RETURN to an Order of the Honourable the
House of Commons dated 12 December, 1977 for

Report of an Inquiry by the Hon. Sir Henry Fisher into the circumstances leading to the trial of three persons on charges arising out of the death of Maxwell Confait and the fire at 27 Doggett Road, London SE6

Ordered by The House of Commons *to be printed*
13 December, 1977

LONDON
HER MAJESTY'S STATIONERY OFFICE

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VOL 1/2

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The estimated cost of the preparation of this report (including the cost of the Inquiry and staff costs) is £205,250 of which £16,750 represents the estimated cost of printing and publishing of this report.

CONTENTS

PREFACE

To: The Right Honourable Merlyn Rees MP
Secretary of State for the Home Department
and
The Right Honourable Samuel Silkin QC MP
Her Majesty's Attorney General

Gentlemen,

I have the honour to report that in compliance with the warrant dated 28 November 1975 signed by the Right Honourable Roy Jenkins MP, who was then Secretary of State for the Home Department, and by Mr Silkin, I held an Inquiry into the circumstances leading to the trial of Colin George Lattimore, Ahmet Salih and Ronald William Leighton on charges arising out of the death of Maxwell Confait and the fire at 27 Doggett Road.

2. In compliance with the direction of the Secretary of State and the Attorney General the Inquiry (apart from a preliminary hearing held in public on 19 December 1975) was held in private on 46 days between 6 September and 2 December 1976. Oral evidence was taken from 38 witnesses, and I also had before me the written statements or other documentary evidence of 257 other persons (of whom 93 provided evidence more than once). Further particulars concerning the Inquiry are given at Appendix A, and a list of the witnesses who gave oral evidence is at Appendix B. I have thought it right to refer in my report to certain persons who were mentioned during the Inquiry (two of whom gave oral evidence) in a manner which will not disclose their identity (see paragraph 5.2 of the report).

3. I received invaluable assistance throughout this Inquiry and during the preparation of this report from the joint secretaries, Mr Michael Butcher of the Home Office and Miss Pat Edwards of the Law Officers' Department. I wish to express my gratitude to the joint secretaries (and to Mrs Elizabeth Davison who assisted during the substantive hearing), as well as to all counsel who appeared at the Inquiry, their instructing solicitors, the shorthand writers and the attendants. The burden on the Treasury Solicitor's staff was particularly heavy, and all who took part in the Inquiry have reason to be grateful to them.

4. In February 1977, you told me that you had been approached about future public access to the Inquiry papers, and you sought my views. These papers of course contain personal information, some of it given against understandings of confidentiality, the disclosure of which might be damaging or hurtful to those concerned. In the same context I was also invited to offer, when submitting my report, my views on the question of publication of the report itself. Since it was in my view essential for me to support my findings by extensive references to the evidence, I thought that it would be useful, with the aim of presenting my report in a form which would facilitate its publication to the fullest possible extent, to

show the draft report, which was then virtually complete, to your officials for their comments on the questions of privacy and confidentiality. This I did in late March 1977. At your suggestion all those who had made evidence available to me were given an opportunity to comment on the question of disclosure of their evidence in a published report. In the light of the comments and observations received I have since made a number of changes designed to protect the confidentiality or privacy of certain information and persons to the greatest extent compatible with an adequate presentation of the evidence and arguments which I had to consider. While these consultations have delayed the submission of my report I wish to emphasise that they have not led to any alteration in my findings nor to any changes in or omissions from the substance of the draft which I showed to your officials in March.

H A P FISHER

P A EDWARDS
M J C BUTCHER } Joint Secretaries
19 October 1977

PART I

CHAPTER 1

INTRODUCTION

1.1 During the night of 21/22 April 1972 a fire took place at 27 Doggett Road, Catford, London SE6. The fire brigade was called to extinguish the fire, and in a room on the first floor there was found the body of a man called Maxwell Confait. As a result of confessions which they were said to have made, two boys named Ronald Leighton (then aged 15) and Colin Lattimore (then aged 18) were charged with the murder of Maxwell Confait and, together with a third boy, Ahmet Salih (then aged 14), were charged with setting fire to 27 Doggett Road. (There was also another arson charge against all three boys in respect of a fire at Ladywell Fields, and a charge against Leighton and Salih of burglary of a shoe repair shop in Sangley Road.) On 24 November 1972, after a trial before Mr Justice Chapman at the Central Criminal Court lasting 18 days, Leighton was convicted of murder, Lattimore was convicted of manslaughter on the ground of diminished responsibility, and all three boys were convicted of arson at 27 Doggett Road. (Leighton and Salih pleaded guilty to the other arson charge and the charge of burglary, and Lattimore was convicted of the other arson charge.) Applications for leave to appeal, by Leighton against conviction, by Lattimore against conviction and sentence, and by Salih against sentence only, were refused by the Court of Appeal (Criminal Division) on 26 July 1973.

1.2 In November 1973 an investigation under section 49 of the Police Act 1964 into allegations of assault by a police officer on Colin Lattimore was conducted by Detective Chief Inspector John Locke. No proceedings were taken as a result of DCI Locke's report. On 16 July 1974, as a result of representations made by Mr Christopher Price, Member of Parliament for Lewisham, West, the Home Office wrote to the Commissioner of Police of the Metropolis asking that a senior officer having no previous connexion with the case or the area should make enquiries into points raised by Mr Price. As a result, Detective Chief Superintendent John Hensley carried out an investigation and made two reports in September and December 1974. I have not seen the reports made by DCS Hensley.

1.3 On 18 June 1975 the cases of the three boys were referred by the Home Secretary to the Court of Appeal under section 17(1) (*a*) of the Criminal Appeal Act 1968. In December 1976 the Parliamentary Commissioner for Administration (the Ombudsman) included in his Report to Parliament[1] a report on a complaint (Case No C909/V) made against the Home Office by Leighton, Salih and Lattimore, alleging delay in referring their cases to the Court of Appeal. The Parliamentary Commissioner stated that he was generally satisfied that the Department dealt with the case conscientiously and as expeditiously as the difficult circumstances allowed, and that there was not any administrative action or inaction falling within the limits of his jurisdiction which caused the reference to the Court of Appeal to be delayed unnecessarily.

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[1]First Report of the Parliamentary Commissioner for Administration, Session 1976–77. HC 46.

1.4 On 17 October 1975 the convictions for murder and manslaughter, and for arson at 27 Doggett Road, were quashed by the Court of Appeal and orders for absolute discharge made in respect of the other offences. Relevant parts of the judgments of the Court of Appeal on the reference are set out at Appendix C.

1.5 At my suggestion the opening of the Inquiry was postponed to enable further enquiries to be made by the police into the circumstances surrounding the death of Maxwell Confait. On the instructions of the Attorney General enquiries were commenced on 23 February 1976 by Mr James Fryer, then Assistant Chief Constable, West Mercia Constabulary, and now Deputy Chief Constable, Derbyshire Constabulary. During the course of Mr Fryer's investigation, witnesses were interviewed and statements obtained from them. After very extensive enquiries Mr Fryer came to the conclusion that there was no *prima facie* case against any living person other than Leighton, Salih and Lattimore in respect of the death of Maxwell Confait. I have not seen Mr Fryer's report.

1.6 The task of the Court of Appeal was to decide whether "the verdict of the jury should be set aside on the ground that under all the circumstances of the case it [was] unsafe or unsatisfactory" (Criminal Appeal Act 1968, section 2(1)(*a*)). The burden of proof on the prosecution in a criminal trial is to establish the charge beyond reasonable doubt, so that the jury are sure of guilt. The Court of Appeal had to decide whether that burden had been properly discharged. The Court concluded that it had not, and that the convictions were unsafe and unsatisfactory. My task is to examine the probabilities of the case (which the Court of Appeal did not seek to do), and reach conclusions, with such certitude as I can after five years, as to what actually happened.

1.7 I am bound neither by the verdict of the jury, nor by the judgment of the Court of Appeal on the reference. I have had available to me a great deal of evidence and other material which was not before the court of trial or before the Court of Appeal on the applications for leave to appeal or on the reference, and the arguments addressed to me have not been in all respects the same. I have been free to examine matters which could not be or were not investigated at the time.

1.8 When I was asked to conduct this Inquiry, Mr Jenkins invited me to explore general questions of law or procedure which were thrown up by my Inquiry into the circumstances leading to the prosecution of the three boys. I have endeavoured to respond to that invitation, and to report defects in the present law and procedure which the evidence has revealed, and to suggest ways of removing them. But in doing so I have borne in mind the danger of drawing general conclusions from the facts of a particular case. Not all persons interrogated by the police or subjected to prosecution are mentally subnormal, near-illiterate youths, any more than they are all "sophisticated professional criminals"[1]. The rules of law and procedure have to accommodate both classes. Moreover, I have, by the nature of my Inquiry, been dependent on the evidence which has been called before me. An inquiry such as mine into a particular case is not a sufficient foundation for fundamental changes in the law relating to police investigation and criminal prosecution (such, for instance, as the introduction of a system like that prevailing in Scotland). If such changes are to be

[1]Paragraph 21(vi) of Evidence (General), the Eleventh Report of the Criminal Law Revision Committee. Cmnd. 4991.

contemplated, then something like a Royal Commission, which could go into all aspects of any proposed changes (including the cost) would be required.

1.9 My Inquiry has been limited to criminal cases in which the prosecution is conducted by the Director of Public Prosecutions and which are to be tried in the Crown Court. I have not heard evidence (except incidentally) about prosecutions in cases which are to be tried in magistrates' courts, or about prosecutions conducted by the Solicitor to the Metropolitan Police or by other prosecuting solicitors or by private firms acting for the police, or – apart from the evidence summarised in paragraph 2.47 below – by Government Departments. I have not been concerned with private prosecutions. Nor of course have I been concerned with civil cases. The general observations which I make should be understood as referring solely to prosecutions conducted by the Director of Public Prosecutions in cases which are to be tried in the Crown Court.

1.10 I have assumed:

(a) that the English 'adversary' system will not be replaced by an 'inquisitorial' system under which there is a full judicial investigation of the whole case, including that for the defence, before the trial and under which the judge at the trial questions the accused from the report of the investigation; and

(b) that the alterations to the law proposed in 1972 by clauses 1 and 2 of the draft Bill scheduled to the Eleventh Report of the Criminal Law Revision Committee[1] will not be carried out.

[1]Evidence (General). Cmnd. 4991.

PART I

CHAPTER 2

FINDINGS

2.1 On 24 April 1972, during separate interviews with DCS Jones (who was in charge of the investigation), Colin Lattimore and Ronald Leighton confessed to having taken part in the killing of Maxwell Confait, and Ahmet Salih confessed to having been present. All three boys confessed to having taken part in the arson at 27 Doggett Road. Later in the evening of 24 April and during the early hours of 25 April, each of the boys repeated his confession in a written statement made in the presence of one of his parents, and in the case of Salih in the presence also of an interpreter. Lattimore's father and Leighton's mother signed statements expressing satisfaction with the way in which the statements were taken.

2.2 In their evidence at the trial all three boys alleged on oath that they had been physically assaulted by a police officer. These allegations were repeated in evidence before me by Salih and by Lattimore. I find that the allegations were untrue. Mr Blom-Cooper, who appeared for the three boys at my Inquiry, did not invite me to accept them.

2.3 I find that no police officer deliberately falsified the record of oral answers given by the three boys to questions. The police officers tried to record as accurately as possible the questions and the answers given, and the written statements made by the boys. The records are substantially accurate in all relevant respects. Mr Blom-Cooper made it clear that, while not accepting the accuracy of the record, he did not allege fabrication in the sense of "a deliberately wicked concoction of a written record which was a travesty of what [the boys] said in the questions and answers [and] in their statements".

2.4 (a) I find that the fire at 27 Doggett Road was probably ignited shortly before 1.10 a.m. on 22 April 1972, and could not have been ignited before 12.45 a.m.

(b) I find that Confait died not later than midnight 21/22 April, and probably died before 10.30 p.m. on 21 April.

(c) I accept the evidence that Lattimore was at the Salvation Army Torchbearers youth club from about 7.30 p.m. to about 11.30 p.m. I find that he was not present at and did not take part in the killing of Confait.

(d) I find that Leighton and Salih could have been present at and taken part in the killing of Confait, and that all three boys could have taken part in setting fire to 27 Doggett Road.

(e) I find that the confessions could not have been made as they were unless at least one of the three boys had been involved in the killing of Confait and in the arson at 27 Doggett Road.

2.5 I consider that the most likely explanation is:

(a) that Lattimore's confession to having taken part in the arson was true, but that he was persuaded by Leighton and Salih to confess falsely to having taken part in the killing; and

(b) that the confessions of Leighton and Salih to having taken part in the arson were true; that their answers and statements as to the killing were falsified to the extent necessary to incriminate Lattimore; but that both Leighton and Salih were involved in the killing.

On the balance of probabilities I find that this is what occurred.

2.6 (a) At the Inquiry it was argued on behalf of the boys that the accounts given in the confessions contained such improbabilities, and gave rise to such questions, as to lead irresistibly to the conclusion that none of the boys was involved in the killing.

(b) It was suggested that it was more likely that Confait was murdered by the late Winston Goode, who was his landlord at 27 Doggett Road, and that it was Goode who set fire to the house. The case against Goode was thoroughly investigated at the Inquiry. I am satisfied that there was not at any time sufficient evidence (as distinct from suspicion) against Goode to justify a charge of murder or arson. I have naturally considered with great care the improbabilities in the story told in the confessions, and the questions raised by it, and the suggestion that Confait might have been killed by Goode. While the story told in the confessions may be *difficult* to believe, I find it (as I have said) *impossible* to believe that the confessions could have been made as they were unless at least one of the boys was involved in the killing. This being so, I am driven to the conclusion that the stories told in the confessions were true except in so far as they related to the involvement of Lattimore in the killing. Moreover, having heard Leighton give evidence, and having heard evidence about him, I find the argument based on the improbabilities in the story less impressive. In addition there was some evidence which suggested a possible connexion with Confait and a possible motive; it is true that this was third-hand evidence, and was denied in a written statement by Leighton, but he was not willing to give oral evidence or submit to cross-examination about it.

The Judges' Rules and Administrative Directions

2.7 In England and Wales the police are permitted to interrogate persons who are in custody on suspicion of having committed offences, up to the point when they are charged or told that they will be charged[1]. There is not, as there is in many countries, a person (or body of persons) of a judicial or quasi-judicial character who himself conducts the interrogation of such persons or who supervises and controls interrogation by the police. Protection for the person interrogated is provided by:

(a) the rule of law that a confession is inadmissible in evidence unless it is "voluntary, in the sense that it has not been obtained . . . . by fear of prejudice or hope of advantage, exercised or held out by a person in authority, or by oppression";[2] and

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[1] *Conway v. Hotten* (1976) 63 Cr.App.R.11.

[2] For an authoritative definition of "oppression" see *R v. Prager* [1972] 1 All E.R. 1114 at 1119 and the cases there cited.

(b) The Judges' Rules and Home Office Administrative Directions, coupled with the discretion of the judge at the trial to exclude confessions obtained in breach of the Rules and Directions.[1]

2.8 The Rules and Directions provide *inter alia* as follows:

(a) that interrogating officers should always try to be fair to the person who is being questioned, and should scrupulously avoid any method which could be regarded as in any way unfair or oppressive (Home Office Circular No 31/1964, paragraph 4);

(b) that as far as practicable a child or young person (whether suspected of crime or not) should only be interviewed in the presence of a parent or guardian, or, in their absence, some person who is not a police officer and is of the same sex as the child (Administrative Direction 4 as explained by a Home Office circular of 31 May 1968);

(c) that every person in custody should be informed of his right to communicate by telephone with his solicitor or his friends and to consult privately with a solicitor provided that no unreasonable delay or hindrance is caused to the processes of investigation or the administration of justice by his doing so; and that his attention should be drawn to a notice describing the rights and facilities available to him, which should be conspicuously displayed in every police station (Administrative Direction 7);

(d) that when a statement made after caution is written by a police officer, he shall take down the exact words spoken by the person making the statement, without putting any questions other than such as may be needed to make the statement coherent, intelligible and relevant to the material matters – and he shall not prompt him (Judges' Rule IV(*d*));

and

(e) that only in exceptional cases should questions relating to the offence be put to the accused person after he has been charged or told that he will be charged[2]. Such questions may be put when they are necessary to prevent or minimise harm or loss to some other person or to the public, or to clear up an ambiguity in a previous answer or statement (Judges' Rule III(*b*)).

2.9 It is a rule of law that when a police officer who is making enquiries of any person about an offence has enough evidence to prefer a charge against that person for the offence, he should without delay cause that person to be charged[3] (principle (*d*) preceding the Judges' Rules).

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[1]The provisions in the Judges' Rules and Administrative Directions are to be supplemented by a statutory right when section 62 of the Criminal Law Act 1977, which received Royal Assent on 29 July 1977, comes into force. The section provides that

"Where any person has been arrested and is being held in custody in a police station or other premises, he shall be entitled to have intimation of his arrest and of the place where he is being held sent to one person reasonably named by him, without delay or, where some delay is necessary in the interest of the investigation or prevention of crime or the apprehension of offenders, with no more delay than is so necessary."

[2]*Conway v. Hotten* (1976) 63 Cr.App.R.11.

[3]The words "or informed that he may be prosecuted" in the Rules are irrelevant to the point which I am considering.

2.10 I find that answers and statements were not obtained from the three boys by fear of prejudice or hope of advantage, exercised or held out by a person in authority, or (save in the specific respects mentioned) by oppression. In particular, they were not obtained by a promise or suggestion that the boys would be allowed to go home if they made admissions.

2.11 I find that there were the following breaches of the Judges' Rules and Home Office Administrative Directions:

(a) Leighton and Salih were interviewed by police officers without the presence of a parent or guardian or someone who was not a police officer, although it would have been practicable to delay the interviews till their mothers or some other person who was not a police officer could be brought there.

(b) When the three boys were taken into custody, they were not informed orally of the rights and facilities available to them, namely to communicate by telephone with their solicitors or their friends and to consult privately with a solicitor, provided that no unreasonable delay or hindrance was reasonably likely to be caused to the processes of investigation or the administration of justice by their doing so; nor was their attention drawn to the notice describing the rights and facilities available to them.

(c) During the taking of a written statement from Lattimore, he was prompted and questions were asked which were not needed to make the statement coherent, intelligible or relevant to the material matters.

2.12 I find that there was a technical breach of the rule set out in paragraph 2.9 above. DCS Jones had sufficient evidence to charge the three boys at the latest by the time they had completed their written statements, at 10.10 p.m. (Lattimore), 10.40 p.m. (Leighton) and 1.30 a.m. (Salih) on 24/25 April, and he told them that they would be charged, but he did not charge them until about 1.45 p.m. on 25 April. One reason for delaying the charge was to enable further questioning of Leighton to take place in the form of the experiment with the 'keys' (see paragraph 23.9 below). This further questioning was a breach of the Judges' Rules, as explained in *Conway v. Hotten*[1] in 1976.

2.13 I find that (apart from the specific breaches set out in paragraph 2.11 above) the questioning of Leighton and Salih was not unfair or oppressive. But the questioning of Lattimore was unfair and oppressive in the following respects:

(a) DCS Jones reached the conclusion that Lattimore had the mental age of a boy of 14. In view of this conclusion, it was unfair to interview him without a parent, guardian or other person not a police officer being present, when it would have been practicable to delay the interview till such a person could be present.

(b) The form and manner in which at the interview Lattimore was questioned about the killing were unfair and oppressive to a person of his mental age (either actual, or as it appeared to DCS Jones).

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[1]63 Cr.App.R.11

(c) It was unfair and oppressive to prompt Lattimore during his written statement, and for DCS Jones to ask the question which he did ask.

(d) The answer given by DCS Jones to Lattimore's question at the interview "can I go home afterwards" was disingenuous and unfair.

2.14 Mr Blom-Cooper suggested that it was unfair for DCS Jones to have opened the interview with Leighton by saying that Lattimore had already implicated him, and to open the interview with Salih by saying that Lattimore and Leighton had already implicated him. Provided that what DCS Jones said was true, this was not a breach of the Judges' Rules nor of any other rule of law or practice about interrogation. I do not consider that in general it should be regarded as unfair to open an interrogation in this way, and I believe that the police would be unduly hampered if they were forbidden to do it. However, it plainly increases the chance of a false confession, and for that reason it would be contrary to what I have been told is good police practice to use that sort of opening in circumstances where a false confession is likely; and it would be wrong to do so where it could be regarded as unfair or oppressive because of the nature of the person being interrogated or the circumstances of the interrogation. In the present case I have found that DCS Jones should have deferred the interviews till the parents arrived. If he was going to interrogate Leighton in the absence of a parent, guardian or other independent person, then it was particularly important that he should refrain from any method which could be regarded as unfair or oppressive. I consider that he is to be criticised for starting the interview of a boy of 15 in that way—and the same applies *a fortiori* to Salih. But I do not consider that the answers given by Leighton and Salih were false admissions induced by the belief that there was no point in making denials if Lattimore had already made admissions. The opening remark was in each case followed by a series of non-leading questions. Although some of the questions to some extent suggested answers (was it to steal or to rob somebody? Who went into the upstairs room first? After the struggle who locked the door before you went downstairs?) the important questions were, if the record is correct, in non-leading form and were answered without prompting.

2.15 I do not find the complaints made against the police established in the following respects:

(a) The caution: the boys were cautioned as the Judges' Rules require. DCS Jones did not unfairly or improperly delay cautioning Lattimore and proper steps were taken to ensure that the boys understood the caution.

(b) Except as mentioned in paragraphs 2.11 and 2.13 above, the boys were not unfairly or oppressively treated whilst in custody at Lee Road Police Station. In particular, the periods for which they were kept waiting before and between the oral interviews, the taking of written statements and the showing of the exhibits, and the lateness of the hour, were not unfair or oppressive.

(c) DCS Jones was not at fault in failing to recognise the full extent of Lattimore's mental handicap. His conclusion that Lattimore had the mental age of a boy of 14 was a reasonable one.

Protection for persons interrogated

2.16 The Confait case provokes the question whether the protection afforded by the rule of law mentioned in paragraph 2.7 above and by the Judges' Rules and Administrative Directions, as they are at present applied, is sufficient. An improvement in the protection given to persons interrogated would have the result that fewer confessions would be made, and in particular some true confessions (such as I have held those in the present case in great part to be) would not be made if the Rules and Directions were strengthened and/or were more strictly enforced. This does not seem to me to be a valid argument against such strengthening and/or enforcement if this is needed to ensure fairness. It is better that a guilty person against whom there is insufficient independent evidence to justify a conviction should be acquitted than that he should be convicted on the evidence of an improperly or unfairly obtained confession. Revision of the law concerning interrogation could appropriately be considered as part of a general review of the balance between police effectiveness and individual rights aimed at the rationalisation and codification of criminal procedure (see Law Commissions Act 1965, section 3(1)(*b*) and 1968 Programme, page 6 Item 18). In this report I can do no more than mention some respects in which the evidence called at my Inquiry suggests that strengthening of the Rules and Directions, and stricter enforcement of them, is required to ensure fairness. The evidence also suggests that the language and arrangement of the Rules and Directions are complicated and confusing, and that they could with advantage be rearranged and clarified.

2.17 In the first place, some of the Rules and Directions do not seem to be known to police officers and members of the legal profession. Others are misunderstood by some police officers and are not given their proper effect. For instance:

(a) DCS Jones misunderstood Judges' Rule IV(*d*). Whether through misunderstanding or not, the Rule was disobeyed by both DCS Jones and DI Stockwell during the taking of Lattimore's written statement.

(b) The Home Office circular applying Administrative Direction 4 to young persons was not published in Archbold[1], and its existence did not seem to be known to some or all of the counsel who appeared at my Inquiry, and of the lawyers and police officers who gave evidence.

(c) Some police officers believe wrongly that Administrative Direction 4 does not apply to *oral* interrogation.

(d) The existence of Administrative Direction 7 was unknown to counsel and to senior police officers who gave evidence before me. In the Metropolitan Police District it is not observed.

2.18 I believe that steps should be taken to see that the Rules and Directions are known by all police officers and members of the legal profession. Any future circulars amending or adding to the Rules and Directions should be given a wide circulation, and should be published in Archbold.

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[1]Archbold: *Pleading, Evidence and Practice in Criminal Cases*, the handbook on criminal law and procedure used by judges and legal practitioners. Current edition (39th) Sweet & Maxwell (London) 1976.

Right to communicate with a solicitor

2.19 In the USA great emphasis has been placed on the presence of a lawyer at police interrogation. It was established in *Miranda v. Arizona*[1] that the constitutional right to the assistance of counsel extended to police interrogation. The Court held that the person to be interrogated must be informed of his right to consult a lawyer and to have the lawyer with him during interrogation. Unless these rights are waived, evidence of a confession obtained in breach of them will be inadmissible.

2.20 In England and Wales there is no right to have a lawyer present during interrogation (though the police witnesses told me that if asked they would normally allow a solicitor to be present, and delay interrogation till he could arrive), but it is a principle of law[2] that "every person at any stage of an investigation should be able to communicate and to consult privately with a solicitor. This is so even if he is in custody provided that in such a case no unreasonable delay or hindrance is caused to the processes of investigation or the administration of justice by his doing so". If, in breach of this principle, a person who asks to communicate and consult with a solicitor is not allowed to do so, then evidence of a confession may be excluded by the judge at the trial: *R v. Allen*[3] (see paragraph 15.4(c) below). The right to consult a solicitor is so important and fundamental a right that I should expect such discretionary exclusion to follow almost automatically in the event of a breach. If there is any doubt whether it will, I should favour a change in the law making exclusion an automatic consequence of a breach of the principle.

2.21 By virtue of Administrative Direction 7 every person in custody must be told of his rights to communicate with and consult a solicitor. During my Inquiry the view was expressed that if (a) Administrative Direction 7 were strictly obeyed, and (b) the right to silence remained, too great a fetter would be imposed on police questioning. This is obviously a question on which different views can be sincerely held: *Miranda* was decided in the Supreme Court only by five votes to four[4]. However, it seems from the literature that no disastrous results have followed from the *Miranda* decision. If a system of law confers rights, people should know of them: this is the philosophy behind the requirement for the caution in Judges' Rules II and III. If people are not informed of

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[1]384 U.S. 436 (1966).

[2]principle (*c*) set out in the introduction to the Judges' Rules.

[3]Norwich Crown Court, 27 September 1976 (MacKenna J) [1977] Crim.L.R.163; but see *R v. Elliot*, [1977] Crim.L.R.551.

See also *R v. Lemsatef*, Court of Appeal, Criminal Division (Lawton LJ, Cusack and Slynn JJ), 2 July 1976: [1977] 1 W.L.R. 812; [1977] 2 All E.R. 835. In that case the Court said (*inter alia*):

> "The other inapt way in which Mr Hinson answered was when he said that he had not allowed the appellant to consult his solicitor, because the solicitor might have contacted somebody else on the appellant's instructions . . . We do not consider that the answer which Mr Hinson gave was a sufficiently good reason for refusing to allow the appellant to consult his solicitor. The answer should have been that solicitors could not reasonably be expected to turn up until ordinary business hours and that delaying interrogation till then might have caused unreasonable delay . . . This court wishes to stress that it is not a good reason for refusing to allow a suspect, under arrest or detention to see his solicitor, that he has not yet made any oral or written admission."

[4]See also *The Times*, 24 March 1977: "The United States Supreme Court has confirmed one of the most controversial decisions in its history, the Miranda rule. Voting five to four, and with bitter dissent from the minority, the court decided to quash a murder conviction because the defendant confessed to the crime in the absence of a lawyer." (*Brewer v. Williams*, 23 March 1977, 97 Sup. Ct. 1232.)

their rights, those who are better educated or have previous experience of police questioning will have an advantage over those who are less well educated and have no such previous experience; it is illegitimate to argue that it is necessary for any reason to keep people in ignorance of their rights. Lord Parker, the Lord Chief Justice, in *R v. Roberts*[1] (see paragraph 15.4(b) below) said that the Administrative Directions were there to be obeyed, and this applied to Direction 7. (He said that the Directions might be disobeyed in special circumstances but he did not say what these were. In the case before him the reason why the accused, a young person, had been questioned without his mother being present was that he had asked that she should not be present.)

2.22 Senior police officers who gave evidence before me expressed the view that the fact that it was believed that a solicitor would advise his client to remain silent should not be regarded as a "hindrance . . . to the processes of investigation or the administration of justice" for the purpose of principle (*c*) or Administrative Direction 7: this view seems to me to be clearly correct, and I believe that general effect should be given to this view. I consider also that Direction 7(*a*) should be amended so as to make mandatory what I understand to be the present police practice, namely that, subject to the proviso, a solicitor should be allowed to attend the interrogation if the person in custody so requests and the interrogation should be delayed until the solicitor can arrive. I believe also that persons who have gone to a police station voluntarily and who have not sought to leave but who would not be allowed to leave if they did seek to do so should be treated as in custody for the purpose of the Direction.

2.23 Administrative Direction 7 will not constitute an effective protection to those who need protection most unless steps are taken to ensure that solicitors will be available and willing to attend at police stations to give advice to persons in custody who ask for a solicitor. In the USA the combined effect of the *Gideon*[2] and *Miranda*[3] decisions is that a lawyer has to be provided for those who are indigent, and this requirement has been met by the creation of 'public defender' systems about which I received some information. In England and Wales the need could be met at least in part under the legal aid system. It has been decided in *R v. Tullett*[4] that a legal aid order can cover services provided before the grant of the order. But this would not cover the case where no prosecution eventuated or for some reason legal aid was not given. And beyond this it would be necessary for members of the legal profession to accept the obligation as a matter of public duty and to risk the chance of not being paid, and for the profession to organise a duty solicitor system similar to those which operate in some parts of England and Wales to ensure representation at magistrates' courts. If the profession was not willing to do this, the only alternative would be for a public defender system to be set up and financed out of public funds. I have not been able within the scope of my Inquiry to investigate the cost of such a system, or the feasibility of finding the legally qualified staff required. It may well be that in the present national economic circumstances it is out of the question. But if that is the right conclusion, then it should be recognised that

[1] *The Times*, 5 May 1970; [1970] Crim. L.R. 464.
[2] *Gideon v. Wainwright* 372 U.S. 335 (1963).
[3] *Miranda v. Arizona* 384 U.S. 436 (1966).
[4] [1976] 1 W.L.R. 241.

without such a system the declaration in principle (*c*) of a right which should be enjoyed by every person involved in a police investigation will remain hollow and ineffective.

Tape-recording

2.24 The Confait case lends support to the argument for the introduction of tape-recording for interviews in police stations and the taking of written statements. If the proceedings at Lee Road Police Station on 24 April 1972 had been tape-recorded, the course of subsequent proceedings might well have been different and my Inquiry unnecessary. Apart from the additional protection afforded to the individual, tape-recording would constitute a valuable protection for the police themselves, and might well shorten trials. I recognise that there may be practical problems, as is shown by the report, published in 1976, entitled *The Feasibility of an Experiment in the Tape-recording of Police Interrogations*[1]. But they can be overstated. I believe that in the great majority of cases counsel would agree the text of a transcript of the tape-recording. The report concluded that an experiment with tape-recording would be feasible, and I hope that it will now be carried out.

Suggested amendments of the Judges' Rules and Administrative Directions

2.25 The evidence given at my Inquiry has suggested other amendments to the present Judges' Rules and Administrative Directions:

(a) *Presence of parents*

Administrative Direction 4 requires that *as far as practicable* children and young persons should not be interviewed except in the presence of a parent or guardian or other independent person. The words which I have emphasised are vague, and are apparently understood by some police officers as giving them an unduly wide discretion. I suggest some such words as the following:

> 'Children and young persons (whether suspected of crime or not) should only be interviewed in the presence of a parent or guardian or, in their absence, some person who is not a police officer and is of the same sex as the child. The only exception is where it is urgent that the child or young person should be questioned and it is not practicable to delay the interview till a parent or other independent person can be fetched. Only in the most exceptional circumstances should a child or young person suspected of crime be questioned under caution without a parent or other independent person being present; if an interview has commenced it should be discontinued as soon as the child or young person becomes a suspect, until a parent or other independent person can attend.'

(See also paragraph 2.26(b) below.)

(b) *Questions during taking of written statement*

The evidence in this case leads me to suggest that words should be added to avoid any possibility of misunderstanding of the words "to make the

[1]Cmnd. 6630.

statement coherent, intelligible and relevant". The words used in the 1918 Judges' Rules, Rule (7), could form a model. Questions should relate only to *what the person has actually said.*

(c) *Persons who ought to have been charged*

Rule III (*b*) does not apply to a person who ought by virtue of principle (*d*) to have been charged but who, in breach of the principle, has not been charged (or told that he will be charged)[1]. It seems wrong that a police officer should be able to extend the period for questioning by contravening the principle. I suggest that Rule III(*b*) should be altered so that it applies to such persons.

(d) *The caution*

The evidence which I have heard suggests that persons to whom the caution is addressed often do not understand that what they are being told is that they are under no obligation to answer questions put by the police and will not be harming their position in any way if they do not answer. If the law requires the administration of a caution, then the caution should be one which is understood. The present wording seems to assume that the person cautioned *will* speak ("whatever you say"), and if the caution is immediately followed by a question in the form "What do you want to say to me?" the impression will be given to some people that they are expected, or even required, to speak. This probably cannot be entirely avoided whatever the wording, but I suggest that the true legal position would be better conveyed by some such wording as the following:

> 'You need not say anything unless you want to; but if you do decide that you want to say anything it may be ..... '

Even a simple reversion to the pre-1964 formula "anything you say", instead of "whatever you say", would be some improvement.

Enforcement

2.26 The sanction for breach of the Judges' Rules ought to be certain and regularly applied, for the reasons given by Mr Justice MacKenna in *R v. Allen*[2] (see paragraph 15.4(c) below). At the moment it is neither. It is not even certain that a breach of the Judges' Rules is enough to entitle the judge in the exercise of his discretion to exclude a confession unless the effect of the breach of the Rule is to make the confession "involuntary": see *R v. Prager*[3]. It appears that evidence can only be excluded on the ground of a breach of the Administrative Direction if the effect is to make the treatment of the person interrogated unfair or oppressive: *R v. Roberts*[4]. Despite the breaches committed in the Confait case, no defending counsel invited the Judge in his discretion to exclude any of the confessions on the ground of such breaches (though an unsuccessful attempt was made to have Salih's confession excluded on the ground that it was not voluntary): see paragraph 15.8 below. There are two possible grounds for exclusion of

[1] *R v. Collier* [1965] 1 W.L.R. 1470; [1965] 3 All E.R. 136; see also *Conway v. Hotten* (1976) 63 Cr. App. R. 11.
[2] [1977] Crim. L.R. 163. But see *R v. Elliot* [1977] Crim. L.R. 551.
[3] 56 Cr. App. R. 151; [1972] 1 All E.R. 1114.
[4] *The Times*, 5 May 1970; [1970] Crim. L.R. 464.

evidence: (i) discouragement of bad practices by the police and (ii) a belief that evidence obtained by unfair means is unlikely to be true. The evidence which I have heard in the Confait case leads me to suggest that it should be made a rule of law that no person should be convicted on the evidence of a confession obtained in any of the following circumstances *unless that evidence is supported by other evidence not obtained in any of such circumstances:*

(a) a confession obtained, in response to questioning by the police, by means of a breach of the Judges' Rules or Administrative Directions, whether or not the effect of the breach was to make the confession "involuntary";

(b) a confession made by a child or young person in response to questioning by the police without the presence of a parent, guardian or other person not a police officer;

(c) a confession made by a mentally handicapped person (whether or not known to be so at the time) in response to questioning by the police without the presence of a parent, guardian or other person not a police officer; and

(d) an oral confession made in a police station (whether the maker was in custody or not) of which a tape-recording is not available. (Head (d) could obviously only be introduced if and when tape-recording is available in all police stations.)

The evidence also leads me to make a further and separate suggestion, namely that (whether or not my first suggestion is adopted) it should be made clear that any breach of the Judges' Rules or Administrative Directions may in itself constitute a ground on which a judge may in the exercise of his discretion exclude a confession obtained thereby, whether or not the effect is to make the confession "involuntary" and whether or not there is supporting evidence. (If my first suggestion was adopted the confession would be covered by (a) above if there was no supporting evidence.) Moreover, it should not be a necessary condition for the exercise of the discretion that in addition to a breach of the Rules or Directions unfair or oppressive treatment should be established, though since the Rules and Directions are presumably standards of fairness it is difficult to see how a breach could fail to constitute unfair treatment.

Children and young persons and mentally handicapped persons

2.27 I should make it clear that sub-paragraphs 2.26(b) and (c) above are intended to apply even where there was no breach of the Directions because (in the one case) it was not practicable to have a parent or other independent person present or (in the other) the police officer reasonably failed to detect that the person interrogated was mentally handicapped. The protection for mentally handicapped persons afforded by Home Office Circular No 109/1976 (see paragraph 16.4 below) or which would be afforded if legislation along the lines of the Protection of Mentally Retarded Persons (Evidence) Bill introduced in the House of Commons by Mr Price on 5 March 1975[1] (see paragraph 16.9 below) were to become law, is always likely to be limited because of the genuine difficulty for a police officer to determine whether a person is mentally handicapped. The

[1]Official Report, Volume 887, columns 1486–1488.

requirement for supporting evidence in these two cases would not be a reflection of any misbehaviour on the part of the interrogator, but a recognition of the fact that protection for children and young persons and mentally handicapped people ought not to depend on the ability of the police officer to detect mental handicap or the practicability of securing the attendance of a parent or other independent person.

Contemporaneous supervision of police interrogation

2.28 The Confait case provokes the question whether there should not be some person or body of legally qualified persons independent of the police with the duty to supervise police interrogation at least in serious cases (e.g. the category of cases which are required to be conducted by the Director of Public Prosecutions). There is a model for the introduction of such supervision into an adversary system in Scotland, where (in theory at any rate) police investigations are under the supervision of the procurators fiscal. (See paragraphs 15.14–15.18 below where the Scottish system is discussed in more detail.) However, the procurator fiscal does not attend police interrogations, and protection for persons interrogated is largely secured by the rule of Scots law that evidence unfairly obtained will be excluded at the trial, coupled with the fact that Scots law requires corroboration and no one can be convicted solely on the evidence of an uncorroborated confession. There may be other reasons for introducing the equivalent of procurators fiscal (see paragraphs 2.42–2.44 below), but I do not believe that this would be an effective way of affording additional protection to persons interrogated by the police. If independent supervision is thought to be required, a far more radical move in the direction of the French system of *juges d'instruction* would be necessary. I have not investigated this possibility (see paragraph 1.9 above). I believe that the existing rules, if strengthened in the ways which I have suggested above, will give effective protection.

Conduct of the prosecution

2.29 The Confait case has shown that it is possible:

(a) for a prosecution to proceed through all stages up to the start of the trial based on a time of death outside the brackets given by medical witnesses, without any attempt to clarify the medical evidence or to discover whether it was consistent with the case to be presented;

(b) for a prosecution based wholly (or almost wholly) on uncorroborated confessions to proceed to trial without proper steps having been taken to seek evidence to support or contradict the evidence of the confessions;

(c) that, although in a prosecution such as that of the three boys there are five occasions when a dispassionate evaluation and analysis of the case could take place (preparation of police report—consideration by the professional officer of the Director of Public Prosecutions—committal—perusal of brief and advice on evidence by counsel—receipt of alibi statements), there can be no assurance that those occasions will be used so as to lay bare discrepancies and weaknesses in the prosecution case; and

(d) for the pathologist to be given no opportunity to see the other evidence relevant to time of death and reconsider his own estimate in the light of it.

2.30 The Devlin Committee on Evidence of Identification in Criminal Cases said of the cases which they were considering:

> "A foreign jurist, studying the two cases on which we have to report, might be tempted to attribute the whole trouble in both of them to the lack in the English system of any officer of justice such as the *juge d'instruction*, whose function it is to apprise himself of all the relevant facts, whether they tell for or against the prosecution, to decide upon what charges, if any, the accused is to be arraigned and to place all this material before the court of trial. If there had been such an officer in Dougherty's case, he would have discovered well before the trial was due to begin that the accused had a cast-iron alibi. In Virag's case he would have unearthed material which would have caused the prosecution's case to have been presented quite differently and might, notwithstanding the apparent strength of the identification evidence, have produced an acquittal."[1]

The same suggestion might be prompted by the Confait case. The evidence which I have heard suggests that the police do not at present see it as their duty to initiate enquiries which might point to the fact that they had got the wrong man, or that for some other reason the prosecution should fail. And there is nobody outside the police who regards it as his duty to spur the police on to question the case and to follow lines of enquiry which might be inconsistent with it.

2.31 I have come to the conclusion that, so far from trying to make the time of death more precise, those concerned with the investigation and prosecution, i.e. DCS Jones, Mr Williams (the professional officer in the Department of the Director of Public Prosecutions) – so far as he was aware of the problem, and Mr Du Cann (Treasury Counsel who conducted the prosecution case at the trial), made every effort to keep it as vague as possible. The reason for this was that they were concerned to establish a case which rested wholly or mainly on confessions which could not be entirely true unless the time of death was outside the brackets given by Dr Bain, the police surgeon, and Dr Cameron, the pathologist, who examined the body during the early morning of 22 April 1972. I do not believe that Dr Cameron ever made his times more precise to DCS Jones. But I am sure that from the start DCS Jones knew that the medical evidence pointed to a time before midnight and that this created a difficulty in view of the time when the fire was discovered and the boys' statements. (Indeed he said as much in 1974: see paragraph 21.10 below.) DCS Jones took no steps to try to obtain closer estimates of the times of death and of the ignition of the fire, which might have made the case for the prosecution stronger but which might have made it more difficult to establish. He accepted the statement of Mr North (the fire expert who was called in to advise the police) that he was not able to estimate the time of ignition of the fire. Dr Cameron qualified his estimated time of death by words such as 'don't hold me to it'; DCS Jones accepted this and, despite the glaring inconsistency between the evidence of Dr Bain and Dr Cameron, and the unexplained gap between (a) the latest time of death given by the two doctors and (b) the time of discovery of the fire and the apparent timing of the events described by the three boys, he made no further enquiries of Dr Cameron. He did not show to Dr Cameron the statements as to the state of the body made by the firemen who discovered it or by Dr Bain, who was the first to examine it; nor was Dr Cameron given any information about the heat in the

[1]HC 338 (session 1975–76) paragraph 1.6.

room; nor was he asked if he could give a more precise estimate of the latest possible time of death. DCS Jones did not mention in the police report the apparent discrepancies and I am far from satisfied that he raised them in conference with Mr Williams. Mr Du Cann in my opinion was anxious to keep the time of death open, as he in fact succeeded in doing at the trial; he certainly did not prior to the trial take any steps to narrow down the period.

Criticism of Professor Cameron

2.32 As a pathologist retained by the coroner it was no part of Dr Cameron's duty to take the initiative in any matter relating to the police investigation or the prosecution. He was never shown or told of the statements of the firemen or of Dr Bain. I do not consider he is to be criticised for not asking for them. It was not for him to ask for a conference, and it was not his fault that no conference took place prior to the start of the trial. However, I find his conduct open to criticism in the following respects:

(a) Professor Cameron admitted frankly that he was wrong not to have taken a rectal temperature at the scene. He said that not to have done so was entirely contrary to his own teaching and practice. He had a reason for not doing so – namely a desire not to disturb or possibly injure the anus by taking a temperature in the bad light at the scene; and his intention to take a rectal temperature at the mortuary was frustrated by the delay in getting the body to the mortuary. But he now accepts (and Professor Forbes, a distinguished pathologist who gave evidence at my Inquiry, agrees) that this was not a sufficient reason. If a rectal temperature had been taken, it might well have altered the whole course of the case.

(b) Dr Cameron did not in his report describe in detail the extent of rigor observed by him. He said that this would not be normal in a report prepared for a coroner, and I consider that under the system in operation at present (see chapter 22) he is not to be criticised for not doing so. However, I consider that Professor Cameron is to be criticised for using in his report the phrase "rigor was commencing" without explanation when it is apparent from the evidence he has given to me that he was using it in a special sense—a sense which is not in my opinion the natural meaning of the words nor one which would occur to a reader.

(c) Before writing the report for the coroner Dr Cameron revised his opinion as to time of death from 9.45 plus or minus two hours to 6.30/10.30 p.m. Yet in his report he repeated his original estimate. Although he believes that he told the police of his revision of the estimate, I do not believe that he did so.

(d) According to Professor Cameron's own evidence, he was worried when he read the newspapers a few days after 22 April: "my estimation of the time of death must either have been wildly out or the house went on fire long after death." I find this evidence difficult to reconcile with his evidence that the first time he realised that the time of death was crucial was after coming out of the witness box at the Old Bailey and with other evidence given at my Inquiry. But if he really did become worried at an early stage then I consider that he is to be criticised for not communicating his worries to the police. I am satisfied that he did not do so.

(e) If it is true (as DCS Jones said) that at the post mortem Dr Cameron said that death could have occurred as late as 1 a.m., then he was at fault in not correcting that statement in the light of his revision of his estimate.

(f) I do not criticise Professor Cameron for the evidence which he gave at the trial. That is outside my terms of reference. But I feel obliged to comment on it since Sir Norman Skelhorn in his evidence before me criticised it. Sir Norman said:

> "I think the thing that basically went wrong here was that Dr Cameron did not give evidence in the same definite and firm way, either by way of the statement which he gave initially or when he was giving evidence at the trial either in chief or under cross-examination, as when he came to the reference . . . hearing of the Court of Appeal—when he gave very much more definite, firm evidence . . . it being the fact that . . . two other very eminent pathologists had in the meantime also given a firm view with which he found himself in agreement. I think that that underlay the whole trouble here. If that firm view had been given from the word go or even if it had been given when he saw Mr Du Cann or even if it had been given when he gave evidence at the trial, I think that it is very likely this Inquiry would never have been required."

In my opinion, Dr Cameron was not given a fair chance to consider the time of death in the light of all the evidence available, and he was led by the questions put to him to express views which made it possible for the Judge to sum up to the jury in the way he did.

Criticism of police

2.33 In my opinion the police were at fault in not going back to Dr Cameron and asking him to consider all the evidence bearing on the time of death and to give (if he were able to) a more precise estimate in the light of that evidence.

2.34 The first moment when they should have realised the necessity to do this was 25 April. The matter which should have alerted them to the need to do this was a combination of the following:

(a) the confessions, which appeared to recount a killing immediately followed by an arson;

(b) the fact that the fire was discovered at about 1.15 a.m. and that (even though Mr North could not estimate the time of ignition) it clearly might well have been ignited only a short time before it was discovered;

(c) the fact that both Dr Bain and Dr Cameron had given estimates of time of death (with whatever reservations) prior to midnight;

(d) the fact that Dr Bain and Dr Cameron were giving estimates within the same bracket though their factual evidence as to the degree of rigor differed; and

(e) the fact that to the knowledge of the police there was other evidence relevant to the time of death (the evidence of the firemen) which was not known to Dr Cameron.

2.35 There is an obvious danger in attributing blame in the light of hindsight. But doing my best to put myself in the position of the police at the time, I consider that they should have appreciated that a further opinion from Dr Cameron was required, and should either have obtained it themselves or at least raised the question specifically with Mr Williams and asked his advice as to whether a further opinion should be sought. The discrepancy between Dr Bain and Dr Cameron was (as Mr Du Cann said) "plain as a pikestaff", and anybody who looked at the papers with "half an eye and part of a mind" could see that time was of importance right from the start.

2.36 I believe that on 22 April (when the first 'specrim' was sent—see paragraph 21.6 below) the police considered themselves justified in placing the death before midnight. If that was their conclusion from the evidence which they had, then it was not justifiable for them to extend the period without making sure that the medical evidence entitled them to do so. If on the other hand they considered (as they have told me) that the evidence was so uncertain that, despite the estimates contained in the reports of Dr Bain and Dr Cameron, death as late as 1 a.m. could not be excluded, then I consider that they should have realised (in the light of the above facts) that the prosecution should not be allowed to proceed without an attempt to make the estimates more precise, or at least they should have sought the advice of the Director of Public Prosecutions as to whether it should be allowed to proceed.

2.37 DCS Jones agreed that as soon as he got Dr Cameron's report it was apparent that "it did not marry up": there was a gap of 1¼ hours between the end of Dr Cameron's bracket and the time (1 a.m.) at which he then believed the fire to have been ignited. DCS Jones did not discuss this gap with Mr Williams (though he said that he discussed with Mr Williams the discrepancy between Dr Bain's and Dr Cameron's factual evidence about rigor). He agreed that this matter ought to have been specifically mentioned in the police report or raised orally with the Director's professional officer, but said that he did not attach a great deal of importance to it in view of the admissions made by the youths and the other evidence which the police had to support the charges. Mr Davis, Deputy Assistant Commissioner (Crime), said that he would have been alerted by the discrepancy and would have gone back to Dr Cameron and asked if the boys' statements were consistent with his findings. The matter should have been brought up either in the police report or orally with the officer of the Director of Public Prosecutions and discussed with him.

2.38 The second occasion on which it should have been plain that a further opinion should be sought from Dr Cameron was after the statements had been obtained from the alibi witnesses. It is true that the case was by that time in the hands of Treasury Counsel, but I believe that the police should have raised expressly with him the apparent contradiction between Lattimore's alibi and the estimates of time of death, and sought his advice.

Criticism of Mr Williams

2.39 I have some sympathy with Mr Williams. He was under great pressure of work. The police report did not bring to his attention the difficulties in the case. According to Sir Norman Skelhorn he did all that was expected of him. But I cannot absolve him from criticism. By the time that he had read the police report and the witness statements, he had all the information which the police

had, other than the fact that Goode had been under suspicion and had been eliminated only after a severe interrogation by DCS Jones. The same features of the case which should have alerted the police to the need for further enquiries should have alerted him.

Criticism of Mr Du Cann

2.40 Mr Du Cann expressed the view that the police were not to blame, and generously took all the blame on himself. I asked him why the consideration which led the Court of Appeal to quash the convictions (namely the impossibility of reconciling the time of death with the confessions) was not brought to light earlier, since all the *facts* were known long before the trial started. He said that the fault was his in that he, having read the evidence in a certain way, allowed the trial to go forward on the basis that death took place after the time span given by Dr Cameron: he thought the evidence as to time of death was very vague and very elastic. He said that if Dr Cameron had said (with the same firmness as he later told the Court of Appeal) that death could not have taken place after midnight, the trial would have taken a different course, and might have resulted in an acquittal. He said that the blame for not teasing out of Dr Cameron his true view was his; he went on:

> "I cannot believe [the police] were at fault at all. Professor Cameron put the time of death within a span of four hours. There is nothing in that which requires or demands Mr Jones or Mr Stockwell to go back and make further enquiries. It would be absurd I think to invest the police, whatever their experience may be, with such a knowledge of trial procedure and the weighing of the issues, including the subtleties of presentation of evidence before a jury, that before the brief comes into my hands they have already foreseen I may demand additional information to that which they have already got out of Professor Cameron. I would state in the plainest terms that they are not at fault in any way at all."

Though Mr Du Cann must share the blame, I do not accept this exculpation of the police. If the exculpation of the police was justified, then it would indicate a grave fault in our system. I have no doubt that discrepancies of the kind which existed here should be brought to light long before the trial. The fault at the outset was wholly that of the police; and though the police are entitled to claim that in the later stages the major share of the blame should rest on Mr Williams and Mr Du Cann, it was accepted by all those who gave evidence on this aspect at my Inquiry that the responsibility of the police does not cease when the Director of Public Prosecutions and Treasury Counsel come on the scene.

The English and Scottish prosecution systems

2.41 My Inquiry has been concerned with a case where the Director of Public Prosecutions took over the prosecution within four weeks of the crime. I felt justified by my terms of reference in considering whether a change in the system of prosecution would have made less likely the things which went wrong in the Confait case, and I have been led on to consider the merits of the arguments in favour of a change in the system *in cases similar to the Confait case*, i.e. murder cases and others falling within regulation 1 of the Prosecution of Offences Regulations 1946.[1] The evidence which I have heard has been related to that

[1]S.R. & O. 1946 No 1467.

class of case. I am not in a position to make recommendations or express opinions about the general question of a change in the prosecution process for all criminal cases. Many of the arguments in favour of a change relate to criminal prosecutions where the Director of Public Prosecutions is not involved, and where the prosecution is conducted either by the police from start to finish (as is true of most prosecutions in the magistrates' courts) or by prosecuting solicitors (or private solicitors acting for the police) and counsel instructed by them. The Director of Public Prosecutions, when he prosecutes, does so in the discharge of a statutory duty; he is not acting for the police or anyone else as client; the Attorney General is the only person who can give him directions. Most of the desiderata set out in the *Justice* report *The Prosecution Process in England and Wales*[1] are already satisfied in cases where the Director of Public Prosecutions conducts the prosecution: the Director already does (or can do) most of what the "Department of Public Prosecutions" suggested by *Justice* would do. If there is to be any general change in the direction of the Scottish system of prosecution, it could take the form of an extension of the Director's duty to prosecute so as to cover all cases tried in the Crown Court.

2.42 I had the benefit of the evidence of Mr Henry Herron, who was a procurator fiscal or assistant procurator fiscal for 30 years and who for 11 years prior to his retirement in 1976 was Procurator Fiscal in Glasgow. He gave me valuable information about the way in which prosecutions are conducted in Scotland. I have also studied the description of the Scottish system in *Smith v. HM Advocate*[2], the Second Report on Criminal Procedure in Scotland (the Thomson Report)[3] published in 1975, and the speech made by the Solicitor General for Scotland (Mr John McCluskey QC, now Lord McCluskey) at a conference on the prosecution process held at the University of Birmingham in April 1975.

2.43 The aspects of Scottish procedure which seem to me to be relevant to my Inquiry are the following:

(a) There is no coroner in Scotland; the investigation of a sudden suspicious or unexplained death devolves on the procurator fiscal. An "inquest" will take place only if the procurator fiscal petitions for, or the Lord Advocate directs, a public inquiry.

(b) Investigation by the police is under the general supervision of the procurator fiscal who normally attends the scene of a murder and summons the pathologist(s). Lord McCluskey said (at page 42 of the edited transcript of the conference referred to in paragraph 2.42 above) that: (i) in the great bulk of cases the procurator fiscal will not know about the police investigations till they have been completed, at which stage the police report to him; but (ii) in the serious cases the procurator fiscal will be informed at the outset and may choose personally to direct the investigation, acting in contact with the police and giving instructions. But (according to Mr Herron) the procurator fiscal does not tell the police what to do, he advises them in law and sets limits to their investigations: "He gives [the police] what they can and cannot do in law." He would never be present at a police interrogation.

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[1]Report, published 1970, of a committee under the joint chairmanship of Lewis Hawser QC and Basil (now Lord) Wigoder QC.
[2]1952 S.L.T. 286, 288–9.
[3]Cmnd. 6218.

(c) The results of the police investigation are reported to the procurator fiscal and it is he (advised by Crown Counsel) who decides whether prosecution is justified and what the charges should be.

(d) There are no committal proceedings in Scotland. The procurator fiscal precognosces all witnesses, that is to say he sees them in private and goes through their evidence and prepares precognitions. The accused is not precognosced. If a witness refuses to speak, he can be taken before the sheriff and compelled to answer questions.

(e) Precognitions are not normally disclosed to the defence, and cannot be referred to at the trial—indeed the witness is entitled to have them destroyed before the trial. The defence are given a list of witnesses with the indictment and can themselves precognosce the witnesses.

2.44 A change to a system like the Scottish, for the investigation and prosecution of serious crimes, might be expected to achieve a number of beneficial effects. Whereas the Director of Public Prosecutions intervenes in a police investigation only if his advice is requested by the police, a system like the Scottish would give the initiative to the equivalent of the procurator fiscal, who might see the need for early intervention by an independent legal mind in cases where the police would not appreciate the need. A system like the Scottish would ensure that decisions to prosecute were taken by someone who had not been deeply involved in the investigation. It would ensure that every case was under continuous professional supervision from the start right up to trial. It would ensure that proper and uncommitted evaluation of the prosecution's case at an early stage would always take place, and that prosecutions would not be permitted to proceed with important issues unexamined.

2.45 The need for an analysis and evaluation of the case by a legally qualified person at as early a stage as possible is amply illustrated by the Confait case. The purpose of such evaluation should be not only to judge the narrow question of whether there is evidence to support the prosecution's case, but to look into the strength and weakness of the prosecution's case in an objective way to determine whether continued prosecution is justifiable. If a legally qualified person had been involved early on, he might have directed enquiries into all those matters for whose omission the police have been criticised (see paragraph 23.12 below): the movements of Confait, the movements of the boys, the discrepancy between Dr Bain and Dr Cameron, the time of death, the time of the fire. Sir Norman Skelhorn was prepared to agree that this might have happened. However, there cannot be any assurance that a legally qualified person, looking at the position directly after the boys had made their confessions, would have been any more likely to direct such enquiries than Mr Williams was three weeks later. He might well, like Mr Williams and DCS Jones, have been satisfied that the confessions made it unnecessary to seek further evidence.

2.46 Sir Norman Skelhorn expressed the view that investigation and prosecution were different functions, requiring different kinds of expertise, and that responsibility for them should in principle be kept quite separate and distinct. He expressed the view that his officers were not qualified to conduct, supervise or take part in the process of investigation. Sir Norman would not favour the adoption of a system under which his officers were responsible for supervising police investigations. However, he said that:

"The police are . . . entitled to, and in practice quite often do, seek guidance from me as to the general lines of their investigation as opposed to the detailed manner in which they should conduct their enquiries. This is particularly so, for example, in complex cases of fraud or corruption, where I may give advice as to the nature of the evidence required or the limits to be placed on the investigation as a whole.

In addition, my guidance is sought where the police are uncertain whether to treat a person as a witness or a potential defendant.

In cases of murder, it is rare for the police to seek my advice before they have made an arrest and submitted their file to me.

I think it is generally desirable that in cases of complexity where there is no necessity for immediate arrest, the police should consult me before launching proceedings. I find that, broadly speaking, the police themselves recognise this, but occasions have occurred where I have felt that difficulties could have been avoided had my advice been sought before a premature arrest was made.

Even in a case where an arrest had been made, should the investigating officer feel that there were difficulties on which he would like advice, I would certainly encourage him to consult the appropriate Assistant Solicitor, despite the fact that the final police report and all witness statements were not yet available.

Once I have received from the police a report and statements concerning any criminal offence, however, I can, and not infrequently do, request further enquiries, and the police invariably accede to such a request.

I might consider such further enquiries necessary where, for example, there is a lacuna in the evidence necessary to prove the alleged offence, or where the defendant has raised an alibi."

He agreed that the present English system places great reliance on the competence and integrity of the investigator up to the moment when the prosecution comes into the hands of the Director of Public Prosecutions.

Investigation and prosecution—other Government Departments

2.47 I caused enquiries to be made into the organisation for investigation and prosecution in other Government Departments. The questions asked were:

(a) whether the investigating officers are part of the solicitor's department or are a separate organisation;

(b) whether they act under the direction of the professional officer having the conduct of a case in which a prosecution is under consideration;

(c) whether officers conducting prosecutions themselves take statements or see witnesses; and

(d) whether decisions by Government Departments to prosecute or not are taken by the investigating side or by the prosecuting side, and how and by whom the decision whether to prosecute is taken.

The answers given were:

Ministry of Agriculture, Fisheries and Food

(a) Not part of the legal department—part of an administrative division.

(b) Investigating officers act under the general direction of the lawyer with responsibility for the conduct of the case, in much the same way as

police officers act under the general direction of the Director of Public Prosecutions, but no attempt is made to exercise close supervision over them.

(c) Prosecutions are conducted by members of the legal department, who do not normally take statements or see witnesses (except sometimes shortly before trial).

(d) By the administrator responsible, in the light of advice from the legal department. (Some cases are referred to the Director of Public Prosecutions.)

HM Customs and Excise

(a) Separate.

(b) They normally act as purely investigating officers, submitting reports to the appropriate technical division in headquarters, with a view to proceedings being instituted but they might, if necessary, continue their enquiries on lines indicated by the legal adviser allotted to the case.

(c) Not as a rule.

(d) By the Commissioners, or by civil servants acting under specific authority from the Commissioners.

Department of Health and Social Security

(a) Separate.

(b) The investigating officers only act under the directions of the professional officers dealing with the case in relation to any further enquiries that may be necessary after it has been submitted for prosecution, or, exceptionally, in relation to a case which is submitted for advice during the course of investigations.

(c) Officers conducting prosecutions do not normally take statements or see witnesses other than outside court immediately before a hearing. Exceptions to this are very few indeed.

(d) By the non-professional side of the Department.

Board of Inland Revenue

(a) Separate.

(b) The Solicitor's Office may be consulted in the course of the investigation, for example, as to whether there is sufficient evidence to justify submitting the case to the Board, or whether further enquiries are needed, and/or for advice as to how or what further enquiries ought to be carried out. Matters of this kind are normally dealt with by an assistant solicitor, and not by the professional officer who would be responsible for the conduct of any prosecution that might later be decided on.

(c) Once a prosecution has been ordered by the Board proofs of evidence in the cases of professional men (accountants, solicitors etc.) are commonly taken by a lawyer on the staff of the Solicitor's Office. Whenever possible, however, this is not the professional officer conducting the prosecution. Otherwise all witness statements and subsequent proofs of evidence are taken or prepared by officers of the investigating bodies or (after proceedings have been ordered) by non-professional members of the Solicitor's Office.

(d) By the Board.

Departments of Trade, Industry and Prices and Consumer Protection

(a) Investigating officers are part of the Solicitor's Department (which serves the three Government Departments jointly).

(b) They act under the direction of a professional officer.

(c) Prosecuting officers do not themselves take statements or see witnesses.

(d) The actual decision to prosecute is taken by the administrative division on the advice of a professional officer in the Solicitor's Department.

Conclusion

2.48 For the reasons which I give in paragraph 1.8 above I do not consider that I can usefully express a view as to whether a system like the Scottish should be introduced in England and Wales. I should, however, report the conclusions which I derive from the evidence given at my Inquiry as to improvements which might be made in the English system on the assumption that it will continue basically unchanged. I emphasise once again that any views which I express relate only to those categories of case in which the Director of Public Prosecutions is required to "institute, undertake or carry on" the proceedings.

2.49 *The pathologist*

(a) Whenever a pathologist's report may be relevant to a police enquiry, it should be prepared by a pathologist employed by the police (who may be the same as the pathologist employed by the coroner).

(b) The police should tell the pathologist (perhaps by the use of a standard form) the questions they are interested in.

(c) The pathologist should, prior to committal or as soon as possible thereafter, see the statements of all other witnesses whose factual evidence may be relevant to time of death (where this is a material issue) or to any other medical question. Where appropriate the pathologist should see the statements of any alibi witnesses.

(d) Every attempt should be made to narrow and firm up estimates of time of death.

(e) A prosecution based on a time of death outside a time bracket given by a pathologist should not be instituted or proceeded with without going back to the pathologist for further advice.

(f) If a pathologist is to give evidence, counsel should *always* have a conference with the pathologist before the start of the trial.

(g) If the pathologist, as a result of (c) – (f) or for any other reason, adds to or alters what he has said in a witness statement which has been tendered, notice should be given to the defence.

2.50 *Unsupported confessions*

(a) When interviewing a suspect the police should always ask at what time events being spoken about by the suspect occurred.

(b) The police should always look for evidence to support or contradict a confession. The police report to the Director of Public Prosecutions should always mention what steps have been taken and the result.

(c) So long as there is no supporting evidence for a confession, the police should not automatically conclude their enquiries on the assumption that the confession is true but should continue other enquiries until they are satisfied that all alternatives have been excluded.

(d) When the only evidence is an unsupported confession, the police should consult the Director before charging.

(e) When consulted by the police in such a case, the Director's professional officer should apply his mind not only to the question whether there is a *prima facie* case against the person whom it is proposed to charge, but also to the question whether there are or have been other actual or potential suspects, and what, if any, further enquiries should be made by the police before a decision to charge is taken.

2.51 *The police report*

(a) Between receipt by the Director of Public Prosecutions of the preliminary application for legal aid (form 153) and the full application (forms 153 AA, AB and AC) the Director, though technically responsible, has not sufficient information to exercise any effective supervision over the case. This period should be made as short as possible, and the police should accept that during it they must continue their enquiries as necessary and deal with any new material which may come in. They should avail themselves readily of the Director's invitation to seek his advice in advance of the submission of the police report.

(b) The police report should draw attention to points which might tell against the prosecution case as well as to those which tend to support it. It should mention any difficulties in the case, and any discrepancies in the prosecution evidence. It should mention any serious suspects who were eliminated by the police.

2.52 *The Director of Public Prosecutions*

(a) The Prosecution of Offences Regulations 1946[1] require revision.

(b) The demands made of the Director's professional staff are excessive. If they are to perform their task properly, their work should be reduced. Unless the volume of crime diminishes, this will require an increase of professional staff.

(c) On receipt of the police report the Director's professional officer should analyse and evaluate the totality of the evidence in a critical way, not confining his attention to the question whether there is evidence to support the charge, but considering also whether further police enquiries should be made before the case should be allowed to proceed, and whether there are any other reasons why it should not continue.

(d) The Director's professional officer should continue to maintain an active supervision over the case after committal and after the brief has gone to counsel. He should attend any conference held with counsel. Where statements of alibi witnesses are obtained, he should re-examine the whole case in the light of those statements, and consider what instructions should be sent to counsel. Normally instructions should be

[1]S.R.& O. 1946 No 1467.

sent to advise generally on the whole case in the light of the statements of the alibi witnesses.

(e) In any case in which there are difficulties or discrepancies in the prosecution evidence, or which rests wholly or mainly on an unsupported confession, the Director should ask for a full committal with *viva voce* evidence.

2.53 *Editing of witness statements and disclosure to the defence*

(a) Any excision of material from a witness statement should be treated as 'editing' for the purpose of the practice direction (see paragraphs 29.1–29.10 below). Fresh statements excluding material contained in earlier statements should not be taken by the police for use at committal proceedings.

(b) There should be uniform and binding rules about disclosure to the defence of witness statements (other than those tendered). I suggest some such rules as those contained in sub-paragraphs (c) to (i) below, which I believe would be acceptable to all or most of those who gave evidence on this topic before me. I have framed my suggestion in terms of counsel-to-counsel disclosure but it may be difficult to ensure that statements are disclosed early enough if disclosure continues to be on a counsel-to-counsel basis, and some other basis may be inevitable. Special arrangements would have to be made for unrepresented defendants.

(c) All statements taken by the police should be disclosed by prosecuting counsel to defence counsel in the absence of any special reason to the contrary. The rule should apply to all the three categories mentioned in paragraph 29.22 below.

(d) Special reasons might include national security, the safety of the witness, the interests of justice, the possibility of intimidation of a witness, anything (such as a special relationship between the defendant and the witness concerned) which might lead to a belief that an attempt might be made to mislead the court.

(e) The statement of a witness whom it is believed the defence will call may be withheld. But as soon as it becomes clear that the witness is not going to be called by the defence the statement should be disclosed.

(f) Disclosure should not normally be subject to conditions, but counsel may impose a condition that the statement is for counsel's use only. Such a condition should be imposed only on grounds analogous to those set out in (d).

(g) No statement should be withheld or condition imposed except on a ground which the person withholding the statement or imposing the condition is prepared to defend before a judge; and there should be machinery under which, in the event of an objection by the defence, the question whether a document has been properly withheld or condition properly imposed can be determined by a judge.

(h) A time limit should be laid down for disclosure which would ensure that the defence received the statements a reasonable time before the start of the trial. There should be an effective penalty for late disclosure,

e.g. the right (unless the judge otherwise directs) to an adjournment with the costs thrown away falling on the prosecution if the defence are prejudiced by late disclosure.

(i) Disclosure should be made whether or not the defence ask for it. Any other rule will put unrepresented defendants, and defendants represented by inexperienced solicitors or counsel, at a relative disadvantage. Moreover, there may be cases where defence counsel reasonably but wrongly believe that there is no point in asking, whereas there are in fact statements in the possession of the prosecution which would help the defence.

PART II

CHAPTER 3

CHRONOLOGICAL SUMMARY

Date	*Time*	
1972		
22 April	1.21 a.m.	Call about fire at 27 Doggett Road received at Lewisham Fire Station.
	1.23 a.m.	First fire unit reaches fire.
	about 1.30 a.m.	First police officers reach fire.
	1.30 a.m.	In Plassy Road, PC Cumming and PC Hewison stop Leighton and Salih who have just burgled shoe repair shop in Sangley Road, and take them to Catford Police Station.
	about 1.35 a.m.	Confait's body discovered in upstairs back room at 27 Doggett Road.
	by about 2 a.m.	Fire extinguished.
	2/2.10 a.m.	Dr Bain, divisional police surgeon, arrives at 27 Doggett Road and examines body.
	2/2.40 a.m.	DI Stockwell arrives at 27 Doggett Road.
	2.30/3 a.m.	Mrs Leighton and Mrs Salih to Catford Police Station.
	3.45/4 a.m.	Dr Cameron arrives at 27 Doggett Road and examines body.
	3.45 a.m.	Leighton and Salih released from Catford Police Station.
	about 4 a.m.	DCS Jones arrives at 27 Doggett Road.
	6.30 a.m.	Post mortem examination of Confait's body begins at Lewisham Public Mortuary.
	8 a.m.	Post mortem finishes.
	?9 a.m. onwards	Winston Goode at Lee Road Police Station; interviewed by DCS Jones and statement taken by TDC Gledhill.
	5.50–6.10 p.m.	Goode examined by Dr Bain; later released.
24 April	a.m.	Mr Lattimore and Colin Lattimore go to London for appointment with solicitor at 11.30 a.m. Return about 3 p.m.
	2.50 p.m.	Fire reported at 1 Nelgarde Road (started by Leighton and Salih—observed by Colin Lattimore).
	after 3 p.m.	Leighton, Salih and Lattimore together in Ladywell Fields: play with javelins;

Date	*Time*	
24 April	about 3.30/45 p.m.	set fire to storage shed;
	about 5 p.m.	and start fire at Catford Bridge Station.
	after 5 p.m.	Mr and Mrs Lattimore to Sidcup.
	about 5.20 p.m.	PC Cumming stops and questions Lattimore in Nelgarde Road; goes with him to 146 Doggett Road (Mrs Jewell's) where he is joined by DC Bresnahan; they find Leighton and Salih in the house and take all three boys to Lewisham Police Station where they arrive, probably between 5.30 and 5.40 p.m.
	about 5.40 p.m. onwards	Lattimore (and later Leighton and Salih) questioned by DC Bresnahan and TDC Woledge at Lewisham Police Station. DCS Jones informed that the boys have made admissions about a fire in Doggett Road.
	about 5.45 p.m.	Mrs Leighton tells Michael Lattimore of arrest.
	before 6 p.m.	The three boys taken to Lee Road Police Station in separate cars by DS Cheval, DC Bresnahan and TDC Woledge, arriving at about 6 p.m.
	6–6.55 p.m.	DCS Jones and DI Stockwell interview Lattimore.
	7.05–7.35 p.m.	DCS Jones and DI Stockwell interview Leighton.
	7.40–8.05 p.m.	DCS Jones and DI Stockwell interview Salih.
	about 7.50 p.m.	Mr and Mrs Lattimore return from Sidcup and are told by Michael to go to Lewisham Police Station; there re-directed to Lee Road Police Station and arrive there about 8.15 p.m.; told by DCS Jones to go off and get refreshment.
	about 9 p.m.	Mrs Leighton arrives at Lee Road Police Station; Mr and Mrs Lattimore return.
	9.15 p.m.	Confrontation between the three boys, Mr Lattimore senior and Mrs Leighton.
	9.30–10.10 p.m.	Colin Lattimore makes written statement in presence of his father.
	about 10/10.30 p.m.	WDS Mays visits Mrs Salih, who declines to attend police station.
	10.15–10.40 p.m.	Leighton makes written statement in presence of his mother.

Date	*Time*	
24 April	10.45–11.15 p.m.	DS Gregg takes statements of satisfaction from Mr Lattimore senior and Mrs Leighton.
	about 11.15 p.m.	WDS Mays collects Mrs Ferid (interpreter) and they go to Mrs Salih's house to fetch her to Lee Road Police Station.
	about 11.30 p.m.	Mrs Salih arrives at Lee Road Police Station.
25 April	12.50–1.30 a.m.	Salih makes written statement in presence of his mother and Mrs Ferid.
	2 a.m. onwards	DCS Jones shows exhibits (flex and heater) to the three boys separately.
	10.10 a.m. onwards	Leighton takes part in experiment with 'keys' (see paragraph 23.9 below).
	12.20–1.55 p.m.	The three boys medically examined by Dr Bain.
	1.45–2 p.m.	The three boys charged with the murder of Confait and arson at 27 Doggett Road.
	after 2.15 p.m.	Boys appear before Woolwich magistrates and are remanded in custody.
27 April	4.22 p.m.	Winston Goode found in dazed and shocked condition in Doggett Road and taken to Lewisham Hospital.
27 April–7 June		Goode in Bexley Hospital with confusion and depression.
28 April		Preliminary application (form 153) by police to Director of Public Prosecutions (DPP) for legal aid.
2 May		Form 153 received by DPP.
11 May		Full application (form 153 AA) by police to DPP for legal aid, together with police report (form 153 AB), other supporting information (form 153 AC), statements and schedule of exhibits.
16 May		Form 153 AA etc. received by DPP.
16/18 May		Conference between DI Stockwell and Mr D G Williams, the DPP's professional officer.
19 May		DPP instructs police to drop murder charge against Salih.
24 May		Statements of prosecution witnesses served on defence solicitors.
26 May		The three boys further charged with arson at Ladywell Fields; and Leighton and Salih with burglary at shoe repair shop in Sangley Road.

Date	*Time*	
2 June		Committal for trial at Woolwich Magistrates' Court; charges: (a) murder of Confait (Leighton and Lattimore—charge against Salih dropped); (b) arson at 27 Doggett Road (all three); (c) arson at Ladywell Fields (all three); (d) burglary in Sangley Road (Leighton and Salih). (Mr Williams represents the prosecution.)
8 June		Alibi notice on behalf of Salih.
9 June		Alibi notice on behalf of Lattimore.
15 June		Further alibi notice on behalf of Salih.
16 June		Alibi notice on behalf of Leighton.
19 June		Police send further police report to DPP.
28 June		Brief to Treasury Counsel (Mr H C Pownall and Mr R D L Du Cann) with police report, statements, schedule of exhibits, notices of alibi, and observations (instructions).
29 June		Mr Du Cann sends draft indictment and list of witnesses to DPP; charges in indictment: (a) murder of Confait (Leighton and Lattimore); (b) } alternative counts of arson at (c) } 27 Doggett Road (all three); (d) burglary in Sangley Road (Leighton and Salih); and (e) arson at Ladywell Fields (all three). Further notice of alibi on behalf of Salih.
11 July		Mr Du Cann sends advice on evidence to DPP.
17 July		Notice of further evidence sent to solicitors for the three defendants, together with list of names and addresses of material witnesses not to be called by the prosecution.
19 July		DPP refuses request from Salih's solicitors for copies of witness statements of material witnesses not to be called by the prosecution.

Date	*Time*	
4 August		Police send further police report (dated 2 August) to DPP enclosing *inter alia* statements taken from alibi witnesses.
8 August		Further police report dated 2 August sent to counsel.
11 September		Police send further police report (dated 8 September) to DPP.
15 September		Further police report dated 8 September sent to counsel.
October		Mr Pownall returns brief; Mr Du Cann instructed to appear at trial leading Mr John Bevan.
? late October		Conference between Mr Du Cann and DCS Jones (? and DI Stockwell).
30 October		Note from DPP to counsel; advice given orally (service of further witness statements).
1 November		Trial opens before Mr Justice Chapman. Pleas of not guilty to murder (Leighton and Lattimore) and arson (all three) at 27 Doggett Road; guilty to burglary in Sangley Road (Leighton, Salih); and not guilty (Lattimore), guilty (Leighton, Salih) to arson at Ladywell Fields.
2 November		Mr Du Cann has conference with Dr Cameron. Dr Bain and Dr Cameron give evidence.
24 November		Leighton found guilty of murder and Lattimore of manslaughter on ground of diminished responsibility. Leighton, Salih and Lattimore found guilty of arson at 27 Doggett Road. Lattimore found guilty of arson at Ladywell Fields. Sentences: (a) Leighton (murder)—to be detained during Her Majesty's Pleasure; (b) Salih (arson at 27 Doggett Road, three other offences taken into consideration)—to be detained for four years; (c) Lattimore (manslaughter)—to be detained at Rampton Hospital with a restriction order without limitation of time. No separate sentences imposed for the other offences.

Date	*Time*	
December		Applications for leave to appeal lodged, by Leighton against conviction, by Lattimore against conviction and sentence, and by Salih against sentence only.
1973		
26 July		Applications refused by Court of Appeal (Lord Justice James, Mr Justice Shaw, Mr Justice Phillips).
6 November onwards		Investigation by DCI Locke under section 49, Police Act 1964, into allegation that Lattimore had been physically assaulted by TDC Woledge.
27 November		DCI Locke's report referred to DPP.
14 December		DPP informs Mr Lattimore senior that the evidence is not such as to justify criminal proceedings.
1974		
22 May		Goode commits suicide by cyanide poisoning.
16 July onwards		Further police enquiries requested by Home Office, and conducted by DCS Hensley.
13 September 30 December		Reports by DCS Hensley sent to Home Office.
1975		
18 June		Reference by Home Secretary under section 17(1)(*a*) of the Criminal Appeal Act 1968.
6, 7 and 9 October		Hearing in Court of Appeal (Lord Justice Scarman, Lord Justice Ormrod, Mr Justice Swanwick).
17 October		Judgments of Court of Appeal: (a) quashing convictions for murder (Leighton), manslaughter (Lattimore) and arson at 27 Doggett Road (Leighton, Salih, Lattimore) as being unsafe and unsatisfactory; and (b) giving absolute discharge on charges of arson at Ladywell Fields (all three) and burglary in Sangley Road (Leighton and Salih).
28 November		Warrant by Home Secretary and Attorney General requiring Sir Henry Fisher to inquire into the circumstances

Date	*Time*	
28 November (contd)		leading to the trial of Colin George Lattimore, Ahmet Salih and Ronald William Leighton on charges arising out of the death of Maxwell Confait and the fire at 27 Doggett Road; and to report.
19 December		Preliminary hearing.
1976		
16 February		Substantive hearing (due to begin on 15 March) postponed indefinitely, after consultation between Sir Henry Fisher, the Home Secretary and the Attorney General, to enable a further police investigation to be made into Confait's death.
23 February		Mr James Fryer, Assistant Chief Constable, West Mercia Constabulary, begins investigation.
27 May		Mr Fryer submits report to DPP.
29 June		Attorney General (having concluded that the evidence did not justify any criminal proceedings) and Home Secretary invite Sir Henry Fisher to resume Inquiry.
6 September – 2 December		Substantive hearing.
27 September		Parliamentary Commissioner for Administration reports to Mr Christopher Price MP rejecting complaint against Home Office by Leighton, Salih and Lattimore about delay in referring case to Court of Appeal and about the arrangements for the investigation of the circumstances surrounding Goode's death and Lattimore's allegation of ill-treatment by the police.

PART II

CHAPTER 4

THE SCENE

4.1 Doggett Road SE6 is in the London Borough of Lewisham. It starts, at the south end, from Catford Road, about 150 yards west of Catford Broadway and just east of Catford Bridge Station, and runs northwards for some 660 yards to a park and playing fields known as Ladywell Fields, where it turns to the right for a few yards to join Silvermere Road. On its east side there are small terrace houses built apparently about the turn of the century which are for the most part well-kept and appear to be in good condition; halfway along there is a school. For most of the length of Doggett Road there are no houses on the west side, since it runs immediately alongside the railway line between Catford Bridge and Ladywell Stations on the British Rail Southern Region route from Charing Cross to Sanderstead. But at the south end there are on the west side of Doggett Road two shorter rows of terrace houses, numbered 1 to 3a and 5 to 27 (odd) respectively, which back on to Catford Bridge Station and the railway. The northernmost house in these rows is number 27, immediately north of which there is a builders' yard.

4.2 Parallel to Doggett Road on the east is Nelgarde Road, lined on both sides (except where the school backs on to it) by terrace houses similar to those in Doggett Road. A road called Holbeach Road runs across from the railway about halfway up Doggett and Nelgarde Roads, and continues eastwards to Rushey Green, a distance in all of about 370 yards. On the east side of Rushey Green there is a one-way road system consisting of Brownhill Road (eastbound traffic), Plassy Road (southbound) and Sangley Road (westbound) which then meets Bromley Road and Rushey Green. In Brownhill Road, just opposite the end of Plassy Road, there is a Salvation Army citadel and youth club. In Sangley Road, on the east side of the junction with Plassy Road, there was in 1972 a small shoe repair shop called E.T.S. Shoe Repairs.

4.3 At page 42 there is a map of the area. The distance from 27 Doggett Road to the Salvation Army youth club by the shortest route is nearly 700 yards, and from 27 Doggett Road to the shoe repair shop is approximately 635 yards.

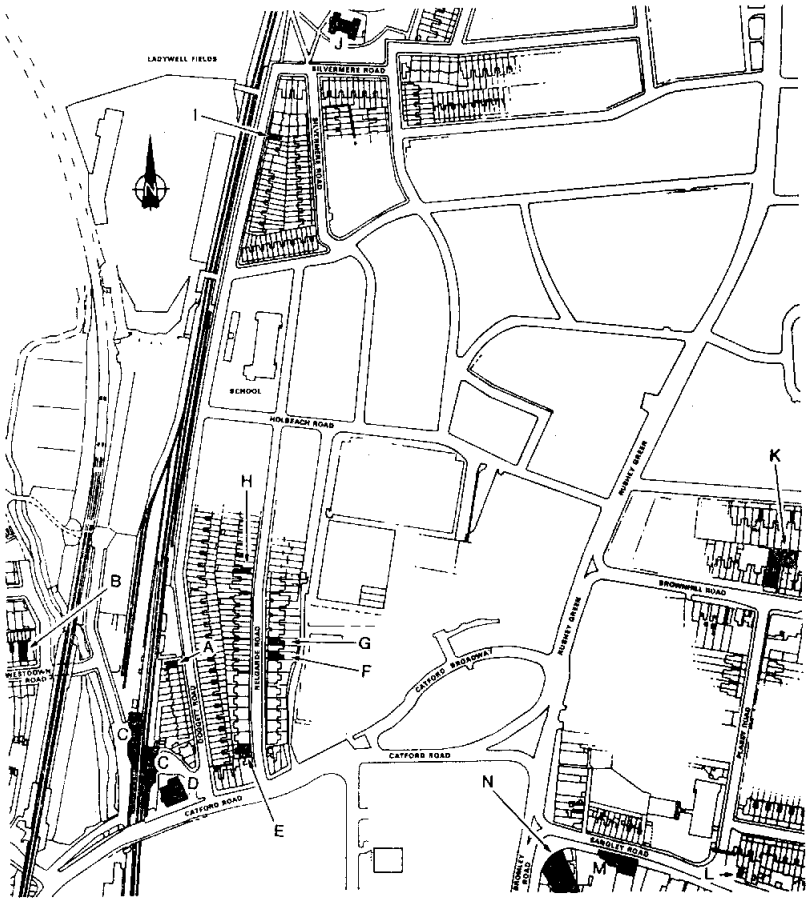
4.4 27 Doggett Road consists of three floors, which I will call the basement, ground floor and first floor (though strictly the basement is a semi-basement and the ground floor is raised somewhat above ground level). At the front of the house in April 1972 there were two entrances, the front door, which is at the top of a flight of nine steps and opens on to the ground floor, and another door which was sideways-on beneath the front steps and which opened into the basement. On the north side of the house, between it and the builders' yard, there was an alley leading to a yard at the back of the house, from which a second door opened into the basement. At the basement level a passage ran from the door at the front of the house to the back door; the left-hand side of the passage as one went from the front towards the back was against the party wall with number 25; on the right-hand side of the passage there were doors leading to a front room and a back room, then a flight of stairs leading to the ground floor and then, under the stairs, a cupboard and a bathroom. The passage from the front door to the rear door was 33 feet long, and nowhere more than 5 feet

4 inches wide. The staircase to the ground floor contained 14 steps and was about 2 feet 4 inches wide. On the ground floor there was a similar passage from front to back, with a front room and back room giving on to it, a staircase to the first floor, and a toilet at the back. On the first floor there were a front room and a back room over the corresponding rooms on the ground floor. The dimensions of the first floor back room were approximately 12 feet 8 inches by 11 feet 6 inches though a chimney breast protruded some 10 inches from one of the longer walls. A plan of the house is at page 43, and a photograph of the exterior is at page 44.

4.5 'The Black Bull' and 'The Castle' public houses were not far away from each other in Lewisham High Street, approximately a mile by road from 27 Doggett Road.

4.6 Lewisham Police Station is in Ladywell Road, close to its junction with Lewisham High Street, also nearly a mile from 27 Doggett Road. Lee Road Police Station is in Lee High Road, about 2½ miles by main road from the scene of Confait's murder.

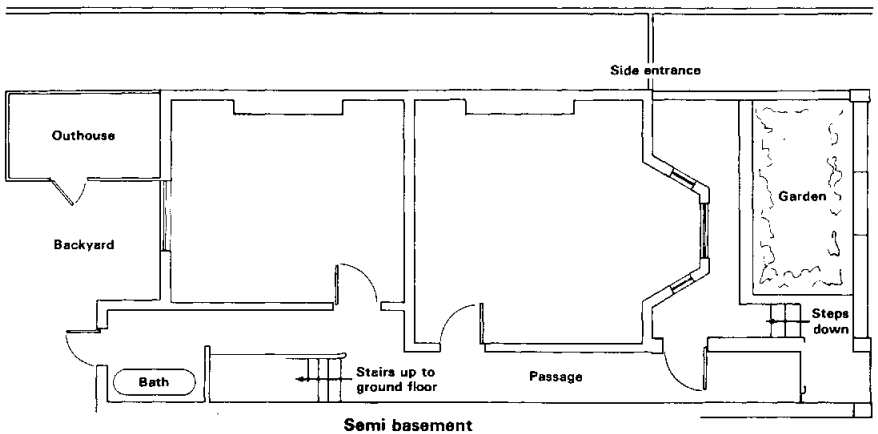
Map of the Catford area



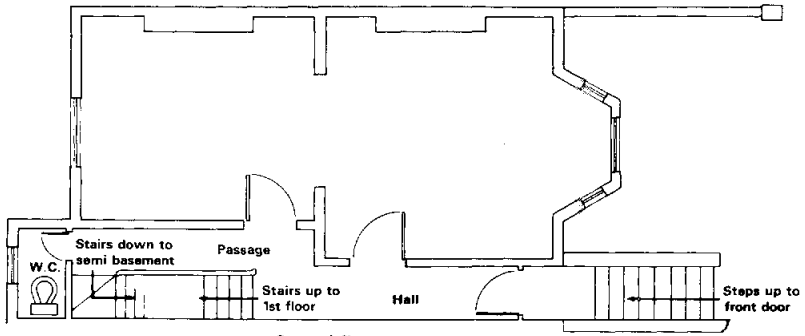
Scale = 0 100 300 500 feet approximately

LEGEND

A	27 Doggett Road	
B	25a Westdown Road	Mrs Leighton's house
C	Catford Bridge Railway Station	Fire on 24 April 1972
D	Railway Tavern Public House	
E	1 Nelgarde Road	Fire on 24 April 1972
F	16 Nelgarde Road	Mr & Mrs Lattimore's house
G	20 Nelgarde Road	Mrs Pendrigh's house
H	49 Nelgarde Road	Mrs Salih's house
I	146 Doggett Road	Mrs Jewell's house
J	Sports Pavilion, Ladywell Playing Fields	Fire on 24 April 1972
K	Salvation Army Halls	
L	Shoe repair shop	
M	Catford Bus Garage	
N	ABC Cinema	



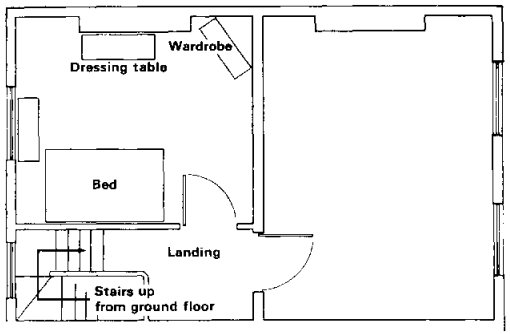
Semi basement



Ground floor

Plan of 27 Doggett Road

SCALE 0 2 4 6 FEET



First floor

Exterior of 27 Doggett Road
(photograph taken on 22 April 1972)

PART II

CHAPTER 5

DRAMATIS PERSONAE

Confait

5.1 Maxwell Thomas Berty Confait was born in the Seychelles Islands in 1945, so that at the time of his death in April 1972 he was aged 26. He spent his childhood in the Seychelles and in Nairobi, Kenya, and in 1963 at the age of 17 or 18 he came to England. From 1968 (or earlier) Maxwell Confait was a passive homosexual; he used to wear female clothing and he had homosexual relationships with a number of men; he was known as "Michelle " and I shall on occasions refer to him by that name. In 1969 he is said to have attempted suicide. He became a homosexual prostitute, and from 1970 onwards had a number of convictions for importuning in the West End of London. On 23 October 1970 he was convicted at Bow Street Magistrates' Court of importuning and given a conditional discharge for two years. On 31 October 1970 at Marlborough Street Magistrates' Court he was again convicted, and fined £20. On 1 July 1971 he was again convicted at Marlborough Street and given a sentence of three months' imprisonment suspended for three years. On 24 September 1971 he was again convicted at Marlborough Street and sentenced to two months' imprisonment and the suspended sentence was activated. On coming out of prison in January 1972 he lived for a time with his mother and in February 1972 he rented the rear upstairs room of 27 Doggett Road, which belonged to a man called Winston Goode (whom he had first met in 1969 or 1970), and went to live there. It was in that house that he met his death. For some time prior to his death he had been drawing unemployment benefit. At the time of his death Confait was awaiting trial for importuning on 6 February 1972.

5.2 Confait was a well-known figure in the area surrounding Doggett Road. He used to go about dressed in women's clothing, or in men's clothing carrying a handbag. One of the fire officers then stationed at 259 Lewisham High Street said that Confait was known locally by the nickname of "Handbag". Confait frequented two public houses in Lewisham High Street, 'The Black Bull' (till it was closed down sometime between December 1971 and February 1972) and 'The Castle', and was well known to the regulars. He had many friends and associates, with some of whom he carried on sexual relationships: among them were the witness whom I refer to as Mr B X whose sexual relations with Confait started in late 1970; his brother, Mr A X, who first met Confait in 1971 but did not form a close relationship with him till 1972—in the last three or four weeks of Confait's life Mr A X was visiting him frequently for sexual purposes and on one occasion spent the night with both his brother (Mr B X) and Confait at 27 Doggett Road (see paragraphs 14.2–14.8 below); a Mr C Y with whom Confait was in love, but who was in prison from August 1971 until after Confait's death; a Mr D Z (whom Confait first met on 27 March 1972) and a man named Terry, with both of whom Confait had sexual relations. According to Goode, Terry had stayed the night with Confait at 27 Doggett Road on both 10 and 11 April. Mr D Z also associated with Mr A X.

Goode

5.3 Winston McMillan Goode (also known as John Goode) was born in

Jamaica in 1939, so that at the time of Confait's death he was 33 years of age. He had a wife, Lilian Millicent, then aged 32, and five children, three girls aged 11, 2 years and 5 months, and boys aged 10 and 8. The two eldest are called Pauline and Colin. In April 1972 the whole family was living at 27 Doggett Road, but for about a year relations between Mr and Mrs Goode had been bad and Winston Goode had been living separately in the house from his wife and family. Mrs Goode and the children lived in the two rooms on the ground floor, while Winston Goode lived in the front basement room. The back room in the basement was the kitchen, which was used in common by the family and by tenants or lodgers living in the first floor rooms. From November 1971 the first floor front room was let to a man named Alves Parchment. From December 1971 to February 1972 the first floor back room was let to two girls. In April 1972 the tenants were Confait in the back room and Parchment in the front room.

5.4 Winston Goode also engaged in homosexual activities. From about 1971 Goode started to wear make-up and women's clothes in imitation of Confait. He and Confait were friends, and Confait often prepared meals for both of them in the basement kitchen at 27 Doggett Road, which they ate together. Goode and Confait used to visit 'The Black Bull' and 'The Castle' together. They were often there in the evenings, together or separately.

Leighton

5.5 Ronald William Sidney Leighton was born on 17 July 1956, the son of Ronald and Daphne Leighton. He has one full brother, Barry, born on 7 June 1958. Mr Leighton deserted his wife in 1959, and she went to live with another man by whom she had four children between 1960 and 1966, the eldest being called Denise. In April 1972 Mrs Leighton was living at 25a Westdown Road, which is across the railway from Doggett Road.

5.6 In 1959, when Ronald was three years old and Barry one, they were taken into care by the Lewisham Borough Council and went to live with their grandparents, Mr and Mrs Jewell, at 146 Doggett Road. In 1963 Ronald was brought before Lewisham Juvenile Court by his grandmother as being beyond control and he was committed to the care of the London County Council under a fit person order. From 1965 to 1968 he was at a boarding school for maladjusted boys; in 1968 he spent a few months living with his grandparents until he was convicted of stealing a bicycle and sent to an approved school. He spent nearly three years at Knotley House Approved School and in July 1971, when he reached school leaving age (15), he went back to live with his grandparents under the terms of a care order. Later that year, it was reported, he did not make any effort to find jobs, and would not consider the jobs which were found for him; he would not join a football club, and apparently just hung about on his bicycle. Apart from three short periods each of less than a month he did not work. The last period of work ended on 12 March 1972 and at the time of his arrest he was unemployed. Attempts were being made to get him into a working boys' hostel.

5.7 In January 1972 (as Ronald Leighton later admitted) he and another boy set fire to a coalbunker at a house in Doggett Road. In February 1972 he was convicted of theft of a bicycle and given a conditional discharge. On 19 April (according to Salih) Leighton and Salih entered a driving school through a window and set a waste paper bin on fire. On 24 April they got into 1 Nelgarde Road through a window and lit a torch out of newspaper. On both occasions,

Salih said, they lit paper to see by, and did not intentionally set fire to the premises. At the time of Leighton's arrest on 24 April 1972 there were three outstanding charges against him for taking motor vehicles, as well as one for theft and another for criminal damage, for each of which he was on 11 May conditionally discharged.

5.8 According to written evidence before me Leighton's family were troubled in early 1972 by disobedient, aggressive and even violent behaviour on his part. He was described as exhibiting "a temper which built up and then simmered down." Whilst he was at Knotley House Approved School, intelligence testing resulted in the following scores: verbal scale 80, performance scale 86, full scale IQ 81. Another report described him as "a very difficult and disturbed adolescent of limited intelligence and with a reading age of 9 years and 6 months . . . from a very unstable background."

5.9 At Ashford Remand Centre Leighton was reported in July 1972 to be near illiterate. Specialised psychological testing revealed that his IQ was 75, a borderline subnormal result. He proved to be considerably better on performance tasks, however, and it seemed that his scores were depressed by lack of effort and motivation. He was said to show an antipathy towards education and anything connected with it, and the records were therefore thought probably to be an under-representation of his ability. He was not considered to be subnormal in terms of the Mental Health Act, being judged capable of leading an independent existence on a simple level. He was summed up as really an immature, inadequate, simple dullard. When interviewed at Ashford Leighton appeared co-operative and stable in mood, fully orientated and rational in conversation. He gave no signs of true mental illness or thought disorder, and was regarded as being well able to distinguish right from wrong. He was not considered to be in need of formal psychiatric treatment. It was noted, however, that due to his immaturity and tendency to be easily led, he required firm handling, but that under those conditions he had been well behaved and co-operative.

5.10 He revealed something of his temperament when giving evidence before me. Early in his cross-examination by Mr Farquharson, when he was being asked why he started fires, he said "I told you I do not know. If you keep on, mate, I will knock you one", and then got up and walked out of the room saying "I have fucking had enough of this." Later, when it was put to him that in 1972 he was capable of standing up for himself, he said "I was only 15. Let them try to do it now; let them take me down the station now, and I will kill the cunts."

5.11 Dr Leigh said that Leighton was obviously a very aggressive youth, and (he thought) a rather dangerous person potentially, impulsive and likely to explode.

Salih

5.12 Ahmet Hasana Salih was born on 11 April 1958 in Cyprus, the son of Hassan and Mukaddas Salih, who are Turkish Cypriots, and in April 1972 was living with his mother at 49 Nelgarde Road. There are eight children in the family, there being two girls and a boy older than Ahmet and two girls and two boys younger than he. Of the girls, Perihan was born in 1956 and Meral in 1960. Ahmet came to England with his family in 1962 when he was four years old. Mrs Salih, the mother, was granted a separation order in 1971 on

the ground of her husband's persistent cruelty; custody of the children was given to her, and a supervision order to the Lewisham Social Services Department was made in respect of them. Mrs Salih speaks only Turkish, but the children are bilingual. Ahmet's school attendance over the period prior to April 1972 was very poor, and consequently his educational attainment was low.

5.13 After his older brother married and left home, the family was left without any male authority and Salih was said to be beyond his mother's control. Salih was convicted in 1971 of being on enclosed premises for an unlawful purpose and given an absolute discharge. Salih agreed that on about 19 April he had with Leighton entered a driving school through a window and set a waste paper bin on fire. On 24 April Salih and Leighton got into 1 Nelgarde Road through a window and lit a torch out of newspaper. On both occasions, he said, they lit paper to see by, and did not intentionally set fire to the premises. These two incidents, together with the fire at Catford Bridge Station on 24 April, were the subject of the three offences which Salih asked to be taken into consideration when he was sentenced on 24 November 1972. At the time of his arrest there were two outstanding matters against him, a charge of attempted theft, and charges of taking a moped, driving without insurance and driving under age, for which on 2 and 4 May respectively he was conditionally discharged. Otherwise he had not previously been in trouble.

5.14 Reports on him during his period of detention show that his behaviour and attitudes progressively improved and excellent progress was made in all areas. His conduct was said to be excellent, and his relations with staff good. It is plain that he must have matured, both intellectually and physically, a great deal during the period 1972–6. He gave a favourable impression when he gave evidence at my Inquiry. He appeared intelligent, collected and articulate. He appeared to reflect on the questions put to him, and answered sensibly.

Lattimore

5.15 Colin George Barcham Lattimore was born on 25 July 1953, so that in April 1972 he was aged over 18½. He and his family had lived at 16 Nelgarde Road for over ten years. His father is Mr George Lattimore, then aged 56, a postman (higher grade) who worked as a sorter at Mount Pleasant. His mother, Mrs Ellen Lattimore, then aged 52, at that time ran a canteen on a construction site. The rest of the family consists of his adopted sister Glynis (then aged 21), who was engaged to and subsequently married Mr Reginald Long, and two brothers, Gary (then aged 12) and Michael (then aged 14).

5.16 Colin Lattimore went to primary schools at Holbeach Road SE6 and Baring Road SE12, and then in 1959 at the age of six he was classified as educationally subnormal and went successively to three ESN schools—Highshore School, Bellenden Road SE15, Nine Acres School, Glyndon Road SE18, and Thomas Doggett School, Briset Road SE9. He left there at the age of 15 in July 1968. Between 1969 and 1972 he had a number of jobs but did not keep any job very long:

1969	Shelf filler in supermarket	13 days	dismissed as unsuitable
	Factory hand	4 days	dismissed as unsuitable
	Labourer	16 days	left of own accord
	Garage hand	9 days	dismissed as unsuitable
	(Unemployed for some 14 months)		

1970	Supermarket	less than 19 days	dismissed as unsuitable
1971	General hand at Dagenham Motors Ltd	7 months	dismissed for bad timekeeping
	General labourer at Catford Greyhound Stadium	20 days	left of own accord

From some date towards the end of 1971 Lattimore was unemployed; he reported to the employment exchange every week for possible employment but was unable to obtain a job.

5.17 Lattimore had been in trouble on a number of occasions. In November 1968 he was convicted of stealing pedal cycles, with five cases taken into consideration, and was put on probation for two years. In September 1970 he was found in breach of probation but the probation order was continued. In February 1971 he was convicted of being on enclosed premises for an unlawful purpose and was given an absolute discharge. In November 1971 he was convicted of burglary (of non-residential premises), taking a conveyance and theft of cycle lamps; he was remanded in custody and spent 16 days in Ashford Remand Centre; he was subsequently given a conditional discharge on 31 December 1971. The magistrates sought an assurance from his parents that they would co-operate fully with the local Social Services Department; this assurance was carried out and the parents used to contact the Department whenever they needed help with Colin. Arrangements were put in hand for him to attend an adult training centre for subnormals living in the community but he remained at home largely unoccupied and unemployed until his admission to Leemore Training Centre, a day centre for mentally subnormal adults, at Clarendon Rise SE13, on 14 April 1972. He had attended for only three days before he was arrested on 24 April. On 18 April 1972 he was convicted of using indecent language and fined. Also in April 1972 he had been charged with attempted theft from a motor vehicle, taking a conveyance and driving without insurance, for each of which he was on 2 May conditionally discharged.

5.18 While he was on remand in custody awaiting trial Lattimore was examined at Ashford Remand Centre by the Senior Medical Officer and the Medical Officer as well as by two consultant psychiatrists (one of whom had seen Lattimore when he was previously on remand, once at Ashford in November 1971, and again during December 1971 on behalf of a social worker in Lewisham, when he visited the home, having a discussion also with both parents). Lattimore's behaviour problems had caused difficulties within the home for a number of years: he was both intellectually and emotionally retarded, behaving like a child aged about 8. He had also suffered from difficulty in sustaining interest for long at a time, from inability to read or write and from other handicaps, including poor sight. His IQ was rated at approximately 60, which was described as very markedly subnormal but not to the extent which warrants classification as severely subnormal. Subsequent specialised testing at Ashford in 1971 showed that his IQ was 66 and he was assessed as subnormal in terms of the Mental Health Act 1959.

5.19 When interviewed at Ashford in May 1972 Lattimore's demeanour and whole manner made a reliable examination difficult: his mood was at once offhand and superficially jocular and unconcerned, yet also very defensive. He seemed unable to distinguish between what if anything he had done himself, and

what it was "supposed" he and the other boys had done. (At one point during the interview Lattimore is reported to have said that he had tied a man up with a rope to kill him; a few moments later he explained that this was all part of a general make-believe story which the boys told the police "in order to get off". On another occasion when asked what happened Lattimore is reported to have said, without further questioning and quite openly, that they went "in this place" and he held the victim from behind while one of the other two tied a flex or cord around his neck.) Lattimore was considered to be so suggestible, however, that little credence could be placed on what he said; and it was thought likely therefore that a careful review of the earliest statements he made after the events of 21/22 April would be more helpful than any account that could be obtained from him at a subsequent psychiatric examination.

5.20 Later while he was on remand Lattimore was described as tending to be perky and cheerful; he required close observation, however, because of his tendency to set fire to papers in his room—his counterpane was found riddled with burn holes. He was also said to be restless, untidy and neglectful of personal hygiene but he showed no signs of disorder of mood (he was not depressed or elated) or of thought (he was not hallucinated or deluded). Testing confirmed that his mental age was approximately 8: he could not tell the time or add the value of coins placed before him. He recognised all the letters, however, and could read but with poor understanding of the words—this difficulty was apparently not due to poor vision. The view was taken that he remained insightless and dangerously irresponsible, his primary disorder being mental subnormality, although his long continued social irresponsibility was seen as an additional handicap amounting to psychopathic disorder. He seemed at that time unlikely to be capable of independent existence and very likely to endanger himself or others through impulsive behaviour, especially if stimulated by other delinquents.

5.21 Among those who examined Lattimore at Ashford was Dr Peter D Scott, Consultant Psychiatrist to the Home Office, who on 1 November 1972 gave a report on the mental condition of Lattimore for the purpose of sections 60 and 61 of the Mental Health Act 1959. He reported that Lattimore was suffering from subnormality within the meaning of the Act, and that his mental disorder was of a nature or degree which warranted his detention in a hospital for medical treatment; and he gave a detailed medical report on his examination of Lattimore. Dr Elmo Jacobs, Medical Officer at Ashford, also gave a report for the purpose of the Act.

5.22 Dr Scott gave evidence at the trial. The note taken by junior counsel for the Crown reads as follows (in part):

> "Very difficult to interview—he's extremely suggestible. He makes few spontaneous remarks, he waits to see what's required of him and when he takes a hint he follows the suggestion. Impossible to make a leading question and expect a proper answer.
>
> If you suggest to him, his answer may or may not be truthful.
>
> Very unreliable in distinguishing what was put to him about events and what he recollects himself about them.
>
> I found very inconsistent account of facts in him. He would say [one] thing, then the exact opposite. Reasonably good ability to concentrate . . .
>
> Low intelligence, personality difficulty . . .

He understands what is said to him, if put fairly simply. He replies appropriately.

Very hard to know his feelings about propositions and the facts of this case. This connects with leading him in questions as I've mentioned.

Same applies to facts.

I questioned him about facts of this case . . . Utterly unreliable, and one doesn't know source of his replies.

Not sure if what he says is related to what he's just heard, what someone said to him just before he came in.

Memory good for both recent and distant events. He gave me his phone number.

When asked about killing he makes no move—one knows that what one suggests he will adopt. He did tell me some features. I didn't like to suggest, I decided it would be a waste of time.

I think I asked what he remembered of events of time. He gave an account I think of being in the place and of being involved in the killing. I mean the house.

At one moment he would admit involvement then he'd deny it next moment."

Lattimore's apparent mental age

5.23 Lattimore spent his time with younger boys. Stephen Harvey (with whom one witness said he was "always together") was 10. Ronald Leighton and Ahmet Salih were 15 and 14. Mrs Brenda Oakley, a Salvation Army captain who then ran the Torchbearers youth club to which Lattimore belonged said she did not realise that he was 18; she thought he was around 14 and he behaved like the usual rowdy 14 year old. She said that Lattimore was not difficult to handle—"If I told him off he sort of stood with head bowed and then he would behave himself for a little while until something else took his fancy." Mr Donald Gordon Heppell, who in 1972 was 15 and assisted Mrs Oakley in the running of the Torchbearers club, spoke of Colin having "a habit of touching people up", and said "he never sort of feels sorry after he has done anything wrong. He will apologise, you know, but . . ." and he went on "we were never aggressive with Colin because he is the sort of person who is . . . bombastic, . . . always full of self-praise—'I am it', you know, 'I'll take you outside any time' . . . He always thought he could always win . . ."

5.24 To those who did not know him he appeared to have the mentality of a boy of 13 or 14. (DC Bresnahan when he questioned him at Lewisham Police Station thought that he was not a bright lad, below average intelligence, but not that he was mentally retarded.) DCS Jones was told by one of the officers who brought the boys to Lee Road that Lattimore was 18 and was not of particularly bright intelligence, and at the time he thought it was strange that an 18 year old was associating with a 15 and a 14 year old. When he saw Lattimore he came to the conclusion that he was an average sort of lad whose IQ was probably that of a boy of 14 or 15; after the introductory questions he came to the conclusion that Lattimore was perfectly capable of giving an intelligent answer. DSupt Stockwell said that in the beginning he thought he was an 18 year old boy, but later on thought that he was not overly bright. At the interview with DCS Jones, Lattimore said he was at school. When the

written statement was taken DI Stockwell got the name Leemore House, Clarendon Rise, from either Mr Lattimore senior or Colin. DI Stockwell knew it was a school for mentally handicapped, but he did not know till the time of the written statement that Colin attended there. According to the police record of the confrontation at 9.15 p.m. on 24 April, Mr Lattimore senior said "You do know that Colin has just started going to a new school and that he is sub-normal. His age is about 13 to 14." According to Mr Lattimore senior, DCS Jones said that he would allow him to attend the confrontation because although Colin was 18 he was subnormal (see also paragraphs 16.7 and 16.12 below). Mr Lattimore senior agreed that at the confrontation he said that Colin had just started going to a new school, and probably said that his age was 13 or 14.

5.25 DCS Jones set out his view in the light of later information as follows:

> "Colin Lattimore was a boy who was 18½ years of age. He was a boy who had had a number of jobs. He was a boy going to a youth club with other teenage boys. He was a boy who was playing table tennis with a youth leader. He was a boy whose parents allowed him to go out with 14½/15 year olds. He was a boy whose parents allowed him out until a very late hour—10 o'clock at night, if we accept what the father has said here. I do not accept that he was in any way a boy of 8 . . ."

5.26 Mr Irving, a psychologist and social scientist, of the Tavistock Institute of Human Relations, said it was a good guess for DCS Jones to make as the interview progressed that Lattimore had a mental age of a 14 year old boy. He said there was nothing in Lattimore's immediate outward appearance to indicate subnormality.

Solicitors and counsel

5.27 The solicitor acting for Lattimore found some difficulty in communicating with him to the extent of getting instructions; and asked Mr Waley, one of Lattimore's counsel, to go to Ashford to see him. Mr Waley had seen Dr Scott's report that Lattimore was suggestible and took particular care not to prompt him. Mr Waley's impression of Lattimore was as follows:

> "He was a frightened young man, as he might well be in those circumstances. He plainly was backward. He was totally consistent throughout all the time I saw him in maintaining his innocence . . . he was backward and gave the impression of being a little almost sly . . . when I was taking him through part of the evidence . . . Somewhere he referred to a queer, and I asked him, 'Do you know what a queer is?', and he said very, very firmly, 'No, I don't.' Then there was a pause, and he said, 'What's more, I don't want to either.' . . . he was able to follow the course of what he was being asked."
>
> "*Q.* . . . Did you take the view that he could give a connected account of an event or not?
>
> *A.* He could give an account. Perhaps the word 'connected' indicates some length. I think he would give it in small pieces and sensibly.
>
> *Q.* And sensibly?
>
> *A.* To the extent that you could make sense of what he was saying and it was coherent. When John Marriage saw him and as the trial went on,

I think we were both pleasantly surprised by how easy it was to get on with him and his understanding of what was happening.

Q. You mean when he told you something and you would say what happened next?

A. He wouldn't tell you a long story without some prompting to go on.

Q. Were there long gaps, pauses, before he answered, or long silences?

A. I think there would have been if we had not been ready to speak to him. He did sometimes sit for a while in silence, but I do not think that particularly strange."

5.28 Mr John Marriage QC, who was Lattimore's leading counsel at the trial, told me in a written statement that when he went to Ashford Remand Centre for an all-day conference with Lattimore he was agreeably surprised at his intellect. Lattimore was able to give instructions to his legal advisers; he refused to accept as accurate part of what was contained in his father's proof of evidence; and in a discussion as to whether or not he should give evidence he showed himself quite able to understand the arguments for and against such a course.

Lattimore's evidence at the Inquiry

5.29 I was able to form my own judgment of Lattimore's mental capacity from his performance when he gave evidence at my Inquiry. I had to bear in mind throughout that 4½ years had elapsed since April 1972 but, according to DSupt Stockwell at any rate, he had not changed by the time of the Inquiry—he gave answers then in much the same way as he had done at the interview with DCS Jones on 24 April 1972. Mr Irving's impression of Lattimore's evidence was as follows:

> "I certainly got the impression that he was not very skilled verbally, not always capable of understanding exactly what was being put to him, not capable of making distinctions between particular things and whole classes of things, and that in fact he was inclined to move over-rapidly to a conclusion such as 'I don't know' or to give an answer, an acquiescent answer, without properly searching his memory for possible traces of events that he had experienced."

I do not disagree with this impression; Lattimore certainly gave the impression of being dull-witted, though his evidence both at the trial and before me showed a use of language much superior to that which one would expect from a boy with a mental age of eight (see paragraph 12.71 below). What was striking, in view of the emphasis placed in the psychiatric reports on his suggestibility, was his ability to stand up to questioning and reject suggestions made to him if he did not agree with them.

Detective Chief Superintendent Jones

5.30 The officer in charge of the investigation into the death of Maxwell Confait and the arson at 27 Doggett Road was Detective Chief Superintendent Alan Keith Jones. In April 1972 he was 46 years of age, a married man with a son then aged 14½ and a daughter then aged 11. He joined the Metropolitan Police in 1946, and was appointed detective chief superintendent in 1969. In 1972 he was the senior detective officer for P Division, which covered the London Boroughs of Lewisham and Bromley, i.e. the greater part of south-east London.

By the time of my Inquiry he had been concerned altogether in some 60 murder enquiries, in about 50 of which he had been in charge of the investigation.

5.31 DCS Jones struck me as being a skilful and determined criminal investigator, with a forceful character and an abrasive and self-assured manner (he was described by Mr Lattimore senior as "bumptious"). He was, I should judge, capable of exerting pressure on persons under interrogation in the exercise of what he conceived to be his duty. He was willing to commit breaches of the Judges' Rules when he considered it necessary. In describing his interrogation of Goode he said that he "undoubtedly bent the Judges' Rules". The record of his interview with Colin Lattimore discloses the degree of pressure he was prepared to put on a boy of 18 whom he believed to have a mental age of 14: "Telling lies isn't going to get you anywhere . . . Now listen". Even if he believed that his intervention when Lattimore was making his written statement (see paragraph 12.86 below) was not a breach of the Judges' Rules, it was clearly an exercise of pressure made (as Mr Lattimore senior said, and as I accept) in a forceful way.

5.32 DCS Jones was prepared to give an answer to Colin Lattimore about going home which I have held to be disingenuous and unfair. He agreed that by the answer "I will see your father about that later" he was temporising. He knew that Lattimore would not be going home, but he did not tell him so. "If I had told him at that time that he certainly would not be going home for a very, very long time, no doubt he would have become very distressed and very upset."

5.33 DCS Jones was prepared to question the boys about a murder and arson without their parents being present, at a time when he must (because he cautioned them) have considered himself to have evidence which afforded reasonable grounds for suspecting that they had committed the offences. If (as he said in evidence at the trial) he believed that Administrative Direction 4 did not refer to oral interviews, that was an inexcusable error for a senior police officer to fall into. Mr R A Davis, a Deputy Assistant Commissioner (Crime) at New Scotland Yard, said that all senior officers should know that it applies to oral statements. If (as DCS Jones said in evidence at my Inquiry) his reason for proceeding was that he thought that it was not practicable to wait till the parents arrived, this was in my opinion an error of judgment. Quite apart from the fact that he denied to the boys a protection which they should have had, he was exposing himself to the kind of suggestions of malpractice which such a manner of proceeding invites. He was weakening the strength of the prosecution's case, and providing a point of attack for the defence. What he did was calculated to arouse disquiet, and has largely contributed to the necessity for holding an inquiry such as mine.

5.34 DCS Jones clearly has great confidence in his own judgment, and does not take kindly to criticism. He has persuaded himself that the Lattimore family has conducted a vendetta against him:

(a) In a letter in 1974 he claimed that ever since Colin Lattimore's conviction Mr Lattimore senior had been conducting his own private campaign against him: in each subsequent murder or serious crime enquiry DCS Jones became involved in Mr Lattimore would appear at the court, buttonhole the press representatives and tell them that this was the officer who was responsible for his son's conviction of a crime for which he was not responsible. According to DCS Jones, when he was at Bromley Magistrates' Court dealing with a case involving a woman

charged with the kidnapping of a baby, Mr Lattimore approached him and said "When are you going to arrest somebody who is not feeble minded?" DCS Jones said that he naturally ignored these remarks, but they showed the type of man Mr Lattimore was.

(b) He was asked in 1976 about an allegation by one of Winston Goode's brothers that a police officer had in the brother's presence shown to Winston Goode a bunch of keys—which Winston Goode identified as Confait's—saying that they had been recovered from the railway line where Leighton said he had thrown them. I am satisfied that this incident did not occur as described (though it may have resulted from a misunderstanding of an occasion when Winston Goode's own keys were handed back to him), and that Confait's keys never were found. I mention it only for the light it throws on DCS Jones. He described the allegation made by Winston Goode's brother as part of a Lattimore conspiracy to pervert the course of justice and he persisted in this suggestion although it was pointed out that the brother's statement if accepted would have supported the prosecution's case against the three boys.

5.35 The explanations which DCS Jones gave of a number of passages in reports and letters written and evidence given by him which were put to him in cross-examination were unconvincing. For instance:

(a) His statement at the Central Criminal Court that Administrative Direction 4 does not apply to oral interrogations (which was clearly wrong) was put to him: his answer was "Perhaps my answers at the Central Criminal Court were not very explicit. . . . That is all I can say."

(b) In relation to paragraph 39 of the police report all that he could say was "my wording of that paragraph is somewhat loose" (see paragraph 25.5(b) below).

5.36 But, however much DCS Jones may be open to criticism, the answer to the question whether or not the boys' confessions were genuine does not turn on the credibility of his evidence. A number of other police officers were involved, notably DI Stockwell and TDC Gledhill, and (as I shall relate) both of them impressed me as entirely straightforward and reliable witnesses. For the written statements, I have the evidence of Mr Lattimore and Mrs Leighton (together with the statements of satisfaction which they signed) and of Mrs Ferid. It is not now suggested that the record of the interviews was deliberately falsified; the evidence taken as a whole would negative any such suggestion. On this footing the internal evidence of the answers and statements has compelled me to the conclusion that the confessions were genuine and that (except for the parts relating to Lattimore's part in the killing) they were true. This conclusion has been reached despite, rather than because of, the view which I have formed of DCS Jones and despite his conduct of the interrogations.

Detective Superintendent Stockwell

5.37 The second in command to DCS Jones in the murder investigation was Detective Superintendent Graham Edward Stockwell, then a detective inspector stationed at Lewisham. In April 1972 he was nearly 38 years of age. He joined the Metropolitan Police in 1955, and was appointed detective inspector in 1970. (In September 1972 he was seconded to the Fraud Squad, and was appointed

detective superintendent in September 1974.) On the weekend of 21/22 April 1972 he was duty officer at Lewisham Police Station, and as such was on reserve for any major crime in the whole of P Division. It was in this capacity that he was called out early on the Saturday morning and went to 27 Doggett Road. He was given by DCS Jones the task of setting up the murder squad, recruiting the members and setting up the headquarters at Lee Road Police Station. He took an active part in the enquiry; he took the contemporaneous note of the interviews with all three boys, and the written statements of Lattimore and Salih. Much of the work of preparing documents for the Director of Public Prosecutions both before and after the committal fell to DI Stockwell.

5.38 DSupt Stockwell gave his evidence convincingly and made a favourable impression on me. He has a frank and open manner; he seemed calm, steady, careful and intelligent (as his posting to the Fraud Squad indicates); I judged him to be wholly trustworthy. He seemed to me to be doing his best to give a truthful recollection of what had occurred, and I formed the view that his evidence could be relied on.

The murder squad

5.39 The members of the murder squad at Lee Road Police Station (in addition to DCS Jones and DI Stockwell) were as follows:

DS B R August
DS P J Bamford
DS R Botwright
DS R E Gregg
WDS B Mays
DS N Veit
WDC P Batty
DC G U McLennan
DC A G McNicol
TDC J Bee
TDC A J Gledhill
TDC A A R Vale
PC P Greenwood
PC F H White

DS Veit was the office manager for the murder squad. DS August was the exhibits officer. TDC Gledhill, who took the written statement of Leighton, is a holder of the George Cross and had then been 15½ years in the force. I formed the opinion that, though it is evident from the time which he had spent in his rank that he is an officer of lower calibre, he was a simple, straightforward and honest person and that his evidence is to be trusted. TDC Gledhill knew Confait well. He had arrested Confait on 10 April 1967 on a charge of stealing his mother's television set, and from that date had seen him regularly in the Lewisham area. He had no further professional dealings with him as a police officer, but just "to say hello, have a chat. He was an amenable fellow." He had seen him dressed as a woman, and knew that he was a male prostitute. He had seen him since his release from prison in early 1972.

Professor J M Cameron

5.40 Professor James Malcolm Cameron, MD, PhD, MRC Path, DMJ(Path), has been a practising pathologist since 1957 and until 1962 had experience as

a police surgeon in Scotland. In 1972 he was Reader in Forensic Medicine at the London Hospital Medical College, and is now Professor there. I have made a number of criticisms of Professor Cameron in my report, one of which (the failure to take a rectal temperature) he very frankly admitted. I think it right to say that Professor Cameron is a forensic pathologist of great experience and recognised ability who, according to the evidence, is held in the highest esteem by those with whom he has had professional contacts over his long career.

Dr A H W Bain

5.41 The divisional police surgeon who first examined Confait's body was Dr Angus Howard Weir Bain, MB, BS, MRCS, LRCP. Having qualified as a doctor in 1949, he went into partnership in 1952 with the then divisional police surgeon for Catford, whom he assisted in his police work. He has been divisional police surgeon at Catford, Lewisham and Penge since 1967.

Mr D G Williams

5.42 Mr Doiran Williams is the professional officer on the staff of the Director of Public Prosecutions to whom the case was allocated in May 1972. He was called to the Bar in 1952, and practised as a barrister in Liverpool until he joined the Director's Department in 1959. In May 1972 he held the rank of senior legal assistant, and is now an assistant solicitor in charge of a division of the Director's Department.

Mr R D L Du Cann QC

5.43 Mr Richard Du Cann, leading counsel for the prosecution at the trial of the three boys, was called to the Bar in 1953, and practised extensively at the criminal Bar. He was appointed Treasury Counsel in 1966, at Inner London Quarter Sessions until 1970 and then at the Central Criminal Court. He was appointed Queen's Counsel in 1975.

Mr J P V Bevan

5.44 Mr John Bevan appeared as junior counsel for the prosecution at the trial. He was called to the Bar in 1970.

Defence counsel

5.45 Lattimore was represented at the trial by Mr John Marriage QC and Mr Felix Waley. Mr Marriage was called to the Bar in 1953 and was appointed Queen's Counsel in 1971. Mr Waley was called to the Bar in 1953 and in 1973 was appointed Queen's Counsel.

5.46 Leighton's trial counsel were Mr Cyril Salmon QC and Mr Ian Alexander. Mr Salmon was called to the Bar in 1947 and was appointed Queen's Counsel in 1970. Mr Alexander was called to the Bar in 1964.

5.47 Counsel who appeared for Salih at the trial were Mr Brian Watling and Mr Anthony Wilcken. Mr Watling was called to the Bar in 1957. He is now a junior Treasury Counsel at the Central Criminal Court. Mr Wilcken was called to the Bar in 1966.

Mrs Ferid

5.48 Mrs Nazenin Ferid has for a long time been a professional interpreter from Turkish into English and *vice versa*. She had met Mrs Salih and Ahmet previously in connexion with Mrs Salih's matrimonial problems; Mrs Salih had been to Mrs Ferid's house several times with her children (including Ahmet) to get Mrs Ferid to translate documents for her.

PART III

CHAPTER 6

INTRODUCTION

6.1 Four of the most distinguished pathologists in Britain have now given their opinion that Confait cannot have died after midnight 21/22 April 1972 and probably died before 10.30 p.m. on 21 April.

6.2 Lattimore has an alibi supported by independent witnesses from 7.30 p.m. till about 11.45 p.m. on 21 April.

6.3 Although on the medical evidence death could have taken place as early as 6.30 p.m., it was not suggested at my Inquiry that Lattimore took part in the killing of Confait at a time prior to 7.30 p.m. If any such suggestion had been made, I should on a consideration of all the evidence have rejected it.

6.4 If Confait was killed between 7.30 and 11.45 p.m. and Lattimore's alibi is good, Lattimore cannot have taken part in the killing of Confait.

6.5 In this Part of my report I examine the two questions of the time of Confait's death and Lattimore's alibi. I have come to the conclusion that the opinion of the pathologists about the time of death is correct, and that Lattimore's alibi is good.

6.6 I conclude that Lattimore did not take part in the killing of Confait.

6.7 Yet he confessed (if the police evidence is correct) to having taken part in the killing, and Leighton and Salih made statements implicating him. In the next Part I shall examine the question of the confessions, the questions whether Leighton and Salih took part in the killing and the question whether Leighton, Salih and Lattimore took part in the arson at 27 Doggett Road.

PART III

CHAPTER 7

TIME OF DEATH

Summary of conclusions

7.1 The Court of Appeal, on the hearing of the reference, had available to it written statements from Professor Simpson and Professor Teare and heard evidence from Professor Cameron and Professor Teare. In its judgment the Court concluded that it was impossible to accept that the killing of Confait took place within less than two hours of the onset of the fire at a minimum, and that the time interval was probably considerably longer. In addition to the evidence which was available to the Court of Appeal, I have heard further oral evidence from Dr Bain and Professor Cameron, and I have had the benefit of both a written statement and oral evidence from Professor Gilbert Forbes, Emeritus Regius Professor of Forensic Medicine in the University of Glasgow. Estimates of time of death are necessarily subject to uncertainty, especially when the best evidence (namely rectal temperature) is not available. I am satisfied, however, that the evidence available in this case enables the latest possible time of death to be stated with virtual certainty: the death of Maxwell Confait cannot have occurred after midnight on 21/22 April. I do not find it possible to reach a positive conclusion as to how long before midnight death occurred: it could have occurred at any time between 6.30 p.m. and midnight, but it is improbable that it occurred after 10.30 p.m.

Factual evidence

7.2 The expert opinions as to time of death must rest on the observations of those who saw the body on 22 April 1972 and on the photographs which were then taken. I set out first the evidence as contained in the pre-trial statements and in the evidence which was given at the trial (both of which were available to Professor Teare and Professor Simpson), and then the additional evidence and explanation given to me (which were not).

Factual evidence available to Professors Teare and Simpson

7.3 Fireman D F Jarman and Station Officer T W Fisher were among those summoned to the fire at 1.26 a.m. on 22 April. They went upstairs at about 1.35 a.m. rigged in breathing apparatus and searched Confait's room, which was then filled with smoke. They discovered Confait's body and found there was no pulse. Mr Jarman in his statement made on 1 May 1972 said that he tried to lift the man by placing his hand behind his head and pulling on his right arm, but he was stiff and awkward, so he lowered him down again; at the trial he said:

> "the body . . . was very stiff and awkward. I tried to pick him up by taking hold of his wrist and then levering him on to my back . . . I just tried to pick the body straight up and then when I found I couldn't do that, I lowered it straight down again . . . I wouldn't say it was rigidly stiff . . . It was just stiff but not rigid. It was awkward to handle . . ."

Station Officer Fisher in his evidence at the trial said:

> "The body was cold and stiff . . . I got the impression then that it was

a body not recently dead. It wasn't somebody who had been involved in the fire . . . I felt the chest underneath the shirt, and then the arms. We started to get hold of him to try and pull him out, but then I felt that he was stiff and cold."

He said that the hand and wrist were cold but not clammy; he did not touch any other part of his flesh—he felt the chest outside the clothing.

7.4 Dr A H W Bain, the divisional police surgeon, who arrived on the scene at 2 a.m., said in a statement made on 22 April 1972:

> "I examined the young man and confirmed that he was dead. I noted that rigor mortis was complete . . . The man had been dead from [sic] between 4 to 6 hours."

In his contemporaneous notebook entry he recorded "Rigor complete . . . Trunk feels warm." At the trial he again said that rigor mortis was complete, but that the body "felt quite warm to touch—the abdomen, and so on."

7.5 Dr J M Cameron, the pathologist, was summoned by the coroner to examine the body on his behalf. He arrived on the scene at about 3.45 a.m. on 22 April and examined the body. Between 6.30 and 8 a.m. at the Lewisham Public Mortuary he carried out a post mortem examination. In his report to the coroner dated 22 April (and his statement in the same terms given to the police on 25 April) he said that when he saw the body at about 3.45 a.m. "The body was cold and rigor was commencing *suggestive of death occurring some six hours plus or minus two hours earlier.*"[1] In his report on the post mortem he said "The lower abdomen showed slight post-mortem change and rigor was fully established at the start of the post-mortem but towards the completion of the post-mortem was beginning to wear off." In his evidence at the trial he repeated those statements; he also said that at 3.45 a.m. "the touch was cold"; he described the post mortem change of the skin over the lower abdomen as "a greenish discolouration".

7.6 The only other contemporaneous factual evidence relevant to the time of death was two colour photographs of the upper part of Confait's body taken at about 6.30 a.m. on 22 April 1972 by Mr B Bellingham, the police photographer. According to him, these—in the crucial areas—realistically reproduced the colours present at the time, and Professor Forbes and Professor Cameron in their evidence at my Inquiry have relied on the photographs as showing that there was hypostasis and that by 6.30 a.m. it had become fixed. The colour photographs had been printed by the time Professor Cameron gave evidence at the trial, and he had the prints in his possession when he gave evidence. Neither Professor Teare nor Professor Simpson appears to have seen the colour photographs.

7.7 Apart from the colour photographs all the foregoing factual material was available to Professor Teare and Professor Simpson when they made statements and gave evidence to the Court of Appeal on the hearing of the reference. The following additional material has been placed before me.

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[1]My emphasis.

Factual evidence not available to Professors Teare and Simpson

7.8 Fireman Jarman in the statement given to the Treasury Solicitor on 22 January 1976 said the wrist did not feel particularly stiff, hot or cold; it was when he attempted to lift the body that he realised it was dead because it was so stiff and awkward; he got the body into a sitting position (by pulling on the wrist and supporting the back of the head) but did not move it into a standing position.

7.9 Station Officer Fisher in the statement given to the Treasury Solicitor on 27 February 1976 said:

> "I did not lift up the T-shirt but on putting my hand on the chest I noticed that it felt solid which struck me as being different from previous bodies I had found in a fire. I tried to find a pulse in the left wrist and felt that the arm was stiff when I would have expected it to be limp, and cold when I would have expected it to be warm."

7.10 Station Officer K T G Speed, who entered the room shortly after the body had been found, said in his statement made to the Treasury Solicitor on 22 January 1976 "as soon as I touched [the body], I realised the man was obviously dead because his arm felt stiff."

7.11 SPS R Ingram who arrived at the scene between 1.30 and 1.40 a.m. was the first police officer to see the body. In his statement given to the Treasury Solicitor on 5 January 1976 he said that he moved the hand to feel for a pulse; the hand "was not particularly cold but it was colder than the hand of an average living person. The hand moved reasonably easily. It was not stiff."

7.12 Another of the fire officers stated in 1976 that he saw the body shortly after 1.30 a.m., and that as he lifted the arm it appeared to him as if rigor mortis had already set in the body. He could not feel any pulse and the skin felt cold and clammy to the touch. According to the statement which Divisional Officer E C W Bond gave to the Treasury Solicitor on 16 February 1976, this colleague had said very much the same to him at the time.

7.13 Dr Bain gave evidence at the trial (see Appendix D where extracts from his evidence are set out). In the statement which he made to the Treasury Solicitor on 22 January 1976 he said:

> "When I touched Confait's body I moved the arm and leg nearest to the door and, subsequently, his head. Both his arm and his leg were rigid in rigor. When I tried to lift his head I found that the neck muscles were also rigid . . . Because his arm and leg were rigid I was satisfied that rigor was complete."

His estimate of four to six hours (see paragraph 7.4 above) took into account the fact that the trunk was still warm to the touch, that Confait had suffered a violent death, and the unknown factor of how hot the room had become during the fire. In his oral evidence before me Dr Bain said that in order to determine the presence and degree of rigor mortis he first tried to close the mouth and to lift the head, and found that the jaw and neck were stiff; he said that he tried to lift the left arm and left leg and found them stiff, and felt that the muscles were in rigor; he said that he had felt the trunk through the T-shirt and found it warm.

7.14 Professor Cameron gave evidence at the trial (see Appendix D where extracts from his evidence are set out) and also to the Court of Appeal on the reference. He said in his evidence to the Court of Appeal that when he examined the body upon his arrival at about 3.45 a.m. he felt the forehead, hand, abdomen and chest and that the body was cold to the feel. He said that he noticed rigor in the facial muscle, lower jaw, and that "there was some jogging, to use a non-medical term, in the elbow generally which suggested to me [that rigor] was commencing in the arm." (In his evidence before me he said that in giving that evidence he was speaking from memory of events $3\frac{1}{2}$ years earlier, and was partly making deductions from the conclusions he had reached at the time.) In the statement which he gave to the Treasury Solicitor on 14 July 1976 he said that he "would . . . have touched all exposed parts and lifted the man's pullover and felt his chest . . . they were all cold to the touch." As to rigor he said "The fact that I stated that rigor was commencing implies that all his limbs were beginning to stiffen. It was clear to me that rigor had reached the lower limbs because the body was joggy." (In his evidence before me he explained that "lower limbs" meant the pelvic region, the lower back and upper thighs, the hips; he detected rigor mortis there when he lifted the body on to the sheet; he did not find rigor in the knees or ankles.) He said that he looked for hypostasis: there was none on the face. He said that the discolouration on the lower abdomen was not hypostasis, it was not caused by bruising, but was a green stain caused by bacterial reaction.

7.15 In the course of his evidence at my Inquiry the original of Professor Cameron's report to the coroner was produced from which it appears that, with reference to his examination of the body at about 4 a.m., the words which he originally dictated were "rigor had commenced" but that he altered those words in manuscript to "rigor was commencing suggestive of death occurring some 6 hrs plus or minus 2 hrs earlier." Professor Cameron told me that in his terminology he did not use the expression "rigor commencing" till rigor was fully present; he did not mean by that phrase that rigor was *just* commencing; when he used a phrase of this kind he always followed it with a time estimate as he did in this case (six hours plus or minus two hours). He said that in order to ascertain the presence of rigor he tested the facial muscles and the arms, and tried to uncross the legs; and that when assisting the police officer to put the body on the plastic sheet he had an opportunity of testing the rigor of the back muscles; he said that rigor was just becoming established in the back muscles; "The arms had naturally been moved before my arrival" he said "and hence my term joggy, because rigor was present and you could get some movement in the arms, but there was a slight jog in the arms"; he did not notice rigor in the legs. He confirmed that the discolouration on the abdomen was not bruising—he reviewed the body the following day and "there was no evidence of bruising which would become more apparent as time went on, but it became greener." He said that he had not seen hypostasis on the back of the body, since the body was not turned over except for the taking of the photographs. Professor Cameron said that by the beginning of the post mortem (6.30 a.m.) rigor mortis was complete which suggested death 12 hours earlier. It had started to wear off by the end of the post mortem (8 a.m.), but since he had been manipulating the body neither he nor Professor Forbes thought that that fact offered any useful indication of time of death.

Expert evidence given at the trial

7.16 At the trial a number of factors were introduced in evidence as possibly having had an influence on the speed of development of rigor mortis which are now agreed to be quite irrelevant to an estimate of the time of Confait's death.

7.17 Dr Cameron had a conference with Mr Du Cann on the second day of the trial. Professor Cameron remembers nothing about what passed at the conference but Mr Du Cann wrote manuscript notes of the conference on his copy of the statement of Dr Bain, which read as follows:

"plastic vent above door
(1) Cadoveric spasm
(2) heat stiffening above 50%
? Allow for excess heat to body
? Experience of effect of heat on body after death
? Disturbance to ordinary symptoms"

According to Mr Du Cann he asked Dr Cameron (who had not seen Dr Bain's statement, or the photographs or any of the other statements) about factors which could disturb the normal onset and progress of rigor mortis, and whether it was possible to narrow the area over which he had estimated the time of death. Dr Cameron told him that he did not think cadaveric spasm applied in that case; that heat stiffening could be discounted; and although he was uncertain about the effect of heat after death it might be that this had had little effect. Mr. Du Cann did not ask Dr Cameron to elucidate his expression "rigor commencing".

7.18 Professor Cameron in his statement to the Treasury Solicitor dated 14 July 1976 said "At the trial . . . I was questioned on the effect of alcohol in the body, cadaveric spasm and heat stiffening. I have no idea why I was asked these questions which had no relevance whatsoever to the case." The effect of the introduction of these factors seems to have been to leave the Judge and the jury with the impression that the development of rigor mortis might have been accelerated to such an extent that the state of the body observed by the firemen, Dr Bain and Dr Cameron was consistent with death having occurred shortly before the start of the fire. The Judge, having drawn attention to those factors which he described as "imponderables", "matters which [make] for uncertainty", concluded his summing up on the question of time of death by suggesting that the time of the fire could well be connected closely with the time of death. I have no doubt that the case was presented to the jury in a way which over-stated the uncertainty of the estimates of the time of death, and which overrode the actual estimates which Dr Bain and Dr Cameron gave, namely Dr Bain's estimate of between four and six hours before 2 a.m. and Dr Cameron's estimates variously given as 9.45 p.m. plus or minus two hours and "between . . . 6.30 and 10.30 . . . even [extending] up to the region of midnight." My terms of reference do not extend to the trial itself, and it is no part of my duty to criticise the way in which those irrelevant factors were introduced, the form of the questions to the witnesses or the way in which they were answered. It is, however, necessary for a number of reasons that I should record the way in which the time of death was dealt with at the trial: first, because it may throw light on the opinions previously or subsequently expressed by Dr Bain and Dr Cameron; secondly, because much of the evidence of Professors Teare, Simpson and Forbes was directed to disposing of the irrelevant matters which had been introduced into

the trial; and thirdly, because of the light which it may throw on the question of what might have occurred if the question of the time of death had been more fully explored before the trial.

7.19 The factors to which I refer above are:

(a) Cadaveric spasm: a phenomenon which if it occurs at all is rare, and which all the experts are agreed can be ignored in the present case.

(b) Alcohol: it is agreed by all the experts that there is no evidence that the presence of alcohol in the body has any effect on the speed of onset of rigor.

(c) Heat stiffening or coagulation of the muscles: it is agreed that this did not occur in the present case. It is in any case a different phenomenon from rigor mortis, and will not occur unless the body is actually charred or cooked.

(d) The effect of a high ambient temperature: there is not the same unanimity among the experts on this point, but I am satisfied that the temperature on the floor of Confait's room did not at any time exceed 80 degrees Fahrenheit, that even that temperature was sustained for not more than about 20 minutes, and that exposure to such a temperature for such a period did not accelerate rigor mortis. Though the fire outside the room had been severe enough to melt the high-level vents, and though the walls were said to have felt warm, there was no sign of burning anywhere in the room, and the firemen found the exposed parts of the body to be cold. It is true that Professor Cameron mentioned a case which he and Professor Mant had had where a temperature of 80 degrees Fahrenheit maintained for about an hour had caused rigor to appear within one hour of death, but I was not told nearly enough about that case to draw any conclusion from it and Professor Cameron does not himself suggest any reduction of his estimate of six hours plus or minus two hours at 3.45/4 a.m. on the ground of ambient heat. Professor Forbes said categorically that 20–30 minutes in a temperature even as high as 80 degrees Fahrenheit would not influence the onset of rigor mortis or its progress at all.

Conflict of factual evidence

7.20 The apparent conflict of evidence between Dr Bain and Dr Cameron is considerably reduced by the explanation later given by Professor Cameron as to what he meant by the words "rigor was commencing". There still, however, remains a discrepancy, Dr Bain saying he found rigor in the legs at 2 a.m. whereas Dr Cameron at 3.45/4 a.m. found no rigor in the legs though it was present in the pelvis and hips. In so far as there is a discrepancy I have no hesitation in preferring Professor Cameron's evidence. Dr Bain made only a brief examination and was not allowed to move the body. It is difficult to see how Dr Bain could have lifted the left leg (as he said he did) to test for rigor; the left leg was under the right leg and both were under the bed. If it were necessary to weigh the qualifications of these two witnesses in the balance, the weight would clearly have to come down on the side of Professor Cameron. Dr Bain is a police surgeon of great experience, but he is not a specialist in pathology as Professor Cameron is. It is true that Dr Bain was on the scene two hours before Dr Cameron, and estimates of time of death get progressively

more difficult as time goes on. But the conflict (to the extent that it exists) is in the description of a state of facts, namely the degree of rigor. There never has been any significant conflict in the estimate of time of death. However they may have described the degree of rigor which they observed, these two experienced medical men, Dr Bain and Professor Cameron, from the start gave consistent estimates of time of death, i.e. Dr Bain 8–10 p.m. and Professor Cameron 7.45–11.45 p.m.

Expert opinion as to the time of death

7.21 There are a number of factors which are relevant to an estimate of the time of death:

(a) internal body temperature;
(b) external body temperature;
(c) rigor mortis;
(d) hypostasis; and
(e) post mortem staining or lividity.

Internal body temperature

7.22 This, which is the most reliable indicator, is not available in the present case since neither a rectal temperature nor an abdominal temperature was taken.

External body temperature

7.23 Judgments formed on the basis of external body temperature felt by the hand are unreliable since they will depend on the temperature of the hand of the person who feels the body. Moreover, the temperature which different people will describe as 'hot' or 'cold' will not necessarily be the same. Professor Teare agreed that the hand was not a very reliable guide, but said he was impressed by the statement of Dr Cameron that when he felt the body at 3.45/4 a.m. it was cold: he interpreted this as about 80 degrees Fahrenheit, and expressed the view that at least eight hours would be required to reach that temperature. Professor Simpson concluded that death must have occurred at least six or eight hours before Dr Cameron's examination at 3.45 a.m. on 22 April if the body was to feel cold (80–85 degrees). Professor Forbes thought that the body would not feel cold till the temperature reached 65 degrees, which would take 12 hours. Professor Simpson said "The circumstances made temperature estimates highly unreliable". Where death occurs by asphyxia, this (it is believed) may raise the temperature at the time of death: not all the experts support this view, but if it is correct it introduces another uncertainty though of course the effect would be to lengthen the time required for a body to cool to a given temperature.

Rigor mortis

7.24 All the experts are agreed that on its own it is an unreliable guide to the time of death, and it is clear that pathologists are always cautious in giving estimates based on rigor mortis alone: when they do so, they frequently give a wide time bracket and will often say in effect (as Dr Cameron did after the post mortem on Confait) 'do not hold me to it'. Clearly, greater reliability can be placed on an estimate that death occurred within a time bracket than on an estimate that death occurred at such-and-such a time, and the longer the bracket the greater the reliability. But even then, experience has shown, pathologists can be wrong. However, I am satisfied on the evidence that certain

statements about the onset of rigor can be made with virtually complete reliability: I accept Professor Teare's statement that in the ordinary case *no* degree of rigor mortis will appear in under two hours. He goes on to say "in four hours you may . . . feel it in the small muscles around the eyes . . . if you were to feel it in the arms, your immediate reaction would be that this man has been dead five hours." I am satisfied that if Professor Teare's views about the onset of rigor are correct, then the state of rigor found by the firemen at between 1.30 and 2 a.m. would have required *at least* two hours to develop, and that the degree of rigor mortis which Professor Cameron observed as he described it in his evidence at my Inquiry would have required *at least* four hours.

Hypostasis

7.25 The evidence of hypostasis in the colour photographs was not observed prior to my Inquiry. Professor Forbes and Professor Cameron had no doubt that the red colouration on the side of the neck and running down the long muscles on the back between the shoulder blades was hypostasis, and that by the time the photographs were taken it was 'fixed'. Hypostasis consists of the accumulation of blood in those parts of the corpse which are dependent, and it becomes fixed when the blood coagulates so that it does not disperse when the body is turned over. Professor Forbes said that hypostasis first appears about three hours after death, and that provided the position of the body is not altered it will (as Professor Cameron agreed) become fixed by about 8-12 hours after death. Since the photographs were taken at about 6.30 or 6.45 a.m. they indicate a time of death of between 6.30 p.m. and 10.45 p.m. on the previous evening.

Post mortem discolouration

7.26 Professor Forbes said in evidence at my Inquiry that such change is ordinarily not seen until a person has been dead for two or three days; he had never seen it occur in under 24 hours, and he said he "quite frankly . . . [could] not understand it." Professor Cameron said that, though he would have expected in normal conditions two or three days, nevertheless depending on the bacterial content of the adjacent bowel it could be accelerated and could appear in 12 hours or even quicker; he said that in the light of it he put his bracket for the time of death back by an hour, to 6.30–10.30 p.m. instead of 7.30–11.30.

7.27 I, like Professor Forbes, find the evidence about the green staining puzzling. There are two possibilities: either Dr Cameron made a mistake, and recorded as post mortem discolouration something which was not really there or which was really a bruise (in which case it can be ignored as a guide to time of death); or post mortem discolouration must have come on much more quickly than Professor Forbes had ever experienced, since otherwise the discolouration would not be consistent with any of the evidence about rigor mortis. Professor Cameron said it could not have been a bruise, but Professor Forbes said one could not tell for certain without a histological examination, which Dr Cameron did not do. On the other hand, if the second is the true explanation, then it would point to an earlier rather than a later point within the time brackets given by the experts (12 hours before the post mortem would take one back to 6.30–8 p.m.); but on the other hand Professor Cameron expressed the view that if it is correct that there were factors in this case which brought on discolouration more quickly than usual those same factors might bring on rigor mortis more quickly than usual.

Summary of views

7.28 Professor Teare in his evidence to the Court of Appeal expressed the view that death had probably occurred between 8 and 10 p.m., and he thought the earlier part of that bracket rather than the later; he would find it difficult to accept that it could have occurred after 10 p.m. (he later said 10.30 p.m.) and could not possibly agree that it could have occurred after midnight. Professor Simpson in his statement dated 9 October 1974 which was before the Court of Appeal said:

> "No one could, on the only medical basis we have in this case, deny that death could have taken place as early . . . as 8 p.m. or as late as 12 . . . much more likely (if the body was 'cold' as Dr. Cameron says 'to the touch') in the earlier part of this period . . . taking the only useable medical basis for estimation that we have—rigor—it does seem pretty certain that death took place before 10 p.m. on the 21st—rather than after 10 . . . I could not possibly accept the fact that death could have taken place around or after midnight . . ."

In a later statement submitted to the Court of Appeal in September 1975 he said:

> "all the evidence is most consistent with Confait being killed at least six hours before 3.45 a.m. and probably earlier. I could not possibly accept that the death could have taken place around or after midnight on April 21st . . . and find it highly improbable that it could have occurred as late as even 11 p.m."

Neither Professor Teare nor Professor Simpson seems to me to have relied on the evidence (as to rigor) of Dr Bain in preference to that of Dr Cameron where they conflict. Neither refers to the post mortem staining which Dr Cameron reported, nor to the evidence of 'fixed' hypostasis (of which indeed they were apparently unaware): these factors would certainly not have weakened their conclusion as to the latest possible time of death.

7.29 Professor Cameron in his evidence to the Court of Appeal maintained the opinion he had given at the trial (6.30–10.30 p.m., even extending up to the region of midnight), but said "I would have thought it less likely to be nearer the midnight mark"; in giving that opinion he was in my view relying on his own observations as to the extent of rigor at 3.45–4 a.m. and at the start and finish of the post mortem and deriving from them a figure of six hours plus or minus two (7.45–11.45 p.m.); in giving this figure he had taken into account the possibility that heat in the room might have accelerated rigor. His final estimate to the Court of Appeal was a possibility up to midnight but certainly not thereafter. He repeated this opinion in evidence before me; he said that without the post mortem discolouration his estimate would have been 7.30–11.30, but that the discolouration led him to put it back to 6.30–10.30 (though he did not tell the police this, or say so in his witness statement). He said that he still felt there was a possibility, remote though it might be, that his upper limit could be midnight, but it would have to be drawn out to bring it up to midnight.

7.30 Professor Forbes thought the firemen's observations suggested that by 1.30 a.m. Confait had been dead for five to six hours; they were, he thought, indicative of rigor being present in the upper extremities, but not in the lower part of the back. He thought that if Dr Bain was right as to rigor mortis being complete by 2 a.m. death must have occurred at least eight hours earlier (i.e. at

6 p.m.), but he did not believe that rigor could have advanced from the state the firemen observed to completion in a period of 30 minutes. Professor Forbes considered that Dr Cameron's description "rigor was commencing" at 3.45 a.m., *in the sense in which Professor Cameron said he had used it* (though not in the sense in which Professor Forbes would have understood it without explanation), was consistent with the firemen's evidence and suggested that Confait had been dead for "something of the order of eight hours." Professor Forbes did not agree that the time of death could have extended up to the region of midnight; he thought death around or after midnight was "out of the question".

Uncertainty of estimates of time of death

7.31 A powerful and sustained argument was addressed to me by Mr Farquharson, who appeared for the Commissioner of Police of the Metropolis and for individual police officers, to the effect that it was not possible in the present case to reach *any* reliable conclusion as to time of death. He based himself on:

(a) the absence of internal body temperature readings, which are agreed to be the most reliable guide to time of death;

(b) the inherent uncertainty of any estimate of time of death based on rigor mortis; and

(c) the conflicting factual basis for estimates of the time of Confait's death.

Mr Farquharson summarised his submission as follows:

> "May I make clear once again what my submissions are then, with regard to this medical evidence which I have now gone through in a great deal of detail. I say that when you are dealing with an unreliable scientific field of evidence you may not, if I may be so bold as to put it that way, rely on coincidence of opinion unless you have examined the factual data upon which that opinion is based. It is quite plain in this particular case, whatever might be the case in others, that the factual data of the persons one has to consider here are irresistibly opposed, and, furthermore, that the most reliable, in the sense of the most highly qualified of those observers, is the one that casts the greatest doubt on the basis that this death took place before midnight, and it is evident from the evidence of the other persons who were here concerned that they had no common basis of their findings as to when death took place."

7.32 I discount the minor inconsistencies between the evidence of the several firemen and policemen who observed the state of the body between 1.30 and 2 a.m.: they are substantially consistent and point to the presence of rigor, and (for what it is worth) a body the exposed parts of which were felt as cold to the touch. I have already discussed the extent of the conflict between Dr Bain and Dr Cameron. I do not consider that the answers given by Professor Forbes in relation to Dr Cameron's phrase "rigor was commencing" *interpreted literally as meaning "just commencing"* will bear the weight Mr Farquharson sought to put on them, in the light of Professor Cameron's evidence (which I accept) as to what he meant by them. Equally, the fact that some of the experts rely on the firemen's evidence does not in my opinion weaken the strength of their views since Professor Cameron's evidence as explained by him is not inconsistent with the firemen's evidence. There is certainly some inconsistency in Professor Simpson's statements of his opinion, but on any view the latest possible time of death he is

giving is midnight. The evidence that death could not have occurred after midnight seems to me, despite Mr Farquharson's argument, to be solid. Subject to this, however, I accept Mr Farquharson's argument that the estimates given by the experts cannot be conclusive and, though the evidence points to a time earlier than rather than one later than 10.30 p.m., I do not believe that a later time up to around midnight can be ruled out.

Rectal temperature

7.33 The best evidence upon which an estimate of the time of death can be based is a series of readings of the core temperature of the body. I was told that the rate at which the temperature of the body falls after death in normal conditions is well-established. The rate of fall may be affected by factors such as the ambient temperature, the presence or absence of blankets or clothing round the body etc. And the temperature at death may differ from the normal, for instance asphyxiation may raise it. But none the less, temperature readings offer a better guide than other indicators, such as rigor mortis. The normal way of discovering the core temperature of the body is by the use of a rectal thermometer inserted *per anum* but it is also possible to insert a thermometer into the abdomen through an incision made for the purpose (though there is a difference of opinion among the experts about the advisability of this practice). In the present case neither of these courses was followed, and the core temperature of the body was not ascertained. I am satisfied that, if it had been, it would have furnished useful evidence to support or contradict the conclusions drawn from other indicators and would probably have enabled a narrower time bracket to have been given and to have been given with greater assurance, even though the reliance which could be placed on core temperature readings would have been diminished to some extent by uncertainty as to the effects of room temperature and of death by asphyxia.

7.34 Why was not a rectal or abdominal temperature taken? Dr Bain told me that he was instructed by a police officer not to take a rectal temperature. I accept that this was so, and further (as I was told by Professor Cameron) that it was the practice in the Metropolitan Police District to ask police surgeons to refrain from taking temperatures if a pathologist was coming. It does not seem to me, therefore, that Dr Bain can be criticised for not taking a rectal or abdominal temperature. However, Professor Cameron has frankly told me that he now considers that he was wrong not to take a temperature: he said that it was contrary to all his own teaching and practice not to do so. The reason he gave at the trial for not having done so was that he had some knowledge of the habits of the deceased and thought it would be wrong for him to disturb the body at the site, and that it would be better for him to wait until he had the body in more suitable surroundings; however, when he re-examined the body at the mortuary some hours had elapsed (there was, I was told, considerable delay in fetching the undertaker) and a number of variables had come into the picture to such an extent that he considered it unwise to take the body temperature and totally wrong to try to estimate the time of death from temperature.

7.35 Professor Simpson expressed the view that there is *never* any reason why one should not measure the body temperature: anal swabs can be taken first and then a rectal thermometer reading, or an abdominal temperature can be taken

through an incision. Professor Forbes considered that a temperature reading could have been taken at the scene, either with a rectal thermometer after first taking anal swabs or by an abdominal incision.

7.36 Professor Cameron said that the light was bad at the scene; he was afraid of injuring the rectum; he wanted to observe the rectum before it was disturbed; and he had expected that the body would reach the mortuary quickly. He said that no obstacle would have been put in his way by the police if he had wished to take a temperature at the scene, the normal practice being to slit the trousers, take a swab and then take the rectal temperature. (Since 1972 new apparatus permits a continuous reading to be taken over a period with a battery-operated thermometer.) However, he recognised that it was an omission not to take the temperature, and I have to record my agreement that in this respect Professor Cameron was at fault.

PART III

CHAPTER 8

ALIBI EVIDENCE OF COLIN LATTIMORE

8.1 On 9 June 1972 an alibi notice was given by solicitors acting for Lattimore, which contained the names of 23 witnesses. Statements were taken by the police from 18 of these witnesses, as well as one other. The witnesses other than the members of the Lattimore family were not called to give evidence at the trial. Counsel for the prosecution agreed that their statements should be read, and did not challenge the truth of their contents. But he did not accept the evidence of the members of the Lattimore family and cross-examined them on their alibi evidence. At my Inquiry Mr Lattimore senior gave evidence, but not the other members of the family, and two of the alibi witnesses not called at the trial, Mrs Brenda Oakley and Mr Donald Heppell, gave oral evidence and were cross-examined.

8.2 The alibi put forward on behalf of Lattimore was that at some time between about 5.30 and 6 p.m. he left home in the company of his brother Gary and another boy, Stephen Harvey, and remained with them until they were admitted to the Salvation Army Torchbearers club in Brownhill Road at about 7.30 p.m. They then spent the evening there until the club closed at about 11.30 p.m. The three boys had then walked home and Colin and Gary had been met by their father in Nelgarde Road shortly after 11.40 p.m. Colin had then gone home where he had remained until the following morning.

8.3 Mrs Brenda Oakley, a captain in the Salvation Army and the leader of the youth club, which met every Friday evening, was a most impressive witness. Her evidence was quite unshaken by cross-examination. As early as 28 April 1972 she was approached by Mr and Mrs Lattimore and asked to make a statement. She in fact gave a statement to the police on 2 August. Other witnesses from the club were approached towards the end of April and gave statements to the police on 17 and 22 July and 2 August.

8.4 The club is down an alleyway running between the two Salvation Army halls which front on to Brownhill Road. The club consisted of two rooms, a club room (which was big enough to hold five table tennis tables, though they normally had only three to allow more room) and a kitchen (about 12 feet by 5 or 6 feet) which was being used for the first time on 21 April. The kitchen had a hatch—measuring four to five feet—which was normally open, through to the club room. Mrs Oakley would be in one or other room, and would move about the room talking to different people and perhaps playing table tennis. She did not think she was in the kitchen on 21 April for more than two to three minutes on two separate occasions. Twenty-eight people, all club members, were in the club for all or part of the evening; the members would assist her in running the club. During the evening coffee was made in the kitchen and served, but she did not make it. The lighting in the club was by overhead lights and was "pretty good".

8.5 Mrs Oakley produced at my Inquiry the register recording attendances by members; the entry for 21 April was made by herself, and showed Colin

Lattimore as having been present. (He had been there on four or five previous occasions, including 14 April.) It also showed the witnesses from the club as having been present.

8.6 Mrs Oakley said that she had arrived at about 7.40 p.m. and had found Colin and Gary Lattimore and Stephen Harvey waiting for her. Colin and Stephen put up the table tennis tables and then played table tennis. Stephen Harvey got a splinter in his finger and went home for a short time to have it taken out by his mother. Mrs Oakley had occasion several times during the evening to tell Colin off—for going into the kitchen and making marks on the floor, for interrupting games by running round the tables, "mucking about with . . . toys" and throwing toilet rolls about.

8.7 At about 9 p.m., Colin went out with Stephen Harvey to the off-licence in Brownhill Road (just across the road from the Salvation Army hall) to buy refreshments and was away for about 10 minutes. As far as she was aware that was the only time Colin left the club. She said:

> "*Q.* Apart from that was there ever a time when he was not there?
>
> *A.* Not that I know of. As I say, he made his presence felt that evening and I cannot recall any long period when he was out of the club at all. That was the only time when I said to someone 'Where's Colin?'
>
> *Q.* Could he have been away for anything like half an hour or so or more without your knowing?
>
> *A.* I do not think so."

She said Colin was "just being a bit noisy", not bad enough for her to throw him out of the club; she did not remember turning him out. She saw him playing table tennis again later on during the evening. She said Colin was "his normal self. There was . . . no change during the evening", "just like a carefree naughty boy really."

8.8 The club closed soon after 11.30 p.m., half an hour later than usual; Colin was there till closing time, when Mrs Oakley saw him leave with his brother Gary and Stephen Harvey.

8.9 Mr D G Heppell was also an impressive witness. He was 15 in April 1972, and used to go to the club and assist the club leader, for instance by making coffee. He was at the club on 21 April 1972 and was first asked to make a statement on 28 April. He got to the club at 7.15 p.m., and saw Colin arrive at 7.15/30. He remembered Colin being there and helping him to make coffee between 9.15 and 9.30 and with the washing up at about 10: Colin spilt a kettle of water over the floor. Colin played table tennis with Mr Heppell and others. At about 10.30 or 10.45 p.m. "we put him outside a couple of times for swearing [because he had lost at table tennis]. . . . He never went, because he made a nuisance of himself, but a friend of mine went out there with him, and we let him in later on." It was Mrs Oakley who put him out the second time. Mr Heppell could remember no other occasion when Colin had left the club—he thought that if Colin had been away for 20 minutes or half an hour he would have been missed. When the club closed at about 11.30 Mr Heppell walked a little way with Colin Lattimore and Stephen Harvey before they parted. Mr Heppell particularly remembered their conversation about "A

certain young lady that was at the club that was quite offended that evening. [Colin] had a habit of touching people up and she was quite offended that evening"; it had been partly for that that Colin had been put out. It was quite a friendly conversation: when they parted Colin "just went, said he would see us Sunday, and that was it." (There was a Salvation Army fellowship on Sundays which they both used to attend.)

8.10 The other witnesses who gave written statements about having seen Colin at the Salvation Army club gave broadly similar accounts to those given by Mrs Oakley and Mr Heppell. They had all of them seen Colin Lattimore at the club between 7.30 and 11.30, though not continuously throughout the period. I did not consider it necessary to invite any of them to give oral evidence, nor do I believe that it is necessary for me to analyse their statements minutely. I accept the evidence given by Mrs Oakley and Mr Heppell that during the period 7.30 to 11.30 p.m. on Friday 21 April Colin Lattimore did not leave the club for long enough to get to 27 Doggett Road and take part in the murder of Maxwell Confait. It would, however, have been possible for Colin Lattimore during one of the short periods when he left the club to have met and conversed with Leighton and Salih. The shoe repair shop in Sangley Road which they broke into is only about 280 yards away from the club, and they could well have passed the front of the Salvation Army halls on their way there from Salih's home or on their return.

PART IV

CHAPTER 9

INTRODUCTION

9.1 I am satisfied that the fire at 27 Doggett Road was ignited at about 1.10 a.m. on 22 April. Both the experts called at the trial were prepared to agree that this was the likely time, and I have not been invited to re-examine the evidence. If it was ignited earlier than that, it could not have been before 12.45 a.m.

9.2 (a) Even if the alibi evidence called on behalf of Leighton and Salih be completely accepted, there were gaps during which Leighton and Salih could have gone to 27 Doggett Road during the period covered by the estimates of the time of Confait's death.

(b) The alibi evidence called on behalf of Leighton, Salih and Lattimore covering the estimated time of ignition of the fire at 27 Doggett Road was before the jury at the trial, and it is clear from the verdict that they must have rejected it. I have not been invited to re-examine that evidence. I am satisfied that all three boys could have gone to 27 Doggett Road at that time.

9.3 I conclude that Leighton and Salih could have taken part in the killing and arson, and that Lattimore could have taken part in the arson.

9.4 I examine next the confessions and the circumstances in which they were made. Are the records accurate? If they are, were the confessions wholly or in part true? Is the story told by the boys so bizarre and improbable that the confessions cannot be true?

9.5 I make criticisms of the way in which the boys were interrogated and the statements taken. But despite these criticisms, I conclude that the record is in all material respects substantially accurate, and that (apart from that part of the confessions which relates to Lattimore's participation in the killing) the answers and statements are substantially true. The answers could not have been made and statements given as they were unless at least one of the boys was involved in the killing and arson. If that conclusion is correct then it is not controverted by the fact that the story told is bizarre and improbable; it could be controverted only if there were factual evidence *inconsistent* with the truth of the statements which (apart from Lattimore and the killing) there is not.

9.6 It has been suggested, as a reason in support of the view that the boys did not kill Confait and set fire to the house, that there are strong grounds for believing that Goode was responsible for both. I examine the case against Goode, and conclude that though there are grounds for suspicion and though he had the opportunity and may have had a motive for killing Confait there is no evidence that Goode was involved.

9.7 I conclude that the explanation which does least violence to the evidence is that Leighton and Salih were involved in the killing; that all three boys took part in the arson at 27 Doggett Road; and that Leighton and Salih persuaded Lattimore to confess falsely to having taken part in the killing. I so find on the balance of probabilities.

9.8 I examine two matters which tend to support the view expressed in paragraphs 9.5 and 9.7:

(a) the remark made by Salih to Mr Lattimore senior at about 11.15 p.m. on 21 April which suggests that, despite the denials by all three boys, they had met during the Friday evening. Salih's explanations of the remark are implausible, and suggest that he has something to hide; and

(b) contemporaneous written evidence which suggests that Leighton may have had a previous contact with Confait.

PART IV

CHAPTER 10

THE FIRE

10.1 The first call was received by the fire brigade at 1.21 a.m. The first fire brigade unit arrived at the scene at 1.23 a.m. The fire is reported as having been under control by 1.52 a.m., and seems to have been extinguished by about 2 a.m. Firemen were able to enter the house at about 1.30, and the body of Confait was discovered at about 1.35. There is no doubt that the fire was deliberately started in the basement, in the cupboard under the stairs next to the bathroom. The cupboard was used by Mrs Goode to store dirty clothes, wet nappies, etc. After the fire there were found in the cupboard one (or two) old firebaskets, and parts of an old paraffin heater resting on top of them. The point of ignition was about nine inches above the floor level. The stairs from the basement to the ground floor were practically consumed, and there was burning up the stairs to the first floor landing. The two experts, Mr North and Mr Craven, are not entirely agreed about the manner of ignition or the path by which the fire travelled, but they are in agreement that the most probable time for the start of the fire was about 1.10 a.m.; and that it was unlikely to have started earlier than about 12.45, even if its development had been somewhat delayed by attempts to extinguish it.

10.2 Mr L S North, who in 1972 was an Assistant Divisional Officer employed by the London Fire Brigade in the Fire Prevention Branch based at New Cross Fire Station, arrived at the scene at about 2 a.m. on 22 April. He had specialised in investigating the nature and cause of fires. He spent a great deal of time over the weekend of 22/24 April at 27 Doggett Road. He concluded that the fire had been deliberately started.

What did Mr North tell DCS Jones?

10.3 At the scene on the morning of 22 April DCS Jones requested Mr North to investigate the possible cause of the fire and to determine the location, and requested that should any evidence be turned up he should be made aware of it immediately without the evidence itself being disturbed. Mr North told DCS Jones that the point of ignition was under the staircase at lower ground floor level about nine inches above the floor level. Later he found beneath the staircase an old and rusty 'Beatrice' paraffin oil heater and concluded that paraffin had been spilt from the heater and ignited; the discovery and conclusion were reported to DCS Jones on the Monday and DS August took possession of the heater on Monday at 3.45. Mr North also found a small amount of soil and a few pieces of brickwork scattered around on the floor which were not in any way consistent with the other types of storage in the cupboard under the stairs.

10.4 Mr North examined the paraffin heater which was found in the cupboard after the fire and concluded that paraffin had been spilt from the heater and ignited. He said that the threads of the reservoir were bright, as if the cap had recently been removed, though the rest of the heater was dirty and rusty. He said that the liquid in the can smelt and tasted of paraffin, and that the soot which

surrounded the area smelt of paraffin. However, the remaining contents of the reservoir, when submitted for scientific examination, were found to contain no paraffin.

10.5 Mr North concluded that the fire had been started by the ignition of a small quantity of paraffin on top of a pile of clothing and nappies, and that that accounted for the absence of burning on the floor. (Mrs Goode stated on 22 April that in the cupboard there had been on the previous evening a dress, a pair of pants, some plastic toys and a set of spare curtains for the whole house.) Mr North thought that the fire had been initially slow-burning and that it had then passed through the hardboard partition into the bathroom whence it had then spread up the stairs. Mr North told DCS Jones on 24 April that he was not able to give an estimate of the time of start of the fire: he said it was quite impossible to be definite on time. He repeated this in the statement which he gave to the Treasury Solicitor on 2 April 1976. However, in his evidence at the trial Mr North said that if someone gave 1.10 as the time when the fire started, that might be a reasonable assumption.

10.6 Mr A D Craven, a partner in Dr J H Burgoyne and Partners, Consulting Scientists and Engineers, who was called for the defence at the trial, first visited the premises on 28 June 1972. He agreed that the fire had been deliberately started by the ignition of some inflammable material. He concluded from the absence of burning on the lower part of the wall of the cupboard that the bottom two feet of the cupboard had been filled with something (probably clothes or dirty washing) which prevented the downward spread of the fire. He took measurements of the depth of charring on timber in the neighbourhood of the cupboard and concluded that the fire had spread from the cupboard up the stairs. He doubted if paraffin had been used to start the fire. He thought that if petrol or paraffin had been used, only a small quantity could have been used since there were no signs of a "pool fire". He deduced from the depths of charring of the woodwork that the fire had been burning in the basement for only 20 minutes when it was extinguished, and on the ground floor only 10 minutes. He estimated the time of ignition as 1.11 a.m. He did not believe that the fire had smouldered in the cupboard for any length of time, and he rejected the possibility that it could have died down and then burst into flames much later on.

Conclusions as to the fire

10.7 (a) It was not ignited before about 12.50 a.m., and probably not until about 1.10 a.m.

(b) There is a conflict between the expert witnesses as to whether or not paraffin was used. I support Mr North on this point, since he was on the scene very shortly after the fire whereas Mr Craven was not instructed until two months later. The evidence seems to me consistent with a fire ignited with paraffin on top of the firebasket(s) and a pile of clothing. The fact that the reservoir of the heater was found on scientific examination to contain no paraffin is not inconsistent with its having been used as the source of paraffin to ignite the fire: it could have been emptied of paraffin, and the liquid found in it could have got in as a result of the activities of the firemen. Counsel for the boys did not seek to argue that the evidence of the fire experts was inconsistent with the account given by the boys.

PART IV

CHAPTER 11

ALIBI EVIDENCE OF SALIH AND LEIGHTON

11.1 On 8 June 1972 an alibi notice under section 11 of the Criminal Justice Act 1967 was served on the Director of Public Prosecutions by solicitors acting on behalf of Salih. This stated that from 9.45 p.m. on 21 April Salih was at his home, 49 Nelgarde Road, with Leighton; that this would be corroborated by his sisters Perihan and Meral who would state that Ahmet was with them till early on the Saturday morning. On 15 June the solicitors wrote to say that Meral saw Ahmet at home till 12.25 a.m. and Perihan till about 1 or 1.05 a.m. On 29 June a further notice was served on behalf of Salih which stated that at approximately 2 p.m. Salih was in the company of his sister Perihan and Leighton at Mrs Leighton's address (25a Westdown Road). They stayed at that address until approximately 7 p.m. when the three of them went to the ABC Cinema at Catford where they met Miss Deborah Ricketts (aged 13). The four of them returned to Mrs Leighton's home, arriving at about 8.15 p.m., and stayed until approximately 9.20 p.m. Perihan Salih and Deborah Ricketts left the company of Salih at approximately 9.30 p.m. At that time Salih and Leighton went to Leighton's grandmother's house at 146 Doggett Road. Salih and Leighton then went to 49 Nelgarde Road.

11.2 On 16 June a notice was served on behalf of Leighton which gave substantially the same story up to 9.15 p.m. and then went on:

> " . . . 4. At about 9.15 p.m., he left 25a Westdown Road, together with Salih Ahmet, Periham Salih and Deborah Rickets and walked to the Hot Dog Stall situated in Catford Road, by the Catford Bridge, when Periham Salih left him. He then walked to the bus stop outside the A.B.C. Cinema in Sangley Road, with Salih Ahmet and Deborah Rickets and waited until Deborah Rickets caught a No. 47 bus.
>
> 5. Thereafter he and Salih Ahmet walked to Sangley Road and then via Rushey Green, Holbeach Road to 146 Doggett Road, Catford, London, S.E.6 arriving at about 10 p.m.
>
> 6. He remained at 146 Doggett Road for a short while and present were Salih Ahmet and Mrs. Violet Elizabeth Jewell of 146 Doggett Road Catford, London, S.E.6.
>
> 7. Thereafter he went with Salih Ahment to 49 Nelgarde Road, remaining there a short while. Present were Salih Ahmet and Periham Salih. He then went with Salih Ahmet to the shoe shop situated in Sangley Road, Catford London S.E.6 remaining there about half an hour. He then returned to 49 Nelgarde Road, arriving at approximately 10.45 p.m.
>
> 8. Between about 10.45 p.m. on 21st April 1972 and about 12.45 a.m. on the 22nd April 1972, save for a period of about five minutes, when he was at the Hot Dog Stall situated at the Railway Tavern Catford Bridge, he remained at 49 Nelgarde Road. Present were Salih Ahment and Periham Salih.

9. Thereafter he waked back to the shoe shop in Sangley Road together with Salih Ahmet, remaining there a short while.

10. He left the said shoe shop and was walking in the Plassey Road, Catford, London, S.E.6 at about 1.30 a.m.

11. Between about 1.30 a.m. and about 3.45 a.m. he was in police custody."

11.3 Statements were taken by the police from Mrs Leighton, Perihan and Meral Salih, Mrs Jewell and Deborah Ricketts (who were all mentioned in the alibi notices), and also from Mr Lattimore senior and Mrs Pendrigh who spoke of seeing Leighton and Salih during the evening. All of the aforenamed except Meral Salih gave evidence at the trial and were cross-examined. None of them except Mr Lattimore senior and Mrs Leighton was called to give oral evidence at my Inquiry.

11.4 The movements of Leighton and Salih as described by their alibi witnesses were as follows:

21 April 1972

5 to 7 p.m.	at Mrs Leighton's home (25a Westdown Road) with Perihan Salih
7	leave with Perihan "just after 7"
7.5/7.15	meet Deborah Ricketts outside ABC in Catford
7.5/7.15 to 8	returning to Mrs Leighton's via Catford Bus Garage and fish and chip shop
8 to 9.15	at Mrs Leighton's
9.15 to 9.25	take Deborah Ricketts back to bus stop
about 10	to Mrs. Jewell's house (146 Doggett Road) to collect coats
shortly after 10	to Salih's house (49 Nelgarde Road) to collect screwdrivers and then leave
after 10.35	return to Salih's house
11	meet Mr Lattimore senior in Holbeach Road
11.20	again meet Mr Lattimore senior, and seen by Mrs Pendrigh, in Nelgarde Road
12.12 to 12.37	watch television at Salih's house
12.37 or 12.55	go out again

At some time during the period 10.35 to 12.09 they are said to have gone out to buy hot dogs from a stall at the junction of Catford Road and Doggett Road, but the times given vary. They were arrested in Sangley Road at about 1.30 a.m.; attempts were made at my Inquiry to suggest that the arrest occurred earlier than that, but I am satisfied that it did not.

11.5 As I have said in the Introduction to Part IV, there are gaps in the alibi evidence, during which Leighton and Salih could have gone twice to

27 Doggett Road, on the first occasion when Confait was killed and on the second when the house was set on fire. Noteworthy aspects of their movements are:

(a) the fact that they went *twice* to the shop in Sangley Road, though it was not easy to see what more they hoped to get on a second visit; and

(b) the interval of time between leaving Salih's house and being arrested seems too long to account for what they said they did during that time.

PART IV

CHAPTER 12

THE CONFESSIONS

12.1 The police allege that confessions were made by one or more of the boys in the following stages:

(a) An admission by Lattimore to PC Cumming in Nelgarde Road at about 5.30 p.m. on 24 April that he and Leighton had lit a fire in Doggett Road the previous Friday.

(b) An admission by Lattimore to DC Bresnahan and TDC Woledge at Lewisham Police Station between 5.30 and 6 p.m. on 24 April that he and Leighton had lit a fire on the Friday night in the house in Doggett Road where the man was killed, and a more doubtful admission by Leighton.

(c) Admissions by all three boys at interviews with DCS Jones at Lee Road Police Station between 6 p.m. and 8.05 p.m. on 24 April.

(d) Admissions by all three boys at a confrontation at Lee Road Police Station between the boys and two of the parents at 9.15 p.m. on 24 April.

(e) Admissions contained in written statements made by the three boys between 9.30 and 10.40 p.m. on 24 April and 12.50 and 1.30 a.m. on 25 April at Lee Road Police Station.

(f) Admissions made at 2 a.m. on 25 April at Lee Road Police Station when certain exhibits were shown to the three boys.

12.2 The question whether the confessions are genuine, and if not (to any extent) how and why they came to be made is central to my Inquiry. The age of the boys, the limited mental capacity of Leighton and Lattimore and the fact that the interviews were conducted with no parent, guardian, solicitor or other independent person present and that there was no independent record (such as a tape-recording) must cause disquiet. This disquiet is increased by the bizarre story which the boys are recorded as telling, and the problems which it raises. It may be that in this country we have had a better experience than in the USA, where methods of interrogation used by the police, at any rate prior to the *Miranda*[1] decision in 1966, have created scandal. But there have been enough cases of police misbehaviour in England to give rise to suspicion when events such as those in the Confait case occur, and to justify a reconsideration of the control exercised over police interrogation. Countries whose law provides for no contemporaneous judicial or other independent control over police interrogation are the exception in Europe and it must be a question whether the Judges' Rules and Home Office Administrative Directions, as applied by the courts, provide a sufficient measure of control over the police and protection for the individual. However, having anxiously considered the evidence in this case, and giving full weight to the above considerations, I feel bound (with one exception) to accept Mr Farquharson's submission which he expressed as follows:

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[1]*Miranda v. Arizona* 384 U.S. 436.

". . . the boys were invited to make their joint statements in the presence of their parents at the time of the confrontation, and . . . after that the written statements themselves were made . . . if what was happening was . . . that the boys were not saying this but their words were being adapted by the police officers, and the police officers put information into their mouths, Lattimore could not have made the statement. He could not have remembered that, nor could Salih, because his statement was not made until midnight. How could it be that the officers were so foolish as to take the risk of pushing information down the boys' throats and in due course inviting them to make those statements in front of their parents, in such circumstances that no parent objected, saying it was a perfectly proper way to make a statement? Having regard to the limitations of those boys in terms of schooling and so on, they could not recall it. Either they were recording facts which took place when they were there and present, or facts which the other two put to them . . . there could have been no pressure on the boys for these reasons: one, the impossibility of coaching Lattimore or Leighton in such a story so that they remembered it; two, the risk having done so of inviting them to repeat it in front of their parents; three, the risk of the admissions not conforming [to] evidence of which the police would be unaware; four, the fact that the police allowed disparities in the statements to remain; five, the fact that there were virtually no leading questions throughout; six, the fact that the written statements were made in such a way subsequently [that] the parents endorsed them."

The exception is that, in respect of the killing, leading questions were put to Lattimore both at the interview and by interruption of the written statement, and I find that that part of his confession was not true.

12.3 In support of Mr Farquharson's submissions the following further points can be adduced:

(a) There was not time to prepare a plan for concocting evidence, nor (as Dr Leigh said) to carry out the kind of operation which the boys alleged to have occurred.

(b) Both Leighton and Lattimore, in the written statements made in the presence of their parents, introduced new details which they had not mentioned in their oral answers.

(c) Lattimore's answers and written statement as recorded contained in places denials, refusals to make admissions, and statements which were subsequently retracted. These can hardly have been suggested to him.

(d) Leighton's allegation that he confessed because the police officers 'kept on' at him cannot apply to his very first answer "Colin killed him. I only held his arms."

The admissions to PC Cumming and DC Bresnahan

12.4 On the afternoon of Monday 24 April the attention of the police had been directed to a fire which had been started in a shed in the park at Ladywell Fields. Two boys had been seen running away from the scene. PC Elliott had seen all three boys (whom he knew) near the shed before the fire was discovered and subsequently gave their names and descriptions to other police officers

who were patrolling in the area. One of these was DC Bresnahan and another was PC Roy Cumming, a police constable who for the last eight of his 13 years' service had been a police dog handler: he had been one of the officers who had arrested Leighton and Salih in the small hours of the previous Saturday morning. At about 5.20 p.m. he was in a panda car on patrol when he saw Lattimore walking along Nelgarde Road and thought that he corresponded with the description of one of the boys seen in Ladywell Fields. According to PC Cumming's note taken on the spot the conversation went like this:

> "I said to him 'You answer the description of a person seen near a fire in Ladywell?' He said 'Do I.' I said 'You don't seem surprised with what I say, did you have anything to do with it.' He replied 'Yes, I was there.' I said 'There's been other fires at the Station, and a house in Nelgarde Road, were you also there.' He replied 'Yes.' I then said 'If I mention Doggett Road last Friday, can you tell me anything about that.' He replied 'I was with Ronnie, we lit it, but put it out, it was smoking when we left.' "

PC Cumming said in evidence before me that he had heard about the fire at 27 Doggett Road and the death of a person there and "it seemed a natural sort of conclusion to come to, having established the first few fires"; but he had no evidence to connect Lattimore with any fire other than the one in Ladywell Fields.

12.5 At or towards the end of the conversation another police officer drove up in a car, DC Bresnahan (aged 48, an officer with 19 years' service in the police force, 16 as a detective), and PC Cumming asked him to take Lattimore to Lewisham Police Station. Lattimore got into DC Bresnahan's car. PC Cumming, because he recognised the name "Ronnie" given by Lattimore, and because the descriptions given to him by PC Elliott fitted the two boys whom he had arrested in Sangley Road on the Saturday morning, went, followed by DC Bresnahan, to 146 Doggett Road where Leighton lived with his grandmother Mrs Jewell. (Lattimore pointed out the house to DC Bresnahan as being Leighton's.) He went in and found Leighton and Salih with Mrs Jewell and (according to his note) had the following conversation:

> "I addressed them both in the presence of Ronald's Gran. and said 'I'm making enquiries regarding fires that have been started in this area today. One of them was round the corner in Ladywell Fields.' AHMET replied 'I was there but I didn't light it.' "

12.6 He then "asked" them to go with him to Lewisham Police Station where he would want the CID to make further investigations regarding the fires. Lattimore and Salih travelled in DC Bresnahan's car, and Leighton in PC Cumming's car. At the police station PC Cumming made entries in the 'Persons stopped in the street' Book (see paragraph 12.23(a) below), and he thinks he would have reported the matter to the station sergeant. He himself took no part in further questioning of the boys.

12.7 There is some confusion in the evidence about the reason why PC Cumming went to Nelgarde Road, and whether or not he knew Lattimore. DC Bresnahan thought that the reason why PC Cumming went to Nelgarde Road was because Lattimore lived there. PC Cumming denied this: he knew

Leighton and Salih but not Lattimore, and picked up Lattimore because he saw him in the street and thought he was Leighton. I find nothing sinister in this confusion: it seems to me very natural.

12.8 According to DC Bresnahan's evidence he heard only the last few words of PC Cumming's conversation with Lattimore and assumed they were talking about the fires that had occurred that afternoon. PC Cumming said he thought he would have told DC Bresnahan of the answer Lattimore had given about Doggett Road in order to explain to DC Bresnahan why he was asking him to take Lattimore to Lewisham Police Station, and the subsequent action in relation to Leighton and Salih. But I am satisfied that he did not do so. This omission may seem surprising but in fact it was not necessary for him to do so in order to explain the request to DC Bresnahan: DC Bresnahan clearly considered that the reason for the request was that the three boys were suspected of having caused the fire at Ladywell Fields, and indeed his evidence was that he arrested the three boys for that offence. His knowledge of the fire and murder at 27 Doggett Road was, as he explained, negligible at the time when he arrived at Lewisham Police Station with the three boys (see paragraph 12.20 below). PC Cumming also said it was in connexion with the fire at Ladywell Fields that he was "taking" the three boys to Lewisham Police Station—indeed no mention had been made of Salih in Lattimore's answer about Doggett Road.

12.9 After the boys had been searched in the charge room at Lewisham Police Station, DC Bresnahan at about 5.30 p.m. took Lattimore upstairs to the CID office and questioned him in the presence of TDC Woledge, an officer very much his junior then aged 22 with four years' service. No other officers were present. According to DC Bresnahan's notebook (which he said he wrote up the same evening at about 7.30 p.m.) the conversation proceeded as follows:

> ". . . I said to him 'I have cautioned you, do you understand what I mean by caution?' He said 'Not really.' I said 'It means that when I ask you a question you don't have to answer me unless you want to but what you tell me I may have to say in Court later on. Do you understand?' He said 'Yes.' I said 'Will you answer my questions truthfully?' He said 'Yes.' I said 'Did you three boys set light to the Sports Hut this afternoon?' He said 'Ahmet threw in the matches after we sprinkled some paraffin from a lamp.' I said 'Two other fires [were] also started this afternoon one at a house in Nelgarde Road and one at Catford Station, did you three light those?' He said 'Yes.' I said 'Why did you do it?' He said 'I don't know they wanted to.' T/DC Woledge then said 'Last Friday night a fire was started in a house in Doggett Road, do you know anything about that?' LATTIMORE hesitated for a moment and said 'Do you mean the end house where the man was killed?' WOLEDGE said 'Yes.' LATTIMORE sat silent for a while and T/DC Woledge said 'Did you go into that house and start the fire?' LATTIMORE said 'We found an old can with paraffin in it and sprinkled it about, Ronnie lit it and then we tried to put it out.' T/DC Woledge said 'But you didn't put it out because it caught fire didn't it?' He said 'Yes.' I then brought SALIH and LEIGHTON into the C.I.D. office and said in the presence of LATTIMORE 'I am going to ask you some questions. You don't have to answer

them if you don't want to but what you tell me I may have to tell in Court Later on. Do you understand?' They both said 'Yes.' I then said 'Colin has told me about you starting fires this afternoon in the Sports Hut, in the house in Nelgarde Road and by the Railway Station. Is he telling the truth?' LEIGHTON said 'Yes.' SALIH said 'I'm sorry.' T/DC Woledge then said 'Your friend Colin has said you went into the house in Doggett Road last Friday night and started the fire is that right?' LEIGHTON said 'That one where the big fire was and the man died?' Woledge said 'Yes.' T/DC Woledge said to SALIH 'Do you know the house I mean?' He said 'The corner one.' T/DC Woledge said 'Well is Colin telling the truth?' SALIH said 'I didn't light it.' LEIGHTON said 'It's right what he says.' "

12.10 DC Bresnahan said that he allowed TDC Woledge to take part in the questioning in order to give him experience; TDC Woledge's questions about Doggett Road came "right out of the blue". Mr Blom-Cooper did not criticise TDC Woledge for having asked the question about the fire at Doggett Road, nor do I consider that DC Bresnahan is to be criticised for allowing it to be followed up (apart from the suggestion, which I discuss in chapter 16, that he should not have done so in the absence of parents) to the point when he considered that he had enough to justify turning the boys over to DCS Jones. It emerged at the trial that TDC Woledge had later the same evening made incorrect entries in his diary about his own movements, and had falsely given himself the credit for having arrested Leighton for murder. These matters seriously damaged TDC Woledge's credit, and led prosecuting counsel to invite the jury not to rely on his evidence. But these matters do not in my opinion cast doubt on the accuracy of DC Bresnahan's account of the questioning at Lewisham. As I recount elsewhere, the allegations against TDC Woledge of assault on the three boys were not pursued.

12.11 Lattimore agreed substantially with the account given by the police officers of how he and the other boys were picked up and taken to Lewisham Police Station. He said that the policeman who first spoke to him (PC Cumming) asked him about the murder at Doggett Road the previous Friday, but that his answer was that he knew nothing about it. In his evidence at the trial he agreed that at Lewisham Police Station TDC Woledge asked him about a murder which had happened in Doggett Road; and that he might have said "We found an old can with paraffin in it and sprinkled it about, Ronnie lit it and then we tried to put it out." His explanations of his admissions to TDC Woledge were as follows:

"*Q.* Did you find an old can with paraffin in it and sprinkled it about?

A. Well I think I said that but I'm not quite sure.

MR JUSTICE CHAPMAN: You think you did say that?

A. Yes sir.

MR MARRIAGE: Then why did you say that?

A. Well he said to me: 'What did you find in the cabin?', and I said: 'Nothing. I wasn't there.' He said: 'You did it?', and I said: 'No'. He said: 'You found an old can?' and I said: 'All right, I found an old can then.'

Q. Did you say or refer to finding an old can in a cabin?

A. I'm sorry, he asked me if I had found an old tin can in a cupboard.

Q. So is this right. He asked you what you had found in the cupboard and you said: 'Nothing. I wasn't there.' Then he suggested to you that you had found an old can in the cupboard and sprinkled it about?

A. Yes, that is what he asked me and I said I didn't know anything about it and hadn't done it. Then he asked me again about it and I said: 'All right I done it then', but I hadn't really.

Q. He asked you what again?

A. Was there a rusty old can in the cupboard in the house with paraffin in it and I said: 'All right, it was there, if you want to put it that way.' "

12.12 Lattimore at the trial said that he was assaulted by TDC Woledge at Lewisham Police Station: he claimed that TDC Woledge said to him "If you don't make a statement, then you'll do porridge" or "have porridge for breakfast", and then "If you don't make a statement" (or "if you don't tell me that you were there") "you are going to get hit"; according to Lattimore, TDC Woledge then rolled up a newspaper tight and hit him on the nose and made it bleed, and also cut his lip.

12.13 At the Inquiry he told a similar story but with some added features: he said that TDC Woledge (whom he had never seen before) told DC Bresnahan to go out of the room, then made the remark about "porridge" and "got a newspaper and he rolled it up tight, put sellotape round it and he whacked me in the mouth with it", and that he had then confessed to the murder "to make him happy". Lattimore said that as a result his face was cut, his lip was swollen and bleeding and his nose "started gushing out with blood" which he wiped with the sleeve of his coat. He said nothing about the assault to DC Bresnahan while he was still at Lewisham, nor to any of the police officers at Lee Road. Lattimore said in evidence "If I had told them . . . it would have gone through one ear and out the other."

12.14 According to Mr Lattimore senior, the first time Colin Lattimore complained that he had been assaulted by a police officer at Lewisham Police Station was at Brixton Prison on Wednesday 26 April. He then, according to his father, had a cut on his mouth which Mr Lattimore had not noticed when he saw Colin about 9.15 p.m. on 24 April. Later, while at Rampton Hospital, Colin told him he had been held by one policeman while the other hit him; he had been struck repeatedly. According to Colin, however, he did not tell his father about the assault until after he was sent to Rampton, and did not then say that more than one officer was involved.

12.15 At my Inquiry counsel for the boys did not invite me to find that the boys had in fact been physically assaulted by police officers (see paragraph 12.46 below).

12.16 Leighton agreed that he had admitted involvement in the three fires at Ladywell Fields, 1 Nelgarde Road and Catford Bridge Station; he agreed that he had been asked about the fire at Doggett Road, but said that he had said he knew nothing about it. In the proof which Leighton gave to his solicitors on 6 June 1972 while he was in the Remand Centre at Ashford, he described the questioning at Lewisham Police Station. He said "he then asked me what I knew about the house that had burnt at Doggett Road and I told him nothing. After he had asked Colin some questions about the house in Doggett Road and

Colin had told him about some bricks, he took me into another room. . . ." But in his evidence at the trial he said he did not remember what Colin was asked or what he himself said. In his evidence at the trial Leighton agreed that at Lewisham Police Station TDC Woledge had said "Your friend Colin has said you went into the house in Doggett Road last Friday night and started the fire is that right?" and that he had said "That one where the big fire was and the man died?" to which TDC Woledge had replied "Yes"; but Leighton denied that he had said "It's right what he says." He said Salih was not present.

12.17 In his evidence at the trial, Salih denied that he had been asked any questions about Doggett Road while he was still at Lewisham Police Station, but in his evidence before me, he agreed that he had. He had said that he knew nothing about it and neither Leighton nor he had admitted being there. He said Lattimore told him that he too had been asked about Doggett Road.

12.18 At the end of the conversation DC Bresnahan informed DS Cheval (then acting detective inspector at Lewisham Police Station) and telephoned to the murder headquarters at Lee Road and passed a message for DCS Jones to the effect that he "had three lads that [might] be able to assist with their enquiries" and was told to take them over there. There is some uncertainty as to whether DC Bresnahan actually spoke direct to DCS Jones. DCS Jones told me that he would have expected PC Cumming to come to Lee Road Police Station to report personally what Lattimore had said to him, and was amazed that he had not done so. However, he had all the information which was recorded in PC Cumming's notebook entry, which an officer at Lewisham Police Station read over to him.

12.19 The three boys were then taken to Lee Road Police Station, each in the custody of a named police officer (Lattimore of TDC Woledge, Leighton of DS Cheval and Salih of DC Bresnahan) who had signed a receipt for the boy in his charge. According to the entry in Book 12A (see paragraph 12.23(b) below) they left Lewisham Police Station at 6 p.m. On arrival (according to his notebook) DC Bresnahan reported that the boys had admitted setting fire to 27 Doggett Road. The boys should have been given into the custody of the station officer, who is responsible for anybody who is being kept at the police station. In fact, however, they were handed straight over to the murder squad.

12.20 DC Bresnahan told me that at the time when he questioned the boys at Lewisham Police Station he knew little or nothing about the fire and murder at 27 Doggett Road; he knew that Confait had died in a fire there, but did not know he had been strangled; he knew that a murder squad had been set up, which some officers from his station had joined, but not being a member of it himself had had no briefing about it. TDC Woledge knew that there had been a fire and possibly a murder.

Arrest

12.21 There has been some contradiction in the evidence as to whether the boys were arrested before they arrived at Lewisham Police Station. According to PC Cumming, he did not tell Lattimore that he was arresting him, and did not in fact arrest either Lattimore, Leighton or Salih: he *asked* them to come to the station. DC Bresnahan on the other hand cautioned Lattimore in the car and told him that he was taking him to Lewisham Police Station "because I think you set fire to a Sports Hut in the Recreation Ground this

afternoon", and he clearly considered that he was then arresting him. At 146 Doggett Road the words which DC Bresnahan said he used (to PC Cumming) were "Bring those two out they know something about the fires", and (to Mrs Jewell) "I think they have been naughty boys and striking matches and setting light to things"; he then told Mrs Jewell he was *taking* the boys to the police station to ask a few questions and make further enquiries. (He said that his reason for thinking that Leighton and Salih were involved was that Lattimore in the car had said he had been with Ronnie and Ahmet.) DC Bresnahan did not caution Leighton or Salih but I have no doubt that at that point the two boys were arrested for arson in Ladywell Fields, and that thereafter all three boys remained under arrest for that offence until they were charged with murder and arson on 25 April.

12.22 DCS Jones expressed the view that the boys were never arrested, though they were taken to the station with very little element of voluntariness, and they would not have been allowed to go home if they had asked. It is true that the word "arrest" was never spoken, but in my opinion what occurred constituted an arrest within *Alderson v. Booth.*[1] Furthermore, I consider that DC Bresnahan did tell the boys what they were being arrested for and so satisfied the requirement of *Christie v. Leachinsky.*[2]

12.23 The entries made in the books at Lewisham Police Station did not, however, bear any resemblance to the facts.

(a) *'Persons stopped in the street' Book (Book 90)*

A copy of the entry which PC Cumming made in the 'Persons stopped in the street' Book is at page 90. In fact, Leighton and Salih were not stopped in the street, and none of the boys was arrested under section 4 of the Vagrancy Act 1824. PC Cumming's explanation of this entry was as follows:

> "This book basically is for records only at higher officer level, really, so that they can know and realise what is going on at their station. There is no Act as far as I am aware that we can put in and section 4 Vagrancy Act is normally used as you can see previously from this page when anyone is stopped in the street regarding their movements. Lattimore as you say was the first entry on this particular one we are interested in and I have just dotted underneath the other two to follow simply because at that stage I suspected they might have been concerned together although not actually stopped in the street."

His explanation why the word "arrested" was written against the names was as follows:

> "Because this was possibly done at a later stage. This would not have been done immediately on going into the station. At the time this was done which could have been an hour later or even two hours later I would have realised then that they had in fact been cautioned and taken to Lee Road so it would follow that this is what I would put in."

I need not labour the point that if entries are to be made in books they should be accurate. PC Cumming said that the 'Persons stopped in the street' Book was "a document for Home Office statistics more than it is for anything used as evidence. . . ." If Home Office statistics are in fact based on records compiled

[1] [1969] 2 Q.B. 216.
[2] [1947] A.C. 573.

1 Serial No. and Arrest No.	2 Date	3 Time	4 Place	5 Name and address, approximate age and height. (If not taken, give brief description)	6 R/C	6 Proof of identity	7 Reason for stop	8 Act and Section	9 Officer(s) stopping (Uniform, Aid, etc.)	10 Result	11 Whether resented	12 Station Officer
760 145	24 4/72	17.30	Nelgarde Rd Catford SE6	LATTIMORE Colin 16 Nelgarde Rd. Catford SE6 18 YRS (25 7/53) 5' 7"	1	ARRESTED	Re movements	Sec 4 Vag Act 1824	PC 459P CUMMING D/HANDLER	12A/205 refers INDEXED COLLATOR P	—	X
761 146	24 4/72	17.30	Doggett Rd SE6	AHMET Salih 49 Nelgarde Rd SE6. 14 (11.4.58). 5' 2"	2	—„—	—„— —„—	—„—	PC 459P CUMMING D/HANDLER	—„— —„— INDEXED COLLATOR P.L.	—	
762 147 X X	24 4/72	17.30	Doggett Rd	LEIGHTON Ronal William 146 Doggett Rd Catford SE6 15 (17.7.56) 5' 8'	1	—„—	—„— —„—	—„—	D/C BRESNAHAN C.I.D.	—„— —„— INDEXED COLLATOR P.L.	—	

[Note: X denotes initials (undecipherable)]

Extract from 'Persons stopped in the street' Book, Lewisham Police Station

Number	Date and hour brought to Station	Person at Station, Name, address, occupation Date of Birth, Sex.	R/C	Circumstances and Reason	Other book reference if applicable, e.g., Stop No.	Name and address of— (*a*) Officer (*b*) Witness	How disposed of	Property found on person or elsewhere Signature of Station Officer		Receipt for property, date, signature. P.P.V. and P.T.R. Nos.
(1)	(2)	(3)		(4)	(5)	(6)	(7)		(8)	(9)
205	24 4/72 5 30 pm	LEIGHTON Ronald William, 146, Doggett Road, SE6. Unemployed. 17 7/56 Male. Rc 1	1	The officer saw Leighton and Salih in Doggett Road SE6 at 525 pm this day, he questioned them re movements and suspected them to have been concerned with various fires. At the station both were questioned by D.S. Chevals and admitted causing a fire at 27, Doggett Road also the subject of a murder enquiry.	90/761-2 MAJOR CRIME 487	a) Pc 459P CUMMING	Left station under escort at 6 pm 24 4/72 Peter Bly SPS3P		ON PERSON Nothing. R Leighton. Roy Cumming 459	Received the custody of LEIGHTON R Cheval D/S. Peter Bly SPS3P 24 4/72
206	24 4/72 5.35 pm X X X	SALIH Ahmet 49, Nelgarde Road, SE6. Schoolboy 14/ 11 4/58 Male. Rc2.	1	At the directions of Detective Chief Superintendent Jones both were transferred to the murder squad headquarters at Lee Road Police Station. Parents being informed by the murder squad.	——,,——	——,,——	——,,——	A A X	ON PERSON BOX MATCHES PURSE Ahmet Salih Roy Cumming 459P	Received the custody of SALIH and the TWO items of property marked A as shown on Forms 64/65 D Bresnahan Peter Bly SPS 3P24 4/72

[Note: X denotes initials (undecipherable)]

Extract from Juvenile Register, Lewisham Police Station

in this haphazard way, then reliance on them would not seem to be justified.

(*b*) *Juvenile Register, Lewisham Police Station (Book 12A)*

A copy of the entry in the book is at page 91. (The book in which a similar entry would have been made about Lattimore is no longer extant.) This entry was apparently made by the station sergeant, SPS Bly. It is incorrect in that DS Cheval at no time questioned Leighton or Salih. According to SPS Bly, it was DS Cheval who told him about the admissions and he assumed they had been made to DS Cheval.

12.24 Mr Blom-Cooper sought to rely on the following matters as evidence of "utter confusion . . . at Lewisham Police Station . . . characteristic of how careless police officers were on that evening when it involved three persons' liberty":

(a) uncertainty as to whether PC Cumming knew Lattimore and had gone to Nelgarde Road purposely to arrest Lattimore;

(b) uncertainty as to whether PC Cumming told DC Bresnahan of the answer he had received from Lattimore about Doggett Road;

(c) uncertainty as to whether the boys were arrested;

(d) the fact that (contrary to what DCS Jones expected) PC Cumming did not go to Lee Road to tell DCS Jones what Lattimore had said; and

(e) the entry in the 'Persons stopped in the street' Book saying that Leighton and Salih had been stopped in the street and that all three had been arrested under section 4 of the Vagrancy Act 1824.

12.25 These matters (or at least (c), (d) and (e)) at the most reveal laxity in following proper police procedures. I find nothing sinister in them. There is no doubt that PC Cumming did mention Doggett Road to Lattimore (Lattimore agreed that he did); the entry in the notebook was made almost contemporaneously, and it was read over to DCS Jones by an officer at Lewisham Police Station. The fact that PC Cumming did not tell DC Bresnahan about Lattimore's answer concerning Doggett Road is puzzling. It is possible to speculate as to reasons—PC Cumming may have thought that DC Bresnahan had heard the whole exchange whereas in fact he had heard only the tail end and assumed it to refer to the Monday fires. The incorrect entries in the books did not in themselves adversely affect the boys, and I do not believe that they justify the conclusion that events did not occur as PC Cumming described them in his notebook. Whatever confusion may have existed was of temporary effect only, and was removed when the boys got to Lee Road. Moreover, so far from "rushing to judgment" on the basis of what he had heard (as Mr Blom-Cooper suggested that he did), DCS Jones (if DI Stockwell's record is correct) started off his interview with Lattimore with a series of questions designed to find out whether Lattimore was really making the admission which PC Cumming and DC Bresnahan believed him to have made about the fire at 27 Doggett Road.

Possibility of confusion as to which house was being talked about

12.26 If the conversations took place as PC Cumming, DC Bresnahan and TDC Woledge have described, I have to ask myself whether what were understood to be admissions relating to 27 Doggett Road could have been the result of misunderstandings on the part of the three boys as to what they were being

asked about, or could have been intended as denials. It has been suggested that when the officer asked about Doggett Road, Lattimore might have thought he was talking about Nelgarde Road. Argument can be based on the following matters:

(a) PC Cumming reports an admission by Lattimore that he was present at a fire at a house in Nelgarde Road. The only such fire of which there is evidence was a fire lit at 1 Nelgarde Road on Monday 24 April by Leighton and Salih, but it is clear that Lattimore took no part in it: he saw it from inside his own house.

(b) DC Bresnahan reports an admission by Lattimore that the *three* of them had lit a fire in a house in Nelgarde Road. Lattimore said at the trial that he had admitted being at the Catford Bridge fire, but not the Nelgarde Road fire.

12.27 The questioning as described by DC Bresnahan and TDC Woledge (if it was in accordance with the record) does not justify the description Mr Blom-Cooper gave it—"quick-fire". The note records that Lattimore "hesitated for a moment . . . sat silent for a while". Before the crucial questions on each occasion (if the account of the conversation in the officers' notebooks is correct) the boy concerned made sure that he knew which house he was being asked about: "Do you mean the end house where the man was killed?" (Lattimore); "That one where the big fire was and the man died?" (Leighton); "The corner one" (Salih). Moreover, on each of the occasions when Lattimore was asked by PC Cumming and DC Bresnahan about the fire at Doggett Road he said that they "put it out" or "tried to put it out". He did not say this about any of the other fires about which he was asked, but it remained a feature of the story which he later told at Lee Road, it was later confirmed by Salih, and evidence to support it (the bricks and dirt found at the seat of the fire) was later found, according to Mr North and the police. Furthermore, it seems clear from Lattimore's evidence at the trial that he was under no illusion as to which house he was being asked about:

"*Q.* Did he say anything about any other fires?

A. Yes sir.

Q. Which other fire or fires did he mention?

A. He mentioned the fire in Doggett Road.

Q. Did he say anything about the Nelgarde Road or the Catford Railway Station fires?

A. No sir; I don't think he did. I think the only other fire he mentioned was the one in Doggett Road.

Q. What did he say about the fire in Doggett Road?

A. He asked me if I had been around or near to the house in Doggett Road when it caught fire and he said something about a murder. Then I said: 'No.'

Q. Would you say that again?

A. He said: 'Do you know anything about a murder which took place there?', and I said: 'Do I?', just like that. He said: 'Do you know anything about it?', and I said: 'No.' I said I didn't know anything about a murder."

12.28 Giving full weight to the low intelligence of both Lattimore and Leighton, I do not consider that it is really possible that they can have failed to understand which house they were being asked about.

12.29 It was further suggested by Mr Blom-Cooper that Leighton's remark "It's right what he says" might have been intended to refer to Salih's immediately preceding remark "I didn't light it" rather than to TDC Woledge's question "Well is Colin telling the truth?" This is a possible literal construction of the words, but I have no doubt that Leighton's words referred to TDC Woledge's question. Moreover, I believe that the words used by Salih were an elliptical way of saying 'I was there but I did not light it.'

12.30 I accept the evidence that before they started questioning the boys neither PC Cumming nor DC Bresnahan nor TDC Woledge had any reason to connect the boys with the fire and murder at 27 Doggett Road. All that they had to go on was their belief, supported by Lattimore's admission, that the boys (or at least two of them) had been concerned in starting fires in the district on the Monday. There is no doubt that the boys were known to a number of police officers before they were arrested by DC Bresnahan:

(a) Following an alleged offence on 25 March TDC Gledhill had had dealings with Leighton on 30 March and TDC Vale, because he knew Lattimore as Leighton's associate, had spoken to Lattimore about it.

(b) PC Cumming and PC Hewison had arrested Leighton and Salih on 21/22 April and taken them to Catford Police Station.

(c) On 23 April WDS Mays had seen the entry of the arrest at (b) above in the 'Persons stopped in the street' Book at Catford Police Station. She had been asked on Sunday to inspect the books of adjoining police stations in which the names of persons stopped in the street or arrested and then charged or released were recorded, to see if anyone had been in the vicinity at the time of the murder; at Catford Police Station she found a reference to Leighton and Salih having been apprehended early on the Saturday morning and reported this to the office manager of the murder headquarters at Lee Road; they were the only names she found. She believed that a note would have been made in the Action Book for the two boys to be interviewed at some time, but she did not know whether DCS Jones was made aware of her discovery (it seems unlikely that either DCS Jones or DI Stockwell was).

(d) PC Elliott, who saw the boys walking towards the shed in Ladywell Fields a few minutes before the fire was discovered, apparently knew all three boys.

Apart from TDC Gledhill and TDC Vale, I have no evidence that any of the officers on the murder squad had any previous knowledge of the three boys. I have ascertained that (with the exceptions mentioned above) the officers who dealt with the boys on the previous occasions when they had been in trouble were different officers. DC Bresnahan said that the boys were complete strangers to him; TDC Woledge was also a complete stranger to Lattimore. No suggestion has been made that the three boys had been hauled in as well-known local wrongdoers so that they could be 'framed' for the Doggett Road offences. On the contrary, it was the fire-raising activities of the three boys on the Monday afternoon which brought them under police attention and led to their arrest.

PC Cumming did not think he told DC Bresnahan of his earlier arrest of Salih and Leighton, and there is no evidence that DC Bresnahan or TDC Woledge had any prior knowledge of them. DCS Jones certainly said he had none prior to the start of the interviews, except the fact that they had been picked up for fire-raising on the Monday afternoon: he had had no conversation about the boys or their records with other officers at Lee Road before starting the interrogation. Before DCS Jones received the telephone call from Lewisham about the boys he had made a connexion in his mind between the fires which had taken place in unoccupied or business premises and the fire at 27 Doggett Road. This was discussed over the weekend by officers of his squad. It was known to the police that there had been fires in the Lewisham area which could not be accidental. It was known that the fire brigade had been called out to an exceptional number of fires. It was a possible line of enquiry, but DCS Jones had not sent officers out to find the people who had been starting the fires.

12.31 It was not suggested that the record of the interviews with PC Cumming, DC Bresnahan and TDC Woledge was consciously and deliberately falsified by the police officers. It does not seem to me that their questions can have been affected, or their record of the answers unconsciously falsified, by any of the psychological processes described by Mr Barrie Irving (see paragraph 12.105 *et seq.* below). These officers were not members of the murder squad; their contact with the boys was, I am satisfied, fortuitous and did not derive from any preconceived notion that the boys were involved in the fire and murder at 27 Doggett Road. The boys were not at that time affected by the experience of being in custody, and had not then got the motives for giving false answers which it was suggested they had later on at Lee Road Police Station. The allegation of assault on Lattimore at Lewisham Police Station has not been persisted in by his counsel, nor has the allegation which was at one time made of rough treatment of Leighton.

12.32 I do not accept that the boys were subjected to improper pressure to give the answers they did or that the answers were put into their heads. If (as I believe) the boys must have understood which house it was they were being asked about, then I do not see how the answers they are recorded as giving could have been given unless either the boys in fact started the fire at 27 Doggett Road or they were all three for some reason admitting to something they knew they had not done. Apart from the mis-statement about Lattimore's involvement in the fire in Nelgarde Road, everything which they said on that occasion about fires elsewhere was true. If one had to draw a conclusion from the answers to PC Cumming and DC Bresnahan alone, the possibility could not be excluded that false admissions were made by the boys because of some shared fantasy or because they might have thought that the best policy for them was to admit everything put to them and that one more fire would not make much difference. But I believe that the more likely explanation is that they were telling the truth, and that DC Bresnahan was right to conclude (as he did) that the boys had admitted (or, as he preferred to put it, implied) an involvement in the arson, and that they should be passed on to DCS Jones for further questioning.

12.33 I am satisfied that prior to questioning Lattimore, DC Bresnahan and TDC Woledge knew nothing about the method of ignition of the fire at 27 Doggett Road; the reference to "an old can with paraffin in it" could not have been suggested by them, nor could the fact that an attempt had been made to put the fire out.

12.34 It was a natural step for police officers to take when they found these three boys who admitted lighting a fire at Ladywell Fields on the Monday afternoon to wonder whether they might not have been responsible also for other fires, as indeed they had. Both PC Cumming and TDC Woledge independently (according to the evidence) thought of the possibility and asked Lattimore about it. The answers TDC Woledge got clearly led DC Bresnahan to think that the boys ought without delay to be passed on to Lee Road Police Station and questioned by DCS Jones. If the answers were as recorded in the officers' notebooks this was plainly a correct conclusion. Even if (contrary to my finding) Lattimore had not understood which house he was being asked about, and even if Leighton's remark had been intended to confirm not Lattimore's admission but Salih's denial, the officers could reasonably have understood Lattimore's answers as referring to 27 Doggett Road and Leighton's remark as an admission. The only possible alternative explanation would be that the officers deliberately decided that these three boys were suitable victims to be 'framed' for the arson and killing. It would be necessary to postulate that this decision was reached independently by PC Cumming and DC Bresnahan, neither of them a member of the murder squad, and that they were prepared to falsify their notebooks to substantiate a false story. I do not believe that this took place.

12.35 Even if the officers were mistaken in their belief that there had been admissions, the first questions which DCS Jones asked of Lattimore were designed to make sure whether he had understood which house he was being asked about and to give him an opportunity to confirm or deny what he was understood to have said to PC Cumming, DC Bresnahan and TDC Woledge. It is true that DCS Jones did not follow the practice, which Mr Fryer suggested was advisable, of talking to all the officers concerned to find out exactly what the boys had said. According to DCS Jones, he was told by one of his staff that three youths were on their way over from Lewisham Police Station and that it was felt that they might be responsible for the events at Doggett Road. DCS Jones spoke on the telephone to the officer at Lewisham from whom the information had come and was told that PC Cumming had stopped a youth in the street and, as a result of stopping one youth, had brought two others to the station where they had been seen by DC Bresnahan and TDC Woledge both of whom were of the opinion that the youths had been concerned in the fire at 27 Doggett Road. DCS Jones was told to his surprise that PC Cumming was not coming to Lee Road. The officer at Lewisham had PC Cumming's notebook in front of him, however, and read from it to DCS Jones, saying that there appeared to be some sort of admission from a youth named Lattimore that he had been responsible for lighting a fire in a house at Doggett Road on the Friday evening. At that moment the three boys arrived with DS Cheval, DC Bresnahan and TDC Woledge. Although the recollections of the witnesses are not entirely clear or consistent, it seems that DCS Jones had a short conversation with DC Bresnahan and/or TDC Woledge in which three matters were touched on: (a) Lattimore's intelligence (see paragraph 5.24 above); (b) the parents (see paragraph 16.16 below); and (c) the admissions which were said to have been made. According to his notebook (which was written up the same evening) DC Bresnahan informed DCS Jones of admissions by all three boys to setting fire to the house at 27 Doggett Road on the night of 21 April. In his evidence before me DC Bresnahan said he did not remember whether he spoke to DCS Jones or to some other officer; he said that he had to leave quickly as he was required back

at Lewisham Police Station; he left TDC Woledge at Lee Road Police Station. Both DCS Jones and TDC Woledge recalled a conversation between the three of them, in which either DC Bresnahan or TDC Woledge said that all three boys had admitted responsibility. Whatever the exact sequence of events (and it is not surprising that witnesses find it difficult to recall), it seems clear that DCS Jones was told, first on the telephone and then direct, that admissions had been made. His remark to Lattimore at the interview ("I understand you were together last Friday night and have told a policeman that you set fire to a house in Doggett Road") was based on what he had been told, and was in fact a correct summary of what, according to the evidence of PC Cumming, DC Bresnahan and TDC Woledge, Lattimore had said to them.

12.36 There was no inconsistency between PC Cumming's notebook entry and what DC Bresnahan and TDC Woledge recorded in their notebooks later the same evening; it is likely that whatever DC Bresnahan and TDC Woledge told DCS Jones would have been consistent with what they later recorded; this would have confirmed what DCS Jones already understood from PC Cumming's notebook and the telephone message he had received from Lewisham Police Station, and what he stated to Lattimore at the start of the interview—it would not have cast doubt on it. DC Bresnahan had left (he had to go back to help man Lewisham Police Station), and there was no reason why DCS Jones should know that TDC Woledge was still at Lee Road Police Station. DCS Jones would clearly have preferred to talk to PC Cumming. Of course, if he had waited for the parents, as he should have done, he would have had time and then could be criticised if he had not spoken to PC Cumming and at greater length to DC Bresnahan and TDC Woledge; the misjudgment was in deciding to proceed immediately with the questioning but, once he had decided that, I do not believe that he can be blamed for not speaking at all to PC Cumming or at greater length to DC Bresnahan and TDC Woledge and for proceeding to question Lattimore on the strength of the information he had.

The oral admissions to DCS Jones; the confrontation; the written statements; showing of exhibits

12.37 The texts of the statement of DI Stockwell and the three written statements by the boys are at Appendices E and F, which it is necessary to read at this point in order to understand what follows.

12.38 The timings given in DI Stockwell's statement were as follows:

Interviews

Lattimore	6 p.m. to 6.55 p.m.
Leighton	7.05 p.m. to 7.35 p.m.
Salih	7.40 p.m. to 8.05 p.m.

Confrontation 9.15 p.m.

Written statements

Lattimore	9.30 p.m. to 10.10 p.m.
Leighton	10.15 p.m. to 10.40 p.m.
Salih	12.50 a.m. to 1.30 a.m.

Showing of exhibits 2 a.m.

12.39 Each of the interviews started with an introduction by DCS Jones which was not recorded by DI Stockwell. DCS Jones said in evidence that he would have told Lattimore that he was the senior officer in charge of P Division, that he was investigating the death of a man at 27 Doggett Road, that DI Stockwell was his assistant, that he was going to ask Lattimore a lot of questions, he did not want him to be upset or nervous, he wanted him to answer truthfully; he would have explained to Lattimore the importance of the fact that he had been brought to Lee Road from Lewisham Police Station. If it be true that DCS Jones mentioned 27 Doggett Road in his introduction, this was unfortunate and contrary to what I understand to be police practice, since one of the purposes of the interview was to establish that it was in fact number 27 which Lattimore was referring to. The interviews with Leighton and Salih would each have started with a similar introduction.

12.40 The evidence of DCS Jones and DSupt Stockwell was that the questions and answers during the interviews were recorded as nearly verbatim as possible, and that nothing was added and nothing omitted except repetitions. The evidence of those two officers and of DS Gledhill was that the written statements (save for the interruptions which are recorded) were dictated by the boys and were not the product of question and answer. During my Inquiry two tests were carried out to determine whether the times recorded in DI Stockwell's statement allowed sufficient time or excessive time for the interviews as recorded. The results were inconclusive and I do not feel able to base any finding on them. The manner of questioning was described by DSupt Stockwell as "calm and fatherly". He said that no pressure was put on the boys.

12.41 DCS Jones described the manner in which Lattimore answered questions as follows:

> "*Q.* How was he answering your questions? We have seen him giving evidence here, and there were from time to time hesitancies and from time to time he dropped his head and didn't appear willing to go on. Was it in any way similar to the way he gave evidence here, or different?
>
> *A.* I would have said very similar, and similar to the way he gave his evidence at the Central Criminal Court . . . I found it difficult to believe his mentality was as described, as a boy of eight, in view of these factors.
>
> *Q.* You say the manner in which he answered your questions was in a way similar to the way he gave evidence in front of me. Is that right?
>
> *A.* My recollection is very similar.
>
> *Q.* Did you have any difficulty in making him understand the questions you were putting to him? Did you have to repeat questions?
>
> *A.* No, not at all.
>
> *Q.* Were there hesitations in answering?
>
> *A.* Yes, as if he was thinking very carefully and deeply . . .
>
> *Q.* You, yourself, presumably were perfectly clear in your mind the sequence of the questions you wanted to put? There wouldn't have been pauses due to your taking time to think, or would there?
>
> *A.* No, sir. I felt that he was answering me perhaps very cunningly on occasions . . . Again, it was because of this I felt, I couldn't believe, that his mentality was as described, that of being an eight year old."

12.42 There was conflicting evidence about the state of the boys at various stages during the evening:

(a) *Lattimore*

According to DCS Jones, Lattimore was not crying or upset or anything of that nature. His behaviour was normal. His demeanour did not change at any time during the interview. According to DSupt Stockwell, Lattimore appeared to be very calm and self-assured. According to Mr Lattimore senior, when he first saw Colin he was in a very distressed state, he had been crying, he was dishevelled and looked in a shocking state: "His hair was all untidy; he had been crying and wiping his hands round his face which made his face quite dirty looking." DI Gregg saw all three boys during the course of the evening, and said none of them was particularly upset or crying. Salih said that both Lattimore and Leighton were crying when they were brought together at Lee Road.

(b) *Leighton*

According to DSupt Stockwell, Leighton did not appear to be in any fear of being in a police station. He was more belligerent than Lattimore, and his answers were more snappy. DCS Jones said that Leighton did not appear to find the interview oppressive. Mrs Leighton said that when she first saw Ronald he was in a terrible condition; his hair was tousled and she thought he had been crying and he looked terrible. DCS Jones did not agree that he was in such a condition. DS Gledhill said that when he was with him as escort Leighton's physical condition appeared quite normal, he was not crying or anything like that, and that when he made his written statement Leighton was not emotional, he did not shout or anything like that.

(c) *Salih*

DSupt Stockwell said:

> "Salih was younger and I was rather amazed how he conducted himself . . . calm and self-assured . . . a lot of young boys [become] frightened."

Mrs Salih said that when she got to Lee Road Ahmet was crying and said that the police had hit him on the head with a chair. He was crying the whole time. Mrs Ferid, on the other hand, described Salih as quite calm, not upset or crying.

Alleged Assaults

12.43 At one time or another all three boys have alleged that they were assaulted by TDC Woledge and have put forward the assaults as an explanation of why they admitted things which they had not in fact done. Lattimore's allegations of an assault at Lewisham Police Station are set out at paragraphs 12.12–12.13 above.

12.44 In his evidence at the trial, Leighton said that at Lee Road he was kept in a room with TDC Woledge who kept asking him about the fire. TDC Woledge, he said, grabbed him and put him up against a wall—got hold of the front of his shirt with his hand and pushed him back against the wall till he made a confession. At my Inquiry, Leighton said again that he had been in a room at Lee Road Police Station with TDC Woledge, but he did not allege an assault. He said that no one had touched him or hit him, though

when reminded of his evidence at the trial he said that it was true as far as he could remember.

12.45 In the proof of evidence which Salih gave to his solicitors in 1972 he said that an officer whom he later identified as TDC Woledge had struck him across the head and that he hit his eye on the chair. In his evidence at the trial Salih said that at the interview with DCS Jones, DI Stockwell and others TDC Woledge had said "If you say 'No' again, I'll give you a thick ear" and hit him on the left ear so that he struck his eye on the chair. This happened in the presence of DCS Jones and DI Stockwell. In his evidence at my Inquiry Salih described three encounters with TDC Woledge. He spent most of the first hour he was at Lee Road being questioned by TDC Woledge; DCS Jones and DI Stockwell came in after about 10 minutes, but TDC Woledge continued to ask the questions. TDC Woledge then left, and a period of about half an hour followed during which DCS Jones and DI Stockwell asked questions. TDC Woledge came in for about 10 minutes and joined in the questioning and then left. All this time nothing was being written down. The third occasion took place after he had been at the station about 2½ hours; DCS Jones and DI Stockwell were still there, when TDC Woledge came in, sat down and, without asking DCS Jones for permission, took over the questioning; he "sort of shouted a little bit", kept asking questions and got angry. TDC Woledge then said "If you don't say you've done it I'll give you a back-hander—a thick ear" and walloped him with his hand on the side of the face. DCS Jones and DI Stockwell were present and said nothing. TDC Woledge and DCS Jones both continued to ask questions. The third occasion lasted about 15 minutes, and TDC Woledge then left. At the time of the assault DCS Jones and DI Stockwell were sitting on either side of Salih, and TDC Woledge opposite. Salih said that after he had been struck he gave in and DI Stockwell started writing things down. All of this occurred before the written statement was taken in the presence of his mother and Mrs Ferid.

12.46 I find as a fact that none of the three boys was assaulted by TDC Woledge. The stories bear all the signs of having been made up after the event in an endeavour to explain away the confessions. The stories have varied from time to time, and contain certain details which are frankly incredible. Since counsel for the boys has not invited me to find that any of them was physically assaulted, it will be sufficient if I state the points summarily:

(a) TDC Woledge was a junior officer aged 22 with nearly four years service. I do not believe that he would have 'told' DC Bresnahan (an officer aged 48 with 19 years service) to go out of the room as Lattimore alleged, and I consider it inconceivable that he should have taken over the interrogation from DCS Jones as Salih alleged.

(b) According to his father, Lattimore at one time alleged that one officer had held his arms while another officer hit him, although at the Inquiry he denied that he had ever said this.

(c) Dr Bain did not observe any injury on Lattimore when he examined him medically in the early afternoon of 25 April; his examination included an examination of Lattimore's eyes, teeth and throat, and he could not have failed to see the injuries described by Lattimore if they had been there.

(d) No blood was found on Lattimore's coat sleeve by the forensic scientist Dr Whitehead.

(e) In his evidence at the Inquiry Lattimore (for the first time) said that TDC Woledge had tied the rolled-up newspaper *with sellotape*, a detail which he would be likely to have mentioned earlier if it had been true.

(f) None of the police officers who saw him at Lewisham or Lee Road saw any signs of an assault on Lattimore.

(g) No signs of assault were seen on Salih by any of the police officers, or by Mrs Ferid or by Dr Bain, and Salih (as I find) made no complaint to Mrs Ferid or to Dr Bain.

12.47 If the allegations of the assaults were untrue, one is faced with the question why they were made. The natural explanation is that the accounts of the assaults were made up by the three boys to explain why they had made confessions which they later wished to say were false. Mr Irving suggested that it is not necessary to suppose that they were made up in any conscious way:

> "Extremely powerful cognitive mechanisms exist for supplying interpretations of events and interpolating missing information consistent with such interpretations. These mechanisms can operate without a person's conscious knowledge, hence interpolations can be produced with great conviction as if they were a record of actual experience."

He said that if events are rehearsed (gone over) new material may be added unconsciously which is objectively not true, though of course this may also be done deliberately. It is of course possible for someone who has made a *false* confession later to try to explain it to himself or to others by saying that he was subjected to violence, as Mr Irving suggested. It is equally possible (and in my opinion more likely) for someone who has made a *true* confession to seek to escape the consequences of it by alleging that he was induced by violence to make a false confession. The fact that violence is falsely alleged is consistent with the original confession having been either true or false. The only valid conclusion which can be drawn is that if false allegations of violence have been made, other explanations of the confessions may be equally false. It was suggested that, even if the allegations of assault were untrue, it would be right to conclude that TDC Woledge exercised bullying tactics on Lattimore at Lewisham Police Station. The only evidence of this was linked with the allegation of assault, which was not persisted in and which I have found to be untrue. I do not accept the allegation of bullying tactics.

Accounts of the confessions given by the three boys

12.48 It is difficult to disentangle the evidence relating to the several stages of questioning. In considering the accounts given by Lattimore and Leighton of the questioning and their reasons for giving the answers which they admit giving it is necessary to make allowance for the difficulty which they have in explaining themselves.

Lattimore

12.49 In his evidence at the trial Lattimore agreed that at the interview DCS Jones had put to him the questions recorded by DI Stockwell but said that his answers were denials. At the end of the interview, when DCS Jones said that

Lattimore would have an opportunity to repeat in front of his parents what he had said, Lattimore replied that he was going to tell them that he "never done it." Lattimore said that he had denied going into the house; but that he might have said "We found a sort of can. A rusty one. It smelt like paraffin so we sprinkled it around." He said that in answer to DCS Jones's question "Who do you mean by 'we'?" he did say "Me, Ronnie and Salih" because "he kept on asking me about it." He said that when asked who lit the fire he said "Salih", and that Salih had had the matches, because " I remembered . . . that Salih had them." He agreed that he did say "I tried to put it out with bricks and dirt and we all ran away" or something like that, and "I ran home" and that he thought Ronnie and Ahmet "went and done a shop." He denied making many of the alleged admissions about the murder. He agreed that he might have said "I did go upstairs but I didn't kill him"—"because he kept on repeating to me all the time: 'You went upstairs.'"

12.50 As to the confrontation, Lattimore in his evidence at the trial agreed that Leighton had made admissions as recorded: Leighton had said that all three boys had been to the house, that he (Leighton) had grabbed hold of the man and that he (Lattimore) had put some wire round the man's neck. He agreed also that Salih had said that he too was in the room. He denied, however, that he himself had made any admissions.

12.51 In relation to the written statement Lattimore agreed that he had said what was recorded down to DCS Jones's interruption, but said it was false, and that he only said it because "they made me make the statement" and he thought that if he made it he would be allowed to go home. He denied that he had said what was recorded after the interruption. However, he agreed that he had said "They told me to say it. I mean Ronnie and Ahmet" and that it was true that they had done so.

12.52 The reasons which Lattimore has given for making false confessions are in summary as follows:

(a) The physical assault which he alleged TDC Woledge had made on him at Lewisham Police Station and the remarks about doing 'porridge'. In his evidence at the trial Lattimore said that he made his statement at Lee Road Police Station because of what had been said to him at Lewisham Police Station about doing 'porridge'. However, when cross-examined at the Inquiry about the threat of 'porridge' Lattimore said:

"*Q.* What did you think would happen to you if you did tell him you had done the murder?

A. I suppose he was trying to put me away, I suppose.

Q. It was obvious what was going to happen, was it not?

A. Yes.

Q. So the fact that he told you you would do 'porridge' did not make much difference, did it?

A. No."

The allegations of assault are not now persisted in.

(b) Because at Lee Road he felt threatened (though he agreed that no officer at Lee Road actually threatened him); he thought something was going to happen; he thought he was going to get his head kicked in or

something like that; he was frightened, upset. depressed, in a bad state; did not know what he was saying. He gave this evidence at the Inquiry:

"*Q.* Let me ask you this, Colin. When you told the police officers at Lee Green Police Station that you had strangled Maxwell Confait with a wire flex and then set fire to the house, was that right?

A. No.

Q. Why did you tell the police something that was not right?

A. Because I was threatened.

Q. How did you feel threatened?

A. I just did, that is all.

Q. If you had told the police something that was not right, what did you think was going to happen to you?

A. I do not know, but something was going to happen.

Q. What did you think was going to happen to you?

A. If I did not tell them, I just thought I was going to get my head kicked in or something like that.

Q. Even if you were telling the police something that was not right?

A. I suppose so, yes."

(c) Because he was told "If you make a statement you can go home".

At the end of the interview this exchange is recorded:

"JONES: 'You are going to be detained at this Station. When your parents get here I will give you an opportunity of telling them what you have told me. If the other boys tell me the truth you can all tell your parents in the presence of each other if you would like to.'
LATTIMORE: 'Yes, can I go home afterwards.'
JONES: 'I will see your father about that later.' "

According to DCS Jones and DSupt Stockwell nothing else was said about going home. In his evidence at the trial Lattimore said:

"*Q.* Then did you ask Mr Jones if you could go home afterwards?

A. Yes.

Q. And what did he say about that?

A. He said I could go home after I had made a statement.

Q. So this is it; you asked him if you could go home afterwards, and he said: 'Yes, after you have made a statement'?

A. Yes sir.

Q. Meaning that if you made a statement you could go home?

A. Yes."

"*Q.* What did you think would happen after you had made this statement?

A. I don't know. I didn't go home, I know that.

Q. Did you think you would be allowed to go home if you made this statement?

A. Yes, he promised me that if I made the statement I could go home. Then when I had made it he told me that I couldn't go home. I had to stay there all night.

Q. If you had thought that you were going to be kept at the Police Station, in any event—whether you made a statement or not—would you have made this statement?

A. No sir."

In his evidence at the Inquiry he said:

"*Q.* Did you know then that you might get sent away from home?

A. I did not think at the time.

Q. Did you think that you would go home after you had told the police officers something that was not right?

A. Yes.

Q. Why did you think that?

A. The police officer said to me 'If you make a statement you can go home', so I made a statement.

Q. Did you believe him?

A. I did at first, yes.

Q. Do you know who said that to you, which police officer it was? Was it the police officer who had been asking you lots of questions?

A. I just cannot remember."

Later in his evidence he said:

"*Q.* If you set light to places and you are taken to the police station then it is serious?

A. Yes.

Q. So you did not really expect to go home anyway?

A. I had no choice; I knew I was not going home."

"*Q.* Anything you would like to complain about, about the way Mr Jones treated you?

A. Well, yes. I asked him when I made a statement could I go home because I felt tired, and he said 'I will see about that to your father later', and I did not like that."

"*Q.* I want to know why you said those things if they were untrue?

A. Because I was upset, that is why. I just told you, didn't I?

Q. It certainly was not because you thought you were going home because no one had told you you were, had they?

A. Yes, I asked if I could go home if I made a statement.

Q. And Mr Jones said he would speak to your father?

A. Yes. I did not like that.

Q. And nobody had told you you could go home if you made a statement?

A. No, and I did not go home."

(d) Because he had words put into his head (mind) by DCS Jones and DI Stockwell—they kept on and on, told him what to say, kept drumming it into his head, kept repeating it all over again and suggesting answers; "he kept saying things like I went into the house, set light to it, killed a man"; that all the things he told the police that night and all the things he put in his written statement were things which the

police themselves had stuck in his head, what the police had told him to say. The matters were put into his head before his father came to the police station, and he remembered them and repeated them without prompting when he made the written statement. What he said in his statement about Ladywell Park was not put into his head. Among the things which Lattimore said (at my Inquiry) were stuck into his head was the statement that Ronnie and Ahmet "told me to say it." But at the trial he said that he had said that and that it was true. The matters which he said were put into his head included the denials ("I never went upstairs" and "it was only an accident"), but did not include a suggestion that he had put his *hands* round Confait's throat.

Leighton

12.53 In his evidence at the trial Leighton agreed that DCS Jones made introductory remarks as recorded; he said that initially his reply was that he did not do it and knew nothing about it, but that after DCS Jones had asked the same questions for a long time he started making some admissions, the answers being suggested to him, though on other matters he continued to make denials or said he did not know. Leighton denied that he had told Colin to say it was he who had pulled the wire round the man's neck. As to the confrontation he said that, after Salih had said he lit the fire, he (Leighton) had said "we busted into the house and went upstairs and done the bloke", and that the wire "got put around the man's neck" and kept there for about two minutes. Apart from that he did not remember what was said. Leighton said that the written statement was entirely given in response to leading questions, with himself just saying 'Yeah.' Leighton could not explain why he had agreed to what was being put to him at the interview—"I just thought it would be the best thing to say"; "I just said it"; "I didn't realise, did I?" Similarly, he said he did not know why in the presence of his mother he said he had done it. He agreed that part of the written statement—"me and Ahmet[1] done . . . a shop" and the description of the fire at Ladywell Fields—were his own words and were true. Leighton said that he had twice asked DCS Jones if he could go home—once during the interview, when DCS Jones said "we'll see", and once when he was making the statement, when DCS Jones said that he could go home "after this". He thought he would be allowed to go home as he had been on previous occasions when the Juvenile Bureau procedure was followed. He said that that was why he made a statement admitting the murder.

12.54 In his evidence at my Inquiry Leighton agreed that in the interview with DCS Jones and DI Stockwell he did say that he had killed Confait and set fire to the house but that it was not true. He said "When you are in a room like that, people asking questions and things like that, you just say anything." He said "They kept on . . . I was scared all the time I was down there." They put words in his mouth, but they used no threats or violence. Leighton said "Bits of it I could make up with pictures." Leighton admitted that at the confrontation he spoke first and said "something that showed [he was] admitting that [he] had been responsible". He said he did not know why he had gone on admitting it with his mother and Mr Lattimore senior present. As to the written statement, he said that TDC Gledhill was saying out loud what he was writing and Leighton

[1] Spelt, in manuscript statement, "Ahment" (see Appendix F).

"was going 'Yes'." Leighton said "When we were having the interview before, you could sort of make up the story, do you know what I mean? You could put it down and he was helping out a bit."

Salih

12.55 Salih agreed that at the interview DCS Jones had said "Colin and Ronnie have both told me that you went into a house in Doggett Road . . . with the intention of stealing from a man who lived upstairs." He said that perhaps he did say "I didn't want to go with them but they said it would be easy", but that was only what "they" (the police) told him to say. Salih said that when he said "I just stood at the door . . . but I didn't do anything" he was saying only what he had earlier been told to say. He gave the same reason for his other answers about the piece of string, the matches and the bricks and dirt, etc. Salih said that he started by saying that he did not know anything about it, but after he had been hit by TDC Woledge he said that he did. He said that answers had been suggested and information supplied to him, including the information that "When the man fell down Ronnie and Colin fell over", and that many of the things written down he had not said at all; none of his admissions was true.

12.56 Salih did not agree that any of the remarks recorded as having been made at the confrontation were in fact made; he said one of the other boys said "I didn't do it", and that all that he himself said was "We didn't do it". As to the written statement, Salih said that DI Stockwell was reminding him of what had been suggested to him earlier and was writing it down.

12.57 The explanation which Salih gave at the trial of why he had signed the written statement as true was first that he thought that if he signed the statement he would be allowed to go home, and secondly that he was frightened: "He hit me once, and I thought: 'When my mum goes, he might hit me again.' " and "I was frightened . . . I thought about that man who hit me." At my Inquiry Salih said that at the beginning at the police station he thought he would be allowed to go home if he confessed, but that did not last long, and later on he realised that if he confessed to being present when a man was killed he would be kept at the police station in custody. (He said that this was at about 11.30 p.m.) He said that the only reason he confessed was because he had been hit and because the police had threatened that he would be hit again if he did not confess. That was the only reason.

12.58 Salih agreed that during the waiting period there had been little conversation with the escorting officer—"I said to him that I didn't do it and he didn't say much".

Accounts given by the parents and by Mrs Ferid

Mr Lattimore senior

12.59 Apart from the difference about which boy spoke first (see paragraph 12.64 below) the police officers' account of the confrontation was substantially confirmed by Mr Lattimore senior. Mr Lattimore agreed that the confrontation started with DCS Jones saying "You have all told me what happened last Friday night. I want you all to tell me again very briefly in the presence of this lady and gentleman". Although he disagreed about the order of the various remarks, he agreed that Colin admitted to having the flex and putting it round Confait's neck. He had agreed to Colin making a written statement because

he wanted to know the truth, and he agreed that as he was leaving the room where the confrontation had been held he said "He's got to tell the truth, he has told you he has done it so there is nothing I can do." He agreed that he said "I tried to keep Colin away from Ronnie, he only gets into trouble with him", but thinks this was said while they were going along to take the written statement. He agreed that he signed the form of words "I Colin Lattimore wish to make a statement . . . I have been told that I need not say anything unless I wish to do so but whatever I say will be given in evidence". He said that (apart from the recorded questions by DCS Jones and DI Stockwell) the only prompting during the taking of the written statement consisted of questions like "What happened next?" He agreed that Colin had described the arson as recorded in the statement. He agreed that, after DCS Jones's question

> "Why did you admit to me a few minutes ago in the presence of your father and in the presence of two other boys that you had in fact pulled the wire around the mans neck and held it pulled for about two minutes",

Colin said "They told me to say it. I mean Ronnie and Ahmet", and that at the time he believed this. He agreed that he had then said "I think this is possible. He is dominated by Ronnie", and that he then told Colin to tell the truth. He agreed that Colin then went on to describe the killing as recorded in the statement. He agreed that after the statement was completed it was read over, and that Colin was told he could add, alter or correct anything he wished. He and Colin then both signed the statement "This statement is true I have made it of my own free will." There was produced to me at the Inquiry a statement which, according to DS Gregg, was made the same evening after the completion of the written statement. It read:

> "I am the father of Colin George LATTIMORE, aged 18 yrs (born 25-7-53). This evening, Monday, 24th April 1972 I was present at Lee Road Police Station between 9.20 pm and 10.10 pm when a statement was taken from my son in my presence by Detective Inspector STOCKWELL. Also present was Detective Chief Superintendent JONES, I read the statement before my son signed it and I am perfectly satisfied with the way it was taken by the officers. The statement related to the killing of a man and the starting of a fire at No 27 Doggett Road, SE6."

and contained Mr Lattimore's signature twice, both at the beginning (under the words "This statement . . . is true to the best of my knowledge and belief . . .") and at the end. Mr Lattimore told me that he had no recollection of making that statement and did not believe that he had signed it. However, I am satisfied that he did. Mr Lattimore told me that (whether he signed it or not) he agreed with what the statement said. The only complaint he had against DCS Jones was the forceful way he put the questions to Colin after he had stopped speaking.

Mrs Leighton

12.60 She agreed in substance with the police officers' record of what Ronald said and Mr Lattimore's interruption, but she could not remember what Colin said and had no recollection of Ahmet saying anything. She said that she would not have allowed Ronald to sign the statement if it was not true or not made of his own free will; and was, in fact, satisfied that the statement was made of his own free will and represented what he had said. It was a true statement in that sense: "After Ronnie had said those things, I thought they were true" (in the

proof of evidence which she gave to her son's solicitor before the trial, she said:

> "Mr. Jones asked Ronnie to tell me what he had told him. Ronnie told me that he had gone upstairs in the house in Doggett Road where he saw the man sitting in the chair. The man came towards him and Ronnie caught hold of his arms. Colin put something (I can't remember what it was) round the man's neck.").

Shortly after Ronald's statement was taken, Mrs Leighton signed a statement in the following terms:

> "This evening, Monday 24th April 1972 I went to Lee Road Police Station where my son Ronald William LEIGHTON, age 15 yrs (born 17.7.56) was detained. I was present when he admitted breaking into a house at 27 Doggett Road, SE6, killing a man and setting fire to the house. A statement was taken from him in writing which I read before Ronald signed. I am perfectly satisfied with the way this statement was taken and the conduct of the officers."

Both at the trial and at my Inquiry she said that she could not remember signing it, but she agreed that at the time she had been perfectly satisfied. She confirmed that at the start of Ronald's statement she had corrected the time (10.30 p.m. to 9.20 p.m.), but said that she could not remember whether she had spoken thereafter. She alleged that when Ronald asked if he could go home DCS Jones said "We'll see". I say something about Mrs Leighton's capacity at paragraph 16.27 below.

Mrs Ferid

12.61 Mrs Ferid was present with Mrs Salih while Ahmet Salih's written statement was taken. The statement was dictated by Ahmet in English without prompting (except of the 'And then?', 'What happened next?' variety)—there was no question of any police officer feeding him the information and Ahmet just agreeing. She did not translate sentence by sentence, but at the point indicated in the statement she read it over in Turkish, whereupon Mrs Salih said to Ahmet in Turkish "It is not correct, is it?" or "That is not true, is it?" to which Ahmet said "Yes." After the first intervention Ahmet dictated the rest of the statement and it was read over in Turkish to Mrs Salih who again spoke words in Turkish indicating that she did not believe the content, to which Ahmet said "Yes." Mrs Ferid considered that his two answers to his mother were ambiguous—they might mean 'Yes, it is true' or 'Yes, it is not true'. So she of her own accord asked him in English which he meant and he said, also in English, "When I answer Yes the first time I meant that what you had written down is all true." She said that Ahmet was quite calm, not upset or crying. She saw no sign of assault, nor did Ahmet complain of any. At no time did he deny being involved: "[Ahmet] himself described it very calmly and nobody else concocted any words actually." The statement was made voluntarily.

Mrs Salih

12.62 Mrs Salih did not give evidence at the trial. In evidence at the Inquiry she said that when she got to Lee Road Police Station Ahmet was crying and said that the policeman had hit him on the head with a chair. He was crying the whole time. Mrs Salih gave evidence through an interpreter and I cannot be sure that she understood the questions or that I understood her replies. But she certainly said that Ahmet did not dictate a statement. According to Mrs Salih,

Mrs Ferid told her that Ahmet had killed a man; Mrs Salih said Ahmet would not do such a thing; and that when asked "Have you done this or haven't you?" Ahmet said "No, I didn't." However, in the proof which she gave to Ahmet's solicitor in 1972 she said "I did understand that when my son gave a statement he was admitting that he had killed a man."

Accounts given by police officers

12.63(a) TDC Gledhill took down Leighton's written statement. He was a member of the murder squad and had taken the witness statements of Winston Goode. He was one of the officers on the murder squad who had had contact with any of the three boys prior to 21/22 April: he had interviewed Leighton on 30 March 1972 about a burglary at 11 Westdown Road, Catford; Leighton admitted that offence under caution but no action was taken because the owner of the property declined to assist the police. But TDC Gledhill did not know the full circumstances of the events at 27 Doggett Road or of what had passed at the interviews with the boys. He did not know what any of the boys had said to DCS Jones, nor did he know that Lattimore had made a written statement. He knew that Confait had been strangled and that there had been a fire. He knew, from Goode's statement, of the events of 21/22 April and the place where the fire had started. He had himself been to the house. He acted as escort to Leighton during the Monday evening from 6 p.m. to 7.05 and from 7.35 till 9.15 and then after the confrontation till 10.15. He said that he did not have any conversation with Leighton about the case. The alteration of the figures "10.30" to "9.20" at the beginning of the statement was the result of an interruption by Mrs Leighton. The rest of the statement, TDC Gledhill said, was taken at dictation from Leighton. No direct questions were asked by DCS Jones or DI Stockwell. Leighton did not say "If I make a statement, can I go home?" TDC Gledhill said that it was not true (as Leighton said) that he (TDC Gledhill) was saying out loud what he was writing and Leighton was saying "Yes": TDC Gledhill did not know what Leighton wanted to say or what he had previously said to DCS Jones. No questions were put to Leighton which were not recorded. Leighton was speaking rapidly and had to be held back. TDC Gledhill had no difficulty in understanding what Leighton said. Sometimes he had to be asked to repeat things.

(b) TDC Vale was a member of the murder squad. He acted as escort at Lee Road to Lattimore for at any rate some of the time between 7.05 and 9.15 p.m. and again after the confrontation till he made his statement. He had no conversation with him about the case. He was present at the confrontation and when a written statement was taken from Lattimore. He had no recollection of what took place on either occasion.

(c) DSupt Stockwell described the taking of Lattimore's written statement as follows:

> "I said . . . 'I would like you to tell me exactly what to write.' I can vividly recall, I sat there and just wrote as he said it and in between sentences . . . there were in fact long pauses while he just said nothing."

He said that there was no questioning except as recorded. He included what Mr Lattimore senior said—"I had made up my mind . . . to write down everything that was said". Colin Lattimore, he said, went straight on to the Ladywell Fields fire without a question. DSupt Stockwell did not know why he asked "Why did you light the fire"—"I was concerned. I just could not understand

why they lit the fire." As to Salih's written statement, DSupt Stockwell expressed his agreement with Mrs Ferid's account (paragraph 12.61 above).

Order of speaking at the confrontation

12.64 There is a strange conflict in the evidence about the order in which the boys spoke at the confrontation with the two parents. The notes made by DCS Jones and DI Stockwell (which were written up before they went off duty that night) record that Leighton spoke first and that Lattimore did not speak until after the intervention by his father (see Appendix E). None of the three boys in his evidence either at the trial or before me said that Lattimore spoke first. The two parents, Mr Lattimore senior and Mrs Leighton, both gave evidence at the trial and before me that it was Colin who spoke first. According to Mr Lattimore:

> "*Q.* Do you remember what was said first by any of the three boys when you got into the room?
>
> *A.* Colin was the first to speak of the three. Colin said, 'I held his arms'. As he said that, Ronnie interrupted and said, 'No, I held his arms and you held the flex'. So Colin then said, 'Yes, that's right; Ronnie held his arms and I had the flex and put it round his neck'."

Mrs. Leighton gave a similar account:

> "*Q.* Do you remember what Colin said? You say he started speaking.
>
> *A.* He said 'Ronnie put the cord round his neck and I held his arms' and Ronnie broke in and said, 'No, you put the cord round his neck and I held his arms'."

(However, in the proof which she gave to the solicitors prior to the trial she said nothing about Colin having spoken first.) None of the boys would accept the account given by Mr Lattimore and Mrs Leighton. DCS Jones and DSupt Stockwell both denied that it occurred, and DSupt Stockwell agreed that if it had occurred it would have aroused suspicion. I accept that it was Ronald Leighton, not Colin Lattimore, who spoke first.

Did the boys make denials in the presence of their parents?

12.65 All three boys have said that they said to their parents or in the presence of their parents that the things which were being said by them or by the other boys were not true.

(a) Colin Lattimore said that at the confrontation, when Leighton said that he had pulled the wire round the man's neck, he said "It ain't true, is it?", but that he did not say it out loud. He said that when his father told him to tell the truth he had said to his father "You know I wouldn't do anything like that". Mr Lattimore senior said that after Colin had spoken regarding putting the wire round the man's neck and choking him, he shouted out "I didn't do it, Dad" loud enough for everyone in the room to hear. DCS Jones was present. Mr Lattimore said there was no reaction from anyone. Later, after the completion of the written statement, Mr Lattimore said, Colin had again said that he did not do it: the only persons present on that occasion were Mr Lattimore, Colin and TDC Vale. Mr Lattimore agreed that as they were going along to take the written statement he had said "I tried to keep Colin away from Ronnie, he only gets into trouble with

him", and might have said "he has told you he has done it so there is nothing I can do." Mr Lattimore could give no satisfactory explanation why he should have made these remarks despite Colin's denial: his explanation was that he thought he could sort it all out with his solicitor on the following day, and did not realise the importance of what was happening till Colin was charged with murder at the magistrates' court. I do not believe that he would have said those things if Colin had just made an open denial, nor do I believe that he would have allowed him to sign a statement admitting the offences or would himself have signed a statement expressing his satisfaction with the way the statement had been taken. The police officers, including DS Vale, denied that Colin did at any time say anything to his father in the way of denying the statement or denying the crime. I accept this. Although Mr Lattimore said in evidence both at the trial and at my Inquiry that he had intended to see his solicitor on the following day, he told me that he did not in fact do so: he spoke on the telephone to the solicitor, Mr Isaacs, on 25 April to tell him that Colin had been charged with murder and to ask that the solicitor's representative, Mr Shine, should go to Lee Road Police Station, but Mr Lattimore did not see Mr Isaacs or Mr Shine on that day.

(b) According to Leighton's evidence at the trial, in the middle of the written statement he said to his mother that he did not do it, but DCS Jones had said that he had to go on with the statement and agree with what the other two would say in the witness box. At the Inquiry he said that halfway through he pushed the paper away, but that DCS Jones told him it would be better if he made a statement. It is difficult to see how Leighton could have pushed the paper away: the paper was in front of TDC Gledhill, not of Leighton, and TDC Gledhill was writing on it. Leighton was sitting alongside him, and would have had to reach over to take the paper. Neither he nor his mother said that he did this. According to Mrs Leighton's evidence at the trial it was before the statement was made that Ronald had pushed the paper away and said "You know what, Mum, we didn't have anything to do with it", to which she replied "What are you making a statement for then?" According to her DCS Jones said "If you don't want to make a statement, then you can agree with what the others have said." The police officers (including DS Gledhill) denied that anything of this kind occurred, and I accept that it did not.

(c) Salih said that when his mother intervened during the taking of the written statement he told her it was not true. Mrs Salih also said this. I do not believe that the statement could have been recorded as it was if this had occurred: Mrs Ferid took special care to make sure that Salih was saying that what he had said was true.

How did the confessions come to be made?

12.66 If the confessions were made as recorded, and if they are not substantially true accounts of events which actually occurred, it is necessary to explain how they came to be made, first of all orally in response to questions

from DCS Jones, then again orally in the presence of Mr Lattimore senior and Mrs Leighton, and finally to be repeated in writing.

12.67 Mr Blom-Cooper made it clear that he did not allege deliberate falsification of the record by any police officers. He said:

"The first submission we make is there was fabrication of the record in this case in the sense, I am very conscious I am making it in a very restricted sense, not fabrication in the sense of a deliberately wicked concoction of a written record which was a travesty of what they said in the questions and answers in their statements, but we submit there was a fabrication in the proper sense, and not with any motive of concoction. There was fabrication in the sense of a conscious and unconscious use of a number of matters. First of all, in the language that was used in both the oral interrogation as the record appears and in the written statements.

THE CHAIRMAN: Could you repeat that?

MR BLOM-COOPER: The first thing is that the language if one reads it aloud to oneself is formal and stilted and only really descends to the vernacular in which these three boys would have talked just occasionally. There is 'do a shop' or 'nick' or 'Me and Ahmet done it', but for the [most] part the record is in stilted language which one would never in a month of Sundays have thought these boys would have talked and, therefore, consciously or unconsciously the record is inaccurate.

THE CHAIRMAN: You use 'fabricated' in the sense of inaccurate, but by fabricated you mean no more than inaccurate?

MR BLOM-COOPER: Changed, altered, but fabricated in the sense that is not the language they used, for example, if one could give a small example, the difference between writing down 'yes' and 'yeah', which is what Ronald Leighton says very often, giving the difference between affirmation and acquiescence. There is a whole range of difference between 'yes' and 'yeah', but it is always recorded as 'yes', and to anybody reading it it looks like a positive affirmation of a question being asked. One never sees 'yeah' in the record anywhere, and you have heard Ronald Leighton give his evidence, and there were occasions where Ronald Leighton used that.

THE CHAIRMAN: You are not saying Mr Stockwell heard one thing and deliberately wrote down something else?

MR BLOM-COOPER: In the sense having heard 'yeah' he always put down 'yes', thinking that is what he meant—yes.

This is only natural but it was deliberate and conscious in the sense that he knew that that is what he was doing and he was doing what I presume most police officers do, which is to put rather inelegant English which is given by a suspect in interrogation into perhaps rather formal, rather more elegant English. But, of course, what happens then is one gets the meaning obscured.

Second, sir, the phrases that were used were phrases that are not in the common parlance of these three. I do not want to go through all the examples of that but there are plenty of phrases. Thirdly, the syntax that

is used is a syntax which reflects the composition of written prose and it could not possibly be the syntax of three boys, one of a mental age of 8, the second very nearly illiterate and the third one a child still."

12.68 Since the allegation of a deliberate falsification of the record was not made by counsel for the three boys, I can set out summarily the points which would have told against any such allegation if it had been made:

(a) A great many officers would have had to be involved, some of them not members of the murder squad. Apart from DCS Jones and DI Stockwell, the following officers were involved: DC Bresnahan, TDC Gledhill, TDC Vale, TDC Woledge and PC Cumming. In addition two chief inspectors were present in the station while the interviews were going on.

(b) By inviting the boys to repeat in the presence of their parents what they had said, and to make written statements, the police officers would have been running a considerable risk that the boys would go back on what they had said and the attempts to 'frame' them would have been revealed.

(c) Apart from PC Cumming (who had arrested Leighton and Salih early on Saturday morning for the burglary in Sangley Road), the evidence of all the police officers who questioned the three boys on 24 April was that they did not know them before they were brought in first to Lewisham Police Station and then to Lee Road Police Station on the Monday afternoon. I accept this evidence. No allegation was made that these three boys were deliberately brought in with the intention of 'framing' them for the killing of Confait and the arson at 27 Doggett Road: if it had been made I should have rejected it. The fact that the boys were brought in was due to their fire-raising activities on the Monday and, without any knowledge of their movements on the night of 21/22 April, it could not have been known whether there would not be evidence which would contradict any confession. Nor would DCS Jones have had any time in which to plan a conspiracy to 'frame' the boys: to found any such suggestion one would have to suppose that he decided between about 5.45 p.m. (when he first heard of them) and 6 p.m. (when he started to interview Lattimore) that these boys would be suitable victims for a 'framing' operation.

12.69 I readily accept that no record taken as DI Stockwell's record of this interview was can be completely accurate. It will probably not record exactly the words used, it will omit repetitions and irrelevancies and it cannot of course reflect intonations or facial expressions. The important question is whether DI Stockwell's record contained systematic inaccuracies which rendered the whole record misleading. DSupt Stockwell told me that he made his record as accurate as he could. There would be a pause after each question and answer to allow DI Stockwell time to write them down. DCS Jones repeatedly checked what DI Stockwell had written before going on to the next question. I accept DSupt Stockwell's evidence, but I am nonetheless perfectly prepared to believe that he may have made recording errors of the kind which Mr Blom-Cooper was able to find even in the transcript of the Inquiry proceedings and of the

kind which Dr Leigh described as "one of the truisms of human behaviour." But that seems to me to go no distance at all towards establishing systematic error rendering the whole record misleading.

Lattimore

12.70 Mr Blom-Cooper submitted that the language and syntax of the answers as recorded by DI Stockwell were not those which the boys would have used. He instanced the sentences in the record of Lattimore's interview:

> "We found a sort of can, a rusty can. It smelt like paraffin so we sprinkled it around."
>
> "I just tried to put the fire out I told you. That was after I found the bricks and dirt."

He submitted that Lattimore could not have given the answers to DCS Jones's questions as they were recorded by DI Stockwell, and could not have dictated the written statement, because the language used was beyond the capacity of someone with the mental handicap from which Lattimore suffered.

12.71 I had the opportunity of seeing and hearing Lattimore give evidence at the Inquiry, though of course 4½ years had elapsed since April 1972 and I accept that Lattimore had gained in assurance; by the time of the Inquiry he had been exposed on a number of occasions to the experience of giving accounts of events in answer to questions. A better guide to the kind of language which in 1972 he was capable of using is provided by the transcript of the evidence which he gave at the trial. I accept that his speech is simple and unsophisticated, but he was even in 1972 capable of using quite long words and quite complicated constructions. I give some examples. These are *not* typical; I quote them solely to illustrate the language of which Lattimore was capable.

> ". . . we crossed over by Woolworths in order to get to Brownhill Road."
>
> ". . . at one time we used to have to go over to the church and make use of the kitchen there, but they have modernised the club now."
>
> "She works at the technical works of Lloyds."
>
> "Well I told my Dad I would take a cup of tea up to my Nan because she was waiting for one. Then I went downstairs and sat in the front room. Then I looked out through the window and I noticed there was some smoke coming out through the roof of the end house. Then I said I had better go and phone the Fire Brigade because this house was on fire. Anyway, before I could do that, I looked out through the window again and I could see that the Fire Brigade had come . . . I was going to ring for the Fire Brigade, but then when I saw the Fire Brigade had arrived, I went out of our house and went to see what was happening there. I then walked up Nelgarde Road on the same side of the road as where I live, and towards the fire."
>
> "*Q.* Did you have anything to do with the lighting of the fire at the Catford railway embankment?
>
> *A.* No. I must admit I was there though—outside.

Q. Where did they actually light the fire there?

A. Underneath the stairs, where the stairs comes down there is a door behind which they keep old lamps and that. They lit the fire in there.

Q. Is this a stairs which is inside some sort of building? Or is it a sort of stairs which leads to a bridge over the railway?

A. No sir; you go straight up the stairs and as you go round the corner there's an old door and in there they keep some old lamps and that. In there it was."

"*Q.* What did you do on your second visit to Ladywell Park?

A. Well we just mucked about and tried to get into the shed, but the gates were locked and there was a big padlock on it. After playing about outside for a little while, we managed to break open the doors of the shed and went inside.

Q. Is that where you got the javelins from?

A. Well the first two doors of the shed, which were on the outside, were already open. Then we walked in through these doors and mucked about just inside there. Then we saw that there were two other doors which were padlocked and which led further into the shed and I think it was Ronnie Leighton who tried to force these other doors open. Eventually, he was able to open these other doors and as I had some matches, I gave them to Ronnie. I think it was Ronnie who then set light to the shed, but I don't really know. I know I had some matches because I wanted to light a fag."

"*Q.* . . . The Officer asked you about two fires which had occurred at Catford Railway Station and at Nelgarde Road?

A. Yes sir; and I said I was present at one. I said I was at the fire at Catford Bridge but not at the fire which happened at No 1, Nelgarde Road."

"*Q.* When he came out, did he tell you what he had done?

A. Yes sir; and I said I was present at one. I said I was at the fire at Catford don't know where he got it from because there was no paraffin in the lamps. He said he had checked them all. Then he got hold of some old dry newspaper. He put these together and got his matches and set light to them. Then he went out and we walked away. Then somebody from the Station got a fire extinguisher and put it out."

Leighton and Salih

12.72 Mr Blom-Cooper made the same submission about Leighton and Salih. He referred to the fact that others (a social worker who interviewed him at the remand centre, and a prison officer) found it difficult to get a complete sentence out of Leighton. He suggested that Leighton could not without prompting have said (in his oral answers and his written statement) that they had burnt the house to get rid of fingerprints. He questioned whether Leighton could have made the written statement without prompting, as DS Gledhill said he did. Mr Blom-Cooper suggested that Salih would not have used words like "we decided to break into a shop", "struggled" and "cable". The evidence which Leighton and Salih gave at the trial and before me satisfied me that they were quite capable of answering non-leading questions and giving descriptions of events, and using the language which was attributed to them.

Were the boys' answers the result of leading questions? Was the information fed to them? Possible sources of information about circumstantial details in confessions. Knowledge by police officers

12.73 If the confessions were false, in that the boys were describing events in which they had none of them taken part, where could they have got the information which they were all giving about the killing and the fire? Some details they certainly could have learnt directly or indirectly from what was in the newspapers. It was suggested that Leighton and Salih might have learnt some of the details from listening to the police radio on their journey in the police car to Catford Police Station, and general conversation in the neighbourhood. They certainly heard Mrs Leighton and her neighbour discussing Confait (see paragraph 12.96 below). But there are matters in the confessions which cannot be explained in this way. It is possible that the boys were retailing a story which they had been taught and persuaded to adopt by some third party (other than the police), but I do not consider that this is a possibility which I need consider seriously. I have discussed elsewhere in the report (see paragraphs 12.84–12.89 below) the likelihood that what Lattimore said about the killing was what "Ronnie and Ahmet" had told him to say. But apart from these considerations, the only possible source if the confessions were false is the police.

12.74 Before he interviewed the boys, DCS Jones had seen the flex, and knew that it had been found under correspondence and photographs in a drawer of the dressing table. He knew that a woollen cap had been found under the neck of the body. He knew that the door of Confait's room had been locked when the firemen arrived. He knew that the source of the fire was in the basement, in the cupboard under the stairs, and that a paraffin heater had been found at the scene of the fire. He knew that two bricks had also been found at the scene of the fire. There were available to him (though he might or might not have read them) statements referring to Confait's having carried a handbag. He was aware that Goode had mentioned in his statement Confait's keyring. All these matters could therefore have been mentioned by DCS Jones to all the boys during the interviews in leading questions which he invited the boys to accept.

The flex

12.75 The flex was discovered by DS August under some papers in a drawer of the dressing table at about 10.52 a.m. on 22 April. This information was communicated to DCS Jones on the same day, and he saw the flex. It was considered by him to be at least a possibility that it had been used to strangle Confait. There had been no mention of the flex in the newspapers over the weekend, though there had been reference to unexplained marks on Confait's neck. According to DCS Jones, its existence, whereabouts and possible use were not generally known prior to 6 p.m. on Monday even to the officers in the murder squad, and DS Cheval, DC Bresnahan, TDC Woledge and PC Cumming would not have known about it. The flex was mentioned to Lattimore by DCS Jones. But Leighton and Salih, according to the record of the interviews, referred to the flex in answer to non-leading questions, describing it respectively as "a piece of wire" and "something . . . long, like a piece of string . . . white". According to DCS Jones, the officers who escorted Leighton and Salih would not have known about the flex, and it is unlikely that Lattimore could have passed on information about the flex to Leighton during the short interval between the end of his interview and the start of Leighton's; or have passed

such information on to Salih during the longer interval before Salih's interview. Mr Blom-Cooper invited me to infer that the knowledge that a flex had been found which might have been used to strangle Confait must have been communicated by DCS Jones to the members of the murder squad at his conferences over the weekend, and that DS August (who had found it and was in charge of the exhibits) must have told his colleagues about it. So, he submitted, Leighton and Salih might have been told about the flex by the escorting officers who were with them in separate rooms before they had their interviews with DCS Jones. If, contrary to the evidence of DCS Jones, the escorting officers did know of the flex, then this would have been possible, but I consider it unlikely to have happened, particularly in view of the evidence (which I accept) that escorting officers are instructed not to talk about the case. Even if the escorting officers did know of it and did mention it to Leighton and Salih, I do not believe that any information they could have imparted would have been sufficient to enable Leighton and Salih to say what they are recorded as having said about the flex. If the records of the interviews with Leighton and Salih are correct, no explanation of their references to the use of the flex seems to me possible other than that they or one of them had been present at the events which they were describing. If in fact the flex had been mentioned by DCS Jones to Leighton and Salih as it was to Lattimore, then I do not believe that DI Stockwell could have recorded the interviews with Leighton and Salih in the way he did otherwise than by a conscious and deliberate falsification. If he "unconsciously" misrecorded as answers to non-leading questions the references to the flex in the Leighton and Salih interviews it is difficult to see why he did not do the same for the reference in the Lattimore interview, where the factors which Mr Irving suggested might lead to unconscious falsification were equally operative.

The heater

12.76 The base of the heater was found at the site of the fire. Mrs Goode stated on 28 April that the heater was under the stairs near the bath when she saw it the last time, which was a few days before the fire when she cleaned that cupboard out; she had not used it for a long time as it did not work any more. Goode on the other hand said on 2 May that the last time he had seen it it had been in a cupboard by the front sub-basement door. According to Mr North's evidence paraffin was used to start the fire, and the base of the heater could have been the source of the paraffin; it was found with the screw threads bright which suggested that the cap had been recently removed. The fact that no paraffin was found in it after the fire could be due to its having been emptied of paraffin, and the liquid in it then having got into it as a result of the activities of the firemen. Before the start of the interviews with the three boys, DCS Jones had been shown the heater and told that paraffin was a likely combustible in starting the fire. It would therefore have been *possible* for him to put the idea of the heater into the minds of the three boys, by means of leading questions. However, according to DC Bresnahan, Lattimore had said in answer to a question from TDC Woledge at Lewisham Police Station that they had "found an old can with paraffin in it and sprinkled it about". The discovery of the heater was certainly not known to DC Bresnahan and TDC Woledge. At the interview with DCS Jones, according to the record, the first mention of the heater came from Lattimore in answer to a non-leading question: "We found a sort of can, a rusty can. It smelt like paraffin so we sprinkled it around . . . We dropped [the can] where we started the fire." Similarly with Leighton and Salih. All

three gave substantially the same account. In view of Lattimore's answers to TDC Woledge it is impossible to believe that the "can" was suggested to the boys by DCS Jones. If it was, I do not believe that the interview could have been recorded as it was without deliberate falsification on the part of DI Stockwell. If the interview was correctly recorded, then the only possible explanation seems to me to be that the boys or at least one of them had been present at the events which they were describing.

The bricks and dirt

12.77 It was a consistent feature of all the statements made by Lattimore that he had tried to put the fire out. In answer to PC Cumming he said (about Doggett Road) "we lit it, but put it out, it was smoking when we left." In answer to TDC Woledge at Lewisham Police Station he said "Ronnie lit it and then we tried to put it out." At his interview with DCS Jones, if the record is correct, the reference to putting the fire out with bricks and dirt was introduced spontaneously by Lattimore: he was asked "Who lit the fire" and replied "Ahmet lit it, I tried to put it out with bricks and dirt. . . " Salih was asked "Did anybody [try to put it out]?" and answered, "Colin got some bricks and dirt." Lattimore in his written statement repeated almost exactly what he had said earlier. Leighton did not refer to the bricks and dirt at all. Bricks and soil were found on Monday 24 April by Mr North in the cupboard under the stairs: he said in his report: "It was further noted that there was a small amount of soil and a few pieces of brickwork scattered around on the floor which were not in any way consistent with the other types of storage within this area." This discovery was reported to DCS Jones, but he said that he did not think that he had paid any particular attention to it at that stage. (The bricks were not collected by the exhibits officer on 24 April; one brick was collected by him later; Mrs Goode was asked about bricks on 28 April and said that there were no bricks in the basement at all, the only bricks she knew about would have been in the back yard; Goode confirmed that there should not have been any bricks in the basement.) He did, however, know about it when he questioned the boys, and *could* therefore have suggested to Lattimore and Salih that attempts had been made with those bricks to put out the fire. But the finding of the bricks and dirt was certainly not known to DC Bresnahan, TDC Woledge and PC Cumming. I do not believe that the bricks and dirt were suggested to Lattimore and to Salih by DCS Jones. (If they were, it is difficult to see why he did not make the same suggestion to Leighton.) If they were, I do not believe that the interview could have been recorded as it was without deliberate falsification on the part of DI Stockwell. If the interview was correctly recorded, the only possible explanation seems to me to be that the boys or at least one of them had been present at the events which they were describing.

12.78 According to DCS Jones, when he questioned Lattimore he did not know of the arrest of Leighton and Salih on the Friday/Saturday night. If this is correct, then when Lattimore said the others "went and did a shop" this was information which could not have come from DCS Jones. It is, however, true that WDS Mays had discovered about the arrest and had reported it to an officer at Lee Road, so that DCS Jones could have heard about it from that officer. The accounts given by the three boys in the interviews and written statements were to a very considerable degree in agreement about

matters which nobody but the participants or someone who had been briefed by a participant could know, for instance:

(a) the order of entry;

(b) the fact that the man was reading;

(c) the fact that Leighton held Confait's arms and Lattimore pulled the flex round his neck; and

(d) the fact that Salih took no active part.

The detail given by Salih (but not by the others):

"JONES: 'Didn't the man try to get away?'

SALIH: 'He tried but when he got his hand up to his neck Ronnie got hold of it.' "

exactly corresponded with the medical evidence (see paragraph 13.26 below) and it could hardly have derived from any police source, except DCS Jones or DI Stockwell who had been at the post mortem, and even they might well not have seen or heard about the scratch mark on the neck. It is noteworthy that Lattimore, when he came to make his written statement, added details which had not been in his oral answers, *viz* the fact that he met Leighton and Salih coming down Doggett Road and that Salih had said "Let's go in that old house in Doggett Road, the end house There is nobody living in there".

12.79 It is true that there were inconsistencies, for instance about the mode of entry, Lattimore saying they entered by "The side door, the one at the bottom", "down the steps", Leighton "We went round the back and got in through the window" and Salih "We went in through the basement door". Also, one boy said Confait was sitting in a chair, another that he was sitting on a bed. There was a discrepancy about who lit the fire. Leighton referred to "petrol" whereas the others referred to "paraffin". The words which the boys used to describe the flex varied—wire, string, cable. The first discrepancy may have been due to the fact that there were two visits, using different modes of entry. Otherwise, I think that the discrepancies are more easily explained by a mistake by the boys than by the insertion of conflicting details by police officers by way of leading questions or otherwise.

12.80 It is clear that at the interview Lattimore's answers about the killing resulted from pressure and suggestion by DCS Jones. Neither then nor when he made the written statement were his answers about the killing spontaneous. This factor casts doubt upon the truth of that part of his confession, and, coupled with the evidence of his alibi, has led me to believe that he did not take part in the killing but said what "Ronnie and Ahmet" had told him to say. But those considerations do not apply to what Lattimore said about the arson. That part of the questioning (if correctly recorded) was, as Mr Blom-Cooper accepted, impeccable. Lattimore's answers were spontaneous and detailed; apart from a possible discrepancy concerning the mode of entry (see paragraph 12.79 above), they tallied with what the other boys said, and with the real evidence (bricks and dirt, can, paraffin). The 'prompting and prodding' in relation to the killing was recorded by DI Stockwell, and I believe that if there had been similar prompting and prodding about the fire he would have recorded it. I do not believe that the considerations affecting Lattimore's confession to the killing cast doubt on the truth of his confession to the arson. He

could have been there and done it: see paragraph 9.2(b) above. I believe that he was there and took part in the arson. I do not accept that there was any possibility of confusion: DCS Jones took great care to establish which house Lattimore was talking about and Lattimore in evidence has said that he knew which house he was being asked about. Mr Blom-Cooper suggested that he might have thought he was being asked about 1 Nelgarde Road where there had been a fire on the Monday afternoon started by Leighton and Salih but in which Lattimore had had no part. But I do not accept this suggestion.

12.81 Mr Blom-Cooper relied on the fact that whereas in the interviews all three boys had said simply "Colin picked up a piece of wire" (Leighton), "Colin picked up something" (Salih), "It was just there. I picked it up" (Lattimore), in their written statements all three said it was in a drawer: ". . . got hold of a bit of wire out of a drawer" (Leighton), ". . . from a chest of drawers" (Salih), "The wire was in a little drawer" (Lattimore). (The only reference to the drawer in the interviews was by Lattimore: "I just put it in a drawer in the sideboard and put some papers over it.") Mr Blom-Cooper suggested that the boys must have been prompted either between the interviews and the making of the written statements, or while the written statements were being taken. If there was prompting on this matter, it would have been after the completion of the interviews, and would affect the argument about the record of the interviews only to the extent that it would cast doubt upon the truth of the evidence by DCS Jones and DSupt Stockwell that there was no prompting at any stage save as recorded. If there was prompting of this nature during the taking of the written statements neither the boys nor the two parents have mentioned it at any stage in their evidence. In itself, a question 'where did Colin pick it up from?', which would have been enough to elicit the sentences in the written statements, would not have been prejudicial though it would have been a breach of the Judges' Rules. It is not a prompting which DCS Jones would have had any sinister motive to make: although he knew where the flex had been found after the killing (something which Lattimore had mentioned at the interview) he did not know at that time that it had been kept in that drawer. That only came out when Goode gave evidence.

Did Lattimore meet Leighton and/or Salih on the evening of 21 April?

12.82 In evidence before me all three boys said that they had not met on that evening. Lattimore's evidence was that he had known Leighton for some time before 21 April, longer than he had known Salih. For some time the three of them had been going about together as friends, going to each other's houses, "mucking about" together. Leighton and Salih were his "mates". Lattimore said that he had gone with them while they set fire to things—such as bits of paper in sheds. Once they had stolen a bicycle together. Lattimore used to go out with them nearly every day; he generally expected to see them every day. However, Lattimore said at the Inquiry that the last occasion on which he had seen Leighton and Salih before 21 April was the previous Monday, 17 April. He did not know why he had not seen them during that week. On the other hand, at one point in his evidence at the trial Lattimore had said that he had been with Salih some time after 4 p.m. on the Friday evening before he went to the Salvation Army club. Leighton said that though Lattimore was a friend he used to go around with Salih more—he used to see Lattimore when they met in the street—he would never go round and knock for him. He could not

remember when he had last seen Lattimore before 21 April. Salih, in his evidence at the trial, said that he saw Lattimore on the Thursday at about 5 to 5.30 p.m. "mucking about" on a little bike with Stephen Harvey "on the estate", by which I believe him to mean the flats in Nelgarde Road. On the Friday evening he had seen someone who he thought was Colin Lattimore, but who in fact was not Lattimore. However, at the Inquiry Salih said he had not seen Lattimore for about a week before 21 April: they had had a bit of a row about a fortnight before. Later in his evidence, he said that he had seen Lattimore in the street a couple of times a week since the row, but had not gone out with him. When reminded of the evidence which he had given at the trial, he said that he had seen him on the Thursday.

12.83 It clearly would not have been surprising if the three boys had met sometime during the evening of 21 April: the shortest way between Nelgarde Road and the shoe repair shop in Sangley Road would have taken Leighton and Salih past, or very near to, the Salvation Army building in Brownhill Road, and it is conceded that Lattimore left the club at least once for a short period. There is some evidence to suggest that the boys may have met. A Mrs Pendrigh who lived at 20 Nelgarde Road witnessed the meeting between Mr Lattimore senior, Leighton and Salih in Nelgarde Road at 11.15 or 11.20 p.m. on 21 April; in 1976 she stated that one of the boys told Mr Lattimore that Colin was with them earlier that evening. However, she had not said this either in the statement which she made on 22 July 1972 or in her evidence at the trial. Mr Lattimore senior said in his statement dated 22 July 1972, in his evidence at the trial and in his evidence before me that Salih had said "Are you looking for Colin? . . . He's not with us, the last time I saw him he was with Stephen Harvey." Salih agreed that he had said that he had seen Colin earlier on, but that he had made a mistake, that in fact it had been *the previous day* that he had seen him and that he had not seen him on the Friday evening. Elsewhere in his evidence, Salih gave a different explanation for his remark to Mr Lattimore senior: he said now that what he had said was that Colin was *probably* with Stephen Harvey, and that he had said this *because Stephen Harvey was the chap Colin went around with*. It is clear from the evidence that Colin Lattimore *had* been with Stephen Harvey on the Friday evening. Stephen Harvey (who in April 1972 was 10 years old) stated in 1976 that he had not seen Leighton and Salih on the Friday evening. But the evasive and contradictory nature of Salih's answers suggests to me that he and Leighton probably had met Colin during the Friday evening, and that Salih was trying to explain away the remark which pointed to their having met. If they had met, this would have given them an opportunity to make an arrangement to meet later on after the Lattimore family had gone to bed.

Matters suggesting Lattimore was involved in the arson but not in the killing

12.84 At the interview with DCS Jones, Lattimore in answer to a series of questions put in an entirely non-leading form gave a spontaneous account of himself, Leighton and Salih setting fire to 27 Doggett Road. He described the starting of the fire as taking place immediately after they got into the house. ("What did you do then?") He was clearly describing events which occurred after he and his parents had gone to bed, which on the alibi evidence cannot have been before 11.45 p.m. and was probably later. During that part of the

interview he did not mention Confait or the killing at all. DCS Jones then said:

> "JONES: 'I don't believe you have told me the whole truth.'
>
> LATTIMORE: 'I have.'
>
> JONES: 'A young man was found strangled in that house early on the Saturday morning and I believe you and your friends were responsible.' "

By this question DCS Jones was for the first time applying pressure of the kind which a suggestible young man (as Lattimore was said by Dr Scott to be) could be expected to submit to, but at first Lattimore resisted: "No, not me. I never went upstairs. . . . The others went upstairs but I didn't. . . . I just tried to put the fire out I told you." DCS Jones then applied further pressure:

> "JONES: 'Telling lies isn't going to get you anywhere. I am sure your parents will want you to tell the truth.' "

It was only at this point that Lattimore gave in and started to admit participation in the killing. But even then he got it wrong: ". . . I put my hands around his neck." It was only after further pressure and a leading question from DCS Jones that he admitted to using the flex:

> "JONES: 'Are you sure it was only your hands that you put round his neck?'
>
> LATTIMORE: 'Yes it was.'
>
> JONES: 'Now listen, this man didn't die because someone put their hands round his neck. He died because he was strangled with a piece of electric light flex, wasn't he?' "

This part of the interview was such that it might well have induced Lattimore to confess to something he had not done but had been told by the other boys to confess to. Then came DCS Jones's interview with Leighton. The interview started with the following introduction from DCS Jones:

> "For the past hour I have been speaking to Colin and as a result of what he has told me I have reason to believe that you were concerned in causing the death of the man who lived at 27 Doggett Road last Friday night and were also partly responsible for setting his house on fire. What do you want to say to me."

Leighton's very first answer was "Colin killed him. I only held his arms", putting the burden of the actual killing off himself and on to Colin. Again later he said "Colin picked up a piece of wire and pulled [it] round his neck"; that it was Colin's idea to set the house on fire, and that Colin found the can. It may be commented that (if the record is correct) the only one of the three who needed prompting was Lattimore, and he only about the killing: the others told their story substantially in response to non-leading questions.

12.85 At the confrontation between the three boys and Mr Lattimore senior and Mrs Leighton, it was Leighton who spoke first and said "We all did it together. We went in there to steal. I grabbed hold of the man and Colin pulled the wire round his neck", again putting the burden of the actual killing on to Colin. (If the account given by Mr Lattimore senior and Mrs Leighton—see paragraph 12.64 above—was correct, it would tend to support the theory of an imperfectly learned lesson.)

12.86 In the written statement of Lattimore, he again first of all described the visit to the house and the arson. His account tallied with what he had said in the first part of the interview with DCS Jones—though he added a number of circumstantial details which had not been given in his answers at the interview. However, he made no mention of the killing. He appeared to be describing something which occurred immediately after they entered the house. At that point DCS Jones intervened:

> "Why did you admit to me a few minutes ago in the presence of your father and in the presence of two other boys that you had in fact pulled the wire around the mans neck and held it pulled for about two minutes".

Lattimore then made the very significant remark "They told me to say it. I mean Ronnie and Ahmet." After that his father said "I think this is possible. He is dominated by Ronnie." I consider it to be true that Colin Lattimore was dominated by Ronald Leighton, and I find nothing implausible in the idea that Ronnie and Ahmet had told him to say it.

12.87 "They told me to say it. I mean Ronnie and Ahmet." Dr Leigh said it was difficult to know why Colin Lattimore would say that unless Ronnie and Ahmet had in fact told him to say it. From his own observations Dr Leigh saw nothing inconsistent with this being the truth. Dr Leigh considered that if the three boys had discussed the killing and the fire, and the account of the murder had been suggested to him by the other two boys, Lattimore was perfectly capable mentally of retaining it in his memory and retailing it to police officers when questioned. Lattimore, he thought, could have responded to such a suggestion and confessed to what had been suggested to him. Leighton was, he thought, dominant over Colin Lattimore, as Mr Lattimore senior said at the confrontation.

12.88 At the trial Lattimore several times confirmed that Leighton and Salih had told him to say it:

> "*Q.* You see, according to what is written in this statement, your reply to that question was: 'They told me to say it. I mean, Ronnie and Ahmet.' Did you say that?
>
> *A.* I said that, yes."

> "*Q.* . . . Well you told us on Friday that when you got about half way through the statement, Mr Jones asked you the question: 'Why did you admit to me a few minutes ago, in the presence of your father and in the presence of two other boys, that you had in fact pulled the wire round the man's neck and held it pulled for about two minutes.' Do you remember that question being put to you?
>
> *A.* Well I think it was Ronnie and Ahmet who told me to say that. They told me to say that I did go in there.
>
> *Q.* When was it that Ronnie and Ahmet told you that you had to say this?
>
> *A.* I think it was when we were at Lewisham Police Station. I think it was when we were in the room there. He said: 'You had better say that', and so I did.
>
> *Q.* Are you quite sure that this was said to you by Ronnie and Ahmet whilst you were at Lewisham Police Station?
>
> *A.* Yes sir.

Q. That Ronnie and Ahmet told you to admit that you had pulled the wire around the man's neck?

A. Yes sir.

Q. When in fact you hadn't?

A. No sir. That is what I said. I said: 'I didn't do it.' He might have done it, but I never.

Q. Did you ask Ronnie if he had done it?

A. I might have asked him if he had done it and he said: 'No.'

Q. What might his reply have been?

A. He said: 'No.'

Q. Now coming back to the statement, did you say to the policeman: 'They told me to say it', meaning Ronnie and Ahmet?

A. Yes sir; I did.

Q. Is that true?

A. Yes sir; that [sic] what it says there."

and he confirmed it again when cross-examined by counsel then appearing for Leighton and Salih. At the Inquiry he denied having said it, or said he did not remember having said it. Mr Irving attempted an explanation: if Colin did say it, he was "[diving] for the nearest cover", seeking a way out of a difficulty. However, Mr Irving could not explain why, if this was so, Colin did not maintain that line. His statement went on to give an account of the killing, though maintaining that he had killed Confait accidentally.

12.89 It is perhaps difficult to understand what Leighton and Salih could have supposed they would gain by getting Lattimore to implicate himself. But they might have supposed that they would minimise the consequences to themselves if Lattimore could be induced to say he had done the actual killing.

Improbabilities in the boys' confessions

12.90 The Court of Appeal was impressed by what it called "a number of very improbable matters in the confessions, and some striking omissions from them." There certainly are such matters, though certain of the evidence which I have heard (if true) tends to reduce the improbabilities. Even so, it remains a strange story. However, I have been constrained by the evidence to conclude that, despite the improbabilities, the confessions are (save as to Lattimore's part in the killing) true. I will now go through the improbabilities and omissions listed by the Court of Appeal and make my comments on them.

(a) "*The appellants were apparently never asked by the police officers to say at what time they went to 27 Doggett Road with a view to stealing. . . .*"

That is true. I criticise the police for this (see paragraphs 23.5 and 23.6 below), but if there are periods of time when the offences could have taken place which are not covered by the alibis this omission does not itself tend to invalidate the confessions. I have concluded that there are such periods in respect of Leighton and Salih for the killing, and of all three boys for the arson.

(b) "*. . . or whether they had ever been to Michelle's room before, or whether they knew him, except by sight.*"

That is true. DCS Jones could have asked these questions during the interviews, but the Judges' Rules would not have permitted this to be done during the taking of the written statements or after the boys were charged. Some evidence has come to light which (if true) suggests a link between Leighton and Confait.

(c) "*How they knew which room he occupied, or how they supposed they could steal from him when he was in the room . . . is far from clear.*"

This remains a surprising feature of the case, unless the evidence linking Leighton with Confait is true.

(d) "*. . . how they supposed they could . . . get up or down the stairs without being heard by Mrs Goode on the ground floor, or engage in the struggle which killed Michelle without making a lot of noise is far from clear.*"

Someone got up and down the stairs and killed Michelle. The evidence about the noises heard in the house that evening is at paragraphs 13.15–13.20 below. The evidence is that there was a good deal of traffic to and from Confait's room, and it would have been no surprise to the Goode family to see or hear strangers going to and from Confait's room. Confait used to bring people home with him in the evening and during the day; he had a lot of visitors (Mrs Goode said at the trial), mostly men and mostly white. He had visitors most evenings, mostly men.

(e) "*The absence of any evidence of a struggle and the putting away of the ligature after the killing are much more consistent with the hypothesis that the killer was well known to Michelle and knew where the flex was kept and possibly was permitted by Michelle to put the ligature round his neck for some sexual purpose.*"

The medical evidence conclusively negatives the theory that Michelle at the time of his death had permitted the ligature to be put round his neck for some sexual purpose (see paragraph 13.27 below). It also establishes that there must have been at least two assailants. It is clear that Goode knew where the flex was kept, and I have therefore had to go closely into the case against Goode (see paragraphs 13.21 and 13.29–13.31 below). Though there was ground for suspicion, there was no evidence against him. No one has suggested any other person who might have joined Goode in killing Confait. The flex remains a puzzling feature of the case, but other explanations are possible: the drawer may have been open and the flex visible.

12.91 Counsel for the boys naturally based argument on similar considerations in inviting me to find that, despite the confessions, none of the boys can have committed the killing or arson at 27 Doggett Road. He submitted that it was unlikely that a murder by strangulation would be carried out by someone who was a stranger to Confait. It was unlikely that a murder by a stranger would leave no sign of a struggle or disturbance in the room, and no marks on the hands or body other than one or two scratch marks on the neck. It was unlikely that a stranger who had entered for robbery or theft would remove the flex from the neck and put it back in the drawer. On the other hand, it was,

counsel suggested, well known that homosexual prostitutes are prone to suffer violence at the hands of those with whom they have sexual relationships, either longstanding or casual.

The boys and Confait

12.92 The boys all said that they had known nothing about Confait before he was killed. This statement has to be considered in the light of the following facts.

12.93 From police enquiries it seemed that Confait was "always around" and was known by "practically . . . everybody". He was very widely known in the district as a person who went around dressed in women's clothing. Mrs Leighton said that he was well known in Lewisham as a homosexual. He was certainly known to police officers and others (see paragraph 5.2 above).

12.94 Mrs Leighton knew the Goode family by sight, and used to talk to Pauline Goode. She had spoken to Mr Goode. She also knew—at least by sight—Alves Parchment, the Goodes' other lodger. Pauline Goode knew the three boys by sight, and two of them (Lattimore and Salih) by name, but she stated in 1976 that she had never spoken to them and that they had never been to 27 Doggett Road. Denise Leighton, Ronald Leighton's half-sister, who lived with her mother, Mrs Leighton, and who in April 1972 was 11, became friendly with Pauline Goode at school in 1969. She visited Pauline's home and Pauline visited hers. Denise got to know Pauline's parents and brothers and sister. She once saw a man there who from her description might have been Confait. She did not remember talking to Ronald about the Goode family or 27 Doggett Road.

12.95 Mrs Leighton knew Confait by sight. She used to see him regularly on Friday evenings in 'The Black Bull' public house some time before it closed in early 1972. (She did not go to 'The Castle' till after Confait's death.) He would come in with Goode and leave with him. She had seen Confait in women's clothing and also in men's clothing. She knew he was a homosexual, but not that he was a prostitute. She had seen Confait and Goode dancing together at a club in Brockley. She had seen Confait on the Monday before he died by 'The Railway Tavern' at the end of Doggett Road.

Knowledge by the boys about the events at 27 Doggett Road

12.96 Either on the evening of Saturday 22 April or on the Sunday, 23 April, Mrs Leighton and her neighbour discussed, in the presence of Ronald, and Ahmet and Perihan Salih, the report in Saturday's *Evening News* or *Evening Standard* (probably the latter) about Confait's killing. The *Evening News* item gave little detail, but the *Evening Standard* report referred to Confait being found dead in an upstairs room and said there were marks on his neck which could not be easily explained. The neighbour said that Confait was a homosexual, and 'took him off'—the way he walked and his shoulder bag and things like that. Mrs Leighton told the boys what she knew about Confait, that she had frequented the same public houses as Confait and that he used to dress up as a woman. On 23 April Mrs Leighton went round to see Mrs Lattimore and told her about the fire, and about Confait—the type of person he was and the clothes he wore. Leighton said that he and Salih after their release from Catford

Police Station in the early hours of Saturday 22 April walked along Doggett Road and saw that number 27 had been burnt out, and that there were a lot of policemen there. Salih said that he had also heard about the fire from friends in the area, and knew from the newspaper that a bloke had been killed there. Both Lattimore and Salih said that during the weekend they had walked past and had a look at 27 Doggett Road. Salih said he realised that that was the house where there had been a fire—all the windows and everything were open, and there was a policeman standing at the door.

12.97 According to Lattimore, on Sunday 23 April his mother told him that a coloured man had been killed in Doggett Road, and that he was "a bit queer", "a funny man . . . who sometimes dressed as a woman." She told him that he had been strangled and that the house was burned down. Before that, he said, he knew nothing at all about Confait, or about 27 Doggett Road or the people who lived there. He went to have a look at 27 Doggett Road, and would have seen that it was burnt.

12.98 When the boys were questioned by police officers on 24 April they all clearly knew about Confait. Lattimore when asked about 27 Doggett Road said "A funny man lives there . . . he used to dress like a woman, he was often behaving funny . . . [He was] sort of [coloured]". Leighton said that they had gone into the house to steal from "That man who was like a woman." But their knowledge might have been gained from conversations which they had had during the weekend.

12.99 Some written evidence of a confidential nature emerged at my Inquiry that Leighton may have had a sexual invitation from Confait before the date of the murder. However, it is right to say that the evidence that Leighton had this previous contact with Confait is third-hand, and there is other evidence that Confait had no sexual interest in young boys and was never seen in their company. The pattern of his sexual activity was that adult men sought sexual services from Confait (Confait playing the woman's part) for which he was paid. It would not be in accordance with that pattern for Confait to offer money to a boy of 15. However, the evidence was virtually contemporaneous and came from an independent source with no incentive to distort the facts. On the other hand, the independent source has subsequently stated that the more immediate source was often muddled and confused in the understanding of situations and has expressed the view that this might have been so on the material occasion.

12.100 The evidence was to the effect that Leighton had been approached by Confait on Thursday, the night prior to the murder, with the offer of £5 if he came to his room, but Leighton had angrily refused; there was an implication that the boys might have gone to Confait's room to teach him a lesson.

12.101 Leighton furnished a written statement concerning this matter. He said it was possible that the more immediate source of this evidence in referring to an approach to him by a man with an offer of money had confused this with an incident which occurred a few weeks before 21 April 1972 when Leighton was approached by a man (not Confait) whom he later saw walking with Ahmet Salih. I also received written evidence from the same independent source mentioned in paragraph 12.99 above that in July 1972 Leighton's brother said

that he himself was frequently followed by men on his way home, and was once with a friend approached by a man offering money which they both refused.

12.102 It is right to say that I invited both the more immediate source of the evidence and the independent source of the written material to give evidence to my Inquiry. Each provided a written statement and the more immediate source denied the contemporary account. Both declined to give oral evidence before me. On my instructions a letter was sent to Leighton inviting him to give further oral evidence to deal with the alleged incident with Confait, and pointing out that an adverse inference might be drawn if he declined to do so. However, he indicated through his counsel that he was not willing to give further evidence.

Later confessions and denials by the boys

12.103 I was shown written statements made by a number of people, and received oral evidence from one witness, to whom at different times after the trial both Lattimore and Leighton were said to have confessed to either the arson or the killing or both. (See for instance the accounts described at paragraph 5.19 and the note of parts of Dr Scott's evidence at paragraph 5.22 above.) On the other hand, there are other statements of people to whom Lattimore or Leighton have denied participation in the crime. One of the witnesses to whom Leighton is said to have made an admission is DS Vale who told me that, on journeys from Ashford while Leighton was on remand, Leighton had said repeatedly "Have you found the keys yet?" and had given a description of the keys which tallied with a description which a witness who had known Confait had given to TDC Vale. This remark was taken sufficiently seriously for a further search for the keys to be made on the instructions of DCS Jones or DI Stockwell. It may, I suppose, be said that it is easier to understand why a guilty person should sometimes admit and sometimes deny guilt than why an innocent person should ever admit guilt. But that is not a strong argument in the case of these three boys, particularly Lattimore who was reported to be so suggestible. Dr Scott said that to him Lattimore would at one time admit and at another deny participation. I regard all the evidence of later confessions as of no value, and I have placed no reliance on it in coming to my conclusions.

Scientific evidence

12.104 Scientific evidence (about hairs found on coats etc.) was given at the trial which was said to confirm the fact that Leighton and Lattimore had been in Confait's room on 21/22 April. It was, however, entirely unconvincing and was not relied on by prosecuting counsel in his closing speech. No attempt has been made to rely on it at my Inquiry. I have ignored it.

The evidence of Mr Barrie Irving

12.105 Mr Barrie Irving is a psychologist and social scientist working at the Tavistock Institute of Human Relations. I permitted him, with his colleague Miss Linden Hilgendorf, to attend the Inquiry hearings so that he could observe the three young men while they were giving evidence.

12.106 Mr Irving submitted a written statement, and subsequently gave oral evidence. His evidence was directed to the question, how could the confessions

have come into being if the three boys were in fact innocent? He sought to derive, from his experience as a psychologist and his knowledge of the psychological literature, possible explanations for the confessions consistent with the assumption (which he made for the purpose of his evidence) of the innocence of the boys.

12.107 He drew attention to the fact that the performance of the three young men when giving evidence at the Inquiry might be an unreliable basis for a judgment about their behaviour in 1972. During the intervening period they had matured and developed, and were likely to have acquired greater confidence and command of language. Moreover, they had acquired experience of being questioned, and of giving answers and explanations to persons in authority. "It would not . . . be reasonable" Mr Irving said "to infer from their willingness to stand up for themselves now any ability to have done so in April 1972." Also, their memory of the events of 1972 might have been overlaid by constant repetition of their story, so that it had become impossible for them to distinguish genuine memories from inferences which they had later drawn.

12.108 Mr Irving suggested that in his evidence at the trial Lattimore had difficulty in dealing with numbers, dates, time sequences and the order of events, but that he could at that time give "detailed and lengthy accounts of physical activity sequences or locations which would have been typical of his experience at that time." In his evidence at the Inquiry, Mr Irving said, Lattimore often answered quickly and apparently without any effort to search for an answer from memory, and tended to use stereotyped phrases which Mr Irving referred to as "learned phrases": he did not seem always to follow lengthy questions, or to see the logical relationship between questions.

12.109 Mr Irving considered that Leighton had a better grasp of the questions than Lattimore, and was better able to deal with complex sequences of events and questions involving numbers. He showed himself intolerant of pressure, and anxious to escape from uncomfortable situations, such as continued questioning. The answers which he gave which appeared to indicate assent may sometimes have been merely acquiescence.

12.110 As to Ahmet Salih's evidence at the Inquiry, Mr Irving said it was

> "generally consistent with that of a normal person trying to remember events in the distant past: he was clearly hesitant; found some parts easier to remember than others; was capable of resisting interpretations put to him by other people; left out some details he had remembered at other times, and included others in a way consistent with a search for traces of remote events."

In 1972 he was much less mature and less verbally skilled, but was able to give more detailed accounts of events from memory. Mr Irving suggested that his development might have been affected by the transfer from one culture (Cyprus) to another, as well as from one language to another, though in fact the family had come to England when Ahmet was four years old.

12.111 Mr Irving drew attention (as did Professor Terence Morris in his statement) to the cultural background to the behaviour of these three boys in 1972 as described by them:

> " . . . the behaviour referred to was the aimless incidental activity of a group of teenage boys who tend to drift from one activity to another around a

familiar territory with no planning and little idea of consequences. The phrases 'mucking about' . . . and 'making our way' . . . capture the aimlessness of the activity pattern."

12.112 In seeking for an explanation for what he assumed to be false confessions, Mr Irving mentioned but discounted the possibility that the records of the interviews were entirely a fabrication on the part of the police. Secondly he suggested the possibility that the records of the interviews and the written statements were an inaccurate record of what happened, particularly in the matters of the attribution of the source of information to persons and the language used. Thirdly he suggested the possibility that the records of the interviews and the written statements were an accurate record of *part* only of what happened.

12.113 In relation to the second possibility, Mr Irving posed the "psychological problems" as follows:

"a) Why did the boys acquiesce [in] a story which they knew to be false and why did they continue to agree to this story once their parents had arrived; and

b) how did the police officers come to their record of what happened [(deliberate fabrication having been ruled out)]."

He drew attention to the fact that the boys' own explanations involved various kinds of intimidation and persistent hostile questioning and said that even if such allegations were not true they were not necessarily consciously made up. He suggested that in 1972 the boys may have believed that acquiescence in matters being suggested to them was their best policy. He suggested that in the culture in which they lived the boys would not have "expected their parents to deal effectively with their accusers" or to "take their word against that of the police." Mr Irving suggested as answers to the questions how and why the police came to make an inaccurate record, first the notorious difficulty of making an exact recording of verbal material, and secondly the phenomenon of "closure", the tendency to selectivity of incoming data to conform with a conclusion or hypothesis already formed and the rejection of anything which challenges that interpretation, failure to perceive information which is inconsistent with a decision previously made.

12.114 In relation to the third possibility, Mr Irving suggested that material contained in the confessions may have been obtained by the boys from discussion in the neighbourhood over the weekend, from the police prior to the interviews, from the police van radio, from the introduction to the interviews or by reasonable inferences from other information: the suggestion was that the boys may "from the bare bones of their prior information [have] constructed a story with police help and then learnt it." Mr Irving, however, concluded:

"The difficulty with this position is the complexity of the tasks which the boys would have had to perform. Not only would they have had to learn to piece together the story the police wanted, but they would have had to add to it and remember it over several hours so as to produce it in a statement. The statements are fairly lengthy and, even if we accept that they might have been given minimal prompts, the performance is remarkable particularly for Colin and Ronnie."

He raised the possibility of this happening unconsciously in some kind of "fugue" or disordered or disoriented mental state, but discounted this.

12.115 I do not find it possible to relate Mr Irving's theories to the actuality of what happened. For instance, if the account of the oral interview with Leighton is correct it started as follows:

> "JONES: 'For the past hour I have been speaking to Colin and as a result of what he has told me I have reason to believe that you were concerned in causing the death of the man who lived at 27 Doggett Road last Friday night and were also partly responsible for setting his house on fire. What do you want to say to me.'
>
> LEIGHTON: 'Colin killed him. I only held his arms.' "

This was not said as a result of "persistent hostile questioning"; it came right at the beginning. Leighton's answer was not suggested to him: DCS Jones's question was put in the most non-leading possible form; and Leighton's assent was a statement of what happened, not a mere 'yeah'. Mr Irving admitted that it was not consistent with 'closure'. If the record of this answer is not correct, and what really happened was that Leighton acquiesced in a suggestion put in a leading form, I do not believe that without conscious and deliberate fabrication DI Stockwell could have recorded the answer as he did.

12.116 Similarly, the questions put to Lattimore by DCS Jones were for the most part short and simple in form; they did not require a great grasp of "the sequential logic [of] a series of questions"; they seemed to me to be such as to require the sort of capacity which Mr Irving found from the transcript of the trial that Lattimore seemed then to possess. In the answers about the arson there was no "acquiescence . . . under verbal pressure".

12.117 It is clear that before the start of the interviews with the boys DCS Jones had formed the view that the killing and the fire had been close together in time and that the same person had been responsible for both (though he said he was keeping an open mind on it). It was this which led him to say to Lattimore, after he had described his participation in the arson but said nothing about the killing, "I don't believe you have told me the whole truth . . . A young man was found strangled . . . and I believe you and your friends were responsible . . . Telling lies isn't going to get you anywhere." DCS Jones said in his evidence before me:

> "*Q.* Looking still at the questions you asked Lattimore . . . he has told you about slipping the lock. You say: 'I don't believe you have told me the whole truth.' Now what was it that led you to believe that he had not told you the whole truth at that stage?
>
> *A.* At that stage, sir, he had only told me about the fire at the house and I felt that the fire and the murder were the work of the same person. I accepted, or I believed, it was more probable that the fire and the murder were connected and the mere fact that he had not mentioned anything about the dead man is the reason why I was saying to him what I did then, sir.
>
> *Q.* It was your belief whoever did the fire, must have done the murder?
>
> *A.* Oh yes."

DCS Jones was thus in the situation in which, according to Mr Irving, the phenomenon of 'closure' can occur. If DCS Jones and DI Stockwell were affected

by 'closure' then it would follow that they must have "shut out inconvenient information"; however, on the contrary, the record of the interview and the written statement contain statements by Lattimore which conflict with the view which DCS Jones had formed. (Mr Irving called this "a very puzzling aspect of the case.") For reasons which I explain elsewhere in the report I believe that when speaking about the murder Lattimore was telling a false story, but I do not believe that it was a story which the police officers suggested to him or wrongly attributed to him while under the influence of 'closure'. At the time when the interviews started DCS Jones and DI Stockwell knew nothing about the boys except that they had been picked up for the arson in Ladywell Fields, and had made what were thought to be admissions about the fire at 27 Doggett Road. Apart from the obviously leading questions (which I discuss elsewhere in the report), the questions put by DCS Jones to Lattimore were in non-leading form, and were not confined to matters about which DCS Jones had formed a view: some of them related to matters about which DCS Jones did not have information. The questions put to Leighton and Salih were entirely in non-leading form.

12.118 DCS Jones started the interview with Lattimore by seeking to find out something about Lattimore himself, and his association with Leighton and Salih. He then put what he had been told: "I understand you were together last Friday night and have told a policeman that you set fire to a house in Doggett Road": that, I believe, was accurate information and DCS Jones cannot be criticised for putting it to Lattimore in that way. He then sought to make sure the boy was talking about 27 Doggett Road. I accept Mr Farquharson's description of this part of the interview as a "prolonged, careful and anxious inquiry". There then followed a series of statements by Lattimore in answer to non-leading questions:

(a) that some black people lived in the house;

(b) that a funny man lived there;

(c) the mode of entry;

(d) what they did then—did they go into any rooms in the basement?—the finding of the can and sprinkling of the paraffin—what they did with the can;

(e) who lit the fire?—attempts to put it out; and

(f) they all ran away—Lattimore went home, the others went and 'did' a shop.

If they were correctly recorded, none of these questions and answers could be said to involve an attempt by DCS Jones to impose a preconceived idea of what had happened.

12.119 In the interview with Leighton the admission came in answer to the first question "What do you want to say to me." It is difficult to understand how a false answer to the very first question could have been induced by the psychological factors of which Dr Leigh and Mr Irving spoke—disorientation, desire to escape from a situation which he found intolerable. According to the record there was not a single leading question. The information was given by affirmative statements. On the seven occasions when he answered a question 'yes' or 'yeah', three were qualified so that there can be no doubt that he was agreeing and the other cases are relatively unimportant in the light of succeeding answers.

12.120 DCS Jones in his introductory remark to the interview with Salih did not suggest any implication of Salih which goes beyond what the other boys had said. There were no leading questions.

12.121 Mr Irving suggested that the answers given by Lattimore were ambiguous and contained several possible confusions, "namely the details about the house at Doggett Road being answered in general terms, not in relation to Colin having been responsible for the fire and the possibility that the early sequence relates to the fire at Catford Bridge not to the one at Doggett Road." But Lattimore himself said in evidence that he knew which house in Doggett Road was being referred to; he did not think he was being asked about a fire at Catford Bridge or Nelgarde Road. DCS Jones's questions were designed to remove any possibility of confusion as to the identity of the house which Lattimore had admitted setting fire to, and in my opinion succeeded in doing so.

12.122 I find it difficult to believe that a police officer recording an interview with a suspect can *unconsciously* fail to record an inconvenient answer, or can *unconsciously* write down as the answer to a non-leading question what was in fact merely assent to or acquiescence in a leading question. I find it even more difficult to believe that DI Stockwell did this in the present case, because in fact some of the answers which he wrote down were "inconvenient" (in Mr Irving's sense), and some *were* recorded by him as assents to or acquiescence in leading questions.

12.123 Both Dr Leigh and Mr Irving, though they considered that the low intelligence of Lattimore and Leighton rendered them prone to suggestion, found it much more difficult to account for Salih having made the confessions which he did if he had not in fact witnessed or taken part in the events described. Salih, Mr Irving said, was capable of holding on to his own view of reality in the face of somebody with differing assumptions from his own; Mr Irving agreed with Dr Leigh that Salih posed a problem because he presented himself before the Inquiry fairly self-confidently; his performance was quite remarkable: he was capable of resisting things he disagreed with.

12.124 Mr Blom-Cooper propounded Mr Irving as a witness who, on the basis of his qualifications and experience, could suggest ways in which, on the assumption that none of the boys took part in the arson and murder, the confessions could have been made and recorded as they were. He listed the points as follows:

(a) confusion between affirmation and acquiescence;
(b) transcription error resulting from the limited capacity of short-term memory;
(c) selective attention leading to the editing out (or in) of material;
(d) rehearsal effects—the overlaying of previous memories with rehearsals of that material;
(e) the tendency to forget inconsistent or anxiety-provoking details; and
(f) closure—the failure to respond to incoming data which are inconsistent with a previous decision.

He cited Trankell's *The Reliability of Evidence*, pages 24–29, in support.

12.125 I have no doubt at all that these phenomena occur, indeed they are well documented in the psychological literature and established by experiment. But, giving the fullest possible weight to Mr Irving's evidence, and accepting that some of the factors leading to these phenomena may have been present, I find it difficult to apply them to the facts of this case. I do not consider that the record of the interviews and the written statements can be accounted for by these mechanisms. If the boys did not make the confessions as recorded, then I do not believe that the record could have come into existence without deliberate, conscious falsification which is not alleged and which, if it had been, I should have rejected. I comment on the six points:

(a) The vital points in the confessions (apart from Lattimore's confession to the killing) were, according to the record, made by affirmation in answer to non-leading questions. DI Stockwell recorded some leading questions, and he was clearly aware (as any police officer would be) of the difference between a leading and a non-leading question, and between acquiescence and affirmation.

(b) Transcription error may have caused inaccuracies of detail, but could not possibly have led (without deliberate falsification) to a recording of detailed and circumstantial accounts of a killing and arson if no such account had been given.

(c) and (f) DCS Jones admitted to having formed a provisional conclusion that the same person had done the killing and the arson, and this accounted for his questioning of Lattimore about the killing and his acceptance of a story which it is now known cannot be true. However, he started with no provisional conclusion about the implication of the boys in the events at 27 Doggett Road, other than that they had admitted starting fires at various places in the vicinity and he understood them to have admitted implication in "a fire in a house at Doggett Road". The fact that he cautioned Lattimore shows that he considered himself to have "evidence which would afford reasonable grounds for suspecting that [he had] committed an offence". The questions which he asked Lattimore about the fire, and Leighton and Salih about the killing and fire, do not seem to have been limited by the provisional view which he held. They were framed in a way which might or might not have elicited answers in accordance with his provisional conclusion. The record includes a number of instances where answers were given which did not correspond with the theory: these were written down.

(d) At the time of the interviews, rehearsals (in the form of answers to questioning) had not taken place. The events may have been, indeed in my view must have been, discussed between the boys. But unless some party had fed them with the story (which I do not believe) they could not have arrived at the detailed story which they each separately gave unless at least one had taken part.

(e) This does not affect what *was* said. It would be an explanation of omission, or silence—but not of inclusion and confession.

Possible mechanisms for producing false confessions

12.126 Mr Blom-Cooper suggested mechanisms which might, if the record is accurate, have led the boys to make false confessions:

(a) disorientation producing inaccuracies in the mind's recall process; and

(b) the bargain theory, a belief that if they made a statement they would be allowed to go home.

12.127 It is of course nowadays a commonplace that disorientation can occur as a result of stress (lack of food, drink, sleep, sensory deprivation, fear). Notoriously, a confession may be extracted by physical violence, or fear of physical violence; by a hectoring, bullying approach; or by an alternation between such an approach and a kind, understanding approach. It may also be extracted by a promise of favours if a confession is made. It is conduct of that kind which renders a confession inadmissible in evidence.

12.128 Professor Terence Morris in the written statement which he was good enough to provide for me referred to the unsettling effect of detention in a police station for a long period of hours, and to the disorientation likely to occur under questioning in conditions of some physical and psychological discomfort.

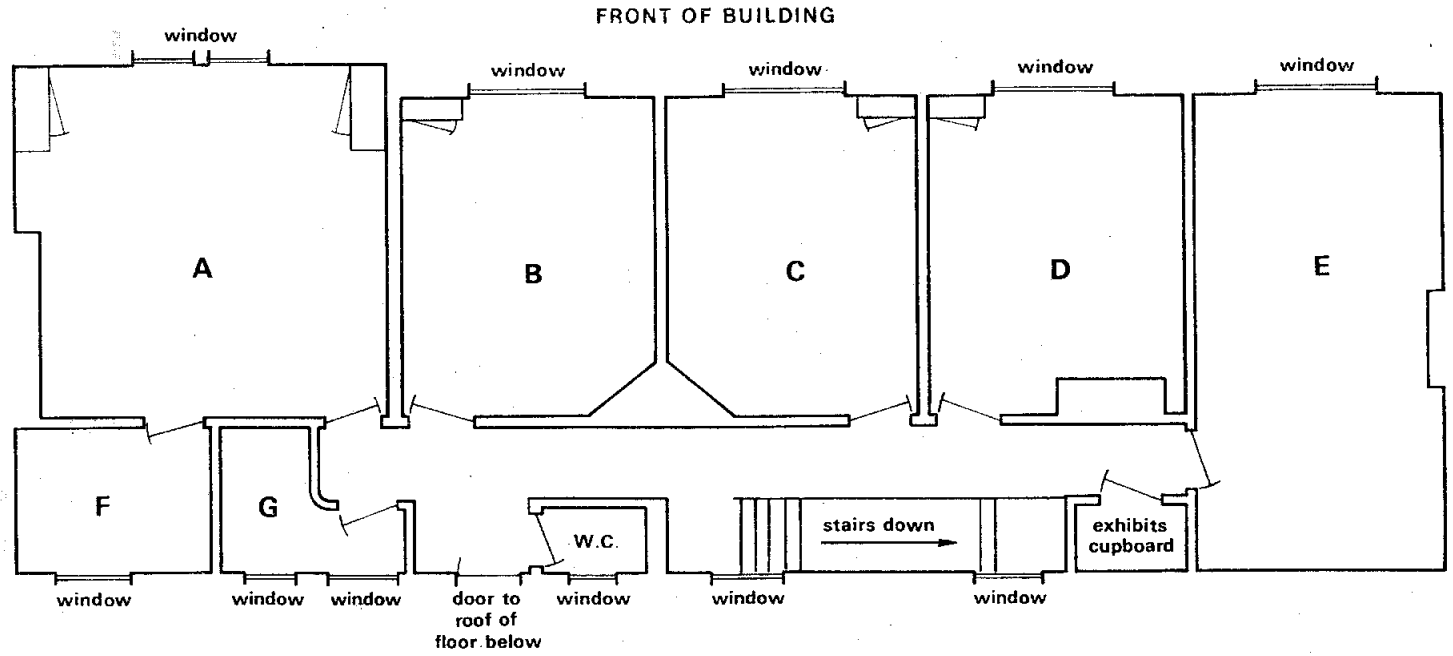
12.129 I have seen the rooms in which the interviews took place. They are certainly (to use Professor Morris's phrase) "unlike that which most people would experience in their own homes, lacking in any personalised human touches." In that respect they do not differ from rooms in police stations anywhere. But the rooms at Lee Road are not particularly cheerless. They have windows opening out on to the outside world. The dimensions can be seen on the plan at page 136: the rooms are not unusually large, nor on the other hand (with the exception of the former bathroom, marked G on the plan) are they oppressively small. They retain the character of rooms which were originally designed and used as living accommodation.

12.130 It clearly ought to be recognised by police officers that disorientation and consequent false confessions can occur. The rules governing interrogation in many countries attempt to provide safeguards to prevent the occurrence of conditions leading to disorientation. In the *Miranda*[1] case in the Supreme Court of the United States Chief Justice Warren said[2]:

> "An individual swept from familiar surroundings into police custody, surrounded by antagonistic forces, and subjected to the techniques of persuasion described above cannot be otherwise than under compulsion to speak. As a practical matter, the compulsion to speak in the isolated setting of the police station may well be greater than in courts or other official investigations, where there are often impartial observers to guard against intimidation or trickery."

Our own Judges' Rules and Administrative Directions (even though they may not go far enough) contain provisions with the same intent: see paragraph 4 of Home Office Circular No 31/1964; the preamble to the Judges' Rules, particularly the principles and the sentence immediately preceding the principles; and Administrative Direction 3. Administration Direction 4 (as later explained) and Circular No 109/1976 reveal an understanding that children and young persons and the mentally handicapped are in need of special protection in this respect. In view of the departures by DCS Jones from the Rules and Directions

[1] *Miranda v. Arizona* 384 U.S. 436 (1966).
[2] At page 461.



Maximum dimensions

Room	A	18'0" × 16'11"
"	B	12'4" × 15'4"
"	C	12'2" × 15'5"
"	D	12'4" × 15'4"
"	E	12'0" × 22'9"
"	F	9'6" × 7'0"
"	G	9'0" × 7'0"

PLAN OF TOP FLOOR OF LEE ROAD POLICE STATION

about interrogation—in particular the absence of the parents—it is necessary to look with the very greatest care at the evidence about the interviews to see whether the consequences which the Rules were designed to prevent did in fact occur. But of course the fact that the Rules and Directions were breached does not necessarily lead to the conclusion that false confessions were made.

12.131 I fully accept that detention and questioning in a police station must often be a frightening and upsetting experience, particularly for those who have never been through it before. But I do not believe that the conditions which may lead to disorientation were present in this case, nor that even if disoriented the boys could have made these confessions unless at least one of them had been there. The facts of the present case are different from those in the *Miranda*[1] case or those in *Haley v. Ohio*[2]. If the evidence of the police officers is to be accepted, admissions about the fire at Doggett Road were made both before and immediately after the boys were taken to Lewisham Police Station, and the interviews with DCS Jones at which admissions in relation to both the killing and the fire were made took place within a short time of the arrival of the boys at Lee Road Police Station at about 6 p.m.: the interview with Lattimore took place between 6 and 6.55 p.m., that with Leighton between 7.05 and 7.35 p.m. and that with Salih between 7.40 and 8.05 p.m. Dr Leigh said that the time the youths were held was too short to have any bearing on confession, and that the position was not affected by the late hour to which the statement-taking extended—"these boys were . . . night birds." Mental and physical fatigue were not factors. The interrogation situation, Dr Leigh said, was not in the present case very important. Mr Blom-Cooper did not feel able to suggest that the disorientation theory could apply to Salih (although he was kept waiting in the police station for the longest period before being interrogated), and made the suggestion only hesitantly in the case of Leighton. Lattimore was questioned within minutes of his arrival at Lee Road Police Station; the series of questions about the fire, which preceded the caution, was designed to remove the possibility of confusion and produced a series of answers which revealed no sign of confusion; at the time when Lattimore made his written statement he was able to give an account of the fire which did not depart in any respect from what he had said three hours earlier in answer to questions; in the course of making the written statement he limited his statement to the fire and, when asked by DCS Jones the question about the killing, he came out with "They told me to say it. I mean Ronnie and Ahmet", hardly consistent with disorientation leading to a false statement. It is inconceivable to me that disorientation could have led three boys separately to tell false stories which were substantially identical.

The bargain theory

12.132 Mr Blom-Cooper put the case as follows:

(a) that the boys gave a false version of events, with their full knowledge or unconsciously, in the expectation that in return for giving the answers the police wanted to hear they would be allowed to go home. Mr Blom-Cooper described the expectation as "not necessarily one which stemmed from the police, although to some extent that is so, but from their own experience", "reinforced by their subcultural values to which they had been exposed"; and

[1] *Miranda v. Arizona* 384 U.S. 436 (1966).
[2] 332 U.S. 596 (1948).

(b) that the three boys had no appreciation of the consequences of a false admission to murder and arson, or the subsequent difficulties of disproving false confessions.

12.133 The facts on which Mr Blom-Cooper relied were:

(a) Lattimore's question "can I go home afterwards" and DCS Jones's reply "I will see your father about that later."

(b) The experience of Leighton and Salih at Catford Police Station on the night of 21/22 April of being questioned, their parents being sent for, and their then being allowed to go home.

(c) DCS Jones's remarks to Leighton and Salih that they would be kept at the station till their parents arrived.

(d) Statements made by Lattimore and Leighton at Ashford Remand Centre to social workers and to one of the consultant psychiatrists saying that they had confessed in the hope that they would be released soon after.

(e) Similar statements made by Leighton and Lattimore after conviction, and a statement by Salih to the effect that he had been told that if he signed he could go home.

(f) Views expressed by Professor Morris, Mr Irving and Dr Leigh that boys in this situation would desire to escape from the situation in which they found themselves and might suppose that the best way to do this was to confess.

12.134 It is clear from the question which he asked at the end of the interview with DCS Jones that the desire to go home was uppermost in Lattimore's mind. I expect that Leighton and Salih were equally anxious to go home. Whether any of the boys thought that he would be allowed to go home if he made a confession is quite uncertain. I am satisfied that no police officer gave to any of the boys any promise or indication that they would be allowed to go home. Though his evidence on this point has fluctuated, in the end Lattimore seemed to agree that no such promise had been given, and that the only thing DCS Jones said was that he would speak to his father about it. He said at one point "I had no choice; I knew I was not going home." Lattimore had recently had experience of being on remand in custody for 16 days, and knew that release did not automatically follow the making of a confession. Salih admitted that by 11.30 p.m. or thereabouts he realised that he was not going to be allowed home.

12.135 But even if one assumes that a mistaken belief that they would be allowed to go home if they made confessions was the factor, or one of the factors, which induced the boys to confess, this still does not help to answer the question (deliberate falsification being excluded) whether the answers could have been given and the statements made as they were unless one at least of the boys had taken part. The bargain theory provides a reason why the boys might have wished to make confessions *true or false*, but does not constitute a mechanism to explain how they could separately have concocted *false* confessions.

12.136 Dr Leigh expressed the view that both Lattimore and Leighton were suggestible and could have produced false written statements even in the presence of their parents. But he said he could not explain Salih—" . . . he is the difficult one of the three", "he . . . has not given the impression of being unduly suggestible." He said all three confessions presented a puzzling problem, Salih's

the most puzzling. His puzzlement was not, he said, removed by the facts that:

(a) in 1972 Salih was a naughty 14 year old boy who hardly ever went to school;

(b) he came from an immigrant family with no father at home;

(c) English was not his first language; and

(d) he was subject to the usual problems of adolescence.

Dr Leigh drew attention to the fact that those who came into contact with Salih after his conviction thought him rather mature; an instructor at the Royal Philanthropic School at Redhill, to which Salih was sent, described him as the most sensible lad in the unit and a steadying influence among the boys. Mr Irving too found it more difficult to explain why Salih confessed. It is true to say that, just as Dr Leigh was puzzled as to why Salih should have confessed on 24 April, those who had charge of him after his conviction all say that he consistently maintained his innocence, and they were surprised that he should do so over a period of 18 months if he was not in fact innocent.

12.137 If Lattimore had, at or prior to the interview with DCS Jones, been fed by the police with facts about the killing and arson, he would have had to retain them in his mind so that he could repeat them at the confrontation with the parents (three hours later) and in the written statement (3½ hours later). Asked whether this was within Lattimore's mental capacity, Dr Leigh said he would have thought it very difficult for a boy at this level to retain all that and bring it out at each stage in such detail. He thought it would be very difficult for the police in a short period of time to have pumped these facts into him so that he could reproduce them hours later: "these people are hard enough to teach in ordinary terms; learning is difficult for them."

12.138 Professor Morris suggested that "the production of exhibits may have created in the minds of these defendants a sense that it was hopeless to do anything except make an admission with such candour and co-operation as would incline their interrogators to behave generously towards them." In fact (as I find) the exhibits were not shown to the three boys until after the completion of the interviews and of the written statements. Indeed, DCS Jones was criticised during my Inquiry for having deferred it so long.

Three confessions

12.139 Mr Irving said in his statement "from a psychological viewpoint two or more confessions obtained by the same police officer should not be regarded as independent. It follows therefore, that one such confession should not be used as corroboration of another." In his oral evidence he elaborated this as follows:

> "I can quite understand that for a person not conversant with probability theory, obtaining three confessions sequentially might be more proof of their veracity than if one only obtained one. Unfortunately that is only true if the three events are independent. That is in statistical terms. If one set of people were constructing all three events then by no stretch of the imagination are the events independent. Therefore they do not add to one another in terms of the probability they are true."

It seems to me that Mr Irving's conclusion would follow only if the inaccuracies in the record were *systematic*—as he says they will tend to be if the recorder

has certain expectations about what he will hear, a great deal of relevant information or a strong need to hear a particular story—and if the common source of the inaccuracies was such as to produce confessions of guilt containing the same circumstantial detail. Clearly there are some possible common factors (say force, fear or promises) which would not tend to produce similar confessions. But, if three statements were taken by a single officer who was deliberately introducing false material, the presence of such material in one statement would not corroborate the truth of it in another. A similar result would follow if false material was unconsciously introduced into more than one statement (if such a thing be possible). But if more than one statement contains factual material which either could not have been introduced by the recorder or from some common outside source, or which it is reasonable to conclude was not in fact introduced by the recorder or from some common outside source, then the presence of such material in more than one statement can fairly be said to corroborate the truth of both or all. In the present case there is material in the oral and written statements made by the three boys which I am satisfied did not originate with DCS Jones or DI Stockwell, either deliberately or unconsciously, or from any common outside source. In my opinion the conclusion which was drawn by the police, as well as by prosecuting counsel, that the confessions corroborated each other and that three confessions were more persuasive than one was not shown to be unjustified by Mr Irving's argument. It is of course theoretically possible that all or some of the boys derived material for false confessions from some source other than the police to which they all had access. I believe that that part of Lattimore's statement in which he confessed to the murder was derived from the other two boys. But I find it impossible to believe that the circumstantial details which appear in all the confessions could have been invented by three boys none of whom had taken part in the events described. Even with the help of such information about the murder and arson as they could have gleaned from newspapers and from conversations over the weekend, the invention would have had to be a common invention: I do not believe that there was any source from which so much detail could have been derived, in a way which corresponded so closely with independently known facts, and (having heard the evidence of Dr Leigh and Mr Irving) I do not believe that these boys were capable of the imaginative enterprise involved in such a joint invention.

RETURN to an Order of the Honourable the
House of Commons dated 12 December, 1977 for

Report of an Inquiry by the Hon. Sir Henry Fisher into the circumstances leading to the trial of three persons on charges arising out of the death of Maxwell Confait and the fire at 27 Doggett Road, London SE6

Ordered by The House of Commons *to be printed*
13 December, 1977

LONDON
HER MAJESTY'S STATIONERY OFFICE

90

VOL 2/2

PART IV

CHAPTER 13

WINSTON GOODE

13.1 By the end of 22 April 1972 Winston Goode had given the police a great deal of information, which may be summarised as follows. Since the age of about 10 Goode had had relationships with men and was bisexual. He had first met Confait about two years previously and they had become friendly. Goode knew that Confait was a homosexual but although he used to see him fairly often Goode denied ever having had a sexual relationship with him. In February 1972, at Confait's request Goode rented him a first floor bedroom from which he himself moved down into the basement. Goode explained that in recent years he and his wife had not got on very well for a number of reasons, including his homosexual activities, and that they had not shared a bedroom for about two years. Since coming to live at 27 Doggett Road it had been Confait's practice to cook him an evening meal. Goode told the police that on a number of occasions he and Confait would dress up as women and go to visit friends, and would also go up to the West End sometimes partly dressed up as women, and would go to a club which was a well-known place for homosexuals. Goode said that since Confait had been living at 27 Doggett Road he had had many men with him, all white; Confait told him he preferred white men. (On 24 April Goode told the police that Confait did not have to ask him if it was all right for him to take his friends to his room, he could do what he liked; he would take friends upstairs during the evening, and Goode did not always see who they were.) Dealing with the events of the last few days, Goode told the police on 22 April that on 19 April (Wednesday) just after 11 p.m. he went to Confait's room; the light was on so he knocked on the door but did not get any reply. On 20 April (Thursday) he went up to Confait's room at 8.30 p.m. and saw a light under his door, but did not call for him. Again at about 11.25 p.m. he went up and knocked on the door, and called to him but did not get an answer; he could hear the bed squeaking and so thought Confait had someone with him. On the Friday, 21 April, he went to bed early without bothering to eat as he had eaten at work. He went to sleep and woke up a couple of times but did not leave the room. At about 1 a.m. he woke up again and heard crackling noises, but did not smell any smoke. He went out into the passage-way and saw flames and smoke coming from the cupboard under the stairs, next to the bathroom. He ran upstairs to his wife's room, and found that she was already up and getting the children up. He then went halfway up the stairs and called Confait but, getting no reply, assumed he was out. He did not go to Confait's room. He helped his wife to get the children to the front door, then went to the telephone box to get the fire brigade. Goode also offered information about a mutual friend of his and Confait's named A (the witness Mr A X—see paragraphs 5.2 above and 14.2–14.8 below) who he said had for the past two months been very friendly with Confait and would come back to his house nearly every Wednesday and Friday evening and sometimes stay the night with Confait. He said that about three weeks previously someone at a party had said that he (Goode) was living with Confait and giving him money: he later had an argument with Confait, who had not been all that friendly with him since. At the same time,

he said, Confait had become even more friendly with A and this had upset Goode, indeed when he came home from work on the Friday he did not feel very well and was fed up, partly because of the argument he had had with Confait.

13.2 Mrs Goode stated to the police on 22 April that she had been married to Winston Goode (whom she always called John) since 1960. She described an incident when she was six weeks pregnant with her last baby (i.e. about March 1971) when her husband told her to shut up or he would "bat" her; she told him she would not put up with it and could hit him back; she said that he got even angrier, she got hold of the electric heater and hit him with it, whereupon he said he would kill her. She said that before that (from about 1970) he had started getting drunk a lot. She said that after the fight things got worse, and about six weeks later Goode moved into the room on the top floor which Confait later occupied: since then he had more or less lived his own life; the children saw him at weekends but during the week she and the children hardly ever saw him. Sometime in 1971 he let the upstairs room to two girls and moved down into the basement and made the front room there his home, keeping the door locked and using the basement door to go out of the house, so that she never saw him. When the girls moved out, Confait came to live in that room. Mrs Goode said that she never visited him, but her husband and Confait visited each other's rooms. Her husband's friends, both men and women, white and coloured, visited him in his basement room. Confait's visitors were, she said, always white men. Since the beginning of 1972, Goode had been wearing women's clothes and make-up; she said that he had two wigs and went out once wearing one and carrying a shoulder bag. She had once seen Confait in a ginger wig. Mrs Goode said that although her husband did not even speak to her, when working in the kitchen she used to hear him in his room downstairs speaking in the manner of a woman. She mentioned that she had only once heard her husband quarrel with Confait, about five weeks previously. She last saw Confait at about 5.30 p.m. on Wednesday (19 April). Confait had let himself in with his front door key and gone upstairs with a white man whom she did not know by name but whom she had seen before with him at the house. The last time Mrs Goode saw her husband before the fire was on the Thursday evening (20 April) at about 6 p.m. when he gave her some money. Dealing with the events of 21/22 April, Mrs Goode said that she woke up fairly early on the Friday morning, when it was light, and heard a voice saying "I'm [sic] a good mind to gas all of you and leave you". She said it sounded as though it was coming from downstairs, but she did not know whose voice it was. In the evening the children went to bed in her bedroom (i.e. the back room immediately beneath Confait's) at about 10 p.m. She herself watched television till later, switching it off when she heard the announcer say it was 1 a.m. (She told the police on 28 April that the children had gone to sleep before that.) She said that about 15 minutes before she turned the television off she heard one noise as if somebody had lost their balance, not a normal step. She heard nothing else, although she would normally hear if anyone walked down the stairs. She said she could hear quite easily through the ceiling and could usually tell when anybody was in Confait's room. Later, Mrs. Goode said, she was lying in bed awake when she heard a noise from downstairs as if somebody were trying to knock a hole in the wall. She called out "John" about four times, thinking her husband was making

the noise, but nobody answered. She said her husband slept very heavily and if he were asleep her calling out would not have woken him up. At about 1.30 a.m. she woke up, having heard a crackling noise, got out of bed and then saw smoke coming up the stairs. She called out to Confait, thinking—because she had heard the noise previously—that he must be in. She said that she could not remember any night when she did not hear Confait come home, even if it were in the very early hours, because he never bothered to keep quiet and she was a light sleeper. She could not remember his ever staying out all night. However, she did not think her call would have been heard by Confait if he had been asleep. Just after that, Goode came upstairs in his pyjamas and said "Who started the fire". Mrs Goode said her husband "looked terrible and really terrified, more than he would have been if it was just seeing the smoke". Mrs Goode said she had already called the children and went back into the room to fetch them. They all left the house and Mrs Goode told him to summon the fire brigade. She had already knocked on her next door neighbour's door and was taken in there with her children, while the neighbour ran down the road after Goode.

13.3 A description of Goode's state immediately after the discovery of the fire was given to the police on 23 April by Mr Hoare, who lived at 25 Doggett Road, next door to the Goodes. His account was that his wife woke up at about 1 a.m. because she heard water dripping in the Goodes' house. Shortly after that, there was a loud banging on the front door. He got up and answered the door to Mrs Goode, who seemed quite excited but not hysterical. She said to him "Our cellar's all alight." He then ran next door, expecting—from Mrs Goode's attitude—to see a small fire in the basement. But when he got there the whole place seemed to be ablaze, and he formed the impression that Mrs Goode must have waited some time before rousing him. He asked her if everyone was out of the house and she said "Yes, Mr Goode has gone to phone." Mr Hoare then ran up Doggett Road, and found Goode near the railway station, trying to telephone the emergency services. Seeing that Goode was "in a state", Mr Hoare took the telephone from him and sent him back to his wife and children. Meanwhile, according to Mr Hoare, Mrs Hoare asked Colin Goode whether there was anyone still in the house and he said they thought the lodger was upstairs but were not sure—his father had tried to call him. DI Stockwell himself saw Goode after the fire. He described him thus: "All during that conversation he was crying . . . wailing like a baby. . . . Tears were just simply rolling down his face".

13.4 DCS Jones first saw Goode outside the house some time after 4 a.m. on the Saturday morning; he seemed "somewhat shocked" and arrangements were made for him to be taken to 30 Doggett Road, where Mrs Goode and the children already were; DCS Jones later arranged for him to stay at "the Peckham halfway house."

13.5 Later the same morning he instructed one of his officers to *take* Goode to Lewisham Police Station, by invitation if he was willing to go, but if necessary arresting him on suspicion of having committed an arrestable offence ("maybe arson, maybe murder, maybe malicious damage—I do not know"). Goode in fact went to the police station voluntarily and the occasion never arose to arrest him.

13.6 DCS Jones spent two or three hours (though not continuously) questioning Goode, who was then a suspect because of his relations with Confait, his bad relations with his wife, and because it is police practice to look extremely closely at the person who discovers a serious crime. No other officer was with DCS Jones when he questioned Goode.

13.7 The description given by DCS Jones of his interview with Goode and his reasons for eliminating him as a suspect were as follows:

> "I felt that he was a fairly strong suspect, or . . . would . . . be able to give me the names of . . . people who would be suspects. I questioned him . . . strenuously . . . I probably said . . . 'If you didn't murder Confait, who did, you must know? . . . Until I am satisfied that you are telling me all the truth, you will not leave the station.' "

DCS Jones did not caution Goode because (he said) he had no evidence on which to caution him. For the same reason he did not have a contemporary record kept. DCS Jones said:

> "I was asking him about his own life and his personal relationship with the deceased—how long he had known him and what he knew about him. I was asking him about his marriage and about the break-up of his marriage —how it was he came to be living in one part of the house and his wife in another part of the house. I asked him about his interest in his children and about his own associates and his own way of life. I asked about his employments and his workmates. I asked what he did with his hours of leisure, about the clubs he visited in the West End and who he went to these clubs with. I asked him about the purchase of the house in which he was living and the buying of the furniture in the house, and I asked whether the house was on mortgage and whether or not the furniture was insured. I do not think I left one stone unturned. I asked him about his whole way of life and everything he could tell me not only about himself but about his wife, about Confait and the other persons at that address.
>
> *Q.* What about the events of the preceding night? Did he give you an account of that?
>
> *A.* He did, yes. I asked him about his employment, what he did when he returned home, his movements that evening, what he did when he heard the crackling noise. I asked him at some length about the fact that he seemed to have taken little action himself with regard to establishing . . . the safety of Maxwell Confait in the upstairs room but by the time I had finished puting my questions to him and as a result of the answers that he had given me, he began to pass from being a suspect to a most unfortunate man.
>
> *Q.* We know in fact now, and I expect you had found out that he is a man of good character?
>
> *A.* I found that out during the time I was questioning him.
>
> *Q.* What was your assessment of him as an individual?
>
> *A.* My assessment was that he was very weak. He was only five feet five in height. He was not fat as one of the witnesses described him; he was quite small. Very weak. Defenceless type of individual. The type in my experience who would readily have confessed to the murder if he had been concerned or if he had been responsible. He would readily have confessed to being

concerned if he had known who was responsible or who had been present when Confait was murdered."

13.8 By the time that Goode was released, DCS Jones had concluded that he was in no way responsible: he saw him as a man against whom there was not a scrap of evidence on which he could regard him as being a likely suspect at that stage. His reasons were:

(a) his judgment that Goode was weak and would readily have confessed if he had been responsible;

(b) his belief that Goode would not endanger his children;

(c) the fact that Goode was of a good character;

(d) the fact that Goode was Confait's friend; and

(e) the facts that his house was under-insured, and his furniture and possessions not insured at all.

Goode never again became a suspect in DCS Jones's eyes. DCS Jones did not at that stage know that Goode had given the flex to Confait and knew where it was kept.

13.9 On 27 April PC Elliott found Goode in Doggett Road in a dazed and shocked condition, unable to speak coherently. He was taken to Lewisham Hospital Casualty Department, and detained for examination by a psychiatrist. He was later admitted to Bexley Mental Hospital, and remained there from 27 April to 7 June suffering from confusion and depression. DCS Jones did not regard this as a ground for bringing him back as a suspect.

Goode and Confait

13.10 Apart from the information given to them by Mr and Mrs Goode themselves, the police had, before the appearance of the three boys on 24 April, learnt the following information about Goode and his relationship with Confait:

> Confait used to come into 'The Castle' every night with Goode. Confait had been in the company of Goode for the last 12 months.
>
> Confait's man friend was Goode, they were nearly always together.
>
> Three to four months previously Confait became very friendly with Goode. About the last three or four weeks they had not been so friendly.
>
> At parties Confait and Goode used to dress as women. About eight weeks previously they went to the West End dressed as women.
>
> Confait and Goode had an argument about a month previously about Confait's boy friend. Goode only started dressing as a woman during the past two or three months, during which time he and Confait had always been arguing over men.

Confait had said to several people that he was going to leave 27 Doggett Road. At one time he said he was going to live with his friend Mr C Y (see paragraph 5.2 above), who was in prison and due to come out in August 1972. Mr A X knew that Confait wanted to leave, and had invited him to live with him. Goode said at the trial that he did not know Confait intended to leave 27 Doggett Road though Confait had at one time said it might be better if he went back and lived with his mother. Goode said he was not jealous of Confait.

13.11 Goode also said at the trial that he had separated from his wife in March/April 1971, long before Confait came to live at 27 Doggett Road in

February 1972. The separation was at about the same time as he became friendly with Confait, but was not due to the friendship. Goode said he did not have a homosexual relationship with Confait, though he used to dance with him at parties and both Goode and Confait on occasions wore wigs, make-up and women's clothing. Apparently both Goode and Confait played the female part in their homosexual relationships with other men.

Movements during the final week

13.12 On 14/15 April Goode, Confait, A X and B X (see paragraph 5.2 above) had all been in 'The Castle' public house; A X and B X both spent the night in Confait's room, B X in bed with Confait and A X on the floor. On 16 April Confait and Goode cooked themselves a meal, and again on 18 April (Tuesday) Confait cooked a meal for Goode, they went to the pub and then went to their respective rooms. Goode said that was the last time he saw Confait (though one witness in a statement taken in 1976 said he had seen them together on the Thursday). A X visited Confait once after the Sunday, not later in the week than Wednesday. On Wednesday, A X and Goode had a Chinese meal together, but did not see Confait. Another witness (who worked with Goode) said that he saw Confait in 'The Castle' public house on that day; Confait gave him his rent money to take to Goode, also a birthday present for one of the Goode children. On Wednesday just after 11 p.m. Goode knocked on Confait's door—the light was on but there was no reply. On Thursday (20 April) Goode went to Confait's room—there was a light on but he did not call to him. Later, at about 11.25 p.m., he knocked on Confait's door and called to him but got no answer: he heard the bed squeaking so he left and went to his own room.

Evidence as to Confait's movements on 21 April

13.13 (a) A restaurant owner saw Confait in his restaurant with two other people from about 3 to 3.30 p.m.

(b) A second witness said that he saw Confait in 'The Castle' public house and spoke to him until about 3 or 3.10 p.m., when Confait left, saying he was going to get some shopping for Goode's dinner.

(c) At about 4 p.m., according to a statement made on 23 April 1972 by a third witness, Miss K Smith (who gave oral evidence before me), Confait was seen by her at 27 Doggett Road. He said a man was expected to call for him at 6 p.m. and take him to a pub in Deptford. In a statement made in 1976 she said that on the occasion in question Confait was ironing a trouser suit which he said he intended to wear that evening. In her evidence before me Miss Smith said that the clothes Confait was wearing when he died were not the same as those he was wearing when she saw him nor those he was then ironing. It was suggested that Miss Smith might have mistaken the Friday but I do not believe that she could have done that only two days later. It was also suggested that her evidence conflicted with that of the restaurant owner mentioned at (a) above but I do not believe that that is so.

(d) Analysis revealed that Confait had 110 milligrammes of alcohol per 100 millilitres of blood, equivalent to 3–3½ pints of beer. There does not appear to have been any drink in his room, so presumably he went out to consume it. There was scientific evidence that Confait had finished drinking some time

prior to his death. (The analysis and evidence do not appear to have been made known to DCS Jones until 15 June 1972.)

(e) Statements were taken in 1976 from a married couple that they had seen Confait in 'The Castle' public house at between 6.45 and 7.45 p.m. on 21 April, and that Confait told them that he had to go somewhere, and that he was going to get drunk. They said that they had given this information to a police officer on 23 April. They were in fact seen by DI Stockwell, probably on 24 April, but he felt sure that they said nothing to him about having seen Confait on the Friday evening. Many others were questioned on the Saturday and Sunday but none of them spoke of having seen Confait in 'The Castle' on the Friday. The couple at first indicated their willingness to come and give oral evidence to my Inquiry, but later refused to do so. If anything turned on their statements, I should not be prepared to accept them as reliable unless corroborated.

(f) The post mortem showed that Confait's stomach contained no identifiable food material.

(g) Pauline Goode (whose evidence I comment on in paragraph 13.34 below) said when interviewed in 1976 that after 6 p.m. she saw Confait going down to the kitchen to prepare a single meal including rice and peas which he took upstairs on a plate. But I think that she was probably referring to a different evening.

The movements of Goode, Mrs Goode and the children on 21/22 April

13.14 (a) *Goode*

He had his last meal that day at midday. He left work at 4.30 to do some shopping on the way home. He arrived home at 6 p.m. and went to his room. At about 6.30 he went to the bathroom to have a wash. He went to bed about 7 p.m. because he was tired and fed up. In his evidence at the trial Goode said that he was not fed up with Confait, but on 22 April he had said that it was partly due to the argument which he had had with Confait. He heard the children playing in the basement hallway. He went to sleep and woke up at least twice. He did not leave his room. The first time it was dark and he could hear the children playing. He woke at about 1 a.m. and heard the crackling.

(b) *Mrs Goode*

At 9 p.m. Pauline went down to fill a bottle. At some time Pauline and Colin made tea. The children went to bed at 10 p.m. Mrs Goode and the children were all together in the back room (see paragraph 13.2 above). The television appears to have been on till the end of the programmes (12.50 a.m.). The children went to sleep—she was the only one who stayed awake to turn the television off. Mrs Goode did not see her husband on the Friday evening.

Noises in the house

13.15 27 Doggett Road is a small house, and my own experience has shown me that, in the condition in which the house was in 1976, sounds of movement in the upstairs rooms and movement on the stairs could be heard downstairs. Mrs Goode told the police on 22 April 1972 that from the rooms which she occupied on the ground floor she could usually tell when anybody was in Confait's room (see paragraph 13.2 above). When I visited the house I came to the same conclusion, though I have no means of determining whether the floor

coverings were of a similar type. One could hear footsteps and voices, though one could not distinguish words. At the time when I was there there was no competing noise, such as television, and of course my attention was directed to the subject of audibility. It has naturally been one of the matters considered by all those inquiring into this case whether noises of any kind were heard during the evening and night of 21/22 April. Mrs Goode and her children were in the two ground floor rooms (most of the time in the back room underneath Confait's) and Mr Goode was in the front basement room. One of the points strongly made in favour of the boys was that they could not have got into the house and gone to Confait's room without being heard. On the other hand, it was pointed out that the television was probably on in the ground floor room up until 12.50 a.m., and that the children were asleep even before the television was turned off, and that as soon as it was turned off Mrs Goode went to sleep; Mr Goode, according to his evidence, was—with the exception of a few short periods—asleep from 7.30 till he was woken by the fire. It was also pointed out that 27 Doggett Road was a house in which, according to the evidence, there was a good deal of traffic; particularly during the evening and at night there were frequent visitors to Confait's room.

13.16 The evidence about noise in Confait's room on the evening and night of 21/22 April was as follows. Mrs Goode told DCS Jones on the morning of 22 April that she had heard a thud coming from Confait's room. Later that day she gave a more detailed description: at a time which she put at about 12.45 a.m. (15 minutes before the television announcer said that it was 1 a.m.) she "heard one noise like somebody had lost their balance, it was not a normal step"; that was the only noise she heard: she never heard anyone come down the stairs though she normally would hear if anyone walked downstairs.

13.17 DCS Jones said that in conversation with him Mrs Goode was not able to state with any certainty the time at which she had heard the thud and her evidence at the trial confirms this. She said at one time that it was after she had turned the television off, and at another that it was while they were watching *Children of the Damned* (which lasted from 10.35 p.m. to 12.09 a.m.). She said that it sounded as if a heavy object had been dropped.

13.18 Pauline and Colin Goode, in the interviews in 1976 to which I refer in paragraphs 13.33–13.34 below, both spoke of an earlier noise: Pauline said that just before it went dark she heard a noise upstairs in Confait's room, a banging and walking noise as though somebody was moving about, and two voices which sounded as though someone was arguing: then the record player was switched off and everything went quiet. (Sunset that night was 8.07 p.m. and lighting-up time 8.37 p.m.) About half an hour after the argument (at another point she said "hours later") she heard a bump from Confait's room, and was told by her mother to go up and see what it was, but Confait's door was locked. Then, not long before the television closed (12.50 a.m.), she heard another bump from Confait's bedroom. Colin Goode also spoke of hearing voices talking, and then a bang or bump on the floor, not very heavy, while they were watching *Children of the Damned.* When she saw the police immediately after the event, Mrs Goode said nothing about the earlier noises. Indeed, her account negatived any earlier noises. The accounts of the Goode children were given four years later; they were not precise about times; and some points mentioned by Pauline Goode probably related to some night other than 21/22 April (see paragraph

13.34 below). In April 1972 the children were asked questions by WDS Mays and she came to the conclusion that they could not give any information of value. Certainly the children said nothing to her about these earlier noises. It was suggested that this was because they were shocked by the recent events, the fire and the killing; or that they believed Confait had been killed by their father and they would not speak for fear of implicating him; that four years later, when he was dead, they were willing to speak, and that there was no reason then why they should lie. Even taking all these points into account, I do not feel that I can place any real reliance on their accounts, especially as there was no opportunity for cross-examination. However, if their statements were true they would seem to support the view that there were two visits to Confait's room, one when he was killed some hours before the fire and one at the time when the fire was ignited.

13.19 The evidence of Mrs Goode and of the children as to noises (even if true) is neutral as to who was responsible. Whether or not the Goode family heard him, someone must have gone up to Confait's room before midnight and killed him there, and then come down again: indeed, it seems certain from the medical evidence that there must have been more than one person. And someone must have lit the fire in the basement at around 1 a.m.

The noise downstairs

13.20 Mrs Goode said that after she switched the television off she heard knocking from downstairs "like somebody trying to knock a hole in the wall". She thought it was someone breaking into the gas meter. She called to her husband. She did not get up at first, but then heard a noise which she variously described as a noise like breaking sticks (wood) and a crackling noise and went out of the door of her room and saw smoke.

Arguments against Goode

13.21 The grounds which were put forward as supporting the view that Goode was the murderer are the following:

(a) Goode had tried to emulate Confait and was jealous of Confait's ability to attract men. Confait intended to leave 27 Doggett Road and live with C Y (though there was no evidence that Goode knew this).

(b) Confait would have sexual relations only with white men, and was unwilling to allow Goode to have sex with him.

(c) Goode and Confait had had a recent argument because someone had said to Goode that he was living with Confait and giving him money. Since the argument (according to Goode) Confait had not been all that friendly with him. One witness said that Confait had called Goode a black bastard. On 21 April Confait was angry because some person (unidentified, but thought by the witness to be Goode) had drunk his gin.

(d) In his evidence at the trial Goode said that he had seen the flex in Confait's room; that it used to be kept in one of the top drawers of the dressing table; that indeed he had given it to Confait. It was said that Goode showed signs of distress when the flex was shown to him.

(e) As Goode told the police on 22 April, he had a key to Confait's room. The only other key was the one Confait had.

(f) Goode was disposed to violence. On 24 April some (secondhand)

evidence emerged of violence towards Mrs Goode, though she herself had spoken only of threats (see paragraph 13.2 above).

(g) Goode was a depressive. He had been admitted to hospital for observation for mental ill health some years earlier (1963). He became mentally ill a few days after Confait's death. His condition was said by his doctor to have dramatically improved when he learned that police investigations had revealed that he was not implicated in the murder of his friend. In May 1974 Goode committed suicide by drinking cyanide.

(h) If Mrs Goode's evidence, given to the police on 22 April (see paragraph 13.2 above), that someone had shouted up from the basement early on the previous day "[I've] a good mind to gas all of you and leave you" was true, it can hardly have been anyone other than Goode (though Mrs Goode said she could not recognise the voice).

(i) Goode was said by fellow employees to have been on edge, and to have wanted to leave work early on 21 April. (This information did not emerge until 1976.) He himself said he did not feel very well and was fed up, partly due to the argument he had had with Confait.

(j) Goode was agitated at the time of the fire. According to what Mrs Goode told the police on 22 April (see paragraph 13.2 above) Goode said "Who started the fire" and "he looked terrible and really terrified, more than he would have done if it was just seeing the smoke."

(k) The woolly hat found under Confait's head was similar to the kind of hat which Goode wore (though it may equally well have been Confait's own).

(l) At the time of the fire Goode did no more than shout up to Confait, though he said he thought that Confait was possibly in the house.

(m) He did not telephone for the fire brigade: Mr Hoare found him in the telephone box "in a state" and himself made the telephone call. The suggestion is that Goode might have been deliberately delaying the call.

(n) Goode told the police that the last time he saw Confait was on the Tuesday (and that since that day he had been looking for him), but one witness said (when interviewed in 1976) that he had seen Confait and Goode together on the Thursday. Another witness said (also when interviewed in 1976) that at about 3 or 3.10 p.m. on 21 April Confait had said to him outside 'The Castle' that he was going to get some shopping for Goode's dinner.

(o) Goode had no alibi for the relevant period. Goode was already in the house: nobody was heard entering by any of the Goode family. His story of coming home and going to bed about 7 p.m. seems strange, though there was no evidence as to whether he made a habit of doing this.

(p) If seen going upstairs to Confait's room or down again, his presence would not arouse comment or alarm—though with the traffic of men to and from Confait's room perhaps no man observed would have aroused comment or alarm. Confait's body must have lain in the room for some time before the fire was ignited; the chance of its being discovered by someone other than the killer was less if Goode was the killer. Goode usually spent Friday evenings with Confait. He knew which Confait's room was. He was known to Confait: the absence of

disturbance in the room and of any sign of a struggle is more easily explained if Confait was attacked by someone he knew.

Mr Craven's evidence

13.22 The strongest evidence against Goode is the opinion expressed by Mr Craven that Goode could not have got up the stairs from the basement to the ground floor if the fire had got to a stage when crackling would be heard. (Goode said he was woken by crackling.) In a statement submitted to the Court of Appeal in September 1975 Mr Craven said:

> "For there to be a crackling noise sufficient to have been heard by Mr. Goode, and still more to have woken him up, the fire must have begun to have affected the woodwork, and, by that time, the fire would have escaped straight out of the cupboard space and gone around and up the stairs. . . . Once the fire had spread to the woodwork, it would have been very difficult, if not impossible, for Mr. Goode to have mounted the interior stairs from the basement without being overcome by heat, flames and carbon monoxide."

Mr Craven gave evidence in the Court of Appeal on the reference. At my request Mr Craven was asked whether his view remained the same and he wrote a letter confirming that it did. I cannot, however, regard Mr Craven's evidence as sufficient to found a case against Goode. First, it rested on a view of the path of the spread of the fire which differed from that of Mr North, who had examined the premises within hours of the fire (Mr Craven did not see them until two months later). Secondly, Mr Craven seems wrongly to have supposed that there was a door at the head of the stairs from the basement to the ground floor. With the door closed, he said, there would have been a collection of gases. True, he said that the difficulty in ascending the stairs would have been just as great if the door was open. But I found that part of his evidence less easy to follow and less persuasive. Thirdly, his view is based on the assumption that the crackling was caused by the woodwork burning—there may have been other things in the cupboard which would have crackled. It is true that Mrs Goode described what she heard as "the crackling of wood", but all that Goode said he saw was smoke and flames coming from the cupboard. Finally, it was not only Goode who said he came upstairs after the crackling noise started: Mrs Goode said that she got out of bed having heard a crackling noise and then saw smoke coming up the stairs, and just after that her husband came upstairs.

Two or more assailants

13.23 There is one factor which seems to me to point conclusively against Goode being the murderer. The evidence points very strongly to there having been two or more assailants. The absence of marks indicative of a struggle and of any marks on the neck other than one small scratch mark indicating attempts to remove the ligature from the neck strongly suggest that one person held Confait's hands while another strangled him with the flex. Death was caused by asphyxia, not by cardiac arrest, and unconsciousness would not have occurred till 30 seconds or more after the application of the ligature. The medical evidence has satisfied me that Confait did not voluntarily submit to strangulation for some sexual reason. If, therefore, Goode was implicated in the murder there must have been someone else there to assist him. No other

person has been identified who would have been likely to co-operate with Goode in killing Confait. The circumstances which have been suggested as possibly constituting a motive for Goode to murder Confait would not provide any basis for a joint murder by Goode and another.

13.24 The medical evidence is as follows. Confait was killed by a ligature (the electric light flex). It is not possible to determine from the marks on the neck whether it was passed round the neck once or twice: certainly in some places the marks are double, and appear to cross over. This could have been caused by the flex having been passed round the neck twice or by the flex having slipped. There is a difference of opinion as to whether the attack was made from the front or the back: Professor Cameron thought (because the marking was less on the left hand side of the neck than on the right) that the assailant had been standing in front and to the left of Confait; Professor Forbes on the other hand thought that the assailant had been standing behind Confait, that the ligature had been slipped over the victim's head from behind, crossed behind and tightened from behind, the double marks being caused by the ligature moving during a struggle. I prefer the view of Professor Forbes. Both these witnesses considered that the actual strangulation had been carried out by one person, holding the ends of the flex one in each hand and pulling outwards. They agreed that it would have taken two to three minutes (perhaps longer) for death to ensue: death was brought about by asphyxia, not by cardiac arrest (as evidenced by the presence of petechial haemorrhages).

13.25 Both thought that unconsciousness would have supervened in not less than 30 seconds. (Professor Cameron said in *not less than* 30 seconds assuming that the pressure was maintained continuously, as he considers it was; Professor Forbes said two to three minutes although it might occur in as short a time as 30 seconds.) Both said it was a tight pull, but that it did not need great strength—"a woman" Professor Cameron said "can pull a ligature equally as tight, particularly with a plastic, non-giving ligature."

13.26 The factors which led Professor Cameron to consider that there must have been more than one assailant were (a) the lack of signs of a struggle in the room; and (b) the paucity of attempts at trying to remove the ligature. There was in fact only one small and doubtful nail scratch on the neck near the ligature. A person whose hands are free will, so long as he remains conscious, make efforts to loosen or remove a ligature, and there will normally be nail marks on the neck. Where death is due to asphyxia, unconsciousness will not supervene so quickly as to allow no time for this to happen. The absence of more than a single mark on Confait's neck suggests very strongly that his hands were held, though one hand must have been, or become for a short time, free if the mark on the neck is a nail mark. "If there were two assailants" Professor Forbes said "and his arms were pinioned at once after he had made one single attempt to get his fingers up, then what we have here is exactly what you would expect."

13.27 The possibility has occurred to almost all of those who have considered the case that Confait may have voluntarily permitted some other person to place the ligature round his neck and tighten it in the course of some form of activity aimed at sexual gratification, and that death may have occurred accidentally through going further than intended. It is notorious that partial

asphyxia is employed by some individuals as a means of obtaining sexual pleasure, and it is a natural speculation in view of Confait's known sexual proclivities that he may have engaged in such practices, though there is not in fact any evidence that he did so. Indeed, the Court of Appeal in its judgment on the reference referred specifically to this possibility. It is therefore a matter into which I obviously had to inquire carefully; but, having done so, I feel obliged to reject the theory completely. None of the expert witnesses to whom the suggestion was put gave it the slightest support, and I was not invited by any counsel to adopt this explanation. As early as the post mortem the possibility was discussed by DCS Jones and Dr Cameron but dismissed by the latter on the ground that there was no evidence of any emission or staining. Professor Forbes said there was nothing to indicate that Confait was indulging at the time he died in any form of abnormal sexual practice: Confait's clothing was not disarranged and he had not had an emission. Professor Forbes gave these reasons for supposing that the killing was not the accidental consequence of sexual activity:

> "During my medico-legal practice from 1937 to 1974 I have only been involved in the investigation of eight or perhaps ten cases of this sort and in none of these cases were two persons involved. The methods used to increase the carbon dioxide content of the blood were either suspension by the neck, placing the head in a polythene bag or breathing an irrespirable gas such as butane. By far the commonest method appears to be suspension and none of my cases involved the use of a ligature as in strangulation.
>
> I am asked to express an opinion as to whether the case in question bears the hallmarks of a sexual affair. In my view it does not. My reasons for saying so are:—
>
> (a) There is no evidence, as far as one can judge from the documents I have seen, of any sexual activity on the part of the deceased. His genitalia were not exposed, turgidity of the penis is not described or its absence commented on in the post mortem report, and he had had no emission. Genital turgidity and emission, or at least leakage of semen from the urethra, do occur not infrequently in cases of suicidal hanging where there is no sexual activity.
>
> (b) The ligature, judging from the photographs of the marks on the neck, must have been very tight and it must have been obvious to the person applying it that respiration was not partially but completely obstructed. Partial obstruction is what is sought and the passive agent would have objected to the degree of respiratory obstruction which must have been induced in this case.
>
> (c) Pressure on the neck must have been maintained for a substantial time—at least two minutes. By the end of this time the victim would be unconscious and it must have been obvious to any well-intentioned collaborator that his partner was in trouble. At this stage artificial respiration or mouth to mouth resuscitation would probably have saved Confait, and nearly everyone knows about these methods now. All this suggests that the death was intentional rather than accidental.
>
> (d) The marks on the hands shown in the photographs suggest superficial injuries. If this is correct, it rather points to the deceased

having defended himself. This is against collaboration with a homo-sexual colleague.

(e) In the fatal cases the reason why the victim cannot save himself is a sudden loss of consciousness due to reflex cardiac arrest induced by pressure on the vagus nerve in the neck. The findings here suggest that this was basically an asphyxial death with no element of reflex cardiac arrest. This view could be contested as the signs of asphyxia were not overwhelming.

(f) The only pointer towards this being perhaps a sexual case is the deceased's reputation. None of the findings is in favour of this view."

Professor Forbes in evidence before me added that all the cases of which he knew where death had occurred through a sexual practice involving partial asphyxia being carried too far had been solitary—he had never known two people involved.

13.28 My conclusion is exactly the same as that of the trial Judge:

". . . there does not seem, . . . you may think, to be any evidence here to show that this was a sexual murder, despite Mr Salmon's suggestion to you that this may have been caused or occurred during some form of sexual perversion or activity of some kind, to which the dead man was a consenting party, and this accounts for there being no disturbance in the room, but you may think there is no evidence here to show that this was the result of any sexual outburst in any shape or form. The clothing was not in any way disturbed, and it doesn't seem as if he was performing any sexual activity, or that any sexual activities were being performed on him. As far as one can tell, as I say, his clothing appears to have been undisturbed."

The case against Winston Goode

13.29 Prior to the confession of the boys there was clearly material (I do not say evidence) to make Goode a suspect. There were, it is true, the points mentioned by DCS Jones which pointed to his not being the murderer. But there were (as I have shown) a number of points which became known to the police before the boys appeared which pointed towards him as a probable culprit. DCS Jones was right in thinking that he had no evidence on which he could have arrested Goode on 22 April or thereafter. But I was surprised that DCS Jones thought it right to eliminate Goode from suspicion as early as the Saturday afternoon. However, the elimination of Goode (like all eliminations by the police in the course of an enquiry) was provisional. Moreover, I am sure that, if he had not eliminated Goode earlier, DCS Jones would have done so when the boys had made confessions. If (which did not happen) he had been led by the difficulties over timing and the other matters to which I have referred to doubt the truth of the confessions, or if he had sought for evidence supporting or contradicting the confessions, then he would have been under a duty to consider again the case against Goode among other things. But the fact that he did not do so is not an independent criticism but merely a consequence of a fault which I have discussed elsewhere.

13.30 At no time prior to or during the trial of the three boys was there any affirmative evidence that Goode committed or was party to the murder of

Confait or that he committed or was party to the arson at 27 Doggett Road. That remains the position today.

13.31 The most that can be said against Goode is that he had the opportunity to commit the murder and arson (a better opportunity than anyone else, since he was admittedly in the house all the time) and that there is evidence which suggests that he may have had a motive. These are grounds for suspicion, and in the light of these considerations some people in the area (including at times Mrs Goode) came to the conclusion that Goode killed Confait and set fire to his house. But they do not, without more, constitute evidence. Even if the boys had not confessed, the police could not at any stage properly have charged Goode with murder or arson; if they had done so, no magistrate would have committed for trial, and no jury properly directed would have convicted. Today, if one were to come to the conclusion that the boys did not commit the crimes for which they were convicted, and that their confessions were wholly false, it would not be justifiable to conclude that Goode did it; the only justifiable conclusion would be that some person or persons other than the boys did it. The only relevance of Goode in considering the case against the boys is that it could not be suggested that there was no person other than the boys who could have done it, since plainly Goode could have. But then so could anybody else, whether it be someone with "a grudge against homosexuals" (as DCS Jones in the very early stages thought likely) or a jealous fellow-homosexual or someone entering to steal or rob. As I have said, the evidence called before me points pretty conclusively to there having been more than one assailant, so that if Goode was involved in the murder he must have had an accomplice in the murder. None of the grounds for suspicion against Goode lends any support to a case that Goode and some other person had a motive together to murder Confait.

The Goode children

In 1972

13.32 DCS Jones spoke briefly to Pauline Goode on 22 April at 30 Doggett Road, where the family were staying, and concluded that she could not help him. Thereafter, in accordance with normal practice, he left the questioning of the children to a woman officer, WDS Mays. She was experienced in taking statements from young children, and took the view that Pauline and Colin Goode were not very bright. She asked them if they had heard anything during the night and both said they had heard nothing—they had gone to sleep during the television programmes. She felt sure that if the matters had occurred which they described in the 1976 statements they would have remembered them when questioned in 1972—these were the very things she asked them about. They could not even remember what the television programmes had been. WDS Mays told DCS Jones that nothing significant had come out of her questioning of the children.

In 1976

13.33 When Pauline Goode was interviewed in 1976 she was, for reasons wholly unconnected with this case, in a depressed and upset condition. There were long pauses and periods when she would weep silently. She was sullen and difficult to communicate with.

13.34 Pauline Goode spoke of Confait having given one of her brothers a present on the Friday evening. However, the boy's birthday was on 19 April (i.e. Wednesday). There was evidence that Confait had given the present to one of Goode's fellow employees to take to Goode on the Wednesday. Mrs Goode spoke of the present having been given on the Wednesday. Mr Goode, however, said at the trial that it was on the Thursday, though he had earlier told the police that it was on the Wednesday. Neither of the parents said it was on the Friday. It seems quite likely therefore that the events described by Pauline took place on the Wednesday or Thursday.

Mrs Goode's television interview

13.35 In late 1974 Mrs Goode was interviewed on film (which was never subsequently broadcast) by Mr John Stapleton for the Thames Television programme *This Week*. What she said by and large corresponded with her contemporaneous accounts and her evidence at the trial. She was asked what sort of mood her husband was in at the time of the fire and she said:

> "Er that night, er that night, as I said, he was very very, I don't know, I don't know what it was, he looked like a cannaball [sic], I think he was coming to throw me and the children downstairs in the fire, right, so I went off him, I was very frightened the night when I saw him come in, he was very, very, very, off colour, I was very black, I've never seen anything like that yet and that's that."

The record of the interview goes on:

> "JOHN STAPLETON: Can I ask you if you have any reason to believe that your husband was in any way responsible for the murder of Mr. Confait?
>
> MRS. GOODE: Erm, well I say he was responsible anyway, because if it wasn't him all this wouldn't have happened, because look, he have me, right, I'm his wife, he gone—knocking (word?) with him pretending to be wife and husband, right, I'm having him and doing his chores and so I say yes. . . .
>
> JOHN STAPLETON: You are saying that you think your husband murdered Maxwell Confait?
>
> MRS. GOODE: Yes I think so, I think—I think so, as a (words?) . . . I think so, because that's what I thought at the police station and that's it.
>
> JOHN STAPLETON: Did you tell the police about that?
>
> MRS. GOODE: Yes as I said to the woman, when I say to the detective lady, you know, that I think it is, and that's it.
>
> JOHN STAPLETON: You told the police that?
>
> MRS. GOODE: I told the woman that, I told her."

WDS Mays, who interviewed Mrs Goode on 22 April 1972, denied that Mrs Goode had said this to her. At that time, immediately after the events, Mrs Goode told DI Stockwell that she could not help at all as to who she thought might be responsible, and in answer to a question from WDS Mays as to whether she thought her husband had killed Confait she said "No". In view of the evidence which I have had as to Mrs Goode's present state of mind I do not believe that any weight should be placed on her statements in the television interview.

Even if taken at its face value, it does not amount to evidence. It merely repeats (what I accept) that there were many matters to arouse suspicion against Goode.

Later confessions by Goode

13.36 I was referred to a statement taken in 1974 from a witness who said that Goode had stated or implied to him that he had murdered Confait. However, the witness had a criminal record, he was hostile to Goode, and when asked to identify the place where the alleged admission was made he was unable to do so. Another witness reported that Goode had denied killing Confait. As in the case of alleged later confessions by the boys, I regard the evidence as of no real value and I place no reliance on it.

PART IV

CHAPTER 14

OTHER ENQUIRIES 22/24 APRIL

14.1 On Saturday 22 April and the two following days, extensive enquiries were carried out by DCS Jones and other members of the murder squad in 'The Castle' public house and in other pubs which Confait was known to frequent, in order to identify and take statements from as many as possible of Confait's associates and those who had known him. The purpose was to find out about Confait's way of life, his movements during the last week of his life and when he had last been seen, and whether anyone had a motive to kill him. A large number of statements were taken. DCS Jones had in mind the possibility that Confait had been murdered by someone with a grudge against homosexuals. He was reported in *The Sun* of 24 April as having said this, where it was also said that police had appealed for regulars at two Soho clubs where Confait was well known. DCS Jones agreed that he might have said as much in order to attract interest and elicit information, but that it would not have been the only thing he had said. At that time he was looking for a murderer in Confait's close circle: one witness told the police on 24 April that the only reason why somebody might have a grudge against Confait would be jealousy as he liked to play one fellow against another.

Mr A X

14.2 Mr A X (see paragraph 5.2 above) informed police officers that he knew Confait extremely well and had himself visited Confait at 27 Doggett Road. He had also been mentioned to the police by Goode on 22 April (Saturday) (see paragraph 13.1 above): Goode said that he found out that Mr A X was a homosexual but did not have a relationship with him. On the following day (Sunday) DCS Jones questioned Mr A X and later instructed DS Botwright to take a statement from him. In his statement Mr A X described at length his relationship with Confait and Goode. He had been introduced to Confait about a year previously by his brother (Mr B X); he had sexual intercourse with Confait occasionally over the year, but during the last three weeks regularly, that is about three times a week. Sometimes there were threesomes or foursomes with various men. (Goode told the police on 22 April that he had had a relationship with Mr B X and that on some occasions Mr B X had been with him and Mr A X and Confait in Goode's room after the pubs had closed and they had had a party, after which Confait and Mr A X would go upstairs and Goode would stay with Mr B X.) Mr A X said that the last time he had seen Confait was the previous Sunday (16 April). He said that on 21 April (Friday) he was working on a job at a doctor's surgery where he also had a room; he had arranged to meet his brother but "I worked on until about 7.30 p.m. and then fell asleep. I woke up at about 10.30 p.m. and . . . decided it was now too late and so I went back to sleep."

14.3 A statement was also taken on 23 April from Mr B X. This contradicted Mr A X's account of his movements during the middle of the day on 21 April, but did not cast any doubt on Mr A X's account of his movements in the evening.

14.4 DCS Jones told me that there was no evidence when Mr A X left the police station after making his statement on 23 April on which he could consider him a suspect.

14.5 Both Mr A X and Mr B X gave evidence at my Inquiry. Mr A X said that he had gone to the police station to correct the mistake he had made about his movements in the middle of the day, but had not been able to get any police officer to take any further statement. I regard this incident as quite unimportant.

14.6 However, two more important matters emerged in 1976. Mr A X admitted that he had been wrong in saying that the last time he had seen Confait had been on the previous Sunday; he had been to see Confait at 27 Doggett Road on one occasion after the Sunday; he thought it was on the Monday but could not be sure. Secondly, Mr B X said that when Mr A X did not keep their appointment on the Friday, he went down and knocked loudly on the window of the ground floor room which he occupied, and would have expected Mr A X to hear him if he had been there. Mr A X countered this by saying that he had not been sleeping in the front room but, in the doctor's absence, in the doctor's bed in the back room upstairs.

14.7 These matters (together with the fact that one witness stated in 1976 that he had seen Mr A X walking with Confait towards 'The Castle' public house on Thursday 20 April) are certainly calculated to arouse suspicion, as is the curious coincidence that Mr A X should, like Mr Goode, have been tired on the evening of Friday 21 April and gone to bed as early as 7.30 p.m.

14.8 However suspicious the factors mentioned above may be, there is no evidence that Mr A X either alone or with any other person murdered Confait or set fire to 27 Doggett Road.

PART V

CHAPTER 15

THE JUDGES' RULES AND ADMINISTRATIVE DIRECTIONS

15.1 There were undoubtedly breaches of the Judges' Rules and Administrative Directions in the present case. Before coming to discuss individual Rules, and the breaches of them, I should like to make some general observations.

15.2 In England and Wales (unlike many other countries) no contemporaneous judicial control is exercised over the interrogation of suspects and others by the police or over the taking of statements. The protection which the law affords is an *ex post facto* protection which derives from the overriding principle that "it is a fundamental condition of the admissibility in evidence against any person, equally of any oral answer given by that person to a question put by a police officer and of any statement made by that person, that it shall have been voluntary, in the sense that it has not been obtained from him by fear of prejudice or hope of advantage, exercised or held out by a person in authority, or by oppression" (principle (*e*)). That is a rule of law[1] and a statement or answer obtained in breach of it will be inadmissible as a matter of law, but, in addition, since 1912 there have been in force a series of rules made by the Judges for the guidance of police officers conducting investigations. The present version of the Judges' Rules dates from 1964. They are contained in Appendix A to Home Office Circular No 31/1964 addressed to chief constables[2] and are preceded by a set of principles (from which principle (*e*) above is quoted) which are stated not to be affected by the Rules. The circular itself contains in paragraphs 3 and 4 further instructions to police officers (paragraph 4 requires that in addition to complying with the Rules, interrogating officers should always try to be fair to the person who is being questioned, and scrupulously avoid any method which could be regarded as in any way unfair or oppressive); and Appendix B to the circular contains a number of "Administrative Directions", which are described in paragraph 5 of the circular as a statement of guidance for police officers, drawn up with the approval of the Judges, about various procedural points which may arise in the course of interrogation and the taking of statements. From time to time since 1964 further Home Office circulars have been issued to chief officers of police, with the agreement of the Lord Chief Justice, dealing with interrogation and amplifying or defining the Administrative Directions. In the present case particular reference has been made to the following circulars:

> circular dated 31 May 1968 entitled *Interviewing, fingerprinting and photographing children and young persons*; and
>
> Circular No 109/1976 dated 21 July 1976 entitled *Interrogation of mentally handicapped persons.*

15.3 In addition to the Judges' Rules, Administrative Directions and Home Office circulars, there is in force in the Metropolitan Police a substantial body of General Orders which are amended and added to from time to time: some of these relate to interrogation and taking of statements.

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[1] See *Commissioners of Customs and Excise v. Harz* 51 Cr. App. R. 123; [1967] 1 A.C. 760; [1967] 1 All E.R. 177.

[2] Published by HMSO 1964.

15.4 The legal effect of the Rules and Directions can be stated as follows:

(a) The Rules are not rules of law, but their non-observance may "render answers and statements liable to be excluded from evidence in subsequent criminal proceedings." Where there has been a breach, the judge has a discretion to exclude the answer or statement; but it was stated by the Court of Appeal in *R v. Prager*[1] that "ultimately all turns on the judge's decision whether, breach or no breach, it has been shown to have been made voluntarily."

(b) The Administrative Directions are not "rules that in the absence of compliance the statements are inadmissible" (*per* the Lord Chief Justice, Lord Parker, in *R v. Roberts*[2]) but in the same case the Court made it clear that, though special circumstances might justify a departure from them, the Administrative Directions are there to be obeyed; the Court did not give any indication of the kind of special circumstances which would justify disobedience (but see paragraph 2.21 above). The Court also made it clear that evidence obtained in breach of one of the Administrative Directions where there are no special circumstances may be excluded on the ground of unfairness or oppression.

(c) A judge in the exercise of his discretion may exclude evidence which has been obtained in breach of paragraph (*c*) of the preamble to the Judges' Rules,[3] whether or not the answers were "voluntary" within the meaning of principle (*e*). In *R v. Allen and others*,[4] Mr Justice MacKenna said:

> "Professor Cross touches upon this matter of excluding evidence on the ground of unfairness at page 28 of the Fourth Edition on Evidence:
>
> > 'The desirability of avoiding the appearance of unfairness by allowing the Crown to take advantage of an official's wrong no doubt lies at the root of the discretion which the courts claim to exclude legally admissible confessions.'
>
> There is, I think, another reason and one which weighs more strongly with me. It is that if the police are allowed to use in court evidence which they have obtained from suspects to whom they have wrongly denied the right of legal advice, they will be encouraged to continue this illegal practice. If the police know that the answers to their questions will not be admitted if they have refused, without good reason, to allow their prisoner to see his solicitor, and that it is not a good reason that they hope that unadvised he will incriminate himself, there will, I think, be fewer complaints of the denial of this right. Complaints against the police of their refusing prisoners access to a solicitor are numerous. If there is substance in them, as I believe there often is, the exercise

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[1] 56 Cr. App. R. 151; [1972] 1 All E.R. 1114.
[2] *The Times*, 5 May 1970; [1970] Crim. L.R. 464.
[3] "That every person at any stage of an investigation should be able to communicate and to consult privately with a solicitor. This is so even if he is in custody provided that in such a case no unreasonable delay or hindrance is caused to the processes of investigation or the administration of justice by his doing so".
[4] Norwich Crown Court, 27 September 1976. [1977] Crim. L.R. 163.

of the court's discretion in the manner I am exercising it may do something to put an end to an undesirable practice."

(See on the other hand *R v. Elliott*[1]; see also paragraph 2.20 above and *R v. Lemsatef* cited in footnote 3 on page 14.)

15.5 It may appear strange that provisions which affect fundamental rights of individual citizens, and which in other countries are treated as legal or even (as in the USA) constitutional rights, should in England and Wales be governed by rules made by the Judges and by administrative directions which may be varied by the Executive at any time. It may seem strange that the consequence of a breach should be at the most to give a discretion to the judge to exclude evidence (and if a dictum in *R v. Prager*[2] is right maybe not even that, since the court there seemed to say that the Judges' Rules and Administrative Directions added nothing to the general rule that statements and answers to be admissible must be voluntary). It may seem strange that Home Office circulars which amplify or define the 1964 Administrative Directions should not have been given a circulation which ensured that they came to the knowledge of the legal profession, despite the fact that they may be capable of forming the basis of defence submissions and affecting the course of criminal trials. It may well seem strangest of all that (as appears from the evidence given at the Inquiry) some senior police officers and lawyers are not, even today, aware of one of the 1964 Administrative Directions, and admit frankly that it is not obeyed. (It was suggested at my Inquiry that, so long as the right to silence remains, exact compliance with Administrative Direction 7 would impose an intolerable obstacle on the police in the detection of offenders. If this is so, the remedy ought surely to be to alter the rule rather than to maintain it but allow it to be generally disobeyed.)

15.6 My own conclusion would be that the subject of interrogation and of protection for the individual is ripe for reconsideration, perhaps as part of a general rationalisation and codification of criminal procedure (see Law Commissions Act 1965, section 3(1)(*b*); 1968 Programme page 6 Item 18). The Confait case has shown that under the present English system it is possible for:

(a) a young man of 18 with an apparent mental age of 14 and, according to doctors, a real mental age of 8, and two boys of 15 and 14, to be interrogated in a police station about a murder with no independent person present;

(b) breaches of the Judges' Rules and Administrative Directions relating to interrogation to be committed by senior police officers without adverse comment from higher ranking police officers, from the officers of the Director of Public Prosecutions, from Treasury Counsel, from defending counsel or from the judge at the trial; and

(c) Administrative Direction 7, which requires persons in custody to be told about their right to consult a solicitor, to become a dead letter.

15.7 The Criminal Law Revision Committee in their Eleventh Report[3] suggested in paragraph 46 that "restrictions on the way in which the police should interrogate persons should be imposed not by the judges but by the

[1] [1977] Crim. L.R. 551.
[2] 56 Cr. App. R. 151; [1972] 1 All E.R. 1114.
[3] On Evidence (General). Cmnd. 4991.

authority responsible for the police (in this case, by the Home Secretary) or, if the matter is important enough, by law", though they went on to express the view that the Judges' Rules should not be made statutory. I venture to express the opinion that the balance between the effectiveness of police investigations and protection for the individual is important enough to be governed by law and that the consequences of a breach of the Rules should be clear and certain. Finally I would suggest that, whether or not any other change is to be made, consideration should be given to the arrangement and wording of the Rules and Administrative Directions, which at present are confusing, and to the extent and method of publication of Home Office Administrative Directions.

15.8 In considering the question of the voluntariness of the answers given and statements made by the three boys in the present case, and of breaches of the Judges' Rules or Administrative Directions, it is material to record that (with one exception) no submission was made at the trial that any of the answers or statements should be excluded either as being inadmissible in law, or in the exercise of the Judge's discretion. The exception is that a submission was made that Salih's answers and statement should be excluded on the ground of the alleged assault on him by TDC Woledge; there was a 'trial within a trial' and the submission was rejected by the Judge. But there was no submission:

(a) that the statements were involuntary in that they had been obtained "by fear of prejudice or hope of advantage, exercised or held out by a person in authority, or by oppression"; or

(b) that the answers and statement of Lattimore should be excluded on the ground of his low intelligence or his suggestibility; or

(c) that the Judge should exercise his discretion to exclude the statements because of any of the breaches of the Judges' Rules or Administrative Directions which I find to have occurred.

However, some at any rate of the matters which might have given rise to such submissions were given in evidence, or were the subject of cross-examination; and, although no transcript of the speeches at the trial was available, I understand that they were relied on by defending counsel.

15.9 In the Confait case the following breaches occurred:

(a) Leighton and Salih (who were both young persons under 17) were interviewed without the presence of a parent, guardian or some other person who was not a police officer, although in my opinion it was not impracticable to defer the interviews till such a person could attend (Administrative Direction 4).

(b) The three boys were not, either when they were taken into custody or at any time on 24 April 1972, informed orally of the rights and facilities available to them by virtue of Administrative Direction 7(*a*), nor was their attention drawn to the notice describing these rights and facilities (Administrative Direction 7(*b*)).

(c) While Lattimore was making his written statement, he was prompted and questions were put by DCS Jones and DI Stockwell which were not necessary to make the statement coherent, intelligible and relevant to the material matters (Judges' Rule IV(*d*)).

(d) DCS Jones did not, when he had enough evidence to charge the three boys with the murder of Confait and arson at 27 Doggett Road, without delay cause them to be charged (principle (*d*)).

In addition, in interviewing Lattimore without the presence of a parent, guardian or other independent person after having formed the view that he was of a mental age of 14, DCS Jones was in breach of the obligation to be fair and scrupulously to avoid any method which could be regarded as in any way unfair or oppressive (Home Office Circular No 31/1964, paragraph 4). It should also be recorded that, though there were no exceptional circumstances to justify such a course, DCS Jones put questions to Leighton, i.e. the 'keys' experiment (see paragraph 23.9 below), after he had told him that he would be charged, which would now be regarded as a breach of Judges' Rule III (*b*): see *Conway v. Hotten*, decided in 1976[1].

Questioning of persons in custody

15.10 The 1918 edition of the Judges' Rules, as explained by Home Office Circular 536053/23 dated 24 June 1930, imposed restrictions on the interrogation of persons in custody. Rules (1)–(3) read as follows:

"(1) When a police officer is endeavouring to discover the author of a crime, there is no objection to his putting questions in respect thereof to any person or persons, whether suspected or not, from whom he thinks that useful information can be obtained.

(2) Whenever a police officer has made up his mind to charge a person with a crime, he should first caution such person before asking any questions or any further questions, as the case may be.

(3) Persons in custody should not be questioned without the usual caution being first administered."

15.11 The Home Office circular of 1930 stated that:

". . . His Majesty's Judges have advised as follows:—

Rule (3) was never intended to encourage or authorise the questioning or cross-examination of a person in custody after he has been cautioned, on the subject of the crime for which he is in custody, and long before this Rule was formulated, and since, it has been the practice for the Judge not to allow any answer to a question so improperly put to be given in evidence"

and

". . . where a person is being interrogated by a Police Officer under Rule (1) whether at a Police Station or elsewhere and a point is reached when the Officer would not allow that person to depart until further inquiry has been made and any suspicion that may have been aroused had been cleared up, it is in the opinion of the Secretary of State desirable that such a caution should be administered before further questions are asked. When any form of restraint is actually imposed such a caution should certainly be administered before any questions or any further questions, as the case may be, are asked."

[1] 63 Cr. App. R. 11.

15.12 Under the 1964 Rules and Administrative Directions, questioning of persons in custody is permitted. Rule I provides as follows:

> "I. When a police officer is trying to discover whether, or by whom, an offence has been committed he is entitled to question any person, whether suspected or not, from whom he thinks that useful information may be obtained. *This is so whether or not the person in question has been taken into custody*[1] so long as he has not been charged with the offence or informed that he may be prosecuted for it."

But under Administrative Direction 7 he must when he is taken into custody be told of his qualified right to consult a solicitor (see paragraph 17.1 below).

15.13 The Judges must presumably have decided in 1964 that the earlier rule was too favourable to persons in custody or imposed an undue restriction on the police. There are two classes of persons who, under the present Judges' Rules, may be questioned in a police station:

(a) those who have been arrested on suspicion of having committed an arrestable offence; and

(b) those who have gone voluntarily to a police station,

in each case provided that they have not been charged or informed that they may be prosecuted. However, the courts both in Scotland and in the USA recognise that the circumstances of interrogation in a police station may put the person interrogated at an unfair disadvantage.

Scotland

15.14 The system is described in Chapter 7 of the Thomson Report[2]. There are no rigid rules—the only rule is that interrogation must be fair. The application of this rule by the Scottish judges in *Chalmers v. HM Advocate*[3], *Manuel v. HM Advocate*[4], *Brown v. HM Advocate*[5], and *Miln v. Cullen*[6] has resulted in a practice which is stricter than the English rules. Mr Herron described it as follows:

> "*Q.* Are there any rules in Scots law relating to statements being voluntary or as to the manner in which they are taken, whether by leading question or matters of that sort?
>
> *A.* Of course, as I said, the standard is fairness and there are three stages. There is before suspicion, there is during suspicion, and there is state of accused when you are an accused. The general principle is that before suspicion a statement can be submitted although there was no caution. When you come to a suspected person—and this is where the difficulty arises—if the person is suspected but he is not a sole suspect, and if the police have not yet formed the view that he will inevitably be an accused person, on all that he has said, then they are entitled to put what he has said to them, having been cautioned. After he has been cautioned and charged with the crime, they cannot question him, and he can only make a voluntary statement which is spontaneous, like a spring bubbling out of the ground; it

[1] My emphasis.
[2] Criminal Procedure in Scotland (Second Report). Cmnd. 6218.
[3] 1954 S.C.(J.) 66; 1954 S.L.T. 177.
[4] 1958 S.C.(J.) 41.
[5] 1966 S.L.T. 105.
[6] 1967 S.C.(J.) 21.

must not be induced by question, it must not be induced by trickery, or cajolery, or bullying, or pressure, or any of these things, because the fundamental principle of the law of Scotland is that the law is there to protect a person from giving evidence against himself, induced by pressure, cajolery, or trickery. That was decided in the case of *Manuel*.

Q. What are the accused's rights as far as representation is concerned during an interview with the police?

A. It is a little bit difficult if he is just there for interview, not as an accused person; but when you reach a stage when the accused is what Lord Cameron called a 'lighted suspect'—that is when he becomes an exclusive suspect, and the limelight is on him as an inevitable accused—then he should be informed of his rights to get a solicitor, and invariably the police would not take a voluntary statement from him without the presence of a solicitor or a solicitor refusing to attend."

15.15 Mr Herron quoted the judgment of Lord Cameron in *Brown*:[1]

". . . interrogation which is designed or calculated to lead to self-incrimination by a person on whom suspicion has centred after that suspicion has lighted on him, goes far beyond the limit of permissible and legitimate inquiry . . ."

15.16 Under the recommendations of the Thomson Committee (Report[2], paragraphs 7.13 and 7.19) answers obtained by questioning of suspects before charge would be admissible subject to four safeguards: fairness, caution, tape-recording (if the questioning was in a police station) and in some cases the judicial examination of the accused before a sheriff.

15.17 In Scotland arrest has to be accompanied by a charge. There is no power to arrest on suspicion. The rule (similar to the English Judges' Rule III (*b*)) that after charge the only statements which are admissible are voluntary statements not made in response to police invitation and unaffected by questioning except for the purpose of clearing up ambiguities, protects all persons under arrest. In England and Wales there is a category of persons, i.e. those arrested on suspicion but not yet charged, for whom no parallel exists in Scotland, though if the recommendations in paragraphs 3.11–3.27 of the Thomson Report were adopted there would be a similar category in Scotland. But in both countries there is another category, namely where "a suspect is technically a volunteer but is in practice not a free agent": cf. *Swankie v. Milne*[3]. The Lord Justice-General (Cooper) in *Chalmers*[4] discussed the position of such persons under Scots law: he said:

". . . This, however, it is possible to say with regard to Scots law. It is not the function of the police when investigating a crime to direct their endeavours to obtaining a confession from a suspect to be used as evidence against him at the trial. In some legal systems the inquisitorial method of investigation is allowed in different degrees and subject to various safeguards; but by our law self-incriminating statements when tendered in

[1] 1966 S.L.T. 105, at 110.
[2] Cmnd. 6218.
[3] 1973 S.L.T. (Notes) 28. See also *R v. Lemsatef* [1977] 2 All E.R. 835, at 839.
[4] 1954 S.L.T. 177, at 184.

evidence at a criminal trial, are always jealously examined from the standpoint of being assured as to their spontaneity; and if, on a review of all the proved circumstances, that test is not satisfied, evidence of such statements will usually be excluded altogether. The theory of our law is that at the stage of initial investigation the police may question anyone with a view to acquiring information which may lead to the detection of the criminal; but that, when the stage has been reached at which suspicion, or more than suspicion, has in their view centred upon some person as the likely perpetrator of the crime, further interrogation of that person becomes very dangerous, and if carried too far, e.g. to the point of extracting a confession by what amounts to cross-examination, the evidence of that confession will almost certainly be excluded. . . . Putting aside the case of proper apprehension without a warrant of persons caught more or less redhanded, no person can be lawfully detained except after a charge has been made against him, and it is for this reason that I view with some uneasiness the situation disclosed in this case, and illustrated by the recent cases of *Rigg* [1946 J.C.1] and *Short* [30 May 1950, unreported], in which a suspect is neither apprehended nor charged but is simply 'asked' to accompany two police officers to a police office to be there questioned. In former times such questioning, if undertaken, would be conducted by police officers visiting the home or place of business of the suspect and there precognoscing him, probably in the presence of a relation or friend. However convenient the modern practice may be, it must normally create a situation very unfavourable to the suspect. In the eyes of every ordinary citizen the venue is a sinister one. When he stands alone in such a place confronted by several police officers, usually some of high rank, the dice are loaded against him, especially as he knows that there is no one to corroborate him as to what exactly occurred during the interrogation, how it was conducted, and how long it lasted. If under such circumstances cross-examination is pursued with the result, though perhaps not with the deliberate object, of causing him to break down and to condemn himself out of his own mouth, the impropriety of the proceedings cannot be cured by the giving of any number of formal cautions or by the introduction of some officer other than the questioner to record the ultimate statement. In the ordinary case, as many decisions now demonstrate, that statement if tendered in evidence at the trial will not be treated as possessing that quality of spontaneity on which our law insists, and its rejection, when tendered in evidence may, and sometimes does, wreck the prosecution. The practice exemplified by this and other recent cases in substance puts the suspect in much the same position as if he had been arrested, while depriving him of the privileges and safeguards which are extended by the statute and the decisions to an accused person who has been apprehended. The police have, of course, the right and the duty to produce all the incriminating evidence they can lay their hands on, from whatever source they may legitimately derive the clue which leads to its discovery, so long as any admission or confession by the accused is not elicited before the jury as an element in proof of guilt. The matter may be put in another way. The accused cannot be compelled to give evidence at his trial and to submit to cross-examination. If it were competent for the police at their own hand to subject the accused to interrogation and cross-examination and to adduce evidence of what he said, the prosecution would in effect be making the

accused a compellable witness, and laying before the jury at second-hand evidence which could not be adduced at first hand, even subject to all the precautions which are available for the protection of the accused at a criminal trial."

15.18 In England and Wales the right to question does not change when a person is arrested or taken into custody, though certain other rights arise, e.g. those under Administrative Direction 7; provided the statements are "voluntary" and the Judges' Rules are followed, statements made and answers to questions given by persons in custody will be admissible. But of course Home Office Circular No 31/1964, to which the Judges' Rules are appended, makes *fairness* a requirement, and in England and Wales as in Scotland the fact that the person interrogated was in custody in a police station may affect the question whether the interrogation was fair.

The United States of America

15.19 In the USA the admissibility of confessions in federal courts is governed by the Federal Rules of Criminal Procedure, especially by US Code Title 18, Crimes and Criminal Procedure, Chapter 223 Section 3501, and in States' courts by a series of decisions of the Supreme Court culminating in *Miranda v. Arizona*[1], a decision given by five votes to four. The Fifth, Sixth and Fourteenth Amendments to the Constitution provide that no person shall be compelled in any criminal case to be a witness against himself and that the accused shall have the assistance of counsel, and entitle the accused to due process.

15.20 The decision of the Supreme Court in *Miranda* is summarised in the headnote as follows:

> "The prosecution may not use statements, whether exculpatory or inculpatory, stemming from questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way, unless it demonstrates the use of procedural safeguards effective to secure the Fifth Amendment's privilege against self-incrimination . . .
>
> (a) The atmosphere and environment of incommunicado interrogation as it exists today is inherently intimidating and works to undermine the privilege against self-incrimination. Unless adequate preventive measures are taken to dispel the compulsion inherent in custodial surroundings, no statement obtained from the defendant can truly be the product of his free choice . . .
>
> (b) The privilege against self-incrimination, which has had a long and expansive historical development, is the essential mainstay of our adversary system and guarantees to the individual the 'right to remain silent unless he chooses to speak in the unfettered exercise of his own will,' during a period of custodial interrogation as well as in the courts or during the course of other official investigations . . .
>
> (c) The decision in *Escobedo* v. *Illinois*, 378 U.S. 478, stressed the need for protective devices to make the process of police interrogation conform to the dictates of the privilege . . .

[1] 384 U.S. 436 (1966).

(d) In the absence of other effective measures the following procedures to safeguard the Fifth Amendment privilege must be observed: The person in custody must, prior to interrogation, be clearly informed that he has the right to remain silent, and that anything he says will be used against him in court; he must be clearly informed that he has the right to consult with a lawyer and to have the lawyer with him during interrogation, and that, if he is indigent, a lawyer will be appointed to represent him . . .

(e) If the individual indicates, prior to or during questioning, that he wishes to remain silent, the interrogation must cease; if he states that he wants an attorney, the questioning must cease until an attorney is present . . .

(f) Where an interrogation is conducted without the presence of an attorney and a statement is taken, a heavy burden rests on the Government to demonstrate that the defendant knowingly and intelligently waived his right to counsel . . .

(g) Where the individual answers some questions during in-custody interrogation he has not waived his privilege and may invoke his right to remain silent thereafter . . .

(h) The warnings required and the waiver needed are, in the absence of a fully effective equivalent, prerequisites to the admissibility of any statement, inculpatory or exculpatory, made by a defendant . . ."[1]

15.21 The facts which led to the *Miranda* decision were as follows: Miranda was an indigent Mexican, described as "a seriously disturbed individual"; he "was not in any way apprised of his right to consult with an attorney and to have one present during the interrogation, nor was his right not to be compelled to incriminate himself effectively protected in any other manner." Vignera (another appellant) "was not warned of any of his rights before the questioning by the detective and by the assistant district attorney. No other steps were taken to protect these rights. Thus he was not effectively apprised of his Fifth Amendment privilege or of his right to have counsel present and his statements are inadmissible." Westover (another appellant) did not "knowingly and intelligently" waive "his right to remain silent and his right to consult with counsel. . . ." He underwent a continuous process of questioning for 14 hours. Stewart (another appellant), "an indigent Los Angeles Negro who had dropped out of school in the sixth grade", was interrogated on nine different occasions; there was no evidence of warning or of waiver of rights. The Court allowed the appeals though, it said, it "might not find the defendants' statements to have been involuntary in traditional terms."

15.22 In *Gallegos*[2] a boy of 14 made an oral confession as soon as he was arrested; after he had been detained by the police for at least five days during

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[1] See also *Escobedo v. Illinois* 378 U.S. 478 (1964); *Haley v. Ohio* 332 U.S. 596 (1948); *Brady v. Maryland* 373 U.S. 83 (1963); *Gallegos v. Colorado* 370 U.S. 49 (1962); *Harris v. New York* 401 U.S. 222 (1971); *Oregon v. Hass* 420 U.S. 714 (1975); *US v. Hale* 422 U.S. 171 (1975); *Michigan v. Mosley* 423 U.S. 96 (1975); *Beckwith v. US* 425 U.S. 341 (1976); *Doyle v. Ohio* 426 U.S. 610 (1976); and cf. 82 Harvard Law Review 42. See also the first footnote to paragraph 2.21 above.

[2] *Gallegos v. Colorado* 370 U.S. 49 (1962).

which time he saw no lawyer, parent or other friendly adult, he signed a formal confession. The Court, in allowing the appeal, said:

> "The prosecution says that the youth and immaturity of the petitioner and the five-day detention are irrelevant, because the basic ingredients of the confession came tumbling out as soon as he was arrested. But if we took that position, it would, with all deference, be in callous disregard of this boy's constitutional rights. He cannot be compared with an adult in full possession of his senses and knowledgeable of the consequences of his admissions. He would have no way of knowing what the consequences of his confession were without advice as to his rights—from someone concerned with securing him those rights—and without the aid of more mature judgment as to the steps he should take in the predicament in which he found himself. A lawyer or an adult relative or friend could have given the petitioner the protection which his own immaturity could not. Adult advice would have put him on a less unequal footing with his interrogators. Without some adult protection against this inequality, a 14-year-old boy would not be able to know, let alone assert, such constitutional rights as he had."

15.23 In *Haley*[1] a 15 year old boy was arrested about midnight on a charge of murder and questioned by relays of police from shortly after midnight until about 5 a.m., without benefit of counsel or any friend to advise him. When confronted with alleged confessions of his alleged accomplices around 5 a.m., he signed a confession typed by the police. This confession was admitted in evidence over his protest and he was convicted. The Court held that the methods used in obtaining this confession violated the due process clause of the Fourteenth Amendment and that the conviction could not be sustained. The Court said:

> "The fact that this 15-year-old boy was formally advised of his constitutional rights just before he signed the confession does not alter the result. Formulas of respect for constitutional safeguards may not become a cloak for inquisitorial practices and make an empty form of due process of law."

15.24 In *Escobedo*[2] the Court said that:

> "where a police investigation is no longer a general inquiry into an unsolved crime but has begun to focus on a particular suspect in police custody who has been refused an opportunity to consult with his counsel and who has not been warned of his constitutional right to keep silent, the accused has been denied the assistance of counsel in violation of the Sixth and Fourteenth Amendments; and no statement extracted by the police during the interrogation may be used against him at a trial."

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[1] *Haley v. Ohio* 332 U.S. 596 (1948).
[2] *Escobedo v. Illinois* 378 U.S. 478 (1964).

PART V

CHAPTER 16

PRESENCE OF PARENT OR GUARDIAN

16.1 The fourth of the Administrative Directions which follow the Judges' Rules appended to Home Office Circular No 31/1964 requires that "As far as practicable children (whether suspected of crime or not) should only be interviewed in the presence of a parent or guardian, or, in their absence, some person who is not a police officer and is of the same sex as the child." (A child is someone who is under 14.) On 31 May 1968 the Home Office, with the agreement of the Lord Chief Justice, issued a circular which included the following:

> "I am directed by the Secretary of State to say that he understands that there is some doubt about the meaning to be attached to the word 'children' in the first sentence of paragraph 4 of the Administrative Directions annexed to the Judges' Rules, which recommends that normally children should be interviewed only in the presence of a parent or guardian. The Secretary of State thinks that the advice should be taken as relating to all under 17 years of age."

16.2 This circular was not published in Archbold[1], and though it was received by the Director of Public Prosecutions it was given only a limited circulation within his office. Its effect was, however, included in Metropolitan Police General Orders. The Direction clearly applies to oral interrogation as well as the taking of written statements, and it in terms applies to a child or young person whether suspected of crime or not. It would be an inadequate protection if it applied only to the taking of written statements. It is during oral interrogation in a police station that the presence of parents is most required. By the time a written statement is taken incriminating statements may have been made which would not have been made if a parent, guardian etc. had been present. Under the Direction the only ground on which the presence of a parent etc. can be dispensed with is if it is not *practicable.*

16.3 It appears from the evidence given at the trial and at my Inquiry that some police officers believe (or have in the past believed) that the Direction does not apply to oral interrogation, though Mr Davis said that all senior officers should know that it does. In his evidence at the trial DCS Jones said that, whereas he would not (save in exceptional circumstances) take a written statement from a boy of 14 unless his parent or guardian were present or had been given the opportunity of being present, the Direction did not apply to oral interrogation. At my Inquiry he agreed that that was not correct.

16.4 Lattimore was 18 years old, and accordingly the Administrative Direction did not apply to him. There was not in 1972 (nor is there now) any Direction about the interrogation of mentally handicapped people. However, in 1976 a circular was issued by the Home Office[2] to chief officers of police in the following terms:

> "The Home Secretary wishes to draw attention to the need for special care in the interrogation of mentally handicapped persons. This circular

[1] See footnote to paragraph 2.17(b) above.
[2] No 109/1976.

has been drawn up following consultation with the Lord Chief Justice who concurs with the advice given.

2. The Home Secretary appreciates that it may be difficult for a police officer to decide whether a person who is to be interviewed is mentally handicapped. However, he considers it important, if it appears to a police officer that a person (whether a witness or a suspect) whom he intends to interview has a mental handicap which raises a doubt as to whether the person can understand the questions put to him, or which makes the person likely to be especially open to suggestion, that the officer should take special care in putting the questions and accepting the reliability of answers.

Presence of a third party

3. So far as mentally handicapped children are concerned, paragraph 4 of the administrative directions appended to the Judges' Rules already applies. The Home Secretary thinks it desirable that, so far as practicable, and where recognised as such by the police, a mentally handicapped adult (whether suspected of crime or not) should be interviewed only in the presence of a parent or other person in whose care, custody or control he is, or of some person who is not a police officer (for example a social worker).

Statements

4. Any document arising from an interview with a mentally handicapped person of any age should be signed not only by the person who made the statement, but also by the parent or other person who was present during the interview. Since the reliability of any admission by the mentally handicapped person may even then be challenged, care will still, of course, be necessary to verify the facts admitted and to obtain corroboration where possible."

16.5 I suggest that, in order to keep this circular in line with the circular of 31 May 1968 the words "and young persons" should be inserted after "children" in the first line of paragraph 3.

16.6 The Home Secretary is aware of the need to give a wide circulation to this circular. In addition to the normal wide circulation within the police service, this circular was also issued to other people, including in particular clerks to justices and court administrators. Organisations with a special interest in the mentally handicapped, such as MIND and the National Society for Mentally Handicapped Children, are aware of it. The Home Office is considering the possibility of including the circular with the Judges' Rules (as issued by HM Stationery Office) when they are next reprinted. I hope that its existence will also be made known to the legal profession by whatever are the most effective and appropriate means, and that it will be included in the next supplement to Archbold[1].

16.7 DCS Jones agreed that this circular corresponded with what had been regarded as good practice since before 1972. Since he was aware that Lattimore

[1] See footnote to paragraph 2.17(b) above.

was backward and thought that he had a mental age of 14 he would have accepted the necessity to treat Lattimore in the same way as he treated Leighton and Salih in the matter of the attendance of parents. According to Mr Lattimore senior, DCS Jones said that he would allow him to attend the confrontation because although Colin was 18 he was subnormal (see also paragraphs 5.24 above and 16.12 below).

16.8 There have been three recent decisions of the courts as to the questioning of persons suffering from mental disability. In *R v. Stewart*[1] Mr Recorder Hawser QC held that a judge has a discretion to exclude evidence on the ground that the defendant's mental disability was so severe and his ability to comprehend and answer questions so lacking that the probative value of any admissions would be extremely small compared with their prejudicial effects and that therefore it would not be fair to the defendant, or in the interests of justice, that the evidence or the admissions should be placed before the jury. It was conceded that there was no evidence of any threat, inducement or oppression on the part of the police. Two medical witnesses were called, who stated that the defendant suffered from severe subnormality of intelligence. One gave his mental age as that of a 5–5½ year old child, and the other stated that his level of comprehension was that of a 3½ year old child and his use of language that of a 3¼ year old child. The Recorder held that in the very exceptional circumstances of the case it was proper for him to exercise that discretion and exclude the evidence. In *R v. Isequilla*[2] the Lord Chief Justice, Lord Widgery, delivering the judgment of the Court said:

> "[Counsel] submits that . . . there is a wholly independent principle, namely that if the suspect's mental state is such that he is deprived of the capacity to make a free choice whether to confess or not, then any confession which he makes is necessarily not a voluntary confession because it was not supported by the capacity to make a voluntary choice.
>
> This is a relatively novel submission, although it is supported by certain Commonwealth authorities and is hinted at, if no more than that, in Cross on Evidence [3rd Edn (1967), pp 450, 451] where the learned author says:
>
> > 'A good deal of Commonwealth authority supports the view that a confession will be inadmissible if obtained at a time when the accused's mind was so unbalanced as to render it wholly unsafe to act upon it. There is no clear English authority on this point, but, if one of the reasons for excluding confessions is the danger that they may be untrustworthy, it would be in accordance with principle to exclude a confession made by someone whose mental state was such as to render his utterances completely unreliable. It is, however, difficult to formulate a governing principle, and it is possible that, in England, the matter will be treated as one of judicial discretion.'

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[1] (1972) 56 Cr. App. R. 272.
[2] [1975] 1 All E.R. 77. Court of Appeal (Criminal Division) (Lord Widgery CJ, Bridge and May JJ).

We would accept that summary of the position as it stands at the present time, and we would recognise that one must not regard Professor Cross's phrase in which he describes the suspect as being in a condition where his utterances are completely unreliable as being the sole and only test in these matters. It may be in time other tests will be developed . . .

Of course, in an extreme case where a man is a mental defective, it would be no doubt absolutely right to rule out evidence of his confession as being wholly unreliable."

The third case is *R v. Hails*[1]. In that case, the only evidence against the accused, who was on the borderline of subnormality with a mental age of about 10, was his uncorroborated oral confessions. No complaint was made of the conduct of the interrogation by the police, but it was submitted at the trial that the confessions should not be admitted because of their intrinsic unreliability, mainly due to the accused's subnormality. Three doctors gave evidence, "two effectively saying they thought he was perfectly able to make a reliable statement, the third doctor taking the opposite view." The Court of Appeal quashed the conviction on another ground, but observed that in the circumstances the judge could not be criticised for allowing the confessions to be put before the jury. However, all three cases were very different on their facts from the Confait case.

16.9 On 5 March 1975 Mr Christopher Price MP successfully sought leave from the House of Commons to introduce the Protection of Mentally Retarded Persons (Evidence) Bill under the Ten Minute Rule procedure.[2] The Bill provided that no statement by a mentally retarded defendant (i.e. a person suffering from "severe subnormality" or "subnormality" as defined in section 4(2) and 4(3) respectively of the Mental Health Act 1959) in an interview should be admissible in evidence in any trial on indictment unless:

(a) a solicitor were present throughout the period during which the statement that it was sought to adduce in evidence was made; or

(b) (i) the court decided that the senior investigating officer did not believe and had no reasonable cause to believe during the relevant period that the defendant was mentally retarded; and

(ii) the interview during which the statement which it was sought to adduce was made was fair and the aforesaid statement was both voluntary and within the capacity of the defendant to make and to understand.

The Bill did not secure a Second Reading debate and made no further progress. It has not subsequently been reintroduced.

16.10 Leighton and Salih were both under 17 on 24 April 1972—Leighton was 15 and Salih was just 14. This was known to all the police officers who questioned them—indeed it may be that they thought Salih was under 14 since his date of birth was wrongly given as August 1958 in some of the police

[1] Court of Appeal (Criminal Division), 6 May 1976 (Ormrod and Bridge LJJ and Nield J).
[2] Official Report, Volume 887, columns 1486–1488.

documents. Lattimore was 18, but see paragraph 16.7 above. I propose to discuss the question of the attendance of parents in relation to all three boys together.

16.11 All three boys were interviewed without the presence of a parent or guardian or of any person not a police officer. It is clear from the evidence that the parents of Leighton and Lattimore did not at any time receive a message from the police telling them to come to Lee Road Police Station. Mr and Mrs Lattimore did in fact go to Lee Road Police Station, arriving there at about 8.15 p.m., after the interview with Colin had finished. Mrs Leighton also went to Lee Road Police Station, arriving at about 9 p.m., after the interview with Ronald had finished. The way in which this came about was as follows. Mrs Jewell, the grandmother of Leighton, knew that the three boys had been taken to Lewisham Police Station in connexion with the fire at Ladywell Fields, because she had been present when Leighton and Salih were arrested at her house. Nobody suggested that she should go to the station. She informed Mrs Leighton, Ronald's mother, of the arrest of the boys. Mrs Leighton went to the Lattimores' house at about 5.45; Mr and Mrs Lattimore were out, but Mrs Leighton told Michael Lattimore, one of Colin's younger brothers, that the three boys were at Lewisham Police Station and told him to tell his parents to go there. Mrs Leighton then went to Lewisham Police Station and was told that Ronald had been taken to Lee Road Police Station and that she should go there; she returned to the Lattimores' house and told Michael to tell his parents to go direct to Lee Road. She then herself went to Lee Road Police Station, arriving at about 9 p.m. Mr and Mrs Lattimore had gone out shopping in Sidcup with a woman friend, and they returned home about 7.50 or 8 p.m. When they got home their son Michael told them Colin had been "nicked", but did not tell them which police station he was at; they went first to Lewisham Police Station, and were there told to go to Lee Road, where they arrived at about 8.15 p.m.

16.12 Mr Lattimore and Mrs Leighton attended the confrontation with the three boys, and the making of written statements by Colin Lattimore and Ronald Leighton respectively. They were told that they should not interfere, or put words into their sons' mouths in any way whatsoever and that if they did so they would be sent out of the room. DCS Jones said that he wished both Mr and Mrs Lattimore to be present at the confrontation to hear from Colin's own lips what he had said, and that he would have been quite willing for the woman friend who had come to the station with them to be present as well (see also paragraph 16.7 above).

16.13 The position with regard to Mrs Salih was different. Mrs Salih did have a message sent to her but refused to come to the police station. DCS Jones said that he caused enquiries to be made of the station officer at Lewisham to ascertain whether he could help in getting Mrs Salih to the station, but the "whole question seemed somewhat vague". Sometime fairly late on in the evening (probably about 10 or 10.30 p.m.) DCS Jones asked WDS Mays to go round and explain to Mrs Salih why she was wanted and bring her back with her in the car. Communication was difficult since Mrs Salih spoke little English; WDS Mays tried to explain the seriousness of the situation to Mrs

Salih, but she still refused to come, on the ground that her other children were in bed and she had no one to leave with them. WDS Mays then returned to the station and picked up a uniformed policewoman and collected Mrs Ferid (the interpreter) from her home, and went back with them to Mrs Salih's house. Mrs Salih was still reluctant to come, as her eldest daughter was out and she wanted to wait and see her home, but eventually she was persuaded to come on the promise that the uniformed policewoman would stay all night with the children. She arrived at the station at about 11.30 p.m., long after the interview with Ahmet had been completed. She was then present when he made a written statement.

16.14 In his advice on evidence dated 11 July 1972 Mr Du Cann advised that all the documents relating to the sending for the parents (telephone messages etc.) and the parents' arrival at and departure from Lee Road Police Station should be at court. In response to this the police report submitted on 8 September contained the following paragraph:

> "All relevant documents will be available at the Court of Trial but briefly can be summarised as follows:—
>
> Approximately 5.15 p.m.—24th April, 1972 Detective Constable BRESNAHAN informed Mrs. JEWELL, grandmother of LEIGHTON, that the three boys would be taken to Lewisham Police Station.
>
> Approximately 7.50 p.m.—24th April, 1972 Mrs. LEIGHTON and Mr. and Mrs. LATTIMORE arrived at Lewisham Police Station and were directed to Lee Road Police Station and arrived there at approximately 8 p.m.
>
> Mrs. Leighton and Mr. and Mrs. Lattimore left Lee Road Police Station at approximately 11.15 p.m.
>
> Mrs. SALIH informed by Woman Detective Sergeant MAYES 'P' Division and Mrs. FERID, Interpreter, at approximately 11.30 p.m.—24th April, 1972 and brought by police transport to Lee Road Police Station—departed at approximately 1.50 a.m.—25th April, 1972."

16.15 It is clear that DC Bresnahan (who interviewed the boys at Lewisham Police Station) never had any intention of getting the parents there before he asked the boys questions. Indeed, he thought that he was not required by any rule to do so. He said:

> "You see, if I can just explain it to you, when you get a juvenile in the station and I start talking to them about an offence, you do not go running off and send for their parents straight away. You may be wasting their time and everyone else's time. I wanted to make sure they were responsible for these fires, and when I did find out that they were then I would have sent for their parents."

and again:

> "You can have juveniles, you bring them into the police station and you sit them down and ask them questions and you do not inconvenience parents or anything like that because there are certain stages where you

think the lad has done it, then you find out he has not and you do not start saying 'Get so-and-so's father from work'. The majority of parents work these days, you do not have a parent dragged from work because of their children, plus the fact that this is only a guideline . . ."

16.16 DCS Jones told me that he gave instructions that the parents should be brought to Lee Road Police Station, and that before he started the interviews he understood from a telephone conversation with an officer at Lewisham Police Station that the parents were being informed by Lewisham Police Station. He also said that from a conversation with DC Bresnahan and TDC Woledge he understood that they had been to Leighton's and Salih's addresses, that the parents had been sent for and were on the way, but nobody knew when they would arrive.[1] The strongest pieces of evidence that DCS Jones was expecting the parents to come are his concluding remarks in the record of each of the three interviews:

"When your parents get here I will give you an opportunity of telling them what you have told me. . . . I will see your father about that later." (Lattimore);

"I will see you again when your parents arrive . . . I will give you . . . a chance of telling me again in the presence of your parents." (Leighton); and

"You will be kept at this Police Station until your parents arrive. I will then give you a chance of telling me what you have already told me in their presence." (Salih).

16.17 The normal practice would be for a message to be sent from uniformed officers at the police station where children or young persons are in custody to the station in whose territory the parents live asking them to go around and tell the parents that they are wanted at the police station where their children are in custody. However, in this case the boys never were taken in charge by the uniformed officers at Lee Road Police Station, as they should have been, but were taken straight upstairs to the murder squad headquarters.

16.18 There is an entry in the Juvenile Register at Lewisham Police Station (see page 91 above) recording that Leighton and Salih had been transferred to Lee Road Police Station and that "Parents [were] being informed by the murder squad." It may be that there was a misunderstanding, but whatever was the reason it is clear that neither the murder squad nor uniformed officers at Lee Road Police Station nor officers at Lewisham Police Station informed the parents of either Lattimore or Leighton and told them to go to Lee Road, and there is no evidence that any of them made any attempt to do so. If police officers had been sent in search of Mrs Leighton and Mr and Mrs Lattimore as soon as the boys reached Lee Road Police Station, it is possible that they would have found Mrs Leighton either at her own home or at the Lattimores' house, and that she would have been got to Lee Road Police Station before 7.05 p.m. when DCS Jones started questioning Ronald Leighton. On the

[1] But see paragraph 12.35 above.

other hand, it is unlikely that police officers would have found Mr and Mrs Lattimore or that they would have been got to Lee Road Police Station any earlier than the hour at which they did in fact arrive.

16.19 The reason which DCS Jones gave for interviewing the boys without waiting for their parents to come was that he was dealing with a very serious crime; he felt that it was his duty if life and property were to be preserved to establish as soon as possible whether these boys were involved, or whether or not the person responsible was still at large and thereby in a position to commit further serious offences. He did not know what time the parents would arrive and in view of the opinion he had formed about Lattimore's intelligence he thought it proper to question him without a parent being present. (It did not apparently occur to DCS Jones to look for some other independent person who could attend the interview if the parents could not be found.) When he had finished with Lattimore, he thought it might be hours before he could get Mrs Leighton or Mrs Salih to the station: he did not say it was *impracticable* to have them there but that they were arriving too late. However, he later said it was not *practicable* to have Mrs Leighton and Mrs Salih there when their children were interrogated.

16.20 Mr Fryer, on the other hand, expressed the view that the urgency was not such that the interrogation could not wait till the parents arrived. I agree with Mr Fryer's view. From the moment when DCS Jones cautioned Lattimore he must have considered that he had evidence which would afford reasonable grounds for suspecting that he had committed the offences into which he was enquiring. He understood that Lattimore had made an admission as to the fire. He had formed a provisional conclusion that the perpetrators of the fire and of the killing were the same. He should at that point have desisted from questioning Lattimore, and delayed questioning any of the boys until a parent or other independent person could be present. Nor do I accept that it was impracticable (which is the only exception provided by the Direction) to delay the interrogation till the Lattimore and Leighton parents arrived. Practicability must relate primarily to the availability of the parent etc., the length of time it will take to fetch him, and the urgency to carry out the interrogation (though I am sure that there will sometimes be other practical considerations to be taken into account). If proper steps had been taken Mrs Leighton might have been found and brought to the police station shortly after 6 p.m.: even if proper steps would not have resulted in her arriving before she did, the delay would have been only about two hours. Similarly, even if it had not proved possible to get the Lattimore parents there any earlier, the delay in questioning Colin Lattimore would have been only just over two hours. It is not established that it was impracticable to delay the interrogation of Salih till his mother arrived. The steps which were eventually successful in getting Mrs Salih to the police station could have been put in hand hours earlier: WDS Mays was available all evening. Whether such efforts would have succeeded in getting Mrs Salih there any earlier one cannot say because they were not tried.

16.21 If it had really been necessary to start the interviews before the parents could be got there, I find it hard to believe that some other independent person

could not have been asked to attend: Mr Hatton, the Deputy Director of Social Services for the London Borough of Lewisham, told me that there was a night duty roster of senior officers of the Social Services Department which commenced at 6 p.m. each evening, and that a copy of the roster with telephone numbers was sent to New Scotland Yard and was available to the local police, and that if a telephone call had been put through to one of these officers he would have gone to the police station. Mr Hatton said that, if he himself had been communicated with, "in the circumstances of such a serious charge [he] would have gone out to wherever the youngsters were."

16.22 Mr Blom-Cooper submitted that DCS Jones did not intend to have the parents present when he was interrogating the boys and until he had oral admissions from them. He based this submission on:

(a) the evidence which DCS Jones gave at the trial in contrast with the evidence which he gave at the Inquiry;

(b) his reliance on a conversation with DC Bresnahan which apparently never took place (but see paragraphs 12.35 and 12.36 above);

(c) the contradiction between the Juvenile Report Book at Lewisham and the understanding which DCS Jones said he had that Lewisham Police Station was sending for the parents;

(d) the fact that the Lattimores and Mrs Leighton never received any message from the police; and

(e) the police report dated 8 September 1972.

I do not accept this submission, though DCS Jones clearly laid himself open to it. I believe that the fact that the Lattimores and Mrs Leighton did not receive a message was due to inefficiency and misunderstanding. DCS Jones and the other police officers did not attach nearly enough importance to securing the presence of the parents, and wrongly thought that the circumstances entitled or indeed required them to interview the boys without the parents. But the reference (in DI Stockwell's record of the interviews) to the arrival of the parents persuades me that DCS Jones thought that they had been sent for and did not intend to proceed any further till they arrived. I consider that DCS Jones was guilty of an error of judgment in deciding to proceed with the questioning of the boys in the absence of a parent or other independent person and that he was wrong in considering that it was not practicable to wait. He did not attach sufficient weight to the importance of complying with the Administrative Direction. But I acquit him of any sinister motive. I do not believe that he deliberately sought to keep the parents away in order to leave him free to exert improper pressure on unprotected juveniles.

16.23 Mr Davis gave his views as follows:

". . . if you have to ask a juvenile about a matter in which you have very little, if anything, to go on, I would think it practical that before one started trying to arrange transport and get parents or guardians present, one would ask some questions to find out whether you had reason to think, or that there was some matter which would support your suspicion,

that they are involved. But once one got to a stage that one considered that there was a bit more than that, that any interview would need to be given in evidence—in other words, there was good reason to think, or reason to think that they were involved in any criminal matter, then I would discontinue that interview until an independent person, parent or guardian was present.

Q. Can we bring it down to a particular question? You have got a boy, and you have no evidence at all that he has, let us say, lit a fire, as these boys are said to have done. The important question is 'Did you do it?' Suppose you know that a fire has been lit by somebody. You ask them 'Did you do it?' Would you say that that is a question which is proper to put without having a parent or guardian there? Because, of course, if he says 'Yes' then there is an admission which may very well be given in evidence later on.

A. It would depend on what I knew beforehand, sir. If I had no evidence at all that they were in any way involved, and bearing in mind that you may interview many, many children, in every case, before you even started to interview any of them, if you had to arrange for a parent or guardian to be present, it would not be practical. But if I had reason beforehand to think that they *were* involved, I would see no point in interviewing them without a parent or guardian, because, looking always towards the court of trial, you know this is going to be brought in dispute anyway, so you would need to make sure that your evidence is of the best quality."

16.24 The obligation under the Direction applies even to the earliest stage of interrogation, before there is any indication of involvement. But I accept that the measure of what can properly be regarded as 'practicable' or 'impracticable' alters, and that in the earlier stage a smaller degree of impracticability would justify going on without the parents. However, I think that Mr Davis's approach can be applied to the situation in which DCS Jones found himself. I believe that DCS Jones, before deciding whether to interrogate the boys without their parents, should have asked PC Cumming, DC Bresnahan and TDC Woledge exactly what the boys had said. If they had told him what they have told me, that might well have determined him to wait for the parents before starting the interviews. But if it did not, and he had started the interview with Lattimore, he should (if he was to give him the protection proper to a young person or a mentally handicapped person) have stopped at the point where he cautioned him. Even if he had treated Lattimore as an adult and carried the interview through to the end, he certainly should not have interviewed Leighton and Salih without their parents.

16.25 It was suggested by Mr Farquharson—who appeared for the Metropolitan Police—that the words "As far as practicable" allowed too wide a discretion for police officers and that the wording of Administrative Direction 4 should be tightened up. I think that he is right, and I suggest for consideration some such wording as this:

'Children and young persons (whether suspected of crime or not) should only be interviewed in the presence of a parent or guardian or, in their

absence, some person who is not a police officer and is of the same sex as the child. The only exception is where it is urgent that the child or young person should be questioned and it is not practicable to delay the interview till a parent or other independent person can be fetched. Only in the most exceptional circumstances should a child or young person suspected of crime be questioned under caution without a parent or other independent person being present; if an interview has commenced it should be discontinued as soon as the child or young person becomes a suspect, until a parent or other independent person can attend.'

It might be thought desirable that a general exception from the rule should be introduced in respect of routine enquiries of a child or young person who is not a suspect. (See Mr Davis's evidence quoted in paragraph 16.23 above and DC Bresnahan's evidence in paragraph 16.15 above.) The difficulty is to define 'routine enquiries'. I should prefer to limit the exception to a combination of urgency and impracticability, which I believe would cover most of the cases where practicalities require an exception.

16.26 There was some discussion at the Inquiry as to whether in a case where a child or young person is in care of the local authority the obligation imposed by the Administrative Direction can be discharged by having the natural parent present, or whether in such a case the Direction requires that a representative of the local authority should be present. It was suggested that in the present case the police were at fault in not ascertaining sufficiently promptly that Leighton was in care, Salih under supervision and Lattimore under voluntary supervision, and making contact with the local authority. I take the view that the obligation is discharged if any person who falls within the description "parent or guardian" is present. Where it is known to the police that a child is in care, it would clearly be desirable that the local authority should be informed and invited to have a representative present; but I do not think that the police can be said to be in breach of the Direction if they do not take steps to find out whether a child or young person is in care, and (if he is) to invite a local authority representative. Quite apart from compliance with the letter of the Direction, however, there might be cases where reliance on the presence of a parent who was obviously unfit to protect the interests of the child or young person would be unfair or even oppressive.

16.27 Both Mr Irving and Professor Morris suggested that some parents would be unable or unwilling to stand up for their children, and that the children themselves would not expect their parents to do so and would gain no comfort or support from their presence. I am sure that this is true in some cases, especially where the parent is a deserted mother whose children are in care because of her own inability to look after them. Mrs Leighton said "I did not have no husband, or anyone I could turn to. I was just as scared as what [Ronald] was." These remarks rang true, and I doubt Mrs Leighton's ability to stand up for her son if that had become necessary. (Mr Lattimore on the other hand seemed to me to be a person who could stand up for his rights and those of his son; his remarks during the confrontation and the taking of Colin's written statement do not suggest that he was confused or intimidated by the situation.) I do not, however, consider that this was a case

in which the police should have recognised Mrs Leighton's inadequacy and sought for some other independent person (such as a social worker) to be present as well.

16.28 Even the presence of an inadequate parent will be of some benefit. It will provide an independent witness of what occurred. It will help the child because it will make unfair pressure or other improper behaviour on the part of the police less likely. It will also help the police in that it will make false allegations of such behaviour less likely.

PART V

CHAPTER 17

THE RIGHT TO CONSULT A SOLICITOR

17.1 This is dealt with in principle (*c*) of the preamble to the Judges' Rules and Administrative Direction 7 which respectively read as follows:

"(*c*) That every person at any stage of an investigation should be able to communicate and to consult privately with a solicitor.[1] This is so even if he is in custody provided that in such a case no unreasonable delay or hindrance is caused to the processes of investigation or the administration of justice by his doing so;"

and

"7. *Facilities for defence*

(*a*) A person in custody should be allowed to speak on the telephone to his solicitor or to his friends provided that no hindrance is reasonably likely to be caused to the processes of investigation, or the administration of justice by his doing so.

He should be supplied on request with writing materials and his letters should be sent by post or otherwise with the least possible delay. Additionally, telegrams should be sent at once, at his own expense.

(*b*) Persons in custody should not only be informed orally of the rights and facilities available to them, but in addition notices describing them should be displayed at convenient and conspicuous places at police stations and the attention of persons in custody should be drawn to these notices."

17.2 The effect seems to be as follows:

(a) Every person at any stage of an investigation should be able to communicate and to consult privately with a solicitor.

(b) If he is not in custody, this is an absolute right, and it is not permissible for the police to refuse to allow a person to communicate and consult privately on the ground of unreasonable delay or hindrance.

(c) Once a person is in custody, his right to communicate and consult is qualified by "no unreasonable delay or hindrance".

(d) A notice describing the rights and facilities available to persons in custody should be displayed in convenient and conspicuous places at police stations.

(e) A person in custody should be informed orally of the rights and facilities available to him, and his attention should be drawn to the notice.

(f) A person in custody should be allowed to speak on the telephone to his solicitor or to his friends subject to the proviso about "no unreasonable delay or hindrance".

17.3 All the witnesses who gave evidence on this topic before me, including Mr Davis and Mr Fryer, expressed the view that the fact that it was thought

[1] Metropolitan Police General Orders treat this as applying also to "a bona fide representative of the solicitor's office who will normally be known as a legal executive."

that a solicitor if called would advise his client not to answer questions or make a statement should not, and would not as a matter of current practice, be regarded as constituting an unreasonable hindrance to the processes of investigation or the administration of justice.

17.4 The rights conferred by the principle and the Administrative Direction alter at the moment when a person is taken into custody: it is when a person is taken into custody that he should be informed of his rights to communicate and consult privately with his solicitor, but from the time he is taken into custody his right becomes qualified by the words "no unreasonable delay or hindrance". Clearly a person who has been arrested is "in custody", but the argument before me disclosed some uncertainty as to whether a person should be regarded as "in custody" for the purposes of the Direction who has gone to a police station voluntarily and has not sought to leave, but who if he did seek to leave would not be allowed to go. It seems to me that such a person has in fact lost his freedom of action, and that he is as much in need of the protection which the Direction affords as a person who has been arrested.

17.5 If a right exists, then unless people are informed of it an advantage will be gained by those who are aware of the right (either by reason of their superior education or of previous contact with the police), and people of inferior education and previous good character will be relatively prejudiced. It is not enough, however, to know of the right if there is no possibility of taking advantage of it: many people do not have a solicitor, and if they are poor may not be able to find out of their own pocket the means to obtain the services of a solicitor. The persons most in need of the services of a solicitor are those who are least likely to be able to pay a solicitor, and who are unaccustomed to using the services of solicitors and are not likely to know a solicitor. If Administrative Direction 7 is to protect those most in need of protection, it will be necessary for arrangements to be made under which solicitors will be available to attend at police stations. Many defendants when told of their rights would not be able to give the name of a solicitor, and even with police help would find it difficult if not impossible to contact a solicitor and persuade him to attend. The only way to make the Direction effective would be for each police station to have a list of names and telephone numbers of solicitors who have indicated their willingness to attend at police stations. I have been shown particulars of duty solicitor schemes which are in operation in certain areas (see for example 25th Legal Aid Annual Reports [1974-75] page 6[1] and the Law Society's Guide to Duty Solicitor Schemes[2]) but such schemes cover only attendance at magistrates' courts. I was told that some or all of the law centres in London do provide a 24-hour telephone service, but that none outside London does so as yet. I was also told that *Release* run a similar service, and that in Greater London some or all Citizens' Advice Bureaux have a referral service available between 6 p.m. and 10 p.m. It would, however, in general be difficult to get a solicitor after 6 p.m. My attention has been drawn to *R v. Tullett*[3] from which it appears that costs incurred prior to the grant of a legal aid order can be taxed and paid. A solicitor who attended a police station at the request of an indigent accused could thus obtain payment provided that a legal

[1] HC 629.
[2] *The Law Society's Gazette* 2 June 1975, page 577.
[3] [1976] 1 W.L.R. 241.

aid order was subsequently made. This would not of course be the case if after questioning in the presence of the solicitor the police decided to make no charge. There would seem to be a case for the State to underwrite the costs of the solicitor in such a case if he is unable to recover them from the individual.

17.6 The evidence which was given to me was that notices are displayed in police stations in the Metropolitan Police District, but that in practice persons in custody are *not* informed orally of the rights and facilities available to them, nor is their attention drawn to the notices. Mr Davis said:

> "All I can say in all honesty is that if there is a duty to inform every person in custody orally that he has a right to consult a solicitor before we commence the interview, then in practice we do not do it . . . It has never been regarded by the police, to speak quite fairly, as a duty to tell a prisoner once he has been brought in and before we go any further that he has a right to consult a solicitor."

This was a surprising answer in view of the fact that provisions giving effect to the Judges' Rules and Administrative Directions are contained in Metropolitan Police General Orders (Section 23 paragraph 129) and were amended in 1973 and again in July and November 1976: the relevant regulations as amended were published in Police Orders, and replacement pages issued.

17.7 The practice in relation to the attendance of solicitors was described as follows:

(a) There are occasions when the interests of the police in arriving at the truth are not consistent with the suspect communicating with a solicitor, for instance (in the words of Mr Du Cann):

> ". . . where serious crime has been committed, and where it is felt that information given to somebody who is going to be able to walk out of the police station can be used to further the crime itself by getting rid of the proceeds of a robbery, for instance, or to hinder the enquiries by divulging information as to who it is the police want to see, how much information the police happen to have got in their possession at that time, or where the police believe, for good or bad reason, that they cannot trust the solicitor who is sought to be called, or rather, more generally speaking, the solicitor's representative who is sought to be called to the police station by the defendant."

(b) Sometimes it would not be possible to get a solicitor there without unreasonable delay. What is regarded as unreasonable delay would depend on the circumstances of the case.

(c) Subject to (a) and (b) above, if the suspect desired a solicitor to be present, the police would delay the interview till a solicitor could be present. If they knew there was a solicitor on the way they would wait.

(d) The police would not regard as a reason for not allowing a solicitor to be present the fact that he was likely to advise his client not to answer questions.

(e) The police sometimes suggest that a solicitor should attend because they consider that he will advise his client to answer truthfully. But this is unusual, and ordinarily the police do not suggest to the suspect that a solicitor should be fetched.

(f) Notices describing the rights and facilities available are displayed in police stations, but they are not always in positions where persons brought into police stations would see them.

(g) Persons taken into custody are not normally informed of their qualified right to speak to a solicitor or to their friends, nor is their attention normally drawn to the notice. It is usually done at some time, but not until after the interview.

(h) There is often great difficulty in getting a solicitor to come to the station, particularly after 6 p.m.

17.8 DSupt Stockwell said that notices are displayed at police stations in P Division, generally in the charge room. I had no specific evidence about whether a notice was displayed at Lewisham Police Station, and if so where. At Lee Road Police Station the notice required by Administrative Direction 7 was hung in the cell passage, and would not be visible to anyone passing through the charge room and going upstairs. It would not have been seen by the three boys when they were brought into the station on 24 April and taken upstairs. There was no notice upstairs. The boys were not informed orally of the rights and facilities available to them, nor was their attention drawn to the notice. Lattimore had been to see a solicitor on the morning of 24 April, and might therefore have been able to give his name if he had been told he could consult a solicitor. His solicitor's representative did in fact attend at the police station on 25 April when Lattimore was charged.

17.9 Mr Fryer expressed the view that DCS Jones should have suggested that a solicitor be present when the boys were questioned for the following reasons:

> "The ages of the boys: the information, even scant though it was, that one of the boys perhaps was not as bright as he might have been; the serious nature of the matters that were going to be put to them and the fact that there ought to be proper representation from the beginning."

He gave this as his personal opinion, but said that he considered from his service in three police forces that his views were of general application. DCS Jones agreed that after a partial admission is just the sort of occasion when there is a particular need to advise a suspect about his rights.

17.10 I should add that since the conclusion of the substantive hearing of my Inquiry the following provision has been enacted as section 62 of the Criminal Law Act 1977:

> "Where any person has been arrested and is being held in custody in a police station or other premises, he shall be entitled to have intimation of his arrest and of the place where he is being held sent to one person reasonably named by him, without delay or, where some delay is necessary in the interest of the investigation or prevention of crime or the apprehension of offenders, with no more delay than is so necessary."

This section is not yet in force. The Home Secretary said in the House of Commons on 27 July 1977[1] that he proposed to issue a circular to the police about the implementation of this provision and to make arrangements for monitoring its operation.

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[1] Official Report, Volume 936, columns 721-726.

17.11 I was furnished with information given at my request by Mr William R Kennedy, Attorney at Law, Chief Public Defender, Office of the Public Defender, Minneapolis, concerning the way in which the public defender system operates in Minnesota. Mr Kennedy's office covers the Hennepin County with a population of approximately one million. Broadly, it is the Greater Minneapolis area. The office has been in existence for about six years. Formerly there was a part-time office, consisting of a part-time Chief Public Defender and seven part-time assistant attorneys. There were no investigators. The new office has an establishment of 76: 56 trial counsel, 10 full-time investigators (former police officers with at least 10 years detective experience) and 10 clerks and secretaries. There are about six similar offices in the United States: a much larger office in Los Angeles, a smaller (federal) office in San Diego, a larger office in Cook County, an office of about the same size in Jacksonville, Florida, and a slightly smaller office in Seattle, Washington; and one other office elsewhere. Other systems are:

(a) members of the private Bar appointed by the court to represent an accused person;

(b) a part-time Public Defender Office (as previously in Minneapolis);

(c) a part-time Public Defender Office combined with court-appointed counsel;

(d) the Public Defender Office as in Minneapolis (which in some States is called 'legal aid').

(a) and (b) rarely have investigators; (c) sometimes; (d) always. In Minnesota, defendants are put into touch with the Public Defender in the following way. The police take very few statements from suspects at their homes; they prefer to take them at the station house. If a suspect does not waive his right to silence and his right to an attorney then he will be taken to the station house, booked and given immediate access to a telephone. Only the more sophisticated suspect will have failed to waive those rights, and he will almost certainly immediately call his own lawyer or the Public Defender. Most suspects, not knowing of their rights, waive their right to silence and to an attorney. In those cases in Minneapolis itself where crimes of violence are involved, on almost every occasion (about 95 per cent.) the detective himself calls the Public Defender but that is very much less likely to happen in the country districts. If, in one way or another, the Public Defender does not see the defendant at the station house, he sees him in court by monitoring the court lists. The defendant has to be brought to court within 36 hours.

PART V

CHAPTER 18

THE CAUTION

18.1 The words of the caution are set out in the Judges' Rules (Rules II and III (*a*) and (*b*); see also Rule IV (*a*) and (*c*)). The ritual formulae are recited by police officers whenever the Judges' Rules require them to do so. Often they will be recited several times to the same individual in the course of a single investigation. I doubt whether all the persons to whom the caution is addressed understand not only that they are not obliged to answer any question which the police may put to them but that they will be in no way prejudiced if they remain silent and on the contrary may well prejudice themselves if they do speak, in other words that the purpose of the questioning by the police is to obtain evidence on which the person questioned may later be convicted. So long as there is a right to silence, and no adverse legal consequences follow from remaining silent, it is plainly just that people with no previous experience of the law (particularly those of low intelligence or little education) should be cautioned in words which convey to them clearly that they need not answer a policeman's questions and are doing themselves no harm if they remain silent. The second half of the caution (". . . but what you say may be put into writing and given in evidence") assumes that the person *does* talk, and may well seem to a simple person to negative the first part, especially when followed by a question or an invitation to speak. It would be better if the second half began: '. . . however, if you do decide that you wish to say anything, it may be . . .' or even (as in the pre-1964 formula) "You are not obliged to say anything, but anything you say may be [put into writing and] given in evidence".

18.2 The three boys in the Confait case were cautioned first by DC Bresnahan at Lewisham Police Station, then by DCS Jones at the start of (or, in the case of Lattimore, during) the interviews, and again when they were charged. Before making his written statement each boy acknowledged in accordance with Rule IV(*a*) that he had been cautioned. I accept that DC Bresnahan and DCS Jones attempted to explain the caution to them in words which they would understand, and believed that they had understood. But there must be considerable doubt whether the boys really did understand. I do not suggest that in this respect there was any breach of the Judges' Rules.

18.3 DCS Jones at the interviews cautioned Leighton and Salih at the outset. He did not, however, caution Lattimore until after the opening series of questions designed to establish which house in Doggett Road Lattimore had been referring to when he made an admission to DC Bresnahan. Till then, DCS Jones said, he did not have "evidence which would afford reasonable grounds for suspecting that" Lattimore had "committed an offence" of murder or arson. I do not consider DCS Jones is to be criticised for deferring the caution until that point.

PART V

CHAPTER 19

PROMPTING AND QUESTIONING DURING WRITTEN STATEMENT

19.1 Rule IV (*b*) and (*d*) of the Judges' Rules provides as follows:

> "(*b*) Any person writing his own statement shall be allowed to do so without any prompting as distinct from indicating to him what matters are material."
>
> "(*d*) Whenever a police officer writes the statement, he shall take down the exact words spoken by the person making the statement, without putting any questions other than such as may be needed to make the statement coherent, intelligible and relevant to the material matters: he shall not prompt him."

19.2 When one or more officers other than the officer writing the statement are present, Rule IV (*d*) does not in terms forbid the other officers from prompting or asking questions. But I consider that it must have been the intention of the Judges that questioning or prompting by such officers should be forbidden.

19.3 The 1918 version of the Judges' Rules contained a Rule (7) in the following terms:

> "(7) A prisoner making a voluntary statement must not be cross-examined, and no questions should be put to him about it except for the purpose of removing ambiguity in what he has actually said. For instance, if he has mentioned an hour without saying whether it was morning or evening, or has given a day of the week and day of the month which do not agree, or has not made it clear to what individual or what place he intended to refer in some part of his statement, he may be questioned sufficiently to clear up the point."

19.4 The questions permitted by the present Rule IV (*d*) clearly include those given as illustrations in the earlier rule. They must relate to "the statement", i.e. something which the person making the statement has actually said. If what he has said is incoherent, or unintelligible, or irrelevant to the material matters, then questions can be asked which would tend to reduce or remove the incoherence, unintelligibility or irrelevance of what has been said. It is in my opinion clear that the Rule does not permit the police officer to extract from the person making the statement substantive matters which he has not already himself voluntarily mentioned. The Confait case has revealed that there are some police officers who do not understand that. I believe that it should be expressly stated.

PART V

CHAPTER 20

CHARGING

20.1 Principle (*d*) prefaced to the Judges' Rules provides:

> "(*d*) That when a police officer who is making enquiries of any person about an offence has enough evidence to prefer a charge against that person for the offence, he should without delay cause that person to be charged or informed that he may be prosecuted for the offence".

Rule III (*b*) provides:

> "It is only in exceptional cases that questions relating to the offence should be put to the accused person after he has been charged or informed that he may be prosecuted. . . ."

20.2 The words "after he has been charged" do not apply to a period during which a person should by virtue of principle (*d*) have been charged, but in fact has not been: see *R v. Collier.*[1] They do, however, apply where a person has been informed that he *will* be charged: see *Conway v. Hotten.*[2] The words "informed that he may be prosecuted" are intended merely to cover a case where the suspect has not been arrested and where in the course of questioning a time comes when the police contemplate that a *summons* may be issued—they have no application to a case where a suspect is arrested and may on further consideration be charged: *R v. Collier*, above.

20.3 The Lord Chief Justice, Lord Parker, in *R v. Collier*, said:

> "In order that r.3(*a*) [i.e. Rule III (*a*)] should apply, the person concerned must have been actually charged, and in such a case any evidence obtained in breach of it will, subject to the discretion of the judge, be inadmissible. Where, however, r.3(*a*) does not apply, because there has been no actual charge, but there has been a breach of [principle (*d*)], that breach will be a factor to be considered in determining whether any statement obtained or made thereafter is a voluntary statement."

20.4 On this footing there is an incentive to the police to delay charging in order to ask further questions, although it is a breach of the Judges' Rules to do so. I should have thought that a person who ought to have been charged but has not been either charged or informed that he will be charged should be in as favourable a position as if he had been charged; that the Judges' Rules should expressly forbid questioning a person in that position save in exceptional cases; and that answers obtained by questioning such a person should be treated as having been obtained by means of a breach of the Judges' Rules.

20.5 In the Confait case DCS Jones informed the boys, after showing them the exhibits at about 2 a.m. on 25 April, that they would be charged but he did not charge the three boys till about 1.45 p.m. on 25 April. He had no more evidence then than he had had in relation to each boy after he had shown him the exhibits about 12 hours earlier. The showing of the exhibits added

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[1] [1965] 3 All E.R. 136; [1965] 1 W.L.R. 1470.
[2] 63 Cr. App. R. 11.

little to the written statements. If DCS Jones had sufficient evidence to prefer a charge at 1.45 p.m. on 25 April, it is hard to see how he could not have considered himself to have sufficient evidence after the completion of the written statements, or even after the interviews. DCS Jones said that he did not address his mind after the interviews to the question whether he had enough evidence to charge; if the answers to the oral questions had been all that he had, he would (he said) have asked the advice of the Director of Public Prosecutions before charging.

20.6 There was in my opinion a breach of principle (*d*) in relation to all three boys, and a breach of Rule III in relation to Leighton. Some of the delay in charging was caused by a desire to meet the convenience of Lattimore's solicitor. But one of the reasons why DCS Jones delayed charging Leighton was in order to stage the experiment with the throwing of the nails (see paragraph 23.9 below). Since he had told Leighton the night before that he would be charged, then on the authority of *Conway v. Hotten*[1] the experiment (which was an attempt to get Leighton to provide further evidence against himself) was a breach of Rule III. However, the experiment was negative, and no harm was done. I regard the breaches as technical. Also, though *Conway v. Hotten* declared and did not create the rule that a person who has been told that he will be charged should be treated as if he had been charged, it was not decided till after 1972.

[1] 63 Cr. App. R. 11.

PART VI

CHAPTER 21

THE POLICE AND THE TIME OF DEATH

21.1 I propose to examine in this chapter:

(a) what information the police had bearing on the time of death;

(b) what their views were about time of death;

(c) what if anything they did to make the time of death more precise; and

(d) what (more) they should have done.

21.2 At about 1.45 a.m. on 22 April a call went from Lewisham Police Station to Dr Bain, the divisional police surgeon. He arrived at 27 Doggett Road at about 2 a.m. and examined the body. He was told by a police officer not to take a rectal temperature. (I do not criticise the police for this: it seems a sensible precaution if it is known that a pathologist is coming.) At about 2.55 a.m. DI Stockwell as the senior officer at the scene telephoned to PC Weston, the coroner's officer, to summon Dr Cameron. Dr Cameron arrived at about 3.45 a.m. He had a brief conversation with Dr Bain, who said that rigor was present and gave Dr Cameron the impression that death had occurred before midnight. Dr Cameron then examined the body. At the scene (according to DCS Jones) Dr Cameron said that it was very difficult to carry out any sort of real examination there and it would be better to wait till they got to the mortuary. There was some delay before the body could be transported to the mortuary (the undertaker could not be got), but no blame can be attached to anybody for this. The post mortem examination started at 6.30 a.m. and concluded at 8 a.m. A police photographer attended both at the scene and at the post mortem, and took black and white and colour photographs of the body.

21.3 Dr Bain made a written statement on 22 April which contained the statement "rigor mortis was complete. . . . The man had been dead from between 4 to 6 hours."

21.4 At the conclusion of the post mortem there was a discussion about time of death. Dr Cameron gave orally to DCS Jones his estimate. He said that in his opinion death had occurred six hours plus or minus two hours before the time when he first saw the body, namely between 3.45 and 4 a.m., and he added (according to DCS Jones) that he was not to be held to it, since one could never be sure or positive in arriving at a time of death from rigor mortis, and medical evidence could never be conclusive. From this statement DCS Jones said that he concluded that death could have occurred at any time on the Friday evening till probably shortly before the fire, i.e. outside the brackets given. (Professor Cameron in evidence said that the time which he gave orally to DCS Jones after the post mortem was 9.30 p.m. plus or minus two hours.)

21.5 Professor Cameron in his evidence before me described the estimate as "an educated guess working on one factor only" (rigor mortis). However, he also told me that by the end of the post mortem he had another factor, namely the greenish discolouration of the lower abdomen which indicated

post mortem change. This caused him to revise his estimate of the time of death from 7.45–11.45 to 6.30–10.30 p.m. He did not however (as I find) communicate this change of opinion to any police officer either at the time or at any time prior to the trial.

Specrim

21.6 Metropolitan Police General Orders require that in cases of murder or of any crime or suspected crime of more than usual importance or public interest, as soon as a preliminary investigation has established the facts, a teleprinter message is to be sent to New Scotland Yard. The message is to be headed "SPECRIM" and is to be transmitted in the following codified form:

(a) Offence (e.g. theft, robbery, or grievous bodily harm).

(b) Date, time and place.

(c) Name and address of victim(s).

(d) Brief details of *modus operandi* (to include injuries and use of firearms or other weapons together with full description of any suspects).

(e) Property involved.

(f) Person(s) arrested, if any, and by whom.

(g) Officer in charge of investigation.

(h) Suitable or not for the press.

The purpose of the report is to inform senior officers: it contains bare facts and headings. A specrim in respect of Confait's death and the arson at 27 Doggett Road was sent at 2 p.m. on 22 April (Saturday). The date and time of death were given as "21-4-72 POSSIBLE BETWEEN 7 PM AND 11 PM". The specrim would have been DCS Jones's responsibility. Whoever filled out the first specrim must have got the time from DCS Jones, who had by that time had only an oral report from Dr Cameron. DCS Jones said that the earlier time (7 p.m.) derived from his conversation with Goode, who had (so he said) gone to bed about 7 p.m. with the house apparently in order; DCS Jones could not really explain why he had given the later time as 11 p.m., but said that probably at the time he felt that those were the most likely times. On some date following the arrest of the three boys a further specrim was submitted giving the date and time of death as "21/4/72. BETWEEN 10 PM AND 11 PM". This was not done by DCS Jones or on his instructions. He did not know how the time of death came to be given in this way. I was not able to discover who filled in the form.

21.7 Professor Cameron said that at the time of the post mortem he could not be accurate about time of death. He said that police officers are trained and realise that there is considerable difficulty in estimating time of death, especially in a case where the body temperature has not been taken. He said that because of the lack of material he could not say to the police that it was impossible that the death had occurred immediately before the onset of the fire (assuming that occurred around 1 a.m.). "I could not answer or help them in that way." DCS Jones told me that it was his recollection that he asked Dr Cameron after the post mortem the specific question "could death have occurred around 1 a.m.?" and was given the answer that it was a possibility and that Dr Cameron could not say anything further until other tests had been made:

"I am almost certain that [at the post mortem] I discussed [with Dr Cameron] the possibility of the death occurring about or shortly before the time of the discovery of the fire and that he said it was always very difficult to be definite about the time of death but he did not dissent from that possibility."

DCS Jones did not take the view that the estimates of Dr Bain and Dr Cameron as to the time of death were inconsistent with the boys' story or with the fire following immediately on the death. He thought it could have happened like that or there could have been a lapse of time. DCS Jones said that Dr Cameron would have been happier if the boys had admitted the death some time earlier than immediately before the start of fire but because of the conversation they had at the mortuary on Saturday DCS Jones was conscious of the fact that this (i.e. the fire following immediately on the death) could be a possibility. DSupt Stockwell confirmed that that was also his impression.

21.8 On 22 April Dr Cameron gave his written report to the coroner, and on 25 April this same report (with the final page missing) was retyped as a witness statement for the police. It contained the statements:

"The body was cold and rigor [mortis] was commencing suggestive of death occurring some six hours plus or minus two hours earlier . . . . The lower abdomen showed slight post-mortem change and rigor was fully established at the start of the post-mortem but towards the completion of the post-mortem was beginning to wear off."

Despite the revision which Professor Cameron said he had made to his estimate, the report contained the same estimate which DCS Jones said Dr Cameron had given him orally after the post mortem. The words originally typed were "The body was cold and rigor *had commenced*",[1] but Dr Cameron altered this in manuscript to "The body was cold and rigor *was commencing suggestive of death occurring some 6 hrs plus or minus 2 hrs earlier.*"[1] He produced to me a note, written on the cover of his file, which he said he made while preparing his report and which read "3.45–6 hours", with above it an arrow pointing to 9.45, then "6.30–12 hours; 6 hours–9.30". That note reflected a change of mind from 9.45 as the mid-point of his bracket to 9.30. However, this did not appear in the report itself. Professor Cameron when he gave evidence before me seems to have believed (wrongly) that the time given in his report was 6.30 to 10.30 p.m. He also thought that there was an occasion when a police officer rang him up and asked whether it was *still* his view that death was between 6.30 and 10.30, and that he said that nothing had changed because he knew nothing more about the problem. However, his recollection of this was not firm; he could not identify the police officer who spoke to him; or the date of the conversation; and DCS Jones and DSupt Stockwell said that no such conversation took place with them. Since Dr Cameron had never given the police the times 6.30–10.30, I think he must be mistaken in thinking that such a conversation took place.

21.9 Dr Cameron was seen by DCS Jones on 25 April when he went to Lee Road Police Station to sign his statement, and again on 26 April when the

[1] My emphasis.

inquest was opened but, according to DCS Jones, nothing was said to modify the views as to time of death given in Dr Cameron's statement. However, Professor Cameron told me that he read in the newspapers shortly after the post mortem (the next day or the day after) that the fire had been started or occurred or noted shortly after 1 a.m. on 22 April, and that he became somewhat worried that the body had been dead some hours earlier—his worry, he said, was that either his estimation of the time of death must have been wildly out or the house went on fire long after death. He said that he mentioned these worries at a meeting in the coroner's office on 26 April, while signing the statement form, at which were present the Coroner (Dr A Gordon Davies), DCS Jones and possibly DI Stockwell. He said that he understood at that time that the police were considering and would investigate a two-visit theory. Neither DCS Jones nor DSupt Stockwell could remember this conversation; none of the newspapers of that period which I have been shown gave a time for the start of the fire; and enquiries have shown that the inquest on Confait was opened on 26 April not by the Coroner, Dr Davies, but by the Deputy Coroner, Dr D V Foster. I conclude that Professor Cameron was mistaken in thinking that any such conversation took place: indeed, he finally in effect withdrew his evidence about it on the basis of his recollection not being clear.

21.10 In a letter written in 1974 (for the statements in which DCS Jones told me that he was relying solely on his recollection) DCS Jones stated that when Dr Cameron and Dr Bain first attended the scene and examined Confait both said that they believed death had occurred "any time the previous evening", and they both agreed that the time of death was "very elastic due to the prevailing conditions"; it was only some time afterwards, DCS Jones said, when Dr Cameron's official report was received, that the prosecution knew that he was fixing midnight as the latest probable hour of death. This, DCS Jones stated in the letter, did cause some difficulty to the police investigation; he went on to say that if that medical evidence was to be accepted then the probability should not be overlooked that, having murdered Confait, the boys returned later and set fire to the building in order to destroy evidence. DCS Jones told me that in the course of his enquiry he did consider the possibility of two visits. He said that the alibi evidence for Leighton and Salih (if accurate) showed two visits to the shoe repair shop: "I think probably it was when I learned that there had been two visits to the shoe shop that may have been the first indication that there had been probably two visits to 27 Doggett Road." But he did not discuss it with the Director of Public Prosecutions or with Mr Du Cann before the trial: and he said that his reason for suggesting to Mr Du Cann during the trial that Lattimore's alibi evidence up to 11.30 p.m. should not be challenged was his certainty by that time that death had occurred after 11.45 p.m. (see paragraph 28.19 below).

21.11 Between the date of the inquest (26 April) and 2 November 1972 no further enquiries were addressed to Dr Cameron, though he made a further statement on 19 May on the question whether the flex could have been the instrument used to kill Confait. DCS Jones also stated in the letter written in 1974 that further enquiries had been made to try to determine a more definite time of death, but that statement referred only to enquiries as to the last sightings of Confait. DCS Jones did not take statements from two fire officers who were

at the scene, and who were discovered in 1976 to have had relevant information to give (see paragraph 7.12 above). He did not further question SPS Ingram or Mr Speed to see if they could speak as to the state of the body.

21.12 A Metropolitan Police Crime Report (form 478) was submitted on 1 May 1972. DCS Jones had nothing to do with it. Part A was made out on Saturday or Sunday 22/23 April by DI Stockwell. When the form was first filled out the date of the event (death of Maxwell Thomas Confait by strangulation) was given as "21.4.72", and the time as "Between 7 pm–11 pm" (or "11.30 pm"). On 30 April the date was altered from "21.4.72" to "21/22.4.72", and the time from "7 pm–11 pm" (or "11.30 pm") to "7 pm–1.30 am". It is difficult to be sure whether the time originally written was "11" or "11.30 pm", since "1.30 am" has been written over it.

PART VI

CHAPTER 22

THE PATHOLOGIST

22.1 When a pathologist is called to the scene of a violent or unexplained death (as he normally would be, particularly in the case of a death associated with a fire), this is done by the coroner and the report prepared by the pathologist is prepared for the coroner. Professor Cameron told me that the department to which he belonged in 1972 (and still belongs), namely the Department of Forensic Medicine at the London Hospital Medical College, was retained by a number of coroners and that fees payable in respect of post mortem examinations were paid by the coroner to the University of London, of which the school is part. In other cases it is an individual pathologist who is retained by the coroner. Pathologists are not normally (and Dr Cameron was not in the present case) retained by the police. Dr Cameron was not in any sense acting for or on behalf of the police when he visited the scene of Confait's death, when he conducted the post mortem examination and when he wrote his report on 22 April. The Coroners Rules 1953[1] provide that the person making the post mortem examination must report to the coroner in the prescribed form, but unless authorised by the coroner must not supply a copy of his report to any person other than the coroner. It is, however, common practice for a copy of the report prepared by the pathologist for the coroner to be furnished to the police, and to be retyped in the form of a witness statement and subsequently signed by the pathologist; this statement eventually becomes one of the committal documents and is used as a proof of evidence at the trial. This seems to me to be an unsatisfactory system, although I fully accept the evidence that relations between pathologists and police are amicable and that in practice they work as a team, and although of course the police always can (and sometimes do) ask for a supplementary report. The fact that this system was followed in the present case was (I believe) one of the reasons why the pathologist's evidence as to the time of death was not in the early stages more precisely and fully stated (as it has eventually been stated in my Inquiry). The coroner is interested in the cause of death, not the time of death, and for this reason a pathologist's report can properly deal only very summarily with the time of death. On the other hand whenever the police are enquiring into a death where the time of death cannot be determined by eye witness, or by non-medical circumstantial evidence, it is important that the fullest possible statement of the evidence as to the time of death should be available from the outset. It cannot in any such case be stated with any certainty that the time of death will not become an issue at the trial (in relation, for instance, to an alibi). Evidence as to the time of death may well affect the course of subsequent police enquiries, and the extent and nature of the evidence which forms part of the prosecution case: for instance, in the present case the evidence obtained by the police about the time of the fire might have been more extensive if Dr Cameron's report had dealt more fully with the time of death. However, the practice is that the police do not expect the pathologist at the post mortem to give an estimate of time of death that he would want to be held to (though they can always ask him at the time or later for such an estimate).

[1] S.I. 1953 No 205, r. 7(1) and (2).

22.2 Another criticism of the procedure followed in the present case (which I believe to be the common practice) is that the pathologist is not given an opportunity at an early stage to see the statements of other witnesses which may be relevant to the question of the time of death. He may see, or be told of, such statements if he attends a conference with prosecuting counsel before the start of the trial. But even that does not always happen: Dr Cameron had no formal opportunity to discuss the case and, in particular, his view as to the time of death between 25 April when he signed his statement and the second day of the trial when he had a conference with Mr Du Cann. According to Professor Cameron's evidence (which I accept), though he had a brief conversation with Dr Bain at the scene, he did not see or know the contents of the statements of Dr Bain or of the firemen at any time before he himself gave evidence. He was not told that Dr Bain had said that rigor was complete at 2 a.m. and was not made aware that there was any difference of opinion about rigor between him and Dr Bain. I accept that Mr Du Cann intended that Dr Cameron should hear Dr Bain's evidence (which was given before his own), but in the event he did not.

22.3 I believe that the present system is unsatisfactory, and that at least the following changes are required to put right what I regard as defects. In every case in which the police are investigating a death which may form the subject of criminal proceedings:

(a) If the evidence of a pathologist may be required, a pathologist should be employed by the police and instructed to report to the police. The same pathologist could properly act on behalf both of the coroner and of the police. The present practice by which the pathologist is summoned by the coroner can be continued, provided that the pathologist summoned is willing to act also on behalf of the police; but the police should be free to, and should, themselves summon a pathologist if there seems likely to be unacceptable delay in the arrival of the pathologist summoned by the coroner, or that pathologist is unwilling to act also on behalf of the police.

(b) The pathologist employed by the police should be told of any special matters of interest to the police, and should deal with them in his report. In any case where the time of death cannot be ascertained with reasonable certainty from other evidence he should deal fully with the evidence as to the time of death, and should give his estimates of the earliest and latest possible times of death. He should (as Professor Cameron has suggested in a published essay[1]) note and record the presence and distribution or absence of rigor or other signs of death. I should advocate the use of a standard list of questions to be answered or matters to be dealt with: this could be drawn up in such a way that it could not be said to constitute an invasion of the pathologist's professional independence, or an attempt to tell him how to do his job, but would be a helpful checklist to the pathologist. It is not for me to pass any general judgment on the reliability of estimates of time of death, but it seems to me from the evidence which I have heard that the dogma that such evidence is not reliable should be reconsidered. It should be recognised that a bracket is more reliable than a spot time,

[1] *Scene of Incident*, chapter 7 in *The Practical Police Surgeon.*

and the longer the bracket the more reliable the estimate. Clearly, also, it is possible for pathologists to say with certainty that some signs cannot appear in less than a minimum time and where those signs are present a latest time of death can be given with some assurance. I see no reason why a single report should not be prepared for both the coroner and the police: the fact that it contained some matter which was not needed by the coroner would not, I think, do any harm. The report should as at present constitute the witness statement of the pathologist, which will be included among the committal documents.

(c) Prior to committal or, if this is not possible, then as soon as possible thereafter, in any case where a pathologist is to give evidence he should be sent all witness statements which may be relevant to an estimate of the time of death, and should be asked to reconsider his own report in the light of those statements. (In the present case this would have included the statements of Dr Bain and the firemen about the condition of the body, all statements as to the fire, especially the temperatures in the room, and expert evidence as to the time of onset of the fire.) If any additions or alterations to the pathologist's statement result, then a further statement should be taken and included with the earlier one in the committal documents or served on the defence as a statement of further evidence. These steps would be the responsibility in the first place of the police but, if they had not been carried out by the time the papers reached the Director of Public Prosecutions, then they would become the responsibility of the Director's professional officer. On receipt of statements of alibi witnesses, in any case where the alibi evidence might be germane to the matter on which the pathologist gives evidence, the statements should be sent to the pathologist. The responsibility here would be on the Director of Public Prosecutions (acting probably on the advice of counsel). These steps would do no more than bring the practice in criminal cases into line with common practice in civil cases involving expert witnesses.

(d) If the pathologist has given a time bracket, even though with qualifications, a prosecution based on a time of death outside that bracket should not be instituted or proceeded with without going back to the pathologist for further advice.

(e) If any alterations or additions are made to the pathologist's evidence which are not contained in his witness statement then notice should be given to the defence.

(f) Save in exceptional circumstances or where otherwise directed by the judge, the pathologist should be in court to hear the evidence of other witnesses whose evidence may be relevant to the time of death, before he gives his own evidence.

22.4 I was told by Mr Davis that it had been decided that in view of the Confait case pathologists would be asked "to come and talk with the senior officers at the Yard, to see if there is something that we can do at the scene to preserve the prevailing temperature and the state of the body." One of the matters which are now being considered in the Metropolitan Police is the possibility of giving instructions to police officers as to certain questions which they should always ask pathologists.

PART VI

CHAPTER 23

THE POLICE AND THE CONFESSIONS—SEARCH FOR SUPPORTING EVIDENCE

Corroboration

23.1 Where a prosecution is based wholly or mainly on a confession, the police have a duty to seek further evidence which may support or contradict the confession. Supporting evidence will make it more likely that the prosecution will succeed, and if the police believe that the confessor is guilty they have a duty to try to strengthen the case against him. On the other hand there is a public interest that persons should not be prosecuted who are innocent or whose acquittal is certain or likely if they are brought to trial, and that if prosecutions have been brought against such persons they should not be continued longer than necessary. It is therefore equally important that evidence contradictory of the confessions should be brought to light as early as possible. The notorious fact that false confessions are sometimes made makes it all the more important that further evidence which will prove or disprove the genuineness of the confession should be sought. Sir Norman Skelhorn gave the following evidence:

> "*Q.* Indeed, if a case came to your professional officer which rested solely on a confession, you might very well instruct or suggest to the police that they should make further investigations to look for supporting evidence?
>
> *A.* Well if there was any indication that they had not, and if the indications were that they had and it was not obtainable, then I would have thought that in such a case it was very probable that there would be no prosecution.
>
> *Q.* That would be because of the danger or the knowledge that people do on occasions make false confessions, and you would have to be very sure that this was a genuine confession before you would permit a prosecution?
>
> *A.* Yes. But one would look at it with very great care. On the other hand, one can get, of course, even such a confession in circumstances in which one says ' Well I think it is safe '. I mean, one element, to start with, is that is this a confession made when the police go to him, or is this a case of a man who comes along and says 'I think I should tell you I killed someone or other at such and such a place', and so on. Well that is a starting point. It makes a fairly big difference when one is looking at it. So that I would not make a sort of too great a generalisation on it, but certainly one would look with very great care at a completely not only uncorroborated confession, but a confession with absolutely nothing to support it at all, in saying 'Well it is still right and safe to go on on this confession just as it stands'."

23.2 It was put forward as a criticism of the police in the Confait case that they did not do enough to seek evidence which might confirm or contradict the confessions of the three boys. In particular it was suggested that they should

have asked the boys questions to establish at what time the events which they were describing occurred, and that they should have asked the boys where they were and what they were doing before and after the events which they were describing, and should have asked their families and others about their movements and whereabouts during the evening and night in question.

23.3 The police should in my opinion always look for evidence to support a confession. I do not use the word 'corroboration' for the reasons given by the Devlin Committee in paragraphs 4.27–4.42, 4.66–4.71 and 4.77–4.88 of their report.[1] I use the expression 'supporting evidence' in a sense which would include evidence which would constitute corroboration under the present law, "independent testimony which affects the prisoner by tending to connect him with the crime", but would also include any evidence which tends to show that the confession is true, whether or not it emanates from the confessor and even from the confession itself. Mr Herron told me that under Scots law corroboration may be *in gremio* of the confession, evidence for instance that the person making the confession was possessed of information which would not have been known to anyone other than someone present at the commission of the crime. In the present case, if the keys had been found where Leighton said he threw them, this would have constituted supporting evidence in this sense.

23.4 Where the prosecution is based on a confession the police report should in my view always include a specific reference to:

(a) the steps taken to obtain supporting evidence;

(b) any supporting evidence found;

(c) the fact (if it be the case) that no supporting evidence has been found; and

(d) any evidence tending to contradict the confession, whether or not such supporting or contradicting evidence would be admissible.

23.5 The confessions contained only the slightest indications of time. Leighton's written statement started with the time 9.20 p.m. (altered from 10.30 p.m.). Lattimore said he went out *after his parents had gone to bed*, and that it was dark when he met Leighton and Salih. Salih said "When it was late . . . It was dark . . .". There is no record of any questions about time by DCS Jones, though he asked questions which assumed that the events took place at a late hour when the Goode family would be in bed. It would not have been a breach of the Judges' Rules if at the interview DCS Jones had asked at what time the events being described by the boys had occurred. DCS Jones said that in hindsight of course he should have asked each of the boys if they could tell him a time that they entered the house. The reason he did not ask them was that he regarded all the other evidence available to him as pointing to a time of fire and death of midnight or later. His questions to Lattimore indicated that the period he was interested in was after Lattimore was supposed to have gone to bed.

23.6 I find that DCS Jones was at fault in not asking for times. The omission made it more difficult to relate the confessions to other evidence about the

[1] Report of the Departmental Committee on Evidence of Identification in Criminal Cases. HC 338. April 1976.

death, and to gather evidence which would corroborate or contradict the confessions. It left an area of uncertainty which, while it may have made it easier for the prosecution to establish its case, since a wide range of times was left open, made it more difficult to establish the truth.

23.7 With the following exceptions the boys were not asked questions about where they had been and what they had been doing before and after the events described. The questions to Lattimore and his answers were as follows:

"LATTIMORE: '. . . we all ran away.'
JONES: 'Where did you run to?'
LATTIMORE: 'I ran home.'
JONES: 'Did you know where the others ran to?'
LATTIMORE: 'They went and did a shop.'
JONES: 'Didn't you go with them?'
LATTIMORE: 'No, I went straight home.'
JONES: 'Did your parents know you were out so late?'
LATTIMORE: 'No.'
JONES: 'Why not?'
LATTIMORE: 'They thought I was in bed. When they went to bed, I got up and went out.' "

Leighton was asked where he went afterwards and he said "Me and Ahmet did a shop. We got some shoes. We got caught and we were taken to Catford", and in his written statement "We run away and Colin went home and me and Ahmet done . . . a shop in Sangley Road."[1] Salih was asked what he did afterwards and he said "I went with Ronnie and we did a shoe shop." These statements were of course confirmed by the evidence of the police officers who arrested Leighton and Salih in Sangley Road. But the boys were not asked where they had been between the time when Confait was last seen and when his body was found. Nor were enquiries made at that stage about the movements and whereabouts of the boys from their parents or from any other source.

23.8 DCS Jones told me that it had been his intention that a longer statement should be taken on Tuesday 25 April from Mr Lattimore senior dealing with his son's movements on the previous Friday evening. However, on the Tuesday when he spoke to Mr Shine, a representative of the firm of solicitors acting for Colin Lattimore, about the importance of a statement from Mr Lattimore senior, Mr Shine had said that he himself would take the statement and that his wish was that no further police approach should be made to Mr Lattimore or Mrs Lattimore. Accordingly no further enquiries were made of the Lattimore family until after the alibi notices had been received, nor were any enquiries made from Mrs Leighton or Mrs Salih because DCS Jones thought that he would get the same reaction from them and that anyhow he did not think they would be able to give him any useful information. Mr Shine has informed me that he does not remember having said this, nor does he think that he would have said such a thing, but I accept that this was DCS Jones's understanding of what Mr Shine said.

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[1] In the typed version used at the trial this sentence was rendered as: "We run away and later went home and me and Ahmet done . . . a shop in Sangley Road."

23.9 Certain steps to find corroborative evidence were taken. There was the experiment with Leighton and the 'keys' on the Tuesday morning: Leighton had said that he threw the keys over the yard next door; he was given three bundles of nails and asked to throw them as he threw the keys. A search for the keys was then made in the areas where the bundles of nails fell. A search was also made to find traces of the handbag which Leighton said he had dropped on the stairs. A few further statements were taken from associates of Confait in an effort to find people who had seen him on the Friday evening and so establish an earliest possible time of death. And DS Shakespeare was asked to make enquiries in the West End about the background to Confait's life: but he was certainly not looking for anybody who might have killed him.

23.10 It is quite clear that once the confessions had been made by the boys, DCS Jones to all intents and purposes closed down the investigation into the murder and arson. He had already eliminated Goode as a suspect. During the week following the confessions he ran down the murder squad. DCS Jones said "we had ample evidence". In his view it was a case which "presented no special difficulties". "I had these confessions and I had a *prima facie* case . . . I certainly was not looking for anyone else." He agreed that after the three young men had been arrested and charged enquiries continued only to strengthen the evidence against them. But, he said, "had in the course of those enquiries . . . information come to light" indicating "that Goode was involved or that the boys were not responsible . . . I would have taken what action was necessary." I believe that the possibility of any person(s) other than the three boys having committed the murder and arson was no longer seriously considered. Two questions arise: (a) was this justified? (b) if further enquiries should have been made on the footing that someone else might have done it, what form should those enquiries have taken and what would have resulted from them?

23.11 The first question amounts to asking whether DCS Jones should have been put on enquiry and alerted to the possibility that the confessions might have been wholly or partly false. Clearly he and DI Stockwell were convinced that the boys were telling the truth. The matters which, it is suggested, should have put them on enquiry were:

(a) the lack of supporting evidence;

(b) the low intelligence of at least two of the boys;

(c) the fact that to their knowledge there were others (Goode being the principal one) who might have had a motive to kill Confait and who had no alibi for the relevant time;

(d) the apparent discrepancy between the estimates of time of death and the sequence of events described in the boys' statements;

(e) the bizarre nature of the events described by the boys; and

(f) the questions which the statements might have been expected to provoke—how could the boys have got in and out, and done what they described doing, undetected? How did they know which was Confait's room? Why should they go to a lighted room to steal? How could they have killed Confait without disturbing the room? How did they find the flex and why did they put it back in the drawer where according to Goode it was normally kept? What happened to the handbag?

23.12 All these matters have been put forward in my Inquiry in support of a

submission that the confessions cannot be true. Despite these improbabilities I have been driven to the conclusion that, apart from the statements about Lattimore's part in the killing, the confessions must be true. But they are all matters which in my opinion cried out for further enquiry. When further enquiries were made after the trial, evidence was produced which persuaded the Court of Appeal that Confait must have died during the period covered by Lattimore's Salvation Army alibi, and I have come to the same conclusion (see Part III above). The improbabilities which I have listed are still puzzling, and it is clear from the judgment that the Court of Appeal was much struck by them. Even without the benefit of hindsight, I believe that DCS Jones should have been aware of these matters and in the light of them should not have regarded the confessions as closing the enquiry. He could have brought these matters to the attention of the Director of Public Prosecutions and sought his advice, either before or after charging the boys with murder and arson at 27 Doggett Road (he could have held them on the charge of arson at Ladywell Fields): I consider that there were enough unusual features about the case to have justified this. The Director of Public Prosecutions has indicated to me that his staff are always willing to advise the police in this way. It may well be that the professional officer of the Director of Public Prosecutions, if asked for advice, would have said simply that there was *prima facie* evidence, and that therefore the prosecution of the boys should proceed. But it would have been his duty to look with care at the evidence, and it may be that if his attention had been directly drawn to the fact that the confessions were uncorroborated (except by each other) and to the other unusual features of the case he would have had doubts whether the prosecution should proceed without further supporting evidence (even though technically there was clearly a *prima facie* case). He might have directed that further enquiries should take place to strengthen the prosecution case against the three boys. I doubt whether under the system as operated at present he would have directed further enquiries into whether some other person might have committed the crime.

Continuing responsibility of police

23.13 The responsibility of the police does not cease when they hand over the police report to the Director of Public Prosecutions. Quite apart from any further enquiries which they are instructed or requested to make by the Director or by counsel (with whom of course the responsibility is shared), and quite apart from the enquiries which they are required to make into alibis on receipt of alibi notices, there is a general duty to follow up and report on any matter which comes to their attention at any stage which either substantiates the prosecution or casts doubt upon the guilt of the accused. It was suggested that it was a feature of the English adversary system that, once a person has been charged and committed, all efforts are geared to securing a conviction of the person charged. There is a natural tendency for this to occur: the police would not have charged the person unless they believed him to be guilty, otherwise they would be laying themselves open to an action for malicious prosecution; a point must, for practical and economic reasons, come when a full-scale enquiry (like a murder enquiry) is wound down and officers are released for other duties. Mr Davis expressed the view that the general basic principle right through is to establish the truth, and that if one is able to make a point more clear one should always attempt to do so at any stage, even a pure discrepancy of fact.

However, DCS Jones gave what I regard as a more realistic view of what actually happens:

"*Q.* . . . as a police officer, how do you see your job? Is it, so far as possible, to reconstruct the whole truth of what happened, in the course of which perhaps a case against Mr X will emerge, or is it to see if you can build up a case against a person who, on the evidence available to you, you conclude is the likely guilty party?

A. Well of course your first example would be the ideal situation, but one finds that is seldom possible, for various reasons. So then we are left with the second example.

Q. Would you accept that if you are driven to the second line of attack, as it were, you may end up with only part of the truth?

A. That often happens."

"*Q.* But you would accept that the ideal is to see if you can reconstruct entirely what happened?

A. Of course.

Q. And everyone's role in it, as far as human memory and human analytical power can arrive at it?

A. Of course.

Q. But would you accept, Mr Jones, bearing in mind the system that we have, that there is an inevitable bias in your enquiry towards producing a case for court, a case against a particular defendant?

A. I would, yes.

Q. Would you accept that, that being the case, you have to guard against that tendency blinding you to some extent to the wider picture?

A. Yes, I would accept that."

PART VI

CHAPTER 24

THE DIRECTOR OF PUBLIC PROSECUTIONS

24.1 The activities of the Director of Public Prosecutions are governed by the Prosecution of Offences Acts 1879 to 1908. Section 2 of the 1879 Act, as amended, provides that:

> "It shall be the duty of the Director of Public Prosecutions, under the superintendence of the Attorney General, to institute, undertake, or carry on such criminal proceedings . . . and to give such advice and assistance to chief officers of police, clerks to justices, and other persons, whether officers or not, concerned in any criminal proceedings respecting the conduct of that proceeding, as may be for the time being prescribed by regulations under this Act, or may be directed in a special case by the Attorney General."

The history of the office is well described in chapters 16 and 17 of Professor J Ll Edwards's book *The Law Officers of the Crown*, and in a lecture given by Sir Theobald Mathew in 1950 entitled *The Office and Duties of the Director of Public Prosecutions.*

24.2 Section 8 of the Act of 1879 provides that the Attorney General, with the approval of the Lord Chancellor and a Secretary of State, may from time to time make regulations for carrying the Act into effect. The current regulations are the Prosecution of Offences Regulations 1946[1]. These regulations need amendment: for instance the references in regulations 1 and 6 to offences "punishable with death" were not revised when the death penalty for murder was abolished, and there is thus a lacuna about the duties and powers of the Director of Public Prosecutions in relation to offences formerly but not now punishable with death, though in fact murder is still treated as falling within regulations 1 and 6. I suggest that early consideration should be given to amendment of the regulations.

24.3 The relevant regulations are the following:

> "1. It shall be the duty of the Director of Public Prosecutions to institute, undertake or carry on criminal proceedings in the following cases, that is to say—
>
> (*a*) in the case of any offence punishable with death;
>
> (*b*) in any case referred to him by a Government Department in which he considers that criminal proceedings should be instituted; and
>
> (*c*) in any case which appears to him to be of importance or difficulty or which for any other reason requires his intervention.
>
> 2. The Director of Public Prosecutions shall give advice, whether on application or on his own initiative, to Government Departments, clerks to justices, chief officers of police and to such other persons as he may think right in any criminal matter which appears to him to be of importance or difficulty and such advice may be given at his discretion either orally or in writing."

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[1] S.R. & O. 1946 No 1467.

"6.—(1) The chief officer of every police district within the meaning of the Prosecution of Offences Act, 1884, shall, as respects offences alleged to have been committed within his police district, report to the Director of Public Prosecutions—

(*a*) every offence punishable with death;

(*b*) every offence in respect of which the prosecution has by statute to be undertaken by or requires by statute the consent of the Director of Public Prosecutions;

(*c*) every indictable case in which the prosecution is wholly withdrawn or is not proceeded with within a reasonable time;

(*d*) every case in which a request for information is made by the Director of Public Prosecutions; and

(*e*) every case in which it appears to the chief officer of police that the advice or assistance of the Director of Public Prosecutions is desirable."

"7. When reporting an offence punishable by death the chief officer of police shall supply to the Director of Public Prosecutions—

(*a*) a full report of the circumstances;

(*b*) copies of the statements of any witnesses; and

(*c*) a report of any proceedings taken before a coroner or justice of the peace in connection with the offence."

24.4 More than 50 statutes provide that proceedings may not be instituted save with the consent of the Director of Public Prosecutions. Other statutes provide that no proceedings may be brought or continued without the consent of the Attorney General and in practice such proceedings are always in the hands of the Director.

24.5 In 1965 discussions took place between the Metropolitan Police and representatives of the Director of Public Prosecutions as a result of which agreement was reached on certain changes in the procedure for reporting specific offences to the Director. The changes did not affect cases of murder.

24.6 Sir Norman Skelhorn described to me the organisation and staffing of his Department both in 1972 and in 1976, and the statistics of work dealt with in 1972 and 1975. The average workload per legal assistant and senior legal assistant increased from 238 cases in 1964 to 366 in 1975. Mr Williams described his own workload at the time when he was asked to assume responsibility for the Confait case: during the first half of 1972 he was concerned in, among other cases, the 'Angry Brigade' case (committal lasted 16 days) and the case of the 'walkie-talkie' robbery at Lloyds Bank (committal lasted 4 days), and on the Monday after the committal in the Confait case he started on committal proceedings in another case which lasted 25 days. Sir Norman Skelhorn said that that was a pretty typical workload in 1972. Mr Williams was offered by his superior officer the help of a legal assistant in connexion with the Confait case, but declined it on the grounds that others in the office were equally busy and that it appeared a straightforward case. I do not think it right to discuss in any greater detail the staffing of the Director's office,

since I understand that the Civil Service Department is at present engaged in an inspection. Sir Norman Skelhorn said "The demands made of [my staff] are excessive." If the present system is to continue, there can be no assurance that cases like the Confait case will not recur if the Director's staff is not increased.

PART VI

CHAPTER 25

THE POLICE REPORT

25.1 The duty of the Director of Public Prosecutions under regulation 1 is to "institute, undertake or carry on [certain] criminal proceedings". When proceedings are *instituted* by the Director, process is laid in the name of the Director of Public Prosecutions. Murder cases are not normally instituted by the Director. The duty under regulation 6 to report to the Director of Public Prosecutions every *offence* punishable with death is not carried out to the letter: the first report is not normally made till after a person is charged, and in cases dealt with by the Metropolitan Police is made by the submission to the Director of a preliminary application for legal aid (form 153). The police can, however, at any stage seek the advice of the Director, whether before or after charge, and often do. Where advice is sought before the Director has taken over a case the Director presumably gives advice under regulation 2; where it is sought after the Director has accepted responsibility for the prosecution, the advice will be given in the exercise of his duty under regulation 1.

25.2 Form 153 (preliminary application for legal aid) sets out the charge(s), the names of the persons charged, and brief details, together with a statement that a report and statements will follow as soon as possible. It is forwarded by the officer in charge of the case to C2 Branch at New Scotland Yard, and then by the Assistant Commissioner to the Director of Public Prosecutions. In the present case the form, signed by DCS Jones, was dated 28 April 1972 and was forwarded to C2 Branch on 29 April (a Saturday). It was despatched on behalf of the Assistant Commissioner by C2 Branch on 2 May and received by the Director the same day. Upon receipt of form 153 the Director accepts responsibility for the prosecution and '*carries on*' the criminal proceedings, but at that time he normally has little information about the case. He is not able to take any effective action till he receives the full application for legal aid (forms 153AA, AB and AC) which contains what is referred to as the police report and to which are attached copies of all statements which the police have taken. There is thus a period which may be in excess of a fortnight when the Director, though technically responsible for the proceedings, is not in a position to act, unless his advice is sought and the necessary material furnished to him to enable him to give advice: in my opinion it ought to be made clear to the police (if it is not so already) that so long as that situation continues they are still responsible for continuing their enquiries as necessary and dealing with any new material which may come in, if necessary seeking advice from the Director. And of course the period should be made as short as possible.

25.3 Form 153AB requires that "brief facts" should be given in numbered paragraphs, and is to be followed by form 153AC setting out "convictions recorded against prosecution witnesses" and "witnesses and remarks". (I was told that some years ago complaint was made that the police included too much, and they were told to confine themselves to brief facts, and that the heading in form 153AB was introduced to emphasise this.) The application in the present case was signed by DCS Jones as supervising officer, addressed to Commander, P Division, and dated 11 May; it was forwarded to C2 Branch

on 15 May and reached the office of the Director of Public Prosecutions on 16 May. (Sir Norman Skelhorn said that the period between the crime and the receipt by him of the full application was slightly shorter than usual.) The "brief facts" ran to 70 paragraphs, and there were attached all the witness statements which had been taken up to that time (with the exceptions mentioned at paragraph 29.7 below) and a list of exhibits.

25.4 The police report is intended to bring to the attention of senior police officers and of the Director of Public Prosecutions:

(a) any particular problems in the case;

(b) an impression of the reliability of witnesses; and

(c) an impression of the reliability of any confession.

It should contain any matters tending to support or contradict confessions. There was a difference of opinion among witnesses as to whether it should draw attention to the fact that there have been other suspects who have been eliminated: DCS Jones suggested that it would be impossible to refer to all eliminated suspects (even if they had been arrested), but that possibly attention should be drawn to those against whom there had been evidence. I doubt if any general rule can be stated, but I have no doubt that there are cases where eliminated suspects should be referred to and that Goode, on whom suspicion inevitably fell, who would have been arrested if he had not agreed to come to the police station voluntarily, who was interrogated for several hours, and who was generally believed in the neighbourhood to have murdered Confait (as DCS Jones knew) should have been mentioned, especially as it was already clear to DCS Jones that the confessions would be challenged at the trial and that it might well be that the defence would suggest that Goode had done it.

25.5 Criticism was directed against a number of statements included in the police report:

(a) Paragraph 20 stated that "The last reliable witness to have seen CONFAIT alive was . . ." (a named witness who spoke of seeing him at about 9.30 p.m. on 20 April) and "from all the enquiries that were made it is more than likely that CONFAIT had stayed in his room on Friday, the 21st April". Prior to the submission of the police report, statements had been taken from three other witnesses who said they had seen Confait on the Friday: Miss Smith, the restaurant owner mentioned at paragraph 13.13(a) above and Mr D Z (see paragraph 5.2 above). DCS Jones gave reasons for not mentioning them: Miss Smith (he said) might not have been referring to the right Friday; if she was referring to 21 April, her statement conflicted with those of Mr D Z and the restaurant owner; he had not himself been able to assess the reliability of their statements whereas he had himself spoken to the witness referred to in paragraph 20 of the police report. The statements of all these witnesses had been included among those sent to the Director of Public Prosecutions. Although I recognise the desirability of keeping the facts brief, I think that last sightings should be mentioned in the police report, with a note against any that are thought to be unreliable.

(b) Paragraph 39 stated that, prior to the start of the interrogation, whereas the boys had implicated themselves in having been responsible for the

fire at 27 Doggett Road, *they "were emphatically denying being responsible for the murder of CONFAIT."*[1] (Paragraph 40 described the admissions made at the interviews.) Prior to the start of the interrogation DCS Jones had had no contact with the three boys himself; the only officers who had questioned the boys were PC Cumming, DC Bresnahan and TDC Woledge. According to their evidence no questions had been asked by them about the murder, and no suggestion made that the boys had done it. DCS Jones's explanation of what he put in paragraph 39 was as follows:

"*Q.* Where are these denials recorded in the confession statements, either the oral interrogation or the written statements?

A. At the time I was dictating this report to my typist I was subconsciously incorporating what I knew at that time. Now at that time I knew that these boys would be strenuously denying the charge at their trial. I knew this as a result of information I had been given by Mr Shine, who was representing one of the boys. I also knew that when I first started to talk to Lattimore he was denying it. I knew at that time that there was a lot of gossip and conversation taking place in public houses in the Lewisham area in which it was being stated that these boys were innocent and that Goode was, in fact, the murderer but we had let him go. I knew also at the time I was dictating this report that Salih had denied all part in the murder other than standing at the door. Again, at the time I was dictating this report, which was being done as a matter of urgency, my wording of that paragraph is somewhat loose, but other than that, sir, I am sorry, I cannot help."

(c) Paragraph 45 stated that "LATTIMORE states that he *went out into the garden,*[1] Picked up some bricks, returned into the house and tried to put the fire out but was unable to do so." There was no reference in Lattimore's answers or statement to going out into the garden.

(d) Paragraph 46 stated that Lattimore "left his parents house and met LEIGHTON and SALIH *by prior arrangement.*"[1] There was no reference in any of the boys' answers or statements to meeting by prior arrangement.

These matters were relied on as part of the attack on the accuracy and completeness of the record of the several interviews with the boys and as casting doubt on DCS Jones's recollection and his regard for truth and accuracy. They suggest that police reports are not always prepared with sufficient care: if reports contain inaccuracies their usefulness is reduced and they may mislead the officer of the Director of Public Prosecutions and counsel.

25.6 More important than inaccuracy in what was stated is the omission of important matters. Various such omissions have been brought out at my Inquiry:

(a) The omission of any times.

(b) Omission of any reference to the factual evidence bearing on the time of death, and in particular the factual disagreement between Dr Cameron and Dr Bain.

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[1] My emphasis.

(c) Omission of any reference to the estimated time of death, and the lack of any expert estimate of the time of ignition of the fire.

(d) Failure to draw attention to the fact that the confessions were uncorroborated, and to any of the "improbabilities" (see paragraph 12.90 above).

(e) Failure to draw attention to the apparent contradiction between the story contained in the confessions and the time of death as estimated both by Dr Cameron and Dr Bain.

(f) Failure to draw attention to the fact that (and the reasons why) Goode had been a suspect but had been eliminated. The remark against the Goodes in the list of witnesses ("Landlord and his wife of deceased person. He is a practicing homosexual. There is a positive antagonism between husband and wife which might manifest itself when either is giving evidence") concealed Goode's position *vis à vis* Confait.

(g) The omission of any reference to the mental capacity of the boys, particularly Lattimore.

(h) Failure to mention the fact that Mr Lattimore senior and Mrs Leighton had made statements expressing satisfaction with the way the boys' statements were taken.

25.7 The omission of times from the police report was the inevitable consequence of DCS Jones's failure to ask the boys questions about times. All the matters referred to in (b) to (f) above were known to DCS Jones before the police report was submitted. It is true that all the witness statements were sent to the Director of Public Prosecutions, that all of these matters (apart from (f)) would be apparent to a careful reader of the statements, and that therefore Mr Williams could be expected to spot them for himself. It is true also that DCS Jones expected to have a conference with Mr Williams prior to committal, and expected to discuss matters of this kind. DCS Jones gave as his reason for not mentioning in the police report the apparent discrepancy between Dr Bain and Dr Cameron and the relationship of the death to the fire the fact that Dr Bain, as divisional surgeon, had been called to the scene to certify death only; DCS Jones said that in relation to time of death he would always rely on the professional, specialist pathologist in preference to the divisional surgeon. The statements of both Dr Bain and Dr Cameron had been included among the statements sent to the Director. DCS Jones said that he knew that there would be consultation with the Director's representative as soon as he had had an opportunity of reading the report, and that one of the things which would be discussed would be Dr Cameron's opinion as to the time of death, the onset of the fire and DCS Jones's view in relation to each of them. I have no doubt that the police should be on the look-out for points which might tell against the prosecution's case and that any report (particularly the first) made by the police to the prosecuting authority should draw attention to any such matters known to the police as well as to points which tend to support it. I have expressed the view (see paragraphs 2.33–2.37 above) that the police are to be blamed for not having themselves made further enquiries or alerted the Director of Public Prosecutions to the necessity to make further enquiries into the matters listed at (a) to (f) of paragraph 25.6 above. The police report was the natural place in which to alert the Director of Public Prosecutions. The matters listed at (g) and (h) should in my opinion certainly have been mentioned.

PART VI

CHAPTER 26

THE PROFESSIONAL OFFICER OF THE DIRECTOR OF PUBLIC PROSECUTIONS

26.1 Mr Doiran Williams, the professional officer of the Director of Public Prosecutions to whom the case was allotted, received the papers probably on 16 May. He read right through the papers, though giving less attention to the statements regarded as non-material which were included among those submitted, and reached the conclusion (which was accepted by the Director) that there was no evidence to support a murder charge against Salih. The case seemed to him straightforward because of the oral and written confessions which were detailed and circumstantial and made independently and repeated in the presence of the parents and Mrs Ferid. Mr Williams said that he must have been conscious that some leading questions had been asked, but he said there was nothing which destroyed his confidence in the confessions. He was not conscious of any breach of the Judges' Rules or Administrative Directions. He was not aware that there had been another suspect or suspects. He was reasonably confident that a conference with police officers was held between 16 and 19 May but he could not remember what was discussed. He did not recollect another conference. He was asked whether he attempted "any analysis of the case as, for instance, by taking the confessions, considering them, and then considering whether other evidence supported them or otherwise." His answer was:

> "I have no conscious recollection of doing that. To be frank, I would doubt that I did. My recollection of the case is that the confessions were sufficiently coherent and telling as not to require such a detailed analysis of the rest of the evidence as to try and discover by perhaps a tortuous process, cracks where in fact there was none."

26.2 Mr Williams knew, he said, from many previous cases that the estimation of time of death, even by a pathologist of great experience, was a very uncertain art, and that there was a marked disinclination on the part of experienced pathologists to be tied down on this point. He had no recollection of perceiving a problem in the evidence of Dr Bain and Dr Cameron (although DCS Jones said he told him about it); if he had, he (like DCS Jones) would have resolved it in favour of Dr Cameron, though he would have included Dr Bain's statement also as part of the prosecution case. He did not see any discrepancy between the time of death and the time of the fire, or between the time of death and the boys' confessions: he did not recollect even having had that problem in mind: he said:

> ". . . approaching the question with hindsight, I think that I would have decided that in so far as there was a discrepancy, the question of ascertaining the time of death by medical means was so uncertain that really it was not sufficiently important a discrepancy to cause me to doubt the strength of the case."

He took no steps to test the evidence of time of death, or to promote further research into the time of the fire. He did not believe that the discrepancy was

raised by DCS Jones or DI Stockwell; if it had been raised he would have mentioned it to his superior, Mr Palmes, and in his observations to counsel. If he had appreciated how potentially serious it was he would have taken it up with Dr Cameron.

26.3 DCS Jones and DSupt Stockwell both recalled that at the conference with Mr Williams the time of death was discussed. According to DCS Jones, he himself said that he considered that they should accept the evidence of Dr Cameron rather than Dr Bain. No difficulty was realised about the time of death in relation to the start of the fire in view of the evidence of Dr Cameron and the other supporting evidence. DCS Jones was asked whether the "inconsistency of the boys' confessions as to the sequence of the murder and the arson and Dr Cameron's opinion" was discussed with Mr Williams; he said it was, probably as early as 18 May. He was cross-examined on this point:

> "*Q.* But, you see, you are still not facing it, Mr Jones, if I may say so respectfully to you. It is not the conflict between Professor Cameron and Dr Bain that I am talking about, it is what, on the face of it, is a necessary conflict between the time of the fire and the time of death (which Dr Cameron did not put later than midnight, do you follow), and the fire was, you remember, a paraffin fire (said to be, in the confessions)?
>
> *A.* Yes.
>
> *Q.* It is the conflict between that and the confessions of the boys which imply (although they do not strictly say so) that the killing and the setting on fire were a continuous process—not literally continuous, but separated by only a short interval. That is the problem that I am on. Is that a problem which had occurred to you at any stage up to the trial, or perhaps even during the trial—really occurred to you—which you really faced?
>
> *A.* Neither myself, Mr Williams or Mr Du Cann realised or were concerned with that discrepancy—
>
> *Q.* Quite so.
>
> *A.* —because of Professor Cameron's evidence, sir. We were conscious of the fact that it was there, but in view of Professor Cameron's evidence, it did not cause myself, Mr Williams or Mr Du Cann any undue concern; and, of course, it certainly did not cause the learned Judge or the jury any concern during the trial, sir.
>
> *Q.* That is precisely what I was really suggesting to you. I was not saying you were alone. In fact I specifically said that you were not.
>
> *A.* But I was conscious of the fact that there could be this discrepancy, sir, yes."

But then later:

> "*Q.* Mr Jones, I am not troubled about Dr Bain at all. What I am troubled about, and I would like you to concentrate on, is whether there was any discussion between you and the Director as to there being a gap between the latest time of death of the doctor you were relying on, namely Dr Cameron, and what on the evidence of those in the house might seem to be the time of ignition of the fire?
>
> *A.* No, that was not discussed.
>
> *Q.* I want to give you a chance to think about your answer. Your answer

a few moments ago indicated this was a gap that you understood at the time to be there. Is that right? You had realised that that gap could exist?

A. Yes.

Q. If you had realised it, why did you not discuss that with Mr Williams?

A. Because I did not attach a great deal of importance to it in view of the admissions made by the youths and the other evidence which we [had] to support the charges."

26.4 Mr Williams regarded his duty as being "to decide upon the selection of the witnesses, the editing of their statements if thought necessary, whether or no in appropriate cases the evidence should be served upon the defence before committal and in cases where proceedings would be envisaged under section 7 of the Magistrates' Courts Act, the so-called 'old-fashioned' committal, to decide upon the order of witnesses and matters of that kind", and to appear at the committal proceedings. He would give legal advice if requested. He might direct further enquiries to be made in order to strengthen the prosecution case. He did not see himself as being in charge of the police enquiries. It was his duty to see whether there was evidence to support the charges. He was asked whether he regarded it as his duty to look at the case afresh from the beginning, and he said:

> "I accept the suggestion that is implicit in your question that I ought to bring a fresh mind to the papers. I agree, but necessarily, I would be only capable of forming a view about the case by relying upon the papers which were before me. And I would certainly regard it as invidious to seek to even mentally institute enquiries which are not in the province of the Director and which properly fall within the province of the police."
>
> "My concept of the analytical approach involves considering the question whether, if there be any evidence that ought to be obtained, that evidence should be obtained."

26.5 Sir Norman Skelhorn said that his Department was responsible for assessing and evaluating the evidence. It was submitted by counsel appearing for the Director that the Director was not required to start a fresh investigation: he would in the first place look at the material provided by the police (including not only the police report, but also all the statements), and in most cases that is all that he would feel the need to do, but if necessary he could ask and did on occasions ask for further enquiries to be made and the material supplemented. One important matter which the Director's professional officer would consider is whether the evidence supported the charge, but he ought not to restrict himself to that. When there were more than one person who might have committed the crime, he ought to concern himself with the question whether the police had charged the right person and in any case whether they had laid the right charge.

26.6 Sir Norman Skelhorn said that if the discrepancies in the evidence had been noticed it would have been the duty of his professional officer:

(a) to have a conference with Dr Cameron to see whether his views could be reconciled with the confessions and the probable time of the fire;

(b) to call Dr Cameron and to draw the attention of the magistrates on committal to the point so that they could decide whether or not there was a case which could properly be committed for trial; and

(c) if the case were then committed, or if the discrepancy had not come to his attention till after committal, to draw counsel's attention to it.

Sir Norman expressed doubt as to whether the discrepancy should have been spotted and regarded as important by his professional officer. Sir Norman suggested that Mr Williams was entitled to take the view that there was really no reason to doubt the validity of the confessions, and that the pathologist's evidence on time of death was so vague that it could not constitute such a reason.

26.7 It seems to me clear that it was Mr Williams's duty to look for weaknesses or contradictions in the prosecution's case, and to see whether there were matters which should be further enquired into. If (as I have held) there were discrepancies in the evidence which the police ought to have either further probed or brought to the attention of Mr Williams, then I necessarily hold that Mr Williams (not having had them brought to his attention) ought to have noticed them himself and taken appropriate action. If (as he said) he did not notice anything which required further investigation or specific reference to counsel, then in my view he was at fault, though in extenuation it can be said that he was under great pressure of work. If (as the police say) his attention was drawn to them and he did nothing, then his fault was greater.

26.8 I accept that Mr Williams is an experienced and conscientious officer. I believe that he did as much as under prevailing practice was expected of him. Sir Norman Skelhorn did not criticise him:

> ". . . for him . . . to go ahead and have his committal without seeing Dr Bain or Professor Cameron to say, 'Can you be more definite about this?' when he had no particular reason to suppose he or they could be and when he had no particular reason . . . to doubt the validity of the confessions which these youths had made, was the proper thing to do."

The scrutiny which Mr Williams provided in this case fell short of the scrutiny which I believe is required and which (in theory at least) the procurator fiscal would carry out under the Scottish system through the process of precognition. If I am right in thinking that Mr Williams did as much as under prevailing practice was expected of him, then I am driven to the conclusion that the practice was unsatisfactory.

PART VI

CHAPTER 27

COMMITTAL PROCEEDINGS

27.1 Committal proceedings should provide an opportunity for an independent review of the evidence to see whether the case is one which ought to be allowed to proceed to trial. Even before the introduction of 'paper' committals I doubt whether, in the absence of submissions by the defence, committal proceedings in fact served this purpose.

27.2 The committal in this case was held under the provisions of section 7(1) of the Magistrates' Courts Act 1952,[1] not under section 1 of the Criminal Justice Act 1967, i.e. it was not what is called a 'paper' committal where there is no consideration of the evidence. However, by virtue of section 2 of the Criminal Justice Act 1967 the magistrates received written statements in lieu of oral evidence. The statements of all the witnesses to be tendered had been given to the solicitors for the defendants prior to the committal hearing in accordance with section 2(2) (*c*) and none of them had objected to the statements being tendered in accordance with the section. No witnesses were actually called, and not all the statements were read in full (see section 2(4) and 2(5)). The statements served on the defendants did not include the original statements (two for Goode, and one for Mrs Goode) but only the later statements taken on 2 May and 28 April respectively (see paragraphs 29.2–29.16 below). They did not include the statements made by Mr Lattimore senior and Mrs Leighton on 24 April (see paragraph 29.35 below).

27.3 Mr Williams appeared for the prosecution at the committal proceedings, but since he had not himself appreciated the discrepancies in the evidence he did not mention them to the magistrates, nor call any evidence *viva voce*, nor did the magistrates discover the discrepancies for themselves. The hearing took place at the end of a full morning's list and only a limited time was available for it. I am sure that this is not unusual.

27.4 Sir Norman Skelhorn told me that, in the present case, assuming that the discrepancy had been perceived as such, he would have

> "expected Mr Williams to have a conference certainly with the pathologist in those circumstances to see whether his views could be reconciled with this. If he said, 'No, it cannot have been after 12 in any circumstances', then I would have expected him still to present the case in the light of the three confessions together with certain other matters supporting them to the bench, call Dr Cameron and draw the attention of the bench to this point so that the bench could consider it and decide whether or not there was a case which could properly be committed for trial."

If he had done so it is possible that the magistrates might have concluded that no properly directed jury could have found the case proved to the criminal standard of proof on the evidence of the confessions coupled with the evidence

[1] This was because of the decision in *R v. L and W* ([1971]Crim.L.R.481) that examining justices dealing with a juvenile charged jointly with an adult were required by the provisions of section 6(1)(*b*) of the Children and Young Persons Act 1969 to consider the evidence under section 7 of the Magistrates' Courts Act 1952 or section 2 of the Criminal Justice Act 1967. This rule has now been reversed (see section 44, Criminal Justice Act 1972).

as to time of death and refused to commit; but much more likely they would have committed for trial, on the basis that a trial court was the right place to resolve the questions. If they had done so, this would not have absolved Treasury Counsel from the duty of himself considering *de novo* the question whether, in the light of all the evidence including the alibi statements, the case should proceed to trial.

27.5 Sir Norman was of the opinion that committal proceedings can provide a good opportunity for ascertaining whether there are any weaknesses or discrepancies in the prosecution case. His Department sometimes takes the initiative to have full committal proceedings. He said:

> "This is done in cases where we consider that the circumstances are such that it is desirable to see precisely what a particular witness will or will not say in relation to the matter. This applies to rape cases where it is often most desirable that the woman involved should give her evidence there, and it also applies to cases where one has one or more accomplices giving evidence and one wants to know precisely what they are going to say and test it. They are the sorts of cases I have in mind."

27.6 There is obviously scope for using committal proceedings to a greater extent to test the prosecution's case. But this will not happen unless there is either a defence submission or the person appearing for the prosecution himself draws the attention of the magistrates to a point of difficulty in the prosecution's case. And this will not happen unless there is a careful and dispassionate survey and review of the evidence by the counsel, solicitor or police officer responsible for presenting the case on committal, a survey devoted not only to seeing whether there is evidence to support the charge but whether there are any weaknesses in the prosecution's case which should be brought out before the magistrate.

27.7 Committal proceedings cannot therefore act as a safeguard against a failure to perform this duty. Under our system, the magistrates do not take the initiative. It is more often than not the defence who ask for a 'paper' committal. It is all too easy for a case to slip through on a section 1 committal without the kind of examination which will reveal weaknesses in the prosecution's case. When that happens the first occasion when there will be a judicial examination of the facts on which the prosecution is based will be at the trial.

27.8 If there is thought to be a convincing argument for a real (as opposed to a formal) preliminary review of every serious case by someone with a quasi-judicial role, then it does not seem to me that committal proceedings can be relied on to provide this, unless a requirement for a *viva voce* hearing is introduced for other classes of case, as has been done for some cases resting on identification evidence (see the Attorney General's statement in the House of Commons on 27 May 1976[1]). A similar rule could be introduced for all cases where the prosecution rests wholly on a confession. This would ensure a judicial scrutiny in such cases and would provide a safeguard against such cases being allowed to go to trial unscrutinised. But even if such a requirement were introduced for certain categories of case there would nevertheless be other cases falling outside the categories which merited special scrutiny, e.g. where there is a conflict between prosecution witnesses on an important point. There can be no

[1] Official Report, Volume 912, columns 287-289.

substitute for vigilance on the part of the officers of the Director of Public Prosecutions and a request by them for a full *viva voce* committal in such cases.

27.9 Another function of committal proceedings is to notify the defence of the case which they have to meet. It is for this reason that in a full committal depositions are taken and in other cases witness statements are served on the defence. The defendants should be entitled to assume that the depositions or statements constitute the evidence on which the prosecution is going to rely. If any additional evidence is to be relied on, then a notice of further evidence must be served. It seems inconsistent with this procedure if the prosecution is permitted without notice to the defendants to advance at the trial a case which is inconsistent with some of the evidence contained in the depositions or witness statements. If this is permitted the defence might well be prejudiced at the trial.

27.10 In the present case the latest time of death given by the medical witnesses in their statements was 11.45 or midnight (i.e. four hours before Dr Cameron first examined the body). Mr Waley, who appeared at the trial for Lattimore, told me that Lattimore's alibi up to 11.45 p.m. appeared to cover the time that the offence had been committed: the defence, he said, had the medical evidence on the committal statements; their alibi seemed to make that totally impossible, "and in due course reasons were found why that time could be expanded." Before the trial the defence did not know that the time was going to be expanded beyond 11.45 or so. At least one of the defence counsel indicated that he did not require Dr Cameron to attend to give evidence. The only possible inference from that fact is that the defence were content to accept the period given by Dr Cameron in his witness statement.

27.11 Mr Du Cann opened the case, on time of death, in the vaguest possible way; he left the question wide open. In support of the prosecution's case he called evidence to the effect that death could have occurred immediately before the onset of the fire, i.e. outside the periods mentioned in the two statements. After the close of the prosecution's case he suggested to Leighton and Salih that they had been to the house once only, and that after 12.45 a.m. At the conclusion of the case he was suggesting that death had occurred after midnight. In his final speech he made a submission (which the Judge adopted in his summing up and the jury must have accepted) that death could have occurred immediately before the fire and therefore that the account given in the boys' confessions could be accurate.

27.12 It is true that the indictment was framed widely enough to cover this time. It is also true that no objection was made by any defence counsel. Mr Du Cann said:

> ". . . the prosecution case was based upon the evidence which was given not merely in the committal documents, but upon the evidence which was given in court. One finds from time to time that there are variations between the evidence as it is set out in the prosecution statements, and then the evidence which is given in court. Nobody was taken by surprise more than I was or anybody else was by the evidence which Dr Cameron gave, which made it appear to me at any rate that the time of death was vague in relation to the time 12 o'clock as a cut-off time, so that one had to examine the period after 12 o'clock as well. I do not remember throughout the

whole of the trial there being any protest by any of the counsel appearing on behalf of the defence that that was not something which it was proper to do upon the facts, or something which took them by surprise."

It may be that if notice had been given the defence case would not have been conducted any differently. But if the rules had required notice to be given, it would have been necessary to take a further statement from Dr Cameron (and perhaps Dr Bain as well); and it might then have become apparent that the evidence which they were prepared to give would not have supported, and indeed would have contradicted, the case for a killing after midnight.

PART VI

CHAPTER 28

TREASURY COUNSEL—INVESTIGATION OF ALIBIS—CONFERENCE WITH DR CAMERON—DECISION NOT TO CHALLENGE LATTIMORE'S ALIBI EVIDENCE

Treasury Counsel

28.1 In any case conducted by the Director of Public Prosecutions which is to be tried at the Central Criminal Court (the Old Bailey) the Director nominates one or more counsel from the panel of Treasury Counsel appointed by the Attorney General. At the Central Criminal Court there are eight senior and four junior Treasury Counsel. In addition, since 1972 a supplementary list has been introduced at the Central Criminal Court of 18 counsel on whose services the Director of Public Prosecutions can call if Treasury Counsel are not available. This system has the advantage that the Director has priority in calling on counsel of the requisite calibre and experience, and that counsel are familiar with the operation and policy of his Department (but see paragraph 29.24 below). Mr Du Cann told me that in 1972 Treasury Counsel were under great strain, though since then the position has been alleviated by the appointment of supplementary counsel. He described the sort of workload which he had: he would be in court every day; he would have other cases awaiting some form of interlocutory action; he would have anything between 30 and 50 briefs on his table; each weekend, in addition to preparing for the case he would be doing in court on Monday, he would expect to read two full sets of papers and draft the indictment, the advice, the order of witnesses and a note summarising the case for his leading counsel as a basis for his opening speech; and also read bits of possibly a couple more. This must sound to the layman an appalling load, but it is the sort of thing to which senior members of the Bar are accustomed. It does indicate, however, that counsel has no spare capacity and cannot be expected to give attention to a case in which he is briefed, unless he is specifically instructed to do so, until shortly before the trial.

28.2 Mr Du Cann thought the case unusual because it was a bizarre occurrence (not a typical 'queer-rolling'), because of the ages of the boys and because of the facts of the case. There was the plainest contradiction between Dr Bain and Dr Cameron—who gave very different accounts of the development of rigor but estimated brackets for time of death which both contained the same period. It was for this reason that he required the attendance of Dr Bain to give evidence at the trial. He did not, however, think it right to clarify the contradiction before trial. On 5 July he wrote a note for his then leader (Mr Pownall) which mentioned "Cameron—timing of death. North—speed of fire": these, he said, were things to be discussed. He wanted a conference with Dr Cameron, but was not able to have one till the second day of the trial. He had one conference with police officers, about two weeks before the start of the trial, but does not remember what was discussed. Mr Du Cann had seen Dr Scott's report on Lattimore before the trial. He realised that some part of the confessions had been elicited by leading questions, though other parts had not. He thought it necessary to examine the confessions with care because of the mental age and suggestibility of Lattimore. He said that he took a positive

decision not to try to sort out the time of death before trial. He would have seen no objection to the police or the Director of Public Prosecutions before committal seeking to clarify the statements of Dr Bain and Dr Cameron as to time of death, or even doing so after committal provided this was done with the advice and on the instructions of counsel, and he agreed that this might have brought to light the fact that Dr Cameron used the word "commencing" to mean 50 per cent. complete. But he said that the possibility did not occur to him: both complete and commencing were "remarkably simple, straightforward English words." He suggested that his failure to do so (if it was a failure) did not indicate any fault in the *system*: he thought there was a bald conflict of fact which should be left for resolution in court.

Investigation of alibis

28.3 The receipt of the alibi notices and the statements of the alibi witnesses further highlighted the question of the time of death. By that time the brief had gone to counsel and the papers of the Director of Public Prosecutions had gone to the Old Bailey. No professional officer on the Director's staff at that stage applied his mind to the time question, nor under the system which prevailed could he have done so (see paragraph 28.4 below). It was clearly desirable (as Sir Norman Skelhorn agreed) that a conference should take place with Dr Cameron as early as possible: Sir Norman said that the question whether it was adequately established on the alibi that, at any rate up to 12, Lattimore was not there, coupled with the vague evidence of the pathologist highlighted the time question and made it desirable that a conference should take place as early as possible, since it might result in further enquiries or further action to be taken. Most of the statements of alibi witnesses were sent by the police to the Director of Public Prosecutions on 4 August and by the Director to Mr Du Cann on 8 August (with a request simply to advise on any notices of further evidence required), and the remainder on 11 and 15 September respectively. No mention was made in the further police reports of any problem created by Lattimore's alibi in relation to the time of death, and no specific instructions were sent to counsel to advise generally on the case in the light of the alibi statements.

28.4 Since 1968 there has been no professional officer on the Director's staff at the Central Criminal Court. The staff there is headed by a highly experienced managing clerk holding the rank of senior executive officer. Most of the work there is administrative, and I am sure it is competently done. All the papers in cases committed for trial at the Central Criminal Court are sent to the managing clerk at the Old Bailey, and the professional officer does not keep a copy, and is not able to exercise any continuing supervision over the case. I find this unsatisfactory; for instance, when the statements of the alibi witnesses were sent to the Director of Public Prosecutions, they went to the Old Bailey not to Mr Williams. No qualified member of the Director's staff addressed his mind to the impact of the alibi statements on the rest of the case, or to the question whether counsel should be instructed to advise generally on the case or specifically on the impact of the alibi statements. Sir Norman said "As soon as the brief is delivered after committal for trial, the conduct of, and ultimate responsibility for, the proceedings lies with Counsel". I do not believe that that is so: the responsibility remains with the Director of Public Prosecutions, even though he acts on the advice of counsel and very properly leaves to him

most of the decisions relating to the conduct of the trial. But before the trial opens counsel should not be expected, without specific instructions, to exercise the continuing oversight over the case which properly belongs to the person carrying out the role of instructing solicitor, in this case the Director. I believe that the Director's professional officers should retain a set of papers, and should themselves receive and consider every piece of further material which comes in right up to the trial, and that any instructions to counsel should be drawn up by the professional officer.

Conference with Dr Cameron

28.5 The trial did not open till 1 November, nearly three months after 8 August, but no conference was held by Mr Du Cann or by anyone else with Dr Cameron till the second day of the trial, just before he gave evidence. There may have been all sorts of reasons for this. Mr Du Cann told me that he had intended to ask for a conference with Dr Cameron prior to the start of the trial, but at some point (I do not know when this was, but I believe it was quite shortly before the trial) he was told that Dr Cameron was engaged on professional work in Ireland and was not available for a conference. I consider that as a matter of general practice in cases conducted by the Director of Public Prosecutions, immediately after receipt of statements of alibi witnesses, *either* the whole case should be reviewed in the light of the alibi statements by a professional officer of the Director of Public Prosecutions *or* instructions should be sent to counsel to advise generally. If this had been done in the present case, it might have been possible for a conference to have been held two months or more before the start of the trial when deliberate consideration should have been given to the case. It might well be that, if Dr Cameron had been given sight of the other evidence and asked to reconsider his evidence in the light of it, and had been asked the relevant questions in a neutral way instead of being asked to suggest ways in which the period for the time of death could be extended after midnight, the course of the trial would have been different and an acquittal might have resulted.

28.6 Professor Cameron said that in his experience there was "quite often" a conference between the pathologist and the officer of the Director of Public Prosecutions or prosecuting counsel before the trial but "unfortunately, not often enough". Where a pathologist's evidence is important to the Crown's case and may be contested, I should have thought that there ought always as a matter of course to be a conference (though if the suggestion which I make in chapter 22 were adopted it would make the need for a conference less crucial).

28.7 Sir Norman Skelhorn said that there would have been no objection to the police or the Director of Public Prosecutions going to Dr Bain and Dr Cameron and asking them to explain their statements. Obviously it is wrong to attempt to persuade a witness to change his evidence. But what was needed here was an explanation of the sense in which words were used and a reconsideration of estimates in the light of factual evidence not known to the witness at the time when the original evidence was given. If any additional material, or any change from the original statement, resulted from this process it should have been communicated to the defence by means of a notice of further evidence. Mr Du Cann considered that the place to resolve contradictions was in court, and said he would not wish anyone to resolve contradictions except through the court. But he nevertheless agreed that there was no objection to an enquiry

to discover what the language used by the witnesses in their statements meant. He would have no objection to the police doing this prior to committal, or even after committal provided this was done with the advice and on the instructions of counsel.

28.8 My attention was drawn to paragraphs 5.98–5.100 of the Devlin Report:[1]

> "**5.98** In paragraph 1.22 we explained how it had come about that the police in practice, before launching a prosecution, considered not only whether there was a *prima facie* case, such as would satisfy an examining magistrate in committal proceedings, but also whether in all the circumstances the case was likely to succeed. For this purpose the police have a duty to make enquiries in a quasi-judicial spirit. By quasi-judicial in this context we mean that the enquiry is to be conducted as much with the object of ascertaining facts which will exonerate as of ascertaining those which will convict; and that the facts when ascertained are to be assessed impartially. It is because this quasi-judicial duty exists that it is not unreasonable to expect a suspect to make a voluntary statement to the police; no such expectation could reasonably be entertained if he were simply giving advance information to the enemy. If a voluntary statement made at the outset includes particulars of an alibi, it is therefore the duty of the police to enquire into these particulars and in the light of the results of the enquiry to re-examine their own evidence of identification and to consider whether it remains strong enough to justify a prosecution.
>
> **5.99** But once proceedings have been initiated the position is radically altered. The process is then under judicial control and there is no longer any place for quasi-judicial decisions. Indeed, the police are not normally required to reach any decision at all. Their duty, insofar as it is indicated by the CLRC, is to 'investigate' the alibi, and in particular to make enquiries about the credit of the witnesses to be called in support of it. What is meant by 'investigation' is clear enough when one considers the mischief that the new procedure was designed to remedy. The mischief of the 'sprung alibi' was that further enquiries, which might disprove the truth of it, could often not be made by the prosecution without an adjournment. Advance notice means that such enquiries can be made in advance. For that purpose the prosecution have to know more than would appear from brief particulars. They must know enough of what the witness is going to say to lead them maybe to other sources, contradictory documents perhaps or to other witnesses whom they will then have time to bring to court. Hence the need, in the view of the CLRC, for the police interview. But the object is not for the police on the one hand to cross-examine the witnesses with a view to breaking them down nor on the other hand to do the work of the defence or turn stones that the defence has left unturned. They have not got to make up their minds whether or not the witnesses are telling the truth or to decide whether the defence is likely to succeed. It would be absurd to evaluate the defence without interviewing its principal witness who is naturally the accused himself.
>
> **5.100** Of course, even in a limited investigation something may emerge

[1] HC 338. April 1976.

that throws grave doubt on the prosecution's case. It is not, however, at this stage for the police to assess the weight of the doubt and assume the responsibility for acting on it. Open justice requires that after proceedings have been initiated everything should be done in public; the defendant has the right to public exoneration and the public (and in particular those members of it upon whose evidence the charge was brought) a right to know why the proceedings are not taking their normal course. The police are not to be expected to withdraw a prosecution unless it is perfectly clear that it is quite hopeless. It is only by rigid adherence to this principle, notwithstanding that it may involve time and money and perhaps some distress to an accused, that there can be avoided any suspicion of a hole and corner affair. All this is well illustrated by Dougherty's case. There were witnesses who were quite convinced that he was the man. He had in fact been a shoplifter and some of his friends and neighbours who were prepared to support his alibi had minor convictions. An announcement that the police had investigated the alibi and accepted the truth of it might well have given rise to dissatisfaction at the British Home Stores and even possibly led to suggestions that the police had been fixed."

28.9 Mr Du Cann expressed a somewhat similar view. He said that though it was the duty of the prosecution to investigate alibis and for the police to take statements from alibi witnesses (unless prevented by the defence solicitors), none the less, under the adversary system, the court was the proper place to sort out alibis, unless there were exceptional circumstances, in which case he would get on to the Director of Public Prosecutions and ask for further enquiries, and if those enquiries upheld the alibi he would offer no evidence.

28.10 Sir Norman Skelhorn said (in relation to alibis):

"I am entirely in agreement with the views expressed at paragraph 5.98 of the Devlin Report: 'If a voluntary statement made at the outset includes particulars of an alibi, it is . . . the duty of the police to enquire into these particulars and in the light of the results of the enquiry to re-examine their own evidence . . . and to consider whether it remains strong enough to justify a prosecution.' "

He went on, speaking generally and not solely in relation to alibis:

"For the sake of completeness, however, I would record that I do not concur with the Devlin Committee's view that 'once proceedings have been initiated the position is radically altered.' In my opinion, a prosecuting authority ought not to proceed with a prosecution if, *at any stage*, it forms the view that the evidence is not sufficient to secure a conviction. Cases do occur in which an alibi, when tested, is found to be reliable, and in such instances, whether they be before or after a charge has been made, the prosecution's case should be considered in the light of it, and if it is then considered that it would be unsafe to continue, the proceedings should be stopped and the reason stated openly in court."

28.11 Alibis are a special case of the general principle. In relation to alibis Sir Norman said:

". . . I take the view that it certainly is the obligation of the police whenever an alibi comes to their notice, in whatever form, whether it be (indeed in many instances it is of course) after the charge that you get a

notice of alibi. You can get that after committal. Once that is given, my view is they have got a duty and should have the duty of investigating that alibi with a view to seeing whether it is in fact reliable and in the full sense an alibi, in that it covers the whole of the material time and that sort of thing. If they come to the conclusion that it is reliable and is a real alibi, certainly in cases which I am concerned with conducting, I should expect them to, and I am sure they would, inform me of this—of the result of their enquiries and if they did not, I should be asking for the result of their enquiries. If that was the state of affairs, you have to look at the evidence again and say 'In the light of this and the evidence, the other way, that it is up-to-date, is this sufficient to warrant going on or does this cast such a doubt upon the matter that plainly we should not go on.' If you come to the latter view, you take the necessary steps to withdraw."

28.12 Sir Norman Skelhorn regarded himself as being entitled, even sometimes under a duty, to withdraw a prosecution if in the light of all the evidence he considered that it should not be proceeded with. Before deciding to do so he would normally take advice from Treasury Counsel, and might consult the Attorney General in appropriate cases.

28.13 The observations made by the Devlin Committee in paragraph 5.100 of their report[1] were of course directed to the duty of the *police*, and there is in fact no inconsistency between what the Committee said and the view expressed by Sir Norman Skelhorn. The withdrawal of a prosecution by the Director of Public Prosecutions does take place in public: in the ordinary case, counsel (with the consent of the judge) will state publicly in open court that he offers no evidence. However, some people might wrongly conclude from what the Devlin Committee said that in all cases doubtful matters should be left to be sorted out at the trial. The Confait case has demonstrated the possible consequence of this. The question whether a prosecution should be brought to trial should never be regarded as closed, but should be regarded as open for reconsideration right up to the start of the trial. The attention of the professional officer of the Director of Public Prosecutions and of counsel should continue to be directed to this question. The police should regard themselves as under a duty to bring to the attention of the Director of Public Prosecutions or counsel any material which might lead to the conclusion that the prosecution should be dropped.

Conference between Dr Cameron and Mr Du Cann

28.14 The conference finally took place on the second day of the trial, shortly before Dr Bain gave evidence, and even then, owing to a misunderstanding as to the place of meeting, the conference was a hurried one. Dr Cameron did not (as I find) see Dr Bain's statement or those of the firemen, and he was not in court to hear the evidence of Dr Bain. Mr Du Cann opened the case on the basis that the killing and the fire were connected, that the fire had been set up to cover the homicide, and that the fire occurred shortly after the killing. Having had no opportunity for discussion with Dr Cameron he opened the time of death very broadly. I am satisfied that he was aware before the trial opened of the problem of reconciling the time of the fire, the time of death and

[1] HC 338. April 1976.

the alibi of Lattimore, and that he was concerned to see whether there were any grounds on which it could be suggested that the time of death might have been later than that given by Dr Bain (8 p.m.–10 p.m.) and Dr Cameron (7.45 p.m.–11.45 p.m.) in their witness statements.

28.15 If Mr Du Cann regarded it as open to him to present his case on the basis that death occurred at a time later than the end of either bracket, I regard it as regrettable that he should not have carefully discussed this way of putting the case with Dr Cameron before the opening of the trial to see if the medical evidence would support it (or at least not contradict it), and that any additional material derived from the conference should have been disclosed to the defence. Mr Du Cann said "Nobody was taken by surprise more than I was or anybody else was by the evidence which Dr Cameron gave, which made it appear to me at any rate that the time of death was vague in relation to the time 12 o'clock as a cut-off time, so that one had to examine the period after 12 o'clock as well", but I find it difficult to believe that this was so for the reasons given in paragraph 28.17 below. The defence were entitled to assume that the case which they had to meet was a killing between 7.45 p.m. and 11.45 p.m., and I consider that if the prosecution was to present a different case or to put to prosecution witnesses matters not referred to in the witness statements as the foundation for a suggestion to the jury that death occurred at a later time, notice should have been given to the defence. Even if these matters had been mentioned in opening, the defence might legitimately have said that they were taken by surprise; but in the present case Mr Du Cann made no reference to these matters in his opening speech; the first time they were mentioned was in the examination in chief of Dr Bain. (It is true, however, that none of the defence counsel complained.)

28.16 Professor Cameron told me that he had not asked for a conference himself because he "did not realise there was so much controversy"; despite the conference which he had with Mr Du Cann he did not appreciate that the Crown's case was that the killing had taken place between 12.45 a.m. and 1.10 a.m.; and that the first time he realised that the time of death was all-important and crucial in the case was after coming out of the witness box at the Old Bailey—"I was somewhat more than surprised" he said "as a result of even the examination in chief." If that is so, Mr Du Cann must have failed to make clear at the conference what the Crown's case on time of death was to be.

28.17 When Mr Du Cann finally saw Dr Cameron on the second day of the trial, he was not in my view seeking to ascertain from him whether there was a time after which death could not have occurred, but whether there were factors which might have had the effect of accelerating rigor mortis and making it possible that death occurred immediately prior to the ignition of the fire. That is the only explanation for the manuscript notes which Mr Du Cann wrote at the time of the conference with Dr Cameron (see paragraph 7.17 above). If (as Mr Du Cann said) Dr Cameron told him that heat stiffening and cadaveric spasm had no relevance, it is surprising that Mr Du Cann felt justified in putting them to Dr Bain. Dr Cameron was not given time or a proper opportunity to reconsider his estimate of the time of death, nor was he provided with the relevant material (see paragraph 22.2 above). If he had been, and had been reminded of the reference to post mortem staining in his original report, I think it is likely that he would have given an opinion not differing from that

which he ultimately gave in the Court of Appeal on the reference. I do not accept the suggestion that further questioning of Dr Cameron at a conference held prior to the trial would not have made the time of death more precise; even if the suggestion were correct, the questions should have been asked.

Decision not to challenge Lattimore's alibi evidence up to 11.30 p.m.

28.18 There was a conflict of recollection on this. DSupt Stockwell thought that the decision had been taken before the start of the trial: DSupt Stockwell said that it was at a conference held about a week before the trial that Mr Du Cann decided that the case would be based on the time between midnight and 1.30 a.m. so therefore the alibis before that time would not be challenged. Mr Du Cann, on the other hand, was convinced that the decision had not been taken until after he had heard all the prosecution evidence, all the Lattimore family's evidence except that of Mr Lattimore senior, and the evidence of Mr Craven. Mr Marriage was pressing him, and finally he said "I will admit the evidence, you can read it." Mr Du Cann said that there was no conversation before the trial about not challenging it, and that he had envisaged that he would be cross-examining all the alibi witnesses. Mr Du Cann's reason for agreeing not to challenge the evidence was that to him the prosecution case was that the murder had been committed and the fire started after the end of the period covered by the Salvation Army evidence. In view of the evidence given by Mr Du Cann (which was supported by Mr Waley) DSupt Stockwell was prepared to agree that his recollection was probably wrong.

28.19 DCS Jones supported Mr Du Cann's decision. His evidence was as follows:

> "*Q.* What I suggest you or perhaps someone else ought to have done once the alibi evidence came in, was to say to themselves 'This makes it absolutely crucial that either we can establish that death occurred after 11.45 or we can provide some explanation satisfactory to the jury that will cope with a death before 11.45—that is to say, satisfactory indications of two visits.' Is that a problem that you appreciated prior to the trial?
>
> *A.* Perhaps I did not appreciate it as much as I should have done.
>
> *Q.* Did you appreciate it at all?
>
> *A.* No, because had I appreciated it I would have probably tried to have persuaded Mr Du Cann to have called the alibi evidence. I must admit I did not persuade him; in fact I persuaded him not to call the alibi evidence.
>
> *Q.* THE CHAIRMAN: You were suggesting to Mr Du Cann it should not be challenged, were you?
>
> *A.* I could not see any really good reason for challenging the alibi evidence because I felt that this had happened after 11.30 in view of the boys' confessions.
>
> *Q.* We have heard Mr Du Cann was taking the same view.
>
> *A.* He did, yes. We did discuss it and we both came to this decision.
>
> *Q.* MR GLICK: Even had the alibi evidence been challenged, it must—I would have thought—have occurred to you, that that challenge might fail in view of the sort of people who were going to be called as alibi witnesses?
>
> *A.* Not really. It was just a question of prolonging the trial unnecessarily.

Q. Again this is based on the absolute certainty in your mind that death occurred after 11.45?

A. Yes.

Q. But it is only when the alibi statements are taken that it turns from being a significant factor in your mind to one that might not, at the end of the day, be relevant to the case, but to being a crucial matter in proving the case and that the death occurred after 11.45. That is the turning point, is it not?

A. Yes.

Q. Because if they have not got an alibi even up to 11.45 it does not matter?

A. Correct.

Q. What I am suggesting to you is that from the time the alibi notices were served and certainly from the time the alibi witnesses had been proved it ought to have been clear to you that it was vital to establish that the death occurred after 11.45, if you were not going to challenge the alibi?

A. I felt that the prosecution were quite able to do this and of course we were able to do it because the jury convicted."

PART VI

CHAPTER 29

EDITING OF WITNESS STATEMENTS—DISCLOSURE TO DEFENCE

Editing of witnesses' statements

29.1 A practice direction was given by the Court of Appeal in 1969[1] in the following terms:

> "Where a witness has made one or more written statements to the police (described in this direction as 'original statements'), it is not only proper, but it is often necessary for the orderly presentation of the evidence, to tender as written evidence under the Criminal Justice Act 1967, s. 2 or 9, a prepared statement based upon the original statement or statements, but excluding prejudicial and inadmissible matter contained therein and/or giving the combined effect of the original statements. Where there is a legal representative of the prosecutor, any such statement should be prepared by him and not by a police officer, and must have been signed by the witness, and the requirements of section 2 or 9 of the Criminal Justice Act 1967, as the case may be, must have been complied with in respect thereof . . ."

29.2 On 22 and 24 April 1972 two written statements were taken from Winston Goode by TDC Gledhill. Among other things these dealt in some detail with Goode's own sexual inclinations and habits, his relationship with Confait, Confait's relationships with Mr A X and Mr B X (see paragraph 5.2 above) and with other men, Goode's last meeting with Confait and various details about Confait's movements during the last week of his life.

29.3 On 22 April a statement was taken from Mrs Lilian Goode by WDS Mays. Among other things this dealt with the relations between herself and her husband, and between her husband and Confait, the homosexual habits of Goode and of Confait, and her own last sighting of Confait. She also described her husband's appearance and behaviour after the discovery of the fire (see paragraph 13.21(j) above).

29.4 The material contained in the statements described above (which I shall refer to as the fuller statements) was relevant to the defence. It could have been used to found or to support a defence that it was Goode who killed Confait and set fire to the house—a suggestion which was advanced, though not with great force, at the trial by counsel on behalf of Leighton. Some (though not all) of the material was known to the defence, as is revealed by defending counsel's brief and by the cross-examination of Goode and by the evidence of Mr Waley at my Inquiry. But if defending counsel had seen the fuller statements before the trial the suggestion could have been put with greater force, and Goode could have been cross-examined more effectively.

29.5 I consider that it was a reasonable view for the police to hold that, in accordance with the current practice, the fuller statements of Mr and Mrs Goode required editing for the committal proceedings to remove evidence

[1] 54 Cr. App. R. 29.

which did not form part of the prosecution's case against the three boys. However, it should have been evident to the police, to Mr Williams and to prosecuting counsel before the trial opened that a suggestion might be made that Goode was the real culprit, and that the fuller statements of Goode and Mrs Goode were or might be relevant to the defence. Yet the fuller statements of Goode never were disclosed to the defence, and the fuller statement of Mrs Goode was disclosed only after the trial had been under way for some days.

29.6 On 28 April WDS Mays took a further statement from Mrs Goode, and on 2 May DS Gregg took a further statement from Goode (I shall refer to these as the shorter statements). The shorter statements omitted much of the material contained in the fuller statements, including all or most of the material which I have described above. They were confined to evidence which was regarded as both admissible and relevant to the prosecution case against the three boys. It was these statements which were served on the defence prior to the committal proceedings, and which were included among the written statements attached to the examining justices' certificate as having been tendered in evidence under section 2 of the Criminal Justice Act 1967 in the committal proceedings, and included among the committal documents forwarded by the justices to the Central Criminal Court.

29.7 I have not been able to ascertain with certainty after such a lapse of time how it came about that the shorter statements were served. The police report contained the following paragraphs:

> "(68) It will be appreciated that the statements attached to this report require editing for service in accordance with the C. J. Act procedure and for this reason Exhibit numbers have not been shown thereon, however, as previously mentioned an Exhibit Schedule has been prepared by Detective Sergeant AUGUST and is attached to these papers.
>
> (69) To assist the representative of the Director of Public Prosecutions, the statements of witnesses whose evidence will be required to prove the offences, have been re-taken in order to save unnecessary delay before the Committal Proceedings can be concluded."

However, the shorter statements were not sent to the Director of Public Prosecutions with the police report (though the statements had been taken before the report was sent). They must, however, at some time have come into the hands of the Director of Public Prosecutions since they were included among the papers sent to prosecuting counsel. DSupt Stockwell regarded it as inconceivable that he did not hand them over to Mr Williams prior to the committal proceedings; but Mr Williams did not remember having seen them either before, at or after the committal proceedings. He told me that if he had applied his mind to the matter he would have directed the service on the defendants of the fuller statements. Mr Williams had not himself edited any statements, and had reason therefore to believe there were no edited statements.

29.8 Mr Williams read all the statements sent with the police report, including the fuller statements of Mr and Mrs Goode, and selected those which ought to be served on the defendants. On 19 May he sent to DI Stockwell a letter enclosing stock forms addressed to the defendants concerning arrangements for the committal proceedings in which he had already filled in the names of

the witnesses whose statements were to be served. He asked DI Stockwell to serve on the defence solicitors the forms and the statements of the witnesses named, and this was done. The list of those whose statements were to be served did not include Mrs Leighton or Mr Lattimore senior.

29.9 At the committal hearing, Mr Williams recalled, he did not read out all the witness statements in full; and it is possible therefore that he may have been working from his bundle containing the fuller statements whereas without his knowledge the bundle of statements handed to the magistrates' clerk contained only the shorter statements, without the discrepancy being detected—though this is unlikely.

29.10 I consider that there was a clear breach of the practice direction. The purpose of the practice direction was to ensure that any decision as to the exclusion of matter from statements should be taken by a legally qualified person and not by a police officer, and that in order to make sure of this the statement to be tendered should be actually prepared by the legal representative of the prosecutor. A fresh statement taken from the witness omitting matters contained in his earlier statement is just as much an 'edited' statement for this purpose as one prepared by the legal representative and then presented to the witness for signature (it makes no difference if the fresh statement also contains new material). It was suggested in argument that a fresh statement taken in this way is not a "prepared statement" within the meaning of those words as used in the practice direction: I do not accept the argument; if it was correct the result would merely be that the fresh statement constituted an additional statement which together with the original statement(s) would have to be edited and converted into a "prepared statement" by the legal representative. I accept that no harm may be done if the police prepare the edited statement and then present it to the legal representative for approval, though this would be a breach of the letter of the practice direction. But in the present case the departure from the practice direction was one of the reasons why the fuller statements of Mr and Mrs Goode were not disclosed to the defence.

29.11 There was conflicting evidence as to whether the practice of police officers preparing further statements omitting matter contained in earlier statements and then submitting them to the legal representative of the prosecutor (along with the earlier statements) for his approval to their use on committal was common. It was quite clear, however, that neither Sir Norman Skelhorn nor Mr Williams approved of the practice. I consider that the practice should cease and that the practice direction should be exactly complied with.

Disclosure of statements to the defence

29.12 The brief for the prosecution was sent to Mr Du Cann on 28 June. There were attached to the brief (*inter alia*) the following bundles of documents:

(a) statements tendered in evidence (which included the shorter statements of Mr and Mrs Goode);

(b) witnesses' statements edited for tendering (which included the fuller statements of Mr and Mrs Goode);

(c) witnesses' statements not tendered;

(d) statements of persons not called; and

(e) non-material statements (which included statements from associates of Confait including Mr A X and Mr B X).

The observations accompanying the brief were written by Mr Williams. They contained the following:

> "Counsel is asked to advise whether any information not contained in the statements tendered should be made known to the Court or the defence, by formal Notice or otherwise.
> Counsel is also asked to consider whether the name and address of any person not called should be furnished to the defence under the rule R. v. BRYANT and DICKSON."

Mr Williams told me that if he had been aware that there were two versions of the statements of Mr and Mrs Goode he would have drawn counsel's attention to them. On the same day Mr Du Cann was sent instructions to advise on evidence. The matters to which the instructions made special reference included:

> "whether the prosecution has any duty to make available to the defence information on any of the matters dealt with in paragraph 1374 of the current edition of Archbold."[1]

29.13 On 11 July, Mr Du Cann in his advice on evidence advised that the names and addresses of all witnesses should be given to the defence. On 17 July Mr Stevens, a member of the staff of the Director of Public Prosecutions at the Central Criminal Court, wrote to the defendants' solicitors giving the names and addresses of "known material witnesses not called by the prosecution", 10 witnesses in all including Mrs Leighton and Mr Lattimore senior (i.e. with one exception, those in bundle (d)). The names and addresses of many of the people from whom statements had been taken, including all those described as "non-material witnesses" (bundle (e)), were not given. Mr Williams said he would not have interpreted counsel's advice in that way; the advice referred to "all" witnesses, whereas Mr Stevens's letter was restricted to "Bryant and Dickson" witnesses. However, Mr Williams would have been surprised if counsel were advising that they should give names and addresses of everyone from whom they had taken statements, and would have queried this on the telephone.

29.14 The particulars given on 17 July were said to be sent "In accordance with the Court's directions in R. v Bryant & Dickson . . . to supply the defence with the names and addresses of known material witnesses not called by the prosecution". On 18 July two of the firms of solicitors asked the Director of Public Prosecutions for copies of the statements of the witnesses whose names and addresses they had been sent. On 19 July Mr Palmes on behalf of the Director wrote saying that he regretted that he could not comply with the request for copies of the statements.

29.15 Mr Du Cann told me that it was his practice that, if any of the defending counsel asked to see any statements, additional to those served, which the prosecution had, he would allow them to do so unless there was some special reason to the contrary. Mr Waley, one of the defence counsel, told me that it was his understanding of the practice that prosecuting counsel would take the initiative and invite defending counsel to see any statements which

[1] 37th Edition (1969). Paragraph 1374, headed "Material information, prosecution's duty to make available", set out, *inter alia*, the effect of *R v. Bryant and Dickson* and *Dallison v. Caffery*.

he had which might be relevant to the defence, and that since Mr Du Cann did not take the initiative he did not ask whether there were any such statements and if so whether he could see them. No request appears to have been made by any other defending counsel.

29.16 It appears from one answer Mr Du Cann gave that if counsel had come to him before the trial opened and asked for Mr Goode's original statements he might have said "We will wait till we get to the trial" since "Otherwise they could be used for a kind of fishing expedition in front of the jury, raising impure thoughts in a sense to the relevant proceedings before the jury." However, he later said that if the defence had said "We want to see if Mr Goode really is a suspect", he would probably have let them see them. For reasons which I give later in the report I do not believe that disclosure should wait on a request by the defence, but I do not consider that Mr Du Cann can be blamed for taking the view that it should, since the practice was so unclear. The fault was with the system which left such an important matter devoid of authoritative rules. I should add that if Mr Du Cann had refused a request for disclosure of Mr Goode's statements on the ground given, I should have regarded it as a bad reason: the purpose of disclosure is to reveal a possible line of defence or means of discrediting a prosecution witness and it is not for prosecuting counsel to pass judgment on the matter. If improper use is made of the matter disclosed, it is for the judge at the trial to stop it. Mrs Goode's statement was disclosed after the trial had been under way for some days.

29.17 The subject of disclosure of statements to the defence has received much attention during the past few years. In 1966 a report by a committee of *Justice* entitled *Availability of Prosecution Evidence for the Defence* was published. After considering the arguments for and against disclosure, the committee made the following legislative proposals:

> "(1) In criminal cases the prosecutor shall, as soon as reasonably practicable, supply the defence with copies of all statements relevant to the case taken from witnesses whom it is proposed to call or to tender to give evidence.
>
> (2) Where the prosecutor has in his possession statements relevant to the case, taken from persons whom it is not proposed to call or to tender to give evidence, copies of all such statements shall, as soon as reasonably practicable, be supplied to the defence.
>
> (3) A police officer or other person in charge of a case shall supply to the prosecutor a copy of all statements taken by him in the course of the investigation into the alleged offence which are relevant to the case.
>
> (4) In relation to the foregoing provisions:
>
> (i) if it is not reasonably practicable for the prosecutor to supply copies of statements to the defence, e.g., in Summary cases, the prosecutor shall afford the defence reasonable facilities before the trial for the inspection of such statements and for copies to be made whenever required;
>
> (ii) the prosecution shall be entitled, notwithstanding the relevancy of any statement, to refuse to supply copies or to permit inspection of the statement or parts of it, on the ground that it would be contrary to public policy so to do. In such a case, however, the

objection shall be notified to the defence in writing. If the defence does not accept the validity of such objection the Court or Judge shall rule thereon. In deciding upon the validity of such objection the Court or Judge shall not be bound to disclose the contents of such statements to the defence."

29.18 In 1973 a private member (Mr S Clinton Davis) proposed a clause for inclusion in the Administration of Justice Bill in the following terms:

"PROVISION OF STATEMENTS IN CRIMINAL CASES

(1) In criminal cases where on summary conviction the defendant shall be liable to imprisonment for a term exceeding three months, the prosecutor shall if required by the defence, as soon as reasonably practicable, supply the defence with copies of all statements relevant to the case taken from witnesses whom it is proposed to call or to tender to give evidence.

(2) If a defendant is not represented by counsel or a solicitor the Court shall inform him of his right to be supplied with copies of statements as set out in subsection (1) hereof.

(3) Where the prosecutor has in his possession statements relevant to the case, taken from persons whom it is not proposed to call or to tender to give evidence, copies of all such statements shall, as soon as reasonably practicable, be supplied to the defence.

(4) The prosecution shall be entitled notwithstanding the relevancy of any statement, to refuse to supply copies or to permit inspection of the statement or parts of it, on the ground that it would be contrary to public policy so to do. In such a case, however, the objection shall be notified to the defence in writing. If the defence does not accept the validity of such objection the Court or judge shall rule thereon. In deciding upon the validity of such objection the Court or judge shall not be bound to disclose the contents of such statement to the defence."

Following a debate in the House of Commons[1], the clause was withdrawn after the then Solicitor General had given an undertaking to invite the comments of interested bodies. I have been informed by the Attorney General that the then Solicitor General carried out his undertaking and passed to the Home Office for consideration the material obtained as a result of the invitation.

29.19 The Interdepartmental Committee on the Distribution of Criminal Business between the Crown Court and Magistrates' Courts (the James Committee) in paragraphs 212–230 of their report[2] discussed the question of advance disclosure of the prosecution case in cases tried in magistrates' courts, and made the following recommendations:

"(i) before giving his consent to summary trial or at any time before the opening of the prosecution case, a person charged with an offence in the intermediate category should have a statutory right to receive, on request, copies of the statements of the witnesses on whose evidence the prosecution proposes to rely;

(ii) if the prosecution calls as a witness a person whose statement has not

[1] Official Report, Volume 854, columns 365-385.
[2] Cmnd. 6323. (November 1975).

been served, the defendant should be offered an adjournment to enable it to be served;

(iii) if the prosecution considers that it would be against the interests of justice to provide copies of the statements, it should be able to apply to a magistrate for a direction that they should not be served; and

(iv) where witness statements have not been prepared or where a magistrate directs that statements should not be served, a summary of the facts upon which the prosecution intends to rely should, on request, be supplied to the defence instead."

The Criminal Law Act 1977, which received the Royal Assent on 29 July 1977, contains a power to make rules providing for advance disclosure of the prosecution case in respect of any offence or category of offence as may be specified.

29.20 The Departmental Committee on Evidence of Identification in Criminal Cases (the Devlin Committee) in paragraphs 5.1-5.4 of their report[1] said:

> **"5.1** Some of the points which we shall be considering in this chapter raise the question of how far it is the duty of the prosecution to disclose to the defence material which the police have discovered in the course of their enquiries but which the prosecution does not intend to make part of its case. Until 30 years ago no authority existed for the proposition that there was any duty at all. In 1946 it was laid down by the Court of Criminal Appeal [*R* v. *Bryant and Dickson* (1946), 31 Cr App R 146.] that where the prosecution have taken a statement from a person whom they know can give material evidence but whom they decide not to call as a witness, they must make that person available as a witness for the defence. 'Making available' is taken to mean supplying the defence with the name and address; it does not extend to supplying a copy of the statement. There is not any general rule requiring the prosecution to supply the defence with copies of statements they have taken or documents they have discovered. Some exceptional cases where there is a duty to do that are given in Archbold, paragraph 443. [Archbold: *Pleading, Evidence and Practice in Criminal Cases*, 38th Edition by T. R. Fitzwalter Butler and S. Mitchell (1973).
>
> **5.2** It is, however, usual for the prosecuting solicitor to supply prosecuting counsel with the material statements and documents (such as the Trojan Club Book in Virag's case; see paragraph 3.54) and to leave the question of what should be disclosed to counsel's discretion. In practice we believe that counsel frequently goes beyond the legal requirements in supplying copies of statements. But this does not usually happen until at, or shortly before, the time of the trial.
>
> **5.3** We have not invited comment on this situation. We believe, however, that it does not give universal satisfaction. In 1966 *Justice* published a report on this topic by its Committee on the Laws of Evidence together with its legislative proposals. Those who think that there is a need for reform will certainly find in Virag's case material to support their view. That case shows in the first place that the prosecution and the defence may very easily take a different view of what may be 'material evidence'. Secondly, it highlights the absence of any machinery for ensuring that

[1] HC 338. April 1976.

the question of materiality is considered at an appropriate level. Thirdly, it raises the question whether the disclosure should not be in sufficient time, as well as in sufficient width, to afford to the defence the opportunity of giving to the material full consideration and maybe of making further enquiries. On the other hand, it is questionable whether everything which the police discover and which might conceivably be material should be made available to the defence. It might not be merely a matter of withholding confidential information. In practice the defence is accorded a wide latitude in the material it puts before a jury and there would be a reasonable fear on the part of the police that statements of little relevance might be used to distract the jury and prolong the trial.

5.4 In the House of Commons on 3 April 1973 [Official Report, Vol 854, col 384.] the Solicitor General, speaking on an amendment to the Administration of Justice Bill, gave an undertaking that he would reconsider the general rule that the prosecution is not required to supply the defence with copies of statements. We understand that in consequence some aspects of pre-trial disclosure are under consideration in the Home Office. We have no doubt that the points that we have made in the preceding paragraph will be taken into account. Even if a full enquiry into them fell within our terms of reference, we think it would be far too large for us to undertake. It would have to cover, of course, all material evidence which might be of use to the defence on any issue and not merely on the issue of identification."

29.21 In response to an enquiry which I made I have been informed by the Home Office that, while consideration has been given to the question whether there are defects in the system of disclosure of statements on which the prosecution does not intend to rely the Home Secretary has not yet formed any final view on the matter. I understand, however, that the Home Office are engaged in consultations about disclosure to the defence of relevant evidence which the prosecution does not intend to bring forward itself but which might tell in favour of the accused.

29.22 The controversy about disclosure in cases to be tried in the Crown Court does not of course relate to statements tendered in evidence under section 2 of the Criminal Justice Act 1967, which will have been disclosed to the defence. It relates to the following classes of statements:

(a) other statements made by witnesses whose statements are tendered under section 2 of the Criminal Justice Act 1967, but which are not themselves so tendered. This class would include the full statements of witnesses whose statements are edited for tendering;

(b) statements made by witnesses whose statements are not tendered, but which are regarded by the prosecution as material; and

(c) statements regarded by the prosecution as non-material.

These classes of statements are included in the statements sent by the police to the Director of Public Prosecutions and by the Director to prosecuting counsel, and are placed in separate bundles. The current practice is that the Director of Public Prosecutions supplies to the defence solicitors, without request, a list of the names and addresses of the witnesses in class (b) but does not normally supply copies or allow inspection of the statements themselves. (See *R v.*

Bryant and Dickson: Archbold[1], 39th edition, paragraph 443.) The Director does not disclose the existence of statements in classes (a) and (c), or give names and addresses of the witnesses in class (c). The Director normally leaves to counsel the decision as to disclosure to defence counsel of the statements in classes (a), (b) and (c), but on occasions statements are handed over by the Director, sometimes before committal.

29.23 The evidence which was given before me indicates that, at the Central Criminal Court at any rate, there has during the past few years been a change of practice in favour of more liberal disclosure. The successive editions of Archbold[2] give support to the idea that there has been such a change: compare the versions of paragraph 443 in the 38th and 39th editions; the latter reads as follows:

> "443. Where the prosecution have taken a statement from a person whom they know can give material evidence but decide not to call him as a witness, they are under a duty to make that person available as a witness for the defence, but they are not under the further duty of supplying the defence with a copy of the statement which they have taken: *R.* v. *Bryant & Dickson* (1946) 31 Cr.App.R. 146. Certain prosecuting authorities and prosecutors not infrequently use this authority as a justification for never supplying the defence with the statement in such circumstances. It should be borne in mind however, that an inflexible approach to these circumstances can work an injustice. For example the witness's memory may have faded when the defence eventually seek to interview him, or he may refuse to make any further statement. It is submitted that the better practice is to allow the defence to see such statements unless there is a good reason for not doing so. Furthermore, it should be observed that the ruling in *R.* v. *Bryant and Dickson, ante*, cannot be reconciled with the observations of Lord Denning M.R. in *Dallison* v. *Caffery* [1965] 1 Q.B. 348, 369, C.A.: 'The duty of a prosecuting counsel or solicitor, as I have always understood it, is this: if he knows of a credible witness who can speak to material facts which tend to show the prisoner to be innocent, he must either call that witness himself or make his statement available to the defence.' Diplock L.J., however, at p. 376, while approving of the course adopted by the prosecution in that case, appears to have thought that they had gone further than they were strictly bound to do: see also *R.* v. *Fenn* (1959) Jour.Cr.Law.253."

(See also paragraph 443a.)

29.24 Sir Norman Skelhorn told me that, when he became Director, the practice was much more restricted, but that partly as a result of his own efforts the practice had become more liberal in the direction of handing over information unless there was some good reason against it. He said that he had a policy that statements should be disclosed unless there were special reasons to the contrary, and that he thought that Treasury Counsel were aware of it. Unfortunately the history of the present case suggests that this may not be so, or that the policy is not always followed. Mr Du Cann said that, though the

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[1] *Pleading, Evidence and Practice in Criminal Cases.*

[2] 39th edition (1976), 38th edition (1973). See also *Phipson on Evidence* Twelfth edition, paragraph 1551(1) and (2). Sweet & Maxwell (London) 1976.

practice varied between different counsel, it was much more frequent that statements were handed over *if the defence asked for them.* He said that in a murder case if any defence counsel asked for statements he would let him read them. He agreed that there had been a move in the direction of greater freedom, and (in the absence of some good reason for withholding a statement) if any counsel of standing were to ask in the ordinary kind of case he would be given the statements without hesitation. Mr Waley said that if there was extra material he would (as prosecuting counsel) regard it as normal practice to tell defending counsel that he had that material, and invite him to look at it. He said that unless there seemed to be some special reason defending counsel would be invited to look through the statements and see if there was anything of any assistance in them. The prosecution should take the initiative, since the defendants would not know the statements existed. Mr Waley thought that, though there was some variation between counsel, this had been the practice for some time.

29.25 There are of course arguments against general disclosure of statements. They are set out in the *Justice* report referred to in paragraph 29.17 above and at paragraphs 215-217 of the James Report[1]. Mr Davis told me he could think of no other reasons against disclosure than those set out in the *Justice* report. But the witnesses who gave evidence before me on this topic expressed themselves as being in favour of disclosure save in exceptional circumstances. Sir Norman Skelhorn thought it right that, save in exceptional circumstances, the prosecution should make known to the defence the nature of the evidence which persons from whom statements have been taken are in a position to give. Plainly there will be exceptions—Sir Norman cited the statement of a witness whom it is believed the defence will call (the ability to put his statement to him acts as a means to check the fabrication of false evidence), and a statement containing material which the prosecution does not wish to disclose, for example secret information or the identity of an informant.

29.26 Those who gave evidence before me on this matter were in favour of a continuance of the practice whereby disclosure normally takes place between counsel, and believed that counsel should have a discretion to withhold statements if in his opinion special circumstances exist. Provided that the general rule is laid down in such a way as to be binding on counsel, and is promulgated in such a way that all counsel are aware of the rule, I should myself prefer this. I see advantages to defendants if disclosure is between counsel: I believe that fewer documents will be withheld if disclosure is between counsel than if a formal procedure were introduced for copies of statements to be disclosed in the same way as statements tendered under section 2 of the Criminal Justice Act 1967. It is clearly vital that there should be as great a uniformity of practice as possible. Where there is a discretion, there are bound to be differences in the way in which different individuals exercise the discretion. But provided the general rule is well known I do not regard this as an objection. Special arrangements would have to be made for unrepresented defendants. I should make it clear that I should not regard it as satisfactory to leave the question of disclosure to counsel if I thought that discrimination was to be practised in the way referred to at paragraph 29.34 below.

[1] Cmnd. 6323.

29.27 However, it may in many cases be difficult to operate counsel-to-counsel disclosure if disclosure is to take place within 28 days (or any other period) after committal (see paragraph 29.33 below). Counsel might not yet have been briefed, or counsel then briefed might have to return the brief and other counsel be substituted.

29.28 I am not on the evidence available to me able to decide where the balance of interest lies. I have framed what I have to say in the rest of this chapter in terms of disclosure between counsel. If it were to be decided that there should be formal disclosure on the same basis as the service of statements tendered, some alteration in my proposals would be necessary but I believe that they could be applied *mutatis mutandis*.

29.29 It is relevant to this question to note that Mr Davis said that he had no misgivings at all about statements being handed over "on a counsel-to-counsel basis of confidentiality", but he would have had misgivings about their being handed over on any other basis.

29.30 One of the arguments against full disclosure is that witnesses will be less inclined to make statements if they know that they are likely to be shown to the defence, and that it would be against the public interest if this were to happen. This consideration did not seem to those who gave evidence before me to be a serious objection provided that the disclosure was to counsel who would be governed by a professional obligation as to confidence: if the matter were irrelevant, it would go no further than counsel; if it were relevant, then it would be right in the interests of justice that (save in exceptional circumstances) it should be disclosed and be available for use by the defence however embarrassing or prejudicial to the witness it might be. Clearly there might be cases where the possible prejudice to the witness would outweigh any possible relevance of the statement; but the discretion to withhold (which it is conceded should exist, subject to reference in case of dispute to the judge) would take care of these cases, and even then counsel for the prosecution should err on the side of disclosure since he would not be in a position to judge what might be relevant to the defence.

29.31 As Mr Du Cann and Mr Waley agreed in their evidence before me, any rule must apply to all statements in the possession of the prosecution, including those thought by the prosecution to be non-material. Before trial (when disclosure should take place) prosecution counsel does not know (save in so far as the defence are required by law to or do voluntarily reveal it) what the defence is going to be. It is not therefore possible for prosecuting counsel to know which documents might be material to the defence. Mr Waley put the matter thus:

> ". . . my own view is that it is very difficult for a prosecutor to assess what may or may not be relevant to the defence and it is better to tell the defence what there is available and let them decide whether it is relevant or not, and if it is relevant they can have use of it and if it is not there is no harm done, if it is done between counsel.
>
> *Q.* As between you and me, I agree with you. I think it is much better to hand over everything one can, but I was asking whether it is right, in other words a matter of correct practice. If there were a confidential matter

which does not appear to be relevant to the defence, that would be a reason for not disclosing it in the interests of the witness?

A. I do not see how the interests of the witness could be harmed by another member of the Bar being shown a statement which may contain material which could be important. If it is not relevant then it will not be used.

Q. Yes, but if the witness learns that, having made the statement to assist the police and told them what one might call personal matters, do you think that might deter witnesses giving statements if it is handed over even to counsel for the defence?

A. Surely these things are done confidentially between counsel? One does not publish the fact that one's opponent has had the opportunity to learn something about the witness. There is no reason why the witness should ever know.

Q. In other words, you would place it on the basis of professional confidence?

A. Yes.

Q. THE CHAIRMAN: And you would say, I suppose, that if the matter does turn out to be relevant and, therefore, comes to light, say, in the cross-examination of the witness, however embarrassing or however personal it may be, if it is relevant to the issue being fought in the action it would be right in the interests of justice that it should be disclosed?

A. Certainly.

Q. And that the personal convenience of the witness should not take precedence over that? I can see there might be difficult cases, though, where the prosecution might take the view that the nature of the information was such that it could do grave harm to the witness if it were disclosed, whereas its relevance to the proceedings could only be marginal?

A. Yes. Plainly, what I have said would be a general statement of good intention and how one ought to deal with these things, but there are special cases—and one has only to think for a moment of those curious trials in Ireland where all sorts of bits of evidence were not disclosed, even to the counsel for the defence. Plainly, where there is any question of security or danger to the witness or anything of that sort, one would have to be very careful and might not be in a position to disclose the information, but if one is only worrying about embarrassment, that would seem to me to be no great bar.

Q. One is familiar with the phrase, 'the prejudice outweighs any possible probative value'. I suppose that sort of test might have to be applied in this case. The prosecuting counsel might have to say that the probative value of the information was so small and the possible prejudice so large that he would exercise his discretion by not disclosing it?

A. Would it not be very difficult—and I am putting this as a rhetorical question—for counsel for the prosecution to decide that unless he already knew precisely the nature of the defence? It seems to me one, therefore, has to err on the side of giving too much rather than too little.

Q. In a sense you might say, I suppose, that the problem then becomes handed on to the defence counsel?

A. Yes. He is the person who decides whether it is material that can help him or not."

29.32 Sir Norman Skelhorn agreed that under our system where (with some exceptions) the defence are not obliged to disclose their case, this is so:

> "In the majority of cases [the prosecution] have a pretty good idea but it is fair to say . . . that you may get something which becomes material at a late stage and no one realised it was going to be."

And of course a possible line of defence may become apparent to the defence for the first time only when they see the statements.

29.33 Sir Norman Skelhorn regarded it as an undoubted proposition that in a case where the defence should have information they should have it in sufficient time to make use of it. Mr Du Cann agreed that if disclosure did not take place till the trial it might be too late for the defence to marshal evidence upon which they might wish to rely. Mr Farquharson, as an experienced advocate in criminal cases, suggested that all statements taken by the police should be served on the defence unless they fell within the excepted categories, and that a time limit should be set for this: it could not be expressed as so many days before trial because the date of trial is rarely known long in advance; he suggested (say) 28 days after committal.

29.34 Mr Du Cann suggested in his evidence that the decision whether or not to disclose statements might be influenced by the view which prosecuting counsel held of the counsel for the defence. I do not believe that this in itself would be a proper ground for withholding statements. Mr Leonard, also an experienced practitioner in criminal cases, indicated that he could not seek to uphold it. It would clearly be wrong to penalise a defendant because he had chosen to employ a counsel whom, for good reason or bad, prosecuting counsel did not regard as a "counsel of standing". It would, however, be a proper reason for withholding a statement if prosecuting counsel had ground to believe that the defending counsel would make improper use of the statement, e.g. by using it to mislead the court, and was prepared to justify this before the judge if challenged. A reasonable belief that the defence solicitor or the defendant himself might use the statement improperly would also constitute good ground for withholding a statement or imposing a condition that it should be seen only by counsel.

29.35 As examples of documents which he would withhold Mr Du Cann cited the statements made by Mr Lattimore senior and Mrs Leighton expressing satisfaction with the way their sons' statements had been taken. Mr Du Cann intended to call DS Gregg in case the parents denied making the statements. It may be that it would have been better if these statements had been disclosed at an early stage. The prosecution could not be sure that the defence counsel and solicitors would be aware of the fact that the parents had made these statements, and clearly defending counsel and solicitors would be less well able to advise their clients if they did not know of them. But I do not believe that Mr Du Cann's decision was wrong in principle, and I believe that counsel's discretion to withhold statements should extend to documents of that kind.

29.36 Rules along the following lines would, I believe, be acceptable to all or most of those who have given evidence before me on this topic:

(a) All statements taken by the police should be disclosed by prosecuting counsel to defence counsel in the absence of any special reason to the

contrary. The rule should apply to all the three categories mentioned in paragraph 29.22 above.

(b) Special reasons might include national security, the safety of the witness, the interests of justice, the possibility of intimidation of a witness, anything (such as a special relationship between the defendant and the witness concerned) which might lead to a belief that an attempt might be made to mislead the court.

(c) The statement of a witness whom it is believed the defence will call may be withheld. But as soon as it becomes clear that the witness is not going to be called by the defence the statement should be disclosed.

(d) Disclosure should not normally be subject to conditions, but counsel may impose a condition that the statement is for counsel's use only. Such a condition should be imposed only on grounds analogous to those set out in (b).

(e) No statement should be withheld or condition imposed except on a ground which the person withholding or imposing the condition is prepared to defend before a judge; and there should be machinery under which in the event of an objection by the defence the question whether a document has been properly withheld or condition imposed can be determined by a judge.

(f) A time limit should be laid down for disclosure which would ensure that the defence get the statements a reasonable time before the start of the trial. There should be an effective penalty for late disclosure, e.g. the right (unless the judge otherwise directs) to an adjournment with the costs thrown away falling on the prosecution if the defence are prejudiced by late disclosure.

(g) Disclosure should be made whether or not the defence ask for it. Any other rule will put unrepresented defendants, and defendants represented by inexperienced solicitors or counsel, at a relative disadvantage. Moreover, there may be cases where defence counsel reasonably but wrongly believe that there is no point in asking, whereas there are in fact statements in the possession of the prosecution which would help the defence.

29.37 Unless and until rules along these lines are introduced, I suggest that the rule in *R v. Bryant and Dickson*[1] should be modified in the way which Sir Norman Skelhorn suggested—namely that where there is a large number of witnesses the list of witnesses supplied by the prosecuting solicitor should give a summary of the evidence which each witness is able to give.

[1] (1946) 31 Cr.App.R. 146.

APPENDIX A

PARTICULARS CONCERNING THE INQUIRY

1. The substantive hearing of the Inquiry was held in private at 116–119 Pall Mall, London SW1, on 6–10, 13, 14, 16, 17, 20–24 and 27–30 September and 4 and 5 October; at the Regent Palace Hotel, Piccadilly Circus, London W1, on 14, 15, 18–20 and 25–29 October and 1, 4, 5 and 9 November; and at the Waldorf Hotel, Aldwych, London WC2, on 15–18, 22–25, 29 and 30 November and 1 and 2 December 1976. There were in all 46 hearing days.

2. The evidence in the case was presented by Mr Peter Webster QC, with the assistance of Mr John Hazan QC, Mr Michael Burke-Gaffney and Mr Ian Glick of Counsel, instructed by the Treasury Solicitor.

3. At a preliminary hearing held in public at 47 Parliament Street, London SW1, on 19 December 1975, I invited applications for the right to be legally represented before me from any individual or body whose conduct was likely to come under close scrutiny. Applications were made pursuant to this invitation, and by my permission the following persons and bodies were legally represented:

Mr Ronald Leighton, Mr Ahmet Salih and Mr Colin Lattimore by Mr Louis Blom-Cooper QC and Mr Jonathan Caplan of Counsel, instructed by Messrs Simons, Muirhead and Allan, Solicitors.

The Commissioner of Police of the Metropolis and individual police officers by Mr Donald Farquharson QC and Mr Leonard Gerber of Counsel, instructed by the Solicitor to the Metropolitan Police.

The Director of Public Prosecutions by Mr John Leonard QC and Mr Fabyan Evans of Counsel, instructed by the Director.

A witness whom I refer to in my report as Mr A X (see paragraph 5.2 of the report) by Mr Adam Pearson of Counsel, instructed by Messrs Lake, Parry and Treadwell, Solicitors.

4. The Secretary of State and the Attorney General indicated that, *ex gratia*, they would pay the reasonable costs of one leading counsel, one junior counsel, and one firm of solicitors acting on behalf of Mr Leighton, Mr Salih and Mr Lattimore. It was subsequently agreed that the reasonable costs of legal representation for Mr A X would also be paid out of public funds.

5. My Inquiry was extra-statutory, and I had no power to compel the attendance of witnesses nor to take evidence upon oath. However, subject to the exceptions which I mention in my report and at paragraph 8 below, all parties concerned fully co-operated in the Inquiry and all witnesses from whom I desired to receive oral or written evidence voluntarily gave such evidence.

6. On the advice of the counsel and solicitors representing them, the three young men agreed to waive legal professional privilege in respect of all the documents in the files of their solicitors prior to the Home Secretary's reference to the Court of Appeal. I was therefore able to see not only the briefs to counsel, including proofs of evidence from the boys and others, but also the defence solicitors' entire files of correspondence, including correspondence with the Director of Public Prosecutions, potential defence witnesses, and notes of interviews, conferences, etc. I requested and received statements on certain

matters from defending counsel, one of whom, Mr Waley (now QC), gave evidence before me.

7. By courtesy of the present occupants of 27 Doggett Road I was able to visit the house, and go into all the rooms. The damage caused by the fire has of course been repaired. The front entrance into the basement has been removed and filled up, and inside there have been some structural alterations. The decoration and furniture are of course also different from 1972. I visited the immediate surroundings of the house, and made a tour of the area including Doggett, Nelgarde, Brownhill, Plassy and Sangley Roads and Ladywell Fields. I also visited Lee Road Police Station and saw all the rooms on the top floor.

8. I tried to get Mrs Goode to give evidence at my Inquiry. Two people from the Treasury Solicitor's office went to see her on 5 August 1976 with an intermediary who knew Mrs Goode, her children and their family history, but Mrs Goode refused to admit them to the house or to discuss the forthcoming Inquiry. Letters were then sent which contained the following paragraphs:

> "During the course of his Inquiry it will be necessary for Sir Henry Fisher to inquire, among other matters, into the police investigation in 1972 and whether this was fully or adequately carried out.
>
> A particular aspect of the police investigation in 1972 concerned other people who might have been suspected of the murder of Maxwell Confait. Among these was your late husband Winston McMillan Goode. It is likely to be suggested at the Inquiry that the police officers investigating the murder of Maxwell Confait ought not to have abandoned at an early stage their suspicion of Winston Goode, and that their investigations ought to have continued to a point at which they might well have concluded that he was in fact directly involved in that matter, alone or with others.
>
> I write, therefore, to give you notice that such suggestions are likely to be made so that you can decide whether or not you would like the interests of the late Winston McMillan Goode to be represented at the Inquiry.
>
> If you decide that you would wish his interests to be so represented, or if you feel you need help or advice in any other way concerning these matters, I suggest that you bring this letter to the attention of a solicitor, either directly or through your local Citizen's Advice Bureau, and invite him to get in touch with me as soon as possible."
>
> "Sir Henry Fisher feels that he would be considerably assisted if you were to attend the Inquiry to give evidence in accordance with the statements and evidence you have previously given. I enclose a copy of those statements and the transcript of the evidence you gave at the trial in 1972. I shall be grateful if you will confirm that you will attend."
>
> "I confirm that I shall be prepared to pay your reasonable travelling expenses, subsistence and any vouched loss of earnings you may incur during your attendance at the Inquiry. I enclose a franked addressed envelope for your reply."

At my request the intermediary visited Mrs Goode again on 27 September, and reported on the visit as follows:

> "At your [the Treasury Solicitor's] request I visited Mrs. Goode on 27th

September for the purpose of asking whether she would be prepared to attend the enquiry as a witness. I explained to her that if she required any assistance from a solicitor that your office would arrange for her to be represented and that an application would be made to the Chairman for this purpose.

I stressed that the Chairman would be most appreciative of any assistance she would give by way of evidence to the enquiry. However, I have to inform you that she absolutely refused to be involved in this matter."

In view of this report I made no further attempt to secure Mrs Goode's attendance, nor did I think it right to seek her consent to her children giving evidence, or to take any steps in the absence of Mrs Goode's consent to secure the attendance of her children.

9. Since it was obvious from the terms of reference that certain witnesses might be asked questions which they might reasonably fear could incriminate them, the Attorney General gave an undertaking in the following terms which I read out at the preliminary hearing:

"I undertake that neither the evidence of any witness who appears before the Maxwell Confait inquiry nor any statement which he makes to the Treasury Solicitor for the purpose of the inquiry, nor any document which he is asked to produce for such purpose, shall be used against him in any subsequent criminal proceedings."

In addition the Deputy Commissioner of Police of the Metropolis gave an undertaking in the following terms, which were communicated to all police officers who gave evidence:

"I undertake that neither the evidence of any officer who appears as a witness before the Maxwell Confait Inquiry nor any statement which he makes to the Treasury Solicitor for the purpose of the Inquiry nor any document which he is asked to produce for such purpose shall be used against him in any subsequent disciplinary proceedings."

10. The procedure followed at the Inquiry was as described by me at the preliminary hearing as follows:

"Counsel to the Inquiry will make such opening statement as to the facts and issues as seems appropriate to him in the light of the information then in his possession. Counsel for any party who is given the right of representation will then be permitted to make a short opening statement on behalf of his client.

All evidence presented to the Inquiry will be presented by Counsel to the Inquiry. Thus, each witness called to give evidence will be called by Counsel to the Inquiry, and will be presented as the Inquiry's witness. It follows that if any person represented at the Inquiry desires to present a witness other than those proposed to be called by Counsel to the Inquiry he must first approach the Treasury Solicitor and furnish to him a copy of the statement proposed to be made by that witness. The decision as to whether that witness should be called will be mine.

Notwithstanding this important procedural principle I shall permit and expect that any person who is legally represented will be examined in chief by his own counsel or solicitor.

After examination in chief the legal representative of any other person will be given the opportunity to cross-examine, in such order as I shall indicate at the time, and Counsel to the Inquiry will conduct the final cross-examination before the witness is re-examined by his own representative.

When a witness is not examined in chief by the legal representative of a person represented, he will be examined in chief by one of the Counsel to the Inquiry and the same procedure will follow, except that the Counsel to the Inquiry who cross-examines the witness will not be the same counsel as has examined him in chief.

The same procedural principle as I have mentioned in regard to oral evidence will apply with regard to documentary evidence. That is, that I shall be unwilling to permit the presentation to the Inquiry of documentary evidence that has not first been furnished to the Treasury Solicitor so that he and Counsel to the Inquiry can consider it and if necessary apply to me for my decision on whether or not it should be admitted in evidence.

At the conclusion of the evidence each party granted the right of representation will have the right to address me and finally Counsel to the Inquiry will make a closing address."

11. Prior to the start of the Inquiry written notice was given to any prospective witness in respect of whom criticism might be made as to his conduct in connexion with the circumstances leading to the trial of Messrs Leighton, Salih and Lattimore in 1972, together with a statement of the substance of the matters out of which such criticism arose. When other points of criticism arose in the course of the Inquiry, written notice was given as soon as possible.

12. I did not regard myself as bound by the strict rules of evidence, and I received evidence which in a court would be excluded as hearsay, though the weight (if any) to be attached to such evidence was a matter which was open to argument and ultimate decision by me. At the opening of the substantive hearing I made the following announcement:

"I propose to treat all Inquiry documents which have been distributed to legal representatives as 'read'. All documents will be admitted without formal proof and their contents will be admitted as evidence for the purpose of the Inquiry. However, the weight to be attached to such evidence will be a matter for my decision having heard argument. If any party wishes to challenge any documentary evidence of a person not called as a witness I will consider any application for the attendance of any relevant witness."

13. A large number of documents was circulated to the legal representatives before or at the outset of the Inquiry or later when they became available. They included:

(a) all material statements and records of interviews taken by the police in connexion with the killing of Maxwell Confait and the arson at 27 Doggett Road;

(b) police registers and other miscellaneous documents, maps and photographs;

(c) other pre-trial documents;

(d) committal documents;

(e) the trial briefs to prosecuting and defence counsel;

(f) documents extracted from the papers of leading and junior counsel for the prosecution;

(g) those parts of the transcript of the trial which could be obtained, including the Judge's summing up;

(h) the judgments of the Court of Appeal on the applications for leave to appeal and on the reference by the Home Secretary;

(i) witnesses' post-trial statements;

(j) other post-trial documents;

(k) the report of an investigation under section 49 of the Police Act 1964.

In addition a further 94 documents or bundles of documents were produced in the course of the Inquiry. A complete set of Inquiry papers (including the daily transcripts of evidence) weighed 106 lb.

APPENDIX B

WITNESSES WHO GAVE ORAL EVIDENCE AT THE INQUIRY

Detective Sergeant Brian Robert August
Dr Angus Howard Weir Bain
Mr Brian Bellingham
Detective Sergeant Richard Botwright
Detective Constable Denis Daniel Sidney Bresnahan
Professor James Malcolm Cameron, Professor of Forensic Medicine, University of London
Police Constable Roy Edward Cumming
Mr Reginald Arthur Davis, Deputy Assistant Commissioner (Crime), Metropolitan Police
Mr Richard Dillon Lott Du Cann QC
Mrs Nazenin Ferid
Professor Gilbert Forbes, Emeritus Regius Professor of Forensic Medicine, University of Glasgow
Mr James Fryer, Deputy Chief Constable, Derbyshire Constabulary
Detective Sergeant Anthony John Gledhill GC
Detective Inspector Roy Ernest Gregg
Mr Frank Hatton, Deputy Director of Social Services, London Borough of Lewisham
Mr Donald Gordon Heppell
Mr Henry Herron CBE (formerly Procurator Fiscal, Glasgow)
Mr Barrie Leslie Irving, Tavistock Institute of Human Relations
Detective Chief Superintendent Alan Keith Jones
Mr Colin George Barcham Lattimore
Mr Frederick George Barcham Lattimore
Dr Archibald Denis Leigh, Consultant Physician, Bethlem Royal and Maudsley Hospitals
Mrs Daphne Gladys Leighton
Mr Ronald William Sidney Leighton
Detective Sergeant Beryl Mays
Mrs Brenda Ann Oakley
Mr John Rhodes
Mr Ahmet Hasana Salih
Mrs Mukaddas Salih
Sir Norman Skelhorn KBE, QC, Director of Public Prosecutions
Miss Katherine Elizabeth Smith
Detective Superintendent Graham Edward Stockwell
Detective Sergeant Arthur Alfred Reuben Vale
Mr Andrew Felix Waley QC
Mr Doiran George Williams
Police Sergeant Peter John Woledge
Mr A X
Mr B X

APPENDIX C

EXTRACTS FROM THE JUDGMENTS OF THE COURT OF APPEAL ON THE REFERENCE DELIVERED 17 OCTOBER 1975

1. ON CONVICTION

"The account of the events at 27 Doggett Road which emerged from their interrogation was briefly as follows . . . . . "

"This was the prosecution's case at the trial, and the whole of it; there was no other evidence against any of the appellants. The crucial aspect of this account of the events at 27 Doggett Road that night and, therefore, of the case for the prosecution, is that Michelle was killed within a matter of minutes of the starting of the fire. If it can be shown that a substantial period of time must have elapsed between Michelle's death and the lighting of the fire, the version contained in these admissions, cannot be a true account. The admissions, in whatever circumstances they came to be made, if they were made as alleged, must then be unreliable and the convictions, accordingly, must be unsafe and unsatisfactory."

"All three of these very experienced pathologists are agreed that the death of Michelle could not have occurred after midnight on 21st April and most probably not later than 10.30 p.m. and possibly as early as 6.30 p.m. Mr. Craven estimated that the fire began about 1.10 a.m. Mr. North was not able to fix a time for the lighting of the fire but indicated that 1.10 a.m. 'might be a reasonable assumption'. The combined effect of the scientific evidence, therefore, is to destroy the lynch-pin of the Crown's case and to demonstrate that the version of the events contained in the admissions relied upon by the Crown cannot be true. Nor is it possible in the circumstances of this case for the Crown to seek to support these convictions by contending that the fire could have been started by the appellants well before 1.10 a.m., was partially put out, but later broke out and caused the crackling sounds which are said to have woken Mr. Goode about 1.00 a.m., for the prosecution at the trial did not challenge the evidence of a large number of witnesses which established that Lattimore was at a youth club up to 11.30 p.m. on 21st April and after this, at any rate up to 11.45 p.m., at home with his family, and that Leighton and Salih were together at Salih's house from 11.00 p.m. until the end of the television programme at 12.50 a.m.

This being the state of the evidence in this Court only one conclusion is possible, namely, that the convictions of Lattimore and Leighton on count 1, of respectively the manslaughter and murder of Michelle, cannot be supported and must accordingly be quashed. In so far as the admissions relate to the starting of the fire at 27 Doggett Road, they still could be true but clearly they cannot be regarded as sufficiently reliable evidence, standing, as they do, alone, to justify the convictions for arson which were based solely upon them, and linked in the terms of the statements with the killing. The convictions of Lattimore, Leighton and Salih on count 2 must therefore also be quashed."

"In these circumstances it is not necessary to embark upon a detailed analysis of the admissions and the circumstances surrounding the making of them. There are, however, a number of very improbable matters in the confessions, and some striking omissions from them. The appellants were apparently never asked by the police officers to say at what time they went to 27 Doggett Road with a

view to stealing, or whether they had ever been to Michelle's room before, or whether they knew him, except by sight. How they knew which room he occupied, or how they supposed they could steal from him when he was in the room, or get up or down the stairs without being heard by Mrs. Goode on the ground floor, or engage in the struggle which killed Michelle without making a lot of noise is far from clear. The absence of any evidence of a struggle and the putting away of the ligature after the killing are much more consistent with the hypothesis that the killer was well known to Michelle and knew where the flex was kept and possibly was permitted by Michelle to put the ligature round his neck for some sexual purpose. All these considerations, and there are others, point to the improbability that these appellants or any of them had anything to do with the killing.

How these admissions came into existence is not a matter for this Court to enquire into nor is the necessary evidence before the Court. So, beyond noting Mr. Du Cann's point that there are passages in them from which it appears that the appellants may have had knowledge of certain matters before the police officers themselves and that some highly important answers appear to have been given to questions framed in an entirely non-leading way, no further comment is required. Nor is it necessary in the circumstances to do more than note that Dr. Peter Scott, the well known psychiatrist, thought that Lattimore was a very suggestible and quite unreliable young man of subnormal intelligence and that Leighton too was of relatively low intelligence. The view which the Court has formed on the medical evidence is sufficient to decide this appeal in the appellant's [sic] favour without further examination of the probabilities of the case."

2. ON SENTENCE

"Thus these three young men have been without their liberty for several years in respect of offences which, in the view of this Court, should not have been made the subject of guilty verdicts. We think that the suffering imposed upon them in respect of offences of which they are innocent, must be brought into account in dealing now, three years later, with offences to which they have either pleaded or been found guilty. If one could look merely at the balance of justice, it would be right that they should in fact, having suffered in the way I have indicated, go free back into the community."

APPENDIX D

EXTRACTS FROM EVIDENCE AND SUMMING UP AT THE TRIAL

1. Dr Angus Howard Weir Bain

Examination in chief by prosecuting counsel

MR DU CANN: When you arrived and examined the body, was rigor mortis complete?

A. Yes, it was.

Q. And at 2 a.m. did you take the temperature of the room?

A. Yes, the temperature in the room at 2 a.m. was 70 degrees Fahrenheit, but by 2.30 a.m. it had come down to 67 degrees Fahrenheit. The window was open.

Q. Then I suppose the temperature of the room gradually dropped as time went on?

A. Well I did not again take the temperature in the room after 2.30 a.m.

Q. I presume that the external temperature in Doggett Road was very much lower than the temperature in the room?

A. Yes. It was 45 degrees.

Q. Does the application of heat to a body interfere with the forming of a reliable estimate as to the time of death?

A. Yes, it does.

Q. It is not shown in the photographs, but did you notice a vent which is placed above the door to this room?

A. Yes. This was melted. It was a plastic air vent placed above the door.

Q. You saw the fire damage which had occurred in the remainder of the house?

A. Yes.

Q. Including the damage which had occurred immediately outside this room, which is shown in photograph No 9 in the bundle?

A. Yes, I saw that.

Q. The air vent to which you refer is just above the door, the hinge of which is shown along the right-hand edge of that photograph?

A. Yes, that is right. That's photograph No 9.

Q. Now rigor mortis is one of the ways in which it is possible to establish an estimate—reliable or otherwise—of the time of death, is it not?

A. Yes.

Q. Does the application of heat to a body, after death, cause stiffening?

A. Yes, it causes what is known as heat stiffening.

Q. Rigor mortis itself is a stiffening of the body, is it not?

A. Yes, it is a stiffening of the muscles.

Q. Is there also something which could interfere with the making of a reliable estimate as to the time of death; something which is called a cattoveric [sic] spasm?

A. Yes, in sudden death the body may go into an instantaneous spasm which simulates rigor mortis.

Q. Because of the heat, and because of the possibility of that spasm were you able to establish, with any degree of reliability, the time of death in this case?

A. I don't think one can be very reliable about this but I felt that it was probably between four and six hours before 2 a.m. . . .

Cross-examined by counsel for the defendant Lattimore

MR MARRIAGE: Doctor, I suppose when you arrived, there were still some firemen going in and out of the building?

A. Yes.

Q. But by this time, was the fire under control, or had it been put out altogether?

A. The fire was out.

Q. Then you say you entered the building; went upstairs and into this room?

A. Yes.

Q. You say the temperature inside the house at that time was 70 degrees Fahrenheit?

A. Yes.

Q. Was there any evidence of any burning within that room?

A. No.

Q. The nearest point of any combustion was on the outside of the door of this room and on the landing. Is that correct?

A. Yes.

Q. I think we can see that in photograph No 9. We cannot see it there, but we shall probably hear it from another witness; was the outside of the door very scorched?

A. I don't remember.

Q. And of course, there was absolutely no sign of any scorching of the body?

A. No.

Q. Did you take the temperature of the body?

A. No, I did not.

Q. You could have done, I suppose, by using a rectum thermometer?

A. Yes, I had one with me.

Q. Were there any signs to show that the body had been affected by heat?

A. No.

Q. No signs of the singeing of his clothing, or anything of that sort?

A. No.

Q. Now, in the ordinary course of events—leaving out the heat factor and leaving out the spasm—in the ordinary course of events, how long do you estimate, or how long a period passes before rigor mortis is complete?

A. Complete?

Q. Yes.

A. Well it normally starts in about six hours after death, and it is usually complete up to about twenty-four hours. It usually passes off after twenty-four and up to forty-eight hours.

MR JUSTICE CHAPMAN: You say that it normally starts about six hours after death?

A. Yes, but it has been known to start as shortly after death as an hour.

MR MARRIAGE: But in the ordinary course of events, it's six hours?

A. Yes sir.

Q. That is the usual period of time?

A. Yes.

Q. And the body that you saw, is it possible to quantify it? Had rigor mortis just started, or was it well developed?

A. Rigor mortis was complete.

Q. You say it was complete?

A. Yes sir.

Q. Now in the ordinary course of events—again leaving out the effect of heat and spasm—how long would you have estimated; how much time would you have estimated had passed from the time of death, at the time you arrived in the room?

A. Well, subject to temperature changes, I would say about eight hours.

Q. But in this case, as I understand it, because of possible or probable temperature changes, and because of the possibility of a spasm, you are reducing the period?

A. Yes, and because of the temperature of the body. The body felt quite warm to touch—the abdomen, and so on.

Q. What sort of heat circumstances are necessary to speed the start of rigor mortis?

A. Well the higher the temperature, the more rapidly it comes on.

Q. Yes, but what sort of temperatures are we talking about?

A. Well, if a body falls into a warm bath, or something like that, then rigor mortis would develop much more quickly.

Q. It would develop rather more quickly?

A. Yes.

Q. If a body falls into a bath, let us say, with a temperature of 80 degrees—

A. Or 100 degrees.

Q. Or 100 degrees, then you say rigor mortis will develop more quickly?

A. Yes.

Q. Are you able to quantify how much more quickly?

A. I'm afraid I can't. This is a specialised matter.

MR JUSTICE CHAPMAN: In any case, I don't suppose there are any actual rules which govern the rapidity at which rigor mortis develops, are there?

A. No, my Lord.

Q. I suppose that different bodies will develop rigor mortis more quickly than others?

A. Yes, my Lord, and if the temperature is 50 degrees centigrade, or 120 degrees Fahrenheit, then you get this heat stiffening. Now this is an imponderable which I don't know about.

MR MARRIAGE: Now this spasm which has been mentioned, is this the sort of spasm which comes on when, say, somebody has been struck on the head with a splinter from a bomb?

A. Yes sir.

Q. Is it the sort of spasm which mainly develops after a percussion death?

A. I am not aware of that. I believe it develops after a sudden death—a very sudden death, sometimes as in the circumstances of struggling.

Q. Did you find any evidence on this body of a struggle?

A. No. Not that I saw.

Q. Of course we can see the ligature strangulation marks, but there was no other evidence that you saw, of a struggle?

A. No.

Q. Indeed, the room was not in any way disordered, was it?

A. Not in the way you would get from a struggle.

Q. In what other circumstances would you get the spasm which would cause rigor mortis to start very much more quickly?

A. I think I have mentioned all the common causes.

Q. You mean by percussion, or very sudden death?

A. Yes, and heat.

Q. Dr Bain, you, of course, are speaking now from many years of experience?

A. Yes.

Q. How many years have you been a divisional police surgeon?

A. Since 1967.

Q. And I suppose, during the course of that time, you have examined very many bodies?

A. Yes, quite a lot.

Q. I mean dead bodies?

A. Yes.

Q. You have been asked to assess, on many occasions, the probable time of death?

A. Yes.

MR MARRIAGE: Yes, thank you, Doctor.

Cross-examined by counsel for the defendant Leighton

MR SALMON: Doctor, I just want to be quite sure as to just what you are saying. You took into account all the possibilities and matters which you were asked to consider by counsel, in arriving at your estimate of the time of death? You took all those matters into account, as an experienced doctor. Is that right?

A. Yes.

Q. And your considered estimate, having done that, was that this man had been dead—at the time you examined him—from four to six hours?

A. Yes.

Q. Then you reduced your estimate from—as you have told us—from the eight hours which it would otherwise have taken, in order to make allowances for these imponderable factors?

A. As far as I could, yes.

Q. There is only one other matter I wish to put to you. Am I right in saying that the earlier an examination of this kind takes place after death, the easier it is to form a view as to the time of death?

A. Yes, together with the observations carried out from that time onwards.

Re-examined by prosecuting counsel

MR DU CANN: Only two other matters, Doctor. You were asked whether you had taken the temperature of the body by means of the rectum thermometer, and you said you had not but that you had such a thermometer in your possession that night?

A. Yes.

Q. Then will you just explain to the court why you did not take the temperature of the body?

A. Well there were two reasons why I did not do so. In the first instance, I did not wish to disturb the position of the body until the photographs had been taken and, secondly, there were reasons to suspect that this man might have indulged in unnatural practices and I did not want to disturb the scene.

Q. The other matter I want to ask you is this; you told my learned friend, Mr Marriage, that in the years of experience that you have had, you have examined quite a large number of bodies after death, in order, in part, to make an estimate of the time of death?

A. Yes, that is so.

Q. Have you, during your years of experience, ever been called upon to examine a body in circumstances such as this, after the body has been exposed to heat?

A. Yes, I can think of two cases where I have examined people who have been involved in fires.

Q. Was it easy, in those cases, to make an estimate as to the time of death?

A. Well it was easier, because of circumstantial evidence . . .

2. Dr James Malcolm Cameron

Examination in chief by prosecuting counsel

MR DU CANN: Now can I ask you about the time of death, or your estimate as to the time of death. What are the ways by which an estimate can be formed as to the time of death?

A. This, in itself, is one of the most difficult tasks in forensic medicine to estimate, but the more common and reliable method is by taking the temperature of the body, and taking it over a period of time, in conjunction with the temperature of the environment. In this particular case, I refrained from taking the temperature of the body, in view of the fact that I had some knowledge as to the background of the deceased and I thought it would be wrong for me to disturb the body at the site, and that it would be better for me to wait until I had the body in more suitable surroundings, in order that I could take the temperature. The other matters are, of course, estimating the state of rigor mortis, or body stiffness. This, in itself, cannot be an accurate method, but it must be taken in conjunction with other methods, in estimating the time of death. Suffice to say, in this particular man's case, when I examined the body, the touch was cold and rigor mortis, in my opinion, was commencing and suggested to me, at 3.45 a.m., that he had been dead for approximately six hours, but six hours, come or go two hours on either side, because you can be no more accurate over a period of time. This was not taken into account, however, with the temperature of the environment which had fluctuated from considerably warm until when I arrived on the scene, it was rather cold. Therefore the part played by the heat of the environment could also have hastened the body rigor. When I re-examined the body at the mortuary, some hours had elapsed and a number of variables had come into the picture to such an extent that I considered it unwise to take the body temperature, because there were so many variables, and so I thought it would be totally wrong to try and estimate the time of death, in my view, accurately, from temperature. However, on looking at the body, I could see there were changes of the skin over the lower abdomen which were indicative of slight or early post mortem change, and rigor mortis was fully established at the start of the post mortem examination and indeed was commencing to wear off at the end of it. So, in my view, this man could even have been dead at 6.30 p.m., that is to say, twelve hours previously. However, again this estimate could have been affected by the temperature of the environment because the hot air in an atmosphere could certainly bring on post mortem change more rapidly than one would have anticipated—

Q. Could I just interrupt you for a moment, Doctor? Post mortem change is something which is totally distinct from rigor mortis?

A. Indeed, yes. This is a greenish discolouration of the lower abdomen, and this can be hastened by heat as—as one is well aware—bodies in warmer countries decompose quicker than in Britain but, nevertheless, my estimation as to the time of death must be extremely vague. Suffice it to say, I would have thought it to have been between—not taking into account the temperature of the environment—6.30 and 10.30 the night before, but with the temperature of the environment it could be a lot later, but I cannot estimate the part which was played by the temperature.

MR JUSTICE CHAPMAN: You say that the time of death could have been later than that because of the substantial heat there must have been in the room?

A. Yes, my Lord, the time of death could even have extended up to the region of midnight . . .

Cross-examined by counsel for the defendant Lattimore

MR MARRIAGE: Dr Cameron, as you have told us, the estimation of the time of death is never easy?

A. No, it is not.

Q. Of course, it gets progressively more difficult as time runs on, after the time of the death?

A. Indeed.

Q. To put it in another way, the sooner you see the body, the more likely you are to be able to make a reasonably accurate estimate of the time of death?

A. In normal circumstances, the first medical expert should be able to give a relatively accurate estimate as to the time of death.

Q. Particularly if he is seeing the body within four hours of the time of death?

A. Yes, in those circumstances, in the majority of cases, you should be relatively accurate.

Q. We have heard of something from Dr Bain about—to use a layman's terms—shock spasms causing stiffness. As I understand it, that amounts to this—and I want your help about it—that where there is a sudden death, there may be a spasm which causes immediate stiffness?

A. In certain parts of the body, yes.

Q. It wouldn't cause an overall stiffness?

A. Not in itself.

Q. I am much obliged. So a blow on the head, or percussion of some sort, causing death, might cause immediate stiffness, say, in the arms?

A. Well this is more frequently found in that grasping mechanism; the grasping of buttons or grass, or something like that. This more often occurs in the grasping mechanism, rather than in the limbs, in general.

Q. But equally, the rest of the body would be unaffected by this kind of stiffness?

A. The stiffness comes on more quickly, but not as a snap type.

Q. And then the ordinary symptoms of rigor mortis takes place over the rest of the body?

A. That is correct.

MR JUSTICE CHAPMAN: But you say it comes on more quickly in this type of sudden death, in certain parts of the body?

A. Yes, my Lord, it comes on more quickly and the text books quote it as such. At least, it is alleged to come on more quickly, by the text books.

MR MARRIAGE: You say that it is alleged to come on more quickly, rather as if you don't necessarily go along with that theory?

A. There is some doubt as to the value of what is known as a cattoveric [sic] spasm, which is the grasping mechanism. Suffice to say that, in certain types of death, rigor mortis does come on more quickly.

Q. Was there anything about this death, or about what you saw, which led you to believe that there was any such spasm in this case?

A. I would have thought there was more emphasis on a heat spasm, or heat coagulation of the muscles, causing the limbs to tighten.

Q. What sort of heat is necessary to cause a heat spasm?

A. Any confined dry heat can cause excessive; almost pugilistic approach of the arms coming up and rigidity appearing very very quickly.

Q. Over what sort of period would this type of heat have to be applied to cause the condition you have just described?

A. Well this can develop within half an hour in a severely burned body, or even quicker.

Q. You say it could develop quicker in a severely burned body. For instance, where there is a body which had been subjected to scorching, one might well find a heat spasm?

A. That is correct.

Q. Certainly a body which has been severely burnt, there you might well find a heat spasm?

A. Undoubtedly.

Q. I suppose a body, in a confined space, where there was a dry and excessive heat, and perhaps an excess to the extent of 100 degrees Fahrenheit, you would find that this heat spasm would occur?

A. Yes, and indeed it need not necessarily be as high as 100 degrees.

Q. Then what is your minimum, Doctor?

A. I would certainly put 80 degrees as the minimum, over a period of time.

Q. Over what period of time?

A. That is impossible to say.

Q. It must be half an hour?

A. Yes, I would have thought so.

Q. I notice, Dr Cameron, that you say rigor mortis was starting to wear off at the end of your post mortem examination, which was at 6.30 a.m.?

A. That is so.

MR JUSTICE CHAPMAN: You say that was occurring towards the end of your examination?

A. Yes, my Lord, but you must realise that I had then opened the body and therefore I might well have broken a lot of the rigor mortis myself.

MR MARRIAGE: I see, so you think that your incisions might have caused that to happen?

A. Yes, and by my manipulations of the body causing movement.

Q. If it wasn't anything which you did which caused the rigor mortis to start to wear off at the end of your examination, does that assist you in any way as to the time of death?

A. Then it would merely tend to put my estimation as to the time of death further back.

Q. Of course, rigor mortis, presumably, remains in a body, or a body remains in the state of rigor—if I can put it in that way—for a certain minimum period?

A. Usually under, what one might call perfect conditions, rigor mortis would begin to develop in five to six hours; be established in twelve hours, and be worn off in twenty-four hours.

MR JUSTICE CHAPMAN: Would you mind giving me that again, Doctor?

A. Yes, my Lord. Under ideal conditions, rigor mortis develops in between five and six hours. It is fully established in twelve hours, and wears off after twenty-four hours, but once a joint is bent or manipulated in rigor, then rigor does not again redevelop. It is then finished completely.

Q. Have we got any record as to when you finished your post mortem examination?

A. I would have thought it would probably have been in the region of about eight o'clock, my Lord . . .

Re-examined by prosecuting counsel

MR DU CANN: The only other matter I want to ask you about is this, because you were asked about it; it refers to the acceleration of rigor mortis as the result of the application of heat to the body after death. I think you said that if the heat then was a dry confined heat, this would accelerate the application of rigor mortis to the body?

A. That is correct.

Q. Are there any tables on which one can sort of calculate at all?

A. Not on this supplementary additional influence on the time of death.

Q. You were asked about what period of time would be required to produce complete rigor mortis. Is it possible to say at all?

A. Not at all, but this is the normal, under ordinary room conditions that I have quoted.

Q. I mean where heat has been applied to the body, is it possible to estimate?

A. Well this again depends on the degree of heat, then you bring the figures much shorter than the ones I have quoted.

Q. But in order to make a reliable estimate—because that is what one is seeking to do here—would one need to know the amount of the heat?

A. Well you would need to know the temperature gradient of the room; the temperature gradient of the body also, for heat loss, and then work it out on graphs.

Q. I see, is it possible to do that in this case?

A. Not in this case, no. You could only do this under ideal circumstances.

3. Summing up by Mr Justice Chapman

However, as to the cause of death, there is no doubt and it is apparent that somebody went into this man's room and killed him. When Dr Bain went there, the temperature of the room, at two o'clock, was 70 degrees. The windows, of course, had then been opened for some time—but I should not say for some time, but certainly for a little time. They had been opened by the firemen to let the

smoke out and so forth. The outside temperature was 45 degrees and he said that by 2.30 a.m., the temperature inside the room had dropped to 67 degrees, and by 3 a.m. it had dropped to 59 degrees in that room. As to the time of death of this man, Dr Bain put it as being about four to six hours before two o'clock, which would place it as being between 8 p.m. to 10 p.m. the previous evening. In saying this, Dr Bain would, of course, to some extent, be going on the state of rigor mortis in the body when he examined it, and he said that rigor mortis was complete, but Dr Cameron said that he saw the body about two hours afterwards and that rigor mortis was then only commencing, and that, you may think, is a somewhat curious difference in the evidence of these two doctors.

There is no evidence of burning inside the room; there was no scorching of the body. The burning which is said to have taken place just outside this room and on the landing is said to have been severe. The doctor said that rigor mortis usually starts within six hours of death, and he says that is how he arrived at his timing. He said that rigor mortis wears off after about twenty-four hours, although the heat stiffening which sometimes occurs may bring on an earlier spasm in the case of sudden death and that would effect what he called the gripping of the muscles. He said there was no sign of a struggle. The room was not in any way disordered and Dr Cameron said there were a lot of imponderables in assessing the time of death. He said that he did not take the body temperature and this was, no doubt, because of what the police had told him as to this man's way of life, and so Dr Cameron did not think it advisable to interfere in any way with the rectum, by which means he would normally have taken the temperature of the body. Had the doctor been able to take the temperature of the body at this time, then of course it would have been a most important factor in trying to assess the approximate time of death.

Dr Cameron, who is an extremely eminent pathologist and expert in forensic medicine, here said that he arrived at this house in Doggett Road at 3.45. He described to us the position in which he found the body of the deceased man lying on the floor. He said the body was then cold and rigor mortis was just commencing. He suggested that the time of death, although he again said there were many imponderables, but he said that he would put the time of death as having been about six hours before his arrival on the scene, plus or minus two hours, so that he placed 6.30 to 10.30 the previous evening, as being possibly, in a normal case, the sort of time when death had taken place.

To give a margin as wide as that is perhaps some indication as to how difficult it is to try and form an estimate of the actual time of death in these matters. The doctor dealt with the question of a sudden shock spasm from a sudden blow or sudden death of any kind and he said that this affected the grasping movement. He dealt with the effect of heat and said this would certainly affect the degree of rigor mortis. The doctor said that rigor mortis was starting to wear off at the end of his post mortem examination. I think Dr Cameron said that he carried out his post mortem examination at some time in the early hour of that morning, and at half past six, or thereabouts.

As I say, Dr Cameron told us that rigor mortis was wearing off when he was finishing his post mortem examination, but of course again he stressed, as being one of the matters which makes for uncertainty in this regard, that in moving the body around and cutting it open, that would assist in the process of relaxing

the rigor mortis. He said that, in ideal conditions, rigor mortis develops in five to six hours, so you see, even an expert of his great eminence, can only give some fairly broad margins with regard to these things. He said that it is fully developed by about twelve hours and it wears off after about twenty-four hours, and then it doesn't redevelop again. He said the time of death in this case would be, he thought between 6.30 to 10.30 on the Friday, because of the heat there was present there, as we know there was, and indeed because of the very excessive heat there must have been in that room, he thought the time of death could be extended even up as far as midnight on the Friday, but again one is in a field where, as Dr Cameron said, estimates must be inevitably broad and all sorts of imponderables enter into it which may affect these estimates in one way or the other. There was one thing which nobody went into at all, and that was whether the alcoholic level in the deceased man's body affected this matter in any way, and it didn't seem to occur to anybody to investigate this.

We were told that the deceased had an alcoholic level in his body which amounted to 110 milligrammes to 100 millilitres of blood, being equivalent, said Dr Cameron, to three and a half pints of beer, and he said that alcoholic level would not diminish after death. The figures which Dr Cameron gave indicated the amount of alcohol that was circulating in the deceased man's blood at the time of his death, and I think, forensically, it was found in the laboratory that this amount of alcohol was found to be circulating in the urine as well as the blood, and so it was in the process of passing through the system and out of the body. Now that is the medical evidence which you have to assess, in so far as it assists you, and that is the best the doctors can do for you in relation to the time this death occurred.

I shall be dealing later on with the question of the fire, because there is one thing that one may feel reasonably certain about—but of course it is entirely a matter for you—I think we can reasonably assume that the fire and this death were connected. You may think that it would really be stretching coincidence too far if a person was killed in this house at the time of—taking Dr Cameron's earliest times as to the time of death—about 6.30, and then a fire occurs in that house at some time in the early hours of the morning, or at one time which is given as being 1.11 a.m. or 1.10 a.m., which had nothing to do with the death. So you may feel that the inferences here point rather strongly to the death and the fire being connected. What the prosecution suggest is that the fire was in fact started deliberately and in order to remove any possible fingerprints that might have been left around when the death had been caused. Of course the time of the fire would well be, in these circumstances, connected closely with the time of death, if the fire was started shortly after the deceased man died . . .

You see, the importance of that perhaps is when we come to deal with the question of time, because if the fire and the death are in any way linked, and the probabilities would seem strongly to point that way, well then if one can get to the time of the fire starting, then we may be within measurable distance of the time of the death. Whatever the doctors may say about this, their estimates are somewhat imponderable anyhow and within rather broad limits . . .

APPENDIX E

NOTES OF THE INTERVIEWS WITH THE THREE BOYS, THE CONFRONTATION WITH THE PARENTS AND THE SHOWING OF THE EXHIBITS

Text of Statement of Detective Inspector Stockwell, 3 May 1972

On Monday, 24th April 1972 at Lee Road Police Station, Detective Chief Superintendent JONES interviewed Colin George LATTIMORE, Ronald William LEIGHTON and Ahmet SALIH. The following are contemporaneous notes recorded by me of questions and answers during these interviews.

6 p.m. Interview commenced with LATTIMORE.

Detective Chief Superintendent JONES introduced himself and me.

JONES: "I understand that you are 18 years. Is that right?"

LATTIMORE: "Yes."

JONES: "Where do you live?"

LATTIMORE: "16 Nelgarde at Catford."

JONES: "When were you born?"

LATTIMORE: "25th July."

JONES: "In 1953, or don't you know?"

LATTIMORE: "Yes."

JONES: "I understand that the other two boys that were brought to the Station with you are friends of yours. Is that right?"

LATTIMORE: "Yes."

JONES: "How long have you been going around together?"

LATTIMORE: "We always go together."

JONES: "Are you working?"

LATTIMORE: "No, I'm at school."

JONES: "Do you all go to the same school?"

LATTIMORE: "No."

JONES: "Which school do you go to?"

LATTIMORE: "I'm not sure of the name, I only started there last week."

JONES: "I understand you were together last Friday night and have told a policeman that you set fire to a house in Doggett Road. Which house was it?"

LATTIMORE: "It was the one next to the builders yard. The one you can get round the back."

JONES: "Would that be on the right or the left as you go down towards the park?"

LATTIMORE: "It was on that side?" (indicating with left arm).

JONES: "That is on your left."

LATTIMORE: "Yes, that is right. It was the house with the alley at the side."

JONES: "Do you know who lived in that house?"

LATTIMORE: "Yes, some black people."

JONES: "Do you know whether any white people live there?"

LATTIMORE: "A funny man lives there."

JONES: "Why do you say a funny man?"

LATTIMORE: "Because he was just funny."

JONES: "Are you saying that because he sometimes looked like a woman?"

LATTIMORE: "Yes, he used to dress like a woman, he was often behaving funny."

JONES: "Was he coloured?"

LATTIMORE: "Sort of."

DETECTIVE CHIEF SUPERINTENDENT JONES THEN CAUTIONED COLIN GEORGE LATTIMORE

JONES: "How did you get into the house?"

LATTIMORE: "I went in through the door."

JONES: "Which door, the front, basement or the back door?"

LATTIMORE: "The side door, the one at the bottom."

JONES: "What did you do then?"

LATTIMORE: "We found a sort of can, a rusty can. It smelt like paraffin so we sprinkled it around."

JONES: "Who do you mean by 'we'?"

LATTIMORE: "All of us."

JONES: "I want you to tell me their names so that there can be no mistake."

LATTIMORE: "Ronnie, Ahmet and me."

JONES: "Where did you sprinkle paraffin around."

LATTIMORE: "All down in the basement."

JONES: "Did you go into any rooms in the basement?"

LATTIMORE: "No, we found the can where we came in."

JONES: "After you had sprinkled the paraffin, what did you do with the can."

LATTIMORE: "We dropped it where we started the fire."

JONES: "Was that under the stairs."

LATTIMORE: "Yes, I think it was."

JONES: "Who lit the fire."

LATTIMORE: "Ahmet lit it, I tried to put it out with bricks and dirt and we all ran away."

JONES: "Where did you run to?"

LATTIMORE: "I ran home."

JONES: "Did you know where the others ran to?"

LATTIMORE: "They went and did a shop."

JONES: "Didn't you go with them?"

LATTIMORE: "No, I went straight home."

JONES: "Did your parents know you were out so late?"

LATTIMORE: "No."

JONES: "Why not?"

LATTIMORE: "They thought I was in bed. When they went to bed, I got up and went out."

JONES: "Have you done that before?"

LATTIMORE: "Yes, often."

JONES: "How can you get up and go out without your parents knowing?"

LATTIMORE: "I slip the lock when I go out and slip it back when I get back."

JONES: "I don't believe you have told me the whole truth."

LATTIMORE: "I have."

JONES: "A young man was found strangled in that house early on the Saturday morning and I believe you and your friends were responsible."

LATTIMORE: "No, not me. I never went upstairs."

JONES: "Why say upstairs. No one has mentioned upstairs. No one has told you the dead man was upstairs."

LATTIMORE: "The others went upstairs but I didn't."

JONES: "Are you saying that the others may have killed the man but you didn't."

LATTIMORE: "I just tried to put the fire out I told you. That was after I found the bricks and dirt."

JONES: "Telling lies isn't going to get you anywhere. I am sure your parents will want you to tell the truth."

LATTIMORE: "We went there to steal something. I did go upstairs but I didn't kill him."

JONES: "So you all went to the dead man's room intending to steal?"

LATTIMORE: "Yes."

JONES: "Now tell me what happened when you went there?"

LATTIMORE: "Ronnie went in first and he was got hold of."

JONES: "Go on then, tell me what happened next?"

LATTIMORE: "I thought we would all get caught so I got Ronnie away."

JONES: "How did you do this?"

LATTIMORE: "Ronnie was holding his arms so I put my hands around his neck."

JONES: "Are you sure it was only your hands that you put round his neck?"

LATTIMORE: "Yes it was."

JONES: "Now listen, this man didn't die because someone put their hands round his neck. He died because he was strangled with a piece of electric light flex, wasn't he?"

LATTIMORE: "Yes."

JONES: "Where did you find the flex?"

LATTIMORE: "It was just there. I picked it up and put it round his neck cos he wouldn't let Ronnie go."

JONES: "Did you do this intending to kill him."

LATTIMORE: "I kept it there until he let go of Ronnie and then Ronnie held him until he dropped down on the floor."

JONES: "How long did all this take?"

LATTIMORE: "I don't know, about 2 minutes.

JONES: "What did you do with the piece of flex afterwards?

LATTIMORE: "I just put it in a drawer in the sideboard and put some papers over it."

JONES: "How long was it?"

LATTIMORE: "It was long, it had things at each end."

JONES: "What colour was it?"

LATTIMORE: "White I think."

JONES: "Was it a big drawer or a little drawer you put it in?"

LATTIMORE: "A little drawer."

JONES: "Was the man dead when you put it in the drawer?"

LATTIMORE: "I think he was."

JONES: "Did you steal anything from the room?"

LATTIMORE: "No. not me."

JONES: "Did anyone?"

LATTIMORE: "Ronnie took the keys when he locked the door."

JONES: "Whose idea was it to set the house on fire?"

LATTIMORE: "We all wanted to."

JONES: "Did you know that the coloured family who live there were asleep when you did it."

No reply.

JONES: "You are going to be detained at this Station. When your parents get here I will give you an opportunity of telling them what you have told me. If the other boys tell me the truth you can all tell your parents in the presence of each other if you would like to."

LATTIMORE: "Yes, can I go home afterwards."

JONES: "I will see your father about that later."

Interview concluded at 6.55 p.m.

7.05 p.m. Interview commenced with LEIGHTON.

Detective Chief Superintendent JONES introduced himself and me.

DETECTIVE CHIEF SUPERINTENDENT JONES THEN CAUTIONED RONALD WILLIAM LEIGHTON.

JONES: "For the past hour I have been speaking to Colin and as a result of what he has told me I have reason to believe that you were concerned in causing the death of the man who lived at 27 Doggett Road last Friday night and were also partly responsible for setting his house on fire. What do you want to say to me."

LEIGHTON: "Colin killed him. I only held his arms."

JONES: "Why did you go into the house. Was it to steal or to rob somebody?"

LEIGHTON: "We went in there to steal."

JONES: "I don't suppose you know the difference between stealing from or robbing a person, do you?"

LEIGHTON: "No."

JONES: "Who were you going to steal from?"

LEIGHTON: "That man who was like a woman."

JONES: "Who went into the upstairs room first?"

LEIGHTON: "I did."

JONES: "Was the light on when you went in?"

LEIGHTON: "Yes."

JONES: "Did the others follow you in?"

LEIGHTON: "Yes."

JONES: "What happened then?"

LEIGHTON: "He got hold of me and Colin tried to get me away."

JONES: "Did he get you away?"

LEIGHTON: "He tried but he couldn't."

JONES: "What happened next?"

LEIGHTON: "Colin picked up a piece of wire and pulled in round his neck."

JONES: "What was the man doing when you went into his room?"

LEIGHTON: "He was sitting down reading."

JONES: "Did you expect the man to be in his room?"

LEIGHTON: "Yes."

JONES: "Was he wearing anything on his head?"

LEIGHTON: "Yes, it was a sort of woolly cap."

JONES: "Do you know what colour it was?"

LEIGHTON: "I think it was black."

JONES: "After the struggle who locked the door before you went downstairs?"

LEIGHTON: "I did."

JONES: "Where did you find the keys?"

LEIGHTON: "They were in the door."

JONES: "Did you take them with you?"

LEIGHTON: "Yes."

JONES: "What did you do with them?"

LEIGHTON: "I threw them over a yard next door."

JONES: "Whose idea was it to set the house on fire?"

LEIGHTON: "Colin said do it."

JONES: "Do you know why he said it?"

LEIGHTON: "He said we should get rid of the fingerprints."

JONES: "Did you help him burn the house down?"

LEIGHTON: "Yes, we all lit matches. The fire went up quick."

JONES: "Why was this?"

LEIGHTON: "Colin found a can and we all sprinkled it around."

JONES: "Did you steal anything from the room other than the keys?"

LEIGHTON: "I don't think so."

JONES: "Are you sure about this?"

LEIGHTON: "I took his handbag but I dropped it on the stairs."

JONES: "Do you know the others who live in the house?"

LEIGHTON: "Black people."

JONES: "Did you know that they had 5 children?"

LEIGHTON: "I don't know how many."

JONES: "Didn't you know that they would have all been in bed asleep at that time of night?"

LEIGHTON: NO REPLY.

JONES: "Where did you go afterwards?"

LEIGHTON: "Me and Ahmet did a shop. We got some shoes. We got caught and we were taken to Catford."

JONES: "I am going to keep you at this Police Station. I will see you again when your parents arrive. You and Colin have told me what I believe is the truth. I will give you both a chance of telling me again in the presence of your parents. Are you willing to do that?"

LEIGHTON: "Yes, what I have said is true."

Interview concluded 7.35 p.m.

7.40 p.m. Interview commenced with SALIH.

Detective Chief Superintendent JONES introduced himself and me.

DETECTIVE CHIEF SUPERINTENDENT JONES THEN CAUTIONED AHMET SALIH.

JONES: "Would you like to tell me in your own words what happened last Friday night. Colin and Ronnie have both told me that you went into a house in Doggett Road and that you went in there with the intention of stealing from a man who lived upstairs."

SALIH: "I didn't want to go with them but they said it would be easy."

JONES: "Did you go with them?"

SALIH: "Yes, but I just stood at the door."

JONES: "Did you go into the man's room?"

SALIH: "Yes, I just stood inside the room but I didn't do anything."

JONES: "Did you go inside the room knowing that they were going to attack the man?"

SALIH: "Yes, but they said it would be easy."

JONES: "Did you see them attack the man?"

SALIH: "Ronnie got hold of him and held his arms. Colin got hold of him too and then Colin picked up something and put it round his neck."

JONES: "Do you know what it was?"

SALIH: "It was long, like a piece of string."

JONES: "Do you know what colour it was?"

SALIH: "It was white."

JONES: "Was there any struggle?"

SALIH: "Not much."

JONES: "Didn't the man try to get away?"

SALIH: "He tried but when he got his hand up to his neck Ronnie got hold of it."

JONES: "Which hand did he get up to his neck?"

SALIH: "I don't know."

JONES: "Did you see the man fall down on the floor?"

SALIH: "Yes."

JONES: "How long were you in the room?"

SALIH: "Not long. When the man fell down Ronnie and Colin fell over. When they got up we got out."

JONES: "What happened next?"

SALIH: "Ronnie locked the door."

JONES: "Yes, go on, tell me what happened then?"

SALIH: "Downstairs we found a can so we tipped it about the place and lit a fire."

JONES: "Did you help to light the fire?"

SALIH: "Yes."

JONES: "Did you have some matches?"

SALIH: "I found some."

JONES: "Do you know what happened to these matches?"

SALIH: "I think they were slung in a room."

JONES: "Where was this room?"

SALIH: "Where the fire was."

JONES: "What did you do when the fire was burning, did you try and put it out at all?"

SALIH: "No."

JONES: "Did anybody?"

SALIH: "Colin got some bricks and dirt."

JONES: "What did you do after this?"

SALIH: "We went out. I went with Ronnie and we did a shoe shop."

JONES: "You will be kept at this Police Station until your parents arrive. I will then give you a chance of telling me what you have already told me in their presence. Do you understand?

SALIH: "Yes."

Interview concluded 8.05 p.m.

At 9.15 p.m. at Lee Road Police Station together with Detective Chief Superintendent JONES I saw Colin George LATTIMORE, Ronald William LEIGHTON and Ahmet SALIH, together with Mr. LATTIMORE (father) and Mrs. LEIGHTON (mother). D.C.S. JONES said to the three boys "You have all told me what happened last Friday night. I want you all to tell me again very briefly in the presence of this lady and gentleman" (indicating parents). D.C.S. JONES then said to the parents in the presence of the three boys "They all understand that they need not say anything unless they wish to but they want to tell you themselves what happened." Mr. LATTIMORE said "Now you tell the truth Colin." D.C.S. JONES said "Who is going to speak first. Would you like to start Ronnie." LEIGHTON said "We all did it together. We went in there to steal. I grabbed hold of the man and Colin pulled the wire round his neck." D.C.S. JONES said "How long did he hold the wire round the man's neck?" LEIGHTON said "About 2 minutes." D.C.S. JONES said "What happened after this?" LEIGHTON said "When he fell to the ground we got up and left the room." D.C.S. JONES said "Yes, go on." LEIGHTON said "I locked the door and then we lit the fire." Mr. LATTIMORE interrupted and said "I tried to keep Colin away from Ronnie, he only gets into trouble with him. You do know that Colin has just started going to a new school and that he is sub-normal. His age is about 13 to 14" DCS JONES said "You have heard what Ronnie has said, Colin. Did you pull the wire round the man's neck?" LATTIMORE said "Yes." D.C.S. JONES said "Why did you do that?" LATTIMORE said "Cos he got hold of Ronnie, I only held it for 2 minutes." D.C.S. JONES said "Were you trying to kill him? LATTIMORE said "No, it was only an accident, I wouldn't kill anybody." D.C.S. JONES said to SALIH "Would you like to tell everyone in this room the part you played." D.C.S. JONES reminded him he was still under caution and SALIH said "I just stood at the door, I helped light the fire when we went downstairs." D.C.S. JONES said "Do you know why you all went into the house." SALIH said "Yes, we went in there to steal from the man." D.C.S. JONES said to the parents, Mr. LATTIMORE and Mrs. LEIGHTON "You have heard what your sons have said. Are you willing for them to make a written statement under caution telling about the various parts they played." Mr. LATTIMORE said "He's got to tell the truth, he has told you he has done it so there is nothing I can do." Mrs. LEIGHTON said "I don't know what to do with him." D.C.S. JONES said "Are you willing for your boy to make a statement in your presence." Mrs. LEIGHTON said "Yes, alright." I was present with Detective Chief Superintendent JONES when a statement under caution was taken from Colin George LATTIMORE on 24th April 1972 at Lee Road Police Station. Statement commenced 9.30 p.m. and concluded at 10.10 p.m. Statement written down at LATTIMORE's dictation by myself in the presence of Mr. LATTIMORE (father) and Temporary Detective Constable VALE. I was also present with D.C.S. JONES when statement under caution was taken from Ronald William LEIGHTON on 24th April 1972 at Lee Road Police Station. Statement commenced 10.15 p.m. and concluded at 10.40 p.m. Statement written down at LEIGHTON's dictation by Temporary Detective Constable GLEDHILL. Also present was his mother Mrs. LEIGHTON. I was also present with D.C.S. JONES when a statement under caution was taken from Ahmet SALIH on 25th April 1972 at Lee Road Police Station. Statement commenced at 12.50 a.m. and concluded at 1.30 a.m. Statement written down at SALIH's dictation by myself. Also present were Mrs. SALIH and interpreter Mrs. FERID. At 2 a.m. 25th April 1972 at Lee Road Police Station D.C.S. JONES showed

LATTIMORE the piece of wire flex, exhibit BRA/19 and said "Is this the piece of flex you pulled round the man's neck." LATTIMORE said "Yes." D.C.S. JONES said "What did you do with it afterwards?" LATTIMORE said "I put it in the little drawer in the sideboard." D.C.S. JONES then showed LATTIMORE exhibit BRA/43 and said "Does this look like the rusty can you told me about which you all used to start the fire with." LATTIMORE said "Yes I think so." D.C.S. JONES then immediately afterwards saw LEIGHTON and showed him exhibit BRA/19 and said "Is this the piece of flex that Colin pulled round the man's neck." LEIGHTON said "Yes, that looks like it." D.C.S. JONES said "Where did Colin get it from." LEIGHTON said "He just picked it up I think." D.C.S. JONES said "Do you know where he left it in the room." LEIGHTON said "He put it in a drawer." D.C.S. JONES then showed him exhibit BRA/43. D.C.S. JONES said "Is this the can you sprinkled paraffin from." LEIGHTON said "I don't know, it's all burnt now, it might be. We got it from the cellar." D.C.S. JONES said "This one was found under the stairs where the fire started, could it be the one." LEIGHTON said "Yes, that's where we left it." D.C.S. JONES then immediately afterwards saw SALIH, showed him exhibit BRA/43 and said "Does this look like the rusty can you sprinkled paraffin from to start the fire with." SALIH said "Yes, that looks like it. We got it from a cellar." D.C.S. JONES later told Colin George LATTIMORE, Ronald William LEIGHTON and Ahmet SALIH that they would be charged with the murder of Maxwell Thomas CONFAIT at 27 Doggett Road, S.E.6 and burning down the house at Doggett Road and cautioned them. None of them made any reply. At 1.45 p.m. on 25th April 1972 at Lee Road Police Station I was present together with Detective Chief Superintendent JONES when they were charged, cautioned and the charge read over to them and none of them made any reply. Present when they were charged were Mr. SHINE, Legal Executive for LATTIMORE, Mrs. LEIGHTON, Mother and Mrs. SALIH, Mother and Mrs. FERID, Interpreter.

APPENDIX F

TEXT OF WRITTEN STATEMENTS MADE BY THE THREE BOYS[1]

1. Lattimore

Lee Road Police Station. *P Divn.* *24th April*, 1972

Name Colin George LATTIMORE *Age* 18 25-7-53

Address and Telephone Number 16 Nelgarde Road, Catford, SE6

Occupation Day school at Leemore, House, Clarendon

Statement I Colin Lattimore wish to make a statement. I want someone to write down what I say. I have been told that I need not say anything unless I wish to do so but whatever I say will be given in evidence.

[sgd] Colin Lattimore [sgd] F G B Lattimore
Father

I met Ronnie and Ahmet coming down Doggett. It was dark at that time. Ahmet said "Where shall we go" I said "I don't know where do you want to go" Ahmet said 'Let's go in that old house in Doggett Road, the end house There is nobody living in there" Ronnie and I agreed to do this. Ronnie went down the steps first, then Ahmet and then me. We had a look inside the basement, in the cupboard to see what was there and Ahmet saw a rusty can. Ahmet said "I wonder whats inside" I said Tip it out to smell it" I smelt it and it was parrafin" I asked Ronnie for matches and he didn't have any. Then I asked Ahmet and he had a box of matches. Ahmet lit the fire and I tried to put it out with bricks and dirt. It keep smoking. Then the other two went upstairs and I waited down in the basement. When they came back down Ronnie and Ahmet both said "Lets get out of here". Then we all ran away. I went home, and stayed in. Question by Det Ch Supt Jones "Why did you admit to me a few minutes ago in the presence of your father and in the presence of two other boys that you had in fact pulled the wire around the mans neck and held it pulled for about two minutes" Answer "They told me to say it. I mean Ronnie and Ahmet. Mr Lattimore said "I think this is possible. He is dominated by Ronnie. After Mr Lattimore had told Colin to tell the truth. Colin said "Ronnie held him and I put the flex around his neck and accidently killed him. We all went up to the top floor together. Ronnie went in first. I went in second and Ahmet went in last. The man was sitting on the bed reading and Ronnie went up to him. I thought he was going to hurt Ronnie so I put the wire round his neck and accidently killed him. The wire was in a little drawer in the sideboard. I put the wire back in the same little drawer Then we all ran home. I liked to say that we lit the fire afterwards Ahmet lit it. Question from Det Inspector Stockwell Why did you light the fire Answer To burn the house, to have a muck about. I'd like also to tell you about burning a shed down in the Ladywell Park. The shed is beside the pavalion. Ronnie lit a witches broom with a box of matches and paraffin. He set fire to

[1] The texts in this Appendix follow the original manuscript statements (rather than the typed copies prepared, for the sake of convenience, by the police before the committal proceedings) as do the quotations given in the main body of the report (except where otherwise stated). Apart from the differences noted in Leighton's and Salih's statements (see footnote 3 on page 273 and footnotes 1 on page 274 and 1 on page 275), the manuscript and typed versions are in substance identical, the variations being mostly confined to rectifying some obvious spelling errors and punctuation omissions.

every[1] part of the shed and it was alight. After this we all ran away. This was today Monday 24th April 1972. I have had this statement read to me by Det Inspector Stockwell in the presence of my father. I have told I can add, alter or correct anything I wish. This statement is true I have made it of my own free will.

[sgd] Colin Lattimore
[sgd] F G B Lattimore

Statement written down in the presence of Mr Lattimore Father. Written by Det Insp Stockwell and read over by Det Insp Stockwell. Also present Det Ch Supt Jones and T/Det Constable Vale. Statement commenced at 9.30 p m and finished at 10.10 pm 24th April 1972 at Lee Road Police Station

2. Leighton

Lee Road Station *'P' Divn.* *24th April*, 1972.

Name Ronald William LEIGHTON *Age* 15 (17 7/56.)

Address and Telephone Number 146, Doggett Road, Catford, SE6.

Occupation Unemployed.

Statement I Ronald William LEIGHTON wish to make a statement. I want someone to write down what I say. I have been told that I need not say anything unless I wish to and whatever I do say maybe given in evidence.

[sgd] R Leighton.
[sgd] D Leighton

Last Friday night 21st April 1972 at about 9.20 pm[2] I was at my mother's until then. After this I went out and met Colin, Ahmet was already with me. We didn't know what we were going to do and together we decided to go into a house in Doggett Road. We went round the back and got in through the window and then went upstairs. We went into a room. I was first, I saw the bloke sitting in the chair he got up and came over and got hold of me. I got hold of his arms when he was fighting with me. Colin came in and got hold of a bit of wire out of a drawer; he put it round his neck and pulled it. I let go of him and he fell to the floor. This man had a hat on, like a wollen cap, I think it was black. I then picked up a shoulder bag and went out and then locked the door with the keys which were in it. I took the keys and on my way down the stairs I dropped the bag. Downstairs, under the stairs, I found some petrol in a can, I tipped it out and then threw a match in it and it went up. We then ran out of the front door in the basement. Outside I threw the keys over a yard by the house. We run away and Colin[3] went home and me and Ahment done at a shop in Sangley Road. I would also like to say about a shed by the Pavilion in Ladywell Park. I was with Colin and Ahmet and we dipped a brush in paint and set light to it and threw it in the shed that was done earlier today, Monday 24th April 1972. When we went into the house in Doggett Road we only went in to steal something, we didnt know anybody was in there. Colin said to burn the place to get rid of fingerprints. This statement has been read over to me in the presence of my mother. I have

[1] Amended from "the" and initialled "CL".
[2] Amended from "10.30 pm" and initialled "RL".
[3] Reproduced as "later" in typed version.

been told that I can correct alter or add any thing I wish. This statement is true and has been made of my own free will.

[sgd] R Leighton.
[sgd] D Leighton (Mother)

Statement taken down from 10.15 pm to 10.40 pm at Lee Road Police Station by A. Gledhill TDC and read over in the presence of Detective Inspector STOCKWELL, and Detective Chief Superintendent JONES.

3. Salih

Lee Road Police Station. *P Divn.* *25th April*, 1972

Name Ahmet SALIH *Age* 14 11.4.58

Address and Telephone Number 49, Nelgard Road, Catford, S.E

Occupation Schoolboy

Statement I Ahmet Salih wish to make a statement I want someone to write down what I say I have been told that I need not say anything unless I wish to do so but whatever I say will be given in evidence

((MRS) N. FERID) [sgd] Nazenin Ferid. [sgd] Ahmet Salih[1]

On Friday I was with Ronnie all day. When it was late we decided to break into a shop. It was dark and we met Colin in the Doggett Road. Then we went up the road and we looked at the house at the end. We decided to break into that one. We went in through the basement door and up the stairs. In a room at the top we saw a man. Ronnie went in first. The man got hold of Ronnie and Ronnie struggled with him. Colin got a piece of white wire from a chest of drawers and put it round the mans neck. As Ronnie was holding him the man was choking so they let him go and he fell on the floor. I just stood inside the doorway watching. Colin put the cable[2] back in the drawer and we ran downstairs. On the way out downstairs in the basement we lit a fire. Ronnie and me threw the parrafin around and Colin lit it with matches. It was a little fire at first and we got out and ran. Then read over by Mrs Ferid interpreter[3] His mother then interuppted and interpreter said "That isn't true what the lady read. Is it and Ahmet replied "Yes". This afternoon Ronnie, Colin and I were in Ladywell Park and Ronnie put a match to a broom which he had poured petrol over. He then chucked it in the shed and it set alight. We saw smoke and flames coming so we ran. Read over by interpreter and his mother said "Is it true" and Ahmet said "Yes". When I answer Yes the first time I meant that what you had written down is all true. This statement has been written down by me at Ahmet Salih dictation and read over to Ahmet. Whilst I was reading it to Ahmet it was translated to his

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[1] In the typed version this line was rendered:
"(sgd) Ahmet Salih
(sgd) Mukaddas Salih
(sgd) (Mrs) N. Ferid."

[2] After "cable" a word, which is not really legible but may have been "put", has been crossed out and initialled "AS".

[3] Sentence actually written at foot of page, i.e. after "Is it and" in next line, interpolated in text at this point by carets and initialled "NF".

mother and Ahmet signed in my presence and also the presence of Det Ch Supt Jones Mrs Ferid interpreter and his mother.

[sgd] Ahmet Salih
[sgd] Nazenin Ferid.[1]
[sgd] G E Stockwell Det Insp 'P'

Statement taken at Lee Road Police Station 12.50 am til 1.30 am Tuesday 25th April 1972

[1] In the typed version this line was omitted and replaced by: "(sgd) Mukaddas Salih."

APPENDIX G

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APPENDIX H

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R v. Tullett	[1976] 1 W.L.R. 241; [1976] 2 All E.R. 1032; 62 Cr. App. R. 225.
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