

Tuesday, 9th June 2009

1

2 (10.20 am)

3 THE CHAIRMAN: Good morning. Before we begin the evidence

4 of Mr Heath, there is one matter that I want to raise.

5 It came to my notice that Mr Smith who appears for

6 Mr Asbury might want to cross-examine about certain

7 matters that were contained in the statement of evidence

8 of Mr Heath and it seemed to me when I read the

9 statement that there were matters in it which were not

10 relevant to the Terms of Reference of this Inquiry and,

11 therefore, I am grateful for having had it pointed out

12 to me those paragraphs in the statement which it was

13 considered by Mr Smith and his team did have a bearing

14 on the subject of the evidence against Mr Asbury.

15 Now, I have had an opportunity to go through this

16 statement which, in effect, is the evidence in-chief of

17 Mr Heath and I think the most efficient way of dealing

18 with this is for me to say which of those paragraphs I

19 feel are not relevant to the terms of reference of this

20 Inquiry and, therefore, I would propose to redact and

21 then to give anyone who wishes an opportunity to give

22 comment to the contrary and try to persuade me that I

23 should take a different view. But I think the most

24 efficient way is just to say at the outset what I would

25 regard as not being relevant.

1                   When I say relevant, I think the Terms of Reference  
2                   of the Inquiry really confines me to those fingerprints  
3                   that were, loosely speaking, associated with the case  
4                   involving Mr Asbury but not the other elements, if any,  
5                   that may have existed in his case.

6                   I have no difficulty with, for that reason, allowing  
7                   redaction of paragraphs -- I will take it slowly that  
8                   you can follow -- 154, 155, 165, 166, 169, 170 and then  
9                   we go forward to 190.

10                  All I want to say about that is that I would be  
11                  inclined to take out the last sentence of 190 and the  
12                  reason it would appear to me to be relevant to leave in  
13                  the earlier part is because it shows why there was an  
14                  interest in the tin in which the money was contained.

15                  191: I would be minded to take out the first  
16                  sentence but it seemed to me that the remaining  
17                  sentence, the remaining part of that paragraph, was  
18                  relevant because an issue actually has been raised about  
19                  why an officer of this seniority was taking prints to  
20                  the Scottish Criminal Record Office. So that is 191.  
21                  As I say, I will take out the first sentence which does  
22                  not seem to me to be relevant to my investigation.

23                  Then 200 I will remove, 201 also. 203: again, I  
24                  would take out the last sentence beginning "However" but  
25                  leave in the first part because, again that has a

1 bearing on why there was an interest in the tin. I  
2 would take out 204, 205, 206, 211, 212, 213, 216, 218.

3 Now, 219 seemed to me again to have relevance in  
4 relation to the money in the tin but not the last  
5 sentence beginning "He had subsequently withdrawn ..."

6 220, I would redact 324, I would redact 326. 327 to  
7 333 seemed to me to be relevant to the witness's  
8 evidence and I would leave in. That is 327 to 333. I  
9 would next take out 342 up to 343, all of that.

10 Then I would leave in 344 to 350 and I would then  
11 take out 351, which is concerned with Mr Asbury and not  
12 an aspect with which I am involved, and 352. I will  
13 leave in 353 but on page 83, three paragraphs from the  
14 bottom, beginning "I have detailed ...", I would take  
15 that paragraph out and I would leave in paragraph 354.

16 Perhaps I should begin by asking Mr Vaughan who I  
17 understand appears for the witness whether there is any  
18 reason why he feels that any of those matters should  
19 stay in that I have proposed should be redacted.

20 MR VAUGHAN: Excuse me a minute. **(Pause)**

21 Mr Heath's position is he is very happy to  
22 co-operate in this Inquiry, restricting matters to the  
23 Terms of Reference.

24 THE CHAIRMAN: Do not feel you need to stand. Sometimes the  
25 microphones are easier sitting, Mr Vaughan. Please feel

1 free to sit while you are addressing me.

2 MR VAUGHAN: Mr Chairman, having said that, these matters

3 have been produced at fairly short notice to us and I

4 have had little or no opportunity to discuss.

5 THE CHAIRMAN: Would you like a moment?

6 MR VAUGHAN: Yes, I would.

7 THE CHAIRMAN: Certainly. I think as I explained before,

8 however interesting it might be the evidence that was

9 collected or the police felt there was against

10 Mr Asbury, I take the view that my Terms of Reference,

11 as I explained a moment ago, really confine me to those

12 fingerprints that were involved in the case against

13 Mr Asbury and that that is really the relevance of the

14 proceedings against Mr Asbury so far as I am concerned

15 in this Inquiry and that I am really confined by my

16 Terms of Reference, but I will give you time.

17 I have adopted this course. Normally what happens

18 is that applications for redaction come at an earlier

19 stage, but it only arose because there was an

20 application to cross-examine on what I might call the

21 case against Mr Asbury and I felt that I could make an

22 exception by perhaps indicating that I would consider

23 redaction this morning rather than at the normal time.

24 So I will certainly give you time and may I take it

25 that everyone else would prefer to hear what Mr Vaughan

1 has to say before they express a view?

2 MR SMITH: Certainly, for Mr Asbury and Miss McKie, our  
3 position is very much that Mr Vaughan would like some  
4 time. I am told by him the position to make  
5 submissions -- not that I would necessarily agree with  
6 what Mr Vaughan says -- but I would appreciate a few  
7 moments as well.

8 THE CHAIRMAN: Please. I do not want to put anybody under  
9 pressure, if you want to look at it and consider it. I  
10 hope I have made it clear what I had in mind and I, of  
11 course, want to hear from Counsel to the Inquiry also as  
12 to whether they have any views. But I think the logical  
13 way to take it would be everybody else can ask for any  
14 contribution they want to make after when they have had  
15 an opportunity of hearing everyone else.

16 Would it be convenient if I give, what, 15 minutes  
17 or would you like longer than that?

18 MR SMITH: For our part I would think 15 minutes would be  
19 more than adequate.

20 THE CHAIRMAN: If you indicate that it is not enough, if you  
21 let me know I will give you longer.

22 So I will rise now until, let us say, 10.50.

23 **(10.31 am)**

24 **(A short break)**

25 **(10.50 am)**

1 THE CHAIRMAN: Mr Vaughan, have you anything you would like  
2 to say about this?

3 MR VAUGHAN: Well, firstly just to indicate on behalf of  
4 Mr Heath, lest there be any doubt in this matter, that  
5 most if not all information supplied by him in his  
6 statement was in answer to a series of questions posed.

7 THE CHAIRMAN: By the Inquiry.

8 MR VAUGHAN: Rather than information simply provided.

9 THE CHAIRMAN: I quite understand.

10 MR VAUGHAN: Secondly, Mr Heath is happy to co-operate  
11 strictly when referring to the Terms of Reference and  
12 appreciates the importance of that. Having said that,  
13 if anything is redacted and he is subsequently asked  
14 questions on it, he may seek to reinstate those areas  
15 redacted.

16 THE CHAIRMAN: Yes. I rather hope he will not be questioned  
17 about anything that is outside the Terms of Reference  
18 and if I miss it, if he draws it to my attention that it  
19 is outside the Terms, then I will give it due  
20 consideration.

21 But, subject to that, is there --

22 MR VAUGHAN: There are two relatively minor matters. I say  
23 relatively minor. You made reference to deleting the  
24 first sentence in paragraph 191 which makes reference to  
25 an ID parade being held. The only significance of that

1 sentence so far as Mr Heath is concerned was that the  
2 police station at Kilmarnock is extremely busy, there  
3 was an ID parade. He is not mentioning in that  
4 paragraph what the ID parade referred to. He just  
5 simply says there was an ID parade and that is to  
6 demonstrate how busy the office was and why he was  
7 required to do what he did. That is the only  
8 significance.

9 THE CHAIRMAN: I think the only reason it occurred to me was  
10 whether the implication was it was an ID parade  
11 involving Mr Asbury but it is not necessary --

12 MR VAUGHAN: He does not go on to explain what the ID parade  
13 was about deliberately because it is not relevant what  
14 it was about, simply there was an ID parade requiring a  
15 number of police officers; hence the reason why he did  
16 what he did that day.

17 THE CHAIRMAN: I do not think you need to take up time with  
18 that. Unless somebody has some strong objection to it,  
19 I would be quite prepared to have that in as  
20 demonstrating that. I mean, I think the whole  
21 complexion of the statement was that he was a very busy  
22 person with a great deal of responsibility. So at that  
23 point --

24 MR VAUGHAN: There is just simply one other matter. 203,  
25 which is on page 45: as I understood it, you are

1 proposing to delete the last sentence.

2 THE CHAIRMAN: Yes, that is all.

3 MR VAUGHAN: I am just wondering whether it may be what I

4 respectfully suggest that if that last sentence is going

5 to be deleted, then perhaps you may propose to delete

6 from line 4 starting with the words "The note ..."

7 because it really all relates to the same --

8 THE CHAIRMAN: The next sentence beginning:

9 "The note also ..."

10 I think the only reason I was putting it in or

11 leaving it in was because, as I said, it showed why the

12 Inquiry was interested in the tin which we, in this

13 Inquiry, are interested in. I do not think a great deal

14 turns on it but I just thought it was relevant to that

15 issue.

16 Then I think unless anyone has any objection to the

17 fact that in the statement in 191 that an ID parade was

18 held as far as Mr Vaughan's points are concerned, I

19 would be happy to accept that point about leaving in the

20 fact that an ID parade was held in paragraph 191.

21 I come next to Mr Holmes. Do you have any points

22 you want to make about the redaction?

23 MR HOLMES: Indeed, sir. The first thing I have to say was

24 what Mr Vaughan said already which is the statement of

25 Mr Heath came about as a result of questions asked

1 of Mr Heath by the counsel employed by the Inquiry team  
2 to take the statements.

3 THE CHAIRMAN: Yes.

4 MR HOLMES: The second thing, sir, is that the information  
5 elicited is not of itself scandalous, in the sense that  
6 Mr Heath is not expressing a view as to Mr Asbury's  
7 guilt, merely setting out the evidence against him which  
8 has been done in public already during Mr Asbury's  
9 trial.

10 He says specifically himself at the end of his  
11 statement that he invites anyone reading it to come to  
12 their own conclusions.

13 The third thing would say, sir, is deleting a large  
14 tract of any witness's statement is liable to lead to  
15 public speculation about what has been deleted.

16 THE CHAIRMAN: Yes. I should make it absolutely clear, even  
17 as I am going to, understand that the scandalous part of  
18 it in the Scots law in the sense I am not suggesting  
19 that at all. This is merely relevance and what I do not  
20 want the Inquiry to do is to spend time looking into  
21 something that is not within its Terms of Reference  
22 because I think I would be subject to criticism by any  
23 reviewing court for going outside my Terms of Reference.  
24 It is merely a question of relevance.

25 But I accept what you say. The Inquiry did record

1           this statement, did ask a lot of questions but the fact  
2           that that happens does not mean that I necessarily agree  
3           that those questions were relevant, or the issues that  
4           were raised.

5                     Is it convenient now, Mr Smith, to take you next?

6       MR SMITH:   As far as the ruling is concerned on the  
7           redaction matters, we are entirely content with the  
8           passages that you wish to redact.

9                     As far as Mr Vaughan's submission is concerned, I am  
10          not sure, sir, that you have rejected his submission on  
11          the second point that was made, but I would certainly --  
12          unless you --

13       THE CHAIRMAN:   That I should take out more concerning the  
14          reference to "grandfather", I think.

15       MR SMITH:   Yes. I am not sure what your ruling is on that.

16          It may be my fault.

17       THE CHAIRMAN:   I was inclined to leave it the way it was as  
18          showing why the police were interested in the tin.

19       MR SMITH:   Certainly, sir, that is my submission that it  
20          should be left the way it is. I think we have to draw a  
21          very clear distinction here between anything that, as it  
22          were, revisits the question of Mr Asbury's guilt or not  
23          and anything else which relates to the inquiry which  
24          took place, the police inquiry, that took place  
25          regarding the fingerprints.

1 THE CHAIRMAN: I think just to remind myself, it is the  
2 fingerprints associated with and leading up to the case  
3 of **Her Majesty's Advocate v McKie** so that is why I have  
4 taken the view that I am only looking at fingerprints.

5 MR SMITH: Sir, I am much obliged. I should say as far as  
6 the passages that are being left in are concerned,  
7 particularly those that a request for redaction has not  
8 been granted, as it were, we have no difficulty with  
9 that but I presume where the Counsel to the Inquiry does  
10 not cover the matters left, the proposed redactions that  
11 are left in, that what we are allowed, if anything, to  
12 ask questions about.

13 THE CHAIRMAN: Yes, I think my concern at the moment is that  
14 I want statements to go on the website as soon as  
15 possible because, as I said earlier, I am treating a  
16 witness's statement as their evidence-in-chief really  
17 and I think it is right that that should be made known  
18 as soon as possible and that is how I wanted to deal  
19 with this at the outset, unfortunately keeping Mr Heath  
20 waiting but I think that is the best way to do it.

21 MR SMITH: Thank you, sir.

22 There are two other matters that I feel I should  
23 raise at this stage. One is that -- and this may come  
24 up again -- the question of redaction. One of the fears  
25 I have is in discussing the question of redaction in

1 proposing something is redacted or arguing against it  
2 being redacted that those representing parties here say  
3 what the proposed redaction is which of course defeats  
4 the purpose and I think perhaps I would certainly do my  
5 best not to say what is in something and we can do it by  
6 reference. I am sure everybody else can bear in mind  
7 the position in that regard.

8 The second thing is that there are a number of  
9 documents which are proposed to go live and  
10 accessible to the public which may contain the same kind  
11 of stuff that you rule on to be redacted. By way of  
12 example, I say things broadest sense, there are  
13 statements of Mr Heath provided previously that contain  
14 some similar matters to those that we wish redacted.  
15 They are not yet live to the public but in discussion  
16 with Counsel to the Inquiry as recently as yesterday, I  
17 think it was made clear by us that we need to discuss  
18 what can, in fact, be made live for the very reason your  
19 ruling covers. So I simply raise that just now.

20 THE CHAIRMAN: That is a very good point. I think we all  
21 must try and stop the process because it could be very  
22 difficult. Anything that is drawn to Counsel to the  
23 Inquiry's attention I am sure they will try to ensure it  
24 does not happen. I want to be consistent obviously.

25 MR SMITH: Thank you, sir.

1 THE CHAIRMAN: Miss Grahame, do you have any point you want  
2 to make?

3 MISS GRAHAME: We have no comments to make.

4 THE CHAIRMAN: Mr Macpherson, any points?

5 MR MACPHERSON: No sir, I have no submissions to make on the  
6 proposed redactions.

7 THE CHAIRMAN: As everyone has now had an opportunity and  
8 the only change that I propose to make then is to leave  
9 in the passage about there being an ID -- now we are  
10 confined to a very narrow issue, unless there is  
11 anything you want to press me on.

12 MR MOYNIHAN: Sir, it is in response to my learned friend  
13 Mr Smith asking for the background papers to be  
14 similarly redacted. If I could simply remind parties  
15 that there is a procedure document that indicates that  
16 points of this nature should be raised in early course  
17 because it is a mammoth task to actually sift through  
18 documents to see if there is any material and an  
19 impossible task if there is material in a document that  
20 a Core Participant might take exception to being  
21 published then we require that to be drawn to our  
22 attention in early course because being a public Inquiry  
23 the intention is material being referred to by a witness  
24 should be accessible to the public as soon as possible.  
25 I appreciate, and I have no difficulty, with this

1 being the first day we are all new to the process, there  
2 is an element of working into the arrangements. But the  
3 request my learned friend has made might result in  
4 material in the course of Mr Heath's statement being  
5 delayed is one that will cause the administration of the  
6 Inquiry quite some difficulty. I will attempt in  
7 conversation with my learned friend to reach some  
8 accommodation but I would ask that all Core Participants  
9 about aware for the future of the procedure so this  
10 difficulty does not occur again and delay the Inquiry  
11 and, in particular, delay public access to the material  
12 by the Inquiry.

13 THE CHAIRMAN: I endorse that and I am sure everyone will  
14 try to co-operate. I am sorry to have overlooked you.

15 I should say since we have lost -- lost isn't quite  
16 the word but spent some time not sitting this morning I  
17 really think we should just go on until lunchtime and  
18 not break at 11.50 unless if at any time you want a  
19 break you must tell me.

20 **STEPHEN HEATH (sworn)**

21 THE CHAIRMAN: For the record just repeat your full name,  
22 Mr Heath.

23 A. Stephen Heath.

24 THE CHAIRMAN: Thank you. Please take a seat and, as I  
25 said, a moment ago, if at any time in the course of your

1 evidence you want a break, because I realise it is  
2 demanding for witnesses, then just say so, please.

3 **Examined by MISS CARMICHAEL**

4 Q. Mr Heath, as I think we have heard this morning, you  
5 prepared a written statement to the Inquiry and you  
6 signed that.

7 Have you satisfied yourself that that was a truthful  
8 record of matters covered in it?

9 A. Yes, that's correct. It was electronic and I signed it,  
10 yes.

11 Q. Before we turn to your evidence in a little more detail,  
12 I would like to find out a little bit more about your  
13 own career in the police, Mr Heath.

14 I wonder if you could tell us how long you spent as a  
15 police officer.

16 A. Yes, I was 30 years with Strathclyde Police.

17 Q. And I think you retired in 2006?

18 A. Yes, that's correct.

19 Q. How long were you a Detective Chief Inspector?

20 A. I think I was a Detective Chief Inspector for about two  
21 years but a Chief Inspector in another role for about  
22 three.

23 Q. You spent all of your police career with Strathclyde  
24 Police?

25 A. Yes. I worked in a variety of roles from constable

1 through to detective superintendent but out of the  
2 30 years I probably spent around 22 years as a detective  
3 in all the ranks up to detective superintendent in  
4 varying roles, the Serious Crime Squad, Drug Squad,  
5 surveillance, firearms.

6 Q. I know that many of the people in the room today will  
7 know a lot about how the police works, Mr Heath, but for  
8 those that don't and the members of the public who do  
9 not, at the time we're interested in you were a  
10 Detective Chief Inspector?

11 A. Yes, that's correct.

12 Q. And I wanted you to tell us where in the structure of  
13 the police, in the hierarchy, a Detective Chief  
14 Inspector fits in?

15 A. In Strathclyde Police at that time there were 19  
16 territorial divisions -- I think it was 19 -- based on  
17 areas of the country -- Strathclyde, sorry. In each of  
18 these divisions there is a Divisional Commander, Chief  
19 Superintendant uniform, a deputy who was  
20 a superintendent and within that structure within the  
21 division would be CID. Each division was split into  
22 subdivisions and I think we had three at that time  
23 covering Kilmarnock, Saltcoats and Ayre. The Detective  
24 Chief Inspector had overall responsibility for the  
25 management of crime within those areas and I will have

1 managers at the rank of detective inspector level  
2 managing the subdivisions. So basically my role was to  
3 oversee the management of crime in the division, to run  
4 major inquiries, sometimes be involved in  
5 investigations, as I was at this time, outwith the  
6 division also and I carried maybe some portfolio work as  
7 well.

8 Q. But your involvement we should understand is at a fairly  
9 high level in the management structure of the police?

10 A. Yes. I would say it's a strategic level but sometimes  
11 because of the business you get dragged down to an  
12 operational level. It's unavoidable.

13 Q. In the Marion Ross investigation, you were the Senior  
14 Investigating Officer and you appointed a deputy,  
15 Mr McAllister; is that correct?

16 A. Yes, that's correct.

17 Q. Can you give the Inquiry some picture of just what his  
18 role involved?

19 A. Alex McAllister was one of the divisional detective  
20 inspectors that I referred to earlier in that role, very  
21 experienced man at the time and when you ask someone as  
22 a deputy Senior Investigating Officer you are basically  
23 saying you are devolving at times when you have to  
24 responsibility, the delegation of certain matters but  
25 with a close working relationship and I would suggest

1 that my role was perhaps more strategic in terms of the  
2 direction of an investigation and managing of the  
3 resources and making sure they are all singing from the  
4 same hymn sheet whereas his role is perhaps delivering  
5 some of the strategic decisions at that level,  
6 operational level.

7 Q. Turning to the beginning of the Marion Ross murder  
8 investigation, I wonder if I could refer you to  
9 paragraph 28 of your statement. That is page 6 of FI13.

10 A. Yes.

11 Q. You tell the Inquiry there that you felt there was a  
12 high possibility that the death of Miss Ross was a  
13 murder and not a suicide?

14 A. Yes, that was the initial assessment I had and of the  
15 other officers who had been on the scene.

16 Q. There is a point I would like to raise with you about  
17 that, Mr Heath, and I wonder if we could have a display,  
18 please, of document AC4 at page 3.

19 Mr Heath, I think this is an extract from one of your  
20 own notebooks; is that correct?

21 A. Yes.

22 Q. I would like to refer you to a passage just at the top  
23 of the right-hand side under the figure 38. I wonder if  
24 you could read out to us just what it says there.

25 A. Yes, it says:

1 "Initial impression suicide, no forced entry."

2 Q. What I am wondering there is what you say about your  
3 impressions regarding suicide there with what you have  
4 recorded in your statement to the Inquiry.

5 A. I think summarising there the opinions of a number of  
6 people that were there. I think the pathologist had  
7 indicated that she had seen worse incidents with  
8 injuries, I think a relative had indicated the  
9 possibility of suicide but these are just notes I've  
10 made to myself. I was of the firm view, and I am in  
11 retrospect as well, and recollection, that that was  
12 being dealt with as a suspicious death but the note  
13 making at that time is simply saying, "Initial  
14 impression suicide, no forced entry".

15 Q. You told the Inquiry in your statement that the official  
16 investigation of the inquiry as a murder inquiry was  
17 something that had to wait to the post-mortem results.  
18 What I am interested in is what practical consequence  
19 there was, if any, that the investigation wasn't  
20 designated as a murder Inquiry at the very outset. I  
21 wonder if you could help the Inquiry with that?

22 A. I have been to many scenes of deaths and suspicious  
23 deaths. I've seen incidents from hypothermia, both  
24 outside and inside, or other incidents which have left  
25 me with the impression I'm definitely dealing with a

1 murder investigation when I'm not. So I can't really  
2 designate something as a murder officially until I've  
3 had a post-mortem, the details of the injuries and what  
4 actually happened. Sometimes you can have people lying  
5 outside, deceased who have been shot and you don't know  
6 until the body has been x-rayed they have been shot.

7 But in terms of the initial approach to this  
8 investigation, although the initial impression says  
9 suicide, were at the very highest level. We dealt with  
10 the scene and secured it, we started with a  
11 house-to-house through DI McAllister, we took some  
12 clothing from a neighbour who found the body and there  
13 were other actions taken during the course of that  
14 evening in terms of photography, the securing of the  
15 house and actions the next morning that were undertaken  
16 which happened at the highest level. So there's nothing  
17 there, in my view, that we did at that time that was any  
18 less than an approach to a very suspicious death.

19 Q. This Inquiry obviously is particularly interested in  
20 fingerprint evidence in the investigation, Mr Heath, and  
21 with that in mind the designation of the investigation  
22 as a suspicious death in the first instance rather than  
23 the murder what I'd like to focus on is whether that had  
24 any effect on the gathering of the fingerprint evidence  
25 in the case?

1 A. I think you need a forensic strategy. So just to speak  
2 to fingerprints isn't the whole picture. If that had  
3 been an outside location where there was that level of  
4 suspicion there's certain forensic things will have had  
5 to have done to secure the evidence in case it  
6 deteriorated. This was an inside location with a  
7 secured house where, if we kept the house secure and we  
8 put people on the doors and nobody got in, the evidence  
9 was preserved in that house. Plus, by the time we had  
10 left that scene and by the time, for example, the body  
11 of Marion Ross had been removed, you were into around  
12 probably 11.00/12.00 at night on recollection or late on  
13 in the evening. That's not a time to start calling out  
14 resources who are tired by the next morning or you have  
15 people working who are not there full-time for you. So  
16 what I'm really saying is that a forensic strategy  
17 really needs to be designed the next morning. For  
18 example, does a chemist need to go in first, does a  
19 biologist need to go in, what is the order of  
20 examination? On many occasions, a post-mortem can say  
21 to you that certain things happened that you perhaps  
22 don't know about that affect that forensic examination  
23 and the order of -- that was a big job. The order of  
24 how you do that job can also often be directed by a  
25 post-mortem examination.

1 Q. I think I am right in saying in this case the Scenes of  
2 Crime Officers tasked with finding fingerprints actually  
3 went in quite early the next morning 9th January; is  
4 that correct?

5 A. Yes, and although DI McAllister wasn't designated  
6 officially in charge of the house and the examination of  
7 the house, I think he was there the next morning trying  
8 to run matters and getting things going. You don't  
9 really want people doing these examinations that aren't  
10 going to be with you for a period of time. So there's  
11 impact on staffing for the Identification Bureau,  
12 there's impact on staffing for other specialisms that  
13 needs to be taken into account.

14 I have on occasions been on an outside location where  
15 a body has been found in the evening. We've had to make  
16 some tough decisions and leave that in situ as long as  
17 the **locus** is protected. So I would say that this was  
18 operating at the highest level, control was in place and  
19 it was a strategy beginning from that night with  
20 house-to-house, seizure of clothing, interviewing of  
21 witnesses. It was much above the level of suicide that  
22 it would normally be. It was a professional approach.

23 Q. Now, turning back to the evening of 8th January,  
24 Mr Heath, I think you left the scene perhaps about 11.00  
25 at night?

1 A. Yes.

2 Q. Do you recall yourself seeing an officer Gary Gray at  
3 the scene?

4 A. I think Gary Gray was at the scene. I think he'd been  
5 on working that evening and called to the scene. So I  
6 think he was at the scene.

7 Q. Was Michael Moffat at the scene by the time you left?

8 A. I'm not sure about the name. There might have been  
9 someone else there.

10 Q. This would be a Scenes of Crime Officer, Mr Heath.

11 A. Possibly but I can't recall specifically. Yes, I think  
12 there was someone from Scenes of Crime there but I can't  
13 recall specifically.

14 Q. There has been a suggestion to the Inquiry that Mr Gray  
15 may have been present at the scene at some stage with a  
16 torn glove. Is that something you can recall seeing or  
17 on which you can cast any light?

18 A. No, I can't recall seeing it.

19 Q. Have you heard of that suggestion before?

20 A. No, I haven't heard of that suggestion.

21 Q. Again, at the scene of the crime on 8th January, were  
22 you involved in the arrangements for the officers who  
23 would keep watch at that time?

24 A. I think I just left instruction with DI McAllister to  
25 make sure the house was secured or even Gary Gray. I

1           can't recollect totally but I would certainly have  
2           specified that the house needed to be secure.

3       Q.    There has been a suggestion to the Inquiry, Mr Heath,  
4           that a number of officers were stationed to keep watch  
5           but allowed access to the living room rather than simply  
6           being in the porch of the property during the course of  
7           that evening.

8           Is that something of which you are aware?

9       A.    It's not something of which I'm aware. I wouldn't know  
10          the purpose of that if there was a purpose to that that  
11          related to the investigation or whatever, but it's not  
12          something I'm aware of.

13      Q.    I take it then that that was not something that would  
14          have been done on your own instruction?

15      A.    No, definitely not.

16      Q.    Would that have been normal practice in an investigation  
17          of this type?

18      A.    I'm unclear because that's the first I've heard of that.  
19          I mean, my role was to go in, we looked at the scene, we  
20          left instructions about what was to be done. When I  
21          leave that scene, I'm assuming that I have delegated  
22          authority to have that scene controlled. So I can't  
23          help you any further with that.

24      Q.    Can you comment as to whether the fact that officers may  
25          have been stationed in the living room or allowed access

1 to the living room in the course of their duties keeping  
2 watch, whether that would have affected the exercise the  
3 next day and the following days regarding the collection  
4 of fingerprint evidence?

5 A. Well, what happens, as I said to you, often a  
6 post-mortem can indicate that perhaps where the body of  
7 Miss Ross was found wasn't necessarily where an attack  
8 had taken place. So for me, anything within that house  
9 beyond that door needs to be protected unless people  
10 have to be there for a purpose and that's the clear  
11 instruction that was left because I regarded that as a  
12 suspicious death and we put in place things that I would  
13 normally put in place for a suspicious death.

14 Q. So, without a good reason for putting officers in the  
15 living room, that is not something that you would  
16 necessarily have thought was a good idea yourself?

17 A. No, it's not necessarily a good idea. I think I left  
18 DI McAllister there at the **locus** with clear instructions  
19 to secure, and Gary Gray, and to carry out what related  
20 to the house.

21 Q. Moving on, Mr Heath, to a slightly different topic, this  
22 was an investigation where the HOLMES computer system  
23 was used I think and, again, for the benefit of those  
24 who may not be familiar with how that works, I wonder if  
25 you could explain what the HOLMES computer system was at

1 the time?

2 A. HOLMES stands for Home Office Linked Major Enquiry  
3 System. To my recollection it was brought in after the  
4 Yorkshire Ripper series of murders because data and  
5 information which was collected manually and written  
6 wasn't properly joined up in terms of search  
7 cross-reference. So basically what it is is an  
8 electronic system of recording a major crime  
9 investigation which allows cross-referral to statements,  
10 cross-referral, for example, to car numbers and colours  
11 and really nothing should be missed within that system.

12 The main thing, it's an audit trail of everything  
13 that's done.

14 One of the issues with HOLMES is that if you delay too  
15 long in bringing in HOLMES from the beginning of an  
16 investigation, it takes a long time to then gather the  
17 data that has been gathered before you bring in HOLMES  
18 and it can take some time to back-log it on to the  
19 system.

20 So a decision in bringing in HOLMES is an important  
21 decision. HOLMES also brings with it an administrative  
22 burden in terms of the number of staff required to man  
23 the incident room and the paper flow of system and on a  
24 big Inquiry which gathers and gathers you can end up  
25 with a lot of data and you have to be fairly focused in

1 determining where you're going and what your policy is.

2 Q. I would like to display for you, please, a particular  
3 HOLMES action in this inquiry, Mr Heath, and that is  
4 CO1435 at page 2. I don't have particular questions for  
5 you about this action, Mr Heath, but we perhaps also can  
6 use it to help explain how HOLMES would work in  
7 practice.

8 We see about three lines down action number A225.

9 A. Yes.

10 Q. What exactly is an action in the context of HOLMES so  
11 that we can understand the context?

12 A. Actions would start at number 1 and would be pieces of  
13 work which needed to be done. So an action would be  
14 allocated to the detectives working on the investigation  
15 for them to go with the action and complete the  
16 instruction that's on it. So starting at 1, that's  
17 action number 225; so previously there have been 224  
18 actions or pieces of work issued to the inquiry team.

19 Q. If we look at the line underneath "action", can you tell  
20 us what piece of work being allocated here is?

21 A. It says "TST", which means take statement "DC Cardwell  
22 N372." So "N" is a nominal number, "N" is a number  
23 allocated to someone's name who has cropped up on the  
24 investigation. What it says is "police officer is seen  
25 9th January 97 code" I think that's a particular code

1 for the area "current state filed". So it's a filed  
2 action out for work. I think that would say take  
3 statement from DC Cardwell police officer at scene and  
4 it comes from document 13, which is a copy of a log from  
5 the scene.

6 Q. So if I can stop you there, the N numbers are things  
7 that are given to anybody whose name crops in the  
8 inquiry, whether that is a police officer or somebody  
9 else?

10 A. Yes.

11 Q. And a D document would be a document number that would  
12 be allocated to documents that had been either come to  
13 your attention or been generated in the course of the  
14 inquiry?

15 A. Yes.

16 Q. I interrupted you when you were going to copy of log at  
17 scene, Mr Heath.

18 A. Reference is made to DC Shirley Cardwell N372, which is  
19 the nominal number, new division CID:

20 "Scene take statement from DC Cardwell regarding her  
21 involvement in this Inquiry."

22 Q. Then when we go to linked actions, do we see a series of  
23 dates there in the left-hand column?

24 A. Yes, I think that refers to the follow-on work -- it's a  
25 long time since I've seen one of these. I think that

1           refers to the following on work from the issue of the  
2           action and what's being done.

3       Q.    So when you see 15th January, presumably the action  
4           being raised from the document the log, what actually  
5           happened when an action was raised?

6       A.    I think someone in the incident room would be an action  
7           allocator would look at what needed to be done in terms  
8           of, for example, someone who's been at the scene who a  
9           statement needs to be taken from because anyone who  
10          visited the scene a statement should be taken from. So  
11          they've raised the action on the 15th at that time,  
12          raised from document 13. So document 13 is the  
13          originating document for that. Then it's allocated on  
14          the 16th to DC Cardwell and then on the 17th it's  
15          changed to "completed", which means the action has been  
16          completed.

17                Then it's on the 17th it's resulted. So that's  
18                resulted with a response.

19       Q.    How would the officer to whom it has been allocated, DC  
20           Cardwell, how would she know that an action has been  
21           allocated to her, just at the simplest level?

22       A.    Probably someone at the incident room would say, "Come  
23           in. There's an action for you to give a statement".  
24           Most of that work would be done from the incident room.

25       Q.    I think you have been asked about this action in your

1 statement and you deal with that at page 29 at  
2 paragraph 127. I think your suggestion, when you were  
3 asked why a request might have been made for a statement  
4 at this stage from DC Cardwell, was because it was she  
5 was leaving the investigation?

6 A. Yes.

7 Q. I wonder if you could look at another document for  
8 display, please, at CO1473 at page 13. You will correct  
9 me if I am wrong but this would appear to be a very  
10 similar action allocated on the same date to DS Shields?

11 A. Yes.

12 Q. Who was the slightly more senior officer paired with DC  
13 Cardwell at the time.

14 A. Yes.

15 Q. I don't think Mr Shields was himself leaving the inquiry  
16 at this stage.

17 Does that make any difference to your view of why the  
18 statement may have come to be requested?

19 A. Yes, it does. Perhaps you would perhaps need to ask  
20 inspector Thomson who is running the incident room but  
21 what it looks to me is that they have been working at  
22 house and it's actually been followed up by the incident  
23 room quicker than someone leaving the Inquiry. So it  
24 looks as though DS Shields and DC Cardwell have been  
25 asked to supply statements fairly quickly after having

1           been known to be at scene. I'm not sure actually  
2           because I'm not really involved in the issue of that  
3           action as such so I think you perhaps need to speak with  
4           the incident allocator about why it was allocated at  
5           that time.

6           What it refers to is DS Shields and DC Cardwell were  
7           working as a pair. They had been at the **locus**. It may  
8           have been that DC Cardwell was leaving at the time and  
9           prepared the actions at the time or that there was some  
10          kind of piece of work going on from the incident room to  
11          take statements from anyone who'd attended the scene.

12        Q.    I wonder if we could look, please, at CO288 on the  
13          document display. At the bottom of page 2, if you look  
14          maybe at the last four to five lines there, if we could  
15          have those enlarged.

16          If you see just at the very bottom there the words,  
17          "During the visit I ..." and if we could move to the  
18          next page, please, the top of the page and enlarge the  
19          writing as well, it says:

20          "I remained within the porch area, touched no surfaces  
21          within the house and stood on metal plates placed within  
22          the area by officers of the identification branch."

23          Mr Heath, you will appreciate perhaps with hindsight  
24          what happened later in this Inquiry there is perhaps a  
25          slight curiosity as to why an officer may have come to

1 give a statement in those terms as early as  
2 17th January.

3 Can you help us with why that might be?

4 A. I really can't because I think this is the first time  
5 I've seen this document. I think you would need to see  
6 the origin of that and speak with the action allocator  
7 and the incident room staff in relation to that.  
8 Perhaps they were looking for anyone who had been in the  
9 house at that early stage to put on HOLMES but I'm not  
10 sure. I'm only conjecturing there so I'm not really  
11 able to help you on the origin of that.

12 Q. The Inquiry may come to hear that this particular  
13 document which is set out of the statement from DC  
14 Cardwell was in fact handwritten up by Mr Shields rather  
15 than by Ms Cardwell, as she was at the time.

16 Can you enlighten us as to how that might come to be  
17 in the ordinary course of things?

18 A. That someone else would write someone's statement?

19 Q. Yes.

20 A. I'm not sure. Perhaps because they were together but it  
21 is a bit unusual that someone would write someone else's  
22 statement. I don't recall -- I would certainly prefer  
23 that every officer wrote their own statement. It's a  
24 bit unusual but perhaps DC Cardwell was involved working  
25 on something else and DS Shields has been asked to

1 complete the statements. I'm not sure.

2 Q. Just returning for a moment to the HOLMES system, what  
3 we see here is a handwritten statement.

4 A. Yes.

5 Q. These statements themselves become part of the HOLMES  
6 system in a typed form.

7 A. Yes.

8 Q. How does that happen? Does somebody take the  
9 handwritten version and put it into the system?

10 A. Yes. There's a number of word processor operators who  
11 would go through the statements and put them on the  
12 system.

13 Q. So it follows that when you find in the course of  
14 looking at an inquiry that there are handwritten  
15 statements which then come to be in the system in  
16 another form and can be printed out as and when required  
17 thereafter?

18 A. Yes, yes.

19 Q. Moving on, Mr Heath, to another topic, it came to be at  
20 a particular stage that a man called David Asbury was  
21 arrested in the course of the inquiry and what I would  
22 like to ask you about is your contact with the  
23 Procurator Fiscal at the time and just after when  
24 Mr Asbury was taken into custody. I would like to refer  
25 you in particular to paragraph 222 of your statement

1 which is at page 49.

2 A. Yes.

3 Q. What you say there is that you have been asked and at  
4 some point, more likely when you delivered the custody  
5 case, Mr McMenemy saying to you that it was a fairly  
6 circumstantial case?

7 A. I think that was the general comment he made, yes.

8 Q. Again, so that everyone who may be interested can  
9 understand, what do you mean when you are saying you are  
10 delivering the custody case?

11 A. If someone is arrested and appearing in court, then we  
12 have a duty as the police to provide the information  
13 evidence to the Procurator Fiscal. So in terms of the  
14 chain, we are the providers of the information to the  
15 Procurator Fiscal. Normally, I go over as a matter of  
16 courtesy, although it would normally be electronically  
17 mailed (but I can't remember if we had that at the time)  
18 or sent to the Fiscal's office or delivered through a  
19 case management system. But on most cases of a serious  
20 nature, I would go over and visit once they had the case  
21 and if there were any questions they wanted to ask, then  
22 we would discuss matters because there may have been  
23 issues that they wanted further interpretation of.

24 Q. Again, just to clarify the stage at which you are doing  
25 that, is that before or after the first time that an

1 accused person would appear in court on petition in a  
2 case of this sort?

3 A. It's before. This occasion here is before appearance,  
4 yes.

5 Q. You have mentioned a Mr McMenemy. I think at the time  
6 there were a number of senior Fiscals working in the  
7 Kilmarnock office with whom you had contact in this case  
8 and I think there was also Mr McTaggart and  
9 Mr McGlenannan you made contact with also.

10 A. Yes, yes.

11 Q. What is your best recollection of what John McMenemy  
12 said to you about the strength of the case when you  
13 delivered the custody case to him?

14 A. That's my general, best recollection that he said it was  
15 a fairly -- John and I knew each other fairly well.  
16 We'd worked together for some time and what I would say  
17 myself is my duty is to provide as much information to  
18 the Procurator Fiscal as possible. It's their decision  
19 on what occurs in terms of appearance at court or not.  
20 So although John's comment is "it's a fairly  
21 circumstantial case" -- I think, there have been a  
22 number of redactions that we've agreed to here -- we  
23 discussed issues within the case and Mr Asbury appeared  
24 in court as a result of the decision with John McMenemy  
25 based on the evidence presented to him.

1 Q. Without going into the detail of anything that has been  
2 redacted, Mr Heath, it is fair to say that there had  
3 been by that point, which would have been about  
4 23rd January, a fairly extensive inquiry with a number  
5 of lines of investigation.

6 You would agree with that?

7 A. This was an extremely thorough investigation.

8 Q. And you reached a stage where your team had identified a  
9 suspect and that person was about to be brought to  
10 court?

11 A. Yes.

12 Q. It can happen that the Crown, even at that stage when  
13 the police have identified a suspect, don't always feel  
14 they are in a position that they can proceed?

15 A. That's where the balance is very important in terms of  
16 someone's liberty; that it's an independent decision  
17 based on the evidence provided to them.

18 Q. But would it not be the case that there would be some  
19 degree of frustration for police officers having reached  
20 that stage of an enquiry if ultimately it was not  
21 possible to bring somebody to court?

22 A. Not necessarily -- if you get too involved in a case as  
23 a Senior Investigating Officer, then you would just not  
24 be able to do the job because I've been on many  
25 occasions, in many cases, where things like that have

1 happened. But then again, you're human and you take a  
2 pride in your work. So, yes, you probably -- personally  
3 yes, I would be but I felt in terms of the case we were  
4 taking over we were presenting a sufficiency to the  
5 Procurator Fiscal. But, again, it's his independence  
6 and his decision.

7 Q. In the week or so, eight days, between when Mr Asbury  
8 first appeared on petition and when he came to be fully  
9 committed in court on 31st January, you were continuing  
10 to work on the case and, again, without going into  
11 detail, to update the Fiscal?

12 A. This is why I'm very pleased to be here at the Inquiry  
13 and given this opportunity because I've read many  
14 comments and seen many comments about when a suspect is  
15 or when someone's arrested the investigation stops,  
16 et cetera, et cetera.

17 We continued with a vast amount of work. I take it  
18 very seriously if someone's liberty is taken away and  
19 they are put in custody. I have a duty, a public duty,  
20 to ensure that the investigation is thorough in all  
21 aspects, particularly in that period between the initial  
22 custody appearance and the period of reappearance which  
23 can often be a very short period. So I had my team and  
24 my officers working extremely hard during that period  
25 and doing a lot. There was a lot of significant

1 evidence developed that week.

2 Q. In the course of that week did you have further  
3 discussions with any of the Fiscals at Kilmarnock about  
4 the strength of the case?

5 A. I recall a request from Mr McTaggart -- I think it's in  
6 my statement -- to give him information on two specific  
7 areas which I did and I attended and I met with  
8 Mr McTaggart and I gave him that additional information.

9 Q. In the light of what we have been told about the  
10 circumstantial nature of the case and in the light of  
11 being asked to provide information about specific  
12 issues, was there perhaps a degree of pressure on you to  
13 gather further evidence against David Asbury?

14 A. As a Senior Investigating Officer you have to thrive on  
15 pressure because it's a very busy, very important job.  
16 So in terms of pressure, pressure is how you deal with  
17 it no matter what role you're in. As far as I was  
18 concerned, this was a professional investigative  
19 approach to a very -- every murder's bad but this was a  
20 very bad murder, if we can say that. So there's no  
21 additional pressure on me. I simply have my people  
22 working as hard as they possibly can to pursue the lines  
23 of enquiry and I know he's(?) a very, very tenacious  
24 investigator. So a lot has been made perhaps about the  
25 comment of this is a very circumstantial case. I've had

1 many discussions or had many discussions with John  
2 McGlenannan about cases. It's healthy that there's a  
3 discussion like that and I've been very open in  
4 including that in my statement and in any discussion.

5 So for me there's no additional pressure. We do the  
6 job anyway and we're going to try and get as much work  
7 done as we can before the next appearance because that's  
8 our duty to an accused person as well and to the  
9 relatives of the victim and the victim. That's our job.

10 Q. Staying on the period between 23rd and 31st January for  
11 a moment but moving away from the Fiscal to relations  
12 with the Scottish Criminal Record Office, Mr Heath, I  
13 think you confirm in your statement that your colleague,  
14 DI McAllister, had visited the Scottish Criminal Record  
15 Office on Saturday 25th and that you had visited on  
16 Sunday 26th to take Mr Asbury's arrest prints to them?

17 A. And I think there were some elimination prints as well.

18 Q. At the start of your evidence today, you did describe a  
19 role that's managerial responsibility of oversight and  
20 strategic responsibility in relation to the murder  
21 investigation. The picture perhaps that emerges is you  
22 and the other senior officer, DI McAllister, assigning  
23 day-to-day jobs, routine matters to the more junior  
24 officers in the investigation. That would be the  
25 general structure?

1 A. Yes.

2 Q. What we see here and what you have told us in your  
3 statement is a Senior Investigating Officer travelling  
4 up to Glasgow from Kilmarnock doing what appears to be  
5 legwork in taking arrest prints and elimination prints  
6 along to the Scottish Criminal Record Office.

7 Why would that be occurring?

8 A. I think the phrase is commonly used is slaughtered. My  
9 staff were slaughtered. I think we worked for -- I  
10 don't know -- 14/15 days in a row 12/14 hours a day. I  
11 think I had taken a Saturday off which was one of the  
12 first days off for an awful long time, I believe, and  
13 Alex McAllister was on duty. So I came on the Sunday  
14 and DI McAllister had left a note and an envelope  
15 requesting I go there. Sometimes as a senior manager  
16 you help out and you do things, so I did it and I took  
17 it up and I wrote it in my notebook that I'd gone.

18 I think in terms of retrospect, if I'm looking back  
19 from 12 years hence, that everything that occurred in  
20 between you would look at that and say, "Well, that's  
21 unusual". Well, quite often there's an ID parade  
22 running, there's no cars left, it's a Sunday morning in  
23 one of the busiest divisions in the Strathclyde Police  
24 with the Saturday night chaos that can often occur,  
25 every officer is busy, it's important the documents go

1 up before the Monday and Alex asked me to do it so I do  
2 it.

3 Q. How often in your career up to that point had you  
4 visited SCRO offices?

5 A. Not often at all.

6 Q. In the time you have been a Detective Chief Inspector  
7 how often had you visited the offices there?

8 A. Not often at all but in terms of this investigation this  
9 was an investigation that was unusual and it was  
10 particularly focused on fingerprints. There were, I  
11 think, in the region of 400 fingerprints from that  
12 house, all of which were very important to be  
13 identified, eliminated, whatever. So sometimes you can  
14 be, for example, in an investigation where you are  
15 linking closely with ballistics, linking closely with  
16 the chemistry side of an investigation. In this  
17 particular investigation we were linking closely on the  
18 fingerprint side.

19 Q. In the course of your career up to the point that we're  
20 talking about, you had presumably been involved in a  
21 number of investigations where fingerprints were  
22 important?

23 A. Yes.

24 Q. You would presumably also have had direct contact with a  
25 number of the people working at the Scottish Criminal

1 Record Office on fingerprints in the course of those  
2 investigations?

3 A. Not really. It was only really this particular  
4 investigation where we had the strategy meetings that  
5 occurred and in that -- I can't even remember who was at  
6 the fingerprint office that day when I took the envelope  
7 up. I don't know who was there. I didn't really know  
8 any of them individually as such.

9 As I say, that particular Sunday was very unusual  
10 because we had no staff left, the request was made by  
11 DI McAllister and I took an envelope up. It really is  
12 as simple as that.

13 Q. I get the flavour from what you say here and perhaps  
14 from what you are saying at paragraph 192 of your  
15 statement at page 42 that you were saying that you were  
16 not in a close relationship with the people at the  
17 Fingerprint Bureau. You used the words "relatively  
18 distant".

19 A. Yes.

20 Q. I wonder if you would look, please, at document DB0258  
21 if we can have that on screen. This is a note that  
22 seems to be recording the Saturday visit by your  
23 colleague that we have already mentioned but at the very  
24 bottom if we look at the passage which seems to be  
25 underneath some initials, we see "Sunday, Stevie Heath

1 brought in acs TP", presumably accused's print, and a  
2 number and "elims".

3 Mr Heath, are you Stevie to everyone or just to your  
4 friends.

5 A. In actual fact this indicates to me how little they knew  
6 me because it's drummed in to me from my mother, "Your  
7 name's Stephen", and in actual fact a few weeks ago  
8 someone I knew, a colleague, was calling me Stevie and  
9 he could see the look and he said, "You don't like to be  
10 called Stevie, do you", and I said, "No, it's Stephen".

11 So for me this simply indicates someone has written a  
12 note and they've decided to call me Stevie because I'm  
13 not known as Stevie.

14 Q. It's not just your Sunday name?

15 A. It was drummed in to me from my mother and it's still  
16 with me.

17 Q. Because you will appreciate, Mr Heath, that people who  
18 have seen that note have perhaps thought that that did  
19 indicate that you were in quite a familiar relationship  
20 with the people at SCRO.

21 A. I can probably understand that. I think there are a lot  
22 of PhDs in retrospect going about based on what's  
23 happened in the 12-year gap. To me, that's a harmless  
24 note that somebody's written at the time and I happened  
25 to be in the door. It was well known. I was a busy

1 investigator, et cetera. It doesn't mean I was well  
2 known in SCRO but my name's Stephen and everybody calls  
3 me Stephen.

4 Q. Just picking up on your being well known there, being  
5 well known it's something that doesn't always work in  
6 one direction, Mr Heath. If you are well known to them,  
7 people may find it more difficult to understand how  
8 people who worked there were not well known to you as  
9 somebody who had been involved in a lot of criminal  
10 investigations over the years.

11 A. Because SCRO are mainly independent. I didn't have a  
12 lot of close work with them as such and this particular  
13 investigation in terms of the focus and in terms of the  
14 work Alex McAllister was doing in the house resulted in  
15 hundreds of prints going from the location to the  
16 Identification Bureau to SCRO. Now we have to also  
17 consider at the time that SCRO are actually taking in  
18 prints from all over the place. There are other  
19 enquiries going on, there are other murder  
20 investigations going on where I don't doubt fingerprints  
21 are important.

22 For me, sometimes also in terms of meeting with SCRO  
23 or whatever it's about thanking people for their focus  
24 and their work as well. But, no, I didn't really know  
25 any. The only one I know that I can see there is Fiona

1 McBride who I have seen in the media. I couldn't  
2 actually put a name to anyone else in SCRO.

3 Q. Just picking up on what you said there about thanking  
4 people for their focus in their work, can you explain to  
5 us what you mean by that, Mr Heath?

6 A. The fact is that the work Alex was doing,  
7 Alex McAllister was doing, in terms of in charge of that  
8 house and having fingerprints going up and the  
9 elimination process and the amount of work that was  
10 going through the laboratory, that was going through  
11 SCRO in terms of the checking they were doing and the  
12 juggling, I don't doubt, of all the work they were  
13 having to do apart from that, it was a significant  
14 contribution to the investigation. That's all I mean.

15 Q. Again, when you say thanking them, how did you go about  
16 thanking them? What were you doing that would be  
17 perceived as thanks?

18 A. Well, I think in some of the strategy meetings we had  
19 because we had other meetings with SCRO with the lab and  
20 with everything else, I think it's very good practice  
21 for a Senior Investigating Officer to be at these  
22 meetings, although Alec's running the ground level  
23 stuff, and to be present and say, "Can we keep going  
24 with the work? Can we keep working on", and, "I  
25 appreciate all your efforts", because being a Senior

1 Investigating Officer is like conducting an orchestra.  
2 You know about all the instruments in there, you can  
3 maybe play a bit of them and if you don't have the  
4 orchestra together and working together, then people  
5 think, "Maybe he's not appreciating the work we're  
6 doing", et cetera, et cetera. So you're juggling those  
7 relationships as well and so that's what I mean by that.  
8 It's just a simple -- it's a simple management tool.

9 Q. Perhaps staying on that theme, Mr Heath, and about the  
10 communications that you had with people at SCRO in the  
11 course of the investigation, I wonder if you could look  
12 for me, please, at document DB0256. Again, this is a  
13 note that was found in documents from Scottish Criminal  
14 Record Office and what we see here is a note in relation  
15 to a gift tag and saying:

16 "They [and I think the Inquiry thus far has read that  
17 as the police] are hopeful about the tin the money was  
18 in. There is an area the same size as the tin on her  
19 bedside table, clearly seen as dust around it, recovered  
20 at accused's."

21 That seems to record a very specific line of enquiry  
22 whether ultimately it came to be a good one or not was  
23 something that had been communicated at people working  
24 in the Fingerprint Bureau at SCRO.

25 Why would such a specific line of enquiry be

1           communicate to the people working there?

2       A.    I can't really answer that. I think -- I don't know who  
3           authorised this note, and I don't know if you managed to  
4           identify who authorised the note, but I would suggest  
5           that the question with regard to that is perhaps  
6           better posed to them.

7           I think there could be a number of interpretations  
8           about that. It could be that the Identification Bureau,  
9           in terms of their examination of the tin, were hopeful  
10          that fingerprints would develop in the examination. I  
11          really don't know. I think also you maybe need to speak  
12          with Alex McAllister in terms of what were the  
13          operational matters that were being discussed. It's a  
14          simple fact that in terms of focus and examination and  
15          direction of investigation that sometimes you have, you  
16          know, a list of eliminations.

17          For example, if we look at the examination of the  
18          interior of the house the bathroom had had a shower unit  
19          newly fitted in Marion Ross' home. It's a natural thing  
20          to try and trace the people who fitted the bathroom, the  
21          elimination prints from the fitters and send them to  
22          SCRO to be examined against those prints.

23          So sometimes on a line of enquiry I don't think that  
24          there's anything untoward in terms of trying to focus  
25          examinations because, as I say, as long as you're not

1 focussing too far, but there are various demands on SCRO  
2 and on the IB where they have to focus their work in  
3 that way because they are juggling other investigations  
4 and other enquiries. It's not just the Marion Ross  
5 investigation at that time.

6 Q. Again on the question of focus in the enquiry, Mr Heath,  
7 if I can direct you to paragraph 227 of the statement  
8 you have given to the Inquiry, what you said there is  
9 that logically you would want marks on the tin and the  
10 money to be compared against Mr Asbury and Miss Ross'  
11 prints but you go on to say that you would have been  
12 interested in all marks on the tin and the money.

13 Do you know yourself what comparisons were instructed?

14 A. No, I don't know specifically but it would be -- if  
15 we've got someone like Mr Asbury in custody and he's  
16 reappearing and we've seized an item from a house which  
17 may have items in that item which possibly connect back  
18 to the murder scene, then I think it's our duty to make  
19 sure that that line of enquiry is pursued in a focused  
20 way within the period of time prior to his reappearance  
21 in court.

22 Q. I wonder if you could look at DB0263. I think the  
23 Inquiry may hear that impressions XQ5 to XP6 are a  
24 series of impressions found on the bank notes and can  
25 you tell us what we're looking at here?

1 A. To me it looks like Alex McAllister's writing, I may be  
2 wrong there but that's what it looks like and what we're  
3 seeing is it's a list to be checked for elimination  
4 purposes. So they're trying to focus on what  
5 elimination prints should be checked against these  
6 particular prints and that then is a list there that  
7 seems to indicate names where eliminations have been  
8 sent to SCRO for comparison against that print. That's  
9 what it looks like to me.

10 Q. That would perhaps show that the instruction wasn't at  
11 least in relation to the money focused solely on  
12 Mr Asbury and Miss Ross?

13 A. Yes. No, it would show that a number of different  
14 people have been quoted, yes.

15 Q. I wonder if you could look, please, at DBO260.

16 A. Yes.

17 Q. That seems to be "the subpostmaster elims to come, issue  
18 D Asbury".

19 Would it be correct to read that as an instruction  
20 that eliminations were expected in relation to a  
21 subpostmaster also?

22 A. The issue for me is that I'm not writing, you know, this  
23 note; so for me to interpret that note you would need to  
24 ask the person who's writing it. But what it seems to  
25 say is subpostmaster eliminations to come issue David

1 Asbury, X amount of money. That's what it says. But in  
2 terms of the message to be delivered --

3 Q. You can't help us with that.

4 Now there is another document we would like you to  
5 look at, please, at DB0251 at page 33. Is this a  
6 document that you have seen before, Mr Heath?

7 A. No. I don't think I've seen that at all.

8 Q. Is it a form of document that you are familiar with?

9 A. Yes, I think it's a form of document I've seen before.

10 Q. Can you help the Inquiry with what it is on the basis of  
11 your experience?

12 A. I think that's -- I forget the number of the form but  
13 what it does it refers to the investigation, it refers  
14 that I'm in charge of the case and it looks as if it's  
15 gone from a Martin Gibbens from maybe the Identification  
16 Bureau to SCRO and then there's a stamp there, "received  
17 by SCRO".

18 Q. I think the Inquiry will hear that in fact it was  
19 completed by Mr MacNeil who was a Scenes of Crime  
20 Officer in the Identification Bureau.

21 If you look about halfway down we see impressions  
22 photographed and where found and the letters QB2 to QL2?

23 A. Yes.

24 Q. This is a series of marks that QI2 which came to be a  
25 much discussed mark, Mr Heath. What you see below that

1 is an entry, "Ident required for deceased".

2 Do you see that there?

3 A. Yes.

4 Q. On the basis of your experience, Mr Heath, is this a  
5 normal form of instruction from somebody in the  
6 Identification Bureau to the Scottish Criminal Record  
7 Office?

8 A. I wouldn't have thought so and on seeing that for the  
9 first time I don't regard that as professional.

10 Q. Why do you say that?

11 A. Because it's being far too specific. Again, you're  
12 asking me to comment on a document that someone else has  
13 filled out and written something on when in actual fact  
14 you should be questioning that person what they meant by  
15 that because there may be a number of interpretations  
16 about what's said there.

17 Q. Mr Heath, on that very point, did you issue any  
18 instruction that an identification was required for the  
19 deceased, Miss Ross, in relation to Q12?

20 A. Absolutely not.

21 Q. Were you involved in giving any instruction as to the  
22 standard to which mark Q12 on the tin should be  
23 identified; that is, as to whether it was to be an  
24 identification on an elimination against Miss Ross?

25 A. No, not to my recollection. Most of that particular

1 work would be done by Alex McAllister. I mean --

2 Q. Would you ever in the course of an investigation  
3 involving fingerprints be involved in saying to the  
4 Fingerprint Bureau, "I want this done to a court  
5 standard", which at the time would have been 16 points  
6 of similarity rather than say, "Well, I'm interested in  
7 whether you can eliminate that". Is that the sort of  
8 discussion you would ever be having?

9 A. Absolutely not. That's not my role, not my remit. My  
10 role is to run a murder investigation as a cop, present  
11 the evidence to the Crown, present statements,  
12 et cetera, et cetera, and I rely on experts, be it  
13 ballistics, drugs, fingerprints, the orchestra. I knew  
14 a bit about it but I rely on the orchestra to perform  
15 the work that they are experts in.

16 Q. Again, still in the same period and still on the theme  
17 of the Scottish Criminal Record Office, Mr Heath, at  
18 paragraph 210 of your statement page 46 you record  
19 attending a meeting at the lab, SCRO Identification  
20 Bureau meeting on 29th January.

21 A. Yes.

22 Q. Given Mr McAllister's role in liaising with the Scottish  
23 Criminal Record Office and others, what was the purpose  
24 of your attending at that meeting?

25 A. I can't really recall. I know that it's written in my

1 notebook that I went to the meeting. I can't recall if  
2 Alex McAllister was at that meeting because it's  
3 12 years ago and in terms of the specifics of why I'm  
4 there, I think in that particular period of time I  
5 wanted to make it clear to everyone that although  
6 someone was in custody here, this investigation was  
7 still going on to look at any suspect as such who was in  
8 the system, any examinations which still had to take  
9 place and clothing, which was still in the laboratory,  
10 had to be done as well.

11 So I don't recall exactly the purpose of the meeting,  
12 but it was a general strategy meeting probably, which  
13 were regular. So whether Alex McAllister was busy, with  
14 somebody else whether he was with me whether I was there  
15 on my own there's nothing sinister about that. But I  
16 was under the pressure at stages after arrest probably  
17 two or three weeks to pull back a bit on the amount of  
18 investigations we were doing and in terms of the  
19 staffing as well. You will see in the HOLMES notes and  
20 in the policy files and everything I was very clear: any  
21 TIE (trace interview eliminate) people that were still  
22 in the system had to be eliminated. Any prints that  
23 were still there had to be eliminated if possible and  
24 any forensic work that still needed to be done, even if  
25 it didn't relate to Mr Asbury, still had to be done and

1 I think we still raised in the region of 200 actions,  
2 you know, not related to Mr Asbury after that arrest.

3 Q. Moving on to a slightly different topic, and back  
4 slightly in time for a period, I think there was a point  
5 at which DS Shields and possibly DC Cardwell, as she  
6 was, made a request to go and visit the crime scene at  
7 Irvine Road in Kilmarnock.

8 Is that something you remember?

9 A. Yes.

10 Q. Can you recall for me the approach?

11 A. I think it was the Mr Shields who was speaking and  
12 DC Cardwell was there and it was in my office and I  
13 recall him coming up to my desk and asking if they could  
14 go into the house.

15 Q. What was your response to that?

16 A. I think that was only a few days into the commencement  
17 of the investigation and I had made it very, very clear  
18 in terms of briefings and everything else that unless  
19 you were a nominated person to be in that house, you  
20 didn't go into that house and everyone knew that.

21 Q. Why in your experience might officers want to see a  
22 crime scene at first hand rather than, for example, on  
23 video?

24 A. Well, people are keen and going into a location  
25 sometimes in terms of a Senior Investigating Officer,

1 for example, can often give you a better picture and  
2 feel of what happened, even in retrospect, visiting  
3 crime scenes, looking years back as I have done,  
4 visiting a location can give you a better idea than  
5 seeing a video. I also think there was an action  
6 allocated to DS Shields and DC Cardwell to look at the  
7 sequence of the rows(?) of the house that was very  
8 important. So in terms of the request to enter the  
9 house, it related I think mainly to that, to undertaking  
10 the action and the work related to the action.

11 Q. In relation to the particular house at 43 Irvine Road,  
12 Kilmarnock, were there features of it that might have  
13 made it particularly desirable for officers to be able  
14 to see inside, at least in their own minds?

15 A. There's a curiosity amongst detectives. I want people  
16 working in our team who are keen to work but I'm not  
17 sure what you mean by particular features inside that  
18 house.

19 Q. Well, perhaps as to its layout. I'm sorry, the question  
20 was not very clear.

21 A. Yes, I think we had done a diagram, a fairly detailed  
22 diagram, that was developed in the incident room, of the  
23 layout of the house. The video sometimes isn't great  
24 for showing the layout of a house because actually it's  
25 focused on particular areas as it moves around but I

1 think there was a very specific diagram. But, again,  
2 for me, if I'm in charge of an investigation or I'm  
3 retrospectively examining an unsolved murder I want to  
4 go and look at the location. But in this situation  
5 there was very clear instructions over people not  
6 visiting that location.

7 Q. Starting to focus on the mark that became known as Y7,  
8 Mr Heath, and that part of the investigation, at a  
9 certain stage I think you said in your statement it came  
10 to be that there were a relatively limited number of  
11 fingerprints that hadn't been eliminated or identified  
12 as belonging to somebody known.

13 A. Yes.

14 Q. One of these was a mark Y7 on the bathroom doorframe on  
15 the ground floor of the crime scene and I think the  
16 Inquiry has evidence that Miss Ross' body was found, was  
17 in the bathroom, in the doorway.

18 A. Yes.

19 Q. So that was a mark that was of some interest and  
20 importance to you?

21 A. Yes.

22 Q. Your statement that records that it came to your  
23 attention that that mark had been identified as  
24 belonging to Ms McKie, who was DC Cardwell at the time?

25 A. Yes.

1 Q. And you record that at paragraph 245 of your statement.

2 That is page 54.

3 A. Yes.

4 Q. Now, what you record there is that you were informed

5 that mark Y7 had been identified as being DC McKie and

6 that you told one of them, that is DI McAllister and

7 DI McDonald to go and speak to DC McKie about it and get

8 it sorted out.

9 What was your intention in asking Mr McAllister or

10 Ms McDonald to get it sorted out?

11 A. I think perhaps you're focussing on the phrase "sorted

12 out". I just wanted the matter resolved and when I say

13 resolved, what is the explanation of the print being in

14 the house. That was my intention.

15 Q. What did you think they would do in response to your

16 instruction?

17 A. Well, ask Shirley Cardwell how her print was found

18 within the house, what was the reason for it being

19 there.

20 Q. You go on to record that you learned that DC Cardwell

21 was denying that the print was hers.

22 A. Yes.

23 Q. At paragraph 247 of your statement, if I can refer you

24 to that, Mr Heath, towards the end of that paragraph you

25 say that you felt she was protesting too much and that

1           you were concerned about her reaction.

2           First of all you spoken to Ms McKie at this point

3           yourself?

4    A.    No.

5    Q.    In what way were you concerned about her reaction?

6    A.    Because after Alex McAllister had gone to speak with her

7           I heard loud discussions along the corridor about the

8           matters because my office was just along from wherever

9           this was taking place. So I didn't feel it was a matter

10          that needed to be, you know, as open as that.

11          Quite often on many investigations I've known police

12          officers to leave fingerprints at crime scenes. It's

13          not a huge deal, as such. I mean, it's not professional

14          totally, it's not professional in a situation like this,

15          it's even more so when specific instructions have been

16          made, it's not good. But at that stage it's not

17          critical. So I wondered why all of this fuss was going

18          on.

19    Q.    What had you actually been able to hear of Ms McKie's

20          reaction at the time?

21    A.    I can't remember now. I just remember hearing a

22          commotion that clearly related to that, that the

23          print -- I think it was along the lines of the print

24          wasn't hers and she hadn't been in the house and I just

25          I didn't really think it was appropriate for that to be

1 going on in the environs of the office where there might  
2 be other staff there.

3 Q. Why was that?

4 A. Because it was more of a private matter. I mean, it was  
5 a matter that could have been harmless, could have been  
6 resolved more simply, perhaps wasn't for general office  
7 discussion. That's the reason I saw it in.

8 Q. What steps did you take on learning that there was some  
9 measure of dispute about Y7 at that stage?

10 A. Well, I felt that there was a strong reaction to it. It  
11 was a matter that might settle itself or might be a  
12 natural reaction if someone says to you the inference is  
13 you haven't done your job properly or you made a  
14 mistake.

15 So I felt that -- I was told Ms Cardwell was off for  
16 the next couple of days so my reaction was let it  
17 settle, let the dust settle on this and let's see if  
18 there's an explanation for it or an account for it once  
19 the whole thing settled a bit.

20 Q. In the days that Miss Cardwell or McKie was away from  
21 work, there was some contact with the Fingerprint Bureau  
22 at SCRO.

23 Was that at your instruction?

24 A. Yes. I asked Alex if he could check in terms of the  
25 identification what the position was.

1 Q. What did you learn from that?

2 A. It was reconfirmed that there was an identification.

3 Q. At paragraph 248 of your statement, if you look at that,  
4 Mr Heath, just on this topic, you say that DI McAllister  
5 and to the best of your recollection DI McDonald and you  
6 had discussions with SCRO over the 11th and 12th, "to  
7 see what the strength of the identification was."

8 I wonder if you could elaborate on what discussions,  
9 if any, you were involved in with SCRO during that  
10 period?

11 A. My recollection's not clear on whether I called the SCRO  
12 but I think Alex McAllister maybe did but I know that I  
13 called in at one stage and I think that's in my  
14 statement somewhere but I can't recall that at the  
15 moment.

16 Q. What discussion did you have with SCRO? Can you recall  
17 what was said by you or by the person that you spoke to?

18 A. No, I can just remember going into SCRO because this was  
19 now -- it was an important matter and I wanted to know  
20 the strength of the identification, you know, because I  
21 was going to be challenging one of my officers two days  
22 later and also, from a professional point of view, I  
23 don't think I'd ever been in a position questioning a  
24 fingerprint identification before and there are  
25 relationship issues in that at the time also. So it was

1 a matter of professional courtesy.

2 I think I was up in Glasgow anyway, I called in and my  
3 conversation was, "What's the position with the print?  
4 Are we absolutely certain about this?" And I even felt  
5 that that was a difficult position for me to be in. But  
6 it was a matter of professional courtesy really.

7 Q. There are two points I'd like to pick up on what you  
8 just said, Mr Heath.

9 You said that you wanted to know what the strength of  
10 the identification was and that you may have to have  
11 discussions about that.

12 What did you learn to your mind about the strength of  
13 the identification? What were you being told?

14 A. I think it says in my statement that -- there's  
15 somewhere in the statement where it says that there were  
16 rumours of an identification.

17 Q. I think we are still on paragraph 248 there.

18 A. I know there were numerous points of identification, so  
19 I can't even remember who I spoke to in SCRO at that  
20 time but maybe they -- mainly they found the  
21 identification was made and it was positive. I can't  
22 recall specific conversations on that.

23 Q. The other point I wanted to pick up on regarding your  
24 answer, Mr Heath, is what you said about the working  
25 relations. I think in your statement also you talk

1 about the preservation of working relationships and I'd  
2 like to clarify with you just exactly what you have in  
3 mind there.

4 A. I'm raising the question in the work. My staff are  
5 important to me and always have been and anyone who  
6 works for me would say that. So what I'm going to be  
7 doing two days later is challenging a member of my staff  
8 on something that's important and I want to be very,  
9 very sure, plus I'm questioning someone's work and I'm  
10 aware that there's a system of checking an SCRO which  
11 involves maybe two or three people verifying the  
12 identification of a fingerprint. So in terms of keeping  
13 a relationship going, I think it's professional  
14 courtesy.

15 If I was in the same position and someone was perhaps  
16 questioning the work I had done in which I was an expert  
17 in, I would hope that someone might come and speak with  
18 me about that. That's all that was.

19 Q. Moving on to paragraph 252 of your statement which deals  
20 with 12th February, you do not yourself recall  
21 involvement in getting the mark re-photographed and  
22 taken to SCRO?

23 A. No, I don't and I think -- to my recollection, I think I  
24 was involved in job interviews that day, I think it says  
25 in my notebook but I'm not certain on that, but I think

1 I was heavily engaged in job interviews that day. So  
2 whether it was re-photographed or not, I'm not clear.  
3 But I certainly don't remember being directly involved  
4 in that particular action, although maybe you're  
5 better asking Alex McAllister of the matters that  
6 happened because I think he was more involved in that.

7 Q. Again moving on to Thursday 13th February which you deal  
8 with at paragraph 254 and the following paragraphs, is  
9 this the reference to the courtesy call that you have  
10 been telling us about, Mr Heath?

11 A. Yes and I think paragraph 255 perhaps explains better  
12 what I didn't maybe explain better there. That's  
13 exactly what it was about.

14 Q. You say you were looking for reassurance in that  
15 paragraph.

16 What exactly were you asking them for, Mr Heath,  
17 there?

18 A. I think if I'm challenging a member of my staff or even  
19 perhaps -- because on that occasion, as far as I was  
20 aware, DS Shields and DC Cardwell had been working  
21 together all the time as a pair and there was a denial  
22 in terms of the fingerprint being in the house. So for  
23 me, both were therefore implicated as such in any denial  
24 and it was just a matter of belts and braces things. It  
25 was courtesy in saying to them; that's all.

1 Q. Moving on to Friday 14th February which you deal with at  
2 paragraph 259 and following paragraphs, that's the day  
3 that DC Cardwell came to speak to you herself.

4 A. Yes.

5 Q. Was that the first occasion you had spoken directly to  
6 her about the matter?

7 A. Yes, I think it was.

8 Q. What did she say to you on 14th February?

9 A. I think she was emphatic that she'd not been in the  
10 house, basically.

11 Q. At that stage, did she offer you any explanation as to  
12 how it might be that a mark there had been identified as  
13 hers?

14 A. No, I can't recall that she did. I think it was just  
15 clear that she hadn't been within the confines of the  
16 house.

17 Q. She didn't suggest that the fingerprint had been  
18 misidentified or that it had got there by some means  
19 that it should not have at that stage?

20 A. I don't think so at that stage. I think at that stage  
21 she just said she'd not been within the house and  
22 it's definitely not her print. But she could interpret  
23 it as being mis-identified.

24 Q. And you record there that you took DC Cardwell and DC  
25 shields along with Detective Inspector McAllister along

1 to the scene at 43 Irvine Road.

2 A. Yes.

3 Q. Why were you doing that?

4 A. Sometimes it can help in terms of memory. So I felt --

5 I was trying to be really fair because two concerns

6 clearly: one was in terms of the case itself and

7 fingerprint evidence in the case; and the other one was

8 that this situation in terms of two of my officers was

9 becoming serious and that if we went along and looked at

10 the **locus** it might assist them to remember if they had

11 been in the house.

12 Q. But in fact nothing altered after the visit?

13 A. No.

14 Q. At paragraph 264 of your statement, you say you had to

15 formally record matters. What steps did you take at

16 that stage, Mr Heath?

17 A. I felt once I'd done all of that and been to SCRO, I'd

18 given it time for reflection for the people involved,

19 I'd gone to the scene which I felt was a fair step to

20 take, I had to formalise this now because I'm a Senior

21 Investigating Officer having run a very serious

22 investigation and from there I felt there was nothing

23 else I could do but formally record this in the HOLMES

24 system and obtain statements.

25 Q. What did you anticipate would follow from that Mr Heath?

1 A. After a visit to the house I think it was going to be  
2 clear that there were going to be statements from the  
3 two officers saying they had never been beyond the porch  
4 basically. But in terms of the HOLMES system and in  
5 terms of integrity and the action that had been taken  
6 over the few days I felt it was really important that it  
7 was audit trailed at that point that we had statements  
8 which covered.

9 Q. So this was a way of getting the dispute formally into  
10 the system?

11 A. Yes.

12 Q. I would like to ask you about what you recorded at  
13 paragraph 265 of your statement, Mr Heath.

14 A. Yes.

15 Q. You mentioned there a DC Lunardi making you aware of a  
16 previous incident involving DC Cardwell or McKie.

17 A. Yes.

18 Q. You say that you have not heard of that before and you  
19 did not refer to it in any subsequent reports.

20 Did you pass that information on to anyone at any  
21 stage?

22 A. No, I didn't. The reason I remember this is it was  
23 just, kind of, Jill Lunardi was bringing me documents  
24 and mentioned this almost casually, as it were. For me,  
25 I think you have to work in boxes: one box is open,

1           there's another box there. The box open here was I was  
2           trying to deal with this situation here and I was now  
3           going to do a report and submit it about this but I  
4           remember that comment from Jill Lunardi.

5    Q.    Were you aware of others in Strathclyde Police talking  
6           about that matter at about this time?

7    A.    This was the first time I'd heard of this.

8    Q.    Did it become part of the -- if I can put it this way --  
9           office gossip at Kilmarnock after you became aware of it  
10           here?

11   A.    I can't recall exactly but I don't think it was -- I  
12           certainly hadn't known about it and I'm not necessarily  
13           involved in the office gossip as such so I can't really  
14           comment. You probably need to ask other officers on  
15           that.

16   Q.    That same day, 14th February, you went on to have a  
17           meeting with some senior officers in your division,  
18           Divisional Commander Cameron and Deputy Divisional  
19           Commander Thomson having made a report to them.

20           At paragraph 270 you record that at the meeting those  
21           officers and Chief Superintendent Gibb took a decision  
22           to keep the matter within the Division and not take any  
23           formal disciplinary steps or notify anyone else outwith  
24           division.

25           What was your view about their course of action,

1 Mr Heath?

2 A. They're senior officers and they're making a decision  
3 based on what they see. So maybe they had a perception  
4 and viewed things as different. For me in terms of the  
5 integrity of the investigation in terms of my position I  
6 felt I had to report that on the HOLMES system, as I've  
7 indicated before, is an audit trail of a decision in  
8 time when I record that.

9 They made the decision to do that but that's the  
10 Divisional Commander and Deputy Divisional Commander and  
11 I'm then instructed by them to do something, so I did  
12 it.

13 Q. And the instruction that you got from them was to ask DC  
14 McKie to report for duty?

15 A. Yes.

16 Q. By that time you had already effectively put matters in  
17 train for it to reach the HOLMES system before you met  
18 with those officers?

19 A. Yes.

20 Q. Moving on to 15th February, that was a day, albeit it's  
21 a Saturday, when you were actually on duty in the  
22 office; is that correct?

23 A. Yes.

24 Q. You received a call from DC McKie.

25 Can you recall what she said to you in the course of

1           that call?

2       A.    I can't recall exactly but I do recall she said it was a  
3           terrible mistake and she wanted the fingerprints and  
4           eliminations checked again.

5       Q.    Did she give any indication at that stage as to whether  
6           she thought that SCRO had made a mistake or that the  
7           fingerprint had got there by some means that it ought  
8           not or anything of that sort?

9       A.    I think there was a clear inference from DC Cardwell  
10          that SCRO had made a mistake. There was no doubt about  
11          that. She was convinced it was a terrible mistake and  
12          she wanted her prints and eliminations taken again. I  
13          think that may have been written in the notebook in  
14          terms of what was said -- I'm not sure -- but that's my  
15          recollection.

16      Q.    Do you recall a conversation with Mr Shields on 15th  
17          February?

18      A.    Not particularly, no.

19      Q.    Do you recall a conversation perhaps to give you a  
20          little more detail, where he told you that DC Cardwell  
21          or McKie was not moving from her position and that his  
22          suggestion was he could only see her accepting the print  
23          was hers if the whole comparison exercise were done  
24          again with her watching?

25      A.    There may have been that suggestion but I'm not sure. I

1           can't recall that conversation. He may have done.

2       Q.    Do you recall a conversation on that date with  
3           Mr Shields or at any other stage where you expressed the  
4           view to him that he and DC McKie would be finished if  
5           their position regarding the fingerprint did not change?

6       A.    No, I don't recall that conversation, no.

7       Q.    Mr Heath, would I be right in saying that at some stage  
8           DC McKie came to allege that fingerprint Y7 had been  
9           placed at the **locus** by means of planting via the  
10          officers. Is that something you became aware of?

11      A.    Yes, I think I heard that third-hand, not directly, that  
12          had been an allegation that had been made, yes.

13      Q.    That wasn't something she said to you directly?

14      A.    I don't recall her saying that to me directly.

15      Q.    Can you recall how you became aware of that?

16      A.    I can't remember exactly how that came. But I think it  
17          was later. I think it was later than this occasion.

18      Q.    At what stage insofar as you can recollect now,  
19          Mr Heath, did you become aware of that?

20      A.    I really can't remember exactly when.

21      Q.    What was your reaction to that?

22      A.    Well, that one of our own officers would suggest that, I  
23          just couldn't comprehend that because it's not something  
24          that anyone in my professional approach would  
25          contemplate. I can't -- I couldn't understand how

1            anyone could contemplate that, particularly those in the  
2            police, how anyone could do that and why? What's the  
3            logic of it? The whole thing just seemed ludicrous.

4    Q.    Were you angry?

5    A.    I don't think anger's a good emotion. I think maybe  
6           "disturbed" is better.

7    Q.    In fact, there was a further exercise to re-photograph  
8           mark Y7 and have it compared again. Were you involved  
9           in that at all? I think your statement indicates not.

10   A.    No, I was away on another investigation.

11   Q.    Did you have any input into the decision that that  
12           should be done?

13   A.    No, not to my recollection.

14   Q.    You are then away for a short period but you become  
15           involved again, certainly on 20th February, and the part  
16           of your statement that deals with that is paragraph 281.

17           You record there that you told the Deputy Divisional  
18           Commander that you intended to speak to the Procurator  
19           Fiscal.

20           What was your thinking in doing that, Mr Heath?

21   A.    I report to the Fiscal in matters relating to the murder  
22           investigation, for example. As far as I'm concerned the  
23           house, the **locus**, belongs to the Procurator Fiscal as  
24           such. I'm acting on the Procurator Fiscal's behest.

25           Therefore, if work of that nature is taking place when

1           there have been other fingerprint identifications which  
2           are important, I just felt that perhaps the Fiscal  
3           should have been involved in that decision.

4           That was my view. There may have been good reasons  
5           for taking that action. That was my view.

6        Q.    What was the Deputy Divisional Commander's reaction when  
7           you said to him that was your intention?

8        A.    To go to the Procurator Fiscal?

9        Q.    Yes.

10       A.    I can't really remember but for me as an SIO I recorded  
11           on the HOLMES system, I've been away working and there's  
12           now an audit trail of the situation and the report I've  
13           done which I've submitted, which I feel should go to the  
14           Procurator Fiscal almost immediately explaining the  
15           circumstances, still hasn't gone. I think I'm going on  
16           my leave for a period of time after that. So my belief  
17           is the Procurator Fiscal is made aware of the  
18           circumstances that occurred because I think it's  
19           important.

20       Q.    Please don't take it you are being criticised for this  
21           certainly in these questions, Mr Heath. I simply  
22           wondered what the other officer's reaction had been if  
23           you could recall it.

24       A.    I can't recall it, sorry.

25       Q.    You record that you met Mr McMenemy at the Fiscal's

1 office, in paragraph 283, and I think if we could look  
2 briefly at page 4 of AC003 and have that on the screen,  
3 please. I will not delay matters with the document  
4 display, but I think your note records that you met both  
5 Mr McGlenannan and Mr McMenemy on that occasion.

6 A. I seem to recall Mr McGlenannan was there as well. It  
7 was an important issue and I asked to see to him.

8 Q. Could we do the next page, please? Yes, indeed, I'm  
9 sorry, the mistake is mine. Just at the bottom of the  
10 right-hand page there you record that you see  
11 Mr McMenemy and Mr McGlenannan and fully update them on  
12 DC Cardwell.

13 A. Yes.

14 Q. So that is the meeting report that we find in your  
15 statement there.

16 A. Yes.

17 Q. You record at paragraph 284 that Chief  
18 Superintendent Gibb and the Deputy Divisional Commander,  
19 Mr Thomson, asked you to review the matter.

20 Can you tell the Inquiry about your reaction to that  
21 suggestion.

22 A. Yes. I didn't think it was a particularly good one  
23 because I was the Senior Investigating Officer in charge  
24 of the murder investigation when a man was in custody in  
25 relation to other evidence but also in relation to

1 fingerprint identification.

2 I felt that and I've always felt that in terms of  
3 independence it's very important that if someone's going  
4 to take an investigation of that nature that they are  
5 independent as such from the circumstances. So I think  
6 if I'd been sitting here today, for example, and I had  
7 undertaken that work, then I think there would be  
8 difficult questions around impartiality -- not that I  
9 wouldn't be impartial, but I just didn't think it was a  
10 good idea.

11 Q. In fact others came to be involved in reviewing the  
12 matter?

13 A. Yes.

14 Q. Moving on, Mr Heath, please, if we may, to the part of  
15 your statement dealing with Monday, 31st March which  
16 starts at paragraph 295. It is paragraph 297 that I  
17 would particularly like to ask you about, at the bottom  
18 of page 64.

19 A. Yes.

20 Q. You record there that there was at the same time a  
21 growing awareness that there had been several visits to  
22 the house by DC McKie.

23 Can you explain what you mean by the growing awareness  
24 that you mentioned there?

25 A. I think it was like a rumbling, like, you know, the

1 staff within the office, comment that was coming to me,  
2 a comment that was being made was that there had been a  
3 number of different visits to the house. That's all I  
4 mean.

5 Q. What I had wondered was whether you had perhaps started  
6 yourself with an awareness of perhaps one visit or two  
7 visits and then you had become aware of a further visit.

8 A. I'm not really clear in my mind in terms of how many  
9 visits I knew about but I think in the beginning, when  
10 I'd done the report to the Procurator Fiscal around the  
11 time shortly after the identification of the print and  
12 coming back from working in the other investigation, my  
13 perception was maybe that there was one visit to do the  
14 locks, you know, to do the lock examination. But I  
15 think as time progresses what I saw on there now there  
16 was a realisation that perhaps there were more visits to  
17 the house. That's all it means.

18 Q. Might that have been in relation to a visit to pick up  
19 and return the visitors' log, if I can call it that, to  
20 the **locus**?

21 A. Yes, it may only mean that.

22 Q. I think towards the end of April 1997 you became aware  
23 that DC McKie had not received or said she had not  
24 received a precognition letter.

25 A. Yes.

1 Q. Can you explain for those who may not understand just  
2 what the system was for defence lawyers getting  
3 precognitions from police officers?

4 A. In terms of fairness and access to the evidence,  
5 et cetera, et cetera, the defence would be given an  
6 opportunity to ask questions, take a statement from  
7 witnesses in the case. So a precognition, that is the  
8 process of the defence getting access to witnesses and  
9 going over the evidence and speaking with the witness.

10 Q. How would police officers usually learn that somebody  
11 from a defence solicitor's firm wanted to speak with  
12 them?

13 A. There would normally about a letter come in requesting  
14 that and perhaps that would be through a form of  
15 administration system and the officer would be notified.

16 Q. What did you do when you learned that Ms McKie seemed  
17 not to have received the letter requesting her to give a  
18 statement to Mr Asbury's solicitors?

19 A. Do you mind -- can you refer me to the page?

20 Q. Of course. It is my fault, Mr Heath. It is at page 69,  
21 paragraph 317?

22 A. I think in fairness we need to go back to the original  
23 if you give me a second.

24 Q. We are looking at 1st April --

25 A. Yes, 1st April.

1 Q. Which you will find at page 66 of your statement?

2 A. If you don't mind if we refer --

3 Q. Indeed, Mr Heath, tell the Inquiry about it as you wish  
4 in this respect.

5 A. I had been away working on a fairly serious  
6 investigation for a period of time and had returned and  
7 John Malcolm had handed me a precognition letter  
8 requesting me to precognosce DC Cardwell and I have to  
9 say I found that a bit unusual.

10 Q. Why was that?

11 A. Well, normally there was a gap of time in terms of the  
12 notification to the defence but I hadn't been  
13 responsible for the absence management of DC Cardwell.  
14 Giving someone a document like that might have created  
15 pressure on him and I didn't know what the situation was  
16 and there was liaison going on, clear liaison going on  
17 between, I think, the Deputy Divisional Commander and  
18 DC Cardwell. So I'm back after four weeks, I'm handed  
19 that to do, I'm not quite sure.

20 So in terms of that day, I phoned John McMenemy and  
21 went to the Deputy Divisional Commander and explained  
22 the situation to him and said I felt that it would be  
23 better if it was done through the proper channels which  
24 existed while I was away.

25 Q. And do you know what, if anything, followed from that?

1 A. No, I don't know. I only know now that we go to  
2 30th April.

3 Q. At that stage you learned that, for whatever reason, the  
4 message may not have got through?

5 A. Yes, as far as I was concerned, I wanted to make sure  
6 that precognition request got to DC Cardwell and the  
7 best way to do that was to go and see the Deputy  
8 Divisional Commander. I'm not sure quite why Detective  
9 Superintendent Malcolm hadn't done that but he may have  
10 had very good reasons.

11 Q. But in any event I'm interested in knowing about what  
12 you decided to do and why you decided to do it when you  
13 learned that the message hasn't got through?

14 A. On the 30th?

15 Q. On 30th, yes.

16 A. The Divisional Commander said to me that DC Cardwell had  
17 denied receiving the precognition letter and he asked me  
18 to arrange it to be delivered. So by now that's four  
19 weeks on from the last time and my view is they should  
20 have been done. If we go back to the report I did and  
21 putting the audit trail on the HOLMES system way back  
22 when the fingerprint was first identified, my view was  
23 clear that this was a serious issue. It needed to be  
24 audited and recorded. I put it in the HOLMES system, I  
25 did a report, I wanted the Fiscal to know, when I came

1 back from working abroad I went to see the Fiscals to  
2 let them know the situation that had occurred.

3 Now I had been working away, I came back and on  
4 1st April was asked to do this so I'm thinking about the  
5 timescales there and now on the 30th I'm learning that  
6 the defence still don't seem to have the precognition or  
7 knowledge of what the precognition was about.

8 Q. Just to be absolutely clear about this, what was it you  
9 thought the defence should know that they didn't know?

10 A. Well, I felt it should have been very clear to  
11 the defence there was a dispute over a fingerprint in  
12 terms of fairness to an accused person and in terms of  
13 work done earlier to make sure it was properly recorded.  
14 I thought it was very important that the defence knew  
15 this.

16 Q. You mention that you called a Mr Dunlop at Mackintosh &  
17 Wylie. I think the Inquiry have heard from other  
18 sources he was called Ross Dunlop, but he was somebody  
19 working within Mr Asbury's defence solicitors at the  
20 time. What, to the best of your recollection, did you  
21 say to Ross Dunlop?

22 A. I can't really remember. I think I made a comment to  
23 the fact it was of interest to undertake this  
24 precognition and could he fax the precognition letter to  
25 me and I would ensure it was delivered to DC Cardwell.

1 Q. Did you say anything to him about why it was in their  
2 interests that they should take care to precognosce  
3 Miss Cardwell?

4 A. I'm not exactly sure. I think the general thrust of  
5 what I was trying to do was to make sure that very soon  
6 the defence had the ability to precognosce DC Cardwell,  
7 that she had something they needed to know. I don't  
8 know the exact words, it was 12 years ago and I didn't  
9 write any words down.

10 Q. Mr Heath, there's, I think, one more matter that I would  
11 like to ask you about and you record at paragraph 320 of  
12 your statement.

13 A. Sorry.

14 Q. 320, sorry, at page 70, about your attendance at the  
15 trial of David Asbury.

16 A. Yes.

17 Q. And about you're making arrangements to have DC McKie  
18 brought to court in a particular manner.

19 A. Yes.

20 Q. Can you explain to the Inquiry why you did that?

21 A. I arrived at the High Court and there was a reporter  
22 there from, I think, the Daily Record who approached me  
23 and said he knew the full circumstances, they had  
24 photographers there and they'd approached the  
25 Police Federation for a story. So this is one of my --

1 still one of my officers, as far as I'm concerned, going  
2 to give evidence at the trial. So, as it says there, I  
3 contacted the Deputy Divisional Commander to try and  
4 ensure that she got to the court without that intrusion.

5 Q. Thank you for that explanation, Mr Heath.

6 There is one perhaps, I suppose, housekeeping matter I  
7 would like to give you the opportunity to clarify  
8 because it's simply about the way that your statement  
9 came to be prepared. I think you'd raised with the  
10 Inquiry team that some parts of it were in different  
11 fonts from another and the concern you had about how  
12 that might be perceived.

13 Your statement was provided to you, I think, in  
14 electronic form and you were able to revise it in that  
15 way and as a result some parts came to be in different  
16 fonts but we can take it, I think, from reading it those  
17 fonts are not meant to indicate any particular emphasis  
18 they are simply a result of the electronic process?

19 A. Yes. Any statement I've submitted I try to make it a  
20 professional finish. There were logistical difficulties  
21 in this (so different fonts and boldness in letters)  
22 because, not to get into too much detail, but in  
23 checking of the statement and everything else I tried to  
24 put, for example, in bold any alterations I made so the  
25 Inquiry would know and then in the final transcript

1 because there was an urgency to get the statement here  
2 on time clearly I missed some pieces, et cetera. So all  
3 I would like to say is that it's not necessarily the  
4 final document I had hoped that it would be and asked  
5 for changes that was all.

6 Q. I simply wanted to give you the opportunity to clarify  
7 that.

8 A. Thank you.

9 MISS CARMICHAEL: I don't have any further questions for you  
10 presently.

11 THE CHAIRMAN: What I was going to suggest is we should stop  
12 now until 1.50 and it would give an opportunity, if  
13 anyone has questions that they would feel that have not  
14 been developed, that Counsel to the Inquiry can consider  
15 whether she should ask them or whether you should be  
16 allowed to apply for leave to do so. We have gone  
17 through the procedure but I think just now that we have  
18 a gap it might be an opportunity, if anyone wishes to  
19 take the opportunity, as I said, to speak to  
20 Miss Carmichael. But otherwise that will be the end of  
21 your examination.

22 So we will return again at 1.50, please.

23 **(12.53 pm)**

24 **(Luncheon Adjournment)**

25