plan, why did it proceed the way it did? Why wasn't the second team called in?

A. I can't answer that question, I don't know.

Q. Whose call would it have been? Like, who was in charge?

A. In my view? Although I was the highest rank that was there, I was not in my police facility, I was not within my police service and I felt that the detective sergeant from Halton who was part of the Green Ribbon task force, that it was his facility.

Q. That's Bob Waller?

A. Bob Waller, and I can't say it would be his call necessarily to say let's bring in the other team but at the time, although the information wasn't coming forth, I wasn't aware of any real problems with what was going on within that room.

Detective Smollett agrees that no one was in charge:

Q. Who was in charge?

A. No one.

Perhaps the last word on this issue should go to Detective Irwin:

Q. Who did have the authority, that night?

A. Marrier and Bevan as the two respective heads from the two respective areas.

Q. Was there any one person that was in charge?

A. Not that I'm aware of.

Q. Should there have been some ..

A. Yes. And I think sometimes we are too worried about offending our peers or our, whatever, our fellow officers, whoever, the crown, perhaps. That's not what we are here to do and that's not why we're doing it, and it's unfortunate if that happens in the process. But I think we need to look at the bigger picture and you need a leader who ultimately is responsible and accountable for the decisions that are made and he can direct the case manager.

There is little more to be said on this topic. I have tried to tell the story of that evening in the words of the officers who were there. As the reader can see, some of them were very frank and open about the problems that led to the mismanaged and disastrous interview. Although the media leak precipitated the problems, the underlying problem is that the Metro officers were operating on their own agenda and no one was in overall charge.

If there was ever an abject example of how things can go wrong when police forces do not co-operate, no one is in charge, and no one accountable, this is that example.

15 Continuing Hostility

The difficulties that arose between Metro and GRT had something to do with Metro's lack of openness in waiting a week before it told GRT anything, and in failing to tell GRT that Metro had Bernardo under surveillance in the Niagara region. The difficulties also had something to do with the disastrous interview discussed above. These difficulties were added on top of the inherent difficulty experienced by many police forces in working together unless there is a strong spirit of co-operation demonstrated from the top down in both organizations.

The arrest and interview was only the beginning of a very long process that included the wrap-up of the investigations and the enormous job of preparing for trial. The difficulties between Metro and GRT continued for some time. As one investigator said:

There was hostility between the two agencies.

Another said:

When someone from Green Ribbon would make a mistake, a blunder, then of course you know, it was put under the spotlight from Metro. When Metro would make a mistake or blunder, it was put under the microscope and under the spotlight by Green Ribbon. So instead of working as a team and saying, mistakes happen let's see how we can resolve this, I think it was always a one upmanship route that was followed.

A number of investigators made similar comments:

- Q. Describe the communications between GRT and Metro when the two joined in February of 1993. Describe the working relationship.
- A. Extremely strained in the beginning.

Q. What were the reasons?

A. You had a core of officers who worked very diligently trying to solve Mahaffy and then Kristen French and then all of a sudden here comes the Metro Toronto Police force and there was a fear we were going to take over.

Q. Did that change?

A. There was an ongoing battle. The distance was a barrier. The separation of the prosecution teams also caused a lot of problems. Most of the rift was healed when we were given provincial funding and housed in the same office.

...

Q. Were the people in the trenches getting along.

A. No. I always got along with them so did [...] I never blamed those guys for the hostility. I felt they were defending the integrity of the case. They felt the interview ruined the case.

Some officers thought there were no problems between the working level officers from Metro and GRT:

Q. Describe the relationship between GRT and MTP?

A. It worked fine. I can only speak for myself. I got along very well with [...] and [...]. I wasn't involved in the politics.

...

Q. Describe the relationship between GRT and MTP?

A. From what I saw at my level we had great co-operation. I wasn't part of any problems with Metro. I didn't see any problems. I deal with the PC's and the Sergeant's and there was no problems.

Q. What factors influenced the relationship?

A. Jurisdictional, territorial, it was just a bunch of good coppers who wanted to put the guy away.

One officer thought difficulties between the forces increased with the rank of the officers involved:

Personally I didn't have much of a problem at my level. I knew there were problems up above.

Another officer described it more graphically by saying that the problems increased the further you went up the food chain;

Q. Describe the relationship between GRT and MTP?

A. Personality played a part. A lot of egos. As you went up the food chain there were more problems. I think the strategy problem with the interview really hurt the potential of the success of it...

Too many bosses there. A whole pile of people there. Arguments between the brass about interview approaches. Too many people involved with too many different opposing points of view.

16 The Relationship Improves

The Metro leadership recognized that the different police organizations had to work together. In late February, Staff Superintendent Boothby asked Detective Sergeant Michael Boyd to work at the GRT Beamsville office to help prepare the case and repair the damaged relationship between the forces.

This was a positive step and it eventually created a measure of co-operation between the forces. As Inspector Bevan said, it helped the two police organization put aside their competing agendas and focus on getting the job done so far as Bernardo was concerned:

We each had our, I suppose, competing agendas. It took some time and it wasn't until ultimately Mike Boyd and later Tony [Warr] got involved that we sort of got back on the rails so that the focus was to jointly get Bernardo for everything that he was responsible

for. At that point in time, we wanted him for the murders, they wanted him for the horrific sexual assaults that were very historic and very notorious in their jurisdiction.

...

You know, maybe some of my counterparts on Metro might take a different view of that but ultimately I think it was when Mike Boyd was injected into the investigation that things really took a turn for the better and his purpose there was to help us and to make sure there was a good, clean line of communication between us and Metro.

One of the GRT investigators made the same comment:

- A. There was bitter feelings until we sat down and discussed it. Mike Boyd helped us deal with it. It was a territorial thing I guess. There were hard feelings.

...

There was no doubt that there was not the spirit of co-operation between the units and that was only overcome after the units worked together. I think if the decision was made to amalgamate the office after Feb. 17th it would have been better. Instead of when things came to a head after the arrest. We never talked unless on the phone. It took a year for us together to work together. I don't know who made that decision. That was after Mike Boyd came here.

- Q. When did things normalize?

- A. Feb. or March of 1994. It would have been then because we worked together. It wasn't open warfare but there was the air of suspicion.

Metro investigators also saw initial problems followed by improvement:

- Q. Describe the communications between GRT and Metro when the two joined in February of 1993. Describe the working relationship.

- A. It wasn't good. I don't think there was communication. I believe it was perception. We shared space only. I think they felt we held back on information from them. It changed a bit when we got brought together in Burlington. It became better when Tony [Warr] got involved but there was still tension.

What this demonstrates is that teamwork and co–operation, despite that inherent rivalries between police forces, can be achieved with the right kind of leadership and the right kind of attitude. The ideal of inter–force co–operation is easy to express—”just a bunch of good coppers who wanted to put the guy away”—but the achievement of that ideal requires special effort and special skills from those charged with the responsibility of leading the investigations. Senior officers in positions of authority need more than investigative and administrative skills. Team building and professional skills of the kind demonstrated by Inspector Bevan in the leadership of the Green Ribbon Task Force, professional and peace–making skills of the kind demonstrated by Detective Sergeant Boyd and Detective Sergeant Warr in the aftermath of the initial Metro–GRT clashes, and leadership of the kind demonstrated by the Metro force when it sent Boyd and Warr to work together with GRT, are essential to the success of any co–operative police venture.

17 Conclusion

Despite some thoughtful planning, the arrest and questioning of Bernardo was a mess from beginning to end because there was no effective co–operation between Metro and the GRT, because Metro officers were operating on their own agenda, and because no one was in charge and no one was accountable. Although it was planned to give the accused a phone call to his lawyer immediately after arrest, this was not done. Not only was it not done, but this crucial information was not conveyed to the interview team. The interview team of Detective Irwin from Metro and Detective Beaulieu from GRT was inadequately prepared. Although Beaulieu tried to meet with Irwin to work out a team strategy for the team interview, Irwin had no time because he had been assigned to the search warrant preparation and no one ensured that he was given time for joint preparation with Beaulieu. Although his ranking officer Staff Inspector Marrier did not ensure that Irwin consulted with Beaulieu, he did ensure that Irwin took direction and strategic advice about the conduct of the interview from other Metro officers, strategies and advice which Irwin did not disclose to Beaulieu. The Metro officers, unknown to the GRT, proceeded with their own agenda. As noted above, this reflects an astounding and dangerous lack of co–operation between police forces.

So far as the interview itself was concerned, the plan was for Beaulieu to start out by questioning Bernardo about the murders and then for Irwin to question him about the rapes. Irwin, apparently acting on his own agenda, suddenly and without warning departed from that plan and immediately took over the interview by confronting Bernardo about the rapes, leaving Beaulieu no choice but to leave the room, stop Irwin and risk an altercation in front of Bernardo, or keep quiet and let Irwin do his own thing. He chose to remain silent and take notes.

About the content of the interview itself there is, as noted above, little to be said except that it began badly, degenerated into an argument, continued badly, and ended badly. Nothing of value was ever gained from the interview.

Although the accused repeatedly tried to invoke his right to counsel, Staff Inspector Marrier told the interview team to proceed in the face of repeated requests to contact counsel, assuring them that this course of action was supported by legal case law. This grossly incorrect legal advice by Staff Inspector Marrier ensured that no evidence discovered directly or indirectly as a result of the interview, could be used against Bernardo.

The degree of disorganization and the inability of the various police forces to co-operate, even to the basic extent of ensuring that the video camera was loaded and the audio tapes were not lost, is difficult to fathom.

It is not hard to tell what went wrong. The precipitating cause of the problems was the media leak which led to the premature arrest and interview before the police were ready.

Underlying causes included:

- the legal problem discussed above, that there was strong evidence on the rapes but virtually no evidence on the murders until the search warrant documentation was completed

- the lack of a ready made running synopsis of the investigations that could be quickly whipped into shape as the basis for the search warrant documentation, leading to a lengthy delay
- the ego clashes, turf competition, and inherent rivalry between police forces, a natural everyday fact of police life, which got in the way of effective law enforcement
- the fact that no senior officer in a position of authority ensured that there was an agreed team interview strategy and adequate joint preparation by the interview team
- the astounding fact that the Metro officers were following their own agenda for the interview, which they did not disclose to the GRT. For Irwin to go into the interview with an undisclosed interview agenda, an agenda he had never disclosed or shared with his interviewing partner, was a prescription for disaster
- the grossly incorrect legal advice given to the interview team by Staff Inspector Marrier
- the fact that there was no one in charge, no one accountable, no effective co–operation between the police forces, and no co–ordination of their work so far as the interview was concerned

As noted above, if there was ever an abject example of how things can go wrong when police forces do not co–operate and no one is in charge or accountable, this is that example.

And again, if there was ever an abject example of why it is necessary to develop a co–operative approach among police forces and a system to ensure such co–operation and accountability under a unified leadership structure, this is that example.

But it is also an example of how things can work well when a spirit of co–operation is demonstrated from the top down throughout a police organization. The improvement in the working relationships, when Metro sent Detective Sergeant Boyd and Detective Sergeant Warr to work with GRT on site in Beamsville, demonstrates that an attitude of professionalism and co–operation from the leadership of a force can overcome the inherent inter–force rivalry and turf wars that are an everyday fact of police life.

As noted above, senior officers in positions of authority need more than investigative and administrative skills. Team building and professional skills of the kind demonstrated by Inspector Bevan in the leadership of the Green Ribbon task force, professional and peace-making skills of the kind demonstrated by Detective Sergeant Boyd and Detective Sergeant Warr in the aftermath of the initial Metro–GRT clashes, and leadership of the kind demonstrated by the Metro force when it sent Boyd and Warr to work together with GRT, are essential to the success of any co-operative police venture.

Communication and co-operation between agencies at all levels must be accepted, encouraged, directed and, above all, practised. If not, every other measure, effort, venture, and joint force operation is doomed to failure.

Chapter 9–The Search Of 57 Bayview Drive

1 The Search of 57 Bayview Drive

Between Friday, February 19, 1993 and April 30, 1993, officers from the Green Ribbon Task Force and the Metropolitan Toronto Police conducted an exhaustive 71 day search of Bernardo's house at 57 Bayview Drive in St. Catharines. This search was in many ways a textbook example of thorough and careful organization. It produced important evidence including hair fragments similar to that of Kristen French and a small bloodstain which matched Leslie Mahaffy's DNA. The excellent work done during the search is summarized in Appendix 12, which contains extracts from the Green Ribbon Task Force Debriefing Report, and Appendix 13, a useful paper presented at the FBI Academy in Quantico, Virginia by Sergeant Gary Beaulieu of the NRPS.

Notwithstanding this success, the critical issue hanging over the entire search is that it failed to produce the crucial videotapes of the rape and torture of Leslie Mahaffy and Kristen French and the rape of Tammy Homolka.

2 Chronological Overview

To analyze this issue it is necessary to set out a chronology of the search, the events leading to it, and its aftermath.

The starting point according to Bernardo's testimony, to the extent it can be believed, is May 12, 1992 after the police interview, when he and Homolka decided to hide the videotapes together with the knife, used in the Scarborough attacks and the abductions of Leslie Mahaffy and Kristen French, in the insulation in the garage rafters at 57 Bayview Drive. According to Homolka, he told her that if anything happened to him, or if the police ever came around and were really serious, she should destroy the tapes.

The videotapes were not the large VHS tapes of the kind rented at video stores, but the smaller 8 millimetre tapes, about 4" by 2 ½" by 3/4" (slightly smaller than an audio cassette tape), that fit into a camcorder or video camera.

Bernardo testified that he retrieved the tapes to look at them and on December 27, 1992¹, after hitting Homolka with the flashlight, he put the tapes in the music room in the closet.

Homolka, to the extent she can be believed, said that she looked for the tapes before she left because they incriminated her and she did not want Bernardo to have them to hold over her head. She looked in the insulation in the garage rafters where he earlier told her he had hidden the tapes. She found the knife and left it there, but the tapes were gone. Homolka testified during Bernardo's trial that she had no idea where the tapes were during the police search and she still did not know, at the time of trial, where the tapes had been found.

Although the police during the search of 57 Bayview Drive had some indirect knowledge of the tapes, it was only after the search was over that they started to get details directly from Homolka after her police interviews started on May 14, 1993.

Bernardo said that after Homolka left he saw that things were missing. He checked a hiding space off the music room, a little attic with a fake partition wall, and noticed that it was ripped out. He assumed Homolka was trying to get the tapes, so he unscrewed a pot light in the upstairs bathroom, pulled it down, and hid the tapes in the upper attic part of the house an arm's length in. He testified that to the best of his knowledge that is where they were when Ken Murray, his former counsel, got them.

As noted above, the police and the Crowns began on February 8, 1993, to discuss the preparation of a search warrant for 57 Bayview Drive.

1. Although nothing turns on the discrepancy, the police report of the assault, based on Homolka's complaint, put the date as December 28.

Metro police officers interviewed Homolka on February 9 at the home of her relatives Calvin and Patricia Seger, although Homolka was not forthcoming with information at that time. After the police left, Homolka told the Segers that Bernardo had videotaped her and Bernardo having sex with Leslie Mahaffy and Kristen French, and that Homolka had looked for the tape before she left. The Segers, when later interviewed by the police on April 1, mentioned Homolka's discussion about the tapes.

On February 11, Metro police took Homolka to her lawyer, George Walker. On the same day, Metro and GRT officers discussed the preparation of the search warrant with Crown counsel. As noted above, the preparation of the search warrants began on the weekend.

Around February 14, the Crown and the police became aware from Walker that some of the sexual assaults on Mahaffy and French had been recorded on videotape and that Homolka had looked for them unsuccessfully before she finally left 57 Bayview Drive. She thought that they were kept in the same hiding place as the knife Bernardo used to intimidate his victims and she thought that the knife was in its hiding place, but not the tapes.

Inspector Bevan notes that because this information came through counsel, the police were advised by the Crown that they could not refer to it or use it in the information to obtain the search warrant, which refers only to “ongoing discussions between counsel”:

During the course of the discussions, defence Counsel conveyed certain initial information to assist in his and Crown Counsel's determination regarding whether his client was in fact a person who may have been involved or had genuine knowledge of criminal acts. I do not rely upon the content of those discussions for the purposes of forming the reasonable and probable grounds necessary to obtain the search warrant. Discussions between Karla BERNARDO's Solicitor and Crown Counsel have continued and are presently ongoing (February 17, 1993). [emphasis in original]

As noted before, the plans for the simultaneous arrest of Bernardo and execution of the search warrant were put at risk by a media leak and Bernardo was arrested on February 17, two days

before the first search warrant was ready. On the day of the arrest, the police learned from M.S.D., a friend of Bernardo's, that Bernardo said he had a videotape of Homolka having sex with women and a video of Homolka killing Tammy, and Bernardo added “you don't keep it, you don't stash it in the place of guilt,...” and said he had it off premises because he had a lot of friends in the city.

On Friday, February 19th, Inspector Bevan met with Sergeant John White, one of the officers assigned to draft the warrant. He had signed the information (court application) for the search warrant for 57 Bayview Drive issued by Judge Silverman that day, valid until February 26, 1993. Bevan and White discussed the limitations on the search process in order to ensure a level of quality control. Inspector Bevan went to 57 Bayview Drive, gave the warrant to the search team and briefed them. He in turn was briefed regularly by the officers involved in the search about their findings.

There were two warrants, one for the GRT just mentioned, executed by Constable Michael Kershaw and Constable Richard Ciszek, Niagara Region crime scene identification officers, and a Metro warrant executed by Detective Sergeant Brian Ward and Detective Cory Bockus of Metro.

By the end of the search on March 30, the GRT had obtained four search warrants allowing the search to continue for 71 days. Metro's search under its first warrant, lasted 8 days, after which they assisted Niagara, and Metro executed a second warrant on April 30 for business and financial documents.

On February 21, the searchers found a videotape in a locked briefcase in the music room on the second floor. It showed a short segment of Homolka performing sex acts on a woman on the floor of the master bedroom of the house. Without photographic enhancement, the woman's face could not be seen when the tape was played. Extensive investigation including photographic enhancement at the National Defence Laboratory and other tests showed much later that the apparently unconscious woman was Jane Doe. This tape will be referred to below in connection with the Jane Doe investigation.

On February 22, Casey Hill, the senior Crown counsel advising the police about the search, wrote Inspector Bevan to summarize a number of the ongoing search and seizure issues and said, in part:

There are a number of issues relating to the execution of the search warrants at 57 Bayview Drive in St. Catharines. These include:

- (1) The need to be guided by the face of the search warrant which describes the things to be searched for.*
- (2) To the extent that the police, during the lawful execution of the warrants, come upon something not listed in the warrants, but which is reasonably believed to afford evidence of the commission of a criminal offence, legal advice should be sought as to whether the item is in fact covered by the search warrant or whether a warrantless search or a further warranted search is required with respect thereto.*
- (3) The need for a search warrant briefing as described to Sergeant Ward by me on Friday in order to focus and organize and co-ordinate the search efforts. It may be that further search warrant briefings are required with respect to the search as time goes on. We are quite prepared to assist in that regard.*
- (4) The use of the videotape [used by police to record the condition of the house] is understood to be employed as an electronic notebook in order to describe the manner in which the premises were found and to assist in describing, during testimony, the location where items were seized. The video tape is not a device to seize images apart from its use incidental to the execution of the search warrant.*
- (5) The principle of minimization requires that the minimum interference with the premises be employed, in terms of damage caused, which is consistent with the reasonable and proper execution of the warrants.*
- (6) There should be no statements as to what has been seized or any displays or exhibitions of things seized as they are removed from the house.¹*
- (7) Co-ordination of the storage of seized items should be worked out between the search parties including the preparation of the post-seizure reports in Form 5.2.*

As investigative needs require the application for further search warrants these should be drafted by the assigned officers and reviewed by Michal Fairburn and I.

1. This advice, designed to prevent the contamination of potential jurors and witnesses, is similar to the advice given to Sergeant Gillies, not to disclose to Homolka any more than he did of the Jane Doe tape, discussed below.

With respect to the garbage at 57 Bayview Drive in St. Catharines, seized from the municipal garbage truck, it should remain where it is for the moment pending further consideration as to whether a warrant will be required to permit access.

As you are aware I have retained the Cantel pager provided to me last week [number] and I remain available to provide legal advice on a continuing basis to those employed in the ongoing searches and such future searches as may prove necessary. There is no question which should be considered too small or apparently inconsequential with which we are not prepared to assist.

I have also enclosed herewith an article which may be of use to the searchers, assuming they are not already familiar with its contents, relating to the places within a residence where things to be searched for may be concealed.

If any questions arise out of the interpretation of my letter please do not hesitate to contact me at your earliest convenience. Thank you for your continued co-operation in these matters of mutual interest.

This letter provides the legal framework within which the police operated during the search, including the principle of minimization which restricts the police to the minimum amount of damage consistent with the reasonable and proper execution of the warrants.

The search strategy included consultation with forensic experts at the CFS, the designation of an exhibit officer to maintain continuity, the use of protective suits and boots to avoid contamination, the systematic videotaping and photographing of the premises before and after the search, the use of an argon gas laser, (a light source that causes certain material to fluoresce, including seminal deposits, some fibres, and chemically treated fingerprints) the use of chemicals to develop fingerprints and minute specks of blood, the quadrant by quadrant combing, brushing, and vacuuming of carpets, the photographing and numbering of latent fingerprints found in the house, and many other techniques summarized in Appendices 3 and 12.

The police did not, during the search of 57 Bayview Drive, use a formal grid pattern system—a system sometimes used for burial sites, human chain searches of outdoor areas and other cases where it is particularly important to define search area boundaries and to identify the exact spot where evidence is located. Prior to the commencement of the search, the GRT considered the

possible use of a grid system but decided not to use it because the methodical room by room, area by area, search of the house served the same purpose. There is no reason to believe that a formal grid search would have improved the chances of finding the tapes.

Over 100 videotapes (including the Jane Doe tape but of course not the crucial tapes of Leslie Mahaffy and Kristen French) were located and viewed inside the house because the search warrant did not provide for their removal. The police seized 937 exhibits including a quilt with a small blood stain that produced a DNA match to Leslie Mahaffy, hair fragments from the bedroom carpet similar to that of Kristen French, and concrete residue on a shovel and rake in the basement that produced a mineralogy match to a unique aggregate filler used in the brand of concrete mix purchased by Bernardo.

In the insulation batts in the garage roof rafters they found the knife but no tapes.

In the attic storage crawl space off the music room they found broken pink insulation bats and brown packaging tape stapled to the wall. Directly behind the packing tape was a small concealed area between the closet and exterior rafters of the north roof. In the concealed area they found stolen licence plates that Bernardo intended to use when he crossed the border to smuggle cigarettes.

On March 15, a second search warrant was issued for the GRT officers to continue to search until April 15. Between then and the end of the month, Inspector Bevan met with Casey Hill to discuss preparation for another warrant and to discuss quality control of the work being done in the house by the search team. There were discussions with the landlord of 57 Bayview Drive and with financial officials about the possibility of funding to compensate the owners for damages and the possibility of renting the house through the time of the preliminary hearing.

As noted above, the Segers told Sergeant Gillies and Sergeant Metcalfe on April 1 that Homolka said Bernardo had videotaped her and Bernardo having sex with Leslie Mahaffy and Kristen French, and that she had looked for the tapes before she left.

On April 15, the third warrant was issued to GRT, authorizing continued searching until April 30. On April 16, the search team met with the CFS to review exhibits already submitted and determine the direction for the balance of the search. On April 30, Metro executed a search warrant for financial documents only and on April 30, the search concluded after 71 days.

By the time they left the house, the police were of the view that they had done everything they could that was authorized by the search warrant and there was nothing more to be done.

John Rosen, Bernardo's counsel at trial made the following formal admission during the course of the trial pursuant to Criminal Code s. 655 that on May 6, 1993, his former counsel K. Murray removed the videotapes from the house:

On April the 30th of 1993 the search warrants issued to police for the search of 57 Bayview Drive, St. Catharines, expired and the police vacated the premises.

On May the 6th, 1993 as a result of arrangements with the landlord allowing re-entry to the premises on behalf of Paul Bernardo, his former counsel Kenneth D. Murray and other members from his office entered the premises at 57 Bayview Drive.

While at 57 Bayview Drive Mr. Murray received a call from Mr. Bernardo on Mr. Murray's cellular telephone. While at 57 Bayview Drive Mr. Murray retrieved six videocassette tapes. These included the two 8 millimetre cassette tapes which have been marked as exhibits 59 and 60. Mr. Murray removed the six videocassette tapes from the house along with other property.

Mr. Murray maintained possession of the six videocassette tapes until September 12 1994 when he turned them over to me.

Pursuant to an undertaking which Mr. Murray gave to the Court on that date after a— and I'll read it exactly as we have worked it out— after a, a careful, albeit brief review of

the file and the tapes, I determined that it was my duty as an Officer of the Court and as a matter of law to turn all six videocassette tapes over to the police.

On September 22, 1994 prior to Mr. Bernardo's next scheduled Court appearance, all of the tapes were turned over to the police in the condition in which I received them from Mr. Murray.

The house was under police surveillance when Murray left the house on May 6. Although the police have been criticized for letting him leave with the tapes, they had no grounds to stop and search Murray on his way out of the house. They never considered doing so. They had no reason to believe the tapes were still in the house when Murray went in. In any event, they had no grounds to believe that an officer of the court would remove from a murder scene real physical evidence hidden by the accused.

On May 7, the police were able to secure consent of the landlord to re-assume control of 57 Bayview Drive. The house was later purchased from the landlord to prevent it from being exploited for sensational purposes that might interfere with the trial.

On May 14, Homolka and the Crown finalized the plea bargain agreement. The Galligan report concluded that the agreement would not have been made if the crucial videotapes were in the hands of the Crown and the police:

... if the videotapes had been in the hands of the authorities on or before May 14, 1993, the Crown would never have entered into the resolution agreement with Karla Homolka. [p. 89]

They [the Crown and police] had good reason to believe that videotapes had been made and were probably still in existence which would provide the necessary link between him and the murder victims. They had searched for the videotapes but had not found them. They did not know if they would ever find the videotapes. [p. 110]

At the time that the Crown made the decision to deal with Karla Homolka, the crucial videotapes, which turned out to contain so much incriminating evidence, had not been found. At that time, the Crown did not know whether they would ever be found. The

evidence to prove Paul Bernardo's guilt was available if an agreement could be reached with Karla Homolka to provide it. [p. 216]

If the authorities had been in possession of the videotapes on May 14, 1993 they would not have dealt with her. They would have offered her nothing for her evidence. [p. 217]

Although Walker on February 14 and the Segers on April 1 disclosed the fact the videotapes had been made, it was only after the plea bargain and after the start of the interviews with Homolka that she spoke to the police about the tapes. The police during the interviews made a deliberate investigative decision to withhold from her the fact that they had not found the tapes. They were dealing with a witness who had demonstrated herself earlier to be a blatant and manipulative liar. They withheld from her the fact the tapes were missing, so she would have no reason to hold back information from them. Had they told her the tapes were still missing, she would have been in a stronger position to lie and hold back. They also had to be extremely careful about anything they told her or showed her, because they had to foreclose any suggestion at trial that they had coached her or shaped her testimony. As noted above, the police had been advised not to display or exhibit things seized from the house.

The officers conducting the interview thought Homolka believed they already had the tapes. Homolka testified at trial:

I have never believed that the videotapes were destroyed. I believed the police were in possession of the videotapes when I was originally questioned in May of 1993. I have—I have admitted my involvement in things that are far more incriminating to myself than this. I've told the truth from the beginning with the exception of the first Metro interview.

This confirms, to the extent Homolka can be believed, the correctness of the police decision to discourage Homolka from holding back on them, by letting her believe they had the tapes when they interviewed her in May of 1993. This fact will be noted below in connection with the Jane Doe investigation.

3 Were the Tapes in the House?

At the time of writing, Murray is the subject of an O.P.P. criminal investigation, announced in November 1994, into his conduct in relation to the tapes. The O.P.P. informed this review it would interfere with their investigation if we were to question any of their potential witnesses, and we have refrained from doing so. This part of the report is written on the assumption that public statements about Murray's removal of the tapes are accurate. It is written without the benefit of any information from Murray or those associated with him in the removal of the crucial evidence from the murder scene.

The admission made at trial by Bernardo's counsel, Mr. Rosen, that Murray removed the tapes on May 6 is an admission by Bernardo, not an admission by Murray. It does not constitute an acknowledgement by Murray that he removed the evidence from the house. There are, however, public accounts attributed to Murray that have not been denied by him. The Toronto Sun on October 15, 1995 attributed to Murray the following account of how he found the tapes and Murray has not publicly denied the accuracy of the account:

In the upstairs washroom, with defence team members Kim Doyle and Carolyn MacDonald watching intently, Murray clambered up on a counter and the toilet bowl and reached up and behind a ceiling pot light.

He withdrew six 8 mm videocassette tapes.

...

In today's Sunday Sun, Murray breaks his silence for the first time, explaining his motivation for keeping the tapes and outlining what he feels is an attempt by Crown officials to misdirect public anger towards him in an effort to escape scrutiny of what he has long called their "deal with the devil."

SUN: Can you describe your reaction when you reached up into the pot light?

MURRAY: My first reaction was, this isn't exactly the way it should be. This must have been either put here or, we've been set up. It was clear that they were videotapes. We were

certainly of the belief that something like that could not have been overlooked. We simply took them, as a group, put them in my briefcase and left them for the rest of the day.

SUN: Testimony at the trial indicated that Paul Bernardo phoned you at some point.

MURRAY: It's quite probable that he did call. I know we had a cell phone there. Probably everybody's concern was whether or not we'd have access to the house. I don't know whether I spoke to him at all, but it certainly had nothing to do with the location of the tapes or anything of that nature.

...

SUN: You are under investigation by both the O.P.P. and the Law Society of Upper Canada.

MURRAY: I have heard for some period of time that I have been under investigation, but I can only confirm that the law society has contacted me and an investigator has contacted me in the last few weeks. I understand from reading Toronto newspapers that as of October last year there was an O.P.P. investigation, but I have not spoken to an investigator, nobody's asked to speak to me nor my counsel.

SUN: They have not seized your files, or executed a search warrant?

MURRAY: I have had no contact at all.

...

SUN: Should you have gone to the law society (when you recovered the tapes?)

MURRAY: Should the police have found the tapes?

SUN: In retrospect, would you have changed anything in the handling of the case? specifically the tapes?

MURRAY: No.

SUN: Did your client ask you to do anything else with those tapes? At any point did he tell you to destroy the tapes?

MURRAY: I can't discuss anything that happened with my client.

Press reports—for instance, the Toronto Star on September 7, 1995, stated that Bernardo told Murray to get the tapes from behind the ceiling light. The Sun, however, attributes to Murray the statement that he doesn't know whether he spoke to Bernardo and that the call certainly didn't have anything to do with the location of the tapes.

In the absence of any evidence to the contrary I proceed on the assumption, although it has not been verified or proven, that the tapes were recovered from the house in the manner attributed to Murray in public statements.

The only evidence within the control of this review, that indicates whether the tapes were in the house at the time of the search, consists of brief comments to police officers by Kim Doyle, Murray's legal assistant, who was in the house with him when he said he recovered the tapes.

Inspector Bevan said that Ms. Doyle told him that the tapes were in the house. Constable Kershaw said that Ms. Doyle told him that Murray had to stick his arm up to his shoulder to get the tapes.

Constable Ciszek said that Murray approached him outside the exhibit room at the GRT headquarters in Beamsville on November 23, 1993, after a discussion about some items that were missing from the house:

Mr. Murray approached me outside the Exhibit Room and stated words to the effect of, "I know what you guys are thinking, another slime ball lawyer but honestly, I don't know where some of the items went".

It appears from the context that Murray was not referring to the tapes and Constable Ciszek said he never dreamed at that point that Murray had the tapes.

Constable Kershaw recalls another discussion with Murray about the tapes:

- Q. Discuss the conversation with Mr. Murray regarding the search of the house and the video tapes.
- A. I was only joking about that “when are you going to give us the tapes”...it was an off the cuff remark...I had no thought he was going to sucker me...we were sitting at the table having lunch—an off the cuff remark.

To summarize, I proceed on the assumption that the public statements attributed to Murray about the location of the tapes are true, and that the tapes during the search were concealed in the area above a potlight in the upstairs bathroom of the house at 57 Bayview Drive.

4 The Physical Location of the Tapes

Because the house has been destroyed, it is now impossible to view the physical area where Murray says he found the tapes. The GRT at the beginning and the end of the search made videotapes of the interior and exterior of the house. Although they show part of the upstairs bathroom, they do not focus on this particular area enough to help with this issue. It is significant, that they show a number of potlights in other areas of the house including the ground floor.

The best available description of the area where Murray says he found the tapes is in Sergeant Beaulieu's paper, in Appendix 13 referred to above, presented at the FBI Academy in Quantico:

According to information provided indirectly through counsel, the video tapes were found secreted in the attic of the residence. The attic area is very small and does not provide for normal access as most attics do. The adjacent ceiling and walls are plaster construction so the area is essentially sealed. There are however, four circular recessed lighting fixtures in the ceiling of the upstairs bath which extend into the attic area. One of the four lights is apparently not fastened to a ceiling joist and merely rests on the attic side of the ceiling. Once the inner cylindrical portion of the light fixture is lowered from the ceiling of the bathroom, the remaining metal box in the attic can be raised to allow minimal access to the attic proper. An arm can then be extended to arms length to deposit any incriminating evidence. While the search team did conduct a search of the lighting fixtures, it is not clear whether or not the search included the area to the full extension of the arm in the only light which was not securely fastened.

Constable Kershaw said that he climbed a ladder, unscrewed the potlight itself and pulled it out so that it was hanging from a wire. Inside the hole was a box about 10" X 10" or 8" X 8". He stuck his hand in but there were flaps to get past and he could only get his arm in up to his elbow. He felt around without lifting up the entire light but he took a flashlight and looked past the flaps. He felt around without finding anything and he is satisfied that the tapes were not anywhere near the box. Kershaw, who is 6' 2" tall, notes that Murray is 6' 3" or 6' 4" and that Ms. Doyle said Murray had to reach in up to the shoulder to get the tapes, which would be at a point in the insulation.

It is possible the tapes, assuming they were there, would have been found if Constable Kershaw had reached in further. Constable Kershaw acknowledges this very openly:

I guess they were in the house...we missed them...as simple as that...I know I searched the pot lights...

5 The Issues

Assuming, in the absence of evidence to the contrary, the factual accuracy of the statements attributed to Murray, the tapes were in the house during the 71 day search concealed in the area above one of the potlights in the upstairs bathroom and the police did not find them.

The tapes were crucial evidence and the failure to find them during the search led to the plea–bargain with Homolka.

Despite the commendable aspects of the search described above, and despite the many successes of the search and the important evidence found, including the small traces of DNA from Leslie Mahaffy and the hair similar to that of Kristen French, the search in hindsight was defective because it failed to produce the tapes.

The failure to produce the tapes did not result from any lack of effort or systematic organization. As noted above and set out in appendices the search demonstrated in many respects a textbook example of organization and thoroughness, and painstakingly systematic attention to detail.

But the question remains, assuming the tapes were where Murray said they were, why did the police not find the tapes?

In order to explore that issue it is necessary to explore the legal obstacles faced by the police because of the Charter of Rights minimization principle and the mindset engendered by the legal restrictions of the search warrant, the knowledge of the police at the time about the likelihood of the existence and the probable location of the tapes, and the physical procedures necessary to retrieve the tapes assuming they were there.

6 Mindset: Likelihood of Existence and Probable Location

It is essential, when judging the search, to bear in mind the limited information available to the searchers. Although they had indirect knowledge about the tapes from Homolka's lawyer and the Segers, it was only after the search was over that the police were able to speak to Homolka directly about the tapes.

The first thing the searchers did not know was whether the tapes still existed. There was a good probability Bernardo had not destroyed them, because of the propensity of sexual predators to keep such trophies to relive their fantasies and their reluctance to destroy such objects. But it could not be said with any certainty that they were still in existence, let alone in the house.

Even if the searchers assumed Bernardo had not destroyed the tapes, there was a strong likelihood that Bernardo had removed them from the house and hidden them elsewhere. It would be a terrible risk for him to leave them in the house where they might be found by Homolka or the police. That is exactly what he acknowledged when he said to Michael Stephen Donald about the

videotape of Tammy: “you don't keep it, you don't stash it in the place of guilt...” and said he had the tape off premises because he had a lot of friends in the city.

The probability, that the tapes were gone, increased as hiding spaces were discovered only to find the tapes were not there– for instance the garage rafters where the knife was found but no tapes, and the concealed area off the music room crawl space where the licence plates were found but no tapes.

To sum up the information available to the police and their state of knowledge during the search, they had not yet had the opportunity to speak to Homolka about the tapes, they had no evidence that the tapes were still in existence, and they had some reason to believe that the tapes were no longer in the house.

7 Mindset: Charter of Rights Minimization Principle

The police were frustrated during the search by the limits of the search warrant and their understanding of its restrictions. As one officer put it, “the warrant was difficult.” As another officer said, “It tied our hands”. The police found cement bags during the first warrant but did not log them because they were busy looking for things that were not so obvious. Because the cement bags were not listed on the return for the first warrant (a court document listing the things seized) and not mentioned in the second warrant, a technical legal problem arose as to how the cement bags could legally be seized and how they should be treated in the court return document.

The Charter of Rights principle of minimization, referred to above, restricted the searchers by limiting the amount of physical damage they could do to the house.

Some kinds of physical damage were contemplated by the search warrant itself, such as physical removal of the basement floor drains and part of the concrete floor and the sink traps. The basement and garage floor drains were cut out of the concrete and sent to the CFS as were all the

sink traps. This did not offend the Charter of Rights because these items were specifically mentioned in the search warrant on the basis of evidence from the condition of Leslie Mahaffy's body that she had been dismembered in an inside area with access to a water source and a drain. The Charter did not prevent them from removing a section of the ceiling in the living room to get access to a drain in the second floor bathroom, because the drain was specifically mentioned in the warrant.

The Charter principle of minimization also permitted the search of areas with apparent access such as accessible crawl spaces. The principle of minimization permitted damage that was reasonably necessary in order to search areas where there was evidence of some alteration to the fabric of the house that might conceal a hiding place. For instance they removed a sheet of drywall from the north dining room wall where the condition of the seams suggested it had been replaced, and they searched behind it although nothing was found there.

Apart from the things mentioned in the search warrant, like the drains and physically altered places like the living room drywall, the police felt they were on slippery ground if they inflicted any damage not explicitly authorized by the warrant. As one officer put it, there were big discussions about damage during the course of the search. As noted above, one officer said the warrant was difficult. Another officer said the warrant was so strict it became unworkable. Another officer put it more directly when he said that from time to time it caused them to tear their hair.

There was a reason why the warrant was so exacting and the Charter of Rights standards were applied so strictly. At the time of the search there was very little evidence against Bernardo for the murders. Without the videotapes, and without even Homolka's uncorroborated testimony at that time, the case against Bernardo was paper thin. There was barely enough evidence to get the police in the door at 57 Bayview Drive. That evidence had to be gleaned in part from seven years of Scarborough rape investigations that showed similar fact patterns to the Kristen French and Leslie Mahaffy killings.

Because the evidence was so thin at that stage, it was crucial to ensure the legal admissibility at trial of any incriminating evidence found in the house. At that time it appeared that the best chance to get real evidence against Bernardo on the murders was through the search of the house, so the stakes for the admissibility in court of that evidence were very high. Inspector Bevan, because so much was at stake, did everything he could to ensure that the search warrant was “court proof”. By going to Casey Hill, the leading Crown expert on search warrants, Bevan ensured as far as possible that the warrant and any fruits of the search would withstand the Charter of Rights court challenge to be expected in such a high profile case. The police sought and obtained from the Crown the strictest legal standard that could be applied to the preparation of the warrant and the execution of the search itself. Because there was so much at stake and the legal situation was so unusual it would have been imprudent to apply any lesser standard.

It might be noted that the length and complexity of the warrants were unusual. It was not a simple task to analyze and painstakingly cobble together, from the six years of Scarborough rape investigations and the twenty months of the Leslie Mahaffy and Kristen French investigations, every scrap of evidence that might point to Bernardo's complicity in the murders and bolster the thin circumstantial case that formed the basis for the murder search warrant.

As it turned out because of the defence strategy, the warrant was never challenged in court and the self-imposed strictness of the Charter standards that were applied to the warrant and the search were never judicially tested or laid down as the standard for future cases.

Some observers have noticed the development of a “Charter chill”; a mindset that deters Crowns and police from doing sensible things because they fear their case will be thrown out of court on Charter grounds. As one experienced observer remarked,

...there is a certain Charter chill, everybody's afraid that your case is going to get gonged by the Charter for some breach of Charter rights...

The weakness of the evidence then available against Bernardo made it crucially necessary to court-proof the search and its execution by the application of the highest and strictest Charter standards. This engendered in the police a mindset that made them very reluctant to inflict damage, unless it was clearly authorized by law.

8 Tear the House Apart?

These legal restrictions answer the criticism made by one officer, not involved in the search, when he said:

They did an awful search. They should have torn the place apart.

The short answer to this criticism is that the warrant did not authorize the police to tear the house apart. Although the NRPS as noted above was able to re-assume control of the premises on May 7 and the house was later purchased to prevent it from being exploited for sensational purposes that might interfere with the trial, the house at the time of the search was owned by the landlord subject to Bernardo's rights under the lease. The Charter principle of minimization restricted the amount of damage the police could do during the search. They were constantly concerned about the damage to the house and the legal effect it might have on the admissibility in court of any evidence they obtained. Constable Kershaw, when asked why they didn't tear the house apart, said:

Tear apart the house for tapes? No, I don't think we could have...If you saw the damage we did, we fought hard to do that damage.

The most direct answer to the question, why they did not tear down the house to find the tapes, was put by Inspector Bevan after he indicated that he became very familiar with the principle of minimization during the search:

- Q. And how did that affect your warrant?
- A. We couldn't do anything that we weren't absolutely authorized to do in that house. If we wanted to do ... if we wanted to do some specific thing, we had to go back and get it written into the next warrant.
- Q. How did that play itself out in your officers ability to do the search?
- A. We knew we couldn't just tear the place down. It just was not in the cards.
- ...
- Q. Is there any way that the warrant itself may have accounted for the not finding of the tapes?
- A. Because of the strict standard that the warrant was written to, and the way it was executed?
- Q. The minimization.
- A. The minimization and the fact that we just couldn't destroy the house without justification for doing what we were doing.
- Q. Do you think it played a part in it?
- A. Yeah. I mean, when you go into a situation like that, sure you would like to tear the whole place down. Where's the saw?

They did not have legal authority to tear apart the house, and having regard to the Charter of Rights restrictions on the power of search and the evidence, it would have been fruitless for them to apply for authority to tear down the house.

As noted above, they had no evidence that the tapes were still in existence and they had reason to believe that the tapes were no longer in the house.

9 Cut a Hole in the Ceiling?

The next question is whether the police should have taken some further destructive steps to look for the tapes, some intermediate steps short of tearing the house down. In hindsight, one can say, assuming that the tapes were found as Murray described above the potlight, that the police should have cut a hole into the attic cavity. As Sergeant Beaulieu says in his paper in Appendix 13.

Hindsight can easily establish that it would have been prudent to cut a hole into the attic cavity.

The key word here is hindsight. It is easy to say the police should have cut a hole in the one place in the entire house where we now know the tapes were said to be hidden. Like the needle in the haystack, hidden things are easier to find when you know where they are. But at the time, there was no reason to cut a hole in the ceiling beside that potlight in particular or even in that room in particular. There was no more reason to cut a hole in that ceiling than there was to cut a hole in every ceiling in the house where there were potlights.

The idea, that there was an intermediate step short of tearing apart the whole house, the step of cutting a hole in the bathroom ceiling, arises only in hindsight and only with the knowledge that Murray says he found the tapes above the bathroom potlight. There was no intermediate step apparent at the time. The next level of search was not to cut a hole where we are now told the tapes were later found, but to cut holes in every similar place in the house, a level of search no different from tearing the house apart.

10 Mindset and Approach

As noted above, the very strict Charter of Rights standards which were applied to the search produced in the police a mindset that made them very reluctant to inflict damage and created a general restriction on the extent of the search.

The selection of crime scene identification officers as searchers may have created another obstacle. Different kinds of expertise are required for different kinds of searches. For example, the expertise to search a financial institution or a computer system is different from the expertise to find hidden drugs concealed in a secret automobile compartment or a house.

Crime scene identification officers are trained and experienced in extremely meticulous crime scene investigation including the detection of fingerprints, blood spatters, fibres and other minute evidentiary traces and the precise notation and cataloguing of small details. They are trained to preserve crime scenes and ensure they are not disturbed or contaminated during the process of the search. The mindset of an identification officer does not conduce to rummaging through houses and tearing things apart, techniques familiar to drug squad officers accustomed to seeking out and finding things hidden in obscure places.

A drug squad officer might be more predisposed than an identification officer, by reason of experience and mindset, to consider a more intrusive and necessarily more destructive search than the search conducted for the tapes and more prepared to make out a case for the legal authority to do so.

This is a convenient place to note that drug officers are given by law, much more extensive search powers than officers investigating criminal offences like murder. Under section 14 of the Narcotic Control Act an officer conducting a drug search has the power to break a building apart:

For the purpose of exercising authority pursuant to any of sections 10 to 13, a peace officer may, with such assistance as that officer deems necessary, break open any door, window, lock, fastener, floor, wall, ceiling, compartment, plumbing fixture, box, container or any other thing.

But the explicit power to break open walls and ceilings in a drug search, even if subject to some Charter restrictions, does not exist in a Criminal Code search like the search of Bernardo's house. Although drug squad officers might have brought to the Bernardo search a more aggressive

mindset and experience, they would not have had the special powers conferred upon them in drug cases which are denied to officers conducting Criminal Code searches.

All that can be said on this issue is that the selection of crime scene identification officers to conduct the search may have created an obstacle in the sense that their experience and mindset is less geared than other officers to physically intrusive searches and the seeking out of things hidden in obscure places.

For this reason there is merit in the recommendation in the Niagara Regional Police Service debriefing report that in major cases “once the original search team has concluded its search, an independent team should be brought in to conduct a secondary search with a fresh view and without restricting influences.”

11 Conclusion

The search produced very significant evidence and was generally a model of painstaking and detailed thoroughness. There was a clearly defined role for each searcher, a system in place to catalogue and systematically document what they were doing, sound systems to ensure exhibit continuity, careful attention to the legal limits of the search warrant, and steps were taken to ensure the scene was not contaminated during the course of the search. The search involved infinitely more resources and more care than most searches. It probably set a record for the longest residential search in Canada.

There is much to be said for the police point of view expressed by Sergeant Beaulieu in his paper prepared for the FBI academy at Quantico and reproduced in Appendix *:

Unfortunately for the personnel who conducted this search, it is not their dedication, tenacity and professionalism that is remembered by most, but rather the regrettable misfortune of the missed videotapes.

There is also much to be said for the viewpoint expressed by one of the investigators:

Those search guys did a good job and I know they checked the pot lights. The ceiling itself was solid. You could get your hand in so far. If you knew they were there maybe you would have checked around a little more. It could have been just six inches away but they missed it. They did everything they could do.

As noted above, the failure to find the tapes had a critical impact on the course of the prosecution because the plea bargain with Homolka would not have been made if the police had found the tapes.

In considering the failure to find the tapes one must bear in mind the information available to the police and their state of knowledge during the search; they had not yet had the opportunity to speak to Homolka about the tapes, they had no evidence that the tapes were still in existence, and they had some reason to believe that the tapes were no longer in the house.

The immediate cause of the failure to find the tapes, assuming they were in the spotlight area, is that Constable Kershaw did not reach far enough into the sealed attic cavity. It is now apparent with the benefit of hindsight, with the advantage of knowledge unavailable to him at the time, and with the benefit of Murray's statement (assuming it is true) that he was able to reach in and find the tapes, that Constable Kershaw erred in failing to search the area more thoroughly. It goes without saying that hidden things are much easier to find when you know where they are, than when you don't know where they are and when there is reason to believe they are not there, and when there is even some doubt whether they exist.

A less immediate but underlying impediment that restricted the scope of the search was the restricted mindset of the searchers. The searchers' mindset was restricted by the application of very strict Charter of Rights minimization principles which strongly discouraged physical damage, such as tearing down the ceilings around every spotlight in the house and tearing up every floor and wall in the house, in the absence of some specific evidence to justify it. The searchers'

mindset may also have been restricted by the limits of their expertise and experience as crime scene identification officers, contrasted with the expertise and experience of officers such as drug officers who specialize in seeking out and finding things hidden in obscure places.

Chapter 10–The Jane Doe Videoclip

The report of the Honourable Patrick Galligan on the Homolka plea arrangement referred to an issue that arose from the police questioning of Homolka, on May 16, 1993, about a photograph of a young woman who was assaulted by Bernardo. The young woman was befriended by Homolka, who helped Bernardo drug her so he could sexually assault her when unconscious on two occasions in 1991, probably June 7, 1991 and August 10, 1991.

The background of the issue is set out in the Galligan report:

During the search of 57 Bayview Drive, a large number of innocuous videotapes were discovered. On February 22, 1993, a videotape was found in Paul Bernardo's briefcase which contained a short segment that was very compromising of Karla Homolka. It showed her committing a sexual assault upon the nude body of a prostrate obviously unconscious female. Because of the angle from which the videotape was taken, the face of the victim could not be identified. The Crown and the police initially thought that the unconscious person in the segment was Kristen French. A photograph of a frame of the segment was made and a copy of it was shown to George Walker by Murray Segal during one of their meetings leading up to the resolution agreement.

The photograph was briefly shown to Karla Homolka by the police during her cautioned interview on May 16, 1993. [p. 127]

After quoting from the interview, the Galligan report notes that:

The subject of the identity of the victim was not pursued further in Karla Homolka's cautioned interviews nor was she shown any other pictures, or the videotape segment itself. In fact, she was not shown that picture again, any other picture, or the videotape from which it was made at any time until February 1995. [p. 129]

The issue for this review is raised in three paragraphs of the Galligan report:

In this case, Karla Homolka was shown a photograph during the cautioned statement which she was required to give under the terms of the resolution agreement. She was obviously concerned when she saw it. She was uncertain about who the other person was

and she could not identify her from the photograph. She asked if there was another picture. She was not told that a videotape existed which showed her conduct over the span of just over a minute and a half. Instead, she was told by Sergeant Gillies that he would like to wait until he got some better quality photographs. The matter was left there.

The police investigation is outside my mandate and there is probably a valid explanation for the approach taken by the police. They had the videotape segment itself. When Karla Homolka had trouble identifying the person from a photograph of one frame of the videotape, I wonder why she was not shown the whole segment or, at least, more than one photograph of one frame.

That interview took place before she was sentenced. If she had been shown the videotape segment or, at least, more pictures as she requested, who can say whether her memory might not have been triggered sooner. Then the disclosure she made on October 6, 1993, December 6, 1993 and February 2, 1994 might have taken place before she was sentenced. If the August 10, 1991 assault on Jane Doe had been disclosed before Karla Homolka was sentenced, it would almost certainly have been taken into account in her sentence, as the other Jane Doe matter had been. [pp. 138–39]

The issue for this review is why Homolka was not shown the whole segment or at least more than one photograph of one frame.

On May 16, 1993, before the technical enhancement of the one and a half minute videoclip which contained a fleeting glimpse of part of the unidentifiable unconscious person, the police did not have any other photographs to show Homolka. The reason they did not show her any other photographs is because they did not have any.

The first reason they did not show her the videoclip, from which the photograph was taken, is because there was no reason to do so. There was no reason to explore further the identity of the unidentifiable person in the blurred videoclip or to explore Homolka's memory about it because the police at that time had no reason to believe it was anyone other than Kristen French or perhaps Tammy Homolka.

The second reason they did not show her the videoclip was because the police at that time did not have the videotapes of Kristen French or Leslie Mahaffy, although Homolka thought they did, and

they did not want to show Homolka (who had earlier demonstrated a strong capacity for lying and manipulation) the weakness of their position, or to influence her testimony or to give her a chance to lie, by showing her at that time that they only had a one and a half minute video clip. In order to keep Homolka as honest as they could, the police had to maintain the upper hand and they had valid reasons for proceeding as they did.

The other issues arising from the Jane Doe investigation have been dealt with in the Galligan report and there is no reason to repeat them here.

Chapter 11–Sexual Assault Victim Concerns

1 Sexual Assault Victim Interviews

The victim in a sexual assault case can easily become the forgotten person. For the victim, the attack and its aftermath can be devastating, as demonstrated by the powerful impact statements given by the women involved. But the adversarial court process does not put the needs of the victim first. The relentless demands of the investigation, the prosecution, the defence, and the adversarial court process are not inherently victim–friendly. Without respect, sensitivity, and support for the victim these forces can overwhelm and re–victimize the original target of the assault.

It seemed important to ensure that the victims involved in these investigations had an opportunity to express any concerns they might have. They were, by a confidential letter (set out in Appendix 14) invited to share any concerns, thoughts, or recommendations they might have from their experience in the investigation, at a time and place convenient to them, accompanied by a family member or counsel if they wished. With the letter, they received an information sheet (set out in Appendix 15). A total of sixteen sexual assault victims and the parents of one victim were interviewed by Detective Jennifer Dinneen and Superintendent Ron Bain on the basis of an interview format (set out in Appendix 16) designed to elicit any concerns they might have.

Several issues were addressed with each victim including : (1) their first contact with police; (2) their contact with the detectives who investigated the matter;(3) their feelings toward police at the end of the court process; and (4) their contact with victim support services. These four areas were the main focus during the interviews. The victims were thoughtful and insightful. Their comments reflected a number of common themes.

1.1 First Contact Officers

The victims for the most part recall that their first police contact after the assault was with a uninformed officer. Many of the victims did not remember the first officer who dealt with them because the assaults occurred such a long time ago. Some were still in shock at the time.

Some remember an initial response of concern and sensitivity. Others remember only comments by the officers made in bad taste, comments that the victims remember to this day as if the words were spoken yesterday.

One victim mentioned that the uniform officers were awkward in dealing with her:

It was very awkward, they felt awkward as well.

And she said that the officers' awkwardness made her feel awkward. She was critical of the officers but sympathized with their discomfort in the situation. She felt training was important so that officers would be prepared to deal with sexual assault victims.

Others commented that the first officers were “great” and described them as compassionate and caring. Some victims were particularly supported when the officers reassured them that they had done nothing wrong:

I didn't have any problems. They were great. They knew what they were doing and they handled it well.

...

The uniform guys were great, terrific. They seemed to know how to deal with someone who had been raped. Their whole manner was great. They reassured me it wasn't my fault, that was important. They were terrific. The detectives were also really good.

...

The officer was really good... He said I had the right to be where I was. He reassured me that I hadn't done anything wrong with being out so late...I never met with a female officer. That is a concern of mine...

One victim stated that immediate reassurance helped in her eventual recovery.

It was important that the initial officer be available to see the victim through to the end of the initial stage of the investigation:

At the hospital there were two female officers. Apparently it was too long for them to stay and there was no authorized overtime so they had to leave. I asked what was the point of them coming, if you just have to pull them off...I understood they had to leave but there was no sense bringing them in to meet me and then not letting them stay with me until I was finished. Otherwise everything was great.

The comments with regard to the uniform officers seem to vary with each victim. Some victims felt that the uniform officers were not sensitive to their feelings and, in haste, made unnecessary and cruel comments. Others had positive memories of the uniform officers who dealt with them.

1.2 Detectives

The victims were generally complimentary about their dealings with the detectives who investigated their case, describing them as compassionate, trusting, sensitive, and professional.

They have been so obliging, so good, giving me as much information as they could.

...

They were very professional, very nice.

...

After a sex assault you have no control but you need some control. Only the police know {what is going on} so when they tell you what's going on you feel like you have some control. It made me feel good because I always got straight answers. It was nice to see that they were human

However, the first victims in Scarborough also felt frustrated that they had to deal with so many officers. They felt that no one was really in charge of their case as several officers made contact with them:

I felt I told my story 83 times. There were so many interviews for pictures, line-ups but the police were so accommodating and I felt safe...they were always so accommodating.

Although they advised that the new officers were always very good at introducing themselves and explaining their involvement in the case, some victims felt that they never developed a rapport with any one officer. This concerned several of the victims because they felt that they never knew who was in charge of their case:

Someone should take charge. I never got the impression that someone was in charge. No one was really in charge. I would have had one person in charge to organize the investigation, one person who has the experience to organize this, someone who is trained. The whole thing never seemed to take shape until the very end. Things seemed to change hands so much/ After about a year we had a feeling that it was really piecemeal. There were so many people involved, we kept wondering where these people were coming from. The whole investigation wasn't being tied together and analyzed.

...

A central contact officer should always be the one officer to contact the victim. One constant contact is very important because you build a relationship with that officer.

With the exception of one, all of the victims stated they had positive experiences with detectives.

It is crucial to a successful investigation and prosecution that the victim disclose full details of the attack to the police at the earliest opportunity. Any lack of training or any interview technique that discourages full disclosure imperils the success of the investigation and the prosecution, and ultimately imperils the interest of the victim in seeing that justice is done.

Several of the victims were asked why they failed to disclose the full nature of the assault at the time of the initial interview. A common theme emerged from their answers. The victims stated

that they did not disclose because of the people present during the interview. It is not surprising that the victims who did not disclose at the time of their initial interview were interviewed in front of a number of people. One victim was interviewed in the presence of her parents, three sisters, and a boyfriend. As a result, she did not disclose. She went on to say that she would have preferred to speak in private but did not feel comfortable enough to say this to the officer. One victim stated that she could not verbalize what happened to her and had to eventually write it out for the officers. She advised she felt too humiliated and embarrassed to discuss it even with female officers.

Several of the victims were interviewed in the presence of family members and have since acknowledged that this was difficult due to the sensitive nature of the assault. One victim advised that the room she was interviewed in was cold and stark and not a comfortable place to make a disclosure.

Several of the victims, although they would have preferred to deal with a female officer, stressed the fact that regardless of the gender the “key” was the training the individual officer received. One victim specifically mentioned that although she was transported to hospital by two female officers they provided no comfort to her because they never spoke to her about the assault.

So far as training is concerned it may be significant that the victims of the later assaults, by which time there was a greater degree of sexual assault training and victim sensitivity and support, seemed generally to have a better experience with the initial police response.

1.3 Feelings Toward Police At End of Court Process

The victims were also asked about their feelings toward the police at the end of the court process. Virtually all the victims had words of praise for the police.

One victim felt frustrated and angry at the end of the process, not on account of the officers personally, but because she was left with unanswered questions. As noted in the Henley Island chapter, the victim and her family in that case had a number of concerns, and the Niagara force agreed through the Chief that the family should at times have been better briefed by the police about the progress of the case. Jane Doe and her family were satisfied with most of the police contact but concerned about a meeting at which a police officer asked her opinion about proceeding with certain charges although the Crown had already indicated to the family that the charges would not be proceeded with. The reason for this misunderstanding was that the police officer had not been informed of the charging decision.

Most victims felt the police went above and beyond the call of duty and described them variously as wonderful, caring, protective and compassionate. Several of the victims even mentioned that they were sad at the end of the court case because they no longer had reason to talk to the police. They said a bond had been formed and some advised that they continue to contact some of the officers involved in the investigation to talk to them and see how they are doing.

1.4 Victim Support Services

The victims were generally complimentary about the victim support services workers. Victims described them as compassionate, caring, and sensitive, and there to serve in their best interest. All felt it was good to have one person they could contact to work through their feelings and concerns. Some felt, however, that it was too much work for one person. Despite this they felt that victim support services played a vital role in their ability to deal with this case.

There is an inherent conflict between the needs of the court process and the needs of the victim. Victim support workers have to wear two hats because the needs of the victim sometimes conflict with the needs of the adversarial court process.

Many of the victims saw no conflict or problem in the role of the victim support services:

They were very supportive, definitely out to serve in my best interest.

Some victims did see a conflict in interest in the victim support service workers:

There were times that I was ignored and I felt I couldn't turn to her because I felt she had loyalty to the police or the court system. I could be wrong, but I felt I couldn't turn to her at that time.

...

I felt a lot of times I was being used, they were not really victim support services... they were asking if I was OK but interested in {my testimony}, not in how I was doing.

Victim support workers need to take care in advising the victims about the probable outcome of legal processes like the Criminal Injuries Compensation Board:

My trust began to waver over the criminal injuries. She had said I would probably get a certain amount and I didn't, so I had lost my trust in her.

One common theme surfaced with the victims who did not reside in the immediate area and felt that they should have been connected to victim support services in their own area as the distance became a real barrier. This barrier appeared to be only physical in nature in that the victims did generally say that the victim support worker would always be only physical in nature in that the victims did generally say that the victim support worker would always be there for them, and they were given a 1–800 number so they did not have to worry about long distance bills.

The overall response to the victim support services was positive and it is obvious that these highly dedicated workers played a vital role in the ability of the victims to deal with their experiences.

2 Specific Victim Concerns

The victims were asked if they had any concerns or would like to see any recommendations made as a result of this review. Several of the victims felt that a person convicted of a sexual assault

should be ordered to take an AIDS test. Many thought there should be more continuity of prosecutors to lessen the likelihood of dealing with more than one Crown attorney.

All victims pointed out how important it was for them to know what was going on, and how important it was for the police to keep them informed.

They told me that he was going to be arrested, then they phoned to say he had been arrested. They kept me informed at that time. Sometimes it even got annoying because they were calling so often, but I would rather they did that than not call at all.

...

The police did call us when things were going to happen, it was a courtesy that they called. This was important, it made us feel at ease. This was very important and appreciated. Overall we were more informed than not.

It was particularly important for the victims to know what was happening before they heard about it from the media. The victims appreciated it when they were informed, and very concerned when they were not informed.

They were really good at keeping us informed. They would call us before it hit the media. They would call and let me know. They were great at keeping in contact.

...

I was always informed. They phoned me every time something happened. You had the media throwing stuff at the public all the time but the police contacted me to let me know what was really happening.

...

When Bernardo was arrested they didn't have my phone number so I found out on the news. That was upsetting. But they got in touch with me a couple of days later.

...

When I found out he was arrested I found out through the TV, and that was unacceptable in my mind. I am still bitter about that. I should have been called. I never discussed this with the police. I was away at {...} but could have been reached.

I think someone should always inform you of what is going on in the case so you're not left in the dark.

The degree of information given to the victim often depended on the particular officer or the victim support person, and also upon the stage of the investigation. One of the most consistent themes of victim concern was the need to be regularly informed, as the investigation and the proceedings progressed, about what was happening.

Another area of concern raised by several of the victims was the need for police training in dealing with victims of sexual assault. They felt that training should emphasize issues relating to sensitivity and compassion in dealing with victims. Most of the victims would have preferred dealing with a female officer from the onset of the investigation because of the sensitive nature of the disclosure and the brutality of the assault. One victim felt that once officers are trained in the investigation of sexual assaults, there should be a system in place to monitor their work. Most, if not all, felt that it would have been easier to deal with only one person from the beginning. When GRT and SAS became involved and maintained contact with the victims, they felt a greater sense of security when they were always contacted by one person and knew that if they had any questions, they could call. This was a major issue of concern among most of the victims of the Scarborough Rapes.

The media was mentioned by several of the victims. Each had different areas of concern. One was devastated because she was identified by a newspaper sketch even though there was a court ban on disclosure of the victim's identity. Another was very concerned that parts of her victim impact statement were included in an article in the newspaper, with information that clearly identified her to her friends and neighbours. One of the St. Catharines stalking victims was concerned because a police officer persuaded her to let him give a reporter her telephone number, then urged her to speak to the reporter, although she did not want to.

Many of the victims felt that they were treated “second” to the murder case. They felt that because the sexual assault cases were linked with the murder cases they, the victims, didn't get the attention of the court that they deserved.

Many of the victims were frustrated with the delays in the court process:

Two years of waiting was ridiculous.

...

Father was frustrated because of the long wait, especially during two years before court. For [...] years prior to that they were concerned with my stability. They didn't want me to get my hopes up and they tried to protect me from false hopes.

Several of the victims felt they did not have proper closure because they did not get to testify and they would have preferred to testify in court rather than preparing a victim impact statement. They felt that there was insufficient time to prepare their victim impact statement. They stated it was extremely difficult to sum up their feelings in a few short hours, feelings that had been building up over many years that could not be properly addressed in this brief period of time.

The short deadline for the preparation of the victim impact statements was difficult for a number of the victims:

I felt dropped as soon as we heard that the sexual assault trial wasn't going to happen... The next I heard was when they wanted our victim impact statements right away, like within a day. That was quite frustrating because it didn't give me enough time.

...

I waited for so long and then everything was in a rush. The victim impact statement, I only had a few hours to do that. How could I sum up [...] years in just a few hours?

One of the victims was particularly concerned that she did not get a chance to go to court and face her attacker from the witness stand and tell the court directly about the impact of the attack on her life:

The murders took over and the sexual assaults took a back seat... I would rather have had my day in court than be part of that mess. I was cheated. I would like to get that statement back and see him in court, and say what I have to say.

3 Conclusion

The strongest impression from the interviews is the thought and care with which the victims expressed their observations and concerns about their experience in the investigations. As reflected above their experience varied, depending on the individual officers and victim support workers they dealt with. Many of the themes were common: the need for sensitivity on the part of the initial response officers and throughout the investigation; the tremendous difference that police sensitivity and training can make for the victim; the positive response to effective victim support services; the need to be informed regularly of the progress of the investigation and to learn of major events before hearing about them from the media; the importance of continuity of investigators; the importance of training and interview techniques to ensure initial full disclosure of the details of the attacks; concerns about the media, and frustrations with the court process.

The most important conclusion from all of this is the importance of training for all officers involved in the response to and investigation of sexual assaults, and the tremendous advantage for the victim of a consistent system of support, continuity, and information about the progress of the investigation and the prosecution.

Chapter 12–CISO: The Criminal Intelligence Service Of Ontario

The terms of reference require a review of the role of the provincial government in the provision of funding for the Green Ribbon Task Force.

1 CISO As A Funding Mechanism

The provincial government provided partial funding for the Green Ribbon Task Force through the Criminal Intelligence Service of Ontario (“CISO”), a co-operative of seventy-five Ontario law enforcement agencies including all of the larger police forces in the province. As part of its mandate, CISO in the past ten years has administered approximately one hundred joint force operations in conjunction with the Ontario Solicitor General's Department. Although the original mandate of CISO focused on organized crime it has been used increasingly to administer joint force investigations into other major serious criminal activity beyond the reach of regular police operations, such as serial sexual assaults or killings which transcend local police jurisdictions and invoke a wider provincial interest.

The CISO cost sharing mechanisms enable police forces to investigate criminal activity which transcends local boundaries in cases where ordinary local budget limitations may prevent an effective investigation. CISO funding can include some extraordinary costs related to the prosecution of charges generated by the investigation. The statutory basis for CISO funding is s. 9 of the Ministry of Treasury and Economics Act R.S.O. 1990, c. M.37 which provides as follows:

- 9 (1) *The certificate or order of the Attorney General or Deputy Attorney General that a sum of money is required to be paid out of the Consolidated Revenue Fund on account of the investigation, detection or punishment of any offence against the laws of Ontario or of Canada, or on account of special services or disbursements in connection with inquests, or any purpose connected with the administration of justice in either civil or criminal matters, is sufficient authority for the issuing of a cheque by the Treasurer for the amount named in the certificate or order, and the*

officer or other person to whom the cheque is issued shall account to the Attorney General for the proper disbursement of the amount received by the officer or other person.

- 9 (2) *The certificate of the Attorney General or Deputy Attorney General that any money received by any officer or other person under this section has been duly accounted for is final and conclusive and the account shall not be subject to any further examination.*

It is important to note that this statutory funding mechanism does not restrict the purpose for which the funds are used or the machinery through which they are expended and accounted for. The use of the CISO machinery is a self-imposed limitation that ensures financial accountability through the structural integrity of an experienced and well-organized body. Nothing in the statute limits the type of operation that can be funded. There is no statutory restriction that limits s. 9 funding to organized crime projects, although the government authorities and CISO have adopted a financially conservative position by restricting most projects to that kind of operation. Their policy has been to expand the joint funding mandate cautiously. Projects such as the GRT serial predator investigation are recommended by CISO for s. 9 funding only when a clear case is made that there is some major criminal activity, beyond the reach of regular police operations and resources, that transcends local police boundaries and triggers the wider provincial interest in protecting the public at large.

Because this funding mechanism operates outside the usual government budget machinery it is surrounded by tight accountability mechanisms including sign-off requirements from a number of Deputy Ministers and Assistant Deputy Ministers, the chair of the CISO governing body, and the chiefs of the participating police forces. Specific financial accountability systems including budget approval, reporting procedures, audits, management scrutiny, and financial reconciliations. Initial funding is not automatic, nor is continued funding. Initial funding and periodic refunding must be justified by the requesting forces.

CISO funding does not ordinarily pay for the salaries and benefits of the officers from the various forces involved in the operation. Police salaries and benefits including overtime are usually, as

they were in the Green Ribbon Task Force, absorbed by agreement by the individual police forces that contribute to the joint force operation. This represents a very significant contribution from individual communities, as demonstrated by Appendix 17 showing the number of officers contributed to the Green Ribbon Task Force not only by Niagara and Halton, but also by Hamilton–Wentworth, the R.C.M.P., the O.P.P., Haldimand–Norfolk, Durham, London, Brantford, Guelph, and Waterloo. In limited circumstances, CISO will fund some salary differentials: for instance an officer from a force with a lower salary structure might be funded at an alternate pay rate of the next rank above in order to avoid gross compensation inequities between officers doing the same work. Joint force operations that continue over a long period of time can develop morale problems when investigators from different forces with different salary and overtime benefits are doing the same work side by side. The alternate pay rate arrangement is a small step towards the alleviation of a problem that can become acute in any protracted joint force operation drawn from different police forces with different pay and overtime scales and benefit arrangements.

It is worth noting that a joint force operation into organized crime tailored to investigation primarily through wiretap authorizations can have a relatively finite duration, depending on what is learned from the intercepted communications over the planned period of time. But serial predator investigations like Bernardo can go on for much longer periods of time with no finite end originally in sight.

Typical CISO funding includes accommodation expenses for officers stationed away from home, vehicle rental and fuel, communications equipment, radios, pagers, accommodation rentals for command posts, computer rentals, civilian monitors and typists, and particularly expensive items such as special surveillance, tracking, aircraft rental, communications intercepts, and the like.

2 CISO Funding Of The Green Ribbon Task Force

The CISO funding process operated, in respect of the Green Ribbon Task Force, as it should have. The standard CISO funding proposals and documentation generated five payment authorizations under s. 9 (2) of the Ministry of Treasury and Economics Act, the first on May 14, 1992 and the last on April 20, 1995. The numbers are summarized in the next section of this chapter. Some of the later expenditures included prosecution costs, because of the immensely labour intensive demands on the Crowns and police in sifting through the massive documentation of five years of investigative work and in preparing for a case that was potentially very complex.

The inter-jurisdictional rationale for CISO funding of the Green Ribbon Task Force, and the difficulties of investigating into a number of possibly linked crimes across a number of police jurisdictions, were addressed almost presciently in the first CISO operational plan of May 13, 1992 for the Green Ribbon Task Force:

The police and the public in the jurisdictions involved are faced with one or more brutal and sadistic killers. It is possible that the same person(s) are responsible for more than one of these abductions/murders...

The mobility of the abductor(s)/murderer(s) is an investigational barrier, the penchant to move from one jurisdiction to another to abduct the victim and then to dispose of the body, creates problem within independent, ongoing investigations.

Most important is that the abductor(s) murderers will strike again and it is incumbent upon the authorities involved to conduct a comprehensive, efficient investigation in order to prevent further occurrences.

A further aspect of this investigation will be to research any other occurrences the person(s) responsible for the outstanding cases may be connected with. This may necessitate the involvement of other agencies outside of the jurisdiction of the participants.

As noted below in the recommendation section, this inter-jurisdictional rationale is the basis for the proposals, made in this review, for a co-ordinated public safety defence against mobile serial predators.

The May 13 proposal, and the later periodic proposals for continuing renewal of the Green Ribbon Task Force until the successful conclusion of the prosecution, contained the standard CISO outline required for approval of a joint forces operation:

- overview of the investigation
- operational plan
- physical surveillance of current suspects [later eliminated]
- reinvestigation of Leslie Mahaffy and Terri Anderson cases
- intensification of Kristen French abduction and homicide
- identification of related occurrences
- managerial control through a joint operational directional team of the three participating police services, Niagara Region, Halton, and Hamilton–Wentworth
- financial and administrative control
- reporting and updating requirements to CISO
- identification of investigative personnel and resources to be contributed by the original participating forces
- funding details
- operational facilities and support services plan
- policing cost analysis and periodic projections
- consents from the Chiefs of the three original participating forces
- approvals from the Joint Forces Operation committee, the Deputy Solicitor General, the Assistant Deputy Solicitor General for Policing Services, the Policing Services Division Intelligence Services Advisor, and the Chief of the CISO governing body

3 The Financial Cost of the Bernardo Investigations

It is impossible to calculate the total financial cost of the Bernardo investigations. Some help is available in the form of CISO accounting of the provincial funding allotments and an estimate of the policing costs absorbed by the individual police forces involved in the Green Ribbon investigation and prosecution phase, set out below. But it must be emphasized that the policing costs are rough estimates only. They do not include all indirect expenditures or externalized costs. In particular, they do not include the massive five-year Metro police expenditure on the Scarborough rape investigations, which would be impossible even to estimate with any degree of accuracy.

Provincial Funding Allotments:

Green Ribbon #1	\$421,800.00
Green Ribbon #2	\$712,280.00
Green Ribbon #3	\$359,280.00
Bernardo Prosecution Project Phase #1	\$812,142.06
Bernardo Prosecution Project Phase #2	\$622,751.00
Sub total	\$2,928,253.06

Policing Cost Estimates (excluding Metro):

These are approximated figures calculated by utilizing the number of assigned officers multiplied by an average wage. They are estimates only and do not include costs incurred by the many support services.

Green Ribbon #1	\$1,104,000.00
Green Ribbon #2	\$1,386,931.00

Green Ribbon #3	\$690,500.00
Bernardo Prosecution Project Phase #1	\$1,174,673.00
Bernardo Prosecution Project Phase #2	\$881,004.75
Sub total (estimated)	\$5,237,108.75
Total Funding Allocations combined with Policing Costs (estimated):	\$8,165,361.81

The estimated figure of approximately eight and a half million dollars, as noted above, excludes the massive Metro police costs for the five–year Scarborough rape investigations. It must be emphasized that the policing costs are estimates only and that they exclude Metro police costs.

4 CISO As An Organizational Model

CISO, as noted, is a unique law enforcement agency developed in the Ontario police community with the support of the Solicitor General's Department and structured as a co–operative police collective. Its membership is comprised of about seventy–seven law enforcement bodies, including forty regular police force member organizations, twenty–seven affiliate member organizations, and ten associate member organizations.

The CISO governing body, comprises the chiefs of the regular member forces, meets twice annually at the same time as the meeting of the Ontario Association of Chiefs of Police. It chooses annually a governing body Chair, a small executive committee of seven police chiefs or senior command officers, and is supported by a number of member committees. The “Provincial Bureau” is the focal point and is run by a very small administrative staff headed by a Director chosen on a two year rotating secondment from a regular police member force. The Director manages the day to day activities and reports to the CISO governing body through the executive committee. A joint force funding co–ordinator, a joint force operation resource co–ordinator, and a handful of support staff provide the direction and accountability for joint force operations. One

of CISO's great merits is that it is a lean, functional organization with a bare minimum of bureaucratic baggage. Another is that the CISO committee members and its small administrative staff enjoy a wealth of practical operational experience and serve also as a valuable resource to those directly engaged in field operations.

CISO is an effective body for the direction of joint force operations because it is a collective that represents the police community as a whole and it is thus able to transcend any rivalry or turf problems that might arise between individual police forces. CISO provides a neutral vehicle for the kind of inter–force co–operation that is difficult to achieve yet absolutely essential for the successful investigation of inter–jurisdictional crime, particularly the investigation of serial rapist/killers.

Its role in the formation and support of the Green Ribbon Task Force, and in other operations such as the Jessup reinvestigation Task Force, Project Hitchhiker which resulted in the conviction of Peter Stark for the murder of Julie Stanton, demonstrates the potential for a co–operative model of joint force investigations and also the potential for significant improvements in the structure, management, focus, and support of serial predator investigations.

Another of CISO's unique strengths is its unusual ability to combine independence from bureaucratic structures with strict accountability for its stewardship and expenditure of public funds.

Given the proven experience throughout the world that inter–force rivalry is a major obstacle to the successful investigation of mobile predatory criminals, any Ontario system should draw on the unique strengths demonstrated by CISO model. Those unique strengths include its proven operational track record, its ability to secure co–operation between police forces by reason of its neutrality and credibility in the police community, its strict accountability and lack of bureaucratic baggage, and its demonstrated ability to achieve buy–in from the chiefs, senior management, and officers of the co–operating police forces.

CISO provides a proven, ready-made model that can be readily adapted for the co-ordination and management of serial predator investigations without the creation of a whole new bureaucracy.

The CISO model requires some special adaptation to the unique problems of investigating mobile serial predators, particularly by way of case management support structures and a focus on inter-disciplinary teamwork and training. This required emphasis on special case management systems, training, and the forensic, medical and scientific teamwork required for serial sexual predator investigations, will be discussed in the recommendations section.

Chapter 13—A Strategic Defence Against Serial Predators

1 The Need for a Strategic Defence Against Serial Predators

1.1 The Unique Danger

Mobile serial predators like Bernardo are exceptionally dangerous. They are hard to recognize and detect and they create a unique challenge to law enforcement. They change their presenting criminal patterns like chameleons and they escalate, sometimes from stalking to rape, sometimes from children and elderly victims to young adults, sometimes from rape to murder. Cunning, charming, manipulative, plausible and resourceful, they slip easily through the gaps in our present law enforcement systems. Experience in the Bernardo case and around the world shows how vulnerable we are to these mobile serial predators. As an American study said:

The sinister figure of the serial murderer exploits gaps in the traditional law enforcement investigative process as he moves through various jurisdictions, avoiding detection and arrest. In recent years, law enforcement has increasingly recognized the need to pool skills and resources to plug these gaps and thereby close off the avenues to escape for this elusive and frightening criminal.¹

These cases show how hard it is to protect the public against mobile serial predators like Bernardo and Olsen in Canada, Bundy and the Green River killer in the United States, Sutcliffe (the Yorkshire ripper) and Black (the cross-border child killer) in the U.K., and Chikatilio (The Rostov Ripper) in the former USSR. Because they are mobile and they change their patterns, because they strike randomly across police jurisdictions, these predators take advantage of gaps in our existing law enforcement systems.

1. U.S. Dept. Justice NJI, Multi Agency Investigative Team Manual, MAIT Guidelines, 1988 v.

There are systems available to narrow these gaps. Unless these systems are adopted, the public will continue to be at unnecessary risk from these remarkably dangerous predators.¹

Two important qualifications are necessary.

The first qualification is that systems and computers do not solve crimes. Crimes are solved by hard slogging investigative work, sometimes with good breaks and good luck. But systems and computers and organizations can ensure that the investigators have the right support and the right information, and that they do not waste their time duplicating other work and bumping up against other investigators. Task forces and superstructures are necessary to create an environment where hard investigative slugging pays off. Systems that link crimes can ensure that if one police force gets a break, it also helps the other police forces or teams investigating the same serial predator. But the bones and sinews of the investigation are the individual police officers. If the police investigator lacks training in the newest techniques because her force cannot afford it, no system can supply that lack. If the first local officer at the body site contaminates the scene or the identification officer misses something, the most sophisticated task force in the world cannot overcome that fatal initial flaw. The systems recommended in this report are no substitute for good traditional investigative work. They are designed to support, supplement and reinforce the generally high standards of policing that we enjoy in Ontario.

The second qualification is that the police manpower and systems necessary for organized mobile serial predators cannot be used for every sexual assault or murder. Fortunately, mobile organized serial predators are very rare. Unfortunately, sexual assaults and murders are common. Every rape case and every homicide case cannot be treated with the same level of priority. The police are faced with a constant stream of such cases. They have to prioritize the degree of commitment and resources dedicated to each case. The extraordinary resources required for a serial predator investigation cannot be made available for the hundreds of serious sexual assaults and murders

1. For an analysis of recent scholarship on issues around serial killing see Thomas O'Reilly-Flrming, Serial and Mass Murder: Theory, Research and Policy, Toronto: Canadian Scholars' Press, 1996.

faced by the police. Tough choices have to be made. There is a limit to the time and resources that any single force or any joint force operation can devote to any one case, especially if there is no visible progress.

Police forces are faced every day with a surprising number of serial stalkers and assaulters and peeping Toms and other perverts including serial sexual assaulters. There are well over two thousand sexual assaults in Metro every year. During the Bernardo investigation, the Metro Sexual Assault Squad was faced not only with other serial predators including the High Park Rapist and the Transit Rapist, but also with a wide range of perverts including a man in the Beach area who was peeping in windows and masturbating on front doors.

Not every pervert or stalker or peeping Tom, and not even any multiple rapist, turns out to be a singularly dangerous monster like Bernardo. In most cases, the police focus successfully on the usual local suspects, often convicted sexual assaulters who have done it before. In most sex offences the offender lives nearby. As one experienced investigator put it, the apple doesn't fall far from the tree. The difficult task is to distinguish the usual cases from cases like Bernardo.

The following recommendations are not designed for every case of sexual assault or rape or homicide. The recommendations are designed for a very special class of case, the case of the organized, mobile, sadistic, serial sexual predator who poses a risk not only to the community in which he first strikes, but to every other community to which he might move in our highly mobile society.

1.2 The Development of a New Strategy

In the aftermath of Bernardo, before the appointment of this review, the Ontario Solicitor General's Department began an internal review to develop strategies for serial predator investigations. The internal review included a survey of Canadian and foreign literature on new developments in serial predator investigations, field visits to the FBI headquarters at Quantico,

Virginia, the Home Office in the U.K., and the Kansas City area where a number of police agencies join forces in major crime investigations by activating rapid response teams drawn from a number of co-operating police forces.

The Solicitor General's internal review team also convened a seminar of senior crime investigators at the Ontario Fire College in Gravenhurst to develop and test proposals for a co-operative multi-disciplinary response for the investigation of serial crimes that cross police jurisdictions.

All of this work has been made available to this review and much of it has been incorporated and adopted in these recommendations.

1.3 Five Elements for a Strategy Against Serial Predators

A strategy for a reasonable level of public protection against serial predators requires five elements.

First, a change in attitude to recognize that the capture of a serial predator requires a wider law enforcement response than the response available from any one police force or agency. The mobile serial predator is dangerous not only to the community he is terrorizing for the time being, but also to the next community he shifts to when the police cordon tightens around him. His capture involves a wider public interest than the local concerns of any individual police force or local community. His capture requires co-operation between forces instead of isolation and rivalry.

Second, a system to recognize links between crimes early enough to pool the information about the linked offences and converge the separate investigations onto the same target.

Third, a centrally supported organizational structure, based on co-operation among individual police forces, that combines unified leadership across police jurisdictions with organized case management procedures and inter-disciplinary support from forensic scientists and other agencies.

Fourth, common case management computer and information systems to ensure that information crucial to a serial predator investigation can be consolidated and recognized and shared.

Fifth, training. Although criminal investigation training is the foundation for good criminal investigation, training is the first thing to cut when budgets shrink. Although there are excellent training packages available in areas such as sexual assault, homicide investigation, major case management, and crime scene investigation, they are underused because individual police forces cannot afford to take officers out of the front line for training purposes. The extraordinary demands of a major serial predator investigation require that the senior officer in command and his senior investigators and forensic support team receive special training in major case management, and also that the general level of training for sexual assault, homicide investigators, and crime scene identification officers be maintained at a high level.

The first essential element, attitude change, will be discussed immediately below. The other elements will be addressed in detail under separate headings further on in this chapter.

1.4 Attitude Change

The Canadian Police College introduces its major case management manual with the dedication:

This edition is dedicated to those who overcome the instinctive pride of ownership for the greater good of the job we do and the people we serve.

and the aphorism:

There is no limit to what can be accomplished if it doesn't matter who gets the credit.

The instinctive pride of ownership felt by each investigator and each force in their own investigation provides incentive and energy. But the sense of individual ownership can also lead to great difficulties when it is necessary for different forces to work together, as seen by the badly strained relations between Metro and GRT in February of 1993 including the bungled interview following Bernardo's arrest.

It is essential to recognize the wider public interest in the investigation of serial predators, an interest much wider than the interest of any particular community where the predator happened to strike first, an interest much wider than the ownership of any single police force in the successful outcome of their own investigation. But every study of serial rape and murder investigations demonstrates that egos, turf, and pride of local ownership are powerful barriers to the apprehension of these dangerous predators.¹ Chief Inspector Roger Orr of the Lothian and Borders Police, in a study of the largest cross-border serial murder investigation in British history into the child abductions and murder committed by Robert Black from 1982 to 1994, noted the difficulties experienced by police forces in working together to find a single common killer:

...in real life there are always frustrations, petty jealousies and egos forcing their way to the surface to hinder the progress of the enquiry. Eliminating them is impossible and coping with them is the challenge to senior management in such circumstances.

It is not only necessary for police forces to recognize the need to co-operate in these investigations. It is necessary to put systems in place to ensure that they co-operate.

1. Thomas O'Reilly-Fleming in "Serial Murder Investigation: Prospects for Police Networking" (1992), *Journal of Contemporary Criminal Justice* v.8 no.3 p.227, remarks at p.233:

"The central priority which will determine the success or failure of efforts in police investigation of serial murders will reside in their ability to effectively interact and share information with other law enforcement agencies. Egger [in *Serial Murder*, 1990] has astutely summarized the core of this problem when he states that police agencies must, "put professional competition, jealousies, turf-protecting, case-based investigative assignments, and jurisdictional myopia behind them."

The police forces involved in the Green Ribbon Task Force achieved a high degree of co-operation in the joint force operation under the CISO umbrella. The Green Ribbon Task Force and the Metropolitan Toronto Police, after their initial difficulties, eventually achieved a significant measure of co-operation. But the initial difficulties between Metro and GRT were very significant, as noted above. The botched interview of Bernardo is a classic example of how badly things can go when police forces have different agendas and do not co-operate. Had there been a unified investigation with clearly defined leadership, the interview team would have worked with a consistent strategy. The investigations didn't really come together—they simply banged into each other. Although there was a patina of co-operation it simply masked an unhappy and unproductive co-existence. These difficulties demonstrate that there is much to do to change attitudes to ensure that another Bernardo, wherever he might strike in Ontario, is met with a timely and co-operative response from all the necessary police and law enforcement agencies.

The underlying problem was stated clearly by one investigator:

Communication is a problem. I think too many people are afraid of their kingdoms being dismantled. I think the reason why the information is not shared is because they want to make the arrest.

The solution is as clear as the problem. As another investigator from the same force said:

I think that every officer should sign a glory waiver. There should be one leader. Everyone can hate the leader and not hate each other.

An attitude shift from competition to co-operation is essential for the successful investigation of serial predators.

Another attitudinal challenge is the need to recognize, and remedy, the debilitating restrictions of tunnel vision in the investigation of mobile predatory serial killers. For instance the Henley Island rape investigation started and continued as a good investigation for an isolated local rape. The investigators began with sound investigative strategies, techniques, and approaches by looking for

a local suspect, and it turned out in the end that they were right. But there must be some mechanism, with a sadistic predatory stranger attack, to break out of the localized mindset and start to ask where the predator came from and where he might be going. When local strategies don't pan out, the investigative horizon should be broadened to a wider field of search. One way to break out of localized tunnel vision is to ensure through training that officers are able to recognize and identify the hallmarks of the mobile serial predator. Another method is through systems that promote early recognition of related individual crimes, such as ViCLAS, the national computerized system for the automated identification and linkage of predatory sexual crimes including serial rapes and murders, described below. Mobile serial predators operate at a great advantage when local police forces restrict themselves to a local mindset.

2 Lessons From Existing Systems

2.1 The Yorkshire Ripper and the Home Office Model

The remarkable thing about serial predator investigations is that the same problems repeat themselves in every investigation with tragic frequency. We seem incapable of learning from previous experience. For instance, it is quite typical for a serial killer to be interviewed several times by police before he is recognized as the killer. Peter Sutcliffe, the Yorkshire Ripper, was interviewed by the police at least 9 times during the course of his six year series of 7 attacks and 13 murders. Yet for years during the 1970's and 1980's he continued to kill and he escaped detection because there was, as in the Bernardo case, no effective system in place to collate all the information from the different investigations and bring together all the separate pieces of evidence in the possession of the police, that pointed him out as the assailant.

Bernardo and other serial predator cases show striking similarities to the Yorkshire Ripper case including the lack of an early warning system to identify links between crimes (no link seen in Bernardo between the Scarborough Rapes and the St. Catharines Henley Island rape), the lack of any system to ensure that all tips, leads, and other information about a suspect was actually put

together in one place and followed up, (the McNiff report, the Royal Bank Tip, the Madden report, the stalking incidents, the Haney tip, the I.L. tip) and the lack of common computerized case management computer software to ensure that separate investigations into the same suspect can share information effectively (c.f. the ineffective communication between Metro and GRT in May of 1992 about the status of the Toronto investigation), and the lack of a unified command structure to co-ordinate parallel investigations into the same suspect.

In the Bernardo case and many other serial predator cases around the world, the lack of these necessary systems enabled the predator to slip through the net between police jurisdictions and even within police jurisdictions.

A review of the Yorkshire Ripper case produced recommendations for a new system for the investigation of major serial crimes which was adopted by the U.K. Home Office. Elements of the system included a computerized system for the early identification of links between crimes, standardised procedures and training to set up “major incident rooms” or command posts, a computerized case management system to organize and collate all the tips and leads and follow ups, an organizational structure with one senior and experienced officer in overall command with the authority to direct all aspects of the investigation in all the police force areas affected, supported by a management team of officers with the required range of skills, a specialized multi-disciplinary support team including a senior forensic scientist to liaise with the forensic service, a media liaison officer appointed on the basis of proven credibility with both the police and the media, and a system of specialized training for officers who may be involved in large scale serial predator investigations.

These system elements have gained wide credibility and acceptance in police circles. The regrettable thing is that they have not generally been implemented, notwithstanding their modest cost, particularly when compared with the massive cost of ongoing unsuccessful investigations.

2.2 The Permanent Flying Squad Model

The permanent flying squad model, although dramatic and superficially attractive, may not be a practical solution for major serial predator investigations in Ontario. It works well for the Criminal Investigation Branch of the Ontario Provincial Police in homicide and major crime investigations in O.P.P. patrol divisions and outside large metropolitan areas at the request of local police forces. The CIB resources are fully occupied and there is more than enough work to justify its permanent establishment for homicides and other major single occurrences. Major serial predator investigations, while fortunately rare, do require an enormous number of police officers dedicated exclusively to that case, sometimes for long periods of time. The financial and manpower cost of a large centralized flying squad on permanent standing waiting for a serial predator to strike may not be financially feasible, particularly at a time of fiscal restraint when all police forces have trouble getting enough officers to deal with major crimes in their own communities. And for local aspects of the investigation it is essential to rely on local investigators familiar with the community. As one experienced officer put it:

You need that local exposure or you will not be successful.

The problems in the Bernardo case were not primarily problems with the investigators, but with the systems for the support and management of their work. The changes needed are not changes of investigators, but more intensive training for investigators in the special problems of serial predator investigations, and better systems for the support and management of investigators who have acquired these special skills.

Many of the advantages of a permanent flying squad can be secured through a rapid response model with a unified command structure and a standby core of specially trained command officers and senior investigators drawn from the local forces supplemented as necessary by outside help.

The idea of a permanent flying squad has some support among senior and experienced police officers and it would be a workable solution given the necessary financial commitment and the

necessary career and succession planning for the officers who would form the permanent group from time to time.

It does not matter whether the core response team is a permanent flying squad or a rapid response standby unit composed of officers who remain in their home forces until called out. The essential features are that there be specially trained and designated senior command officers and specially trained and designated senior investigators, wherever they are based from time to time, available at a moment's notice. The most essential feature is that this system be put in place without any delay before another predator like Bernardo strikes again.

2.3 The Canadian Police College/MAIT Model

The Canadian Police College has developed an organizational and procedural model for major joint force investigations, a model taught in a special two-week training course and outlined in its major case management manual which sets out the elements of the model developed from the literature and the experience of investigators. Although it owes a good deal to the U.S. Department of Justice multi-agency investigative team model (MAIT), a highly commended American approach to joint force serial killer investigations based on the lessons learned in 16 American serial murder investigations and last updated in 1988, the Canadian Police College model reflects the experience and the problems faced by Canadian investigators. It deals with problems that recur over and over in serial predator investigations and builds on lessons learned through experience, sometimes painful experience.

The model is built around an ad hoc force of investigators, forensic advisers, and support staff seconded from their normal routines in local and other police forces, dedicated exclusively to the successful conclusion of the one investigation. Key elements of this model include:

- the command structure with one person clearly in charge of and accountable for the overall direction of the investigation;

- an inter-disciplinary support team to advise and assist in forensic, technical, and legal issues;
- consultant teams of experienced investigators;
- an experienced media liaison officer credible to the media and to the police;
- a counsellor able to recognize and deal with the difficulties faced by witnesses, families of victims, and critical incident stress among investigators;
- a computerized system to prioritize and investigate tips and to classify and eliminate suspects consistently and rationally;
- the careful selection of the arrest team and planning of the arrest and post-arrest interview;
- the planning of public appeals for information so they do not swamp the investigation;
- the pre-identification of suitable command post locations; and
- the development of standing letters of agreement between forces that can be activated immediately, instead of wasting investigation time while straightening out detailed administrative arrangements between forces.

The Canadian Police College model is a well-thought out approach to the problems of major serial predator investigations, solidly grounded in Canadian investigative experience and the lessons learned from failures and successes.

2.4 The Rand Study

The 1975 Rand study of American police investigations, while controversial in some respects, offers some valuable insights and suggestions including the propositions that:

- that most cases are solved by means of information spontaneously provided by a source other than those developed by the investigator;
- that a small number of serious cases requires special investigative skills and experience;

- that the best organizational structure is an investigative team with one senior, specially qualified investigator clearly in charge;
- that computerized information systems can greatly increase the effectiveness of criminal investigation; and
- that most police departments collect more evidence than they can process productively and a greater proportion of police resources should be devoted to processing and analysis of information.

2.5 The Kansas Rapid Response Model

Police forces in the Kansas City area, faced with mobile criminals operating across the borders of its 42 separate law enforcement agencies, have developed a rapid response model for major criminal investigations based on joint force squads drawn from the various police forces which range in size from 3 to over 1,000.

The squads are accountable to a board of directors of six police chiefs designated by the chiefs' association which manages the agreements between the forces and the overall direction of the system. Investigation squads are led by one officer in charge, usually the commander of the investigative unit in the host agency where the body is found but sometimes by an officer from another force if a special level of experience is required. Rank is left at the door and all squad members, regardless of experience, rank or department are responsible to the officer in charge.

The host agency remains in charge of the investigation and no outside agency takes over. Standing agreements between the forces govern the allocation of costs which are typically borne by the host agency for investigative costs such as extra vehicles and clerical costs and by the contributing agencies for manpower costs.

The personnel officer who activates the squad on the authority of the Board is part of a 24 hour operation and individual squad members are selected from standing duty rosters, having regard to their experience, location, and recent assignments. A media officer and a crime lab scientist attend

every scene. The main operational principal appears to be the assignment of a critical mass of experienced investigators, trained in standard procedures, at the earliest possible stage of an investigation.

The Kansas model works well. It has been used in over two hundred cases since it began in 1964 and its success rate of 60–65% is quite high considering the fact that it only takes on the most difficult homicide cases and the fact that there is a strict limit on the length of investigations, which average only 4–5 days.

This model is based on a multi-agency mutual aid agreement. It depends entirely on co-operation among the 42 police forces. The key to its success is that turf and ego problems are rare because the police forces and the officers accept that the normal way to do things is through co-operation. Another factor is that its investigative time line is so short that it does not attract the problems associated with a lengthy joint force investigation when officers are away from their normal duties for a prolonged period of time.

There are obvious differences between the law enforcement environment in the United States and in Ontario, including the fact that many American police jurisdictions limit severely the length of time they will support a major investigation. In some American cities, the identification officer typically spends less than one hour at a murder scene and has time only to note the obvious and take a few pictures before moving on to the next homicide scene. Anecdotal references abound to the so-called “four corners” rule—that the identification officer photographs only the four corners of the death scene before moving on to the next case. One great advantage of our law enforcement system is that our police forces do pour enormous investigative resources into major cases, as seen at the height of the Scarborough rape investigation before it geared down after the last rape, and as seen throughout the Green Ribbon Task Force investigation.

Despite the differences, the Kansas model has a great deal to offer because it responds rapidly and effectively to major cases in a way that local forces never could by themselves, and because it

depends on a co-operative structure which gives each separate force and each investigator a stake in its success. If the police forces in the Kansas area can develop a co-operative system of dealing with major cases, there is no reason why the police forces in Ontario cannot achieve the same kind of co-operation with a made-in-Ontario model.

As noted below, the Criminal Intelligence Service of Ontario provides a ready-made and successful structure for this kind of co-operation between police forces in the investigation of serial predator investigations which raise a wide provincial public interest above and beyond that of any individual police force.

2.6 CISO: The Criminal Investigative Service of Ontario

The model here proposed depends entirely on buy-in from the Ontario policing community. The Criminal Intelligence Service of Ontario, as noted in the CISO chapter, is the ideal model to be adapted for the co-ordination and management of serial predator investigations because of its structure as a police co-operative, its proven success in facilitating co-operative police operations, and its support and credibility in the police community.

Any new system to support serial predator investigations should build on the strengths of this proven, ready-made model. The CISO model requires some special adaptation to the unique problems of investigating mobile serial predators, particularly by way of case management support structures and a focus on inter-disciplinary teamwork and training. This required emphasis on special case management systems, training, and the forensic, medical and scientific teamwork required for serial sexual predator investigations, will be discussed below.

2.7 Coroner's Jury Recommendations

The best solutions for problems in our public safety systems have often been recommended by Coroner's Juries. It is worthwhile to review some of the recommendations made in coroner's inquests that are applicable to the Bernardo investigation.

The recommendations following the Inquests into the deaths of Jonathan Yeo,¹ Christopher Stephenson,² and Dennis Kerr,³ although involving different circumstances and government agencies, address problems that arose in the Bernardo investigation (see Appendix 18 for relevant recommendations). In all three inquests the juries recognized the need for a standard approach to agency operating procedures, recording of information, file management, case management and training, and the importance of having one individual or body in place to ensure co-ordination and consistency.

Numerous recommendations focused on training and education—initial, ongoing and specialized. In the Yeo inquest the jury recommended longer basic training for new police recruits, updating sessions for all police officers, and special training for officers involved in the investigation of sexual assaults. The jury also recommended that the government of Ontario ensure that funding is available for the training courses offered for sexual assault investigators. The Stephenson jury recommended training for parole officers supervising sexual offenders and the Kerr jury made recommendations for training programmes within the Ministry of Health and the Ministry of the Attorney General in relation to forensic psychiatric patients. One of the recommendations made in the Kerr inquest by the jury was that a specially trained case manager who would be ultimately responsible for the compilation and maintenance of a critical file be designated for each patient.

-
1. Jonathan Yeo was responsible for the sexual assaults and deaths of Nina De Villiers of Burlington, Ontario, and Karen Marquis of Moncton, New Brunswick, as well as the assaults and sexual assaults of a number of other victims who testified at the inquest. Yeo committed suicide while being pursued by the police on August 14, 1991. Yeo was a suspect in the investigation into the death of Leslie Mahaffy but police were unable to find any evidence to link him to the case. Date of Inquest: April 13, 1992 to August 17, 1992.
 2. Christopher Stephenson, 11 years of age, was kidnapped from a shopping mall in Brampton in June of 1988 and sexually assaulted and later taken to a remote area and stabbed. Joseph Fredericks was arrested and convicted of first degree murder. While serving his sentence Fredericks was killed by a fellow inmate. Date of Inquest: September 8, 1992 to January 22, 1993.
 3. Dennis Kerr was a forensic psychiatric patient at Brockville Psychiatric Hospital who was brutally murdered by another psychiatric patient, David Michael Krueger (also known as Peter Woodcock), and a former psychiatric patient named Bruce Hamill on July 13, 1991. Date of Inquest: October 18, 1993 to April 12, 1994.

The recommendations from all of the juries emphasized the need for a free flow of information and open communication among agencies in the criminal justice system. In the Stephenson inquest the jury recommended that the Ontario Parole Board be encouraged to enter into a statement of agreement and understanding for the sharing of information with the Correctional Service of Canada and local police services. The Yeo jury recommended that the College of Physicians and Surgeons facilitate regular meetings between local mental health professionals and local police to discuss issues of mutual concern.

The Yeo jury also noted the problems associated with the inadequate dissemination of information, recommending that all officers responsible for the drafting of all-car bulletins, zone and provincial alerts be retrained ensuring that serious crimes are broadcast on a priority basis with sufficient detail. The jury recommended standard procedures for bringing all broadcasts and alerts to the attention of all officers at the commencement of shifts, especially for those officers who miss the regular parade procedure.

The juries considered the Canadian Police Information Centre (C.P.I.C.), again emphasizing training and standardization. Both the Kerr and Stephenson juries recommended the expansion of the C.P.I.C. computer system to include such details as a complete criminal history, modus operandi, psychiatric diagnosis where applicable and a source for further information. In Kerr the jury recommended the development of a central registry for sexual offenders detailing the background of the offenders.

The need for uniform computer technology was addressed by all of the juries in the recommendations. While the jury in Stephenson suggested an expansion of the existing computer system in Peel Region, the jury in the Yeo inquest recommended that the Solicitor General immediately consider the implementation throughout the province of a uniform computer system of police information storage to ensure full and ready access to police records by all police services in the province.

It is of utmost importance that these and like recommendations are acted upon whenever possible. Unfortunately this has not always been the case and the criminal justice system does not have a good track record of learning from its mistakes.

3 The Fire College Proposals

3.1 The Fire College Conference

The Fire College conference, noted above, was convened at the Ontario Fire College in Gravenhurst in September 1995 by the Solicitor General's Department. Senior homicide investigators, major crime investigators, and police administrators reviewed the systems in other jurisdictions, summarized above, and developed a series of proposals for a new system to deal with complex, multi-jurisdictional major criminal investigations. The lessons of the Yorkshire Ripper case were analyzed with James A. Dickinson, the Assistant Chief Constable of the Essex Police who prepared a paper on the management of serious and series crime investigation in England and Wales. Although the conference focused on serial murder cases, its work has equal application to serial sexual assault cases like Bernardo where the rapist's pattern of sadistic violence demonstrates a likely propensity to kill.

The officers in the investigative management workshop, all of them seasoned criminal investigators,¹ concluded on the basis of the Bernardo case that Ontario is ill equipped to investigate multi-jurisdictional serial homicides. They warned that the problems of the Bernardo case could be repeated if adequate systems are not put in place:

It is the opinion of the working group that in this province law enforcement as it exists today is ill equipped to investigate multi-jurisdictional, serial homicides. To those of us involved in law enforcement this is a most disconcerting and troublesome situation. Clearly the commensurate expertise required to cope with these issues in our view is

-
1. Sgt. Brian Cookman, Kingston Police Service; Supt. Larry Edgar, O.P.P. C.I.B.; Insp. Brian Jerrett, Sudbury Regional Police Service; Mr. Robert Pearson, Joint Force Coordinator, CISO; Staff Supt. Noel Catney, Peel Regional Police Service; and Insp. Wayne Wrightson, Waterloo Regional Police Service.

abundantly available within. This can only be appropriately applied with the required support and resources. There is a clear consensus that the level of public trust and confidence in the ability of law enforcement to meet their mandated objectives has been adversely affected as a result of the investigation into the multiple sex murders perpetrated by convicted killer Paul Bernardo. Considerable consternation and concern exists with the working group members that if a similar scenario were to occur within the foreseeable future these unfortunate circumstances could be repeated. It is a known fact that the police within this Province are recognized as capable of solving these types of complex investigations if provided the necessary tools and support. Current analytical data and crime trends indicate that this type of criminal offence may be increasing; therefore it is critical that these recommendations be aggressively pursued. [emphasis in original]

The consensus of these officers, about what needs to be done to overcome the systemic weaknesses in our law enforcement system demonstrated by the Bernardo case, are amply supported by my review of the things that went wrong, outlined in the next section of this review.

3.2 Strategy and Structure Proposals

These recommendations were made by the officers on the basis of their considerable investigative and case management experience, and their concerns about the systemic weaknesses demonstrated by the Bernardo case are set out in Appendix 19. Their recommendations include the following elements:

- systems for early recognition of serial predators
- an overall province-wide strategy for multi-jurisdictional serial cases
- a specially trained rapid response team
- a structure with one senior officer clearly in charge, reporting to a board of directors and the chiefs of the involved agencies, with the assistance of a support staff, advisory committee, and lead investigators for the various individual cases
- a standard computerized case management system
- specialized training

- a Board of Directors or governing authority with representation from the Ontario Association of Chiefs of Police, Ontario Provincial Police, Coroner's office, and Policing Services Division
- a senior and experienced officer in charge with specialized training
- a standardized procedure for major case management and review
- formal memoranda of agreement between participating police forces

I endorse these recommendations, and have incorporated them with some additional detail in the recommendations of this review.

3.3 Information Management Proposals

The workshop on information management systems examined the information system barriers to serial predator investigations, caused largely by the great variety of computer hardware and software used by and within different police forces. They considered this lack of uniformity to be a detriment to the investigation of multi-jurisdictional, multi-agency serious or serial crime. Their recommendations, set out in Appendix 19, include:

- standardized and compatible computer systems
- data entry standards
- minimum system capabilities
- case management programme
- search and retrieval programme
- evidence retrieval and continuity component
- disclosure tracking system
- standardized audit trail
- standard form/document system

- training
- data bank
- mandatory ViCLAS submissions
- research on standards and requirements

Some of these recommendations, such as common case management investigation software and mandatory ViCLAS submissions, are low cost necessities, essential for the investigation of serial predators, that can and should be implemented almost immediately. Others, such as common information forms and standards for all police forces, are relatively low in cost but would take a lot of time and co-ordination to achieve.

3.4 Training Principles

The workshop on training recommended specialized training for the officer in overall command of a serial predator investigation and specialized training for the senior investigators.

The recommended training content included media relations, recognition of linked offences, awareness of forensic capabilities, victim support, inter-force and inter-agency co-operation and co-ordination, and legal issues.

4 Bernardo Case: Systemic Problems

As noted in the chapters on the Scarborough and GRT investigations, the lack of effective case management systems led to a number of systemic problems. These problems demonstrate the need, in serial predator investigations, for a case management system of the kind now under discussion in the police community and recommended in this review. In brief, these are the things that went wrong systemically:

- (a). Scarborough Rapes Investigation: lack of consistent and adequate file and exhibit management; no effective system to ensure that information and tips went to the right place and were followed up;
- (b). Scarborough Rapes Investigation: lack of consistent case manager and management approach;
- (c). Scarborough Rapes Investigation: no high level co-ordination of investigative and forensic work; lack of communication between CFS and Metro; delay within CFS; no system in place within Metro to act as tickler to avoid unreasonable delay in CFS response; delay in re-submission to CFS by Metro;
- (d). Scarborough Rapes Investigation: lack of consistency in the collection of suspect samples for conventional serology and DNA testing;
- (e). Scarborough Rapes Investigation and Henley Island: no early recognition of links between the Scarborough rapes and Henley Island investigation; general lack of communication between forces in different jurisdictions; lack of system to adequately disseminate information; inadequate attention to zone alerts;
- (f). GRT Investigation and Scarborough Rapes Investigation: no effective and uniform computerized case management software; valuable time wasted experimenting with inadequate information management systems;
- (g). GRT Investigation and Scarborough Rapes Investigation: no standard procedures for suspect classification, elimination, prioritization and interviews;
- (h). Niagara and Halton Task Force (pre-GRT): lack of a system to ensure examination of all transaction records having to do with the cement purchase (cement investigation otherwise an example of an innovative investigation);
- (i). GRT Investigation: lack of system to delegate media relations and office administration from officer in charge to full-time media relations and office administration staff
- (j). GRT Investigation: lack of system to weigh benefits of expanding the Camaro investigation; lack of uniform interview procedures for potential Camaro witnesses;
- (k). GRT Investigation: inadequate systems to process tip information and to follow up on leads once public appeal made;

- (1) GRT Investigation and Scarborough Rapes Investigation: inadequate systems in place once link made to determine chain of command, ensure some accountable officer in charge of overall operation, and to ensure full communication between forces and the sharing of information.

None of these problems have to do with the skill and dedication of the investigators and the senior officers in charge of the investigations. All of them have to do with the lack of effective case management systems of the kind proposed in this review.

5 Early Recognition and Linkage

5.1 Need for Early Recognition and Linkage

It is imperative that police forces have the capacity and use the capacity to recognize linkages between crimes in different communities, such as the linkage between Bernardo's Scarborough, Mississauga, and Henley Island rapes. Unless these linkages are recognized early, the serial predator can continue his hunt and strike at will in different communities with very little risk of detection.¹

Identification of linkages will not, by itself, solve cases. Cases are solved by painstaking investigation supported by forensic work, and often by lucky breaks that have to be recognized and followed up. Linkages ensure that the work done and the breaks received on one investigation will benefit all related investigations.

Reference is made below to the existing systems that can help investigators find links between crimes, including the C.P.I.C. zone alert system, the C.P.I.C. off-line search capability, the Chief Coroner's death records, and the ViCLAS computerized violent crime linkage system.

1. For the concept of "linkage blindness" see Thomas O'Reilly-Fleming "Serial Murder Investigation: Prospects for Police Networking" (1992), *Journal of Contemporary Criminal Justice* v.8 No.3, and S. Egger "A Working Definition of Serial Murder and the Reduction of Linkage Blindness" (1984), *Journal of Police Science and Administration* v.12 No.3 p.348.

Ontario already has a first rate recognition system in the ViCLAS violent crime linkage analysis system. Described in some detail below, ViCLAS is a computerized system for the classification and analysis of predatory sexual assaults and homicides. Although recognized in other countries as a world class system, ViCLAS generates only a tiny portion of its power in Ontario because of under-reporting to it by police forces. This under-reporting by individual forces diminishes the capacity and therefore the effectiveness of ViCLAS and other police forces to recognize violent crime linkages early enough to make a difference in the outcome of the investigations.

Bernardo was difficult to apprehend not only because he was cunning but also because he was so mobile, striking in four Ontario communities, Scarborough, Mississauga, St. Catharines, and Burlington.

The roving predator is hard to track down not only because of his organized cunning, but particularly because of his mobility. It is difficult enough, as seen from Bernardo, to capture violent serial predators who operate within the boundaries of a single police force. When they operate across police boundaries they are even more difficult to investigate and apprehend. Mobility is the hallmark of the most dangerous sadistic predators in the sense that their very mobility itself, their power to hunt throughout a wide territorial range and to strike anywhere at will, gives them more thrill than the actual attack itself.

Organized predatory serial killers tend to continue until they are dead or in prison. It is likely that Bernardo, had he not been arrested in February of 1993, would have continued to abduct and rape and kill. This is confirmed, to the extent she can be believed, by Homolka who described a conversation with Bernardo after he had murdered Kristen French:

He bragged about ?? he bragged to me about how he'd gotten away with another one...He wanted to do it again. He wanted to abduct another girl. And I said to him, "Aren't you afraid of getting caught?" And he got mad at me and he said, "Don't you realize that I'll never be caught?"

The dangerous thing about predators like Bernardo, although they may move, is that they do not stop.

As noted in connection with Bernardo's foray into Peel where he raped K.C. on May 29, 1988, community awareness and police activity in the predator's home range may drive him to further hunting grounds, in order to avoid the tightening police cordon and to prey on less cautious victims.

Because mobility is a hallmark of the serial predator, and because local prevention strategies may increase the predator's mobility by driving him into other police jurisdictions, it is imperative that the police be given the tools to link predatory crimes that occur across police boundaries and that they be supported by systems that ensure the existing tools are used.

One of the major problems in the Bernardo investigations was the fact that the linkage between his Scarborough attacks and his attacks and murders in the Niagara region were not recognized earlier.

As noted below, the computerized national police information system, C.P.I.C., can provide some help in checking criminal history and police contacts but it is not designed or intended to recognize links between offences.

The most useful system for recognition and linkage of serial predator crimes is ViCLAS, the computerized system for the classification and analysis of predatory sexual assaults and homicides. ViCLAS operates at a fraction of its capacity because it depends on a voluntary reporting system and its reporting rate, because there is no regulation that requires reporting, is very low. This problem will be addressed below.

The Chief Coroner's office has a major centralized resource in its records of unsolved deaths. The use of this information and other potential linkage points will be discussed below.

5.2 Present Systems For Early Recognition And Linkage

5.2.1 C.P.I.C.

C.P.I.C. is a national computerized information system used by police agencies throughout Ontario. Although it is elementary that no computer can make investigative judgments, C.P.I.C. can give investigators useful data such as criminal history and motor vehicle registration information. It is important to understand the limitations of police information systems such as C.P.I.C.. Every police information system, including C.P.I.C., has rigid inclusion criteria that limit the scope and content of its data files. Strict rules determine what information may be put into the computer. There is no big police computer that has everyone's name in it and a whodunit button.

C.P.I.C. contains data banks for different categories of information including wanted and missing persons, stolen vehicles, stolen guns and property, criminal charges and criminal records, vehicle registration, and parolee and offender status.

There are a number of special C.P.I.C. categories that require brief explanation. Constable Townsley, when asked why he did not submit a report on August 1, 1991 about Bernardo's stalking of P. E., said he would have taken the stalking more seriously if the Metro police had put Bernardo on the C.P.I.C. observation category. At the time of the Bernardo investigations there was a C.P.I.C. observation category, since changed to the newer categories of special interest to police and surveillance. These categories include a range of subjects such as people who may attempt to commit suicide while in police custody, people violently hostile to police officers, and known or documented dangerous criminals. There is also a capacity to put suspects on the system. The system is designed for highly selective use and is not intended for every suspect, but only for suspects of very special interest in the discretion of the investigator. Suspects are only put on the system if they are very strong suspects and there is some particular investigative reason to track them and learn of any contact they have with the police. Although a few of the Scarborough rape suspects were regarded as strong enough suspects to put on the C.P.I.C. observation category, Detective Irwin indicated that Bernardo did not fit that category:

- Q. When would you use the observation category on C.P.I.C. for suspects?
- A. Well, when everything points to them and nothing points away and when I need to keep track of who they are, where they are and where I need to know of any police contact. When I need feedback from the field. We have to justify and account for why a person is listed on there, like maybe after a threat assessment has been done...where I need to know contacts...

In this case we did put some guys on C.P.I.C., like M..., because he looked pretty good at the time and I wanted to track him and know of any contacts he had with police. If I had a hundred suspects I wouldn't nor have I ever seen anyone else put that kind of list on C.P.I.C., that's not what its for. There has to be some common sense. If Metro put every suspect they had names to them on every case, we would burn up the C.P.I.C. system ourselves, never mind any other police force.

- Q. On April 2, 1992 when you submitted the 5 people to the CFS, why not put those 5 on C.P.I.C. as suspects?
- A. No, I had more than 5. I just had 5 whom I had samples from, that I could send to CFS. I had a lot more reasonable suspects whom I just couldn't eliminate. So no, I wouldn't put them on C.P.I.C.. The other thing is that when you eventually resolve it someone might ask why so and so was listed on C.P.I.C. as a suspect. With disclosure now, you have to be careful because you know a defence lawyer is going to be asking about all those people you have listed or investigated as suspects, how strong they were, what investigation you did.

In short, Irwin did not put Bernardo on the C.P.I.C. observation (now surveillance) category because Bernardo was not a high enough level of suspect to fit the exclusive criteria for that category.

The special C.P.I.C. categories such as the old observation category and the newer surveillance category are not practical tools for the linking of serial predator investigations because of the number of potential suspects in such investigations and the rigid C.P.I.C. inclusion categories designed to prevent the system from becoming unworkable through information overload.

The C.P.I.C. zone alert system as it applied to the Bernardo case is described in some detail in the chapter on the Henley Island rape. The zone alert system, if used by the receiving force, can

disclose linkages between predatory sexual offences. Had the Henley Island zone alert come to the attention of the Scarborough rape investigators, the probable linkage would have been seen immediately between the Scarborough rapist and the Henley Island rapist who struck within a mile of Bernardo's house.

Although the Henley Island zone alert must have been received by the Metro force, it appears that it never came to the attention of the Scarborough rape investigators. Zone alerts were not used as a systematic tool in the Scarborough rape investigations. There was a pretty good awareness among investigators of the significance of zone alerts that originated within the Metro force, but little, if any, attention was paid to zone alerts from other jurisdictions. None of the Metro investigators interviewed in the course of the review recognized or recalled the Henley Island zone alert and the review was unable to find any evidence that it was received or considered by the Scarborough rape investigators. Conversely, there were in the Henley Island rape investigation files no replies to the zone alert.

One Metro investigator described the underutilization of the C.P.I.C. zone alert system:

I never thought about zone alert or Metro alert but I can see it as a tool. A very effective tool that is under-utilized. It is not underrated but it is under-utilized.

I had a message received today regarding my case last night. I sent a message back to them saying thanks for the info but it is not the same case.

We should be communicating with each other to even let them know we read their message. But we don't do that.

It is clear in hindsight that the police, because of the systemic failure to use C.P.I.C. zone alerts as an investigative tool, missed a golden opportunity on April 6, 1991 to focus the separate investigations in a way that could have led them to Bernardo because the Metro investigators knew in November of 1990 that he was moving to St. Catharines.

C.P.I.C. has an additional capacity to produce an “off–line” search which retrieves a record of all inquiries to C.P.I.C. about a particular person (or other search criterion such as a vehicle license number) and discloses what inquiries were made about the subject and by what police officer and when. An off–line search is a labour–intensive technical process which requires the downloading of master tapes in Ottawa and it can only be done if the officer requesting the search obtains the prior authorization of a higher officer within the requesting force. An urgent request can be processed within six hours and a routine request can be processed overnight or the next working day after the request.

Because it is labour intensive and requires special authorization, a C.P.I.C. off–line search cannot and should not be used routinely on every suspect in every case. It can only be used selectively after a realistic assessment of its need in the investigation of a particular suspect. It cannot be used as part of an automatic checklist in the development of every suspect profile. For instance, an investigator who gets several files a day for the purpose of suspect investigation and elimination cannot use a shotgun approach and simply ask for a C.P.I.C. off–line search on every suspect; the investigator has to narrow down the suspects before an off–line search is appropriate.

C.P.I.C. off–line searches are a powerful investigative tool to discover whether other police officers or police forces have investigated a suspect and to capture information that has not been properly recorded or has not been shared for one reason or another. For instance, it was only after Bernardo's identification as the Scarborough rapist that a C.P.I.C. off–line search disclosed the fact that Constable Townsley had queried C.P.I.C. about Bernardo when investigating the P. E. stalking incident on August 9, 1991. It is inevitable in any major investigation that some information will not get properly recorded and some information will not find its way properly into the record system. C.P.I.C. off–line searches are a valuable safety measure to guard against the loss of crucial information through failures such as the failure to report Bernardo's stalking of P. E.

Had the Metro or Green Ribbon investigators conducted an off-line search of Bernardo at any time after August 9, 1991, they could have learned from Constable Townsley that Bernardo had stalked and terrorized P. E.. Although it is speculative to suggest how this might have affected the course of the investigations, it is clear in hindsight that this knowledge of Bernardo's predatory propensities would have greatly increased his viability as a suspect and would have led to more intense and timely investigation of him.

It must be borne in mind that C.P.I.C. off-line searches cannot be used routinely on every suspect, and that the senior case manager has to make a realistic assessment whether a particular suspect is strong enough to justify an off-line search. The manager must also assess whether the search will likely provide information that will further the investigation. However the fact that valuable information about Bernardo was available to the investigators in both forces, but not captured by them, discloses in hindsight a systemic weakness that should be addressed through a clearly defined set of standard case management procedures for serial predator investigations, including the appropriate use of C.P.I.C. off-line searches.

5.2.2 ViCLAS

At the time of the Bernardo investigations, there was no automated system in place to link violent predatory crimes. Use of the system now in place, ViCLAS, is not mandated by regulation and its power to link these crimes is greatly diminished by underuse.

It is likely that Bernardo would have been apprehended much sooner had ViCLAS been in place at the time and fully operational through centrally mandated reporting requirements.

Since December of 1993, the ViCLAS system, operated by the O.P.P. Behavioural Sciences Section in Orillia¹, has functioned as part of a national violent crime linkage analysis system.

1. Including a direct access satellite terminal operated by the Metropolitan Toronto police.

ViCLAS is designed to capture, collate, and compare predatory/sexual crimes of violence through the analysis of victimology, suspect description, modus operandi, forensic and behavioural data.

Developed largely through the initiative of Inspector Ron McKay of the R.C.M.P. with the assistance of other officers including Detective Inspector Kate Lines of the O.P.P., ViCLAS is recognized internationally as the most effective and most useable automated violent crime linkage analysis system now available and is being introduced and considered for use in a number of American and European jurisdictions.

Described by an FBI specialist at Quantico Virginia as “the Cadillac or premier system available worldwide”, ViCLAS is currently being implemented in the eight Australian law enforcement jurisdictions. The director of the Australian Bureau of Criminal Intelligence writes:

After examining current available law enforcement systems, ViCLAS was chosen because of its recognition as the leading system of its type in the world, and has been adopted by European and North American law enforcement agencies. ...

ViCLAS provides the methodology to track violent offenders across jurisdictional boundaries. While encouraging greater liaison and co-operation amongst agencies...For too long offenders have had the benefit of escaping apprehension by moving from state to state, country to country, where they have the advantage of dealing with law enforcement authorities who are unaware of their previous activities...Prior to the implementation of ViCLAS, there was no common system which enabled offences to be linked across boundaries, and in some cases, within boundaries.

Dr. David Cavanaugh of Harvard University said of ViCLAS that the Canadians have:

...done to automated case linkage what the Japanese did with assembly line auto production. They have taken a good American idea and transformed it into the best in the world.

As noted below, it is ironic that ViCLAS, despite its international recognition and accolades as the best crime linkage system in the world, is used in Ontario to a small fraction of its capacity, in part because there is no regulation that requires police forces to use it.

ViCLAS is designed to capture information on all homicides that are sexual or predatory in nature, that are apparently random, motiveless or suspected as being part of a series, and all sexual assaults or attempts of a predatory nature, including stranger-to-stranger assaults, date rapes, paedophiliac crimes. It also captures information on missing persons where the circumstances indicate a strong possibility of foul play and where the victim is still missing, unidentified bodies where the manner of death is known or suspected to be homicide, and all non-parental abductions and attempts. The underlying premise of ViCLAS, amply proven by the Bernardo case, is that repeat offenders follow similar patterns and that homicidal and sexual offenders exhibit identifiable and often predictable characteristics and motivation.

The investigator fills out a comprehensive report in the form of a highly detailed and structured questionnaire designed to enable the analysis of known and established criminal patterns, traits, and pathologies. The information from the questionnaire is entered into the national ViCLAS database by the O.P.P. Behavioural Sciences Section in Orillia. A crime analyst trained in the use of ViCLAS will conduct an analysis for each new case submitted in order to identify possible linkages with similar crimes committed anywhere in Canada. Once a potential linkage has been identified, the originating agency will be notified of the other similar cases and will be able to follow up on the identified linkages.

ViCLAS does not solve cases; it tells police forces about similarities between crimes, particularly predatory crimes of sexual violence, and gives them the tools necessary to investigate and develop the links between offences committed by the same serial predator.

To take one example: in June of 1994 the Surrey detachment of the R.C.M.P. investigated the case of a young girl walking home from school who was attacked in a public park and dragged in a wooded area where she was forced into to perform sexual acts including fellatio, sodomy, vaginal intercourse, and cunnilingus. The offender threatened to kill her or her father if she reported the attack to the police. She reported the offence immediately. There was tremendous media attention,

and the Surrey police received over 700 tips. In September, after all investigative leads were exhausted, the Surrey police submitted a ViCLAS form on the attack.

Within an hour of the Surrey ViCLAS submission, the system analysis indicated that there were striking similarities with a case in Prince Rupert, 800 kilometres away, two cases in the neighbouring Richmond Detachment and one case in the neighbouring Burnaby detachment. The ViCLAS system notified the three different police jurisdictions who immediately started to share information. A photograph of the Prince Rupert suspect was sent to Surrey and identified by the Surrey victim. The suspect was arrested and convicted.

Not all ViCLAS success stories are this dramatic. But this case demonstrates the enormous investigative power ViCLAS can put into the hands of police faced with an unidentified mobile serial sexual predator.

ViCLAS has little chance to work unless investigators enter all violent predatory crimes into the ViCLAS system.

Although the Metropolitan Toronto Police force now has a ViCLAS centre within the Sexual Assault Squad and requires that all sexual assault investigations conducted by its members are entered on ViCLAS, there is no general regulation that requires mandatory ViCLAS reporting.

The power of ViCLAS to link violent predatory sexual offences is greatly reduced because it is underused. In 1995, under 30% of Ontario's murders and under 6% of Ontario's level 1 sexual assaults were captured by ViCLAS.

Busy investigators are naturally more intent on tracking the criminal than they are on spending 45 minutes to fill out a ViCLAS form. Experience shows that it is not enough merely to encourage ViCLAS reporting by means of the standard policies and procedures of individual forces. Encouragement is not enough.

Unless the entry of information into ViCLAS is centrally mandated and enforced throughout Ontario, and its operation supported through training and strong reinforcement of the reporting requirement, its power to link predatory serial crimes is greatly weakened.

This may require some additional resources for the expansion of existing ViCLAS units in the O.P.P. and Metro forces to handle increased reporting.

The extra effort and resources are a small price to pay for the early linkage and resolution of serial crimes when compared with the enormous financial cost of a continuing major investigation, to say nothing of the human and social cost of delayed resolution during the time a serial predator continues at large.

I therefore recommend mandatory ViCLAS reporting by all Ontario police forces of crimes that fit the ViCLAS submission criteria by way of regulation under the Police Services Act and the reinforcement of ViCLAS reporting by way of training and auditing.

5.2.3 Coroner's Office

The Chief Coroner's office is a central repository for information about deaths investigated by coroners throughout the province. Information about unidentified human remains and unsolved suspicious sudden deaths and homicide cases can be a valuable resource in the solution of homicide and other violent crimes.

A good example of this is the unidentified human leg that floated up on a Hamilton beach in 1992 which was examined and tested in the Hamilton forensic unit and later in the main Toronto unit. A number of different police forces thought this evidence might help solve open cases in their jurisdictions but the forces were initially unwilling to share information about the case until the Chief Coroner's office facilitated a degree of co-operation and eventually linked the leg to a missing Toronto woman who had been murdered and dismembered.

Another good use of coroner's records is in the reinvestigation of old deaths as possible homicides. In many cases the police department has been unable even to start the investigation because of their short records retention policies. When police records are destroyed the coroner's records dating back to 1966, can provide crucial investigative information. One good example is a case presently before the courts originally investigated in the late 1970's and thought then to be a natural death from sudden infant death syndrome. The case was re-opened in 1994 as a result of new information and the coroner's records assisted in the investigation, which resulted in the laying of murder charges in the death of the child. The invaluable assistance from coroner's records has already been mentioned in connection with the Mark McAvoy case, referred to in Chapter 4 and Appendix 7. Because of their importance in the investigation of secret homicide it is essential that the Chief Coroner retain death records for an indefinite period of time so that information capable of detecting secret homicide and identifying murderers is not destroyed.

Until now, the use of the coroner's records of unidentified human remains, homicides, and coroners' death investigations has been ad hoc and anecdotal, rather than uniform and systematic. The collection of this information into a systematic database would ensure that investigators in serial predator investigations can use this information, of great potential relevance, that would otherwise be unavailable to them in a readily accessible form.

5.2.4 Other Potential Linkages

Other potential linkage points include the creation of composite drawings of suspects—particularly if different police forces use a common resource to produce composites, the Centre of Forensic Sciences which may recognize links between offences through scientific testing, and other common resources such as criminal profiling facilities and specialized police personnel who may by chance be working on apparently unrelated cases that are in fact the work of the same predator. An effective case management system for serial predator investigations would emphasize the potential use of such resources by encouraging all investigative personnel to concentrate not only on the case at hand but on its potential similarity to other cases to indicate where the predator may

have come from and where he might have gone. There were in Bernardo a number of potential but unrecognized sources of linkage information between his various crimes. For instance, the same identification officer worked at the Henley Island rape scene and at the Leslie Mahaffy body site, and the same composite drawing resource was used for Henley Island and one of the Scarborough rapes. Given the information available to them at the time, there is no suggestion that these common resources had the capacity to recognize the linkages between Bernardo's separate attacks in Toronto and the Niagara Peninsula. But the commonalties do make a strong argument for a case management system that seeks out and systematically develops the potential linkages between apparently unrelated cases that could provide the key to the identity of the common predator.

Another gold-mine of information about linkages is the uniformed patrol officers in the various police forces throughout the province. Much more can be done, as discussed below, to ensure that criminal investigators tap and use the enormously relevant information within the knowledge of neighbourhood uniformed patrol officers whose knowledge of local people and local crime trends can make the difference between the success and the failure of a major criminal investigation.

5.3 A Co-ordinated Recognition System

The elements are in place for a better and earlier system to recognize serial sexual predators so they cannot continue to strike with impunity across and within police boundaries. The ViCLAS system, the C.P.I.C. zone alert system, the coroner's records of unsolved deaths and the other potential linkages referred to above are all available at the present time. What is needed is a system to ensure they are used effectively in the course of serial predator investigations.

As noted above it is ironic that ViCLAS, despite its international recognition and accolades as the best crime linkage system in the world, is used in Ontario in less than 30% of homicide cases and less than 6% of sexual assault cases because ViCLAS reporting is not mandatory. If ViCLAS had been operational and supported by mandatory reporting at the time of the Bernardo investigations, the linkage between Bernardo's Scarborough rapes and his Henley Island rape within a mile of his

home would have been immediately apparent. It is essential that ViCLAS reporting become mandatory by force of regulation under the Police Services Act.

Tammy Homolka's death, under the changes to the coroner's reporting system since the Bernardo investigations, would today be reported as undetermined. The development of the Chief Coroner's unsolved death records into an accessible database, readily available to investigators, would provide another source of linkages to ensure that a suspect's connection with an unsolved death would not go unnoticed by those investigating him for other offences.

A standard case management system for serial predator investigations would ensure that all effective linkage sources, including ViCLAS data, coroners' data, relevant C.P.I.C. zone alerts, potential information from C.P.I.C. off-line searches and other linkages is brought to the attention of investigators in a form that can be recognized and used by them.

6 A Co-ordinated Case Management Proposal

6.1 The Need for Co-ordinating Machinery

The Bernardo investigations demonstrate a clear need for high level machinery to co-ordinate the work of police forces and agencies such as the Coroner's office and the Centre of Forensic Sciences in the investigation of mobile sexual predators. The investigations demonstrate a need for some machinery to ensure that different police forces communicate with each other and co-operate fully in the investigation of serial sexual predators. The investigations demonstrated the need for a system of case management structures and procedures designed specifically for the special needs of serial predator investigations. The following proposals are based, in light of the Bernardo experience, on elements of the models and systems described above.

6.2 Board of Directors

Two levels of co-ordination are needed.

The first level is an overall co-ordinating mechanism or, for want of a better name, the Board of Directors, to implement the policies and maintain the framework that will make the following recommendations in this review work:

- early recognition of linkages between investigations;
- selection of a cadre of senior officers to command serial predator investigations;
- selection of a cadre of inter-disciplinary support team members chosen from forensic and legal disciplines;
- prescribing training for officers in command and for other standby team members;
- approval of a common case management software system;
- overseeing and encouraging ViCLAS training and reporting;
- overseeing the development of an accessible central database of unsolved deaths;
- the development of memoranda of agreement between police forces to empower and encourage inter-force co-operation in such investigations; and
- the development and oversight of financial accountability procedures and the ultimate decision to launch, continue, intensify, wind down, or terminate such investigations. It is also the mechanism to resolve conflicts that cannot be resolved by the officer in charge.

The co-ordinating body must be broad based enough to secure the confidence of the police community in general and the chiefs and senior investigators in particular. It must be financially accountable. It must involve representation from central bodies such as the Solicitor General's Department and inter-disciplinary resources such as Chief Coroner and the Centre of Forensic Sciences. It must be small enough to work effectively through an executive committee and make quick decisions when necessary.

The co-ordinating body cannot become a new bureaucracy or a new agency; it must use existing systems, tap existing resources, and build on strengths of existing systems, particularly the CISO co-operative model.

Because of CISO's proven effectiveness in co-operative ventures among police forces, the new system should be modelled on the CISO governing body structure with additions from the Solicitor General's Department, the Chief Coroner and the Centre of Forensic Sciences.

Although there is no scientific way to determine the exact composition of the Board, it could consist of sixteen members; twelve chiefs of police selected by the OACP or the CISO governing body with the approval of the Solicitor General plus the Chief Coroner, the Director of the Centre of Forensic Sciences, and the Assistant Deputy Solicitor Generals for Policing and Public Safety.

The second level is an executive committee responsible for the triggering mechanism which launches the co-ordinated investigation in a particular case, and provides the general oversight of specific investigations.

The Executive Committee would:

- consider and recommend to the Board, on the basis of predetermined triggering criteria, requests and proactive suggestions for the activation of major or joint force investigations under preselected senior case managers;
- keep aware through the ViCLAS system and through liaison with local police forces of cases that might potentially require the invocation of the special machinery;
- consider the need for reinvestigation or stepping up of cold cases or cases not being actively investigated;
- consider and recommend to the board requests for funding similar to CISO joint force operational funding under s. 9 of the Treasury Act (e.g. Operation Hitchhiker; the Jessup reinvestigation; the Green Ribbon Task Force; Operation Woodland; Operation Ashtray);
- monitor the expenditure and financial accountability and cost-effectiveness of the investigation;
- select and remove the officer in command for particular investigations;
- select an inter-disciplinary advisory body in consultation with officer in command;

- provide general oversight of particular investigations without interfering with investigative decisions unless they involved a major change of direction or policy;
- authorize additional resources on an emergency basis or recommend the stepping-up or stepping-down or termination of the investigation; and
- review the progress and audit reports submitted to the Executive Committee by the officer in charge.

The Executive Committee would include as ad hoc members, when considering any particular investigation, the chiefs of police of the forces involved in the investigation and perhaps the chief or deputy chief of the force from which the officer in charge is drawn, if the officer comes from another force. The Board and the Executive Committee could authorize the chair of the executive committee to make emergency decisions when necessary.

Although the Board and the Executive Committee would have some need for a very small support staff, that need should be supplied through existing mechanisms like CISO and not through the creation of a new agency or bureaucracy.

The Board of Directors would be directly accountable to the Solicitor General for all financial issues but would have the same independence, in relation to operational matters, that applies to every criminal investigation conducted by the police.

6.3 Memoranda of Agreement

One of the Board's first tasks would be to develop a standard memorandum of agreement for serial predator investigations and to encourage all the police forces in Ontario to enter into such agreements voluntarily. The memorandum would acknowledge:

- that the overall public interest in the apprehension of serial sexual predators is greater than the autonomous interest of any individual police force or community; and

- that every community and police force has a direct stake in the apprehension of a mobile serial predator and that inter-force co-operation and co-ordination is absolutely necessary.

The memorandum would commit each police service to co-operate with other services, when required, for a serial predator investigation and would provide the general principles for participation in joint force operations, including the machinery to bring together separate investigations by separate police forces under a single officer in command designated by the Board. The agreement would also set out the principles that govern the secondment of officers such as their accountability and vital administrative details such as the treatment of overtime and other benefits while on secondment. It is intended that individual police officers, while on secondment, would direct all of their energies and dedication to the work of the investigation, without fear or concern that any of the benefits of their employment would be jeopardized in any way, as a result of such secondment.

No new legislation appears necessary because police officers have jurisdiction throughout Ontario and nothing in the present legislative framework prevents Boards of Police Commissioners, chiefs of police, and police forces from co-operating with other police forces, with or without a memorandum of agreement.

6.4 Trigger

Mobile serial sexual predators are fortunately rare, and the special machinery necessary to investigate and apprehend them will be used rarely. The triggering mechanism for such investigations must be tightly defined, yet flexible enough to permit the exercise of careful judgment by the Board. Because this machinery is designed to fill the gaps disclosed by the Bernardo investigations, which showed specific systemic weakness in the machinery for the investigation of mobile serial sadistic sexual predators, the machinery should be limited to that class of case. Other major crimes, such as serial bank robberies or commercial fraud scams or organized crime cartels, do not attract the same special needs and there is effective machinery

already available for them through the CISO process. To preserve the focus of this machinery for the crimes for which it is designed, the appropriate triggering mechanism, based on adaption of the ViCLAS definition, is the following:

All abductions, homicides, sexual assaults and attempts or attempts that appear to be sadistic or sexual or predatory in nature, apparently random, motiveless or are known or suspected of being part of a series, particularly where more than one police jurisdiction is involved and where the circumstances suggest a public safety interest beyond the community or communities directly involved.

Local police forces successfully investigate predatory sexual assaults every day. Not every such assault requires this kind of machinery. Before invoking this machinery, a judgment call by the Board would be required as to the potential public danger and the extent to which the case involves a public safety interest wider than the interest of the particular community or communities directly involved.

Although the machinery is particularly appropriate where more than one police force is involved, it should not be ruled out where the predator's only known offences are within a single police jurisdiction. A mobile escalating serial rapist in Peterborough alone or Toronto alone may pose the kind of special public danger that requires extraordinary measures, even though the predator's only recognized offences are within the borders of a single police force.

Special funding for joint force operations would be available on the same legal basis it is now, through the present legal machinery of s. 9 of the Treasury Act and the funding machinery discussed in the chapter on CISO would be applicable through the machinery of the new Board. Having regard to the possible advantage of joint force funding, which would be available on essentially the same basis as present, it would have to be clear that the funding aspect of the mechanism should not be invoked if the sole purpose for doing so is to obtain cost relief for one or more police jurisdictions. The machinery has to be driven by public safety and not by the desire of an individual police force for cost relief.

One would expect the special machinery to be invoked almost always at the request of the police forces primarily involved in the investigations. There may be rare cases where a local force is not convinced that it needs outside assistance or advice. In such cases a degree of advocacy or persuasion might be necessary to help it appreciate the benefit, to its local community and the overall protection of the public, of invoking the special investigative machinery. But it is essential that the system be based on a co-operative and essentially voluntary model. Compulsion without co-operation will not work in a province of community based police forces. No joint force investigation, and no inter-jurisdictional investigation, will work without the co-operation of the individual police forces whose communities are primarily concerned. The success of the proposed system will depend entirely on the willingness of the police community to support it and to work together within its co-operative framework.

6.5 One Senior Case Manager Clearly In Charge

The Bernardo case demonstrated clearly, particularly in the botched and disorganized interview of the accused and the lack of co-operation between Metro and the Green Ribbon Task Force after the identification of Bernardo as the Scarborough rapist, that serious problems can arise if there is no single person clearly in charge of an investigation.

Murder and rape cannot be investigated by committee. It is essential that there be one person clearly accountable and clearly in charge of the overall investigation, whether that person is called a senior case manager or the senior officer in command.

The officer in charge should be drawn from a cadre of approximately twelve senior and experienced criminal investigators, preselected by the Board on the basis of proven investigative ability, experience in complex, major case management, and strong administrative, leadership, and team-building skills. One would expect to find officers with these qualifications at the rank of inspector and above. Although rank can also provide the authority required to deal effectively with other forces and agencies, other ranks should not be excluded by the glass ceiling which

typically blocks working investigators from promotion beyond the rank of Sergeant or Detective Sergeant.

This cadre of officers would receive special case management training of the sort described below.

Apart from their training and regular refresher courses and exercises, these officers would remain at their regular jobs in their home police forces until designated by the Board to become the senior case manager in charge of a special investigation.

The officer selected for the investigation could come from a force not previously involved in the investigation or related investigations and, if the inter-force dynamics were right could come from one of the investigating forces.

The officer in charge would be directly accountable to the Board, through its Executive Committee (which would include as ad hoc members the chiefs of police of the affected communities and perhaps his own Chief or Deputy Chief) for financial matters and for the ultimate success or failure of the investigation. The Board would have the authority to replace the officer in charge if irreconcilable differences arose between him and the Board.

Although accountable to the Board for the overall direction and management of the investigation and for decisions to change strategies or directions or step the investigation up or down, the officer in charge would not report to the Board in respect of daily investigative operations. Murder and rape cannot be investigated by committee. There can be no mistake about the fact that the officer is in charge of the investigation at all times and accountable for it at all times and that he lives and dies by the decisions he makes.

6.6 Inter-disciplinary Advisory Committee

One of the lessons of the Scarborough rape investigation and the investigation of Tammy Homolka's death is the need to co-ordinate the work of the investigators with the work of other agencies and resources such as the Coroner's office and the Centre of Forensic Sciences. The officer in charge of a major serial predator investigation must have immediate access to the best advice available, whether it comes from the forensic or pathological or legal or other disciplines. A small inter-disciplinary advisory committee must be available throughout the course of the investigation. Its members need not work full-time on the investigation, although they must be available as needed and sometimes for extended periods. The members of the inter-disciplinary advisory committee should be selected to ensure a consistently high level of continuing technical, legal and forensic advice, and to provide ideas about other sources of technical and professional advice that could be of assistance. The members of the committee, with the approval of their own agencies, would be selected jointly by the officer in charge and the Executive Committee.

The precise role of Crown counsel requires some consideration. Although the prosecution of the Bernardo case is not within the terms of reference of this review it is obvious that Crown attorneys have their own territorial imperatives. One cannot escape the conclusion that it would have been better to have a single Crown counsel in charge from beginning to end. Because Crown law officers have an independent quasi-judicial function, some care would be needed to preserve the appropriate distinctions between legal support, independent legal advice, and the role of Crown counsel as prosecutor.¹

It must be repeated yet again that murder and rape cannot be investigated by committee. The advisory team does not wear the hat of a management team that might direct the course of the investigation. There is another place for that level of accountability, and that is the Board of

1. The Independent role of Crown counsel and their relationship with the police is set out by the Honourable G. Arthur Martin in the report of the Attorney General's Advisory Committee on Charge Screening, Disclosure, and Resolution Discussions.

Directors. The senior officer in command must maintain the necessary autonomy throughout the course of the investigation.

6.7 Support Team

The senior officer in command needs the support of a small full-time staff group, seconded from their home forces for the duration of the investigation. Depending on the configuration of the particular investigation, the support team would include a full-time media officer with some depth of experience who has credibility with both the media and the police community, crime analysts, profilers, computer technicians, an officer manager, clerical staff including data entry staff and a budget officer to monitor costs and maintain financial accountability.

The support team ensures that the administration of the investigation runs smoothly, that the officer in charge and the senior investigators are not consumed by administrative tasks, and that incoming data is organized and analyzed with the assistance of effective computer technology.

6.8 Lead Investigators For Individual Cases

It is difficult and usually unproductive to totally merge two or more investigations. In most cases it is better for a senior case manager to co-ordinate the separate investigations to ensure effective information flow and co-operation between the various investigations. In such case, the course of the individual investigations would remain the responsibility of the lead investigator of each case while the senior case manager assumes the overall co-ordination role to ensure the merger of data when necessary and the standardization of information systems and case management procedures.

This has as much to do with practicalities as anything else. Over time, it may become evident that one or more of the individual cases are not, or should not, remain linked. Later decisions such as laying charges at different times, prosecution strategy, or court orders in respect of joinder or separation of charges or change of venue might result in a separation of the cases. For these

reasons it is better to leave the individual cases co-ordinated but separate from the start instead of trying to unscramble them after a long period of merger.

The lead investigators for individual cases would require essentially the same training package as the senior case manager or overall commander because of the comparability of responsibilities, the degree of accountability, and the need to understand and function within an inter-jurisdictional milieu.

6.9 Investigators for Serial Predator Cases

Serial predator cases impose special demands and challenges and demands for investigators. These demands, particularly in a complex investigation which requires forensic and inter-disciplinary knowledge and information management skills, require special training. This training is essential for those who investigate serial predators. Whether the investigators are part of a permanent flying squad or part of a rapid response standby unit attached to their home forces until assigned, a special training package is essential for the senior working level investigators.

7 Standard Case Management Procedures

Years of trial and error in serial crime investigations have been distilled into a set of case management principles, standards, and procedures set out in the American Multi-Agency Investigative Team Manual (MAIT) and the more up to date Canadian equivalent, the Major Case Management Manual developed by the Canadian Police College in 1994 and revised in 1995.

These case management systems depend on a series of principles including managerial accountability, proper delegation of responsibilities, consistent standards for investigative procedures such as suspect elimination, victim support and liaison, tip handling and file management, and the effective use of forensic resources.

Although these case management systems require some adaption for use in Ontario they can be taken off the shelf and, after some customization, used almost immediately.

The Canadian Police College Model covers the essential case management procedures such as:

- command post organization
- letters of agreement between co-operating police forces
- media liaison (see Appendix 20)
- file co-ordination
- exhibit management
- victim support and liaison
- communications systems
- reporting and disclosure systems
- the recording and prioritization and investigation and assessment of tips
- the planning and execution of public appeals for information and the handling of the massive amounts of resulting information
- the management of stress during prolonged and intense investigations
- the use of computerized information systems
- preparation for arrest
- preparation for the interview of the accused

Without a consistent set of case management standards and procedures, individual investigations will be less effective and it will be extremely difficult to co-ordinate separate investigations when a link between them becomes apparent.

Although there was some incremental development of major case management concepts in the early 1990's, the fully developed major case management model was not available at the time of the Bernardo investigations and the Major Case Management Manual was first published in 1994.

Had the major case management model been available during the Bernardo investigations, and had it been used, it is clear in hindsight that a number of difficulties could have been avoided.

For instance:

- tips would have been organized and followed up;
- CFS and Metro would have had a more effective relationship including not only communication between investigators and scientists, but also review by a senior officer and a senior member of CFS staff; delay with respect to DNA testing would have been questioned at a much earlier stage;
- there would have been, with an appropriate measure of discretion for individual investigators, standard procedures for the preparation and conduct of suspect interviews and forensic sample collection;
- there would have been standard procedures for suspect classification, elimination and prioritization; it would have been impossible for one officer to classify Bernardo as 1C and another to classify him as 3C;
- there would have been standard procedures for witness interviews and follow up; eg. "Camaro" witnesses would have been approached in a uniform manner;
- there would have been greater continuity of contact between victims and investigators;
- there would have been one specially trained officer to deal with media relations, operating under a media policy of reasonable openness while maintaining confidential whatever is necessary in order to preserve the integrity of the evidence and prevent the obstruction of the investigation'
- an more effective computerized information system would have been in place from the commencement of each investigation, bearing in mind that effective technology was not as available then as now; and

- the arrest and interview would have been conducted in an organized way according to a predetermined strategy that included adequate preparation, and effective technical support.

8 Information Management

Many of the information management problems in the Bernardo investigations have been addressed above; the need to mandate the use of ViCLAS by regulation, and the need for a case management organization and standard procedures that systematically make the fullest appropriate use of resources such as C.P.I.C. zone alerts and C.P.I.C. off-line searches.

8.1 Standard Case Management Software

The Scarborough Rape investigations and the GRT investigations were seriously hampered by the lack of a uniform, effective, free-standing computerized case management system to analyze the masses of information about suspects and tips and investigative leads. The investigators had no way to tell how often they had run across the same suspect or the same informant. Vital information about suspects, including Bernardo, was overlooked because there was no such system in place. The lack of an effective case management software system created a number of problems:

- (a). tips/information were not consolidated; investigating officers did not have an accurate record of all relevant information; no means of acquiring all information that had been gathered on suspect;
- (b). there was no tickler system to show what had to be done (eg. follow up with CFS; C.P.I.C. checks and off-line C.P.I.C. checks; alibi checks); no system to establish priorities;
- (c). officers were overwhelmed by the volume of information and time was wasted in attempting to organize and utilize information (specifically with the Camaro investigation and the phone-in tips);
- (d). officers could not pinpoint specific information (eg. what kind of vehicle does the suspect drive?);

- (e) lack of consistency with respect to information gathered on suspects and from witnesses through interviews; no consistency in reporting/recording details; and
- (f) lack of consistency with respect to suspect classification and elimination.

Case management software is a free-standing information system dedicated exclusively to one large investigation. It is important to distinguish between a case management software system, a stand alone system which depends for its efficiency on a database unique to the particular investigation, and the larger police data system which contains occurrence reports and records and often runs part of the police communication and emergency call system. For serial predator investigations, the first priority is to mandate, by regulation one standard case management software system for use in all major homicide and sexual assault investigations by all forces.

As seen above, a major problem in Bernardo was the lack of adequate case management software even within each investigation to keep track of suspects and tips and information throughout the case. There was no way, for instance, to find out how many times a suspect's name had come up or to ensure that appropriate follow up was done on tips. The I. L. tip about Bernardo got lost in St. Catharines and there is still some confusion about what happened to the McNiff report that identified Bernardo as a Scarborough rape suspect in 1988 but was never followed up. There was no way even within the individual investigations to put together all the information about one suspect in one place. As one Metro investigator put it:

There was a lot of good in this investigation but there was a lot of good information that wasn't acted on. It all boils down to accountability. There was nothing out of those 70,000 pieces of paper that jumped out "Bernardo". When you look at the information on Bernardo you see they had the information but they didn't recognize it. It was there. The McNiff supplementary is a good example. When was [I. G.] interviewed, 1993? That needs an answer.

The problem is even greater when there are separate investigations with no capacity to share and pool information about suspects and investigative leads.

As noted above, the senior investigators at the Fire College Conference thought that the lack of uniformity of case management software used by different police forces is a major obstacle to the successful investigation of serial predators.

During the Scarborough rape investigations, the Metropolitan Toronto force used the HOLMES (Home Office Large Major Enquiry System) case management system as well as another computer system called Dr. Watson, a commercially available Q. & A. database programme to index the investigative file, and a number of different word processing systems including Wordperfect 5.1 then Microsoft Access, then Wordperfect 6 because Wordperfect 5.1 was not commercially available when the joint prosecution task force was later formed, although the Crown's office used Wordperfect 5.2. Later on Wordperfect 6.1 was used, and then the corporate Metro computer standard changed to Microsoft Word. The disclosure to the defence, after charges were laid, was a massive undertaking which involved significant software conversion and enormous problems because different software versions of the same document had different formatting and pagination.

Because the investigative information did not immediately go into one stand alone case management computer system used consistently for the duration of the investigations, there were problems bringing all the information together in one place. As noted in the Metro report on the Scarborough rape investigations:

Bernardo's name was added to the investigation at least eight times. No system existed to check for prior entries of a name at that time other than a manual search. If information is submitted to a central database and it is possible to search for other entries of similar information, links can be made even if the information is contained in a different file.

The system now in place does not allow for the name of everyone contacted during an investigation to be searched other than within the particular file.

...

Ideally, provincial mandates for software should be established enabling the effortless transfer of data between agencies. Standard programmes must be established and utilized by all agencies within law enforcement.

The GRT also had problems with its case management software, as noted in the Niagara GRT Debriefing Report:

The Task Force utilized several computer programs during the investigation. As the information received increased, it was found that the programs had to be upgraded to accept the volume of information. The Task Force eventually employed an existing software program that could accommodate the demands. Superior programs for these purposes are now available on the market and will be addressed in the proposals.

The investigative team should use an indexed software system either for custom application, ie. Police Retriever, Casefile!, etc., or an existing microsoft system already on the market such as Word Perfect 6.1 or Office. The existing microsoft systems are less expensive than custom application programs and they also have their manuals available. The only requirement is the program must have indexing capabilities.

The number of different computer systems used by the GRT during the course of the investigation was imposing:

- (a). **Hotline**—this system dealt with incoming tips from the public; from the beginning of its use the system crashed on a regular basis although little data was actually lost as there was a back-up file created daily; the breakdowns caused considerable delays and frustration; search capabilities were slow and unreliable; tips entered starting in April 1992.
- (b). **MTO**—data loaded from the Ministry of Transportation files listing all of the Camaros in Ontario; operating by mid June 1992.
- (c). **Report MTO**—system which enabled the searcher to ask more specific questions about the Camaros listed on MTO; on-line by mid June 1992.
- (d). **Phone back**—system which organized follow up on Camaro tips; initiated in September 1992.

- (e) **Wordperfect 5.1**—contained all supplementary reports; statements; exhibits; disclosure material; all information concerning court case and prosecution; including Tammy Homolka, Leslie Mahaffy and Kristen French files.
- (f) **Q & A**—system which organized all the material concerning suspects and Bernardo time lines; used by crime analysts; limited access authorization.
- (g) **Casefile!** (version 1.61)—May 1993, a case management and brief preparation program; used mainly for keeping track of witnesses—this early version of the programme was inadequate for an investigation of this magnitude; later versions have increased capacity; GRT used the system mostly to keep track of the witnesses.
- (h) **Police Retriever**—a case management program used for Leslie Mahaffy investigation, but proved to have inadequate capacity once investigations combined;

This is only a partial list of computer programmes that were considered, tried, or used briefly.

It is no wonder that serious information management problems arose and that vital information got lost during the course of investigations that used so many different computer systems.

This major weakness can be overcome very simply by mandating one standard case management software system for all police forces in the province to ensure that all information about suspects and leads and tips can be put together in a form that is accessible to all investigators in related investigations.

Computerized case management systems can prevent the problems that arise in Bernardo and in many other serial predator investigations such as the Yorkshire Ripper case, where there was no way to put together in one place and analyze all the relevant information learned about the killer during the course of the investigation. It is essential not only that police forces use such a system but that they use the same system so they can put together the information once a link becomes apparent between two investigations.

As the summary of the Fire College Conference put it:

In order to enable criminal investigations to be joined, there is clearly a need to achieve common ground in terms of compatibility and standards. Since all multiple and serial investigations start out as individual, distinct investigations, this necessitates that all major criminal investigations be commenced on the same, or at least compatible, computer systems.

Without a standard case management software system for all Ontario police forces mandated by regulation, more serial predators will continue to slip through the net within police borders and between police boundaries.

A number of different systems are used by different police forces and even within single police forces including HOLMES, Police Retriever, Q&A MCMS, Dr. Watson, Super Gravity, and CASEFILE!.

HOLMES, although very powerful is not user friendly. Although it has its supporters, its lengthy training requirements create problems, because it is not practical to take an investigator or a civilian clerk out of the field for two weeks to learn this complicated system.

One of the most widely used systems is CASEFILE!. Now available in a Windows production version, CASEFILE! has been acquired by Metro, Peel, York, Durham, and is being considered by other forces including the R.C.M.P. and the O.P.P.. As noted, an earlier version with a smaller capacity was used in the GRT investigation on a limited basis. It is being used to impressive benefit in the Christine Jessup murder reinvestigation by Metro homicide and this gives it the advantage of being tested on a very large case. CASEFILE! has a number of distinct advantages including not only the ability to collate information about suspects but also the capacity for Crown disclosure, case preparation, audit trails, and summary reports.

The minimum standards for a common case management system mandated by regulation would obviously include a case management programme to assist in the direction and control of the

investigation, a search and retrieval programme to allow data searching, an evidence retrieval and continuity component, a disclosure tracking system, a standardized audit trail, and a short training requirement. In choosing such a system one would obviously look for software that is easy to install and intuitive with well designed screens and a consistent layout, a navigational entry screen from which to manage all aspects of an investigation, the capacity to deal with the usually overwhelming information found at the start of a major investigation, search engines that allow a single search of all data fields in a single case or across multiple case data files, the ability to import statements and large documents into the database, the ability to import data from other cases using the same system, the ability to handle all areas of the investigation including persons and vehicle data, statement information, exhibits, reports, Crown briefs and disclosure trails, the capacity to produce audit trails and daily summaries, the capacity to produce action logs and follow up information, the ability to provide scalable file management for major investigations of different sizes, and a series of data entry, investigational, report, and file management functions.

It is a technical question for the police community and for the Solicitor General, whether CASEFILE! or some other system is the right computerized case management system to mandate by regulation for all major homicide and sexual assault investigations by all police forces.

But it is a clear lesson from the Bernardo investigations that whatever software system is chosen, one single uniform computerized case management system, mandated by regulation, is urgently needed to increase our level of protection against serial predators. There will have to be some give and take among police forces in order to agree on one common system. As Inspector Bevan said:

We're all in the same boat. We're all looking for some tool that's going to do the job, at least at the investigative level, that's going to be accepted. We all may have some kind of pet preferences but I think those preferences will be overridden with the knowledge that there is a system out there that's going to get some kind of support and there's a standard that lets us talk from one investigative file to another.

It would be a grave mistake to delay the mandating of a common case management system until the distant day when all police mainframes and information systems are compatible. And it would

be a grave mistake to delay the mandating of a common case management system until the distant day that some common information networking system is available to police forces. A common computerized case management information system mandated by regulation is doable now. This urgently needed and immediately doable improvement must not be delayed and defeated by tying it to other laudable but distant goals.

The first word of caution here is that the system has to be updated from time to time. Otherwise, to quote Inspector Bevan:

The technology tends to jump ahead of you and again you're left back in the dust. It's got to be an application that can somehow be kept current, whether that's by annual upgrades and everyone gets these upgrades, or otherwise. You know you can't in 1996 present a system and say this is what we are going to use for ten years, because that's totally ridiculous, your equipment changes and the technology changes, the capability of your software changes, and based on experience your ideas are going to change and I don't think we should ever lose sight of that. So whatever kind of system we go to, has to have that built in recognition that you need to continually develop.

These points made by Inspector Bevan should never be lost sight of by those charged with the responsibility of setting up a standard case management system mandated by regulation. These issues, updating by annual upgrades or some other system, recognizing that technology and ideas on how to use technology jump ahead and police have to move ahead with them or be left in the dust, are crucial to the success of a common case management computer system.

The British experience does show that serious difficulties occur if local police forces are allowed to add their own “improvements” to the system or if more than one system manufacturer is involved. Despite the best of good will, it appears that promises made in the early days of system development were never fully resolved and compatibility remained a problem, particularly where there was a need to transfer data from one machine to another. One of the clearest messages from the U.K. experience in the development of HOLMES has been the need to use one single software supplier. The other message is that individual police forces must not be allowed to modify the common system. Experience in England with the HOLMES system shows that the remorseless

drive to tinker and improve locally can destroy the effectiveness of computer systems as a common tool. As James Dickinson, the Assistant Chief Constable of the Essex Police put it:

It is imperative that the current level of standardisation is maintained and any initiatives are co-ordinated on a central basis. Senior investigators must not introduce innovative ideas locally in breach of the accepted conventions of HOLMES. We do not need 43 better ways of using the HOLMES system as we had with manual systems prior to 1984.

A central capacity is necessary to update the system as new technology becomes available and above all to ensure that the uniform system remains uniform and compatible. What must be prevented are well-meaning local initiatives that improve the system 10% for the individual police force and destroy 90% of its capacity as a compatible tool for all police forces.

8.2 Other Standard Information Management Issues

A common case management computer system is only the first step towards compatibility of police information systems in Ontario. The recommendations at the Fire College Conference and studies within the Ontario government have identified many other needs including the need for common information standards, common forms, and eventually common mainframe and records and networking systems.

Some of these steps such as the development of common information standards and common forms can be started immediately and some steps will take time. Police forces have made huge financial investments in computerized information systems that involve not only investigative records and occurrence reports but also 911 systems and dispatch services. The 10 to 20-year lifespan of these capital intensive systems presents a real obstacle to early standardization of all police information and computer systems.

It is important for the police community and the Solicitor General's department to continue to work towards greater compatibility of information systems and standards. For instance, a stalking

incident might be reported as a trespass or a stalking or a prowling by night or a trouble call or an information item or a suspicious person.

The need for standardized police information systems and information standards is significant. But the perfect is the enemy of the good. A common case management system for all major homicide and sexual assault cases is urgent and is immediately attainable. It cannot be delayed by the pursuit of some wider goal of police computer compatibility and networking.

9 Training

When police budgets are pruned, training is often the first thing to be cut. Yet when something goes wrong in police work, it can often be traced to inadequate training. It is a form of institutional recklessness to reduce police training budgets below the essential requirements for good police work.

Two levels of training are needed to increase our protection against serial predators.

The first level is major case management training for the small cadre of preselected senior investigators and their forensic support team for leadership of major complex serial predator investigations.

The second level is sexual assault, homicide, and crime scene identification for investigators designated by local police forces.

9.1 Major Case Management Training

The Fire College working group, as noted above, strongly endorsed the development of a specialized training course in multi-jurisdictional serial predator investigations as a qualifying step for a cadre of senior investigators available to respond to such cases when they arise.

The need for such training is recognized by officers like Inspector Bevan who have been through such investigations, and see from their experience the advantages of a programme similar to the major case management course recently developed by the Canadian Police College since the Bernardo case:

I think one of the downfalls of investigations in the past has been that offenders such as Bernardo are very aware of jurisdictional difficulties and they play upon those. Now the experience in the United States has shown the same thing where they will cross jurisdictions knowing they have a better chance of avoiding detection... Not all organizations have the expertise in case management that is needed to do this job. I mean, the training has improved, I really wished I'd had exposure to a course similar to what they offer now at the Canadian Police College because it really would have helped me, it would have helped the investigation, I think. But as far as having people who are trained case managers who come in with that level of expertise, I think that could be a very good thing. The other benefit that I see coming out of it is that you're going to have a pool of expertise that exists who could act in an advisory capacity to someone who is caught up in performing case management function in an investigation such as this. We shouldn't overlook those resources. They could be very helpful.

The Canadian Police College Major Case Management Course is an obvious starting point for the creation of such a course tailor-made to the Ontario investigative, legal, and forensic environment.

The Canadian Police College Course deals in a highly organized and systematic manner with issues such as the accountability of the senior officer in charge, the organization of the major investigative functions such as liaison with victims and their families, team building, financial administration, file organization, scene examination, profiling of victims and suspects, computerized investigative techniques, preparing for Crown disclosure, processing tips, planning the arrest and the interview, handling inter-jurisdictional issues, public appeals and planning for the deluge of information that results from them, dealing with the inevitable stress inflicted on the investigators and the victims and their families, establishment and management of the command post, and dozens of other issues faced daily by the officer in charge of a major serial predator investigation.

A made-in-Ontario course would include those elements with particular emphasis on factors unique to Ontario including the available forensic and legal resources and the particular challenges of dealing effectively with a highly competitive media industry.

A companion training programme would emphasize not only the particular forensic skills and disciplines relevant to major serial predator investigations but also the special challenges of managing and co-ordinating the most effective use of a wide range of forensic resources within and between such investigations.

Major case management training would be made available to officers with at least 15 years experience who have achieved the rank of at least Staff Sergeant (or the equivalent rank of Detective Sergeant) as outlined in the Fire College recommendations at Appendix 19. The programme would be geared to officers who had already proven themselves as proficient and accomplished investigators. While important areas such as victim management, media relations, tip processing and profiling as well as other issues dealt with by the Canadian Police College course would figure prominently in a course on case management of the multi-jurisdictional investigation into serial predators, the main focus of the training would be corporate management skills and techniques in a police operational environment.

The more senior officers would be trained with a view to becoming the Senior Case Manager with an understanding of the requirements and need for management of a multi-jurisdictional investigation. The senior case manager must be trained to take command with little advance warning and maintain control from an overview position much like the president of a company. Less senior officers would receive substantially the same training developing an understanding of the role of the lead investigator for the individual case within a multi-jurisdictional or serial crime investigation.

Both the senior case manager and the individual case manager must be trained to:

- ensure that there is a standard approach to criminal investigations within the investigation;
- identify when other investigations should be linked (mandatory ViCLAS submissions will assist managers significantly in this area);
- understand the significance of open communication with other officers and police forces and agencies;
- be aware of forensic capabilities, computer technology, civil responsibilities and legal issues, and utilize the available resources in these areas;
- involve the media and public constructively;
- delegate responsibilities to specially trained officers in areas such as media relations, victim services and file management;
- co-ordinate and control the financial aspects of the investigation;
- review the investigation in a comprehensive manner on an ongoing basis and ensure that standard case management techniques are being followed.

Major case management training would instill in the managing officer an understanding of the intricacies of the multi-jurisdictional serial predator investigation while enabling the officer to develop the ability to manage the entire investigation or a branch of the investigation in a productive and professional manner.

9.2 Homicide Training

The second level of training that is necessary is specialized training for the investigating officers in specified areas such as homicide.

The Homicide I course offered by the OPC provides an excellent overview for the investigation of homicides. Selected officers review the law on homicide, the taking of statements and the interviewing of witnesses. A day is spent on crime scene management focusing on the role of the coroner, the role of the identification officer and the role of the Centre of Forensic Sciences in homicide investigations. Search and seizure and case management, including media relations and

file management, are also dealt with in the five-day module. Officers attend lectures given by Crown attorneys, coroners, CFS scientists and senior officers.

While this course acts as an excellent starting point for homicide investigators, ongoing training is necessary to hone the investigators' skills and keep them aware of recent developments in the case law, forensics and computer technology.

Ongoing training is expensive and inconvenient especially in jurisdictions where there are great demands on the homicide department and it would be impractical to suggest that all designated homicide officers regularly attend at the Ontario Police College. Individual forces with the guidance of the OPC need to create a system to ensure that recent developments in the investigation of homicides reach all investigators through in-force seminars and on the job training. As one officer stated:

I don't believe that in my experience—I guess I haven't been taught as much by senior investigators as I always expected I would be, and it's one thing to learn in the classroom, it's another now to apply it, and not have a textbook case or classroom case where little twists and turns come into it, and that comes down to training issues and being up to speed on precedents that are set in the high courts, procedures, CFS procedures, contamination procedures if we are dealing with DNA. That all comes down to training.

Case managers in charge of multi-jurisdictional investigations must have complete confidence that the homicide investigators, so important to the investigation, are properly and consistently trained.

9.3 Crime Scene Identification Training

Training of identification officers is an area that has suffered due to fiscal restraints in the last few years. Ironically this has occurred during a time when criminal investigators have become increasingly aware of the value of forensic evidence gathered at the scene of a crime. If the

identification officer at a crime scene makes a mistake, the most sophisticated task force in the world cannot overcome that fatal initial flaw.

An effective multi-jurisdictional investigation into the activities of a serial predator requires a small number of officers to be trained in the most advanced crime scene identification techniques. Errors made and evidence overlooked at the crime scene can be fatal to any investigation.

Course content should be developed by the OPC with input from the Office of the Chief Coroner, the Centre of Forensic Sciences and senior officers from various jurisdictions. Trained identification officers will ensure forensic competence in the following areas to name but a few:

- blood splatter analysis;
- DNA analysis;
- fibre and trace evidence;
- bullet and shell casings identification;
- forensic knotcraft;
- forensic tire and track identification;
- crime scene analysis;
- crime scene reconstruction; and
- crime scene interpretation.

As stated in the Major Case Management Manual distributed by the Canadian Police College,

While investigative supports do not always point an unerring finger at an accused, they may serve to eliminate many suspects who would otherwise consume precious resources.

A well-trained homicide squad or sexual assault squad will be disadvantaged without the assistance and support of crime scene identification officers versed in the state of the art methodology and technology.

9.4 Sexual Assault Training

Another area of specialization in which training is imperative for the purposes of multi-jurisdictional investigations of serial predators as well as the day-to-day functioning of every police force is sexual assault. Officers must be aware that sexual assault is different from other offences and cannot be approached in the same way. In a draft version of the Policing Standards Manual, October 4, 1995, the rationale for the special approach that must be adopted in investigating sexual assaults was set out as follows:

With the exception of homicide, sexual assault is the one crime that generally has the most traumatic effects on the victim and those persons associated with the victim. The investigation of sexual assault is complicated by the nature of physical evidence, the collection of which may be particularly complex, as well as the other elements necessary to verify the offence which are unique. Further complicating the investigation, the subsequent laying of charges as well as the reporting of sexual assault are existing myths and stereotypes and the social context within which sexual assault takes place that may place additional burdens on a victim. Recognition and appreciation of these factors must influence the actions taken by police and their response to victims.

Due to the trauma suffered by the victim of a sexual assault first contact officers and criminal investigators should be trained to approach the victim and the victim's family in a manner that will assist in their emotional recovery as well as to preserve evidence of the offence, both statement evidence and forensic evidence.

Sexual assault training was clearly lacking in the early stages of the Scarborough rape investigation. One victim did not initially disclose crucial details of the attack because she was interviewed in front of her parents, sisters and boyfriend. Others referred to remarks made by officers in unintentional bad taste. As one officer said when asked about the Scarborough rapes

and victim contact, “A lot of things shouldn't have happened but it comes down to training.” The police response to the Scarborough rape victims did appear to improve as training improved, and a number of victims did comment on the need for training.

The need for special training for investigators and uniform officers in the area of sexual assault has been recognized by many police agencies. Currently the Ontario Police College offers a ten-day course for sexual assault investigators focusing on:

- new legal precedents;
- issues in search and seizure;
- DNA and sexual assault investigations;
- investigative techniques;
- medical evidence and the sexual assault kit;
- case management; and
- working with survivors of sexual assault.

Selected officers attend lectures given by Crown attorneys, CFS scientists, victim services workers and senior officers and are evaluated on their performance.

As was stated above with respect to the OPC Homicide course, the Sexual Assault course is an excellent starting point for the training of competent and effective sexual assault investigators. One officer felt that an effort should be made to expand the OPC Sexual Assault training course:

“They have a good course but it could be more in depth and should involve actual interviewing techniques”.

Another officer said that training should be ongoing:

Training is an ongoing thing, you can't be a certified sexual assault specialist and never receive any more training, and I am sure with any other specialty as well. It's an ongoing thing and rather than train everybody a little bit, let's train a few people with everything and then they can impart that training to the rest of the people. Having everybody go to a sexual assault course does not make everybody a sexual assault investigator.

As with homicide investigations, there must be some system in place within the individual police force to ensure that there is continued and ongoing training for officers in the area of sexual assault.

Training that provides an awareness of the special demands of sexual assault investigations must extend to the uniform officers, usually the first to arrive on the scene. The initial contact with the victims of sexual assault presents a special challenge to both male and female uniform officers who may not be equipped to deal with circumstances. Superintendent Joe Wolfe noted:

I think uniform officers can always get more training. I believe most feel uncomfortable when dealing with a victim of sexual assault. I think we are getting better at training them. My feedback from the hospital is extremely positive. We can always do better.

The Coroner's jury in the Inquest into the Death of Jonathan Yeo recommended that the Solicitor General appoint a provincial sexual assault co-ordinator to monitor the implementation of sexual assault specialty squads throughout Ontario. The jury recommended that these courses be directed to all issues relating to the investigation and prosecution of sexual crimes with a special emphasis on:

- (a) recognition and understanding of the impact of crime upon the victim, and offering of appropriate assistance with security concerns;
- (b) taking of statements from the victim;
- (c) ongoing reporting to, and communication with, the victim concerning all important aspects of a prosecution involving her; and
- (d) facilitating communication between the victim and Crown Counsel.

While it may not be practical for smaller forces in Ontario to set up sexual assault squads due to the limited number of officers available and the small number of sexual offences that occur in the jurisdiction, there has to be an awareness in every police force about the sensitivity and special requirements of sexual assault investigations. Officers cannot be criticized for saying or doing the wrong thing when they have not been trained to approach sexual assaults in a manner that is sensitive to the victim and beneficial to the investigation.

In light of the experience in the Bernardo investigation, any basic or advanced training in the area of sexual assault should contain reference to the offence of stalking and criminal harassment, emphasizing the significance of stalking as one of the potential hallmarks of the sexual predator. Training will assist the police in recognizing criminal harassment and stranger stalking as a serious threat to public safety.

9.5 Other Areas

Other areas that require attention in training police officers, especially those involved in the management of a major case, are media relations, stress management and computer and C.P.I.C. technology. These issues have been referred to above but must be emphasized given their significance and the obvious lack of training in these areas evident in the Bernardo investigation.

Officers must be aware of the danger in releasing too much or not enough information to the media. The media should not be permitted to dictate the course of the investigation or become an obstacle but rather should be utilized as a resource to inform the public and to assist in public appeals for information. Further, officers must be made aware of the potentially devastating effects of leaking information to the media.

Stress, inevitable in any high-pressure investigation, must be recognized and managed. Again the onus is on the case manager to be adequately trained in this area as pointed out by Inspector Vince Bevan:

For years and years it's overlooked. You know, we thought our people could do their job and go home unaffected and be doing the same job for years and years and that's quite frankly bullshit because we're talking about somebody doing a career over a number of years. Those are the kinds of people you want working on an investigation, your experienced people, and if you put that load on them, it's ... they're going to burn out.

Computer technology and the full capabilities of the C.P.I.C. are other areas where there must be training. One officer put it succinctly:

How can we criticize if we don't train. Training on the computer and on basic skills. Our department is buying the fancy equipment but the officers are learning themselves how to work the systems. The department is not training them... Every bit of information is on computers these days. You have to be able to understand how the systems work to get the info. If I am Chief and I decree officers to take CPR and to qualify at the range. How often do I do CPR and shoot my gun? But the computer is something you use every single day. We have to have training.

The bottom line in any discussion about training be it for new recruits, senior officers or specialty squads is that you can never have enough. Uniform officers, criminal investigators and case managers cannot be skilled if they are not properly trained. Initial training, specialized training and ongoing training must be available. The tendency to cut training when restrictions are placed on the police budget must be re-examined, for it is often a question of pay now or pay later when it comes to the education and training of police officers. It is, to repeat, a form of institutional recklessness to reduce police training budgets below the essential requirements for good police work.

10 Cost Issues

The recommended changes involve some start-up costs and some continuing costs. It will cost money to increase and maintain adequate testing capacity for the DNA lab at the Centre of Forensic Sciences, to mandate a uniform computerized case management information system, and to provide the necessary training for senior case managers, inter-disciplinary support teams, senior investigators, sexual assault investigators and crime scene identification officers. The cost

of administering the central co-ordinating system will be modest because it uses existing structures and does not depend on any new bureaucracy co-ordinating system.

Most of these will be provincial costs to the Solicitor General's department although some of the costs will inevitably be borne by local police forces who are increasingly required to provide more service with less money.

The actual investigative costs of another serial predator investigation should be less under the proposed system than under the system that now exists because early recognition of linked crimes is more likely under the proposed system, and the arrest of the predator is likely to take place sooner if systems are in place of the kind recommended.

Against the relatively modest start-up and continuing cost of the new system should be weighed the enormous financial and human cost of another Bernardo case, which could easily happen in the absence of corrective action, and the cost to public confidence in the ability of our law enforcement systems to protect the community against serial predators.

11 Central Mandating and Local Autonomy

Ontario depends on a system of community based policing, with a high degree of autonomy vested in individual police forces. No centrally imposed or Toronto-driven system will work throughout Ontario. The approach recommended in this review preserves local autonomy but supplements it with a co-operative system among police forces to ensure that local autonomy does not dilute public protection against mobile serial predators who use police boundaries to avoid detection and capture. The proposals are based on co-operation among police forces, facilitated by a model based on the existing CISO police co-operative structure, supplemented by forensic and inter-disciplinary teamwork. The proposals will only work if the Ontario police community buys into them. The proposals are designed to attract that support.

Some central mandating is required, such as ViCLAS submissions and a uniform computerized case management system. But the recommendations depend fundamentally on the co-operation of individual police forces through their support of the unified leadership model facilitated by standard memoranda of agreement.

There are many suggestions on the table for changes in the financing and regional structures of policing in Ontario. The recommendations in this review are not tied to any of those proposals and they are not tied to the maintenance of the status quo. Whether the structure of policing organizations changes or remains the same, these recommendations stand on their own. The principle of a unified investigative strategy driven by co-operation among police forces and forensic agencies will work whether or not our policing structures change or remain the same.

The climate in the police community appears favourable to the changes suggested in this review. They are similar to, and in some instances identical with, the thoughtful recommendations of the Metropolitan Toronto Police Service and the Niagara Regional police Service in their reports on the Bernardo investigations as well as the Chief Coroner's report, the report of the Centre of Forensic Sciences, and the Fire College Conference recommendations. It is my strong impression that there is a recognition within the police community that there are better ways to do things and that there is support for the kind of co-operative approach reflected in these recommendations.¹

12 Implementation

The implementation of these recommendations, if accepted by the government and the police community, will require a brief period of consultation. The consultation need not be lengthy because these ideas are not new. They emerge from the police and law enforcement communities and have been discussed within government during the consultations that preceded this review. Some of the recommendations can be implemented immediately, such as mandatory ViCLAS

1. To take one example, see the excellent analysis in Appendix 21 prepared by Detective Sergeant Robert Hotston of the Criminal Investigation Division of the Peterborough Police Service.

submissions. Others, like the uniform computerized case management information system, will take a little more consultation to ensure that the greatest possible degree of consensus has been reached on the best single common system for use by all police forces in major sexual assault and homicide cases that have the potential to turn into inter-jurisdictional serial predator investigations. But the need for change is urgent, and if there is a will to change it can be achieved very quickly. It should be possible to know before the end of the year whether the recommendations will be implemented.

Chapter 14–Summary Of Recommendations

Introduction

- (1). A major case management system is required for major and inter-jurisdictional serial predator investigations, based on:
 - a) co-operation rather than rivalry
 - b) specialized training for senior officers in charge, senior investigators, and inter-disciplinary support teams
 - c) early recognition of linked offences
 - d) co-ordination of inter-disciplinary and forensic resources
 - e) simple mechanisms to ensure unified management, accountability and co-ordination among police forces and law enforcement agencies
- (2) A commitment for change is required from the police and law enforcement communities, the Ontario government, and from the community at large

Metropolitan Toronto Police Investigation

- (3) A major case management system for the investigation of serial predators is required to ensure:
 - a) unified direction under one single person in overall charge of, and accountable for, related investigations
 - b) supervision of time lines and systematic follow up of crucial investigative steps such as forensic testing
 - c) a standard computerized case management system for the recording, organization, management, analysis, and follow up of tips and investigative leads
 - d) the consistent, and organized classification and elimination of suspects
 - e) the systematic use of relevant information from other forces such as C.P.I.C. zone alerts

- f) co-operative provincial oversight and intervention when a serial predator investigation is not pursued vigorously when it becomes a low priority for a local police force

The Centre of Forensic Sciences

- (4) A reasonable turnaround time for DNA testing is required, in the range of 30 days
- (5) A continuing commitment of resources is required to achieve and maintain this turnaround time in face of technological change, rising workload, and recent and anticipated Criminal Code amendments
- (6) A system is required to better co-ordinate the work of forensic scientists and police investigators

The Secret Killing of Tammy Homolka

- (7) Continuation and support is required for the work of the Chief Coroner's office in developing, for unexplained or suspicious deaths, an inter-disciplinary approach to integrate the work of the police, coroners, forensic scientists, and forensic pathologists

The Henley Island Attack

- (8) A case management system is required to ensure that investigations of sexual predators widen their scope once local leads are exhausted
- (9) Mandatory ViCLAS reporting is required to ensure early recognition of links between sexual predator attacks

Stalking

- (10) Increasing awareness and training are required to ensure that stalking is recognized as a serious problem and a potential hallmark of the serial predator and that reported incidents are responded to and documented in accordance with approved procedures

The Green Ribbon Task Force

- (11) A major case management system is required to ensure that all relevant resources and techniques and information sources are applied to the investigation

- (12) A standard computerized case management information system is required for major sexual assault and homicide investigations that have the potential to involve inter-jurisdictional investigations
- (13) A major case management system is required to ensure:
 - a) standardization of interview and statement techniques and consistent criteria for suspect classification and elimination
 - b) better communication between police forces about common suspects
 - c) strategic analysis of the benefits of major initiatives and the capacity of the investigation to use the resulting information effectively
 - d) a high degree of mutual understanding and agreement between police investigators and forensic pathologists on the steps to be taken at a body site and during a post mortem investigation
 - e) effective media relations policies directed in major cases by a specially trained full-time media relations officer

Identification, Arrest, Questioning

- (14) A major case management system is required to ensure:
 - a) that one single specially trained officer is in clearly in charge of, and accountable for, the planning, strategy, and execution of the arrest and interview as well as all other aspects of the investigation
 - b) that a detailed running synopsis of the investigation be maintained in a form that can be quickly adapted as a core document as a basis for the preparation of a search warrant and other legal documentation
 - c) that all officers involved in the arrest and questioning of a suspect, from the most senior to the most junior, are aware of the legal requirements for a valid arrest and questioning and the legal consequences of failing to comply with those requirements
 - d) that the officer in charge be responsible for the co-ordination of all advice and direction given to the arresting and interviewing officers

The Search of 57 Bayview Drive

- (15) The officers who conduct major searches should be selected based on their experience and expertise, with an effort to combine officers, and other persons selected to assist, with different perspectives. A second team of searchers should be sent in after the first group has exhausted all apparent possibilities.

Sexual Assault Victim Concerns

- (16) Sexual assault case management systems and sexual assault investigation training are required to emphasize:
 - a) sensitivity to the special concerns of sexual assault survivors and the potential for revictimization through the investigative, prosecution, and judicial processes
 - b) continuity of contact between investigator and victim
 - c) availability of victim support services
 - d) interview techniques that encourage full disclosure of the assault and its circumstances
 - e) keeping victims informed of the progress of the investigation and the case

CISO: The Criminal Intelligence Service of Ontario

- (17) A province–wide co–ordinated response to serial predators is required, based on the CISO model of a centrally supported police co–operative with additional inter–disciplinary advice and support, but without the creation of a new agency or the attraction of any bureaucratic baggage

A Strategic Defence Against Serial Predators

- (18) A co–ordinated case management system is required that transcends any localized mindset, discourages tunnel vision, recognizes that the capture of a serial predator involves a provincial public interest wider than the interest of any single community or police force, and encourages unified investigations with clearly defined leadership and accountability

- (19) A co–ordinated early recognition system is required to recognize links between crimes early enough to pool information and converge the separate investigations onto the same target, a system based on:
- a) more effective utilization of C.P.I.C. zone alerts and C.P.I.C. off–line searches
 - b) mandatory ViCLAS reporting by all Ontario police forces, by regulation under the Police Services Act, supported by training, reinforcement, and any resources necessary to support expanded ViCLAS reporting
 - c) the use of the Chief Coroner's records of unidentified human remains, homicides, and coroners' death investigations organized on a systematic database
 - d) systematic use of other potential linkage indicators such as composite drawings, forensic tests conducted by CFS, and profiling
 - e) training for major case managers and senior investigators to use all potential linkage indicators
 - f) case management systems that heighten the awareness, of uniformed officers and investigators throughout a police force, to linkage indicators
- (20) A centrally supported organizational structure is required, based on co–operation among individual police forces, that combines unified leadership across police jurisdictions with organized case management procedures and inter–disciplinary support from forensic scientists and other agencies. The recommended structure is as follows:
- a) two levels of co–ordination including a Board of Directors and an Executive Committee
 - b) the Board of Directors,
 - based on the CISO police co–operative model
 - composed of twelve police chiefs chosen by the OACP and/or the CISO governing body, the Chief Coroner, the Director of the CFS, the Assistant Deputy Solicitor Generals for Policing Services and Public Safety
 - supported by existing structures without the creation of any new bureaucratic agency or the attraction of bureaucratic baggage

- to implement the policies and maintain the framework that will ensure the smooth operation of the recommended major case management system for multi-jurisdictional investigations of serial predators
- to resolve any conflicts that cannot be resolved by the officer in charge
- to be directly accountable to the Solicitor General for all financial issues but independent in relation to police operations and investigations
- to operate on the basis of standard memoranda of agreement entered into voluntarily by all police forces in Ontario
- to be administratively supported by a small staff group similar or identical to the present CISO structure

c) the Executive Committee

- a small group of Board members accountable to the Board
- responsible for the triggering mechanism, based on the ViCLAS definition, which launches the co-ordinated investigation in a particular case:

all abductions, homicides, sexual assaults and attempts or attempts that appear to be sadistic or sexual or predatory in nature, apparently random, motiveless or are known or suspected of being part of a series, particularly where more than one police jurisdiction is involved and where the circumstances suggest a public safety interest beyond the community or communities directly involved

- responsible for the resource decisions, financial accountability and general oversight of specific investigations, leaving the actual investigation itself to the officer in charge
- to include as ad hoc members, when dealing with a specific investigation, the chiefs or their designates of the individual forces involved and the chief of the senior officer in command, if he does not come from one of the involved forces
- responsible for selecting and, in the case of irreconcilable differences the removal, of the senior officer in charge and for major resource and policy decisions, but not to interfere with the investigative authority or accountability of the senior officer in charge

- one single senior case manager or officer clearly in charge and accountable, drawn from a cadre of approximately 12 senior and experienced criminal investigators preselected by the Board
 - specially trained in major case management and inter-jurisdictional investigations
 - accountable to the Board and the Executive Committee for financial issues and the ultimate success or failure of the investigation, but personally and directly in charge of the investigation at all times
- d) an Inter-disciplinary Advisory Committee to ensure a consistently high level of continuing technical, legal and forensic advice; selected jointly by the Senior Case Manager and the Executive Committee, to advise the senior officer in charge but not to manage the investigation
- e) a Support Team composed of a full-time media officer, crime analysts, profilers, computer technicians, an officer manager, clerical staff including data entry staff and a budget officer
- f) Lead Investigators for the individual cases who will have received essentially the same training package as the senior case manager
- (21) Standard case management procedures are required of the kind described in the Major Case Management Manual developed by the Canadian Police College, customized to the Ontario police, legal and forensic environments
- (22) Early approval of one single uniform computerized case management system for mandatory use in all serial predator investigations and all major sexual assault and homicide cases that could potentially fit the ViCLAS definition or the triggering definition and turn into a serial predator investigation
- a) with capabilities similar to the CASEFILE! system
- b) agreed upon quickly by the Ontario police community as the one single preferred uniform package
- c) updated regularly under the direction of the Board and the Executive Committee
- d) with its uniformity and ability to share information guaranteed by a strong prohibition against “improvements” or tinkering by individual forces that

- might improve it 10% and destroy 90% of its value as a common, uniform, system for information sharing
- e) supported by basic computer training for all investigators who will use the programme and advanced training for those at the centre of the investigation
- (23) Eventual standardization is desirable of other police information and record systems, information standards, and mainframes, of the kind recommended at the Fire College Conference; such work must not interfere with the immediate approval of a single common computerized case management information system of the kind represented by CASEFILE!
- (24) Specialized training is required as one of the foundations of a new defence against serial predators, particularly in the following areas:
- a) Major case management and inter–jurisdictional investigation training for specially selected senior officers in command, senior investigators, and members of inter–disciplinary support teams, to include topics such as
- special problems of serial predator investigations
 - special problems of inter–jurisdictional investigations
 - media liaison
 - victim support
 - stress management
 - information management
- b) Specialized training for criminal investigators in homicide and sexual assault investigations and crime scene identification
- (25) An organized system is required under the direction of the proposed Board of Directors to ensure that our law enforcement agencies learn from the mistakes of the past not only in the Bernardo and other serial predator investigations but also the problems and solutions identified by Ontario coroners' juries
- (26) Funding and support for serial predator investigations is required under s. 9 of the Treasury Act, administered through the proposed Board of Directors and Executive Committee through machinery based on the present CISO funding

model. This funding cannot be used simply for the purpose of cost relief for investigations that should be funded locally.

- (27) Funding is required for the training packages, the establishment and maintenance of a reasonable turnaround time for DNA testing, and the start-up and maintenance of the proposed system. The necessary funds are modest compared with the human and financial costs of failing to increase, to a more reasonable level, the systems of public protection against serial predators. It would be institutionally reckless to fail to do so.

Chapter 15–Chronology

87 May 4	Scarborough sexual assault
87 May 14	Scarborough sexual assault
87 Jul 27	Scarborough sexual assault
87 Dec 16	Scarborough sexual assault
87 Dec 2	3 Scarborough sexual assault
88 Jan 5	Bernardo's ex-girlfriend speaks to Sergeant McNiff McNiff submits 3 page report about Bernardo, suggesting he should be considered a suspect in the Scarborough rapes
88 Apr 18	Scarborough sexual assault
88 May 29	Mississauga sexual assault
88 Oct 4	Scarborough sexual assault
88 Nov 16	Scarborough sexual assault
88 Nov 17	Scarborough Rapist Task Force formed
88 Dec 8	New York DNA lab obtains no result from DNA test
88 Dec 27	Scarborough sexual assault
89 Apr 12	Sexual Assault Squad formed
89 Jun 20	Scarborough sexual assault
89 Aug 15	Scarborough sexual assault
89 Nov 21	Scarborough sexual assault
89 Dec 22	Scarborough sexual assault
90 May 26	Scarborough sexual assault
90 May 28	Composite in May 26 sexual assault made public
90 Jun 26	Royal Bank teller calls in Bernardo as a good look-a-like for composite
90 Jul	Centre of Forensic Sciences on line with RFLP DNA testing
90 Sep 12	Madden report of call from “Tina” about Bernardo
90 Sep 26	Tina and Alex Smirnis interviewed

90 Nov 20	Metro officers Irwin and Munro interview Bernardo; Obtain samples of hair, saliva, and blood
90 Nov 21	Bernardo samples submitted to CFS for DNA testing if serology is right
90 Dec 13	CFS serology test shows Bernardo's serology is right
90 Dec 24	Death of Tammy Homolka
91 Jan 29	Bernardo and Homolka move to 57 Bayview Drive, St. Catharines
91 Apr 6	Henley Island sexual assault
91 Jun 7	Date of Jane Doe incident 1
91 Jun 15	Bernardo stalks, rapes and murders Leslie Mahaffy
91 Jun 17	Bernardo's concrete cash purchase and return slip
91 Jun 29	Body parts discovered in Lake Gibson Bernardo and Homolka married
91 Jun 30	Torso recovered from Lake Gibson
91 Jul 4	Investigators find similarities between body and Leslie Mahaffy's description
91 Jul 8	Body parts identified as Leslie Mahaffy
91 Jul 10	Joint Forces investigation is launched into Leslie Mahaffy murder by Niagara and Halton Regional Police Services
91 Jul	Bernardo stalks P. E.
91 Aug 9	Bernardo stalks P. E. again P. E. notes licence plate number 660HFH Niagara officer checks stalker's car on C.P.I.C. Car registered to Bernardo Niagara officer checks Bernardo's car 660HFH at 57 Bayview Drive
91 Aug 10	Date of Jane Doe incident 2 Nina De Villiers disappears in Burlington
91 Aug 14	Jonathan Yeo suicides after police chase
91 Aug 17	Nina De Villiers' body found in creek in Napanee
91 Nov 6	Bernardo samples returned to SAS by CFS
91 Nov 30	Terri Anderson disappears in St. Catharines

92 Jan 24	P. E. mentions earlier stalking to Niagara officer
92 Mar 30	Bernardo videotapes K. A. and S. A. in St. Catharines Stalks, follows them home K. A. and S. A. record licence number 660NFM or 660MFN
92 Mar 31	K. A. and S. A. report incident to NRPS 2 possible licence numbers
92 Apr 2	Bernardo samples re-submitted to CFS for DNA testing along with other suspects
92 Apr 16	Kristen French abducted in St. Catharines
92 Apr 18	K. A. recognizes and follows Bernardo's Nissan Loses him near his home in Port Dalhousie Calls police with original incident number Reports licence number 660HFM
92 Apr 19	Bernardo murders Kristen French
92 Apr 30	Kristen French's body found in Burlington ditch
92 May 1	O.P.P. Constable Haney phones in Smirnis tip re Paul Bernardo to GRT hot line
92 May 12	GRT officers, Sergeant Nesbitt and Constable Kenney, interview Bernardo
92 May 13	Detective Nesbitt calls SAS for info on Bernardo Message left for Irwin to call Nesbitt
92 May 14	CISO approves funding for GRT
92 May 20	Irwin returns Nesbitt's call and sends fax GRT gives Bernardo suspect status 3C and 1C Likely suspect, probable elimination Unlikely suspect, probable elimination
92 May 23	Terri Anderson's body found in Port Dalhousie harbour
92 May 31	I. L. attends Niagara headquarters Says suspicious of Bernardo as possible suspect
92 Jun 18	Leslie Mahaffy disinterred
92 Jul 21	CHCH Programme “The Abduction of Kristen French”
92 Dec 24	Bernardo sexually assaults L. S. at 57 Bayview

93 Jan 6	Bernardo charged with assault on Homolka
93 Feb 1	First DNA test completed at CFS Shows one probe match to Bernardo
93 Feb 8	Metro informs GRT of Bernardo suspect status
93 Feb 9	Homolka interviewed by Metro
93 Feb 12	Work on search warrant begins
93 Feb 17	Preparation for search warrant documentation continues Media leak Bernardo arrested and interviewed
93 Feb 19	Start of search at 57 Bayview Drive
93 Apr 30	End of search at 57 Bayview Drive
93 May 6	Videos allegedly removed from house by Ken Murray Tapes show French, Mahaffy, Tammy Homolka and Jane Doe
93 May 14	Walker and Segal finalize resolution agreement Homolka police interviews begin
93 Jul 20	Tammy Homolka exhumed
95 Sep 1	Bernardo convicted
95 Nov 3	Bernardo found dangerous offender

Chapter 16–Summary

Chapter 1: Introduction

The Bernardo case, like every similar investigation, had its share of human error. But this is not a story of human error or lack of dedication or investigative skill. It is a story of systemic failure.

It is easy with hindsight, knowing now that Bernardo was the rapist and the killer, to ask why he was not identified earlier for what he was. But the same question and the same problems have arisen in so many similar tragedies in other countries, because serial predators pose a unique challenge to all law enforcement agencies.

What is needed is a system of case management for major and inter–jurisdictional serial predator investigations, a system that corrects the defects demonstrated by this and so many similar cases. A case management system is needed that is based on co–operation, rather than rivalry, among law enforcement agencies. A case management system is needed that depends on specialized training, early recognition of linked offences, co–ordination of inter–disciplinary and forensic resources, and some simple mechanisms to ensure unified management, accountability and co–ordination when serial predators cross police borders.

There were times during the separate investigations of the Scarborough rapes and the St. Catharines rapes and murders that the different police forces might as well have been operating in different countries.

Because of the systemic weaknesses and the inability of the different law enforcement agencies to pool their information and co–operate effectively, Bernardo fell through the cracks.

The Bernardo case shows that motivation, investigative skill, and dedication are not enough. The work of the most dedicated, skilful, and highly motivated investigators and supervisors and

forensic scientists can be defeated by the lack of effective case management systems and the lack of systems to ensure communication and co–operation among law enforcement agencies.

Some of the systemic weaknesses have been identified and corrected in Ontario through changes in investigative procedures and advances in the application of forensic science. Other systemic weaknesses urgently require correction in order to guard against a tragic repetition of the problems that arose in the Bernardo investigations.

Ontario has, in its existing law enforcement agencies, the essential capacity to respond effectively to another case like this, but only if certain components of those agencies are strengthened and only if systems are put in place to co–ordinate and manage the work of the different agencies.

Chapter 2: The Metropolitan Toronto Police Investigation

Excellent investigative work was done by the Metropolitan Toronto Police Service during the Scarborough rape investigations. The difficulties faced by the investigators were enormous. Finding the rapist was like finding a needle in a haystack. There were thousands of tips including tips about suspects who looked very promising, to the extent that they devoured very significant investigative attention and resources.

There was no lack of hard work, dedication, and investigative skill by individual officers. The investigative strategies were sound but the investigation was hampered by systemic weaknesses. There was no single person in charge at the beginning and until Superintendent Wolfe took over there was very little continuity of investigators.

Conspicuous by its absence was any system whereby senior officers monitored and followed up the investigation and set time lines and ensured follow up. Although the DNA submission went into a black hole no alarm bells went off, even when it was returned untested by the CFS because

there was no monitoring or supervisory system in place to ensure follow up with the CFS and high level co–ordination when necessary.

There was no information system to ensure that all the tips called in about one suspect were put together and followed up when appropriate. The McNiff report was ignored for over two and a half years. It is discouraging that a report from an experienced officer should disappear into a hole like that. Even after other tips about Bernardo started to come in they were not put together. They were scattered throughout the files and index books and binders and desk drawers in a paper driven process described by one investigator as a nightmare. The final Smirnis tip about Bernardo, the third unrelated tip about the same suspect, was only followed up because of the persistence of the caller because there was no system to show immediately that it was the third separate tip about the same suspect. There was no consistent organized system for suspect classification and elimination.

The problems that arose from lack of a case management system show that motivation, investigative skill, and dedication are not enough. The work of the most dedicated, skilful, and highly motivated investigators and supervisors can be defeated by the lack of an effective case management system.

Communication between police forces was inadequate. There was at that time no ViCLAS automated crime linkage system in place. There was not even any system to ensure that the zone alert from the Henley Island rape was considered by the Metro investigators, a zone alert that would have suggested strongly to any experienced investigator that the Scarborough rapist was operating in St. Catharines. There was no system to put that information together with the fact that Bernardo, one of the Scarborough rape suspects, had moved to within a mile of the strikingly similar Henley Island rape. There was no system in place to recognize that the Scarborough rapist was still operating almost next door. There was no system to ensure full communication between Metro and GRT when GRT inquired about Bernardo as a Scarborough rape suspect. So far as

Bernardo was concerned, the Metro force and the GRT might as well have been operating in different countries.

The chase of a suspect from a stakeout on May 25, 1988, now believed to be Bernardo, and the rape by Bernardo four days later in Mississauga suggests that serial predators will move their base of operation to avoid a tightening police cordon.

When the Scarborough rapes stopped, the investigation wound down and Metro put it on the back burner because of competing workload from other recent sexual assaults. There was no provincial system in place to recognize that serial predators are mobile, and to ensure that the investigation was continued vigorously after the local police force no longer considers it a priority. There was no system in place to recognize a wider public interest in tracking down the predator, wider than the interest of Metro taxpayers but just as high in priority for the residents of other communities at risk from the mobile serial predator.

When Bernardo stopped stalking and raping in Toronto and started stalking and raping and killing in St. Catharines and Burlington he might as well have moved to another country for a fresh start.

Chapter 3: The Centre of Forensic Sciences

Bernardo's samples were submitted to the CFS on November 21, 1990 for conventional serology testing and, if the serology was right, for DNA testing. The serology results on December 13, 1990 showed that his serology was right for DNA testing. Thus on December 13, 1990, the CFS had a written request from Metro to test Bernardo's sample for DNA.

Despite this request for DNA testing, effective December 13, 1990, Bernardo's test results were not obtained until February 1, 1993.

It appears that Bernardo's DNA submission went into a black hole at the end of 1990.

The overall delay between December 13, 1990 and February 1, 1993 was over 25 1/2 months. If the five suspect samples including Bernardo's had been given the highest priority on December 13, 1990, the DNA match to Bernardo could have been found in early January 1991.

The CFS test of Bernardo's DNA sample on February 1, 1993 led to his arrest and prevented him from raping or killing again.

The tragic converse of this fact is that Bernardo, during the 25 1/2 months his DNA was waiting to be tested, raped four young women and raped, tortured, and murdered two others. In hindsight, it is clear that these rapes and murders could have been prevented if Bernardo's DNA sample had been tested by the CFS within 30 or even 90 days of the December 13, 1990 serology test.

The underlying reason for the delay was the limited capacity of the DNA lab during its start up period to conduct the labour intensive and time consuming RFLP DNA tests in a timely fashion in the face of a heavy work-load. This was compounded by the lack of any supervisory system within the Metro police department to ensure that the case was monitored and followed up vigorously at a higher level, and by communication problems between the CFS and the Metropolitan Toronto Police and within the CFS itself.

At the heart of the tragedy was a systemic failure. There was no system to recognize that the Scarborough rapist was going to kill someone and to give the case a high level of co-ordination among all agencies involved in the investigation. For Metro and the CFS it was business as usual. The people working on the case had no mandate or direction to set everything else aside and stop the Scarborough rapist before he killed someone. After he stopped raping in Toronto, he naturally became a lower priority in Toronto. There was no system to recognize that a serial predator like Bernardo is not just a problem for Toronto but also for every other community he may move to when things get too hot for him at home. There was no system to recognize a wider public interest, in the apprehension of a serial sexual predator, beyond the parochial interests of one particular community.

It was known that serial predators don't usually stop unless they are dead or in jail.

Yet there was no system in place to drive this case forward to the top of the priority list or to leapfrog it ahead of other serious sexual assault and murder cases. There was no case management system in the Metro force to supervise this cold case and drive it forward vigorously. There was no strategic co–ordination of the work of the different agencies involved in the investigation. No one assumed the responsibility to push Bernardo's DNA test ahead because there was no system to prioritize and urgently drive forward the investigation of this violent escalating mobile serial predator.

To meet the additional work–load created by the Criminal Code amendments and to reduce the DNA testing delay to a reasonable turnaround time in the range of 30 days, additional funds for the CFS are urgently required.

The recent announcement of the expansion of the CFS testing capacity, from 26 scientists to 52 scientists, and the increase in testing capacity from 400 cases a year to two thousand cases in the next few years, is encouraging and it demonstrates a welcome recognition that public safety must receive a high priority even in times of fiscal restraint.

From a financial point of view, the Bernardo case demonstrates that delays in DNA testing can cost millions of dollars in the investigation of offences that could be prevented by timely DNA testing. Again from a financial point of view, there is a rapidly developing body of law around the potential legal liability of government for failing to provide a reasonable standard of public protection, an area of liability which could prove very expensive to the government if reasonable standards are not met.

And most importantly, the Bernardo case demonstrates that delays in DNA testing can imperil personal safety and cost lives. Any reluctance, to continue to spend the public funds necessary to maintain a reasonable turnaround time for DNA tests must give way to a consideration of the

financial and human cost of failing to do so. The planned expansion of the DNA lab at the Centre of Forensic Sciences demonstrates that this has now been recognized.

It will be difficult for the government to continue to commit the necessary funds to achieve and maintain a reasonable turnaround time in the range of 30 days for DNA testing. But the Bernardo case, in terms of the government's obligation to provide a reasonable standard of public protection, demonstrates that the public will remain at unnecessary increased risk from violent serial predators unless a reasonable turnaround standard is maintained for DNA testing.

Chapter 4: The Secret Killing of Tammy Homolka

It was inappropriate for the coroner, Dr. Rosloski, to submit a final report showing death by natural causes when there was a dramatic and unexplained second degree burn over much of Tammy's face, inappropriate to report that she died by means of natural causes when he did not know how she died, and inappropriate to list asthma as a cause of death when he had no evidence that asthma caused or contributed in any way to her death.

This is all said with the benefit of 20–20 hindsight and it should be noted that Dr. Rosloski, apart from the mistakes noted above, performed his duties conscientiously and put a significant degree of effort into the investigation. It was at that time acceptable for a coroner to list aspiration of vomit as a cause of death but that practice has been changed and aspiration of vomit is no longer accepted by the coroner's office as a cause of death without a good explanation of the underlying cause.

I cannot say that there was any breach of duty by NRPS officers. It is clear however that there was bad communication between Weeks and Mitchell and Weeks did not communicate all his suspicions to Mitchell. It is also clear that there was a major discrepancy between the 15–20 minute wait before the 911 call that Bernardo described to the ambulance drivers and the 2–3 minute wait he described to Mitchell, a major discrepancy that Mitchell did not investigate

although he knew there were suspicions about the delay. He accepted Bernardo's explanation of the discrepancy too easily, without checking readily available sources of highly credible information that would have starkly contradicted Bernardo.

Had Weeks' private suspicions or Bernardo's contradiction about the 911 call been followed up, there would have been further questioning of Bernardo and Homolka although it is speculative to suggest that further questions of them would have led to the truth. It is also possible that if the death had been recorded as undetermined this would have led to greater suspicion of Bernardo by Sergeant Nesbitt in his May 1992 investigation of Bernardo although, again, it is speculative to suggest this would have led to a different result.

The question of the unexplained burn, although it was picked up by Dr. Groves and referred to Dr. Hillsdon–Smith, was left hanging without any resolution and there was apparently no follow up with a dermatopathologist although that was raised as a possibility by Dr. Hillsdon–Smith. The work of the pathologists on the burn was done in apparent isolation from the coroners and other investigators and without any attempt at a collaborative or team or inter–disciplinary approach. It appears that the role of the pathologists was somewhat isolated and certainly not fully integrated into the death investigation system. This may have accounted in part for the lack of follow up in respect of the burn and the fact that the case was closed without any explanation for the burn.

It would be guesswork to speculate what might have happened differently if Tammy's death had been treated more suspiciously and reported differently. If the Halothane bottle and Halcion container had been found, that would have focused further inquiries on Bernardo and Homolka, and had the videotape of the sexual assault on Tammy been seized, that obviously would have exposed the homicide. But short of that, and in the absence of any basis to conduct a forensic search of the Homolka house, further questioning of Homolka and Bernardo would probably have led nowhere having regard to their proven ability as smooth and accomplished liars, the lack of any evidence with which to confront them and the lack of any leverage in the hands of the police. It seems unlikely, for the same reasons, that a coroner's inquest would have yielded anything

different although it might have focused more attention on the medical mystery of the unexplained burn and driven Homolka and Bernardo to further explanations.

Had Tammy's death been classified as unexplained, as it would be now, it would have come to the attention of the Green Ribbon Task Force when they did a Niagara police records check of Bernardo after the Haney tip in early May of 1992, and this might have heightened their scrutiny of him as a possible suspect. There is, however, no reason to believe that Metro at any stage of its investigation would have learned about Bernardo's involvement in an undetermined death in St. Catharines.

A number of changes have been made by the Chief Coroner's office in the system of death investigation as it existed at the time of Tammy Homolka's death. The changes include training, emphasis on the category of undetermined death, a direction that aspiration of stomach contents is not in and of itself a recognized cause of death, the introduction of team reviews and interdisciplinary evaluations of all cases where there are unresolved concerns, and improvements in the organization of the forensic pathology service.

Chapter 5: The Henley Island Attack

The modus operandi of the Henley Island rape on April 6, 1991 in St. Catharines was strikingly similar to that of the Scarborough rapist. These details were so obviously alike that an experienced investigator with detailed knowledge of the Scarborough attacks would immediately conclude that the Henley Island attacker was probably the Scarborough rapist.

We now know that it was not just a carbon copy of the Scarborough rapes. The Henley Island rapist was Bernardo, one of Metro's Scarborough rape suspects who had moved to St. Catharines and lived, unbeknownst to the Niagara Police or the GRT, within a mile of the attack scene. Unfortunately, there was no system in place to ensure that these vital pieces of information, all

readily available in the hands of various police forces, were ever put together in a way that they could be used by the investigators.

The Henley Island case does not raise any concerns about the quality of the local criminal investigation. The problem is that there were no systems to ensure that the obvious link to Scarborough was recognized and to ensure, once local leads were exhausted, that the scope of investigation widened beyond local boundaries. Had there been such a system in place, the investigators, after exhausting local leads would have asked where the predator came from and where he might go next. They did what they could with the systems then in place, including the C.P.I.C. zone alert, but that system was not supported by procedures to ensure that investigators got its benefit.

Had the ViCLAS system been in place and fully used at that time, it would immediately have suggested a link between the Scarborough and Henley Island rapes. It would have enabled the separate investigations to pool their resources and focus the two investigations in the direction of the common attacker.

But there were no systems in place to compel recognition of the link. So far as the Scarborough rape investigation and the Henley Island rape investigation were concerned, Metro Toronto and St. Catharines might as well have been in different countries.

Chapter 6: Stalking

Bernardo was a predator who stalked his victims.

After he stalked and raped the young women in Scarborough between 1988 and 1990 and after he stalked and raped a young woman on Henley Island on April 6, 1991, and after he stalked and raped and murdered Leslie Mahaffy in June of 1991, he stalked and terrified a number of young

women in St. Catharines in the summer of 1991 and the spring of 1992, before he stalked and raped and murdered Kristen French.

Stalking was a hallmark of his method. The young women he stalked in St. Catharines took the initiative to report Bernardo's stalking to the NRPS. Regretfully, the police did not take Bernardo's stalking seriously. There was no investigative follow up. The police information about Bernardo's stalking was not properly reported and not properly organized and not retrieved although it was potentially significant to the investigations of the murders of Leslie Mahaffy and Kristen French. One of the young women re-sighted Bernardo in his car on April 18, when Kristen French was being held captive, and reported it to the Niagara Regional police, although she was not able to get the correct licence number and the police took no notice of her follow up report.

That question, whether Kristen French would be alive if the stalking incidents had been followed up, is unanswerable. There are too many unknowns.

The most significant problems were that the officer who investigated Bernardo as the August 1991 stalker did not report the incident and that the re-sighting of Bernardo on April 18, 1992 was apparently not taken seriously when the call was received by the police. Underlying those problems was the more fundamental problem that stalking, until recently, was not taken very seriously either by the police or by the public.

Although stalking is now taken more seriously, and is increasingly recognized as one of the hallmarks of the serial predator, much remains to be done by the way of police training and by way of raising public consciousness about its seriousness. It is questionable, having regard to the wording of the Criminal Code stalking amendment and its restrictive judicial interpretation, whether Bernardo's stalking of the young women in St. Catharines would be caught by the Criminal Code stalking amendments, although the judicial interpretation of those provisions is not yet completely settled.

Having noted the underlying reasons why Bernardo's stalking of the young women in St. Catharines was not taken seriously by the NRPS, and having noted that there have been general improvements in police response to stalking since then, it remains to be said that the Niagara Region Police Service should have been more responsive to Bernardo's stalking of the young women in St. Catharines in the summer of 1991 and the spring of 1992, and to his re-sighting on April 18, 1992. The incidents themselves deserved more attention because of the justified fear of the victims and the inherent danger implicit in the stalking. The incidents deserved even more attention at a time when the local police force was looking for Leslie Mahaffy's killer, just four months after a vicious stalking rape a few miles away on Henley Island. Although it is impossible to calculate the impact upon the Bernardo investigations of this lack of attention, it is obvious that the information would have been of interest to the GRT investigations because that was the very kind of information they had tried to obtain from the Niagara Regional Police Service.

Chapter 7: The Green Ribbon Task Force Investigations

The GRT investigation was characterized by tremendous dedication and a great deal of investigative skill, hampered by the lack of adequate case management systems.

It is a model of co-operation between police forces, originally Niagara Region and Halton Region, and ultimately a dozen police forces working together co-operatively under unified leadership.

The paint and cement investigations of the materials used to dispose of Leslie Mahaffy's body displayed great investigative ingenuity and led to the source of the cement, but these investigations were hampered by the lack of a standard system to ensure that the cement cash return slips were checked as a matter of course.

The Camaro turned out in hindsight to be a red herring. But the Camaro sightings at Kristen French's abduction scene were the only things the investigators had to work with. Although it was

appropriate for the investigation to focus on the only evidence that was available, the lack of standard interview techniques may have affected the extent to which the investigation focused on a Camaro instead of other similar cars. The decision to extend and continue the Camaro investigation, and the usefulness of the checking of Camaros through the windshield sticker programme are issues which, in hindsight, might have been addressed differently had there been a system in place to ensure, in advance, the capacity to deal effectively with the information received from the Camaro investigation.

Although it did not effect the thoroughness or competence of the post mortem examination, the working relationship between the police and the forensic pathologists could have reflected more team–work and inter–disciplinary co–ordination.

The relations between the GRT and the media industry were very bad, because of the inadequate NRPS media policy then in force, the lack of a full–time media liaison officer, and frustration by the GRT officers with the conduct of some media representatives that appeared to them to border on obstruction of the investigation.

The suspect classification and elimination system was essentially sound but there was no machinery in place to ensure its consistent application. One glaring example of this problem is the confusion as to whether Bernardo was classified as a 3C suspect or a 1C suspect throughout the investigation. Another example, although there is no indication that it would have affected the outcome, is the fact that Sergeant Nesbitt did not attempt to check Bernardo's alibi for Easter weekend and that he did not contact Metro police for suspect information about Bernardo before interviewing him.

The communication between GRT and the Metro Force about Bernardo was inadequate. Metro could have given GRT more information and GRT could have asked Metro for more information. There was no case management information system to ensure the effective communication of suspect information between the two police forces.

The information management systems available to the GRT were inadequate. The investigation was overwhelmed with tips it could not handle because the public appeals for information were not linked with the planned capacity to handle the volume of public response. Like Metro, the GRT had no case management information system to ensure that tips like the I. L. tip and the Haney tip were put together so the investigators could see, when a tip came in, that there had already been another tip about the same suspect.

These problems were compounded because NRPS personnel did not report Bernardo's stalking or re-sighting and this potentially important information never came to the attention of the GRT.

Not only were the case management information systems within Metro and the GRT inadequate, but they had no way to put together the information they had both received about the same suspect. One wonders how many times Bernardo had to be reported to the police before all the police information about him was put together in one place. It was only after his arrest that all the information about him, readily available in the hands of both police forces, was put together. An effective system puts this information together during the investigation, not after the arrest. As noted above, Metro and the GRT might as well have been working in different countries so far as Bernardo was concerned, and Bernardo slipped through the net.

It is guesswork to speculate on what might have happened differently had there been an effective case management and information system in place during the GRT investigation, combined with similar systems within the Metro force and effective communication between the various law enforcement agencies. Certainly if these systems had been in place at the time the connection could have been made between:

- Bernardo's statement to Irwin in November of 1990 that he was moving to St. Catharines
- the striking similarities between the Scarborough and Henley Island rapes
- his residence within a mile of the Henley Island rape

- the McNiff, Smirnis, Royal Bank, Madden and I. L. tips
- appropriate follow up investigation on these tips
- the stalking incidents earlier reported to the NRPS
- Bernardo's return of the cement

All this information was readily available but there was no system to put it together and it got lost in the overall mass of investigative information. What is clearly needed is a systematic case management approach that taps into every available technique and resource and source of information and organizes the information in a way that it can be recognized and used effectively by investigators.

So far as leadership is concerned, Inspector Bevan did what he could with the systems available to him. He is to be commended for his first rate skills as an investigator, his team–building ability, and his tireless dedication and commitment to the work of the task force.

Chapter 8: Identification, Arrest, Questioning

Despite some thoughtful planning, the arrest and questioning of Bernardo was a mess from beginning to end because there was no effective co–operation between Metro and the GRT, because Metro officers were operating on their own private agenda, and because no one was in charge and no one was accountable. Although it was planned to give the accused a phone call to his lawyer immediately after arrest, this was not done. Not only was it not done, but this crucial information was not conveyed to the interview team. The interview team of Detective Irwin from Metro and Detective Beaulieu from GRT was inadequately prepared. Although Beaulieu tried to meet with Irwin to work out a team strategy for the team interview, Irwin had no time because he had been assigned to the search warrant preparation and his senior officers did not ensure that he was given time for joint preparation with Beaulieu. Although his ranking officer Staff Inspector Marrier did not ensure that Irwin consulted with Beaulieu, he did ensure that Irwin took private direction and strategic advice about the conduct of the interview from other Metro officers,

strategies and advice which Irwin did not disclose to Beaulieu. The Metro officers, unknown to the GRT, proceeded with their own private agenda. This reflects an astounding and dangerous lack of co–operation between police forces.

So far as the interview itself was concerned, the plan was for Beaulieu to start out by questioning Bernardo about the murders and then for Irwin to question him about the rapes. Irwin, apparently acting on his own agenda, suddenly and without warning departed from that plan and immediately took over the interview by confronting Bernardo about the rapes, leaving Beaulieu no choice but to leave the room, stop Irwin and risk an altercation in front of Bernardo, or keep quiet and let Irwin do his own thing. He chose to remain silent and take notes.

About the content of the interview itself there is little to be said except that it began badly, degenerated into an argument, continued badly, and ended badly. Nothing of value was ever gained from the interview.

Although the accused repeatedly tried to invoke his right to counsel, Staff Inspector Marrier told the interview team to proceed in the face of repeated requests to contact counsel, assuring them that this course of action was supported by legal case law. This grossly incorrect legal advice by Staff Inspector Marrier ensured that no evidence discovered as a result of the interview could be used against Bernardo.

The degree of disorganization and the inability of the various police forces to co–operate, even to the basic extent of ensuring that the video camera was loaded and the audio tapes were not lost, is difficult to fathom.

It is not hard to tell what went wrong. The precipitating cause of the problems was the media leak which led to the premature arrest and interview before the police were ready.

Underlying causes included:

- the legal problem discussed above, that there was strong evidence on the rapes but virtually no evidence on the murders until the search warrant documentation was completed;
- the lack of a ready made running synopsis of the investigations that could be quickly whipped into shape as the basis for the search warrant documentation, leading to a lengthy delay;
- the ego clashes, turf competition, and inherent rivalry between police forces, a natural everyday fact of police life, which got in the way of effective law enforcement;
- the fact that no senior officer in a position of authority ensured that there was an agreed team interview strategy and adequate joint preparation by the interview team;
- the astounding fact that the Metro officers were following their own agenda for the interview, which they did not disclose to the GRT. For Irwin to go into the interview with an undisclosed interview agenda, an agenda he had never disclosed or shared with his interviewing partner, was a prescription for disaster;
- the grossly incorrect legal advice given to the interview team by Staff Inspector Marrier; and
- the fact that there was no one in charge, no one accountable, no effective co–operation between the police forces, and no co–ordination of their work so far as the interview was concerned.

As noted above, if there was ever an abject example of how things can go wrong when police forces do not co–operate and no one is in charge or accountable, this is that example.

And again, if there was ever an abject example of why it is necessary to develop a co–operative approach among police forces and a system to ensure such co–operation and accountability under a unified leadership structure, this is that example.

But it is also an example of how things can work well when a spirit of co–operation is demonstrated from the top down throughout a police organization. The improvement in the working relationships, when Metro sent Detective Sergeant Boyd and Detective Sergeant Warr to work with GRT on site in Beamsville, demonstrates that an attitude of professionalism and co–

operation from the leadership of a force can overcome the inherent inter–force rivalry and turf wars that are an everyday fact of police life.

As noted above, senior officers in positions of authority need more than investigative and administrative skills. Team building and professional skills of the kind demonstrated by Inspector Bevan in the leadership of the Green Ribbon Task Force, professional and peace–making skills of the kind demonstrated by Detective Sergeant Boyd and Detective Sergeant Warr in the aftermath of the initial Metro–GRT clashes, and leadership of the kind demonstrated by the Metro force when it sent Boyd and Warr to work together with GRT, are essential to the success of any co–operative police venture.

Communication and co–operation between agencies at all levels must be accepted, encouraged, directed and, above all, practised. If not, every other measure, effort, venture, and joint force operation is doomed to failure.

Chapter 9: The Search Of 57 Bayview Drive

In the absence of any evidence to the contrary I proceed on the assumption, although it has not been verified or proven, that the crucial 8 mm. videotapes were recovered from the ceiling area above a potlight in the upstairs bathroom at 57 Bayview Drive in the manner attributed to Mr. K. Murray in public statements.

At the time of writing, Murray is the subject of an O.P.P. criminal investigation, announced in November 1994, into his conduct in relation to the tapes. The O.P.P. informed this review it would interfere with their investigation if we were to question any of their potential witnesses, and we have refrained from doing so. This part of the report is written on the assumption that public statements about Murray's removal of the tapes are accurate. It is written without the benefit of any information from Murray or those associated with him in the removal of the crucial evidence from the murder scene.

The house was under police surveillance when Murray left the house on May 6. Although the police have been criticized for letting him leave with the tapes, they had no grounds to stop and search Murray on his way out of the house. They never considered doing so. They had no reason to believe the tapes were still in the house when Murray went in. In any event, they had no grounds to believe that an officer of the court would remove from a murder scene real physical evidence hidden by the accused.

The search produced very significant evidence and was generally a model of painstaking and detailed thoroughness. Notwithstanding this success, the critical issue hanging over the entire search is that it failed to produce the crucial videotapes of the rape and torture of Leslie Mahaffy and Kristen French and the rape of Tammy Homolka.

There is much to be said for the police point of view expressed by Sergeant Beaulieu in his paper prepared for the FBI academy at Quantico and reproduced in Appendix 13:

Unfortunately for the personnel who conducted this search, it is not their dedication, tenacity and professionalism that is remembered by most, but rather the regrettable misfortune of the missed videotapes.

The failure to find the tapes had a critical impact on the course of the prosecution because the plea bargain with Homolka would not have been made if the police had found the tapes.

In considering the failure to find the tapes one must bear in mind the information available to the police and their state of knowledge during the search; they had not yet had the opportunity to speak to Homolka about the tapes, they had no evidence that the tapes were still in existence, and they had some reason to believe that the tapes were no longer in the house.

The immediate cause of the failure to find the tapes, assuming they were in the spotlight area, is that Constable Kershaw did not reach far enough into the sealed attic cavity. It is now apparent with the benefit of hindsight, with the advantage of knowledge unavailable to him at the time, and

with the benefit of Murray's statement (assuming it is true) that he was able to reach in and find the tapes, that Constable Kershaw erred in failing to search the area more thoroughly. It goes without saying that hidden things are much easier to find when you know where they are, than when you don't know where they are and when there is reason to believe they are not there, and when there is even some doubt whether they exist.

A less immediate but underlying impediment that restricted the scope of the search was the restricted mindset of the searchers. The searchers' mindset was restricted by the application of very strict Charter of Rights minimization principles which strongly discouraged physical damage, such as tearing down the ceilings around every potlight in the house and tearing up every floor and wall in the house, in the absence of some specific evidence to justify it. The searchers' mindset may also have been restricted by the limits of their expertise and experience as crime scene identification officers, contrasted with the expertise and experience of officers such as drug officers who specialize in seeking out and finding things hidden in obscure places.

Chapter 10: The Jane Doe Videoclip

The report of the Honourable Patrick Galligan on the Homolka plea arrangement referred to an issue that arose from the police questioning of Homolka, on May 16, 1993, about a photograph of a young woman who was assaulted by Bernardo. The young woman was befriended by Homolka, who helped Bernardo drug her so he could sexually assault her when unconscious on two occasions in 1991, probably June 7, 1991 and August 10, 1991.

The reason they did not show her any other photographs is because they did not have any.

The first reason they did not show her the videoclip, from which the photograph was taken, is because there was no reason to do so. There was no reason to explore further the identity of the unidentifiable person in the blurred videoclip or to explore Homolka's memory about it because

the police at that time had no reason to believe it was anyone other than Kristen French or perhaps Tammy Homolka.

The second reason they did not show her the videoclip was because the police at that time did not have the videotapes of Kristen French or Leslie Mahaffy, although Homolka thought they did, and they did not want to show Homolka (who had earlier demonstrated a strong capacity for lying and manipulation) the weakness of their position, or to influence her testimony or to give her a chance to lie, by showing her at that time that they only had a one and a half minute videoclip. In order to keep Homolka as honest as they could, the police had to maintain the upper hand and they had valid reasons for proceeding as they did.

Chapter 11: Sexual Assault Victim Concerns

The strongest impression from the interviews is the thought and care with which the victims expressed their observations and concerns about their experience in the investigations. Their experience varied, depending on the individual officers and victim support workers they dealt with. Many of the themes were common: the need for sensitivity on the part of the initial response officers and throughout the investigation; the tremendous difference that police sensitivity and training can make for the victim; the positive response to effective victim services; the need to be informed regularly of the progress of the investigation and to learn of major events before hearing about them from the media; the importance of continuity of investigators; the importance of training and interview techniques to ensure initial full disclosure of the details of the attacks; concerns about the media, and frustrations with the court process.

The most important conclusion from all of this is the importance of training for all officers involved in the response to and investigation of sexual assaults, and the tremendous advantage for the victim of a consistent system of support, continuity, and information about the progress of the investigation and the prosecution.

Chapter 12: CISO: The Criminal Intelligence Service of Ontario

The provincial government provided partial funding for the Green Ribbon Task force through the Criminal Intelligence Service of Ontario (“CISO”), a co-operative of seventy-five Ontario law enforcement agencies including all of the larger police forces in the province.

The CISO funding process operated, in respect of the Green Ribbon Task Force, as it should have. The standard CISO funding proposals and documentation generated five payment authorizations under s. 9 (2) of the Ministry of Treasury and Economics Act, the first on May 14, 1992 and the last on April 20, 1995. The numbers are summarized in the chapter. Some of the later expenditures included prosecution costs, because of the immensely labour intensive demands on the Crowns and police in sifting through the massive documentation of five years of investigative work and in preparing for a case that was potentially very complex.

It is impossible to calculate the total financial cost of the Bernardo investigations. Some help is available in the form of CISO accounting of the provincial funding allotments and an estimate of the policing costs absorbed by the individual police forces involved in the Green Ribbon investigation and prosecution phase. But it must be emphasized that the policing costs are rough estimates only. They do not include all indirect expenditures or externalized costs. In particular, they do not include the massive five-year Metro police expenditure on the Scarborough rape investigations, which would be impossible even to estimate with any degree of accuracy.

Given the proven experience throughout the world that inter-force rivalry is a major obstacle to the successful investigation of mobile predatory criminals, any Ontario system should draw on the unique strengths demonstrated by CISO model. Those unique strengths include its proven operational track record, its ability to secure co-operation between police forces by reason of its neutrality and credibility in the police community, its strict accountability and lack of bureaucratic baggage, and its demonstrated ability to achieve buy-in from the chiefs, senior management, and officers of the co-operating police forces.

CISO provides a proven, ready-made model that can be readily adapted for the co-ordination and management of serial predator investigations without the creation of a whole new bureaucracy.

The CISO model requires some special adaptation to the unique problems of investigating mobile serial predators, particularly by way of case management support structures and a focus on inter-disciplinary teamwork and training. This required emphasis on special case management systems, training, and the forensic, medical and scientific teamwork required for serial sexual predator investigations, will be discussed in the recommendations section.

Chapter 13: A Strategic Defence Against Serial Predators

This chapter is summarized in the Summary of Recommendations.

Appendix 1

The Review Team

A debt of gratitude is owed to the review team, without whose dedicated and skilful work this report would not have been possible.

Superintendent Ron Bain, Peel Regional Police Service

Detective Jennifer Dinneen, Peel Regional Police Service

Ms. Adeline Harrison, administrator and secretary

Ms. Anne Kendall, law clerk to the Chief Justice of the Ontario Court

Clifford Lax Q.C., counsel, of the law firm of Goodman, Phillips and Vineberg

Three members of the review team had some marginal contact with the Bernardo case.

Superintendent Bain in 1992 took part in a consultative meeting of senior investigators convened by CISO to provide a sounding board for Inspector Bevan and the senior GRT investigators.

Clifford Lax appeared as counsel in the Ontario Court of Appeal for the Toronto Sun Newspaper in its appeal against the press ban in the Homolka case.

Before and during the Bernardo trial I oversaw the administrative arrangements at the Toronto courthouse on behalf of Associate Chief Justice Lesage. Towards the end of the trial I heard and allowed motions by the French and Mahaffy families for a temporary press ban, until the end of the criminal trial, in relation to civil proceedings brought by the French and Mahaffy families.

The principle of openness requires the disclosure of this previous contact between members of the review team and the Bernardo case. I am satisfied that none of these matters could create any reasonable apprehension of conflict of interest, because of their marginal connection with the

subject matter of the review, and because they did not create any personal interest in the outcome of the review.

On behalf of the review team, I acknowledge the co-operation and assistance of the Solicitor General's Department, the police forces and agencies involved and to all those who provided so much help during the course of the review.

Appendix 2

Investigative Techniques in Scarborough Rape Case, Extract from Metropolitan Toronto Police Report

3. Investigative Strategies Used in Effort to Identify the “Scarborough Rapist”

The Metropolitan Toronto Police employed a number of diverse methods to try and identify the person responsible for the sexual assaults which were attributed to the “Scarborough Rapist.” These included the following:

Decoys: female police officers, in plainclothes, rode TTC buses and walked similar type locations late at night in 1987 and 1988 while non-uniformed police officers staked-out pre-determined locations. Surveillance was conducted wherever investigators felt it was required during the investigation. (e.g. Suspect [A.] actually encountered and spoke to one decoy during surveillance in February of 1988)

On May 25, 1988 a plainclothes officer was staking out a bus stop in Scarborough when he observed a suspect hiding under a large tree. The officer chased him unsuccessfully. It is believed this was in fact Bernardo as the next attack in the series happened in Mississauga.¹ (The theory being that he moved his attack from Scarborough to avoid the tightening police cordon).

Surveillance—visual/photographic: In November 1988 a plan was developed to have uniform personnel contain the area of the attack immediately after the report of a sexual assault and notify the Major Crime Unit surveillance team to attend along with a list of pre-determined authorities.

1. I.A.

Mobile surveillance, using teams of officers and vehicles, was carried out on a number of the suspects, including: [D.]; [R.]; [D.]; [C.]; [E.]; [M.]; [C.].

Police dogs were used to search the areas of attacks.

Laser examination of the victims and their property for fingerprints (Ontario Provincial Police provided this service at their headquarters located in Toronto).

Computer technologies: the HOLMES [Home Office Large Major Enquiry System] computer program was employed for gathering, tracking and identifying information collected.

Provincial vehicle and drivers licence databases: vehicle licence plates observed during surveillance activities and vehicles observed by witnesses were researched and the registered owners investigated.

Public appeals: radio and television (including local community channels).

Sexual Assault Task Force bulletins were read out regularly to all uniformed reliefs, to ensure all patrol officers had complete information about the attacker. Sexual Assault Squad members attended the divisions and briefed the uniform officers on the status of the investigation.

Toronto Transit Commission employees were canvassed relating to potential suspects frequenting the system.

A special telephone hot-line was set up and advertised encouraging the public to assist the police with information.

Digital Number Recorder, (DNR) machines were set up on the telephone lines of a number of victims who had received strange or harassing telephone calls after their attacks.

Composite sketches: police artists were used to assist victims and witnesses in compiling sketches of the suspects—one sketch (composed by the victim [L.] in May 1990) was colourized with the assistance of Toronto Sun Newspaper personnel and proved to be very close to the actual likeness of Paul Bernardo.

Posters and billboards: these were placed in strategic locations throughout the City, including TTC buses and along the subway routes, asking for the help of the public to identify the “Scarborough Rapist.”

Profile of the offender: The Federal Bureau of Investigation Behavioural Sciences Unit provided a Criminal Profile using information supplied to them by the investigators of the first six occurrences.

Profile of the offender: Dr. Bradford, psychiatrist, was asked to give his opinion of the personality or type of offender being sought.

Hypnosis of a number of victims and witnesses, was conducted, to assist in recalling events more clearly. This was performed by a psychologist, Dr. George Matheson.

Robert C. Chisnall an expert in the tying of knots was asked for his opinion concerning the bindings used on some of the victims.

Centre of Forensic Sciences (biology, toxicology, etc.....) tested numerous samples submitted over the years.

Lifecodes Laboratories in New York was used for DNA analysis prior to the same techniques being available at the Centre of Forensic Sciences. No results were obtained.

Linguistic analysts were employed to analyze suspect(s) statements.

The collection of voluntary biological samples for comparison: many suspects were asked to voluntarily supply saliva samples, hair samples and/or blood samples for comparison.

Photo line-ups (numerous victims and witnesses were shown photo line-ups that included selected suspects).

Voice recording equipment: in January 1989 this was employed in an effort to narrow down suspects including [Q].

Voice line-ups: Ryerson students were used as foils in producing a detailed voice line-up package that was utilized in an attempt to identify the perpetrator.

Presentations were made to the community on a number of occasions not only informing them, but also asking for their assistance. These were held in high school auditoriums and audio and video cameras were set-up in strategic locations hoping that the meeting would draw the person responsible for the attacks to the meeting and aid the investigators in identifying him.

Search warrants executed: a number of search warrants were executed at the home addresses of suspects, including: [Q]; [T.]; [C.]; [E.]; and [M.].

- Shoe prints that were found at different crime scenes were photographed and saved by means of plaster cast. The assistance of shoe companies was sought and information obtained that gave investigators some idea of the type and size of the shoes worn by the

perpetrator. A poster was developed advertising the size, shape and tread of the shoe print left at the scene of two attacks.

- A reward was offered and advertised requesting information leading to the arrest and conviction of the person responsible for the Scarborough Rapes.

Appendix 3

FBI Profile of Scarborough Rapist

Other Document Number: D115
Date: November 17, 1998
Description: Investigative Analysis F.B.I. Virginia

Unsub:

[H.L.]–Victim

[J.R.]–Victim

[R.Z.]–Victim

[K.J.]–Victim

[L.A.]–Victim

[M.J.]–Victim

[I.A.]–Victim

Metropolitan Toronto Police, Toronto, Ontario, Canada, May 4, 1987, May 14, 1987, July 27, 1987, December 16, 1987, December 23, 1987, April 18, 1988, May 30, 1988. NCAVC–Serial Sexual Assaults (Criminal Investigative Analysis) Foreign Police Co–operation (F.P.C.)

The following criminal investigative analysis was prepared by Special Agent Gregg O. McCrary, in consultation with Supervisory Special Agent James A. Wright and other members of the national Centre for the Analysis of Violent Crimes (NCAVC). The analysis is based upon a review of the materials submitted by our agency, and the conclusions are the result of knowledge drawn from the personal investigative experience, educational background and research conducted by these crime analysts as by other NCAVC members. It is not a substitute for a thorough well planned investigation and should not be considered all inclusive. This analysis is based upon probabilities noting however, that no two criminal acts or criminal personalities are exactly alike and, therefore, the offender at times may not fit the analysis in every category. This analysis

contains information of a confidential and sensitive nature; and is provided for your investigative assistance. It should not be disseminated except to other criminal justice agencies with a legitimate investigative or prosecutorial interest in this matter.

1 Victimology

Analysis of the victims in an effort to determine their risk factor is of significance. The susceptibility of these women becoming victims of a sexual assault was examined in conjunction with their individual lifestyles, background, and overall social and physical environments. We found nothing in any of these women's backgrounds or lifestyles that would elevate their risk of becoming victims of a violent crime and/or sexual assault. We consider all of these victims to be low-risk victims.

There are observable similarities in that the victims are white females 15–21 years of age, with six out of seven living in the Scarborough area and three of those living in extremely close proximity to one another. The significance of this will be discussed in greater detail in the crime analysis section of this report.

The fact that four of the victims either travelled from or through the downtown area immediately prior to the attack is noted, but is not felt to be of significance in this analysis. If the offender was selecting his victims from a downtown location and surveilling them to their residential area for the attack, we would expect to see a far more random geographical pattern to the attacks than there is. With the exception of the Mississauga attack, all are clustered in the Scarborough area.

Another notable similarity among the victims is their small physical stature, ranging from 5'1" and 95 pounds to 5'3" and 135 pounds. this will be discussed in more detail in the crime analysis section also.

2 Hospital and Laboratory Examinations

The result of the medical and laboratory examinations of each of the victims is complete and specific details are readily retrievable from those reports, therefore, no attempt will be made to summarize the findings.

All reports are consistent with and tend to corroborate the individual victim's specific allegation regarding each attack.

3 Crime Analysis

A meaningful behavioural analysis of a series of sexually motivated attacks is best accomplished by examining the assailants verbal, sexual, and physical behaviour during the commission of the attacks. In conjunction with these considerations, the following aspects are being set forth as significant.

The process by which an offender targets and/or selects his victims is of obvious importance.

We feel your offender uses bus stops for staking out points. He surveills streets rather than homes and does so at night. Some victims were victims of opportunity while others appear to have been previously targeted to a degree. We believe the offender has seen victims or potential victims in passing, but had no urge to attack and at other times has seen victims, had the urge to attack, but the moment was inopportune.

The successful attacks occurred when the urge, opportunity and victims coincided. The victims are being targeted by the offender in the areas in which the attacks are occurring. He is following them short distances before attacking them.

The six victims in Scarborough were all approached from behind, while the victim in Mississauga was approached from the front. He gained control over all the victims by the immediate application of injurious physical force. He maintained control of the victims through the use of physical force and verbal threats of bodily harm and or death, all of which were often accomplished while brandishing a knife in a threatening and intimidating manner.

All victims were attacked outdoors, while walking alone, near their residence during the hours of darkness.

Typically, this type of offender starts his attacks in an area with which he is familiar. This familiarity is usually the result of the offender living or working in that area and gives him a sense of security and comfort as he knows the neighbourhood well, can plan escape routes etc. The behaviour exhibited by your offender is consistent with this premise.

We believe your offender resides in the Scarborough area, specifically within walking distance of the first, second and fifth attacks. Because he lives in his attack area it is of utmost importance to him that the victims not see him. This is one of the reasons he prefers to approach the victims from the rear. Upon contact he forces them face down into the ground and or demands they keep their eyes closed to ensure they do not see him.

The victim in Mississauga was approached in a slightly different manner. After following her for a distance on foot, he approached her under the guise of asking directions. This approach allowed the victim to see his face, but was short in duration as the offender did not finish his first sentence before physically assaulting this victim and forcing her face down to the ground. It is our opinion that the offender was less concerned about being seen by his victim as he does not spend a great deal of time in the Mississauga area and believes that it is unlikely he would be recognized or seen there again.

Another reason your offender approaches his victims from behind is that he harbours some inadequacies. These inadequacies are further evident in his verbal behaviour as he scripts many of his victims to say, “Tell me you hate your boyfriend and you love me.” “Tell me you love me, tell me it feels good” and other ego–gratifying statements.

Another indication of his inadequacies is evident in his victim selection. He selected victims that appeared non–threatening to him. As noted in the victimology section, the victims are physically small and could offer no real resistance to the attack. Each victim was walking alone at the time of the attack and was virtually defenseless.

Anger, however, is the primary behaviour exhibited by your offender. His intent is to punish and degrade the victims as he is angry at all women. This is evident in the blitz style approach and the majority of his verbal behaviour as well as the type and sequence of sexual acts forced upon the victims in conjunction with the punishing physical force used against them.

The typically profane verbal behaviour combined with scripting the victims to describe themselves as a bitch, a cunt, a slut etc., evidences his anger and his need to punish and degrade his victims.

This anger is also apparent in your offender's sexual behaviour. By forcing the victims to perform oral sex on him after he has repeatedly vaginally and anally assaulted them he is punishing, degrading the humiliating them. The type and sequence of sexual assault is consistently observable in the series of attacks.

His anger is unmistakable when observing the excessive physical force he uses against the victims. What is of concern is the escalation in violence observable in this series of attacks. He is using far more physical force against the victims than is necessary to control them. In addition to this, the offender has stuffed articles of clothing into the mouths of victims and in the case of the

sixth victim, not only broke her collar bone, but poured dirt on her and rubbed it into her hair and onto her body. This is a symbolic gesture which expresses the assailants opinion of women.

We do not believe the offender would attack a victim with a premeditated idea of murdering her. However, we would opine, based upon our research and experience, that if confronted by a victim who vigorously resists his attack, your offender is the type who would likely become so enraged he could lose control and thereby become capable of unintentionally murdering the victim.

This type of behaviour is observable in your offender to a lesser degree in these attacks. In analyzing the interaction between the individual victims and the offender it can be seen that the victims feel overpowered by him and are generally compliant and submissive. Still, when the victims either misunderstand a command or delay, even momentarily responding to a demand, the offender immediately becomes enraged and escalates the amount of violence directed at the victim.

The offenders escalation in violence is observable also as the first three attacks could been seen as attempted rapes where no penile penetration occurred, while the rest of the attacks were successful rapes from the offenders view point as he achieved penile penetration. This expansion of the sexual nature of the assaults was accompanied by an escalation in the verbal and physical violence directed at the victims.

Also observable in the offender is the development of sadistic tendencies. He asked the seventh victim, should I kill you, thereby making her beg for her life. The sadist achieves gratification by the victims response to his attempts to dominate and control her either physically or psychologically, by posing a question that made the victim beg for her life he is deriving pleasure.

He has shown adaptive behaviour, indicating he is becoming comfortable in committing the assaults and feels unthreatened and in control. This is exemplified in the sixth attack. While he was accosting the victim and attempting to gain control over her, a car pulls out of a driveway a

few inches away and drives by them. He does not panic, but forces the victim into some bushes near a house and continues to assault her.

4 Offender Characteristics and Traits

Your offender is a white male, 18 to 25 years of age. It should be cautioned that age is a difficult category to profile since an individual's behaviour is influenced by emotional and mental maturity, and not chronological age. No suspect should be eliminated based on age alone. The behaviour exhibited throughout these assaults suggests a youthful offender rather than an older more mature one.

As noted above, we believe your offender lives in the Scarborough area. He is familiar with Scarborough, especially the initial assault sites, and, therefore, in all probability lives in the immediate vicinity of those first assaults.

The offender's anger towards women will be known by those individuals who are close to him. He will speak disparagingly of women in general conversation with associates.

He had a major problem with women immediately before the onset of these attacks. His anger would have been apparent not only for the particular woman involved but those close to him.

He is sexually experienced but his past relationships with women have been stormy and have ended badly. In all probability he has battered women he has been involved with in the past. He places the blame for all his failures on women.

If he has a criminal record, it will be one of assaultive behaviour. The arrests will likely be for assault, disturbing the peace, resisting arrest, domestic disturbance, etc.

His aggressive behaviour would have surfaced during adolescence. His education background will be at the high school level with a record of discipline problems. He may have received counselling for his inability to get along with others, his aggressiveness, and or substance abuse.

He is bright, but an underachiever in a formal academic setting.

He is nocturnal and spends a good deal of time on foot in the target assault area.

We believe your offender is single.

The offender has an explosive temper and can easily become enraged. This rage transfers over into the rest of his life.

He blames everyone else for his problems.

His work record will be sporadic and spotty as he cannot hold a job due to his inability to handle authority.

He is financially supported by his mother or other dominant female in his life.

He is a lone wolf type of person. He can deal with people on a superficial level but prefers to be alone.

The personal property of the victims which your offender took from the assault scenes is being kept by him. These effects are viewed as trophies by the offender and allow him to relive the assaults. He will keep these items in an area which is under his personal control which he feels in secure, but yet allows him ready access to them.

The nature of these attacks will continue to be episodic and sporadic. In all probability, they will continue to occur outdoors as he is familiar with the area and this familiarity gives him a sense of freedom and mobility which would be denied if he were to attack indoors. Each attack is precipitated by a stressor in the offenders life. This stressor could be either one in face or in his mind.

The offender recognizes his inadequacies and attempts to mask them, but very often overcompensates. These inadequacies are not known by casual acquaintances, but are well known by those closest to him.

5 Post Offense Behaviour

Your offender harbours no guilt or remorse for these crimes. He believes his anger is justified and, therefore, so are the resultant attacks. His only concern is being identified and apprehended.

Any further questions regarding this analysis or discussion regarding investigative strategy and interview techniques should be direct to SA Gregg O. McCrary or SSA James A. Wright, F.B.I. Academy, Behavioural Science Unit, ...

Appendix 4

Extracts from CFS Report Summary of CFS Activities in the “Bernardo Homicides”

As indicated above, all of the CFS sections except Firearms/Toolmarks were involved in the investigation of the deaths of Tammy Homolka, Leslie Mahaffy and Kristen French. The enormous amount of work in these cases will only be briefly summarized here.

1 Biology

Initially, there were no foreign body fluids detected in any of these cases despite the examination of many items. After February 17, 1993, hundreds of items from the Bernardo residence were processed and DNA analysis (both RFLP and PCR) was done on approximately sixty of these. The results of all this work essentially established the presence of traces of the blood of Leslie Mahaffy, and Kristen French in the residence on Bayview Drive in St. Catherines.

Trace examinations were made on over 390 items during the period April 21, 1992 to June 15, 1994. Hairs from the church parking lot and hair clippings from the bedroom carpet in the Bernardo residence were determined to be similar to Kristen French's. A few fibres recovered from Kristen's body were consistent with fibres from the carpets in the dining room and master bedroom of the residence.

The Biology section had no significant findings from the examination of items from Tammy Homolka.

2 Chemistry

Much of the work of the Chemistry section related to the concrete blocks in which the body of Leslie Mahaffy was encased. Some of the aggregate material in the concrete was similar to fragments of aggregate on tools from the residence. Black paint from the concrete blocks was compared with a great many paint samples as a possible investigative lead but to no avail. After the residence was examined, traces of black paint found on the cellar stairs were found to be consistent with the paint from the blocks. Fireplace ashes from the residence were examined and some items identified that may have had some relevance.

Some bone fragments from Leslie Mahaffy were examined and marks on them identified as being from a 7" to 8" circular saw blade. A stun gun was determined to be functional and its effect on a human body described. During the investigation of Kristen French's disappearance and death, several tape recordings of telephone calls to 911 and from possible suspects were compared and the likely caller identified.

3 Documents/Photography

Several documents were examined both before and after February 17, 1993 most of which had no significance. A Beaver Lumber return voucher for bags of concrete was identified as having been signed by Paul Bernardo as was the writing on two Video Flicks invoices and the labels on six video tapes.

4 Toxicology

Samples from Tammy Homolka were received on December 28, 1990 with a brief case history. Analysis was done for the drugs requested but only traces of alcohol were detected. Halothane and triazolam were not mentioned in the case history and were not tested for. Halothane is rarely seen outside medical and veterinary facilities and, because of its volatility, would be difficult if

not impossible to detect in blood or tissue even if specifically looked for. Triazolam, although a relatively common hypnotic, was not detectable in the routine drug screen in use at that time because of the low therapeutic blood concentrations that result from its use. A specific, labour-intensive procedure had to be used for triazolam and this was done only if the drug was indicated by the case history. Following the second autopsy, this procedure was used and triazolam was detected. A revised routine screening procedure has since been developed which can detect triazolam.

Samples from the body of Leslie Mahaffy were received on July 19, 1990. Initially no drugs were detected, partly because of the condition of the samples. Subsequently, a request was received for an analysis for triazolam however this was unsuccessful probably because of the condition of the mass spectrometer in use at that time. In April 1993, a new mass spectrometer was in use and additional samples were located. Triazolam was detected in these.

Samples from Kristen French were received on May 5, 1992. Drugs were detected in these but they were of a type often found in “over the counter” remedies. Following the search of the Bernardo residence, two containers were submitted the contents of which were identified as halothane and triazolam respectively. As a result, samples from Kristen French were examined for both drugs but only triazolam was detected.

Appendix 5

CFS Statistics: Turnaround Time for DNA Tests

Letter dated June 6 1996 to Mr. Justice Archie Campbell, the Bernardo Investigation Review, from R. J. Prime, Ph. D., Acting Director, Centre of Forensic Sciences:

Further to your request of Dr. Jim Young for additional information about the average processing time for our Biology casework, I can provide the following:

Over the last year, the average turnaround time for cases in the Biology Section is falling within the range of 150 to 250 days based on our monthly reporting system. This figure includes wait time due to our back-log, search time to locate suitable evidential materials and the DNA processing time. Many factors, of course, affect this average including the number of items submitted, the extent of search time required to locate useful evidentiary materials, the actual processing time for analyses, prioritization (and disruptions), as well as, other duties of the scientists and technologists such as maintaining quality assurance, participating in lecture assignments, staff development, etc. Also it is important to note that while in some cases the file is opened soon after the investigation begins, it remains open while samples from many suspects are examined before the perpetrator is identified.

Perhaps the most relevant component in the average, and the one to which Mr. Lucas was referring in his report, is the time to actually process the DNA samples. While at the introduction of DNA technology, the processing time involved periods of about one week per locus and, therefore, up to 8 weeks per sample, advances in technology have reduced this time to days. Thus the average time referenced by Mr. Lucas [CFS Report to Bernardo Review, January 24 1996] has changed from 4 to 6 months to the range of 1 to 3 months. Furthermore, it is possible in cases of high priority to compare single samples to a pre-existing DNA profile with as little as two days analysis time. Of course, this is only done when the urgency warrants since it is disruptive to the efficiency of the batch processing system and ultimately contributes to delay in other cases.

On an unrelated matter, Dr. Young has asked me to mention that the same arguments applied to the privatization or the charge for services concept for DNA testing also hold for all of the other forensic science services.

Please feel free to contact me should you need further information.

Appendix 6

Review of the Niagara Regional Police Service Investigation into the Death of Tammy Lyn Homolka

Prepared By: Inspector Ian W. Fiddes and Staff Sergeant Douglas I. Brooks

April 1996

Foreword

Inspector Ian FIDDES and Staff Sergeant Douglas BROOKS were assigned to conduct a review of the initial Niagara Regional Police Service investigation into the death of Tammy Lyn HOMOLKA who died on December 24, 1990.

The review was to encompass all aspects of the investigation to determine whether or not there was a need to improve investigative procedures when faced with similar circumstances.

From the onset, the investigators were mindful of the fact that what the officers involved in the HOMOLKA investigation on December 23, 1990 did not know, and could not know, until Karla HOMOLKA's confession in February 1993, was that Paul BERNARDO and Karla HOMOLKA had drugged and sexually assaulted the young girl just prior to her death. Neither of the parties responsible for Tammy Lyn HOMOLKA's death had intended for her to die.

Executive Summary

The original investigation into the death of Tammy Lyn HOMOLKA began on December 23, 1990 and was conducted by members of the Niagara Regional Police Service assigned to number Eleven Division, St. Catharines. This investigation was conducted in a professional manner consistent with the policies and general orders governing investigations of sudden deaths. Evidence that would later corroborate the testimony of Karla HOMOLKA and assist in the

successful prosecution of Paul BERNARDO for the crimes committed against Tammy Lyn HOMOLKA was properly collected, documented and preserved.

As will be explained further in this report, there were burn marks on the facial area of Tammy Lyn HOMOLKA that were not properly explained. However, other than the unknown cause of the burn marks, there was no evidence to suggest that the death was anything other than an unfortunate medical occurrence.

Over twenty interviews were conducted and extensive amounts of documentation reviewed during the course of this investigative review. The review found that, given the known facts, circumstances and forensic test results existant at the time of Tammy Lyn HOMOLKA's death, there was apparently nothing that members of the Niagara Regional Police Service could have done that would have altered the outcome of this investigation. Since that time, there have been improvements in scientific testing and investigative practices which would today lead to different results.

Initial Investigation of the Death of Tammy Lyn Homolka

Tammy Lyn HOMOLKA died at home on December 24, 1990. At the time, she was 15 years old and lived at 61 Dundonald Street, St. Catharines with her parents Karel and Dorothy and two sisters Karla and Lori HOMOLKA.

The HOMOLKA family, along with Karla HOMOLKA's 26 year old fiance Paul Kenneth BERNARDO, was present at a family gathering at the HOMOLKA residence on December 23, 1990.

This being two days before Christmas, it was natural for families and loved ones to gather for the holiday season. The scene that was presented to the emergency crews that were later called to the residence, was one of a family settling in for the night. The parents and one sister were in their

bedrooms, while two of the sisters and the fiance of one had retired to the family recreation room to watch a rented movie. In keeping with the holiday spirit, some alcoholic beverages had been consumed in a moderate amount by family members. There appeared to be nothing of a sinister or untoward nature taking place at this family gathering.

On December 23, 1990, the Niagara Regional Police Uniform platoons were at minimum staffing levels. The Number Eleven Division platoon commander was Staff Sergeant James TAILLEFER, an experienced criminal investigator. The patrol supervisor was Sergeant George RAVENEK who was also an experienced criminal investigator. The Detective Office was staffed by one experienced investigator, Constable Kenneth MITCHELL, who was scheduled to work until 0100 hours. The remaining Detectives were either on annual leave or actively involved in a unsolved homicide that had been reported four days earlier on December 19, 1990.

On December 24, 1990 at 0118 hours, a 911 operator received a call from 61 Dundonald Street, St. Catharines. The caller requested an ambulance and was transferred to the ambulance dispatcher. The ambulance dispatcher received information that a young female within the residence, who had been drinking was unconscious. Ambulance, fire, and police units were dispatched to attend the residence. While enroute to the residence ambulance attendants received information from the dispatcher that the young girl's parents were home but the caller did not want to wake them. Shortly after this, the ambulance dispatcher advised that the unconscious female was possibly "vital signs absent". This information was given only to ambulance attendants and not the fire or police units.

Members of the St. Catharines Fire Department arrived at the residence first and two firefighters immediately began performing cardio pulmonary resuscitation on the unconscious female identified as Tammy Lyn HOMOLKA. Ambulance attendants Derek HICKS (8 months experience) and Scott BIRD (11 years experience) arrived at the residence next. They found Paul BERNARDO standing in the doorway of the bedroom where firefighters were working on Tammy Lyn HOMOLKA and they observed Karla HOMOLKA kneeling beside Tammy Lyn

HOMOLKA. Neither recalls seeing the parents until they were leaving the residence with Tammy Lyn HOMOLKA.

In response to questions from Derek HICKS, either Paul BERNARDO, or Karla HOMOLKA, advised that Tammy Lyn HOMOLKA had just started throwing up and, after deciding she was choking, they had attempted to revive her for 20 or 25 minutes prior to calling for help. Derek HICKS asked Karla HOMOLKA what the burn mark on Tammy Lyn HOMOLKA's face was and how long it had been there. Karla HOMOLKA did not answer. She just gave a blank stare in response to the questions.

Constable David WEEKS arrived at the residence next and asked Paul BERNARDO and Karla HOMOLKA to move away from the bedroom to allow the emergency personnel sufficient room to work. It was while asking the two to leave the bedroom area that Constable WEEKS first noticed what appeared to be a burn mark on the face of Tammy Lyn HOMOLKA.

While fire and ambulance personnel continued their resuscitation efforts Constable WEEKS led Paul BERNARDO and Karla HOMOLKA out of the basement area and into the kitchen at the top of the stairs. They were joined there by the parents, Karel and Dorothy HOMOLKA and the remaining sister, Lori HOMOLKA. Constable WEEKS began recording information related to Tammy Lyn HOMOLKA that might be of assistance to medical personnel in their efforts. Constable WEEKS recorded what Tammy Lyn HOMOLKA had to eat and drink that evening and that she was having some sort of vision problems which the family believed was related to her consumption of alcoholic beverages. Constable WEEKS recorded that, after Mr. and Mrs. HOMOLKA and Lori HOMOLKA had retired to their respective bedrooms, Paul BERNARDO, Karla HOMOLKA, and Tammy Lyn HOMOLKA had moved to the basement recreation room to watch a rented movie. While watching the movie, Paul BERNARDO and Karla HOMOLKA dozed off on one couch, while Tammy Lyn HOMOLKA rested on another couch. At some point in time Paul BERNARDO and Karla HOMOLKA were awakened by the sound of Tammy Lyn HOMOLKA having difficulty breathing.

It was at this point that Constable WEEKS' note taking was interrupted as emergency personnel moved Tammy Lyn HOMOLKA from the residence to the ambulance for transport to the hospital. An ambulance attendant drew Constable WEEKS attention to the burn mark on Tammy Lyn HOMOLKA's face. At this time Constable WEEKS had the opportunity to more closely inspect the burn mark. Soon after, Sergeant George RAVENEK arrived at the residence. Sergeant RAVENEK made enquiries of parties present to determine what had happened. He then instructed Constable WEEKS to remain at the residence with Paul BERNARDO, Karla HOMOLKA and Lori HOMOLKA while he accompanied the distraught parents to the hospital.

Constable WEEKS then shepherded Paul BERNARDO, Karla HOMOLKA and Lori HOMOLKA into the basement recreation room. In hindsight, this may seem an odd choice of locations to conduct interviews, the location being where Tammy Lyn HOMOLKA became ill. It must be remembered that Constable WEEKS had only seven months patrol experience and there was no indication or suggestion that this was anything other than an unfortunate medical occurrence. In the calm aftermath following the departure of the emergency personnel, Constable WEEKS looked for and located a light switch within the recreation room and turned on the lights. It should be noted that Paul BERNARDO and Karla HOMOLKA had stated, in effect, that panic and confusion had set in when Tammy Lyn HOMOLKA was vomiting and having breathing difficulties so they moved her a few feet into a lighted bedroom not thinking to turn on the lights in the recreation room. Emergency personnel who attended at the residence and were in the bedroom and the recreation room did not think to turn on the lights in the recreation room. This would appear normal given the natural confusion and urgency surrounding the events taking place.

Lori HOMOLKA recalls that after Tammy Lyn HOMOLKA was taken to the hospital she was on the stairs leading to the recreation room when a police officer accused her of "free basing" cocaine with Tammy Lyn HOMOLKA. Lori HOMOLKA stated that she became very upset and demanded that blood samples be taken to prove she was not involved in any illicit drug use. Karla

HOMOLKA also stated that she and Paul BERNARDO were accused of “free basing” cocaine with Tammy Lyn HOMOLKA. This is an allegation they both denied.

While seated in the recreation room Constable WEEKS began taking a statement from Paul BERNARDO in the presence of Karla and Lori HOMOLKA. In hindsight, to formally interview BERNARDO in front of the two sisters may not have been acceptable but, once again, it should be stated WEEKS was a relatively inexperienced Constable at the scene of what was believed to be no more than an unfortunate medical occurrence. As Constable WEEKS began recording a statement from Paul BERNARDO, he stated he was interrupted by BERNARDO who blurted out words to the effect that there were absolutely no drugs involved in this incident. This utterance by BERNARDO caused Constable WEEKS some concern, and he would later bring this to the attention of Constable MITCHELL.

While this was taking place, resuscitation efforts at the hospital proved fruitless and Tammy Lyn HOMOLKA was pronounced dead at 0203 hours. Sergeant RAVENEK telephoned Constable WEEKS at the residence, informed him of the death and instructed him to notify Paul BERNARDO, Karla HOMOLKA and Lori HOMOLKA.

Sergeant RAVENEK then telephoned Staff Sergeant TAILLEFER at the police station and provided what information he had available to him. Staff Sergeant TAILLEFER telephoned Staff Sergeant Peter RACE of the Detective Office. Staff Sergeant RACE recalls receiving the telephone call and being informed that a young female had died, likely as a result of alcohol consumption. Staff Sergeant RACE authorized the call back to duty of Constable MITCHELL to investigate the circumstances surrounding Tammy Lyn HOMOLKA's death.

At the HOMOLKA residence, Constable WEEKS carried out his instructions and informed Paul BERNARDO, Karla HOMOLKA and Lori HOMOLKA of the death of Tammy Lyn HOMOLKA. While all three began to cry Constable WEEKS observed that Paul BERNARDO was crying very loudly and very vigorously. Constable WEEKS was concerned about

BERNARDO's reaction to the news of Tammy Lyn HOMOLKA's death and would later bring this to the attention of Sergeant RAVENEK and Constable MITCHELL. Constable WEEKS was told that people react differently to news of a death and that their reaction may not always be indicative of guilt or wrongdoing. Karla HOMOLKA would later say that Tammy Lyn HOMOLKA was not meant to die and BERNARDO's reaction to the death notification was a genuine one.

For a short period of time, Karla HOMOLKA and Lori HOMOLKA hugged each other and cried before Lori HOMOLKA left the room and went upstairs. Constable WEEKS, out of concern, followed Lori HOMOLKA to her bedroom and ensured she was physically well. When Constable WEEKS returned to the recreation room he found Paul BERNARDO sitting alone. After asking where Karla was, Constable WEEKS was directed by Paul BERNARDO to a lower level basement area where he found Karla HOMOLKA about to place a vomit stained throw cover and towel, from the recreation room, into the washing machine. Constable WEEKS stopped Karla HOMOLKA and took the items and placed them back in the recreation room from whence they had been taken. Karla HOMOLKA's actions caused Constable WEEKS concern and he mentioned this concern to Sergeant RAVENEK and Constable MITCHELL. Both officers told Constable WEEKS that it was not that unusual, given the circumstances, for a daughter to want to clean up the mess before her parents returned home from the hospital. Karla HOMOLKA later testified at trial that she was only attempting to clean up the mess so her mother would not have to do it herself.

Shortly after, Constable WEEKS advised Paul BERNARDO, Karla HOMOLKA and Lori HOMOLKA that they would be taken to the police station to give statements regarding the occurrence. It was at this point that Paul BERNARDO used the basement washroom. Constable WEEKS, other than noting it, did not attach any significance to this event. After using the washroom Paul BERNARDO asked to change his pants before going to the police station. After Paul BERNARDO had changed his pants Constable WEEKS checked them very carefully and failed to find anything noteworthy.

At the hospital Sergeant RAVENEK made arrangements for a uniform officer, Constable Nadine WALLACE, to stay with the body of Tammy Lyn HOMOLKA while the preliminary investigation was carried out. Sergeant RAVENEK and ambulance attendant Derek HICKS had a brief conversation regarding the occurrence. Derek HICKS recalls the conversation as being general in nature regarding the tragic death of a young girl during the holiday season. Although Derek HICKS was concerned about BERNARDO's statement that they had attempted to revive Tammy Lyn HOMOLKA for 20 or 25 minutes prior to calling for assistance, he did not mention it to Sergeant RAVENEK. HICKS would later say that because of his inexperience he did not feel it was his place to relate this concern to the police.

Sergeant RAVENEK returned to the residence at 0220 hours and asked Constable WEEKS if any one had given him an explanation for the burn mark on Tammy Lyn HOMOLKA 's face. Constable WEEKS then queried BERNARDO, who replied that it may have been a rug burn caused when they dragged Tammy Lyn HOMOLKA's body into the bedroom. It was apparent to Constable WEEKS that Paul BERNARDO was just speculating when he gave this answer.

At 0235 hours Constable MITCHELL arrived at the residence and for the next fifteen minutes discussed the occurrence with Constable WEEKS and Sergeant RAVENEK.

All were concerned about the burn mark on Tammy Lyn HOMOLKA's face and what may have caused it. Constable WEEKS believes he told Constable MITCHELL that he felt it was unusual that the parents were not made aware of the occurrence until emergency personnel arrived. Constable WEEKS also related his concern that Tammy Lyn HOMOLKA had been moved to the lighted bedroom from the recreation room. Constable MITCHELL felt that, although somewhat unusual, it was not entirely unreasonable given the circumstances of panic and urgency. Constable WEEKS advised Constable MITCHELL that he felt Paul BERNARDO had overreacted to the news of Tammy Lyn HOMOLKA's death, and that Karla HOMOLKA had attempted to wash a vomit stained throw cover and towel. Both Constable MITCHELL and Sergeant RAVENEK, with their experience, believed that people react in varying ways after receiving news of the death of a

loved one and neither incident caused them any great concern. When Constable WEEKS stated that Paul BERNARDO had volunteered that “there were absolutely no drugs involved” this was of great interest to Constable MITCHELL.

Constable WEEKS believes that Constable MITCHELL was acting like a defence lawyer or devil's advocate when he suggested other alternatives rather than adopting his concerns. Constable WEEKS states he began to feel that he was overreacting, or was not communicating effectively, as he could not understand why Constable MITCHELL didn't seem to share all of his concerns. Constable WEEKS stated that at no time did he suspect anything sinister, such as murder or sexual assault, had taken place. He simply had an uneasy feeling about the occurrence.

After completing his duties at the residence, Constable MITCHELL requested that Sergeant RAVENEK transport the two HOMOLKA sisters, along with Paul BERNARDO, to the police station for interview. Constable WEEKS was instructed to remain at the residence and secure the scene until further advised.

While alone in the residence and awaiting the arrival of an identification officer, Constable WEEKS conducted a search of the basement area. Constable WEEKS now realizes that this was an error in judgement and fully understands that this practise might well have disturbed or destroyed forensic evidence. In defence of Constable WEEKS' actions, it should be noted that he was an inexperienced officer at the scene of an occurrence with no evidence, or belief, that any type of criminal act had taken place.

At 0257 hours, the coroner, Doctor Joseph ROSLOSKI, arrived at the hospital and spoke briefly with ambulance attendant, Derek HICKS, who advised Dr. ROSLOSKI about the possible delay in calling for assistance.

At 0302 hours, Constable MITCHELL arrived at the hospital and discussed the incident with Doctor ROSLOSKI. Although the ambulance attendants were present for a portion of this conversation, no concerns were brought to the attention of Constable MITCHELL.

Doctor ROSLOSKI and Constable MITCHELL viewed the body and reviewed the information they had available to them. The only issue causing concern during these discussions was the unexplained burn mark on the facial area of Tammy Lyn HOMOLKA. Both undertook to investigate and explain the burn mark. At this point in time, Doctor ROSLOSKI and Constable MITCHELL were faced with the unexplained death of a young girl. There was no evidence to support a belief that anything sinister or criminal in nature had taken place. Because of the tragic circumstances and the naturally suspicious nature of the coroner, it was agreed that a full forensic autopsy would be conducted later that day in Hamilton.

Shortly after 0400 hours, Constable MITCHELL left the hospital and attended at the police station to conduct interviews with Paul BERNARDO and Karla HOMOLKA.

While Sergeant RAVENEK interviewed and took a statement from Lori HOMOLKA, Constable MITCHELL interviewed and took a statement from Paul BERNARDO. Constable MITCHELL then interviewed and vigorously questioned Karla HOMOLKA regarding the concerns raised by Constable WEEKS.

The stories related by Paul BERNARDO and Karla HOMOLKA were basically the same. They appeared to be co-operative and forthright. They did not disclose information relative to the drugging and sexual assault of Tammy Lyn HOMOLKA.

Despite Constable WEEKS' impression that Constable MITCHELL failed to share or understand his concerns, it is evident that this was a misunderstanding or miscommunication between the two officers. Interviews of BERNARDO and HOMOLKA were of such intensity that Constable MITCHELL felt compelled to attend the family residence the next day and after advising the

outcome of the autopsy and initial drug screening, he apologized to the family for any burden brought on by the investigation.

Constable MITCHELL not having received a satisfactory explanation for the burn mark on Tammy Lyn HOMOLKA's face, proceeded to seek an explanation from a reference book entitled the Medicolegal Investigation of Death which is a forensic pathology text that was kept in the Detective office. Constable MITCHELL located a passage in the book stating that marks on the face and neck caused by the coagulating effect of regurgitated gastric juices, caused a tanning of the skin which would simulate antemortem burning. This seemed a plausible explanation as Karla HOMOLKA had stated that Tammy Lyn HOMOLKA had vomit on her face when she and Paul BERNARDO had awakened to find her having breathing difficulties.

Constable MITCHELL was to share this information with Doctor ROSLOSKI hoping that his finding would either be confirmed or replaced with another explanation by the pathologist or scientists at the Centre of Forensic Sciences.

At 0424 hours, Constable George ONICH of the Forensic Services Unit attended at the hospital and photographed the body of Tammy Lyn HOMOLKA. At 0540 hours, Constable ONICH acting on the instructions of Constable MITCHELL, left the hospital to attend the HOMOLKA residence. Constable ONICH was instructed to photograph and diagram the scene, secure and collect any possible evidence, and to search the residence for any caustic substance that might be responsible for the burn mark on Tammy Lyn HOMOLKA's face.

At 0717 hours, after completing his duties at the residence, Constable ONICH attended at the police station to discuss the occurrence with Constable MITCHELL. As a result of this discussion, Constable ONICH was instructed to attend at the pathology unit of the Hamilton General Hospital at 1230 hours to perform his forensic identification duties during the autopsy on the body of Tammy Lyn HOMOLKA.

At 0728 hours, Constable WEEKS, having been relieved at the residence by Constable Russell PETTIFER, left the residence and met Constable MITCHELL at the police station. Constable WEEKS did not take this opportunity to inform Constable MITCHELL regarding his concerns that the television in the recreation room had been turned off and that the movie in the video cassette recorder had only been half played. These two observations were made during his search of the basement area. Constable WEEKS asked for and received advice from Constable MITCHELL on how to complete a Sudden Death Report. The advice Constable WEEKS received, he continues to follow to this day, and it is the same he would give to any new officer wishing to learn how to properly complete a Sudden Death Report.

Constable ONICH, as directed, did attend the autopsy on the body of Tammy Lyn HOMOLKA. Constable ONICH, an officer who has taken part in hundreds of sudden death investigations, was satisfied with the way the pathologist conducted his examination. At the request of Constable ONICH, an examination was conducted for evidence of any trauma that might be associated with a sexual assault. The pathologist found nothing to suggest any type of assault had occurred. Constable ONICH agreed with the pathologist's determination that all that was required to be sent to the Centre of Forensic Sciences for further testing were blood samples. Additionally, an initial drug screening was conducted at the hospital with negative results. It was concluded that death was the result of asphyxia caused by the aspiration of vomitus. There were no obvious signs of drug or alcohol abuse, however, further testing would be completed by the Centre of Forensic Sciences.

The pathologist could not explain the burn marks on the body of Tammy Lyn HOMOLKA. In an attempt to receive an explanation, he sent photographs to our province's Chief Forensic Pathologist, Doctor John HILLSDON-SMITH, requesting his opinion as to their cause. He was later to receive a reply from Doctor HILLSDON-SMITH stating that he believed the burns could have been caused by someone attempting to wipe off vomit with a cloth that had been soaked in some type of ordinary caustic household chemical cleaner. No other research or investigation into the cause of the burns is known to have been conducted.

Constable MITCHELL and Doctor ROSLOSKI discussed the results of the autopsy and, other than the unexplained burn mark, they were in agreement that the evidence suggested the death of Tammy Lyn HOMOLKA appeared to be an unfortunate natural occurrence. Both agreed to await the results of testing by the Centre of Forensic Sciences prior to concluding the investigation.

In the interim, Constable MITCHELL reviewed the investigation with at least one other criminal investigator as well as a Detective Staff Sergeant. No one offered any new avenues of investigation or disagreed with his findings.

On December 24, 1990 Constable ONICH had seized items of clothing, a towel, Kleenex, and a waste basket, all with vomit on them. These items were placed in a property locker at Eleven Division to await the results of toxicology testing by the Centre of Forensic Sciences.

As the property storage area was not equipped with cold storage facilities, the stench from these exhibits became quite obnoxious. The property clerk, Mr. Joseph DAWSON approached Inspector Robert CLARKSON, the officer in charge of the Detective Office, responsible for the storage of exhibits, and sought his assistance in dealing with the property. After viewing and smelling the situation first hand, Inspector CLARKSON conferred with Constables MITCHELL and ONICH. He then sought and received permission from Doctor ROSLOSKI, the investigating coroner, to dispose of the property. Inspector CLARKSON was satisfied the evidence had been photographed and would not be needed for further forensic testing. On January 22, 1991, Inspector CLARKSON authorized the disposal of the exhibits in the city landfill site.

On February 23, 1991, the report from the Centre of Forensic Sciences was received. It stated that no drugs and only a trace of alcohol were found in the blood of Tammy Lyn HOMOLKA. It should be noted that at the time blood samples were submitted for analysis, the type of drug administered to Tammy Lyn HOMOLKA by BERNARDO and Karla HOMOLKA was not detectable in the standard drug screening used during the toxicology tests. The Centre of Forensic

Sciences has since updated the screening test by broadening their spectrometer, and the scientists have expanded the screening tests to include the type of drug used in this occurrence.

On March 25, 1991, Constable MITCHELL and Doctor ROSLOSKI discussed the circumstances surrounding the death of Tammy Lyn HOMOLKA, including the pathologists report, and the report from the Centre of Forensic Sciences. As a result of that conversation, Doctor ROSLOSKI instructed Constable MITCHELL to close the case.

This investigation was dormant until information regarding the criminal activities of Paul BERNARDO and Karla HOMOLKA came to the attention of members of the Green Ribbon Task Force. The investigation into the death of Tammy Lyn HOMOLKA was re-opened. Karla HOMOLKA was interviewed regarding other matters by members of the Metropolitan Toronto Police Service and the death of her sister Tammy Lyn HOMOLKA was discussed. Karla HOMOLKA repeated the same version of events as she had to Constable MITCHELL on December 24, 1990.

It was not until May 14, 1993, after she had entered into a Resolution Agreement with the Crown, that Karla HOMOLKA revealed the criminal events surrounding the death of her sister, Tammy Lyn HOMOLKA.

Conclusions

- (a). Members of the Niagara Regional Police Service involved in the investigation into the death of Tammy Lyn HOMOLKA, adhered to all policies and general orders governing the investigation of sudden deaths.
- (b). The information and evidence initially collected and documented by members of the Niagara Regional Police Service later corroborated the testimony of Karla HOMOLKA and aided in the successful prosecution of Paul BERNARDO for the crimes committed against Tammy Lyn HOMOLKA.
- (c). Given the known facts and circumstances that existed at the time of Tammy Lyn HOMOLKA's death, including the results of the pathologist's examination and

forensic tests, there was apparently nothing that members of the Niagara Regional Police Service could have done to alter the outcome of this investigation. Since that time there have been improvements in scientific testing and investigative practices, which would today lead to different results.

Appendix 7

Extracts from Chief Coroner's Report

Advances in Sudden Death Investigation Since 1990

As part of the ongoing process of critically reviewing investigations, the Office of the Chief Coroner has been rapidly and intentionally changing the death investigation system in recent times. Although not all measures are directly related to this case, it is important and useful to detail the changes that have occurred in death investigation in Ontario since 1990. Despite these changes, there still is no guarantee that some types of deaths will not be missed. However, the likelihood of this occurring has been reduced.

- (1). In 1992, the Office of the Chief Coroner instituted a special three day course which is mandatory for all new coroners when they first embark upon their coroner work. This course stresses the importance of coroners “thinking dirty” and the necessity for the use of “team work” involving all the different agencies and disciplines responsible for a death investigation. The course also stresses the need for the coroner to be an “independent thinker” during an investigation. The course teaches that investigations which are mishandled, usually go off course with incomplete or sloppy work at the death scene. (Appendix A) [not attached]
- (2) The Annual Educational Course for Coroners offers further instruction about problems in death investigations. In recent years, the Annual Educational Course has attempted to stress the same principals as the New Coroners Course in order to re-educate senior coroners. (Appendix B) [not attached] Once Mr. Justice Campbell has made his report public, Tammy's case will be presented at all coroners, police and pathologists in all courses run by the Office of the Chief Coroner.
- (3) A number of memorandums have been issued and circulated to all coroners and pathologists since 1991 which further stress the need for “thinking dirty”; the need for team work and the need for effective communication (Appendix C) [not attached]. I draw your attention in particular to Memo #611 covering homicide investigation; Memo #623 on femicide; Memo #631 dealing with the sudden unexpected death of children under age 2; and Memo #637 regarding aspiration of stomach contents.

- (4) The Office of the Chief Coroner has since produced a Newsletter called “The Mortem Post” which is circulated four times a year to all coroners and pathologists with information regarding death investigation. (Appendix D) [not attached]
- (5) Coroners have been reminded to classify the “By What Means” as “Undetermined” unless they are satisfied with the result of the death investigation. In any cases classified as “Undetermined” or in any other case where the local coroner has concerns, arrangements are now in place for consultation between the Coroner and the Regional Coroner and/or the Office of the Chief Coroner. Where appropriate, a complete review of the case is conducted at meetings involving all the different agencies and investigators. This concept of round table discussion between the many different agencies and people involved in death investigation has only been fully developed in recent years and has proven very successful in resolving outstanding issues as well as charting the need for further investigation or forensic tests.
- (6) An investigation manual for the use of coroners across the Province has been created by the Office of the Chief Coroner and is now in wide-spread use by all coroners. (Appendix E) [not attached]
- (7) Prior to 1994, death investigation involved two different branches within the Ministry of the Solicitor General: (1) Office of the Chief Coroners; (2) Forensic Pathology Branch. It was recognized in the early 1990's that to make better use of forensic pathology there should be an integration between forensic pathology and the Office of the Chief Coroner. The concept of death investigation as a team effort was being increasingly recognized and it was believed the team should include the coroner, police, pathologist, forensic laboratory and Crown Attorney. It was considered essential that the medial members of that team, (i.e. the corner and the pathologist), communicate clearly and the best way of achieving this goal was to incorporate the Forensic Pathology Branch into the Office of the Chief Coroner.

When Dr. Hillsdon-Smith retired as the Chief Forensic Pathologist in 1994, forensic pathology was merged with the Office of the Chief Coroner and Dr. David Chiasson was appointed as the Chief Forensic Pathologist for the Office of the Chief Coroner. When Dr. Chiasson was hired his responsibilities included: (a) overall supervision of forensic pathology service in the province; (b) the organization, supervision and upgrading of forensic pathology training programs for pathology residents and (c) continuing education programs for practising pathologists. This had been missing in the preceding number of years. Dr. Chiasson also provides consultation to practising pathologists, coroners, police, Crown Attorneys and the Courts.

- (8) The Office of the Chief Coroner is in the process of upgrading the level of training for pathologists in Toronto. In due course, the Forensic Pathology Unit in the Office of the Chief Coroner will be staffed by full-time forensic pathologists. Currently, there is a second full-time pathologist in Toronto, with a third being recruited. Future plans call for five full-time forensic pathologists (one added each year) to replace the part-time pathologists currently doing the work.
- (9) In the last few years Regional Centres of Excellence in Forensic Pathology have been established in Ottawa and Hamilton. As well as a Paediatric Forensic Unit at The Hospital for Sick Children. These centres are based on the model of the Hamilton Forensic Pathology Unit which has been in existence for sometime. Efforts are still under way to establish a Centre of Excellence for Forensic Pathology in London, Ontario and eventually in Kingston and northern Ontario.

The goals of the Regional Forensic Centres of Excellence are as follows:

- to address the shortage of trained forensic pathologists;
- to balance the increasing workload on forensic pathologists and pathology units;
- to encourage and improve the level of training of forensic pathologists in Ontario;
- to achieve greater consistency of quality in the forensic work undertaken; and
- to engage and advance research through linkages with the associated university teaching hospitals.

(Appendix F) [not attached]

- (10) Since Dr. Chiasson's appointment as the Chief Forensic Pathologist, daily rounds regarding death investigation are held at 26 Grenville Street and weekly rounds are held with the coroners, pathologists and toxicologists regarding any complicated cases.
- (11) Joint investigation rounds have also been instituted at the Forensic Pathology Unit in Hamilton, Ottawa and Kingston. These rounds give an opportunity to all the different agencies involved in a particular death to discuss the death in detail and make sure that they clearly understand all the issues.
- (12) In 1994, after many years without any forensic pathology courses for the Ontario pathologists, the Office of the Chief Coroner re-instituted educational courses on

an annual basis for pathologists. These courses are held at the same time as the Coroners Education Courses and in an integrated fashion with the Coroners Educational Course. This integration promotes communication between these groups.

- (13) Pathologists from across the Province practising in local hospitals are invited to spend a week at the Forensic Pathology Unit at 26 Grenville Street. Their expenses when in Toronto are paid for by the Office of the Chief Coroner.
- (14) The eight Regional Coroners across the Province have been given the additional role of co-ordinating any complex investigations which may involve many agencies.
- (15) The Office of the Chief Coroner has been actively involved in the special project team which is devising an investigative model for multi-jurisdictional serial crime. This model stresses the multi-disciplinary nature of these investigations and the increasing important role of science.
- (16) To ensure that the Office of the Chief Coroner is kept up to date with all major advances in death investigation, Dr. Young, Dr. Cairns, Dr. Chiasson and some of the Regional Coroners have been attending the annual convention of the American Academy of Forensic Sciences. This is the largest meeting of forensic scientists in the world and has been invaluable for educational purposes and for making contacts with particular experts who may provide valuable information in special cases. For example, in Kristen French's death, Neil Haskell, a forensic entomologist, from Indianapolis and Bill Rodriguez, a forensic anthropologist, from the American Armed Forces Institute of Pathology in Washington were both retained to assist in establishing how long Kristen French had been dead. Their expertise was invaluable and the availability of these superbly qualified individuals was identified from attendance at the American Academy of Forensic Sciences. Attending at such meetings also produces ideas for education programmes and potential lecturers.
- (17) There have been considerable advances in drug detection since 1990 and the toxicology Section of the Centre of Forensic Sciences will be able to test for Halcion on a drug screen in the very near future. In addition, local coroners and pathologists have been sent a list of the various drugs and poisons that will be picked-up on a general drug screen and have also been advised of their ability to specifically request testing for any additional drug if they are aware of or suspect its use in any case.

Appendix 8

Letter dated May 30, 1996, to Mr. Justice Archie Campbell, the Bernardo Investigation Review, from James T. Cairns, M.D., Deputy Chief Coroner for Ontario

Re: Mark McAvoy Inquest

I enclose a copy of the Verdict [not attached] from this Inquest which I presided over in Hamilton in February and March of this year. I feel the Verdict and Recommendations may be of some interest to you in your present review of how suspicious deaths are investigated in this Province.

Mark McAvoy at the time of his death on February 13, 1991 was a twenty-four year old funeral director. On the evening of February 12, 1991 he went to the home of a friend and then to a local bar where he met up with another friend Mr. James Kusz. Later he and Mr. Kusz went to the Kusz' home with the intention of watching some rented videos in the basement. Mark McAvoy and James Kusz had both been drinking as was confirmed by a blood alcohol reading of 134 mg/100mL for Mark McAvoy at his autopsy and a reading of 150 mg/100mL for James Kusz as a result of a breathalyser test taken on the 13th of February, 1991.

At 2:43 a.m. on the 13th of February the Hamilton–Wentworth Police received a 911 call from the Kusz' residence indicating that Mark McAvoy had been shot in the basement. James Kusz indicated during this telephone call that Mark had shot himself with a shotgun.

Emergency personnel and police were dispatched to the home. On arrival at the home James Kusz, and his father Stanley and mother Lepa were present. The officers were directed to the furnace room in the basement where the body of Mark McAvoy was laying. According to the evidence given at the Inquest the investigating detectives were suspicious of the circumstances of the death and requested an Identification officer to attend. The identification officer attended and spent 1 hour and 16 minutes at the scene. He told the Inquest that the reason for the short

examination was because the Coroner had indicated it was a suicide. Other evidence at the Inquest indicated that the investigating detectives and the Coroner did not believe this was a suicide. However, after this brief examination the scene was released.

At a meeting of the investigating detectives back at the Division it was realized that perhaps the scene had been released too early and a different Identification officer was sent back to do further photographs and measurements of the scene. However, this Identification officer was not briefed as to what the scene looked like originally. When he arrived back at the scene he found that the furnace room was being cleaned up by Mr. Stanley Kusz (father of James Kusz). The second identification officer only found out while giving his evidence at the Inquest that the carpet upon which lay the body of Mark McAvoy had been removed from the furnace room. Upon the carpet was important forensic deposits from the blast of the shotgun which fortunately was photographed by the first identification officer but unfortunately were never seized by either of the identification officers.

An autopsy was carried out the next day at the Hamilton General Hospital and confirmed the cause of death was due to a shotgun blast. The entrance wound was on the left side of the neck and the exit wound on the right side of the neck. There was debate among the pathologist, investigating detectives and identification officer as to whether this was or was not a contact wound. A firearm examiner was also asked to review the case and in due course James Kusz was charged with criminal negligence causing death.

The preliminary hearing was heard in June 1991 and the accused was committed for trial on a charge of criminal negligence causing death. During this hearing no evidence was presented by the Crown regarding an incident in November 1990 when James Kusz and Mark McAvoy had been involved in a motor vehicle accident with the new truck of James Kusz; had failed to remain at the scene; and had then made up a story with the assistance of Stanley Kusz that the vehicle had been stolen. The Crown and investigators were aware that Mark McAvoy was concerned about having lied to the police and had indicated that he was going to tell the truth. Indeed, McAvoy had

told his best friend earlier in the evening before McAvoy met up with James Kusz that he was going to tell Kusz that he could no longer support the lie about the vehicle collision. During our re-investigation we felt this evidence was highly significant in establishing a motive for the death.

Following the preliminary hearing the Crown attempted to include a count of manslaughter on the indictment but at a pre-trial motion the Judge quashed this count. The Crown had sought to prefer this count pursuant to section 574(1)(b) of the Criminal Code. The Crown's position at the preliminary hearing was that Kusz by delivering his shotgun to the intoxicated McAvoy had committed a criminally negligent act. The evidence of the firearms examiner was that McAvoy discharged the shotgun himself thereby causing his own death. In the absence of any evidence that someone other than McAvoy discharged the shotgun the pre-trial judge found that the bringing of the shotgun by Kusz to the room was not an unlawful act which caused the death.

The trial on the charge of criminal negligence causing death was heard in January 1992. At that time the evidence heard by the Judge basically indicated that this was a contact wound to the side of the deceased's neck and that the deceased was capable of firing the shotgun. No evidence of the motor vehicle collision or the strained relationship of McAvoy and Kusz to that collision was introduced.

When the firearm examiner was directly questioned by the Judge as to whether there was any other way Mark McAvoy could have been shot other than by self-inflicting the wound, the firearm examiner answered "I can't think of any other way".

After all the evidence was in defence counsel Mr. Dean Paquette made submissions that his client would be willing to plead guilty to giving a firearm to a person who is impaired by alcohol.

Based on the evidence that had been presented to the Court, particularly in light of the evidence given by the pathologist and the firearm examiner, the Crown agreed to this plea and James Kusz was given a suspended sentence with two years probation.

Mark McAvoy's mother could never accept the fact that her son had committed suicide and with the assistance of James Holt a reporter from the Hamilton Spectator spent the next two years gathering as much information as she could regarding the case. She had opinions from firearm experts in the United States that it would be impossible for someone to shoot themselves in the neck with a shotgun and maintain the gun in the hand as was shown in the death scene photographs (copies enclosed)[not included]. She presented a case to the chair of the Hamilton–Wentworth Regional Police Services Board and in due course a re–investigation was requested. During this investigation the Detective Sergeant in charge of the case consulted the Office of the Chief Coroner for advice. A review of the death scene photographs; the autopsy report; as well as the evidence of the preliminary hearing and the trial was undertaken. Following this initial review it was decided that the re–investigation should be done in a multi–discipline fashion and I requested the assistance of the following experts:

- (a). Det. Insp. Jack Goodlett, Ontario Provincial Police, Criminal Investigation Bureau and Staff/Sgt. Doug Hyndman, Simcoe Detachment, Ontario Provincial Police.
- (b). Dr. David Chiasson, Chief Forensic Pathologist, Office of the Chief Coroner.
- (c). Mr. Michael Philp, blood spatter expert, Biology Section, Centre of Forensic Sciences.
- (d). Mr. Finn Nielsen, Chief Firearm Examiner, Centre of Forensic Sciences.
- (e). Mr. James McWha, Chief Firearm Examiner, R.C.M.P.
- (f). Const. Vince Hawkes, blood stain pattern analyst, OPP.

Following a number of meetings everyone was satisfied that this was not a self–inflicted shotgun wound. All the evidence indicated that at the time that Mark McAvoy was shot he was in a standing position, slightly crouched with his left hand stretched out in front of him in a defense–like position. The end of the shotgun barrel was between 3 and 5 feet from McAvoy at the time the shot was discharged. The combination of all the evidence indicated overwhelming that Mark

McAvoy was shot by another person and that the death scene had been altered before the police arrived.

At this stage all of this information was given to the Crown Attorney and the Regional Crown Attorney who indicated that no new charges could be laid since this was a re-interpretation of evidence available at the time of the first trial. In due course the Ministry of the Attorney General, Criminal Law Division, were asked to give an opinion of the viability of laying further charges and it was also their opinion that this could not be done.

It was then decided that a public Inquest should be held to make the true facts regarding McAvoy's death known. The evidence for the Inquest was prepared with the assistance of all the previously mentioned experts under the guidance of my counsel, Mr. Bill Wolski. By having sufficient discussions in advance of the Inquest with the full team Mr. Wolski was in an excellent position to know exactly what the evidence of the experts would be and accordingly was able to properly plan the presentation of the evidence.

During the Inquest when the original investigators were giving their evidence they indicated that they were unhappy with the conclusions of the first investigation but did not feel they could ask for second opinions from a different pathologist or a different firearm examiner at the Centre of Forensic Sciences. It was made clear that such is not the situation in 1996. Whenever issues regarding a case arise in a death investigation the Office of the Chief Coroner is prepared to convene a meeting with all interested parties and make every effort to resolve troublesome concerns in advance of any trial or Inquest dates.

During the Inquest the jury heard evidence from Dr. Chiasson that this was not a contact or close contact wound but in fact was a distant wound. This evidence was complimented by the evidence of Mr. James McWha, R.C.M.P., firearm examiner who indicated the range of fire was 3 to 5 feet. This opinion was seconded by Mr. Finn Nielsen, Head of the Firearm Section, Centre of Forensic Sciences. The evidence of Mr. Mike Philp and Constable Vince Hawkes regarding the blood

spatter analysis was very detailed and convinced the jury that at the time of his death Mark McAvoy was in a standing position with his left hand out in front of him. During the initial investigation no request for blood spatter analysis had been undertaken by the investigating detectives.

At the time of the initial investigation evidence at the Inquest revealed that suspicious deaths and homicide investigations were not carried out by a major crime squad in Hamilton–Wentworth but were assigned to detectives in a division where the death occurred. Since 1992 Hamilton–Wentworth have now moved to a major crime squad that is responsible for all suspicious death investigations in their jurisdiction.

When the Inquest jury heard in detail how this death was initially investigated and then how it was re–investigated by the Office of the Chief Coroner in preparation for Inquest they clearly saw the value of a multi–discipline approach. This type of investigation enhanced the jury's understanding of the complexities of death investigations and caused their first recommendation: “The development of a system to deal with cases of sudden and unexpected death in which there are significant unresolved issues of a scientific and/or medical nature”.

Their second recommendation follows from the first and obviously indicates that this should be used on a provincial basis: “This system must be adapted by all police services, Crown Attorneys, investigative agencies, pathologists and the Centre of Forensic Sciences”.

In the jury's third recommendation they recommend that the system should be modeled on the approach that was taken by the Office of the Chief Coroner and the re–investigation of Mark McAvoy's death.

I think this case is an excellent example of what can be achieved by a using a multi–discipline approach in death investigation.

I hope this explanation is of some assistance to you in your present deliberations and if I can be of any further assistance, do not hesitate to contact me.

Appendix 9

Media Article—Beaulieu

The Niagara Regional Police Service

Media Relations and The Green Ribbon Task Force

Prepared for:

Mr. D. Staszak
Mass Media and the Police
ED 372C
F.B.I. Academy

Prepared by:

Gary Beaulieu
Niagara Regional Police Service
F.B.I. National Academy
183rd Session

November 8th, 1995

The Niagara Regional Police Service in Canada had developed a strained relationship with both national and local news media during the four year nationally publicized Green Ribbon Task Force murder investigation. The major aspects of the problem in the relationship were two-fold. The first was in essence a fundamental error in judgement by police in a lack of co-operation and openness with the media regarding facts and progression of the investigation. The second was an inequality in treatment of the media in general through a 'special relationship' situation that existed between police and a selected media organization.

In order to fully comprehend the situation, some background information relating to the investigation is necessary.

The Niagara Regional Police Service is a municipal police agency serving the Niagara Region's population of 450,000. The 600 member police service is located in the southern portion of the province of Ontario in a densely populated area known as the 'Golden Horseshoe'. The 35 mile eastern perimeter borders the U.S. at New York State.

On Saturday June 29th, 1991, the body of missing teen, 14 year old Leslie Mahaffy, was discovered in Lake Gibson near the City of St. Catharines in Niagara Region. Miss Mahaffy had been missing for two weeks from her home which is located in the City of Burlington Ontario, in an adjacent jurisdiction some 50 miles away. Her body had been dismembered and encased in concrete.

On Friday November 14th, 1991, 14 year old Terri Anderson disappeared without a trace from her home in the City of St. Catharines. A massive search and extensive investigation failed to uncover any clues as to her whereabouts.

On Thursday April 16th, 1992, 15 year old Kristen FRENCH was kidnapped in broad daylight while walking home from school. Her nude body was located two weeks later in the City of Burlington.

A Task Force of police investigators was assembled to investigate the murders of Leslie Mahaffy and Kristen French, and any connection to the disappearance of Terri Anderson. The Task Force became known as the 'Green Ribbon Task Force'.

The City of St. Catharines is the largest city in the Niagara Region with a population of 230,000. The area is relatively free of serious crime. The unsolved cases led to a general condition of fear and paranoia amongst it's citizens. Area schools reported traffic chaos with anxious parents driving their children to and from school. The situation that existed in the community at the time fuelled a media 'frenzy' in every sense of the word. National attention was focused on the investigation where all the ingredients of sensationalism made captivating news.

The Niagara Regional Police Service, the lead agency in the Green Ribbon Task Force, was charged with the responsibility of media relations. The officer in charge of the Task Force, Inspector Vince Bevan, in addition to all his other important duties, was assigned this task.

Although the service had a formal media policy at the time, the policy did not include or allow for the creation of a formal media relations officer.

The responsibility imposed by the duties of media relations in this case was overwhelming. It proved to be more than a full time job. The media as a whole were generally unhappy about the volume and quality of information they were receiving. Bitter complaints arose accusing the Inspector of not being frank and open concerning the facts and status of the case. While the Inspector tried to remedy the situation, he simply could not devote the attention it required. There were more serious and pressing issues relating to the investigation that took precedent.

In a mis-diagnosis of the problem, the Chief of Police succumbed to media pressure and announced that his Chief Executive Officer would assume the duties of media relations for information concerning the Green Ribbon Task Force investigation. The Chief of Police had incorrectly assumed that the root of the media problem existed in a personality conflict between the media personnel and the lead investigator Bevan. The change in personnel however did nothing to quell the media cries for information. The C.E.O. did not take a hands-on approach to the investigation in order to be truly informed of the status of the case, nor was he relieved of any of his other duties and responsibilities. The problem was never really resolved. The relationship with the media fostered a climate of mutual mistrust and suspicion which has only recently shown signs of relief. The situation is aptly described by Hamilton Spectator reporter Nick DeBono in the following passage;

“Very early in the investigation, the cops did something to the media that is the worst thing you can do in a case like this: they gave them nothing to lose. They cut them off from information so completely that the media said, Well fuck you, I'll go get the story myself. I believe that appointment of a full time media relations officer for this case would have been the prudent corrective measure.”¹

1. Chatto, J. (May 1994). The Bernardo Industry. *Toronto Life*, 51-58

A well trained officer would have a sole responsibility to focus on the media and public need for information without compromising the 'investigative keys' which had to be kept sacred in the case. In addition, the officer could have devoted more attention to the media to foster a mutually beneficial alliance.

To further compound tensions in this case from a media relations standpoint, Inspector Bevan entered into a dangerous arrangement with a selected television news agency to produce a television special entitled, 'The Abduction of Kristen French.' The program was designed to disclose for the first time, many facts of the case previously guarded from the media. As an aid to the investigation in the way of fostering leads, the program was an award winning production. From a media relations perspective however it was an incredible error which served to corroborate the complaints by the media of unreasonable secrecy on the part of the police in the case. Members of the media were incensed by this exclusionary practise.

A critical editorial appeared in the St. Catharines Standard newspaper entitled, 'Crime and show business—A thin ethical line¹'. The sentiment expressed the general media frustration over the dangers of police failure to live up to their obligations to inform the public of developments in the case.

It was not until April of 1995 that the Niagara Regional Police Service adopted a new media policy creating a Public Affairs Office. A full time Public Affairs Officer with his own office and staff in Headquarters is now fully operational. Feedback from local media is extremely positive. An effective working relationship was quickly established by the officer who is well trained and understands the need for openness in matters of public and media interest. As for the Green Ribbon Task Force investigation, time has healed old wounds. A five month long gruesome and very public trial has served to fulfil the media's quest for intimate knowledge of details in the case.

1. "Crime and show business - A thin ethical line". (1992, July 16). The St.Catherines Standard, p.A4.

In all this was an excellent learning experience both for the Service and for me. It is comforting to know that a positive approach has been taken which has tackled the issue head on, and has improved relations with our media. This will most certainly improve the public image of the Service through our most powerful public relations ally; our media.

Appendix 10

Article on Present NRPS Media Policies

Prepared by Sergeant Gary Beaulieu NRPS for FBI National Academy 183d Session, December 5 1995

Niagara Regional Police Service

General Order #019

“An Analysis”

The Niagara Regional Police Service has established policy and procedure regarding media relations and public affairs issues. The seven page document, entitled Support Services General Order-019, was authorized by Chief of Police J. Grant Waddell on April 19th, 1995. The pages that follow will serve as a review of the contents of the General Order. The review will provide an analysis of both positive and negative aspects of the policy from a balanced perspective which considers not only the duties and responsibilities of the Niagara Regional Police Service in release of public information, but also the right of the media and indeed the public to be kept informed.

Prior to examination of the particular policy, it is first essential to consider some of the internal and external factors affecting the Niagara Regional Police Service in its attempt to fulfil its duties and responsibilities respecting media relations.

The Niagara Regional Police Service is a municipal police agency located in the Niagara peninsula in the Province of Ontario, Canada. The 600 sworn member agency serves the Niagara Region's population of 450,000. Geographically, it is located in the densely populated southern portion of the province and is part of an area known as the ‘Golden Horseshoe’. The Golden Horseshoe area includes Canada's largest city, Toronto. The 35 mile eastern perimeter of Niagara borders the United States at the major cities of Buffalo and Niagara Falls, New York.

Geographically, from a media perspective, Niagara has a unique location placing it in the strategic interest of both Canadian and United States media outlets. Although it has only one television station, Niagara receives television signals from all major television networks in Canada and the U.S. National network television news in Canada is broadcast from Toronto which is 40 miles from Niagara across Lake Ontario. Local television news agencies in Buffalo also broadcast selected Niagara news. This same situation applies to both U. S. and Canadian radio programs. In addition to the national and international media interest, Niagara is home to three daily newspapers, and approximately 12 radio stations.

As illustrated above, the media situation in Niagara Region is unique in the sense that there is interest from an unusually high number of media organizations. National news agencies based in Toronto, as well as bordering U.S. news agencies, contact the Niagara Regional Police Service on a routine basis. They are, of course, solely interested in major or unusual news items. The remaining local news agencies within the region are in contact on a regular basis for dissemination of local news and items of interest.

Niagara Regional Police Service, Support Services General Order-019 is reproduced as follows:

The general order is drafted in a format popular in written police communications and termed a 'policy and procedure' document. This format allows for a general statement of the philosophy of the organization relating to the subject matter in the 'Policy' section of the document. The remaining 'Procedures' area allows for the setting of specific rules to ensure that the goals spelled out in the policy section are attained.

'Policy sets the target and procedures tell how to hit it'¹

The document is well laid out in an easy-to-read style with use of marginal section numbers to separate specific topics. A corresponding decimal number is used to separate paragraphs within

1. Gerald W. Garner, The Police Meet the Press. (Springfield, IL: Thomas, 1989). 85.

the topic. Sub-paragraph alpha characters are also utilized in certain areas. This system allows for easy access not only for specific reference purposes but also for purposes of future amendment or revision.

Part 1—Policy

The Policy statement in section 1 is concisely reduced to 5 paragraphs. Each paragraph recognizes a relevant but distinctive portion of the philosophy in media relations and public affairs.

Paragraph 1.0 outlines a general recognition of the duty of the Service to provide accurate and timely information to the public. This statement is significant in the sense that it is directed not solely to the media but to the general public as well.

Paragraph 1.1 is a restatement of overall good intentions on behalf of the Service in the establishment of media relations. An important aspect of this paragraph is the mention of the two-way co-existence in the relationship. It is clear that not only does the Service wish to promote good relations with the media, but it also wishes that the reverse be true. Once established, this relationship can also work to the best interests of the organization in crime prevention, community policing, and other public relations programs.

In the remaining paragraphs within the Policy section, an expansion of the cooperation philosophy is stated by expressing that the information provided by the Service be truthful and factual. This area is also used to generally explain reasons for restricting access to certain information that might otherwise be accessible. This includes reference to restrictions set out in statute and to the various common sense situations dealing with personal grief, embarrassment or protection in a sensitive investigation.

The policy section of the General Order is a clear statement of the mission of the Niagara Regional Police Service in media relations and public affairs. By reading the policy which

occupies less than one page, members of the Service and affected media personnel can understand and appreciate the good intentions of the police in fulfilment of their duties in media relations. A novel aspect of the policy is the recognition that the relationship with the media is as much an alliance, with the media in a position to assist in the operational goals and objectives of the Service.

Part 2—Procedure

The Procedures section of the document sets out the specific rules and guidelines which are to be followed to ensure that the philosophy contained in the policy of the document is achieved. The most important aspect of this section is the clear and concise statement of the rules to ensure they are easily referenced and understood. All too many procedure sections become lengthy and convoluted as the author tries to draft a specific rule for each and every situation that could possibly arise.

In the subject policy the guidelines in the procedures area are well constructed. Generally speaking, the document can be quickly referenced and the rules are clear and straightforward.

The Procedures section commences with a definition area. This is important in order to identify what is meant by certain key phrases routinely referenced throughout the document. Defining these key phrases or terms at first reference helps to limit the size of the document by explaining their meaning only once. There are two important definitions in this section. The first defines who, 'Persons authorized to release information to the media are' The four positions listed are clearly identified positions within the Service. Their selection as an authorized person is a logical one based on position in the organization and area of command. The second definition describes what is meant by 'A Public Affairs Officer.' Again, the definition is clear and concise and even includes the method by which the designated officer is appointed.

The next four Sections deal with specific release of information to media. Rather than continually list in random and lengthy fashion the occasions where information can be released to the media, the architect of the General Order wisely chose to divide the sections into four logical areas or instances where information is routinely provided by police to the media. This provides a manageable list for each situation and also serves as a quick reference for specific instruction.

Release of Initial Information - Section 3

This section cleverly anticipates the need to accommodate the requirements of the media at times other than normal business hours. This will assist media personnel in meeting deadlines without having to wait to contact the Public Affairs Officer.

The release of information under this section is conveniently divided into three categories. The first category lists information that shall be released. The second category lists information that may be released, allowing the authorized person some discretion. The third category is also discretionary, and lists information that may be released following an arrest.

The person authorized to release information is by definition a person with some position of authority in the Service. The spokesperson is empowered in Section 3 to use his best judgement in the discretionary situations described. Section 3.2 also gives latitude to authorized persons in the release of information that may result in positive media coverage for the Service. This is an innovative concept and another example of the recognition of the value of positive media relations that is the underlying principle in this document.

Release of General Information - Section 4

Section 4 contains provisions for the release of general information to the media. The guidelines are clear and specific. There is an important statement indicating essentially that information expressed should contain no speculation or opinion outside the expertise of the person making the release. Although this appears overly simplistic, today's police agencies are extremely diverse and

one should not make comment to the media regarding an area he knows little about. Section 4 also lists the specific legal areas which may prevent or prohibit certain information from being released. In the spirit of establishing a mutually beneficial alliance with the media, a provision of the section ensures that members of the Service permit free access to media personnel in areas where the general public is permitted access. The need for such a provision arises out of the fact that there are police personnel who still treat the media with disdain. This provision should serve to alleviate that problem.

Finally, Section 4 contains a paragraph prohibiting members of the Service from releasing information pertaining to the operation of the Police Services Board which is the governing body of the Service. This provision has arisen out of past experiences where policy decisions by the Board were prematurely released by members of the Service.

Release of Prohibited Information - Section 5

Section 5 lists circumstances where information is prohibited from release. The section also includes a clause ensuring an explanation be given to media personnel for non-release of information. The list is lengthy but easily referenced. The format will be useful when quoting a reason for the non-release of information. The media will no doubt be familiar with the items on this list and will understand when a refusal is explained in this fashion.

Release of Personal Information - Section 6

This section lists general situations where personal information may be released. This is an extremely difficult area to reduce to text, as there are vast and varied reasons for a police decision to withhold personal information. Unfortunately the reasons as listed are not entirely clear, through no fault of the author, and leaves the reader with some doubt as to the correctness of a particular situation. The Service might consider a more informative approach to this area by publishing a supplemental document explaining the rationale behind decisions not to release personal information. This document could also contain actual examples as guide items.

Existence of the supplement could be made in a subparagraph in Section 6 as follows: *6.6 For further information concerning the release of personal information please consult Supplemental Guide #12, 'Release of Personal Information' available through the Public Affairs Office.* This would ensure the information is available which reflects the policy of the Service without cluttering the media release policy document.

Media Releases - Section 7

Section 7 is very well drafted and formalized in explanation of standards in format and internal circulation of written media releases. This is extremely important in terms of uniformity and reference.

Media Interviews - Section 8

This section stipulates general common sense rules when giving a media interview. The most important aspect is contained in paragraph 8.2 where it is specified that members are not to give interviews to the media without permission on 'any issue not related to a current news story'. This process ensures that the most qualified spokesperson is selected to conduct an interview relating to a specific area of authority or expertise.

Public Affairs Officer - Section 9

This section outlines the general duties of the Public Affairs Officer. A subparagraph also expresses that the duties of the P.A.O. should not be construed as relieving any officer from engaging in positive relations with the media. This is an important statement which is reflective of the policy in Section 1.

The General Order ends with the signature of the Chief of Police in standard format of the official General Orders of the Niagara Regional Police Service.

The General Order, Media Relations–Public Affairs is the end product of a long evolution of media release policies of the Niagara Regional Police Service. The document is reflective of the constant revision of media policy since the first was endorsed on inception of the Service in 1970. It is also reflective of a host of changes learned the hard way through some unfortunate and negative media publicity. As the policy evolved so did it improve, with the most significant development being the creation of the Public Affairs Officer and his staff in April 1995. With very few exceptions, the General Order is overall a model policy document that recognizes not only our duty to keep the public informed, but also the importance and benefit of an effective relationship between the Service and our media.

Appendix 11

Profiling Extract From GRT Search Warrant

1 Analysis of Offender Characteristics

I, the Affiant have been given a report entitled “Analysis of Offender Characteristics” by Inspector Vincent BEVAN of the Niagara Regional Police. Through my discussions with Inspector BEVAN he has advised me that he has consulted with Supervisory Special Agent Gregg O. MCCRARY of the Federal Bureau of Investigation. MCCRARY's report is summarized as follows:

Supervisory Special Agent Gregg O. MCCRARY has twenty–three years experience with the FBI and is a Criminal Investigative Analyst with the National Center for the Analysis of Violent Crime (NCAVC) at the FBI Academy in Quantico, Virginia. NCAVC is a law enforcement oriented behavioural science and computerized resource center which consolidates research, training and investigative support functions to assist law enforcement agencies with violent crimes which are particularly complex or bizarre. Since 1981, NCAVC has focused its research capabilities upon serial killers and severe sexual offenders utilizing behavioural science methodology to develop a reliable data base and analytical framework for use in law enforcement. The unit reviews and studies information contained in hundreds of cases which are submitted each year for consultation purposes. The foundation of its data base is empirical research into the case histories of some thirty–six serial killers (i.e., three or more killings in separate incidents), forty–one rapists (each responsible for at least ten such offenses), fifty arsonists, seventeen child abductors/molesters and thirty sexual sadists. Refer to the article “The Sexually Sadistic Criminal and His Offenses” which is included as Appendix G to this Information. This research project has included an exhaustive review of the investigative files, in–depth interviews of each offender, and selected interviews of surviving victims.

Gregg O. MCCRARY, a Supervisory Special Agent with the Federal Bureau of Investigation (FBI), is assigned to the National Center for the Analysis of Violent Crime (NCAVA) at the FBI Academy in Quantico, Virginia, Supervisory Special Agent MCCRARY serves both as a consultant to law enforcement agencies and a research project coordinator. He entered on duty as a Special Agent with the Federal Bureau of Investigation in 1969 and served in various investigative capacities throughout the United States. He has been associated with the National Center for the Analysis of Violent Crime since 1985.

He consults in the investigation and prosecution of such crimes as serial murder, serial rape, sexual homicides, kidnappings, and child abductions/molestations. His duties also include supervising 3 other Supervisory Special Agents. MCCRARY is a contributing author to the Crime Classification Manual published in 1992 by Lexington Press. This work is the first to systematically classify homicides, sexual assaults and arsons.

He has provided expert witness testimony before Select Senate Committees on Sexual Violence as well as in homicide trials in the United States. He has consulted on thousands of cases throughout the United States, Canada, Central America, Australia, England, Austria, Italy and China. Agent MCCRARY has provided consultation or instruction to the Central Intelligence Agency, Federal Bureau of Investigation, Drug Enforcement Administration, Royal Canadian Mounted Police, National College of District Attorneys, National Criminal Intelligence Service of the Netherlands and numerous other local, state, federal and international agencies.

Agent MCCRARY's work in serial murder has been highlighted in a Public Broadcasting System documentary entitled, "The Mind of a Serial Killer" and he has provided expert commentary to Cable News Network (CNN) television regarding serial murder.

Agent MCCRARY's formal education includes a Master's degree in psychology from Marymount University. He is a featured speaker to legal, medical, law enforcement and private sector audiences throughout the world.

Special Agent MCCRARY and his colleagues at NCAVC studied the available information (most of which is provided herein) about the first eight (8) offences of a then unknown offender called the Scarborough Rapist. During those offenses the rapist displayed several sexually sadistic characteristics and was becoming more and more violent as demonstrated by his punishing and beating of the victims. As a result of the behaviour of this offender, Mr. MCCRARY was able to predict that the danger posed by this person would escalate. The use of force beyond that necessary to subdue the victims, together with the psychological abuse, assisted in identifying this offender as a sexual sadist.

Special Agent MCCRARY is of the opinion that as time passed the sadistic component of this offender's actions would continue to grow. Research has demonstrated that such an offender will not stop of his own volition. He only stops with the exertion of external forces, that is he either dies or is in custody. The offenses may stop in a given area because this type of offender moves, but Mr. MCCRARY would expect to see the offender act out in the area to which he has relocated.

In the case of Paul BERNARDO, he moved from the Scarborough area and the offenses attributable to the Scarborough Rapist stopped. Within nine (9) weeks of BERNARDO's arrival in St. Catharines, a rape occurred in close proximity to his new home. This rape clearly demonstrated the same modus operandi used by the Scarborough Rapist as described elsewhere in this document. This pattern is predictable in the case of the sexual sadist. Mr. MCCRARY would expect to see another offence in close proximity to the offender's new home and the cycle would start all over again.

Mr. MCCRARY predicted an escalation in the nature of offenses based upon a lifestyle change. In the case of Paul BERNARDO, while living in Scarborough, he was in a home which was controlled by his parents. Once he moved to St. Catharines, he had a home of his own over which he was able to exert complete control. This change in his circumstances, aids him in the escalation of his offenses to the point where he can now bring his victims home.

Abduction is a predictable progression for the sexual sadist. However, abduction of a victim virtually guarantees that murder will result. If the sexual sadist has held a victim he feels in his own mind that he can't possibly let them go. As his fantasy escalates he needs more control and gains that control through abduction and forcible confinement of his victims. The ultimate fantasy of a sexual sadist is to totally possess his victims, both physically and psychologically. He seeks to achieve control over their life and ultimately over their death as well.

In the expert opinion of Mr. MCCRARY it is predictable that some of the Scarborough Rapist's victims would be killed by this point in time. Rapists identified as sexual sadists are statistically less than 2% of all of these types of offenders. Therefore, the probability of having more than one of these type of offenders in the geographic area and population we are concerned with is statistically very remote. There is a high probability that the Scarborough Rapist and the sexual sadistic murderer of MAHAFFY and FRENCH is the same offender.

Further, sexual sadist tendencies when combined with a very rare phenomenon where hair is collected from victims, as BERNARDO did with two women in Scarborough, and as happened with Kristen French, is a strong indicator this is the same offender. The taking of hair satisfies BERNARDO's need to punish, degrade and disgrace his victims. It also serves as a trophy.

Special Agent MCCRARY and his colleagues at NCAVC studied the available information on the murders of Leslie Mahaffy and Kristen French and concluded that they are likely victims of a sexual sadist. Paul BERNARDO demonstrates almost all of the characteristics which are typically found in the sexually sadistic serial killer. The constellation of characteristics which NCAVC research has consistently encountered in such offenders includes each of the following:

- Male
- White
- Parental Infidelity or Divorce

- Physically Abused in Childhood
- Sexually Abused in Childhood
- Married at Time of Offence
- Incestuous Involvement with Own Child
- Known Homosexual Experience
- Known Cross-Dressing
- Known History of Peeping, Obscene Telephone Calls
- or Indecent Exposure
- Shared Sexual Partners with Another Man
- Education Beyond High School
- Military Experience
- Drug Abuse
- Suicide Attempt
- Excessive Driving
- Police “Buff”

The following characteristics, from the police investigation described above, apply to Paul BERNARDO:

White male: Same

Above average intelligence: Investigators have established that BERNARDO completed a four year University Degree in three years.

Neat and well groomed: Surveillance has established that BERNARDO presents himself very well in a social setting, especially during daytime. However, during the hours of darkness while stalking potential victims, his appearance changes

Parental conflict: Family members report that BERNARDO expresses hatred for his mother and thinks she is crazy. At age 14 years BERNARDO learned that who he had thought of as his father was actually his step-father since he was a product of his mother's affair with another man.

[PARAGRAPH REMOVED TO PROTECT THE CONFIDENTIALITY OF THIRD PARTIES]

Will select an occupation which makes him an authority figure: When asked about employment, BERNARDO told his wife's parents, who have been interviewed, that he was involved in a secret “project”. He currently claims to be involved in writing “rap” music and has told his sister-in-law that he will be the white “M.C. Hammer” a popular black rap musician.

Fascination with weapons: Several people have reported that BERNARDO has a “special” knife that he usually keeps in his car under a seat. A prior girlfriend, who also became a victim, describes this knife as having a personal inscription on the blade. A knife has been used in numerous offenses. Family members have disclosed that BERNARDO has purchased a “Stun gun” and normally keeps it under his bed.

Compulsive driving: Surveillance has established that BERNARDO for several days in a row, drove an average of 650 kilometres.

Initially presents the image of a sincere, caring, loving and attentive individual: Past girlfriends and his wife's family all report that BERNARDO, during the early stages of his relationships, showered the women with gifts and attention. He maintained an outward appearance of being loving and attentive.

Dominating personality: Family members report that BERNARDO told his wife how to wear her hair and chose her clothing. Over the course of time he isolated her from her former friends. A close friend of BERNARDO, Van Smirnis, disclosed that he observed many occasions when BERNARDO treated his wife with a total lack of respect. In January 1993, after charges were laid against BERNARDO for beating his wife, she disclosed a long history of physical abuse.

Obsession with sexual sadism; suffers from an overpowering compulsion to inflict pain upon and totally dominate any sexual companion: A former girlfriend has disclosed that BERNARDO was unable to achieve an erection unless he frightened or inflicted pain on her. With that woman, BERNARDO used ligatures around her neck while engaging in anal intercourse. He also used foreign objects including bottles and sticks by inserting them into both vaginal and anal cavities of his victims. Further, any non-compliance on the part of his victims or willing sexual partners resulted in violence.

Compulsively collects and uses pornography: A friend, Van SMIRNIS, has reported that BERNARDO made a videotape of himself having sex with an unknown woman. He then showed the video to his wife. SMIRNIS also reports that BERNARDO disclosed that his wife had been searching their home for a video tape that recorded her having sex with another woman. Further, BERNARDO is known to own a video camera and playback equipment. He, as a matter of habit, videotapes people and events and collects these.

Collects and keeps as trophies and mementos personal items belonging to past victims (e.g., undergarments, shoes, jewellery, wallets or identification); such trophies then serve as a source of perverse gratification and enrich the offender's sexual fantasies: Investigation has revealed that each victim has lost item during the attack which could be characterized as a "trophy". Trophies include photo identification, articles of clothing, jewellery, head and pubic hairs.

Selects victims who are particularly vulnerable –favours the young: Most victims are young women found alone at the time of the attack. Victims all have the appearance of being between 14 and 18 years of age.

Married at time of offense: Paul and Karla BERNARDO lived together from February 1991 at 57 Bayview Drive. They were married June 29, 1991. Therefore they were in at least a common-law relationship at the time of MAHAFFY and FRENCH.

Known history of Peeping or Obscene telephone calls: In at least one of the Scarborough Rapist offenses BERNARDO told the victim he had watched her inside her home. One other victim reported receiving telephone calls after her attack. In addition, the victim in the Henley Island attack also reported phone calls.

93% of sexually sadistic serial killers plan their crimes carefully: Surveillance has established evidence of stalking victims during both the daytime and night-time. The method of disposal of the body in the MAHAFFY case is indicative of planning. The condition of the body in the French case also indicates planning since the body was cleaned to remove trace evidence. All rape attacks occurred in dark areas where there was some sort of cover. Also during the rapes he forced victims to swallow semen in order to destroy biological samples.

According to Special Agent MCCRARY, the NCAVC research found that the sexually sadistic serial killer exhibits a high degree of predictability in his criminal behaviour. Accordingly, Special Agent MCCRARY believes that it is not a question of whether, but when, Paul BERNARDO will offend again. Since there is no limit upon his appetite for sadistic gratification, it is only a question of time until his next victim does or refuses to do something which he perceives as a threat to his control over her. When that happens, he will react as he has always reacted. The documented case histories demonstrate conclusively that offenders like Paul BERNARDO cannot stop raping and killing of their own volition. They stop only when they are stopped by external forces.

Offender activity may be suppressed for a time. Close brushes with law enforcement would lead to a period of inactivity. In BERNARDO's case, he was interviewed as a suspect in the Scarborough Rapist case in November 1990. No offence was committed in that area after that time. This behaviour is consistent and predictable. However, this quiet period will consistently be followed by renewed activity by the offender. Hence the offence in St. Catharines in April 1991.

Special Agent MCCRARY agrees with those who attended the case review conference that Paul BERNARDO will react as predicted.

Finally, with respect to the likelihood that tangible evidence will be recovered through additional searches, Special Agent MCCRARY indicated to the Task Force in the month of May, 1992, that he believed that such evidence does exist and can be recovered for the following reasons:

Supervisory Special Agent MCCRARY relates that a prime characteristic of the sadistic offender is to keep and conceal journals, graphic materials and particularly audio and video tapes which will feed his fantasies and enable him to relive the exhilarating moments of his past offenses for continual gratification. Indeed, 53% of the sexually sadistic offenders studied by NCAVC actually memorialized their offenses in some tangible form. Depending upon the particular offender's living arrangements and how secure he feels in any particular location, this collection of memorabilia may be hidden but will be somewhere within reasonably easy access. Paul BERNARDO should feel relatively safe in his home because although he was a suspect in the Scarborough Rapes and provided biological samples, 27 months have elapsed since he gave those samples and nothing has happened to him. He has no reason to believe that he is currently the target of any police investigation. Hence, he is likely to have his stash of "trophies" and mementos of the kind described above concealed in his home or in a related storage area, the location of which a thorough search of the home should reveal.

The high risk nature of the abduction of Kristen French was a predictable action of a sexual sadist such as Paul BERNARDO. Since he believes he was not detected when biological samples were

collected from him in November 1990, his confidence has grown and he has developed a sense of invulnerability. He will begin to think he won't be apprehended and therefore he indulges in more high risk offenses.

The opinions and information above described, provided by Special Agent Gregg MCCRARY, have been reviewed by Peter I. COLLINS, M.C.A., M.D., F.R.C.P. (C). Doctor COLLINS concurs with the opinions offered by Mr. MCCRARY. Rapists who are also sexual sadists are rare. Doctor COLLINS is the Consultant Psychiatrist, Violent Crime Analysis Section of the Royal Canadian Mounted Police.

Doctor COLLINS has further referred me to the following excerpts from the Diagnostic and Statistical Manual of Mental Disorders (3rd ed.) revised (1987) at pages 287 and 288:

American Psychiatric Association

Diagnostic And Statistical Manual Of Mental Disorders

3rd Edition–Revised 1987

302.84 Sexual Sadism...

Sadistic fantasies or acts may involve activities that indicate the dominance of the person over his victim (e.g. forcing the victim to crawl, or keeping the victim in a cage), or restraint, blindfolding, paddling, spanking, whipping, pinching, beating, burning, electrical shocks, rape, cutting or stabbing, strangulation, torture, mutilation, or killing.....Differential diagnosis. Rape or other sexual assault may be committed by people with this disorder. In such instances the suffering inflicted on the victim is far in excess of that necessary to gain compliance, and the visible pain of the victim is sexually arousing.

Similar evidence relating to sexual sadism was recently held to be admissible in evidence as going to the issue of propensity to commit the offence: **Regina v. Pierre Malboeuf**, (February 24,

1992). Unreported judgment of the Ontario Court of Justice (General Division). The following holding of Mr. Justice MCWILLIAM is relevant:

For the reasons I have outlined, I have concluded that evidence from the alleged crime scene, the apartment of the accused, including drawings and art work found there, and evidence of his past relationships may indicate sadist sexual interests on the part of the accused. In my view its probative force outweighs the risk of a jury convicting the accused unfairly. Given the rarity, in absolute terms, of death caused by asphyxia in possible circumstances of non-consensual bondage, Dr. BRADFORD is right in my view when he says commonplace inferences in such cases might very well be misleading.

Appendix 12

Extracts from GRT Report: Search of 57 Bayview Drive

Security for the residence was of paramount importance and police were posted at the house twenty-four (24) hours a day for seventy-one (71) days. The door locks were changed within the first few days of the search for continuity purposes. For quality control a log book was maintained documenting the entry and exit of every person that attended in the residence.

A search strategy was discussed beforehand and members assigned their duties. Resources that would be used during the search were made available to further the efforts of the team. Experts from the Centre of Forensic Sciences were contacted and asked to assist. One member of the Niagara Regional Police Service was designated as the Exhibit Officer to maintain continuity of items seized. The Command Post from Hamilton-Wentworth Regional Police was set up in front of the residence on Bayview Drive to provide a place to discuss further strategies and to allow members to change into protective suits before entering the residence.

The search team sought to avoid any potential contamination of the residence. To accomplish this, boots worn from the Command Post to the door of 57 Bayview Drive were removed and replaced with protective footwear. All members entering the residence were required to wear an officer protection suit. The consumption of food, drink and tobacco products were all prohibited while in the residence.

The search in the beginning was conducted by four experienced Forensic Services Unit members, two from Niagara and two from Metropolitan Toronto. During the early stages and throughout the search, the team was instructed to keep property damage to a minimum during removal of evidence.

A special team was also assigned on the first day to secure the BERNARDO vehicle for transportation to an Ontario Provincial Police facility and then to the Centre of Forensic Sciences for expert examination.

The search team commenced the project by first videotaping and still photographing the entire scene. A systematic search then commenced. The Head of the Chemistry Section from the Centre of Forensic Sciences attended after the first week to assist in searching for paint consistent with the sample found on concrete that encased part of Leslie MAHAFFY's body. The Head of the Biology Unit also attended to assist in the search for body fluids, blood and semen.

The Ontario Provincial Police attended on several occasions. At one point during the search they provided assistance with their Argon Gas Laser. The Royal Canadian Mounted Police assigned one of their blood spatter experts to assist at the scene.

The Forensic Officers gathered minute samples of D.N.A. suitable for testing and were able to confirm that both Leslie MAHAFFY and Kristen FRENCH had been at the scene. This was established before the acquisition of the video tapes that came into the possession of BERNARDO's lawyer. Other evidence seized included the concrete mix, BERNARDO's knife and electrical cords.

Following the search and seizure of biological evidence, chemicals were used inside the entire residence for the detection of fingerprints.

During the search over one hundred (100) videotapes were located. The search warrant did not provide for their removal and they were viewed inside the residence. If it was found the tapes contained anything connected to the victims, to the scene or the perpetrators the tapes could then be seized. During these viewings one tape was found to contain a very limited portion of the assault on a female person who was later to be identified as Jane DOE. It was only then that the videotapes could be seized to be removed to a laboratory for expert frame by frame examination.

A Niagara Forensic Officer did search the potlight area in the bathroom, later identified as the hiding place of the videotapes that eventually came into possession of BERNARDO's lawyer. This officer reported finding no videotapes in that location.

As stated earlier, the search was renewed on three occasions. Each time a new warrant was obtained it was updated with new grounds as the information became available during the search. Expert advice on all aspects of the search, as well as the services of many of those experts, was utilized during the search.

This project was of such unique proportion that the Ontario Provincial Police made one of their Argon Gas Lasers portable so it could be transported and used at the Bayview Drive location. Since that time this laser has been made available to assist at some forty (40) other locations and funding has been provided for a dedicated vehicle for this unit.

The Green Ribbon Task Force in consultation with the Crown's Office also decided to acquire ownership of the premises in the event they had to return to renew the search. This decision was also made in the event a jury may have to attend to personally view the crime scene.

Appendix 13

The Kidnapping and Murder of Leslie Mahaffy and Kristen French Search of the Crime Scene 'A Case Review'

Prepared for:

Mr. E. Burwitz
Overview of Forensic Science
CJ473B
FBI Academy
December 1st, 1995

Prepared by Group 7:

Gary Beaulieu
Gary Crane
Ty Johnson
Gary Penland
J. Ray Sanford

The Kidnapping and Murder of Leslie Erin Mahaffy and Kristen Dawn French

Paul Kenneth Bernardo was 26 years old in June of 1991. He was an unemployed accountant living with his fiancée, 21 year old Karla Homolka. The couple resided in their rented home at 57 Bayview Drive in St. Catharines located in the Niagara Region in Canada.

On June 14th, 1991, in the early morning hours, Bernardo, a psychopathic serial rapist and sexual predator with no criminal record, was stalking 14 year old Leslie Erin Mahaffy near her home in the nearby City of Burlington. Bernardo kidnapped the young teen from her backyard.

Bernardo arrived home with his victim at about 3:30 a.m. Over the next 36 hours Leslie Mahaffy was brutally raped and forced to endure various forms of sexual degradation. Karla Homolka also participated in the sex acts under the direction of Bernardo. Much of the activity was recorded on video tape.

Paul Bernardo knew that he would have to kill and dispose of his victim to avoid police detection. Police in Metropolitan Toronto had samples of his blood taken in 1990 during his questioning as a suspect in a series of vicious sex crimes known as the 'Scarborough Rapes'. He had managed

thusfar to avoid apprehension in the case which involved the rape of 15 young women during a period from 1987 to 1990.

Bernardo strangled Leslie Mahaffy with an electrical cord. In the basement of the home he then used a power circular saw to cut her body into ten pieces. Eight cardboard boxes were used as forms to contain the body parts which were surrounded in wet cement. Once dry, the concrete formations were dumped in a nearby lake.

On June 29th, 1991, Bernardo and Homolka were married in a lavish wedding ceremony. On the same day, several of the concrete formations containing the body parts surfaced when the lake levels reached a critical low. The following day, June 30th, the torso block separated under water releasing the torso to float to the surface. A Homicide investigation commenced and investigators learned of the identity of the victim through dental records.

On Thursday April 16th, 1992, 15 year old Kristen Dawn French was walking home from school at 3:00 o'clock in the afternoon. Bernardo selected her as his next victim. He parked his Nissan 240SX sports car in a church parking lot. Kristen French was lured to the passenger side of the car by the pretty blonde Homolka who was seated in the passenger seat. On the pretext of asking for directions, Homolka engaged Kristen in conversation. Armed with a knife, Bernardo grabbed his victim from behind and forced her into the car.

Kristen French was driven to Bernardo's home where she too was forced to suffer brutal sexual torture by her captor over a period of four days. Again, portions of the sexual acts were recorded on video tape. Kristen French was strangled by Bernardo using the same electrical cord. Her body was thoroughly cleansed in a jacuzzi. Vaginal and anal cavities were douched, and her long hair was cropped short to eliminate trace evidence. The body of Kristen French was dumped in a ditch on a sideroad next to the cemetery where the body of Leslie Mahaffy was buried. A Task Force was formed to investigate the murders.

On January 5th, 1993, Bernardo severely beat his wife Karla Homolka with a flashlight. She was injured and hospitalized for five days. Homolka left her husband and went into hiding as she feared she was to be his next victim.

In late January 1993, the Laboratory at the Centre of Forensic Sciences in Toronto had made positive identification of Bernardo through D.N.A. analysis, as the perpetrator in four of the Scarborough rape cases. This came almost three years after the control sample from Bernardo was originally obtained.

Karla Homolka was located and interviewed by police on February 9th, 1993. Homolka sensed that her secret life with Bernardo and her complicity in the crimes was about to be exposed. She then contacted a high profile criminal lawyer who soon commenced plea resolution negotiations with the Attorney General's Ministry. Homolka's lawyer disclosed very little detail of the crimes, but enough that investigators knew they were on the right track.

As negotiations continued, investigators prepared a search warrant for the Bernardo home at 57 Bayview Drive in the City of St. Catharines. The residence is a rented single family home. It is a 3 bedroom, storey and a half, Cape Cod styled home with a full basement and attached single car garage. It is situated in a residential subdivision near the shore of Lake Ontario.

Police Forensic Identification personnel knew that search of the Bernardo home would be an extremely tedious and complex task. To further complicate matters it was decided that two teams of Forensic officers would have to conduct the search simultaneously. The first team of two forensic officers would search the home concentrating on evidence relating to the murder cases. The second team of two forensic officers would concentrate on a search for evidence relating to the series of offenses known as the Scarborough rapes.

It had been planned to execute the search warrant at the same time as the arrest of Bernardo was effected. This plan went awry on February 13th, 1993, when news of the impending arrest was

leaked to the media. This made it immediately necessary to arrest Bernardo prior to finalization of the search warrant application.

Following the arrest, the home at 57 Bayview Drive was secured and the entire property was controlled from public access. A tarpaulin was placed over the Nissan which was parked in the driveway. A sign-in/sign-out log book was kept as permanent record of the on site police personnel assigned to protect the integrity of the scene. A Mobile Command Post was also set up adjacent to the property as an office for police personnel.

The search team used the time prior to commencement of the search to identify and separate specific responsibilities. Detectives Richard Ciszek and Michael Kershaw would search under the authority of the warrant relating to the murders. Detective Sergeant Brian Ward and Detective Corey Bockus acted under the authority of the warrant granted in respect of the Scarborough rape investigation. All were assigned general search duties including maintenance of their personal notes. Specifically, Detective Ciszek was assigned duties as the main exhibit officer responsible for collection, identification and continuity of exhibits. He also maintained a video tape record of significant findings. Detective Kershaw was responsible for still photography. Detective Corey Bockus was responsible for video and still photography relating to the Scarborough rape investigation. Detective Sergeant Brian Ward was assigned to maintain a search log book detailing the duties of each officer at specific times.

The search crew also used the interim time to brief one another on the facts and circumstances of their cases along with evidence expected to be found in the search process. Each member's personal examination equipment was thoroughly cleaned to eliminate the possibility of contamination. They were issued new full coverage protective suits complete with head gear and new footwear to be worn only inside the residence. It was ordered that no food, beverages or smoking be allowed in the residence.

A warrant to search the home was finalized and granted on Friday February 19th, 1993. Search of the residence at 57 Bayview Drive commenced on that day and continued over the course of the next several weeks, concluding on Friday, April 30th, 1993. Police searched the residence for a total of 70 days.

On entry, in the preliminary survey, the interior and exterior of the home was systematically videotaped. Still photos were taken as well. The interior of closets, cupboards and drawers were included in this process to demonstrate the condition of the entire residence prior to the search. The locks on entrance doors were changed with keys retained only by search personnel.

The Nissan vehicle in the driveway, and the Mercury Marquis vehicle in the garage were given a cursory search. Both cars were then sealed, covered with a tarp, and loaded separately into covered trailers for transport to the Ontario Provincial Police Forensic Laboratory for expert examination.

The search crew then commenced their search inside the crime scene. Head of Biology at the Centre of Forensic Sciences, Norm Erikson, and Head of Chemistry, Ray Prime, were allowed access. Erikson assisted in determination of the method of collection, preservation and process of pertinent biological exhibits. Prime was primarily interested in the chemical composition of black paint found within the residence. He was looking for a match to a rare and unique composition of black paint found to have been sprayed onto the outer surface of two of the eight concrete formations containing the dismembered body of Leslie Mahaffy.

While none of the liquid paints stored in the home were found to be similar, paint transfer indentations were found on the wooden basement stair treads numbered 1, 2 and 7. The entire basement staircase was dismantled and sent to the lab. The paint transfer areas were examined resulting in a chemical match of the paint.

Using a chemical test kit was supplied by the lab, areas of interior walls, ceilings, doors and windows tested positive for very minute specks of blood. Some of these areas required the removal of an entire door or window for direct transport to the lab under the direction of Mr. Erikson. Smaller areas required the removal of sections of plaster or drywall, or extraction using a 2" hole saw. A Master Exhibit List was compiled by Ciszek detailing all pertinent information regarding the identification, source, and collection procedure for each exhibit.

Corporal Pat LATURNUS of the Royal Canadian Mounted Police Research and Identification Section in Ottawa was called to attend the scene to examine for trace evidence of blood which was expected to be found after the process of dismemberment of the body of Leslie Mahaffy. Corporal LATURNUS was experienced in two methods of blood detection using the chemicals, Luminol and Leucomalachite Green (LMG). The clear liquid chemicals were mixed and applied in various areas of the house. Positive reactions to blood will result in a luminescent glow from application of the chemical Luminol, and a green coloured reaction from the chemical LMG. This process was not entirely successful in this case for two reasons. The first being that Bernardo was extremely devious and skilful in eliminating trace evidence in all his crimes. It was later learned that he performed the dismemberment within an area completely enclosed with polyethylene, eliminating the possibility of blood transfer to other surfaces. The second reason the process was not entirely successful was that many 'false positive' readings were obtained. While the chemicals will react to blood, they also reacted to urine in the toilet areas and to cleaning agents such as chlorine bleach.

The warrants allowed for seizure of documents, receipts and other written materials. Exhibits of this type were collectively photographed as they were found in the home. They were then seized as one exhibit and sent to the Task Force office to be catalogued by investigators. This process proved invaluable in establishing a 'Time Line' document of the travels of Bernardo over an eight year period. Handwriting was also analyzed to prove that Bernardo had signed a return voucher for excess cement he had purchased to encase the body parts.

Many exhibits were seized and packaged separately for submission to the lab. These included items such as clothing, bedding, hand tools, power tools, illicit and therapeutic drugs, video tapes, audio tapes and generally anything remotely considered relevant or requiring further examination. The most significant findings in this area were as follows;

- (1). D.N.A. matched to the victim Leslie Mahaffy was analyzed from a small blood stain found on a quilt seized in the search.
- (2) A small test tube containing a drug later analyzed as Triazolam and sold under the trade name Halcion, was found. This led to specific analysis and detection of Triazolam in control samples of blood and intestinal contents from the victim French.
- (3) Another significant finding was the presence of concrete residue on a shovel and rake in the basement of the home. Analysis of the concrete produced a mineralogy match to the unique and exclusive aggregate filler used in the brand of concrete mix used by Bernardo.
- (4) Examination of the striation marks on the cut ends of bone of Leslie Mahaffy was conducted by Dr. Steven Symes, Forensic Anthropologist, Dept. of Pathology, University of Tennessee at Memphis. This resulted in his opinion of the dismemberment device as a power circular saw. While there was no circular saw found in the Bernardo home, attachments for a circular saw were located in the basement. These attachments were exclusive to a model of saw later proven to have been owned by Bernardo. A large portion of the casing of this model of saw was recovered from the lake where the Mahaffy body parts were located.

Video tapes containing recorded material other than television broadcast material, were analyzed frame by frame for relevant evidence. A personal computer was also sent to the R.C.M.P. computer crime lab in Ottawa for analysis of written material on the hard drive disc.

Examination for latent fingerprints at the crime scene proved to be an extremely complex and labour intensive process. Each impression, prior to being photographed, was marked to signify the identifying number, date and method of examination. The following methods were used;

- (1). Portable laser with and without enhancement using rhodamine dye. Use of this equipment required the rental of a three phase diesel electric generator as a power source.
- (2) Ultra violet radiation imaging. (black light)
- (3) Infra red imaging. In this process a video camera outfitted with an ultra violet lens filter is passed over specific areas while the images are viewed on a television monitor.
- (4) Lumalite. This provides a specific type of lighting causing images to fluoresce under the light.
- (5) Iodine Fuming. Iodine and it's gas is a hazardous material, and as such required special precautions. For this process, forensic personnel used 'Scott Air Packs' as a breathing device. A protective chemical resistant suit was worn over the entire body including the air apparatus. Once this process was complete the home was thoroughly ventilated before continuing the search.
- (6) Ninhydrin. This liquid chemical was applied to specific surfaces using a paint roller. Images were then photographed.
- (7) Cyanoacrylate (Super glue) Fuming. Once a search of the cold storage room in the basement was completed, it was converted to use as a fuming chamber to print portable objects within the residence. Separate heat and humidity sources were installed in the chamber to enhance the fuming process.
- (8) Traditional finger print black powder.

Numerous fingerprint impressions of Bernardo and Homolka were found, however no such evidence relating to the murder victims was developed. Bernardo's fingerprint was even found on the adhesive side of duct tape which he had used to form a hidden compartment in the crawl space of the residence.

Floor surfaces were carefully examined. Carpeted surfaces were combed, brushed, then vacuumed in quadrant sections. A new vacuum bag was used in each quadrant and marked accordingly for analysis. Sections of carpet were removed and the reverse side and underpad

examined for stains. This resulted in entire sections of the carpet being submitted directly to the lab. The following results were obtained;

- (1). A vomit stain in the walk-in closet area of the master bedroom resulted in a D.N.A. match to the victim Kristen French. The vomitus was also found to contain male sperm.
- (2) Fibres from carpet in the master bedroom matched the colour and composition of unique trilobal fibres found on the body of Kristen French.
- (3) Short, cut, pieces of head hair consistent in colour and composition to that of the victim Kristen French, were located in an area of carpet on the floor of the master bedroom.

All floor drains in the basement and garage were cut out of the concrete. The traps and connected pipe were sent to the lab. Cracks in the concrete floor were chiselled open to enable the contents to be examined. A power auger was also inserted into the sewer line to retrieve residue for examination. All sink 'P traps' were also removed and submitted for analysis.

Ashes in the fireplace cleanout shaft were removed and submitted to the lab. Many metal objects were discovered and found to be similar to fastening devices on the clothing of the victims.

Case reviews and meetings were conducted periodically throughout the course of the search. These meeting involved discussions with lab and forensic personnel and task force investigators. Three days before expiration of the warrant, the search process was reviewed and further work done as deemed necessary.

In the final survey before concluding the search, video record and still photographs were taken in the same manner as in the preliminary survey, giving a before and after condition of home. As a final means of assurance before conclusion, a team of investigators was allowed to conduct their own search of the home prior withdrawal. A total of 937 exhibits were collected from the residence at 57 Bayview Drive.

Following the completion of the search at the residence, defence counsel for Bernardo negotiated with the prosecution, a two hour period of unsupervised access to the home. With information obviously supplied by Bernardo, his counsel apparently removed from the home a package of six 8 millimeter video tapes. The video tapes contained a complete and graphic record of the torturous sexual assault of the two murder victims and others. The lawyer retained the tapes in secret for some 15 months. When Bernardo eventually fired his lawyer, the tapes were finally disclosed to police.

The apparent failure of the search team to find this most incriminating piece of evidence proved to be an embarrassing and devastating blow to the entire prosecution team. In the end, however, the video tape evidence was admitted without question at the trial.

According to information provided indirectly through counsel, the video tapes were found secreted in the attic of the residence. The attic area is very small and does not provide for normal access as most attics do. The adjacent ceiling and walls are plaster construction so the area is essentially sealed. There are however, four circular recessed lighting fixtures in the ceiling of the upstairs bath which extend into the attic area. One of the four lights is apparently not fastened to a ceiling joist and merely rests on the attic side of the ceiling. Once the inner cylindrical portion of the light fixture is lowered from the ceiling of the bathroom, the remaining metal box in the attic can be raised to allow minimal access to the attic proper. An arm can then be extended to arms length to deposit any incriminating evidence. While the search team did conduct a search of the lighting fixtures, it is not clear whether or not the search included the area to the full extension of the arm in the only light which was not securely fastened.

The residence at 57 Bayview Drive was the scene of two homicides. The driving force and prime mover in the crimes, Bernardo, was an experienced sexual predator and very clever and devious in the elimination of forensic evidence. The video tapes of the commission of the crimes proved to be very clear and convincing evidence to the jury who returned guilty verdicts on two counts of first degree murder. It was the position of the defence in this case that it was Homolka who was in

fact the murderer and not Bernardo. Homolka testified as an accomplice and her credibility was a paramount issue. The most important aspect in the totality of the forensic evidence collected from the search of this crime scene was in the form of the corroboration it provided to the account of Homolka. This forensic evidence greatly bolstered her credibility.

The search of the home at 57 Bayview Drive was in our opinion a successful and professional effort, which is unfortunately clouded by the video tape issue. Hindsight can easily establish that it would have been prudent to cut a hole into the attic cavity. Despite this singular issue however, the search process was an excellent example of the use of current forensic technology and resources. Major search efforts such as this can easily become disorganized and lose focus. It is clear that the members involved in this search worked together as a team despite their separate goals and objectives. Another important aspect of this search was the consultation of resource personnel on a regular and ongoing basis. Obtaining advice of laboratory personnel regarding the collection and preservation of exhibits assisted in assuring optimum results from selected specimens.

Unfortunately for the personnel who conducted this search, it is not their dedication, tenacity and professionalism that is remembered by most, but rather the regrettable misfortune of the missed videotapes. This particular exercise is helpful in the sense that other positive aspects of the search process are highlighted.

Appendix 14

Letter To Victims

January 10, 1996

Name []

Address []

Dear []

Re: Bernardo Investigation Review

The Solicitor General for Ontario has asked Mr. Justice Archie Campbell to review certain aspects of the investigations that led to charges against Paul Bernardo, to report on the issues identified, and to recommend policies and procedures to improve the response of investigative agencies to crimes of the nature investigated.

Mr. Justice Campbell and his staff will review reports of the agencies involved and such additional factual material as appears necessary. To the extent necessary to supplement the written reports, he and his staff will meet privately with people having knowledge or experience touching on the terms of reference. No public hearings are mandated.

We know that you have been through a lot, and fully understand that you might not want to discuss this matter or even be reminded of it. You may, however, have observations, concerns, or advice that might be useful in the review of this investigation or the improvement of public response to crimes of this nature. If so, we would like to give you an opportunity to share your thoughts with us.

We would appreciate the opportunity to meet with you to discuss your knowledge or experience of the matters under review. You may be accompanied by a family member or counsel, if you wish. Should you agree to be interviewed, we shall make ourselves available at a time and place convenient to you.

We also enclose an information sheet which may answer any questions you may have. Feel free to contact the undersigned at the telephone numbers listed on the letterhead.

Yours truly,

Superintendent Ron Bain,
Senior Investigator to the
Bernardo Investigation Review

RB/ayh
encl.

Appendix 15

Questions To Victims

Issues Regarding:

1 Police

- (a). Can you remember who the officers were who first interviewed you?
- (b). Can you describe your first impression of that interview and the police response to your assault?
 - First response officer?
 - Detectives?
- (c). Can you describe your relationship with the police during the investigation?
Did it change as the investigation continued?
- (d). If you were the police investigator, would you have handled your interview any different? If so, give examples.
- (e). Describe your comfort level during the interview process.
- (f). Describe a time when you felt neglected during the investigation.
- (g). Describe a time when you felt informed during the investigation.
- (h). Can you give an example of a time when you felt you had to hold back on disclosing certain information from the police?
 - Why did you feel this way?
 - Do you still feel this way?
- (i). Can you describe how you felt towards police at the end of the court process?

- (j) If you were interviewed several times throughout the investigative process, how did this make you feel? Why do you think there had to be subsequent interviews?
- (k) If we had an opportunity to interview your family/parents/husband/etc., what do you feel their concerns were during this investigation?
- (l) Have you received any explanation as to what happened to your report?
- (m) In view of your experiences, how do you feel about law enforcements ability to investigate and solve these type of crimes?
- (n) Can you recall when it was when you first recall hearing about the Scarborough rapist investigation?

2 Victim Support Services

- (a). Were victim support services made available to you? If so, by whom?
- (b) Can you describe your dealing with victim support services? Did you feel they were out to serve your best interest?
- (c) Can you describe a time, if any, that you felt that your needs were being met by your support service?
 - Describe a time when the victim support services may have been in conflict between your needs and the court case.
- (d) Other than victim support services, did you avail yourself to any other support services? If so, were they more or less helpful and why.
- (e) Did victim support services advise you of the many services they provide, including accompanying you to all court proceedings?
- (f) Do you have any suggestions that would improve the present victim support services?

3 Summation of the Interview Questions

- (a). In view of our interview here today, what would you expect to see or like to see in Justice Campbell's Recommendations?

- (b) Are you aware of any other pressing major issues that the community may have, in connection to this case?

Appendix 16

Information Sheet: Bernardo Investigation Review

- (a). The purpose of the review is to provide a public account of the Bernardo investigations, to identify issues arising therefrom, and to make recommendations that would improve the responses of the police, the Centre of Forensic Sciences and the Coroners' Office to deal effectively and efficiently with crimes of the nature investigated.
- (b). A report will be made to the Solicitor General who has announced that it will be made public, subject to any ongoing legal proceedings and the provisions of the Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. F31.
- (c). At the conclusion of the review, material received from agencies will be returned to them.
- (d). If requested, interviews may be recorded and a copy of the audio tape will be provided to the person interviewed.
- (e). Persons interviewed may be accompanied by legal counsel or family members if they wish.
- (f). A copy of the order in council establishing the review is enclosed with this information sheet.
- (g). Should you have any questions, please contact the staff of the review at 1-800-269-5007.

Appendix 17

Police Forces Involved in the Bernardo Investigation From CISO Proposal Documents

Date of CISO Proposal	Police Force	Number of Officers
May 19, 1992	Niagara	16 full-time (2 ident.) 5 surveillance
	Halton	12 Full-time (2 ident.) 5 surveillance
	Hamilton-Wentworth	3 full-time
	R.C.M.P.	1 CISO analyst
	O.P.P.	1 CISO analyst
Oct. 8, 1992	Niagara	16 full-time (2 ident.) 5 surveillance 2 modified duties
	Halton	7 full-time 5 surveillance
	Hamilton-Wentworth	3 full-time
	Haldimand-Norfolk	2 full-time
	Durham	2 full-time
	O.P.P.	2 full-time 1 CISO analyst
	R.C.M.P.	2 full-time 1 CISO analyst
	London	1 full-time (3 months only)
	Brantford	1 full-time (3 months only)
	Guelph	1 full-time (3 months only)
	Waterloo	1 full-time (3 months only)

Date of CISO Proposal	Police Force	Number of Officers
May 11, 1993	Niagara Halton Hamilton-Wentworth R.C.M.P.	8 person team to conduct surveillance on second suspect (proposal does not specify number of officers from each force)
May 21, 1994	Niagara Metro	14 officers: <ul style="list-style-type: none"> • 2 inspectors • 2 detective sergeants • 10 officers (proposal does not specify number of officers from each force)
April 20, 1995	Niagara Metro	14 officers: <ul style="list-style-type: none"> • 2 inspectors • 2 detective sergeants • 10 officers (proposal does not specify number of officers from each force)

Appendix 18

Extracts from Recommendations by Coroner's Juries

Date of Inquests: Jonathan C. Yeo - April 13, 1992 to August 17, 1992
Christopher Stephenson - September 8, 1992 to January 22, 1993
Dennis Kerr - October 18, 1993 to April 12, 1994

Standard Procedures, Co-ordination and Consistency:

Inquest	Rec. No.	Recommendations
Yeo	1	There needs to be a weekly meeting in the Criminal Investigation Division in order to go over the major cases that they are working on. This will enable the officers to get a team approach on a problem case. This would also help to improve the performance of the officers so that future investigations may run more efficiently
	7	There needs to be a weekly meeting in the Criminal Investigation Division in order to go over the major cases that they are working on. This will enable the officers to get a team approach on a problem case. This would also help to improve the performance of the officers so that future investigations may run more efficiently.
	47	The evidence at this Inquest indicated a lack of uniformity of practice between police services throughout the Province in this regard. Accordingly, the Solicitor General or his designate shall implement a uniform practice for police services throughout the Province relating to the retention of occurrence reports for incidents involving weapons or the use or the threatened use of violence.
Kerr	3	MINISTRY OF HEALTH–FORENSIC SECRETARIAT–ADVISORS TO DIRECTORS We, the Jury, recommend that the Director be assisted by a committee composed of all Forensic Unit Directors throughout the province. REASON: This will enable the Director to have an accurate, comprehensive overview of the entire system at his disposal.

Inquest	Rec. No.	Recommendations
	6	<p>MINISTRY OF HEALTH–FORENSIC SECRETARIAT–PROGRAMS</p> <p>We, the Jury, recommend that a programming department be establish[ed] under the authority of the Director to review existing programs, devise and approve new programs and carry out research into the efficacy of programs and into risk assessment and danger predictability.</p> <p>REASON: This would help to standardize and improve the consistency of programs throughout the system and provide a means of evaluating the effectiveness of risk assessment.</p>
	15	<p>MINISTRY OF HEALTH–FORENSIC SECRETARIAT–CRITICAL FILE</p> <p>We, the Jury, recommend that for each forensic psychiatric patient, who enters the mental health system as a result of a finding of not criminally responsible on account of mental disorder pursuant to the Criminal Code of Canada, a Critical File be created, similar to the system in use at Correctional Services Canada.</p> <p>REASON: It is essential to have ready access to a comprehensive record, which is not excessively long.</p>
	16	<p>MINISTRY OF HEALTH–FORENSIC SECRETARIAT–CRITICAL FILE</p> <p>We, the Jury, recommend that a case manager be designated for each patient and it shall be his responsibility to gather the documents necessary to form the Critical File and to keep it updated as needed. He should contact directly the participants in the criminal trial including the police, the Crown Attorney and the defense counsel. The case manager has an ongoing obligation to constantly update the information. The case manager must be independent of the patient's treatment team.</p> <p>REASON: There should be one person ultimately responsible for the compilation and maintenance of the critical file.</p>

Inquest	Rec. No.	Recommendations
	19	<p>MINISTRY OF HEALTH–FORENSIC SECRETARIAT–CASE MANAGER</p> <p>We, the Jury, recommend that employees within the mental health system, specifically trained in security matters, be designated as case managers for each forensic psychiatric patient. That individual's duties include being the liaison between the courts and the psychiatric hospitals within Ontario and gathering the appropriate information and background for that patient. The case manager, apart from collating the critical file on the patient would be required to review the complete file from time to time and provide opinion on the treatment plan from the security perspective.</p> <p>REASON: Specifically trained personnel would provide the necessary focus on security.</p>
Stephenson	10	<p>It is recommended that all psychologists in the employ of Correctional Service of Canada maintain detailed and accurate records of all counselling sessions both formal and informal, conducted with the inmates. Further, these records must be maintained within the inmate's file.</p> <p>REASON: Information received by the psychologist at any time or under any circumstance should be recorded in the inmate's file for future consideration.</p>
	18	<p>It is recommended that the Correctional Service of Canada develop a national strategy for the assessment, management and treatment of sex offenders. Further that the Correctional Service of Canada establish an office within its National Headquarters to exercise responsibility for the direction and development of policy and programs to deal specifically with sex offenders.</p> <p>REASON: The evidence shows different institutions have different policies for sex offenders and this should be co–ordinated under a national policy.</p>

Inquest	Rec. No.	Recommendations
	19	<p>It is recommended that the Correctional Service of Canada create the position of National Co-ordinator for the treatment and management of sexual offenders. This Co-ordinator would report directly to the Commissioner of the Correctional Service of Canada. The Co-ordinator should be chosen following a national job search, involving both internal and external candidates, in an effort to select the best qualified and respected expert in this field. The Co-ordinator would be responsible for the development and implementation of the national strategy as referred to in the previous recommendation.</p> <p>REASON: The evidence shows different institutions have different policies for sex offenders and this should be co-ordinated under a national policy.</p>
	27	<p>It is recommended whenever a serious and material conflict presents itself between different psychiatrists and/or psychologists with respect to risk assessment of a serious offender, Case Management Teams or other parole officers must refer the problem to their superiors for action.</p> <p>REASON: Evidence shows a third opinion is necessary when conflicting risk assessments are given by psychiatrists/psychologists to disallow choosing the report convenient to the release plan as designed by the Case Management Team.</p>
	54	<p>It is recommended that the Peel Regional Police standardize the parolee reporting procedures at the Divisional level to ensure its uniformity and continue to maintain and expand a central data base for all parolees.</p> <p>REASON: This may allow for quicker identification and apprehension of offenders when a crime [h]as been committed.</p>
	69	<p>It is recommended that both federal and provincial correctional files, as well as provincial mental health files must keep an updated summary report on the inside front cover or in some other conspicuous location identifying the seminal characteristics of the inmate.</p> <p>REASON: Since some of these files become quite large and cumbersome over a period of time it is important to ensure a quick accurate summary is readily available to anyone who has access to the file.</p>

Training:

Inquest	Rec. No.	Recommendations
Yeo	2	Longer basic training for new police recruits.
	3	On-going training at the Police Departments to ensure everyone is kept updated on the procedures and new Criminal Code Revisions coming in to act. They can use classroom set ups or video tapes and must be quizzed after each lesson in order to make sure they are doing the work they have been assigned.
	9	The Hamilton–Wentworth Regional Police Service shall establish a sexual assault specialty squad, charged with the responsibility of investigating all allegations of sexual assault.
	10	Absent compelling circumstances, a member of this squad shall be involved from the earliest stages of a sexual assault investigation, commencing with the initial contact with the victim.
	11	The squad shall be comprised of officers who have received special training and designation as sexual assault investigators.
	12	Special designation shall only be conferred upon successful completion of an examinable course, such as the course presently offered at the Charles O. Bick Police college, Metropolitan Toronto Police Service, or as otherwise approved by the Ministry of the Solicitor General.
	13	These courses shall be directed to all issues relating to the investigation and prosecution of sexual crimes. Particular emphasis shall be placed on sensitivity to the victims of crime. In this context, sensitivity training must include: <ul style="list-style-type: none"> (a) Recognition and understanding of the impact of crime upon the victim, and offering of appropriate assistance with security concerns; (b) Taking of statements from the victim; (c) Ongoing reporting to, and communication with, the victim concerning all important aspects of a prosecution involving her; and (d) Facilitating communication between the victim and Crown Counsel.
	14	The Solicitor General or his designate shall direct police forces throughout Ontario to establish sexual assault specialty squads.

Inquest	Rec. No.	Recommendations
	15	The Solicitor General or his designate shall appoint a provincial sexual assault co-ordinator to monitor the implementation of sexual assault specialty squads throughout Ontario.
	16	The Government of Ontario shall ensure that funding is available for the training courses that shall be offered for sexual assault investigators.
Kerr	7	<p>MINISTRY OF HEALTH–FORENSIC SECRETARIAT–EDUCATION</p> <p>We, the Jury, recommend an Educational Branch with two distinct functions:</p> <ul style="list-style-type: none"> (a) to promote co-ordination of education programs with the universities and other interested professional bodies for forensic professionals, including psychiatrists, psychologist, criminologists, social workers and nurses. (b) This Branch will devise supervise and implement standards of training for the staff employed in the forensic services, both new and existing staff. <p>REASON: Evidence shows that there is a distinct lack of educational and training facilities and programs for Forensic Staff.</p>
	10	<p>MINISTRY OF HEALTH–FORENSIC SECRETARIAT–TRAINING</p> <p>We, the Jury, recommend that all training be under the education branch of the forensic secretariat and there must be specific recruiting and training of forensic psychiatrists, psychologists, social workers, nurses, criminologists and other professional staff in the Province of Ontario. The Ministry of Health should assist in the establishment of a forensic psychiatrist specialty program through resources and expert personnel. Steps must be taken to entice medical personnel into this area of speciality.</p> <p>REASON: There appears to be little co-ordination in training and recruitment for all professional staff in the system. Specialized training is essential.</p>
	11	<p>MINISTRY OF HEALTH–FORENSIC SECRETARIAT–TRAINING</p> <p>We, the Jury, recommend that the training be co-ordinated with universities and colleges and on the job courses for potential and current staff.</p> <p>REASON: We feel Universities and colleges would be the most logical places to establish a standardized program.</p>

Inquest	Rec. No.	Recommendations
	12	<p>MINISTRY OF HEALTH–FORENSIC SECRETARIAT–TRAINING</p> <p>We, the Jury, recommend that all forensic staff have mandatory initiation training before being exposed to forensic patients and all staff should have regular and up-to-date refresher training.</p> <p>REASON: There is enough risk involved at the best of times. Staff should have the opportunity to keep abreast of current trends in the treatment of Forensic patients.</p>
	13	<p>MINISTRY OF HEALTH–FORENSIC SECRETARIAT–TRAINING</p> <p>We, the Jury, recommend that all forensic staff who will have contact with patients who are diagnosed as personality disorder individuals receive specialized education for dealing with this type of individual and should have a working knowledge of the risk assessment and background of that individual. These particular staff should also receive periodic training to deal specifically with the aspect of maintaining objectivity dealing with this category of patient and be constantly alert to the ever present issue of manipulation.</p> <p>REASON: Due to the manipulative and deceptive nature of psychopaths, Staff must be trained to be aware of the risks involved in the performance of their duties.</p>
	14	<p>MINISTRY OF HEALTH–FORENSIC SECRETARIAT–TRAINING</p> <p>We, the Jury, recommend that training for all forensic staff should involve ongoing intervention, aggressive disturbed behaviour assessment and issues of community management in addition to other areas deemed appropriate by management.</p> <p>REASON: Staff must be able to deal with a wide range of situations that may arise between patients and the community. Crisis training is essential.</p>
	20	<p>MINISTRY OF HEALTH–FORENSIC SECRETARIAT–CASE MANAGER</p> <p>We, the Jury, recommend that training and resources be utilized to properly qualify these employees for these duties and establish consistency throughout the province. At an absolute minimum each hospital who accepts forensic psychiatric patients should have at least two qualified case managers.</p> <p>REASON: It is important that someone be readily available and properly trained, who is responsible for Forensic patients and their files.</p>

Inquest	Rec. No.	Recommendations
	56	<p>MINISTRY OF HEALTH–UNIT MANAGEMENT–STAFF TRAINING: SECURITY</p> <p>We, the Jury, recommend that all staff at all hospitals housing forensic psychiatric patients be adequately trained in security concerns by a competent professional.</p> <p>REASON: Evidence shows no standardized training anywhere in the system.</p>
	87	<p>MINISTRY OF THE ATTORNEY GENERAL–REVIEW BOARD HEARINGS–INVESTIGATIVE ABILITY</p> <p>We, the Jury, recommend that to assist the Crown, for each file, a properly trained police officer be assigned for file co–ordination and investigation related to the particular patient.</p> <p>REASON: This would help to provide more in–depth information that could be critical to the Crown's position at the hearing.</p>
Stephenson	17	<p>It is recommended that the Correctional Service of Canada designate and train selected Parole Supervisors in the supervision and management of sexual offenders.</p> <p>REASON: The evidence shows a lack of training of parole officers that deal with sex offenders.</p>
	63	<p>It is recommended that the Ontario Ministry of Correctional Services and the Ontario Parole Board designate and train selected parole officers in the supervision and management of sexual offenders and psychopaths.</p> <p>REASON: Evidence shows a lack of knowledge regarding psychopaths and sexual offenders.</p>

CPIC:

Inquest	Rec. No.	Recommendation
Yeo	37	Police must get full training concerning Canadian Police Information Centre.
	38	The information on C.P.I.C. must be standard across Canada.

Inquest	Rec. No.	Recommendation
Kerr	95	<p>SOLICITOR GEN. OF CANADA–CENTRAL REGISTRY–CPIC</p> <p>We, the Jury, recommend that the Canadian Police Information Centre (CPIC) be expanded to retain information on present, former LGW patients and sexual offenders including conditions of release, index offense, psychiatric diagnosis, modus operandi, and the originating and subsequent police forces involved with the patient. Information shall be retained for the life time of the subject.</p> <p>REASON: To expedite an investigation, complete and immediately accessible information of all present and former patients must be available.</p>
Stephenson	47	<p>It is recommended that the Correctional Service of Canada and the Royal Canadian Mounted Police expand the capacity of the C.P.I.C. computer system to provide enhanced offender information including conditions of release, complete criminal history and details of all offences (modus operandi), psychiatric diagnoses and a source for further information.</p> <p>REASON: The evidence shows a very important tool in understanding and dealing with violent sexual predators is to have full and complete access to that persons' history, be it from a Correctional facility or Mental Health facility. If a summary of this information could be kept in a central registry for access by local police, the Royal Canadian Mounted Police and others it could greatly assist the investigation and apprehension of sexual offenders.</p>

Computers:

Inquest	Rec. No.	Recommendation
Yeo	40	<p>The evidence at this Inquest has indicated that police services in the Province are not always able to obtain and use information in the hands of other police services. The evidence has indicated that such information, in particular prior police occurrences, may be essential to proper police preparation of bail briefs. Accordingly, the Solicitor General or his designate shall immediately consider the implementation throughout the Province of a uniform computer system of police information storage to ensure full and ready access to police records by all police services in the Province.</p>

Inquest	Rec. No.	Recommendation
	41	Until such time as the above uniform computer system is in place, the Solicitor General or his designate shall endeavour to implement a system enabling a police service in one jurisdiction to ascertain on a computer search that prior occurrence reports in respect of a named individual exist in other police services, and to ensure ready access to such prior occurrence reports.
Stephenson	51	It is recommended that the Peel Regional Police expand and refine their information retrieval system data bases on all known criminal within their jurisdiction. This would include information on all federal and provincial parolees. REASON: This may allow for quicker identification and apprehension of offenders when a crime has been committed.

Dissemination of Information/“Zone Alert”:

Inquest	Rec. No.	Recommendation
Yeo	42	The evidence at this inquest indicated that the seriousness of an ongoing police investigation and all relevant police information is not in all instances adequately disseminated in police broadcasts to service members and to other police agencies. Accordingly, the Chief of Police of the Hamilton–Wentworth Regional Police Service or his designate shall direct that all officers with responsibilities for drafting all–cars bulletins, zone and provincial alerts receive immediate re–training as to the criteria required for each type of alert so that serious crimes will be broadcast on a priority basis.

Inquest	Rec. No.	Recommendation
	43	<p>The Chief of Police of the Hamilton–Wentworth Regional Police Service or his designate shall further ensure that all offices with responsibilities for drafting all–cars bulletins, zone and provincial alerts receive immediate re–training as to the appropriate content of zone and provincial alerts in serious criminal investigations. This shall include re–training on matters such as:</p> <ul style="list-style-type: none"> (a) Full description of the suspect; (b) Photograph of the suspect; (c) Suspect may be armed and dangerous; (d) Full description of any motor vehicle associated with the suspect; (e) Suspect may be suicidal; (f) Criminal charges have been laid or are soon to be laid against the suspect. (g) The suspect is at large on a recognizance and is in breach of a condition of the recognizance; (h) The need to update broadcasts from time to time to ensure that accurate and up–to–date information is being disseminated.
	44	<p>The Chief of Police of the Hamilton–Wentworth Regional Police Service or his designate shall ensure that there are procedures in place with the Hamilton–Wentworth Regional Police Service for bringing all broadcasts and alerts to the attention of all officers at the commencement of shifts, particularly those officers who are not working on regular shifts and may miss the standard parade procedure.</p>
Stephenson	53	<p>It is recommended that the Peel Regional Police continue to complete and provide special attention bulletins on all known high risk parolees. These bulletins must be made available for perusal by all uniform patrol and investigative officers force wide.</p> <p>REASON: This would familiarize police with offenders in their jurisdiction.</p>
	61	<p>It is recommended that the Ontario Parole Board be encouraged to enter into a Statement of Agreement and Understanding for the sharing of information with the Correctional Service of Canada and local police services.</p> <p>REASON: All parties would benefit from sharing information while encouraging a better working relationship.</p>

Inquest	Rec. No.	Recommendation
	68	<p>It is recommended that both Federal and Provincial authorities ensure that there is a full sharing of information relevant to the assessment of the risk that a particular individual imposes to the community. This disclosure is not restricted to provincial correctional institutions and federal correctional institutions and respective parole boards, but as well to provincial mental health facilities and federal/provincial correctional facilities. If legislation is required to give effect to this recommendation, then this should be done.</p> <p>REASON: Evidence shows on several occasions proper transfer of files was not done due to ineffective legislation pertaining to the proper flow of information. It is important that all parties concerned have a clear consensus of particular individuals.</p>

Communication And Sharing Of Information:

Inquest	Rec. No.	Recommendation
Yeo	95	<p>The College of Physicians and Surgeons shall facilitate and encourage regular meetings between local mental health professionals and local police services to discuss issue[s] of mutual concern such as:</p> <ul style="list-style-type: none"> (a) Educating local police services as to the Mental Health Act, the security status of each local psychiatric hospital within their jurisdiction and its ability to hold individuals on an involuntary basis; (b) Procedures to be followed when police officers bring an individual to a psychiatric hospital, suspected of having engaged in violent conduct or criminal offences; (c) How, when and to what extent police officers shall communicate the background circumstances that led them to bring an individual to a psychiatric hospital; (d) When medical personnel may or shall advise the police as to the status of a patient and the date of release from psychiatric hospital.

Inquest	Rec. No.	Recommendation
	96	<p>The College of Physicians and Surgeons shall facilitate and encourage meetings between psychiatrist in chief throughout the Province to discuss issues of mutual concern such as:</p> <p>(a) A system to ensure prompt forwarding of hospital records to other hospitals and treatment facilities when requested;</p> <p>(b) Those matters listed in paragraph 81 [95] (a) through (d).</p>
Kerr	1	<p>MINISTRY OF HEALTH–FORENSIC SECRETARIAT–CREATION</p> <p>We, the Jury, recommend that the Ministry of Health creates a Secretariat to deal with the care and treatment of all forensic psychiatric patients. This secretariat would be responsible for co–ordinating all aspects of forensic patients within the criminal law and mental health system in Ontario. This has been recommended by no less than five studies of the system going back to 1979. We think that the time to act has arrived.</p> <p>REASON: According to the evidence presented to us, we the jury feel there is a need to create a secretariat as there seems to be a lack of co–ordination, consistency and communication within the Mental Health System.</p>
	2	<p>MINISTRY OF HEALTH–FORENSIC SECRETARIAT–DIRECTOR</p> <p>We, the Jury, recommend that a Director of Forensic Service be appointed to be in charge of this secretariat and report directly to an Assistant Deputy Minister of Health.</p> <p>REASON: This would ensure that a comprehensive flow of information be channelled to the assistant Deputy Minister of Health.</p>
	21	<p>MINISTRY OF HEALTH–FORENSIC SECRETARIAT–INTER HOSPITAL COMMUNICATION BEFORE TRANSFER</p> <p>We, the Jury, recommend that when there is a permanent transfer of a forensic psychiatric patient from one hospital to another there be direct liaison between the sending and receiving treatment teams. This should include direct face to face meetings of some members of each treatment teams or, at least, conference telephone calls for the purpose of exchanging important information relating to the patient.</p> <p>REASON: It is essential that all pertinent information be given to the receiving hospital by the previous treatment team.</p>

Dangerous Offenders/Central Registry:

Inquest	Rec. No.	Recommendations
Kerr	96	<p>FEDERAL–PROVINCIAL RECOMMENDATIONS DANGEROUS OFFENDERS LEGISLATION</p> <p>We, the Jury, recommend that the federal and provincial governments continue their best efforts to deal with the issue of dangerous anti–social disordered individuals being released into the community. The jury specifically reinforces and supports the following two recommendations and reasons from the Stephenson inquest held in Brampton, in 1993:</p> <p><u>Community Protection Recommendations:</u></p> <p>“It is recommended that legislation be created which shall provide for the protection of the community by permitting the continued detention of sexually violent predators beyond expiration of their sentences, or other dispositions of detention as authorized by the Criminal Code of Canada, as well as the provision of treatment during their confinement. Further, in recognition that there exists a constitutional division of powers between criminal detention and civil commitment authorities, it is recommended that the federal and provincial governments work in concert to construct constitutionally sound legislation which shall ensure the continuing protection of the community from sexually violent predators. The Washington State Community Protection Act, 1990, should be used as a model for such legislation. It is strongly recommended by the jury that a joint Federal/Provincial task force be implemented within six months from today to facilitate this recommendation and that it be national in scope.”</p> <p>REASON: According to the evidence presented to us the chance of a violent sexual predator being successfully cured would seem very remote and that is why we are recommending the Community Protection Act of Washington State as a model for a similar Canadian law that would be national in scope.</p> <p>“It is recommended that the unproclaimed capping provisions of Bill C30, an Act to amend the Mental Disorder Provisions of the Criminal Code of Canada, which permits the release of dangerous, mentally disordered offenders after a stipulated maximum period of detention, not be proclaimed in force, unless and until community protection legislation is enacted which shall permit prior to such release an application before the courts for an order to continue the detention of the dangerous, mentally, disordered offender.”</p>

Inquest	Rec. No.	Recommendations
		<p>REASON: "This recommendation could be used as a way to detain for an indefinite time someone who meets the criteria to be detained under a Community Protection Act until such an act is made law."</p>
	98	<p>FEDERAL/PROVINCIAL RECOMMENDATIONS–SEX OFFENDERS–CENTRAL REGISTRY</p> <p>We, the Jury, recommend that, the Solicitor General of Canada in conjunction with the Ontario Solicitor General, police and other appropriate bodies, establish a central registry for known sexual offenders, with appropriate details of subject's history. This registry contents is to be available to police and approved agencies.</p> <p>REASON: It is very important in understanding and dealing with sexual offenders to have a full and complete access to that person's history, either from the correctional or the Mental Health facilities. This would greatly assist the investigation and apprehension of sexual offenders.</p>
Stephenson	44	<p>It is recommended that the Solicitor General of Canada in conjunction with the Ontario Ministry of the Solicitor General, Police and other appropriate bodies establish a registry for convicted, dangerous, high risk sexual offenders and require each such offender to register with police in the jurisdiction where the offender will reside or is residing. In addition, it is recommended that the Ontario Provincial Police establish a central registry of dangerous, high risk sexual offenders required to register with the local police.</p> <p>REASON: The evidence shows a very important tool in understanding and dealing with violent sexual predators is to have full and complete access to that persons' history, be it from a Correctional facility or Mental Health facility. If a summary of this information could be kept in a central registry for access by local police, the Royal Canadian Mounted Police and others it could greatly assist the investigation and apprehension of sexual offenders.</p>

Appendix 19

Extracts From Fire College Proposals

Strategy And Structure Proposals

(a). Early Recognition

The working group is clearly of the view that quick identification of serial killer incidents is critical to the successful resolution of same due to the complexity and magnitude of these types of investigations.

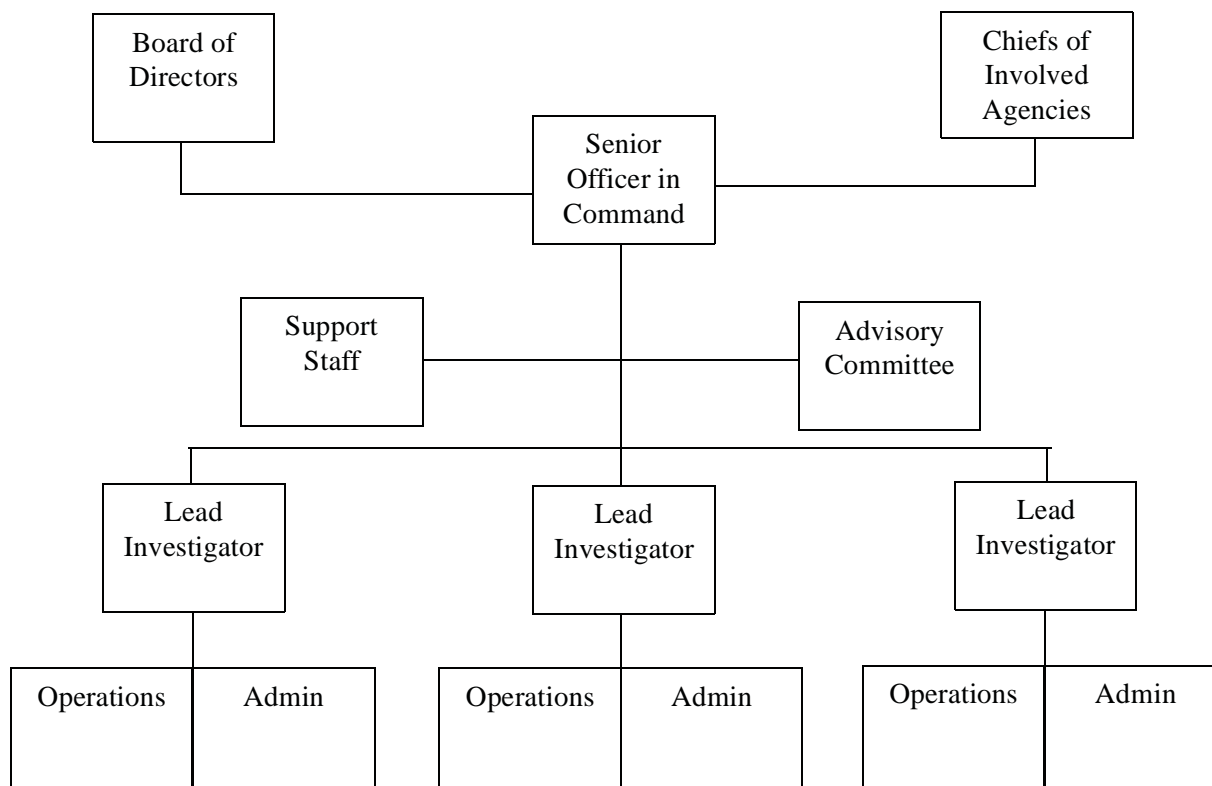
(b) Develop Strategy for Investigation of Serial and Multi– Jurisdictional Crime

Governmental authorities in conjunction with law enforcement must develop and implement a province wide process that will avail itself to a timely and expeditious response to the issue of multi–jurisdictional serial homicide.

(c) Rapid Response Team

There is a clearly identified need for a response team of twenty trained investigators available to be deployed province wide from the onset where a situation of this nature is identified.

(d) Recommended Structure



(e) Standardized Case Management System

It is obvious from the input of the working group and from other sources there is NO standardized system in the province that provides for the connectivity and compatibility necessary to manage investigations of this nature. There are several different systems in place that have the capability to provide for this area. One system in place in some jurisdictions is “CASE FILE”, described below, which has proven beneficial both from an operational and financial point of view.

(f) Specialized Training

There is a clear need for training over and above that which is presently available in the area of managing these types of investigations. The working group strongly endorses the compilation of a course solely relative to the investigation and management of multi-jurisdictional homicides. There are two areas that in our view require immediate attention. The Senior Officer in charge and the twenty

selected investigators must receive extensive training with respect to their new roles.

(g) Board of Directors

The governing authority should be composed of a representative of OACP, OPP, The Coroners Office and Policing Services Division. This group will receive and review requests for the deployment of the multi-jurisdictional task force.

(h) Senior Officer in Charge

Shall be the rank of Inspector or above and have major case management experience and the specialized training mentioned above.

(i) Case Review

The working group strongly recommends that a standardized procedure of case management and review be implemented Province wide as soon as possible.

(j) Formal Agreements

The working group supports the concept of a formalized agreement for all police agencies requesting the services of the multi-agency task force (similar to the existing JFO process).

Information Management Proposals

(k) Standardized And Compatible Computer Systems

Standardized and compatible computerization for all police services within the Province of Ontario. This may be accomplished by utilizing either a current system that can be upgraded or a new system.

(l) Data Entry Standards

Standards must be set for all data entry for all police services.

(m) Minimum System Capabilities

The system selected must contain, at a minimum, the following capabilities:

- 1) a case management program to enable us to direct and control the investigation.

- 2) a search and retrieval program to allow data searching.
 - 3) an evidence retrieval and continuity component.
 - 4) disclosure tracking system.
 - 5) standardized audit trail.
- (n) Standard Form/document System
- A province wide form/document system, acceptable to the courts.
- (o) Training
- A training program should be in place, available to all services to enable standardization in the use of the system.
- (p) Data Bank
- Once a link is made and the investigation becomes a multi agency investigation a central data bank should be in place to allow all agencies involved access to the information gathered.
- (q) Mandatory Viclas Submissions
- Mandatory submission to VICLAS
- (r) Requirements And Standards Research
- A research team should be created to study the requirements and standards for the computer system needed for the case management of multi agency/jurisdiction investigations. The team should include a mixture of computer experts, criminal investigators and senior managers.
- Standardization compliance must be mandated to ensure co-operation of all police services throughout the province in an effort to avoid the possibility of civil litigation at both provincial and municipal levels.

Training Philosophy

- There has to be acceptance of case management by all levels in police management from the chief down.

- Ongoing training is a requirement of professional standards.
- Recognition of criminal investigation as a major part of policing.
- There has to be a standard approach of criminal investigation.
- Efficient and effective criminal investigation promote legitimacy of policing.
- Willingness to accept O.I.C. in J.F.O's–Officer in charge must be qualified.
- Professional Standards have to be set for Criminal Investigation.
- “Delegation of Responsibility does not include abdication of accountability”.

Training Requirements

Officer Overall Command–Superintendent?

Senior Management

- Understanding of the requirements and need for management of a multi-jurisdictional investigation.
- Media issues–releases from one source and only the information that is authorized, etc.
- Ongoing review of the investigation on a regular basis.
- Understanding the roles and responsibilities of senior investigator/case manager/senior manager.
- Senior Officers need to be trained to identify any investigations that should be linked.
- Create a medium for retrospective analysis of all major investigations to verify the evaluation of an investigation as a learning process not a fault finding mission.
- Sharing of resources and things learned between multiple police agencies.
- Awareness of Forensic capabilities.
- Partnership of the Solicitor General's office and the O.A.C.P. re these matters.

- Clear understanding of civil responsibilities and legal issues regarding litigation.
- Awareness of system requirements.
- Practical exercises in the training process.
- Testing mechanism in the teaching process.
- Victim management.
- E.A. P. management.

Senior Investigator/Case Manager

S/Sgt.,/D.Sgt.,/D/Inspector

- Experienced (15 yrs.) Major Case Investigator
- Will be utilized by Force in future
- Training
- Understanding of the role of Major Case Manager in a Joint Force Operation
- Understanding theories of Major Crime Investigations
- Standard Policies
- Structure
- Forensic update
- Philosophy
- Co-ordination with other agencies, i.e. forensic, crowns, specialists
- Legal issues
- Administration training, wages, overtime, vehicles, equipment, etc.
- Media relations

- Teaching the structure and philosophy of Major Crime Investigations
- Practical applications used in the training process
- Testing mechanism in the teaching process
- Victim management
- E.A.P. management of staff
- Crime Faculty/Library–use of retired experienced officers for review

Appendix 20

Extract from Major Case Management Manual, Second (1995) Edition, Canadian Police College

Part II Chapter 3 Media Liaison

A. Media Liaison

The success or failure of major investigations in the eyes of victims and the community we serve is contingent to a great extent upon the manner in which our efforts are portrayed by the media. Of similar significance, the substantive success or failure may often depend to a significant extent upon the spirit of co-operation developed between the Investigative Agencies and the on-scene media representatives.

The competition for news and the intermittent need for confidentiality in an investigation often appear to place the media and the Team in adversarial positions. Many Teams have either witnessed or suffered the interference which results from the media's aggressive search for news. This tends to make investigators distrustful of the media. The potential for a positive, even essential media contribution, however, cannot be overlooked.

Planning for the needs of law enforcement, the community and the media can enhance co-operation and prevent damaging consequences to the investigation. To this end, sensitization of media personnel to the restrictions (investigative, moral, ethical) placed upon the Investigative Team must develop quickly and be maintained throughout the investigation and its aftermath.

Inasmuch as the family and acquaintances of the victims are an easily identified and available source of information, they are sometimes targeted and further victimized by the media. The Media Liaison must be ready and able to work closely with the Support Service Liaison to shelter (as much as is reasonable) the Victim/Family group from the media.

The media, by its very nature, is a public information entity. Treat the media as a direct, irreversible link to all participants in the events which resulted in the investigation, including all suspects (if applicable). Offenders are often avid consumers of media reports of the events. They may study media accounts and Team media releases to determine what Investigators know and do not know about the crime or the offender. They may take pleasure in playing games and can personalize the situation.

Studies suggest that offenders sometimes try to “inject” themselves into an investigation. They may contact the Team by telephone or otherwise in response to something that appeared in the media.

Notwithstanding, the media cannot run the investigation, nor can their desires or requirements govern the manner in which we investigate. The Media Liaison must be trained in media management and be a disciplined manager of the information entrusted to the Team and its personnel.

B. Selection/Appointment

The ideal Media Liaison has received extensive formal training, has experience in the care and handling of all aspects of the media AND is likely already part of an Agency Media Liaison Unit. Media Liaison is sensitive to the public's needs and is capable of formulating and releasing information that will alleviate their concerns and fears while satisfying them that professional and competent services are being rendered at the scene, and operations are being conducted in the interest of public safety. Staff this position from among trained and competent investigators to avoid jeopardizing the direction, speed and flow of the investigation by inadvertent or inappropriate releases.

Team–media co–operation does not begin with the creation of the Team. It begins now, in anticipation of the need for such co–operation in the future. The best Media Liaison is one who is

known in the jurisdiction of the Investigation, who is familiar with and trusted by media personnel who have to be dealt with and who has bred an understanding among them of the need to safeguard certain investigative information. At the outset, media personnel must be sensitized to and accept the philosophy that they are part of the problem (when not part of a solution) and have a vested interest in seeing the Investigation concluded successfully.

A Media Liaison should assume a status subordinate to the Team Commander. The rationale is that which exists in a Hostage Commander–Negotiator relationship. The subordinate nature of the liaison affords the option of “having to refer it to the boss” when faced with an unexpected question or one which might invoke an answer which could jeopardize the investigation or cause grief to persons involved and should therefore be withheld or otherwise restricted.

B.1 The Team Commander shall select and appoint the Media Liaison.

B.2 The Media Liaison shall report directly to the Team Commander.

C. Designated Duties

Under the direction of the Team Commander, the Media Liaison:

C.1 Shall identify and secure the services of such human and physical resources as are required to maintain the type of media liaison envisioned by the Team Commander.

C.2 Shall assign duties, authorities and responsibilities to personnel within the Media Liaison Branch commensurate with their skills and experience in accordance with the organizational chart contained in Appendix I–I.

- (a). Shall ensure that formal, effective scheduling of human resources is established within the Media Liaison section of the Team.
- (b) Shall ensure that Media Liaison Branch activities impacting upon other Branches be made known to the head of that Branch so that resources can be scheduled accordingly. A media release may have an especially significant impact upon the Telephonist/Receptionist, for example.

- C.3 Shall provide clear, concise instructions on job duties to all personnel occupying position within the organizational chart contained in Appendix I-1.
- C.4 Shall attend at all active scenes and be available at all active command centres daily to handle the media in both Official Languages (if and when applicable).
 - (a). Attempts to handle media releases from a remote location have proven ineffective as on-site media will often impede the scene investigators.
 - (b). Photographers/camera crews should be drawn away from operational personnel to prevent them capturing unguarded moments for publication.
- C.5 Shall prepare and receive prior approval for the content and release of all information supplied to news media (including answers to expected questions) if applicable) from the Team Commander and thereafter control its release.
- C.6 Shall instruct media in matters of hazards inherent in uncontrolled release of intelligence they may have picked up during their independent interviews as well as benefits to be gained by disseminating certain types of information released by the Team.
- C.7 Shall provide instruction if necessary and brief all Team personnel intermittently or as required on what to expect from and how to isolate themselves from unwelcome or harmful exposure by the media.
- C.8 Shall liaise directly with Team Commander on matters concerning written releases, media enquiries, problems involving media personnel or procedures.
- C.9 Shall maintain a file of media releases, including voice and video tape releases.
- C.10 Shall clip all news articles and audio or video tape all media coverage of matters relevant to the Team initiative. These items shall be supplied to the Team Commander and the Primary Investigator as quickly as possible.
- C.11 Shall obtain, where and when necessary, copies of media films or articles from the appropriate media.
- C.12 Shall constantly scrutinize media coverage for any possible or real holdback evidence leaks and report same to the Primary Investigator immediately.

- C.13 Shall establish a “permanent” media centre separate from all other active investigation sites where media can expect to receive the best information.
- C.14 Shall establish designated times and location for releases and ensure all media have equal access to information on the process, the times and the locations.
- C.15 Shall establish and verify the identity of and be responsible for all media representatives in attendance at all active scenes and command posts.
- C.16 Shall report immediately to the Team Commander any suspicious inquiry from or attendance of a person claiming to represent a media interest but who fails to meet the criteria of a bona fide media employee.
- C.17 Shall work with media and Support Service Liaison to ensure that victims and families are not targeted unnecessarily and further victimized by the media.
- C.18 Shall work together with all members of the Team (especially ad hoc volunteer groups), conducting briefings if deemed necessary, reminding them of the goals and tactics of media, so that no one inadvertently divulges any information that will disadvantage the direction, speed and flow of the investigation.
- C.19 Shall refer any possible violation referred to in C.14. to the Team Commander and the Crown Prosecutor for discussion and appropriate action.
- C.20 Shall remain conversant with all aspects of law which will ensure that the media do not jeopardize the direction, speed and flow of the Team Initiative, i.e.: trespassing, invasion of privacy, injunctions on publication, obstructing justice or peace officer, intimidation of witnesses, libel, etc.
- C.21 Shall remain a Performance Evaluation of all subordinate Team members indicated by the Organizational Chart.

D. Reporting

The Media Liaison:

- D.1 Shall provide copies of all media releases prior to any release to the media to:
 - (a). The Team Commander,
 - (b) The Primary Investigator,

- (c) The Officer in Command of the Lead Investigative Agency,
- (d) The Officers in Command of all Partner Investigative Agencies,
- (e) The File Co-ordinator.

D.2 Shall remain a chronological activity log.

- (a). This log shall constitute the personal notes made by the Media Liaison.
- (b) The log entries shall record the source, time and date of each apparent media inquiry and the action taken as a result.

E. Cautions/Considerations

E.1 Generally, a policy of controlled co-operation works to the advantage of the investigators. Notwithstanding, each release must be regarded in light of media goals and the impact on the direction, speed and flow of the Investigation.

- (a). Controlled co-operation is just that, controlled. Do not feel forced to disclose exhaustively each time new information becomes available.
- (b) Piecemeal disclosure serves the Team and the media. It provides the Team with a media-pacifying bits intermittently while allowing the media to provide public-pacifying releases.

E.2 Beware of leaks at “arms length” by which the media may gain access to information that may result in the investigation being “media-driven”.

E.3 The media are obviously essential to effective communication with the public. Consider conveying details on how the public can aid an investigation or on the existence of an enduring danger or threat. When composing the release, look for every chance to provide impact, to compel the public to focus on the investigation. Be ready to gather information in response.

- (a). Liaise (through the Team Commander) with the Senior Management Group to discuss the public's right to know, as well as ways, means and timing of any release relative to a serial crime with ongoing threat.
- (b) A “potential victim analysis”, a study of “victim vulnerability factors” and an assessment of your ability to protect must precede the discussion to allow the Senior Management Group to arrive at an informed decision.

- (c) Involve Violent Crime Analysis experts (if available) or use a VICLAS crime analysis report in conducting the studies mentioned in b. above.
 - (d) Consider the potential threat to the next victim versus the need to successfully identify and prosecute the perpetrator of the last victim.
- E.4 It is best to restrict media releases to those written and approved by the Team Commander in consultation with the Primary Investigator and the Crown.
 - (a). Information which may jeopardize the direction, speed and flow of an investigation must not be released until the potential for such harm is either reduced or eliminated,
 - (b) The Team must be ever vigilant to ensure that classified information is not released (ie: holdback evidence, identities of sources, etc.), ie: they should be instructed in advance not to respond to any media inquiries but to refer them to the Media Relations Liaison.
- E.5 The handling of releases to the media may be positive or negative. While media releases are an invaluable tool, properly used, media access to the scene will surely give anyone interested access to a massive amount of information which may harm the investigation. Conversely, broadcasting a gruesome scene may clinch support of both community and community leaders (ie: with funding).
- E.6 It is difficult to refrain from releasing too much information to the media, particularly as they may press. Be friendly and open, but set clear restrictions before interviews, and stick to them. When a situation is explained, they may understand but do not assume the media staff appreciate the requirements for crime scene management, evidence control or investigative media probes.
- E.7 Avoid expressing opinion, speculating on facts or discussing evidence. Never reply to hypothetical questions since the hypothetical aspect will soon be lost or forgotten and the answer will be seen to be based on the case at hand.
- E.8 Never misrepresent the truth. “Due to the ongoing nature of the Investigation, we are neither able to confirm or deny the allegation, statement, etc.” is usually preferable to “No Comment” as it informs both the media and the public that the failure to disclose is based upon necessity and not on preference.
 - (a). Deliberately inaccurate releases leave a record of deception, likely to come back bringing disgrace to the Team and the Partner Investigative Agencies if it is determined that the inaccuracies were premeditated.
 - (b) Inadvertent incorrect releases could:

- damage a future court case if information proves incorrect,
- affect the credibility of the officer and police in general,
- assist a person to formulate an alibi or develop a defence strategy,
- result in open conflict between the police and media,
- cause an adverse reaction by perpetrator, accused or public.

- E.9 The media monitor (scan) all police radio and cellular telephone communications.
- E.10 In even the most heinous crimes, when the police make overt mistakes, the media may change their focus into an examination of investigator competence.
- E.11 Media reporters are investigators and may actively monitor police investigators, using any method available gain access to photos or information.
- E.12 Witnesses and victims are as valuable to the media as they are to investigators. When the media hound witnesses and victims, protection may be required.
- E.13 The more restrictive the information supplied by the investigators, the more action the media will take on its own volition to make up the difference.
- E.14 At a scene, controlled access through a corridor, providing for photos, will generally dissuade the media from sneaking around to get unauthorized photos.
- E.15 Never allow photos of bodies. Photos are usually insensitive to human pathos (especially when taken out of context) and can cause the subjects unwarranted grief and embarrassment for a long time after the events. Discourage them.
- E.16 There is **NO SUCH THINGS AS AN OFF-THE RECORD COMMENT** or interview. Treat media as if they were insensitive or unsympathetic to a situation. As much as this may not be so, their first loyalties are to their employers.
- E.17 TEAM MEMBERS CANNOT AFFORD A SINGLE UNGUARDED MOMENT WHEN MEDIA REPRESENTATIVES ARE ON THE SCENE.**
- (a). The public expect a Team's deportment to reflect the solemnity of the investigation. A chuckle, "high-five", congratulatory slap on the back or any seemingly apathetic deportment will presumably be captured on film, taken out of context and interpreted as insensitivity. The moment may haunt a member and Agency so unwittingly caught for years.

- E.18 If you have to make the Commander or Primary Investigator accessible to the media, never allow them to be directly cross-examined. Direct access to anyone with so much information risks the prospect of an impulsive response which may be deemed ill-advised following analytical consideration.
- E.19 Never allow media access to operations command centres, etc. unless you have a specific agenda which requires their attendance. Investigative aids, charts, documents may be seen, photographed, video-taped or conversation overhead.
- E.20 Remember, the media record interviews. Make your own overt recordings of interviews whether live or on the phone (in compliance with privacy act and intercept legalities).
- E.21 Remember, they will check their information by calling various members and comparing one with the other. The investigator who knows the lease is often the most likely one to do the most harm.
- E.22 The media are divided into reporters and photographers. Pictures of everything will be taken and those that embarrass the Team are possible, i.e.: pictures of children crying during an arrest or of investigators photographing a funeral, etc.
- E.23 When necessary Transport Canada can restrict the air space over a scene thereby preventing media or citizen encroachment or intervention.
- E.24 Ensure that all forms of media have equal access to “fodder” for their subscribers, i.e.: photos for newspapers, film for television, live quotes for radio, etc. but avoid favouritism (exclusivity or “scoops”) at all costs.
- E.25 Never miss an opportunity to highlight the positive impact of an aspect of media participation in the Team initiative. This tact entrenches the media on the side of the Team.
 - (a). “On behalf of the Team, we would like to express our appreciation to the news media in and around this community for assisting us in locating a number of witnesses who are essential to our investigation.”
 - (b). “On behalf of the Team, we would like to say a sincere Thank You to ABCD Television and John Doe for their assistance in preparing a video composite of certain events in support of our need to broadcast the information in order to generate a response from the general public.”
- E.26 All media forms have “deadlines”. These are media deadlines, not Team deadlines. Make reasonable efforts to accommodate their deadlines (ie: in scheduling media events) but do not be driven by them.
- E.27 Post the Team Media Liaison's location and phone number throughout the command post, briefing rooms, media centre, Lead and Partner Agency offices, etc. to ensure that every

Team member and any other person likely to be approached by the media will have the material required to refer to the media.

- (a). “‘**ALL**’ media enquiries relative to project ‘Straight Arrow’ are to be referred to the Media Liaison at (888) 555–2222 (24 hours/day) or in person at 123 Busy Street, Ourtown between 08:00 and 16:30 Hours, Monday through Saturday.”
 - (b) Make sure that offices and phones are staffed by competent personnel during the posted hours and that current media releases are available.
 - (c) Ensure that the Team Commander reinforces the concept that no one other than the Media Liaison shall comment to the media on matters touching the Team Investigation for fear of jeopardizing the investigation.
- E.28 How much do the media and public need to know of the investigation? If the subject of investigation represents a threat to society, at what point does the threat take precedence over the need to maintain confidentiality and calm? An assessment by the Community Relations Liaison is indicated.
- E.29 Thoroughly investigate any leak or suspected media leak whether suspected of being from within or outside of the Team. While “loose lips sink ships”, the possibility of a deliberate leak also exists.
- E.30 Do not underestimate the number of media enquiries that may be generated by Major Incidents; in recent disasters, several hundreds of thousand of calls have been received, many of which originate with the media.
- E.31 Work the Team Commander to ensure that media releases are generated (in the form of a formal communique, under a unique letterhead) and circulated among the populations of the Partners Investigative Agencies at the same time they are released to the media. If personnel within Partner Investigative Agencies believe that the media are receiving more consideration than they are, they will attempt to develop lines of communication (illicit channels) with their acquaintances within the Team.
- E.32 Media files will be of interest to the prosecutor who should be apprised periodically of their content. In the event of an eventual defence application to challenge jurors for cause or to change the trial venue, they will be critical.
- E.33 Many media personalities have a disapproving opinion of media performance in dealing with traumatic events. They have spoken out against their peers and even their own publications/stations. There seems to be a movement by many to handle trauma with sensitivity. These personalities should be identified and complimented. They are credits to their profession and a boon to Investigation Teams. On the other hand, there are still those whose ambition still outstrip what we normally consider as compassionate treatment of

the news. Regrettably, given the potential for the harm that even one of the latter can cause, Investigators should always conduct themselves as if their conversations and conduct were being monitored at all times.

Appendix 21

Letter dated March 21, 1996, to Mr. Justice Archie Campbell, of the Bernardo Investigation Review, from Sergeant Robert Hotston, Criminal Investigation Division, Peterborough Community Police Service.

Please find enclosed a submission for your consideration regarding your enquiry into police actions regarding Bernardo/Homolka. This submission was prepared with the co-operation of a number of my colleagues in the Criminal Investigation of the Peterborough Community Police Service. It does not, however, reflect the official position of my police agency.

I trust you may find these comments of some assistance in your deliberations...

“Major Case” Investigations

- (1) *I have reviewed most of the recent (last 20 years) literature regarding the investigation of “high profile” cases (particularly “serial” killer investigations) in North America and Europe and wish to share my thoughts regarding “major case” investigations:*

“Traditional” Investigations

- (2) *When there are an unusual number of murders occurring within a specific geographical area, especially if different police jurisdictions involved, there seems to be a number of problems, either “political” or otherwise inherent in such investigations.*
- (3) *Traditionally, police officers have investigated one or a pair of killers for just a single murder. Murders committed by the same killer(s) over time are unusual for most agencies. They don't know how to react because they've never investigated related murder cases before. As a result, they end up using traditional single-murder investigative methods, just as they have done in every murder case that came before. That reaction is a conditional response. The supervisor assigns an investigator to a case. That investigator has help with the initial investigation, but when the “heat” dies down, it's all his. His name is on the folder as a “my case” attitude develops. Anything that comes in regarding any one case goes to “so-and-so”. Other members of the police service relinquish all responsibility for the investigation, thereby placing it solely in the hands of one unwitting investigator.*

There is great danger in this. One investigator is left with only what worked in the past — looking for suspects from within the victim's circle of acquaintances. How can one investigator deal with a case that might have multi-agency implications? When all

traditional investigative options are exhausted, what comes next? Indecision on the part of the investigator, lack of alternatives and delays in pursuing strangers negatively impact the investigation. By the time a “routine” investigation is completed, the investigator is many steps behind the killer. What is needed is an investigation of suspects who are complete strangers, as well as a traditional investigation of the victim's acquaintances.

“Institutional Separateness”

- (4) *Another problem that negatively impacts on such investigations from the start is institutional separateness. Members of one agency just aren't used to working with members of other services who are pursuing the same killer. This hesitancy comes from “institutional memories” about how previous investigations were shared amongst different agencies, particularly when things went badly. When things went wrong, it was the other guys fault. When things went right, credit wasn't shared equally. The more cunning killers intentionally abduct victims from one jurisdiction and eventually dump their bodies in another because they know that bickering alone between members of different police agencies will delay or even prohibit any meaningful investigation (ie. Bernardo).*

“Hot Suspects”

- (5) *A non-systematic investigation of random suspects in such cases often leads nowhere. The haphazard pursuit of innocent people plagues every such investigation. Since these cases generate dozens, if not hundreds, of suspects, usually in a very short time frame, the investigation gets instantly bogged down because the pursuit of suspects is not systematic. The reason for this problem is inadequate experience among supervisors and investigators in establishing priorities for follow-up. They don't know who to investigate first.*

Every investigation has its “hot suspect.” The downfall of most investigations is the haste and intensity with which the “hot suspect” is pursued. Everyone drops everything they're doing to concentrate on one person, and after awhile, the “hot suspect” fizzles out. The time wasted pursuing this suspect puts investigators that much further away from the real killer. The lack of a clear priority system for suspect investigations results in some suspects being partially investigated, in their elimination being postpone by investigation of a “better” suspect, in having to play catch-up, and in a feeling of being overwhelmed by masses of work.

Confusion of Leads

- (6) *Another characteristic of “major case” investigations is that large amounts of information flows through many hands, resulting in duplication of effort, confusion,*

untouched leads, numerous individual priorities, tunnel vision, investigation on tangents, and an almost total lack of co-ordination and direction.

When vast amounts of information are coming in, it would be best to designate one person through whom all incoming information must flow first. Leads then can be assigned based on viable investigative priorities that have been set. These priorities must be constantly reviewed for their effectiveness.

The best way to monitor incoming leads and sort and organize information is through the use of computer. As the investigation becomes more complex with additional contacts and companion cases, a computerized system will reduce major time-consuming tasks.

“Luck”

- (7) *Catching the perpetrator or discovering his identify has frequently been termed “lucky.” I firmly believe that luck is luck, but creative investigative work is still required to turn luck into the successful resolution of a case. Sometimes officers create their own luck (ie. the Atlanta “Child Murders” task force staking out Chattahoochie River bridges which results in Wayne Williams being caught). In other cases, “luck” was created because investigators were willing to share their information with patrol officers, who happened to be in the right place at the right time (ie. prostitute murders in King County, Washington in late 1970's).*

The “Media”

- (8) *Police must be careful about what they release to the media as Ted Bundy said, “the police say far too much to the press.” In the throes of a high-profile case, police find themselves constantly in a corner, obligated to say something new every day.*

When interesting facts dwindle (hopefully they don't give the perpetrator an idea how close police are to him) reporters look for other angles, and they begin to write reports critical of the police investigation (again, Bernardo). If police stop giving details of the investigation, it's a double edged sword. The perpetrator won't know what they're doing, which is good, but then the public may get the perception from the media that nothing is being done, or that police are incompetent. Funding concerns for a questionable investigative effort also arise when little information about the investigation is released.

Conclusion

- (9) *I have little doubt that large and medium-sized police agencies are fully capable of conducting major case investigations, either alone or jointly, if provided with the proper manpower and resources. Kingston Police conducted the investigation of probably the most serious prison riot in Canadian history, using essentially their own resources. they*

did not have the resources available to agencies today (ie. computer, video, DNA typing, etc.) but still charged and convicted a number of inmates with numerous offences, including murder.

I would suggest the following avenues be explored to enhance the investigation/solution of “major cases”:

- *increased CFS resources particularly with respect to DNA typing and an update of the CFS “Investigative Aids” manual*
- *enhanced Identification training at the Ontario Police College*
- *increased availability of “major case” management training for supervisors*
- *development of a software program for major case management—compatible with OMPPAC*
- *development of a protocol for media relations in major case investigations*
- *a requirement that where two/more jurisdictions are involved in joint investigation, that they enter into a written agreement (ie. like CISO JFO agreements).*

*R. Hotston, Sergeant
September 7, 1995*

