

Summary of Investigation

Introduction

(1) On Friday August 9th, 1996 Thomas KERR -32 years was arrested for the following Criminal Code offences: Assault Police, Cause a Disturbance, Assault Causing Bodily Harm and Assault to Resist Arrest.

(2) The victim in that incident was Metropolitan Toronto Police Constable Gordon McLeod #4646 of "D" Platoon in 51 Division. As a result of the altercation with Thomas KERR, Constable McLeod suffered the following injuries; pulled back muscles, abrasions to his left knee and a broken left elbow requiring him to wear a bandage and sling.

(3) On Wednesday, August 21st, 1996 at approximately 1310 hours, KERR was again arrested by officers from 51 Division. This time it was for Intoxicated in a Public Place and he was lodged in the cells at 51 Division located at #30 Regent Street, Toronto.

(4) At 1400 hours members of "D" Platoon at 51 Division reported for duty and commenced their afternoon shift.

(5) At approximately 2005 hours KERR was issued a provincial offences ticket for intoxicated in a public place and released from custody.

(6) At approximately 2120 hours an ambulance attended at #393 Front Street and transported Thomas KERR to St. Michael's Hospital where he was examined and admitted. He was suffering from the following injuries:

- The left eye was bloodshot and the area around it had bruising, abrasions and swelling.
- The left jaw area was swollen.
- There were cuts, bleeding and swelling to his lips.
- He complained of pain in the back right side of his head.
- There were abrasions to both elbows.
- He had abrasions to both knees.
- He complained of soreness to his back.
- Upon examination by medical staff he was found to have blood in his urine.

(7) KERR told the ambulance crew and the hospital staff that he had been assaulted by police officers.

(8) Initially Divisional Detectives from 51 Division attended at the hospital and took an audio taped statement from the victim. The two investigators then took steps to secure evidence and approximately eight hours after the Divisional Detectives initial involvement, Internal Affairs took over the investigation. The following is a summary of that investigation including interviews conducted, evidence secured and conclusions reached regarding possible criminal charges.

Initial Investigation -51 Division Detectives

(9) At approximately 2320 hours on Wednesday, August 21st, 1996 Detective Frank Skubic (3981) and Detective Drian McLaughlin (5695) of 51 Division Criminal Investigation Bureau, attended at the hospital and took an audio recorded interview from KERR. At approximately the same time as that interview, blood was taken from KERR for medical reasons and the blood alcohol level was zero. KERR related the following story:

(a) He (KERR) had been arrested for being drunk and taken to the cells at 51 Division. He was released several hours later but rather than going out the front door of the station he was escorted out the back door by a uniform police constable. That officer was described as male, white, 6'4", 270 lbs, moustache, black hair, wearing a blue uniform shirt, wedding band and a watch.

(b) A lone black male officer was waiting at the back of the station and told KERR to come with him. When KERR protested, the black officer said, "we want to talk to you". KERR was then placed in the back seat of a uniform police car and driven from the station. the officer told KERR that he was going to take him for a ride for a couple of hours. The black officer was described as male, black, 5' 10", 180 lbs, short clean cut afro, clean shaven.

(c) An officer, with his left arm in a sling, came out of the station and pointed KERR out as the person who broke his arm the week before.

(d) The black officer and KERR ended up at an abandoned warehouse area, near Front Street, where several Goodwill trucks were parked. Shortly afterwards I four other uniform officers, all white males, showed up in two different marked, police cars. The officers then began drinking what KERR thought to be some sort of an alcoholic beverage while standing around outside of the cars.

(e) The door of the car opened up and the officers began punching and kicking at KERR. He was then dragged out of the car and threatened with death. One of the officers said, "we're going to kill you, you're dead". The officers then continued punching and kicking the victim about the face and body causing him to fall to the ground. The victim stated that one of the white officers was wearing an external bullet proof vest, on which the word "POLICE" was written. The victim managed to escape and made his way to 393 Front Street where an ambulance was called.

A copy of Thomas KERR'S first interview is included -please refer to Exhibit List

(10) Detectives Skubic (3981) and McLaughlin (5695) left the hospital and were able to locate the probable scene of the alleged assault. "The location was a parking lot on the east side of Cherry Street near Mill Street. There were numerous Goodwill trailers parked on the lot and they were arranged in such a manner as to make the back part of the lot hidden from the e view for anyone passing by on Cherry Street.

(11) Forensic Identification officer, Detective Rick Bunting (3454) attended the scene. He photographed the area and seized several beer bottles and latex gloves which were laying on the ground. He later attended at the hospital and photographed the victim.

(12) After completing the interview of the victim and attending the scene, Detectives McLaughlin and Skubic returned to 51 Division where they sealed and locked the lockers of some of the officers who may be suspects and had worked the afternoon shift on "D" Platoon. The detectives also determined that Special 51, which was assigned to a black officer, Constable Albert Coombs (512), was the only solo divisional car in 51 Division that evening. There was a second solo car in the division, however it was a traffic car. The detectives sealed scout car #15102 which had been used as Special 51.

Preliminary Investigation -Internal Affairs

(13) On Thursday, August 22, 1996 at approximately 0845 hours, acting on instructions from Deputy Chief Robert Molyneaux, seven members of Internal Affairs under the direction of Acting Staff Inspector Robert Ward (617) attended at 51 Division and took control of the investigation.

(14) Upon arrival at 51 Division the Internal Affairs officers were briefed by Acting Staff Inspector Bruce Crawford (4279) of 51 Division, Detective McLaughlin and Detective Skubic. During the briefing the Internal affairs officers were appraised of the aforementioned information supplied by the victim and the actions taken by the investigators up to that time. Detective McLaughlin advised that Constable Albert Coombs fit the general description or 111e black officer supplied by the victim. He also stated that the description supplied by the victim, of the officer who escorted him out the back of 51 Division, is consistent with the description of the booking officer, P .C. Michael Hammond (6183), who was working on "D" Platoon that evening. **Acting Staff Inspector Crawford advised that it was evident that at least one of the sealed lockers had been broken into during the night and that several of the seals on the other lockers had been broken. P. C. Rubbini's locker had the clasp broken and the door \was completely open.**

(15) Members of Internal Affairs commenced their preliminary inquiries and arranged for various actions to be taken in relation to the investigation, which included the following:

- (a) A uniform Sergeant was assigned to the locker room to ensure that there was no further interference with potential evidence.
- (b) A uniform Sergeant was detailed to the scene on Cherry Street.
- (c) The memo books of the officers, who on August 21, 1996 were members of "D" platoon and working in 51 Division were seized.
- (d) Scout car 5102 was towed to the Centre of Forensic Science where it was fingerprinted and examined for evidence.
- (e) The narrative messages and the unit history reports for the CAD and MDT systems for all the 51 Division vehicles used by "D" Platoon on August 21 , 1996 were ordered.
- (f) The parade sheet for 51 Division "D" Platoon on Wednesday, August 21st, 1996 was seized.
- (g) The page of the prisoner Log Book for 51 Division regarding August 21/96 was seized.
- (h) An information to obtain a Criminal Code search warrant for the lockers of the subject officers was commenced.
- (i) KERR'S record of arrest for being intoxicated, August 21/96 was obtained.

- (j) The booking tape relating to KERR was seized.
- (k) Arrangements were made to have a team attend at the hospital to re-interview the victim.

S.I.U. Involvement

(16) At approximately 11:05 hours Acting Staff Inspector Ward received information from Mr. Rusty Beauchesne of Legal Services advising him that the S.I.U. were going to invoke their mandate and the investigation was to be turned over to them.

(17) Members of Internal Affairs attended at St. Michael's Hospital as did an investigator from S.I.U. Upon their arrival they were informed that the victim had signed himself out of the hospital at approximately 0750 hours. The investigator from S.I.U. was supplied the details of the investigation up to that time. He then contacted his superiors and shortly afterwards, at approximately 1350 hours, S.I.U. advised that they were withdrawing from the case and that Internal Affairs could continue with the investigation.

Internal Affairs Investigation – Continued

(18) Acting Staff Inspector Ward then contacted the investigators who had been involved in the investigation from the early morning and had them resume their investigation. Investigators were assigned to complete the details from the preliminary assessment of the circumstances in the morning, and the following new areas of the investigation were addressed.

- (a) Members of Internal Affairs and the Forensic Identification Unit returned to the scene to conduct a more thorough search. At that time a casing from a .40 calibre semi-automatic handgun was located on the ground and seized.
- (b) Efforts were made to locate and re-interview the victim.
- (c) Supervisors from "O" Platoon and "E" platoon were interviewed.
- (d) Ambulance and hospital staff were interviewed regarding the injuries to the victim.

(e) A street person, Joseph Corbett, was interviewed. He stated that he slept most nights under a ramp which is located in the parking lot where the Goodwill trailers were parked. He further stated that he was not around the lot at the time of this alleged assault. However the previous Wednesday he was in the lot when he observed numerous uniform and plainclothes officers drinking in the lot and he heard two gunshots come from the direction of the officers.

(f) Civilians who had first contact with the victim after the assault were interviewed.

(g) All other marked police vehicles used by D platoon personnel on August 21st, 1996 were examined by F.I.S. personnel. Samples of possible blood stains and hair were located and seized. Also seized from Scout Car 5103 was a box of latex gloves.

(19) Early in the investigation it became evident that there was a need to obtain search warrants for the lockers of the subject officers. On the morning of Friday, August 23, 1996 the investigating officers reviewed the information which had been obtained. Paragraphs 20 to 28 inclusive, is a summary of the evidence which had been collected up to that point in time, and this was contained in the information to obtain five Criminal Code search warrants.

Officer Assignments ("D" Platoon) on August 21/96:

(20) The memo books, communications records, parade sheets, divisional records and interviews conducted in relation to 51 Division "D" Platoon on Wednesday, August 21st, 1996, collectively indicate the following in regards to the officers' tours of duty:

(a) Constable, Albert Coombs (512) was solo on scout 5102 using the call sign of "Special 51" (He was the only black divisional officer on D Platoon).

(b) Constables Craig Bromell (1425) and Mark Laine (3914) were partners on scout 5110.

(c) Constables Paul Rubbini (269) and Dale Corra (6641) were partners on scout 5108.

(d) Constables Patrick McLeod (1465) and John Reid (1149) were partners on scout 5103.

(e) Constable Gordon McLeod (4646) was working light duties in the station, wearing street clothes and a sling. He had returned to light duties on Tuesday, August 20th, 1996.

- (f) Constable Michael Hammond (6183) was the booking officer.
- (g) Constables John Spence (6883) and Wylie Sheridan (63) were partners on Scout Car 5104.
- (h) Sergeant Michael Martin (6167) was the Acting Staff Sergeant.
- (i) Sergeant Paul Miller (2646) was the uniform road Sergeant.

MDT Printouts:

(21) A review of the recorded calls on the communications CAD and MDT systems revealed the following

(a) **1852 hours** From an MDT message, it is evident that Constables Bromell, Laine, Patrick McLeod and Itaid were familiar with a location referred to as TRAILERS. A message was sent from scout 5110 to scout 5103 which reads as follows:

5103 to 5110: **"WHERE IN 5"** (5 has been interpreted to mean 5 minutes.)

5103 replies: **"TRAILERS. Reg 1"** (Reg 1 has been interpreted to mean 1 regular coffee)

5110 responds: **"4"** (4 is a commonly used short form for 10-4)

(b) **1859 hours** The CAD system indicates that Constable Coombs was at the station commencing a one hour lunch period.

(c) **2001 hours** The CAD system indicates that Constable Bromell and Constable Laine, who were assigned to Scout 5110 were at the station. The booking tape shows that this is 4 minutes before, when according to KERR, he is taken out the back door of 51 Division and handed over to the black police officer .

(d) **2013 hours** A message was sent from Special 51 to Scout 5108, Constables Rubbini and Corra' s car.

Special 51: **DUCK BLIND"**
 Scout 5108 replied: **"TRAILERS".**
 Special 51: **"4"**

(22) From the information supplied by the victim Thomas KERR, as outlined in paragraph 9 of this summary, it appeared that the victim was sitting in the back seat of Special 51, driven by Constable Coombs, at the time the aforementioned messages were transmitted. KERR also stated that he was taken to a place where Goodwill trucks were parked, and beaten by 4 white police officers and 1 black officer. Both Constables Rubbini and Corra are white police officers and the MDT transmissions indicate that they were telling Constable Coombs to meet them at the trailers.

Exterior Vest -POLICE:

(23) Investigations were conducted regarding officers on "D" Platoon who wear an external vest displaying the word "POLICE".

(a) On Thursday, August 22nd, 1996 Staff Sergeant Barbara Stevenson (5598) of 51 Division "E" Platoon was interviewed by members of Internal Affairs. She was the Platoon Commander who relieved "D" Platoon on Wednesday, August 21st, 1996. She states that only two officers on "D" Platoon wear external vests Constable Bromell and Constable Almas. However, only Bromell reported off duty to her that night. Staff Sergeant Stevenson also stated that the vest worn by Bromell does have the word POLICE on it. She further indicated that as far as she is aware she is the only person who arrives at work in uniform, everyone else changes at work and leaves their uniforms at the station.

(b) On Thursday August 22nd, 1996 Sergeant Michael Martin (6167) of 51 Division "D" Platoon, who was the acting Staff Sergeant on Wednesday, August 21st, 1996 was interviewed by Internal Affairs. Sergeant Martin stated that Bromell was working on that date and so was Constable Almas however, Constable Almas was working in plainclothes for the complete shift.

(c) The information received from the above two supervisory officers appears to confirm that Constable Bromell was the only officer on "D" Platoon in 51 Division wearing an external vest with the word "POLICE" displayed. Both Bromell and his partner Constable Laine are white police officers and their description along with the external vest worn by Bromell, is consistent with the Information supplied by the victim.

Victim's Fingerprint -Blood Smears:

(24) On Friday, August 23rd, at 1021 hours Detective Sergeant Mark Thorpe (712) of the Forensic Identification Unit advised the Internal Affairs investigators that the right thumb print of the victim Thomas KERR was located on the left rear portion of the plexiglas screen inside Scout 5102. He further advised that it was the only identifiable

print found inside the rear seat area of the vehicle. Detective Sergeant Thorpe also indicated that there were blood smears in the back seat of 5102 and swabs were taken.

Coomb's Memo Book – Record of Arrest -Booking Tape:

(25) The following was noted when checking the memo book of P.C. Coombs, the record of arrest for KERR and the booking tape:

(a) P.C. Coombs did not make any notation in his memo book of having transported KERR anywhere during his tour of duty, which obviously conflicts with KERR'S fingerprint being found in 5102.

(b) There were no notations of any injuries or complaints on KERR'S record of arrest for August 21, 1996 at 51 Division.

(c) The section of the record of arrest pertaining to injuries and medical notes was marked as N/ A and signed by the acting Staff Sergeant J. Martin (7059).

(d) Because of the quality of the booking tape and the angle of the view, it is impossible to tell if KERR had any of the injuries as previously described.

Motive- Coomb's & Hammond's Initial Involvement:

(26) As indicated in paragraph (1) it is alleged that Constable Gordon McLeod previously suffered a fractured left elbow at the hands of the victim, Thomas KERR. On Friday, August 23rd, 1996 when the investigators were accumulating information for search warrants, they were of the opinion that the assault on KERR was an act of retaliation for the injury inflicted on P.C. Gordon McLeod. The initial investigators from 51 Division, paragraph (14), indicated that Constable Coombs fit the general description of the black officer involved. They also said that Constable Hammond fit the description of the booking officer who released KERR from the station. Having regard to all or the aforementioned information the lead investigators were of the opinion that there were grounds to implicate seven police officers on "D" Platoon in a conspiracy to forcibly confine and assault the victim Thomas KERR.

Initial Subject Officers:

(27) On Friday, August 23, 1996 the following seven officers were identified by the investigators as being subject officers.

- 1) **Gordon. McLeod** He was the victim of the assault on August 9th, 1996, hence the motive. KERR Indicated that at some point an officer in street clothes wearing a sling pointed him out.
- 2) **Mike Hammond** He was the booking officer, described by KERR as having taken him out the back door and turning him over to the black officer.
- 3) **Albert Coombs** He is a black police officer, fits the description supplied by KERR, was at the station at the time KERR was released and was assigned to 5102 in which the victim's fingerprint was found.
- 4) **Paul Rubbini** He is a white officer (there were four white officers at the assault) and was assigned to 5108 from which the message originated directing P.C. Coombs to "Trailers".
- 5) **Dale Corra** He is also a white officer and was assigned to 5108 as P .C. Rubbini's escort.
- 6) **Craig Bromell** He is a white officer, identified as the only officer on "D" Platoon on August 21/96 who was wearing a vest with the word "POLICE", He was aware of the location of "Trailers" as indicated in paragraph 21 (a).
- 7) **Mark Laine** He is a white officer and was assigned as Bromell's partner.

Justification For Search of Lockers:

(28) It was the opinion of the investigating officers that there was no justification in searching the lockers of Constables Gordon McLeod or Mike Hammond. However, there was justification in searching the other subject officers' lockers. The complainant stated that he was kicked and punched during the assault and there was evidence that he had bled as a result of the injuries inflicted. It was quite possible that blood or hair from the victim adhered to the clothing of the officers who committed the assault. There was also the issue of the vest with the word "POLICE". On Friday, August 23, 1996 five informations to obtain search warrants were sworn before Justice of the Peace Whalen. He later signed the warrants to authorize a search of the lockers belonging to Constables Coombs, Rubbini, Corra, Bromell and Laine.

Search Warrants for Lockers Executed -August 23/96:

(29) At 2254 hours on Friday, August 23rd, 1996 the above five search warrants were executed and numerous articles of clothing including boots, gun belts, pants and bullet proof vests were seized for expert examination by personnel at the C.F .S. Also seized: was the following:

- (a) A blue exterior vest carrier as described by the victim from P.C. Bromell's locker.
- (b) A gun belt containing Constable Rubbini's issued Glock semi-automatic handgun, from P.C. Rubbini's locker

Locating the Victim -Domestic Assault:

(30) One of the early priorities in the investigation was to locate the victim Thomas KERR and conduct a more thorough interview. To that end investigators from S.I.S. were asked to assist in the task of finding KERR and numerous inquiries were made in regards to the victim's possible location. At 1115 hours on Friday, August 23rd, 1996 the Internal Affairs investigators were advised that KERR was presently at 52 Division where he was under arrest for Domestic Assault which had occurred on Monday, August 19, 1996. The investigators were also informed that KERR was in an intoxicated condition.

KERR'S Second Statement:

(31) On Friday August 23rd, 1996 at approximately 2000 hours members of Internal Affairs were directed by KERR to the area of Cherry Street where he pointed out the location of the assault. The area KERR identified corresponded with the location which was identified by the initial investigators on August 21st, 1996.

(32) After attending at the scene of the assault the Internal Affairs investigators took KERR to 41 Division for the purposes of taking a video taped K.G.B. statement. The transcript of that statement is included - please refer to the Exhibit List. In this statement, KERR recalls the incident of August 21st, 1996 and the sequence of the events is virtually the same as in the first statement. The victim was able to elaborate on some of the details and in doing so showed to be reasonably consistent with his first statement. The following is a summary of the sworn statement taken from the victim on that date and areas in which the statement has been corroborated or is consistent with the first statement:

- (a) In both statements KERR states that an officer with his arm in a sling pointed KERR out to the black officer as being the person who broke his arm.
- (b) The victim accurately describes the rear of 51 Station and he indicates that he turned left after leaving the booking hall, which is the correct direction to leave by the back door.

(c) The victim states in his second statement that he was driven around by a male black officer for approximately forty minutes to one hour before he was taken to Cherry Street near Lakeshore Boulevard East.

(d) The victim remains consistent in his account of the incident involving three vehicles and five officers in uniform. He repeats that the officers were seen to be drinking what he believed to be alcohol. He also repeats that the actual assault commenced when the rear door of the car opened. He was kicked in the head and dragged out of the car and beaten further.

(33) Thomas KERR appears to be forthright in the statements that he has given. \ However, there are some inconsistencies which are believed to be as a result of his : addiction to alcohol thus affecting his recollection of the events surrounding the incident. : : Some of the inconsistencies which can be found by comparing the two statements are as' : follows:

(a) KERR states in his second video taped interview that he was wearing a black leather type necklace with a black and white stone. He also stated that the officers who assaulted him tore the necklace off him during the assault. Officers from Internal Affairs have reviewed the video tape of the victim at the time of his arrest for being intoxicated and could not see a necklace on the victim. There is no item of that nature listed on his Record of Arrest, which would normally be the case and the scene was searched for evidence of the necklace with negative results.

(b) Although KERR recalls the incident concerning the officer with the sling he does not remember hearing the specific words spoken as he did in his first interview. In the first statement KERR recalled the officer saying, "That's the bastard who broke my arm". In the second statement KERR stated tllat tll e officer pointed at him and said something which KERR believes to be "that's him".

(c) KERR does not mention in his second video taped statement that one of his assailants was wearing a black vest with "POLICE" written on it, as he did in his first statement.

(d) KERR does not mention in his second video taped statement that his life was threatened as he did in his first statement.

(e) In the first statement the victim indicated that the officer who arrested him for being intoxicated on August 21st, 1996, was also involved in the assault that took place later that day. It has been confirmed that that officer was working the day shift and was not on duty at the time of the assault. Therefore the victim is wrong in his allegation. He is also inconsistent in his second statement because he makes no mention of this same officer being involved.

(f) The victim is also inconsistent in identifying the police car numbers at the scene of the assault. In the second statement, he indicated that 5106 was involved however, he did not mention this in his first statement.

(34) Thomas KERR admits to experiencing blackouts from time to time and had a couple of drinking sessions since his first audio taped interview on August 21st, 1996. KERR stated in his second interview that he felt his first statement (August 21st, 1996) was his best recollection of the events. KERR has also displayed some problems with his recollection which are outlined as follows:

(a) KERR told his bail officer, Steven Sharpe, that he was assaulted for a second time on August 22nd, 1996 and then KERR also mentions a second assault taking place to a Detective Dee 011 August 23rd, 1996. When questioned about a second incident, KERR denied any knowledge or to have had a conversation.

(b) In the first audio taped statement of the victim on August 21st, 1996, KERR states on page #38 that he has not been in trouble (with the law) since 1990. The victim is wrong. KERR has a criminal record which indicates that he has had three criminal convictions registered against him since 1990.

Constables Patrick McLeod's & John Reid's Suspected Involvement: ,

(35) Sunday, August 25th, 1996 Internal Affairs investigators attended at Communications in an attempt to get a clearer picture of the activities of 51 Division scout cars during the evening shift of Wednesday, August 21, 1996. A review of the voice transmissions tapes, and MDT and CAD printouts indicate the following:

(a) The MDT transmission at 1852 hours confirms that P .C. Patrick McLeod and P.C. Reid were aware of the location "TRAILERS".

(b) It is apparent that from 2009 hours to 2037 hours, John Reid and Patrick McLeod (the brother of the injured officer, Gordon McLeod) were busy answering radio calls. At 2040 hours, 5103, with Reid and McLeod and 5110, with Bromell and Laine were dispatched to Lower Jarvis Street and the Esplanade regarding a man laying in the bushes. Officers from both cars contacted the dispatcher at approximately 2046 hours, indicating that the man was intoxicated.

(c) At this point, the above four officers were located approximately two minutes drive from the location on Cherry Street where the victim was eventually assaulted. As indicated, Bromell, from the description supplied by the victim, is believed to be one of the individuals involved in the assault. The above time

sequence would be sufficient for McLeod and Reid to accompany Bromell to the location on Cherry Street and take part in the assault.

(d) The victim indicated that he was in the police car for approximately one hour which would allow time for Patrick McLeod to free himself from the radio calls and take part in the assault. This scenario would account for the victim being assaulted sometime after 2100 hours, as suggested by his account of the events in his second statement. This time line is supported by ambulance and fire department records which indicate that they attended at 393 Front Street at approximately 2120 hours which, according to KERR, was immediately after the assault.

(36) Based on the previous information it was now the opinion of the lead investigators that two other officers were involved in the conspiracy and assault on Thomas KERR and became subject officers 118 and #9.

8) **Patrick McLeod** He is the brother of Gordon McLeod, is male white and was available at the time of the assault.

9) **John Reid** He is also male white and was Patrick McLeod's partner.

Authorization to Intercept Private Communications:

(37) On Saturday August 24th, 1996 during a meeting between Mr. Jerome Wiley Q.C., Deputy Chief Molyneaux, Staff Inspector William Blair and members of Internal Affairs it was determined that an authorization to intercept private communication of the subject officers should be obtained.

(38) On Monday August 26th, 1996 Mr. Justice Hamilton signed an authorization to 27 and 36. The authorization which was for a period of 30 days concluding on September 26th, 1996, was in relation to the following offences:

- (1) Conspiracy to Commit the Indictable Offence of Assault Causing Bodily Harm
- (2) Forcible Confinement
- (3) Assault Causing Bodily Harm.

Subject Officers Suspended:

(39) The process of suspending the aforementioned nine subject officers took place during the evening hours of Monday August 26th, 1996 and the morning hours of Tuesday, August 27th, 1996. Constable Reid was on annual leave at that time and was not suspended from duty until he returned to work. When the other officers were suspended they were told to take all of their personal property from their lockers and leave all police property, including uniforms, gun belts, vests, and other issued equipment and property. Constable Reid's locker was also opened and inspected for police property.

Basis for Two More Search Warrants for lockers:

(40) On Sunday, August 26th, 1996, after reviewing the circumstances regarding the MDT and voice transmissions, His Worship, Justice Of The Peace Whalen was contacted and advised of the new information. When the investigating officers asked J.P. Whalen's opinion regarding another search warrant he advised that there was insufficient evidence to support a search warrant at that time. A formal information was not placed before J.P. Whalen; he was merely asked for advice.

(41) Immediately after the officers were suspended, Detective Sergeant Mark Thorpe of the Forensic Identification Unit did a brief examination of the police property located in Constable McLeod's locker. During that examination he noticed a long blond hair adhering to the speed loader on the gun belt which had been issued to Constable McLeod. Detective Sergeant Thorpe discontinued his examination, secured the locker and had a police guard placed on it.

(42) Detective Sergeant Thorpe also opened the locker which was issued to Constable Reid with the intent of examining police property contained within the locker. Detective Sergeant Thorpe observed that there was a police vest, of the type described by the complainant at the time of the assault, hanging in the locker. He was also able to see what he believed to be a blood stain on one of the uniform shirts. Detective Sergeant Thorpe discontinued the brief examination, and secured the locker.

Search Warrants Executed -August 27/96:

(43) On Tuesday, August 27th, 1996 a Justice of the Peace signed search warrants for the lockers of Constables Patrick McLeod and John Reid. Those search warrants were executed and along with numerous articles of clothing and equipment, the following were also seized:

(a) A police shirt, containing a small blood stain, was seized from Constable Reid's locker and taken to the Centre of Forensic Sciences for examination. Also seized was Constable Reid's gun which was located in his locker.

(b) A gun belt was seized from Constable Patrick McLeod's locker. That gun belt had a long blond coloured hair twisted around the speed loader. It too was taken to the Centre of Forensic Sciences for examination. Also seized was Constable McLeod's gun which was located in his locker.

Three Month Investigation:

(44) During the three months following this alleged assault members of Internal Affairs has conducted numerous witness interviews of police personnel and civilians. **All of the subject officers have been interviewed with counsel present and they have chosen to remain silent.** The results of the interception or private communications has been reviewed and at present there appears to be little or relevance which could be used in a criminal proceeding. At the time of writing, most of the physical evidence taken from the lockers and Scout Car 5102 has been examined.

(45) As with most other investigations this one contains the usual ingredients to assess culpability; motive, determination of suspects through physical and verbal evidence and the opportunity to commit the crime. In this particular set of circumstances the motive appeared to be clear from the beginning of the investigation. The greatest degree of difficulty was encountered in attempting to identify all of the suspects and determining opportunity. The following is an examination of those areas of the investigation, including the physical evidence collected and how it applies to individual suspects.

Motive I

(46) The issue of motive was addressed at the preliminary stages of this investigation as outlined in paragraph (26) of this summary. The opinions of the lead investigators as to motive has not changed since that time. If this assault occurred as stated by Thomas KERR in appendixes " A " and "8" there is little doubt that it was an act of retaliation for the injury inflicted on P.C. Gordon McLeod.

Determining What Officers Were Suspect.

(47) There were numerous areas explored in attempting to identify the individual officers involved in the alleged assault. At the time of this report it is still the opinion of the lead investigators that the nine officers who have already been identified in paragraph (27) remain the most likely suspects. If we take KERR'S statements, follow the sequence of events chronologically, and then add the evidence collected thus far, we are able to establish the individuals involved. As will soon become evident the evidence against some suspects is stronger than against others. The manner in determining the subject officers' possible involvement and the evidence as it relates to them individually is contained in the following paragraphs.

(48) **P.C. Mike Hammond:** As previously indicated, P.C. Hammond was the booking officer for "D" platoon on Wednesday August 21, 1996. He is clearly visible on the booking tape at the time of KERR'S release at 2005 hours.

(a) KERR states that the officer then took him down a corridor and out the back door. KERR accurately describes the route necessary to get out the back door of the station and into the police parking lot. KERR states that the officer took him to the waiting police car. The officer then had an unknown conversation with a black police officer.

(b) From the interviews of other booking officers and supervisory officers, conducted by Internal Affairs, it appears that there would be no reason to take KERR out the back door. The only exception would be if he was collecting property too large to be stored in the station. The investigation to date has shown that KERR did not have any property to be collected and there is no other rational reason, that has been offered, to take KERR out the back door.

(c) P.C. Hammond has refused to speak about the incident, therefore it is unknown if he had some logical reason for taking KERR out the back door. At this point the content of the conversation between Hammond and the black officer, as described by KERR, is also unknown

Taking KERR'S account of the incident at face value it appears that P.C. Mike Hammond is the start of the process in the conspiracy to commit an indictable offence.

(49) **P.C. Albert Coombs:** As previously indicated, P.C. Coombs is a black police officer; he was assigned solo to Special 51, he was at the station at the time of KERR' S release and he used the MDT to confirm the location trailers. The evidence

which conclusively links KERR and Coombs is the fingerprint located on the plexiglas screen in 5102.

(a) The officer using 5102 on the day shift on August 21, 1996 has stated that he had the interior and exterior of the car washed prior to the evening shift relieving the car.

(b) Detective Sergeant Bruce Crawford of 51 Division C.I.B. has checked all of the available records for the year 1996 and there is no indication that Thomas KERR had ever been Inside Scout Car 5102.

(c) There is no doubt that KERR was in the rear seat of 5102 after 20:05 hours on August 21, 1996. The presence of his fingerprint lends credence to his story.

(d) KERR in his statement stated that Coombs used the radio to tell other officers that KERR was in his car. Investigations have proven that KERR's account of a voice radio transmission is wrong. However Coombs did use the MDT to get the location, (trailers), which we now know to be the parking lot on Cherry Street.

(e) P.C. Coombs has also refused to talk with the investigators and it is unknown if he will suggest that he had some legitimate reason for placing KERR in the rear seat of the police car. The investigation has not turned up any evidence, such as a memo book entry, which would support such an explanation.

Taking KERR'S statements at face value, corroborated by physical evidence, it appears that P.C. Coombs is the second officer to play an active role in this conspiracy and assault on the victim.

(50) P.C. Gordon McLeod: In both statements KERR stated that an officer in plainclothes, with his arm in a sling, pointed at him. Investigations to date have confirmed that P.C. Gordon McLeod was working light duties, in civilian clothes, and was at the station at the start of his shift on August 21, 1996. As will be discussed later, there is a great deal of difficulty in confirming P.C. McLeod's whereabouts after the beginning of his shift

(a) In his first statement (see **Exhibit List -page 32 of statement**) KERR indicated that the officer with his arm in a cast came out of 51 Division and stated "yeah that's the bastard that broke my arm". That would have occurred after 2005 hours when KERR was released from the station. In his second statement (see **Exhibit List -page 35 of statement**) KERR elaborates on where he saw the officer with his arm in a sling. KERR indicated that the black officer stopped the police car in front of the station near the gas pump and he then saw the officer believed to be Gordon McLeod) for a brief moment.

(b) KERR described the male at the pumps as, male white, early 30's or 40's, white and brownish coloured moustache, 6'1" -6'2", normal build, curly white hair, wearing casual street clothes with his arm was in a sling. The actual description of Constable Gordon McLeod on August 21, 1996 was male, white, 6'0", approximately 235 -250 lbs, short dark brown hair, wearing street clothing, with his arm was in a sling.

(c) Except for the weight and the hair colour, KERR's description of Gordon McLeod is fairly good. It must be kept in mind that KERR had an opportunity to view McLeod the week prior, when it is alleged that KERR assaulted McLeod. However KERR described McLeod, usually a uniform officer, as wearing civilian clothing with his arm was in a sling.

(d) It is obvious that KERR did see P.C. Gordon McLeod on August 21, 1996. There is no other way to explain KERR'S description of the sling or for him to be aware that McLeod was at the station in civilian clothes.

(e) As with the first two officers, P.C. Gordon McLeod, on the advice of counsel also refused to speak with the investigating officers. KERR' S account of the assault and the circumstances leading up to that incident positions P.C. Gordon McLeod as the third party in the conspiracy.

(51) P .C. Dale Corra & P .C. Paul Rubbini: As previously indicated, they are both white officers (there were four white officers at the scene of the assault) and were assigned to 5108, from which the message originated directing P .C. Coombs to "Trailers".

(52) P.C. Craig Bromell: As previously indicated the MDT transmissions at 1852 hours regarding a meeting for coffee, confirms that Bromell had knowledge about the location "TRAILERS. Bromell is further implicated in this conspiracy because of the information regarding the vest, as described by the victim. Nothing has changed from the initial stages of the investigation in relation to the identity of the officer wearing the vest with the word "POLICE". All the evidence still points to Bromell, although the following are some other possibilities regarding KERR's knowledge of the vest.

(a) It is worth bearing in mind that at the time of this incident there were literally hundreds of vests, with the word police printed on it, in the possession of Metro Police Officers. It would be an impossible task to account for all of the vests that could have been used by other officers.

(b) A second possibility for KERR'S recollection of the vest is that he saw Bromell at the station. As revealed in paragraph (21) (c), P.C, Bromell was in the station at approximately 2001 hours which is only 4 minutes before KERR was released. KERR may have seen Bromell at that time. There is no evidence at this time to support that theory.

(53) **P.C. Mark Laine:** He is a large male white police officer, therefore he fits the very general description of the assailants as supplied by the victim. He was assigned as P.C. Bromell's partner on August 21st, 1996 and it is likely that if Bromell attended the scene then Laine was present. There is no evidence such as notations in memo books, radio calls, or MDT transmissions which suggest that Bromell and Laine split up at anytime, leaving Bromell solo.

(54) **P.C. Patrick McLeod:** He is the brother of P.C. Gordon McLeod and it can be argued that alone would be motive for him to commit an assault on KERR. When a search warrant was executed on his locker a long blond hair was found wrapped around the speed loaders on his belt. An examination by the C.F.S. has confined that the hair could have come from the victim Thomas KERR. That hair has now been taken to the F.B.I. laboratory for further examination. The investigation has revealed what undoubtedly will be a point of contention at any future trial, even if the examination of the hair is conclusive as being from the victim.

(a) On July 13th, 1996 P.C. Greg Almas (3431) and P.C. Patrick McLeod (4665) were partners in a 51 Division marked police car. During that shift they investigated an unknown trouble call regarding a naked man who had just grabbed a female and took her into a building on the Southwest corner of Parliament Street and King Street. The call turned out to be a dispute between Thomas KERR and his girlfriend, Theresa Albanese. Both parties were spoken to by the officers and M. T .P .208s (person investigated cards) were submitted.

(b) P.C. Almas has been interviewed and he stated that he believed that he was the person who filled out the MTP 208s. He further stated that neither he nor P.C. Patrick McLeod had any physical contact with Thomas KERR and the parties were not placed in the police car. He also stated that both he and Patrick McLeod spoke with the two parties at what he described as talking distance.

(c) The C.F.S. examiner has indicated that the hair on P.C. Patrick McLeod's belt was tightly jammed into the keepers. This indicates, in his expert opinion, that a considerable amount of force was used for it to have become lodged in that fashion. Notwithstanding the expert's opinion, it can be anticipated the obvious question which will be asked of the expert witness by defence counsel. Is it possible that on July 13, 1996 a hair from Thomas KERR fell onto P.C. McLeod's belt and then became twisted around his speed loaders to be found later on August

27th at the time of the search warrant? Previous trial experience tells us that the answer will be, "Yes it is possible".

(d) From the MOT transmissions it is apparent that Patrick McLeod was aware of the location "TRAILERS".

(55) **P.C. John Reid:** He was P.C. Patrick McLeod's partner on August 21, 1996. As with P .C. Mark Laine there is no evidence to suggest that he did not remain with his partner throughout his tour of duty. The blood found on a police shirt seized from P.C. Reid's locker has been tested by the C.F .S. and has been eliminated as having come from the victim.

Eyewitness Identification by The Victim:

(56) Throughout the investigation the lead investigators maintained that they would be reluctant to act on any identification made by the victim based on a couple of factors. First the victim himself told the investigators that he was an alcoholic and suffered from blackouts from time to time. The victim identified the officer who arrested him for being intoxicated at 13:30 hours on August 21, 1996 as being one of the officers who assaulted him at approximately 2100 hours that day. From the investigation to date there is no evidence to support that allegation; on the contrary all evidence collected thus far suggests otherwise. The problems with identification were outlined in the affidavit to obtain an authorization to intercept private communications.

(57) Although the lead investigators were wary of any identification by the victim, it was still recognised as a valuable tool in the investigation. If the victim was able to identify a couple of his assailants from properly conducted line-ups, it would be difficult evidence to dispute. Furthermore, if the victim was unable to identify anyone then the subject officers were entitled to that evidence in the event of a future prosecution. **With that in mind all of the subject officers were offered an opportunity to take part in a formal line-up and all have declined.** The investigators then attempted to put together a photo line-up which proved to be a much more difficult task than first anticipated.

(58) After the subject officers declined to take part in line-ups, the first avenue explored for a photo line up was the use of police personnel identification photographs. Most of these photos were years out of date, some of the officer's hairlines had receded, some officers had gained weight, grown beards or had removed facial hair. In short, none of the identification photographs of the subject officers in personnel files fairly depicted the officers as they would have appeared on August 21, 1996.

(59) The next approach was to enlist the assistance of the Mobile Support Squad. Two officers were assigned to obtain photographs of the subject officers as they reported to headquarters while on suspension. On the first attempt to get the photographs some of them were overexposed, underexposed, blurred or there was an unsuitable background. There was a second attempt to get new pictures of the subject officers who appeared blurred in the first set of pictures, however the new photographs were also out of focus. By this time the subject officers had returned to work and there was another unsuccessful attempt to get different photographs of the officers in their new divisions. The lead investigators then consulted with Forensic Identification and it was decided for various reasons that the photographs were not suitable for a proper line-up.

(60) The final avenue used to obtain suitable photographs for line-ups was through the driver's licence division of the Ministry of Transportation and the subject officer's information was supplied to the Ministry. The investigators were then advised that only five of the subject officers' photographs were available. The other four officers' photographs would become available over the next couple of years as they renewed their licences.

(61) On Tuesday November 19th, 1996 a search warrant was executed at the Ministry of Transportation office at 2680 Keele Street in North York. At that time driver's licence photographs for the following officers were seized; Craig Bromell, Paul Rubbini, Patrick McLeod, Mark Lame and Dale Corra. Betty Clark from the CARES Unit was then able to use the subject officer's photos in line-ups which were taken from the RIC system. Because of the different paper used and the backgrounds, all of the photos had to be produced in black and white to eliminate some of the colour distortion.

(62) Arrangements were made for the victim to view five photo line-ups on Friday, November 22, 1996, however the victim failed to show up at Headquarters. He later telephoned Internal Affairs and stated that he didn't trust the police anymore however he would attend later in the day. Again he failed to show up for the interview. On Monday, November 25, 1996 KERR telephoned Internal Affairs and arrangements were made for a photo line-up to be conducted in 22 Division the following day.

(63) On Tuesday November 26th, 1996 members of Internal Affairs transported Thomas KERR to 22 Division where Detective Sergeant David Landry (1687) of 22 Division C.I.B conducted five video taped photo line-ups. Of the sixty pictures that the victim viewed, he positively identified two of the pictures as police officers who were involved in the following manner:

- (a) One photograph was of the officer who had his arm in the sling and came out of 51 Division when the victim was in the back seat of the police car.

(b) A second picture was of an officer who had come into the cells on August 9th, 1996 and threatened the victim, "We'll get you for what you did to our fellow officer". That occurred on the same date that p.c. Gordon McLeod's arm was fractured.

(c) **This was the first time that the victim had mentioned anything about being threatened on August 9th, 1996.**

Both photographs identified by KERR were of persons with M.T.P. numbers from the RICI system. KERR incorrectly identified them as police officers from 51 Division.

(64) While being transported to 22 Division tile victim made numerous statements about the investigation including the following:

(a) "I'm going to be the Canadian Rodney King".

(b) "They're not going to get off."

(c) "I remember them just like you guys when you were there that night".

When questioned about tile last statement it became obvious tllat the victim thought the Internal Affairs Officers transporting him were the officers who had attended at the hospital on the night of August 21, 1996. In actual fact it had been two detectives from 51 Division which clearly indicates that KERR incorrectly identified the officers.

(65) It now appears to be clear that the victim, Thomas KERR, will not be able to supply any eyewitness identification in this matter. He has incorrectly identified numerous people to date and has not been able to identify any of the subject officers. Based on tile other incorrect identifications nothing would be gained in attempting to get better photographs of Coombs, Reid, Gordon McLeod and Hammond for the purpose of conducting more line-ups. Hammond is already visible on the booking tape, the victim's fingerprint was found in 5102 implicating Coombs, the person with the broken arm has been incorrectly identified by KERR, and he could not identify Patrick McLeod, Reid's partner. Even if the victim did identify someone, little or no weight could be attached to that identification. **It is the opinion of the lead investigators that positive eyewitness identification evidence on the part of the victim is non-existent.**

Opportunity to Commit the Crime

Time of the Assault:

(66) To determine opportunity it was first necessary to pinpoint the most probable time of the actual assault. The first inclination of the lead investigators was to allow five or ten minutes from the time that KERR was released from 51 Division, for travel time to the location of the assault. The next estimate of time was a maximum of another five minutes for the actual assault to take place. That would make the time of the assault at approximately 2020 hours. The assumption being that the officers involved in the assault would want to finish the deed as soon as possible to minimize the potential for detection.

(67) When KERR was interviewed on August 23, 1996, he stated that he was driven around for about 40 minutes to an hour. He further stated that after the assault he ran to the hostel located at 393 Front Street. The call for an ambulance was dispatched at 2113 hours. Based on the above information the lead investigators revised the probable time of the assault to sometime between 2100 - 2110 hours which could implicate P.C. Patrick McLeod and P.C. John Reid in the conspiracy.

(68) In evaluating the subject officers' opportunity to commit the assault, the lead investigators examined the evidence as it applied to the individual officers and then as it applied to the larger conspiracy. As already indicated the only evidence suggesting P.C. Hammond's involvement, occurred at the station at approximately 2005 hours. It is obvious that Hammond was not at the scene of the assault. He may have been a major player in the actual conspiracy, however the evidence suggests that his involvement was taking the victim out the back door and turning him over to P.C. Coombs. Establishing the whereabouts of the other subject officers at the critical times relating to the assault, proved to be more difficult. To get a clear picture it was necessary to conduct numerous interviews and an in-depth review of the radio and MOT transmissions.

Whereabouts of P.C. Gordon McLeod:

(69) The information on DECS indicated that P.C. Gordon McLeod was working light duties on August 21, 1996. From interviews conducted it has been confirmed that he was wearing street clothes instead of a uniform and he was wearing a sling on his left arm. However, there is conflicting information regarding the whereabouts of Constable Gordon McLeod at the time in question.

(70) Constable David Stinson (4422) of the Employment Office performs his duties in plainclothes, and has been interviewed on four different occasions by members of the Internal Affairs Unit. During all four interviews Stinson indicated that he and Constable Gordon McLeod were socializing at licenced establishments and elsewhere throughout the afternoon and evening of August 21st, 1996 when they were supposed to be working.

(a) In the first interview Stinson stated that he was with Constable Gordon McLeod from approximately 1400 hours on August 21st, 1996 to after 2200 hours and at no time did they ever drive through 51 Division or attend at the station

(b) In the second interview Constable Stinson stated that they did attend at the station at approximately 1700 hours and he parked near the pumps at the front of the station. Constable Gordon McLeod got out of the car and went into the station for approximately 5 minutes and then returned. At no time did McLeod speak with anyone outside the station. After leaving 51 Division McLeod and Stinson went directly to a business premises on Spadina Avenue. Constable Stinson stated that he realised his mistake after he left the first interview and wanted to make sure that he corrected his statement.

(c) In his third statement Constable Stinson stated that after leaving 51 Division they went to the Eaton Centre where Constable McLeod met with a female before they went to the address on Spadina Avenue. The female at the Eaton Centre has confirmed that Gordon McLeod and Stinson were at that location at approximately 1730 hours. Stinson reiterated that it was approximately 1700 hours when they attended at 51 Division. During a fourth statement Stinson maintained the same story as in the third statement. There are no witnesses, police or civilian, who can assist with the actual whereabouts of Stinson and Gordon McLeod at 2005 hours.

(71) The victim stated that when he was driven out of the station by the black officer he saw another officer in street clothes with his arm in a sling and standing near the pumps. That had to occur between 2005 hours and 2010 hours, which would allow for KERR to be released, walk out the back door, be placed in 5102 and driven to the front of the station. Constable Stinson gave three different versions of his story, however he did say that he parked near the pumps with Constable Gordon McLeod at approximately 1700 hours.

(72) From all of the information gathered it is evident that the victim was in the cells at 51 Division at 1700 hours. It is also quite possible that the meeting between McLeod and KERR could have occurred in the cells at 1700 hours without Stinson's knowledge. KERR could only have seen Constable Gordon McLeod near the pumps if Constable Stinson is either lying or mistaken about the time he arrived at 51 Division. At present

the investigation has not produced any other logical explanation for the conflicting stories.

MDT, CAD and Voice Transmissions:

(73) As previously indicated the communications between the various subject officers played a large part in building the theory of the investigating officers. An examination of those messages and interviews to confirm the significance of the messages has successfully clarified some issues. However the same investigation has cast a doubt on some other previously very inculpatory evidence.

(74) **18:52 hours:** From an MDT message it is evident that Constables Bromell, Laine, McLeod (1465) and Reid were familiar with a location referred to as TRAILERS. A message was sent from Scout 5110 to Scout 5103 which reads as follows:

5103 to 5110: **"WHERE IN 5"**
5103 replies: **"TRAILERS. REG 1"**
5110 responds: **"4"**

(75) **18:59 hours:** The CAD system indicates that Constable Coombs was at the station commencing a one hour lunch period.

(76) **20:01 hours:** The CAD system indicates that Constable Bromell and Constable Laine, who were assigned to Scout 5110 were at the station. That is 4 minutes before, When, according to KERR, he is taken out the back door of 51 Division and handed over to the black police officer. As previously suggested that could have been the time when KERR saw the officer with the external vest.

(77) **20:05 hours:** The victim of this assault, Thomas KERR was released from custody, as per the prisoner log book, and taken out the back door of 51 Division. The victim states that he was met there by a black officer in a 51 Division car.

(78) **20:09 hours:** Scout 5103, the car assigned to Constables Patrick McLeod and Reid accepted the first of three radio calls which kept them occupied until 20:37 hours.

(79) 20:13 hours: A message was sent from the MDT in Special 51, Constable Coombs' scout car, to scout 5108, Constables Rubbini and Corra' s car.

Special 51: **"DUCK BLIND"**
Scout 5108: **"TRAILERS"**.
Special 51: **"4"**

(a) On Thursday, August 29th, 1996, investigators from Internal Affairs interviewed Constable Sheridan in relation to this investigation. At that time Constable Sheridan stated that the term TRAILERS was used to refer to the parking lot on Cherry Street where numerous trailers were parked. That is the same location where the victim KERR said he was assaulted.

(b) On Friday, October 11th, 1996, P.C. Spence was interviewed in regards to the term "DUCK BLINDS". Constable Spence indicated that he thought the terms "DUCK BLIND" and "TRAILERS" referred to the same location.

(c) It can be safely assumed that the officers on "D" platoon on August 21, 1996 had knowledge that the term "TRAILERS" referred to the location where the victim states he was assaulted.

(d) "Special 51" remained clear from the time of this transmission at 20:13 hours to 21:15 hours when he accepted a medical complainant at George Street and the Esplanade. Although there were numerous radio calls that P.C. Coombs could have attended or volunteered to back up other officers, one being a gun call, he chose not to do so until 21:15 hours.

(80) 2027 hours: 5108 with P.C. Rubbini and P.C. Corra accepted a call to 507 King Street regarding disorderlies. They remained on that call until 2119 hours, at which time they booked on scene at Dundas and Jarvis regarding an investigation of two persons.

(a) The complainant for the call at 507 King Street, Michael KANAKIS, lives in apartment 214. He was interviewed by Internal Affairs investigators on September 5, 1996. Mr. Kanakis stated that he called because of transients that were coming in and out of the building. He further stated that he did not see a police car stop outside of the building that night and he never spoke to a police officer. He assumed that the problem was taken care of so he never called back.

(b) The only notation in the memo books of P.C. Corra and P.C. Rubbini regarding this is that they investigated two males, - moved along. There are no names and 208's were not submitted. P.C. Corra did note the name of the victim and his phone number however there was no effort to contact him.

(c) Most experienced police officers would be of the opinion that it would not take the officers 52 minutes to investigate two disorderlies and "move them along". It is also interesting to note that the location of 507 King Street East is less than a 2 minute drive from the location of the assault. If this assault occurred as suggested by the victim then both P.C. Rubbini and P.C. Corra were available to participate in the crime.

(81) 20:28 hours: There was a voice transmission between P.C. Sheridan on 5104 and P.C. Coombs on Special 51 (using Scout Car 5102) During that transmission P.C. Coombs said, "Come see me at Danny's". P.C. Sheridan advised Coombs that he had a prisoner in the car and was heading to the station. P.C. Coombs acknowledged the information and advised Sheridan, "I'll call you inside".

(a) On Friday October II, 1996 P.C. Spence, who was P.C. Sheridan's partner on August 21, 1996, was again interviewed. Spence indicated that "DANNY'S" referred to Goody's restaurant located at Sherbourne and Dundas Street East. It is referred to as "DANNY'S" because the owner is named Danny. P.C. Spence also stated that he could not recall if P.C. Coombs ever called the station to speak to him or P.C. Sheridan.

(b) On Friday October II, 1996 P.C. Sheridan was also interviewed. He stated that he could not recall receiving a phone call from P.C. Coombs.

(c) P.C. Coombs used the words, "Come see me at Danny's", which would indicate that he was already at the restaurant, located at Sherbourne and Dundas Street East.

(d) Investigators from Internal Affairs have interviewed Mr. Danny Michelis, owner/manager of Goody's Diner, and one of the waitresses, Joan Hartman. Both persons indicated that Constable Albert Coombs frequents the restaurant and they recall that he came into the restaurant by himself on Wednesday, August 21st, 1996. Mr. Michelis stated that it was between 8:30 p.m. and 9:30 p.m. He further stated that P.C. Coombs had come upstairs to see him and then they both returned to the main floor of the restaurant. P.C. Coombs ordered some food and sat down for approximately 20 minutes. P.C. Coombs then left with the food order. Ms. Hartman stated that P.C. Coombs came into the restaurant and went upstairs to see Danny. He and Danny then returned and Coombs ordered a drink. Hartman states that Coombs did not order any food, and left within 10 minutes. She also states that she is positive the time was approximately 8:30 p.m.

(e) Joan Hartman stated that she knows several of the officers in 51 Division because they frequently come into the restaurant. She further stated that P.C. Coombs invited her to a beach party that "D" platoon was having after the shift

that night. However, she did not attend. Hartman also stated that Danny has a very friendly relationship with officers from 51 Division.

(f) The theory of the lead investigators up to the time of the above interviews was that P .C. Coombs had the victim in the back seat of his vehicle from 2005 hours to approximately 2110 hours. We now have two independent civilian witnesses who state that for 10- 20 minutes of that time P.C. Coombs was in the restaurant. That evidence is totally contrary to the story related by the victim. At no time does he say that he was placed in another car or that he was left alone in the vehicle driven by the black officer.

(g) There are four possible explanations for the discrepancy between the two stories.

(i) The two civilian witnesses, one of whom is a respected local business man, are lying or mistaken.

(ii) P.C. Albert Coombs left the abducted victim sitting in the back seat of his police car while he spent 10 to 20 minutes inside the restaurant.

(iii) The victim, who is an admitted alcoholic and drug abuser, and suffers from black outs, is mistaken or fabricating the incident.

(iv) P .C. Coombs transported the victim to the Salvation Army Hostel, dropped him there and then went to Danny's.

(82) **20:40 hours:** From the CAD system it is evident that Scout Car 5110 (P .C. Bromell and P.C. Laine) and Scout Car 5103 (P.C. Patrick McLeod & P.C. Reid) attended together at a radio call to Jarvis Street and the Esplanade.

(83) **20:58 hours:** 5103 received a radio call to attend at 309 Parliament Street regarding an assault.

(a) Members of Internal Affairs have interviewed the complainant in the above assault, Mr. Mifsud Tedla and a witness to the assault, Mr. Kibreab Sereberham. Both men have difficulty in giving the exact time that the two uniform officers arrived to speak with them. Mr. Tedla did indicate that the officers were there for approximately 10 minutes. Mr. Sereberham stated that the officers were there for approximately 5 minutes.

(b) Number 309 Parliament Street is only a 3 minute drive from the parking lot on Cherry Street where the alleged assault on KERR took place. Constables Patrick McLeod and John Reid would have had sufficient time to be involved in

the assault, drive to 309 Parliament Street, stay there for 5 -10 minutes and then attend at 51 Division for 21:25 hours. Cherry Street, 309 Parliament Street, and 51 station are all within minutes of each other.

(84) 21:13 hours: The Ambulance Service received a call to 393 Front Street for a person injured which turned out to be the victim.

(85) 21: 15 hours: Special 51 backed up 5110 and accepted a medical call to George Street and the Esplanade.

(86) 21:19 hours: 5108, Rubbini and Corra advised the radio room that they are investigating two persons at Jarvis Street and Dundas.

(87) 21:25 hours: 5103 was marked off at the station and the unit was logged off for the shift.

(88) The investigation to date has confirmed that the seven subject officers, Patrick McLeod, John Reid, Paul Rubbini, Dale Corra, Craig Bromell, Mark Laine and Albert Coombs were available to participate in an assault from approximately 20:45 hours to 21:10 hours. The victim states that a black officer and four other officers assaulted him. P.C. Coombs is a black officer and all the other officers are white.

Injuries Received by the Victim

(89) Members of Internal Affairs have interviewed hospital staff at St Michael's; Hospital and ambulance staff who attended to the victim. On occasion the victim repeated that he was assaulted by five police officers. Investigations to date have revealed some discrepancies as to when the injuries on the victim occurred as listed in paragraph 6. The following is an outline of the investigation as it pertains to the injuries

Wednesday, August 21,1996 -10:45 hours.

(90) Constable Al Therrien (6812) arrested the victim, Thomas KERR for Mischief Under \$5,000.00. At that time Constable Therrien noticed that KERR had numerous injuries some of which he noted in his memo book and later on a record of arrest. The injuries noted were, cuts to mouth, arms, and legs. When Therrien questioned KERR

about the injuries, KERR stated, "I just got the shit beat out of me". KERR further stated that he didn't want to pursue the matter. Constable Therrien also noted that KERR had been drinking although he was cognisant of the events. P.C. Therrien released KERR on an appearance notice and at approximately 11:45 hours drove him to # 135 Sherbourne Street which is a hostel.

(a) During an interview with Internal Affairs officers P.C. Therrien was questioned about what appeared to be an additional entry in his memo book relating to KERR'S injuries. P.C. Therrien stated that after he completed the record of arrest on August 22, 1996 he realized that he did not make note of the eye injury in his book. At that time he made the additional entry so that the record of arrest and his memo book would be consistent. This information did not come to light until Therrien 's second interview.

Wednesday, August 21,1996 -13:00 hours.

(91) P.C. Larry Walsh (1917) and his partner P.C. Paul Nadeau (3879) of 51 Division observed the victim, Thomas KERR walking along Dundas Street East. They were of the opinion that KERR was obviously intoxicated and placed him under arrest for being intoxicated in a public place. They transported KERR to 51 Division, took him before Sergeant John Martin (7059), and KERR was lodged in the cells.

(92) All three officers, Sgt. Martin, P.C. Nadeau and P.C. Walsh have been interviewed by members of Internal Affairs. They were shown a photograph of KERR'S injuries taken by Detective Bunting during the evening of August 21, 1996. All three officers stated that the injuries depicted in the photograph are consistent with the injuries they observed in the early afternoon of August 21, 1996. That was approximately eight hours before the assault as described by KERR. None of the officers made note of the injuries in their memo books or on the record of arrest. They also did not submit an injury report as required by the Service's regulations. **It is apparent that Sergeant Martin made some sort of observation regarding KERR'S physical appearance because he actually marked the medical note portion of the record of arrest as N/A. He then signed that part of the record of arrest.**

Wednesday, August 21,1996 -20:05 hours.

(93) KERR was released from 51 Division's cells and he states that he was driven from the station and assaulted by police officers-

Wednesday, August 21,1996 -21:23 hours.

(94) The following is a summary of the observations of the ambulance personnel and the attending physicians.

(a) Ambulance personnel and Fire Department personnel responded to the call for a man injured at 393 Front Street. KERR advised the ambulance personnel that he had been assaulted by live police officers and pointed in the direction of Cherry Street. At that time one of the ambulance attendants noticed that the victim had a swollen left eye, there was dried blood in his hair and clotted blood on the roof of his mouth. KERR was transported to St. Michael's Hospital and treated for his injuries. He again complained that he was assaulted by police officers.

(b) Dr. Dominic Lehnert examined KERR in the emergency department of the hospital and indicated that there were some old injuries and other newer injuries. In reference to the eye injury he stated that he was, "not able to say definitively that it was new as in terms of four hours. Twenty four hours, I think you could say with confidence. But there was no fresh abrasions or fresh blood or anything like that which might help you assess that." Dr. Lehnert further stated, "I didn't make note of any abrasions on his face. There may well have been but I can't recall for sure." He also said that there were small new-appearing abrasions on his back and there was a triage note from the nurse that KERR had swelling to his lip. However Dr. Lehnert didn't make note of the swelling and couldn't comment on the injury. Dr. Lehnert stated that there were abrasions on KERR'S knees that were old which KERR stated were from an incident a week or two prior to August 21st, 1996.

(c) Dr. Dan Cass also examined Thomas KERR and was unable to pinpoint the injury in terms of having occurred in number of hours previous to the examination. He did note that the swelling around the eye injury increased in size over a matter of hours while the victim was at the hospital. Dr. Cass stated that the swelling, "suggests to me that this was new bruising which has occurred as opposed to something from several days before."

(d) Dr. Cass' examination appears to contradict the information supplied by Sgt. Martin, P.C. Nadeau and P.C. Walsh. They stated that the injuries shown on the photograph, taken at the hospital, were the same as when they saw the victim some ten hours earlier. Dr. Cass saw the swelling increase in a matter of hours while the victim was at the hospital.

Thursday, August 22, 1996- 7:00 hours.

(95) The victim, Thomas KERR checked out of the hospital. He had been admitted for observation because blood was found in his urine

Thursday, August 22,1996 -17:00 hours.

(96) Constable Therrien of 14 Division spoke with the victim Thomas KERR who was in Alexander Park. At that time KERR told Therrien about his altercation with the officers from 51 Division. P.C. Therrien noticed that the injuries on KERR were still the same as he had noted the day before at 10:45 hours. 111 P.C. Therrien's opinion there were no new injuries.

Dr. Cass' examination also contradicts the above statement of P .C. Therrien who stated that the injuries on August 21 and those noticed on August 22 appeared to be the same.

Friday, August 23, 1996- 21:40 hours.

(97) On two occasions during his second interview, KERR was asked if he had any injuries before he was placed in the cells at 51 Division. Both times he stated that he had no injuries.

(98) As a result of the investigation concerning injuries, it is now obvious that there is insufficient evidence to substantiate a charge of assault causing bodily harm. The victim's allegation that he received his injuries as a result of a beating at approximately 21:00 hours on August 21, 1996 is contradicted by at least four police officers and to some extent by the two doctors. Dr. Lehnert stated that in reference to the eye there was no fresh abrasion or blood to help indicate the time of the injury.

Physical Evidence

(99) At the time of this interim report, Monday, December 2nd, 1996, the following physical evidence has been examined and now appears to have no relevance in the case.

(i) Of the five blood smears taken from the back seat of 5102, the C.F.S examiner chose to only examine one. It has been eliminated as not being consistent with the victim's blood.

(ii) The .40 calibre semi-automatic casing located at the parking lot on Cherry Street has been examined. It was compared to all of the subject officers' issued weapons with negative results.

(iii) The police shirt with a blood stain, seized from P.C. Reid's locker, has been examined and the blood does not match the victim's.

(iv) The beer bottles and latex gloves seized at the scene have been fingerprinted with negative results.

(100) The investigators are still waiting for the forensic results from the F.B.I regarding the hair sample taken from P.C. Patrick McLeod's gun belt. The F.B.I. lab personnel indicate that it will be mid-January 1997 before their examinations will be completed. Other examinations still to be conducted by the Centre of Forensic Sciences are as follows:

(i) The clothing seized from the lockers are still to be examined.

(ii) Preliminary examinations of the boots seized from the locker room have revealed that there is blood present. Those blood samples are being examined.

(iii) The four blood smears from 5 102 still have to be examined.

(iv) Other blood/hair samples which were taken from police cars other than 5102 still have to be examined, and their examination is still pending.

Other Possible Witnesses/Evidence.

(101) This investigation has involved approximately 160 interviews of police personnel and 60 interviews of civilian witnesses. As the investigation progressed it became necessary to re-interview a number of the witnesses on several occasions. An MTP 649 has been forwarded to the Unit Commander of 51 Division requesting that all of the officers in the Division be canvassed, to ensure that any person who may have information to assist in this investigation is given the opportunity to provide that information. To date no other officers or civilian employees have come forward.

Conclusion

(102) As indicated in the preceding paragraphs the investigation to date has both corroborated and discredited parts of Thomas KERR'S allegations. KERR maintains that he was assaulted and some very important details of his account are supported by the investigation. For instance KERR indicated that he was placed in the back of a uniform police car which was driven by a black officer. The fingerprint found in the back of 5102 and divisional records indicating Coombs was a solo officer corroborates that allegation. KERR also maintains that he was taken to a location where several trucks were parked

and at that time he was assaulted. There are MDT transmissions which confirm that the officers were familiar with a location known as "TRAILERS" and used it to meet that night. That location is the same as identified by KERR as being where the assault occurred. The location is only a three or four minute walk from where KERR was treated by the ambulance attendants and then transported to the hospital. The time line as alleged by KERR is supported by police, ambulance and fire department records.

(103) Much of the evidence collected thus far serves to discredit some of KERR's allegations and frequently his memory regarding some details is questionable. It is the view of the investigating officers that there are at least five substantial issues which will have to be overcome in any future prosecution involving the nine subject officers.

(a) There is absolutely no eye witness identification in this investigation and in fact KERR has made incorrect identifications.

(b) In this investigation four police officers state that KERR had his facial injuries prior to being placed in the cells and to some extent this is corroborated by the attending physicians. That evidence tends to question the time and extent of the assault as alleged by KERR.

(c) Two witnesses state that P.C. Coombs was in a restaurant for 10 to 20 minutes at a critical time in the conspiracy. That evidence totally discredits KERR'S version of the events when he said he was driven around by the black officer for 40 minutes to an hour. It also gives rise to the question, did this sequence of events, as described by KERR, actually occur.

(d) The evidence of P.C. Stinson, if it is to be believed, discredits KERR' s statement that an officer wearing a sling at the gas pumps, pointed to him at approximately 2005 hours.

(e) There are discrepancies between the victim's first and second statements. When one examines these discrepancies and then adds the fact that KERR suffers from an addiction to alcohol and blackouts, it is reasonable to suggest that his memory of the events on August 21,1996 will be questioned.

(104) The weight of the inculpatory evidence first gleaned during the initial stages of the of the investigation has been substantially diminished as a result of the in-depth probe conducted over the past three months. As with any other investigation all of the information, inculpatory or otherwise, has to be weighed in making a determination of- the reasonable grounds to swear to an information. In this particular instance it is obvious that the victim's creditability will be a major issue in any trial and will be vigorously attacked.

(105) The investigation is nearing completion. The results of the examination of the exhibits submitted to the Centre of Forensic Science and the F.B.I. laboratory have not been completed. Upon the completion of all forensic examinations the lead investigators will then be able to evaluate the complete investigation.

SECOND INTERIM REPORT

**THE FOLLOWING IS THE SECOND INTERIM REPORT
IT CONTINUES THE SUMMARY OF THE INVESTIGATION FROM
WHERE THE FIRST INTERIM REPORT ENDED**

(106) The first interim report submitted in December of 1997 concluded at the point where the investigation was nearing completion and the investigators were awaiting results from forensic testing. Since that time other witness interviews have been conducted and there are now some results to report regarding physical evidence seized from the locker room at 51 Division. The relevant call transcripts from the interceptions have been reviewed which may have also provided further evidence.

DNA Evidence:

(107) The victim's blood was located on the bottom of the heel of a boot seized from the top of the locker belonging to Constable Rubbini. The three drops of blood located on the heel of the boot corroborates the victim's version of the events which includes being kicked while he was in the back seat of the police car and again on the ground outside of the car. At this point in the investigation there is no evidence placing the victim in the company of Constable Rubbini prior to August 21, 1996. The examiner at the CFS stated that the DNA pattern in the blood sample would repeat once in every 16000 white males in the population. The examiner also indicated that the results may be further refined to 1 in every 3 million, however, it is the expert's opinion that in these circumstances it is not necessary.

(108) The examinations on the rest of the footwear seized in the locker room of 51 Division has been completed and there has been no further evidence found in relation to this investigation. However, blood from two different unidentified sources has been found on some of the seized footwear. One boot seized from the top of Constable Rubbini's locker has blood splatters on the side. That boot is not the mate to the boot which has the victim's blood. Blood was also found on a boot seized from Constable Bromell's locker. The examiner will next examine the pants seized from the lockers and those results will take from two to six months to obtain.

(109) Investigations have been conducted to prove Constable Rubbini's control of the boots seized from the top of his locker. A receipt for a pair of boots fitting the description of the boots seized from the top of Constable Rubbini's locker has been seized from the supplier, Gordon Contract Sales. The receipt indicates that on December 1st, 1995 Constable Rubbini was issued a pair of boots with the same identification model number as in the boot with the three blood stains on the heel.

(110) Forensic Identification personnel have been in contact with the F.B.I. lab personnel in Washington regarding the hair sample taken from the gun belt of Constable Patrick McLeod. That examination has not yet started, however this investigation has

reached the top of the list and it is anticipated that the process will commence within the next two weeks. Results from that examination are approximately eight weeks away.

Relevant Call Transcripts:

(111) During the investigation numerous telephone calls intercepted through the Authorization were identified as possibly having some relevance and were transcribed. Those relevant call transcripts have been reviewed since the submission of the initial interim report. That review has resulted in locating one telephone call which appears to further implicate Constable Coombs in this conspiracy. A copy of that transcribed call is included - please see the Exhibit List. The rest of the relevant call transcripts appear to be of no evidentiary value.

Charts and Summary of activities regarding "D" Platoon:

(112) Charts and summaries regarding the activities of all the officers on "D" Platoon during the evening shift of August 21, 1996 have been prepared and are included in this brief- please see the Exhibit List. The first is titled Summary Comparison of Activities by Unit and the second is titled Activity Charts.

MDT transmissions used by the subject officers:

(113) A review of the MDT and voice transmissions has revealed transmissions attributed to 5110, Constable Bromell and Constable Laine's assigned vehicle on August 21, 1996. Those transmissions were inadvertently omitted from the initial interim report. The following account of the transmissions should have appeared in the initial report where indicated.

(81a) 20:37 hours: The MOT is used in 5110 to accept a call To 84 Cornwall Street

5110 to Dispatcher: **Want us 2 do 84 Cornwall, we R on River at Cornwall.**

(82a) 20:41 hours: 5110 is cleared off the Cornwall call and dispatched to the shooting at Lower Jarvis and the Esplanade.

(82b) 20:46 hours: 5110 clears the above call and verbally advises the dispatcher that they are going to 84 Cornwall Street. P.C. Bromell's book indicates that he was on scene at Cornwall at 20:55 hours.

(a) Dora Villanueva, 84 Cornwall Street, and her 14 year old daughter, Veronica have been interviewed by Internal Affairs Investigators. The police had been called because one of the neighbourhood children threw a Frisbee at Dora and struck her when she was telling them not to play in the area. They estimate that the two police officers were at their residence for approximately 5 minutes. Veronica also stated that the officer stated that he would speak to the parents of the child who threw the, Frisbee at 126 Oak Street.

(b) There is no indication in Constable Bromell's or Constable Laine's book that they ever attended at Oak Street. Members of Internal Affairs attended at 126 Oak Street and were informed that the Police never arrived at that address on August 21, 1996.

(c) The distance from Cornwall Street and the location of the assault on Cherry Street is only a few minutes drive. It is Apparent that at 2100 hours P.C. Bromell and P .C. Laine were available to participate in the assault as indicated in paragraphs 35(c) and 88 of the Initial Interim Report.

Video Tape

(114) Also supplied to the Crown's office along with the report and the initial interim report is a copy of the video tape statement given by the victim, Thomas KERR.

Conclusion

(115) The investigators are waiting the results of the forensic testing still to be I, completed in relation to this investigation.

FINAL REPORT

THE FOLLOWING IS THE FINAL REPORT

**IT CONTINUES THE SUMMARY OF THE INVESTIGATION FROM
WHERE THE SECOND INTERIM REPORT ENDED**

Final Report

(116) This investigation involved very serious criminal allegations of Conspiracy, Forcible Confinement and Assault Causing Bodily Harm against uniform police officers. The allegations were made by Thomas KERR, a 32 year old admitted alcoholic and street person. Early in the investigation a considerable amount of evidence was uncovered which appeared to corroborate KERR'S allegations. As a result of the initial inquiries the lead investigators formed the opinion that nine members of "D" Platoon in 51 Division were involved in a criminal conspiracy which culminated in the kidnapping and assault of Thomas KERR on Wednesday August 21st, 1996 at approximately 2100 hours.

(117) There was also an indication that unknown person(s) in 51 Division attempted to obstruct the investigating officers by breaking seals which had been applied to the suspect officers' lockers. The locker belonging to one of the suspect officers, Constable Paul Rubbini, was actually forced open and it is unknown if evidence was removed or otherwise tampered with. The investigation to date has not identified anyone responsible for the forced locker or the damaged seals.

(118) As outlined in the two interim reports, December 1996 & January 1997, numerous avenues of investigation were used to ensure a complete and thorough investigation. A total of eight (8) search warrants were executed, a thirty day authorization to intercept private communications was obtained, several police vehicles were the object of expert examinations, the scientific expertise of the Centre of Forensic Sciences and the F.B.I. laboratory has been employed and hundreds of civilian and police witnesses have been interviewed. The investigation to date still has not overcome the five substantial issues challenging KERR'S account of the events as identified in the conclusion of the first interim report.

Much of the evidence collected thus far serves to discredit some of KERR'S allegations and frequently his memory regarding some details is questionable. It is the view of the investigating officers that there are at least five substantial issues which will have to be

overcome in any future prosecution involving the nine subject officers.

(a) There is absolutely no eye witness identification in this investigation and in fact KERR has made incorrect identifications.

(b) In this investigation four police officers state that KERR had his facial injuries prior to being placed in the cells and to some extent this is corroborated by the attending physicians. That evidence tends to question the time and extent of the assault as alleged by KERR.

(c) Two witnesses state that P.C. Coombs was in a restaurant for 10 to 20 minutes at a critical time in the conspiracy. That evidence totally discredits KERR'S version of the events when he said he was driven around by the black officer for 40 minutes to an hour. It also gives rise to the question, did this sequence of events, as described by KERR, actually occur.

(d) The evidence of P.C. Stinson, if it is to be believed, discredits KERR'S statement that an officer wearing a sling at the gas pumps, pointed to him at approximately 20:05 hours.

(e) There are discrepancies between the victim's first and second statements. When one examines these discrepancies and then adds the fact that KERR suffers from an addiction to alcohol and blackouts, it is reasonable to suggest that his memory of the events on August 21, 1996 will be questioned.

(119) The investigation has led to the conclusion that the approximate time of the assault is between 21:00 hours and 21:10 hours on Wednesday, August 21, 1996. The lead investigators are also of the opinion that Constables Bromell, Laine, Rubbini, Corra, Reid and Patrick McLeod were available during that time period to participate in the assault. Taking into account the availability of the officers and the time of the assault, the following is a brief review of the inculpatory evidence as it applies to each of the nine suspect officers.

(a) Constable Michael Hammond (6183): His involvement in the conspiracy appears to be restricted to having taken KERR out the back door of 51 Division and turning him over to Constable Coombs.

(b) Constable Gordon McLeod (4646): Retaliation for Gordon McLeod's injury, apparently caused by Thomas KERR, appears to be the motive

behind this assault. McLeod's participation occurs only at the time that Constable Coombs is driving KERR out of the back lot of 51 Division and stopped near the pumps. KERR states that at that time a male wearing civilian clothing pointed him out and said something approximating "that's him". As indicated at pages 24 and 25 of the first interim report there are some problems with this evidence because there is conflicting information as to the exact whereabouts of Gordon McLeod at the time the victim was being released from 51 Division.

(c) Constable Albert Coombs (512): Thomas KERR stated that a solo black police officer, in a uniform police car, drove him around for approximately one hour and then to a place on Cherry Street where he (KERR) was assaulted. Four white police officers also attended at the scene and assisted in the beating. The following implicates Constable Coombs.

(i) At 20:00 hours Constable Coombs was at the station completing his lunch hour. The victim was released from the station at 20:05 hours

(ii) Constable Coombs is a black police officer .

(iii) Constable Coombs was solo on 5102 using the call sign of Special 51 on August 21st, 1996.

(iv) The MDT on 5102 was used at 20: 13 hours to inquire about "TRAILERS"

(v) The victim pointed out a location on Cherry Street where the assault took place. That location is known as "TRAILERS" by the officers of "D" Platoon in 51 Division.

(vi) The victim's fingerprint was located on the Plexiglas screen in the rear of 5102.

(viii) Special 51 did not take any details or offer any assistance to other units between the time of 20:00 hours and 21: 15 hours.

(d) Constables Craig Bromell (1425) and Mark Laine (3914): The officers were partners on scout 5110 and their memo books indicate that they remained together throughout their tour of duty. Therefore, what implicates one would apply to the other or at least call for an explanation.

(i) 5110 was marked in the station at 20:00 hours which is the same time that Constable Coombs was finishing lunch and a couple of minutes before the victim was released from the cells.

(ii) There is MDT traffic at 18:52 hours (page 25 of the first interim report) which indicates that the officers were aware of the location "TRAILERS".

(iii) The victim described one of his assailants as wearing a dark coloured exterior vest with the word POLICE printed on it. From the investigation conducted thus far it appears that Constable Bromell was the only officer wearing such a vest on "D" Platoon on August 21, 1996.

(e) Constables Paul Rubbini (269) and Dale Corra (6641): They were partners on scout 5108 and their memo books indicate that they remained together throughout their tour of duty. Therefore, what implicates one would also implicate the other or at least call for an explanation.

(i) When Special 51 made his enquiries at 20: 13 hours, the MDT on 5108 was used to direct Special 51 to "Trailers".

(ii) Three small blood stains were located on the bottom of the heel of a boot seized from the top of Constable Rubbini's locker on August 24th, 1996. That blood has been identified through DNA analysis as having come from KERR. The victim stated that he was kicked in the head while he was inside the back of a police car and then dragged out of the car and beaten. KERR 'S account of the incident is consistent with the blood being located on the heel of a police boot.

(f) **Constables Patrick McLeod (1465) and John Reid (1149):** They were partners on scout 5103 and their memo books indicate that they were together throughout their tour of duty. Therefore, anything which implicates one would also implicate the other or at least call for an explanation.

(i) Constable Patrick McLeod and Constable Gordon McLeod are brothers and could be substantial evidence as it applies to motive.

(ii) A long blond hair was located wedged into the leather of Constable Patrick McLeod's leather gun belt. When examined microscopically that hair has all the same characteristics as a control sample taken from Thomas KERR. That hair is presently being examined for a DNA comparison at the FBI laboratory.

(iii) The MDT message at 18:52 hours to Bromell and Laine indicate that they were also aware of the location "Trailers".

(120) At the completion of the second interim report the lead investigators were of the opinion that other than waiting for the last of the scientific examinations there was little else which could be done to further the investigation. It was felt that the time had come to consult with the Crown Law Offices at 720 Bay Street to determine what if any charges should be laid.

(121) On January 20th, 1997 Mr. Jerome Wiley, Detective Sergeant Robert Ward, Detective Sergeant Earl Witty and Detective Sergeant Charles Perry attended at 720 Bay Street and spoke with Crown Attorney Ian Scott. Mr. Scott was provided with copies of the first and second interim reports. Mr. Wiley and the investigating officers also gave an overview of the investigation and briefly explained the strengths and weaknesses of the case. At the conclusion of the meeting Mr. Scott stated that his first instinct is to suggest one joint charge of Assault Causing Bodily Harm against Constables Coombs, Rubbini and Corra, however he would like to read the complete reports before committing to anything.

(122) On February 5th, 1997 the above investigators and Mr. Wiley again met with Mr. Ian Scott. He stated that he had some great concerns about the alibi evidence offered by the two civilians at Goody's restaurant and indicated that it will be very difficult to cross examine them at trial. He further stated that the evidence regarding the injuries was crucial to the charge because the injury was the reason for the blood on the boots. Mr. Scott stated that there would be difficulty with the hair because it could be easily transferred from one person to another. Mr. Scott identified several areas which he felt the defence would have little difficulty in challenging the validity of the Crown's case and thereby raise a reasonable doubt.

(123) At the conclusion of the meeting Mr. Scott stated that he would be unwilling to proceed with any charges laid against the officers other than Assault Causing Bodily Harm against Constables Coombs, Rubbini and Corm. He further stated that those charges were contingent on the results of an interview with Doctor D.A. Chaisson, Chief Forensic Pathologist with the Ministry of the Solicitor General. Mr. Scott also requested that the investigating officers interview the examiner who removed the hair from Constable McLeod's gun belt and obtain his opinion as to the degree of force used to place the hair in the belt.

(124) On Thursday, February 6th, 1997 Dr. D.A. Chaisson and Dr. Queen, Forensic Pathologist with the Ministry of the Solicitor General, were interviewed by members of Internal Affairs. Both Doctors were of the opinion that the injuries to KERR, as shown in the photographs taken after his assault on August 21, 1996, were consistent with having occurred as described by KERR. Both Doctors also stated that the injuries are also consistent with having occurred 24 hours before the photographs were taken. In other

words KERR could be telling the truth or the four police officers who saw KERR on the morning of August 21, 1996 could be telling the truth when they said that KERR had those injuries at that time.

(125) On Friday, February 7th, 1997 Anthony Tessarolo, trace examiner in the Biology Section of the Centre of Forensic Science, was interviewed by members of Internal Affairs. He is the examiner who removed the hair, believed to belong to the victim KERR, from the gun belt of Constable Patrick McLeod. Mr. Tessarolo stated that the hair was wedged in between a dome and the leather of the speed loader. He further stated that there was some amount of force used to wedge it in that maruler however the force could come from just opening and closing the speed loader. Mr. Tessarolo stated that this hair is, "not a forcibly removed hair, this is a hair that's come to the end of its life cycle and has been shed by the skin".

(126) On Monday, February 10t11, 1997 Detective Sergeant Robert Ward, Detective Sergeant Earl Witty and Detective Sergeant Charles Perry attended at 720 Bay Street and spoke with Mr. Ian Scott. The officers apprised Mr. Scott of the new information received from Dr. Chassion, Dr. Queen and Mr. Tessariolo. Mr. Scott again reviewed the evidence as it applied to the various suspect officers and evaluated the various tactics which he believed would be employed by the defence at trial.

(127) He pointed to the fact that the officers clothing containing trace evidence, Constable Rubbini's boots with the blood and Constable Patrick McLeod's belt with the hair, could be explained because the officers and the victim had access to the same areas of 51 station. Mr. Scott theorised that the hair, which had reached the end of it's life cycle, could have dropped from the victim in the back hallway or the booking area and was later transferred to Constable McLeod's belt. He also suggested that the defence would be able to argue that the victim's hair could have fallen onto Constable Patrick McLeod's belt at the time that he had contact with Kerr several weeks prior to this incident. Mr. Scott suggested that a similar transfer could have occurred in relation to the blood round on the bottom of Constable Rubbini's boot. If one is to believe the four officers who state that the victim had his facial injuries prior to being booked, then KERR could have spit onto the floor and the blood later transferred to Constable Rubbini's boots when he stepped in the spittle. Mr. Scott suggested that given time the defence would be able to suggest several other scenarios which would be just as plausible. At the end of the discussion Mr. Scott summed up his position as the head of the department of the Crown Law Office which would be responsible for the prosecution of this case.

(128) Mr. Scott stated that it was not his position to tell anyone to lay a charge or not to lay a charge. That is solely the responsibility of the individual swearing to the information, who must come to the subjective view that he/she honestly believes that the

offence took place and that the individuals named in the information are responsible for the act. However, a police officer should take into account the entire investigation as a basis to determine if there are reasonable grounds to swear to an information.

(129) Mr. Scott said that after the information is laid it is then his responsibility to determine if there is a likelihood of conviction. He stated that in this instance he felt that the likelihood of conviction is almost zero, remote in the extreme. Mr. Scott reiterated that he would only entertain proceeding with the charge of Assault Causing Bodily Harm against Constables Rubbini, Corra and Coombs. He indicated that from the information provided it is apparent that the victim will have little or no credibility. He further stated that in this set of circumstances, where there are so many avenues open to the defence to raise a reasonable doubt, he would have to give very careful consideration as to whether or not he would be willing to proceed.

(130) On Monday, February 24th, 1997 all of the subject officers, accompanied by counsel, attended at the Internal Affairs office and were individually advised or a summary of the inculpatory evidence collected thus far. All of the officers exercised their right to silence.

(131) On Tuesday, February 25th, 1997 Detective Sergeant Robert Ward, Detective Sergeant Earl Witty and Detective Sergeant Charles Perry attended at the Crown Law Office, 720 Bay Street and spoke with Mr. Ian Scott. The investigation to date was again reviewed and Mr. Scott was of the view that at this time there was still a concern with proceeding with the prosecution. However, Mr. Scott was also of the view that the suspect officers should have to account to their employer for their activities on August 21, 1996 and suggested an avenue of investigation which should be explored.

(132) Mr. Scott stated that the framework was contained in the Police Services Act which would allow the investigators to order the suspect officers to give an induced statement. He said that one or more of the officers, under the threat of repercussions via the Police Services Act, may give a statement which would incriminate some of the other officers. Mr. Scott stated that in a criminal proceeding the statement could not be used against the officer making the statement, however it could certainly be used against other officers. Mr. Scott acknowledged that given the circumstances the statement would be viewed as accomplice evidence at a criminal trial. He further stated that if the officers refused to comply with the order then they would be subject to a charge of insubordination under the Police Services Act. Mr. Scott stated that he could not see the criminal investigation advancing any further at that point, because the factual circumstances will not have changed, and the Police Services Act charges may be the end of the investigation. Mr. Scott stated that until that avenue of investigation was attempted he could not give a final opinion as to the possibility of a prosecution.

(133) Shortly after the above meeting Detective Sergeant Robert Ward, Detective Sergeant Earl Witty and Detective Sergeant Charles Perry met with Mr. Jerome Wiley and Staff Inspector Rocky Cleveland at the Internal Affairs Office. The suggestion of Mr. Ian Scott, to order the suspect officers to give induced statements, was discussed at length. Mr. Wiley was of the opinion that if statements were obtained in the manner suggested by Mr. Scott, they would be of little value at a criminal proceeding after the defence completed their cross examination of the individual officers supplying the statement. The usual problems of accomplice evidence would be greatly magnified when defence counsel probed the reason for the statement and examined the duress endured by the officer at the time the statement was made.

(134) Historically Internal Affairs officers involved in criminal investigations have not used the method suggested by Mr. Scott to obtain statements from subject officers. All present were aware that the issue of a police bill of rights and the creation of a statutory requirement for police officers to give statements had been a topic of discussion at the Provincial Government level for some time. However, these issues were not included in the last revision of the Police Services Act. One can only assume then, that the prudent course of action is to continue with what has been accepted in the past. The meeting concluded with Mr. Wiley indicating, and all others present concurring, that the Service should not change the accepted investigative techniques normally used in this type of investigation.

(135) After several hours of consultation with Mr. Ian Scott the lead investigators are of the opinion that it would be bordering on irresponsible to swear to an information against any of the suspect officers in this investigation. It is apparent that Mr. Scott, a senior Crown Counsel with four years experience in prosecuting police officers for criminal misconduct, is concerned about proceeding with any charges because in his opinion the likelihood of conviction is remote in the extreme.

(136) Mr. Gary Clewley, counsel for all of the subject officers, was contacted and did attend at the Internal Affairs office at 1:00 P.M. Wednesday, February 26th, 1997. At that time he was supplied with a copy of the interim report to read and then return. Arrangements were also made to have all of the subject officers attend at Internal Affairs at 2:00 P.M. At that time they were informed that there will be no criminal charges in this matter. Staff Inspector Cleveland called a press conference for 2:00 P.M. on February 26th, 1997 at which time the media was informed of the status of the investigation. It was indicated that a complete brief of this investigation was being prepared for presentation to the Professional Standards Review Committee.

APPENDUM TO THE FINAL REPORT

(137) On March 18th, 1997 the results of the hair analysis was obtained from the FBI Laboratory in Washington D.C.

(138) The results of the test were that a mitochondrial DNA (mtDNA) sequence was obtained both from the hair that had been attached to the gun belt and from the known sample of KERR's blood that was submitted. The mtDNA sequences are the same. Therefor Thomas Hugh KERR cannot be eliminated as a source of the hair sample submitted. *Please refer to the Laboratory Report included for the interpretation of these results.*