

**THE CORNWALL
PUBLIC INQUIRY**



**L'ENQUÊTE PUBLIQUE
SUR CORNWALL**

Public Hearing

Audience publique

Commissioner

The Honourable Justice /
L'honorable juge
G. Normand Glaude

Commissaire

VOLUME 301

Held at :

Hearings Room
709 Cotton Mill Street
Cornwall, Ontario
K6H 7K7

Tuesday, November 11, 2008

Tenue à:

Salle des audiences
709, rue de la Fabrique
Cornwall, Ontario
K6H 7K7

Mardi, le 11 novembre 2008

Appearances/Comparutions

Mr. Peter Engelmann	Lead Commission Counsel
Ms. Brigitte Beaulne	Registrar
Ms. Mary Simms	Commission Counsel
Ms. Kelly Doctor	
Ms. Reena Lalji	Cornwall Community Police Service and Cornwall Police Service Board
Mr. Neil Kozloff	Ontario Provincial Police
Ms. Diane Lahaie	
Mr. Joe Neuberger	Ontario Ministry of Community and Correctional Services and Adult Community Corrections
Mr. Kevin Hille	Attorney General for Ontario
Ms. Michele R.J. Allinotte	The Children's Aid Society of the United Counties
Ms. Helen Daley	Citizens for Community Renewal
Mr. Dallas Lee	Victims' Group
M ^e Gisèle Levesque	Diocese of Alexandria-Cornwall and Bishop Eugene LaRocque
Mr. Michael Neville	The Estate of Ken Seguin and Doug Seguin and Father Charles MacDougald
M ^e Danielle Robitaille	Mr. Jacques Leduc
Mr. William Carroll	Ontario Provincial Police
Mr. Mark Wallace	Association
Mr. Ian Paul	Coalition for Action
Mr. Timothy Smith	

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1 --- Upon commencing at 9:34 a.m./

2 L'audience débute à 9h34

3 **THE REGISTRAR:** Order; all rise. À l'ordre;
4 veuillez vous lever.

5 This hearing of the Cornwall Public Inquiry
6 is now in session. The Honourable Mr. Justice Normand
7 Glaude, Commissioner, presiding.

8 Please be seated. Veuillez vous asseoir.

9 **THE COMMISSIONER:** Thank you, and good
10 morning, all.

11 Mr Engelmann?

12 **MR. ENGELMANN:** Good morning, Mr.
13 Commissioner.

14 **THE COMMISSIONER:** Good morning, Mr.
15 Engelmann.

16 **MR. ENGELMANN:** The next witness for the
17 Commission is Mr. Tim Smith.

18 **THE COMMISSIONER:** Thank you.

19 **MR. ENGELMANN:** Mr. Smith is present and
20 coming forward.

21 **THE COMMISSIONER:** Thank you.

22 **MR. ENGELMANN:** If the witness could be
23 sworn, Madam Clerk?

24 **TIMOTHY SMITH, Sworn/Assermenté:**

25 **THE COMMISSIONER:** Have a seat, sir, welcome

1 aboard.

2 We will be breaking at 11 o'clock to give
3 honour to those who gave our lives for us. That'll be a
4 two-minute moment of silence and we'll follow with the
5 break.

6 Yes, sir. There are glasses there with
7 water, fresh; everything is fresh. You please speak into
8 the microphone and if there's anything that you feel
9 uncomfortable about, let me know. In the meantime, please
10 answer the questions as best you can and we'll go from
11 there.

12 **MR. SMITH:** Thank you.

13 **THE COMMISSIONER:** All right. Thank you.

14 Mr. Engelmann.

15 --- **EXAMINATION IN-CHIEF BY/INTERROGATOIRE EN-CHEF PAR MR.**
16 **ENGELMANN:**

17 **MR. ENGELMANN:** Good morning, Mr. Smith.

18 **MR. SMITH:** Good morning, sir.

19 **MR. ENGELMANN:** I just wanted to say as well
20 you'll be getting some documents in hard copy form but
21 you'll also have them available to you on the screen and
22 sometimes we'll blow them up so that so that the writing
23 that is sometimes quite small will be bigger for you.

24 **MR. SMITH:** Thank you.

25 **MR. ENGELMANN:** And I just wanted as well,

1 Mr. Commissioner ---

2 **THE COMMISSIONER:** Yes.

3 **MR. ENGELMANN:** --- to acknowledge
4 Remembrance Day and to thank those public servants who are
5 working today for the Inquiry and others who are working
6 for parties here.

7 Mr. Smith, what I'd like to do is start with
8 your background, if I may. I understand that you commenced
9 working with the OPP in 1967 and would have retired in
10 1999. Is that right?

11 **MR. SMITH:** That's correct.

12 **MR. ENGELMANN:** All right. And we have a
13 career profile document for you. I'm just going to ask the
14 clerk to provide you with a copy. The Document Number,
15 Madam Clerk, is 200223.

16 It will just be entered as an exhibit but
17 you see some of it already on the screen.

18 **THE COMMISSIONER:** Thank you.

19 Exhibit 2557 is a career profile of Timothy
20 Francis Smith.

21 --- **EXHIBIT NO./PIÈCE NO. P-2557:**

22 (200223) Career Profile of Timothy Francis
23 Smith

24 **MR. ENGELMANN:** Now, Mr. Smith, you would
25 have had an opportunity to review this document?

1 **MR. SMITH:** Yes, sir, I did.

2 **MR. ENGELMANN:** And it's a summary, if I can
3 call it that, of the career you had with the Ontario
4 Provincial Police?

5 **MR. SMITH:** Yes, sir.

6 **MR. ENGELMANN:** And I just want to go
7 through it if I can briefly. It appears, sir, when you
8 began working for the OPP in 1967 you were posted to the
9 Barrie Detachment?

10 **MR. SMITH:** Yes, sir.

11 **MR. ENGELMANN:** And you continued working
12 there for a number of years in a variety of capacities. Is
13 that fair?

14 **MR. SMITH:** That's correct.

15 **MR. ENGELMANN:** For example, you worked --
16 you became a provincial constable in 1968; correct?

17 **MR. SMITH:** Permanent, say permanent. Yes,
18 I was probationary for the first year and then I was
19 permanent, yes.

20 **MR. ENGELMANN:** Fair enough. You worked as
21 a court officer, I understand, from 1973 to 1975?

22 **MR. SMITH:** That's correct.

23 **MR. ENGELMANN:** And in that role, sir, you
24 would have been assisting some Crown Attorneys with their
25 work at the courthouse?

1 MR. SMITH: Yes, yes.

2 MR. ENGELMANN: You were an acting corporal
3 twice in your career, in 1982, and then again in 1983?

4 MR. SMITH: That's right.

5 MR. ENGELMANN: You were promoted to the
6 right of corporal and assigned to the CIB unit in Barrie on
7 December 1st, 1983?

8 MR. SMITH: That's correct.

9 MR. ENGELMANN: And you became an acting
10 detective sergeant in July of 1986 and then in July of 1987
11 you were promoted to that rank?

12 MR. SMITH: That's correct.

13 MR. ENGELMANN: And I understand, sir, that
14 you became a detective inspector in May of 1988?

15 MR. SMITH: Yes, sir.

16 MR. ENGELMANN: And concurrent with that,
17 you were transferred to eastern Ontario?

18 MR. SMITH: Yes.

19 MR. ENGELMANN: And you would have worked
20 out of the Kingston unit from then on?

21 MR. SMITH: Yes.

22 MR. ENGELMANN: And that was the Criminal
23 Investigations Branch of the OPP?

24 MR. SMITH: Yes, sir.

25 MR. ENGELMANN: Sir, with respect to your

1 investigative experience, it appears that as a member of
2 the criminal investigation unit for sometime you were
3 assigned to a number of high profile investigations?

4 **MR. SMITH:** Yes, sir.

5 **MR. ENGELMANN:** And several of these
6 investigations would have involved some allegations of
7 institutional corruption?

8 **MR. SMITH:** Yes, sir.

9 **MR. ENGELMANN:** For example, you were a
10 member of the team that investigated alleged police
11 corruption at the Niagara Regional Police Force?

12 **MR. SMITH:** Yes, sir.

13 **MR. ENGELMANN:** You also investigated
14 officers in an incident or an investigation of alleged
15 municipal corruption in the Township of Vaughan?

16 **MR. SMITH:** Yes, sir.

17 **MR. ENGELMANN:** And, sir, you were the case
18 manager of an investigation of alleged municipal corruption
19 in York Region in 1988?

20 **MR. SMITH:** That's correct.

21 **MR. ENGELMANN:** And, sir, were you also
22 involved in a case involving alleged conspiracy in
23 Newfoundland in approximately 1998?

24 **MR. SMITH:** Yes, sir.

25 **MR. ENGELMANN:** Can you tell us what that

1 was about, sir?

2 MR. SMITH: That was an allegation, sir,
3 made by an informant that the Crown Attorney and the police
4 had forced him to lie in a murder trial. And,
5 subsequently, the charged person's convicted for second
6 degree murder, sentenced to life in prison.

7 MR. ENGELMANN: Is that a case that there
8 was a judicial inquiry on it subsequently?

9 MR. SMITH: Yes.

10 MR. ENGELMANN: Sir, I understand that
11 you've had a fair bit of experience investigating either
12 sexual assault or sexual abuse?

13 MR. SMITH: Yes, sir.

14 MR. ENGELMANN: And when you were in the
15 criminal investigation unit in Barrie, would you have been
16 responsible for investigating or reviewing investigations
17 of that nature?

18 MR. SMITH: I would have been the sexual
19 assault coordinator, so I would not necessarily investigate
20 but I would review them and see that they were done in a
21 proper manner.

22 MR. ENGELMANN: All right.

23 Sir, I understand from approximately 1990
24 through till 1997 you were the case manager of a major
25 investigation into allegations of child sexual abuse or

1 sexual abuse of young people at the St. Joseph's and St.
2 John's Training Schools?

3 MR. SMITH: Yes, sir.

4 MR. ENGELMANN: And was this commonly known
5 as the Alfred investigations?

6 MR. SMITH: Alfred and St. John's.

7 MR. ENGELMANN: Yeah.

8 MR. SMITH: Yes.

9 MR. ENGELMANN: And the suspects in those
10 investigations were they primarily clergy or Christian
11 Brothers?

12 MR. SMITH: The majority were. However,
13 there were some civilians, sir.

14 MR. ENGELMANN: All right, and those
15 investigations would they have involved allegations of both
16 current and historical reporting?

17 MR. SMITH: Mostly historical, sir.

18 MR. ENGELMANN: All right. In those
19 investigations, it's my understanding you would have found
20 or your team would have found dozens of victims of child
21 abuse?

22 MR. SMITH: In excess of 1,300, sir.

23 MR. ENGELMANN: Sir, I understand as well,
24 aside from investigative experience you had an opportunity
25 to travel to Newfoundland?

1 **MR. SMITH:** Yes, sir.

2 **MR. ENGELMANN:** And that was to learn about
3 the investigative and case management techniques that were
4 employed in the Mount Cashel case?

5 **MR. SMITH:** Yes, and also the inquiry that
6 was ongoing at the time, the Hughes Commission.

7 **MR. ENGELMANN:** All right.

8 So was it work with Cashel or was it also
9 work with the Winter Commission? There were two things
10 going on in St. John's at that time.

11 **MR. SMITH:** Pardon me.

12 The Winter Commission followed us but the
13 Hughes Commission was ongoing at that time.

14 **MR. ENGELMANN:** All right.

15 **MR. SMITH:** In June of 1990.

16 **MR. ENGELMANN:** All right. And I understand
17 that you would have gone with a Crown prosecutor?

18 **MR. SMITH:** Yes, I did, with Bob Pelletier.

19 **MR. ENGELMANN:** All right. And can you just
20 give us a sense as to how long you were there?

21 **MR. SMITH:** We were there a week.

22 **MR. ENGELMANN:** All right. And what did you
23 do while you were there, sir?

24 **MR. SMITH:** We met with Catherine Knox who
25 was the Crown Attorney prosecuting the cases against about

1 10 Christian Brothers.

2 We got an insight into the difficulties and
3 what we were going to encounter. It was a similar order
4 that we were investigating here. Our order was the French
5 Order. Their order was the Irish, but they were still
6 Christian Brothers schools.

7 I spent some time with Len Power who was the
8 lead investigator and ended up the chief of police, since
9 deceased, but he gave me an insight into what I would run
10 into. I dealt with Des Peddle and Sean Innes in regard to
11 their management set-up system that they had -- case
12 management.

13 In addition, we spent some time with Mr.
14 Hughes himself. He spoke to us for awhile and that was
15 interesting. And Commission counsel at that time was Clay
16 Powell and he was very helpful.

17 **MR. ENGELMANN:** And just to understand the
18 timeline, this would have been just at about the time you
19 were assigned to the work in Alfred?

20 **MR. SMITH:** Alfred I think, sir, I was
21 assigned in February of 1990 and we'd commenced and I was
22 concerned we were cutting new territory; that we were going
23 in the right direction. And so Bob Pelletier and I spoke
24 to each other and got permission to go to Newfoundland, and
25 it confirmed that we were pretty well on the right track,

1 that we had some other good information that we obtained.

2 MR. ENGELMANN: All right.

3 So this was an opportunity for you to learn
4 and to gain some experience ---

5 MR. SMITH: Oh, definitely.

6 MR. ENGELMANN: --- in what they were doing?

7 MR. SMITH: Definitely.

8 MR. ENGELMANN: All right.

9 And can you just give us a sense, your work
10 with respect to the Alfred -- it's Alfred in St. John's; do
11 I have that right?

12 MR. SMITH: Yes, there are two separate
13 investigations. They weren't intertwined at all.

14 MR. ENGELMANN: Okay.

15 MR. SMITH: The suspects or the victims were
16 not affiliated with each other.

17 MR. ENGELMANN: And, sir, you were the case
18 manager of those projects?

19 MR. SMITH: Yes, sir.

20 MR. ENGELMANN: So did you have an
21 investigative team reporting to you?

22 MR. SMITH: I had two teams. I had a team
23 for St. John's and I had a team for Alfred or St. Joseph's.

24 MR. ENGELMANN: All right.

25 Were you actually doing some of the

1 investigative work or was it more case management?

2 **MR. SMITH:** I did a little bit just to get a
3 feel for it because I had never been involved in the
4 interviews of males' historical sexual abuse. Actually
5 none of us had; it was new territory. And I wanted to get
6 a feel as to what we were getting into and how to conduct
7 these types of interviews.

8 And I've learned a fair amount from Mount
9 Cashel from the investigators there and how to conduct
10 them, and we imparted that to our investigators when I
11 returned and we added to the way that we conducted our
12 interviews from previous.

13 **MR. ENGELMANN:** And these investigation
14 teams that you were coordinating or managing, were they OPP
15 officers only or were there other police forces?

16 **MR. SMITH:** OPP only, sir.

17 **MR. ENGELMANN:** All right.

18 And you would have been involved right
19 through the prosecutions of some of these cases?

20 **MR. SMITH:** Yes, sir.

21 **MR. ENGELMANN:** And with respect to those
22 prosecutions, do you know if there was a dedicated team of
23 prosecutors for those cases or a dedicated Crown who was
24 responsible for coordinating?

25 **MR. SMITH:** Yes, sir.

1 **MR. ENGELMANN:** And who would that have
2 been, sir?

3 **MR. SMITH:** The lead one in St. Joseph's was
4 Bob Pelletier, and he was assisted by his assistant, and we
5 had two Crown attorneys that also assisted Murray MacDonald
6 and Guy Simard. And I'm sorry, the name escapes me, but
7 Ron Laliberté maybe I think is his name.

8 **MR. ENGELMANN:** Okay.

9 **MR. SMITH:** In St. John's we had Mary-Lou
10 Dickie from Newmarket and -- from Whitby ---

11 **MR. ENGELMANN:** Mr. Paul?

12 **MR. SMITH:** Yes, that's right, yes.

13 **MR. ENGELMANN:** All right.

14 So there were two teams of prosecutors, one
15 for each of the investigative teams?

16 **MR. SMITH:** Yes.

17 **MR. ENGELMANN:** All right.

18 And, sir, I think you told us that this was
19 a new experience for you dealing with male victims'
20 historical abuse?

21 **MR. SMITH:** Yes. I'd only had one other
22 investigation in my career involving a male sexual abuse
23 victim.

24 **MR. ENGELMANN:** And, sir, would you agree
25 that there's some challenges from a police perspective in

1 working with victims of childhood sexual abuse?

2 MR. SMITH: Yes, sir.

3 MR. ENGELMANN: And those challenges exist
4 whether you're dealing with a current report or a
5 historical report ---

6 MR. SMITH: Yes.

7 MR. ENGELMANN: --- although they may be
8 different?

9 MR. SMITH: Yes, sir.

10 MR. ENGELMANN: And can you just give us an
11 example of some of those challenges that you would have
12 learned about then in or around 1990 dealing with male
13 victims in the historical type case? You said you imparted
14 some knowledge back in ---

15 MR. SMITH: What we found in a number of the
16 cases when we investigated and interviewed these victims
17 was that when they decided to come forward and disclose
18 they would disclose everything, as far as suspects went,
19 but they were reluctant to expose offences of penetration.
20 They would downplay those.

21 They were subject to mood changes -- very
22 bitter, and in a number of cases they felt that all they
23 wanted was an apology and an admission that it happened,
24 nothing else. Some of them didn't want to proceed
25 criminally or civilly, they just wanted the fact that it

1 did happen. Some of them were very strong Catholics and
2 remained so.

3 The majority that we dealt with now in
4 Alfred and in St. John's unfortunately came from usually
5 single parent families. Poverty was a big issue. We had
6 very few students at those schools that came from affluent
7 families. Many of them had suffered neglect prior to going
8 to those schools.

9 MR. ENGELMANN: I'm sorry; had suffered?

10 MR. SMITH: Had suffered neglect.

11 MR. ENGELMANN: Okay.

12 MR. SMITH: Many had been involved with the
13 CAS. Many of them were failing in school when they went to
14 these institutions.

15 MR. ENGELMANN: Now, some of these
16 attributes or characteristics would have arisen because of
17 where this abuse took place?

18 MR. SMITH: Yes, but we found that when we
19 spoke to them that this precluded, in a number of cases,
20 their arrival at the schools.

21 MR. ENGELMANN: All right.

22 MR. SMITH: And for that reason I think that
23 the schools could offer -- at that time they said "We can
24 take care of them. We'll educate them. We'll provide the
25 nurturing that's required."

1 **THE COMMISSIONER:** You use the word

2 "preclude." I think you meant ---

3 **MR. SMITH:** They ---

4 **THE COMMISSIONER:** You said ---

5 **MR. SMITH:** They were suffering these things
6 prior to.

7 **THE COMMISSIONER:** Yes.

8 **MR. SMITH:** I'm sorry.

9 **THE COMMISSIONER:** No, no, that's fine.

10 **MR. ENGELMANN:** Did you find that some of
11 the victims and alleged victims were distrustful of the
12 police and other professionals?

13 **MR. SMITH:** Some of them were. Some of them
14 brought knives to the interviews in their socks and -- and
15 I should say most of them have had dealings with the police
16 since ---

17 **MR. ENGELMANN:** So ---

18 **MR. SMITH:** Eighty-three (83) percent of
19 them had criminal records.

20 **MR. ENGELMANN:** Eighty-three (83) percent?

21 **MR. SMITH:** Yes, sir.

22 **MR. ENGELMANN:** So there's quite a
23 correlation between being a victim of the abuse and then
24 committing ---

25 **MR. SMITH:** Yes.

1 **MR. ENGELMANN:** --- criminal activities?

2 **MR. SMITH:** Yes, sir.

3 **MR. ENGELMANN:** And were there concerns
4 about trusting people in positions of authority?

5 **MR. SMITH:** Yes.

6 **MR. ENGELMANN:** And you've noted that there
7 was some bitterness, there were mood changes. And that --
8 so you weren't certain of the attitude or mood that an
9 individual would be on any given day?

10 **MR. SMITH:** That's correct.

11 **MR. ENGELMANN:** All right.

12 You talked about problems with criminality.
13 Did some of these individuals also have addiction problems?

14 **MR. SMITH:** Yes, substance and liquor.

15 **MR. ENGELMANN:** And did you learn about
16 investigative techniques to avoid re-victimizing or re-
17 traumatizing victims of this type of abuse?

18 **MR. SMITH:** Yes, the -- we were fortunate in
19 that we had -- they had a help line and it was run
20 initially by the person that broke the story, a fellow by
21 the name of Dave McCann for St. Joseph's; and on St. John's
22 in Toronto another fellow by the name of Michael Waters.

23 And in many, many cases the victims came to
24 them first and then to us. And we gained some trust with
25 McCann and Waters and we were really fortunate that we had

1 witness assistance people assigned to us in the initial
2 stages with therapists and it was invaluable. It paved the
3 way for us.

4 MR. ENGELMANN: So that was set up at the
5 same time?

6 MR. SMITH: Yes.

7 MR. ENGELMANN: All right.

8 MR. SMITH: There was funding made available
9 for that very early in the investigation.

10 MR. ENGELMANN: So not waiting for the court
11 side of things, that was available right there when you
12 were investigating?

13 MR. SMITH: Yes, the government of the day
14 had provided it quite readily.

15 MR. ENGELMANN: And I think you told us that
16 there were some details of abuse that victims, alleged
17 victims were very reluctant to tell you about.

18 MR. SMITH: Yes, we'd find a little bit from
19 them but then come trial time there'd be full disclosure
20 and quite often on the stand.

21 MR. ENGELMANN: All right. So in many
22 cases, there was further disclosure over time?

23 MR. SMITH: They had a tendency -- a great
24 number of them had a tendency to under report the abuse
25 that they'd suffered. They would readily admit to physical

1 abuse, which was substantial, and I'm talking broken bones,
2 contusions.

3 **MR. ENGELMANN:** But with respect to some of
4 the aspects of sexual abuse, there was either difficulty in
5 retelling or recalling some of those details?

6 **MR. SMITH:** No, when they decided to
7 disclose, they were very open about telling about the
8 abuse, but describing the events, they were selective.

9 **MR. ENGELMANN:** All right. Were you also
10 informed or did you come to learn that it was important not
11 to interview an individual on too many occasions about the
12 abuse itself?

13 **MR. SMITH:** We found, sir, that the best
14 interview we got was the first one and in preparation for
15 testifying, the police officers would sit with the Crown
16 and just review what they'd said in the first place and
17 first instance and rarely did we re-interview. We tried
18 not to.

19 **MR. ENGELMANN:** There could be a variety of
20 problems with re-interviewing; correct?

21 **MR. SMITH:** Oh, yes. Yeah.

22 **MR. ENGELMANN:** One is you may be re-
23 victimising a victim?

24 **MR. SMITH:** That's one and then you can
25 taint the case.

1 **MR. ENGELMANN:** Yes. And, as well, you
2 could have multiple statements and no doubt some
3 inconsistencies with multiple statements?

4 **MR. SMITH:** Exactly, yeah.

5 **MR. ENGELMANN:** Which might hurt the
6 prosecution?

7 **MR. SMITH:** Yes.

8 **MR. ENGELMANN:** Sir, you would have also
9 gained some insight into the behaviour of abusers or
10 alleged abusers as a result of those investigations?

11 **MR. SMITH:** Yes.

12 **MR. ENGELMANN:** For example, did you become
13 aware of some grooming behaviour that sometimes abusers
14 would use with young people?

15 **MR. SMITH:** In the institutions, there was
16 some, but you have to appreciate, sir, that these people
17 were there against their will and ---

18 **MR. ENGELMANN:** Fair enough.

19 **MR. SMITH:** --- the people that were running
20 the institution had complete power over them. So they
21 didn't really have to groom.

22 **MR. ENGELMANN:** All right.

23 **MR. SMITH:** But there were groomers there.

24 **MR. ENGELMANN:** But the typical grooming,
25 buying things for a victim, earning their trust, allowing

1 them to engage in adult activity when they're under-aged,
2 like providing them liquor, drugs, things of that nature,
3 may not be necessary in the institutional setting you were
4 in?

5 **MR. SMITH:** There was some of that. There
6 was wine given to them. There was candy and pop, things
7 that they wouldn't get in the institutions and not by all
8 the brothers but by some of them, hence the pseudonyms.

9 **MR. ENGELMANN:** So these are things that you
10 might see more in a non-institutional setting perhaps than
11 in an institutional setting?

12 **MR. SMITH:** Yes. In the institutional
13 setting also I should advise you that the students were
14 victimized by other students also and it was a learned
15 behaviour.

16 **MR. ENGELMANN:** All right.

17 **MR. SMITH:** And the older students picked on
18 the smaller ones and committed the same acts that the --
19 our suspects or accused were doing.

20 **MR. ENGELMANN:** So you saw some of the
21 victims then become abusers themselves?

22 **MR. SMITH:** Yes. Yes, in the institution
23 but yet on the outside, from what we've read and from what
24 we've spoken to others, it's not as prevalent.

25 **MR. ENGELMANN:** Yes. We've heard that's a

1 risk factor here.

2 MR. SMITH: But I think it's a small
3 percentage that become abusers on the outside.

4 MR. ENGELMANN: And I think you told us,
5 sir, about targeting particularly vulnerable youth?

6 MR. SMITH: Oh, yeah, yeah.

7 MR. ENGELMANN: And you would have noticed
8 that in the institution and perhaps as well outside of the
9 institution?

10 MR. SMITH: Yes, the weaker, the weaker and
11 more needy students seemed to suffer the most.

12 MR. ENGELMANN: Did you also come across, in
13 some circumstances, a continuing relationship between
14 abusers and victims even after the abuse finished?

15 MR. SMITH: Yes, we had some that were
16 released from the institutions and returned to see their
17 abusers. We tried to define how it happened, but these
18 people had been in the institution for eight or nine years,
19 it was the only life they knew, and they were lost when
20 they were on the outside. So quite often when they were 18
21 they were gone, but they would return and visit.

22 MR. ENGELMANN: So even if this individual
23 had abused them, that was an individual that had been
24 present in their life and sometimes they'd return to that
25 person?

1 **MR. SMITH:** Not a lot, but it did happen,
2 yes.

3 **MR. ENGELMANN:** All right.

4 Now, sir, just with respect to training if I
5 can, because I know you have listed a number of courses in
6 your career profile on training. I note, for example,
7 there was a training course in 1984 on child abuse?

8 **MR. SMITH:** That was a child abuse seminar
9 in Toronto, yes.

10 **MR. ENGELMANN:** All right. And we know from
11 evidence we've heard at this Inquiry that 1984 was a year
12 when a large report was started on child abuse in Canada
13 both physical and sexual?

14 **MR. SMITH:** The Bagley (sic) Report.

15 **MR. ENGELMANN:** Yes, the Badgley Report?

16 **MR. SMITH:** Badgley, I'm sorry, yes.

17 **MR. ENGELMANN:** Yes. So that training
18 presumably would have been in all forms of child abuse?

19 **MR. SMITH:** Yes.

20 **MR. ENGELMANN:** And you've talked about
21 neglect, physical, sexual abuse for example?

22 **MR. SMITH:** And psychological, yes.

23 **MR. ENGELMANN:** Okay. And I note in your
24 career profile, you've had certainly a number of courses in
25 criminal investigation?

1 **MR. SMITH:** Yes, sir.

2 **MR. ENGELMANN:** A major crime investigator
3 course in 1988 and you also have courses in 1990 and
4 additional courses in criminal investigation

5 **MR. SMITH:** Yes, mostly homicide and death
6 investigations.

7 **MR. ENGELMANN:** All right. I was just going
8 to ask you that, sir, if there was a focus at all on the
9 sexual abuse of children or physical abuse of children or
10 whether it was mainly dealing with murders and homicides?

11 **MR. SMITH:** The Criminal Investigation
12 Branch of Major Cases usually involved homicides or death
13 investigations, inquests, municipal corruption, but there
14 was very little in the way that our Branch was involved in,
15 in sexual offences unless death resulted or very serious
16 injury.

17 **MR. ENGELMANN:** So would it be fair to say
18 that your expertise in investigating sexual abuse of young
19 people comes primarily from your experience as opposed to
20 the training?

21 **MR. SMITH:** I would say, yes, sir. There
22 was very little training available at that time, and the
23 training that we did receive involved victims being female.

24 **MR. ENGELMANN:** Sorry?

25 **MR. SMITH:** Victims becoming female or

1 female victims, yes.

2 MR. ENGELMANN: Oh, female victims. All
3 right.

4 MR. SMITH: Rarely male victims. It was
5 rarely reported by males that they had been abused
6 sexually.

7 MR. ENGELMANN: So you would be aware, sir,
8 of these reports that there's certainly a lot of under-
9 reporting of sexual abuse and sexual assaults by victims?

10 MR. SMITH: I believe there is to this day.

11 MR. ENGELMANN: Yes, and even more so if the
12 victims are male and the alleged abuser is male?

13 MR. SMITH: I would say they're more open
14 now, but I'd still that a lot of it is unreported.

15 MR. ENGELMANN: Sir, if we could just change
16 tracks then and leave this exhibit.

17 I would like to talk to you just briefly
18 about note-keeping, okay, and your experience with note-
19 keeping, and if it's of assistance maybe we could start by
20 just having some notes that you would have written back in
21 the sort of early nineties involving this matter.

22 MR. SMITH: M'hm.

23 MR. ENGELMANN: And they're Exhibit 1803.
24 Counsel, it's Document Number 111109.

25 So these are notes of yours that have

1 already been put into evidence so we have an exhibit number
2 and we have a number of binders for you to look at.

3 Mr. Smith, these are your notes?

4 **MR. SMITH:** Yes, they are.

5 **MR. ENGELMANN:** All right.

6 Mr. Commissioner, I just want to clean
7 something up for the record, if we may?

8 **THE COMMISSIONER:** Sure.

9 **MR. ENGELMANN:** When this exhibit was
10 entered, we were missing a page of Mr. Smith's notes, and
11 I'm wondering if -- I believe Madam Clerk has the page
12 here. The missing page is Bates page 7013482.

13 **THE COMMISSIONER:** What exhibit are we
14 looking at?

15 **MR. ENGELMANN:** We are looking at Exhibit
16 1803.

17 **THE COMMISSIONER:** Yes.

18 **MR. ENGELMANN:** It's Document Number 111109.

19 **THE COMMISSIONER:** Yes.

20 **MR. ENGELMANN:** We had a Bates page that was
21 missing from the notes.

22 **THE COMMISSIONER:** Yes.

23 **MR. ENGELMANN:** And I think ---

24 **THE COMMISSIONER:** These start with 105
25 though.

1 **MR. ENGELMANN:** I'm sorry?

2 **THE COMMISSIONER:** These notes ---

3 **MR. ENGELMANN:** Yes?

4 **THE COMMISSIONER:** --- on Exhibit 1803, the
5 Bates page starts with 105. Am I reading this wrong? One
6 zero five forty-two twelve (1054212), yes.

7 **MR. ENGELMANN:** All right. I'm using a
8 different document number but that's fine.

9 So the missing page as I understand it is
10 from a different document but it is a page that was missing
11 from these notes.

12 **THE COMMISSIONER:** Okay.

13 **MR. ENGELMANN:** So what I'd like to do if we
14 can, sir, is enter it and perhaps we can refer to it as
15 Exhibit 1803A.

16 **THE COMMISSIONER:** Sure.

17 **MR. ENGELMANN:** It's just one page that was
18 missing.

19 **THE COMMISSIONER:** Okay. Where does it go?

20 **MR. ENGELMANN:** And I think the document
21 number you're working with -- is it 703938?

22 **THE COMMISSIONER:** No, I'm looking at Doc.
23 Number 111109.

24 **MR. ENGELMANN:** Okay. Fair enough. So the
25 Bates page that I'd like to have added should go between

1 Bates page 281 and 282.

2 THE COMMISSIONER: Two eight one. Okay.

3 Can I have that then? So 282, so it's probably 281 back?

4 MR. ENGELMANN: It's from a different
5 document.

6 THE COMMISSIONER: Never mind.

7 MR. ENGELMANN: It is the missing page.

8 THE COMMISSIONER: It's okay. Do we have
9 it, Madam Clerk?

10 MR. ENGELMANN: If -- Madam Clerk, if you
11 could look at Document Number 703938 on your list, Bates
12 page 7013482.

13 Just some housekeeping, Mr. Smith.

14 THE COMMISSIONER: Exhibit 1803A.

15 --- EXHIBIT NO./PIÈCE No. P-1803A:

16 (703938) - Notes of Tim Smith dated 20 Mar
17 98 to 01 Jun 98

18 THE COMMISSIONER: So can you make sure it's
19 properly put in the witness' ---

20 MR. ENGELMANN: That should be inserted in
21 the notes that you have in front of you between -- and the
22 Bates page you'll see at the top-left of each page.

23 MR. SMITH: Yes.

24 MR. ENGELMANN: So if you look at the
25 document in the binder, look for Bates page that ends in

1 281 Front.

2 THE COMMISSIONER: It's near the end of that
3 exhibit, sir. So there's 281 on the left side and 282.

4 MR. SMITH: Yes.

5 MR. ENGELMANN: Again these are your notes
6 sir, this one page that we're adding.

7 MR. SMITH: Yes.

8 MR. ENGELMANN: It's your handwriting?

9 MR. SMITH: Yes, they are.

10 MR. ENGELMANN: Okay. All right. So we're
11 going to be referring to these notes at various times as I
12 ask you some questions. But they start in early February
13 1994; am I correct?

14 MR. SMITH: Yes. Yes, sir.

15 MR. ENGELMANN: All right. And I just want
16 to ask you some general questions about note keeping and in
17 particular your note keeping before we start. And can you
18 just tell us, I mean, you were at this point in time, a
19 detective inspector; am I correct?

20 MR. SMITH: Yes.

21 MR. ENGELMANN: And can you just tell us
22 generally speaking in what circumstances you would be
23 taking notes at that time?

24 MR. SMITH: I would take notes of things
25 that I considered important for myself to refresh my

1 memory, not necessarily a record of what had transpired.

2 MR. ENGELMANN: All right.

3 MR. SMITH: At that time, I'm not bragging,
4 but I had a pretty good memory.

5 I had a pretty good memory.

6 MR. ENGELMANN: All right.

7 MR. SMITH: And I didn't take a lot of
8 notes. But I could recall events pretty vividly.

9 MR. ENGELMANN: All right. And the note
10 taking then -- and this would be in the function of a case
11 manager typically ---

12 MR. SMITH: Yes.

13 MR. ENGELMANN: --- as opposed to the
14 investigating officer?

15 MR. SMITH: Yes, sir. If I was to take a
16 statement from somebody or interview somebody, I would
17 probably make extensive notes.

18 MR. ENGELMANN: All right.

19 MR. SMITH: Day-to-day operations, just a
20 notation.

21 MR. ENGELMANN: All right. And, sir, were
22 your notes typically handwritten as opposed to typed at
23 that time?

24 MR. SMITH: Yes.

25 MR. ENGELMANN: And when you took notes, did

1 you attempt to take them contemporaneously?

2 **MR. SMITH:** Yes. It didn't always happen
3 that way but yes.

4 **MR. ENGELMANN:** Okay. So they were either
5 taken at the time something was happening or shortly
6 thereafter?

7 **MR. SMITH:** Yes.

8 **MR. ENGELMANN:** If you took the notes more
9 than 24 hours after the incident, would you note that in
10 your notebook?

11 **MR. SMITH:** Yes, because I worked on a date
12 and time of entry. So that would show -- I wouldn't
13 necessarily say 24 hours later but -- maybe I can explain
14 the way I took my notes?

15 **MR. ENGELMANN:** Sure.

16 **MR. SMITH:** We were assigned multiple cases.
17 We may have 10, 15, 20 active cases going at the same time.
18 I couldn't keep one notebook; I'd never find my notes. So
19 for each case, I had a binder with a divider in it and I
20 would have pages in it. And I could jump from one
21 investigation to the other and make notes as they occurred
22 or shortly after as they occurred.

23 When I was finished the case or when the
24 case was dormant, I would take those notes, and all the
25 rough notes and the reports and everything I had and I'd

1 put them in a file folder along with the Crown brief if I
2 had one. And then, insert more pages to -- blank pages to
3 take up the room in my notebook for additional assignments
4 that I may be assigned to.

5 MR. ENGELMANN: So the notes we're looking
6 at here ---

7 MR. SMITH: Yes.

8 MR. ENGELMANN: --- in 1803, would this have
9 been a dedicated tab in a binder?

10 MR. SMITH: Yes, yes.

11 MR. ENGELMANN: So these notes would only be
12 with respect to this investigation?

13 MR. SMITH: They should be but I found some
14 notes in there from other investigations that I put in
15 there, one or two like that ---

16 MR. ENGELMANN: All right.

17 MR. SMITH: --- I misfiled or miswrote.

18 MR. ENGELMANN: Okay. But generally
19 speaking, you would try and have them dedicated to a
20 particular investigation?

21 MR. SMITH: Yes, yes.

22 MR. ENGELMANN: And that's why we might see
23 a gap of a day or ---

24 MR. SMITH: Yes, I ---

25 MR. ENGELMANN: --- a week or even more?

1 **MR. SMITH:** I could be working another case
2 or something else, yes.

3 **MR. ENGELMANN:** And did you attempt, sir,
4 when you were taking notes to accurately reflect what you
5 were told in conversations and/or interviews?

6 **MR. SMITH:** Yes.

7 **MR. ENGELMANN:** Okay. And did you attempt
8 to make it clear in your notes when you were recording
9 something that you said as opposed to something you were
10 being told?

11 **MR. SMITH:** I tried to be accurate, sir, in
12 my notes.

13 **MR. ENGELMANN:** Okay. And were there times
14 when you would take notes that weren't necessarily recorded
15 in this form that might have been recorded somewhere else?

16 **MR. SMITH:** Depending on where I was.
17 Again, sir, I had an office but I wasn't always there. I
18 could have been anywhere, in the car quite often. I may
19 have received phone calls in a vehicle or car; I might put
20 it on a dash pad or scratch something up.

21 Some of those notes may not have ended up in
22 here but would end up in my file folder as loose paper.

23 **MR. ENGELMANN:** The purpose would always be
24 to try and get them back into that same file?

25 **MR. SMITH:** Yeah, I don't think I always did

1 but if they were important, certainly. But if they were --
2 what I refer to as administrative-type things, they may not
3 have.

4 MR. ENGELMANN: Some of the notes, at least
5 in this notebook that we're looking at ---

6 MR. SMITH: M'hm.

7 MR. ENGELMANN: --- here, 1803, were very
8 brief.

9 MR. SMITH: Yes.

10 MR. ENGELMANN: Sometimes they would only
11 record the fact that a meeting or a conversation took
12 place.

13 MR. SMITH: Yes.

14 MR. ENGELMANN: In other words, they
15 wouldn't get into the content.

16 MR. SMITH: Yes.

17 MR. ENGELMANN: All right. Why would that
18 be in a case of this nature?

19 MR. SMITH: Usually, it's just updates as to
20 what had occurred. If there were -- if there was anything
21 of any importance, I would mark down maybe in point form
22 what we had agreed to actually after the meeting, not all
23 the time, no.

24 MR. ENGELMANN: And sir, this is a case as
25 you can see, that you're assigned early in February of

1 1994.

2 MR. SMITH: Yes, sir.

3 MR. ENGELMANN: And I understand that you're
4 the case manager and you have an investigating officer by
5 the name of Constable Fagan?

6 MR. SMITH: Yes.

7 MR. ENGELMANN: Okay. And you'll see just -
8 - and we'll come to this in a bit more detail in a minute.
9 Some of the questions you would answer are set out right
10 there on February 3rd, '94?

11 MR. SMITH: Yes, sir.

12 MR. ENGELMANN: One, two and three?

13 MR. SMITH: Yes, sir.

14 MR. ENGELMANN: "Was there a conspiracy
15 between the Cornwall Police, Catholic
16 Diocese, to affect the civil
17 settlement? Was there obstruction of
18 justice by lawyers?"

19 And the third one is:

20 "In the absence of cooperation of
21 alleged assault victims should Cornwall
22 Police consider proceeding with
23 prosecution against a priest?"

24 MR. SMITH: M'hm.

25 MR. ENGELMANN: Okay. And we'll go into

1 that in a bit more detail in a few minutes, but this was in
2 effect a re-investigation, if I can call it that?

3 **MR. SMITH:** Yes, sir.

4 **MR. ENGELMANN:** All right. And you had an
5 officer with you so there were two of you?

6 **MR. SMITH:** Yes, but there was another
7 ongoing investigation at the same time.

8 **MR. ENGELMANN:** Okay.

9 **MR. SMITH:** It was overlapping ther-.

10 **MR. ENGELMANN:** Okay. So we'll come to
11 that. I'm just talking about this in the context of your
12 notes for a minute.

13 **MR. SMITH:** Okay.

14 **MR. ENGELMANN:** And why your notes may be as
15 brief sometimes as they are.

16 **MR. SMITH:** M'hm.

17 **MR. ENGELMANN:** I'm just trying to get an
18 explanation for that.

19 **MR. SMITH:** The notes are my notes to
20 refresh my memory and they're not a log of what went on
21 day-to-day or hour-to-hour.

22 **MR. ENGELMANN:** Okay. Would you for example
23 have made an effort to note all of the contacts you would
24 have had with the alleged victim here, Mr. Silmsen?

25 **MR. SMITH:** I know I didn't make notes of

1 all of them. There were some phone calls that were made
2 that were of a short duration and not going anywhere. A
3 phone was usually hung up. So I didn't bother making notes
4 on a few of those. I don't think there were a lot of them.

5 MR. ENGELMANN: I'm sorry?

6 MR. SMITH: I don't think there were a lot
7 of them.

8 MR. ENGELMANN: Okay. And what about a
9 fellow by the name of Perry Dunlop? Do you know if you had
10 any contact with him during the course of that
11 investigation?

12 THE COMMISSIONER: The '94 investigation?

13 MR. ENGELMANN: The '94 investigation.

14 MR. SMITH: Yes, I received a call, and I
15 don't know where I was, that he was just congratulating me
16 for being assigned to the investigation and hoped that I'd
17 get to the bottom of it and that was it.

18 MR. ENGELMANN: Okay. Because I just didn't
19 see any reference to any contact with him.

20 MR. SMITH: No.

21 THE COMMISSIONER: One at a time, please,
22 okay?

23 MR. ENGELMANN: I didn't see any reference
24 to contact with him on this note.

25 MR. SMITH: No, but there was a call.

1 **MR. ENGELMANN:** Okay, all right.

2 **MR. SMITH:** M'hm.

3 **MR. ENGELMANN:** Sir, would you agree that it
4 might be important, given that this was a re-investigation
5 and that both of these gentlemen had expressed concerns
6 about previous police investigations, to ensure that
7 contacts with them were noted?

8 **MR. SMITH:** Oh, in hindsight, yeah, I could
9 make a notation and say he called me but, again, it was one
10 of those that was -- there was really no substance that
11 affected me. He wanted the investigation I guess, sir. He
12 made the allegation or whatever it was. And I guess he
13 heard through the police department that I was assigned and
14 he called.

15 **MR. ENGELMANN:** Okay.

16 **MR. SMITH:** And there wasn't any information
17 exchanged so ---

18 **MR. ENGELMANN:** So I guess what you're
19 telling us is that when you didn't have the reference to
20 either contact, the one contact with Mr. Dunlop or minor
21 contacts with Mr. Silmser, the reason was there was nothing
22 of substance?

23 **MR. SMITH:** As far as I'm concerned, yes.

24 **MR. ENGELMANN:** So before we go into the
25 1994 investigations I understand, sir, that you were

1 involved in an investigation in this area back in
2 approximately 1992, January of 1992, involved -- it's a
3 homicide case involving an individual by the name of Travis
4 Varley?

5 MR. SMITH: That's correct.

6 MR. ENGELMANN: And can you tell us what you
7 were assigned to do in that case?

8 MR. SMITH: I was in Ottawa at the time
9 working on St. Joseph's Training School, and I guess I was
10 the only one available and I was assigned in the middle of
11 the night to come down to a homicide here near Lancaster
12 and be the case manager.

13 MR. ENGELMANN: And so your role in the
14 investigation was that of case manager?

15 MR. SMITH: That's correct.

16 MR. ENGELMANN: And did you have local
17 officers assisting you in that investigation?

18 MR. SMITH: Yes, I did.

19 MR. ENGELMANN: And were those officers
20 Randy Millar and Chris McDonell?

21 MR. SMITH: Amongst others, yes.

22 MR. ENGELMANN: All right. There would have
23 been others as well?

24 MR. SMITH: Identification -- other officers
25 to assist. I can't recall the names but the two lead

1 officers were Randy Millar and Chris McDonell.

2 MR. ENGELMANN: All right. And do you know
3 who the lead investigator was amongst them?

4 MR. SMITH: I believe it was Randy.

5 MR. ENGELMANN: All right.

6 And was there any involvement with the
7 Cornwall Police Service in that case?

8 MR. SMITH: I don't have it in my notes. Do
9 you have any documents, sir, that might show that I did
10 that? I don't ---

11 MR. ENGELMANN: I don't believe so. I
12 understand, though, that one of the officers from the
13 Cornwall Police Service may have been related to Mr.
14 Varley.

15 MR. SMITH: I can't remember.

16 (SHORT PAUSE/COURTE PAUSE)

17 MR. ENGELMANN: Perhaps we'll just move on.
18 You would have become aware, sir, as a
19 result of the investigation, that there were four young men
20 who had been on a form of drinking binge, if I can use that
21 term, for many hours before this homicide?

22 MR. SMITH: And a young lady, yes, I think.

23 MR. ENGELMANN: Okay.

24 MR. SMITH: Four men and a young lady.

25 MR. ENGELMANN: All right. Well, there was

1 Travis Varley?

2 MR. SMITH: Yes.

3 MR. ENGELMANN: His brother Bob Varley?

4 MR. SMITH: Yes.

5 MR. ENGELMANN: A fellow by the name of Mark
6 Woods?

7 MR. SMITH: He was there for a short period
8 of time. He was on probation and he had to go home at nine
9 o'clock, I think.

10 MR. ENGELMANN: Do you know if he actually
11 did? He has a curfew.

12 MR. SMITH: He wasn't on the scene.

13 MR. ENGELMANN: All right, wasn't on the
14 scene.

15 And there was another fellow by the name of
16 Andrew MacDonald?

17 MR. SMITH: The deceased, yes.

18 MR. ENGELMANN: Yeah. And there was also a
19 young woman involved?

20 MR. SMITH: Yes. And her name escapes me,
21 sir.

22 MR. ENGELMANN: All right. That's fine.

23 And would you have become aware that these
24 four young men had visited the residence of a local
25 probation officer on the day of Mr. MacDonald's death?

1 **MR. SMITH:** Yes, sir.

2 **MR. ENGELMANN:** And was that an individual
3 by the name of Ken Seguin?

4 **MR. SMITH:** Yes, sir.

5 **MR. ENGELMANN:** And was he known to you
6 before this investigation?

7 **MR. SMITH:** Not to me.

8 **MR. ENGELMANN:** And were you familiar with
9 any of the employees of the local probation office at that
10 time?

11 **MR. SMITH:** No. No, sir.

12 **MR. ENGELMANN:** All right. So you didn't
13 know his manager, Mr. Robert?

14 **MR. SMITH:** No, sir.

15 **MR. ENGELMANN:** All right.

16 And do you know how old these four men were
17 approximately?

18 **MR. SMITH:** I believe they were -- I know
19 they were drinking in hotels from the information I had. I
20 believe they were of legal drinking age.

21 **MR. ENGELMANN:** Yes. Mr. Wood -- Mr. Varley
22 being 19 and the others slightly older?

23 **MR. SMITH:** Well, I'm at a disadvantage,
24 sir, I don't -- I'm going back ---

25 **MR. ENGELMANN:** That's fine.

1 **MR. SMITH:** --- 16, 18 years. My memory is
2 not that good to remember the age, but I know that they
3 were ---

4 **MR. ENGELMANN:** Of legal drinking age.

5 **MR. SMITH:** --- legal drinking age, yes.

6 **MR. ENGELMANN:** Sure. And did you become
7 aware that they would have been -- they would have visited
8 Mr. Seguin at his residence?

9 **MR. SMITH:** That came to my attention, yes.

10 **MR. ENGELMANN:** And that at the residence
11 they would have consumed alcohol?

12 **MR. SMITH:** Yes, sir.

13 **MR. ENGELMANN:** You became aware that one of
14 the individuals was on probation or was being -- a pre-
15 sentence report was being prepared on him by Mr. Seguin?

16 **MR. SMITH:** Mr. Wood, I believe.

17 **MR. ENGELMANN:** All right. And were you
18 aware if any of the others were former probationers of Mr.
19 Seguin?

20 **MR. SMITH:** I can't recall.

21 **MR. ENGELMANN:** Sir, as a result of this
22 interaction with Mr. Seguin in the hours before the
23 shooting, did you or you and others have a letter written
24 to his supervisor about this incident?

25 **MR. SMITH:** Yes, much later on. It was

1 following the conviction of Travis Varley in court. In
2 discussion with Mr. Simard, myself and Randy that it was
3 decided that a letter would be sent to his supervisor,
4 something officially indicating what had gone on.

5 **MR. ENGELMANN:** All right.

6 **MR. SMITH:** He was already aware, sir. He
7 was aware before Mr. Seguin was even interviewed, according
8 to my recollection. The following morning, I think, as
9 soon as he heard it, he went to Mr. ---

10 **MR. ENGELMANN:** Robert?

11 **MR. SMITH:** --- Robert and advised him of
12 what had transpired.

13 And also, I think later that day or maybe
14 the next day, it seems that I recall that day that Chris
15 McDonell had heard up in Lancaster from probation officers
16 that Ken Seguin had the people there that night and that
17 his boss was aware.

18 **MR. ENGELMANN:** Okay, but Mr. Seguin would
19 have informed one of your officers that he had made his
20 supervisor aware of this?

21 **MR. SMITH:** No. No, no. Yeah, when they
22 took the statement, yes.

23 **MR. ENGELMANN:** Okay.

24 **MR. SMITH:** But also I guess the Probation
25 Office, the people in the Probation Office knew.

1 **MR. ENGELMANN:** All right. If we could just
2 have the witness have a look at Exhibit 929? Counsel, it's
3 Document 100313.

4 **THE COMMISSIONER:** Nine twenty-nine (929)?
5 So we are at Exhibit 929, yes. That's a
6 letter of September 3rd, 1992 to Emile Robert from Detective
7 Constable Millar.

8 **MR. ENGELMANN:** Sir, is this a letter that
9 you and Mr. Simard would have asked Mr. Millar, at that
10 time, Detective Constable Millar, to write?

11 **MR. SMITH:** Yes, sir.

12 **MR. ENGELMANN:** And it appears from the
13 letter that Constable Millar would have spoken to Mr.
14 Robert a few days before he wrote the letter? Do you see
15 that on the first page, "Following our discussion of 27
16 August"?

17 **MR. SMITH:** That would appear to be the
18 case, yes.

19 **MR. ENGELMANN:** All right. So just to get a
20 timeline, would there have been some discussion between the
21 three of you and then Constable Millar instructed to call
22 Mr. Robert and then to write the follow-up letter?

23 **MR. SMITH:** I don't recall instructing to
24 call Mr. Robert, but I recall that we came to the decision
25 that a letter should be sent and the Crown wasn't going to

1 send it. He felt that we should do it so Randy was
2 assigned to do it.

3 **MR. ENGELMANN:** All right. And why was it
4 felt important to write this letter?

5 **MR. SMITH:** Well, a conviction had just been
6 registered against the young fellow who received two years
7 less a day for manslaughter of his cousin. We felt that
8 although it may not have been the cause or the root cause
9 of what I refer to as a foolish drunken accident, that it
10 could be a contributing factor because I think, as I
11 recall, they left there around nine o'clock, and this
12 shooting didn't occur until some four or five hours later.

13 But the concerns we had was that here's a
14 probation officer doing the pre-sentence report for
15 somebody the next day. Why is he doing it in his residence
16 and why is he offering them beer? And I feel it should be
17 on the record.

18 **MR. ENGELMANN:** All right.

19 **MR. SMITH:** And the Crown was of the same
20 opinion.

21 **MR. ENGELMANN:** All right.

22 **MR. SMITH:** I'm going to add also that in
23 the agreed Statement of Facts before Judge Desmarais it was
24 indicated that they had been at the Probation Officer's
25 house, Ken Seguin's, and consumed liquor and whatnot. So

1 it was on the public record also.

2 MR. ENGELMANN: All right. And you and your
3 colleagues thought it was important that that be emphasised
4 to Mr. Seguin's supervisor?

5 MR. SMITH: Yes. Even though he must have
6 been aware of it earlier. He may not have been aware of
7 the beer, but he was certainly aware of this -- that there
8 was a homicide following these people being at his -- at
9 Seguin's residence.

10 MR. ENGELMANN: Okay. And he would have
11 been aware then of what one might consider inappropriate
12 socializing or contact with someone who's on probation or
13 about to be on probation?

14 THE COMMISSIONER: Well, I'm sorry. I don't
15 know where you're going with that, but how would he know
16 what Mr. ---

17 MR. SMITH: Yeah.

18 THE COMMISSIONER: --- Robert would have
19 been aware of? Because we do know that what Mr. Seguin
20 said to Mr. Robert is slightly different than what ---

21 MR. ENGELMANN: No, I know. It's different
22 than what's in this letter.

23 THE COMMISSIONER: M'hm.

24 MR. SMITH: I don't know.

25 MR. ENGELMANN: All right. Fair enough.

1 And there's a reference in the letter that -
2 - first page; that the investigation revealed that Travis
3 Varley, the deceased, and his brother -- oh, sorry, no, not
4 the deceased -- that Travis Varley and, in fact, his
5 brother and others in the Varley family regularly
6 socialized with Mr. Seguin.

7 Do you see that at the bottom of the first
8 page?

9 **MR. SMITH:** Yes. Yes.

10 **MR. ENGELMANN:** And again you weren't aware,
11 sir, of their status as probationers or not?

12 **MR. SMITH:** No, sir.

13 **MR. ENGELMANN:** All right. And sir, can you
14 give us a sense if there was a need or at least a perceived
15 need to write to the supervisor and have this put on the
16 record so to speak, why that wouldn't have been done
17 earlier? Because this is now early September. This comes
18 to your attention about nine months earlier.

19 **MR. SMITH:** Well, we didn't know that we
20 would have a plea of guilty and we anticipated somewhere
21 along the line that Ken Seguin may be called as a witness.

22 **MR. ENGELMANN:** Okay.

23 **MR. SMITH:** And we felt that it might be
24 better not to antagonize him from our point prior to him
25 testifying but definitely that somewhere along the line we

1 would send a letter, either the Crown or ourselves.

2 I was satisfied at the time that Mr. Robert
3 was aware and I don't know what action he took, but he was
4 definitely aware.

5 **MR. ENGELMANN:** All right. Do you know if
6 there was any follow-up on the letter to speak with him
7 further or just a follow-up just to see what happened?

8 **MR. SMITH:** I believe that Detective Millar
9 received a reply. I don't know; I can't remember the
10 contents.

11 **MR. ENGELMANN:** All right.

12 **MR. SMITH:** But it was acknowledged to him.
13 I'm quite sure the letter was acknowledged.

14 **MR. ENGELMANN:** At the time of this
15 investigation, were you aware of any other issues
16 concerning Ken Seguin? And by that, I mean we've heard
17 from others that there were stories about him before this
18 time that had surfaced, and I'm just wondering if you were
19 aware about other concerns, if you became aware at this
20 time?

21 **MR. SMITH:** I can't recall, but I -- at that
22 time later, and it may have been in subsequent interviews
23 that we had with Travis Varley that it came to my attention
24 that Ken may have been a homosexual.

25 **MR. ENGELMANN:** Okay.

1 **MR. SMITH:** For what that's worth.

2 **MR. ENGELMANN:** What about inappropriate
3 contact with probationers or any allegations of abuse?

4 **MR. SMITH:** I can't recall any of that.

5 **MR. ENGELMANN:** So that would have only
6 arisen later presumably?

7 **MR. SMITH:** Yes.

8 **MR. ENGELMANN:** All right.

9 So let's turn then back to the '94
10 investigations. Do you still have those notes handy?

11 **MR. SMITH:** Yes, sir.

12 **MR. ENGELMANN:** And as I understand, sir,
13 you, on February 3rd, 1994, met with Superintendent
14 Frechette, and he assigned you to conduct an investigation
15 in the Cornwall area?

16 **MR. SMITH:** I didn't meet with him.

17 **MR. ENGELMANN:** All right. This was done?

18 **MR. SMITH:** It was a telephone call.

19 **MR. ENGELMANN:** Okay. Was he your
20 supervisor?

21 **MR. SMITH:** He was at the time. He was the
22 Director of Criminal Investigation Branch.

23 **MR. ENGELMANN:** All right, and your
24 understanding of the mandate at that time, would that have
25 been the three questions that you wrote out in your notes?

1 **MR. SMITH:** I think that's what he dictated
2 to me and that had come from the Acting Chief of Police I
3 believe.

4 **MR. ENGELMANN:** Sorry, from?

5 **MR. SMITH:** This was a telephone
6 conversation and he would send documentation to follow up,
7 but basically this is what the investigation would be
8 about.

9 **MR. ENGELMANN:** All right. And can you
10 just, either by reading your note or on the screen, just
11 let us know those questions that you were asked to answer?

12 **MR. SMITH:** The first question was:
13 "Was there a conspiracy between
14 Cornwall Police and the Catholic
15 Diocese to effect a civil settlement
16 with the alleged victim, thus
17 terminating criminal proceedings?"

18 Secondly:
19 Was there obstruction of justice by
20 lawyers who brought about..."

21 **THE COMMISSIONER:** "...civil..."

22 **MR. SMITH:** "...civil settlement of the
23 assaulted victim which resulted in the
24 termination of a police investigation
25 upon consultation with the local Crown

1 attorney."

2 And thirdly:

3 "In the absence of
4 cooperation of the alleged..."

5 **THE COMMISSIONER:** "...assault victim..."

6 **MR. SMITH:** "...assault victim, should the
7 Cornwall police consider proceeding
8 with the prosecution against the
9 priest."

10 **MR. ENGELMANN:** All right.

11 So that's how it was initially described to
12 you by Superintendent Frechette?

13 **MR. SMITH:** Yes.

14 **MR. ENGELMANN:** All right.

15 And were you given some background then or
16 shortly thereafter about the events that led up to your
17 investigation?

18 **MR. SMITH:** There would be -- that would
19 pretty well be it and then really I would have to contact
20 the acting chief to get further particulars.

21 **MR. ENGELMANN:** All right.

22 And then was Acting Chief Johnston?

23 **MR. SMITH:** Yes, sir.

24 **MR. ENGELMANN:** All right.

25 And did you become aware that he had written

1 to an individual at the OPP by the name of Piers?

2 MR. SMITH: Yes.

3 MR. ENGELMANN: And I just want to show you
4 a couple of letters, if I may. The first one is -- Madam
5 Clerk, it's Document Number 701630.

6 It's a letter, Mr. Commissioner, from Acting
7 Chief Johnston to Deputy Commissioner R.E. Piers dated
8 January 31st, 1994.

9 THE COMMISSIONER: Good. Exhibit 2558.

10 --- EXHIBIT NO./PIÈCE NO. P-2558:

11 (701630) - Letter from Carl Johnston to R.E.
12 Piers dated 31 Jan 94

13 MR. ENGELMANN: Mr. Smith, you've indicated
14 that your first contact with Superintendent Frechette about
15 this matter was by way of a phone call. Do you know if he
16 or the Deputy Commissioner would have provided you with a
17 copy of this letter?

18 MR. SMITH: It looks familiar, yes, sir.

19 MR. ENGELMANN: All right.

20 MR. SMITH: If you've got -- amongst my
21 documents would this show up some where?

22 MR. ENGELMANN: We got documents from the
23 OPP electronically and, sir, I don't think I'd be able to
24 tell you whether ---

25 MR. SMITH: Well, I was wondering, in the

1 Crown brief there may have -- this may have been -- this
2 may have ---

3 **MR. ENGELMANN:** All right.

4 But there's three letters, and I'm just
5 wondering if you would have seen it at or about this that
6 time, if you can tell us?

7 **MR. SMITH:** It looks familiar, and I would
8 assume that I got it around that time.

9 **MR. ENGELMANN:** And Mr. Kozloff's just
10 indicated too ---

11 **MR. SMITH:** Actually ---

12 **MR. ENGELMANN:** --- there's a fax number.

13 **MR. SMITH:** --- maybe I can help you. The
14 fax number -- the Kingston number, there it is, yes, and
15 that's our number.

16 **MR. ENGELMANN:** All right.

17 **MR. SMITH:** And so yes.

18 **MR. ENGELMANN:** Okay.

19 **MR. SMITH:** Yes.

20 **MR. ENGELMANN:** So right on that same day,
21 on February 3rd, it appears that this letter would have been
22 faxed to you at your workplace?

23 **MR. SMITH:** Yes, if I was there in Kingston
24 on that day.

25 **MR. ENGELMANN:** Okay. Well, if you didn't

1 see it that very day you would have seen it shortly
2 thereafter.

3 MR. SMITH: Yes. I would, yes.

4 MR. ENGELMANN: All right.

5 And this -- in fact, the three of the
6 paragraphs of the four paragraphs seem to be almost
7 identical or identical to what you've described in your
8 notes; that being paragraphs 1, 3 and 4.

9 MR. SMITH: Yes, sir.

10 MR. ENGELMANN: I just want to ask you about
11 paragraph 2 then for a minute. If you could just have a
12 look at it, sir.

13 MR. SMITH: Yes, sir.

14 MR. ENGELMANN: Now, there's the word "no"
15 written next to that and I don't know if that's in your
16 handwriting or someone else's.

17 MR. SMITH: That's not mine.

18 MR. ENGELMANN: All right.

19 Other than this particular letter, I'm
20 wondering what knowledge you had about the allegations at
21 the Laurencrest Group Home. And at the time there was an
22 enclosure report that was shared that came from the chief
23 of the Ottawa police, a fellow by the name of Brian Ford,
24 and it talked about allegations at the Laurencrest Group
25 Home.

1 **MR. SMITH:** I don't know anything about
2 that, sir.

3 **MR. ENGELMANN:** All right.

4 So you don't know why you were not asked to
5 reinvestigate that issue?

6 **MR. SMITH:** No, sir.

7 **MR. ENGELMANN:** You had no role in that
8 decision making?

9 **MR. SMITH:** No, sir.

10 **MR. ENGELMANN:** All right.

11 Now, at point number one you're asked to
12 investigate an alleged conspiracy between the Cornwall
13 police and the local Catholic Diocese; correct?

14 **MR. SMITH:** Yes, media allegations.

15 **MR. ENGELMANN:** All right.

16 Well, it says in this particular case to,
17 "effect a civil settlement."

18 **MR. SMITH:** Yes.

19 **MR. ENGELMANN:** Right. And I'm just
20 wondering, at this point in time, did you consider your
21 mandate to include any conspiracy or collusion between
22 these two institutions or only specific allegations that
23 they conspired to effect a civil settlement?

24 **MR. SMITH:** Just that, sir.

25 **MR. ENGELMANN:** All right.

1 **MR. SMITH:** The Silmsen one.

2 **MR. ENGELMANN:** All right.

3 **MR. SMITH:** Yes.

4 **MR. ENGELMANN:** And you're asked to
5 investigate, in the third paragraph, the role of lawyers;
6 two lawyers, one acting on behalf of the alleged sexual
7 assault victim and the other on behalf of the local
8 Diocese. Do you see that?

9 **MR. SMITH:** Yes, sir.

10 **MR. ENGELMANN:** And at that point in time
11 you wouldn't have had knowledge about the limited retainer
12 of the lawyer for the alleged victim?

13 **MR. SMITH:** I don't understand the question.

14 **MR. ENGELMANN:** All right.

15 Well, the point that's being asked of you in
16 paragraph 3 is the suggestion that two lawyers, one acting
17 on behalf of the alleged sexual assault victim and the
18 other on behalf of the local Diocese, worked to bring about
19 a cash settlement. And you became aware later that the two
20 lawyers perhaps most involved in this matter were the
21 lawyer representing the Diocese and the lawyer representing
22 the priest.

23 **MR. SMITH:** That's correct, sir.

24 **MR. ENGELMANN:** Not a lawyer representing
25 the alleged victim.

1 **THE COMMISSIONER:** Mr. Sean Adams, if that
2 helps you out a little bit.

3 **MR. SMITH:** No, I -- no. It's two lawyers
4 that you mention, sir.

5 **MR. ENGELMANN:** Right.

6 **MR. SMITH:** MacDonald and Leduc.

7 **MR. ENGELMANN:** Right. And that the alleged
8 victim didn't have a lawyer through any negotiation phase
9 or what have you, simply had a lawyer for independent legal
10 advice late in the day.

11 **MR. SMITH:** That came much later.

12 **MR. ENGELMANN:** Yes.

13 **MR. SMITH:** I wasn't -- at this time I
14 wasn't aware of what had transpired.

15 **MR. ENGELMANN:** Right. And in fact the two
16 lawyers you were looking at first were the local -- the
17 lawyer for the Diocese and the lawyer for the priest.

18 **MR. SMITH:** That's correct.

19 **MR. ENGELMANN:** All right.

20 **THE COMMISSIONER:** Nor was it part of your
21 mandate -- and I doubt you were aware of it -- to
22 investigate Murray MacDonald at this point?

23 **MR. SMITH:** No, sir.

24 **MR. ENGELMANN:** Now, sir ---

25 **MR. SMITH:** Excuse me. May I correct that?

1 **THE COMMISSIONER:** Yes.

2 **MR. SMITH:** There was some mention here that
3 -- and it may -- "upon consultation with the local Crown
4 attorney."

5 **THE COMMISSIONER:** M'hm.

6 **MR. SMITH:** So can I take that back?

7 **THE COMMISSIONER:** Yes.

8 **MR. SMITH:** There was some indication that
9 Murray MacDonald was involved in here somewhere.

10 **THE COMMISSIONER:** M'hm.

11 **MR. SMITH:** Yes, I would have been aware

12 ---

13 **MR. ENGELMANN:** All right.

14 **MR. SMITH:** --- as a result of this.

15 **THE COMMISSIONER:** And at this time you
16 would have known Mr. MacDonald with work in previous cases?

17 **MR. SMITH:** Yes.

18 **MR. ENGELMANN:** And you would have worked
19 with him on a number of cases in the Alfred investigation?

20 **MR. SMITH:** Well, he prosecuted for us. I
21 don't think I had any direct contact with him. There were
22 other officers. But I -- certainly in the past I worked
23 with Mr. MacDonald on homicides and other issues.

24 **MR. ENGELMANN:** So he'd been here since the
25 late '80s as a Crown prosecutor in the Cornwall area?

1 **MR. SMITH:** He was here when I had my first
2 case down here. He was an assistant Crown attorney at the
3 time. Don Johnson was the Crown attorney.

4 **MR. ENGELMANN:** Would that have been in the
5 late '80s, sir?

6 **MR. SMITH:** That would have been 1988 when I
7 came down here, sir.

8 **MR. ENGELMANN:** Fair enough.

9 And, sir, the paragraph we just looked at
10 talks about investigating the lawyers. It doesn't actually
11 talk about investigating their principals; correct?

12 **MR. SMITH:** Of the Diocese?

13 **MR. ENGELMANN:** Yes.

14 **MR. SMITH:** Yes.

15 **MR. ENGELMANN:** But would you agree that
16 that would have been part of your mandate to investigate
17 the Diocese and/or the priests with respect to their
18 involvement in a possible obstruct justice?

19 **MR. SMITH:** I think they're part and parcel
20 of the same thing, sir. It wouldn't be just the two
21 lawyers. What interest would they have? They're
22 representing somebody, and who are they representing? They
23 are representing the priest and the Diocese.

24 **MR. ENGELMANN:** So you took it to mean that
25 you were investigating not just the lawyers but their

1 principals?

2 MR. SMITH: Yes. They may be acting on --
3 the lawyers would be acting on their behalf.

4 MR. ENGELMANN: And you just -- because of
5 the recent exchange with the Commissioner, you knew that at
6 least indirectly you had to look at the involvement of the
7 local Crown attorney?

8 MR. SMITH: Yes, sir.

9 MR. ENGELMANN: But he's not mentioned with
10 respect to the conspiracy issue that you were to look at in
11 paragraph 1?

12 MR. SMITH: No, that involves the Diocese
13 and the Cornwall Police.

14 MR. ENGELMANN: All right.

15 THE COMMISSIONER: So did you at any point,
16 at this early point, think that there may be a conflict if
17 you were looking into Mr. Murray MacDonald's actions in all
18 of this?

19 MR. SMITH: No, sir. If I can say, in my
20 career I was assigned investigations to investigate
21 criminality of my fellow workers and I did it and they were
22 convicted and they went to jail and they lost their jobs.

23 THE COMMISSIONER: M'hm.

24 MR. SMITH: So a criminal is a criminal,
25 sir.

1 **THE COMMISSIONER:** Yes, except there is also
2 the perception -- did you at anytime during your
3 involvement in this matter ever feel that there may be a
4 conflict? You know, I'm not looking at a reflection on
5 your integrity in doing your job. But there is also the
6 perception that we have.

7 **MR. SMITH:** There could be but I wasn't
8 concerned with that.

9 **THE COMMISSIONER:** Okay.

10 **MR. ENGELMANN:** Okay. Did you ever consider
11 Mr. MacDonald as a suspect with respect to this aspect of
12 your investigation?

13 **MR. SMITH:** Yes.

14 **MR. ENGELMANN:** Okay. And that's on the
15 obstruct justice issue?

16 **MR. SMITH:** Yes.

17 **MR. ENGELMANN:** That paragraph, okay.

18 And sir, in the letter it indicates at the
19 second paragraph -- sorry, third paragraph:

20 "Since speaking with you on Friday,
21 January 28th and again today, it's
22 suggested that the mandate of your
23 personnel be expanded."

24 Do you see that, the first page of the
25 letter right where the arrow is?

1 (SHORT PAUSE/COURTE PAUSE)

2 MR. ENGELMANN: You see the note, sir, the
3 front page:

4 "Since speaking with you..."
5 If you look on the screen there's an arrow.

6 MR. SMITH: Oh.

7 MR. ENGELMANN: There is a reference to
8 something being expanded and then the paragraph above
9 there's a reference to earlier correspondence, dated
10 January 28th, '94. Do you see that?

11 MR. SMITH: Well, there is an arrow here,
12 okay.

13 (SHORT PAUSE/COURTE PAUSE)

14 MR. SMITH: Okay, I see that, yes.

15 MR. ENGELMANN: All right.

16 So there is a reference to earlier
17 conversations and an earlier letter and I just want to show
18 you that letter and ask if you've seen that before. It's
19 Exhibit 2517, Madam Clerk.

20 Counsel, it's Document Number 110245.

21 I think we had a fax mark on there but it
22 seems to have been lost on the photocopying. If you could
23 have a brief look at that, Mr. Smith?

24 (SHORT PAUSE/COURTE PAUSE)

25 MR. ENGELMANN: Oh, wrong document, sorry.

1 Yes, I'm sorry, the Document Number is 111001. I
2 apologize.

3 **THE COMMISSIONER:** But it's still Exhibit
4 2517.

5 **MR. ENGELMANN:** It is, yes.

6 **(SHORT PAUSE/COURTE PAUSE)**

7 **MR. SMITH:** I don't recall the letter. I
8 could have got it, but certainly the allegations or the
9 allegations to be investigated and they are part and parcel
10 of what I understand I was to do.

11 **MR. ENGELMANN:** All right.

12 And what Acting Chief Johnston is saying in
13 this -- the earlier letter we looked at, which is actually
14 later in time, is that he's expanding what he wants done,
15 and we've looked at three of the four paragraphs that you
16 were looking into.

17 Just some of the contents of this letter,
18 sir, indicate that the Ottawa Police Service had been
19 involved at the request of Acting Chief Johnston with a
20 view to determining if an inefficient investigation was
21 conducted.

22 **MR. SMITH:** Right.

23 **MR. ENGELMANN:** You were aware that they had
24 just been in to do that?

25 **MR. SMITH:** I was aware. I was aware of

1 that, yes.

2 MR. ENGELMANN: All right.

3 And whether or not any member of the
4 Cornwall Police Service had attempted to conceal the
5 allegations?

6 MR. SMITH: That's correct.

7 MR. ENGELMANN: All right.

8 So whether or not you received this letter
9 at the time you were certainly aware of the contents of the
10 letter?

11 MR. SMITH: M'hm. Later on, yes.

12 MR. ENGELMANN: Okay. Now, sir, would it be
13 fair to say that you understood from the beginning of your
14 mandate that you were also being asked to reinvestigate
15 allegations of sexual assault perpetrated by Father Charles
16 MacDonald?

17 MR. SMITH: Yes, sir.

18 MR. ENGELMANN: Allegations. And that's not
19 specifically included in your notes but you were aware that
20 that was part of what you were to do?

21 MR. SMITH: Yes, sir.

22 MR. ENGELMANN: All right.

23 And sir, just in that vein, if the witness
24 could be shown Exhibit 2519, it's Document Number 111005.

25 Mr. Smith, this is another letter from

1 Acting Chief Johnston to Deputy Commissioner Piers. Do you
2 have that, sir?

3 MR. SMITH: Yes, I do.

4 MR. ENGELMANN: In the second paragraph he's
5 saying:

6 "I would request that your police
7 service reinvestigate the Silmsers
8 matter in its entirety, the results of
9 which will respond to media allegations
10 of a conspiracy..."

11 Et cetera?

12 MR. SMITH: That's correct, yes.

13 MR. ENGELMANN: All right.

14 So clearly, in order to answer those
15 questions that we looked at, it was thought that it was
16 necessary to reinvestigate Mr. Silmsers' allegations in
17 their entirety, vis-à-vis Father MacDonald?

18 MR. SMITH: That's correct.

19 MR. ENGELMANN: Now, in the last line of
20 that letter it says:

21 "Your investigation will also make a
22 determination if the priest can or
23 should be prosecuted given the civil
24 settlement to Silmsers and his refusal
25 to testify."

1 **MR. SMITH:** Yes, sir.

2 **MR. ENGELMANN:** Okay. Were you advised at
3 that time as to why Mr. Silmsler had refused to testify or
4 some of the reasons behind that?

5 **MR. SMITH:** I don't think I was aware at
6 that time.

7 **MR. ENGELMANN:** All right. So that was
8 something that you were going to be looking into as part of
9 your investigation?

10 **MR. SMITH:** Yes.

11 **MR. ENGELMANN:** Now, sir, we've set out your
12 mandate as you understood it ---

13 **MR. SMITH:** Yes.

14 **MR. ENGELMANN:** --- from your notes and also
15 from the letter which set out three or four paragraphs
16 questions you were to answer?

17 **MR. SMITH:** That's correct.

18 **MR. ENGELMANN:** I'm wondering what you
19 thought you were to do if you came across evidence of
20 related criminal activity that might not have been included
21 in this mandate? And perhaps I can just give you an
22 example, if I could.

23 What if you discovered that there was
24 another institution that might have been involved in a
25 conspiracy; for example, the Ministry of Corrections, if

1 you'd come across some involvement on their part with the
2 Cornwall Police and the Diocese. Would you have considered
3 that to be part of your mandate?

4 **MR. SMITH:** In regard to this allegation?

5 **MR. ENGELMANN:** Yes.

6 **MR. SMITH:** I thought that this mandate was
7 quite explicit and it was one issue only, not involving
8 other ministries or anybody else.

9 **MR. ENGELMANN:** So you didn't see the fact
10 that Mr. Silmsler had made an allegation against Mr. Seguin
11 and perhaps some involvement there as being something that
12 you were being asked to look at? Mr. Seguin was dead at
13 this point in time.

14 **MR. SMITH:** I wasn't -- I wasn't aware of an
15 investigation for me to conduct of Mr. Seguin.

16 **MR. ENGELMANN:** Okay.

17 **MR. SMITH:** For me.

18 **MR. ENGELMANN:** Sir, if you found out there
19 was another lawyer involved in bringing about an illegal
20 settlement?

21 **MR. SMITH:** Yes.

22 **MR. ENGELMANN:** You did look at three
23 lawyers, not just two, or you interviewed three in any
24 event?

25 **MR. SMITH:** Well, like four including the

1 Crown attorney.

2 MR. ENGELMANN: Yes, fair enough. So that
3 was something that if you had uncovered further criminal
4 activity you would have considered part of your mandate?

5 MR. SMITH: Well, yes, because that related
6 to the settlement.

7 MR. ENGELMANN: To the obstruct justice and
8 the settlement?

9 MR. SMITH: Yes.

10 MR. ENGELMANN: All right.

11 So anything that might have caused an
12 illegal settlement to have been brought about, you would
13 have considered part of your mandate?

14 MR. SMITH: In the Silmser ---

15 MR. ENGELMANN: Yes.

16 MR. SMITH: Yes, sir.

17 MR. ENGELMANN: And again, if you had
18 discovered evidence that the clients had instructed the
19 lawyers to agree to pay money to end criminal proceedings
20 you weren't just looking at the lawyers, you were also
21 looking at the clients?

22 MR. SMITH: Oh, I had looked at all the
23 circumstances surrounding that, yes, sir.

24 MR. ENGELMANN: All right.

25 MR. SMITH: And the parties involved.

1 **MR. ENGELMANN:** So sir, if we can go back to
2 your notes, Exhibit 1803, the second page in and it's Bates
3 page 213.

4 **(SHORT PAUSE/COURTE PAUSE)**

5 **MR. ENGELMANN:** Your notes indicate that you
6 would have met with Acting Chief Johnston on February 7th,
7 '94?

8 **MR. SMITH:** That's correct.

9 **MR. ENGELMANN:** So almost immediately after
10 being assigned?

11 **MR. SMITH:** Yes, sir.

12 **MR. ENGELMANN:** And you also met with Staff
13 Sergeant Luc Brunet?

14 **MR. SMITH:** That's correct.

15 **MR. ENGELMANN:** And he would have been the
16 head of their CIB unit at the time?

17 **MR. SMITH:** Yes, he was.

18 **MR. ENGELMANN:** And he would have been in
19 charge of the officer who had investigated the Silmser
20 matter for the Cornwall police?

21 **MR. SMITH:** That's correct.

22 **MR. ENGELMANN:** All right.

23 And sir, the issues that are set out in
24 these letters would have been the subject of some
25 discussion; in other words, your mandate?

1 **MR. SMITH:** Yes, sir.

2 **MR. ENGELMANN:** Do you know if the
3 Laurencrest issue was raised at that time, the one that was
4 set out in one of those letters?

5 **MR. SMITH:** I don't recall.

6 **MR. ENGELMANN:** All right.

7 And do you know if there was any discussion
8 about another case at that time, a case involving an
9 alleged victim by the name of Jeannette Antoine?

10 **MR. SMITH:** Not at that time. Later on that
11 name came to my attention but not in the initial stages.

12 **MR. ENGELMANN:** All right.

13 I believe you had a meeting later on -- it's
14 referenced in your notes -- with an officer by the name of
15 Shawn White?

16 **MR. SMITH:** Yes.

17 **MR. ENGELMANN:** Perhaps that is when that
18 came up?

19 **MR. SMITH:** That name is familiar. It could
20 be, yes.

21 **MR. ENGELMANN:** All right.

22 Now, sir, this would have just been a
23 preliminary meeting presumably? You don't have real notes
24 other than the fact that the meeting took place?

25 **MR. SMITH:** No, as I recall I got a bit of a

1 background of their investigation. I asked for some notes
2 and documentation of what they had done so far. I think I
3 had a copy of the Ottawa Police investigation and it was
4 just an initial start to my investigation to get a grip on
5 what was going on and what had happened.

6 **MR. ENGELMANN:** All right.

7 And did they actually turn over documents to
8 you at that time?

9 **MR. SMITH:** Yes, I believe they did.

10 **MR. ENGELMANN:** Do you recall if anything
11 was told to you right there at the initial meeting about
12 the involvement of an officer by the name of Perry Dunlop?

13 **MR. SMITH:** I believe there may have been.
14 I can't recall but I -- I can't say for sure.

15 **MR. ENGELMANN:** Okay. Sir, I note the time.

16 **THE COMMISSIONER:** Yes, and I think it is
17 time. Thank you.

18 Let's take a moment to reflect on really the
19 immense contribution our men and women have and continue to
20 make to keep our community, our country, our allies in the
21 world a safe and free place.

22 So let's take time. Thank you.

23 **(SHORT PAUSE/COURTE PAUSE)**

24 **THE COMMISSIONER:** Thank you. Take the
25 morning break now.

1 **THE REGISTRAR:** Order; all rise. À l'ordre;
2 veuillez vous lever.

3 This hearing will resume at 11:15.

4 --- Upon recessing at 11:02 a.m. /

5 L'audience est suspendue à 11h02

6 --- Upon resuming at 11:19 a.m. /

7 L'audience est reprise à 11h19

8 **THE REGISTRAR:** Order; all rise. À l'ordre;
9 veuillez vous lever.

10 This hearing is now resumed. Please be
11 seated. Veuillez vous asseoir.

12 **THE COMMISSIONER:** Go ahead, sir.

13 **TIMOTHY SMITH, Resumed/ Sous le même serment:**

14 --- **EXAMINATION IN-CHIEF BY/INTERROGATOIRE EN-CHEF PAR MR.**
15 **ENGELMANN (cont'd/suite):**

16 **MR. ENGELMANN:** Mr. Smith, when we left off
17 we were looking at Exhibit 1803, your notes from the 1994
18 investigations, and I was asking you a couple of questions
19 about the preliminary meetings you had with Acting Chief
20 Johnston and Staff Sergeant Brunet. And sir, I again
21 realize that the notes are very limited. They just talk
22 about the fact that there was a meeting. I'm just trying
23 to get some information about some of the things you might
24 have been told right at the start of this investigation.

25 So for example, part of the investigation

1 was to look at issues that had arisen as a result of media
2 coverage, recent media coverage, and I'm wondering if some
3 of that would have been provided to you in those initial
4 meetings, some of the media clippings or there would have
5 been some discussion by the police about the media
6 coverage.

7 If you don't remember that's fine, sir.

8 **MR. SMITH:** I can't remember.

9 **MR. ENGELMANN:** All right, fair enough.

10 Do you know, sir, if at the initial meeting
11 whether there would have been any discussion by either of
12 these police officers, the Cornwall police officers, about
13 the role that the CAS was currently playing?

14 **MR. SMITH:** I can't remember.

15 **MR. ENGELMANN:** Okay.

16 You did become aware though, presumably
17 shortly after you started investigation that the CAS were
18 doing an investigation that they had called a Project Blue?

19 **MR. SMITH:** Subsequently, yes, I heard word
20 of that, yes.

21 **MR. ENGELMANN:** All right. And sir, at/or
22 about the time you started your investigation, it's my
23 understanding that the OPP issued a press release
24 announcing the fact that you were going to be
25 investigating. Were you aware of that at the time, sir?

1 Perhaps I can show you the document ---

2 **MR. SMITH:** That would help, yeah. I'm ---

3 **MR. ENGELMANN:** --- that might help.

4 **MR. SMITH:** --- I didn't initiate it, I know
5 that.

6 **MR. ENGELMANN:** Madam Clerk, it is Document
7 Number 733165; it is a news release communiqué dated 2nd
8 February '94, contact name is Detective Superintendent W.C.
9 Fréchette; the caption is "New Investigation into
10 Allegations of Sexual Assault."

11 I'm wondering if that could be the next
12 exhibit, sir?

13 **THE COMMISSIONER:** It certainly can.
14 Exhibit 2559 ---

15 **MR. ENGELMANN:** Thank you.

16 **THE COMMISSIONER:** --- is a news release
17 communiqué dated the 2nd of February 1994.

18 ---EXHIBIT NO./PIÈCE NO P-2559:

19 (733165) - News Release 'New Investigation
20 into Allegations of Sexual Assault' dated 02
21 Feb 94

22 **MR. ENGELMANN:** Would you have seen this
23 at/or about that time, sir?

24 **MR. SMITH:** I don't recall but more than
25 likely.

1 **MR. ENGELMANN:** Yeah. It's not as expansive
2 as the mandate that you've just described for us. Is that
3 fair?

4 **MR. SMITH:** No. No.

5 **MR. ENGELMANN:** Would you have had some
6 input or involvement in the drafting of the press release?

7 **MR. SMITH:** Not in this, no.

8 **MR. ENGELMANN:** So to your knowledge, you
9 had no input into this wording at all, sir?

10 **MR. SMITH:** No, sir.

11 **MR. ENGELMANN:** All right. So you couldn't
12 tell us why it simply refers to the reinvestigation of the
13 allegations against Father Charles MacDonald and not the
14 other issues that you were tasked to investigate?

15 **MR. SMITH:** No, I can't, sir.

16 **MR. ENGELMANN:** Okay. Do you know if there
17 would have been a subsequent press release issued shortly
18 thereafter that would have expanded upon your mandate?

19 **MR. SMITH:** I can't remember. I don't know.

20 **MR. ENGELMANN:** Okay. If there had been,
21 presumably, you would have been involved?

22 **MR. SMITH:** Yeah -- well no. Quite often
23 what would happen is that news releases would be made from
24 our director or the media relations people and a copy would
25 be sent to me.

1 So I would more than likely get this copy
2 but I can't remember.

3 **MR. ENGELMANN:** Sir, would you have -- what
4 you've just described, would you typically get a draft and
5 be asked to comment before it's then actually sent out to
6 the press if it's your investigation?

7 **MR. SMITH:** If it's involved the results of
8 an investigation, yes; but something of this nature, no,
9 not necessarily. I wouldn't ---

10 **MR. ENGELMANN:** What about reporting during
11 the course of an investigation where you're the case
12 manager?

13 **MR. SMITH:** I would have input.

14 **MR. ENGELMANN:** All right.

15 Let's talk briefly then about staffing for
16 the investigations.

17 **MR. SMITH:** M'hm.

18 **MR. ENGELMANN:** It's my understanding -- and
19 let's just talk about your investigation, not the
20 concurrent one which we'll come to in a minute.

21 But with respect to your investigation,
22 we've talked about the mandate now. You were assigned one
23 officer to assist you. Is that correct?

24 **MR. SMITH:** I asked for one officer, yes.

25 **MR. ENGELMANN:** All right. And did you ask

1 for the officer by name?

2 MR. SMITH: Yes, I did.

3 MR. ENGELMANN: All right. And you had
4 worked with that officer before or he was known to you?

5 MR. SMITH: For three years, I'd worked with
6 him on Alfred.

7 MR. ENGELMANN: All right. And that
8 officer's name is Michael Fagan?

9 MR. SMITH: That's correct.

10 MR. ENGELMANN: And he was a detective
11 constable with the OPP?

12 MR. SMITH: That's correct.

13 MR. ENGELMANN: And where was he from?

14 MR. SMITH: Ottawa; Bell's Corners, I
15 believe.

16 MR. ENGELMANN: And did Constable Fagan
17 continue to have some Alfred responsibilities during the
18 course of the time he worked with you on these
19 reinvestigations?

20 MR. SMITH: He may have but I think they
21 were minimal at that point.

22 MR. ENGELMANN: All right. And was that
23 your call to simply ask for one officer or was that what
24 you were told you were going to get?

25 MR. SMITH: It was my call because when I

1 looked at the mandate and I thought I was going to be
2 involved -- usually I don't get hands-on involved, but I
3 was going to get hands-on involved in this.

4 So -- and for that reason -- I was dealing
5 with the chief of police, the Crown attorney, the Bishop,
6 lawyers; rather than send a constable to deal with them, I
7 thought that somebody with maybe a bit more experience and
8 a higher rank protocol would be appropriate.

9 And Mike -- Constable Ha -- Constable Fagan
10 could work on the sexual assault issue. He had quite a bit
11 of experience on that with Alfred.

12 **MR. ENGELMANN:** So ---

13 **MR. SMITH:** He ---

14 **MR. ENGELMANN:** --- he would -- sorry?

15 **MR. SMITH:** If anywhere along I required
16 more personnel then I would get them.

17 **MR. ENGELMANN:** All right. And did you ever
18 think during the course of this investigation, during the
19 calendar year 1994 that you required additional help?

20 **MR. SMITH:** Well, I was using additional
21 help from the other investigation that was ongoing at the
22 same time that was parallel to mine with Constable
23 Hamelink. And we used his investigators along with Mike to
24 conduct parallel interviews.

25 And there was a two-fold for that is that

1 okay that many of the people that we were going to
2 interview we have an interest in both for our
3 investigations and secondly, it would be an opportunity for
4 us to be aware of each other's investigation as it
5 proceeded.

6 **MR. ENGELMANN:** All right. I did note when
7 I was looking at some of the interviews you had that six or
8 seven perhaps were done by Constable Fagan with another
9 constable by the name of McDonell?

10 **MR. SMITH:** That's correct.

11 **MR. ENGELMANN:** Is that what you mean by ---

12 **MR. SMITH:** Yes.

13 **MR. ENGELMANN:** --- additional resources?

14 **MR. SMITH:** I believe Genier was in some of
15 those too. I -- yes.

16 **MR. ENGELMANN:** Okay. And Constable
17 McDonell, he was assigned to work with a colleague of yours
18 by the name of Fred Hamelink ---

19 **MR. SMITH:** That's correct.

20 **MR. ENGELMANN:** --- on a concurrent
21 investigation?

22 **MR. SMITH:** Yes, involving Silmser also.

23 **MR. ENGELMANN:** Involving Mr. Silmser?

24 **MR. SMITH:** Yes, yeah.

25 **MR. ENGELMANN:** Okay. And you -- if I

1 understood your answer, thought that one officer would be
2 sufficient because you were going to be taking an
3 investigative role, not simply a case management role, at
4 least with part of your investigation?

5 **MR. SMITH:** I would take pretty well the
6 major part of the conspiracy and the settlement.

7 **MR. ENGELMANN:** So both the conspiracy and
8 the obstruct justice aspects?

9 **MR. SMITH:** Yes, sir.

10 **MR. ENGELMANN:** And you had worked with
11 Constable Fagan on some of the Alfred investigations? Had
12 that been your total experience with him?

13 **MR. SMITH:** I knew of his background prior
14 to that. In Ottawa, he'd been an investigator. And he
15 came on our team with Alfred and I think he came out in
16 '91. And he was there approximately three years. And went
17 through the trials, the brief preparations and worked
18 closely with the Crown attorneys.

19 **MR. ENGELMANN:** All right. And so you would
20 have been knowledgeable about his experience?

21 **MR. SMITH:** Yes.

22 **MR. ENGELMANN:** What about his training and
23 educational opportunities?

24 **MR. SMITH:** Maybe not a lot, but I knew that
25 -- I saw his work with us over three years. And he

1 wouldn't be a detective unless he was capable.

2 **MR. ENGELMANN:** All right. And did you have
3 opportunities to observe him relating to victims or alleged
4 victims of sexual assault?

5 **MR. SMITH:** Well, that was one of the main
6 reasons I got him. We had two or three fairly difficult
7 victims since -- in St. Joseph's during the trials and
8 during the investigation. And Constable Fagan particularly
9 handled it very well. He had a knack of getting along with
10 people.

11 And when I brought him on this
12 investigation, I was made aware of some of the difficulties
13 that were encountered with Mr. Silmsler, typical victim.
14 And I thought that Haze would be -- Mike, I keep saying,
15 Fagan ---

16 **MR. ENGELMANN:** That's fine, Mr. Fagan.

17 **MR. SMITH:** Yeah, Mr. Fagan would be a good
18 candidate assisting in this investigation.

19 **MR. ENGELMANN:** Okay. So you were confident
20 that he was comfortable dealing with victims of child
21 sexual abuse?

22 **MR. SMITH:** Very much so.

23 **MR. ENGELMANN:** And he'd dealt with some
24 difficult victims in the past?

25 **MR. SMITH:** He had, yes.

1 **MR. ENGELMANN:** All right. And as I
2 understood your explanation as well, you were to deal with
3 the sort of high-ranking people that might have been
4 involved; some of the lawyers, the Bishop?

5 **MR. SMITH:** I would conduct the interviews
6 of those and I would be the lead.

7 **MR. ENGELMANN:** And he would be dealing with
8 Mr. Silmsen and/or potentially other victims or alleged
9 victims?

10 **MR. SMITH:** Yes.

11 **MR. ENGELMANN:** All right. And you worked
12 with him for several months on this project?

13 **MR. SMITH:** Yes. If I might add, one thing
14 that we learned about sexual abuse was that you can't rush
15 things, especially in male victims.

16 **MR. ENGELMANN:** Yes.

17 **MR. SMITH:** They're slow to disclose. And I
18 didn't want any real deadline put on us because we found in
19 the past that if we rushed and put everything together and
20 put it before the courts in a short period of time,
21 invariably more would come forward when we were in the
22 middle of a preliminary hearing, and it caused disclosure
23 problems, it caused us all types of difficulties.

24 In some cases, we went with two victims or
25 only one victim, the case was dismissed, and afterwards

1 more victims came forward against the same suspect which
2 would have made a stronger case and possibly a conviction
3 of the suspect.

4 So for that reason, I wanted to go slowly on
5 the sexual assault end of it and because I knew there were
6 more victims out there.

7 **MR. ENGELMANN:** All right.

8 **THE COMMISSIONER:** So you were permitted to
9 run your investigation and take the time that it took with
10 no deadlines?

11 **MR. SMITH:** That's what I wanted to do, yes.
12 And my superiors were, I think, comfortable with that
13 because I'd had experience in it.

14 **MR. ENGELMANN:** So you wanted to try and
15 uncover as many of these victims as possible before
16 proceeding with charges and court cases ---

17 **MR. SMITH:** Yes.

18 **MR. ENGELMANN:** --- and problems that might
19 result if things came up later?

20 **MR. SMITH:** Yes.

21 **MR. ENGELMANN:** All right.

22 And, sir, can you just give us a sense, were
23 you satisfied with the work that Constable Fagan did for
24 you during the course of this 9 or 10 month investigation?

25 **MR. SMITH:** Yes, I -- we all have

1 shortcomings. Constable Fagan's statements that he had
2 taken are short but to the point. There's not a lot of
3 extra in them. But I had no complaints from the Crown
4 Attorneys that he had worked with. And his other
5 attributes, as far as I'm concerned, far outshone the
6 ability to take a lengthy statement.

7 **MR. ENGELMANN:** So the only concern you had
8 during the course of these 9 or 10 months with his work was
9 some of the statement-taking?

10 **MR. SMITH:** He could have been -- he could
11 have taken a bit more with a bit more detail.

12 **MR. ENGELMANN:** Okay.

13 **MR. SMITH:** But I can live with that.

14 **MR. ENGELMANN:** All right. Well, you didn't
15 -- did you request his assistance later on in helping you
16 with what we'll come to a bit later known as Project Truth?

17 **MR. SMITH:** No.

18 **MR. ENGELMANN:** Why was that, sir?

19 **MR. SMITH:** At that point, he was getting
20 another position in gaming. When you deal with long-term
21 investigations involving sexual assaults it has a tendency
22 to burn you out.

23 **MR. ENGELMANN:** Sorry?

24 **MR. SMITH:** To burn you out.

25 **MR. ENGELMANN:** Yes.

1 **MR. SMITH:** And I didn't realize at the time
2 but -- pardon me.

3 **THE COMMISSIONER:** It's okay. Would you
4 like a break, sir?

5 **MR. SMITH:** Yes, please.

6 **THE COMMISSIONER:** Thank you.
7 We'll take a short break.

8 **THE REGISTRAR:** Order; all rise. À l'ordre;
9 veuillez vous lever.

10 This hearing will resume at 11:45 a.m.

11 --- Upon recessing at 11:35 a.m./

12 L'audience est suspendue à 11h35

13 --- Upon resuming at 11:46 a.m./

14 L'audience est reprise à 11h46

15 **THE REGISTRAR:** Order; all rise. À l'ordre;
16 veuillez vous lever.

17 This hearing is now resumed. Please be
18 seated. Veuillez vous asseoir.

19 **THE COMMISSIONER:** Thank you.

20 **TIM SMITH, Resumed/Sous le même serment:**

21 ---**EXAMINATION IN-CHIEF BY/INTERROGATOIRE EN-CHEF PAR MR.**

22 **ENGELMANN (Cont'd/Suite):**

23 **MR. SMITH:** I'd like to apologize. I'm
24 sorry.

25 **THE COMMISSIONER:** Oh, no, sir, you need not

1 apologize, not at all.

2 MR. SMITH: If I might, you brought up how
3 we pick our people, and what I found over a number of years
4 is that it's -- you can only do this type of investigation
5 in short periods of time because it does affect you. I've
6 had to send some of my men home because it affects them.
7 It didn't affect me when I was working, but it does now.

8 We had secretaries who couldn't type the
9 statements or couldn't type the transcripts. They'd break
10 down. They were tough investigations. And I've seen
11 everything in the world, I've seen every crime you can
12 think of and murders and awful things. These are harder.
13 These are tough.

14 MR. ENGELMANN: When you talk about "these",
15 you're talking about the abuse of children ---

16 MR. SMITH: Yes.

17 MR. ENGELMANN: --- and the sexual abuse of
18 children?

19 MR. SMITH: And even when they're adults
20 when you see the affect of it, it rips you. I'll get into
21 it later but for now that's okay. I think we can go on.

22 MR. ENGELMANN: Yes, absolutely.

23 THE COMMISSIONER: I think we all, having
24 been here for a little while now, understand a bit -- a bit
25 -- what you're ---

1 **MR. SMITH:** None of you will be the same
2 after this, I'll tell you that right now. You'll look at
3 things differently at the end of this Inquiry.

4 So we were talking about Mike Fagan.

5 **THE COMMISSIONER:** M'hm.

6 **MR. SMITH:** Mike had been with me for three
7 years. We talked about his strengths, perhaps the weakness
8 of the length of his interviews and statements. The reason
9 I didn't bring him on Project Truth is that I could see
10 those signs with Mike. I think his interest had waned and
11 I don't blame him one bit and it was time that he moved on.
12 He would stay with Father Charlie with the prosecution, but
13 he wouldn't come on on Project Truth.

14 **MR. ENGELMANN:** We had some contextual
15 evidence early on and we had some experts talk to us about
16 -- I think they used the term "vicarious trauma" -- that
17 some of the people working for police or other public
18 institutions dealing with child sexual abuse can suffer
19 from.

20 **MR. SMITH:** Well, we're not quite as tough
21 as we think we are.

22 **MR. ENGELMANN:** Well, it certainly has had
23 an impact on a lot of people.

24 So, sir, if you do need a break at any time,
25 you just ask.

1 **MR. SMITH:** Well, I hope not.

2 **MR. ENGELMANN:** Okay. It's no problem.

3 It's no problem.

4 **THE COMMISSIONER:** But one thing we have
5 learned, sir, that it's okay to take breaks. It's okay.

6 **MR. SMITH:** Thanks.

7 **MR. ENGELMANN:** All right. Let's switch
8 tracks a bit. Let's talk about this other investigation,
9 if we can.

10 You told us that there was a concurrent
11 investigation and I believe it was headed up by a fellow
12 officer by the name of Hamelink?

13 **MR. SMITH:** That's correct.

14 **MR. ENGELMANN:** And would he have been of a
15 similar rank to you, sir, at the time?

16 **MR. SMITH:** He was.

17 **MR. ENGELMANN:** All right.

18 **MR. SMITH:** Detective Inspector, yes.

19 **MR. ENGELMANN:** All right. And he had the
20 assistance of an officer by the name of Chris McDonell and
21 perhaps others, but ---

22 **MR. SMITH:** Yes, and ---

23 **MR. ENGELMANN:** --- were you aware of his
24 staff complement?

25 **MR. SMITH:** I thought that he had two. I

1 thought he had Genier and McDonell.

2 MR. ENGELMANN: All right. And apparently
3 he was assigned his investigation the same day you were
4 assigned yours?

5 MR. SMITH: I believe so, yes.

6 MR. ENGELMANN: And that probably would have
7 come from above as well, from Detective Superintendent
8 Frechette?

9 MR. SMITH: Yes.

10 MR. ENGELMANN: All right. And would you
11 have known at the outset of your investigation what the
12 mandate of Detective Inspector Hamelink's investigation
13 was?

14 MR. SMITH: I didn't see it in writing but
15 my understanding was that it was the alleged extortion
16 involving David Silmser and Mr. Seguin.

17 MR. ENGELMANN: All right. So if I can just
18 -- maybe just in a general sense, in your investigation
19 clearly David Silmser would have been considered an alleged
20 victim?

21 MR. SMITH: Yes.

22 MR. ENGELMANN: And in the other one he was
23 an alleged or he was a suspect?

24 MR. SMITH: My understanding was that, yes.

25 MR. ENGELMANN: All right.

1 Now, did this raise any concerns for you,
2 the fact that these concurrent investigations were going
3 on; in the one case he's a suspect, in the other case he's
4 an alleged victim?

5 **MR. SMITH:** Yes, they did.

6 **MR. ENGELMANN:** All right. I know you
7 didn't set those two investigations out, but because of
8 those concerns that you had, did you have some ground rules
9 from the start, from the get-go as to how you and Inspector
10 Hamelink would be corresponding throughout?

11 **MR. SMITH:** Yes, we met with Peter
12 Griffiths, the Regional Director of Crown Attorneys, and
13 I've got notes here.

14 **MR. ENGELMANN:** Yeah, I believe that's in
15 your notes, sir.

16 **MR. SMITH:** Yeah.

17 **MR. ENGELMANN:** And if you want to take a
18 look, again, you'll have to go back to 1803 if you still
19 have that?

20 **MR. SMITH:** Yes, I do.

21 **THE COMMISSIONER:** Yes, he does.

22 **MR. ENGELMANN:** And I believe it's Bates
23 page 214. It would be the third page in.

24 **MR. SMITH:** Yes. Yes, I have -- on the 10th
25 of February.

1 **MR. ENGELMANN:** I'm sorry?

2 **MR. SMITH:** 10th of February?

3 **MR. ENGELMANN:** Yes.

4 **MR. SMITH:** 1994?

5 **MR. ENGELMANN:** All right.

6 So just before that there's a reference, and
7 I'm looking at your notes, on I believe it's the 8th of
8 February right next to -- and I'm not sure of the time
9 that's listed there. It's hard for me to read, but it says
10 -- I think it's 1300 perhaps. It's right where the arrow
11 is on the screen.

12 **MR. SMITH:** Yes, that would be 1300, yes.

13 **MR. ENGELMANN:** All right.

14 So before you meet with Peter Griffiths it
15 appears you have a meeting with Fred Hamelink.

16 **MR. SMITH:** Yes, I do.

17 **MR. ENGELMANN:** And your note says:

18 "Obtain further info re investigation
19 Ottawa intelligence branch."

20 **MR. SMITH:** Yes.

21 **MR. ENGELMANN:** So what did you -- do you
22 have some -- that would have been your -- would that have
23 been your first meeting with Detective Inspector Hamelink?

24 **MR. SMITH:** I believe it was.

25 **MR. ENGELMANN:** All right.

1 And at that time this is presumably -- is
2 this just the two of you? This is before you meet with
3 Peter Griffiths?

4 **MR. SMITH:** Yes, I think so. Yes.

5 **MR. ENGELMANN:** All right.

6 So you would have had some exchange of
7 information as to what your respective mandates were?

8 **MR. SMITH:** Yes, we talked to each other
9 about what we're doing and what he had to do and what I had
10 to do.

11 **MR. ENGELMANN:** All right.

12 **MR. SMITH:** And it appeared that -- and I
13 recall it vividly -- is that the way the investigation goes
14 is that we're going to trip over each other. We are going
15 to have common people that we'll have an interest in, so
16 ---

17 **MR. ENGELMANN:** How were you going to
18 approach that then if you had common people that you had
19 interest in?

20 **MR. SMITH:** Well, my suggestion to him was
21 that, "Let me proceed with Mr. Silmser as a victim first.
22 Don't approach him as a suspect or we're liable to lose
23 everything."

24 **MR. ENGELMANN:** Right.

25 **MR. SMITH:** And so if he can work around Mr.

1 Silmser and let me continue my investigation with him to
2 such a point as that I'm satisfied that we've got as much
3 as we can and that then I would let him know and he could
4 proceed with Mr. Silmser, and then when we had -- our
5 investigation was complete, the two of us would get
6 together, compare our notes completely, see what we've got
7 and then go to Mr. Griffiths with our Crown briefs for his
8 recommendations.

9 MR. ENGELMANN: All right.

10 And is this some of what would have been
11 discussed with Peter Griffiths on the 10th?

12 MR. SMITH: Yes.

13 MR. ENGELMANN: And that was your
14 understanding as to how this was going to happen?

15 MR. SMITH: Yes, yes.

16 MR. ENGELMANN: All right.

17 And would his investigation be put on hold
18 until a part of your investigation was done or was it just
19 those aspects dealing with Mr. Silmser and/or other alleged
20 victims?

21 MR. SMITH: Just Mr. Silmser.

22 MR. ENGELMANN: All right.

23 MR. SMITH: And again, leave Mr. Silmser
24 alone until we can get him all finished as a victim.

25 MR. ENGELMANN: All right.

1 And presumably there would have to be
2 meetings at which you would discuss your progress?

3 **MR. SMITH:** Periodically, yes. See, maybe I
4 haven't expressed what was going on.

5 I had a number of other cases on the go
6 also.

7 **MR. ENGELMANN:** Yeah.

8 **MR. SMITH:** And so did Mr. Hamelink. So we
9 would cross each other's paths on an ongoing basis, maybe
10 every month or so. But the idea that I had was that if I
11 had one of his investigators helping -- Fagan -- then we
12 would have an exchange of information ongoing all the time
13 because Fagan could fill me in and also his investigator
14 could fill Fred in if we didn't see each other -- or
15 Hamelink.

16 **MR. ENGELMANN:** All right.

17 Well, certainly you would be filled in on
18 joint investigations that would happen; correct? If
19 Constable Fagan was working with one of Mr. Hamelink's
20 investigators you would get that feedback?

21 **MR. SMITH:** Oh, yes, from ---

22 **MR. ENGELMANN:** What about people they were
23 seeing that Constable Fagan would not have been involved
24 with?

25 **MR. SMITH:** We may have missed those.

1 **MR. ENGELMANN:** Okay. And what if anything
2 did you set up at the beginning to try and ensure that the
3 ones that they were seeing that might have been relevant to
4 the three aspects of your mandate were getting to you?

5 **MR. SMITH:** Well, anything that they came
6 across they had Father Charlie on it, I wanted.

7 **MR. ENGELMANN:** M'hm.

8 **MR. SMITH:** And their investigators would be
9 aware of that.

10 **MR. ENGELMANN:** Okay.

11 **MR. SMITH:** Yeah.

12 **MR. ENGELMANN:** And that would capture
13 conspiracy, obstruct and ---

14 **MR. SMITH:** Hopefully, yes. Hopefully.

15 **MR. ENGELMANN:** All right.

16 And that would have been discussed
17 presumably when you met with Fred Hamelink on the 8th?

18 **MR. SMITH:** Yes, and furthermore with Mr.
19 Griffiths. I think there's -- there may be even a note on
20 that.

21 **MR. ENGELMANN:** Yeah, well, what we have
22 about Mr. Griffiths, I think -- and you can help us out
23 here with your notes, but if we look a little further down
24 on the page:

25 "Discuss method of interview with

1 Silmsers and whether he should be
2 cautioned re possible extortion. Don't
3 know if what he alleged to do with
4 Seguin is extortion per *Criminal Code*."

5 MR. SMITH: Yes.

6 MR. ENGELMANN: Okay:

7 "Peter Griffiths to research and
8 advise."

9 MR. SMITH: Yeah.

10 MR. ENGELMANN: "He will..."

11 MR. SMITH: "...know next Tuesday or
12 Wednesday."

13 MR. ENGELMANN: All right, okay.

14 So there is this issue about presumably an
15 interview with Silmsers where there may be issues with him
16 as a victim and also perhaps some questions put to him as a
17 suspect?

18 MR. SMITH: Yes.

19 MR. ENGELMANN: All right.

20 And you yourself have said you have to be
21 very careful dealing with victims ---

22 MR. SMITH: Yes.

23 MR. ENGELMANN: --- or alleged victims of
24 sexual abuse ---

25 MR. SMITH: Oh, definitely.

1 MR. ENGELMANN: --- at the best of times.

2 MR. SMITH: Yeah, definitely.

3 MR. ENGELMANN: And so there'd be even more
4 of a concern if you were prodding about possible criminal
5 activity on ---

6 MR. SMITH: Yes, sir.

7 MR. ENGELMANN: --- this person's part?

8 MR. SMITH: Yes, sir.

9 MR. ENGELMANN: All right.

10 So did you get some feedback on that issue
11 about whether he should be cautioned and whether you were
12 going to ask some questions about the extortion issue when
13 you met with him?

14 MR. SMITH: I don't recall. I can't
15 remember if there was or not.

16 MR. ENGELMANN: All right.

17 MR. SMITH: I know when I did interview Mr.
18 Silmsen I did not caution him. I interviewed him as a
19 victim but within that statement that we took from -- or
20 the interview, we did address what appeared to be the
21 extortion. And what I wanted to know was if he got into it
22 I'd have to stop him and caution him. And there was a
23 caution with him in regard to what went on and I didn't see
24 anywhere where I had to caution him.

25 MR. ENGELMANN: You didn't see extortion in

1 a criminal sense at the time?

2 MR. SMITH: No, no.

3 MR. ENGELMANN: All right.

4 MR. SMITH: But he had not been really
5 questioned on it. It was just in passing and that was at
6 the request of Inspector Hamelink. He said, "If I'm going
7 to interview in the early stages then can you see what's
8 going on and if you get the opportunity would you put this
9 question to him?"

10 MR. ENGELMANN: All right.

11 So there was some question that you probe
12 but not too deep ---

13 MR. SMITH: Exactly.

14 MR. ENGELMANN: --- with respect to that
15 issue?

16 MR. SMITH: It's within the statement there
17 somewhere I think.

18 MR. ENGELMANN: Yeah.

19 MR. SMITH: Yeah.

20 MR. ENGELMANN: And we have that, that
21 statement.

22 So did you at least at this initial stage
23 make some decisions about individuals where there should be
24 an investigator from each team on the actual interview, or
25 was that something that just happened by chance later?

1 **MR. SMITH:** We agreed that we could share
2 them. In particular, we had to go down, I know, to New
3 Brunswick. Fagan had to go to New Brunswick to interview
4 one victim and then another one in Maine. And there was a
5 common interest also with the extortion and he and McDonell
6 went down and did those interviews together.

7 And I think there were some other interviews
8 that they were -- I know there were other interviews that
9 they did together.

10 **MR. ENGELMANN:** All right. So you went ---

11 **MR. SMITH:** Basically, I didn't want Fagan
12 to do an interview alone. I wanted another officer
13 present.

14 **MR. ENGELMANN:** So if you couldn't be with
15 him, the next available officer might be another officer
16 from Hamelink's team?

17 **MR. SMITH:** Yes.

18 **THE COMMISSIONER:** I'm sorry, and why didn't
19 you want Fagan to go in alone?

20 **MR. SMITH:** I prefer, sir, to have two
21 officers do interviews.

22 **THE COMMISSIONER:** Okay. So it's not
23 anything related to Fagan personally?

24 **MR. SMITH:** No, no.

25 **THE COMMISSIONER:** Just in having two.

1 **MR. SMITH:** It's good practice to have two
2 officers present.

3 **THE COMMISSIONER:** It certainly is.

4 **MR. SMITH:** M'hm.

5 **MR. ENGELMANN:** And you had some form of
6 unwritten agreement that if you had interviews that were
7 relevant to his investigation or vice versa that they would
8 be sharing at some point?

9 **MR. SMITH:** Yes, and that would be when we
10 neared the end of our investigation, that we would get
11 together and compare notes what we had to see if I had
12 anything that would apply to him or vice versa and then
13 together we would go with our briefs to Mr. Griffiths for a
14 recommendation.

15 **MR. ENGELMANN:** All right. And presumably
16 that would be important to have all relevant statements for
17 your Crown brief and likewise for his?

18 **MR. SMITH:** Yes. Yeah.

19 **MR. ENGELMANN:** Okay. So was there any
20 concern about a conflict at all? The fact that one team is
21 investigating as a suspect and the other as a victim; did
22 that arise at all?

23 **MR. SMITH:** No.

24 **MR. ENGELMANN:** Any consideration to have
25 another force involved?

1 **MR. SMITH:** We were assigned and we did our
2 job. That decision would have to come from higher up, sir.

3 **MR. ENGELMANN:** All right. That's not
4 something you suggested to higher ups though; that they
5 consider perhaps using a different force for the other
6 investigation?

7 **MR. SMITH:** No, I didn't have any trouble
8 with the conflict. I didn't have any difficulty with that.

9 **MR. ENGELMANN:** So if there were
10 difficulties, they were with respect to how it was
11 coordinated and what took place towards the end?

12 **MR. SMITH:** Yeah, we ran into some
13 difficulty, yes.

14 **MR. ENGELMANN:** All right. Well, we'll get
15 there in just a bit. I want to try and do this
16 chronologically if I can.

17 **MR. SMITH:** Okay.

18 **MR. ENGELMANN:** We talked about Peter
19 Griffiths?

20 **MR. SMITH:** Yes.

21 **MR. ENGELMANN:** Had you worked with him
22 before?

23 **MR. SMITH:** Yes.

24 **MR. ENGELMANN:** He was the Regional Crown?

25 **MR. SMITH:** Yes.

1 **MR. ENGELMANN:** So he would have been in
2 Ottawa?

3 **MR. SMITH:** Yes, sir.

4 **MR. ENGELMANN:** And the meeting you had with
5 Peter Griffiths at the beginning, would Inspector Hamelink
6 have been there as well or was that just you and Mr.
7 Griffiths or do you recall?

8 **MR. SMITH:** I think I've got in my notes who
9 was present.

10 **MR. ENGELMANN:** We -- and I'm not sure if
11 it's a meeting on February 10th or it's just a call. You
12 have a reference to a meeting with him on February 21st?

13 **MR. SMITH:** Yes, I think 21st is the meeting.

14 **MR. ENGELMANN:** All right. So if you had
15 references to him earlier those would have just been calls?

16 **MR. SMITH:** Yes, and I think that was the
17 first available date they had to see us.

18 **MR. ENGELMANN:** All right. And I'm just
19 looking, it's now Bates page 215, next page, there appears
20 to be a reference to calling him on the 14th of February and
21 then you're setting up a meeting for the 21st. Do I have
22 that right?

23 **MR. SMITH:** Yes.

24 **MR. ENGELMANN:** And it talks about the fact
25 -- and I'm looking at your note and assuming from it that

1 both you and Fred Hamelink were present?

2 MR. SMITH: Yes.

3 MR. ENGELMANN: Together with the three
4 Officers; Constable Fagan from your team, and Constables
5 McDonell and Genier from his?

6 MR. SMITH: Yes, and a law student.

7 MR. ENGELMANN: Okay, and a law student who
8 later becomes a prosecutor, Claudette Breault?

9 MR. SMITH: I was unaware of that, but it is
10 Claudette Breault, yes.

11 MR. ENGELMANN: Oh, okay. All right, she
12 becomes Claudette Wilhelm I believe.

13 MR. SMITH: Oh, okay, yes.

14 MR. ENGELMANN: That name may be familiar to
15 you?

16 MR. SMITH: Yes, I know, yes, and she
17 married a police officer, yes.

18 MR. ENGELMANN: All right. And I just want
19 to just get a sense, again this is a very short note, sir.

20 MR. SMITH: Yes, sir.

21 MR. ENGELMANN: This is all we have though
22 from you by way of a note at that meeting?

23 MR. SMITH: Yes.

24 MR. ENGELMANN: And it says:

25 "Interview Silmsers, all sexual

1 allegations and how did settlement come
2 about."

3 **MR. SMITH:** Yes.

4 **MR. ENGELMANN:** There's no reference to the
5 extortion issue there.

6 **MR. SMITH:** No.

7 **MR. ENGELMANN:** But you do recall it being
8 discussed?

9 **MR. SMITH:** Yes.

10 **MR. ENGELMANN:** All right. And there was
11 this issue earlier and the phone call from Mr. Griffiths
12 about possibly cautioning Mr. Silmser. Do you know if that
13 issue would have come up at the meeting?

14 **MR. SMITH:** I don't remember.

15 **MR. ENGELMANN:** All right.

16 **MR. SMITH:** I'm experienced enough that if
17 I'm interviewing somebody on a sexual assault, and I want
18 to put a question to him somewhere of something else and
19 they're going to get into it, then I would stop and caution
20 and charter them and give them a secondary caution. And I
21 wanted to avoid that at all costs when dealing with Mr.
22 Silmser as I did.

23 **MR. ENGELMANN:** Certainly. Because you're
24 trying to get him to open up to you about his allegations?

25 **MR. SMITH:** M'hm, well, I was walking on

1 eggshells, so to speak, when I put the questions to him
2 they were likely about what happened with Ken Seguin.

3 **MR. ENGELMANN:** Okay, but were you already
4 aware at this point in time that there was an issue about a
5 monetary settlement? You would have been?

6 **MR. SMITH:** Oh, yes, sir.

7 **MR. ENGELMANN:** Okay. And presumably from
8 your previous investigative experience, you would know that
9 from time to time there can be concurrent criminal and
10 civil proceedings in some of these cases?

11 **MR. SMITH:** I happened all through St. Joe's
12 and St. John's, we had civil proceedings going on along
13 with the criminal proceedings. It happened in Mount
14 Cashel. They had inquiries going on while trials were
15 going on and -- it does happen.

16 **MR. ENGELMANN:** All right. And did that
17 affect your view at all on the credibility of the victim;
18 if there was a victim seeking either an apology and/or some
19 kind of civil settlement?

20 **MR. SMITH:** No. I'll go back to Silmser,
21 and I'll tell you, I believed him, and I'll tell you why.

22 Within the statement and early in the
23 statement, he mentioned that he went to the Archdiocese or
24 the Diocese seeking an apology and a letter. And he stated
25 that, "All I want is a letter of apology so I can show it

1 to my mother, to show her that I'm not all that bad; that
2 there were things that happened in my life that caused me
3 to be the way I am."

4 And I can show you 100 other statements that
5 we took in St. John's, in St. Joe's that were the same.
6 These guys, all they wanted was recognition that it
7 happened, an apology, and show it to their parents or loved
8 ones and get on with life.

9 So when I saw that out of Dave Silmser, no
10 doubt in my mind, he was a victim.

11 **MR. ENGELMANN:** Sir, I guess from your
12 experience, you'd know that in many of those cases, the
13 apology wasn't forthcoming?

14 **MR. SMITH:** Yes.

15 **MR. ENGELMANN:** And then perhaps there were
16 civil and/or criminal proceedings?

17 **MR. SMITH:** Had that apology come, we
18 wouldn't be here today, I don't think.

19 **MR. ENGELMANN:** Now, just to turn back to
20 the previous page, Bates page 214, and the telephone call
21 on the 10th, just below when we -- just if we could scroll
22 down a little further, Madam Clerk.

23 Just below the issue about cautioning, and I
24 think we looked at this, the issue about extortion, "Peter
25 Griffiths to research or advise."

1 Do you have a sense as to why he might be
2 discussing the possible extortion issue with you at that
3 time or was that simply something he was doing for Hamelink
4 and he was advising you?

5 **MR. SMITH:** I was doing that for Hamelink.

6 **MR. ENGELMANN:** I'm sorry?

7 **MR. SMITH:** I was doing that for Hamelink.

8 **MR. ENGELMANN:** Okay.

9 **MR. SMITH:** At his request.

10 **MR. ENGELMANN:** All right.

11 **THE COMMISSIONER:** Doing what? I'm sorry, I
12 lost that.

13 **MR. SMITH:** Asking ---

14 **THE COMMISSIONER:** Griffiths for a memo?

15 **MR. SMITH:** Yes.

16 **THE COMMISSIONER:** Or some advice.

17 **MR. SMITH:** Yes.

18 **MR. ENGELMANN:** All right, because you had
19 had that discussion a couple of days earlier with Fred
20 Hamelink?

21 **MR. SMITH:** Well Hamelink was going to be
22 present when I took that statement. He was behind the
23 closed glass.

24 **MR. ENGELMANN:** All right.

25 **MR. SMITH:** So he would be there and that

1 was an agreement that we had.

2 MR. ENGELMANN: Okay. So -- and you knew
3 that was the strategy, so Mr. Hamelink had asked you to put
4 some questions to Mr. Griffiths about the issue?

5 MR. SMITH: Yes. And I thought that that --
6 and I agreed. I think that was an appropriate way of
7 handling it in that it would give him an idea of where he
8 was going with the investigation without interfering with
9 my investigation of Silmsers as a victim.

10 MR. ENGELMANN: Okay.

11 MR. SMITH: Again, it was a chance that we
12 took and it worked.

13 MR. ENGELMANN: All right. So he was
14 present when you actually did your interview with Silmsers
15 but was not available. It was not known to Mr. Silmsers
16 that he was there?

17 MR. SMITH: Yeah. No, we didn't tell him,
18 no.

19 MR. ENGELMANN: Right. So again the meeting
20 on the 21st, on Bates page 215, would have essentially been
21 a coordination meeting with some direction from a senior
22 Crown?

23 MR. SMITH: Yes.

24 MR. ENGELMANN: Because you and Fred
25 Hamelink were of a similar rank and Peter Griffiths is

1 giving you some advice and direction?

2 MR. SMITH: Yes.

3 MR. ENGELMANN: If I can use the term.

4 MR. SMITH: I was senior to Hamelink. He
5 was just a new inspector.

6 MR. ENGELMANN: Okay, but in any event, you
7 were getting some direction or some advice from a third
8 party who was a senior Crown prosecutor?

9 MR. SMITH: Yeah, yes. Yes.

10 MR. ENGELMANN: And this was not an easy
11 situation to deal with?

12 MR. SMITH: No, not at all, knowing the
13 background.

14 MR. ENGELMANN: No. Do you know why the
15 extortion investigation was even instituted at that point
16 in time. Did you have some knowledge about why that got
17 going; what was behind that?

18 MR. SMITH: No, they both came down at the
19 same time. I guess it was an investigation requested by
20 the acting chief of police and we were assigned at the same
21 time. I couldn't wear both hats and do it. Somebody else
22 had to do it.

23 Do one investigation and the other officer
24 had to do the other if it was going to be done at the same
25 time.

1 **MR. ENGELMANN:** Just -- about your answer
2 though, the acting chief of police didn't appear, at least
3 in the letters we looked at, to be asking for Mr. Silmser
4 to be investigated for extortion. Do you know? I'm just
5 wondering where that came from; whose idea that was? We'll
6 certainly put that question to ---

7 **MR. SMITH:** Maybe better put it to ---

8 **MR. ENGELMANN:** --- Mr. Hamelink.

9 **MR. SMITH:** --- Mr. Hamelink because we were
10 assigned at the same time, you know.

11 **MR. ENGELMANN:** All right. And you weren't
12 clear on who the potential complainant was in that case or
13 how that came about? You just knew your instructions.

14 **MR. SMITH:** I knew it was happening but I --
15 yes, you're right.

16 **MR. ENGELMANN:** All right.

17 I'll just be a moment, sir.

18 **THE COMMISSIONER:** Certainly.

19 **MR. ENGELMANN:** If we could have a quick
20 look at -- it's Exhibit 2544.

21 **THE COMMISSIONER:** Twenty-five forty-four
22 (2544).

23 **MR. ENGELMANN:** The Document Number,
24 counsel, is 725224.

25 **THE COMMISSIONER:** He doesn't have that one.

1 Oh, no, he doesn't. Okay. Twenty-five (25)?

2 MR. ENGELMANN: Twenty-five forty-four
3 (2544).

4 MR. SMITH: Thank you.

5 MR. ENGELMANN: Okay. And just to orient
6 you, sir, these are notes of the February 21st meeting taken
7 by then-Detective Inspector Hamelink.

8 MR. SMITH: Okay.

9 MR. ENGELMANN: Okay. So if you have brief
10 notes, he also has brief notes at this time ---

11 MR. SMITH: M'hm.

12 MR. ENGELMANN: --- of this meeting. It
13 indicates first of all:

14 "How does Seguin fit in? Extortion on
15 hold for time being until Smith
16 completed obstruct investigation.
17 Needs Silmsen as witness against Father
18 MacDonald."

19 Okay? And I think you had told us that it
20 was your belief or certainly your recollection that at
21 least a portion of your investigation -- of your mandate
22 had to be finished before he was to proceed.

23 And this would seem to suggest that -- what
24 he's writing is that you're to complete the obstruct
25 investigation before he's to proceed.

1 **MR. SMITH:** No, he could go about
2 interviewing people on the peripheral but just stay away
3 from Mr. Silmser until ---

4 **MR. ENGELMANN:** Okay.

5 **MR. SMITH:** --- I had -- I got my statements
6 and was comfortable with my position. And then he could do
7 what he had to do with Mr. Silmser.

8 **MR. ENGELMANN:** All right. So when he says
9 "extortion on hold for time being," you're saying it was
10 only a portion of ---

11 **MR. SMITH:** That would be the extortion on
12 hold as far as Silmser's concerned until I was completed.
13 But I wasn't completed. I would have said as a victim
14 rather than obstruct justice -- obstruct investigation.

15 **MR. ENGELMANN:** Just ---

16 **MR. SMITH:** Oh, okay, I understand, yeah.

17 **MR. ENGELMANN:** What I'm saying is -- sorry,
18 I didn't mean to interrupt. What I'm saying is this
19 appears to be a bit broader than what you'd indicated?

20 **MR. SMITH:** Well, he's got down the
21 obstruct. Well, the obstruct would be also the sexually
22 assault I think too.

23 **THE COMMISSIONER:** The obstruct was you
24 investigating whether or not the lawyers were involved in
25 obstructing justice in coming up with this deal.

1 **MR. SMITH:** That's one, and also the sexual
2 assault.

3 **THE COMMISSIONER:** Exactly.

4 **MR. SMITH:** Yeah.

5 **MR. ENGELMANN:** And they're closely linked.

6 **MR. SMITH:** Well, I can do those both
7 without any problem as long as Silmsers is not investigated
8 for extortion at the same time.

9 **MR. ENGELMANN:** Okay.

10 **THE COMMISSIONER:** Did you ever think to
11 investigate Mr. Silmsers in the deal with the -- the
12 transaction with the Church and Father MacDonald as to
13 whether or not he was involved in trading off money for
14 getting rid of the criminal proceedings?

15 **MR. SMITH:** That would be part and parcel,
16 yes, sir. But that would come from the evidence from the
17 lawyers but I've -- Silmsers didn't do anything wrong. He
18 went there and suggested a price. But he didn't say that
19 he would withdraw the charges or anything of that nature.

20 I think he wouldn't proceed civilly. That's
21 -- I think that's in the notes or in Heidi Sebalj's or
22 somebody else's notes somewhere.

23 **THE COMMISSIONER:** So you ---

24 **MR. SMITH:** I was under the belief that he
25 wasn't extorting them on the 32,000.

1 **THE COMMISSIONER:** M'hm. Okay.

2 **MR. SMITH:** At the same time, sir, and there
3 were some difficulties I guess that were going around
4 Canada and the States at the time but Michael Jackson was
5 involved in similar settlements but a lot more than
6 \$32,000.

7 And I think not just once but two times in
8 that period of time that we were working here, the news
9 were full about these settlements where all of a sudden
10 criminal charges were terminated because he had settled.
11 So that was knowledge that that was out there at this time.

12 **MR. ENGELMANN:** So that would have been a
13 concern of yours?

14 **MR. SMITH:** Well, in a way, in a way because
15 -- but that's in the States, that's not Canada.

16 **MR. ENGELMANN:** Yeah.

17 **MR. SMITH:** But people watch television here
18 and they think the laws are the same.

19 **MR. ENGELMANN:** All right.

20 Yes, and just in keeping with the same theme
21 about whether one investigation was at least partially put
22 on hold, we do have some other notes of Fred Hamelink,
23 Exhibit Number 1031, it's Document 725119.

24 **THE COMMISSIONER:** Sorry, again Mr.
25 Engelmann?

1 **MR. ENGELMANN:** I'm sorry. It's Exhibit
2 1031, sir.

3 **THE COMMISSIONER:** Thank you.

4 **MR. ENGELMANN:** I just want to take you
5 briefly to one page, if I may. It's Bates page 7098225 and
6 it's referencing a meeting with Nancy Seguin. I believe
7 that's the sister-in-law of the deceased -- of Ken Seguin.

8 **MR. SMITH:** Wednesday, April 13th?

9 **MR. ENGELMANN:** That's right. And it says
10 at 4:15:

11 "We spoke of the extortion portion of
12 the investigation. I explained..."

13 And I think this would be Fred Hamelink:

14 "...that because the sexual assault
15 investigation was intertwined, the
16 extortion part has not been proceeded
17 with full time because I didn't want
18 the other portion of the investigation
19 jeopardized."

20 **MR. SMITH:** M'hm.

21 **MR. ENGELMANN:** That would be consistent
22 with your understanding?

23 **MR. SMITH:** Yes.

24 **MR. ENGELMANN:** All right. Now, we
25 understand that the day after you met with Peter Griffiths,

1 you actually did interview David Silmser?

2 **MR. SMITH:** Yes, I did.

3 **MR. ENGELMANN:** And there was one interview
4 with him that you were involved in?

5 **MR. SMITH:** That's all I ever had, yes ---

6 **MR. ENGELMANN:** Yeah.

7 **MR. SMITH:** --- with his lawyer ---

8 **MR. ENGELMANN:** Yes.

9 **MR. SMITH:** --- present.

10 **MR. ENGELMANN:** His lawyer was present. It
11 says:

12 "...a lawyer that he had recently
13 retained by the name of Bryce
14 Geoffrey?"

15 **MR. SMITH:** That's correct.

16 **MR. ENGELMANN:** All right. And the
17 statement was videotaped?

18 **MR. SMITH:** Yes, sir.

19 **MR. ENGELMANN:** All right. And by this
20 time, you had had some experience in -- obviously in
21 interviewing victims of sexual abuse?

22 **MR. SMITH:** Yes, sir.

23 **MR. ENGELMANN:** And clearly, Constable Fagan
24 had had fairly extensive experience in doing that?

25 **MR. SMITH:** Yes.

1 **MR. ENGELMANN:** And you were both involved
2 in the interview?

3 **MR. SMITH:** Yes, we are.

4 **MR. ENGELMANN:** And as you said, although
5 Fred Hamelink was present, he wasn't in the room itself?

6 **MR. SMITH:** Mr. Silmsler would be unaware.

7 **MR. ENGELMANN:** Right.

8 **MR. SMITH:** He was in a separate room with a
9 one-way glass.

10 **MR. ENGELMANN:** So the four of you were in
11 the actual interview room?

12 **MR. SMITH:** And the man taking -- one of the
13 officers taking the video.

14 **MR. ENGELMANN:** Oh, okay, sorry.

15 **MR. SMITH:** M'hm.

16 **MR. ENGELMANN:** Our equipment was a little
17 archaic at that time. We weren't -- we were behind other
18 forces when it came to video.

19 I might add too, at this time, is that if
20 you want to get into the -- end of the statement, Mr.
21 Geoffrey was late for the appointment, and I smoked at the
22 time, so we were downstairs with Silmsler in the garage
23 smoking and he was quite antsy.

24 **MR. ENGELMANN:** Yes.

25 **MR. SMITH:** And very, very nervous. And

1 there were police cars coming and going all over the place.

2 In hindsight, I think I may have been able
3 to conduct a better interview had I found another place
4 that could do a video other than a police station.

5 I wasn't fully aware at the time that Mr.
6 Silmser's experience with police stations was what it was
7 and that may have led to some of the difficulties that we
8 had.

9 **MR. ENGELMANN:** Okay. So he was nervous or
10 agitated?

11 **MR. SMITH:** Even Mike Fagan, or Constable
12 Fagan, couldn't get him to calm down and he could calm down
13 anybody or make them feel comfortable.

14 **MR. ENGELMANN:** Yeah.

15 **MR. SMITH:** Mr. Silmser was very
16 uncomfortable.

17 **MR. ENGELMANN:** And this would have been --
18 this was at the Kanata Station?

19 **MR. SMITH:** Yes.

20 **MR. ENGELMANN:** The OPP?

21 **MR. SMITH:** Yes.

22 **MR. ENGELMANN:** At the time, were you aware
23 of some of the difficulty he had had in the past with
24 police?

25 **MR. SMITH:** Yes, but that didn't bother us.

1 His record was, he was an angel compared to some of the
2 ones that we'd -- we were dealing with murderers and
3 rapists and robbers and everybody, and his criminal record
4 was -- I don't know if I can say it here and that, but it
5 was really insignificant.

6 MR. ENGELMANN: Yes.

7 MR. SMITH: I paid no attention to that.

8 MR. ENGELMANN: There had been a few years
9 since there had been an issue, I believe, at that point.

10 MR. SMITH: That would -- that wouldn't even
11 bother me.

12 MR. ENGELMANN: Okay, but more than the
13 record itself, were you familiar with some distrust on his
14 part of the police, right? I guess that might not surprise
15 you in any event.

16 MR. SMITH: Maybe not at the time, but I
17 knew that he, yes, that the police had difficulty dealing
18 with him.

19 MR. ENGELMANN: Okay.

20 MR. SMITH: And, again, typical victim;
21 typical victim, his behaviour, yeah.

22 MR. ENGELMANN: Were you aware though, sir,
23 in his case of distrust that he felt because of the fact
24 that a statement he had given to the Cornwall Police
25 Service had ended up being broadcast over television and in

1 local media just a month before?

2 MR. SMITH: No, I wouldn't blame him for
3 that -- certainly ---

4 MR. ENGELMANN: But were you aware that it
5 happened?

6 MR. SMITH: Yes.

7 MR. ENGELMANN: Okay. And I think there
8 were complaints under the *Police Services Act* and other
9 action taken by his lawyer because of ---

10 MR. SMITH: He had a suit -- eventually, he
11 had a suit against the police department.

12 If I was aware at that time, I don't know,
13 but I know subsequently, there was a suit over that.

14 MR. ENGELMANN: All right.

15 Now, in advance of the interview with Mr.
16 Silmsler, you would have reviewed some of the material from
17 the Cornwall Police Service?

18 MR. SMITH: Yes, I had his previous
19 statement.

20 MR. ENGELMANN: Okay.

21 MR. SMITH: And I believe I had Sebalj's
22 notes.

23 MR. ENGELMANN: Okay, so when you say "his
24 previous statement", that was his handwritten statement?

25 MR. SMITH: Yes, sir.

1 **MR. ENGELMANN:** Of February of 1993?

2 **MR. SMITH:** Yes, sir.

3 **MR. ENGELMANN:** All right. And would you
4 have had a letter that would have set out a bit of what he
5 would have told a priest in Ottawa in December of 1992?
6 This is a priest by the name of Monsignor Schonenbach?

7 **MR. SMITH:** I can't remember if I had it
8 then. I -- subsequently, I've seen that ---

9 **MR. ENGELMANN:** All right.

10 **MR. SMITH:** --- I know, but I don't know at
11 what period, sir.

12 **MR. ENGELMANN:** Okay. Because he obviously
13 met with him and told part of his story to him in early
14 December of '92?

15 **MR. SMITH:** Yes.

16 **MR. ENGELMANN:** He also met and told part of
17 his story to a committee or a group of two priests and a
18 lawyer for the Diocese in February of '93?

19 **MR. SMITH:** That's correct.

20 **MR. ENGELMANN:** Were you aware of that at
21 the time?

22 **MR. SMITH:** I was aware that he had been
23 interviewed by the Diocese.

24 **MR. ENGELMANN:** Okay, and I don't know if
25 this had been provided to you, but there was a fairly

1 lengthy interview of him by the Cornwall Police Service on
2 January 28th, 1993, and I don't know if those notes were
3 provided to you.

4 **MR. SMITH:** I must have had those notes.

5 **MR. ENGELMANN:** Okay, and I'm just thinking
6 at the time.

7 **MR. SMITH:** Yeah.

8 **MR. ENGELMANN:** Because there were a number
9 of statements or interviews that he would have given before
10 February 22nd, 1994.

11 **MR. SMITH:** I know that now or -- that he'd
12 given at least five previous statements to various agencies
13 before we took ours.

14 **MR. ENGELMANN:** Okay.

15 **MR. SMITH:** At the time that I took the
16 statement from him, I don't know if I was fully aware of
17 all of them.

18 **MR. ENGELMANN:** And just to complete that
19 picture, if I may, we've also heard that there was a fairly
20 lengthy interview with him by the Cornwall Police on March
21 10th, 1993. So January 28th, '93, March 10th, '93, with the
22 Cornwall Police Service. We have his handwritten statement
23 of February 16th, 1993. We have the two meetings with
24 Diocesan officials; one in Ottawa and one in Cornwall. So
25 that's -- I believe that's five.

1 **MR. SMITH:** Okay.

2 **MR. ENGELMANN:** So, in any event, and as
3 well, sir, you may have been aware that he had a fairly
4 lengthy interview with the Children's Aid Society here in
5 Cornwall in early November of '93?

6 **MR. SMITH:** I was aware that he had been
7 interviewed, but I didn't have a copy of that interview.

8 **MR. ENGELMANN:** Okay. That was audio taped,
9 so that Miss -- that was something you got later?

10 **MR. SMITH:** Yes, I had -- I think I had a
11 letter or something to the effect that -- maybe I shouldn't
12 think -- but somewhere, and I can't put the period of time.
13 There was a letter after their investigation was completed
14 that they said they believed him.

15 **MR. ENGELMANN:** Yeah, that's coming just a
16 bit later, just after in March.

17 **MR. SMITH:** Okay.

18 **MR. ENGELMANN:** And there was also a brief
19 statement that he would have given to Officers Millar and
20 McDonell after the death of Ken Seguin in November of '93.

21 So of all of these statements, you were at
22 least aware of the handwritten statement that he had given?

23 **MR. SMITH:** I had that.

24 **MR. ENGELMANN:** You had that. And of the
25 others, you may not have had them at the time; the ones

1 I've just mentioned?

2 MR. SMITH: I may not have had them, but I
3 was aware of some of them.

4 MR. ENGELMANN: All right. And this can
5 cause difficulties, can it not, when there's multiple
6 statements or multiple interviews?

7 MR. SMITH: Certainly.

8 MR. ENGELMANN: All right. Because more
9 than likely, people won't say exactly what they did in a
10 previous interview.

11 MR. SMITH: I'm going to go back to the
12 statement that he provided. I'm not in favour of taking
13 those types of statements.

14 MR. ENGELMANN: Which statement is that,
15 sir?

16 MR. SMITH: The one he ---

17 MR. ENGELMANN: The one where he was asked
18 to write out a statement?

19 MR. SMITH: Yes, but at that time, we had a
20 new thing called Statement Analysis that was going to be
21 the next thing to DNA and it was in police circles. It was
22 quite popular, so to speak, that you have them write their
23 own statements and you can look for credibility within it.

24 I think it's comparable to Voodooism. It
25 doesn't mean a lot, but there is -- sometimes you can get a

1 feeling of the truthfulness of it, but you'd never be able
2 to use it. I've used it.

3 **MR. ENGELMANN:** All right.

4 **MR. SMITH:** But it didn't mean much. So I
5 would not take a statement like that.

6 **MR. ENGELMANN:** All right. And, sir, if you
7 were using that technique, would you do a lengthy interview
8 with him and then ask him to do that technique or would you
9 simply give him the form and ask him for the statement?

10 **MR. SMITH:** I like doing the interviews the
11 way we do them, sir. I'm a strong proponent for videotaped
12 statements from witnesses and accused.

13 **MR. ENGELMANN:** All right. And was that
14 already fairly common then, in early 1993, to try and
15 videotape or at least audiotape these interviews?

16 **MR. SMITH:** No. Not with our police force.
17 We were poorly equipped. We had a hard interview room --
18 they weren't an interview room -- they were hard
19 interrogation-type rooms where they weren't soft. They
20 were a bad atmosphere to take those types of ---

21 **MR. ENGELMANN:** We are going to just break
22 in a couple of minutes, but I just want to ask, I was
23 trying to get from you what you might have had in your
24 possession by way of statements and interviews.

25 What about Mr. Silmsen? Were you aware if

1 he had any of these interview notes or his handwritten
2 statement or any of that to review before he met with you?

3 MR. SMITH: I believe that Mr. Geoffrey had.
4 He had papers with him and they had had meetings prior to
5 this interview. I wasn't asked for any of them by Mr.
6 Geoffrey. I was asked for -- later on if they could have a
7 copy of our interview.

8 MR. ENGELMANN: All right.

9 MR. SMITH: And because I think they had to
10 have it because there were other civil proceedings that
11 were in the works at that time.

12 MR. ENGELMANN: Okay. I don't think they
13 had been started but you think they had a copy of his own
14 handwritten statement?

15 MR. SMITH: Well, I'm pretty -- yes, I'm
16 pretty ---

17 MR. ENGELMANN: Yeah.

18 MR. SMITH: I didn't -- I don't think I saw
19 it or I can't remember seeing it but I'm quite sure because
20 even in the interview Mr. Geoffrey says there's other
21 things in the works right now.

22 MR. ENGELMANN: All right.

23 THE COMMISSIONER: Lunchtime, come back at
24 two, sir.

25 MR. SMITH: Thank you.

1 **THE COMMISSIONER:** Thank you.

2 **THE REGISTRAR:** Order; all rise. À l'ordre;
3 veuillez vous lever.

4 This hearing will resume at 2:00 p.m.

5 --- Upon recessing at 12:32 p.m. /

6 L'audience est suspendue à 12h32

7 --- Upon resuming at 2:04 p.m. /

8 L'audience est reprise à 14h04

9 **THE REGISTRAR:** Order; all rise. À l'ordre;
10 veuillez vous lever.

11 This hearing is now resumed. Please be
12 seated. Veuillez vous asseoir.

13 **THE COMMISSIONER:** Good afternoon, all, Mr.
14 Smith.

15 **MR. ENGELMANN:** Good afternoon, Mr.
16 Commissioner.

17 **THE COMMISSIONER:** Yes, sir.

18 **TIMOTHY SMITH, Resumed/ Sous le même serment:**

19 --- **EXAMINATION IN-CHIEF BY/INTERROGATOIRE EN-CHEF PAR MR.**
20 **ENGELMANN (cont'd/suite):**

21 **MR. ENGELMANN:** Good afternoon, Mr. Smith.

22 **MR. SMITH:** Sir.

23 **MR. ENGELMANN:** We were, I believe, at
24 February 22nd, 1994. This was -- you were about to -- you
25 had described some interaction with David Silmser just

1 before interviewing him at the Kanata police station; do
2 you recall?

3 MR. SMITH: Yes, sir.

4 MR. ENGELMANN: And you indicated that you
5 believed at least his lawyer had a copy of the handwritten
6 statement that he had given to the Cornwall police about a
7 year before.

8 MR. SMITH: Yes, sir.

9 MR. ENGELMANN: The statement was mid-
10 February '93.

11 Do you have any sense, sir, or would you
12 have advised either Mr. Silmsler or his new lawyer of some
13 of the benefits of perhaps having a look at that previous
14 statement before meeting with you? Do you recall having
15 any discussion about that as to what he might do to prepare
16 for the meeting?

17 MR. SMITH: I can't remember.

18 MR. ENGELMANN: Okay. Would you agree that
19 that might have been prudent for him to have a look at that
20 earlier handwritten statement? It had been a year.

21 MR. SMITH: Well, he is a lawyer. I would
22 imagine he'd be prepared with ---

23 MR. ENGELMANN: No, I meant Mr. Silmsler.
24 It'd be prudent for him to have looked at it before?

25 MR. SMITH: On whose behalf, mine or his

1 lawyer's?

2 MR. ENGELMANN: No, all I'm saying is for
3 Mr. Silmsen before interviewing you, it would have been
4 prudent on his part to have looked at his previous
5 statement?

6 MR. SMITH: Oh, certainly, yes.

7 MR. ENGELMANN: Right. And did -- I took it
8 from your answer that you thought perhaps that's something
9 his lawyer should have had him do?

10 MR. SMITH: Well, his lawyer knew that they
11 were going to give an interview and it was in regard to
12 everything that he had told him before, so I would imagine
13 he would prepare him, sir.

14 MR. ENGELMANN: Okay.

15 MR. SMITH: Yeah.

16 MR. ENGELMANN: Am I correct in saying that
17 if he hadn't been represented by counsel it's something you
18 would have suggested?

19 MR. SMITH: I think so, yes. Yeah.

20 MR. ENGELMANN: But in this case you didn't
21 because he had a lawyer?

22 MR. SMITH: When I had made the arrangements
23 for the interview with his lawyer I would have been under
24 the impression that he would have been prepared.

25 MR. ENGELMANN: All right.

1 And I think you've indicated some of the
2 harm that can come up with multiple entities or multiple
3 statements.

4 **MR. SMITH:** Yes, sir.

5 **MR. ENGELMANN:** And how it can affect a
6 prosecution?

7 **MR. SMITH:** Yes, sir.

8 **MR. ENGELMANN:** All right. And did you feel
9 you had taken necessary steps to avoid that as much as
10 possible?

11 **MR. SMITH:** Yes, I did.

12 **MR. ENGELMANN:** Okay. During the course of
13 the interview -- Mr. Silmsler actually testified here ---

14 **MR. SMITH:** Yes.

15 **MR. ENGELMANN:** --- some time ago and he
16 expressed some concern. I'm trying to find the words but I
17 recall him saying that he thought at times you were overly
18 aggressive with him. I can't remember what else he would
19 have indicated but it was of the line that he kept coming
20 with questions or things of that nature.

21 **MR. SMITH:** It was push, push, push, was it
22 not?

23 **THE COMMISSIONER:** That's the word, yeah.

24 **MR. ENGELMANN:** Okay, yeah.

25 You've had an opportunity to review his

1 evidence?

2 MR. SMITH: Yes, sir.

3 MR. ENGELMANN: Okay. And I just -- I just
4 wanted your own view on that and just reflecting back on
5 the interview. One, if you felt you did anything
6 inappropriate or, two, if you have any explanation perhaps
7 for us as to why he might have reflected upon it that way?

8 MR. SMITH: I think -- well, I'm not saying
9 I think. The difficulty seemed to come when I started
10 questioning for more particulars.

11 MR. ENGELMANN: Yeah.

12 MR. SMITH: And I think that's when the
13 difficulties started. And I didn't know any other way to
14 get what I needed and I know that you've had the
15 opportunity to see the interview and his statement.

16 MR. ENGELMANN: Yes.

17 MR. SMITH: I thought that it was done as
18 easily as I could. And I can't think of any other way that
19 I could have done it.

20 MR. ENGELMANN: I did notice from time to
21 time either on the tape or by looking at the statement that
22 there appeared to be some hesitancy, particularly when you
23 would ask a follow-up question when you were probing a
24 little more. And there were times when he would be holding
25 his hand and looking somewhat agitated in the course of the

1 video.

2 MR. SMITH: I can't recall that.

3 MR. ENGELMANN: Okay. And sir, let's just
4 have a quick look at the statement, if we can. It's
5 Exhibit 267.

6 (SHORT PAUSE/COURTE PAUSE)

7 MR. SMITH: Thank you.

8 MR. ENGELMANN: Do you have that, sir?

9 MR. SMITH: Yes.

10 MR. ENGELMANN: Let's turn to Bates page
11 833. It's page 32 at the top, if that helps.

12 MR. SMITH: Yes, sir.

13 MR. ENGELMANN: All right.

14 And just to orient you, I'm wondering if you
15 recall a point in the interview that we get to on this page
16 where he suggests to you that he has to leave at a certain
17 time?

18 (SHORT PAUSE/COURTE PAUSE)

19 MR. ENGELMANN: Towards the bottom of that
20 page.

21 MR. SMITH: Eight thirty-two (832), sir?

22 MR. ENGELMANN: Eight-thirty-three (833).

23 MR. SMITH: Oh.

24 MR. ENGELMANN: I'm sorry.

25 MR. SMITH: Oh.

1 **MR. ENGELMANN:** Page 32 of the transcript
2 but it's 833.

3 **THE COMMISSIONER:** The last comment by
4 Silmser on the bottom of the page is:

5 "I have my wife. I had to pick her up
6 at 3:30."

7 **MR. ENGELMANN:** Do you recall either
8 independently or by refreshing your memory by looking at
9 this material that there was a time when he brought up some
10 time commitments and time pressures?

11 **MR. SMITH:** I can't remember, sir.

12 **MR. ENGELMANN:** Okay. Well, just if you can
13 take a look at the next page, which is 834, page 33, and
14 sir, we know that it's not Officer Fagan that is actually
15 interacting with him here, it's his lawyer. So when it
16 says:

17 "We need to see how long can you stay.
18 Is there anyway you can call your wife,
19 tell her it's going to take a little
20 bit longer than you thought?"

21 That's actually Bryce Geoffrey?

22 **MR. SMITH:** M'hm.

23 **MR. ENGELMANN:** All right.

24 "No, she's stuck in the country."

25 Then it's Geoffrey again:

1 "Where is she?"

2 Then it's Silmser; then it's Geoffrey again:

3 "She's working in Ottawa right now."

4 This is all Geoffrey interacting with his
5 client and then you say:

6 "Well, let's see if we can get -- how
7 far we can get done. It makes things
8 difficult for us too."

9 He says:

10 "It's been difficult for me too. Well,
11 okay."

12 And you say:

13 "Well, the whole thing is difficult."
14 "Yeah, but you know what I've been
15 through with cops and everything else
16 in the last..."

17 And he is somewhat emotional at that time;
18 he actually leaves the room.

19 **MR. SMITH:** M'hm.

20 **MR. ENGELMANN:** Do you remember that part of
21 the interview that he actually gets up and leaves?

22 **MR. SMITH:** Oh, I remember that, yes. I
23 remember him leaving, yeah.

24 **MR. ENGELMANN:** Okay. All right. And
25 you've made the comment -- well, the whole thing's

1 difficult and then that just seems to trigger and he sort
2 of bolts the room. Now he does come back after about 10
3 minutes, and you go back on.

4 **MR. SMITH:** M'hm.

5 **MR. ENGELMANN:** And everything seems to be
6 okay again.

7 **MR. SMITH:** Yes.

8 **MR. ENGELMANN:** Okay. Do you recall that
9 particular incident?

10 **MR. SMITH:** Where he walked out?

11 **MR. ENGELMANN:** Yeah.

12 **MR. SMITH:** Yes, I do.

13 **MR. ENGELMANN:** Yeah. Okay. So again, he
14 was agitated. He was, as you described, had some typical
15 victim symptoms ---

16 **MR. SMITH:** Yes.

17 **MR. ENGELMANN:** --- and reactions.

18 **MR. SMITH:** Yes.

19 **MR. ENGELMANN:** All right. Is there
20 anything you think you could have done differently to try
21 and make him more comfortable? You did mention the
22 location of the interview and that that might have been a
23 mistake in hindsight, the police station.

24 But I'm wondering if there's anything else
25 you thought you could have done differently?

1 **MR. SMITH:** Short of stopping and let him go
2 and then making arrangements for another day to pick it up
3 but then you're into another interview again. And the very
4 thing that you were talking about, the difficulty that you
5 have with multiple statements, I'd be right back there.
6 So, I was trying every effort as quickly as I could to get
7 what I needed from that statement. Because I wasn't
8 satisfied with the handwritten statement that he gave me
9 because there was not enough particulars in it.

10 **MR. ENGELMANN:** You wanted more detail?

11 **MR. SMITH:** I needed it, yeah.

12 **MR. ENGELMANN:** Yeah.

13 **MR. SMITH:** Otherwise that -- there was
14 insufficient anywhere to lay a charge on that -- on this
15 information, or help me further in the investigation.

16 I might add that this was -- we made every
17 arrangement to accommodate them because I wanted to video
18 it in Ottawa rather than elsewhere because I knew he had a
19 lawyer and the lawyer could be there.

20 The time, there was no indication prior to
21 this that he had to be away at a certain time or to pick up
22 his wife. Had his lawyer not been late; perhaps we may
23 have been able to complete the interview in time.

24 **MR. ENGELMANN:** All right.

25 **MR. SMITH:** That would have helped him get

1 home in time.

2 MR. ENGELMANN: In the interview, Mr.
3 Silmser tells you he'd also been abused by other
4 individuals; correct?

5 MR. SMITH: Yes.

6 MR. ENGELMANN: Not just Father MacDonald
7 but also Ken Seguin ---

8 MR. SMITH: Yes.

9 MR. ENGELMANN: --- who, of course by this
10 point, is deceased. And he also mentions a school teacher.

11 MR. SMITH: Yes.

12 MR. ENGELMANN: And this is a fellow by the
13 name of Marcel Lalonde; correct?

14 MR. SMITH: Yes.

15 MR. ENGELMANN: And apparently this fellow
16 is a Grade 8 teacher at the time you're interviewing Mr.
17 Silmser in February of '94? That's correct?

18 MR. SMITH: He was a school teacher. I
19 don't know that he was Grade 8 at that time or not.

20 MR. ENGELMANN: All right. That portion of
21 the interview ---

22 MR. SMITH: Can you refer me to where it is
23 in the interview?

24 MR. ENGELMANN: Yeah. I'm just going to do
25 that sir, I'm just finding the Bates page. It is -- here

1 it is, it's Bates page 838; it's page 37.

2 MR. SMITH: M'hm.

3 MR. ENGELMANN: Now, at this point, you say
4 there were some other indication about a school teacher and
5 were you aware of that as a result of the statement you
6 might have been provided by the CAS or is that something
7 else that Mr. Silmsler had simply said earlier on?

8 MR. SMITH: I believe I had a conversation
9 with Ron Wilson who used to work in Alfred with me.

10 MR. ENGELMANN: Okay.

11 MR. SMITH: And I think somewhere along the
12 line, Ron Wilson had indicated that the CAS had told him
13 something about a Marcel Lalonde.

14 MR. ENGELMANN: Okay. That's -- we've had
15 some evidence about Mr. Wilson being contacted by the CAS
16 late in '93. So ---

17 MR. SMITH: Okay.

18 MR. ENGELMANN: --- that would make some
19 sense.

20 So, on this particular page, you're getting
21 some detail from Mr. Silmsler about the situation with
22 Marcel Lalonde?

23 MR. SMITH: Yes.

24 MR. ENGELMANN: Right?

25 MR. SMITH: Yes.

1 **MR. ENGELMANN:** All right. And, sir, you
2 would consider a student/teacher relationship to be one of
3 a position of trust and authority?

4 **MR. SMITH:** Yes, sir.

5 **MR. ENGELMANN:** And as a teacher, assuming
6 he's continuing as a teacher, Mr. Lalonde would have
7 continual or regular access to children?

8 **MR. SMITH:** Yes.

9 **MR. ENGELMANN:** Okay. And do you know, sir,
10 upon receiving this information, did you or Constable Fagan
11 take some action to determine whether or not this fellow
12 was still an active school teacher?

13 **MR. SMITH:** I recall, and I don't know when,
14 but I know that there was some correspondence that I had
15 sent to the CAS and also the chief of police.

16 **MR. ENGELMANN:** Okay. We'll come to that in
17 just a couple minutes if I can. Or we can turn to it right
18 now if you'd like. It is Exhibit 406.

19 **THE COMMISSIONER:** We call this Mr.
20 Engelmann's shuffle, Mr. Smith. He shuffles all of the
21 documents over here and over to you, then at the break, the
22 clerk brings them all back and we start all over again.

23 **MR. ENGELMANN:** I don't want to sound
24 defensive but I was going to come to this one a little
25 later. But we're there so we'll shuffle right now.

1 **THE COMMISSIONER:** What exhibit number
2 again? Four-six-three-six (4636)?

3 **MR. ENGELMANN:** Four-zero-six (406).

4 **THE COMMISSIONER:** Four-zero-six (406).

5 **MR. ENGELMANN:** Counsel, it's Document
6 Number 728471.

7 **THE COMMISSIONER:** He doesn't have that
8 letter in his binder.

9 Make sure you give it back to me though,
10 okay? Thanks.

11 **MR. SMITH:** Thank you.

12 **THE COMMISSIONER:** So this is a letter dated
13 July 21st, 1994 to Chief Carl Johnston from Mr. Smith.

14 **(SHORT PAUSE/COURTE PAUSE)**

15 **MR. SMITH:** Yes, sir.

16 **MR. ENGELMANN:** All right. So approximately
17 five months after you have your initial interview with Mr.
18 Silmser, you write a letter to the Chief -- Acting Chief of
19 the Cornwall Police Service about Marcel Lalonde; correct?

20 **MR. SMITH:** Yes, sir.

21 **MR. ENGELMANN:** And, sir, it is my
22 understanding that you have some discussions, and we'll
23 come to them, with the CAS in that intervening period about
24 Marcel Lalonde? Because you meet with them ---

25 **MR. SMITH:** Yes, I ---

1 **MR. ENGELMANN:** --- late in March.

2 **MR. SMITH:** Okay. I believe even prior to
3 this, that in Project Blue ---

4 **MR. ENGELMANN:** Yes?

5 **MR. SMITH:** --- there was some indication
6 that Silmser was assaulted by Marcel Lalonde. And when I
7 got this and when I reviewed everything else, I thought
8 that perhaps it would be a good idea.

9 **MR. ENGELMANN:** Okay. We know and you've
10 talked to us about that, that Mr. Bell, who was the lead
11 investigator in Project Blue, contacted Mr. Wilson or
12 Constable Wilson ---

13 **MR. SMITH:** M'hm.

14 **MR. ENGELMANN:** --- a local OPP officer and
15 advised him about Marcel Lalonde. We know that Mr. Silmser
16 mentioned that name in an interview he had with the CAS
17 back in early November of '93.

18 **MR. SMITH:** M'hm.

19 **MR. ENGELMANN:** But he's given you a little
20 more information than he gave the CAS. For example, if we
21 go back to the statement you took from him for the
22 interview -- and I don't know if you still have your finger
23 open to that interview?

24 **MR. SMITH:** Yes.

25 **MR. ENGELMANN:** It's Exhibit 267 but at page

1 -- Bates page 838, he's giving you some information.

2 For example, he's saying that Marcel Lalonde
3 was his teacher at the time of the alleged abuse. He's
4 telling you that he was in Grade 8. He's telling you that
5 they would go to the teacher's house. He's giving a little
6 bit of detail about the nature of the abuse. He's also
7 saying that Marcel Lalonde had sexual pictures of students.

8 **MR. SMITH:** M'hm.

9 **MR. ENGELMANN:** And that he believed he was
10 still teaching; correct?

11 **MR. SMITH:** That's correct.

12 **MR. ENGELMANN:** So he's giving you -- and I
13 believe he also said that he did it to someone else as
14 well. Oh, no. It's just about what happened to him
15 "getting grabbed", and that the pictures and some of the
16 other things are on the following page.

17 And you seem to be interested in this, which
18 wouldn't be surprising as a teacher and you say close to
19 the bottom of page 838:

20 "Can you give us a little more, be
21 explicit what he did. If he's still a
22 schoolteacher, he should be looked at.

23 "Well, I don't."

24 "In fairness, like if it happened to
25 you and made you uncomfortable and it

1 was a sexual assault, then I think we
2 should look at it so it doesn't happen
3 to others, but if you can be more
4 explicit as to what happened, it would
5 help us. Maybe other names of other
6 people that you may have that you may
7 be aware of."

8 "I know."

9 "Can you tell us what he did then,
10 Dave?"

11 And then he gives you a brief description
12 about grabbing him in the crotch, fighting his way out, and
13 he says:

14 "I remember he had a whole bunch of
15 pictures on the table all the guys, he
16 would get all the students and all that
17 he was sex, with sexual and stuff like
18 that."

19 "Did he ever take your picture?"

20 "No."

21 "That was in Grade 8. He was your
22 teacher."

23 And then there's no contact for some time.

24 Okay?

25 And you ask whether he's associated with

1 Seguin or MacDonald and he says, "I don't believe so", but
2 we know from other material here that this fellow was a
3 Deacon at St. Columban's Parish when Father Charles
4 MacDonald was the priest there.

5 So you're trying to get some information.
6 You do get some information, and this is in February of
7 '94.

8 **MR. SMITH:** M'hm.

9 **MR. ENGELMANN:** And I realise that this
10 isn't strictly within your mandate. You talked to us about
11 your mandate, but I'm wondering, sir, if you didn't feel
12 that either you or Constable Fagan should act on this,
13 given the information you'd received?

14 **MR. SMITH:** I can't remember what I did
15 between that period and the 21st of July, and I don't know
16 what precipitated me to send this letter on the 21st of
17 July.

18 **MR. ENGELMANN:** Well, I'll take you through
19 a little bit of it, but there's some contact with the CAS.

20 **MR. SMITH:** Okay.

21 **MR. ENGELMANN:** And they are trying to get
22 him to come back in and ---

23 **MR. SMITH:** Okay. If you're going to ask me
24 the question, sir, and you've already got the documentation
25 there, may I see the documentation before I answer these

1 questions?

2 MR. ENGELMANN: Oh, well, about the CAS?

3 MR. SMITH: Yes.

4 MR. ENGELMANN: I wasn't asking you about
5 the CAS. I was asking you about the Cornwall Police.

6 MR. SMITH: Yeah.

7 MR. ENGELMANN: I will get you there.

8 MR. SMITH: Oh, okay.

9 MR. ENGELMANN: Because you're bouncing back
10 and forth on some of the things and I'm having difficulty
11 following.

12 MR. ENGELMANN: All right. Well, I wasn't
13 going to go to this letter.

14 MR. SMITH: Okay.

15 MR. ENGELMANN: You asked me to go there so
16 that's why I'm jumping around a bit, but I'll go back, if I
17 can. All right?

18 MR. SMITH: Okay, thanks.

19 MR. ENGELMANN: So we've looked at the
20 information you would have gained from Mr. Silmsen about
21 Marcel Lalonde; we've done that.

22 And it's my understanding at least, Mr.
23 Smith, that you do not relay that information to the
24 Cornwall Police Service until about five months later,
25 which is the letter we've just looked at.

1 And it doesn't appear when you do that, that
2 you give them the statement you've taken or even an excerpt
3 of the statement. You simply write to them.

4 Is that fair? That's the letter we looked
5 at? There's no attachment, no excerpt?

6 **MR. SMITH:** I don't believe they got a copy
7 of my statement.

8 **MR. ENGELMANN:** Right. And you were
9 investigating the Cornwall Police at that point, so I mean,
10 that may be why you don't want to give them too much, I'm
11 not sure, but you are investigating them in the context of
12 David Silmser; correct?

13 **MR. SMITH:** That's correct.

14 **MR. ENGELMANN:** All right. I understand
15 that you advised the CAS that you thought they should
16 notify the school board and there's a reference to that in
17 Exhibit 2462.

18 **THE COMMISSIONER:** Do you have a page
19 number, Mr. Engelmann?

20 **MR. ENGELMANN:** I'm sorry?

21 **THE COMMISSIONER:** Page number?

22 **MR. ENGELMANN:** I think it's just -- oh, I'm
23 sorry, it's Bates page 7080546.

24 **THE COMMISSIONER:** Five-four-six (546),
25 okay. Before last page, sir.

1 **MR. SMITH:** I'm sorry?

2 **THE COMMISSIONER:** If you look at Exhibit
3 2462.

4 **MR. SMITH:** Yes, I have.

5 **THE COMMISSIONER:** It's the before last
6 page. No, what did you say?

7 **MR. ENGELMANN:** Five-forty-six (546).

8 **THE COMMISSIONER:** Yes, that's right, 546.

9 **MR. SMITH:** The handwritten?

10 **THE COMMISSIONER:** Yes.

11 **MR. ENGELMANN:** Yes, I'm going to try to
12 help you with that.

13 It says:

14 "Update: Communication from Inspector
15 Tim Smith of OPP recommending that we
16 advise school board of Marcel Lalonde.
17 Feels Silmsen could bring suit if this
18 teacher continued to molest."

19 **THE COMMISSIONER:** "We had the name..."

20 **MR. ENGELMANN:** "And we had the name.
21 Teacher at Sacred Heart."

22 Okay. So that's one reference, sir, that I
23 can give you that sometime just prior to July 7th, '94, I
24 believe, you are in touch with either -- well, someone from
25 the Project Blue team to give them that information.

1 Do you recall this at all, sir?

2 MR. SMITH: This phone call to him?

3 MR. ENGELMANN: Yeah.

4 (SHORT PAUSE/COURTE PAUSE)

5 MR. SMITH: I don't appear to have a note on
6 that.

7 MR. ENGELMANN: Okay. They're not very
8 descriptive sometimes, sir, and I know they're ---

9 MR. SMITH: M'hm.

10 MR. ENGELMANN: --- you don't have a note of
11 certainly all of your calls.

12 So does this seem at all familiar to you
13 that you would have called and recommended that the CAS
14 contact the school board?

15 MR. SMITH: I thought I sent them a letter.

16 MR. ENGELMANN: Okay, I think you did.

17 Sir, I know that -- perhaps we can look at
18 another document, which are Greg Bell's notes, Exhibit
19 2324.

20 (SHORT PAUSE/COURTE PAUSE)

21 MR. ENGELMANN: The Bates page number you're
22 going to want is 079. It's also page 211 of his notes.
23 It's towards the back. And I know you've got binders
24 everywhere, Mr. Smith, but there's also a reference in your
25 notes ---

1 **MR. SMITH:** Okay.

2 **MR. ENGELMANN:** --- which we've looked at
3 and I'll take you to it in a minute too.

4 The reference here to Mr. Bell's notes is if
5 you look at the middle of the page, it says:

6 "Constable McDonell indicated that
7 Marcel Lalonde is still teaching
8 primary school at Sacred Heart School
9 and believed to be homosexual."

10 Do you see that reference?

11 **MR. SMITH:** Yes.

12 **MR. ENGELMANN:** And, sir, these are notes
13 that he takes of a meeting. If you flip the page back one
14 ---

15 **MR. SMITH:** M'hm.

16 **MR. ENGELMANN:** --- this is a big meeting
17 that you're having at the CAS with yourself, Constable
18 Fagan, Constable McDonell, Rick Abell, William Carriere and
19 Greg Bell.

20 **MR. SMITH:** Okay.

21 **MR. ENGELMANN:** All right?

22 **MR. SMITH:** Yeah.

23 **MR. ENGELMANN:** So there's -- this follows
24 their letter to you where they verify abuse in their
25 investigation of Father MacDonald.

1 **MR. SMITH:** M'hm. Yes.

2 **MR. ENGELMANN:** And this is the meeting
3 that's set up so that you can exchange some information.
4 And you'll see there's notes. He said:

5 "Reviewed our respective finding;
6 shared information."

7 And then if we flip onto the next page we
8 have that reference that I indicated to you where McDonell
9 is indicating that Lalonde is still teaching primary school
10 at Sacred Heart.

11 Okay?

12 **MR. SMITH:** I'm sorry; could you ask that
13 question again, sir? I was trying to find ---

14 **MR. ENGELMANN:** All right. Well, let's just
15 look at the page and what's referred to there about Marcel
16 Lalonde. Okay? This is page 211, Bates page 079.

17 **MR. SMITH:** Yes.

18 **THE COMMISSIONER:** So we're on March of
19 ---

20 **MR. ENGELMANN:** This is a meeting on March
21 22nd ---

22 **THE COMMISSIONER:** Of 1994.

23 **MR. ENGELMANN:** --- '94, and you're sharing
24 information about Mr. Silmsers' allegations. And it's not
25 just about Charles MacDonald; there's some discussion about

1 Marcel Lalonde.

2 And if we look on the second page, page 079
3 or page 211, it says -- about the third paragraph:

4 "We discussed why we didn't feel we
5 could pursue the issue of the
6 allegation that Marcel Lalonde molested
7 D. Silmser any further without more
8 details from D. Silmser."

9 Do you see that?

10 **MR. SMITH:** Yes.

11 **MR. ENGELMANN:** Then it says:

12 "Constable McDonell indicated that
13 Marcel Lalonde is still teaching
14 primary school at Sacred Heart School
15 and believed to be homosexual."

16 And then it says:

17 "Detective Inspector Smith gave me a
18 letter confirming he's investigating
19 allegations that David Silmser's been
20 sexually assaulted or abused by Father
21 Charles MacDonald when he was a child.
22 This is the letter I requested to
23 clarify that we can release information
24 under the protocol."

25 All right?

1 **MR. SMITH:** Yes.

2 **MR. ENGELMANN:** So just a couple of things,
3 if I may. Someone, at your direction perhaps or perhaps
4 not, Constable McDonell has confirmed that Marcel Lalonde
5 is still an active teacher.

6 **MR. SMITH:** Yes, I have no reasons to
7 dispute these notes, no.

8 **MR. ENGELMANN:** So he may not be at Bishop
9 Macdonell anymore but he's at another school, Sacred Heart?

10 **MR. SMITH:** A teacher, yes.

11 **MR. ENGELMANN:** All right.

12 And there's apparently some discussion by
13 you or one of your colleagues about why you feel you cannot
14 pursue the allegation.

15 **THE COMMISSIONER:** No, no, no, no. "We" is
16 the Children's Aid Society.

17 **MR. ENGELMANN:** Oh, sorry.

18 **MR. SMITH:** The Children's Aid Society, yes.

19 **MR. ENGELMANN:** Fair enough. My mistake.

20 So the Children's Aid Society is telling you
21 why they feel they can't pursue this; correct?

22 **MR. SMITH:** That's correct, yes.

23 **MR. ENGELMANN:** All right.

24 And you would have been aware -- or would
25 you have been aware that there were absolutely no details

1 provided to the Children's Aid Society when they met with
2 him back in November?

3 MR. SMITH: I had not seen the statement.

4 MR. ENGELMANN: All right.

5 The statement just indicated were you
6 sexually assaulted or sexually abused by anyone else and he
7 mentions the name but there's no details provided.

8 MR. SMITH: No.

9 MR. ENGELMANN: Would you have shared the
10 information that you had with them at that time about the
11 allegations against Marcel Lalonde?

12 MR. SMITH: Again, I'm trying to figure --
13 when did I take the statement from Silmsner?

14 MR. ENGELMANN: February 22nd, '94.

15 MR. SMITH: So this is a month later.

16 THE COMMISSIONER: A month later.

17 MR. ENGELMANN: Yeah.

18 MR. SMITH: A month later.

19 MR. ENGELMANN: And we went through some of
20 the information he gave you.

21 MR. SMITH: M'hm.

22 MR. ENGELMANN: For example, that at the
23 time of the abuse Marcel Lalonde was his teacher; that he
24 was in Grade 8 at the time; that it happened at Marcel
25 Lalonde's house; that he grabbed his crotch or tried to

1 grab his crotch; that there were sexual pictures, students,
2 et cetera ---

3 MR. SMITH: M'hm.

4 MR. ENGELMANN: --- and that he believed he
5 was still teaching.

6 MR. SMITH: I find it hard to believe that
7 I'd have that information and not pass it on somehow or
8 another.

9 MR. ENGELMANN: What strikes -- but we don't
10 see that ---

11 MR. SMITH: I see that.

12 MR. ENGELMANN: --- detail anywhere in the
13 CAS notes.

14 MR. SMITH: No, I don't see it either, sir.

15 MR. ENGELMANN: And I'm wondering why that
16 kind of detail would not have been passed on.

17 MR. SMITH: I don't know. I'm wondering
18 what came to my attention, though, to send that letter in
19 July.

20 MR. ENGELMANN: All right.

21 THE COMMISSIONER: Well, I thought, isn't it
22 that they requested the letter from you? See, it says
23 "This is in the letter..." -- I'm sorry; if you look at
24 what's on the screen, I don't know what page, this big
25 paragraph where it says "Detective Inspector" right in the

1 middle.

2 MR. SMITH: Yes.

3 THE COMMISSIONER: Okay. It says:

4 "This is the letter I requested to
5 document that we can release
6 information under the protocol."

7 MR. ENGELMANN: Sir, I believe that letter
8 is Document Number 715809.

9 THE COMMISSIONER: Oh, well ---

10 MR. ENGELMANN: Perhaps we could go there.

11 THE COMMISSIONER: --- I tried.

12 MR. ENGELMANN: I believe they're requesting
13 the letter because they want a letter before they turn over
14 their material.

15 THE COMMISSIONER: Yes.

16 MR. ENGELMANN: And we'll just bring that up
17 if we can.

18 THE COMMISSIONER: Okay. So that's not the
19 same letter that you just showed ---

20 MR. ENGELMANN: No.

21 THE COMMISSIONER: Okay.

22 MR. ENGELMANN: That's a letter in July

23 ---

24 THE COMMISSIONER: Right. Of course.

25 MR. ENGELMANN: --- that Mr. Smith had --

1 then Detective Inspector Smith is sending to Acting Chief
2 Johnston.

3 **THE COMMISSIONER:** Yes. Yes, yes, yes.

4 Thank you. Exhibit 2560 is a letter dated
5 March 21st, 1994 addressed to Gregory Bell of the Children's
6 Aid Society from Mr. Smith.

7 --- **EXHIBIT NO./PIÈCE NO. P-2560:**

8 (715809) - Letter from Tim Smith to Gregory
9 Bell dated 21 Mar 94

10 **MR. SMITH:** Yes.

11 **MR. ENGELMANN:** All right.

12 So this is a letter you write to the CAS.

13 **MR. SMITH:** Yes.

14 **MR. ENGELMANN:** The following day you have
15 the meeting.

16 **MR. SMITH:** Yes.

17 **MR. ENGELMANN:** They've already written to
18 you. I don't know if we need to go there but they wrote
19 you a -- well, it was a letter to the OPP to a fellow by
20 the name of Fougere indicating that they have verified
21 abuse in their process.

22 **MR. SMITH:** Yes.

23 **MR. ENGELMANN:** It's not a criminal process.
24 It's a process they use ---

25 **MR. SMITH:** Yes.

1 **MR. ENGELMANN:** --- when they're concerned
2 about whether a child's at risk.

3 So you have this meeting on the 22nd.
4 There's no reference in your letter to Mr. Bell about
5 Marcel Lalonde?

6 **MR. SMITH:** No.

7 **MR. ENGELMANN:** You're simply talking about
8 your investigation, your mandate?

9 **MR. SMITH:** Yes.

10 **MR. ENGELMANN:** And then the following day
11 there's clearly some discussion about Marcel Lalonde. And
12 sir, if you want the only other thing I have that might
13 refresh your memory is in your notes at Exhibit 1803, Bates
14 page 220.

15 **(SHORT PAUSE/COURTE PAUSE)**

16 **MR. ENGELMANN:** Again, it would be helpful
17 if we had this blown up a bit on the screen because it's
18 very small.

19 **MR. SMITH:** My notes -- Bates?

20 **MR. ENGELMANN:** The Bates page is 220 and
21 these are dates in March of '94.

22 Madam Clerk, if you go down to -- it says
23 "Speak to Greg Bell" about halfway down? Just if you pull
24 the arrow down a little bit?

25 **THE COMMISSIONER:** Right there.

1 **MR. ENGELMANN:** Yeah, just a little bit
2 further.

3 I thought I saw it there a minute -- oh,
4 yeah, "Speak to Greg Bell. CAS..."

5 **MR. SMITH:** Yes, yes.

6 **MR. ENGELMANN:** I'm not sure what it says
7 after that.

8 **THE COMMISSIONER:** "Re..."

9 **MR. SMITH:** "Speak to Bell, Greg Bell, CAS
10 re their investigation re school
11 teacher and Silmser's allegation.
12 Advised Silmser not specific in
13 allegations and when requested to give
14 further details..."

15 **MR. ENGELMANN:** By?

16 **MR. SMITH:** "...has not responded."

17 **MR. ENGELMANN:** By who?

18 **MR. SMITH:** Letter.

19 **MR. ENGELMANN:** Okay. So they are reporting
20 to you that Silmser has mentioned this fellow to them.
21 They tried to follow up but he has not responded?

22 **MR. SMITH:** That's correct.

23 **MR. ENGELMANN:** All right.

24 And there doesn't appear to be any reference
25 on your part to you sharing the information that you've

1 gleaned from him in February; correct?

2 MR. SMITH: Yes.

3 MR. ENGELMANN: All right.

4 And then, as I said, aside from that we have
5 the reference to contacting CAS sometime shortly before
6 July 7th, '94, and that was Exhibit 2462. We looked at that
7 briefly. That was the handwritten note dated July 7th '94,
8 the CAS note.

9 MR. SMITH: Yes.

10 MR. ENGELMANN: And they have you indicating
11 that they, the Children's Aid Society, should advise the
12 school board of Marcel Lalonde. All right?

13 MR. SMITH: Correct.

14 MR. ENGELMANN: And then, sir, we have the
15 letter you write to Acting Chief Johnston later in July
16 about this. And if we could just go back there for a
17 minute, because I think I've given you everything that I
18 can with respect to trying to refresh your memory.

19 MR. SMITH: Yeah.

20 MR. ENGELMANN: But that letter is July 21st,
21 '94. It's Exhibit 406.

22 THE COMMISSIONER: So -- okay.

23 MR. ENGELMANN: The Document Number is
24 728471.

25 Okay. So do you have that letter again,

1 sir?

2 MR. SMITH: Yes, I do.

3 MR. ENGELMANN: All right.

4 So in this letter you refer to the fact that
5 Silmsler was interviewed on November 2nd, '93 by Bell and
6 DeBellis.

7 MR. SMITH: M'hm.

8 MR. ENGELMANN: That the interview was tape
9 recorded and you say:

10 "Within the interview Silmsler alleged
11 he was sexually assaulted by Father
12 Charles MacDonald and probation officer
13 Ken Seguin. These allegations were
14 similar to those he gave to Constable
15 Sebalj of your Service."

16 And then you say:

17 "It appears Mr. Silmsler also alleged
18 being sexually assaulted while a
19 student in Grade 8 by a school teacher,
20 Marcel Lalonde, who taught at possibly
21 Bishop MacDonell School."

22 Okay? And if we turn the page there's no
23 reference to the fact that Silmsler would have provided you
24 and Constable Fagan more information of that nature on
25 February 22nd, 1994; correct?

1 **MR. SMITH:** Yes.

2 **MR. ENGELMANN:** And I'm wondering why you
3 would just reference the CAS interview where he doesn't
4 give any allegations, just gives the name and not reference
5 the fact that you have more information and provide that to
6 the CPS.

7 **MR. SMITH:** The only explanation I can give
8 you is that I missed it. I must have missed it in the
9 statement.

10 **MR. ENGELMANN:** The other thing that struck
11 me as strange is in March an OPP officer by the name of
12 McDonnell at a meeting that you're present at is saying,
13 "No, this guy is at Sacred Heart now" and that's not in
14 this letter either, which I would have thought would have
15 been useful for the Cornwall Police Service to know.

16 **MR. SMITH:** That's where I'm having
17 difficulty. I can't understand how I missed that.

18 **MR. ENGELMANN:** Okay.

19 **MR. SMITH:** It appears I may have.

20 **MR. ENGELMANN:** What about -- and when you
21 write to them you say:

22 "I bring this to your attention in the
23 event you have any similar complaints
24 or investigations concerning this
25 school teacher."

1 Now, did you have some discussion with
2 either Johnston or Brunet about this matter after you wrote
3 to them?

4 **MR. SMITH:** Not that I recall.

5 **MR. ENGELMANN:** Okay. They never told you,
6 did they, that they had had a complaint back in the late
7 '80s about this school teacher?

8 **MR. SMITH:** Not that I recall.

9 **MR. ENGELMANN:** Okay. You know, sir, that
10 he's eventually prosecuted?

11 **MR. SMITH:** Yes, sir.

12 **MR. ENGELMANN:** And found guilty or pleads
13 guilty?

14 **MR. SMITH:** Yes.

15 **MR. ENGELMANN:** Found guilty to several
16 counts?

17 **MR. SMITH:** Yes, two years I believe he was
18 sentenced to.

19 **MR. ENGELMANN:** Okay. And I'm just
20 wondering, sir, why the OPP wouldn't have followed up with
21 this investigation.

22 **MR. SMITH:** When?

23 **MR. ENGELMANN:** Just at this time. Was that
24 something that you asked either Fagan or -- Constable Fagan
25 or someone else to try and follow up on to get more

1 information?

2 MR. SMITH: Not that I recall. All I can
3 say, sir, is that this comes as a complete shock to me that
4 I could miss that. And I don't have any excuse. I see
5 there is no documentation anywhere that shows that I did
6 anything until July.

7 MR. ENGELMANN: I've given you what I know
8 of so ---

9 MR. SMITH: No, I ---

10 MR. ENGELMANN: There may be something else
11 but ---

12 MR. SMITH: I'm being honest with you. It
13 appears I missed it. I was unaware somehow or I've missed
14 it, and it should have been reported.

15 MR. ENGELMANN: Okay.

16 MR. SMITH: I can't -- what more can I say?

17 MR. ENGELMANN: M'hm. Well, okay. To the
18 best of your recollection, you didn't follow up on this
19 yourself? You didn't, either yourself or Constable Fagan,
20 do any work with either the school board ---

21 MR. SMITH: I can't remember any being done
22 on that.

23 MR. ENGELMANN: All right.

24 MR. SMITH: And once again I'm going to say
25 that it's definitely in that statement and I can't believe

1 that I didn't pass that on immediately, not six months
2 later, if I was aware. And there's no excuse.

3 **MR. ENGELMANN:** To pass it onto the Cornwall
4 Police Service immediately?

5 **MR. SMITH:** And the CAS.

6 **MR. ENGELMANN:** Okay. Because the CAS
7 presumably with that information -- well, I shouldn't ask.
8 They might have decided to go further with the information
9 you had given and look at the situation in the school?

10 **MR. SMITH:** If I had given that information
11 there's no doubt in my mind that they would have acted on
12 it.

13 **MR. ENGELMANN:** All right, fair enough.
14 And did you, sir, in your dealings with the
15 CAS team get the sense that they were serious about what
16 they were doing?

17 **MR. SMITH:** Definitely.

18 **MR. ENGELMANN:** All right.

19 And you had a good professional relationship
20 with Abell, Carriere and Bell?

21 **MR. SMITH:** No complaints whatsoever. They
22 were totally cooperative in anything that I had to do.

23 **MR. ENGELMANN:** And when you provided that
24 letter, they provided you access to their files?

25 **MR. SMITH:** Yes.

1 **MR. ENGELMANN:** All right.

2 Now, I've been jumping around a bit so I
3 just want to find my place.

4 **MR. SMITH:** I'm running out of room here.

5 **MR. ENGELMANN:** Yeah.

6 **(LAUGHTER/RIRES)**

7 **MR. ENGELMANN:** That's many ---

8 **THE COMMISSIONER:** That's why we take breaks
9 so that we can arrange our ---

10 **MR. ENGELMANN:** --- we've had many comments,
11 Mr. Smith, about the fact that that desk isn't big enough.
12 So I'll just -- just give me a moment.

13 **THE COMMISSIONER:** Would you like ---

14 **MR. ENGELMANN:** All right.

15 I want to just turn you back to the
16 statement, so that's Exhibit 267, the interview you took of
17 Mr. Silmser.

18 **MR. SMITH:** Yes, at the bottom of the pile
19 here.

20 **THE COMMISSIONER:** Oh, that's the other
21 thing. Mr. Engelmann always goes to the bottom, leaves no
22 stone unturned -- 260?

23 **MR. ENGELMANN:** Two-sixty-seven (267), I
24 believe.

25 **THE COMMISSIONER:** Yeah.

1 **MR. ENGELMANN:** Do you have that, sir?

2 **MR. SMITH:** My notes?

3 **MR. ENGELMANN:** This is your interview of --

4 -

5 **MR. SMITH:** Yeah, and what page? I'm sorry,
6 sir.

7 **MR. ENGELMANN:** The page that I want to turn
8 to now is Bates page 845.

9 **MR. SMITH:** Eight-four-five (845), yes, sir.

10 **MR. ENGELMANN:** And if we look about halfway
11 down the page, you start asking him about Ken Seguin. All
12 right? It's been primarily about Father MacDonald. Now,
13 you're asking about Ken Seguin and you say:

14 "You mention at one time something in
15 regard to Seguin, to the police, that
16 you didn't -- any charges..."

17 Probably said "lay any charges with Seguin"
18 or something:

19 "...not at that time. I just wanted to
20 get one over with at a time so I could
21 handle one."

22 "Okay. At some point did you contact
23 Seguin et al in regard to any
24 settlement or anything?"

25 Now, at this point would it be fair for me

1 to suggest that this is a question that you're asking for
2 your colleague and this isn't really part of your mandate;
3 this is something you're asking for Mr. Hamelink?

4 **MR. SMITH:** I'd have to read through the
5 entire statement to find that, but that would appear that
6 that would be the start of it.

7 **MR. ENGELMANN:** Oh, I don't know if this is
8 the only place you talk about it, but when I'm looking at
9 the questions that follow here, it appears that this
10 probably has more to do with the extortion issue than it
11 does the three issues that you've told us you were looking
12 at.

13 **MR. SMITH:** I would agree.

14 **MR. ENGELMANN:** All right. And you go on
15 and it says:

16 "Yeah, I told him I was talking
17 actually to his lawyer and his lawyer
18 is Malcolm MacDonald, the same
19 lawyer..."

20 And then it carries on, on this page, and
21 then onto the next page.

22 **MR. SMITH:** Yes.

23 **MR. ENGELMANN:** Where he says at the bottom:

24 "I said, Ken, what are you going to do
25 or do I have to go civilly?"

1 So in other words, he appears to be
2 acknowledging to you that he's asked Mr. Seguin for some
3 money and if he's not going to get paid he's going to try
4 and sue him.

5 **MR. SMITH:** Yes.

6 **MR. ENGELMANN:** Okay?

7 **MR. SMITH:** Yes.

8 **MR. ENGELMANN:** Not that he's going to go
9 lay a criminal charge but that he may sue him?

10 **MR. SMITH:** Yes.

11 **MR. ENGELMANN:** All right. And you're just
12 listening at that point and then you say:

13 "Was your intention with Seguin -- were
14 you going to go back to the police and
15 file a complaint with them?"

16 And:

17 "I'm just asking. I'm just asking."

18 "No, the police weren't doing nothing
19 in the first place. I was handling it
20 all by myself the whole time, you know,
21 I didn't have a lawyer..."

22 Et cetera. So it would seem to me that
23 these questions clearly would have been dealing with the
24 extortion issue and, sir, again, did you -- did you feel at
25 all that it might have been appropriate to caution him or

1 warn him that you were seeking this information for some
2 other purpose?

3 MR. SMITH: No, he hadn't committed anywhere
4 in my opinion that he was committing an offence. Had he, I
5 would have stopped him.

6 MR. ENGELMANN: Okay, but just the fact that
7 you were asking him questions and probing that issue, you
8 didn't feel it was necessary to give him some form of a
9 warning as to where you were going?

10 MR. SMITH: Well, no. If you're
11 interviewing somebody in regard to a possible criminal
12 offence, you can put questions to them until such time that
13 they incriminate themselves. You stop them and caution
14 then.

15 MR. ENGELMANN: Okay.

16 MR. SMITH: And at no point did he ever
17 incriminate himself.

18 MR. ENGELMANN: Fair enough, but in ---

19 MR. SMITH: In my opinion. Now, that
20 statement, if I did give anything to him, would be subject
21 to a judge to decide whether it's admissible or not.

22 MR. ENGELMANN: But in that particular
23 sense, he understood that he was seeing you as an alleged
24 victim?

25 MR. SMITH: Yes.

1 **MR. ENGELMANN:** And he had no idea that this
2 extortion investigation ---

3 **MR. SMITH:** No, no.

4 **MR. ENGELMANN:** --- was going on?

5 **MR. SMITH:** No.

6 **MR. ENGELMANN:** All right.

7 **MR. SMITH:** I thought we made that
8 abundantly clear earlier, sir, that that's what I was going
9 to do.

10 **MR. ENGELMANN:** Right, okay.

11 **MR. SMITH:** Now, according to your -- would
12 I be correct in saying that immediately after the interview
13 that you had with Mr. Silmsler on the 22nd of February, that
14 you met with the other officers; that is, Officers
15 Hamelink, McDonell, and Fagan to discuss the interview?

16 The reason I ask is there's no reference in
17 your notes, sir, but there is some reference in Constable
18 Fagan's notes to that.

19 **MR. SMITH:** That would make sense because we
20 had conducted that at Kanata and we would go back to the
21 Intelligence Branch office in Bell's Corners, wherever
22 Hamelink was working.

23 **MR. ENGELMANN:** All right.

24 And if we could just pull up Document Number
25 713543. Mr. Smith, these as I understand it are notes that

1 were taken at the time by Mike Fagan?

2 MR. SMITH: Okay.

3 THE COMMISSIONER: Thank you.

4 Exhibit 2561 is Officer Fagan's notes and
5 the first date is -- no idea -- oh, this is 1994.

6 Is that right, Mr. Engelmann?

7 MR. ENGELMANN: Mr. Commissioner, I'm not --
8 first of all, I didn't get the exhibit number actually.

9 THE COMMISSIONER: Two-five-six-one (2561).

10 MR. ENGELMANN: Yes.

11 THE COMMISSIONER: I'm at the point of
12 identifying the notes. They are Constable Fagan's notes?

13 MR. ENGELMANN: Yes, the first dates I have
14 on the page, legible date, is February 8th, '94, about the
15 third of the way down the page.

16 THE COMMISSIONER: Yes, that's right.

17 MR. ENGELMANN: So I'm assuming that the
18 start of the page is somewhat slightly before then.

19 THE COMMISSIONER: Sure.

20 MR. ENGELMANN: My understanding, Mr.
21 Commissioner, is this is from his notebook between the
22 dates of February 8th and March 25th of 1994.

23 THE COMMISSIONER: Thank you.

24 --- EXHIBIT NO./PIECE NO. P-2561:

25 (713543) Cst. Fagan notes dated February 8

1 to March 26, 1994

2 **THE COMMISSIONER:** Can we take the break
3 now, Mr. Engelmann?

4 **MR. ENGELMANN:** We can.

5 **THE COMMISSIONER:** Thank you. Let's take
6 the afternoon break.

7 **THE REGISTRAR:** Order; all rise. À l'ordre;
8 veuillez vous lever.

9 This hearing will resume at 3:15 p.m.

10 --- Upon recessing at 3:02 p.m. /

11 L'audience est suspendue à 15h02

12 --- Upon resuming at 3:20 p.m. /

13 L'audience est reprise à 15h20

14 **THE REGISTRAR:** Order; all rise. À l'ordre;
15 veuillez vous lever.

16 This hearing is now resumed. Please be
17 seated. Veuillez vous asseoir.

18 **TIMOTHY SMITH, Resumed/ Sous le même serment:**

19 --- **EXAMINATION IN-CHIEF BY/INTERROGATOIRE EN-CHEF PAR MR.**
20 **ENGELMANN (Cont'd/Suite):**

21 **MR. ENGELMANN:** Mr. Commissioner, just a
22 housekeeping matter from yesterday.

23 **THE COMMISSIONER:** M'hm.

24 **MR. ENGELMANN:** I understand when Officer
25 McDougald was here, during the course of his cross-

1 examination by one of my colleagues or one of my friends,
2 there was an issue that arose and he thought he had
3 something in his notes.

4 **THE COMMISSIONER:** M'hm.

5 **MR. ENGELMANN:** And, in fact, he was able to
6 find it after the hearing yesterday. My colleague, Maitre
7 Dumais, dealt with this issue with counsel. I'd like now
8 to add an excerpt from the officer's notes.

9 **THE COMMISSIONER:** Certainly.

10 **MR. ENGELMANN:** This is apparently from his
11 notebook and I believe the date, although it's not on the
12 notes, should be February 18th. I wasn't told what year,
13 but in any event I think that his notes ended February 17th
14 and he was able to find this and unfortunately had been cut
15 off due to photocopying or something of that nature.

16 So if the Document Number 200310 could be
17 entered as Exhibit 2555A; 2555A?

18 **THE COMMISSIONER:** That's fine.

19 **MR. ENGELMANN:** I assume there's no
20 objection from counsel?

21 **THE COMMISSIONER:** Thank you.

22 ---EXHIBIT NO./PIÈCE NO P-2555A:

23 (200310) - Notes of Steve McDougald dated 18
24 Feb 93

25 **MR. ENGELMANN:** All right.

1 And Mr. Smith, if we can go back then to --
2 it's Constable Fagan's notes. And the Bates page that I'd
3 like you to turn to in Exhibit 2561 is Bates page 347.

4 These notes are a little bigger but I'm just
5 -- I'm looking towards the bottom of the page. And I
6 believe what's being referred to, after -- you'll see it
7 about halfway down the page. It says "Lunch" and then it
8 says:

9 "With Inspector Smith at Ottawa
10 Detachment for interview with David
11 Silmser, 12:45; 12:55, interview
12 started."

13 He lists who's present.

14 "14:55, interview completed."

15 And I'm not sure what it says after that but
16 it says:

17 "Meeting with Inspector Hamelink,
18 Constable McDonell, Constable Genier
19 and Inspector Smith."

20 And unfortunately, there's no real
21 description about what happened at the meeting. But this I
22 think confirms your suspicion, sir, that you would have had
23 a meeting after the interview with ---

24 **MR. SMITH:** Yes, we would have because
25 Hamelink was there watching the interview.

1 **MR. ENGELMANN:** Yes.

2 **MR. SMITH:** Yeah.

3 **MR. ENGELMANN:** Okay. Do you have any
4 recollection, sir, as to what might have been discussed at
5 that time with respect to how your respective
6 investigations would continue?

7 **MR. SMITH:** Well, the first thing I think we
8 would have done was to make arrangements to have that tape
9 transcribed which I was having a lot of difficulty getting
10 people to transcribe. So it would be some time before I
11 got that written statement back. That would be one issue.

12 I imagine that Hamelink would naturally want
13 a copy of that statement.

14 **MR. ENGELMANN:** Okay. And did you when you
15 were doing your investigation, from time to time come
16 across information that might be relevant to the extortion
17 investigation? For example, in this interview, there were
18 some questions that would have been relevant to it.

19 And I'm just wondering, sir, if you had a
20 practice of providing statements over to the other
21 investigation or whether that was something that was to be
22 done at the end?

23 **MR. SMITH:** I know I had contact with
24 Inspector Hamelink throughout the next several months on a
25 pretty regular basis. So I would have exchanged whatever

1 information I had at that time. But I can't recall exactly
2 what that was.

3 **MR. ENGELMANN:** All right. But you're
4 pretty sure you would have provided a transcript of the
5 Silmsler interview once you had it transcribed?

6 **MR. SMITH:** I believe I would have. Yeah,
7 he would have.

8 **MR. ENGELMANN:** All right.

9 **MR. SMITH:** But that may have taken some
10 time to get that.

11 **MR. ENGELMANN:** All right. Well if we go
12 back to your notes and just to perhaps refresh your memory,
13 but you've indicated that there were other contacts with --
14 -

15 **MR. SMITH:** Yes.

16 **MR. ENGELMANN:** --- Detective Inspector
17 Hamelink?

18 **MR. SMITH:** That I recall, yes.

19 **MR. ENGELMANN:** Let's turn to -- it's
20 Exhibit 1803, Bates page -- let's start at Bates page 217.
21 And perhaps you can just help me out here. It's
22 referencing, sir, as I understand it, on March 8th, you have
23 a meeting with Superintendent Fougère ---

24 **MR. SMITH:** Yes.

25 **MR. ENGELMANN:** --- and Detective -- Staff

1 Sergeant?

2 MR. SMITH: Staff Sergeant Duhamel, D-U-H-A-
3 M-E-L.

4 MR. ENGELMANN: Okay. And were they asking
5 for some kind of an update from you?

6 MR. SMITH: I would have updated them, I
7 know that.

8 MR. ENGELMANN: All right. And just so that
9 I'm clear, and I should be clearer on this, with respect to
10 Superintendent Fougère, is there a reporting relationship
11 between the two of you?

12 MR. SMITH: No.

13 MR. ENGELMANN: Because I understood you
14 reported to Superintendent Fréchette.

15 MR. SMITH: No, it's a courtesy because I'm
16 operating in his district.

17 MR. ENGELMANN: All right.

18 MR. SMITH: And he's actually providing me
19 with his personnel so it's a courtesy.

20 MR. ENGELMANN: Okay. So Constable Fagan
21 would have been one of his personnel at the time?

22 MR. SMITH: I'm not entirely sure. I think
23 -- I know that he was with Bell's Corners Detachment but at
24 some point, I think, he was also with the Intelligence
25 Branch.

1 **MR. ENGELMANN:** Okay.

2 **MR. SMITH:** And there was a transfer in
3 there somewhere.

4 **MR. ENGELMANN:** Okay.

5 **MR. SMITH:** And I don't know what period of
6 time it would be but it's still on Superintendent Fougère's
7 jurisdiction.

8 **MR. ENGELMANN:** Fair enough. So just a
9 little bit later on, you have a meeting at 11 o'clock and
10 this is with Officers Fagan, McDonell, and Genier?

11 **MR. SMITH:** M'hm.

12 **MR. ENGELMANN:** So even though Inspector
13 Hamelink is not there, some of his team is?

14 **MR. SMITH:** Yes.

15 **MR. ENGELMANN:** All right. And can you tell
16 us what the -- it says "Fourteen (14)..."

17 **MR. SMITH:** "Fourteen (14) local persons to
18 interview."

19 **MR. ENGELMANN:** "Nine have been
20 interviewed"?

21 **MR. SMITH:** Yes.

22 **MR. ENGELMANN:** And what does it say after
23 that? Just the next line.

24 **MR. SMITH:** "Of all the interviews, only
25 allegation was Silmser's."

1 **MR. ENGELMANN:** Okay. Now there's a name
2 right after that that is protected by a moniker here.

3 **MR. SMITH:** Yes.

4 **MR. ENGELMANN:** C-3.

5 **MR. SMITH:** Yes.

6 **MR. ENGELMANN:** So -- just so that I'm
7 clear, is this a meeting where you're meeting and you're
8 providing some information to the other investigative team?

9 **MR. SMITH:** Yes, I would imagine that that's
10 what we're doing.

11 **MR. ENGELMANN:** All right.

12 **MR. SMITH:** There were exchanges and telling
13 them what the status is.

14 **MR. ENGELMANN:** All right. So when we're
15 talking about "14 local persons to interview, nine have
16 been interviewed," that's your investigation?

17 **MR. SMITH:** Yes.

18 **MR. ENGELMANN:** Okay:
19 "One person possible, brought
20 criteria when Father MacDonald..."

21 **MR. SMITH:** That's changing gears.

22 **MR. ENGELMANN:** Okay. And then you've got
23 another name there and an address in New Brunswick.

24 **MR. SMITH:** Yes.

25 **MR. ENGELMANN:** And something possible with

1 Charlie in a motel.

2 MR. SMITH: Yes, in Pennsylvania.

3 MR. ENGELMANN: All right. "Majority no
4 sexual impropriety"?

5 MR. SMITH: Yes. "And speak well of
6 Charlie."

7 MR. ENGELMANN: Okay. "Nothing wrong at
8 all."

9 MR. SMITH: Yeah, that's:
10 "Speaking well of Charlie, nothing
11 wrong at all with what he's done."

12 MR. ENGELMANN: Okay.

13 MR. SMITH: Genier.

14 MR. ENGELMANN: All right. "Back to
15 Maxwell..."

16 MR. SMITH: "Back to Maxwell next week."
17 And, "Chris and..."

18 MR. ENGELMANN: "...Genier to conduct
19 interviews this week in the Cornwall
20 area."

21 MR. SMITH: Yes.

22 MR. ENGELMANN: Now, they're not on your
23 team?

24 MR. SMITH: No.

25 MR. ENGELMANN: Are they just reporting to

1 you that they're doing interviews on their investigation?

2 **MR. SMITH:** I don't know.

3 **MR. ENGELMANN:** Well because after that, we
4 have a reference to the Seguins. And would it be fair to
5 say that -- well are they meeting with the Seguins or is
6 that going to be your team?

7 **MR. SMITH:** No, that was me ---

8 **MR. ENGELMANN:** Okay.

9 **MR. SMITH:** --- at the request of Mrs.
10 Seguin.

11 **MR. ENGELMANN:** All right.

12 **MR. SMITH:** I believe that Hamelink had
13 given me some information that she wished to speak to me,
14 she had some information.

15 **MR. ENGELMANN:** All right. So do you have
16 any recollection as to why Inspector Hamelink would not
17 have been there?

18 **MR. SMITH:** For?

19 **MR. ENGELMANN:** At this meeting. You have a
20 meeting with the two teams; you're discussing where you're
21 both going.

22 **MR. SMITH:** He may have been there.

23 **MR. ENGELMANN:** Okay.

24 **MR. SMITH:** Because I think he was there at
25 the ---

1 **MR. ENGELMANN:** The only ---

2 **MR. SMITH:** --- Seguin's residence with me.

3 He may be ---

4 **MR. ENGELMANN:** Oh, okay. Sorry, sir, I
5 mean the meeting that starts at 11 o'clock ---

6 **MR. SMITH:** Well ---

7 **MR. ENGELMANN:** --- with all the officers
8 there.

9 **MR. SMITH:** If he's in Cornwall at 11
10 o'clock, I imagine that he is at Seguin's with me at 1315,
11 I had to -- he asked me to see her and I believe he was
12 with me at that interview.

13 **MR. ENGELMANN:** All right. So you just --
14 would have just neglected to put his name ---

15 **MR. SMITH:** That could be, yeah.

16 **MR. ENGELMANN:** --- down in the letter?

17 **MR. SMITH:** Yep, that could be.

18 **MR. ENGELMANN:** And you think he was present
19 -- by "he" you think he was present with you when you met
20 with ---

21 **MR. SMITH:** Nancy.

22 **MR. ENGELMANN:** --- Mrs. Seguin?

23 **MR. SMITH:** Yes. I know he was.

24 **MR. ENGELMANN:** All right.

25 Now, sir, as I said earlier, there were

1 several, at least seven of these interviews, where
2 Constable Fagan would have done an interview with Constable
3 McDonell. And I don't want to mention their names here,
4 some of them are alleged victims, and they give some
5 information about abuse from Ken Seguin or others, but I'm
6 just wondering, sir, when there was something related to
7 your case, that information was to be shared or the
8 statement was to be shared with your team presumably?

9 **MR. SMITH:** Ideally, yes, but at the
10 conclusion of our investigation when we met together, the
11 idea was that we would view everybody's statements. So
12 that was a double-check that we didn't miss anything.

13 **MR. ENGELMANN:** All right. So if someone
14 had missed something, even though it could have been an
15 officer from each team, the idea was to get together at the
16 end and review each and every one?

17 **MR. SMITH:** Yes. Prior to making the briefs
18 and sending them to Norm Douglas.

19 **MR. ENGELMANN:** All right.

20 Now, there are some further contacts between
21 yourself and Inspector Hamelink. For example, Bates page
22 221, there appears to be a reference on June 7 -- 7th that
23 day at 15:45?

24 **MR. SMITH:** Yes.

25 **MR. ENGELMANN:** And again it just says,

1 "Update Fred Hamelink on investigation"?

2 MR. SMITH: Yes.

3 MR. ENGELMANN: Now, it doesn't say that
4 he's updating you, but would it be fair to say there would
5 be an exchange of information?

6 MR. SMITH: Any time I spoke with Inspector
7 Hamelink, it would be both ways.

8 MR. ENGELMANN: Yeah.

9 And, again, there seems to be a reference on
10 Bates page 234, and this is now December 21st, 1994.

11 MR. SMITH: Two-thirty-four (234)?

12 MR. ENGELMANN: The date is December 21,
13 '94. The time is 14:40. And can you just tell us what
14 you've noted there, sir?

15 MR. SMITH: I'm sorry. May I have the date
16 again, please?

17 MR. ENGELMANN: The date is 21 December '94,
18 I believe.

19 THE COMMISSIONER: It's up on the screen if
20 it will help you.

21 MR. ENGELMANN: Yeah, at 14:40.

22 MR. SMITH: Oh, December, oh.

23 MR. ENGELMANN: Yes, it's Bates page 234,
24 sir.

25 MR. SMITH: Okay, here I am; I'm on the

1 wrong page, sorry.

2 And what did you want me to read sir, 14:40?

3 **MR. ENGELMANN:** Yes. I can read:

4 "Speak to Fred Hamelink..."

5 I think it says, "re press"?

6 **MR. SMITH:** Yes, yes.

7 **THE COMMISSIONER:** "He does not wish any
8 mention of his investigation at
9 present. He wishes to discuss same
10 with Seguin prior to any press
11 release."

12 **MR. SMITH:** Yes.

13 **THE COMMISSIONER:** All right.

14 **MR. ENGELMANN:** Okay.

15 And there's one other reference, sir, to --
16 the only other reference I saw to a meeting was in his
17 notes, and his notes are 1031, Exhibit 1031.

18 **THE COMMISSIONER:** Thank you.

19 **MR. ENGELMANN:** It's Bates page 235,
20 7098235. The date is Monday, May 9th, '94.

21 **MR. SMITH:** Yes.

22 **MR. ENGELMANN:** Sir, this one was not in
23 your notes, but you're not -- you wouldn't dispute that you
24 would have had a discussion with him on the 9th of May?
25 It's in his notes.

1 **MR. SMITH:** Yes, I wouldn't dispute that,
2 no.

3 **MR. ENGELMANN:** All right. It says:
4 "Spoke with Inspector T. Smith; advised
5 me that Silmser is suing CAS, CPD, for
6 leaking his witness statement to the
7 media."

8 **MR. SMITH:** Yes.

9 **MR. ENGELMANN:** I think you had told us that
10 you found out something about that.

11 "M. Fagan in process of putting brief
12 together for presentation to P.
13 Griffiths."

14 Now this, what he's talking about -- what's
15 being discussed here is what you're relating ---

16 **MR. SMITH:** Yes.

17 **MR. ENGELMANN:** --- to Hamelink.

18 "He (Fagan) still has several
19 interviews to conduct. He believes the
20 brief will be completed by the end of
21 May, '94."

22 All right?

23 **MR. SMITH:** That's correct, yes.

24 **MR. ENGELMANN:** So it appears that what's
25 being discussed here is more about -- at least from

1 Hamelink's notes -- more about what's happening in your
2 investigation?

3 MR. SMITH: That's correct.

4 MR. ENGELMANN: And when you hope to be
5 finished?

6 MR. SMITH: Yes.

7 MR. ENGELMANN: All right?

8 MR. SMITH: Yes.

9 MR. ENGELMANN: So these are examples of
10 contacts you had. You may have had other contacts that
11 neither of you noted. Is that possible?

12 MR. SMITH: Yes, sir.

13 MR. ENGELMANN: Okay.

14 Now, just to get into the '94 investigation
15 in a little more detail, we talked about -- and if you want
16 your notes handy, they're 1803.

17 MR. SMITH: Okay.

18 MR. ENGELMANN: But we talked about how
19 almost immediately after you were given your mandate, you
20 met with Acting Chief Johnston and Staff Sergeant Brunet?

21 MR. SMITH: Yeah.

22 MR. ENGELMANN: And to some extent, sir,
23 even though they had asked for the investigation, they were
24 suspects, given your mandate. Is that fair?

25 MR. SMITH: Yes, sir.

1 **MR. ENGELMANN:** All right.

2 And I'm wondering and it's not really
3 detailed, but I'm just wondering if you have some
4 recollection of being provided with the following
5 documents. If you don't now that's fine, but there was a
6 Crown brief that would have been prepared by Ms. Sebalj or
7 something that looks like a Crown brief in or around early
8 October of 1993 that set out in summary form some of the
9 statements from witnesses and some of the work that she had
10 done.

11 Do you recall if that would have been
12 provided to you?

13 **MR. SMITH:** I can't remember.

14 **MR. ENGELMANN:** Okay. You do recall getting
15 what appeared to be dedicated notes of hers?

16 **MR. SMITH:** Yes.

17 **MR. ENGELMANN:** Okay. You got the original
18 statement or the handwritten statement from Mr. Silmsler ---

19 **MR. SMITH:** Yes.

20 **MR. ENGELMANN:** --- through them. Did you
21 get their officers' notes of their meetings with Mr.
22 Silmsler on January 28th, the initial meeting? There were
23 three different officers taking notes: Sebalj, Malloy, and
24 Lefebvre?

25 **MR. SMITH:** I can't remember.

1 **MR. ENGELMANN:** All right. But you would
2 have had a description of those in the set of notes, the
3 dedicated notes that you had from Sebalj; there would be
4 some description?

5 It's okay. It's in there.

6 **MR. SMITH:** Okay, I just can't ---

7 **MR. ENGELMANN:** You did receive the Ottawa
8 Police Report?

9 **MR. SMITH:** Yes, I remember reading it.

10 **MR. ENGELMANN:** Did you receive Staff
11 Sergeant Derochie's notes of his reinvestigation? This
12 would have been -- Staff Sergeant Derochie was looking at
13 two issues in the fall of 1993: The possible *Police*
14 *Services Act* charges against Perry Dunlop, and also looking
15 at how his own officers had investigated the Silmsers
16 matter?

17 **MR. SMITH:** I can't remember.

18 **MR. ENGELMANN:** Okay. Do you know if Staff
19 Sergeant Brunet would have turned over some of his own
20 notes to you?

21 **MR. SMITH:** Once again, I can't remember.

22 If I had my brief and everything else that
23 we put together, those would have been in it. All of that
24 would have been in it.

25 **MR. ENGELMANN:** All right.

1 **MR. SMITH:** I'm going back 15 years.

2 **MR. ENGELMANN:** Fair enough.

3 Do you recall, sir, if the information you
4 got from them you got all at the front end or do you recall
5 if you were getting information over time? Cornwall Police
6 Service.

7 **MR. SMITH:** I can't remember when I got it
8 but I can assure you, sir, that I had complete cooperation
9 from the Cornwall police, and anything that I wanted or
10 required I was provided.

11 **MR. ENGELMANN:** All right.

12 And typically your contact was with Staff
13 Sergeant Brunet?

14 **MR. SMITH:** Yes.

15 **MR. ENGELMANN:** And there were some contacts
16 with Acting Chief Johnston?

17 **MR. SMITH:** Yes.

18 **MR. ENGELMANN:** And with respect to Staff
19 Sergeant Brunet, you've confirmed already that he was in
20 charge of CIB before the Silmsler investigation by the
21 Cornwall Police Service?

22 **MR. SMITH:** Yes, he'd just been assigned to
23 that position, if I recall correctly.

24 **MR. ENGELMANN:** Yeah, he had just started in
25 1993 ---

1 **MR. ENGELMANN:** Yes.

2 **MR. ENGELMANN:** --- when this started.

3 He would have been Constable Sebalj's direct
4 supervisor during her investigation?

5 **MR. SMITH:** I believe so.

6 **MR. ENGELMANN:** He would have had
7 conversations with her from time to time about the status
8 of her investigation?

9 **MR. SMITH:** I would imagine, yes.

10 **MR. ENGELMANN:** I'm just wondering if that
11 would have been related to you.

12 Were you advised that he had spoken and
13 corresponded with Murray MacDonald, the local Crown, about
14 the Silmsers matter?

15 **MR. SMITH:** I saw some of that
16 correspondence.

17 **MR. ENGELMANN:** And, sir, were you aware
18 that he would have spoken with the Chief and Deputy Chief
19 about the withdrawal of the complaint, the lack of
20 information on OMPPAC, and the placement of the Silmsers
21 investigation in a project file by the Cornwall police?

22 **MR. SMITH:** That Brunet spoke to the Chief
23 in regard to that?

24 **MR. ENGELMANN:** Yeah.

25 **MR. SMITH:** I know he was reporting to the

1 Chief but I can't give you the specifics.

2 MR. ENGELMANN: That's fine.

3 And were you aware, sir, that he had
4 attended with the Chief to meet with the Papal Nuncio?

5 MR. SMITH: Yes, I'm aware of that.

6 MR. ENGELMANN: And also with Bishop
7 LaRocque thereafter?

8 MR. SMITH: Yes, I'm aware.

9 MR. ENGELMANN: And given his involvement
10 and given your mandate, would he have been at least a
11 person of interest or a potential suspect given what you
12 were investigating?

13 MR. SMITH: As I went on, no, and I'll tell
14 you why, and I'll give you the theory that I thought had
15 happened as far as this conspiracy went to drop the
16 charges.

17 The common denominator in the whole issue of
18 the charges not proceeding and the settlement coming about
19 and the catalyst of everything was Malcolm MacDonald.

20 So for that theory to work, Malcolm had
21 contacted the Bishop, he had contact with Jacques Leduc, he
22 had contact with Luc Brunet and he had contact with Murray
23 MacDonald. But for the whole thing to work there had to be
24 the okay of the Chief. Luc Brunet couldn't make that
25 decision, nor could Heidi Sebalj, nor could anybody else in

1 that department because the Chief was the one that assigned
2 and nobody in there could bypass the Chief to make that
3 theory work.

4 When I spoke to the Chief it was abundantly
5 clear that he and the Bishop did not get along at all and
6 really would not agree to anything. That's fairly clear in
7 this letter.

8 So for the theory for that charge to be
9 tossed by the wayside you'd have to have the Chief involved
10 in it; he wasn't, and so the need to pursue anything
11 further with Luc Brunet or any other senior staff, in my
12 opinion, wasn't necessary.

13 **MR. ENGELMANN:** Sir, if the Police Chief was
14 unaware -- let's just hypothetically here, if he was
15 unaware of what happened until late September and if in
16 effect the matter had been dropped by the Cornwall Police
17 Service, an exchange between Staff Sergeant Brunet and the
18 Crown, based on a settlement that they didn't know the
19 terms of why, would it be necessary for the Chief to be
20 involved?

21 **MR. SMITH:** The Chief was the one that
22 initiated the investigation. He was the one that initiated
23 that whole investigation to start with. He assigned some
24 senior officers initially and then that didn't work and it
25 went down to Brunet and Sebalj.

1 Neither one of those officers would be able
2 to make that decision without the Chief being involved, as
3 far as we're withdrawing the charge, without him taking
4 some action later on against both of them.

5 **MR. ENGELMANN:** Sir, what, if any,
6 information did you have that the Police Chief was in the
7 know about what happened in early and mid-September?

8 **MR. SMITH:** But came to ---

9 **MR. ENGELMANN:** Because he becomes aware of
10 things in late September.

11 **MR. SMITH:** Yes. Shortly after the
12 settlement, was he not?

13 **MR. ENGELMANN:** The settlement -- the
14 illegal settlement happens on September 2nd, 1993.

15 **MR. SMITH:** Yes.

16 **MR. ENGELMANN:** Malcolm MacDonald writes a
17 letter to Staff Sergeant Brunet enclosing a direction to
18 the Cornwall police signed by David Silmser and witnessed
19 by Sean Adams.

20 The letter coming from ---

21 **MR. SMITH:** Is that on the 9th?

22 **MR. ENGELMANN:** That's on the 3rd.

23 **MR. SMITH:** The 3rd.

24 **MR. ENGELMANN:** And then there's a -- after
25 that Staff Sergeant Brunet writes to Crown Counsel

1 MacDonalld and MacDonalld writes back to him. And on the
2 basis of having no further complainant the matter doesn't
3 proceed. And Chief Shaver becomes aware of this at the end
4 of September.

5 **MR. SMITH:** But does Silmser not appear with
6 another letter.

7 **THE COMMISSIONER:** Just a second.

8 **MR. KOZLOFF:** Commissioner, I'm not carrying
9 a brief for the Cornwall police but there is some evidence
10 that there were morning meetings in mid-September at which
11 this was discussed.

12 So I'm not as confident as Mr. Engelmann
13 about his hypothetical, which in fairness that's what he
14 started out by saying, let's say hypothetically. I'm not
15 so confident that the facts support that hypothetical.

16 **THE COMMISSIONER:** Okay. Do you want to
17 rephrase it?

18 **MR. ENGELMANN:** Well, I have a slightly
19 different recollection than my friend Mr. Kozloff. I
20 believe that although there's some evidence this comes up
21 at a morning meeting, Chief Shaver's evidence was he
22 doesn't know about it until very late September and at that
23 point he starts getting directly involved.

24 **THE COMMISSIONER:** Okay. So regardless of
25 the date, in September sometime the Chief starts getting

1 involved and he goes and sees Monsignor Schonenbach.

2 MR. SMITH: That's correct, yes.

3 MR. ENGELMANN: He goes to see ---

4 THE COMMISSIONER: Oh, sorry.

5 MR. SMITH: The Nuncio.

6 THE COMMISSIONER: Yes.

7 MR. SMITH: And then the Bishop.

8 THE COMMISSIONER: M'hm.

9 MR. ENGELMANN: And he decides that they
10 can't investigate.

11 MR. SMITH: Well, Silmsen sent a letter in
12 later again, didn't he, and then that was the end of it.
13 Towards the end of September, Silmsen delivers a letter
14 that he doesn't want anything more ---

15 MR. ENGELMANN: Right.

16 MR. SMITH: --- and he's not willing to
17 cooperate anymore.

18 MR. ENGELMANN: Right.

19 MR. SMITH: M'hm.

20 MR. ENGELMANN: But he signed a settlement -
21 --

22 MR. SMITH: M'hm.

23 MR. ENGELMANN: --- that says he has to
24 withdraw his criminal charge, and he signed a settlement
25 that says if he doesn't do that and if he says anything

1 about the events -- anything about the events -- he loses
2 his \$32,000.

3 MR. SMITH: Yes.

4 MR. ENGELMANN: So it's hardly surprising
5 that he wouldn't want to proceed; correct?

6 MR. SMITH: Well, how would the police
7 proceed then?

8 MR. ENGELMANN: I'm sorry?

9 MR. SMITH: How would the police proceed
10 then?

11 MR. ENGELMANN: Well ---

12 MR. SMITH: My question there is that the
13 Chief's hands are bound at that point ---

14 MR. ENGELMANN: Sir ---

15 MR. SMITH: --- and so you turn it over to
16 the investigation of the illegal settlement. That's what
17 happens now.

18 MR. ENGELMANN: But, sir, wouldn't the way
19 the police could proceed is they'd actually look at the
20 settlement document to see what it says?

21 MR. SMITH: No, I don't think they did.

22 MR. ENGELMANN: No, they didn't.

23 MR. SMITH: No.

24 MR. ENGELMANN: They could have done it.
25 That didn't happen really, sir, and that information didn't

1 come out until the CAS investigation. The Cornwall Police
2 Service getting a letter from Malcolm MacDonald with a
3 direction to end matters, signed by David Silmser; writes
4 to the Crown, and after getting some words back they don't
5 proceed and they don't ask to see the settlement to confirm
6 whether or not it's voluntary, there's duress, whether the
7 settlement's illegal. That doesn't happen, does it?

8 **MR. SMITH:** Not to my knowledge.

9 **MR. ENGELMANN:** And isn't that something
10 they could have done? If the Chief wanted to look at he
11 could have asked to see that settlement and see what it
12 said?

13 **MR. SMITH:** Had he asked him, sure, it would
14 have been provided, yeah. But, again, you have to have the
15 -- you still have to have the Chief as the centre figure to
16 make that conspiracy work. He did not -- he and the Bishop
17 did not get along at all. They wouldn't agree on anything.
18 Why would he -- why would he ---

19 **MR. ENGELMANN:** Who told you that, sir?

20 **MR. SMITH:** He did.

21 **MR. ENGELMANN:** And when did he tell you
22 that?

23 **MR. SMITH:** In an interview that we had at
24 his place and furthermore in his letter. He was livid over
25 what had happened in 1986 with Father Deslauriers.

1 **MR. ENGELMANN:** But did he tell you that he
2 felt much differently about the Bishop when he met with him
3 in October of 1993; he was pleasantly surprised?

4 **MR. SMITH:** October?

5 **MR. ENGELMANN:** Yes.

6 **MR. SMITH:** Not in September.

7 **MR. ENGELMANN:** I'm sorry?

8 **MR. SMITH:** Not in September, not when the
9 deal had been finalized and the letter had come in to
10 terminate the investigation.

11 There was some discussion with the Bishop
12 but I -- you know, you can say what you want about the
13 Chief but there was no way that I could see him being part
14 of a conspiracy to have that charge go by the wayside.

15 **THE COMMISSIONER:** Is that ---

16 **MR. SMITH:** There are other issues too that
17 I feel would show that there was no conspiracy, but that
18 was the one that stood out in my mind.

19 **MR. ENGELMANN:** Okay.

20 I'm sorry, Mr. Commissioner.

21 **THE COMMISSIONER:** It's okay.

22 **MR. ENGELMANN:** And so on October 7th you
23 were aware that the Bishop and the Chief had met?

24 **MR. SMITH:** Yes.

25 **MR. ENGELMANN:** And you were aware that the

1 Chief received some information from the Bishop later that
2 evening?

3 MR. SMITH: In regard to what?

4 MR. ENGELMANN: In regard to Father
5 MacDonald and the allegations against David Silmser, the
6 allegations by David Silmser against Father MacDonald.

7 MR. SMITH: Is there any documentation on
8 that someplace?

9 MR. ENGELMANN: Okay. Oh, I'm jumping
10 ahead.

11 MR. SMITH: I'm ---

12 MR. ENGELMANN: I'm jumping ahead because
13 you jumped ahead on your theory.

14 MR. SMITH: Well ---

15 MR. ENGELMANN: We'll go there.

16 MR. SMITH: Okay.

17 MR. ENGELMANN: Okay. I'll wait and I'll
18 come to it.

19 So we got off on this digression when I
20 asked you if you had considered Staff Sergeant Brunet at
21 anytime suspect or someone that you should at least
22 interview?

23 MR. SMITH: Well, I spoke to him and I'm
24 sure I reviewed his notes and I had meetings with him, and
25 I was satisfied that his explanations were reasonable.

1 **MR. ENGELMANN:** You never took a statement
2 from him?

3 **MR. SMITH:** No, I didn't.

4 **MR. ENGELMANN:** Okay. Did you take a
5 statement from any Cornwall Police Service officer because
6 I couldn't find them, sir.

7 **MR. SMITH:** Well, the Chief provided me with
8 one.

9 **MR. ENGELMANN:** Oh, he provided you with
10 one?

11 **MR. SMITH:** Yes.

12 **MR. ENGELMANN:** Yes, okay.

13 And that was the statement that he had
14 prepared for his lawyer?

15 **MR. SMITH:** Yes, that they would provide to
16 me.

17 **MR. ENGELMANN:** Right. Now ---

18 **MR. SMITH:** I had the benefit also of the
19 Ottawa report.

20 **MR. ENGELMANN:** Yes.

21 **MR. SMITH:** Yes.

22 **MR. ENGELMANN:** But the Ottawa report,
23 really, sir, would it not be fair to suggest it was really
24 looking at whether the Cornwall Police Service
25 investigation was well done?

1 **MR. SMITH:** Yes, but there was explanations
2 within there what was done as far as the investigation had
3 been done and there were interviews of some senior officers
4 in there.

5 **MR. ENGELMANN:** I'm sorry?

6 **MR. SMITH:** There were some interviews of
7 some senior officers that had been interviewed and there
8 was a path, a trail, of what had transpired there.

9 **MR. ENGELMANN:** All right.

10 So did you actually seek all of the
11 interview notes that had been taken by the two officers
12 from Ottawa?

13 **MR. SMITH:** No.

14 **MR. ENGELMANN:** Blake and Skinner?

15 **MR. SMITH:** No.

16 **MR. ENGELMANN:** Then how did you know what
17 was contained or did you just -- by reading the report ---

18 **MR. SMITH:** Yes.

19 **MR. ENGELMANN:** --- get a summary of what
20 the statement ---

21 **MR. SMITH:** Yes, in the report, yes.

22 **MR. ENGELMANN:** Did you not think it might
23 be prudent to get those statements as well?

24 **MR. SMITH:** I didn't feel I needed it at
25 that time.

1 **MR. ENGELMANN:** Okay.

2 Now, you had a number of contacts with
3 Acting Chief Johnston during your investigation?

4 **MR. SMITH:** Yes, I did.

5 **MR. ENGELMANN:** They're referenced in your
6 notes and just -- there's a -- we don't really have to go
7 to them but I'll just give them to you for reference. At
8 Bates page 220, which is March 10th '94, there's just a
9 comment that you're updating Johnston on the investigation.

10 Bates page 221, May 13th '94, same thing, a
11 reference to updating him on the investigation.

12 Then we know, sir, that you write a letter
13 to him in July.

14 **MR. SMITH:** M'hm.

15 **MR. ENGELMANN:** And that's the letter we
16 looked at earlier ---

17 **MR. SMITH:** Yes.

18 **MR. ENGELMANN:** --- about Marcel Lalonde?

19 **MR. SMITH:** Yes.

20 **MR. ENGELMANN:** And we also know that if we
21 look at Bates page 232:

22 "25 November 94, Call to Chief Johnston
23 re. news release..."

24 **MR. SMITH:** Yes.

25 **MR. ENGELMANN:** "...last night, Charlie

1 Greenwell."

2 And can you just help me out there, sir,
3 about -- do you have a note about what you would have
4 discussed with Acting Chief Johnston at that time?

5 "I advised Chief of contents..."

6 **MR. SMITH:** I can't ---

7 **THE COMMISSIONER:** "I advised Chief of
8 contents and that I did not..."

9 I'm sorry?

10 **MR. SMITH:** "...I did not say same to
11 Greenwell."

12 **THE COMMISSIONER:** Okay.

13 **MR. SMITH:** "Told Greenwell no..."

14 **THE COMMISSIONER:** "No..."

15 **MR. SMITH:** "...decision had been made the
16 investigation complete. The briefs are
17 in possession of the Regional Director
18 of Crown Attorneys, Peter Griffiths,
19 and I'm awaiting his instructions and
20 recommendations. I don't know when."

21 **THE COMMISSIONER:** Okay.

22 **MR. ENGELMANN:** So that's yet another
23 discussion you would have had with Acting Chief Johnston?

24 **MR. SMITH:** More than likely, yes, I told
25 him pretty well what was going on.

1 **MR. ENGELMANN:** All right. But it appears,
2 at least from the other notes you -- you have a note saying
3 "update on investigation"?

4 **MR. SMITH:** Yes.

5 **MR. ENGELMANN:** So it would be fair to say
6 that you would speak to him from time-to-time to provide
7 him with an update?

8 **MR. SMITH:** Yes.

9 **MR. ENGELMANN:** Okay. And can you just give
10 us a sense of what you might be telling him?

11 **(SHORT PAUSE/COURTE PAUSE)**

12 **MR. SMITH:** I'd certainly be telling him in
13 regard to the Silmsler complaint, I would have updated him
14 on that. Father Charles. I know I would update him on the
15 obstruct by Malcolm MacDonald as far as the settlement was
16 concerned.

17 And I would probably indicate that at that
18 time that I was satisfied that there was no conspiracy
19 between the Diocese and the lawyers and the Crown and
20 themselves to withdraw that charge or not proceed with that
21 charge at that time because the news release was coming up.

22 **MR. ENGELMANN:** So you would have been
23 discussing all of the three investigations then, or at
24 least giving some information?

25 **MR. SMITH:** I would say yes.

1 **MR. ENGELMANN:** All right. Perhaps a little
2 less about the conspiracy because they were alleged to be
3 involved?

4 **MR. SMITH:** Perhaps, but I can't say
5 exactly. See, the Chief had come in after all of this had
6 gone on, so he was sort of independent of everything.

7 **MR. ENGELMANN:** Yes.

8 **MR. SMITH:** So he played no part in any of
9 this. So I would probably tell him more than I would if he
10 had been in the Chief when this had all happened.

11 **MR. ENGELMANN:** And did you know him at all
12 from his Provincial Standards work?

13 **MR. SMITH:** I knew him when he was the Chief
14 of Collingwood Police Department. I had had dealings with
15 him.

16 **MR. ENGELMANN:** All right.

17 Let's go back, then, to an officer by the
18 name of White. We touched upon him briefly.

19 **MR. SMITH:** Yes, m'hm.

20 **MR. ENGELMANN:** Sir, if you'll look at --
21 it's Bates page 220 of your notes, Exhibit 1803? And it's
22 down near the bottom of the page. And I believe the date
23 is 22nd, March '94.

24 **MR. SMITH:** Yes.

25 **MR. ENGELMANN:** And I believe it says:

1 "Meet with Shawn White, Staff
2 Sergeant Derochie, to discuss their
3 group home..."

4 **MR. SMITH:** "...their group home," yeah.

5 **MR. ENGELMANN:** "...investigation..."

6 **MR. SMITH:** Yes. "Re: sexual..."

7 **MR. ENGELMANN:** "...sexual and physical
8 abuse"?

9 **MR. SMITH:** Yes.

10 **MR. ENGELMANN:** Okay. And were you aware,
11 sir, that Constable White and Staff Sergeant Derochie were
12 investigating allegations of historical abuse both sexual
13 and physical in Cornwall area group homes and in some
14 foster homes?

15 **MR. SMITH:** Yes, the Chief had asked me if I
16 would speak to them and maybe give them some advice on
17 historical sexual abuse.

18 **MR. ENGELMANN:** Okay. So Acting Chief
19 Johnston had asked ---

20 **MR. SMITH:** Yes.

21 **MR. ENGELMANN:** --- you to do that.

22 Do you recall, sir, if you would have been
23 apprised about some of the prevalence of the abuse that
24 they would have uncovered -- the alleged abuse?

25 **MR. SMITH:** In general terms, yes, I would

1 be, yes.

2 MR. ENGELMANN: And do you recall if there
3 was any request not just for advice but actual OPP
4 involvement in looking at some of these allegations?

5 MR. SMITH: Not to me but the route to
6 follow on that is for them to make a request of our
7 Commissioner, not through me.

8 MR. ENGELMANN: All right. Well, if some of
9 what they'd uncovered would have taken place in foster
10 homes in OPP jurisdiction, would you have been a person for
11 them to talk to about that or is there another ---

12 MR. SMITH: Well, Carson Fougère --
13 Superintendent Fougère.

14 MR. ENGELMANN: Okay.

15 MR. SMITH: I wasn't there to investigate
16 the world, sir, I had my hands full as it was.

17 MR. ENGELMANN: No, I know that. The reason
18 why I'm asking though is that there were allegations in the
19 media with respect to at least one of the complainants
20 alleging abuse at this group home, Jeannette Antoine.

21 MR. SMITH: M'hm.

22 MR. ENGELMANN: That would have been
23 publicized in the media in January '94. There were
24 allegations or suggestions that the Cornwall Police Service
25 might have been involved in a cover-up of those

1 allegations. It was coming out right about the same time
2 as Silmser. I'm just wondering if there was any requests
3 made of you. But you certainly don't recall that, that
4 you'd be involved?

5 **MR. SMITH:** No. And had I, I would have
6 passed it on.

7 **MR. ENGELMANN:** To Carson Fougère or someone
8 like that?

9 **MR. SMITH:** Yes.

10 **MR. ENGELMANN:** All right. Now, sir, also
11 on that date, and it's on the screen, you note a meeting
12 with Heidi Sebalj. Do you see that at 12:30?

13 **MR. SMITH:** Yes.

14 **MR. ENGELMANN:** And I believe it says:
15 "Meet with Heidi Sebalj; go over her
16 notes of Silmser investigation."

17 **MR. SMITH:** Yes.

18 **MR. ENGELMANN:** All right. And it appears
19 that you meet with her for no more than half an hour
20 because you have another matter at 1300.

21 **MR. SMITH:** Yes, there, yeah.

22 **MR. ENGELMANN:** And I'm not sure where these
23 meetings are but you have a meeting with CASP at 1300;
24 right?

25 **MR. SMITH:** Those meetings would always be

1 at CAS.

2 MR. ENGELMANN: All right. And with respect
3 to Ms. Sebalj or Constable Sebalj; any sense as to where
4 you would have met her?

5 MR. SMITH: That'd more than likely be at
6 the police station.

7 MR. ENGELMANN: All right. Okay.

8 MR. SMITH: Because I'd met just -- prior, I
9 think, I was meeting with Staff Sergeant Derochie and Shawn
10 White at the police station.

11 MR. ENGELMANN: Yes.

12 MR. SMITH: So I think I was at the police
13 station pretty well ---

14 MR. ENGELMANN: Okay.

15 MR. SMITH: --- right through.

16 MR. ENGELMANN: And do you recall anything
17 about what you would have discussed with her?

18 MR. SMITH: No.

19 MR. ENGELMANN: So you don't know if you
20 discussed her relationship and how she got along with Mr.
21 Silmsner?

22 MR. SMITH: I'm -- we would have discussed
23 what she'd done in her investigation on the 12th of March
24 '94. I'd be interested to see her contacts with him and
25 what she'd done. And she'd go over the notes and tell me.

1 **MR. ENGELMANN:** I'm just wondering if you
2 would have discussed at all her communications with Murray
3 MacDonald?

4 **MR. SMITH:** I can't remember.

5 **MR. ENGELMANN:** That's fine. So I was going
6 to ask you a number of questions about this but you don't
7 really recall what you would have spoken with her about
8 that day, other than there would have been some discussion
9 the notes she had taken?

10 **MR. SMITH:** Yeah. Not now, maybe a year or
11 two after, I had to take notes. My memory was pretty good
12 but not now.

13 **MR. ENGELMANN:** Okay. And you didn't take
14 any notes of that particular meeting other than what we see
15 here?

16 **MR. SMITH:** This would be it, yes.

17 **MR. ENGELMANN:** All right. Did you consider
18 taking a statement from her?

19 **MR. SMITH:** At some time I did, but then my
20 contact with Heidi was terminated, I guess, at one point
21 later on. It may have been in the following year that when
22 she went off sick, she wouldn't talk to me anymore.

23 The last conversation I had with Heidi was a
24 telephone conversation indicating that -- alleging that
25 Father MacDonald was leaving the country. And at the same

1 time, I recall, while I was speaking to her I received a
2 call from either John -- I believe it was John MacDonald to
3 give me the same information. So I was going to call her
4 back and she never responded to any calls again.

5 **MR. ENGELMANN:** So if John MacDonald was
6 involved, this would have been after the summer of '95?

7 **MR. SMITH:** Yes, like I'm saying, it's after
8 this. So any contact that I had with Heidi Sebalj was
9 after 1995 -- or between '94 and '95.

10 **MR. ENGELMANN:** Now, I believe she gave a
11 very brief statement to people doing the extortion
12 investigation.

13 **MR. SMITH:** M'hm.

14 **MR. ENGELMANN:** Do you recall if that would
15 have been shared with you?

16 **MR. SMITH:** I can't remember but I would
17 imagine it was.

18 **MR. ENGELMANN:** I've asked you some
19 questions already about information in meetings with the
20 CAS. And I've covered most of what I wanted to cover there
21 but I have -- there were a couple of other references in
22 Greg Bell's notes. So maybe we can just go there for a
23 minute.

24 **MR. SMITH:** M'hm.

25 **MR. ENGELMANN:** And that, sir, is -- it's

1 Exhibit 2324.

2 THE COMMISSIONER: Twenty-three twenty-four
3 (2324)?

4 MR. ENGELMANN: The Document Number is
5 721672.

6 THE COMMISSIONER: And the page number?

7 MR. ENGELMANN: The first reference is -- I
8 have is 1887, Bates page 7081887; it's page number 30. My
9 copy's very difficult to read. I'm not sure of ---

10 THE COMMISSIONER: Page 30?

11 MR. ENGELMANN: Yes.

12 MR. SMITH: Yes, I have it.

13 MR. ENGELMANN: Okay. If we can just have
14 that a bit larger on the screen?

15 THE COMMISSIONER: Where do you want to go
16 with that?

17 MR. ENGELMANN: Well, just, if you turn back
18 a page, 7081886, it says this page 30 for Mike Fagan ---

19 MR. SMITH: M'hm.

20 MR. ENGELMANN: --- and I think that's the
21 following page, and this is dealing with other allegations
22 against Father MacDonald.

23 Sir, I'm just wondering and I'm -- we're
24 looking at -- there's a reference to, in the fall of 1991,
25 an anonymous person called the Diocesan Centre, made an

1 allegation that Father MacDonald had committed an
2 impropriety of a sexual nature.

3 This is information being relayed, by the
4 way, to Mr. Bell from a Monsignor McDougald. And I'm just
5 wondering, sir, if this information would have been shared
6 with you?

7 **MR. SMITH:** I can't remember but when I see
8 that it was provided to Mike Fagan, it's quite possible
9 that it did come to us.

10 **MR. ENGELMANN:** All right. I think at the
11 bottom of the page, sorry, number 5.

12 He's acknowledging that when he was
13 confronted, Father MacDonald denied such behaviour and
14 nothing further was done. This is the allegation from
15 Williamstown.

16 **MR. SMITH:** Okay.

17 **MR. ENGELMANN:** Okay?

18 Just have a moment?

19 **(SHORT PAUSE/COURTE PAUSE)**

20 **MR. SMITH:** This is vaguely familiar.

21 **MR. ENGELMANN:** Okay. I'll just be one
22 moment. I'm just checking for one other thing.

23 **(SHORT PAUSE/COURTE PAUSE)**

24 **MR. ENGELMANN:** Sir, in reviewing the
25 statements that were taken and the work that was done on

1 the '94 investigations, it appears that the bulk of the
2 investigative activity, certainly in the early months of
3 your investigation was focused on the re-investigation of
4 the complaint by Silmser against Father MacDonald. Is that
5 fair?

6 **MR. SMITH:** That's correct.

7 **MR. ENGELMANN:** And that's consistent with
8 your desire to get that one -- that one done before this
9 extortion ---

10 **MR. SMITH:** No, as I stated earlier, that I
11 wanted to get it started. I know that there was some media
12 attention to that to keep it alive. And I said I thought
13 there may be -- I felt strongly there'd be other victims
14 out there and I wasn't going to put a deadline on it.

15 **MR. ENGELMANN:** All right.

16 **MR. SMITH:** So if I can keep that alive,
17 initially I thought that I could have it done possibly by
18 Christmas. So if I didn't have anybody else by Christmas
19 then I was -- the likelihood of anybody coming forward was
20 remote.

21 **MR. ENGELMANN:** All right.

22 **MR. SMITH:** But this was on, and in addition
23 there were -- I couldn't interview Father MacDonald. He
24 was away, I think in Southdown. There was difficulty ---

25 **MR. ENGELMANN:** Could you have gone there to

1 interview him, sir? It was in your area, I believe.

2 MR. SMITH: Aurora.

3 MR. ENGELMANN: Oh.

4 MR. SMITH: I had dealings with Southdown
5 when I was involved in St. John's training school and I
6 don't have great faith in that organization from a police
7 perspective. They may be and probably are very good at
8 rehabilitation but they -- I know on a few occasions they
9 wouldn't make the person available when they're under
10 treatment.

11 MR. ENGELMANN: All right.

12 THE COMMISSIONER: And just for -- when I
13 was reading through -- I forget what notes -- Mrs. Seguin,
14 Mr. Engelmann?

15 MR. ENGELMANN: Yes.

16 THE COMMISSIONER: Mrs. Seguin, it's
17 reported in the notes, visited Father MacDonald when he was
18 in Southdown. And that's in the notes someplace. So there
19 you go.

20 MR. ENGELMANN: Yeah, but your experience
21 was as a police officer wanting to interview priests or
22 religious who had been charged or were being investigated?

23 MR. SMITH: The information was when they
24 were in their care that they didn't -- they weren't too
25 keen on us interviewing them.

1 **MR. ENGELMANN:** "They" being staff at that
2 institution?

3 **MR. SMITH:** The staff, yes.

4 **MR. ENGELMANN:** All right. Now, with
5 respect to the Silmsler allegations with -- allegations vis-
6 à-vis Father MacDonald, his allegations centred on a
7 timeframe when he told you he was an altar boy?

8 **MR. SMITH:** Yes, I believe the years were in
9 -- he was born in '58, if I'm correct, and the years were
10 around '74 I think when these things were occurring, '72 to
11 '74.

12 **MR. ENGELMANN:** Okay. In the early '70s?

13 **MR. SMITH:** Yes.

14 **MR. ENGELMANN:** All right. And I think we
15 have information that Father MacDonald is a priest at St.
16 Columban's from, I think, sometime in 1969 to approximately
17 1975.

18 **MR. SMITH:** I don't remember but that sounds
19 ---

20 **MR. ENGELMANN:** All right.

21 **MR. SMITH:** --- to be in that area.

22 **MR. ENGELMANN:** And a couple of the
23 allegations allegedly took place there at St. Columban's?

24 **MR. SMITH:** Yes.

25 **MR. ENGELMANN:** One at a retreat?

1 **MR. SMITH:** Yes.

2 **MR. ENGELMANN:** And one during or
3 immediately after a car ride into the country?

4 **MR. SMITH:** Yes, out in the country, yes.

5 **MR. ENGELMANN:** All right.

6 And you had received this background
7 information from the CPS, the Cornwall Police Service and I
8 don't know how much information from the CAS but you knew
9 that they were also investigating. And I'm wondering about
10 an underlying strategy, sir, as to how to approach the
11 reinvestigation of the complaints against Father MacDonald.

12 **MR. SMITH:** Well, our intention was to
13 conduct our own investigation.

14 **MR. ENGELMANN:** All right.

15 **MR. SMITH:** And start from the beginning,
16 which would start with our own statement from Mr. Silmsen
17 ---

18 **MR. ENGELMANN:** Yes.

19 **MR. SMITH:** --- and take it from there.

20 **MR. ENGELMANN:** All right.

21 **MR. SMITH:** And interview anybody that was
22 associated with the retreat that he was at, altar boys, or
23 any other information we could have that could provide
24 information on the vehicle that Father MacDonald was
25 driving at that time and if Silmsen could identify it.

1 **MR. ENGELMANN:** Sir, we know from reviewing
2 some of the witnesses who were interviewed by Constable
3 Sebalj that many of the people she spoke to were people who
4 were associated with the retreat incident.

5 **MR. SMITH:** Yes.

6 **MR. ENGELMANN:** Okay. And you of course
7 were looking for other alleged victims, as well as Mr.
8 Silmsers.

9 **MR. SMITH:** Yes.

10 **MR. ENGELMANN:** And presumably because that
11 would help corroborate Mr. Silmsers's complaint?

12 **MR. SMITH:** Yes.

13 **MR. ENGELMANN:** And make it more likely that
14 at the end of the day if there was a prosecution it would
15 be successful?

16 **MR. SMITH:** Yes. It had been our experience
17 that any case that we had in the past of a historical
18 nature and we proceeded to trial, they were all dismissed.
19 There was never a conviction on the one and one, as we
20 called it.

21 **MR. ENGELMANN:** Okay.

22 **MR. SMITH:** We required more.

23 **MR. ENGELMANN:** You were aware, though, sir,
24 that there had been amendments to the *Criminal Code* and
25 that corroboration was no longer required to get a

1 conviction?

2 MR. SMITH: I was well aware of that, sir,
3 because Robert Pelletier, in the St. Joseph's training
4 school investigation, had gone back to 1934 *Criminal Code*
5 and right up to the present and had provided us a list of
6 what was required and the charges and the wordings and
7 everything from that period on.

8 MR. ENGELMANN: Okay.

9 MR. SMITH: So yes, I'm aware of ---

10 MR. ENGELMANN: All right.

11 And in particular, even though the report
12 may not come to the police until '92 or '93 or '94,
13 whenever, the *Criminal Code* having been amended back in '88
14 to no longer require corroboration, that applied even in
15 cases that took place before '88 that were reported
16 afterwards? I don't know if I said that very clearly.

17 MR. SMITH: Yes, I understand what you're
18 saying.

19 MR. ENGELMANN: Yeah.

20 MR. SMITH: That was my understanding.

21 MR. ENGELMANN: Okay, all right.

22 So it wasn't required but you were saying
23 even though it wasn't required you weren't doing well on
24 the conviction rate?

25 MR. SMITH: Well, our experience ---

1 **MR. ENGELMANN:** Is that my understanding?

2 **MR. SMITH:** Our experience was that when it
3 came to he says and she says or he says and he says that --
4 and that's all you had that there was a doubt and not
5 guilty enough and the charge was dismissed.

6 **MR. ENGELMANN:** And sir, although you said
7 you were doing a completely new investigation, you re-
8 interviewed a number of people who had been interviewed by
9 Ms. Sebalj, Constable Sebalj?

10 **MR. SMITH:** I don't know if I did, but the
11 investigators did.

12 **MR. ENGELMANN:** Sorry, that's what I meant.

13 **MR. SMITH:** That was my understanding, yes.

14 **MR. ENGELMANN:** Yeah.

15 **MR. SMITH:** Those were my directions, to re-
16 interview everybody.

17 **MR. ENGELMANN:** And do you recall, sir,
18 whether there were additional witnesses that you wished to
19 interview?

20 **MR. SMITH:** I think we found more. I know
21 we found more.

22 **MR. ENGELMANN:** Okay. And do you have a
23 sense, sir, and I realize this was a long time ago, but of
24 the efforts that would have been made to locate other
25 individuals who would have been altar boys at St.

1 Columban's between those years, '69 to '75 at or about the
2 time that David Silmser was there and, of course, Father
3 MacDonald was there?

4 **MR. SMITH:** I know there were attempts made
5 to find all the altar boys that we could and interview.
6 Yeah, we made attempts to locate other altar boys, yes.

7 **MR. ENGELMANN:** Now, would this have been by
8 asking the altar boys that -- the former altar boys that
9 you met with names of others?

10 **MR. SMITH:** Yes, and if they had photographs
11 of anything, you know, masses or whatever, yeah, that --
12 those were the things that we asked.

13 **MR. ENGELMANN:** Do you recall, sir, if
14 Constable Fagan or you, or you instructing Constable Fagan,
15 would have made requests of the parish for information
16 about who the altar boys were?

17 **MR. SMITH:** At St. Columban's?

18 **MR. ENGELMANN:** Yes.

19 **MR. SMITH:** I believe that Constable Fagan
20 did that.

21 **MR. ENGELMANN:** And do you know if he was
22 provided with church bulletins and material of that nature
23 that would like the names of the altar servers?

24 **MR. SMITH:** We didn't get church bulletins
25 then. I know we had church bulletins later.

1 **MR. ENGELMANN:** I'm not talking about during
2 Project Truth. I'm talking about ---

3 **MR. SMITH:** No.

4 **MR. ENGELMANN:** --- in '94?

5 **MR. SMITH:** I can't remember.

6 **MR. ENGELMANN:** So you believe there was an
7 effort by Constable Fagan to go directly to St. Columban's
8 and get information from the parish?

9 **MR. SMITH:** Yeah, I believe he did, yes.

10 **MR. ENGELMANN:** All right. And what about
11 information from the Diocese?

12 **MR. SMITH:** No, I don't think so.

13 **MR. ENGELMANN:** Sir, would you have been
14 aware of Father MacDonald's involvement in a youth program
15 known as CORE?

16 **MR. SMITH:** It sounds vaguely familiar. I
17 believe that -- I don't know again if we got that in Truth
18 or if we got it at that time, but my understanding was that
19 he was involved with some youth programs and that involved
20 some of the retreats and things of that nature.

21 **MR. ENGELMANN:** That would be another place
22 to get information, possibly?

23 **MR. SMITH:** In Project -- I think that came
24 to our attention in Project Truth.

25 **MR. ENGELMANN:** Okay.

1 Perhaps if we could just look at the Crown
2 Brief Index for a moment, the reinvestigation of Father
3 MacDonald, and this is on the late list. It is Document
4 Number 714977.

5 Sir, this document will require a
6 publication ban stamp.

7 **THE COMMISSIONER:** Thank you. Exhibit 2562
8 is the Index to the Crown Brief.

9 **MR. ENGELMANN:** That's my understanding.
10 Perhaps we'll just let Mr. Smith have a minute to look at
11 it.

12 **THE COMMISSIONER:** Okay.

13 --- **EXHIBIT NO./PIÈCE No P-2562:**

14 (714977) - Crown Brief re: Synopsis of Cornwall
15 Police Investigation

16 **MR. ENGELMANN:** Sir, it is my understanding
17 this is the Index for the Crown Brief you would have
18 prepared or perhaps Constable Fagan prepared with respect
19 to the Father MacDonald investigation in 1994?

20 **MR. SMITH:** Yes, I would agree.

21 **MR. ENGELMANN:** All right.

22 And, sir, number one is Mr. Silmser; two
23 through to 21 are a list of names and addresses. And are
24 these names of potential witnesses identified in your
25 investigation? Is that how you would describe this?

1 **MR. SMITH:** These would be witnesses. I
2 don't know if they're all victims or not.

3 **MR. ENGELMANN:** No. I wasn't suggesting
4 they were.

5 **MR. SMITH:** They would be people to whom we
6 had taken statements.

7 **MR. ENGELMANN:** So number seven, for
8 example, that's Mrs. Silmser's -- that's David Silmser's
9 mother?

10 **MR. SMITH:** Yes.

11 **MR. ENGELMANN:** All right. And I understand
12 that most of these individuals were interviewed and
13 provided a statement, but there's at least one, I believe,
14 sir, and that's Monsignor Schonenbach, number eight, who's
15 listed but he wasn't interviewed, but you would have had a
16 letter from him, as I understand?

17 **MR. SMITH:** I didn't interview him so I
18 don't know.

19 **MR. ENGELMANN:** Okay, and well, sir, it's
20 our understanding he was not interviewed. And do you know
21 why that would have been?

22 **MR. SMITH:** I don't know. There are only
23 two people on this list that I was part of the interview
24 with.

25 **MR. ENGELMANN:** And which numbers would

1 those be sir? Just the numbers.

2 MR. SMITH: Number one and number three.

3 MR. ENGELMANN: Okay. Number one is of
4 course Mr. Silmser and number three is someone by the name
5 of C-3, okay, or moniker here at this Inquiry. And would
6 you have met with C-3 in person or would that have been a
7 phone call, sir?

8 MR. SMITH: That was in person.

9 MR. ENGELMANN: Okay.

10 MR. SMITH: I think there's a video taped
11 statement, if I'm not mistaken.

12 MR. ENGELMANN: Okay. I believe that
13 happened later, sir, perhaps ---

14 MR. SMITH: Yes.

15 MR. ENGELMANN: I don't think ---

16 MR. SMITH: Okay, yes, you're correct, there
17 was a reluctance in the initial stages.

18 MR. ENGELMANN: What I recall from this
19 investigation, if I may, is that there was a phone
20 interview that Detective Constable Fagan might have had
21 with C-3?

22 MR. SMITH: Yes, he didn't wish to speak to
23 us, if I recall correctly. Yes.

24 MR. ENGELMANN: But he later became someone
25 that you would have interviewed after this investigation

1 was already finished?

2 MR. SMITH: Yeah, he had a change of heart
3 and filed a complaint.

4 MR. ENGELMANN: So, sir, number one you
5 would have interviewed during this investigation?

6 MR. SMITH: Yes, I said that, yes.

7 MR. ENGELMANN: Yeah. Number three, we now
8 know is later?

9 MR. SMITH: Yes.

10 MR. ENGELMANN: No one else on the first
11 page?

12 MR. SMITH: No.

13 MR. ENGELMANN: Okay, and if you look at the
14 second page, is there anybody there that you might have
15 interviewed, sir?

16 MR. SMITH: Oh, yes, 19.

17 MR. ENGELMANN: Okay, and this was an in-
18 person or was that a telephone call?

19 MR. SMITH: That was in person.

20 MR. ENGELMANN: And is this the fellow that
21 was the police officer from out West?

22 MR. SMITH: Yes, sir.

23 MR. ENGELMANN: Yeah.

24 MR. SMITH: Number 17 is also a police
25 officer.

1 **MR. ENGELMANN:** Yes.

2 Sir, there were some church officials that
3 were spoken with; for example, Father Vaillancourt,
4 Monsignor McDougald. They're not listed here. Is that
5 because they're part of another investigation; the obstruct
6 or the conspiracy?

7 They were spoken with?

8 **MR. SMITH:** I believe they were, but I don't
9 remember.

10 **MR. ENGELMANN:** Do you know, sir, if -- did
11 you know at the time that St. Columban's was a fairly large
12 parish?

13 **MR. SMITH:** I was under the belief that it
14 was a large church in Cornwall or a large Cathedral or
15 whatever.

16 **MR. ENGELMANN:** And that there were several
17 priests employed there at any one time?

18 **MR. SMITH:** I knew there were more than one.

19 **MR. ENGELMANN:** Yes, they would live at the
20 Rectory.

21 **MR. SMITH:** We had complaints at the
22 Rectory, so I imagine that's where they lived, yes.

23 **MR. ENGELMANN:** All right. And, sir, I'm
24 just wondering if in this reinvestigation if there was any
25 effort to interview some of the priests who would have

1 lived with Father MacDonald during the time in question, to
2 your knowledge?

3 MR. SMITH: I can't remember.

4 MR. ENGELMANN: I didn't see any reference
5 to ---

6 MR. SMITH: I can't remember.

7 MR. ENGELMANN: --- priests or other staff
8 at St. Columban's.

9 MR. SMITH: I can't remember.

10 MR. ENGELMANN: We looked at, I believe, the
11 fact that Monsignor McDougald had advised Rick Abell and
12 Project Blue about an allegation from Apple Hill at
13 Williamstown. Were you ever able to identify that
14 complainant? I don't believe that it's a person listed in
15 the Crown brief index we've looked at.

16 MR. SMITH: I don't believe that person was
17 identified, sir.

18 MR. ENGELMANN: All right.

19 So I want to ask you about a couple of
20 individuals on this list, and my understanding is that
21 these are the only two that were new from the Cornwall
22 investigation. In other words, that of the 21, 19 of them
23 would have been talked to by the Cornwall Police Service
24 but there's two here that are new and the two are numbers
25 two and five. And I'd ask that you not use their names.

1 **MR. SMITH:** This is a part of the
2 investigation that I'm not really familiar with and I can't
3 remember really. I didn't interview these -- Fagan put
4 together this Crown brief.

5 **MR. ENGELMANN:** Okay. Well, these two names
6 were not names that were in that form of Crown brief that
7 Ms. Sebalj would have prepared in October of 1993. That's
8 number two and number five.

9 **MR. SMITH:** All right. I don't know.

10 **MR. ENGELMANN:** All right. Were you aware,
11 sir, that these two individuals were individuals who -- I
12 mean, I can show you the Sebalj Crown brief if you'd like
13 to just see. It's Exhibit 1249.

14 **THE COMMISSIONER:** How are you holding up,
15 sir?

16 **MR. SMITH:** Well, fine.

17 **THE COMMISSIONER:** How much longer, Mr.
18 Engelmann?

19 **MR. ENGELMANN:** I'm ---

20 **MR. SMITH:** No, keep going. That's okay.

21 **MR. ENGELMANN:** I mean, if you'd like to
22 take a break and go after that or ---

23 **MR. SMITH:** No, that's fine.

24 **MR. ENGELMANN:** Just go for a bit longer?

25 **MR. SMITH:** Sure.

1 **MR. ENGELMANN:** Okay.

2 **THE COMMISSIONER:** Exhibit 12 ---

3 **MR. ENGELMANN:** Twelve-forty-nine (1249).

4 **(SHORT PAUSE/COURTE PAUSE)**

5 **MR. ENGELMANN:** So, sir, it's my belief in
6 any event, at least from just cross-referencing these
7 lists, that numbers two and five were not interviewed by
8 Ms. Sebalj or anyone from the Cornwall Police Service in
9 1993, but that the remainder of the names on your list were
10 individuals they would have spoken with.

11 **MR. SMITH:** It appears that way, yes.

12 **MR. ENGELMANN:** Okay. And, sir, both of
13 these individuals made allegations of sexual assault by
14 Father MacDonald against them when they were young men.
15 One was 19 and the other was 20, 21, something like that.

16 Were you aware of that, sir?

17 **MR. SMITH:** My understanding was that some
18 of the ones that Fagan interviewed were adults.

19 **MR. ENGELMANN:** Yes.

20 **MR. SMITH:** Yes. And that the activity
21 between Father Charles and themselves or the allegations
22 were when they were adults.

23 **MR. ENGELMANN:** Okay.

24 **MR. SMITH:** Which ones I don't know.

25 **MR. ENGELMANN:** All right. So you're not

1 aware now that number two and number five alleged they were
2 sexually assaulted by Father MacDonald when they were young
3 adults?

4 **MR. SMITH:** Since then or at this time?

5 **MR. ENGELMANN:** Well, at this time you're
6 not aware. Is that fair?

7 **MR. SMITH:** Well ---

8 **MR. ENGELMANN:** No, okay. Well, let me just
9 try and refresh your memory.

10 I can pull up the statement. I don't really
11 want to, but number two came to your attention, it was a
12 referral by the New Brunswick RCMP who would have passed
13 the complaint to the Cornwall Police Service and then they
14 referred it to your investigation. And I think you told us
15 earlier that ---

16 **MR. SMITH:** Yes.

17 **MR. ENGELMANN:** --- Constable Fagan went
18 down to New Brunswick.

19 **MR. SMITH:** Yes.

20 **MR. ENGELMANN:** So it's my understanding
21 that that was to interview number two.

22 **MR. SMITH:** That appears to be that, yes.

23 **MR. ENGELMANN:** And number five was another
24 alleged victim of a sexual assault by Father MacDonald, and
25 you can't help us as to how he would have come to your

1 attention?

2 MR. SMITH: I can't remember, sir.

3 MR. ENGELMANN: All right.

4 And would you agree, sir, that that
5 information would be relevant to you in your investigation
6 of the Silmsler complaint?

7 MR. KOZLOFF: Mr. Commissioner.

8 THE COMMISSIONER: Yes, sir.

9 MR. KOZLOFF: I'm sorry, Engelmann is asking
10 the officer, or retired officer, about whether something
11 would have been relevant without showing him the statement
12 to give him at least an opportunity to refresh his memory
13 after 14 or 15 years.

14 THE COMMISSIONER: Mr. Engelmann?

15 MR. ENGELMANN: I thought on the basis of
16 the facts I provided, that would have been sufficient.

17 Assuming that these are two young men who
18 alleged that they were sexually assaulted by Father
19 MacDonald when they were 19 in one case and I think about
20 21 in the other, would that have been relevant to you in
21 your investigation?

22 MR. SMITH: You're saying that they're 19
23 and 21 years old?

24 MR. ENGELMANN: Yes, and they alleged they
25 were sexually assaulted by Father MacDonald.

1 **MR. SMITH:** Not consensual?

2 **MR. ENGELMANN:** That's right.

3 **MR. SMITH:** Yes.

4 **MR. ENGELMANN:** That's what I thought your
5 answer would be. I mean, do you -- anyway ---

6 **MR. SMITH:** Okay.

7 **MR. ENGELMANN:** And that's no doubt why they
8 were followed up and why statements were taken from them
9 and why they appear on your Crown brief list?

10 **MR. SMITH:** I would believe so. Again, I
11 don't -- I remember very little about this.

12 **MR. ENGELMANN:** Okay.

13 Now, sir, do you recall receiving
14 information or statements from Inspector Hamelink for your
15 reinvestigation of Father MacDonald?

16 **MR. SMITH:** I can't remember that but it
17 could be. Do you have something to show me?

18 **MR. ENGELMANN:** Well, I want to show you a
19 statement that was taken in the other investigation and
20 it's not referenced in your Crown brief.

21 **MR. SMITH:** Okay.

22 **MR. ENGELMANN:** And I'm wondering if you
23 have any recollection of whether you received it. And I'll
24 have you take a look at it and just ask you if in your view
25 it's something you should have received?

1 **MR. SMITH:** Well, I think later on we found
2 a statement of an individual that had shown up in their
3 statements but nobody could find them, if I remember
4 correctly. And we didn't get that until we were into
5 Project Truth.

6 **MR. ENGELMANN:** But, presumably, if they had
7 taken some statements from Cornwall Police Service officers
8 who were involved in this allegation, the investigation of
9 Father Charles MacDonald, those would be statements that
10 you would have wanted to have been shared with you?

11 **MR. SMITH:** Yes.

12 **MR. ENGELMANN:** And if you could have a
13 look, sir, as well at -- it's Exhibit 1085, the Document
14 Number 725557.

15 **THE COMMISSIONER:** All right.

16 **MR. ENGELMANN:** This is a statement by an
17 employee of the Corrections Department, or Ministry, a
18 fellow by the name of Jos van Diepen.

19 **THE COMMISSIONER:** Ten-eighty-five (1085)?

20 **MR. ENGELMANN:** Yeah.

21 **THE COMMISSIONER:** Do you have that book,
22 sir? I don't think so.

23 **(SHORT PAUSE/COURTE PAUSE)**

24 **MR. SMITH:** I don't think so.

25 **THE COMMISSIONER:** One-zero-eight-five

1 (1085). It's getting late. That's why.

2 MR. SMITH: I don't think so.

3 THE COMMISSIONER: No, I don't think you
4 have it, sir.

5 MR. ENGELMANN: Can we take a -- just look
6 at it on the screen. There's not going to be much on it.

7 THE COMMISSIONER: Okay, let's look at it on
8 the screen.

9 So sir, just to help situate you, I guess,
10 this is a statement taken on the 10th of February, 1994 of
11 Jos van Diepen by Detective Constables Genier and McDonell.

12 MR. SMITH: Yes.

13 THE COMMISSIONER: Okay.

14 MR. ENGELMANN: So it's my understanding,
15 sir, this is a statement being taken by the other
16 investigation team. This is Hamelink's team?

17 MR. SMITH: I would imagine that was it,
18 yes.

19 MR. ENGELMANN: And this fellow was a co-
20 worker of Mr. Seguin's for many years.

21 MR. SMITH: Correct.

22 MR. ENGELMANN: Okay. He may have come to
23 your attention during Project Truth.

24 MR. SMITH: He did.

25 MR. ENGELMANN: But I'm wondering if he

1 would have come to your attention back in '94.

2 MR. SMITH: I can't remember. Can I read
3 the statement?

4 MR. ENGELMANN: Yes.

5 (SHORT PAUSE/COURTE PAUSE)

6 MR. ENGELMANN: Sir, I'm particularly
7 interested at the bottom of the first page which is just
8 showing up on the screen. There's a reference to an
9 individual. I'm not sure if we'll need a moniker for his
10 name but he does not have a moniker.

11 MR. SMITH: Yes, I see the name there, yeah.

12 MR. ENGELMANN: Okay.

13 Madam Clerk, if you could just give me the
14 next page?

15 (SHORT PAUSE/COURTE PAUSE)

16 MR. ENGELMANN: Sir, it's really the first
17 half of that second page; that is the information I was
18 interested in having.

19 MR. SMITH: I don't remember this. It's not

20 ---

21 MR. ENGELMANN: Okay. Mr. Smith, you would
22 have been familiar with the fact that obviously Mr. Silmser
23 not only made allegations that both Father MacDonald and
24 Ken Seguin sexually abused him, ---

25 MR. SMITH: Yes.

1 **MR. ENGELMANN:** --- but also that they were
2 close friends.

3 **THE COMMISSIONER:** And that was in his first
4 statement ---

5 **MR. ENGELMANN:** In his first statement --
6 it's the first call he makes to the Cornwall police. He
7 said it on several occasions.

8 **MR. SMITH:** I'm aware of it. I'm aware.
9 When I'm trying to figure out. But no, I don't ---

10 **MR. ENGELMANN:** But as a consequence there
11 may well be -- and this is perhaps one of these
12 information in the extortion file which would have been
13 helpful for you to have in the reinvestigation of Father
14 MacDonald?

15 **MR. SMITH:** Yes.

16 **MR. ENGELMANN:** Because you didn't know
17 about the individual who's listed here in the bottom of the
18 first page and the description onto the second page?

19 **MR. SMITH:** That name came to us -- we were
20 aware that somebody was living with Father Charlie, and I
21 don't know when it came to my attention.

22 **MR. ENGELMANN:** But ---

23 **MR. SMITH:** It could have been on Truth out
24 of this.

25 **MR. ENGELMANN:** I think there have been more

1 than -- I think there have been a few people named as
2 having spent sometime there. I'm just wondering about this
3 specific person here.

4 And would you agree with me that this is
5 information that would have been relevant to your
6 reinvestigation of Father Charles?

7 **MR. SMITH:** Yes.

8 **MR. ENGELMANN:** And it's information you
9 would have liked to have had at that time?

10 **MR. SMITH:** Yes.

11 **MR. ENGELMANN:** Okay.

12 And this is not information you had when you
13 prepared your Crown brief at the end of the day; or at
14 least this individual is certainly not listed?

15 **MR. SMITH:** Not in the index, no.

16 **MR. ENGELMANN:** Okay. And presumably, this
17 is someone you could have tried to contact to follow up on
18 when you were looking for other alleged victims?

19 **MR. SMITH:** If we had the name. If we had
20 the name I should ---

21 **MR. ENGELMANN:** Yes. Yeah, but you may not
22 have had the name.

23 **MR. SMITH:** Yes, that's why I said ---

24 **MR. ENGELMANN:** You being Constable Fagan
25 and yourself.

1 **MR. SMITH:** What I'm saying is that if we
2 had the name we would have looked more.

3 **MR. ENGELMANN:** Yeah.

4 Mr. Commissioner, I'm in your hands. I can
5 go for 15 minutes, half an hour or stop now. It's really
6 up to you.

7 **THE COMMISSIONER:** Well ---

8 **MR. ENGELMANN:** Or perhaps it's really up to
9 the witness.

10 **THE COMMISSIONER:** Mr. Smith?

11 **MR. SMITH:** I think -- I am tired.

12 **THE COMMISSIONER:** Then we'll call it a day.
13 Thank you. We'll come back at 9:30. Thank
14 you.

15 **THE REGISTRAR:** Order; all rise. À l'ordre;
16 veuillez vous lever.

17 This hearing is adjourned until tomorrow
18 morning at 9:30 a.m.

19 --- Upon recessing at 4:48 p.m. /

20 L'audience est ajournée à 16h48 ...

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C E R T I F I C A T I O N

I, Dale Waterman a certified court reporter in the Province of Ontario, hereby certify the foregoing pages to be an accurate transcription of my notes/records to the best of my skill and ability, and I so swear.

Je, Dale Waterman, un sténographe officiel dans la province de l'Ontario, certifie que les pages ci-hautes sont une transcription conforme de mes notes/enregistrements au meilleur de mes capacités, et je le jure.



Dale Waterman, CVR-CM