

Tuesday, 16th June 2009

1

2 (10.15 am)

3 THE CHAIRMAN: Mr Russell, you asked for leave to make a  
4 submission and I have granted that and I understand that  
5 Mr Ross wishes to say something; is that right?

6 MR RUSSELL: That is correct, sir.

7 THE CHAIRMAN: Yes. Now, which order do you want to go in?

8 MR RUSSELL: I just indicated to Mr Flinn, sir, who has just  
9 asked me, that our preference would be to go later in  
10 the day, which was an option put to us, so that  
11 Mr McAllister could continue with his evidence to this  
12 Inquiry and that could proceed before we make  
13 statements.

14 THE CHAIRMAN: Yes, very good. I am not sure -- could we  
15 begin with Mr McAllister?

16 MR MOYNIHAN: The other point is that I don't think we're  
17 hearing Mr Russell because he wasn't using the  
18 microphone.

19 THE CHAIRMAN: I picking him up all right, I think. It's  
20 just that the microphones are not as effective as we  
21 hoped they would be. But what you have said is that you  
22 would like to go later in the day. I think the  
23 Secretary to the Inquiry did say that we would try to  
24 fit you in at a convenient time. So as long as  
25 Mr McAllister is available, as I am sure he is ...

1 Does anybody have any objection? I know I indicated  
2 it would be 11.00 before we would begin Mr McAllister's  
3 evidence because at that stage there was a slight  
4 breakdown in communications and I did not realise that  
5 Mr Russell had been given an option as to the start time  
6 for his submission.

7 Would anybody object, if Mr McAllister is available,  
8 if we take him earlier than I indicated?

9 Is Mr McAllister available? I think then we will  
10 take his evidence now rather than spend time waiting.

11 **ALEXANDER MCALLISTER (continued)**

12 THE CHAIRMAN: Good morning. I am sorry, we are asking you  
13 to return a little earlier than I said but if that is  
14 not inconvenient to you, then we will proceed with your  
15 evidence.

16 **Examined by MISS CARMICHAEL (continued)**

17 Q. Mr McAllister, we had reached something of a break in  
18 your evidence but I should say that during the weekend  
19 other representatives have contacted the Inquiry to ask  
20 for clarification of some points regarding the events of  
21 the evening of 8th January.

22 It may just be a convenient point to return to that  
23 before moving on to other chapters of your evidence, if  
24 we may.

25 One of the matters that has been raised is if it be

1 that there was no Fiscal in attendance on 8th January,  
2 can we draw any inference from that as to whether the  
3 inquiry was being treated as a suicide inquiry or murder  
4 inquiry in the early stages?

5 A. If there wasn't a Procurator Fiscal in attendance?

6 Q. Indeed. There is no evidence that one was.

7 A. I see. The normal course of events would be such that  
8 if there was a significant element of suspicion we were  
9 clearly dealing with a homicide, then certainly it would  
10 be the normal course of events for the Procurator Fiscal  
11 Depute on call in the local area to be advised of what  
12 we were dealing with.

13 In my experience in dealing with fairly significant  
14 number of suspicious deaths over the years, it's a  
15 matter of choice for the particular Depute about whether  
16 he actually attends at the scene.

17 I have known some deposes that come out for scenes  
18 where there's a relatively low level of suspicion and  
19 some deposes to leave matters in the hands of senior  
20 police investigators when there's significant suspicion.  
21 So it's somewhat difficult to give a black and white  
22 answer to that question.

23 Q. Can we take it that in this particular case you have no  
24 personal knowledge of what the communication may or may  
25 not have been with the Fiscal?

1 A. No. No, I had no part in it.

2 Q. I would like to take you, please, to SG0537. That  
3 should appear on your screen, Mr McAllister. About four  
4 entries from the bottom at 23.15 hours the writing is  
5 not altogether easy to decipher but I think it is:

6 "DI McAllister enters **locus**."

7 The reason I'm asking you about this is because I  
8 think your evidence was that you did not think you had  
9 actually gone into the house at Irvine Road on that  
10 evening and I am wondering whether, when you look at  
11 this entry, that makes any difference to your  
12 recollection or not.

13 A. I certainly did not enter the house itself on that  
14 evening. I have no doubts about that. I'm looking at  
15 this handwritten entry and ... it's difficult to make  
16 out the writing, to be honest.

17 However, I absolutely did not enter the house on  
18 that evening. My first entry into the house itself was  
19 the following morning.

20 Q. Thank you.

21 I think your position in your statement to the  
22 Inquiry has also been that Detective Superintendent  
23 Malcolm didn't go into the house either that night.

24 A. My recollection was of standing outside the house in the  
25 cold with Mr Malcolm for some time during the evening.

1 I have no recollection of him going into the house  
2 either.

3 Q. If we look again at the same sheet, I think we have  
4 before your entering the **locus** at 23.15 Detective  
5 Superintendent departing the **locus**; so it may be that he  
6 has had some involvement at a time that you are not  
7 present. Is that possible?

8 A. It is possible. Yes, he was not in my company  
9 throughout the evening.

10 Q. The Inquiry has also seen by earlier reference to this  
11 document that forensic science staff attended on the  
12 first night 8th January and then returned on  
13 10th January.

14 Are you able to help with what the significance of  
15 the timing of those attendances is?

16 A. Well, certainly in terms of the attendance of a forensic  
17 scientist on the first evening, that would be normal  
18 procedure in a death where there was a significant level  
19 of suspicion to give an initial assessment from the  
20 scientific point of view and to take any samples which  
21 were necessary for biological tests prior to any removal  
22 of the remains of the victim.

23 Q. It may be you cannot answer this and we perhaps can ask  
24 others about it but do you know why they went back on  
25 10th January?

1 A. I've no recollection now. Essentially, our processes  
2 back in 1997 were such that the Identification Bureau  
3 staff and the Forensic Science Laboratory staff would  
4 essentially liaise with each other in terms of how they  
5 carried out their particular aspects of the  
6 investigation, and it's not something I had a direct  
7 element with it.

8 Q. I would like to move on at this point to a different  
9 topic and to take you to paragraph 63 of your statement.  
10 You write here about an instruction about a possible  
11 re-enactment of the door opening with a Mr Kinnaird.

12 In your statement you mention an initial incident  
13 when Mr Heath came to countermand your instructions and  
14 you recall also that you were asked about a possible  
15 further instruction from you regarding this matter on  
16 Sunday 12th January. I think the position was that you  
17 couldn't find any -- you weren't aware of any relevant  
18 records, you had not been shown any at the time your  
19 statement was taken.

20 I wonder if you would look, please, at a document  
21 CO1467 and move on to the second page of that. This  
22 appears to be an action relating to Alan Kinnaird about  
23 the situation with doors, what was locked, the  
24 instruction seems to be:

25 "Show him door keys and have him repeat his actions

1 on entering house."

2 A. Yes. This is a HOLMES generated action for a  
3 reinterview of Mr Kinnaird to clarify the situation with  
4 the doors at the **locus** when he actually entered the  
5 house.

6 Q. Towards the bottom of the typed part of that sheet, we  
7 see a number of linked actions and I think we heard from  
8 Mr Heath that the way that the HOLMES system worked was  
9 that we could then see from the dates on the left-hand  
10 column when certain things had occurred in relation to  
11 the instruction at the top of a sheet of this sort.

12 A. Yes.

13 Q. If you go to 11th January, we see an allocation to  
14 DC Swan?

15 A. Yes.

16 Q. Then we see on 12th January 1997 at what I understand to  
17 be 1102 am -- correct me if I am wrong:

18 "Changed to for referral."

19 A. Yes.

20 Q. What does that mean when you say "Changed to for  
21 referral" here?

22 A. Again, this is within the HOLMES management system. The  
23 date and the timing are when the HOLMES operator has  
24 updated the state of that particular action, number 15.  
25 So the first thing through on the 11th indicates that

1 that action had been given to Detective Constable Swan  
2 to carry out and subsequently on the following morning  
3 when instructions of the SIO, Mr Heath, the status of  
4 the action has been changed to for referral. In other  
5 words, it's gone into a holding queue. In simplistic  
6 terms, DC Swan would have been instructed not to carry  
7 out that action without any further direction.

8 Q. So we should read "Changed to for referral" along with  
9 the words "On instructions of SIO" that is the  
10 continuation of the same --

11 A. Yes.

12 Q. I wonder if you could look for me, please, at CO1419 and  
13 go to page 2 again. This is another HOLMES document, I  
14 think, and the Inquiry has some evidence to the effect  
15 that this reflects times at which DC Cardwell(sic) was  
16 given the keys for the property. If you go to the  
17 bottom sheet where you see the word "movement", we see  
18 there two entries for 9th January but also two entries  
19 for 12th January which seem to indicate that  
20 DC Cardwell(sic) got the keys at 10.45 and then at 11.00  
21 they went back to the temporary production store.

22 A. Yes, that's my interpretation of the document.

23 Q. I wondered if we could infer anything from the apparent  
24 coincidence of the times of 11.00 on this document and  
25 11.02 on the document that we have just looked at where

1 the action was "Changed to for referral on the  
2 instruction of the SIO".

3 A. In terms of the previous document and the timing of the  
4 change of status of the action, I should say that that  
5 timing would have been the time at which the HOLMES  
6 operator actually changed the document, changed the  
7 status of the document. The actual decision to refer  
8 could have been taken some time earlier and I should say  
9 that at particularly busy phases of major inquiries  
10 there can be a significant build-up in the paper  
11 documentation awaiting copying on to the HOLMES system.

12 So I would be wary, I think, of necessarily  
13 linking -- because the timings are very close, I would  
14 be wary of linking them directly.

15 Q. I wonder if we could look at the previous document  
16 again, please, page 2 of CO1467.

17 The allocation that we saw on 11th January to  
18 DC Swan again, the timing I would take of 18.31 would be  
19 the time that went into the system rather than  
20 necessarily the precise time at which it was allocated.

21 A. That's my understanding. In all probability -- I'm not  
22 an expert on the HOLMES system, I may say, but my  
23 understanding would be that would be the time that the  
24 system had been updated.

25 Q. Does sight of these documents assist you in any way with

1 recalling a possible further instruction from you  
2 regarding the matter on or about the Sunday  
3 12th January?

4 A. I'm afraid it doesn't. My recollection at the time from  
5 the initial inquiries was that there was a lack of  
6 clarity within the documents, principally Mr Kinnaird's  
7 early statement, around the sequence of entry into the  
8 house, which doors had been locked, which had been  
9 insecure and so forth and in a general sense I was keen  
10 to establish clarity in that area. But I'm afraid my  
11 recollection about the specifics of how we went about  
12 that has faded somewhat.

13 Q. Thank you.

14 Can we move on to paragraph 67 of your statement,  
15 please, Mr McAllister. There you mention you are shown  
16 a document SG0836 and I would like to have that on the  
17 screen, please -- this is, in fact, Mr McAllister's  
18 statement. The document is in fact SGO386. If we start  
19 to scroll through the pages there, can we move on to  
20 perhaps page 3 here.

21 Can you tell us what this document is, please,  
22 Mr McAllister?

23 A. Yes. It's a HOLMES-generated document. It has been  
24 generated on 17th January 1997 and it is a list of all  
25 police officers who had been logged at the crime scene.

1                   From looking at the document previously at  
2                   precognition, I formed the view that it was a  
3                   chronological list of terms of officer attendance at the  
4                   scene.

5       Q.    You see in the top right-hand corner it seems to be  
6            saying "rec'd" -- possibly received -- from  
7            DI McAllister on 17th January 1997.

8       A.    Yes.

9       Q.    Who would you send this off to and why?

10      A.    In all probability, I have sent a copy of this document  
11            to the SCRO fingerprint section for elimination purposes  
12            or for checking of those officers against any  
13            outstanding marks at the crime scene.

14      Q.    Do you need a moment, Mr McAllister?

15      A.    That's fine.

16      Q.    If we could move on within this document again please.  
17            We are looking at what is page 4 of the PDF and we see  
18            some writing:

19                    "Cut off point info from DI McAllister."

20                    There are two words I'm not quite sure what they say  
21                    and "29/01/97."

22                    Can you help us with what that might mean?

23      A.    Yes. I think the words or the word under my own name is  
24            actually "debrief", a debrief on 29th January 1997.

25            Sorry, can the operator put the document back? Thank

1           you.

2       Q.    What is the significance of "cut-off point"?

3       A.    It's not my writing. That's the first thing I should  
4           say. My assessment of looking at the document is that I  
5           have probably been asked to prioritise or have taken a  
6           decision to prioritise which officers to ask SCRO  
7           fingerprints to check for elimination purposes first of  
8           all, and, from looking at the document where the cut-off  
9           point has actually been drawn, it appears to me that the  
10          officers below that line are, with a few exceptions that  
11          are essentially uniformed officers, probably those who  
12          were carrying out the guard duty at the house on the  
13          days following the initial investigations at some point.

14                 So it's probably been a purely pragmatic decision on  
15                 my part to suggest to SCRO that they would wish to check  
16                 out or they might check out to DC O'Hanlan, Detective  
17                 Constable in the first instance.

18       Q.    An instruction of this sort, I think I remember you  
19           saying you would ask to check these first of all. Is  
20           this a once and for all instruction or would you expect  
21           the additional officers to be checked at some stage,  
22           albeit perhaps not being prioritised?

23       A.    No, it's an interim position, again, from a  
24           prioritisation point of view to check those officers  
25           first.

1                   Clearly, if there still remained a number of  
2                   outstanding marks, ultimately it would be essential to  
3                   check every officer who had ever been at the scene at  
4                   any time.

5       Q.    Thank you. I think we can leave that document now.

6                   The first part of your evidence on Friday was about  
7                   the matter of allocations regarding what Mr Moffat has  
8                   said he said to you and what he said you said to him and  
9                   you indicated that in the course of your evidence on  
10                  Friday that you had, in fact, created a report for  
11                  Detective Superintendent Malcolm.

12    A.    Yes.

13    Q.    I think we have this in hard copy for everyone to use.

14                  Do you have a copy, sir?

15    THE CHAIRMAN: I think so.

16    MISS CARMICHAEL: I believe we can put it on the camera.

17                  Would you be able to follow it sufficiently? If you can  
18                  follow what is on that ...

19                  What we see here is a document headed "Memorandum"  
20                  and dated 29th August 2000?

21    A.    Yes.

22    Q.    It is from yourself, Detective Chief Inspector  
23                  McAllister K Division, to Detective Chief Superintendent  
24                  Malcolm who I think you told us was head of CID at the  
25                  time?

1 A. Yes, head of CID for Strathclyde Police.

2 Q. You have headed it, "Erroneous information given by  
3 force support officer."

4 You relate in the first paragraph that:

5 "On Monday 28th 2000 [you were] interviewed by  
6 officers of Tayside Police in relation to [your]  
7 knowledge of events surrounding the identification in  
8 1997 by SCRO of a crime scene mark as that of the then  
9 Detective Constable Shirley Cardwell ..."

10 In the second paragraph you relate:

11 "In the course of the interview [you were] made  
12 aware by the interviewing officers of information given  
13 to the Tayside Police enquiry team by Michael Moffat,  
14 Scenes-of-Crime-Officer with the Identification Bureau."

15 Then you set out what is described as the relevant  
16 points of Mr Moffat's information. The first of this is  
17 that Mr Moffat became aware that police officer  
18 Detective Constable Gary Gray was wearing a rubber glove  
19 which had become damaged and exposed a finger or  
20 fingers.

21 Can you recall what Tayside Police told you  
22 regarding which digits were exposed?

23 A. I don't think the information that was conveyed to me by  
24 the Tayside police officers was that specific and I  
25 certainly didn't get anything in writing from them. It

1 was simply verbal and very soon after the conclusion of  
2 that interview I had summarised essentially what had  
3 been conveyed to me from them within this document.

4 Q. Your second point is the presence of yourself and  
5 Mr Moffat at 43 Irvine Road, Kilmarnock, reviewing marks  
6 at the crime scene.

7 A. Yes.

8 Q. The third is that Mr Moffat expected that mark Y7 may  
9 have been eliminated as Detective Constable Gray's.  
10 Going on to paragraph 4, which is Mr Moffat having  
11 referred you to that possibility in discussion with  
12 yourself.

13 You also record that you allegedly responded that it  
14 was not DC Gray's mark but was known to be that of a  
15 police officer whom you did not name.

16 Would it be fair to summarise what follows as your  
17 denial, effectively, of the truth of Mr Moffat's account  
18 on those matters?

19 A. Yes, certainly. Denial wasn't a term I used but I  
20 thought it was appropriate for me to set out the facts  
21 of the matter as known to myself to my senior officer.

22 Q. And the position as to whether or not Detective  
23 Constable Gray was wearing the damaged glove at the  
24 location is that simply is not something you know about  
25 yourself at all?

1 A. I had no knowledge until this interview in 2000.

2 Q. Following that interview and your report to Detective  
3 Superintendent Malcolm, do you know whether any steps  
4 were taken to check whether Gary Gray's print could be  
5 matched with Y7?

6 A. I don't. In truth, I left the matter with Mr Malcolm  
7 for whatever appropriate action he deemed to be fit.  
8 The circumstances at the time obviously were that  
9 Mr Mackay's Inquiry was in full flow and it was a fairly  
10 significant inquiry. So in terms of any contact between  
11 Mr Mackay and senior officers at Strathclyde Police that  
12 was not something that I was involved in and I don't  
13 recall being updated at any later stage regarding this  
14 matter.

15 Q. Were you interested to be updated or did you seek to be  
16 updated?

17 A. I think it's fair to say, based on the discussions I had  
18 with Tayside officers, I received a level of comfort in  
19 terms of what credibility they were according to myself  
20 and to Mr Moffat. So I was interested in it but I was  
21 not anxious about the matter.

22 Q. Just to clarify what you just said, did you get the  
23 impression that the Tayside officers preferred your  
24 account to Mr Moffat's?

25 A. Fundamentally, yes.

1 Q. Do you know whether anyone else within Strathclyde  
2 Police was aware of this series of allegations by  
3 Mr Moffat in and around 2000?

4 A. I don't is the simple answer to the question, although  
5 from information I'm now aware of I suspect that  
6 Mr Hogg, as head of the Identification Bureau, may have  
7 some knowledge of what Mr Moffat had been saying.

8 Q. What information is that that has come to your  
9 attention?

10 A. Essentially, around the inference that Detective  
11 Constable Gray had been responsible for leaving the  
12 questioned mark at the crime scene. But I haven't had  
13 any discussions with Mr Hogg concerning that.

14 Q. I am sorry, but how did it come to your attention that  
15 Mr Hogg might be aware of this matter?

16 A. I think it's something I've seen in some of the material  
17 that's on the website for this Inquiry.

18 Q. So it's come to your attention through this Inquiry --

19 A. Fairly recently, yes.

20 Q. Were you aware of any other discussion in Strathclyde  
21 Police at any stage before this Inquiry about this  
22 matter or any investigation into it?

23 A. No.

24 Q. Moving to the last two paragraphs of this document, you  
25 say that the apparent account of the events of Thursday

1 23rd January 1997, as stated by Mr Moffat, to Tayside  
2 Police causes you concern in that he attributes remarks  
3 to you which may be taken to infer that you may have had  
4 some level of prior knowledge of the identification of  
5 mark Y7. You say that that is simply not the case. You  
6 say you have not spoken to Mr Moffat with regard to his  
7 recollections and you have no idea why he has given  
8 information which you know to be false.

9 Have you at any stage after this spoken to Mr Moffat  
10 about the matter?

11 A. I'm sorry, I didn't catch the first part of your  
12 question.

13 Q. After writing this memo in which you record you had not  
14 spoken to Mr Moffat, did you at any stage come to speak  
15 to Mr Moffat about it?

16 A. No.

17 Q. If you would give me a moment, sir. There are some more  
18 hard copy documents we may need to look at, sir, if you  
19 will just give me a moment to make sure we have the  
20 correct copies to hand. **(Pause)**

21 Sir, I think we are faced with a slight  
22 technological difficulty which may mean I come to things  
23 slightly out of chronological order in this witness's  
24 evidence for which I have to apologise.

25 Moving on to a point of detail, please, that I would

1 like you to clarify in relation to paragraph 81 of your  
2 statement, please, Mr McAllister, if you look at that.

3 **(Pause)**

4 You record your understanding there that a  
5 particular parcel was found on a settee.

6 A. Yes.

7 Q. The Inquiry has seen a video that seems to indicate on  
8 the night of 8th January it's being on a side table in a  
9 nest of tables beside a sofa in the living room and the  
10 Inquiry has heard that that was the position it was in  
11 when it was found.

12 Now, are you in a position to contradict that?

13 A. No. No, I'm not. I should say I had not been in the  
14 scene in the initial examination so I had not seen this  
15 particular item in its original location within the  
16 house. My knowledge of it would have been through  
17 looking at crime scene photographs at a later stage.

18 I do recall there were a number of what were clearly  
19 unwrapped Christmas presents, presumably received by  
20 Miss Ross, on a settee and my thought at the time was  
21 that this wrapped gift was with those, but, again, I'm  
22 somewhat vague in my recollections after so much time.

23 It possibly may not have been on the settee itself.  
24 If the photograph showed it somewhere else, then I'm  
25 sure that's correct.

1 Q. I think simply for completeness, sir, I have here a hard  
2 copy of a photograph that we have on the system but  
3 others have had difficulty with the darkness, as it  
4 were, of the reproduction on the system. So I wonder if  
5 this could be put on camera. On the system it's --

6 THE CHAIRMAN: Do you want both up? Do you want to show the  
7 original.

8 MISS CARMICHAEL: Yes, I think it's more benefit to show the  
9 original because the witness, I suspect, is likely to  
10 have greater ease in seeing what we are talking about  
11 with it. As I say, this document is on the system but  
12 others have had some difficulty.

13 Can we put this landscape style. If we look in the  
14 centre -- we see here a photograph of a living room,  
15 Mr McAllister, with a sofa located to the left of the  
16 image, a door roughly in the centre and we see in front  
17 of the door what appears to be perhaps a small table  
18 protruding and I think we can see in red that item on  
19 it?

20 A. Yes.

21 Q. You mentioned having seen photographs. Is this one that  
22 you have seen before?

23 A. I have seen this photograph or others that showed  
24 similar views, yes.

25 Q. And the Inquiry has heard that it is the red wrapped

1 item that came to be the item of significance rather  
2 than other items on a settee?

3 A. Yes, a number of items on the settee, as I recollect,  
4 were clearly gifts which Miss Ross had received that  
5 festive season and the wrapped item was the significant  
6 item amongst those gifts.

7 Q. When we look at the sofa that we see in this particular  
8 image, I think it might be fair to say that there are  
9 perhaps potential unwrapped gifts on the sofa itself.  
10 There seem to be boxes located along it, particularly to  
11 the end view to the photographer. Would that be fair to  
12 say?

13 A. Yes.

14 Q. I have been passed a number of hard copy items, sir, and  
15 it may be I can turn to the passage I was hoping to  
16 slightly earlier.

17 I would like you to look, please, at a document  
18 ST0001. I am told that, I think, possibly as a result  
19 of difficulties this morning we don't have yet have hard  
20 copies of this and I can seek for others but it may be  
21 that we could put it on the screen at any stage in any  
22 event and could make further copies available when they  
23 are available.

24 I wonder if it could be put on the screen unless  
25 there's any objection to proceeding in that way at this

1 stage?

2 THE CHAIRMAN: Yes. No, I think that is reasonable. You  
3 will produce it later in hard copy?

4 MISS CARMICHAEL: Yes, sir.

5 THE CHAIRMAN: We can see it and follow it.

6 MISS CARMICHAEL: We see here I think a statement made by  
7 yourself, Mr McAllister.

8 A. Yes, it is.

9 Q. And your age there is recorded at the time as 41.

10 A. Yes.

11 Q. I don't think we have a date when the statement actually  
12 was made but does that help you perhaps with when it may  
13 have been made?

14 A. It was a statement I made around my involvement in the  
15 Marion Ross investigation for recording on the HOLMES  
16 system.

17 Q. I think we see at the bottom left-hand corner of this  
18 document that we've got:

19 "Archive U273 murder of Marion Ross 1997".

20 So would we take it that this is somebody going back  
21 to the HOLMES record from the investigation and finding  
22 your statement there?

23 A. I think that's a reasonable assumption. The  
24 investigation that's been recorded in the HOLMES would  
25 normally be archived after the conclusion of criminal

1 proceedings or appeal proceedings. So it's probable  
2 that someone has accessed the archive system in order to  
3 retrieve this print.

4 Q. It is simply in relation to a matter that you record on  
5 the final page of the statement that I would like to ask  
6 you, Mr McAllister. You record that at about 2.30 pm on  
7 Thursday 23rd January you entered the house along with  
8 Mr Moffat to review the fingerprint examination of the  
9 scene. You write:

10 "I then reviewed the search of the house with  
11 Detective Constable Kerr and Constable McIntyre ...",  
12 and you left the house about 4.50 pm.

13 You mention a further visit on Friday 24th  
14 January 1997 and I wonder if, for completeness, you  
15 could tell us about what happened on that occasion  
16 because I don't think you clarified that when your  
17 statement was taken.

18 A. Yes, the search on the Friday by the police unit was  
19 essentially the final search that was made of the house  
20 and curtilage of the house, an independent search by  
21 specialist trained officers who had no prior  
22 involvement. They had their particular specialisms in  
23 identifying voids within houses, anything that might  
24 contain items of potential value which hitherto had not  
25 been established. In essence, it's almost a final

1 insurance policy in terms of dealing with a **locus** of  
2 this nature to ensure that the investigators had not  
3 missed anything.

4 Q. Should we take it that there was no particular further  
5 work done in relation to fingerprints during your visit  
6 on 24th January?

7 A. I think by that stage the fingerprint examination had  
8 been completed.

9 Q. Moving on to a slightly different topic, Mr McAllister,  
10 we heard from Mr Heath that he had had a discussion  
11 possibly around 23rd January with one of the Fiscals in  
12 which he had been told that there was a fairly  
13 circumstantial case in relation to the person who had  
14 come to be of interest to the police inquiry.

15 Were you aware of that?

16 A. No. No, I wasn't. I don't recall having any contact  
17 with any of the Procurator Fiscal staff throughout that  
18 investigation. That was dealt with by Mr Heath.

19 Q. Was there any particular pressure in the period between  
20 23rd January (when Mr Asbury first appeared in court and  
21 the time about eight days later when he was due to  
22 appear in court again) on the police, as it were, to  
23 improve the evidential position to gather credible  
24 evidence against him?

25 A. No, no, I don't think there was any pressure other than

1 we would normally experience in an investigation of this  
2 sort. It was certainly not my sense at the time that  
3 the case against Mr Asbury was circumstantial and,  
4 without going into the details of that case, significant  
5 fingerprint identification at the **locus** and a number of  
6 other areas of supporting evidence. So my view was  
7 certainly not that it was circumstantial. Perhaps  
8 Mr Heath was a little bit more -- slightly a bit more  
9 pessimistic than myself in that area.

10 Q. I think Mr Heath said that remark was attributed to the  
11 Fiscal that said it was a circumstantial case.

12 I would like to move to the time when you first  
13 became aware that the mark Y7 had been identified as  
14 belonging to DC Cardwell, as she was then.

15 How did you become aware of that?

16 A. That was later on in the investigation on 11th February,  
17 if I recall, and I either received a call directly from  
18 SCRO fingerprints or someone took a call on my behalf,  
19 but I was certainly at Kilmarnock Police Office that day  
20 when I was made aware, still in terms of my liaison  
21 role, that Y7 had been eliminated.

22 Q. What did you do when you received that information?

23 A. I think I spoke to Stephen Heath about it at that time.  
24 Thereafter, as I recall, Shirley was on duty and I spoke  
25 to her. I mentioned that one of the prints within the

1 house had been eliminated as hers and directed her to  
2 put in an additional statement into the HOLMES system to  
3 cover her presence at the **locus**.

4 Q. What was DC Cardwell's response?

5 A. She was adamant from the outset that she had not been  
6 within the house, that she had certainly been at the  
7 front porch area, I think, on a couple of occasions but  
8 had not been within the house itself and that was her  
9 position.

10 Q. Do you recall being told by Mr Heath to sort the matter  
11 out?

12 A. No. No, I don't. My recollection is of contacting SCRO  
13 fingerprints again that day after speaking to Shirley  
14 and asking them just to confirm that that particular  
15 mark was in fact eliminated as hers because of the  
16 position she had taken.

17 Q. Who did you speak to there?

18 A. I think it was Mr Macpherson, Hugh Macpherson, although  
19 I couldn't be specific.

20 Q. How did you find out whether he had checked the matter?

21 A. Well, SCRO fingerprints confirmed for me that it was in  
22 fact Shirley Cardwell's, as she was at the time. I  
23 think they actually phoned me back slightly later that  
24 afternoon after having checked it, to the best of my  
25 recollection. But certainly they gave me confirmation

1           that day that it was in fact her print.

2       Q.    What did you do when you received that confirmation?

3       A.    I believe I spoke to Shirley again and just confirmed to

4           her that the elimination -- that there was no mistake

5           with the elimination, that it had been confirmed by

6           SCRO.

7       Q.    Again, can you recall what her reaction was at that

8           stage?

9       A.    Her position was unchanged. She was adamant that she

10          had never been within the house itself and her only

11          access to the **locus** had been to the front porch area.

12       Q.    The Inquiry has some evidence about a re-photographing

13          of mark Y7 on 12th February.

14       A.    Mmm.

15       Q.    What is your best recollection regarding that?

16       A.    I'm afraid I have no recollection whatsoever of being

17          involved in a re-photographing at that early stage. I

18          certainly had involvement in a complete re-photographing

19          and re-identification exercise the following week.

20       Q.    I think that would be about 18th February?

21       A.    The 18th, yes.

22       Q.    Again, there are some hard copy documents that I would

23          like you to look at, please.

24                 Again, sir, these are items that have been printed

25          off this morning, if I may just have a moment.

1 I would like you, first of all, to have a look at a  
2 document AG0001. You may just need a moment to look at  
3 that because I am not sure that you have been asked  
4 about this in quite this way, but what I can tell you is  
5 that the page I am particularly interested in is the  
6 page numbered 3. I think that will be put up on the  
7 screen. I would like page 1 and 2 put up as well so  
8 that Mr McAllister and everyone else can see what  
9 document it is we are looking at here.

10 Would I be correct in thinking this is a handwritten  
11 statement from you about the inquiry that we are  
12 concerned with here?

13 A. Yes, it is. It's in my own handwriting.

14 Q. We see, I think, the first full paragraph relates your  
15 duty on 11th February and then when you get to the final  
16 line on the first page you start to explain why mark Y7  
17 was of particular importance.

18 If we can go to page 3, if you feel that you have  
19 had sufficient opportunity to satisfy yourself about  
20 what this document is, Mr McAllister?

21 A. Yes --

22 Q. If you need more time to look at it, please, just say.

23 A. No, that's all right.

24 Q. But if you go to the third page, we see you are  
25 recording what you have told us about regarding your

1 contact with Mr Hugh Macpherson and in the following  
2 paragraph you write:

3 "I informed her of this ,.." that is informing  
4 DC Cardwell of the outcome of your contact with  
5 Mr Macpherson and you write:

6 "She was adamant that she had never entered the  
7 house ..." and you say you informed DCI Heath of this  
8 development.

9 If we can perhaps leave this document to the side  
10 just at the moment, please, and move on to a different  
11 one, CO2217, this document unlike, I think, the  
12 handwritten one has on the first page dates and timings.

13 What it bears to be is a statement taken by Chief  
14 Inspector Wilson and it does -- certain portions of it,  
15 at least, are very similar to what is in your own  
16 handwritten statement that we have just looked at and,  
17 again, here it is the third page that I would like to  
18 move to.

19 I think we have seen in your handwritten statement:

20 "I informed her of this ... but she was adamant that  
21 she had never entered the house. I informed ...  
22 DCI Heath about this development ...", what we see  
23 halfway down page 3, if you can find the passage:

24 "I informed her of this confirmation but she was  
25 adamant that she had never entered the house. I

1 subsequently informed Detective Chief Inspector Heath of  
2 this development."

3 However, in the statement that is recorded as being  
4 taken by Chief Inspector Wilson, we see a further  
5 passage:

6 "Who instructed me to have impression number Y7  
7 re-photographed. I contacted Inspector Thompson ...", I  
8 think maybe there is an "of" missing there but  
9 "Identification Branch at force headquarters and  
10 arranged to have Scenes of Crime Officer Wilson  
11 re-photograph Y7 and take the developed film to SCRO for  
12 comparison."

13 I appreciate that we have got something here in a  
14 typed statement that is not in your own handwritten one  
15 but I am wondering if it in any way assists your  
16 recollection to see that.

17 A. I think in terms of the context the Chief Inspector  
18 Wilson at that time was attached to Strathclyde Police  
19 Complaints and Discipline Branch and was tasked with  
20 carrying out an investigation around this element or  
21 this part of the Marion Ross case.

22 The handwritten statement would have been -- well,  
23 was certainly prepared by myself and probably just  
24 submitted to Mr Wilson for his information. In the  
25 first instance, I do recall Chief Inspector Wilson then

1 coming to Kilmarnock and essentially interviewing me and  
2 taking another statement, of which this would appear to  
3 be a typed-up version.

4 Certainly I think this was taken in June 1997; so  
5 fairly soon after the events in question. At that point  
6 clearly he has noted information from me around this  
7 re-photographing exercise. Unfortunately, I've no  
8 recollection at this stage of that particular element.

9 Q. So you're not disputing that that may have been  
10 correctly recorded by Mr Wilson who took the statement  
11 at the time?

12 A. No, no, not at all. If he's recorded that, I've no  
13 doubt that's whatever I've conveyed to him back in 1997.

14 Q. Thank you.

15 In the period after you became aware that mark Y7  
16 had been identified as DC Cardwell's mark, the Inquiry  
17 has heard a suggestion that she was visited, I think, by  
18 a DI MacDonald, one of your colleagues.

19 Do you have any knowledge as to what instructions  
20 were given to DI McDonald?

21 A. No, not all.

22 Q. Do you have any personal knowledge as to what transpired  
23 between DI MacDonald and DC Cardwell?

24 A. No.

25 Q. Mr McAllister, I think you may already be aware that the

1 Inquiry has received information in a statement from a  
2 gentleman called Leslie Brown?

3 A. I have some knowledge, yes.

4 Q. Do you know Leslie Brown?

5 A. Not personally.

6 Q. But do you know who he is?

7 A. I believe he's a former detective officer of Strathclyde  
8 Police and I think at City of Glasgow Police.

9 Q. Have you ever spoken to him about the case that we are  
10 concerned with here today?

11 A. I don't think I've spoken to him directly. There was  
12 some e-mail correspondence relatively recently.

13 Q. To you yourself?

14 A. Instigated by Mr Brown to myself essentially seeking  
15 leave to precognosce me in relation to my knowledge of  
16 this case and no precognition took place.

17 Q. Mr Brown has alleged that your father approached him,  
18 perhaps just over a year ago, and told him that you knew  
19 that Shirley McKie had been inside the house at Irvine  
20 Road, Kilmarnock.

21 Do you know whether that allegation is true --

22 THE CHAIRMAN: There are really two questions there: one,  
23 his father approached Mr Brown, which the witness may or  
24 may not be able to answer.

25 MISS CARMICHAEL: I am sorry, that was the intention, sir.

1 Do you know whether your father spoke to Leslie  
2 Brown in the terms that Leslie Brown alleges?

3 A. I know, having spoken to my father relatively recently,  
4 within a few days, that no such -- his position is that  
5 no such conversation took place.

6 Q. Can we be quite clear about this: you asked your father  
7 about this because the Inquiry has raised the matter  
8 with you?

9 A. Yes.

10 Q. Did you ever yourself tell your father that you knew  
11 that Shirley McKie had been inside the house?

12 A. No.

13 Q. Do you know whether Shirley McKie was ever inside the  
14 house?

15 A. I don't, no.

16 Q. I think you have raised at one stage with the Inquiry  
17 the possibility that there may be a case of mistaken  
18 identity here in what Mr Brown has told the Inquiry and  
19 that there was another senior gentleman called  
20 McAllister, other than your father, who might have been  
21 involved.

22 I wonder if you could just clarify that for us.

23 A. Well, whether he's involved or not I have no idea but I  
24 am aware of another retired officer who was a former  
25 detective superintendent of Ayrshire Constabulary and

1           latterly Strathclyde Police, a Mr Derek McAllister.

2           Because I have fairly strong professional connections

3           with Ayrshire a number of people have assumed wrongly

4           that over the years that I am in some way related to

5           Derek McAllister, which is not the case.

6        Q.    Just to clarify, your father is himself also a retired

7           police officer?

8        A.   My father is a retired officer, I think he retired in

9           1984 or 1985. He was an officer of the Lanarkshire

10          Constabulary and, latterly, Strathclyde Police.

11       MISS CARMICHAEL: Thank you, Mr McAllister. I don't have

12          any further questions for you at moment.

13       THE CHAIRMAN: Mr Holmes, have you any application to make?

14       MR HOLMES: No, sir, I have no questions.

15       MR SMITH: Sir, I do have some questions. The topics I

16          would like to explore with this witness is some more

17          questions regarding the integrity of the scene;

18          secondly, some further questions about the new

19          production that was given to us today; the third matter

20          is relating to the attitude towards Shirley McKie and

21          her position that was adopted; the fourth is a one short

22          question relating to the information about Mr Les Brown,

23          and the final matter is relating to the method of

24          contact with the SCRO, if any, and what information was

25          exchanged and communicated.

1 THE CHAIRMAN: I think the last was explored fairly fully.

2 MR SMITH: It was explored fairly fully. There is just one  
3 matter I wanted to check.

4 THE CHAIRMAN: If there is one matter to check I give you  
5 leave.

6 MR SMITH: Thank you, sir.

7 **Cross-examined by MR SMITH**

8 Q. Mr McAllister, can I just be clear about this: from a  
9 very early stage you were aware, I think you said, this  
10 was a homicide that you were dealing with?

11 A. Certainly my view was it was in all likelihood a  
12 homicide, yes.

13 Q. As far as the **locus** being a homicide **locus**, that of  
14 course would involve some fairly robust methods of  
15 securing the **locus** so that there is no interference with  
16 any potential evidence which might be there; that's  
17 fair, isn't it?

18 A. Yes, the normal course of events would be for a guard to  
19 be maintained on the **locus** until such time as the  
20 forensic investigations and so on could be carried out.

21 Q. I am a little confused. As to what the division of  
22 labour was and responsibility was that existed as  
23 between you and Mr Heath as to who was responsible for  
24 ensuring the **locus** was properly protected and the  
25 evidence within it, can you explain to us what the

1 position was, please.

2 A. Do you mean on the night of the discovery of Miss Ross'  
3 body?

4 Q. Yes.

5 A. My involvement on that night was entirely external to  
6 the house, essentially around the initial interviews  
7 with relatives and Mr Kinnaird and, initially,  
8 house-to-house inquiries. Mr Heath, as the SIO, senior  
9 officer, chose to deal with the **locus** if I put it in  
10 those terms and he was the one who entered the **locus**.

11 Q. Right. He may have entered the **locus** but I want to be  
12 clear about this: who was responsible as between you and  
13 Mr Heath to ensure that the **locus** was not breached other  
14 than by those who had a proper purpose for being there?

15 A. Well, ultimately that is a matter for the Senior  
16 Investigating Officer to give such instructions as he  
17 feels are appropriate to maintain the integrity of the  
18 **locus**. I have no recollection now of giving any  
19 instructions myself on that night in terms of that  
20 integrity.

21 Q. In your statement to the Inquiry, I think you indicate  
22 from paragraph 15, I will just read out what it said:

23 "After removal of the body from the house on  
24 8th January the house was secured and there was at the  
25 very least a police guard by the door to prevent anyone

1 from accessing the house. I was not directly involved  
2 in the instruction of this and so do not know when a  
3 guard or lock keeper would have been deployed. The log  
4 itself will show when it started."

5 Again, that was your understanding, was it, that the  
6 **locus** was effectively secured at least by the time  
7 Miss Ross' body was removed? Is that correct?

8 A. Yes.

9 Q. Was your job one which was essentially a liaison officer  
10 between, for example, SCRO and the police? Were you the  
11 link man, if I can put it that way, between the two  
12 organisations?

13 A. Yes, I was, at Mr Heath's request, yes.

14 Q. I think Counsel to the Inquiry put something to you from  
15 the log itself which indicated and you commented on  
16 appears to record when you, it says, enters at 23.15 and  
17 departs the **locus** at 23.20. I think you said that was  
18 incorrect you were not in the **locus** at least at that  
19 time. Is that right?

20 A. At no time on the first evening was I in the house.

21 Q. This is 8th January I am referring to.

22 A. Yes, on the 8th.

23 Q. But I take it you were actually at the **locus** but not in  
24 it at that time?

25 A. I was certainly outside the house, yes.

1 Q. Can you understand if there is any reason why they  
2 recorded that you were there, that you were actually in  
3 the house?

4 A. I think, looking at the log now, it's a fairly  
5 unstructured log that was taken and, in fact, the  
6 processes that we follow these days in terms of crime  
7 scene recording are much more stringent. So I think  
8 it's probably fair to say there's a lack of specific  
9 accuracy within the log.

10 Q. Who's responsible for the methodology of the log?

11 A. In 1997?

12 Q. Yes.

13 A. Essentially at that time we did not have a structured  
14 methodology for recording access and attendance at crime  
15 scenes. A log would be kept and probably initially in  
16 an officer's, attending officer's notebook and  
17 thereafter on loose sheaf paper, as was the case in this  
18 particular investigation.

19 Q. Again dealing with your Inquiry statement, I think you  
20 indicate, just reading from the beginning of  
21 paragraph 15:

22 "Detective Superintendent John Malcolm was contacted  
23 and told of the incident."

24 You say:

25 "He attended Irvine Road and I spent some time

1 discussing matters with him outside the house."

2 I think if we look at the log that is before us just

3 now, the entry is at 23.37 Detective Superintendent

4 Malcolm arrives at **locus**", and it seems to say, if I am

5 looking at this correctly, above the word "**locus**,

6 "enters" and it's maybe "earlier seen" or "HOU". I am

7 not sure which it is. Do you see that?

8 A. Which time entry?

9 Q. The entry is 20.37. It's just above the lower hole in

10 the side of the paper. Do you see that?

11 A. I do, yes.

12 Q. Then we see the next entry is somewhat further down the

13 page at, I think it's 23.00 hours "D Super Malcolm" and

14 there's a squiggly line down and I think it's probably

15 "departs **locus**" or "depart **locus**". Do you see that?

16 A. Yes, I do.

17 Q. So apparently in the **locus** for about two and a half

18 hours, just short of two and a half hours. Do you see

19 that?

20 A. I certainly see both entries, yes.

21 Q. Let us assume that the log is broadly accurate, if we

22 can, for the moment. Are you able to tell us in your

23 knowledge of what Detective Superintendent Malcolm was

24 doing, if at all, for that length of time in the **locus**?

25 A. No. No, my only recollections on the evening were of

1 speaking to Mr Malcolm outside the house and certainly  
2 when Mr Heath had entered the house Mr Malcolm and I  
3 remained outside. I've no knowledge -- he may have  
4 entered the house later but I've no knowledge of it.

5 Q. Did you ever discuss with him what he found or what he  
6 thought or what might be a good idea?

7 A. No. The Senior Investigating Officer was Mr Heath.  
8 Mr Malcolm's role was essentially an overview role for  
9 all major crime investigations at that time in the south  
10 side of Glasgow right down into Ayrshire.

11 Q. I am just wondering what he could have been doing  
12 because he was there for quite a long time. That's  
13 fair, isn't it?

14 A. If indeed he was in the house itself between the two  
15 timed entries, the initial investigations within the  
16 house that evening did take quite some time, as I would  
17 anticipate in the case of a very suspicious death.

18 Q. You see again reading on from the statement where I left  
19 off you explain that you spent some time  
20 discussing matters with him outside the house:

21 "I cannot recall exactly what time this took place.  
22 He did not enter the house", is what is said.

23 A. He did not enter the house in my sight and certainly he  
24 and I remained outside for a period of time.

25 Q. So we should in fact look at that as, in fairness to

1 your statement, that you did not see him enter the house  
2 rather than he did not enter the house at that stage.

3 In Mr Heath's evidence to this Inquiry, on the  
4 morning of 9th June, at page 25, line 14, for purposes  
5 of everyone else's notes, what he said was this -- he  
6 was asked the question:

7 "So without a good reason for putting officers in  
8 the living room, that is not something that you would  
9 necessarily have thought was a good idea [himself]?"

10 Mr Heath said:

11 "No, it's not necessarily a good idea. I think I  
12 left DI McAllister there at the **locus** with clear  
13 instructions to secure, and Gary Gray, and to carry out  
14 what related to the house."

15 In the afternoon session, reading on, on 9th June  
16 afternoon session page 25, line 24:

17 "Did Mr McAllister [he is asked] convey to you at  
18 any stage police officers had been, as it were, guarding  
19 the **locus** but in the living room", and he said:

20 "What you are saying to me now is the first time  
21 that I've heard of that."

22 Can I take the first of these quotes, first of all.

23 You will appreciate that there seems to have been some  
24 kind of understanding by Mr Heath that he had left you  
25 in command to organise securing of the **locus**.

1                   Can I have your comments on that, please?

2     A.   Well, as I've said earlier, I've no recollection of  
3           giving any specific instructions around the protection  
4           of the **locus** on that night. My duties were essentially  
5           external to the house.

6     Q.   You see, we have also heard some information and may yet  
7           hear evidence that on 8th January -- I will just cover  
8           the detail of this in case you are unaware of it --  
9           Constable Lynn Nicol who gave a statement, a  
10          precognition, to the defence team for Shirley McKie  
11          coming up to her perjury trial and she indicated she was  
12          on night shift on 8th January and took up  
13          security duties at 43 Irvine Road. At 23.30 hours on  
14          8th January she arrived and she admits she entered the  
15          house and was, she says, instructed to remain in the  
16          living room.

17                 Can I ask for your comments about that, first of  
18                 all, bearing in mind the importance of the integrity of  
19                 the **locus**. If a police officer was under the impression  
20                 she was instructed to remain in the living room of that  
21                 particular house, do you have any comment on that?

22     A.   My preference certainly, then and now, would be that any  
23           intrusion into the house would be limited to that that  
24           was essential. My expectation is that officers on guard  
25           on the first evening would have gone no further than the

1 porch area itself, certainly not into the house.

2 Q. You say it is your preference then and now. It's more  
3 than a preference though, isn't it, Mr McAllister. It  
4 would be pretty well essential that non-essential  
5 persons do not go into the house. That is right, is it  
6 not?

7 A. Yes.

8 Q. It is common sense if not always invariable police  
9 practice, isn't it?

10 A. Absolutely. I mean, intrusion -- basic forensic  
11 principles would be to minimise intrusion to the crime  
12 scene or potential crime scene.

13 Q. If I can put something else that Constable Lynn  
14 Wyllie -- again, she gave a precognition to the defence  
15 team -- she relates arriving at 43 Irvine Road at  
16 03.15 hours on 9th January and she indicated:

17 "From memory at that time the other officers who  
18 were present, like myself, were permitted access to the  
19 living room of the house."

20 Again, she indicated that was her understanding and  
21 that would be frankly unacceptable for that to have  
22 taken place, isn't it?

23 A. Well, it would certainly not be a position that I would  
24 have been comfortable with as an investigating officer  
25 myself, having that level of intrusion within a

1 potential crime scene.

2 Q. I think Constable Wyllie was accompanied by a colleague  
3 a PC Maguire although we have a statement from PC  
4 Maguire on the basis of what PC Wyllie says, it may be  
5 reasonable, certainly on this side here, assuming that  
6 Constable Maguire may also have been in the living room.  
7 You see the picture building up of a number of officers  
8 who were under the impression they could go into the  
9 living room. Your position is that that would not be  
10 acceptable behaviour; that's right, isn't it?

11 A. In terms of the officers themselves, it would be  
12 entirely dependent on what direction and instructions  
13 they had been given.

14 Q. The system has failed, if I may put it that way, if  
15 officers felt they could go into the living room; you  
16 would agree with that much, wouldn't you?

17 A. It's difficult for me to comment specifically because,  
18 as I say, I have no recollections of being involved in  
19 giving any direction as to how the guard was to be  
20 maintained. As I've said, for good crime scene  
21 management reasons, it's preferable that any intrusion  
22 to the house was kept to an absolute minimum.

23 Q. And if we take it the same vein -- I won't go into the  
24 detail of it -- but the next morning we have a Constable  
25 Margaret Baird, accompanied by PC Johnson, again who

1           went into the scene and remained in the living room.

2           Again, you see that it appears there are a number of

3           officers who were under the impression they could go

4           into the living room and that the position is that

5           something is that really ought not to have happened, to

6           put it that way?

7       A.    It was certainly preferable if they had not entered the

8           house, yes.

9       THE CHAIRMAN:   Are you about to move to a different subject?

10      MR SMITH:   I have one more question on this.

11                    In Constable Baird's precognition, and a copy was

12                    provided to the Inquiry, she says:

13                    "I recollect that Detective Inspector McAllister

14                    from Kilmarnock Police Office came to the **locus** at

15                    approximately 9.00 am accompanied by other police

16                    personnel. When Mr McAllister arrived at the **locus**, he

17                    instructed my colleague and I should leave the house and

18                    carry out our duties outside and not remain in the

19                    house."

20                    You will appreciate that what Constable Baird is

21                    suggesting is that not only were you there but you knew

22                    they were in the living room. Are you saying that she

23                    must be wrong about that? Are you saying that maybe her

24                    recollection is incorrect?

25      A.    My recollection is of attending at the house shortly

1 before 11.00 am. I simply have no recollection of  
2 attending the house any earlier on the Thursday(?) and I  
3 certainly have no recollection of coming across any  
4 uniformed officers within the house itself.

5 THE CHAIRMAN: We will rise now until 11.55.

6 **(11.35 am)**

7 **(A short break)**

8 **(11.55 am)**

9 MR SMITH: Mr McAllister, I think I was pointing out to you  
10 information that a number of officers were in what has  
11 been described as a living room within that house.

12 I take it you agree with me the living room was an  
13 area of intense investigation for forensic purposes?

14 That's right, isn't it?

15 A. I think at that stage it's fair to say that the whole  
16 house would potentially be an area of intense  
17 investigation.

18 Q. That included, didn't it looking for fingerprints on  
19 paper items; that's right, isn't it?

20 A. Well, the strategy that was eventually instructed by  
21 myself was for a full house fingerprint examination  
22 rather than specific areas, yes.

23 Q. Can I ask you to look, please, at the document CO2592 at  
24 page 5. If you take it from me this is a precognition  
25 statement taken from a James Kerr for the purposes, we

1 understand, of Shirley McKie's trial and it was taken by  
2 the Crown.

3 I would like you to look, please, at the middle  
4 paragraph just about the middle of the page. I will  
5 just read that out:

6 "I am asked about the log officers at the **locus**.  
7 They didn't really have much of a clue of what they were  
8 doing. I remember that at one time I saw 'Hello'  
9 magazines which had been removed from the lounge of the  
10 house of Marion Ross and taken into the porch for the  
11 log officers to read. Some of these log officers did  
12 not appreciate the seriousness of their task, in my  
13 opinion. Sometimes when I went up, and I know Graham  
14 McIntyre did not notice this as much as me, log officers  
15 were asked to nip over to the garage for crisps or a  
16 drink or to use the toilet. In those circumstances, I  
17 would just hang around until they got back."

18 I would like to ask you if this is correct, of  
19 course, about the idea of Hello magazines being removed  
20 from the lounge of the house of Marion Ross and taken to  
21 the porch for log officers to read.

22 Have you any comment on that if that took place?

23 A. Well, I have no knowledge of that having happened.

24 Q. Let us assume that did happen. Do you any comment to  
25 the propriety of such an approach?

1 A. It should not have happened.

2 Q. One of the difficulties I still continue to have is

3 that, if what I have been putting to you is correct, a

4 number of officers within the living room or lounge,

5 however one describes it, items being removed from the

6 lounge for recreational purposes, if I put it that way,

7 reading magazines, who carries responsibility for that?

8 As you sit here now, if that **locus** was not being handled

9 as it should, whose responsibility do you consider it

10 is?

11 A. If the **locus** was mishandled in some way, that's clearly

12 the fault of myself and Mr Heath as the SIO and deputy.

13 Q. I think in your Inquiry statement, Mr McAllister,

14 reading from paragraph 44 just a few lines into it, you

15 say:

16 "Accordingly there was discussion with Serious Crime

17 Squad officers having entered the scene without wearing

18 the appropriate clothing -- this may have been discussed

19 at one of the briefings. The log keeper officer should

20 have declined them entry. However, in fairness to the

21 officer if an experienced detective arrives at the **locus**

22 the log keeper should record their presence if the

23 detective states that he requires to enter the scene."

24 Can I just understand that. Are these Serious Crime

25 Squad officers recorded anywhere on the log as having

1 entered? Do you wish to see the log?

2 A. Well, without seeing it I couldn't answer the question.

3 Q. The reason I ask is that the implication from your  
4 statement appears to be that they should have been  
5 logged on the log and I am sure -- it is there before  
6 us. Are you able to help us with the entries relating  
7 to the Serious Crime Squad officers?

8 A. Well, I can see the front page of the log but that  
9 simply covers the first night.

10 Q. It may be there. I am just wondering if it is. It is  
11 the way you write in paragraph 44 of your statement, I  
12 was reading it to suggest that if it hadn't been entered  
13 on the log because the log keeper should have entered  
14 their details on it.

15 Do you understand what I'm saying to you?

16 A. The issue with the Serious Crime Squad officers was that  
17 they had attended to assist the investigation. I think  
18 it was several days after it had commenced. I briefed  
19 them verbally to bring them up-to-date with the state of  
20 the inquiry and advised them to go to the **locus** to  
21 orientate themselves. There was no intention they  
22 should enter the house itself.

23 However, possibly through misunderstanding, I later  
24 learned that that's what had happened.

25 Q. You see -- or maybe you don't see, but just to remind

1           you of your statement -- the suggestion that there was a  
2           discussion that they entered the crime scene without  
3           wearing appropriate clothing. This may have been  
4           discussed at one of the briefings.

5                     Is that something that you recall?

6        A.    I'm afraid my recollection of this is fairly vague after  
7           this period of time. I think it became known to me some  
8           days after these particular officers had entered the  
9           crime scene.

10     Q.    I take it with you being, as I put it earlier, the link  
11           man with the various organisations, with the  
12           Identification Branch -- is that right -- as part of  
13           your remit?

14     A.    Yes.

15     Q.    -- I take it that you would report the fact that  
16           officers had been in without wearing the appropriate  
17           clothing to the identification branch; is that right?

18     A.    If there was a potential for any officers to have been  
19           inadvertently left any sort of mark at the crime scene,  
20           then clearly it may be necessary to eliminate or to  
21           check those officers' eliminations prints against  
22           outstanding marks.

23     Q.    I'm not sure I got an answer. In your capacity as the  
24           link man, as I put it, did you report to the  
25           relevant authorities that there had been people within

1 the **locus** without the appropriate clothing on?

2 A. I may have done but I can't recollect now.

3 Q. The Inquiry has the ability to require all kinds of  
4 documents so can you give us an idea if that would be  
5 documented if you had reported it?

6 A. I think the Serious Crime Squad officers may be -- I  
7 think they are documented on the HOLMES-generated list  
8 of all officers who had attended at the scene.

9 Q. Are you saying that that list would have gone to the  
10 identification branch, necessarily to SCRO advising them  
11 of the identities of other potential individuals who may  
12 have left forensic evidence at the scene? Are you  
13 saying that that would have been passed on to the  
14 appropriate organisations?

15 A. That document?

16 Q. Yes.

17 A. Yes, I hope so.

18 Q. You passed it on, did you?

19 A. I don't recall specifically passing that on.

20 Q. If you didn't do it who would have done it?

21 A. I don't recall doing it personally. The document that  
22 has already been shown which lists all of the officers  
23 at the scene, I believe, includes the names of the  
24 Serious Crime Squad officers, the ones you were  
25 referring to.

1 Q. I just want to be clear, Mr McAllister: are you saying  
2 it definitely was passed on to forensic, to the  
3 identification branch and to SCRO?

4 A. I have no recollection of specifically making reference  
5 to Identification Bureau or SCRO of those particular  
6 officers.

7 Q. So it may not have been passed on; is that possible?

8 A. I have no recollection; so it's possible, yes.

9 Q. We heard some evidence from Mr Graham Hunter. In his  
10 written statement at paragraph 25 he indicated that  
11 during the day of 10th January he said he saw Stephen  
12 Heath and Bob Lauder inside the house. Bob Lauder was  
13 not wearing appropriate protective clothing.

14 Do you know anything of a visit by Bob Lauder and  
15 whether or not he was wearing protective clothing?

16 A. No, I don't.

17 THE CHAIRMAN: You know nothing about Mr Lauder being at the  
18 scene; is that right?

19 A. Not at all, sir. I had no contact with Mr Lauder.

20 MR SMITH: Was it ever communicated to you, not having seen  
21 him there, ever communicated that there was any person  
22 within the scene who did not have the appropriate  
23 protective clothing, aside for the serious crime  
24 officers that I put to you?

25 A. I don't recall any other instances, no.

1 Q. I would just like to ask you this in a general sense: as  
2 far as you were concerned, the **locus**, it was not known  
3 where Miss Ross had actually either been killed or  
4 assaulted before she died was within in the house. The  
5 precise **locus**, whether it was in the hall, whether it  
6 was the bathroom, whether it was in the living room, it  
7 just wasn't simply known, was it?

8 A. The actual point of contact between the assailant and  
9 Miss Ross, no, could not be established.

10 Q. We can see in the video that what appears to be focussed  
11 in on by Mr Moffat at least one spot of what maybe blood  
12 near to one of the front doors. It's quite a  
13 complicated arrangement, the number of doors, but we  
14 have seen -- I think it is fairly obvious -- at least a  
15 speck of what may be blood near the front door. Do you  
16 recall that at all?

17 A. No.

18 Q. In any event, I take it that all of that house, as you  
19 explained, would be important -- particularly the ground  
20 floor would be important -- for any forensic purposes.  
21 That's right, isn't it?

22 A. Potentially there was very little disturbance within the  
23 house to indicate where any significant contact between  
24 Miss Ross and the assailant had actually taken place.

25 Q. It could have been taken place anywhere from, as it

1           were, the outside door, the very first door to the  
2           screen and garden, as it were, anywhere between there  
3           and where she was ultimately found?

4    A.   Potentially, there could have been contact anywhere,  
5           yes.

6    Q.   I think we have seen in the photographs there's a table  
7           near the entrance to the premises.

8                   Do you remember a table?

9    A.   No, I don't.

10   Q.   You don't. If there is a table in one of the porches or  
11           sun porches or however one describes it, I take it you  
12           would agree that that table may be something that could  
13           have yielded some forensic evidence that would be of  
14           assistance, fingerprints, DNA, blood, all these kinds of  
15           things?

16   A.   Potentially anything in the house could yield evidence,  
17           yes.

18   Q.   We have heard evidence which you may or may not accept  
19           but we have heard evidence that someone put an overcoat  
20           on that table as they arrived at the premises. I take  
21           it you would agree that that would be something that  
22           would be broadly unacceptable when the **locus** was to  
23           be --

24   A.   That would be poor practice, yes.

25   THE CHAIRMAN: Before you go further, the LiveNote has

1 stopped on mine. **(Pause)**

2 MR SMITH: I think, Mr McAllister, you indicated that you  
3 had some kind of conversation, I think, on 11th February  
4 with SCRO about the identity of the mark Y7; is that  
5 correct.

6 A. Yes.

7 Q. As far as that is concerned, I think you indicated in  
8 your written statement to the Inquiry that it may have  
9 been Hugh Macpherson you spoke to in the afternoon of  
10 11th February 1997. That is paragraph 97 of your  
11 statement. Is that right? Hugh Macpherson being the  
12 person, being the one that you recollect being spoken  
13 to --

14 A. Mr Macpherson was my usual point of contact within SCRO  
15 so it's likely that it was Mr Macpherson.

16 Q. I think we looked at a statement in the course of today  
17 which was for the purposes of the disciplinary Inquiry,  
18 the statement you provided. We will try to get that  
19 called up for you in a moment. I think the statement is  
20 CO2217 if we could have that brought up, please. It is  
21 a hard copy document.

22 Just to be clear about it, I think we can see on the  
23 front page of this that the date of the statement was  
24 taken from the Inquiry, Chief Inspector Wilson, was  
25 Thursday 26th June 1997.

1 Do you see that about a third of the way down the  
2 page?

3 A. Yes.

4 Q. So it is reasonably contemporary with the events that  
5 it's describing that's right, isn't it?

6 A. Yes.

7 Q. On 3 of the statement -- the copy we have goes straight  
8 from page 1 to page 3 for some reason, but page 3 we can  
9 see in the second paragraph on the page six lines down:

10 "I contacted Mr Hugh Macpherson at SCRO fingerprint  
11 section for confirmation of the identification of  
12 impression number Y7. I was informed there was no  
13 possibility of an error ..." et cetera, et cetera.

14 I take it that your recollection must have been  
15 fairly fresh at this time, a few months after the events  
16 you are describing?

17 A. Yes.

18 Q. The reason I ask -- I stand to be corrected on this  
19 later -- but I think Mr Macpherson's position to the  
20 Parliamentary Inquiry was it couldn't have been him  
21 because he was unaware of the issue until some weeks  
22 after that.

23 Against that background, are you still reasonably  
24 sure that it was Mr Macpherson you spoke to on that  
25 date?

1 A. No, I'm not sure. At the time Chief Inspector Wilson  
2 has noted this statement, clearly I must have been  
3 reasonably sure it was Mr Macpherson himself that I  
4 spoke to as opposed to one of his staff.

5 Q. Can I ask arising from that whoever told you that Y7 was  
6 identified as belonging to Shirley McKie you, as you've  
7 explained, spoke to her and discussed it with her;  
8 that's right, isn't it? We had some evidence from  
9 Mr Heath that the discussion was very loud, from the  
10 point of view Shirley McKee was loud, she was denying  
11 very vociferously the fact this could not have been her  
12 fingerprint.

13 Is that your recollection of her position when it  
14 was raised with her?

15 A. No, no, it was not vociferous. I'd probably call it  
16 professional and she was adamant that clearly it was not  
17 her print -- well, she was adamant that she'd not been  
18 within the house but I certainly wouldn't describe her  
19 attitude as vociferous.

20 Q. You see, I think in fairness just to put the detail of  
21 the evidence Mr Heath's position was he thought that her  
22 position was unprofessional because of the noise she was  
23 making about it and was effectively becoming quite  
24 public within the office rather than the fact she was  
25 denying it.

1 Do you follow the difference that he was trying to  
2 draw?

3 A. When I dealt with the matter in speaking to Shirley, it  
4 was professional notwithstanding her own position.  
5 There may have been -- I believe there were actually  
6 some further discussion within the office concerning the  
7 elimination of Shirley's print but I don't recall being  
8 there myself. I don't recall hearing anything  
9 vociferous.

10 Q. I think you were aware she was interviewed on many, many  
11 occasions, I think we have 13 occasions when she was  
12 actually interviewed over the period of time right up  
13 through the disciplinary process, up to the point, no  
14 doubt, when she had been charged relating to this  
15 matter.

16 You will understand her position has been  
17 consistent, "I couldn't have been in because it's not my  
18 fingerprint", is her position now of course but her  
19 position was "It can't be that I was in the **locus**".

20 Now do you have any comment yourself about the  
21 number of times she was interviewed on her denial, as it  
22 were? Do you think that's surprising or that's  
23 perfectly reasonable to be interviewed so many times?

24 A. I think the only comment I could possibly pass is  
25 Shirley's position has been consistent throughout.

1 THE CHAIRMAN: I am still having a problem with my

2 LiveNote -- **(Pause)**

3 MR SMITH: I think we heard some evidence from Mr McMenemy,

4 the former Procurator Fiscal, and he suggested in his

5 knowledge when he actually interviewed Shirley McKie --

6 and this is on page 39 of his evidence -- he said:

7 "Officers, in fact, who I believe had been

8 supportive of her to begin with basically had withdrawn

9 from her and she was feeling very, very alone and

10 isolated. I can understand that."

11 Can I ask whether that is a sentiment you agree with

12 as far as the way she was being treated while she was

13 within the offices? Do you agree with that?

14 A. My contact at that time with Shirley was very, very

15 limited indeed and I certainly didn't have enough

16 contact with her to be able to pass comment on that

17 suggestion.

18 Q. We also understand from Shirley McKie's position in

19 February 1997 a DI Karen MacDonald went round to her

20 home bringing her a bunch of flowers, a bottle of wine

21 and a box of chocolates and she spent three hours trying

22 to persuade Ms McKie to speak what she described as the

23 truth.

24 Were you aware of that visit, either before it

25 happened or after it happened?

1 A. I became aware at some later stage that Karin McDonald  
2 had visited Shirley at home but not at the time.

3 Q. Were you in any way involved in asking her to go round?

4 A. No.

5 Q. I would like to ask you one matter about the questions  
6 that were put to you concerning Les Brown and I think at  
7 the end you were asked whether you know or not whether  
8 Shirley McKie was in the **locus** and I think your response  
9 was you don't know.

10 You will understand that fingerprint Y7 is hotly in  
11 dispute, as far as we understand it. Leaving that  
12 aside -- leaving that aside -- I take it that you  
13 actually have no evidence in fact that she was in the  
14 **locus**, do you?

15 A. No, I have no evidence that Shirley was within the  
16 **locus**.

17 Q. I would like to ask you some questions about the  
18 production that was given in this morning and kindly  
19 provided as headed up "ACPOS". I am not sure we have a  
20 number for it but it is the memorandum that is attached  
21 to it.

22 THE CHAIRMAN: This is the one with "ACPOS" --

23 MR SMITH: It is, sir. There are a number of items attached  
24 to it. It is the second of the pages.

25 I think, Mr McAllister, you have explained how this

1           came to be prepared and it was really in response to the  
2           interview that took place by the Mackay Robertson  
3           Inquiry and you decided you should report to Detective  
4           Chief Superintendent Malcolm about the position.

5                     First of all, can I ask why was it going to  
6           Detective Chief Superintendent Malcolm? Is he your  
7           ultimate boss or something; is that how it worked?

8    A.   Effectively yes.

9    Q.   Of course he has been involved, as we have seen, at the  
10       **locus** where the crime actually occurred.

11   A.   Yes, it had been in a different role. Just for clarity,  
12       at the time of this report he had been promoted to  
13       Detective Chief Superintendent Malcolm and was the most  
14       senior CID officer within Strathclyde Police.

15   Q.   In a different role he is being reported to here than  
16       when he was involved in the original Inquiry?

17   A.   A different role.

18   Q.   I take it you were aware that he actually was there when  
19       Shirley McKie was arrested? Were you aware of that.

20   A.   I am aware.

21   Q.   I guess he would have been in a different role there, an  
22       arresting officer as opposed to, an investigating  
23       officer as opposed to somebody things were being  
24       reported to?

25   A.   Yes, I believe at the time of Shirley's arrest he was

1 still in his area detective superintendent role for all  
2 of Glasgow and Ayrshire.

3 Q. Just being straight forward about it he, as it were,  
4 moved to different roles at different times?

5 A. Yes.

6 Q. And he had different responsibilities relating to this?

7 A. Yes.

8 Q. The memorandum which you have prepared makes it very  
9 clear that you dispute the position adopted by Mr Moffat  
10 insofar as he was saying that you indicated that the  
11 print may have belonged to a police officer. That is  
12 one of the things that is disputed. I have got that  
13 right, haven't I?

14 A. Yes, absolutely.

15 Q. But also you are fairly disparaging about Mr Moffat's  
16 recollection in general. Can I ask you to look at the  
17 second page of the memorandum.

18 You refer in the second last paragraph after the  
19 numbered paragraphs immediately following that there's  
20 one that says:

21 "The apparent account of the events on Thursday  
22 2,030th January 19 'as stated by Mr Moffat to Tayside  
23 Police causes me concern in that he attributes remarks  
24 to me which may be taken to infer they have had some  
25 level of prior knowledge of the identification of mark

1 Y7. That is simply not the case."

2 You say:

3 "I have not spoken to Mr Moffat with regard to his  
4 recollections and I have no idea why he has given  
5 information which I know to be false. There may also be  
6 professional concern that an officer of Strathclyde  
7 Police has given information to an outside enquiry which  
8 is erroneous."

9 Can I be clear about this: at this stage had you  
10 spoken to Gary Gray before making this memo?

11 A. No.

12 Q. Can I ask why not?

13 A. It wasn't my position to speak to Detective Constable  
14 Gray.

15 Q. I am wondering --

16 A. If I may continue to answer that question, at this time  
17 my home division was Paisley and Renfrewshire and I had  
18 no responsibility at all for DC Gray.

19 Q. I'm just looking at numbered paragraph 3, for example,  
20 you say in the second sentence:

21 "With regard to mark Y7, at no time was any  
22 reference made by either Mr Moffat or myself to the  
23 possibility that it had been made by DC Gray or any  
24 other officer."

25 Did you not think it prudent perhaps to at least

1 take steps to speak to Gary Gray and find out whether he  
2 recollected anything?

3 A. It would have been inappropriate for me to have directly  
4 involved myself at that stage; hence my report to the  
5 head of CID in the Force.

6 Q. Are you saying there is no possibility that you are  
7 wrong about the evidence of Mr Moffat that's identified  
8 here? You are right and he is wrong; is that the  
9 position?

10 A. Mr Moffat's information as conveyed to me by Tayside  
11 police officers is completely erroneous.

12 MR SMITH: Can I have just one moment, please. **(Pause)**

13 I have no further questions thank you, sir.

14 THE CHAIRMAN: Miss Grahame, do you have any application?

15 MISS GRAHAME: No, thank you.

16 MR MACPHERSON: No, thank you.

17 THE CHAIRMAN: Is there any re-examination?

18 **Re-examined by MISS CARMICHAEL**

19 Q. I have one question simply to clarify a matter.

20 I wonder if we could look at page 5 of SG3507,  
21 please. Mr Smith asked you some question about Serious  
22 Crime Squad officers and I think you were at that point  
23 looking only at the first page of this document and you  
24 indicated you couldn't see anything there. We are  
25 looking at page 5 of the same document.

1                   Is there anything that helps you identify the  
2                   presence of Serious Crime Squad officers on this sheet  
3                   and, if so, can you tell us roughly where it is on the  
4                   page?

5     A.    Yes. There are several references to officers who were  
6           then attached to the Serious Crime Squad rather than to  
7           the police division at 13.05 DC Quay -- DC Park and DC  
8           Quay and immediately above that Detective Sergeant  
9           Crawford. I'm not sure about DC Wright but Crawford,  
10          Park and Quay were officers of the Serious Crime Squad.

11    Q.    If we look at just the first four entries which seem to  
12          be bracketed together on the page, we see is it  
13          Detective Superintendent or Sergeant I can't make it  
14          out?

15    A.    Sorry, I suppose I should have started at the top of the  
16          page.

17    Q.    It is maybe my fault, I should have made taken you  
18          there, DC Wright and DC Quay, and I think it  
19          says "Serious Crime Squad" next to the bracket; would  
20          that be correct?

21    A.    Yes, that was the team of Serious Crime Squad officers  
22          on Friday, the 10th.

23    Q.    It looks as if they are arriving at perhaps about 12.50  
24          in the afternoon on Friday 10th January if we take what  
25          is recorded here as correct?

1 A. Yes.

2 Q. You have just pointed us, I think, slightly further down  
3 the page to the same four officers leaving at 13.05 and  
4 if we perhaps travel down the page again a little  
5 further to 13.20, I think we again have DC Park and Quay  
6 at **locus**?

7 A. Yes.

8 Q. And at 13.30 DC Park and Quay leave **locus**.

9 A. Yes.

10 Q. So it may be that if there have been Serious Crime Squad  
11 officers present that would have been a record of their  
12 evidence?

13 A. I would think so, yes.

14 MISS CARMICHAEL: Thank you for clarifying.

15 THE CHAIRMAN: Can I ask you just one -- if you could help  
16 me about the security of the **locus**. Obviously, as you  
17 are not going to be there all the time and when there is  
18 a major crime the police usually tape it off, the scene,  
19 and I think that was done in this case because one of  
20 the witnesses said that's how he discovered which house  
21 it was --

22 A. Yes.

23 THE CHAIRMAN: -- because he saw tape. But do you -- and I  
24 understand you are accepting the responsibility for the  
25 security lies with you and Mr Heath -- but actually in

1 practice if the buck ends with you, so to speak, to whom  
2 do you delegate or expect that to be, the scene to be  
3 maintained.

4 A. My own practice, sir, as a Senior Investigating Officer  
5 myself, would be to delegate that task to one of the  
6 local uniformed supervisors, either a local sergeant or  
7 local inspector and -- depending upon the seriousness of  
8 the investigation -- and to simply give them  
9 instructions about what level of security was required  
10 and for that matter whether cordons were required and  
11 how likely those would be put in place and, thereafter,  
12 it would be a matter for that uniformed supervisory  
13 officer to take the necessary steps to carry out Senior  
14 Investigating Officer's instructions. It's not  
15 something that a senior detective would be hands-on  
16 with.

17 THE CHAIRMAN: I presume you have no recollection of to whom  
18 you gave the instruction?

19 A. I'm afraid I have no recollection now of giving any  
20 direct instructions at all on the night.

21 THE CHAIRMAN: I appreciate this is early January and you  
22 are asked -- not you but officers are being asked -- to  
23 stay outside, but I would have thought that one of the  
24 dangers is not only of going into the living room but  
25 also that, human nature being what it is, curiosity

1 might have taken people a little further even than that.

2 So there are really quite serious risks involved in

3 people who do not need to be at the scene being there at

4 all.

5 A. Yes. As I've said, sir, given the potential for

6 forensic recovery of evidence and potentially for

7 identification of the perpetrator, our practice is --

8 and nowadays they are more stringent than they were in

9 1997, but our practices are firmly focused on control of

10 a crime scene and recording every action that's taken at

11 that crime scene.

12 Police forces in Scotland now have available to them

13 standard documentation and practices endorsed by ACPOS,

14 the Association of Chief Police Officers in Scotland,

15 that simply did not exist in 1997.

16 THE CHAIRMAN: It may be when I come to look at

17 recommendations that this is something that I may need

18 to discover more about what the current practice is,

19 but, as I understand it, from an earlier witness there

20 is now someone called the Crime Scene Manager --

21 A. Oh, yes --

22 THE CHAIRMAN: -- who has authority to ensure that things

23 don't happen that ought not to happen.

24 A. Absolutely, sir. The role of Crime Scene Manager is a

25 role that did not exist in 1997. It's a very formalised

1 and structured role. Officers from all forces in  
2 Scotland receive very intensive training at the Scottish  
3 Police College before they are allowed to perform that  
4 role. They have to show a level of competence at  
5 training. In practice, it means that those officers  
6 will control the crime scene or crime scenes as we would  
7 tend to think of nowadays. They will control all the  
8 crime scenes and they will control level of access, even  
9 to experts such as the forensic scientists and  
10 biologists and fingerprint experts. I think it's fair  
11 to say that the position nowadays bears little  
12 resemblance to where we were 12-year ago.

13 THE CHAIRMAN: Just one last thing: the actual log keeper,  
14 has the log keeper 12 years ago, did he or she have  
15 authority to say to someone, "You are not coming into  
16 this scene"?

17 A. The log keeper should have received direct instructions  
18 about who was to be allowed to have access to the scene  
19 and he should be making it clear to any officers that  
20 turned up what their instructions are in terms of the  
21 access. For example, it wasn't uncommon in years gone  
22 past for local senior officers to wish to enter a major  
23 crime scene to perhaps satisfy their own professional  
24 curiosity and quite often rank would be pulled for that  
25 to take place. I'm comfortable in saying today that



1 her mother's mannerisms. She found it very difficult to  
2 deal with life after her mother died and that was  
3 further aggravated by the death of her father a year  
4 later.

5 Marion became semi-reclusive and her world narrowed  
6 right down to a simple set of routines that helped her  
7 to feel safe in her own surroundings.

8 You can imagine then a winter evening just at the  
9 start of New Year where there's a knock on the door and  
10 what follows is a mixture of fear and terror being  
11 closed in by somebody that you trust to come into your  
12 own home and the unimaginable pain of a vicious stabbing  
13 and no-one around to help. That wasn't the end, really,  
14 that was the start of a systemic series of failures in  
15 the Scottish system of justice and it started really  
16 just hearing about the small errors of organisation by  
17 the police and how we heard on numerous occasions that  
18 the security of the murder scene was flawed, to say the  
19 absolute least.

20 Then there was the potentially minor issue  
21 concerning a police officer leaving a mark where she  
22 shouldn't have been. That was manipulated and  
23 mismanaged into a situation that had an appalling  
24 impact.

25 Then into the higher echelons of the legal system,

1 with the disgraceful failure of senior law officers to  
2 request a retrial of the man that was originally  
3 convicted of Marion's murder.

4 Some years later the chain of events went even  
5 further up the tree when developments in DNA led to a  
6 piece of evidence that had been kept since the original  
7 trial of David Asbury, that piece of evidence had blood  
8 on it and there was a request made for a DNA examination  
9 with DNA technology being much better several years on.

10 That evidence was originally lied about and then  
11 subsequently claimed to have been lost. A request for  
12 the log of the status of that piece of evidence to be  
13 produced which had a deadline on it and a matter of  
14 hours before that deadline the then Lord Advocate of  
15 Scotland resigned.

16 All of those issues shows the probity of Scottish  
17 justice being in absolute tatters and that's  
18 predominantly due to not the Executive but to the  
19 lawyers in the process.

20 After a number of years now when one has tried to  
21 rehabilitate this system of justice and decided that a  
22 public inquiry would be the solution and that is this  
23 Inquiry. Who would they choose to run an Inquiry to  
24 look into a lack of confidence that has been caused by  
25 lawyers? Well, it's run by more lawyers and you could

1 not really make it up, could you?

2 What of this Inquiry, I have not been able to take  
3 part in this Inquiry because the Inquiry team of lawyers  
4 will not release any evidence without a signed  
5 non-disclosure agreement. Why should a public Inquiry  
6 need a non-disclosure undertaking? It's supposed to be  
7 public. It's declared to be open.

8 The non-disclosure requirements were so broadly  
9 drawn that required at the end of the Inquiry that all  
10 documentation and all copies of all documentation are  
11 surrendered back up to the Inquiry; so people wouldn't  
12 even have rights to their own submissions. Despite  
13 numerous requests from me and Mr Russell, for reasons  
14 for these secretive requirements, nothing was  
15 forthcoming and we refused to sign them. Even now at  
16 this stage published materials appearing on the website  
17 have had sections blacked out so that we, the public,  
18 can't see it. I remind you again this is supposed to be  
19 a public Inquiry.

20 Lawyers have an arcane term for this blanking out.  
21 They call it redaction but I suspect the rest of us have  
22 a much simpler word for it which is censorship and what  
23 part can that have to be in an open and honest public  
24 inquiry?

25 After a secret and a shambolic process the Inquiry

1 decided to appoint an expert to advise it on fingerprint  
2 issues and the person selected has strong links with an  
3 organisation whose members have tried to pervert the  
4 course of this Inquiry. As if that weren't enough that  
5 adviser admits that he is not an expert fingerprint  
6 practitioner yet he will be able to give guidance to the  
7 Inquiry which isn't the subject of examination by  
8 anyone.

9 The only assumption from all this that a reasonable  
10 person can make is that the legal team and the Inquiry  
11 are making concerted efforts to protect certain people  
12 and that that is being done in order to steer the  
13 Inquiry towards a particular predetermined outcome. So  
14 where does that leave us? It seems clear that the  
15 lawyers' careers and reputations are more important than  
16 the truth. My cousin's dead, her murderer has still not  
17 answered for his crime and he walks the streets of  
18 Scotland.

19 I don't know what that does for a system of justice  
20 in Scotland. Thank you.

21 THE CHAIRMAN: Mr Russell?

22 MR RUSSELL: Thank you, sir. I appear **pro bono** for two Core  
23 Participants, Malcolm Ross and Peter Swann and two  
24 witnesses, Martin Leadbetter and John Berry. With  
25 regard to the statements, I emailed Ann Nelson,

1 Solicitor and Secretary of the Inquiry, on  
2 8th June 2009. My position was I said I was denied  
3 access to all documentary evidence provided to the  
4 Inquiry and to the witness statements taken by the  
5 Inquiry team.

6 The Inquiry's refusal to grant me access to such  
7 material and, indeed, to the Core Participants database  
8 is ostensible founded upon my refusal to sign the  
9 required confidentiality undertaking.

10 Such refusal is also maintained by those Core  
11 Participants and witnesses represented by me. Our  
12 refusal to submit to gagging agreements does not require  
13 further justification by me.

14 Be that as it may, the terms of the confidentiality  
15 agreement are oppressive and entirely contrary to the  
16 public interest.

17 If, therefore, the Chairman wished to know why I did  
18 not elect to make an opening statement last week then my  
19 answer is, of course, that I had no access to nor  
20 knowledge of any evidential material, witness statements  
21 or issues to enable me to make such a statement. Having  
22 read the available transcripts I now wish to make a  
23 statement. It would be inappropriate to call it an  
24 opening statement. It might more accurately be termed a  
25 statement of issues, the position and reply. There are

1 matters arising from the opening statements which  
2 require our response. Our position on confidentiality  
3 should also be placed in the public domain. Indeed, I  
4 have a duty to ensure that our absence from the hearings  
5 is not misinterpreted by anyone, particularly the McKies  
6 and their supporters.

7 In a letter of 26th February 2009 Ann Nelson wrote  
8 to me stating:

9 "The term that you wish me to repeat the Crown  
10 Office released their file to the Inquiry on the basis  
11 that it was subject to an obligation for confidentiality  
12 and, therefore, we were required to impose the same  
13 obligation upon others. The requirement was not imposed  
14 on the instigation of the Inquiry but of the Crown  
15 Office."

16 That is unacceptable to us. Further we cannot  
17 accept the redaction of documents and statements. We  
18 ask Crown Office to withdraw its obligation of  
19 confidentiality or what we call gagging order upon the  
20 material provided to the Inquiry. We also call upon  
21 Crown Office to find the material which they say is  
22 missing and we don't believe the explanation provided by  
23 Crown Office.

24 Peter Swann has made a Criminal Justice Act  
25 statement on 3rd June 2009. Mr Swann made that

1 statement without any contribution from lawyers or third  
2 parties. It is his statement and his alone. That  
3 statement is not in Mr Swann's evidence-in-chief to the  
4 Inquiry but simply a Criminal Justice Act statement made  
5 in order to exhibit 18 fingerprint charts and related  
6 material and if I may at this stage, sir, take the  
7 opportunity to hand up some exhibits to the Inquiry.

8 THE CHAIRMAN: Just let us get this quite clear. This is  
9 not an opportunity for you to introduce evidence to this  
10 Inquiry. I am giving you an opportunity to make what I  
11 understood was a statement about issues. I permit you  
12 to do that. If you wish to adduce evidence, then it  
13 will have to be done in the proper way by making it  
14 available to the Inquiry like everyone else has done and  
15 I don't see why you should be treated as a special case.

16 MR RUSSELL: We're not a special case, sir. We are making  
17 our evidence available to the Inquiry now, our first  
18 appearance before the Inquiry. We are making evidence  
19 available to the to the Inquiry in circumstances where  
20 because of our decision not to sign confidentiality  
21 undertakings or gagging orders we have no justification  
22 to see any material lodged by anyone else until it is  
23 lodged.

24 THE CHAIRMAN: I wish you wouldn't use emotive phrases like  
25 "gagging" because it is quite inappropriate coming from

1 someone with your experience and, I would have hoped,  
2 your understanding of the reason why the Inquiry, like  
3 many other inquiries, has approached this topic in the  
4 way that it has.

5 MR RUSSELL: I do not accept the explanation given. The  
6 explanation given by Mrs Nelson, the obligation was  
7 imposed by Crown Office, so I am asking that Crown  
8 Office withdraw that obligation.

9 THE CHAIRMAN: Let me make it clear it is also -- and I am  
10 subject to correction but I understand it was made clear  
11 to you that in due course the information would be  
12 forthcoming.

13 The reason -- if I can interrupt you -- is so you  
14 can understand, and I hope that Mr Ross can too, that  
15 the reason that an undertaking was asked was this: the  
16 Inquiry wished to make available for two reasons all the  
17 material, that of proceedings, to Core Participants.  
18 That would be, first of all, so they can prepare  
19 properly in due course for the Inquiry but, secondly, so  
20 that they can suggest lines of inquiry.

21 Now in that material there may be material that, for  
22 good reasons in law, should not be disclosed in public.  
23 If it was handed to the Core Participants without any  
24 form of undertaking, then the result would be that they  
25 would be at liberty to publish information that was not

1 and should not by reason of law be in the public domain.

2 Now, if, as I say, that happened, then people's  
3 rights would have been invaded. As it is, the Inquiry  
4 has been proceeding in my view in a satisfactory way  
5 and, indeed, we have had an example where this has  
6 happened and where as Mr Ross refers to items as being  
7 redacted, to use the phrase which lawyers use or blacked  
8 out which he referred to, that is because, as a matter  
9 of law, I take the view that there is good reason why  
10 they should not be made public.

11 It could be because they are irrelevant to the  
12 Inquiry and prejudicial. That would be one perfectly  
13 good reason and I would have thought it was right that  
14 everyone should be in a position to protect the interest  
15 of others.

16 Now that is the reason that this course is adopted.  
17 Everything that should be in the public domain goes in  
18 the public domain and if you have the difficulty that  
19 you have had it has been because of your refusal to give  
20 the undertaking which, as I say, I regard as necessary  
21 if people's rights are to be protected.

22 Now, I hope that makes clear the reason for the  
23 course that has been adopted.

24 MR RUSSELL: Which I entirely reject, sir. This Inquiry  
25 originates from a 51-year old spinster being murdered in

1 her home. You refer to people's rights being invaded  
2 because documents might be published. I absolutely  
3 could not care less about that, sir. We're concerned  
4 about the rights of Marion Ross having been invaded by a  
5 man who murdered her.

6 THE CHAIRMAN: Of course the rights of Miss Ross are  
7 important and essential but so are the rights of other  
8 people.

9 MR RUSSELL: No they are not, sir.

10 THE CHAIRMAN: Well, that is a matter for you. Please move  
11 on.

12 MR RUSSELL: I am doing, sir.

13 In this Inquiry we have red herrings being planted.  
14 Mr Smith has done it with references to mysterious  
15 figures passing Marion Ross' house, a man called  
16 Docherty and whether he was a tie or whether he had been  
17 properly eliminated. This is the campaign that has gone  
18 on for year after year after year.

19 David Asbury is a Core Participant before this  
20 Inquiry. Is he asking for confidentiality? If he is,  
21 let him say so. Shirley McKie, Core Participant: is she  
22 asking for confidentiality of sensitive material, her  
23 rights are being invaded? If she is, let her say so.

24 If people are wanting to be protected before this  
25 Inquiry let them say so. We have no respect for such a

1 position.

2 Our position is that we are here to put it all on  
3 the tape. I can understand your saying, sir, as I have  
4 seen on the transcripts, "there are sections of  
5 Mr Heath's witness statement which are not relevant to  
6 my Terms of Reference". Now, that is an issue which  
7 means that it may not have to be explored, even those  
8 matters resulted from questioning by the Inquiry legal  
9 team.

10 If that is the position, then quite simply those  
11 issues are not addressed before the Inquiry but,  
12 nevertheless, they are published or should be published  
13 on the website. What you are doing is saying that this  
14 material should immediately be redacted, it's  
15 prejudicial. How can it be prejudicial? David Asbury  
16 says "I'm innocent. I didn't murder Marion Ross." Why  
17 are we excluding the DNA? Why are we excluding material  
18 which goes to prove the guilt of Mr Asbury? Is  
19 Mr Asbury asking for protection before this Inquiry? If  
20 so, let us hear it --

21 THE CHAIRMAN: Because it doesn't come within my Terms of  
22 Reference --

23 MR RUSSELL: -- on the basis of quite simply a blanket of  
24 confidentiality which I do indeed call gagging because  
25 it is entirely inappropriate. After the brutal murder

1 of Marion Ross, here we are in 2009, the opportunity of  
2 addressing these issues, bringing it all out into the  
3 open and instead we have teams of lawyers who spend  
4 their time dissecting statements and deciding which  
5 material should be withheld from the Scottish public.  
6 That is an appalling disgrace.

7 Now I say I appear here **pro bono**. I do not take a  
8 penny from this Inquiry. I have just paid £4,500 to  
9 West Yorkshire Police to prepare those fingerprint  
10 charts which you declined to accept. They were prepared  
11 by West Yorkshire Police so they might be authenticated  
12 and not subject to challenge before this Inquiry. We do  
13 not ask for any funding before this Inquiry; we are  
14 simply interested in the truth.

15 Now, you have indicated, sir, that you have no wish  
16 to hear anything concerning what I was about to say on  
17 behalf of Peter Swann. You say it's a matter of  
18 evidence in which event you invite me to move on. What  
19 I was simply going to do was explain that you had before  
20 you, had you have accepted them, a sequence of  
21 fingerprint charts, the first of which were prepared for  
22 the Scottish Parliament, the second of which have been  
23 prepared by us, by West Yorkshire Police at our expense,  
24 to assist this Inquiry.

25 I would have taken you through what those exhibits

1           were, which would have been entirely appropriate. I

2           have listened and --

3       THE CHAIRMAN: All I am objecting to is I don't want them  
4           handed up to me in the middle of this hearing. If you  
5           want someone to come along and give evidence about that,  
6           then make that known to the Inquiry and -- please let me  
7           finish if you could -- and that would then give a proper  
8           opportunity for the matter to be introduced before the  
9           Inquiry.

10       MR RUSSELL: Sorry, sir, have you finished? But why ever  
11           would you not accept primary important evidence from  
12           whatever source at whatever time? They are fingerprint  
13           charts which will assist this Inquiry. They can be  
14           handed up now or, if you don't want them, they can  
15           remain on the floor or I can take them away --

16       THE CHAIRMAN: This is a serious matter.

17       MR RUSSELL: It is immensely serious --

18       THE CHAIRMAN: I would like to remind you that there is a  
19           proper way of doing things. Make it available to the  
20           Inquiry and it will be dealt with. If there is a  
21           witness to these documents, the person can be called.  
22           All I am saying is I don't want them introduced in the  
23           course of your address without an opportunity for the  
24           background to the documents and so on to be considered.

25       MR RUSSELL: Considered by whom, sir? Your Inquiry team

1           whom for reasons that are well known to you I have no  
2           confidence --

3       THE CHAIRMAN:   That is a matter entirely for you. I am a  
4           member of the Inquiry team. I head the Inquiry team.  
5           If you don't have confidence that's too bad but that's  
6           the way it will have to be introduced.

7       MR RUSSELL:   In his opening statement to the Inquiry Gerry  
8           Moynihan reported that a witness Les Brown, a retired  
9           Detective Chief Inspector, Strathclyde Police:

10                 "... makes an allegation that Ms McKie committed  
11           perjury at the perjury trial."

12                 Mr Moynihan stated:

13                 "It must be stressed that this is an allegation made  
14           by Mr Brown and that Counsel to the Inquiry has reached  
15           no conclusion in relation to that."

16                 However, that is not, as Mr Moynihan states, simply  
17           an allegation made by Mr Brown. It was in fact a formal  
18           substantive and documented report that was lodged by me  
19           with the authorities in Scotland.

20                 On 21st March 2005 I wrote to the office of the  
21           Solicitor to the Scottish Executive duly citing the  
22           approved official transcripts in the proceedings of **Her**  
23           **Majesty's Advocate v Shirley Jane McKie a/k/a Cardwell.**  
24           By reference to Shirley McKie's cross-examination by the  
25           Advocate Depute on 11th May 1999, when her evidence was

1 on sworn oath, I specifically urged that she committed  
2 perjury. I gave full particulars.

3 On 6th July 2005 I lodged a formal complaint with  
4 William Gallacher, the then district Procurator Fiscal.  
5 I gave the Procurator Fiscal a summary of the false  
6 averments against the SCRO fingerprint experts in the  
7 Court of Session civil action. I then provided  
8 Mr Gallacher with pages 86 to 89 of the official  
9 transcripts of the hearing on 11th May 1999 in **Her**  
10 **Majesty's Advocate v Shirley Jane McKie a/k/a Cardwell.**

11 That was entitled:

12 "Identification of false statements made by Shirley  
13 McKie whilst on sworn oath under cross-examination by  
14 the Advocate Depute".

15 In my report to Mr Gallacher on 6th July 2005, I  
16 stated:

17 "In the Court of Session proceedings being pursued  
18 by Shirley McKie cites and places reliance upon her  
19 acquittal in her perjury trial. However, the pursuer  
20 made no less than five false statements whilst  
21 undergoing cross-examination on 11th May 1999 by the  
22 Advocate Depute. In this connection I attach an extract  
23 from the transcript of evidence upon which the five  
24 false statements have been advanced. Ms McKie, whilst  
25 on sworn oath, repeatedly denied having knowledge of any

1 other fingerprint expert having examined exhibit Y7 on  
2 her behalf prior to Pat Wertheim. However, Ms McKie had  
3 full knowledge that her retained fingerprint expert  
4 Peter Swann had inspected exhibit Y7 prior to  
5 Mr Wertheim."

6 I provided Mr Gallacher with a chronology supporting  
7 and corroborating undertaking the correspondence and  
8 documentation.

9 In his opening statement to this Inquiry Andrew  
10 Smith on behalf of Shirley McKie --

11 THE CHAIRMAN: Can I interrupt you again. What exactly is  
12 the point you are wishing to make because obviously this  
13 is something that will have to be explored in the course  
14 of the Inquiry.

15 MR RUSSELL: I am making an opening statement, sir.

16 THE CHAIRMAN: I am asking you -- well, I think you said a  
17 few moments ago it wasn't an opening statement. All I  
18 am asking is what is the point because it seems to me  
19 this is something that will definitely have to be  
20 explored.

21 Do you not want it explored or what is it you are  
22 seeking to ask me to do?

23 MR RUSSELL: These are matters which should be in the public  
24 domain now.

25 THE CHAIRMAN: Yes, well, I have no doubt this will be in

1 the public domain --

2 MR RUSSELL: These are matters which I was wanting to, in  
3 respect of Mr Moynihan's opening, where he attributes  
4 these matters to Les Brown --

5 THE CHAIRMAN: Yes, but --

6 MR RUSSELL: -- these are matters that should have been  
7 dealt with in Mr Moynihan's opening but were not.

8 THE CHAIRMAN: He certainly raised the topic.

9 MR RUSSELL: That's all.

10 THE CHAIRMAN: Yes. Well, it's a matter I can assure you  
11 that will be explored in the course of the Inquiry.

12 MR RUSSELL: No, sir, because Mr Moynihan has chosen to  
13 present in his opening statement to this Inquiry an  
14 account with a bias which is entirely inappropriate. He  
15 has given an account of events which I do not recognise.  
16 Now, do I not have the right to challenge that? I say  
17 that I do. His account is entirely inappropriate.

18 Now I go on and say why is it inappropriate and that  
19 is my challenge which I maintain again that Jerry  
20 Moynihan QC did not disclose that he was Her  
21 Majesty's Advocate Depute in the proceedings of **Her**  
22 **Majesty's Advocate v Shirley Jane McKie a/k/a Cardwell.**  
23 I raised that as a matter of gross bias and I've raised  
24 it before. It is a profound matter of concern that in  
25 England it is recognised as a gross conflict of interest

1 that should have been disclosed. It was not disclosed.

2 THE CHAIRMAN: I am afraid I may be completely lost but I

3 didn't understand it was the case of **McKie**.

4 MR RUSSELL: I am responding, sir --

5 THE CHAIRMAN: It was the case of **Asbury** that Mr Moynihan --

6 MR RUSSELL: I beg your pardon **Her Majesty's Advocate v**

7 **David Asbury**. That was my mistake, I apologise for

8 that.

9 THE CHAIRMAN: This might be a convenient moment to rise at

10 1.00 and I will resume at 1.50.

11 **(1.00 pm)**

12 **(Luncheon Adjournment)**

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