

REPORT OF THE INQUIRY INTO THE LIAISON ARRANGEMENTS BETWEEN THE POLICE, THE PROCURATOR FISCAL SERVICE AND THE CROWN OFFICE AND THE FAMILY OF THE DECEASED SURJIT SINGH CHHOKAR IN CONNECTION WITH THE MURDER OF SURJIT SINGH CHHOKAR AND THE RELATED PROSECUTIONS

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1. INTRODUCTION

Background to the Inquiry

1.1 In May 2000 the Lord Advocate, the Rt. Hon Colin Boyd QC, identified the need for the Crown Office to review the circumstances surrounding the level of contact between the Chhokar family and next-of-kin and the Procurator Fiscal Service. The review was carried out by Mrs Elish Angiolini, Regional Procurator Fiscal for Grampian, Highland and Islands. Her Report, entitled 'Internal Report to the Lord Advocate: Review of Liaison with Next of Kin in the Case of Her Majesty's Advocate v. Coulter and Her Majesty's Advocate v. Montgomery and Coulter' was submitted on 17th November 2000. On the basis of the findings of the Report it was decided to set up an independent Inquiry.

Appointment and Terms of Reference

1.2 The Lord Advocate published the Internal Report on 27th November 2000, and on the following day, 28th November, he announced the setting up of this Inquiry in a Written Answer and Statement in the Scottish Parliament following the conclusion at the High Court in Glasgow of the trial of Her Majesty's Advocate v. David Montgomery and Andrew Coulter for the murder of Surjit Singh Chhokar. The Internal Report forms part of the Terms of Reference given to this Inquiry, which were as follows -

"To review and report on the liaison arrangements between the police, the Procurator Fiscal Service, and the Crown Office and the family of the deceased Surjit Singh Chhokar in connection with the murder of Surjit Singh Chhokar and the related prosecutions, and in particular:

- to consider the internal report commissioned by the Lord Advocate;
- to conduct the inquiry by obtaining information and comment from the family of Surjit Singh Chhokar, their representatives and from the police;
- to consult the Commission for Racial Equality and Victim Support Scotland and any other relevant group;
- to comment on the findings and recommended actions in the internal Report;
- to consider whether liaison arrangements were affected by institutional racism; and

· to report with findings and recommendations for action to the Lord Advocate and the Minister for Justice by April 2001."

1.3 I was directed to report to the Lord Advocate and the Deputy First Minister and Minister for Justice, Jim Wallace QC MSP.

1.4 After the announcement of the setting up of the Inquiry, and my appointment, I set about to arrange the start of the Inquiry as soon as possible. The extent of public disquiet, reflected in the high level of media coverage, was clear. It was apparent from the Internal Report submitted to the Lord Advocate that there had been a fundamental breakdown in communication between the Police, the Procurator Fiscal Service and the Crown Office which had obstructed the proper approach to providing respect, compassion and due consideration to the family and next of kin of the deceased. Accordingly, I decided to ascertain the facts, address the problems, and to try to offer guidelines to restore confidence in the working of the agencies of the criminal justice system, both for the agencies themselves and for the public. For these reasons I decided I had to begin hearing evidence as quickly as possible.

1.5 I have thought it appropriate to take a wide view of my Terms of Reference, but I believe that I have not gone beyond them. As the Inquiry progressed it became clear that, in order for me to carry out a thorough investigation it was appropriate to look at the circumstances surrounding the question of potential racial motivation. I sought clarification of whether my Terms of Reference permitted me to consider and comment upon racism and its possible impact on the police investigation of the case. It was agreed by the Lord Advocate and the Minister for Justice that they did.

1.6 The length of time spent hearing evidence was dictated by the necessity of a thorough investigation into a large number of complex and varied matters, all of which in my opinion merited consideration and comment in the Report. The Inquiry began taking evidence on 18th December 2000 and finished on 15th June 2001. Supplementary evidence on one point was taken from a witness on 6th September 2001.

Sources of Evidence

Interviews

1.7 Evidence was principally obtained through interviews with individuals who in some way had an involvement with the circumstances relevant to my Inquiry. From the outset it was made clear to me that I would receive the complete co-operation of both Crown Office and Procurator Fiscal Service and Strathclyde Police officers. This proved to be the case. I also interviewed a considerable number of individuals outwith these organisations and all those whom I invited to interview co-operated fully in answering the questions which I put to them. They are listed at Appendix 13.

1.8 Mrs Sanehdeep Chhokar, Surjit's widow, gave her evidence to the Inquiry. She indicated that she preferred to give her evidence through Mrs Kate Duffy of the PETAL organisation. I was able therefore to put questions to her and get her views on a number of relevant issues. I am grateful to Mrs Sanehdeep Chhokar for assisting me and also to Mrs Kate Duffy.

1.9 I wrote to the deceased's girlfriend, Mrs Elizabeth Bryce, by recorded delivery on several occasions at the address provided to me. I did not receive a response to these letters although one letter was returned indicating that it had not been uplifted by the addressee. I am unable to say, therefore, whether Mrs Bryce received my invitation to give evidence to the Inquiry. She had given a number of statements to the police and the Procurator Fiscal, evidence in both trials and made subsequent comment in the media. I have had regard to them.

1.10 The only individuals who declined my invitation for interview were Mr Darshan Singh Chhokar and his wife, Mrs Gurdev Kaur Chhokar and Mr Aamer Anwar. I met with, but did not interview, Mr and Mrs Chhokar, Mrs Manjit Sengha (their daughter) and Mr Anwar on 16th February 2001. On 11th May 2001 they elected, under

advice from their representative, Mr Aamer Anwar, not to give evidence to the Inquiry. Mr Anwar did not himself respond to an invitation to give evidence about his involvement in the events that fall within the remit of the Inquiry.

1.11 A public session was held on 21st May 2001 in Glasgow at which Mr Anwar read a statement in his capacity as Legal Spokesperson for the Chhokar Family Justice Campaign. Mr Chhokar also spoke at this session and I am grateful to him. A copy of Mr Anwar's statement is contained in Appendix 6.

1.12 Both Mr and Mrs Chhokar and Mrs Sengha together with Mr Anwar, made their positions about issues which fell within the remit of this Inquiry well known in their public statements to the media. I have taken them into account and put them to relevant witnesses for comment. The family made public comments about their treatment by and views of the criminal justice system: these have been reported in over 600 newspaper articles.

1.13 I took written evidence from the pathologists who conducted the post mortem examination of Surjit Singh Chhokar's body. Their evidence was of a purely formal and procedural nature and I did not, therefore, see a necessity to interview these individuals. Written evidence was also taken from Detective Inspector Kenneth MacIver who has, for the duration of my Inquiry, been absent from duty on the grounds of ill-health. I am grateful to him for his assistance.

Documentary evidence

1.14 I was given unrestricted access to all papers held by the Crown Office and Procurator Fiscal Service in connection with the death of Surjit Singh Chhokar and the related prosecutions. These included the precognition documents and the correspondence files from both the Procurator Fiscal's Office at Hamilton and the Crown Office. I also obtained documents relevant to the interim review conducted by the Regional Procurator Fiscal, Mrs Angiolini, into the liaison arrangements with the next of kin.

1.15 I was provided with copies of relevant guidance available at the time of preparation of the prosecution case up to the present date in the form of the Crown Office and Procurator Fiscal Service Book of Regulations and Crown Office Circulars. I also obtained information relevant to the creation and development of the new Victim Liaison Office scheme.

1.16 I was also given access to the papers held by Strathclyde Police in connection with the investigation of the case. These included copies of all witness statements and case reports submitted to the Procurator Fiscal; the Management Policy Book maintained by the Senior Investigating Officer; and the report of an internal review of the police investigation.

1.17 In addition, Strathclyde Police assisted greatly in providing the Inquiry with copies of both Strathclyde and national policy and guidance documents.

Methodology

1.18 This was not a public inquiry. I had regard to what was said by Lord Denning in his Report into the Profumo affair in 1963 (Cmnd. 2152). In approaching questions of fact I was mindful of what he said in paragraph 8:

"When the facts are clear and beyond controversy, I will state them as objectively as I can, irrespective of the consequences to individuals: and I will draw any inference that is manifest from those facts. But when the facts are in issue, I must always remember the cardinal principle of justice - that no man is to be condemned on suspicion. There must be evidence which proves his guilt before he is pronounced to be so. I will therefore take the facts in his favour rather than do an injustice which is without remedy. For from my findings there is no appeal."

This Inquiry shares some of the features with those of Lord Denning's Inquiry. The procedures, which I adopted, carry with it both advantages and disadvantages, which, again, are discussed in paragraph 5 of Lord Denning's Report. I was, of course, mindful of the criticisms of this form of Inquiry in and of the

Recommendations of the Royal Commission on Tribunals of Inquiry, 1966, chaired by the late Lord Salmon (Cmnd. 3121). I adopted broadly the same approach as Lord Denning described in the passage quoted above. Interviews with individual witnesses were conducted in private and, with one exception (where the interview was tape-recorded), a written record of the session was taken. Witnesses were given the opportunity to consider their role and, where appropriate, to check their account by reference to relevant documents. Every witness was offered and all took the opportunity to comment on drafts of their evidence to me. All witnesses were given the opportunity to bring to my attention issues they thought pertinent. Where there was substantive criticism made of individuals or organisations by third parties, or indeed by the Inquiry, these were put to witnesses for comment. Witnesses gave their evidence on the understanding that it might be quoted and attributed to them in my Report.

1.19 In drawing conclusions from the evidence given to me I have, of course, had regard to its reliability and quality. In particular, I have considered whether it is first hand or not, whether it is consistent with other accounts of the same events and whether it is corroborated or capable of independent verification. I have also had regard to the fact that, in the case of events which occurred in 1998, ie more than two and a half years ago, recollections are sometimes hazy and it would not be surprising if accounts of different individuals are not wholly consistent with each other.

1.20 I have made extensive use of verbatim quotation of witnesses throughout this Report. These quotations are not only for illustration but form also an integral part of the narrative of the Report, so that the reader may better judge the conclusions I reach by direct inspection of the evidence.

Advice

1.21 The Terms of Reference required me to consult with Victim Support Scotland and the Commission for Racial Equality. I met with representatives of both organisations and am indebted to them for the advice and assistance they provided to me. I am also grateful to those other individuals and organisations - and notably Victim Support Scotland - who made written submissions to the Inquiry. They are listed at Appendix 13.

Visits

1.22 The Inquiry visited the scene of Surjit Singh Chhokar's murder and took the opportunity to familiarise itself with the surrounding area. I am grateful to Detective Sergeant Ian Duffy for accommodating requests in this regard.

1.23 The Inquiry took evidence at a number of locations: Strathclyde Police Headquarters, Glasgow; Motherwell Police Office; the Procurator Fiscal Offices at Aberdeen, Glasgow and Hamilton; the High Court of Justiciary at Glasgow; the offices of PETAL in Hamilton; the offices of the now West of Scotland Racial Equality Council, Glasgow; the East Pollokshields Multicultural Centre, Glasgow; the Faculty of Advocates, Parliament House, Edinburgh; and at the Inquiry's own offices in Edinburgh.

1.24 The Inquiry also visited the headquarters of Victim Support Scotland and the offices of the Commission for Racial Equality in Edinburgh.

Terminology

1.25 In this Report, the term 'ethnic minorities' is used in a general sense to describe minority groups and communities who share a common sense of identity based on shared culture, language, religion, history or country of origin. This term is used merely as convenient shorthand and its limitation is recognised.

Acknowledgements

1.26 I should like to thank Sir John Orr, Chief Constable of Strathclyde Police until June 2001, Sir Roy Cameron, Chief Constable of Lothian and Borders Police, and Mr. Andrew Brown, Chief Constable of Grampian Police for their assistance in

giving me access to policy documents. I also thank others, whom I do not name, who, at various stages, helped to ensure that the Inquiry had all the facilities necessary to allow me to conduct my investigation and prepare my Report. I also express here my gratitude to Alpha Translating and Interpreting Services, Edinburgh and, in particular to Mr Shafiq Ashraf and Mr Atiq Malik who interpreted for the Inquiry.

1.27 I have been assisted in carrying out my Inquiry by Elizabeth Ramsay and Ted Davison. I am greatly indebted to them for their conscientious application to the work of the Inquiry. They have worked assiduously and tirelessly to help me to complete my Inquiry within the timetable which I set myself. I offer here my thanks and my appreciation for their work. Their wisdom and good humour was indispensable. The Inquiry was also assisted by Angela Ward and Lorimer Mackenzie and I am very grateful to them.

1.28 The Report remains my sole responsibility.

2. EXECUTIVE SUMMARY

The murder

2.1 Surjit Singh Chhokar was attacked by three white men and fatally stabbed on 4th November 1998 outside his girlfriend's home in Overtown, Wishaw. The attack was witnessed by his girlfriend, Elizabeth Bryce. A number of individuals went to Surjit's aid but their efforts to save his life were unsuccessful.

Police response

2.2 The initial response by Strathclyde Police was swift and appropriate, beginning with the human need of the victim; and their investigation was well-focused and for the most part, thorough. The eye-witness Elizabeth Bryce identified the primary motive for the murder - "*an argument over a giro*" - and the police gathered evidence to support that.

2.3 Immediately after Surjit was pronounced dead, police officers went to the homes of his wife and his parents, informed them of his death, and accompanied them as they identified the body. Other officers looked after Surjit's children while these formalities were attended to. This initial contact with members of the Chhokar family was effective and sympathetic.

2.4 Three suspects - Andrew Coulter, David Montgomery and Ronnie Coulter - were identified, and all were arrested and charged within five days of the murder. Ronnie Coulter was brought to trial in March 1999, convicted by the jury of assault, and set free. The other two accused men were indicted in June 1999; they lodged appeals on Human Rights grounds, which went ultimately to the Judicial Committee of the Privy Council; and they were brought to trial in November 2000. David Montgomery was acquitted: Andrew Coulter was convicted by the jury of assault.

2.5 The police investigation was efficient and effective in tracing and arresting suspects, and gathering evidence; but it failed to pursue the question whether the crime was racially aggravated. The Divisional Commander himself attended the scene of crime immediately after the murder. He noted that there was a non-racial motive but did not dismiss from his mind the possibility of a racial element. However he was over-ruled the next morning (5th November 1998) when police headquarters issued a press release containing the statement that "there does not appear to be any racial motive involved". On the same morning the Head of the police Community Involvement Branch made a telephone call to a local councillor who was, like the Chhokar family, a Sikh to convey the same view of the crime. The Senior Investigating Officer who took over the enquiry later in the day also ruled racial motivation out of his consideration: none of the victim's relatives was interviewed in connection with the crime; when the police Family Liaison Officers reported that a family member had asked "*Was it because he was black?*" the Senior Investigating Officer dismissed it from consideration, and nothing further was said to the family about it, at any time.

Police family liaison

2.6 Family Liaison Officers were appointed promptly. Three experienced officers were selected, two of whom had a strong background in police work with minority ethnic communities: the third was already acquainted with the Chhokar family. The officers were briefed for their role; visited the family several times in the first few days and gave relevant and helpful information, including victim support literature. The possible need for interpreters was anticipated, and two Punjabi-speaking officers were put on standby for this; the Family Liaison Officers offered this service but it was declined. The officers judged that interpreters would not be needed, on the basis that Mr Chhokar had some conversational English and his daughter and daughter-in-law were fluent in English. Family liaison was confined to the Chhokar family: the police viewed Mrs Bryce as a witness only, and offered her no liaison service.

2.7 The police were taken by surprise to learn that Sikh custom requires that a body be cremated and does not condone burial. They foresaw a problem, in that in a homicide case the victim's body would generally be released by the Procurator Fiscal for burial only; but their lines of communication with the Procurator Fiscal's Office were confused, there was delay in getting clearance for cremation of the body, and further delay - over a weekend - in getting this information to the family. At one point the police advised the family to contact the Procurator Fiscal themselves. **Needless and avoidable distress was caused to the family.**

2.8 The police enquiry was finished and the Incident Room closed down on 17th November; and Surjit Singh Chhokar's funeral was held on 18th November. Thereafter Mr Chhokar was given contact details for any queries he might have, but the police took no further initiative to make contact. Mr Chhokar telephoned to ask about the date for the trial, and was told when the sitting would commence. Liaison continued with Surjit's widow, Sanehdeep, however, at her request, until she let the police know she had no further need for it.

2.9 After the trial of Ronnie Coulter, when the outcome of the case and the judge's public comments on it became national news, the Family Liaison Officers were instructed to visit Mr Chhokar. By this time the Chhokar Family Justice Campaign had been launched, and the police were taken by surprise to find Aamer Anwar present with the family. Mr Anwar had a number of questions relating mainly to the prosecution, which the police were not able to answer on the spot, and the officers withdrew from the meeting. They made some attempt to get a list of Mr Anwar's questions, but abandoned liaison with the family at that point and did nothing to try to repair their relationship with them.

The Procurator Fiscal's Office

2.10 In the Hamilton Procurator Fiscal's Office **the case was passed to a Deputy who had neither experience nor training to handle a murder case, and was not adequately supervised. In innocence, he made critical mistakes in relation to the family, which went unrecognised until it was too late to retrieve the situation.** Overlooking information which could have been gleaned from the documents, in particular the Sudden Death Report, he identified Mr Chhokar and Mrs Bryce as next of kin and ignored Mrs Sanehdeep Chhokar, until her interest was brought to his notice by PETAL, a self-help group to which she had turned for assistance; and he gave no priority to making contact with Mr Chhokar. At the trial itself he had only fleeting contact with the family on the first day, and nobody from the Procurator Fiscal's Office was present at all during the later stages of the trial. **The consequence was that at the end of the trial there was nobody on hand to explain to the family why only one of three accused had been in the dock, or why the accused was set free.**

2.11 Publicity and political pressure after the trial galvanised the Crown Office. The Regional Procurator Fiscal was instructed to meet the family, but was not able to give them satisfactory answers to their questions, and showed little sensitivity to their point of view. The following month, April 1999, the family, accompanied by supporters from the Chhokar Family Justice Campaign and with attendant publicity, travelled to Edinburgh and sought a meeting with the Lord Advocate. The Lord

Advocate considered it would not be proper for him to meet the family until all proceedings were at an end, but instructed the Deputy Crown Agent to meet the family and supporters and to report back to him. The Deputy Crown Agent made a genuine attempt to communicate with the family and to explain matters to them, through an interpreter whom they had brought with them; but he was unable to do so satisfactorily, due to the intervention of Mr Anwar, who took on himself the role of interpreter as well as leader of the Campaign.

2.12 Thereafter the Crown Office itself took responsibility for liaison with Surjit's parents and sister, and took pains to ensure that they were informed of progress at each stage. However it was left to the Hamilton office to maintain contact with Sanehdeep Chhokar, who took no part in the Campaign and distanced herself from it; and the Hamilton office was not kept fully informed by Crown Office, with the result that when the other two accused were indicted, Mrs Chhokar learned of it only when her (and Surjit's) daughter saw it announced on television.

2.13 During subsequent proceedings, in particular the Privy Council hearings, Crown Office arranged full liaison with the other family members, with which they were well satisfied.

2.14 Meticulous preparations were made for liaison at the second trial, including provision of a team of independent interpreters for the family, and the arrangements were conscientiously carried through. However the efforts of the Depute responsible for liaison were impeded and disrupted by interventions by the Campaign leader and spokesman, Mr Anwar, who made misguided attempts to influence the conduct of the prosecution. The Crown Office was obliged to take steps to resist these. After the trial, the Lord Advocate met the family.

Racism, and institutional racism

2.15 There is abundant evidence of racism in Scotland. Most of the evidence is anecdotal, though there has been some systematic research. There is a need for more research, professionally carried out.

2.16 The concept of institutional racism has been much discussed, and its definition much debated. For the purposes of this Report the criterion adopted is that -

Institutional racism occurs wherever the service provided by an organisation fails - whether deliberately or not - to meet equally the needs of all the people whom it serves, having regard to their racial, ethnic or cultural background.

2.17 The view taken in this Report is that institutional racism is a disorder in an organisation, which is likely to occur from time to time, in greater or less degree, and has to be tackled whenever it occurs or recurs. As such, it is an ailment which is curable, and the cure may be more or less effective, and more or less permanent.

2.18 Measured against that criterion, **there was evidence of institutional racism**, notably in the failure of the police to consider racial aggravation as a factor in their investigation of the crime; but also in the unpreparedness of police and Procurator Fiscal to respond readily to the requirement of cremation in Sikh funeral customs; and in the failure of the Procurator Fiscal's Office to recognise that a person such as Mr Chhokar could have difficulty in coping with correspondence in English, and their slowness to realise the need for interpreters.

2.19 Under Ministerial leadership, first from Lord Hardie and continued under the present Lord Advocate, the Crown Office and Procurator Fiscal Service have taken systematic action to eradicate institutional racism. A Race Strategy Action Plan was approved in June 1999, a foundational training seminar held in September of that year, and a training programme rolled out to the whole Service between September 1999 and May 2000, with input from Racial Equality Councils and other local community groups. Anti-racist training is also to be built into existing training courses. A Race Strategy Group, chaired by the Solicitor General, started work in July 2000, with a wide-ranging agenda including: recruitment from ethnic minorities; a review of reports of racial crime and Crown

prosecution policy; relations with the Commission for Racial Equality and Racial Equality Councils; interpreters; establishment of regional resource teams to co-ordinate race strategy; research; and secondments.

2.20 This Inquiry did not extend to the police service in Scotland as a whole, but was concerned with **Strathclyde Police**. The first Multi-Agency Racial Incident Monitoring (MARIM) group was formed in 1987; the first Race Relations Policy and first race relations training appeared in 1989; a 'Policing a Multi-Racial Society' training programme began in 1992, for officers between Sergeant and Chief Inspector ranks, and continues still; a revised Race Relations Policy was produced in 1997; and a guidance document 'Religion, Culture and Sensitivities' was produced in late 1999 and issued to the entire Force. At the national level, ACPOS published a Racial Diversity Strategy in March 2000. These developments are commended: **what remains to be realised is the translation of those policies into action by every individual police officer. Only when that is achieved will minority communities gain confidence that they are being policed fairly.**

Victim support

2.21 The Inquiry heard vivid evidence about the experiences and perceptions of the relatives of murder victims - who are themselves, in effect, victims - when a case comes to trial. No one agency can supply all their needs, for comfort in grief, moral support, practical advice and guidance, and intelligible explanation of the processes of criminal investigation, prosecution and trial. There are tasks for voluntary and self-help groups as well as for the public authorities, and there is a need for these various agencies to be co-ordinated. The work of Victim Support Scotland (VSS) is particularly noted. Recent developments are also noted and welcomed: the publication in 2000 of the Scottish Executive's Strategy for Victims; and the issue in July 2000 of a new chapter of the Crown Office and Procurator Fiscal Service Book of Regulations, which sets out the duties of Procurators Fiscal to victims, next of kin and witnesses, gives instructions about helping witnesses and others who may be unfamiliar with court proceedings and anxious; spells out the duty of the prosecution to ensure that the court is informed about the effect of the crime on the victim; and gives new and very specific directions about contacting next of kin. Most significantly, the development of a Victim Liaison Office pilot scheme, which is to be rolled out to each region, is described and welcomed.

2.22 Recent developments in police family liaison are also reviewed and welcomed, specifically: the issue of ACPOS guidance on good practice; the introduction of a national training course for Family Liaison Officers; and the introduction of the 'Family Liaison Log', an operational document designed to ensure that appropriate contacts are made and the details duly recorded for the Senior Investigating Officer. Monitoring of these developments is recommended, and in particular that HM Inspectorate of Constabulary make it an early priority to conduct a thematic inspection of family liaison, and that Justice Ministers give special attention to the report of that inspection.

2.23 Here and throughout the Report **the need for much closer and more systematic liaison between police and Procurator Fiscal** at all stages of a case is stressed. Much of the neglect of the Chhokar family in the lead up to and during the first trial might have been averted if there had been systematic communication between the police and the Procurator Fiscal.

2.24 Other relevant issues are reviewed in summary chapters on **interpreters** and on **legal education and training**. The latter is an issue for the entire legal profession, and for the university Law Schools.

Internal reports

2.25 This Inquiry was instructed to review the Crown Office internal report, which was commissioned by the Lord Advocate, and published in November 2000. The report was originally prepared as a confidential document, but was published before it had been completed. The methodology was inadequate, and this Inquiry has not relied on the internal report, but has gone back to the primary sources. The conclusions however, which are reviewed in detail, largely accord with the findings of this Inquiry.

2.26 Strathclyde Police also commissioned an internal review of their handling of the criminal investigation in this case, in 1999. This is an unpublished document, but the Inquiry has been given access to it and has examined it critically. The remit given to the reviewing officer was vague and unfocused, and the review itself lacked rigour. In particular, the reviewing officer made the same mistake as the Senior Investigating Officer, in discounting and failing adequately to investigate the question of racial aggravation, or the racial aspect of the case altogether. Reviews conducted on such lines can do nothing to build confidence that the police are sufficiently focused, even yet, on racial issues. Recommendations are made for the conduct of future reviews

Conclusions and recommendations

2.27 Parallels which have been drawn between this case and the Stephen Lawrence case are misleading. Surjit Singh Chhokar was not picked on at random by a gang who did not know him: at least one of his assailants was an associate of his, who had a non-racial motive for attacking him. His girlfriend, who was an eye-witness, did not see it as a racist attack; neither did his wife. The police officers who came to the scene made it their first priority to save his life, if they could.

2.28 Elements of institutional racism are found in the organisation and procedures both of Strathclyde Police and the Procurator Fiscal Service. They are curable; and there are encouraging signs that steps are being taken to cure them, and that progress has been made even in the intervening years since Surjit Singh was murdered. The recommendations of this Report are tempered by that. The cardinal principles which must underlie further steps towards reform are -

- Public confidence in the police and prosecution authorities is an essential feature of a criminal justice system that values justice and liberty in a democratic society.
- The processes of the criminal justice system should treat all victims and witnesses with courtesy, compassion and respect for their personal dignity; and should be responsive to their needs.

2.29 The principal recommendations of this Report are as follows -

2.30 An Inspectorate of the Crown Office and Procurator Fiscal Service should be established, headed by an independent Inspector. The Quality and Practice Review Unit of the Crown Office should be reinforced and reconstituted as a support unit to Inspectorate with an independent element. The Inspectorate's reports, like those of other Inspectorates, should be made public.

2.31 The Crown Office Inspectorate should conduct a thematic inspection of the Service's response on race matters, reporting to Ministers through the Race Strategy Group, within the next two to three years.

2.32 The police should make it their priority now to translate the policies which they have developed into guidance for the Force which is operationally based and gives practical instructions to police officers. In doing so the police should rely on and develop partnership links with other bodies, both statutory and voluntary, through organisations such as the MARIM groups and Racial Equality Councils.

2.33 HM Inspectorate of Constabulary should make it an early priority to conduct a thematic inspection of family liaison, and Justice Ministers should give special attention to the report of that inspection.

2.34 There must be a more structured system of communication and liaison between the Procurator Fiscal and the police, from the earliest stages of an investigation right through to trial, and in particular with police Family Liaison Officers.

2.35 There is also a need for systematic communication, co-operation and exchange of ideas between the prosecution service and the police at the most senior levels.

2.36 Specific recommendations made at points throughout the Report are summarised at the end of the final chapter.

3. THE MURDER

This chapter describes the circumstances of the murder of Surjit Singh Chhokar. It also describes his family connections.

3.1 Descriptions of the murder of Surjit Singh Chhokar on 4th November 1998 have been given in evidence in two criminal trials, reports of which have appeared in many newspapers and television programmes. Only two direct eyewitness accounts of the attack have been given, one by Mrs Elizabeth Bryce, with whom Surjit had been living, and one by a neighbour of Mrs Bryce who was unable to identify any of the perpetrators.

3.2 Much of the following sequence of events has been reconstructed using the information contained in the statements given by witnesses to the police following the murder and in precognition statements given to the Procurator Fiscal. I have also taken evidence from the first police officers to arrive at the scene of the attack and have read the post mortem report prepared by the forensic pathologists.

Surjit Singh Chhokar

3.3 Surjit Singh Chhokar was 32 years old (date of birth 11 April 1966) when he was murdered on 4th November 1998. He was an Indian citizen who came to the United Kingdom as a child in 1975 with his mother and sister. His father, Darshan Singh Chhokar, was already living in the United Kingdom having arrived a few years earlier.

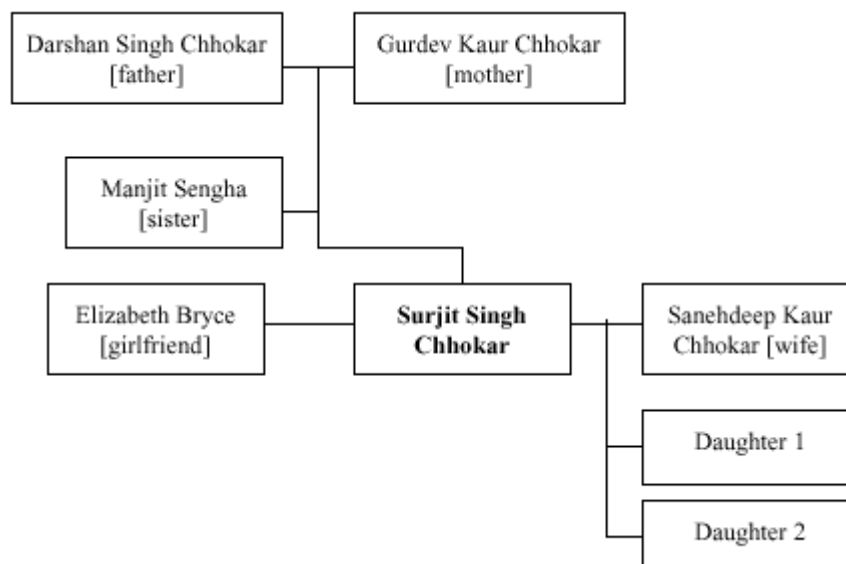
3.4 Surjit was separated from his wife Sanehdeep Chhokar with whom he had two children who lived with their mother in Lawhill Road, Law.

3.5 Surjit was involved in a relationship with his girlfriend Mrs Elizabeth Bryce for about six years. At the time of his murder Surjit had been living for approximately three/four months with her in Garrion Street, Overtown, Wishaw.

3.6 He also had a tenancy, until the day of his death, at 65 Caplaw Tower, Gowkthrapple, Wishaw. He moved there in or about April/May 1998 but decided to live with Elizabeth Bryce after his flat had been broken into in July or August of that year. Elizabeth Bryce told the police that Surjit did not feel comfortable living in the flat following the break-in.

3.7 Surjit's parents Darshan Singh Chhokar and Gurdev Kaur Chhokar also live in North Lanarkshire.

3.8 His sister Mrs Manjit Sengha lives in Bishopbriggs, Glasgow. Surjit's 'family' is described in the family tree:



The Murder of Surjit Singh Chhokar

3.9 On the morning of Wednesday 4th November 1998, Surjit Singh Chhokar and Elizabeth Bryce drove from her house at Garrion Street to Surjit's flat at 65 Caplaw Tower in order to uplift his fortnightly state benefit girocheque. He went into the flat while Mrs Bryce waited in the car. He returned after a short time, telling Mrs Bryce that the flat had been broken into and the girocheque was not there. They thought that the postman might have retained the girocheque because the front door of the flat was insecure.

3.10 The couple later went to the Job Centre in Kirk Road, Wishaw. Again, Mrs Bryce waited in the car while Surjit went inside to report the matter. After approximately twenty minutes, Surjit emerged and explained to Mrs Bryce that the girocheque had been cashed earlier that day by Andrew Coulter who was known to both Mrs Bryce and Surjit.

3.11 The couple then went to the Housing Office in Gowkthrapple to report the housebreaking. The office was closed between 1300 and 1400 hours so Surjit and Elizabeth Bryce went for lunch together and Surjit also had his hair cut. Shortly after 1400 hours the couple went back to the Housing Office. Surjit also completed forms to terminate his occupancy of the flat at Caplaw Tower. They then went back to Elizabeth Bryce's home in Garrion Street.

3.12 Surjit left there at approximately 1500 hours to drive to work at the New Poonam restaurant in Bellshill. He did not report the housebreaking or the fraudulent encashment of the girocheque to the police. Mrs Bryce did not speak to any agency at the time.

3.13 Some time after 1500 hours that afternoon, Mrs Bryce went to the home of Andrew Coulter's mother, Margaret Chisholm. It was a walk of less than three or four minutes from her own home in Garrion Street. She wanted to find Andrew Coulter and confront him about the girocheque. She had known Mrs Chisholm for a number of years. Mrs Chisholm told her that Andrew Coulter did not live there any more. Mrs Bryce told her about the theft of Surjit's girocheque. In her statement to the police, Mrs Chisholm said that Mrs Bryce had told her to warn Andrew that the police would be 'round to see him' regarding the stolen girocheque. Mrs Bryce then returned home.

3.14 Approximately five minutes later, Mrs Chisholm went to Mrs Bryce's home in Garrion Street. Andrew Coulter and his sister arrived shortly afterwards in Garrion Street. Andrew Coulter told Mrs Bryce that "Chhokar" had given him the girocheque that morning and had asked him to cash it at the post office. He said that Surjit had given him £20 for doing so. Mrs Bryce told Andrew Coulter that the police would probably become involved. It was alleged that Andrew Coulter retorted, *"If that's the case, he'll be getting it"*.

3.15 Mrs Chisholm returned to her home with Andrew Coulter and his sister. Mrs Bryce followed them there about 10 minutes later. She asked Andrew Coulter about the money Surjit had allegedly given for cashing the girocheque. Mrs Bryce told Andrew Coulter to come to her house some time after 2300 hours, by which time Surjit would be home from work, in order that the matter could be resolved.

3.16 At approximately 2330 hours Surjit Singh Chhokar returned from work and parked his motor car outside Mrs Bryce's house. He was unaware of the discussions that had taken place between Elizabeth Bryce, Andrew Coulter and his mother. Mrs Bryce saw him from the window, he smiled at her and she saw that he was carrying a take-away meal and a bottle of 'Irn Bru'. He walked towards the gate leading to the door of the house.

3.17 After a few minutes, Mrs Bryce heard screaming from outside her home and knew that it was Surjit. She looked out of the window and saw Surjit being assaulted by three white males on the footpath near to his motor car. She ran out of her house and shouted, *"Fuckin' leave him alone you bastards"*. By this time the men had dragged Surjit across to the other side of the road and were pulling his arms and clothing. Surjit was attempting to keep his arms at his body. He tried to resist his attackers but his arms were repeatedly pulled by his assailants. Mrs

Bryce shouted, "*Andrew Coulter, I'm getting the fuckin' polis for you*". One of the attackers then ran off. At that point another of the men raised his arm and appeared to swing something at Surjit. According to Mrs Bryce this object was possibly a belt or a chain approximately two feet in length. The two remaining men also ran off down a lane leading to Main Street, Overtown. Surjit staggered across the road towards Mrs Bryce and said to her, "*I've been stabbed*", before collapsing over his motor car and on to the footpath.

3.18 A number of individuals went to the assistance of Surjit, including a gas technician who had been called out nearby and several neighbours, one of whom had called the emergency services at 2336 hours. Witnesses indicated that Surjit was bleeding heavily from wounds to his stomach and chest. The gas technician and a neighbour tried to stop the bleeding. The neighbour was holding Surjit's head and asked him who had done this to him. Surjit tried to answer but it was not possible to make out what he had said. Mrs Bryce had gone into the house and came back with a blanket and a pillow. Surjit was by this time unconscious.

3.19 The police arrived within three minutes of the '999' call. Constables John Maclean and David Rattray entered Garrion Street and observed an injured male on the ground. As PC Maclean approached the male he recognised him as Surjit Singh Chhokar, who was known to him. PC Maclean tried to assist Surjit. He attempted to locate a pulse but could not do so. Surjit was totally unresponsive. The gas technician indicated to PC Rattray that he believed Surjit had been stabbed in the chest. PC Rattray looked for other wounds but was unable to ascertain whether there were any due to the large amount of blood. He exerted pressure on Surjit's wounds in an attempt to stem the flow of blood.

3.20 An ambulance arrived at 2343 hours, seven minutes after the '999' call. The two paramedics observed that Surjit had been stabbed in the abdomen and left chest areas. He was not breathing, had no pulse and displayed no vital signs. Cardio-pulmonary resuscitation was administered by the paramedics to no avail.

3.21 Surjit was taken by ambulance from Garrion Street to Law Hospital, a journey which took approximately four minutes. Mrs Bryce and PC David Rattray accompanied him in the ambulance. Surjit was examined upon arrival and found to have sustained a stab wound to the abdomen, a stab wound to the top of the abdomen and a further stab wound to the left front chest. He was administered adrenaline and resuscitation attempts were continued unsuccessfully. Surjit Singh Chhokar was pronounced dead at 0007 hours on Thursday 5th November.

3.22 A post mortem examination was carried out on the afternoon of 5th November 1998. Surjit had sustained a total of three stab wounds to the front of his body. One of these wounds, to the upper abdomen, had severed the right coronary artery, resulting in massive haemorrhage, and had also penetrated the diaphragm and the liver. Surjit would have bled very heavily and quickly. In the opinion of the forensic pathologists, this was the fatal wound. Dr Jeannette McFarlane, Consultant Pathologist, has stated, "*This is not a wound you would realistically expect him to survive even with treatment*". The total depth of this wound was approximately nine centimetres. Of the other two wounds, one had penetrated the chest and pericardial sac but had not injured any major structures. The other wound had penetrated the abdomen and nicked the transverse colon. This wound was also potentially life threatening. The total depth of this wound was approximately 11 centimetres.

3.23 In addition, there were small superficial incised wounds to the left side of Surjit's nose, around his left ear and his left thigh. There was a laceration to his scalp, which, in the opinion of the forensic pathologists, was consistent with him striking his head on the ground.

The significance of the murder

3.24 No murder is insignificant: for those who are bereaved by murder, the event is overwhelming. Surjit's young daughters, his wife, his girlfriend, his parents and his sister have suffered a heartbreaking loss, which can never be made good.

3.25 Three men have stood trial for this murder. All were acquitted of murder although two were convicted of assault. Surjit's family are critical of the manner in which they were dealt with by the criminal justice system. The extent of public disquiet, reflected in the high level of media coverage, was clear.

4. PROCEDURAL HISTORY

This chapter sets out the procedural history of the cases against the suspects. It necessarily uses some technical terms: a glossary of terms is given in Appendix 16, and a brief description of the procedures involved in criminal proceedings of this nature is outlined in Appendix 14. The complete terms of the indictments in respect of Ronnie Coulter, David Montgomery and Andrew Coulter are set out in Appendix 1.

4.1 Surjit Singh Chhokar was attacked on **4th November 1998**.

4.2 Police enquiries identified three suspects: Andrew Coulter, David Montgomery and Ronnie Coulter. All were arrested and charged by the police within five days of Surjit's murder. All appeared on Petition at Hamilton Sheriff Court charged with murder; Andrew Coulter on 6th November 1998, David Montgomery on 9th November 1998 and Ronnie Coulter on 10th November 1998. All were committed for further examination.

4.3 Andrew Coulter was scheduled to be fully committed, if appropriate, on 13th November 1998. Full committal proceedings, if appropriate, in respect of Ronnie Coulter and David Montgomery were scheduled for 17th November 1998.

4.4 On **13th November 1998**, instructions were issued by Crown Counsel to fully commit Ronnie Coulter alone on a charge of murder and to liberate Andrew Coulter and David Montgomery meantime. The position in respect of these accused was to be kept under review during the precognition of the case. Ronnie Coulter was fully committed on 17th November 1998. An accused person charged with murder could not, at that time, apply for bail¹ and, accordingly, Ronnie Coulter was remanded in custody. Where an accused has been fully committed and is in custody, his/her trial must be commenced within 110 days of the date of full committal proceedings. The 110-day time bar in the case of Ronnie Coulter was 6th March 1999.

4.5 The precognition was submitted by the Procurator Fiscal's Office at Hamilton to Crown Office on **19th January 1999**. It was considered by Crown Counsel who instructed, on the same day, that Ronnie Coulter was to be indicted in the High Court on a charge of murder. Following instruction from Crown Counsel, Crown Office advised the Hamilton office that the position regarding David Montgomery and Andrew Coulter would be reviewed following the trial of Ronnie Coulter.

4.6 Ronnie Coulter was indicted to the sitting of the High Court at Glasgow commencing 1st March 1999. The trial took place on 2, 3, 4, 5, 8 and 9 March 1999 before Lord McCluskey. At the conclusion of the trial the jury convicted Ronnie Coulter of assaulting Surjit Singh Chhokar in that he did "seize hold of his body, struggle with him, strike him on the body". The reference to "murder" was deleted by the jury. The Crown did not move for sentence.

4.7 The police were thereafter instructed to make further enquiries and certain witnesses were reprecognosed. Ronnie Coulter was precognosed on oath by the Regional Procurator Fiscal at Hamilton. The Deputy Crown Agent re-reported the case to the Law Officers on 21st June 1999.

4.8 On **28th June 1999** instructions were issued to indict both Andrew Coulter and David Montgomery in respect of the murder of Surjit Singh Chhokar. In addition, Andrew Coulter was charged with housebreaking and stealing a cooker and a girocheque from Surjit's flat. He was also charged with uttering the stolen girocheque at the post office and receiving £100.70. David Montgomery was also charged with attempting to pervert the course of justice by seeking to destroy forensic or other evidence linking him or his car to the murder.

4.9 The case against David Montgomery and Andrew Coulter was originally indicted to the High Court sitting at Glasgow commencing 16th August 1999. The case was adjourned to the sittings of 13th September and 22nd November 1999 and 10th January, 14th February, 10th April, 5th June and 31st July 2000 as a result of the devolution issues² raised and appeals ultimately to the Judicial Committee of the Privy Council.

4.10 Devolution issue minutes were served by both Andrew Coulter and David Montgomery in early August 1999. In these minutes the defence claimed that each accused's right to a fair trial in terms of the European Convention on Human Rights had been breached as a result of prejudicial pre-trial publicity and the failure to bring all three accused to trial together.

4.11 At a hearing on **24th August 1999**, Lord Abernethy ruled that additions to the original devolution minutes lodged by the accused should be allowed. Leave to appeal was granted to the Crown. On 14th September 1999 the Appeal Court refused the Crown appeal and remitted the matter to the High Court for a hearing on the merits of the devolution minutes. On 7th September 1999 a four-day hearing on the devolution minutes took place before Lord Kirkwood. On 24th September 1999 the devolution minutes were refused. Leave to appeal was granted to the defence and the Appeal Court hearing in respect of Lord Kirkwood's decision took place on 15th and 16th November 1999. The appeals were refused and written reasons for the Court's decision became available in late December 1999. On **14th January 2000** leave to appeal to the Judicial Committee of the Privy Council was granted to the defence by the Appeal Court and, in due course, a hearing was fixed for 19th and 20th July 2000.

4.12 Relatives of Surjit Singh Chhokar, and Mr Aamer Anwar, attended every diet in the progress of the devolution minutes.

4.13 After hearing parties on 19th and 20th July 2000, the Judicial Committee of the Privy Council refused the appeal and intimated that written reasons would be issued in due course. These were not made available until 19th October 2000.

4.14 On **26th July 2000** a hearing was convened at the High Court in Edinburgh before Lady Paton to hear defence arguments to have the trial of Andrew Coulter and David Montgomery postponed until the Judicial Committee's written judgment became available. The Court adjourned the case to the sitting of the High Court commencing 28th August 2000 but indicated the case should not proceed to trial until the written reasons were available. Accordingly, the case had to be adjourned to sittings of the High Court at Glasgow commencing 9th and 23rd October 2000.

4.15 Although the written judgment became available on 19th October 2000, the Chhokar family indicated that they would prefer the case to proceed on a definite date some weeks ahead rather than face the uncertainty of the case calling at the earliest possible date. The family also asked that the trial take place after the second anniversary of Surjit Singh Chhokar's murder. The defence were agreeable to an adjournment of the trial to the sitting of the High Court at Glasgow commencing **6th November 2000**.

4.16 The trial of David Montgomery and Andrew Coulter took place on 10, 13, 15, 16, 17, 20, 21, 22, 23, 24, 27 and 28 November 2000 before Lord Bonomy. At the conclusion of the evidence, a no-case-to-answer submission by David Montgomery's Counsel was upheld in respect of the charge of attempting to pervert the course of justice. The jury acquitted David Montgomery of the murder of Surjit Singh Chhokar. Andrew Coulter was convicted of housebreaking and of uttering the stolen girocheque. In respect of the murder charge, Andrew Coulter was found guilty of assault by striking Surjit Singh Chhokar repeatedly with a piece of wood or metal. The reference to "murder" was deleted by the jury and, accordingly, Andrew Coulter was also acquitted of the murder of Surjit Singh Chhokar.

4.17 Contempt of court proceedings were instituted in respect of two Crown witnesses, one being Ronnie Coulter, who gave evidence at the trial of David Montgomery and Andrew Coulter. I did not feel it appropriate to consider as part of this Inquiry proceedings related to the case which were ongoing following the setting-up of my Inquiry on 29th November 2000.

5. THE POLICE ENQUIRY

This chapter describes the steps taken by the police during the investigation of the murder. It considers the initial actions of the police, subsequent enquiries and the structure of the enquiry team. It also comments on the availability of resources for the investigation.

5.1 Surjit Singh Chhokar was attacked in Garrion Street, Overtown at approximately 2330 hours on 4th November 1998. The Command and Control Incident Log maintained at Force Control, Strathclyde Police Headquarters, Glasgow and at the Control Room, Motherwell Police Office in respect of the incident details the early responses of Strathclyde Police. Further records are to be found in the Management Policy Book.³

Initial Actions

5.2 An anonymous '999' call was received at 2336 hours at Force Control, Pitt Street, Glasgow, summoning the police and ambulance services. The caller indicated that a male had been stabbed and was lying in the street. By 2338 hours an ambulance had been instructed to attend by an officer at Force Control. Police officers were instructed via the police radio to attend at Garrion Street in response to the call. Constables John Maclean and David Rattray drove from nearby Castlehill Road and were the first police officers to arrive at the scene at 2339 hours.

5.3 Constables Maclean and Rattray immediately administered first aid. PC Maclean (who recognised Surjit as a person he had arrested some 18 months earlier for breach of the peace and assaulting a police officer) sought to locate a pulse but could not do so. He found Surjit "totally unresponsive". PC Rattray exerted pressure on Surjit's wounds to stem the flow of blood; and he looked for other wounds.

5.4 PC Rattray spoke with Elizabeth Bryce to find out what had happened. He observed that she was *"relatively lucid, not hysterical but certainly in shock"*. She told him that Surjit had come home from work and that three men, whom she had seen in the street earlier that evening, attacked him as he got out of his motor car. Mrs Bryce named Andrew Coulter as one of those responsible. The ambulance arrived within five minutes of being instructed. In the meantime CID officers had been advised of the incident. The first detective officer to arrive at Garrion Street was Detective Constable James Dyas at 2350 hours. He was made aware of the information Mrs Bryce had given to PC Rattray.

5.5 PC Rattray went with Surjit and Mrs Bryce in the ambulance to Law Hospital, a drive of approximately four minutes. PC Rattray has told me that he went with the couple in order to maintain the chain of evidence as Mrs Bryce had already named one of the men involved in the attack. He noted a brief statement from Mrs Bryce while they were travelling in the ambulance to the hospital. The statement is noted in PC Rattray's notebook as follows:

"Surjit was coming in from his work at 11.30(pm). I was looking out of the window when I saw 3 guys pull Surjit up in the street. He was trying to get away from them. One of the boys was Andrew Coulter of Gowkthrapple. I've known him from when he was a wee boy. He and the other two had been stoatin' about all night. He was wearing a skipped hat and a bubble jacket. I ran out of the house and saw Surjit collapse against the car. A boy stopped his van and I asked if he had a phone. The three boys had run off along the street towards Overtown. The boy from the van helped Surjit. One of [the neighbours] came out and then the police arrived."

5.6 PC Maclean remained in Garrion Street and began to secure the murder scene. He placed tape around Surjit's car and the street was blocked off. He also recovered items of potential evidential value, namely an electronic key fob and an 'Irn Bru' bottle. At 0003 hours on 5th November 1998 DC Dyas requested that Scene of Crime Officers attend. A police photographer was also requested. DC Dyas then immediately made his way to Law Hospital.

5.7 At 0007 hours on 5th November 1998 Surjit Singh Chhokar was pronounced dead. Elizabeth Bryce, who was still accompanied by PC Rattray was informed of this at 0008 hours. Within a minute of Surjit being pronounced dead, PC Rattray recorded in his notebook Mrs Bryce's words as "*an argument over a giro*".

5.8 PC Rattray stayed with Mrs Bryce at Law Hospital until 0054 hours, when two CID officers took her to Wishaw Police Office to obtain a factual statement about the events preceding Surjit's death. PC Rattray examined Surjit's body and noted three stab wounds to the chest area and one cut on the leg. PC Maclean joined his colleague PC Rattray at Law Hospital at 0210 hours.

5.9 DC Dyas made his way to the homes of Mr Darshan Singh Chhokar (Surjit's father) and Mrs Sanehdeep Chhokar (Surjit's wife), informed them of Surjit's death and thereafter took them to Law Hospital. They arrived at 0215 hours and identified his body. Details of this initial police contact with the family of Surjit Singh Chhokar are given in Chapter 8.

5.10 At approximately 0330 hours Surjit's body was taken from Law Hospital to Glasgow City Mortuary and was escorted by Constables Maclean and Rattray who had previously taken possession of his clothing and personal belongings from hospital staff.

5.11 At 0017 hours, the Divisional Commander, Chief Superintendent Sandy Forrest, was informed of the incident by the Duty Officer at Motherwell. By 0034 hours the on-call Procurator Fiscal Depute from the Procurator Fiscal's Office at Hamilton, Mr John Slowey, had been informed of the incident. By 0036 hours Divisional Commander Forrest, Acting Detective Chief Inspector William Anderson (who was the DCI for 'P' Division in which the murder took place and would initially become the Senior Investigating Officer), Detective Inspector Nicholson and the Procurator Fiscal Depute had arrived at Motherwell Police Office. All went to the scene of the murder at Garrion Street. Mr Forrest arrived at 0040 hours, Mr Slowey at 0120 hours and Acting DCI Anderson at 0215 hours. During this time other detective officers were in attendance in Garrion Street, along with the Forensic Scientist and Scene of Crime Officers. The police, while protecting the crime scene, maintained a log of persons entering and leaving the street.

5.12 Within two hours of the murder, staff from the Forensic Science Laboratory and the Identification Bureau made their way to Wishaw Police Office and then to Garrion Street. Bloodstaining was "lifted" from various locations there and the area was photographed and video-recorded. Following completion of the forensic examinations at lunchtime on 5th November 1998, the police arranged for Cleansing Department staff to attend at Garrion Street and clean the blood from the kerb and gutter.

5.13 The police conducted an early search of Garrion Street and the surrounding area. A further search was conducted during daylight hours on 5th November. The murder weapon was not recovered. Additionally the drains in the area were searched with the assistance of the Cleansing Department.

5.14 At approximately 0430 hours on 5th November officers made arrangements for Surjit's motor car to be removed to the special unit at Paisley Police Office for examination by the Identification Bureau and Forensic Laboratory staff. A motor car driven by the suspect David Montgomery was also subsequently removed to Paisley for examination.

5.15 Police officers went to the home of Andrew Coulter's mother, Mrs Margaret Chisholm, in an attempt to trace the suspect. At approximately 0520 hours on 5th

November officers attended at the home address of Andrew Coulter in Caplaw Tower, Gowkthrapple. The officers forced entry to the flat and seized paperwork and clothing. The Procurator Fiscal was consulted regarding the requirement for a warrant to authorise the seizure of these items.

5.16 At 1130 hours on 5th November, Cleansing Department lorries which had emptied the bins at Caplaw Tower earlier that morning were intercepted by police officers and the contents removed for examination.

The Major Incident Room and Major Enquiry Team Structure

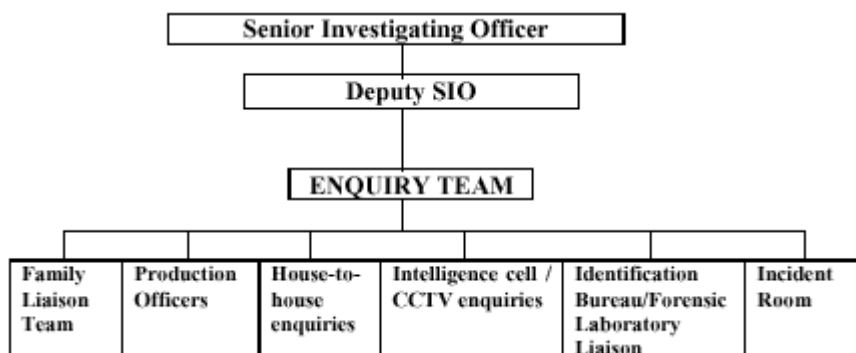
5.17 At approximately 0100 hours on 5th November 1998, Acting DCI William Anderson took the decision to set up a Major Incident Room at Wishaw Police Office, being the nearest police office to the scene of the murder. The Incident Room controls the information in an enquiry and, as a result of the information received, officers within the Incident Room will consider and raise further actions to be taken in the investigation. The Incident Room was to operate on the Manual Index system, as opposed to the computer-based system, HOLMES.⁴ Detective Superintendent Jeanette Joyce, who conducted a review of the police enquiry, explained in her evidence to this Inquiry that a HOLMES Incident Room would not be set up in an enquiry such as the one following the murder of Surjit Singh Chhokar.

"In a category C murder case where the identity of the suspect is known and you are following a positive line of enquiry a manual incident room would be set up. If the identity of the offender is known you would not set up a HOLMES room."

A category C murder is ... one where the identity of the offenders is known at an early stage. A category A murder is one of grave public concern, for example, the murder of a child or a politician. A category B murder is where the identity of the offender is not readily known."

5.18 The Major Incident Room was staffed by six officers, including the three officers also identified as Family Liaison Officers. The Incident Room was in operation from 5th to 17th November 1998.

5.19 The Incident Room forms one part of the structure of a major enquiry team. The structure of the enquiry team in respect of this investigation is shown in the following diagram.



Subsequent Police Investigation

5.20 Elizabeth Bryce was the main witness to the attack on Surjit Singh Chhokar. She was known to Detective Inspector Kenneth MacIver (who was responsible for the Wishaw Sub-Division) with whom she had had dealings following the death of her son. She immediately named Andrew Coulter as being one of those responsible for the attack. Mrs Bryce knew both Ronnie Coulter and Andrew Coulter through Andrew Coulter's mother, whom Mrs Bryce had known for many years. The police suspected that Mrs Bryce was withholding information. She was interviewed by police officers on a number of occasions in the days following the murder. It was not until a fourth formal statement was taken from her on 8th

November that Mrs Bryce named Ronnie Coulter and David Montgomery as being involved in the attack.

5.21 House-to-house enquiries were carried out in Garrion Street and three surrounding streets in close proximity to the scene of the murder. Additionally, enquiries were carried out at the Community Centre, two public houses, shops and takeaways all sited in Main Street, Overtown. The house-to-house enquiries revealed only one eye-witness to the attack other than Mrs Bryce. This witness was unable to identify any of the attackers and failed to make any identification at subsequent Identification Parades which were conducted.

5.22 Statements were obtained from known associates of the suspect, Andrew Coulter. The statements of these individuals are considered in greater detail in Chapter 6. Important information was also obtained from relatives of the three suspects.

5.23 Enquiries were also conducted at the Department of Social Security and Overtown Post Office regarding the alleged fraudulent encashment of Surjit's girocheque. CCTV recordings from the post office were seized as productions and clearly showed Andrew Coulter cashing Surjit's girocheque on 4th November 1998. A number of witnesses were interviewed about this.

5.24 Other CCTV recordings by the police and the local authority of the Gowkthrapple area were obtained. The Strathclyde Police Technical Support Unit was involved in compiling a video tape showing the movements of the three suspects at crucial times during the evening of 4/5th November 1998. The routes apparently taken by the suspects to Garrion Street were video-recorded, timed and measured by officers of Strathclyde Police Traffic Department. The route was also walked and timed by a police constable.

5.25 In her report following the Review of the police enquiry, Detective Superintendent Joyce described the importance of the CCTV evidence:

"Effective and efficient use of CCTV not only put the accused in each other's company at the relevant time and/or out of their dwelling-houses at the appropriate time, it also documented the clothing worn by each, which in turn led to effective house searching and the correct clothing being recovered."

5.26 Enquiries were also conducted to trace the movements of the car driven by David Montgomery following Surjit's murder. This involved investigations at a garage and a car valet business in an effort to determine whether David Montgomery had attempted to dispose of the car or any crucial evidence. Officers in the enquiry team also obtained copies of the itemised telephone bills of both Ronnie Coulter and Andrew Coulter.

5.27 Clothing taken from Surjit and the accused was submitted to the Forensic Science Laboratory on 9th November along with the baseball bat recovered in Andrew Coulter's house for examination. This was with a view to establishing whether there had been transference of any material (for example, blood) from one source to the other which might link the suspects to the attack on Surjit.

5.28 A witness gave the police information about the murder weapon. He told the police that he had been asked to dispose of a box of knives, the smallest of which was missing. It was alleged that the missing knife had been the one used to stab Surjit. The witness assisted police in recovering this box. Officers thereafter purchased an identical box of knives. These knives were shown to the pathologists who conducted the post mortem on behalf of the Crown and they were of the opinion that the smallest knife in the set was possibly a similar weapon to that used in the attack on Surjit.

5.29 Following a telephone call by his solicitor to the Incident Room, Andrew Coulter went to Wishaw Police Office at approximately 1800 hours on 5th November 1998. He was detained by officers, interviewed for some two hours, and subsequently arrested and charged with the murder of Surjit Singh Chhokar.

5.30 The police were looking for David Montgomery. On 7th November he was traced to an address in Newarthill and detained by police officers. He was interviewed for more than three hours and he too was charged with the murder.

5.31 At approximately 1400 hours on 9th November 1998 Ronnie Coulter went to Wishaw Police Office with his solicitor. He was detained, interviewed for more than four hours and then charged with murder.

5.32 Reports in respect of each suspect were submitted to the Procurator Fiscal; in the case of Andrew Coulter, on 6th November 1998, and similarly for David Montgomery and Ronnie Coulter, on 9th November 1998. The statements of the witnesses were also submitted to the Procurator Fiscal during the course of the days and weeks following Surjit's murder.

Witness statements

5.33 In total 142 formal statements were taken by the police from 98 civilian witnesses between 2355 hours on 4th November 1998 and 14th November 1998. Of these statements, seven were taken prior to 0200 hours and a further three taken by 0600 hours on 5th November 1998. These included a statement from the mother of the suspect Andrew Coulter. The following table details the number of statements taken in the course of the police enquiry. 30 police officers were involved in taking statements from civilian witnesses.

November 1998	Number of civilian witness statements taken
4 th	1
5 th	49
6 th	24
7 th	12
8 th	12
9 th	5
10 th	9
11 th	11
12 th	3
13 th	13
14 th	4

5.34 In addition, statements from 37 police officers were submitted to the Procurator Fiscal. This figure does not reflect the total number of officers involved in the case. Statements would not ordinarily be submitted by officers who would not be required evidentially for the prosecution of the case. Such officers would often include the Senior Investigating Officer, the Family Liaison Officers and other officers who formed the Incident Room Staff.

Senior Investigating Officer

5.35 Acting DCI William Anderson was initially the Senior Investigating Officer in the case. At that time he had approximately 22 years' police service and had been the Senior Investigating Officer in two murder enquiries prior to the Chhokar case. He had also been involved in a number of other murder enquiries during a period with the Serious Crime Squad. He explained that 'P' and 'N' Divisions were merging in December 1998. The Detective Chief Inspector who was based at Motherwell ('P' Division) was transferred in July 1998 to another Division. It had been decided that Detective Chief Inspector John Michael, who was the DCI for 'N' Division, would become the DCI of the merged Divisions following the merger in

December 1998. In the meantime, Acting DCI William Anderson was to fulfil the role of DCI at 'P' Division.

5.36 On the night of Surjit's murder, Acting DCI Anderson was in bed and received a telephone call some time after midnight informing him of the incident. In evidence to this Inquiry he explained that he would be taking decisions about the enquiry and asking questions from that moment -

"I would be making decisions in the house while I was taking that phone-call, for example, Is somebody at the hospital? Get me a crime scene manager, Did I ask for a pathologist? Where are we going to run this enquiry from? etc. I would be making decisions as I am going along. Once I am called out I would tend to go to the office and eventually arrange to set up the Incident Room."

5.37 According to the Management Policy Book, the role of Senior Investigating Officer was transferred to DI Kenneth Maclver at approximately 1345 hours on 5th November 1998. The murder had occurred in Wishaw Sub-Division for which DI Maclver had responsibility. The enquiry was overseen by DCI John Michael. DCI Michael, however, in his evidence to me, stated he was the Senior Investigating Officer and that DI Kenneth Maclver was his Deputy. Certainly the evidence of other officers, including the Family Liaison Officers, is to the effect that DCI John Michael was the Senior Investigating Officer. Det Supt Jeannette Joyce explained to me her understanding of the position -

"The SIO in this case was of Detective Inspector rank although the enquiry was overseen by Detective Chief Inspector John Michael. Kenny Maclver was the SIO but John Michael would be overseeing the enquiry. He would be supervising the Detective Inspector, sitting with him and making sure that the matter progressed satisfactorily. I understood John Michael's role to be that of an overseer/mentor. If the murder had been a category A murder the SIO would have been of Detective Superintendent rank. If the murder had been a category B murder the SIO would be a Detective Superintendent or Detective Chief Inspector."

DCI Michael obviously took an active part in this case but that is okay. There was not to my knowledge or my impression ever a conflict of interests between DCI Michael and DI Maclver. DI Maclver is the SIO as per the policy book."

5.38 Both DI Kenneth Maclver and DCI John Michael are experienced police officers. DCI Michael joined the police in 1972 and has extensive experience in policing both rural and urban communities. He also has experience as both uniformed officer and detective officer at the ranks of Constable, Sergeant, Inspector and Chief Inspector. He first became a detective officer in 1979. Between 1983 and 1988 he served as a Detective Sergeant in 'A' Division (Glasgow City Centre), in the Serious Crime Squad and in 'P' Division (Bellshill). He was promoted to Inspector in 1991 and Chief Inspector in 1995 upon which he spent three years in the Complaints and Discipline Branch. He transferred to the Detective Chief Inspector post in 'N' Division (now 'P' Division) in 1998.

5.39 DCI Michael told me that he has worked on over 20 murder enquiries during the last two years. In the period 1st January 1998 to July 2001 the former 'P' and 'N' Divisions were involved in 31 murder enquiries. All of these murder enquiries were detected.

Resources

5.40 At approximately 0120 hours on 5th November 1998 Acting DCI Anderson made the decision to call out detective officers from the day-shift to augment the late-shift CID resources and to form the Enquiry Team. An entry in the Management Policy Book made by Acting DCI Anderson reflects that decision and details the number and rank of officers called out:

"Call-out of dayshift CID resources ('P') to form Enquiry Team.

*1 DS [detective sergeant], 4 DCs [detective constables], 1 DIO (staff)
[divisional intelligence officer]*

('N') 4 DCs

('H' SCS) [Serious Crime Squad] 1 DS, 2 DCs."

5.41 Prior to his posting to Acting DCI at Motherwell, William Anderson was an officer in the Serious Crime Squad. He explained that part of its role was to assist Divisions in murder cases during the early stages of the investigation.

5.42 It is noted at 0239 hours that 10 police constables from 'N' and 'P' Divisions attended at the murder scene for search purposes. The entry at 0303 hours indicates that four police constables based at Coatbridge Police Office were called in to assist at Wishaw Police Office.

5.43 Acting DCI Anderson, who handed over the Senior Investigating Officer's role at approximately 1345 hours on 5th November 1998, was content that he had sufficient resources during the early stages of the investigation.

"I did not feel grossly under-resourced but I did call for Serious Crime Squad assistance and called the day-shift out early.

In the Chhokar case I asked if the Serious Crime Squad were still on duty. If they were on duty I would utilise them. You try to get as many people as you can, for example, if the late-shift had still been on I would keep them on and I would also get the day-shift out early. I could also try to get neighbouring Divisions to assist. I was happy that we had enough officers at that time."

5.44 The Divisional Commander, Sandy Forrest, attended the scene of Surjit's murder. He was the Divisional Commander for both 'N' and 'P' Divisions. He had been at home in bed when he received a telephone call from the Control Room at Motherwell Police Office. He made the decision to go to the police office and then to the scene of the attack. He told me -

"On hearing the injured party's/deceased's name, I decided to go out to the incident. I preferred if possible to attend such incidents because it is a lot easier to deal with the management of the incident the next morning if you have been there the night before ...My decision to attend is also based on the nature of the incident ... I have to decide if I am adding any value to the situation by going. In this case I was aware of the name and therefore knew that the deceased was likely to be of Sikh background. This incident occurred in the post-Lawrence era. I also feel that if others know I am prepared to attend such an incident then it encourages them."

5.45 Mr Forrest explained to me that as Divisional Commander he had strategic and managerial responsibility for the policing of the Division. In attending the scene of Surjit's murder he was attending to manage the incident but not to investigate the crime. Mr Forrest described part of his role:

"My role is to boundary manage. If my detectives want, for example, the Serious Crime Squad to attend, they would get that. I am a resource manager. I ensure that there are adequate police officers to deal with the incident. CID will tell me who they need. It is not a proactive role but reactive to the CID coming to me with a problem. CID officers should be busy investigating the incident rather than dealing with resource difficulties.

All available resources were made available in the Chhokar case - there were no resource difficulties. Other officers would have been available if required. It would be open to me to go to the Serious Crime

Squad and get a contingent of officers but I could also contact the Duty Officer at Force Control and ask for, for example, 3 detective sergeants and 2 detective constables from every Division. ... Nobody came to me with an issue nor did I find an issue of lack of resources in the Chhokar case. To my knowledge the resources were adequate."

5.46 Acting DCI Anderson confirmed this account:

"Chief Superintendent Sandy Forrest was keen on coming out to incidents. He wanted to know how he could help. He would say, 'you are the detectives but tell me what you need'. If there had been a deficiency in officer numbers I would have had no difficulties in requesting more."

5.47 In relation to the question of resources in this murder enquiry, Assistant Chief Constable Graeme Pearson remarked:

"In terms of looking to the allocation of resources to avenues of enquiry, I find it difficult to find that the resources were not allocated to lines of enquiry that were pertinent. There is no evidence of any shortcuts having been taken and indeed, the Investigating Officers went back and cross-referenced many of their lines of enquiry."

Commentary

5.48 The police investigation, particularly at the earliest stages, was in a number of ways exemplary -

- Police officers were at the scene within minutes of the reported assault.
- When they arrived, the two constables, PCs Rattray and Maclean, saw a severely injured man, and made it their first priority to administer first aid and if possible save his life. They waited until the ambulance arrived before carrying out further tasks. The fact that one of them recognised him from a previous occasion when he had had to arrest him for assault, made no difference to their response: they saw, not an 'Asian' but a human being in dire need and they acted on that alone.
- The police took immediate steps to secure the scene of crime, and acted quickly to try to preserve potential evidence. The street was cordoned within minutes. Scene of Crime Officers and a police photographer were summoned, and arrived within two hours of the murder. The police maintained a log of persons entering and leaving the secured crime scene.
- PC Rattray - a very junior officer, but a very alert and disciplined one - noted the events leading up to the attack from the key witness, and had the name of the suspect Andrew Coulter as being at the crime scene, and within a minute of the victim being pronounced dead he had been given a possible motive - *"an argument over a giro"*. PC Rattray maintained a contemporaneous record of events in his police notebook from the moment when he arrived at the crime scene to the time when he completed his duties. Critical information was noted and not lost, and was passed to CID officers and senior police officers immediately.
- The police acted quickly to locate and detain the named suspect.
- They were speedy in obtaining statements from witnesses. They took statements at the murder scene, and they did not allow potential witnesses to disperse. In relation to the key witness, Elizabeth Bryce, they were rigorous and persistent in seeking to establish the truth from her.

- They conducted house-to-house enquiries and extended their enquiries beyond local street residents.
- Police were deployed to search the immediate area for a murder weapon. This was done on repeated occasions.
- The police were resourceful and proficient in their use of police and local authority CCTV facilities, which yielded critical information.
- They knew the victim's family and where to go to find them.
- The Divisional Commander regarded the incident of an assault on a member of a minority ethnic community as serious enough to require his own presence at the scene of the crime.

5.49 These are all positive points, to the credit of the police, and ought to be recorded as such. However, the police failed to seek information from the victim's family, beyond formal identification of his body. **In my view this was a serious omission.** Questions about Surjit's lifestyle, on which the family could have been expected to provide information, could have yielded significant further lines of enquiry, which the police scarcely considered. This is particularly significant in relation to questions of a possible racial motive for the crime.

5.50 This issue is of course central to my Terms of Reference. As will be shown below, in the chapters dealing with family liaison, the family themselves asked whether there was a racial motive in the crime. The police handling of this aspect was inadequate. I deal with it at length in the next chapter.

6. RACIAL MOTIVATION

This chapter examines

- whether race was a motive in the murder, and
- whether the police investigation was thorough in relation to possible racial motive.

The conclusion drawn is that the police correctly identified the primary motive for the murder, which was not racial; but that they did not follow through the investigation of a racial motive, and consequently failed to establish whether or not there was a racial component to the crime. This failure was particularly damaging to the Chhokar family.

The initial police response to the crime

6.1 An entry on the police command and control printout at 0054 hours on 5th November 1998, records Chief Superintendent Forrest, the Divisional Commander, as saying at the scene of crime 'This does not appear to be a racial incident.' The murder had taken place little more than an hour earlier, and Mr Forrest had been on the scene for just a quarter of an hour when he made his assessment.

6.2 In giving evidence to this Inquiry Chief Supt Forrest emphasised to me that this was no more than an initial view, which would have to be tested and might alter when more information came in. He told me -

"My comment is not a conclusive view. I am not saying that the people involved did not hold racial prejudices but the motivation did not appear at that stage to be racial. ... My comment at 0054 hours is akin to me saying that a death appears to be suspicious or non-suspicious. The initial indications may point to the death being non-suspicious but when, for example, the pathologists attend that position may change ... The reason for making that comment is that the incident is being monitored by a number of parties. It is simply a question of letting them know what is in my mind based on the information at that time. The statement is not for public consumption but is an administrative tool for letting people get on with their job. I am not saying conclusively that it is not a racial incident. As far as I was aware, this was not an

incident of a black person being set upon randomly by three white youths. By the time I make the comment, the story was known to me, that is the story about a fallout over a giro cheque and a threat to go to the police."

6.3 The term 'racial incident' which Chief Supt Forrest uses, had a specific operational meaning. The Strathclyde Police Race Relations Policy, issued in July 1997, states (at paragraph 4.2) that -

A racially motivated incident is defined as 'any incident in which it appears to the reporting or investigating officer that the complaint involves an element of racial motivation or any incident which includes an allegation of racial motivation made by any person'.

6.4 Acting DCI Anderson, whose role as the initial Senior Investigating Officer is described in the preceding chapter, gave a similar account. I asked him when it had first occurred to him that this might be a racial incident. He said -

"Certainly by the time I was at the office [0036 hours on 5th November] and getting information from the officers at the locus, that question would be in my mind. I would be asking whether the deceased had been attacked by Asian or white males. I would be asking myself whether there was any reason this individual was singled out. It would be fair to say I would be thinking about whether race was an issue within the first couple of hours. In any case you would be thinking, 'what is the story here?' You know that you are going to be asked whether it is racial therefore you have to satisfy yourself as far as you can from the information which is available at that stage."

6.5 Later in the morning of 5th November Chief Supt Forrest was consulted by the Strathclyde Police Media Services office about the terms of a press release, which contained the words (attributed to DI Kenny MacIver)

'Although the inquiry is at its early stages, we are following a positive line of inquiry and I can say that there does not appear to be any racial motive involved'

I shall deal with the news release in more detail in chapter 7, but it is relevant to note here that Chief Supt Forrest argued strongly against the use of these words in a news release so early in the investigation - as did DI MacIver whose name is used in attribution - but he and his colleague were over-ruled.

Commentary

6.6 I note three points about this very early phase of the investigation -

- The police immediately recognised that they must consider whether the crime was racially motivated.
- They very quickly formed an initial view that it was not, because there was evidence of another motive.
- Nevertheless the officers concerned were aware that their view at this stage could only be provisional.

Information obtained during police investigation

6.7 In the course of the same day, 5th November 1998, the Senior Investigating Officer responsibility was handed over to DCI John Michael, and it was under his command that the investigation was then taken forward.

6.8 I have examined every statement taken by the police, of civilian and police witnesses. There is no evidence in them that the attack was racially motivated. Statements taken by the police in the early afternoon of 5th November, about a conversation which the suspects Andrew Coulter and Ronnie Coulter had with

friends on the previous evening, before the attack, provide evidence of Andrew Coulter showing resentment towards Surjit Singh Chhokar because he (Andrew Coulter) was "...getting the blame for cashing a guy called Chhokar's giro...".

Further statements were obtained from these witnesses on 10th November which gave more detail of the discussion between Andrew Coulter and Ronnie Coulter. In that conversation they were reported to have discussed, in particular and disgusting detail, what they intended to do to Surjit Singh Chhokar. One witness stated -

"Andy said he was going to batter Chhokar with a bat. He said, 'I'm going to go up and break his two kneecaps so that he'll never walk again'. He also said, 'We'll get a spoon and take his eyes out'. Both Ronnie and Andy were laughing about it. Andy even said to Ronnie, 'Ah bet you'll no sit back and watch me hit this guy myself, you'll jump in'. ...I cannot remember which one said it, but one of them said, 'I'm goin' ta take him down the Clyde and chuck him off the bridge and then drive his car up ta the priory and burn it out'. I just thought they were joking and laughing about it, but I did know that they were going up to Overtown to batter him, Chhokar. I also heard Andy saying to Ronnie, 'I've to phone Chez [David Montgomery] at half eleven when am ready and we've to go and buzz him at [...]'s house'."

6.9 This account of the conversation was supported by the statement of another witness also present during the discussion between Andrew Coulter and Ronnie Coulter. This witness stated to the police on 10th November -

"Andy was saying Chhokar was getting the polis for a £110 giro and Andy had cashed it. Andy said he was going to go up and give Chhokar a doing when Chhokar arrived back from work. They said it would be about twelve. ... Andy said at some point that when he had got a run down with Chez [David Montgomery] from his mum's to Ronnie's that Chez had said he was going to go with Andy and Ronnie up to Overtown to give Chhokar a doing and that he was going to take the motor if he wasn't drinking and that they had to give him a phone about half eleven if they were going up to do it.

Ronnie was saying, 'We will wait until he comes back from work and we'll drag him round the back' and then he said, 'No, in case he screams for help'. Then Ronnie said at some point, 'We will take him away in Chhokar's motor and we will batter him' and that they were going to throw him off a bridge. ... Ronnie said that they were going to burn Chhokar's motor. I think it was Andy that said, 'I wonder how he would look without his eyes. We could take them out with spoons and that'. They said they weren't going to take anything with them but then Andy said, 'No, I'm going to take my bat because it's no been used yet'. ... I thought what they were talking about was disgusting and sick."

6.10 Another witness, Jamie Rooney, who used to meet socially with Andrew Coulter told the police on 7th November at 0940 hours about two conversations he had had with Andrew Coulter. He stated -

"About 7 o'clock on Wednesday 4 November 1998 I went down to Andy's house...When I got in he was drinking Merrydown Cider and he told me 'Chokee' had asked him to cash his giro and he would give Andy £20. Andy had said he signed it and cashed it. Then Andy said 'Chokee' had reported his place had been broken into and had told the Social. That was a load of crap 'cos Andy had been given the Giro by 'Chokee' and cashed it and 'Chokee' was trying to get the money twice, that's what Andy said. Andy then said Liz Bryce had told his mum to get Andy to go up and see 'Chokee' at Liz's house when 'Chokee' finished work at twelve o'clock at night. Andy said that he was going to go up and see him.

About five to ten that same night...I went up to Andy's house.... When I went up Andy was on the phone trying to get a 'Chinky'. He came off the phone and said to me that he was to phone Chez (I think his second name is Montgomery) and his uncle Ronnie. Ronnie Coulter and Chez was going to run them up to Overtown to see Chhokar. Andy had a wee wooden baton lying on the window sill at the living room and said he was taking it with him. I gathered he was going to use it and I tried to talk him out of it. I said, 'Don't be so stupid, don't take that with you'. He said he was taking it with him."

6.11 None of these reported conversations shows any evidence of racist attitudes expressed, or racist language used, in relation to Surjit Singh Chhokar by any person in the hours when the attack was being plotted. The ideas expressed were brutal and vicious, but not racist.

6.12 Mrs Bryce told the police that she confronted Andrew Coulter on the afternoon of 4th November 1998 regarding the alleged theft of Surjit's girocheque. She said to Andrew Coulter that the police would probably become involved because it was fraud. Andrew Coulter allegedly replied, *"If that's the case, he'll be getting it"* - further evidence that his motive was revenge.

6.13 There is also evidence (taken by the police at 1050 hours on 5th November 1998) which indicated that Surjit Singh Chhokar knew at least one of the suspects, namely Andrew Coulter. The post office manager told the police that he knew them both and *"knew that Andrew Coulter and Chhokar were friends"* - indeed it was for that reason that he was not suspicious when Andrew Coulter presented Surjit's girocheque. Less directly, the administrative assistant in the Job Centre to whom Surjit went to report that he had not received his cheque, said that -

"I ... told Mr Chhokar that his Giro had been cashed by a person call Andrew Coulter. Mr Chhokar told me he did not know a person called Andrew Coulter but something about his manner gave me the impression that he was lying about not knowing him."

6.14 Mrs Bryce confirmed also that Surjit Singh Chhokar and Andrew Coulter knew each other. She had known Andrew Coulter since he was a child and Mr Chhokar knew him through her. She stated - *"...we just see him on the street now and then and he says 'hello'"*.

6.15 These various pieces of evidence very clearly suggest a motive of revenge. None of them contains any hint of a racial motive.

Evidence of a racial motive?

6.16 There is however one witness statement among the police papers which reports Andrew Coulter referring to Surjit Singh Chhokar as a "black bastard". Jamie Rooney stated to the police at 2130 hours on 5th November -

"About three or four weeks ago I was in the park next to the Community Centre, there were other people there but I'd be lying if I said I knew who they were. Anyway, Andy Coulter said to me, 'Did ye hear about it, that black bastard Chhokar raped a bird behind Almas'. I said, no, I never heard about it. He seemed angry, a bit upset about it but he never said any more about it. He never mentioned it to me again."

6.17 Another witness referred to the same rumour. The police investigated the allegation of rape and found no evidence to support it. The Senior Investigating Officer, DCI Michael, explained -

"I was informed of the content of the statement and that comment was put to Andy Coulter during his interview that night. The question of rape was researched by the intelligence cell. The only incident was as far back as 1995 or 1997. There was nothing to connect that incident with Surjit Singh Chhokar."

We had not ruled anything out at all at that stage. The intelligence cell information identified that no rape had taken place but Andrew Coulter may have given us further information and details during his interview.

The question of rape was a rumour which was untrue. It was researched thoroughly. Surjit Singh Chhokar had no background of sexual assault..."

6.18 The police response to the allegation made by the witness is significant. They concentrated their attention on whether the allegation itself was true. That was of course quite right - rape is a serious crime, and they could not ignore a statement which alleged it. They had to find out whether it had any substance. However, they did not attach any significance to the fact that the suspect in the present case, Andrew Coulter, was being alleged to have referred to the victim, Surjit Singh Chhokar, in terms which could be taken as racist, ie 'black bastard', albeit some time before the time of the murder and in another context. According to the information available to the police at the time, the reported comment was made several weeks before the murder, the victim and the suspect were known to be at least acquainted and possibly friendly, and there was no evidence at the time of or immediately before or after the attack of there being any racial aggravation. Therefore the police did not follow up the alleged racist remark. I shall return to that point later in this chapter.

6.19 Would this evidence of a racist attitude have made any difference to the prosecution? The answer seems to be: probably not, because the witness was unreliable. In his statement to the police on 5th November 1998 he said that the remark had been made "about three or four weeks ago"; when he was precognosced by the Procurator Fiscal Depute preparing the case, on 15th December 1998, he said it was "a while ago"; and when he was reprecognosced in November 2000, at the instruction of the Advocate Depute during the trial of Andrew Coulter and David Montgomery, his recollection was that the remark had been made about one year before the murder, at the time when Mr Chhokar was working at the Almas restaurant.

6.20 However, during my meeting with the Advocate Depute, Sean Murphy, I showed him a copy of the witness's statement to the police on 5th November 1998. Mr Murphy told me that he had not been aware of the content of that statement. He said that, on the timescale of three to four weeks outlined in the statement to the police, the alleged comment by Andrew Coulter would have had more significance. Clearly, in this matter the prosecuting Advocate Depute had not been fully advised of relevant material; and that in itself is a matter of concern. However, Mr Murphy went on further to say -

"The difficulty is one of corroboration. If race was a motivation, then there was no other indicator to that effect. It does raise the question of secondary motivation. It would suggest that there was a much less cordial relationship between Andrew Coulter and Surjit Singh Chhokar than I had thought. It would have flown in the face of other witnesses including the post office worker. ...The racial element may be there but it was ill at ease with other evidence."

6.21 I asked Mr Murphy if he had considered or caused to be investigated any previous racism suffered by Surjit Singh Chhokar. He explained -

"No, the evidence I had related to a specific time and specific circumstances. It is difficult to lead evidence of racial aggravation if there is a time lag between the alleged racist comment and the attack, even if that is only three or four weeks."

6.22 I agree with Mr Murphy on this point. Whether the alleged comment by Andrew Coulter was made three or four weeks before the incident or up to one year previously, I doubt whether the evidence of that comment alone would have enabled the Crown to libel a racial aggravation in the murder charge against Andrew Coulter. It would not fall within the definition of s.96(2)(a) of the Crime and

Disorder Act 1998⁵. Considering that the information about the theft of the girocheque and what followed afterwards suggests a clear motivation, it would be difficult to argue that the offence was racially motivated such as to allow it to come into the terms of s.96(2)(b). The witness, Jamie Rooney, was not saying that Mr Chhokar was killed by Andrew Coulter because he was black. Nor is there any evidence at all in the police statements or the Crown papers linking Ronnie Coulter or David Montgomery to a racially motivated attack.

A second racist remark

6.23 The phrase "black bastard" appears in one other place in the police statements. On this occasion it is attributed to Andrew Coulter's mother, Margaret Chisholm. The witness stated to the police at 2040 hours on 5th November 1998 that, on the afternoon of 4th November Mrs Chisholm, following a telephone conversation with her son Andrew Coulter, regarding Mrs Bryce:

"... put the telephone down and rushed out the door and said, 'I'm away roun' to get her and that black bastard'."

6.24 This however is evidence about the mother, not about the son who was accused of the crime. Mr Murphy summed up the implications of this statement when he told me -

"There is a difficulty regarding the police statement in that Margaret Chisholm is one step removed from the accused. The remark is coming from the mother and you cannot transfer a racist remark from the mother to the son. It might have made a difference to the way that Margaret Chisholm was cross-examined but you would have to consider whether that type of language was in general use. It might be seen as a clear racial motive but it could also be used to dilute that effect because that might be the way people in that family talked generally. In any event, it is not relevant because it is one step removed from the accused."

Police enquiry into potential racial motive

6.25 I have shown at the beginning of this chapter that the police were conscious, from the very beginning of their investigation, that the attack on Surjit could be a 'racial incident'; but that they were presented immediately with evidence of a non-racial motive. Within minutes of the attack, Elizabeth Bryce had named Andrew Coulter to the police; and within a minute of Surjit being pronounced dead at Law Hospital she had given the police a possible motive - "an argument over a giro". The witness statements which they took the next day, parts of which are quoted above, confirm the non-racial motive; they give only the thinnest hint of a racist attitude, and none at all that can be linked directly to the crime. Acting DCI Anderson emphasised to me that this investigation was more straightforward than many -

"The Chhokar enquiry did have a focus based on the information we received from our officers. There are occasions when there is no information available and the police know nothing."

6.26 The question which I have to consider in this Inquiry however is whether the police were thorough in their pursuit of the racial line of enquiry, or whether, on the contrary, having found a non-racial motive they neglected to investigate the racial aspect as thoroughly as they should have done.

The 'black bastard' comment

6.27 DCI John Michael, who took over as the Senior Investigating Officer for this case in the afternoon of 5th November, had this general view of the case -

"The Chhokar enquiry was not a complicated enquiry. No enquiry is straightforward but this enquiry was not complex given that a suspect

had been named. A clear distinct line of enquiry emerged from the early stages in this case. This enquiry was not complex and not protracted."

6.28 I have referred above (paragraph 6.18) to DCI Michael's response to the witness statement that "Andy Coulter said to me, 'Did ye hear about it, that black bastard Chhokar raped a bird behind Almas'" and I have noted that his attention focused on the allegation of rape, but not on the expression 'black bastard'. This is consistent with his further comment -

"I would not say that no significant weight was placed on the comments. The comments were identified and the interviewing officer was instructed to put it to Andrew Coulter during interview. The questions were also thoroughly researched. It is significant that it was an inappropriate comment. We had not ruled anything out at all at that stage. The intelligence cell information identified that no rape had taken place but Andrew Coulter may have given us further information and details during his interview. There were a number of possible motives and we investigate all lines of enquiry. The race dimension was taken into account to see whether there was a race motive."

6.29 I note particularly the last two sentences of this extract, and I challenge them. It is noteworthy that the police Management Policy Book on this case, which was the responsibility of the Senior Investigating Officer, contains no reference to investigation of the case as a racial incident nor any reference to investigation of the 'black bastard' comment. With regard to the specific matter of the 'black bastard' expression, PC Quigley, who took the statement from the witness Jamie Rooney, told me -

"In his statement, Jamie Rooney said Andrew Coulter had remarked '..that black bastard Chhokar raped a bird behind Almas...'. I was not asked to look into the 'black bastard' comment nor the rape question. The statement would have gone to the Statement Reader and the SIO and it would be up to them to decide on further actions."

Jamie Rooney was re-interviewed. I think this was in connection with a party he had been at with Coulter. We were not instructed to ask the witness about the 'black bastard' comment during re-interview."

6.30 PC Forsyth, who was with PC Quigley on both occasions, gave me a similar account.

6.31 I think it is likely that DCI Michael omitted to follow up the use of the expression 'black bastard' because he did not consider that either the witness or Andrew Coulter who was alleged to have used it would have intended any racist connotation. His views on the use of the term 'Chinky' was also instructive. As Mr Michael put it to me -

"The people we deal with speak like that and in those terms all the time. For example, the witness Rooney in his statement also calls people Chinky etc. That is just the type of individual he is, for the type of individual he is he would use a phrase like that as a figure of speech."

6.32 That was a judgment which DCI Michael made. Whether or not it was correct, I have to say that some of his senior colleagues who gave evidence to me did not think that the matter should have been left there. Chief Superintendent George Burton, who was Head of the Community Involvement Branch of Strathclyde Police at the time, commented to me -

"You would probably want to speak to the associates of the Coulter family to establish whether the comment 'black bastard' is general language used by the family. People in the West of Scotland refer to Pakistanis as "Pakis" day and daily. You would have to investigate whether there was an element of racism in the comment."

6.33 Similarly, Assistant Chief Constable Graeme Pearson said to me that, with hindsight, the police ought to have gone back to the witness who reported Andrew Coulter's alleged comment. An attempt should have been made to establish whether the 'black bastard' comment was in fact made by Andrew Coulter, who was present when the comment was made and the circumstances in which it was made. Mr Pearson remarked -

"This may have given an alternative reason for the murder, that is, the perceived injustice on Andrew Coulter's part that a black person had raped a woman."

6.34 ACC Pearson also said that a comment of the nature reported to have been made by Andrew Coulter would not now be approached in the way described by DCI Michael. Mr Pearson told me -

"I think in the current sensitivities it would not be approached in that way - it would be nailed down and taken to a conclusion. The language of the people the police are generally dealing with can be gratuitous. The ability to describe an individual is often limited and the description of a person as a 'black bastard' is not always related to the colour of their skin. Police officers are, for example, called black bastards. You have to analyse the context in which these statements are made and you must accept that you have to rely on the judgment of the officers involved in discriminating between the contexts. For example, was he referred to as a black bastard because he had raped a woman or was he referred to as a black bastard because he is Asian. You have to look for information to suggest that race had something to do with the murder. You would speak to the key witnesses but in this case there was no information that the accused had a problem with Surjit Singh Chhokar because he was Asian."

Background enquiries

6.35 Witness statements are by no means the only source of information used by the police in investigating a crime. The then Divisional Commander, Chief Supt Forrest, explained that due to the nature of the incident, ie a serious crime, a 'global message' would have been automatically forwarded to various departments within the police, including Special Branch and the Serious Crime Squad, on the morning of 5th November 1998. A global message outlines the information known at that stage, gives descriptions of the suspects and requests that any information which could assist the enquiry be forwarded to the Incident Room. Mr Forrest explained that if Surjit Singh Chhokar had, for example, been subject to activity by the British National Party or the British National Front, Special Branch would have identified that and fed the information back to the murder enquiry team.

6.36 Both DCI Michael and ACC Pearson confirmed that intelligence checks were carried out with the Scottish Criminal Records Office and the Force's own intelligence system to get a picture of the individuals involved and whether they were known to the police.

6.37 Local enquiries were made also. The police took statements from several people who knew Surjit Singh Chhokar and it is obvious from the content of these statements that the individuals were asked if they were aware of any difficulties or problems he had experienced. Both the owner and the chef of the New Poonam restaurant where Surjit worked were visited by the police. Surjit had been working there for only two weeks before his death and both men were unable to say whether he had any problems. Police officers also spoke with a neighbour of Elizabeth Bryce in Garrion Street as well as two relatives of that neighbour. These three women all knew Surjit but explained to the police that they did not know him closely enough to know whether he had any personal problems.

6.38 I note here that the police were aware, from statements made to them by Elizabeth Bryce, that his flat at Caplaw Tower had been broken into in July or August of that year, and that he did not feel comfortable living in the flat following the break-in. That does not seem to have been followed up: there is no information

in the police record about the residents of Caplaw Tower, for example whether Surjit was the only non-white person living there (as was later alleged by the Chhokar Family Justice Campaign⁶) or whether there was any sign of racial tension in the area. In general I found no indication that the police officers who carried out these enquiries were directed to look particularly for any evidence that Surjit had met problems arising from his ethnic origin. It would appear that no evidence specifically relating to race was turned up by these various enquiries, and that the Senior Investigating Officer therefore assumed that there was none to be found.

6.39 There was a degree of complacency there. Maggie Chetty, Senior Officer with the West of Scotland Community Relations Council told me -

"Even if you have a dominant motive which is not racist, good professional policing would look hard at the possibility of a racial motive. All relevant witnesses would have to be brought on board, including the family. You would be asking questions about the background to the incident, whether they had had any difficulties, any harassment, bullying, intimidation of any sort etc in the past. There is a reluctance to speak about these issues. These questions do, however, have to be asked, albeit sensitively. You would not ask the family immediately, you would give them a few days."

The family view

6.40 A more obvious and fundamental failure however was that the police omitted to discuss either with Mrs Bryce or members of Surjit's family whether he had been subject to racist abuse or threats from any part of the community and in particular from any of the suspects. Even though there was no immediate evidence, on the night of the crime, of a racial motive, the police should have been alerted by the fact that the Family Liaison Officers, on their first visit to the family, in the morning of 5th November, were spontaneously asked by the family whether there was a racial motive.

6.41 The Family Liaison Officers, DS Ian Duffy and PC Lynn Laverick, visited the home of Surjit's parents, probably between 0800 and 0900 hours on 5th November. Family members present included Surjit's father and mother, his widow, Sanehdeep, and his sister, Mrs Manjit Sengha. DS Duffy and PC Laverick have given me their accounts of what was said -

DS Duffy

"Manjit said something like, 'is it because he was a black man?' I said 'no'. I explained that the enquiry was ongoing but I said that that was not the reason. I was able to say that from the information which had been gathered. I did not dismiss it out of hand. I said something like, 'it would not appear to be anything like that'."

PC Laverick

"The deceased's sister asked us, 'Was it because he was black?' Ian Duffy told her that the enquiries at that time did not indicate that."

6.42 This was reported back to the Senior Investigating Officer, but no further action was taken on it. DS Duffy told me -

"After I left the family I went back to the police office and reported back to the SIO. I would go to him directly. I told him the information regarding the cremation question, that the family were happy speaking English and did not need an interpreter, that the family were all in the house including the wife Sandy. I think we also told him about Manjit's question. Yes, I did tell him about that. The SIO knew that race was not a motive and therefore it was not an issue."

6.43 The last sentence in that extract is evidence that the Senior Investigating Officer did not at that stage have an 'open mind' on the issue - he had ample evidence of a non-racial motive and had drawn the conclusion that race was not an issue. Consequently he failed to see that the very fact that a family member had raised the question might be significant to his enquiry.

6.44 Chief Supt Burton described to me the approach he would have expected -

"The officer should make preliminary enquiries, for example, 'what makes you raise that question? Are you aware of something in the background that makes you ask that? Did the deceased suffer from racial abuse at the restaurant or where he lived?' Having done that the officers would then go back to the SIO and ask that someone be actioned with looking into this in order to satisfy the family."

6.45 I was also given a Procurator Fiscal's perspective on the matter, by Mrs Angiolini. She told me that she would have expected the details of Mrs Sengha's question to have been reported from the police to the Procurator Fiscal Depute preparing the case.

"If I had been made aware of the question raised by the deceased's relative, 'was it because he was black?' I would have wanted the police to find out what was behind that concern and to report to me."

6.46 In point of fact the visit on 5th November was not an appropriate moment for the Family Liaison Officers to start asking questions - as I shall describe in a later chapter, the family was distraught and in shock at the time, and the Family Liaison Officers wisely kept their visit as short as possible. But they had heard and mentally noted the question, and reported it back. It ought to have been followed up, in the way that Mr Burton describes above.

6.47 There appears to have been a lack of communication within the police enquiry team. The officers who later that day took the statements which contained the 'black bastard' comment would not have known that the victim's sister had that morning asked 'Was it because he was black?'; and DS Duffy did not know that the phrase 'black bastard' appeared in witness statements until I showed them to him during his sessions with this Inquiry. He told me that he would not necessarily have mentioned Mrs Sengha's question in a team briefing, although he did tell DCI John Michael. DS Duffy's response to the witness statements which I showed him was -

"That is the first I have heard of this comment, 'black bastard'. It would have rung bells with me. If I had known that before I went up to the house, my answer to Manjit may have been different. It would make me ask, 'Is there a connection? Is Manjit correct?' I would have actioned these statements. I would have asked these statements to be clarified."

Commentary

6.48 The police were right to identify that the primary motive (and possibly the sole motive) for the crime was not racial. Having found a primary motive however, they simply ignored the question, which was explicitly put to them by the family, of whether there could also have been a racial motive. They let it rest on the provisional reply which DS Duffy gave them on the spot on the morning after the murder. They failed to ask family members whether they themselves had any light to shed on the question; and thus were never in a position to go back to the family and give them a conclusive answer to it.

6.49 The Procurator Fiscal was never informed that this question had been raised. The fact should have been recorded by the police and should have been passed to the Procurator Fiscal.

6.50 The only statements which the police took from Surjit's father, Darshan Singh Chhokar, and from his widow, Sanehdeep Chhokar, were in connection with the identification of the body. If they had questioned Sanehdeep about her husband's

background they might have learned from her what she has told me, through Mrs Kate Duffy of PETAL. Mrs Duffy has reported -

"She [Sanehdeep Chhokar] did, however, speak about the crime not being racist. Sandy explained that most of Surjit's friends were white. She said that the killing was not racist. Sandy said that the first time I met her. She was talking about her husband and explained that he was more westernised. She said that she knew people had been talking about it being racist, but she said that it wasn't. She said it was not a racist murder. Surjit had white friends, a white girlfriend etc.

Sandy did say that it wasn't a race case. She spoke about the Lawrence case and said that that was racist. She said that she did not believe the murder of Surjit was racist.

She could not understand why he [Aamer Anwar] was involved and couldn't understand why they were saying it was a racist murder. Sandy said that Surjit had a lot of white friends. In Sandy's opinion, it was not a racist murder."

6.51 Mr Chhokar was not interviewed by the police, and the relevant questions which they might have asked were not put until he was precognosced during the trial of Andrew Coulter and David Montgomery, two years later. It is not known what perspective he would have had at the time of the police enquiry: it emerged only later during the course of this Inquiry that he had probably not seen his son for many months before the murder, and therefore he may not have had very much light to shed on Surjit's lifestyle at the time.

6.52 Mr Darshan Singh Chhokar's later views were widely reported in the press, after the trial of Ronnie Coulter in March 1999 and more recently. One thing which is very clear is that his complaint throughout, apart from the basic complaint that his son has been murdered and nobody has been convicted for it, is that he has at no time been given an opportunity to give his own perspective on the event. This came to a head during the second trial, where there was a question as to whether he would give evidence. There was some doubt and dispute as to what evidence he wanted or expected to be able to give - I shall deal with that in detail in a later chapter - but I note here simply that if the police had taken the trouble to interview him, and then to keep him informed of the progress of their enquiries with respect to the racial question, much of his grievance (though not his grief) might have been removed and his suspicion that the murder was racist defused.

Postscript: the Macpherson definition of 'racial incident'

6.53 This chapter is critical of the Senior Investigating Officer on the grounds that, even within the canons of good investigative practice at the time, he failed to make enquiries of the family which might have settled conclusively whether there was a racial aspect to this crime. It is however important to bear in mind that these events took place before the publication of the Macpherson Report into the Stephen Lawrence murder⁷.

6.54 That Report put forward a revised definition of 'racist incident'-

'a racist incident is any incident which is perceived to be racist by the victim or any other person'.

6.55 This significantly widens the scope of the definition in use in late 1998 (quoted at paragraph 6.3 above) and shifts the balance away from the investigating officer to any person who perceives the incident as racist. The revised definition has been accepted and adopted, by ACPOS and others. It is an improvement; but even so it has caused some confusion and misunderstanding. A 'perception' is only a perception: it is not the same thing as an 'allegation', and it is certainly not the same thing as 'evidence'. If perception is confused with allegation or evidence the definition loses much of its force.

6.56 However, this problem has been addressed, in guidelines to Chief Constables, issued by the Lord Advocate in May this year. I shall quote them in full

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Recommendation 12 of the Lawrence Inquiry Report by Sir William Macpherson states that,

'A racist incident is any incident which is perceived to be racist by the victim or any other person.'

The Scottish Executive has accepted this definition for the purposes of the reporting to, and recording of, racist crime by the police. The definition does not alter the onus or the standard of proof in criminal proceedings and it remains the case that the prosecutor requires to be satisfied that there is sufficient evidence to proceed before criminal proceedings in respect of allegedly racist crime may be taken against any individual.

It is of crucial importance however that the prosecutor is advised whether the victim or any other person has perceived an incident to be racist.

The Lord Advocate therefore directs that, in the investigation of crime, police officers must ascertain the perception of the victim and witnesses as to the motive for the crime*. This must be fully investigated and clearly recorded. If racism is perceived to be a factor by the victim or witnesses this should be investigated and evidence recorded. Police officers should bear in mind that victims of racism may be reluctant to express their fears or beliefs, including their belief that an incident has been motivated by racism, and that victims reporting racism may often be doing so against a background of previously unreported racism. It will be necessary for officers in such cases to make every effort to ascertain the true perception of the victim as to the motive for the crime.

The Procurator Fiscal should always be advised in police reports of the perception of the victim and witnesses as to motive. The Procurator Fiscal should always be advised of the existence, and provided with a copy, of a racist incident monitoring form.

* Leading questions should not be used. Examples of appropriate questions include: 'Why did this happen?' or 'What was the motive behind the incident?'

6.57 It remains only to say that I fully endorse this guidance.

Endnote: 'motive' in the criminal law; and Racial Aggravation

1. The question of motivation is an important issue for the families and friends of murder victims. Knowing why the perpetrator acted in the way he did can be an important step in trying to come to terms or deal with the death. The criminal law however is generally not concerned with motive. In a criminal trial there are two essential elements in proof of guilt: firstly, that the crime has been committed and, secondly, that the accused person committed the crime. The prosecution does not generally require to prove the motive. In the case of *Alexander Milne*, Lord Justice Clerk Inglis observed, "The motive may remain a mystery, while the murder is an accomplished fact."⁸

2. In some cases however the motive behind a crime may be relevant as evidence. This may occur where the motive goes towards the facts of a crime, ie where it forms part and parcel of the evidence of the crime. Lord McCluskey, giving evidence to this Inquiry, put it thus -

"If in the course of an attack there are shouts of, 'get those Paki bastards', then that is relevant to what happened."

3. In other cases, there may be no suggestion of the motive during the commission of the crime itself. In many circumstances, however, evidence from individuals other than the perpetrator may offer indicators as to the motive behind the crime.

4. Motive is also important in the investigation of crime, no more so than in circumstances where there are no known or obvious suspects. In detecting unresolved crime, establishing the reason the crime was committed will often lead detectives to the identity of the offender or offenders. What is more, motives may be complex - individuals may be acting on more than one motive; and this has to be taken into account in the investigation of a crime.

5. Although the criminal law is generally not concerned with motive, recent legislation has introduced racial motivation as a consideration in the criminal law. Section 96 of the Crime and Disorder Act 1998 (which came into force on 30th September 1998) provides that, where racial aggravation is libelled in a charge and proved in respect of any offence, the court shall, on conviction, take the aggravation into account in determining the appropriate sentence. "Racial aggravation" is defined in subsection (2):

"(2) An offence is racially aggravated for the purposes of this section if

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(a) at the time of committing the offence, or immediately before or after doing so, the offender evinces towards the victim (if any) of the offence malice and ill-will based on the victim's membership (or presumed membership) of a racial group; or

(b) the offence is motivated (wholly or partly) by malice and ill-will towards members of a racial group based on their membership of that group,

and evidence from a single source shall be sufficient evidence to establish, for the purposes of this subsection, that an offence is racially aggravated."

6. Although subsection (2)(b) provides that an offence is racially aggravated if it is racially motivated, there are as yet no statistics to show how often aggravations are libelled under this subsection. It is possible that the difficulties of proving motive may deter prosecutors from relying on subsection (2)(b); but until statistics become available there is no means of knowing whether this is happening.

7. The 1998 Act requires the sentencing judge to give due weight to the proved aggravation when imposing sentence; but it does not lay down any specific increase in sentence which may be imposed, nor does it provide for the maximum sentence for the crime to be increased to take account of the aggravation.

7. THE RELEASE OF INFORMATION BY THE POLICE

This chapter examines critically two actions taken by the police on the morning after the murder, 5th November 1998, namely -

- A telephone call from Chief Superintendent George Burton to Councillor Bob Chadha, at about 0800 hours, and
- A press release issued at 1050 hours.

Both concerned the question of whether the murder was racially motivated, and both involved giving police information about the murder to a third party. In both cases the action was taken without reference to the Family Liaison Officers or the Chhokar family.

Chief Superintendent Burton and Councillor Chadha

7.1 At the beginning of the previous chapter I have recorded that the Divisional Commander stated, in the small hours of 5th November, that 'This does not appear to be a racial incident'; and that he intended this as no more than a provisional view, not a conclusive one.

7.2 Chief Supt George Burton, the Head of Strathclyde Police Community Involvement Branch, based in Police Headquarters in Glasgow, became aware of the murder incident on the morning of 5th November 1998 when he saw it marked on a print-out from Force Control. Since his professional remit included race relations he needed to know whether the incident was racially motivated. He therefore spoke to Chief Inspector Alistair Ingram at Wishaw Police Office, who informed him that (as Mr Burton told me in evidence) -

"the information showed that it was not thought to be a racist motive but had rather stemmed from the theft of a girocheque. Chhokar had threatened to go to the police regarding this theft and it seemed that there was an element of retribution."

7.3 Chief Supt Burton anticipated that media interest would focus on the fact that an Asian man had been attacked and killed by white men. He therefore wanted to make sure that, if the media went to the minority community for comment, the comment should be informed about the police perspective on the incident. To that end, Chief Supt Burton chose to telephone Councillor Balwant (Bob) Singh Chadha of North Lanarkshire Council. He knew Mr Chadha through their respective involvement with the West of Scotland Community Relations Council. He made the call at about 0800 hours or a little after. He told me -

"I called him because, firstly, he was a local Councillor for Motherwell District and, secondly, he was the person most likely to be asked by the media regarding a possible racial incident."

7.4 Mr Chadha's council ward is in fact Condorrat North and Westfield, some way distant from Wishaw, but since he was the only non-white member of the Council, it was reasonable for Mr Burton to identify him as a 'community champion'.

7.5 Mr Burton gave me this account, from memory, of the conversation -

"I think my words were that 'initial indications in this case are that it appears not to involve a racial element'. What we seem to have is thefts of property from the deceased and an element of retribution. Use of the words 'initial indications are' is a formula that I have used in the past because at that early stage we are not ruling anything out."

I did not take any notes of this telephone conversation but it would have taken place soon after speaking to Alistair Ingram. ...

I don't know if I indicated to him directly whether further investigations regarding a racial motive would be carried out. If a race motive had emerged, I would expect to be told. I would then brief the ACC and would have re-contacted Bob Chadha. I would brief the ACC because he would be the most likely person to front any press conference.

I did not contact Bob Chadha again in this case as nothing further was brought to my attention. I think I would have been told if it had emerged that the incident was of a racial nature. If there had been any change to the initial information from Ingram I would have expected to know. I don't think I would have been told if there was positive evidence ruling out a race motive."

7.6 Councillor Chadha however, also speaking from memory, gave me a rather different account -

"I had already heard on the radio or the television that there had been a murder. Mr Burton phoned and introduced himself. He said that he had phoned me because I was the local councillor. He told me that

there had been a murder of an Asian and that it was not racist. That is all he said. He said the information he was relying on was that it was not a racist murder. I thought it was probably too early to say that but I can't remember if I told him that or formed that opinion later. I think I was listening more during this telephone call rather than commenting.

The reason the conversation has stuck in my mind is because he made the comment that the murder was not racist and I thought 'Who is he to make that decision?' I was wondering why he had phoned me but I don't know if I asked him that. I think he did mention the media, that he had phoned in case the media questioned me because I was the only black councillor in the area. I think he probably thought he was being helpful. I thought making a decision like that was too much and it was too quick to make such a judgment. Where two races are involved in an incident you do not come to that conclusion. The motive of the crime should not be judged so soon. I think George Burton had told me that there were three white people involved. I'd probably said something like, 'Thanks for telling me, George.'

I asked myself why they had contacted me. I suppose I am more vocal in the CRC [Community Relations Council] and I was also a substitute member of the Police Board. I think, therefore, the police view was that I needed to be more informed. That is welcomed by me but I do not think Mr Burton could come to that view so early. He did say 'It is not a racist murder' but he could have qualified that by stating that that view was according to the information he had. I could not go into that information because that is a matter of the police investigation. I think he did mention a giro cheque and that the local police were pursuing lines of enquiry.

I did not form an opinion at an early stage. My conclusion is that it was a racist murder and that conclusion has been reached out of my own experience. The early call by Mr Burton has strengthened my view. Where two different nationality groups of people are involved you should reserve opinion on whether it is a racist murder until all information is double-checked."

7.7 These accounts conflict on a substantial point, viz. whether Mr Burton qualified his statement with '*initial indications are*' or whether he said without qualification that it was not a racist murder. I am inclined to believe Mr Burton: as an experienced policeman he is trained to observe and remember detail, and as a specialist in community relations he would be alert to the distinction between an initial view and a concluded view of whether a crime was racially motivated. His qualification to the statement would also correspond very closely to that made by Chief Supt Forrest a few hours earlier, which I have quoted above.

7.8 However, if Mr Burton did qualify his statement, as I believe he did, it did not register with Mr Chadha, who - according to his evidence to me - drew the opposite conclusion. In any event, it seems likely that Mr Chadha would eventually have come to the conclusion that the police had ruled out a racial motive, because he heard nothing more from them. As Mr Burton's evidence testifies, he himself heard nothing further within the Force about a racial motive, and had no further involvement with the case.

A letter from Mr Chadha

7.9 In the event the news media did not immediately contact Mr Chadha and his view of the case remained private for the time being, but after the trial of Ronnie Coulter in March 1999 he was contacted by Aamer Anwar with a view to getting support in North Lanarkshire Council for the Chhokar Family Justice Campaign. On 23rd March Mr Anwar was quoted in The Scotsman as saying

'within 12 hours of Mr Chhokar's death, detectives had told the press and a local Asian councillor that there was no racial motivation.'

7.10 Mr Chadha told me that he felt under pressure within the Council not to raise the issue: someone had said to him "Don't play the race card here - there is no racism in Wishaw." He went on -

"I do not think I spoke to anybody after the call from George Burton. The press was picking up the story and eventually it was raised at the Labour Group meeting. I think it was the Leader who made a statement about it. I was silent on the matter from November 1998 until April 1999 because the case was still being investigated. These were the instructions by the Leader not to raise the issue, although I spoke about it in one meeting querying what stand the Council should take.

I did want a debate after the first trial to look at racism generally in North Lanarkshire. ...The Leader of the Council said the matter was still sub judice. Strangely enough, on the same day Amer Anwar phoned me. He asked me to put something in writing to him as the co-ordinator of the campaign and he asked me to support the Chhokar Family Justice Campaign. He asked me to put what I knew of the case in writing. I think that Amer Anwar probably knew that North Lanarkshire Council was debating the Chhokar case.

He sent me a petition for the Chhokar Family Justice Campaign and wanted me to circulate the petition. I spoke to the Leader of the Council and he told me that I could not circulate it because the case was still sub judice. Amer Anwar had wanted me to circulate the petition among councillors. I was sent this petition by Mr Anwar prior to the meeting of the Council."

7.11 Having been prevented from circulating the petition in the Council, Mr Chadha wrote a letter to the Campaign himself, in the following terms -

North Lanarkshire Council

Date: 15 April, 1999

The Co-Ordinator

Chokar Family's Campaign for Justice

Dear Mr Anwar

Letter of Support

Following the launch of your Chokar Family's Campaign Committee, I raised Mr Chokar's case in the Council.

A full debate ensued and the Council Leader's motion was carried by a majority vote. The exact wording of the motion is not in my possession, however, it read something like this, "that Chokar's case is still sub-judice, therefore no conclusion should be formed as to whether there was an element of racism in handling the case by the criminal justice system."

However, I take a different view and I believe that there was sufficient evidence to suggest that racism was a factor in this case. I also take the view that the Police came to the conclusion very rapidly to suggest that it was not a racist murder as one of the Senior Officer from the Community Involvement Section telephoned me early in the morning following the date of the murder suggesting that it was not a murder of a racial nature.

I would have no hesitation in supporting your campaign for justice and to establish whether there was an element of racism in this sad tragedy.

Yours sincerely

Councillor Balwant Singh Chadha J.P.

7.12 I asked Mr Chadha whether, as a well known and respected anti-racist campaigner, he had felt that he had no choice but to support the campaign. He said -

"There was a bit of pressure. Aamer Anwar wanted a response quickly. I dictated the letter quickly because he wanted it as soon as possible. On reflection, perhaps I should have sat down and thought of the wording of the letter more carefully. I will criticise the wording of my letter but I have no hesitation in supporting the campaign. There were pressures in relation to the call from Aamer Anwar. He asked for it as quickly as possible and I said that I would dictate it right away."

7.13 I also asked him what he had had in mind when he used the phrase 'sufficient evidence'. He told me -

"I take the view that it is sufficient but I am not talking about a legal sufficiency. I do accept that the wording of the letter could give the wrong impression... The word 'sufficient' is not a legal term in the sense of my letter ... I had no practical evidence about race being a factor. I had no solid evidence... I do not know if there was racism in the case and I did not sit in court through the trial."

7.14 Councillor Chadha was very helpful in his evidence generally to this Inquiry, and I am grateful to him for that. Nevertheless I have to say that I find this particular account confused and unconvincing. Mr Chadha was a Justice of the Peace of over 25 years standing. He had carried out his judicial duties every fortnight since 1972. He was also a social worker whose duties involved attending court in a professional capacity. With all that experience of courts and legal process behind him, I cannot believe that he could be ignorant of the connotation of the phrase 'sufficient evidence' or of the distinction between evidence and suspicion. If he had evidence, he should have taken it to the police. He described himself as being vocal in the West of Scotland Community Relations Council and was a substitute member of the Police Board. He thus had ample opportunity to raise the issue with the police through his official contacts; but he did not. In fact, as he admitted to me, he had no evidence - his 'evidence' was nothing more than an inference drawn by himself from a telephone call from the police - and yet he issued a letter which claimed that there was 'sufficient evidence'. It was a reckless use of words.

7.15 To his credit however, he admitted to me that his letter had been drafted in haste. The reference to a 'full debate' was inaccurate: the Council Leader had said that the matter was sub judice and therefore there should be no debate, and Mr Chadha's own contribution had been in the Labour Group meeting, not in the full Council. Mr Chadha also admitted that the use of the phrase 'sufficient evidence' was misleading. He told me -

"I did not realise how important this letter would become and how Aamer Anwar would use it. I thought it was just going to be a letter of support but now I know the value of this letter. For Aamer Anwar, and his history of taking the police to task, this letter gives him support... I would not say that the letter is totally misleading but I accept that the phrase 'sufficient evidence' is misleading. "

7.16 I also sympathise with Mr Chadha's frustration in his attempts to get the issue of racism on to North Lanarkshire Council's political agenda. To say '*Don't play the race card here - there is no racism in Wishaw*' is complacent at best, and at worst dishonest.

7.17 The police felt that Mr Chadha's action was a breach of confidence: Chief Supt Burton described it to me as "*morally wrong*". He told me that Mr Chadha could have contacted him with a view to giving information he possessed because

Strathclyde Police was alive to race issues at the time and depended upon information from the public. ACC Pearson also told me -

"in relation to the briefing of Bob Chadha, it appears that this effort may have backfired on the police even if we were trying to do our best. The attempt on the part of the police to accurately brief a community champion has since been the subject of misrepresentation."

7.18 Mr Pearson went on to say that the decision to communicate with Mr Chadha was correct but that subsequent events have created greater uncertainty and reluctance on the part of Strathclyde Police to give information to the public through media releases.

7.19 However, Mr Chadha actually had no information to pass on; and the police must recognise that in contacting a figure who is active in politics, as Mr Chadha was, they will run the risk that information may sometimes be used in ways they do not anticipate. There is a lesson here for the police, that when they are giving information to community leaders, not only should it be given precision and clarity, but there should also be an explicit understanding reached as to what is given in confidence and what may be used in public.

7.20 Overall however I consider that the terms of Mr Chadha's letter could only serve to damage relations and heighten tensions between the police and minority ethnic communities. It was subsequently used by the Chhokar Family Justice Campaign in the media: in *The Scotsman* of 30th November 2000 it was quoted thus -

'Last night Mr Anwar insisted that the crime was racially motivated and accused the Crown and the police of trying to play down the race issue.

He said: "We believe that there was sufficient evidence to suggest that racism was a factor in this case. But when it comes to black deaths the most obvious connections elude the police and prosecutors.

The Crown and the police simply chose to ignore the possibility that this could have been a racist killing.'

Implications for Police Family Liaison

7.21 I have noted above that Chief Supt Burton's telephone call to Councillor Chadha was made at or shortly after 0800 hours on 5th November 1998. At that point the Chhokar family knew only that Surjit had been killed: they knew nothing else about suspects or motive. They were visited by the police Family Liaison Officers later that day; and on that visit, as I have recorded in the previous chapter, Surjit's sister asked the question "*Was it because he was black?*", and DS Duffy told her, in words which have not been exactly recorded, that the crime did not appear to be racially motivated.

7.22 Neither the Family Liaison Officers nor the Senior Investigating Officer, DCI John Michael, knew that Community Involvement Branch was taking an interest nor that Chief Supt Burton had anything to do with the case. Thus they could not know that Councillor Chadha had already been told about it, and had been told - in whatever terms - that a racial motive was not suspected. Similarly Chief Supt Burton knew nothing about the next of kin or about the family liaison arrangements which were being set up that morning.

7.23 It was therefore only a matter of good fortune that there was no contact between Mr Chadha and the news media that day. If there had been, and if the police view about racial motivation (whether in the guarded terms which Mr Burton recalls using or in the unqualified terms recalled by Mr Chadha) had been reported, it would justifiably have caused the family to think that the police were not being candid with them. That would have created a distrust which could have hurt the family deeply and would have done severe harm to the police attempts to build a relationship with them.

7.24 Equally, for all the police knew, Mr Chadha and Mr Chhokar might have spoken together. In fact, they did not know each other, but the police did not know that. In any case, a possible reaction by Mr Chadha, even though he did not know Mr Chhokar, might have been to contact him. The result would have been the same: the family would have found that the police were saying things about the murder which they were not telling the family, with consequent damage to the relationship.

7.25 ACC Pearson recognised this when he gave evidence to me. He said that if the family

"had gone out looking for alternatives and had approached Bob Chadha then he would have said to them that the police had briefed him regarding the circumstances. The family could then go back to the police with the comments that they were not briefed but that a local Councillor was. That would be a difficult thing to justify."

7.26 There was an obvious failure of co-ordination here. The police had to have an eye to the public perception of the murder; and they had to discharge their responsibilities to the family. Chief Supt Burton was concerned with the one, and the Family Liaison Officers, under the command of the Senior Investigating Officer, were dealing with the other; but there was no communication between them.

7.27 I have a number of recommendations to make, arising from this whole episode. I set them out at the end of this chapter.

The news release

7.28 Later in the morning of 5th November 1998, Strathclyde Police compounded the confusion by the issue of a news release. I was told that the police were under media pressure to issue a press release. I was told by DCI Michael that the media would have asked the question 'Is it a racist murder?' because they express an interest in every murder. He cited the example that if there had been a murder at an 'Old Firm' game, the police would be asked questions by the media as to whether it was a sectarian murder. ACC Pearson told me that the police are under pressure from the media to release information. He explained that -

"If there is no release of information then a vacuum exists and the press would try to seek information from the local community. This leads to misinformation."

7.29 The full text of the news release is as follows -

`Detectives are following a definite line of inquiry into the murder of a 32-year-old man after he was attacked outside his home in Overtown, Wishaw, late last night (Wednesday, 4th November 1998).

The victim, Surjit Singh Chhokar (correct), was attacked by three white male youths around 11.30pm last night, moments after parking his car outside his home in Garrion Street on return from work as a waiter at a Bellshill restaurant.

He collapsed in the street and was taken to hospital, where he was found dead on arrival.

Door-to-door inquiries are taking place, in the area and a further close search of the Street will also be carried out.

A post-mortem examination will take place later today to establish the cause of death, therefore details of his injuries will not be released for the time being.

The three youths are described as in their late teens, of slim build, 5ft 7 ins to 5ft 9 ins tall and wearing dark clothing. They made off on foot west down Garrion Street and via a lane towards the main A71 after being disturbed by a local resident.

Detective Inspector Kenny McIver, the officer in charge of the inquiry, said: 'Although the inquiry is at its early stages, we are following a positive line of inquiry and I can say that there does not appear to be any racial motive involved.'

However, I would appeal for anyone who was in Garrion Street area around 11.30pm last night or anyone with any information to contact Wishaw Police at 01698 372592 or Crimestoppers on 0800 555 111.'

7.30 I focus here on the second last paragraph, which I have highlighted. I took evidence on this from Chief Supt (as he was at that date) Sandy Forrest. He was the Divisional Commander at that time and was personally involved in discussion with the police Media Services in the drafting of the release. Mr Forrest told me that he had previously served as an Inspector in the Pollok area of Glasgow. He was thereafter promoted to Chief Inspector and then Chief Superintendent in the Govan area of Glasgow. Mr Forrest said he also spent a significant part of his police service in Giffnock. These areas, I was told, are the principal ethnic minority residential communities in Strathclyde.

7.31 Mr Forrest said that he had a great deal of experience in dealing with the Sikh and Muslim communities and that he chaired a MARIM⁹ group and was involved in multi-agency training. I was told by him that the MARIM group had two principal roles, firstly to monitor how the police or other agencies deal with racial incidents and, secondly, whenever necessary, to form a task force to deal with issues which may arise in the aftermath of an incident. He cited an example when there was an incident at Bellahouston Academy and there were "rivers of blood" headlines. I was left in no doubt that ACC Forrest was a police officer who was highly experienced in operational duties in areas of Glasgow with high minority ethnic populations. He said that his experiences in these areas could do nothing other than inform the process of policing minority ethnic communities.

7.32 In relation to the news release he told me that there were conflicting views within Strathclyde Police about both content and timing -

"First thing in the morning, I got a call from Susan Dean from Media Services to clear a press release with me. I said under no circumstances should that draft press release be released. I said that I disagreed with the decision. My comment at 0054 hours was for internal consumption and although we were into the investigation stage by the time of the press release, I did not think it was right to make such a release. I phoned Kenny MacIver and he was adamant that he did not want the press release to go out in that way. Kenny MacIver did not phrase the press release and did not approve of it going out in that way. The press release was phrased by the Media Services Group. I had an argument with Susan Dean about this and Kenny MacIver was outraged at the press release.

Susan Dean's argument was that the details of the deceased were already in the public domain, press speculation was already to the effect that the crime was racially motivated and that we should pour oil on that and say that it did not appear to be. She argued that if we did not make the press release, the media would speculate. Kenny MacIver and I were of the view that it was too early, that there were still people to be seen and things to be done. I thought the bit at the end of the press release regarding racial motivation was gratuitous."

7.33 Susan Dean was the Deputy Head of the Press Office at Strathclyde Police Media Services. She was not a police officer. Mr Forrest was firm in his evidence that had the decision been left to either himself or DI MacIver the press release would not have been made.

7.34 In relation to the timing of information about motivation, Mr Forrest told me that both he and DI MacIver were of the view that, notwithstanding the fact that details of the deceased were already in the public domain and the existence of press speculation about the crime being racially motivated, the press release was

too early. He said there was need for further investigation. He told me that he was ultimately relying upon his experience as a senior police officer, in particular in dealing with issues where race was a sensitive issue; and it was that experience which persuaded him that the press release should not be made in those terms.

7.35 I was told that the Deputy Head of the Press Office was working under the authority of the Deputy Chief Constable. The decision for issuing the Press Release was one taken by Strathclyde Police by an officer of ACPO rank. The procedure however made no provision for Chief Supt Burton, in the Community Involvement Branch, to be consulted about the press release. I note also that DCI Michael and the officers whom he appointed as Family Liaison Officers that morning apparently had no knowledge of the matter.

7.36 I was given another view about the news release by Maggie Chetty, Senior Officer, West of Scotland Community Relations Council. She said -

"We at the CRC were shocked but not surprised by that statement. I did not feel that they had taken enough time to explore all the relationships. In any sort of incident where violence is involved and the situation is charged, I would be surprised if it was not a racial incident".

7.37 Strathclyde Police put their media strategy in this case under professional scrutiny after the trial of Ronnie Coulter, in April 1999, in an internal review of the whole case, carried out by then Detective Superintendent Jeanette Joyce. Chapter 32 below is a commentary on that report and the handling of it by Strathclyde Police; but it will be convenient to deal here with what it has to say about this press release.

7.38 In her evidence to me, Det Supt Joyce took a different view from Mr Forrest as to the timing of the press release and said that she considered it was appropriate for the police to issue the press release at 1050 hours on 5th November 1998. In relation to the paragraph about racial motivation, she said she had a 'preferred option'. She suggested that the appropriate text might have been "Although the enquiry is at its early stages, there is no evidence to suggest racial motivation and a positive line of enquiry is being pursued." She thought the version issued by the police, attributed to DI MacIver was 'more clinical' and that her version was 'softer'. Her comment was

"it might be fair to say that [the published] version is more of a conclusion but he was the one dealing with the case on the spot and had the information to hand. It may be fair to say that my version is less of a conclusion in that it does not rule out race."

7.39 Det Supt Joyce sought to impress upon me that she did not think DI MacIver was wrong with his statement and she founded on the words "there does not appear" to support her analysis.

7.40 In his evidence before me ACC Pearson was of the view that Det Supt Joyce's version was *"a better designed set of words and is crafted to give an impression but in essence it does not say anything different from the statement which was released."* It was he said *"neater, tighter and more factual."* The original, he said *"says too much too soon"*.

7.41 By October 2000 the Crown Office had come to the view that the police were vulnerable because of their initial haste to announce that the murder was not a racist crime. In a letter of 20th October 2000 from the Deputy Crown Agent, Frank Crowe, to Superintendent Ian Gordon, Media and Information Officer at Strathclyde Police (which I quote in full in chapter 21) there is the statement -

'there may be criticism of the well intentioned decision of the police shortly after the murder to advise local community leaders that this was not a racist crime.'

7.42 This was just before the trial of Andrew Coulter and David Montgomery. The anticipated criticism came after the end of that trial, in the statement released on 28th November by the Chhokar Family Justice Campaign which included this -

'Within hours of Surjit's death the most pressing need for the police was not catching the killers but for a senior police officer to telephone the only Asian Councillor Bob Chadha to deny it was a murder of a racial nature and issuing a press statement claiming the same.'

7.43 That statement was untruthful in saying that catching the killers was not a priority - the press release itself is exactly an appeal for help in tracing them - but in my view it hit the mark in criticising the haste to close off the question of racial motivation. At any rate it stimulated Strathclyde Police to reconsider their press release of 5th November 1998. In a memorandum dated 24th November 2000 from Chief Supt Caroline Scott to the Chief Constable John Orr she advised that a public explanation for the 1050 hours press release should be given. She suggested that the explanation should be given by a media release in the following terms: "It was evident from a very early stage that the incident was not racially motivated. We were also conscious of the damage, anger and fear that could be engendered within the community if such harmful and inaccurate speculation continued unchecked. It was therefore essential that we act quickly to put an end to this speculation - and we did so."

Commentary

7.44 It seems to me that neither Det Supt Joyce nor Chief Supt Scott grasped what was wrong with the original press release, although the officers closer to the action saw it very clearly. Neither of the alternative versions attempted by the police avoids the fault of the original: both of them in effect state that the police are not looking for racial motivation. Det Supt Joyce's version comes closer to that, though it needs a sophisticated reader to deduce it. Chief Supt Scott's wording misses the point completely - so far from putting an end to the 'speculation', it has continued ever since. The irony of all this is that the original wording was in fact accurate, in that the officers who took forward the enquiry did fail to investigate the racial aspect, as I have shown in the previous chapter.

7.45 I recognise that the police were anxious to forestall inflammatory speculation, and rightly so. That was good race relations: if an incident is known not to be racist the public needs to be told so, with authority. But the police undermine their own credibility with the public, and especially with vulnerable minority communities, if they are seen to be making such statements before they have all the evidence in. Their response in this case was hasty and ill-considered, and thereby did substantial damage to race relations.

7.46 It is critical that members of minority ethnic communities can place their faith in what is being said by agencies involved in the criminal justice system. That faith will only become richer and fuller in the measure in which the authorities provide accurate, clear and honest statements. Nothing short of that will do.

7.47 Finally I note that there was no consultation with the Procurator Fiscal or Crown Office over the news release. I do not criticise the officers involved for that, since I understand that it was no part of their normal procedure. However, a murder enquiry is under the direction of the Procurator Fiscal and I consider that this ought to extend to control over the release of information from the police. These matters are too sensitive to be left to the police alone.

7.48 I have a number of **recommendations** arising from this chapter -

- Internal police liaison: in any serious incident such as a murder, where it seems possible that a racial motive may be perceived by the public, any communications with the public or members of the public should be co-ordinated throughout the Force, and always with the Senior Investigating Officer. If that had been done in the present case, Chief Supt Burton, the media office and the Senior Investigating Officer would all have been in contact with each other throughout.

- Family liaison: similarly, communications with the public or members of the public should be appropriately co-ordinated with police contacts with the family of the victim. The police are already well able to handle situations where the family have not yet been contacted and do not know there has been a death. The media are also aware of this kind of situation and respect it. The same sensitivity should be observed, by police and media, when the family do know, before anything is said to any third party or to the media.

- Contacts with 'community leaders': in the present case, Chief Supt Burton was right in principle to think it would be appropriate to make contact with the person he perceived as the 'community leader'; but such contacts should only be made on the basis of a clear understanding by both parties, either that the information given will be held in confidence or that it may be used in public; and the officer making the contact should record what has been said.

- No communication should be made to the media or to any other party, apart from the family, without consultation with the Procurator Fiscal or, where appropriate, the Crown Office.

- The Lord Advocate should issue guidelines to the police confirming that any press release or other communication to parties other than next of kin (or other individuals personally associated with the victim) should be under the authority of the Procurator Fiscal, after consultation with the Senior Investigating Officer.

8. FIRST CONTACT WITH THE FAMILY

This chapter describes the contacts made by the police with the Chhokar family immediately after the murder.

8.1 The first contact which any member of the Chhokar family had with the police following Surjit's death was at approximately 0120 hours on 5th November 1998 when Mrs Sanehdeep Chhokar was told by Detective Constable James Dyas of Surjit's death.

8.2 DC Dyas had long experience in the area. He joined the police in 1969 and after postings to Motherwell, Newarthill (a rural posting) and Bellshill he was transferred to Wishaw Police Office in 1979 where he has remained to date, with the exception of a three year period spent at Shotts, which is in the Wishaw sub-division.

8.3 At 2340 hours DC Dyas was instructed by the Duty Officer at Motherwell to go to Garrion Street in response to a reported stabbing. It took him about five minutes to get there. He was met there by PC John Maclean who told him that Surjit Singh Chhokar had been stabbed, appeared to be seriously injured and had been taken to Law Hospital. He arranged for part of the street to be taped off.

8.4 He went to Law Hospital at about 0015 hours and was told by hospital staff that Surjit had died. He decided to contact the relatives. He explained to the Inquiry that he did so for three reasons. Firstly, he had been asked by a nurse at the hospital to inform the relatives; secondly, he wished to tell the Chhokar family before Mrs Bryce did; and, thirdly, from past dealings with the family he knew that they were Sikh and was uncertain as to whether there were last rites in that religion. DC Dyas had the unenviable task of having to bring desperate news to the Chhokar family.

8.5 DC Dyas knew Surjit, his father and his wife. He lived in Law himself and knew where Mr Darshan Singh Chhokar lived. DC Dyas knew Sanehdeep Chhokar from the family's shop. He knew Surjit because about six years previously he had had to arrest him in connection with a break-in.

8.6 At approximately 0100 hours he visited Mr Chhokar's house, along with a colleague, Inspector Speedie, but was unable to get a response. They confirmed with a neighbour that Mr Chhokar still lived there. They radioed to Motherwell Police Office and asked for uniformed officers to attend. A police car from Carluke

came and directed them to Mrs Sanehdeep Chhokar's house. The local Law policeman was in the car and either knew where Sanehdeep Chhokar lived or had found out. It was three minutes by car or six minutes' walk from Mr Chhokar's house to Sanehdeep Chhokar's house. DC Dyas described what happened -

"We got to [Mrs Sanehdeep Chhokar's] house within 20 minutes (approximately 1.20am). She was in bed. I told her that Surjit Singh Chhokar had been involved in an incident, had been stabbed and had died. She told her kiddies that their father had died. She spoke to the children in her own language. I then asked her to phone Mr Chhokar Senior which she did. She spoke to her father-in-law in Punjabi and told him that the police were there.

The widow's English is excellent. No interpreter was needed for her. She did speak to her children in Punjabi."

8.7 Inspector Speedie and DC Dyas then went, with Mrs Chhokar, to Mr Chhokar's house. The uniformed officers stayed with Mrs Chhokar's children at their own home. DC Dyas told me -

"I spoke to Mr Chhokar senior in English and told him what had happened. He spoke back to me in English and I didn't have a difficulty in understanding him. He understood what I had said to him and was upset.

I told him what had happened and what would happen next. We were in the living room of the house for about 15 minutes. I never saw Mr Chhokar senior's wife. Mr Chhokar got ready and we went to the hospital along with the deceased's widow."

8.8 DC Dyas has said that he found Mr Chhokar's English "slow and fractional" but that he was able to hold a conversation. DC Dyas knew that Mr Chhokar could both understand and speak English and could have a conversation, although slowly, about everyday things. He remembered a previous conversation with Mr Chhokar about Alsatian dogs.

"It never occurred to me that he would need an interpreter at that stage. His daughter-in-law was there and she speaks excellent English. They spoke to one another in Punjabi. They appeared to be able to relate to one another.

We then drove to Law Hospital which took about 5 minutes and arrived some time after 2am [0215 hours]. We went to the mortuary and they were with the body for quite a while. Mr Chhokar senior was distraught and in tears. It took him a while to compose himself. ...Mrs Chhokar had been upset in her own house when we first told her the news but was a million times worse when we were in Mr Chhokar senior's house."

8.9 The body was formally identified to the police. DC Dyas, in the presence of Inspector Speedie, noted statements from both Darshan and Sanehdeep Chhokar in Law Hospital. He wanted early information for the enquiry. He explained that it took approximately 5-10 minutes to note a statement from Mr Chhokar and that Mrs Sanehdeep Chhokar was able to assist with spelling, dates of birth and so on. DC Dyas said that Sanehdeep Chhokar was acting as an unofficial interpreter and that he treated her as such.

"Mr Chhokar's English was slow and I wanted to speed things up. I did not want to detain him too long at this stage. His son had just been murdered - he needed time by himself and with the family.

The purpose of the short interview at this stage was to ascertain the family background, to ascertain who's who. [This information was reported back to colleagues and was put into the Sudden Death

Report.]... *At that stage information is required to set the scene for those who follow on with further enquiries later that day. The information could then be expanded at a later stage.*

I am not interested in talking to the family about motive etc at that stage. Once I had obtained the information about the family background, the scene was set. Mr Chhokar Senior's son had just been murdered - it was time to leave him then and, if need be, see him again later."

8.10 In his brief statement to the police Mr Chhokar indicated that Surjit was his son, was married to, but separated from, his wife and lived with his girlfriend in Garrion Street, Overtown. In relation to Mrs Bryce, Mr Chhokar said, *"I take nothing to do with her"*. DC Dyas formed the impression that *"[Mr Chhokar's] son's marriage had broken up and he didn't particularly like Mrs Bryce and had washed his hands of her"*. The remainder of the statement dealt with the formal identification of Surjit.

8.11 DC Dyas also noted a brief statement from Sanehdeep Chhokar in which she advised the police that she was married to Surjit but was separated from him. She indicated that she lived in Law village with their two children while her husband had lived in Gowkthrapple. The remainder of the statement dealt with the formal identification of her husband.

8.12 DC Dyas thereafter took Mr Chhokar and his daughter-in-law back to their own homes in Law village. He explained to them that detectives would be back to see them in the morning. Sanehdeep Chhokar told him that Surjit had a sister, Manjit Sengha, who spoke English. He arranged for Mrs Sengha to be present in the morning with the family when they met detective officers and to act as an interpreter if required. DC Dyas explained that he did not believe Mr Chhokar required an interpreter but felt the presence of Mrs Sengha, who could speak English, might *"speed things up for the family and make them more relaxed"*. He made a distinction between different levels of language ability by relating it to his own experience -

"I speak French but I am not fluent in it. It is schoolboy French and I have not studied it beyond school. I have used my French in France and I appreciate what it is like to try and speak in another language - it is difficult."

8.13 DC Dyas then returned to Wishaw Police Office at about 0400 hours and briefed other detective officers on the information he had gathered. He told other officers what he knew of the circumstances of Surjit's death, the injuries sustained by him, details of the witnesses who had formally identified the body and the family background.

8.14 DC Dyas took statements from several other witnesses but otherwise had no further involvement in the murder enquiry.

Commentary

8.15 In my opinion, DC Dyas was well suited to meeting the family under very difficult circumstances and therefore the initial contact with the Chhokar family was effective and sympathetic. Its purpose was to tell the family that Surjit had been killed, to assist them in getting to the hospital, secure formal identification of the body and to lay the groundwork for subsequent police contact whether relating to the enquiry or for family liaison.

8.16 I formed the view that, in pursuing these ends, DC Dyas was sensitive to the family's circumstances and to their immediate needs. He saw their distress and sought to minimise any additional burden on them by keeping the formalities of identification and taking of statements as brief as possible. He put himself in their shoes. Though he did not know whether, as Sikhs, the family had religious needs, such as the administration of last rites, he was alert to the possibility and that is one of the reasons he cited for his decision to go and notify the family quickly. He was alert to the possible language difficulties and, though he was content that Mr

Chhokar did not need an interpreter at that stage, he made arrangements for Mrs Sengha to be with her parents when the police next called. He briefed his colleagues within an hour of his attending with the family. No information was 'lost'.

9. SELECTION AND BRIEFING OF FAMILY LIAISON OFFICERS

This chapter deals with the selection and initial briefing of the Family Liaison Officers (FLOs). The selection was well founded and the individuals chosen brought relevant experience to the task; but the initial briefing which they were given failed to anticipate that the family would want to know whether the crime had a racial motive.

Criteria for selection of Family Liaison Officers

9.1 In November 1998 the function of a Family Liaison Officer had not yet been developed into the specialism which it has since become. Nevertheless, those involved in this case did recognise the role that needed to be undertaken. It is possible to build a picture of what the police thought was required in this case from the evidence of those involved, namely DCI Michael who selected the Family Liaison Officers and the officers whom he chose - Detective Sergeant Duffy, Police Constable Laverick and Detective Sergeant Smith.

9.2 When considering the appointment of Family Liaison Officers, **DCI Michael** told me that he looked for good communication skills and experience. He saw the role as an important concern from a human point of view. The officers needed an ability to be sympathetic towards the bereaved and, in this case, experience of working with ethnic minority families was also an advantage. The family needed police reassurance that enquiries were being carried out. The Family Liaison Officers would have needed to explain the family's responsibilities, which might include identifying the body (although this had already been done at Law Hospital earlier that morning, it would need to be done again at the post mortem). They would be responsible for liaison with the Senior Investigating Officer (SIO) and with other agencies. Family Liaison Officers are also part of the investigation team. A Family Liaison Officer might, for example, have had to take statements from family members about delicate issues.

9.3 DC Dyas became involved in the case when it was first reported to the police because he was the officer on night duty; but he was not appointed as a Family Liaison Officer.

Selection

9.4 The Family Liaison Officers were appointed at or shortly after 0800 hours on the morning following the murder, Thursday 5th November. DCI John Michael selected three officers: DS Ian Duffy and PC Lynn Laverick in the primary role and DS Jim Smith as a "back-up" should one of the others be unavailable for any reason. I have taken evidence from each of them.

DS Ian Duffy

9.5 DS Duffy joined Strathclyde Police in 1972 and spent four years in uniform in 'A' Division which covered the Charing Cross area of Glasgow. He then spent eleven years in the CID at 'A' Division, after which he was promoted to the rank of Detective Sergeant and was stationed at 'P' Division in Lanarkshire. He gave evidence to me over three days. He summed up his policing experience for the Inquiry -

"'A' Division is a multi-racial area of Glasgow. There is a large Chinese community in Garnethill, as well as a large Indian and Pakistani community to the west of that. I have a lot of experience in dealing with people from ethnic minority backgrounds - from day-to-day matters such as burst pipes, vandalism and football in the street to more serious investigations, including a number of murder enquiries. I have worked with almost every ethnic minority community in Glasgow."

9.6 DS Duffy told me that he had been involved in significant incidents involving black and ethnic minority communities and listed: the enquiry in relation to the murder of the Hector Smith, a West Indian, approximately 25 years ago; the murder of the Chinese victim Philip Wong; and the murder enquiry regarding an Asian victim found in Sauchiehall Street.

9.7 DS Duffy had considerable experience of police work with ethnic minority communities. He had been a Family Liaison Officer on previous occasions, though this was his first time as a Family Liaison Officer working with a family from an ethnic minority community in a murder enquiry.

9.8 He described his policing methods -

"I am aware of the sensitivities involved in dealing with ethnic minority families. During my time at 'A' Division in Glasgow I had a close relationship and contact with the community. I was friendly with restaurateurs, shopkeepers etc. I would also go in for a cup of tea and listen to their problems. At that time it was all foot patrol - there were no mobile patrols. This led to a closer relationship with the community. It was not called community policing at that time but that is what it was. Community police officers now are required to attend community meetings.

During that time I was in and out of people's homes. We did not call them 'ethnic minorities' at that time. They were just the people that lived there. The name 'ethnic minority' did not exist then."

9.9 He was promoted in 1987, and moved to Lanarkshire and worked in 'P' Division which covered Shotts, Harthill, Wishaw, Bellshill and Uddingston. 'N' and 'P' Divisions when amalgamated included Coatbridge, Kilsyth and Cumbernauld. In November 1998 he was based at Motherwell Police Office.

9.10 He saw a contrast between the two communities in Glasgow and Lanarkshire -

"The community in Lanarkshire was mixed. I know that there is a large Muslim community at Mossend where they are building a new Mosque. There are more Muslims than Sikhs in Lanarkshire but I don't know exact numbers.

I am not aware of any racial tensions in Lanarkshire. I know that during Ramadam there can be various parking problems, vehicle break-ins etc., but I honestly do not know of any real racial problems. There have not been any in my time there.

I worked in the multi-racial heartland of Glasgow. Lanarkshire has much less of an ethnic minority community."

9.11 DS Duffy retained his responsibilities with regard to the Incident Room and the investigation. This was normal, with Family Liaison Officers being part of the investigation team. In the Chhokar case DS Duffy had responsibility for the house-to-house enquiries and was also the office manager. He described his role -

"Everything comes to me as office manger and I control it. It is a very busy zone and can be highly pressured. There are lots of things happening and you have to control the paper flow etc. ... My duty as office manager is to feed information to the SIO. I speak to him. It is not any more formal at that time. Information is not passed directly to the SIO from officers dealing with enquiries. The information always comes through me as office manager. ...The officers coming into the Incident Room can be from anywhere - uniform, senior officers etc. Part of my task is to prioritise the information I receive and the tasks which require to be actioned."

DS Duffy as Family Liaison Officer

9.12 DS Duffy identified a Family Liaison Officer "as having good skills, a wider view of life, someone that the family can identify with. The family do not want to see a 20 year old coming into their house to tell them about the murder of their son. They want to see a more experienced officer that they think they can trust."

9.13 DS Duffy had considerable experience of working in and with members of ethnic minority communities. He had the necessary sensitivity to undertake the role and, as an officer with 26 years' experience at the time of murder, had sufficient seniority to inspire confidence in both his senior officers and the relatives. He was aware of the sensitivities of the role and was willing to take it on:

"I had no problems being allocated the FLO task. If given the choice, however, I would rather have been allocated a different task. It is a hard, sensitive task. You have to be sympathetic, give them information about other agencies, take an interest in their sorrow. This can be stressful. If given the choice of doing that or something else, I think I would probably want to do something else. There are officers who find the FLO task very hard but professionalism carries you through. You can grieve with the family but there is no point in you crying as well."

9.14 He was also aware of the reasons for the team being selected and of the relevance of his experience:

"The choice of FLO is crucial and thought must be put into the decision. DCI John Michael thought of my experience in 'A' Division and of the fact that Lynn lived in the village. I think it was a remarkable blend in this case. John Michael did not just walk into a room and pick the first two people he saw. Lynn had experience of dealing with cot death cases etc, which are also very traumatic."

PC Lynn Laverick

9.15 PC Laverick joined Strathclyde Police in 1991 and was a probationary constable based at Motherwell Police Office. She remained in uniform until February 1995 when she was seconded to the Female and Child Unit. In September 1995 she was appointed to plain clothes duties and in January 1996 was seconded to the Drug Squad. In April 1996 she returned to uniform mobile patrol duties and was involved in policing various 'Spotlight Initiatives'.

9.16 In May 1997 she was appointed to the Female and Child Unit, where she worked closely with CID officers and was also involved in major incidents, including murder enquiries.

9.17 She lived in Law Village and knew Mr and Mrs Chhokar and Sanehdeep Chhokar. She used the family's shop in the village and had done so for a long time. She also knew Surjit. She was confident that the family would be able to speak to her.

9.18 PC Laverick perceived her role as "not to act as a counsellor but I am there to listen, to be a shoulder to cry on".

9.19 PC Laverick was also part of the investigating team. She described her roles -

"I was also appointed as an Indexer in the Incident Room. When a line of enquiry is being pursued an officer is allocated to follow that line. I would then update the information obtained by that officer, for example, what a witness saw, whether a vehicle was involved. The indexer's job is quite a responsible, onerous task. Sometimes the FLO task can be particularly demanding for a period of time. If I was engaged with FLO duties someone else would have been appointed as indexer. That did not happen in this case."

PC Laverick as Family Liaison Officer

9.20 PC Laverick brought skills and experience which were complementary to those of DS Duffy. With seven years police service she was significantly less experienced than DS Duffy, but she had recent experience as a Family Liaison Officer in two cases. Whilst in the Female and Child Unit she had been involved in dealing with the victims of rape, other sexual assaults and domestic abuse, and with families in the aftermath of cot death tragedies.

9.21 She knew the family. This had potential advantages as well as disadvantages. It offered the possibility of the police establishing good contact with them, but carried the risk that either the family or PC Laverick might feel uncomfortable given the sudden change in the nature of their relationship which had until then been as acquaintances. Living close to the family risked putting additional pressure on PC Laverick. Her senior officers were aware of the potential difficulty for her and asked whether she was content to undertake the role. She told me -

"I was also asked if I objected to dealing with the family as I knew them. I think it is a good idea to appoint someone who knows the family. I don't think it could be a hindrance. I knew the family would be able to speak to me".

She therefore felt that she could engage with the family and did not have any problems so doing.

9.22 Her evidence shows that the police had considered not only whether PC Laverick would have a problem, but also whether her presence in the Family Liaison Officer team would have an adverse effect on the family. There is, however, no evidence that this question was put to the family.

9.23 PC Laverick's experience as a Family Liaison Officer was recent (in two cases in the previous 18 months). This had the advantage that she was used to undertaking the role. However, the stresses involved in the role are significant and there is no evidence that the senior officers took this into account in allocating her the task. (Practice has since changed so that Family Liaison Officers are given a break between cases to ensure that they do not 'burn out'.)

DS Jim Smith

9.24 DS Smith had 21 years' police service, most of which had been spent in CID. The first 12 years were spent in 'A' Division in Glasgow City Centre. He too described his work in the context of a multi-ethnic community.

"This Division is made up of a multi-ethnic community. I worked at both Stewart Street and Cranstonhill Police Offices. These areas cover Woodlands and Garnethill in Glasgow. The Woodlands area has a large Asian and Pakistani community, while the Garnethill area has a large Chinese population.

During my time in 'A' Division in Glasgow, I spent a lot of time dealing with people from ethnic minority backgrounds. This was probably on a daily basis. I would say that I had more experience than a lot of police officers in dealing with people from such backgrounds. There is not such a large ethnic minority community in North Lanarkshire. My contact with people from ethnic minority backgrounds has ranged from speaking to people on the street to investigating murder cases.

I was involved in the Incident Room at Cranstonhill Police Office in relation to the high profile case of the Asian woman who had her throat cut in Woodlands. ... I had no contact with the family in that case. I am HOLMES¹⁰ trained and was the receiver and action allocator in that case.

While I was based at Cranstonhill Police Office, I sat on the MARIM¹¹ group a few times. I found that exercise quite informative. I do not think it helped me as an investigator but it did help me as an individual and as a police officer. This was back in the late 1980s. I did not do it

for long. Being involved in the group raises awareness of other people's needs, for example, cremation. It makes you more sensitive to other people's needs."

9.25 DS Smith spent two years as a uniformed officer at Airdrie Police Office and was promoted in February 1993 to the rank of sergeant. He has been based at Motherwell CID since 1994.

9.26 In the Chhokar case DS Smith was the receiver, statement reader and action allocator in the Incident Room. He described that role as follows -

"In a manual incident room you can change position almost hourly if needs be. As a receiver every document would come through my hands. As a statement reader, as a rule, in a perfect world, every statement should be read. But if I was not there, for example, someone else could read statements such as Ian Duffy. The SIO or his deputy would also read statements. When I read statements I also act on what I see - that is my job as action allocator. It is my job to prioritise actions. I would write comments on the statement and instruct an action to be raised for that. I would also be involved in prioritising actions. However, before any action goes anywhere, the SIO or his deputy would read the proposed action and prioritise them relevant to priority lines of enquiry. I would write the action on the statement as there are several copies of the statement, for example, the SIO has a copy, I would have a copy and there are copies for the enquiry team."

The Family Liaison Officer team

9.27 The Family Liaison Officer role is a delicate one and the officers were selected for their particular skills and experience. The selection of a team requires a balance of skills. In DCI Michael's own words -

"To my knowledge, the officers I selected have the right skills to be FLOs....I knew that DS Duffy was used to dealing with different victims of crime including minority victims. PC Laverick was at that time working in the Female and Child Unit and had a good bit of experience. She also lived locally, knew the family and was on good terms with them. I thought that would be helpful. DS Smith was HOLMES trained and had worked on a large number of murder cases. He was one of the most senior detectives there at that time.

I have worked on over 20 murder enquiries in the last 2 years. I would in most cases appoint an officer of at least the rank of sergeant as an FLO. An FLO requires good communication skills and experience. I trust my staff but there are people I trust to a greater degree. The most major enquiry is a murder enquiry, regardless of colour or creed. I would appoint officers I could trust as FLOs.

The fact the deceased was Indian did make me think of DS Duffy as FLO because of his previous experience in dealing with victims of different ethnic backgrounds. I was also aware that PC Laverick knew the family."

Briefing the Family Liaison Officers

9.28 DCI Michael and DI MacIver briefed the Family Liaison Officers in Wishaw Police Office in the morning of 5th November. Detective Superintendent Jim Gemmell, DCI Michael and DS Smith had arranged for two Punjabi-speaking police officers to be available to act as interpreters should the need arise. DCI Michael outlined the briefing -

"I identified their roles and we discussed various things including interpreters. I can't remember the names of the officers who were

contacted to act as potential interpreters - I believe one was an Asian officer from 'G' Division and the other was an officer from 'A' Division.

Through experience you become aware of the needs of people. I didn't refer to any policy - the question of interpreters was in my head. A list of interpreters is kept by the Force duty officer. Any member of the community could struggle with complex legal terms. We do not make assumptions about anybody, for example, we treat children at a different level. We deal with people from all different backgrounds and all levels. I am confident that the FLOs in this case would have been aware of that.

We also discussed leaflets available for the family and identified suitable material. DS Smith was aware of a leaflet from 'A' Division for Asian victims of crime and he obtained a copy of that.

The FLOs would also be briefed on the family structure as known to me at that stage. The FLO would have to know this in order to know who to liaise with. The family structure in this case was not particularly complex - dysfunctional families are not that uncommon these days. It is complex to the extent that you have to keep in touch with different members of the family but I see that as important. But who you liaise with would also depend on the reaction of the particular family, who wants to be involved etc. It also depends on the level of family response. Sometimes we have to develop a withdrawal strategy."

9.29 Following this briefing DS Duffy and PC Laverick went to pay their first visit to the Chhokar family.

Commentary

9.30 I have the following comments on the selection and briefing of these officers -

- The Senior Investigating Officer's approach to selection was sound. The individuals selected as Family Liaison Officers were good choices and approached their assignments with good sense and sensitivity.
- Due consideration was given to the implications of PC Laverick's acquaintance with the family. An officer who knows the family would not necessarily always be the right choice, for example where the person was unacceptable to the family, or where a family member was a suspect or had a close connection with a suspect. In this case however PC Laverick's previous acquaintance with members of the family did assist in giving the family, in particular Sanehdeep Chhokar, confidence in the relationship with the police.
- The briefing emphasised the possible need for interpreters, and the provision being made. This was sensible and appropriate.
- The briefing did not however anticipate the question which the family raised, as to whether the crime was racially motivated. It should have done so. The Senior Investigating Officer should have anticipated that this question would arise anyway in the course of their enquiry; and the family could have been expected to be able to shed some light on it. The Family Liaison Officers were also members of the investigating team and would have had a role to play in this. (Chapter 6 deals with this issue at length)

10. FIRST LIAISON VISIT TO THE FAMILY

This chapter deals with the Family Liaison Officers' first visit to the Chhokar family, on 5th November 1998, the day after the murder. It examines the assumptions and decisions which the police made about who should be contacted by the Family Liaison Officers, and where; describes the visit, what the police said and did and how they were received; examines the question of using interpreters, and the police responses to questions as to whether the murder had a racial motive and about whether the body could be released for cremation.

`Next of kin'

10.1 In setting up family liaison arrangements the police have to establish who is to be considered as `family'. In this case they were well placed to do so, since **DC Dyas**, whose involvement on the night of the murder has been described in a previous chapter, knew the victim's father, Darshan Singh Chhokar, his widow, Sanehdeep Chhokar and his girlfriend with whom he was living, Elizabeth Bryce. As noted above, DC Dyas had taken it on himself to see that the father was informed of the death immediately, and in the course of doing so had had to call on the wife and break the news to her. They had identified the body at the hospital. Elizabeth Bryce was of course a witness to the event. These were the people who might have a claim to be considered `family'.

10.2 **DS Duffy**, appointed the next morning as the lead Family Liaison Officer, had no previous knowledge of any of these people, and had to rely on the briefing given him by the Senior Investigating Officer, DCI Michael. DS Duffy told me -

"I was given certain information prior to going to visit the family for the first time. When I went to the family, I knew that Surjit Singh Chhokar had been murdered by three white men in the street. ... I was made aware that the family resided in Law Village ... I was made aware that the deceased's father was a shopkeeper in the village. I also knew that the deceased was married with children. ... I did not know the full extent of the deceased's separation from his wife at that stage."

10.3 DS Duffy did not specifically mention having been briefed about Mrs Bryce, but as the officer responsible for the Incident Room he would be aware of her as a witness. He drew the conclusion that she was not part of the family -

"The widow was also part of the family but Bryce was not as far as I was concerned. I did not regard it as a complex family arrangement. The widow was under the umbrella of that family. I had no involvement with the witness Bryce."

10.4 **PC Laverick** knew the Chhokar family, as neighbours in Law village, but had no contact at any time with Mrs Bryce. The briefing she received was simply -

"I was advised that Surjit and Sanehdeep were separated and that he was living with another woman and had another flat."

10.5 **DCI Michael**, the Senior Investigating Officer in this case, confirmed the police view of Mrs Bryce's status when he told me -

"I would regard the legal next of kin in this case as the deceased's wife. We also had close liaison with Elizabeth Bryce. She was in for interview on a number of occasions and withheld important information for a number of days."

10.6 Elizabeth Bryce was a witness to the murder and gave a first formal statement to the police at 0131 hours on Thursday 5th November 1998. She subsequently gave three more statements; at 1945 hours on Thursday 5th November, at 1200 hours on Saturday 7th November and at 1110 hours on Sunday 8th November. The police were therefore in contact with her as a witness. PC Laverick put it thus -

"I have never had any contact with Elizabeth Bryce. I was made aware that she had been brought into Wishaw Police Office for interview regarding the circumstances. It was clear from these interviews that her loyalties did not lie with Surjit Singh Chhokar. If I had gone in there to deal with her as next-of-kin then I may have given her information which she had not already given to the police."

10.7 To sum up this evidence: the police identified Darshan Singh Chhokar and Sanehdeep Chhokar (and her children) as the `family' of the murder victim, with

whom they should liaise, but regarded his girlfriend, Elizabeth Bryce, as a witness only.

10.8 Were they right to exclude Mrs Bryce from family liaison arrangements? I do not think so. Although she and Surjit had been living together for only three or four months, she had had a relationship with him for six years. The police were aware of this from the first statement which they took from her at 0131 hours in the morning of 5th November. They were aware therefore that she had been bereaved by Surjit's death.

10.9 I recognise of course the complication that Mrs Bryce was also a key witness. The police needed to exercise particular caution in dealing with her, given her initial unhelpful approach. PC Laverick said that Mrs Bryce's loyalties did not lie with Surjit. The police needed to take four statements from Mrs Bryce with regard to the attack. They focused on her purely as a witness. That was justified while they were still engaged in getting essential information from her - that was their primary duty.

10.10 Nevertheless, that could not absolve them from the duty to try to offer the support and information about progress in the case which a bereaved person is entitled to expect. The circumstances of a case will dictate how the police will treat any individual. In this case they might - for example - have seen to it that she was given the leaflets which they gave to the Chhokar family (see paragraph 10.21 below). No such action was taken. When DCI Michael told me that the police were in "close liaison" with Mrs Bryce, I do not accept that this contact with Mrs Bryce could be described as family liaison. I have to conclude that the police either neglected to offer family liaison support to Mrs Bryce or deliberately excluded her from it. That is a decision, and an implied moral judgment which they were not entitled to make.

The Chhokar Family

10.11 When, on the morning of 5th November 1998, DS Duffy and PC Laverick made their first visit as Family Liaison Officers, they went to the home of Surjit's parents in Law village. DS Duffy told me that he assumed that Sanehdeep would also be there because he was aware that in such situations the father would take charge of making any necessary arrangements. DS Duffy also thought that the house was the family home and thought that Sanehdeep lived there.

10.12 This betrays inadequate briefing. The police considered Mrs Sanehdeep Chhokar to be the next of kin. I have no criticism of that decision. They also intended to give support to Surjit's parents and sister. I have no criticism of that. However, the police also assumed that Mr Chhokar's home should be the first point of contact. The police had a separate address for Sanehdeep Chhokar and both addresses should have been treated as primary points of contact until the police were told otherwise. The briefing which the officers were given before visiting the relatives should have been based on the information available to the police at that point. This included the addresses of Mr Chhokar and Mrs Sanehdeep Chhokar. In the event they found their way to both addresses on the night of the murder, and found Sanehdeep at the home of Mr Chhokar when the Family Liaison Officers visited - but that was fortuitous.

First visit by the Family Liaison Officers

10.13 DS Duffy and PC Laverick called on Mr Chhokar on the morning of 5th November. Mr Chhokar answered the door. They introduced themselves as police officers and were invited into the home. They were taken to the kitchen/sitting area where they met Mrs Gurdev Chhokar (Surjit's mother), Mrs Manjit Sengha (his sister) and Mrs Sanehdeep Chhokar (his widow). Sanehdeep Chhokar knew PC Laverick and greeted her - evidently her presence was welcome to the widow, and this undoubtedly helped the liaison off to a good start. There was another man there whom the police officers did not know but whom they understood to be a relative from London. There was another living room area which appeared to be busy but the officers were not introduced to anyone in that room. The living room door stayed closed except to allow people out and in as they went to and from the kitchen.

10.14 The Family Liaison Officers offered their condolences. They saw and heard family members in great distress. The family were grieving. DS Duffy observed -

"There was a lot of screaming, bawling and shouting in the house. Mr Chhokar was distraught. He was not saying much to us."

"In the kitchen at that time was Mr Chhokar, the deceased's wife Sandy [Sanehdeep] who was hanging onto the leg of the deceased's sister, Manjit. Sandy was screaming the place down. There were other members of the family there."

"[Sanehdeep] was not in a fit state to be spoken to."

10.15 The family's grief made a significant impact on the officers: *"There was clear distress in that house, I will never forget the screaming and wailing. It was exceptional."* (DS Duffy).

10.16 PC Laverick told me, *"[Sanehdeep] was hysterical. She was sitting on the floor next to Manjit, screaming and crying and hanging onto Manjit's leg."*

10.17 DS Duffy got the impression that he was dealing with *"a family together"*.

Explanation of Family Liaison Officer role

10.18 DS Duffy was aware of the difficulties in communicating with a family suffering such grief and that this first meeting was not the best time to give information to the family. However, that was his role. *"There was nothing I could say to them but I was doing my best to give them information."* He explained to the family that he and PC Laverick were the Family Liaison Officers. He explained that they were there to keep them fully updated regarding every stage of the enquiry. He said that the police were continuing to conduct enquiries and that a definite line of enquiry was being followed. He did not give further details because of the need to preserve the integrity of the enquiry.

10.19 He went on to explain that in this and subsequent meetings he and PC Laverick would answer any questions which the family had. They would explain police procedures and what would happen next. They would also explain the role of the Procurator Fiscal and how the police reported cases to the Procurator Fiscal. This would be a continuing process.

10.20 The family were told about the requirement for a post mortem and that two of them would be required to identify the body. The Family Liaison Officers were sensitive to the effect which this might have on the grieving family and apologised because they knew that the body had already been identified at Law Hospital. DS Duffy asked the family if they required transport to the Mortuary in Glasgow and Mr Chhokar said they did not. The Family Liaison Officers told the family that someone from the police would be at the Mortuary to meet them.

10.21 They explained to the family that there were various organisations to help them and explained to them about People Experiencing Trauma And Loss (PETAL), an organisation which provides support to families of murder victims, and Victim Support Scotland (VSS). They gave the family a PETAL leaflet, a Victim Support Scotland leaflet and a leaflet entitled "What Happens Next?", along with other police-generated leaflets. The leaflets were in simple English. DS Duffy explained to the family that the VSS and PETAL leaflets were from people who had been in similar circumstances to those which the family were now in. These leaflets were left with the family but Mr Chhokar did not look at them when the Family Liaison Officers were there.

10.22 At the briefing before this visit, the police officers had discussed what leaflets should be given to the family. DS Smith was aware of a leaflet from 'A' Division for Asian victims of crime and he obtained a copy of that. From the evidence before me I do not know at which meeting the family were given the leaflet, or indeed whether they were ever given it.

Commentary

10.23 Passing information to bereaved relatives is a crucial part of family liaison. Leaflets are a way of giving information which allows a family to take it in when they feel up to it. They reduce the need for explanations by the Family Liaison Officers and thus reduce the length of visits and intrusion into the family's grieving. In this instance, the police handed the leaflets to Mr Chhokar but did not check whether he, or others in the family, would be able to understand them. The level of English being spoken may have led them to believe that all members of the family could read the leaflets, but the question should have been asked. I note however that under current practice police Family Liaison Officers are now expected to provide and explain the Home Office Pack for Families of Homicide Victims.

10.24 Given the circumstances of this introductory meeting, the Family Liaison Officers covered a lot of areas of benefit to the family including their role, forthcoming stages and procedures and the existence of organisations which could offer assistance and support. This was a constructive start.

Interpreters

10.25 Family Liaison is dependent on the ability of the Family Liaison Officers to communicate with the bereaved relatives. It is necessary therefore that for any family liaison visit where the relatives may have difficulties dealing with the situation in English, the police assess whether there is a need for an interpreter.

10.26 DC Dyas had made an assessment of Mr Chhokar's English, namely that Mr Chhokar could hold a conversation, although slowly, about everyday things, and he had established that Sanehdeep Chhokar's English was fluent. He had reported back on this; and DCI Michael, before briefing the Family Liaison Officers for their visit, had identified the possible need for interpreters and had made arrangements for two police officers to be on standby to act as interpreters if needed (paragraph 9.28). DC Dyas had also arranged for Mrs Sengha to be at her father's house -

"to act as an interpreter if needed. I did not think that Mr Chhokar senior required an interpreter but arranged for the deceased's sister to be there just in case. It might speed things up for the family and make them more relaxed".

10.27 The police had therefore made a preliminary assessment of the family's need and had taken appropriate action in arranging to have interpreters on standby, and the Family Liaison Officers were briefed to offer the services of an interpreter. DS Duffy explained -

"The family was offered the services of an interpreter - that is guaranteed. I asked Mr Chhokar. I had to ask it because I was instructed to do so by the SIO. Officers were on standby. I wouldn't have asked him bluntly, 'do you want an interpreter?'. I would have said something along the lines of, 'are you happy speaking to me or do you want someone else here?' He was clear that I was talking about someone to speak to in his own language. Manjit [Sengha] was also there and she speaks English. She was also clear about what I was saying. She did not say anything to me about Mr Chhokar not speaking English. He nodded his head indicating that he did not require an interpreter. I did not want to push it after that, for example, 'Are you sure? Do you not want an interpreter?' That would be patronising to Mr Chhokar. If an interpreter had been required there would have been one there. It was not required."

10.28 DS Duffy and PC Laverick told me that they were left in no doubt that Mr Chhokar understood what was being said to him. He sought clarification on a few points by asking questions.

10.29 It is important that, when an offer of an interpreter is made, it is clearly understood. The phrasing of the offer can be important. DS Duffy said that he did not ask the question direct, but said *"something along the lines of, 'are you happy speaking to me or do you want someone else here?'"*. In evidence to me, Assistant Chief Constable Pearson commented on this approach -

"That is not a good way of doing it. Firstly, that approach could have been misunderstood by Mr Chhokar and he might not have known that Mr Duffy was talking about professional interpreters. Secondly, the family is dealing with grief and loss at that stage and may not be concentrating on other issues. We would take additional steps now to make sure that as a family group the services of an interpreter were not wanted. I think we would then go back after the heat of the moment had calmed down, speak again to the family and again ask them if they required interpreters."

10.30 PC Laverick told me that if she and DS Duffy had had concerns that the family didn't understand, then they would have erred on the side of having an interpreter. She had not met Mrs Sengha before but thought that her English seemed very good. This shows that the Family Liaison Officers had not only considered Mr Chhokar's English but had made an assessment of the other members of the family who were involved.

10.31 PC Laverick was alert to the different levels of language ability:

"I appreciate that people can understand English for limited purposes only. I felt at that time that Mr Chhokar was able to understand things well. I was in their shop almost on a daily basis and had conversations with him - it was not just shop talk."

Commentary

10.32 The police arrangement to have the Punjabi-speaking officers on standby was good practice. The Family Liaison Officers were also right to offer to make interpreters available; though they may not have succeeded in making their meaning clear in doing so. I am, however, critical of the decision to rely on Mrs Sengha as interpreter. In the first place, the Family Liaison Officers could not be certain that either Mrs Sengha or Mrs Sanehdeep Chhokar would be at future meetings. A more general point concerns the reliance by the police on members of a bereaved family to interpret: that situation places an extra strain on a person who is already under stress; what is more, it is possible that issues might arise which might be inappropriate for a particular relative to translate (e.g. having a daughter translating questions for her father on the nature of his son's relationship with his girlfriend). In some cultures such an approach could be offensive. As against that, the police have to recognise - as these officers did - that a family could take offence if an interpreter is introduced when they do not themselves consider that they need one; and in the end the family would have to have the last word about that. Clearly it is a situation calling for a lot of sensitivity.

Questions raised by the family

10.33 The family raised two questions. The first was that of racial motivation: Mrs Sengha asked *"Was it because he was black?"* I have dealt with this already, in some detail, in chapter 6 above. I conclude there that, while the Family Liaison Officers dealt with it satisfactorily on the spot, and reported it back to the Senior Investigating Officer, the police then failed to follow it up with the family, and lasting damage ensued. The Family Liaison Officers should have returned to the question at a later meeting, should have enquired into what lay behind it, and should have given the family eventually an explanation of the police view of the matter. The fact that they were unable to do any of that was not their fault, but a fault in the way the police enquiry itself was conducted.

Cremation

10.34 The second question which the family raised was that of cremation. DS Duffy told me -

"I think it may have been the person from London who introduced the question of cremation. He was wearing a collar and tie, his hair was cut and he was wearing western dress. He was talking about cremation/burial. The funeral arrangements were mentioned by this person in everyone's presence. He mentioned cremation."

10.35 DS Duffy formed the opinion that all the people in that house had come up for the funeral and that they were expecting that the cremation would be held immediately. He continued -

"I told them there would have to be a post mortem and that if someone else was arrested there may another post mortem. I said to the family that the body would then be released for burial only. I said that because in my experience the PF only ever releases for burial in murder cases. I then started reading a leaflet which said that the PF may release for cremation and I explained that to the family. I was surprised by this leaflet. I knew, however, that cremation would be required for this particular family. I then told the family to leave it with me. A comment was then made by the relative from London that only pigs and Muslims are buried. I reassured the family that we would look into the cremation question. I did not guarantee them anything. The impression I got was that they were a dignified family trying to come to terms with their loss."

10.36 PC Laverick's account is similar -

"Mr Chhokar asked when his son's body would be released for cremation. In my experience I had never known the PF to release a murder victim's body for cremation but a leaflet we had with us said that in certain circumstances the PF would release a body for cremation.

The family explained to us that they were Sikhs and that certain arrangements had to be made for the body. The father was concerned about the fact that the body may be released for burial and not cremation. Another person there said, 'Only Muslims and pigs get buried. Our religion does not allow for that'".

10.37 She told me that she and DS Duffy explained that there would be the possibility of defence post mortems. She said that the family were concerned at this and that they said something about timing, though she could not remember what. She went on -

"It was obvious to us that the family had a huge concern, a real anxiety. I was not aware of the cultural background or the detail of the Sikh religion. They were extremely concerned and we said that we would liaise with the PF regarding release of the body when that stage was reached. We offered to assist them with the registration of the death."

Commentary

10.38 The question of cremation was critically important to the family. It caught the Liaison Officers unprepared, as DS Duffy's account reveals, and it was badly mishandled by the police in the following week. I shall deal with this in full in Chapter 12 below.

End of the meeting

10.39 The officers were aware of the need to intrude as little as possible on the family. DS Duffy explained -

"This first meeting lasted approximately 15 minutes maximum, but it could have been shorter or longer. I was there as long as it took. You do not want to outstay your welcome. You give your name and contact number and tell them that they can come back to me. That would be no different from any other cases I have been involved in. The family do not want you there at that time - they are grieving. They had things to do. But if it had taken 5 hours, I would have stayed - there is no time limit on my visit to the family."

PC Laverick told me -

"The conversation tailed off naturally. I was of the view that the FLO work had got off to a good start - everyone was talking.

We left our names and the contact numbers for myself, DS Duffy, the SIO and his deputy, DI MacIver."

Commentary

10.40 I have identified concerns and failings with regard to the way in which the Family Liaison Officers addressed the issues of interpreters, racial motivation and the family's concerns about cremation. These were all important issues and should have been dealt with differently. However, it remains the case that the family had talked to the Family Liaison Officers, had seemed to them content with the information with which they had been provided and had raised questions. The criticisms which I have set out above are directed at institutional failings in the police family liaison system as it was at that time, not at these officers personally.

10.41 The Family Liaison Officers achieved several of the objectives of the meeting: they offered their condolences to the family, explained their role, offered assistance, and sought to answer the questions raised. The evidence is that the visit was a reasonable basis on which to build a relationship with the family. The Family Liaison Officers' view that good contact had been established was supported by the fact that Sanehdeep Chhokar telephoned the Wishaw Police Office between 1700 hours and 1800 hours that day and asked for "Lynn". She apologised for being so distressed that morning. PC Laverick had a brief conversation with her and told her not to worry and that she and her colleagues were there to help.

10.42 The offer of assistance made by the Family Liaison Officers was taken up later by Mrs Manjit Sengha on 12th November in relation to the release of Surjit's body for cremation (paragraph 12.31) and on many occasions after the funeral (Chapter 13) and by Mr Chhokar in the run up to the first trial (paragraph 13.18).

11. ARREST OF THE SUSPECTS

This Chapter deals with the second, third and fourth police liaison visits to the Chhokar family. Having established a positive relationship with the family at the first visit, the police now visited them each time there was a significant development, to pass on information about the progress of the case. They did not at this stage have any news to pass to the family about cremation, but the family were led to believe that the police were pursuing the question.

Second Visit by the Family Liaison Officers

11.1 The second visit to the Chhokar family was to the parents' house at somewhere between 0800 hours and 0900 hours on 6th November 1998. Again the officers involved were DS Duffy and PC Laverick who were instructed by DCI Michael to make the visit. There was, therefore, continuity in police personnel. The family members present were Mr Chhokar, Mrs Sengha and Mrs Sanehdeep Chhokar. Surjit and Sanehdeep Chhokar's children were at the house. PC Laverick got the impression that Sanehdeep had stayed at the parents' house overnight.

11.2 The purpose of the visit was to tell the family that someone (Andrew Coulter, but they did not give the family the name) had been arrested. They told the family that the man was due to appear in court that afternoon. They explained what this meant. This was positive news, inasmuch as anything can be in the circumstances. As DS Duffy said -

"As far as I am concerned I was up there to tell them good news, that was, the police had arrested someone for this."

11.3 DS Duffy said that the family treated the news with dignity and thanked him and PC Laverick.

11.4 Since there had been an arrest, there was the likelihood of a post mortem being done on behalf of the defence and this was explained to the family.

11.5 The meeting was brief and, although the visit had been made on instruction from the Senior Investigating Officer, the Family Liaison Officers understood the necessity that they meet the family to pass on the news on progress.

PC Laverick: "We were there for ten minutes at the most. You would not give that kind of information by telephone, it would be in person. If I had something to tell them it is good practice to go to their house."

11.6 The Family Liaison Officers did not consider language to be an issue at this stage. Both recall that the meeting was in English and that at no point did the family members talk Punjabi to each other. Mr Chhokar spoke in English and asked questions of the Family Liaison Officers.

11.7 DS Duffy described the meeting as a "team effort" by him and PC Laverick. He explained that he had had to fit it in with other duties in the Incident Room -

"After this short meeting I returned to my job as officer manager. The first seven days in an enquiry can be busy and intense, involving long shifts. At that time there was more going on in my office manager job than in my FLO job."

Third Visit by the Family Liaison Officers

11.8 The third visit was on Monday 9th November and was again to the parents' house. As was the case for the second visit, the Senior Investigating Officer had instructed DS Duffy and PC Laverick to visit the family. They spoke to Mr Chhokar, Sanehdeep Chhokar and Mrs Sengha. The purpose was to tell them that a second man (David Montgomery) had been arrested. The meeting took the same format as the second meeting. The family were reminded about the possibility of a defence post mortem and they may have been told that attempts were being made to have just one defence post mortem. An interpreter was not offered at this or the second meeting, the officers having concluded that the family were not having difficulty understanding them.

11.9 The Family Liaison Officers remained alert to the changes in atmosphere and the demeanour of the family between visits. DS Duffy observed,

"They were very dignified in mourning. ... Everyone was very dignified. Mr Chhokar was obviously grieving. ... The house was quieter on this third occasion. In my opinion, the family who had come up had been told to go back until the funeral arrangements were known."

11.10 He also told me that there was no animosity from the family towards the police at any time.

11.11 Although the question of cremation remained a concern for the family, they asked no further questions of the police at this meeting.

Fourth Visit by the Family Liaison Officers

11.12 The fourth visit, on 10th November 1998, followed the arrest of Ronnie Coulter and was to tell the family of that arrest. DS Smith and PC Laverick saw the same members of the family as DS Duffy and PC Laverick had seen on the two previous visits. This was DS Smith's first visit to the family. He had been briefed about the previous meetings. There is no evidence that the change in personnel affected the positive relationship which the Family Liaison Officers had established with the family. The family were still concerned about cremation. The Family Liaison Officers said that they were still looking into that and sought to reassure the family.

11.13 DS Smith told the Inquiry -

"I spoke to the father. I told him that a person had been arrested. We held the conversation in English. He did not say a lot but he did speak in English. I thought that he understood me. He was upset and was crying a lot. He kept asking why it had happened to his son. I think this was a general question in that he was trying to come to terms with the fact that his son had been murdered."

11.14 DS Smith understood the family's concern about the funeral arrangements -

"I was also talking to the family about the possibility of getting a defence post mortem arranged in order that the body could be released. At that time I had never experienced the release of a body for cremation in a murder enquiry. I explained that to the family and Mr Chhokar was upset. I said I would take it up or get John Michael to take it up with the Fiscal. Mr Chhokar was upset and I knew why, that is, because he wanted his son cremated. I was aware that cremation was a requirement of their religion. I raised the question of the funeral arrangements with Mr Chhokar. I wanted to explain the PF's procedure to him. I told him that there was a high likelihood that the body would be released for burial only but I did say that I would take it up with the PF's office. Mr Chhokar then reminded me (as I already knew but had forgotten) that due to their religious beliefs, they would want to wash the body."

11.15 DS Smith clearly appreciated the importance which the family placed on fulfilling the requirements of their religion by having Surjit's body cremated. DS Smith, having identified this as a serious issue, undertook to pursue it and, after his return to Wishaw Police Office he told his senior officers about the family's concerns. He was given responsibility for following this up with the Procurator Fiscal's office.

Commentary

11.16 At this phase of family liaison the police took the initiative to visit the family to make sure that they were kept up to date with significant developments. They explained sensitive issues such as post mortems and took up the family's concerns about cremation. They were alert to the family's understandable distress. The meetings were short and informative and reassurance was given that the police would assist with the concerns about funeral arrangements. This was a valuable and constructive period of work and the officers are to be commended for it.

11.17 However, there was a significant omission. I have noted in an earlier chapter that witness statements were being taken by the police, including one - taken on the evening of 5th November - which reported the 'black bastard' comment attributed to Andrew Coulter. The Family Liaison Officer team failed to bring that statement into focus with Manjit Sengha's question 'Was it because he was black?'. DS Duffy, to whom her question had been addressed, was also office manager in the Incident Room, and all statements would pass through his hands. I accept that the job did not leave him time to read them all, and therefore I do not fault him for missing this point. DS Smith was the statement reader in the Incident Room, and as such would have seen the statements which contained the 'black bastard' comment; but as family liaison officer he had not been present at the meeting where Mrs Sengha asked her question. The Senior Investigating Officer, DCI Michael, was aware of both the witness statement and Mrs Sengha's question but, as I have shown in chapter 6 above, dismissed them as irrelevant. There was an institutional failure here, as well as a personal one, in that there was no provision to ensure that all three family liaison officers were equally briefed.

12. THE QUESTION OF CREMATION

This chapter deals with the period from Thursday 12th November to Monday 16th November 1998. It covers two significant events -

- the release of Surjit's body for cremation, and

- the release of two of the suspects.

The more significant of these, for this Inquiry, was the release of the body for cremation, or rather the process leading up to it.

Release of the body for cremation

12.1 The meetings immediately before this phase had been successful and the Family Liaison Officers had developed a positive relationship with the family and gained their trust. There did, however, remain one issue which had been raised at the first meeting and subsequently but had not yet been resolved, namely the family's continuing anxiety to secure release of the body for cremation.

12.2 I have been unable to reconstruct, from the evidence, the precise sequence of events over this critical period. During these few days there was a telephone call from Mrs Manjit Sengha to DI Maclver, there were meetings between DS Smith and PC Laverick and the family and a possible meeting which DS Smith had with the family on his own, and there was contact between the police and the Procurator Fiscal's Office and contact between the Procurator Fiscal's Office and the defence agents. No notes of meetings or telephone calls were taken by anyone at the time. The statements given to me in evidence were taken more than two years after the events to which they refer. It is almost inevitable, therefore, that there are some gaps and inconsistencies in recollections, for instance with regard to the sequence of events and to the nature of contact between the police and the Procurator Fiscal's Office.

12.3 I have considered the evidence I was given by DS Smith, PC Laverick, DCI Michael, DI Maclver and ACC Pearson from Strathclyde Police and Ian McCann and Sharon Lithgow from the Hamilton Procurator Fiscal's Office. I have also considered the Police Management Policy Book and the Hamilton Procurator Fiscal's Office's files. In the following paragraphs I shall

- summarise the evidence and note inconsistencies;
- provide a probable reconstruction of the sequence and timing;
- examine critically the handling of the cremation issue between the police and the Procurator Fiscal's Office; and
- describe and comment on the dealings of the Family Liaison Officers with the family over this issue.

The evidence

12.4 **PC Laverick**, who was the only Family Liaison Officer to have been at all the previous meetings with the family, identified two meetings which would fall within this period, but she was unable to give dates for either. She told me that one of the meetings was when DS Smith and she went to Mr Chhokar's house to tell the family that two men (David Montgomery and Andrew Coulter) had been released (13th November). She said that the family were still concerned about the question of cremation and that DS Smith explained that the Procurator Fiscal would only release the body for burial. She said that the Family Liaison Officers explained to the family that they could contact the Procurator Fiscal's Office directly through a family lawyer or even through a member of the temple. Mr Chhokar said that their family lawyer would do that for them.

12.5 The second meeting mentioned by PC Laverick was in response to a call from Sanehdeep Chhokar who asked if PC Laverick could go and see her. She gave no reason at the time. Since procedure required that two Family Liaison Officers should be present during visits, DS Smith and she went to Mr Chhokar's home where Sanehdeep Chhokar asked for the return of property which had belonged to Surjit. PC Laverick can remember specifically that she asked for a tool box and some aftershave. These items were with Elizabeth Bryce.

12.6 PC Laverick said that at this meeting the family asked that they be allowed to go and wash Surjit's body. She said that that was her last meeting with the

extended family (her subsequent contact was only with Sanehdeep Chhokar (see Chapter 13)). If so, it took place after the afternoon of 13th November.

12.7 In his evidence, **DS Smith** made no mention of telling the family about the release of David Montgomery and Andrew Coulter, nor of Mrs Sanehdeep Chhokar's request for personal effects to be returned. This contrasts with PC Laverick's evidence that these were the reasons for the meetings. DS Smith did however refer to following up the question of release of the body with the Procurator Fiscal's Office. He referred to having spoken to several "Fiscals" and said that he did not get helpful responses. He said that at a later point he was telephoned by the Deaths Unit to say that the body had been released for burial only, that he explained about the family's wishes, spoke to a Procurator Fiscal and was told that release for cremation could not happen. He then went to the family to say that he had done what he could and that the family should go to their solicitor or one of the leaders at the temple to see if they could assist. The earliest this could have happened was the afternoon of 13th November.

12.8 **DI MacIver** told me that he received a telephone call from Mrs Manjit Sengha in the late afternoon or early evening of Thursday 12th November. When I was taking evidence for this Inquiry, DI MacIver was on long term sick leave and his evidence was given in writing in response to a short list of questions which I sent to him. I did not therefore have the opportunity to ask him to elaborate on his answers and I therefore do not know how or why Mrs Sengha was put through to him instead of one of the Family Liaison Officers. He said that she asked for the earliest possible release of the body so that it could be washed and cremated. He told her that he would have enquiries carried out with the Procurator Fiscal's Office *"to address her requests and concerns of the Chhokar family"*.

12.9 There are two relevant entries in the **Police Management Policy File** on 13th November, both made by DI MacIver.

The first is timed at 0825 hours and is as follows: under "Decision", "contact PF McCann re possible release of body of deceased" and under "Reason", "family of deceased are of Sikh religion and request release of body at the earliest opportunity - all defence agents, Gallagher MacBride and McAfee have verbally agreed to accept results of the defence PM".

The second entry is timed at 1700 hours and the relevant extract reads, under "Decision", "body released by PF for burial only" and under "Reason", "family informed as they have pressed for release of body. They are unhappy as deceased is a Sikh and they do not condone burial".

12.10 **Ian McCann** was acting head of the Deaths Unit in the Hamilton Procurator Fiscal's Office. He was responsible for preparing the report seeking Crown Counsel's instructions in relation to full committal (referred to as "the three-day report") and for dealing with release of the body. He told me that he got a telephone call from the Crown Office on the morning of 13th November asking for another report on the question of concert¹² by 12 noon that day. He prepared a supplementary report for Crown Office. The report is on file and is dated 13th November. In reply to this he received a letter dated 13th November (which was faxed at 1247 hours) saying that Crown Counsel instructed that Ronnie Coulter only should be committed on a murder charge and saying that Andrew Coulter and David Montgomery should be released in the meantime. Their release could not therefore be earlier than 1247 hours on Friday 13th November. Mr McCann told me that 13th November was a training day for the Procurator Fiscal's Office and that most people in the office had gone to that.

12.11 Mr McCann told me that after he authorised the body for release for burial he was told by his administrative colleague (Sharon Lithgow) that release for cremation was sought. He contacted the defence agents who had restricted their agreement to burial and got their agreement to release for cremation. The

timescale for this cannot be absolutely precise, but the time of a fax from one defence agent and contemporaneous annotation of the file by Mr McCann show that defence agents' first agreement to release the body was not given until 1237 hours at the earliest and that agreement to release for cremation from the agent who had originally stipulated burial was given by telephone at 1540 hours.

Sequence of events

12.12 In order to establish the most likely sequence of events, I work from the two incidents on 13th November for which times can be identified: the authority to release the two suspects and the period between the Procurator Fiscal's Office telling the police that the body had been released for burial only and the point at which Mr McCann had secured the necessary agreement to release the body for cremation. The former could not have happened until after 1247 hours when the fax from Crown Office arrived (paragraph 12.10). The latter covers the time between 1237 hours and 1540 hours. (I have assumed that the times printed on faxes are accurate.)

12.13 Using these times as a basis for the other events of which I was told I have compiled the following timetable:

Thursday 12th November

Late afternoon/early evening: telephone call from Mrs Manjit Sengha to DI MacIver requesting earliest possible release of the body for washing and cremation.

Friday 13th November

0825 hours: DI MacIver entry in Management Policy File to contact Mr McCann regarding release of body (reference to immediacy ("at the earliest opportunity") but no reference to washing or cremation).

Morning: Mr McCann prepares supplementary three-day report and sends to Crown Office.

1237 hours: receipt by Procurator Fiscal's Office of fax from a defence agent giving clearance for body to be released.

1247 hours: Crown Office letter to say that Andrew Coulter and David Montgomery should be released.

Between 1237 hours and 1540 hours: Sharon Lithgow (Procurator Fiscal's Office) telephones police to say that body is released for burial, DS Smith says that cremation needed. Sharon Lithgow tells Mr McCann that cremation needed.

1540 hours: annotation by Mr McCann showing agreement by telephone from defence agent to release for cremation.

1700 hours: entry by DI MacIver in police Management Policy File recording that body had been released for burial only and that family had been informed.

Weekend 13th - 15th November

Family Liaison Officers inform family that body released for burial only, and advise them to pursue the issue by other means.

Monday 16th November

E1 form (releasing body for cremation) issued.

Contacts between police and Procurator Fiscal's Office

12.14 I now turn to the matter of the contacts between the Family Liaison Officers and the Procurator Fiscal's Office regarding release of the body for cremation. DS Smith told me that, after the fourth meeting with the family (paragraph 11.12):

"I made the bosses aware of these concerns [the need for cremation] and they left it to me to liaise with the Procurator Fiscal. I spoke to several Fiscals about the release of the body but I do not remember exactly who I spoke to on each occasion.

I would describe the PF's approach as unhelpful. I met with a blunt refusal to deal with the request. I was trying to broker a deal for the family because at that time the family would have no direct contact with the Fiscal's office.

When I initially brought it up with someone with from the PF's office, I was told, 'you know that can't happen'. I said to them that I understood the normal procedures but explained the position about the family. Kenny MacIver had also spoken to the defence solicitors and had encouraged them to make the necessary arrangements for the defence post mortem as quickly as possible for the family's sake. The defence solicitors agreed to have one defence post mortem. The defence solicitors were very helpful in this regard."

12.15 DCI Michael told me -

"The final decision [about cremation] is that of the PF. DS Smith was involved in the Incident Room and he discussed the question of cremation with the family. DS Smith was to contact the PF on behalf of the family and I would expect the PF to respond to any such requests by the family. It is unusual for a family to ask to wash a relative's body. I have never come across a situation before where the PF has said that the family cannot wash the body. I think that is insensitive and in this case was at odds with the family wishes. I recall there were "protracted calls" between DS Smith and PF's office regarding release of the body. I don't think the exact content of these calls would be noted. It is a matter of trying to sort things out - that is the priority. I think the family required clarification as soon as possible. It was not a comfortable situation for DS Smith. He was concerned about the family and advised them that they may wish to involve the family solicitor. The management policy file (which was maintained by DI MacIver) details that the PF was twice specifically told what the family wanted regarding release of the body."

12.16 The police were aware that they could not settle the question regarding release for cremation until the post mortem(s) had been completed. PC Laverick made it clear that she and DS Duffy were aware that the question could not be dealt with in the early stages of the enquiry. All that could have been achieved before the afternoon of 13th November was an agreement in principle to seek release of the body for cremation. However, the quotation above does give a picture of some activity on DS Smith's part in attempting to secure release of the body for cremation.

12.17 DS Smith in his evidence to me portrayed the Procurator Fiscal's Office as negative and unhelpful on this occasion -

"Later someone phoned me from the Deaths Unit at the PF's office to say that the body was now clear for burial only. I think this was just an admin person from the office - I do not think it was a Fiscal. I tried to explain to them about the family but they advised me to speak directly to a Fiscal."

12.18 This was in part confirmed by Mr McCann who told me that he was told by Sharon Lithgow (the "admin person") about the need for cremation.

12.19 DS Smith then said, *"I later spoke to a PF but was told that it just could not happen"*.

12.20 However, he was unable to say to whom he spoke on the several occasions he telephoned the Procurator Fiscal's Office. Mr McCann was one of the few people in the office that day, most of the staff being absent on a training day, and he told me that he did not discuss this matter with the police, nor would he normally have expected to - it would have been dealt with by administrative staff. It is clear from the Management Policy Book that the police (DI Maclver) knew that Mr McCann was the contact regarding release of the body.

12.21 The police evidence is also inconsistent. DCI Michael's evidence (quoted in paragraph 12.15 above) was that *"the management policy file (which was maintained by DI Maclver) details that the PF was twice specifically told what the family wanted regarding release of the body"*. This is not accurate. As can be seen from the extracts themselves (see paragraph 12.9), both references are on 13th November, the first refers to the need to contact Mr McCann (in relation to immediacy not cremation) and the other records (more than an hour after Mr McCann knew that cremation would be permitted) that the body had been released for burial only and that the family had been informed.

12.22 At best therefore the police criticism of the "Fiscal" is not corroborated by the evidence. If DS Smith did indeed have unhelpful and misleading advice from the Procurator Fiscal's Office, there is no record of it on either side. On the other hand, it is clear from the Management Policy File entry that morning that the police knew that Mr McCann was the relevant contact point. Mr McCann said that he did not discuss this with the police. He was one of the few people in the Hamilton office not at the training day. Between 1247 hours and 1540 hours he had authorised the release of the body for burial, been told that cremation was needed, and got the defence agent's agreement to that. I find it unlikely that in that timeframe he would also have told the police that cremation "could not happen". I am therefore unconvinced of DS Smith's account of this matter.

12.23 The timetable above shows that from 1540 hours on 13th November the Procurator Fiscal's Office was able to release the body for cremation. They would therefore have had no objection to allowing the relatives to wash the body. **However, I do not have evidence of when the body was released for cremation.** The date of issue of the E1 form is when the undertaker collects it and not when the Procurator Fiscal gives clearance. (E1 forms are not retained on file so there is no way to show when it was signed, though we know that it was issued on Monday 16th November.) Neither Mr McCann nor Mrs Lithgow was able to confirm to me when notification of release for cremation was given to the police or to others (e.g. the undertakers).

12.24 Mr McCann told me -

"My recollection is far from perfect at this stage. I was aware that there was a requirement that there be a cremation. The information that the body could now be released for cremation would have been conveyed to the admin. desk. I do not know whether there was an arrangement that the form was picked up on 16 November by the undertakers."

12.25 Mrs Lithgow said -

"The Fiscal then releases the body and I would call the police. I would call them and let them know the result of the post mortem and would call and fax the mortuary to let them know if the body was to be released. I would also call the undertaker. If there was a problem about the release of a body for cremation I would not be able to deal with this. I would need to discuss it with a Fiscal."

12.26 The death was registered on Monday 16th November.

12.27 To summarise: the papers show that the question of cremation was dealt with promptly by the Procurator Fiscal's Office. Police efforts to get an early

decision were uncoordinated, and their claim that the Procurator Fiscal's Office was unhelpful is not corroborated by the evidence. On the Procurator Fiscal side there is no evidence of when notification that the body had been released for cremation was given to the police or others. There is no record of further contact with the family or between the police and the Procurator Fiscal's Office regarding the fact that the body had been released for cremation. This was a sorry state of affairs.

Family Liaison Officer contact with the family

12.28 In the following paragraphs I assess the performance of the police and the Procurator Fiscal's Office in relation to this matter of cremation, identifying points of good practice observed and areas where there are lessons to be learned.

12.29 It was only in the course of their first visit to the family that DS Duffy and PC Laverick became aware that the Procurator Fiscal could release a body for cremation because of a leaflet which they had with them to give to the family. The Family Liaison Officers were, therefore, unprepared for the question. The subject of funeral rites for Sikhs should have been a topic on which they were briefed. DC Dyas knew that the family were Sikhs. The Senior Investigating Officer should, therefore, have ensured that the Family Liaison Officers were aware of the needs of Sikhs with regard to the death of a relative and of the Procurator Fiscal's procedures with regard to release of a body. (I comment on those procedures below.) It cannot have been reassuring to the family that the Family Liaison Officers should have so obviously been unsure about the question of cremation. This was a failure of preparation. The issue should have been covered at the first briefing with the Senior Investigating Officer.

12.30 The Family Liaison Officers understood the concerns of the family, and assured the family that they recognised that it was an important issue. They could not have given a final answer until the defence post mortem had been completed and the defence agents agreed to the body's release. This did not happen until 13th November and therefore up to that point, the police could not have given the family a definite answer regarding whether the body would be released for cremation. Up to that point, therefore, their procedure was correct.

12.31 In the late afternoon or early evening of Thursday 12th November, Mrs Sengha telephoned Wishaw Police Office. She spoke to DI Maclver. She asked for the earliest possible release of Surjit's body for washing and cremation. DI Maclver explained to her that the release of the body was a matter for the Procurator Fiscal. He said that in some instances after a murder the Procurator Fiscal released the body for burial only. He assured her that he would have someone make contact with the Procurator Fiscal's Office to address her requests and contact the family to tell them the outcome. He made sure she knew his name and said that she should contact him should she or others in the family need any assistance. He then instructed DS Smith and PC Laverick to follow this up. This was good procedure.

12.32 The entry in the Management Policy File at 0825 hours the next day (13th November) shows that DI Maclver refers to a need for earliest possible release but makes no mention of washing or cremation. That could have been a critical omission. However, DS Smith and PC Laverick were aware of that need.

12.33 It is worth noting at this point that DI Maclver told Mrs Sengha something which had been told to the family previously, namely that in some murder cases the Procurator Fiscal released the body for burial only. This was true and it was a sensible precaution to remind a family member of that. It would, necessarily, be a matter for DI Maclver's own judgment whether that message, which had been given to the family before, needed to be reiterated. There seems to have been a pattern which meant that each time the family spoke to someone new - DS Duffy at the first meeting, DS Smith at the fourth and DI Maclver on the telephone - they were told in one form or another that release of the body for cremation could not be guaranteed.

12.34 Although that message was correct, it is important to consider the terms in which the message is couched. For instance, the way DI Maclver phrased the

message made it clear that procedures might not allow release for cremation, whereas DS Smith had told the family that he had no experience of it happening, which did not address the issue of whether it was possible. Briefing before the meeting would have ensured that he would have been aware that cremation was possible and that the family were already aware of that. There was a discontinuity about the approach to the question of cremation which suggests a lack of proper briefing before each liaison meeting. Before visiting a bereaved family, the Family Liaison Officers should be fully aware of the issues which are of concern to the family at the time. This is a particular need where Family Liaison Officers are interchanging.

12.35 That brings us to 13th November and the meeting at which DS Smith told the family that he had done all that he could on their behalf and suggested that they make other arrangements to pursue the matter. He would not have been in the position of giving this advice but for a major failure of communication between the police and the Procurator Fiscal's Office. There is evidence that the police could have averted this if they had used their own records and had contacted Mr McCann directly. At the same time however there is no record that the Procurator Fiscal's Office followed its normal practice and informed the police of the decision to release the body for cremation.

12.36 No record was made of any of the calls between DS Smith and the Procurator Fiscal's Office, nor, from the Procurator Fiscal's Office, of the time at which the police or undertakers were informed that the body had been released first for burial and then for cremation.

Commentary

12.37 This is a catalogue of confusion which tells its own tale. At the centre of it is DS Smith, who made no record of his contacts with the Procurator Fiscal's Office, and could give no clear account of them from recollection. But underlying that is the almost total unpreparedness of all the police officers involved for the essential requirements of a Sikh funeral. They should not have let themselves get into the position where they had in effect to leave the family in misery - which was actually quite needless - for an entire weekend. The customs surrounding death and the disposal of a body vary among different cultures, but all cultures regard these matters as of the greatest seriousness, involving as they do literally matters of life and death. It is the duty of the police, the Procurators Fiscal and indeed any public authority, to treat them with that degree of seriousness and urgency.

12.38 I now turn to the other significant matter on which the Family Liaison Officers had dealings with the Chhokar family between 12th and 16th November.

The release of Andrew Coulter and David Montgomery

12.39 DS Smith and PC Laverick visited the family with the purpose of telling them that two men had been released from custody. They spoke to Mr Chhokar, Mrs Sanehdeep Chhokar and Mrs Sengha. They explained that this did not mean that the two suspects could not be tried later. The family asked why the men had been released. The police officers explained that they did not know and suggested that the family might wish to contact the Procurator Fiscal. The Family Liaison Officers continued to treat Mr Chhokar as the leading member of the family and gave him a contact number in the Procurator Fiscal's Office.

Commentary

12.40 There are several points to be addressed here. The first is the effect which the news and how it was handled would have on the family. When they had visited the family to tell them that people had been arrested, DS Duffy said that they were taking the family "good news". It would have been reasonable, therefore, for the police to assume that the family would view the release as "bad news" and that the effect on them could be upsetting or distressing. It would be highly likely that the family would ask questions about the decision.

12.41 The Family Liaison Officers were clearly poorly briefed for this visit. They were unable to answer straightforward questions from the family about the decision. The questions should have been anticipated before the visit. I have no evidence to show the level of briefing which they were given before they made the visit. The evidence from the police is consistent in identifying the Senior Investigating Officer as the person responsible for directing Family Liaison Officer contact with the family and it would be his responsibility to ensure that his officers were fully prepared for liaison visits.

12.42 The second issue is that the Family Liaison Officers said that the release did not mean that the two men could not be tried at a later date. This was correct since it is clear from the Crown Office papers that proceedings might still be instituted. However, I do not have any evidence of contact between the police and the Procurator Fiscal's Office showing that the police had checked this. If they had not checked and there were to be no proceedings against the two men, then the picture given to the family would have been wrong and could well have led to significant distress and undermined the relationship which the Family Liaison Officers had established with the family.

12.43 The third point here relates to the treatment of the question regarding the reasons behind the decision to release. This was an obvious question to foresee and the Family Liaison Officers should have been in a position to answer it. The police should have contacted the Procurator Fiscal's Office to discuss what the family could be told and how questions might be answered. That could even have involved saying to the family that the Procurator Fiscal would be better placed to answer the question and giving them the contact name and number. It was not enough to tell the family that they did not know and give them a telephone number for the Procurator Fiscal. This display of uncertainty risked damaging the family's confidence, not merely in the Family Liaison Officers but in the whole criminal justice system.

12.44 When it comes to getting information to a victim's family, the onus should not be on the family to chase the information, it should be on the police, with reference to the Procurator Fiscal as necessary, to ensure that it is given to them.

12.45 There is also a more general point arising from this. That is the need for co-ordination of effort between the police and Procurator Fiscal's Office to ensure that the messages being given to the family are consistent, that the information is as complete as possible, and that each is aware of the other's contacts with the next of kin. There is no evidence that there was any such co-ordination at this point in this case.

Footnotes

1 Until August 2000 section 24 of the Criminal Procedure (Scotland) Act 1995 provided, among other things, that all crimes and offences except murder and treason were bailable. The Bail Judicial Appointments Etc.(Scotland) Act 2000, section 3 repealed that provision and, accordingly, it is now competent for a person accused of murder to apply for bail.

2 A 'devolution issue' is a question whether the exercise of a function by a member of the Scottish Executive (including the Lord Advocate) is incompatible with the Convention for the Protection of Human Rights and Fundamental Freedoms. See section 57(2) and Schedule 6 of the Scotland Act 1998.

3 The Management Policy Book is a file maintained by the Senior Investigating Officer during a police enquiry. Its purpose is to record policy decisions taken in the course of the enquiry.

4 Home Office Large Major Enquiry System

5 I have added a note at the end of this chapter about the significance of motivation in a criminal prosecution, and in particular about s.96 of the Crime and Disorder Act 1998.

6 "Surjit's flat was targeted for robbery within weeks of moving into an all white tower block." - statement read out at press conference, 28 November 2000

7 CM. 4262 - I

8 (1863) 4 Irv. 301 at p.365

9 Multi Agency Racial Incident Monitoring

10 Home Office Large Major Enquiry System

11 Multi-Agency Racial Incident Monitoring Group

[Back](#) | [Contents](#) | [Next](#)

REPORT OF THE INQUIRY INTO THE LIAISON ARRANGEMENTS BETWEEN THE POLICE, THE PROCURATOR FISCAL SERVICE AND THE CROWN OFFICE AND THE FAMILY OF THE DECEASED SURJIT SINGH CHHOKAR IN CONNECTION WITH THE MURDER OF SURJIT SINGH CHHOKAR AND THE RELATED PROSECUTIONS

BY DR RAJ JANDOO, ADVOCATE

VOLUME 1: REPORT

SP Paper 424

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13. FROM THE POLICE INVESTIGATION TO THE FIRST TRIAL

This chapter deals with police family liaison between the end of the police enquiry and the trial of Ronnie Coulter ("the first trial"), ie from 17th November 1998 to the beginning of March 1999. In this phase the police dealt separately with Mrs Sanehdeep Chhokar and her children and with Mr Chhokar and his family since these two distinct parts of the family had different needs after Surjit's funeral.

Between the End of the Police Enquiry and the First Trial

13.1 The Police Management Policy Book records that the police enquiry was concluded and the Incident Room closed down on Tuesday 17th November 1998.

13.2 After the funeral, which was held on Wednesday 18th November, Mrs Sanehdeep Chhokar returned to her own home with her children. The police therefore had two family units to deal with; the first was in Sanehdeep Chhokar's home and consisted of her and her (and Surjit's) two children, and the second, which was centred on Mr Chhokar's home and comprised Mr and Mrs Chhokar (Surjit's parents).

Mrs Sanehdeep Chhokar

13.3 The last meeting which PC Laverick remembered having with the family at Mr and Mrs Chhokar's house was the one at which Sanehdeep Chhokar had asked if the police could help her with the return of Surjit's belongings (paragraph 12.5). That meeting had been held at Mrs Chhokar's request. Thereafter PC Laverick's contact was with Mrs Sanehdeep Chhokar.

13.4 PC Laverick's evidence to me gives a picture of a strong trusting relationship being built with Sanehdeep Chhokar and her children -

"Once Sandy moved back to her own home I had numerous contacts with her and the two kids. The kids were calling me "Auntie Lynn". I was getting calls from Sandy when I was off-duty. She would sometimes go to the office but wouldn't speak to anyone but me."

13.5 In all, PC Laverick estimated that she had between 20 or 30 contacts with Sanehdeep after the funeral. These were at Sanehdeep's home, at PC Laverick's office and by telephone.

"I might have had contact with Sandy on 20 or 30 occasions after the funeral. This contact was sometimes once a week, sometimes twice a week and sometimes more or less frequently. I met her parents who had come over from India on one occasion. I also had contact with her

over the return of the keys to the flat at Caplaw Tower [Surjit 's flat] and over the death certificate."

13.6 PC Laverick referred Sanehdeep Chhokar to PETAL -

"I also had contact through PETAL. ... Sandy became withdrawn. There were a few times when Sandy would not get out of bed to speak to us. The children were answering the front door. ... I had concern about Sandy and the kids. PETAL arranged for Sandy to work with them on a part-time basis."

13.7 Kate Duffy of PETAL confirmed this. She told me that PC Laverick had contacted her because

"She wanted someone to go round and visit Sandy and the children as she was concerned about their welfare".

13.8 PETAL also contacted PC Laverick to raise a concern about the behaviour of a defence precognition agent who interviewed Sanehdeep Chhokar on Wednesday 27th January 1999. Sanehdeep had been asked questions which she found distressing and which seemed inappropriate. PC Laverick told me -

"PETAL also contacted me regarding a concern over the defence precognition. We had explained to the family that they might be contacted by defence lawyers although I can't remember exactly when this was explained."

13.9 PC Laverick thought that the agents would only ask Sanehdeep about identifying the body and so did not warn her that awkward questions might be asked. There were three precognition agents (one for each accused). One of them asked questions about Sanehdeep and Surjit having separated, whether he had ever abused her and about her sex life. Neither Kate Duffy, who was at the interview, nor PC Laverick could see the relevance of the questions.

13.10 This is an area in which a bereaved person might look either to the police or to another organisation for support. Both PETAL and PC Laverick had considerable experience dealing with female victims in distressing situations. In this case it was PETAL who supported Sanehdeep Chhokar before and during the interview. I comment elsewhere (Chapter 30) on defence precognition agents.

13.11 PC Laverick explained that as Family Liaison Officer she would always offer assistance at defence precognition, for example she would explain the procedures involved and would offer to be present or offer the use of accommodation at the police office.

13.12 As part of the preparation for the trial, PC Laverick tried to contact Mrs Sanehdeep Chhokar beforehand and went to her house.

"I tried to speak to Sandy prior to the trial and went to her house. The house was empty and it was obvious she had moved without telling me. I think it came to a stage where I had to take a step back. Sandy was in contact with PETAL. Perhaps I was just a reminder of what happened to her husband. I was surprised that the house was empty. Sandy had mentioned to me on a previous occasion that she thought about moving to Glasgow to live with relatives. I was arranging lifts for the extended family prior to the trial but I was told by PETAL that transport for Sandy had been organised."

13.13 PC Laverick continued her Family Liaison Officer contact until Mrs Chhokar herself decided to discontinue it, as recorded by PC Laverick in a note for the Senior Investigating Officer -

"At about 1230 hours on Monday 26 April, I received a call from Kate Duffy at PETAL. She initially contacted me to ensure that the death certificate for Surjit Singh Chhokar which Sandy Chhokar gave to the

police to be handed to the PF prior to the trial was returned to Sandy and not to the deceased's parents.

She also stated that Sandy Chhokar had asked Kate to inform me that she was more than satisfied with the assistance that she received from the police at the time of Surjit's murder and wanted us to know that the problems which are on going are not instigated by her.

Also apparently Sandy Chhokar has moved ... to live with an uncle. There is no forwarding address."

13.14 I have a number of comments on this evidence -

- The Family Liaison Officer carried out her proper function: she put her client, Mrs Chhokar, into contact with a support organisation (PETAL, in this case) and worked flexibly with the organisation; she made herself available to the client, and specifically offered support at the stages of defence precognition and before the trial. Although she apparently treated the Family Liaison Officer commitment as open-ended, it was brought to an end by the client when the client was satisfied and ready to do so.
- PC Laverick's previous experience as a Family Liaison Officer and in the Female and Child Unit was specially relevant and valuable in this case.
- The Senior Investigating Officer appears to have been content to let PC Laverick deal alone with Mrs Chhokar, although the policy was that Family Liaison Officers should always work in pairs. This was less critical at the stage where the police investigation was complete, but the decision should also take account of the effect on the Family Liaison Officer when asked to work alone. Such decisions should always be taken with care. In this instance I am satisfied that the decision was right.

Mr Darshan Singh Chhokar

13.15 Mr Chhokar was in a different position to that of his daughter-in-law. After the funeral, Sanehdeep was living with her children. She had little contact with the rest of Surjit's family. She had turned to PC Laverick and to PETAL for support. Mrs Duffy told me *"the relationship between Sandy and Surjit's parents was difficult. I understand that the father would contact her periodically but this was mostly to lay blame, for example, if Surjit had been at home with his wife this would not have happened"*. Mr Chhokar and his family had each other and their community.

13.16 Mrs Duffy confirmed this to me, *"I spoke to my colleagues and they had explained to Sandy that there were other people available to help if, for example, the parents wanted support. When they went back to see Sandy, she said that the parents would get support from their own community"*. It is, therefore, unsurprising that the level of contact given by the police differed considerably between the two.

13.17 After the funeral, the police did not have any immediate reason to initiate any contact with Mr Chhokar. Mr Chhokar was given contact details so that he could get hold of the police to raise any concerns or questions which he might have.

13.18 The only recorded contacts with Mr Chhokar, between the funeral and the trial, appear to have been two telephone calls from him, both of which were taken by DC Owen Bradley. DC Bradley had been involved in the investigation, but was not a Family Liaison Officer. DC Bradley did not refer or report the calls to the Family Liaison Officers, and since his account to me is the only record of what took place I shall quote it in full -

"I can't remember the exact dates of the telephone calls but it was before the first trial. I think the first call was about one month before the trial. Mr Chhokar phoned Wishaw police office. The call was made to the CID. Any officer present would have picked up the phone. The caller identified himself and said, "I'm Mr Chhokar, my son has been murdered". I said to him that I knew who he was. I have never seen or

spoken to Mr Chhokar before but everyone in Wishaw CID at that time would have known who Mr Chhokar was.

He asked me about the date of the trial. The citations could not have been out yet as I and the police did not know the date of the trial. I asked him for a note of his telephone number and explained that I would phone the Procurator Fiscal to find out and would then phone him back.

I then phoned the PF's office to confirm the date. I told them that Mr Chhokar had been on the phone. I was told when the sitting was to start. I don't remember who I spoke to.

I phoned back Mr Chhokar within 5-10 minutes and explained to him when the sitting started. I explained that although the sitting was starting on, for example, 2 March, the trial may not start that day because the court may be busy. I told him the trial might not start until a later date.

I would say that Mr Chhokar's English was pidgin English. I did not have a difficulty understanding what he was trying to tell me. I do not remember having to repeat myself and he appeared to understand what I was telling him.

The second telephone call was made nearer the time of the trial. Mr Chhokar again phoned the CID. This time he asked if he could attend court and sit in. He implied that he had an interpreter and wanted him to sit in too. I asked him if he was a witness because if he had been he wouldn't have been allowed to sit in court until his evidence had been heard. Mr Chhokar said that he was not a witness but I told him that I would phone the PF's office to confirm that. Again I said that I would phone him back.

I phoned the PFs office and was told that Mr Chhokar was not a witness. I think I spoke to one of the precognition officers, Ian Main. I explained to the PF's office that Mr Chhokar was wanting to sit in with an interpreter at the trial and I was told that that would not be a problem.

I phoned Mr Chhokar back within 5-10 minutes and explained to him that he could sit in court as he was not a witness. I asked him if he needed an interpreter and explained that the police or the PF could provide one. He said that he had an interpreter. I can't remember if he said it was a family member. I was asking him and reinforcing that the police could provide an interpreter in case he was paying for his own interpreter. He appeared to understand what I was saying and said that he had an interpreter. I told him that if he required any further assistance he could contact the police. I was making it clear that someone could assist him if required."

13.19 DI Maclver confirmed to me (in his written reply to my questions) that DC Bradley had reported the conversations with Mr Chhokar to him; and the matter had rested there. DI Maclver's statement to me said that there was no need to involve the Family Liaison Officers with requests that had been dealt with. DCI Michael also told me -

"I do not think DS Duffy would have to know the information about Mr Chhokar phoning. Owen Bradley had dealt with that via the PF. The FLO withdraws until he is required again for a specific purpose."

13.20 The telephone calls raised two issues -

- whether Mr Chhokar was a witness, and
- his wish to bring an interpreter.

Attendance as a witness

13.21 When I interviewed DC Bradley in January 2001, he told me (as quoted above) that he asked the Procurator Fiscal's Office whether Mr Chhokar was a witness and that he was told that he was not. I do not believe this, for reasons which I shall state. Mr Chhokar appeared on the indictment as a witness and therefore could not be excused unless by the Advocate Depute with the consent of the defence. There is a statutory presumption that a court will accept the identification of the victim's body without calling witnesses to that effect.¹³ However, Crown Counsel may still decide to call a witness to that effect and the defence may ask that identification be confirmed in court. In practice, because of the time at which the papers reach Crown Counsel, such decisions take place very close to, or on, the day of the trial. When Mr Chhokar called therefore, no-one would be in a position to say whether he was to be a witness or not.

13.22 If the Procurator Fiscal's Office had been asked a question about a particular case, the question would have been referred to the person responsible for the case or to the administrative staff. Alan MacDonald was the Procurator Fiscal Depute who was responsible for precognosing the case. He can remember no call from DC Bradley. If the call had gone to a member of the administrative staff they would have checked the indictment, on which Mr Chhokar appeared as a witness.

13.23 In the light of this discrepancy between DC Bradley's account and standard prosecution procedures I sought clarification from DC Bradley in September 2001. I put it to him then that, if his question had been phrased along the lines of 'I have just had someone on the phone, wanting to know about a forthcoming trial. He says that he's not a witness and was asking whether he could bring an interpreter to help him', it would simply be asking for a general principle, namely, can an observer bring their own interpreter. In that case, the person who took the call in the Procurator Fiscal's Office would have no need to look at papers relating to any specific case: they could simply address the principle and say that that was all right, which would mean no more than that the person could bring an interpreter.

13.24 However DC Bradley said that he had certainly not phrased his question in those terms but had asked specifically whether Mr Chhokar was to be a witness. He said -

"I'm positive it was Ian Main I spoke to. They [the Procurator Fiscal's Office] asked if Mr Chhokar wanted an interpreter. I asked Mr Chhokar and he said it was OK - 'I've got my own'."

13.25 Accordingly, I then interviewed Mr Main, a Precognition Officer in the Hamilton Procurator Fiscal's office. I asked him how he would respond to a suggestion that a police officer had spoken to him about the case, about the deceased's father, whether he was a witness and his need for an interpreter. Mr Main said -

"No, I have had no dealings with the case whatsoever. If I had an enquiry then I would have spoken to the person dealing with the case, Alan MacDonald. The only other person I know who had dealings with the case is Angela Matthews and only because she went to the High Court case. I never received a phone call like that."

13.26 I then put it to Mr Main that it was suggested that the police officer had called the Hamilton Office, that the officer was positive it was Mr Main he had spoken to and that Mr Main had asked whether Mr Chhokar wanted an interpreter. Mr Main said -

"I have no recollection of that at all. That would be the sort of thing I would remember. I have been a precognition officer for fourteen years and I would remember cases where an interpreter was needed. It would also stand out because this was not my case."

It was never asserted by me, 'Does Mr Chhokar need an interpreter?'"

13.27 I then asked him in general what he would do if he was asked whether an individual was a witness in a case which was not his own. He told me -

"It would depend on the circumstances. I would try to speak to the person who had been allocated that case. [If that precognoscer was not available] I don't think I would do anything with it, however, unless it was a matter of urgency. If it was important then I would refer it to the Principal Depute in the Solemn unit. I could get access to the computer but only if the statements in the case had been sent in by email. Otherwise I could try to find the case papers.

I have never seen the case papers in the Chhokar case.

Initially in the precognition process, the precognoscer decides who should be a witness. If the case had been to Crown Office and the trial was only weeks away, as has been suggested to me, then the decision is that of Crown Counsel. Up until the case is allocated to an Advocate Depute (which can be days or hours before the trial), then those decisions are made via the High Court Unit at Crown Office. If someone had been given a witness citation, then there would have to be an enquiry by that person as to whether they were necessary as a witness. There is no way we could go to Crown Office and say that the person simply didn't want to be a witness. There would need to be a reason."

13.28 Finally I asked Mr Main whether he had received a phone call from DC Owen Bradley between January and March 1999 regarding the Chhokar case and, in particular, about whether Mr Chhokar was a witness and needed an interpreter. Mr Main said -

"I know Owen Bradley and have spoken to him about literally hundreds of cases. I did not receive a phone call from Owen Bradley about this."

13.29 I found Mr Main a clear-minded and candid witness.

Offer of an interpreter

13.30 DC Bradley told me, in his interview in January, that he "was reinforcing that the police could provide an interpreter in case he was paying for his own interpreter". This was not normal police practice. DCI Michael told me that he thought that it might have been inexperience on Owen Bradley's part which led him to suggest that the police would provide an interpreter. ACC Pearson told me -

"We do not normally offer interpreters in those circumstances. If someone like Mr Chhokar comes on to the telephone and remarks that he is thinking about getting an interpreter, I think the reaction of the police officer would be, 'is he paying for that?'. The police have access to an interpreting service and could have accessed that for Mr Chhokar. Where the individual is the deceased's victim's father there would be humane reasons for the police wanting to do something to assist. I do not know if that has happened in other cases, it probably has but I do not know."

13.31 In September I put it to DC Bradley that it was not normal practice to offer an interpreter, he said -

"I wouldn't have known. I would have thought it was the police or PF's obligation to provide an interpreter. I made the assumption that it was."

Commentary

13.32 DC Bradley's accounts of what he said and did are internally inconsistent, improbable, and contradicted by other evidence. I did not find him an honest witness. All that is certain is that he did take phone calls from Mr Chhokar; and it is

probable that these concerned Mr Chhokar's attendance at court, possibly as a witness, and the presence of an interpreter. Most significantly, from the point of view of this Inquiry, we are left without any clear idea of what was on Mr Chhokar's mind when he made those calls, and without any idea at all of what information he got from them.

13.33 In my view this episode represents an almost total failure in police family liaison. There were Family Liaison Officers designated, but they were not even told about these calls. DC Bradley, who had no previous contact with the family, took it on himself to deal with matters which were outwith his responsibility and beyond his ken; whilst the Family Liaison Officers, who had laid the basis of a good relationship with the family, were left unaware of the significant facts that the family was now beginning to be concerned about the trial and about having an interpreter present. Likewise, the officer dealing with the case in the Procurator Fiscal's Office, Mr MacDonald, was told none of this.

13.34 My immediate concern at this point is the possible impact of all of this on Mr Chhokar. Having telephoned the police he may have been given the impression that he would not be a witness. He would have expected to go into the public gallery of the court and to observe the trial about the death of his son, which in itself would be distressing. However, unknown to him apparently, there remained the possibility that he might still be called as a witness. If he felt the need of an interpreter in order to follow proceedings as an observer he would have had all the more need of one to deal with the considerably more stressful position of giving evidence. If he had been required to give evidence there was a probability that, in the absence of an official interpreter, he would have been unable to do so. He was therefore likely to be made to feel embarrassed, distracted, distressed and humiliated in public.

13.35 Two general points emerge from this episode -

- It demonstrates the need, which emerges at other points in this narrative, for a more structured system of communication and liaison between the Procurator Fiscal and the police, from the earliest stages of an investigation right through to trial, and in particular with police Family Liaison Officers.
- Internal communication within the police team dealing with a case is also essential, and specifically so as to ensure that Family Liaison Officers are kept informed of all matters related to their responsibilities.

The trial of Ronnie Coulter

13.35 There was no police liaison presence at the first trial. PC Laverick, who was on leave at the time of the trial, knew that PETAL were supporting Sanehdeep Chhokar. I have no evidence that the police established whether Mr Chhokar and his family required any assistance. The telephone calls which Mr Chhokar had made to DC Bradley showed that he was contemplating attending the trial, so the police knew that this was a possibility; but I have no evidence that the Family Liaison Officers or anyone else in the police followed this up.

13.36 It is of course the case that the trial itself is the responsibility of the Procurator Fiscal, and therefore it is likely that police family liaison will have a diminished role, at most, at this stage. However, I consider that there ought to be protocols established to determine the link between the duties of the Procurator Fiscal Service to families and those of the police, and I so **recommend**.

13. POLICE FAMILY LIAISON: FINAL MEETING WITH THE FAMILY

This chapter describes the final meeting between Family Liaison Officers and the family, shortly after the first trial. The meeting was difficult for the police and unsatisfactory for the family; and the police then abandoned any attempt to continue family liaison.

A meeting at the Chhokars' house

14.1 The trial of Ronnie Coulter ended on 9th March 1999. The comment made at the end of the trial by the judge, Lord McCluskey (see paragraph 18.17 below), attracted sensational media coverage and put the case, and with it the Chhokar family, into full public view. As noted in Chapter 19, the family's own point of view, articulated mainly by Manjit Sengha, was being reported in the press from 11th March onwards¹⁴. Comments by Aamer Anwar were also reported from that date. The family's disappointment and shock were public knowledge from then on.

14.2 Six days after the end of the trial, on 15th March, DS Duffy was instructed by the Senior Investigating Officer to telephone the family and arrange a meeting. DS Duffy's understanding of the purpose of the meeting and his role in it was simply "to answer any questions they [the family] may have had regarding the trial." I was told by ACC Pearson that this was a relatively routine procedure -

"It is not unusual for an FLO to go back to a family post trial. There is sometimes just a need for an officer to go round and explain things to the family rather than leaving them with unanswered questions. There would also be unresolved issues such as the return of property and productions. Family liaison can sometimes resolve these questions and there is also a greater freedom for the FLO at that stage to express his/her views because the case would no longer be sub judice."

14.3 I assume that the police felt that a meeting was particularly advisable in this case so as to demonstrate that, notwithstanding the public criticism of the Crown over the trial, they themselves had discharged their duty to the family. However, if this was their purpose in offering a meeting, they were pitifully unprepared for the meeting itself. DS Duffy gave me a full and vivid account of it, which I shall quote at length and then comment upon. He said -

"At about 10am the following day [16th March] I asked Julie Edwards (an officer at the Female and Child Unit at Motherwell) to come with me to the meeting with the Chhokar family. We went to Mr Chhokar's house and were taken into the living room. Manjit was there along with another man who I now know to be Mr Aamer Anwar.

I told them the reason that I was there, that is, to answer any questions they may have had regarding the trial. Mr Anwar was the one doing all the talking. His whole tack was, 'in light of the Stephen Lawrence Inquiry ...', 'in light of the Macpherson Report ...', 'why was this not done...'

I asked him who he represented and he replied the Chhokar Family Justice Campaign. I told him why I was there but he said, 'you haven't been here for five months'. He was asking me questions I could not answer. There were still two people to come to trial. He then started talking about a meeting he had had with Lord Hardie and kept going on about the Macpherson Report and the Lawrence Inquiry.

I said to him that I would take a list of questions he wanted answered and that a meeting could be arranged with the SIO. He asked me why I wanted a list of questions and I explained to him that some of the questions may take a while to research.

Mr Anwar kept going on about race. I kept saying that race was not an issue.

...I can see what Mr Anwar is doing and I do not have a problem with it. However, this was totally unexpected by me. The previous meetings had been amicable but to be suddenly faced by Mr Anwar in full flight, having a go at me, was a different situation. I think he was trying to have a go at the police, the PF, at everybody but I was the first person he met. The Campaign had only been formed the day before. I said I would report back to my boss.

... I did not resent him being there. If I had been in the same position as the Chhokar family, I would have wanted someone to ask questions for me. But everything I said, he was not happy with ...

He was saying that I had no contact for five months. As far as I was aware the family had been dealt with by Lynn Laverick. I assumed that Mr Chhokar would have contacted the police if he had required anything.

I went back to the SIO and told him that I had been "ambushed". No amount of briefing would have prepared me for that. I felt I had been used. Manjit had originally arranged the meeting to be held at Bishopbriggs but phoned me back to say that the meeting would now be in Law. I feel she orchestrated it. I was disappointed because I felt I had gained the respect of the family. I saw Mr Anwar as a very angry man with a set agenda. I felt Mr Chhokar had been dragged along. Manjit may have been there of her own volition.

I spoke to the SIO and he wanted me to get questions from Mr Anwar. I phoned Mr Anwar ... later that day. DI McConnell happened to be there and I asked him to sit in to listen to what I was saying. I wanted to make sure that someone knew I wasn't being abusive to Mr Anwar. DI McConnell did not hear what Mr Anwar was saying. If DI McConnell had not been there, I would not have got anyone else. He just happened to be there. I was a little concerned that Mr Anwar might put words on paper that I have never said.

The SIO was asking me to find out specifically what questions Mr Anwar wanted to discuss at the meeting which could be set up.

The phone call was also based on the whole race issue. He did not put any specific questions regarding the preparation of the case or the police involvement in relation to the trial, apart from the question about why was there not a charge regarding theft of the cooker. He had a race agenda. He was trying to push this as a sole agenda.

Manjit never said to me on the phone that there would be a representative from the campaign there. Indeed, I half expected Sandy to be there - maybe that was naive. Mr Anwar never mentioned Sandy at all. Sandy disassociated herself with the whole thing. She was happy with the treatment she had been given. Indeed there is a note on the file of a telephone call received from PETAL which says that Sandy had no problem with the police.

It was not an interview at Mr Chhokar's house. It was a group of people in a room. I would regard it as a meeting rather than interviewing - a meeting with the Chhokar Family Justice Campaign. It was never a meeting between the FLO and the family. If it had been known that the Chhokar Family Justice Campaign would be there, I would never have been instructed to go. No dialogue was exchanged between me and the family."

14.4 DS Duffy accurately saw that this was a meeting with the Campaign, rather than a liaison meeting with the family; for it was reported the next day, in the following terms (in the Scotsman) -

OFFICERS from Strathclyde Police yesterday met the family and supporters of the stabbed Sikh waiter Surjit Singh Chhokar to discuss their worries about the case.

But the meeting at the home of Mr Chhokar's parents Darshan and Gurav ended within minutes, after Aamer Anwar, a spokesman for the newly formed Chhokar Family Justice campaign, asked for more details about why the police investigation discounted racist motives for the attack.

Last night Mr Anwar said that the family was now hoping to ask the same question of the CID chief inspector in charge of the case.

"We asked how the police investigated it and how they explained it," said Mr Anwar.

"They said that the family didn't raise the question of racism at the time of the killing.

"We said that it didn't occur to them at 1am when they had just been told their son was dead.

"The question of racist motivation has arisen in the light of everything else that has happened over the last few months, with the Stephen Lawrence case.

"Strathclyde Police has recently publicised its improved monitoring of racist incidents.

In the light of this case, I feel that is a farce."

Commentary

14.5 It is little surprise that this meeting went badly, quite apart from the intervention of the Campaign, since the groundwork for it had never been laid. The press article pinpointed the weakness in the police handling of the race question, which I have dealt with at length in Chapter 6 above. Mr Anwar's attack, as recounted by DS Duffy, though harsh on the individual officer, and not entirely honest (there had been no meeting with the Lord Advocate), was not without justification in respect of the police corporately.

14.6 The police also were completely unaware of the almost total failure of the Procurator Fiscal's Office to establish family liaison with the Chhokars, and would have been quite unable to deal with the questions the family would be likely to raise, even without Mr Anwar's intervention. I shall show, in my commentary on the Procurator Fiscal's Office, that one reason why they failed was that they had no contact with the police Family Liaison Officers. The conclusion to be drawn is that the whole system failed in this matter. The remedy is equally obvious: **that there must be a channel of communication established between police family liaison and Procurator Fiscal, from the point at which the case is reported to the Procurator Fiscal and continuing until court proceedings are finished.**

14.7 As regards police family liaison in general I have the following observations -

- **The police have to be prepared to encounter pressure groups and campaigners in the course of family liaison.** DS Duffy was taken by surprise - 'ambushed' - by this meeting, but his response was basically correct. He accepted that a family has to be taken on its own terms, and if it wishes to be associated with a pressure group or a campaign that is its right. The police however are there to listen to the family and to respond to them, and cannot get drawn into argument with a campaign.

- **DS Duffy's response to the situation was appropriate.** He had evidently had some briefing on questions which might arise - his remark that "there were still two people to come to trial" is evidence of that. Mr Anwar put other questions to him for which he did not have an answer - since they are not recorded I cannot comment on that - and it was a reasonable response to offer to take them later. DS Duffy was also prudent to have a colleague sit with him during his subsequent telephone conversation with Mr Anwar, lest he be misquoted in the press.

- Although I accept that DS Duffy did right to withdraw from this meeting as he did, I note that **the police thereafter simply abandoned the attempt to maintain liaison with the Chhokar family at this point; and I do not accept that that was good practice.** Family liaison should continue until the end of proceedings, and in this case proceedings were to run for a further 18 months. Family liaison should

have an 'exit strategy': what it is, will depend on the circumstances of each case, but it is no strategy simply to leave the field.

Sanehdeep Chhokar

14.8 Surjit's widow, Sanehdeep, was not present at the meeting on 16th March. She had been in regular touch with the other Family Liaison Officer, PC Laverick. On 26th April, Kate Duffy, PETAL, telephoned the police on behalf of Sanehdeep to ask that the death certificate be returned to Sanehdeep rather than to other members of the family. Kate Duffy said that Sanehdeep had moved and that she did not want the police to have her new address. She said that Sanehdeep had asked her to tell PC Laverick that she was more than satisfied with the assistance which she received from the police at the time of Surjit's murder and, in a reference to the public statements being made by Mr Anwar on behalf of the Chhokar Family Justice Campaign, she dissociated herself from the criticisms then being made of the police.

14.9 This concludes my examination of police family liaison in this case. The next nine chapters are a parallel examination of the dealings of the Procurator Fiscal Service and the Crown Office with the Chhokar family.

14. INTIMATION OF THE MURDER TO THE PROCURATOR FISCAL

This chapter describes the involvement of the Hamilton Procurator Fiscal's Office in the immediate aftermath of the murder. It does not directly involve the relatives of Surjit Singh Chhokar, but is essential background to the later dealings of the Procurator Fiscal Service with them.

At the scene

14.1 In the investigation of any serious crime, and particularly in a homicide case, the Procurator Fiscal is necessarily involved from the earliest stage. In a murder case, he has control over the disposal of the body while he makes enquiries into the death: and accordingly he (or one of his deputies) is normally summoned to the scene of crime in order to ensure that a full and proper investigation is carried out and that evidence is properly identified and preserved. It is for him to decide whether it is necessary to leave the body at the scene or to have it removed to a mortuary, and he will direct and supervise the post mortem. The Procurator Fiscal's advice and assistance may also be required in making "out-of-hours" applications to the Sheriff to obtain search or other warrants.

14.2 As noted above (paragraph 5.11) Mr Slowey, Procurator Fiscal Depute at Hamilton, who was the Depute 'on call' for urgent out-of-hours business that night, was notified of the incident at approximately 0030 hours on 5th November 1998 and arrived at the scene at 0120 hours. The detail of his activity is not recorded, but it appears that he was consulted later in the night (paragraph 5.15) over the possible requirement for a warrant to seize items from the home of Andrew Coulter.

The post mortem

14.3 The post mortem on Surjit's body was carried out at approximately 1315 hours on the afternoon of Thursday 5th November. Mr Ian McCann, Procurator Fiscal Depute, attended in the course of his normal duties as head of the Deaths Unit at Hamilton Procurator Fiscal office.

The Sudden Death Report

14.4 The police are required to submit a "Report of a Sudden Death" to the Procurator Fiscal in respect of all sudden, suspicious, accidental, unexpected or unexplained deaths coming to their attention. This includes homicide cases. The report in such a case will contain the following information (if known at the time the report is made):

- Date of death

- Deceased's name, address and date of birth
- Details of any spouse, including name, address, age and occupation
- Details of the next of kin (if not the spouse)
- Time, day, date and place of death
- Registrar's district
- Details of the deceased's father, including name and occupation and whether alive or dead
- Details of the deceased's mother, including name, maiden name and occupation and whether alive or dead
- Cause of death (and duration of illness, if appropriate)
- Details of the medical practitioner certifying the death
- Details of the deceased's G.P.
- Hour, day, date and place of burial/cremation
- Details of the undertaker
- Name and address of employer if the death resulted during the course of employment.

14.5 The report will provide a summary of the facts including details of the deceased's background, relationships and medical history. The report will then give a description of the events leading to the death as known to the police at that time.

14.6 The report will also contain a list of witnesses which may include, for example, the next of kin, doctors, any eyewitnesses to the events leading to the death and the police officer(s) reporting the death. If the body has been identified it will also provide the details of those persons who identified the deceased.

14.7 The Sudden Death Report on Surjit Singh Chhokar was prepared by the police on 5th November 1998 and a copy was given to the pathologists. The police e-mailed a copy of the report to the Procurator Fiscal's Office and this was received by that office at 0914 hours on 6th November 1998. It gives Surjit's address as 24 Garrion Street, Overtown, Wishaw, identifies Mrs Bryce as a witness, also at that address; but it also identifies Sanehdeep as the next of kin, gives her address, notes that there are two children from the marriage, and identifies Darshan Singh Chhokar as the father of the deceased (without his address, since the form does not require it). It describes Surjit's relationship with Mrs Bryce, and his continuing relationship with his wife, as follows -

"During March 1998 the now deceased separated from his wife and obtained tenancy of the local council dwellinghouse at 65 Caplaw Tower, Wishaw. This separation was amicable and the now deceased returned to visit his wife on a regular basis.

The now deceased had had a long term relationship with the witness Elizabeth Bryce and of late, the house at 65 Caplaw Tower, Wishaw, has simply become a postal address... the now deceased having moved into the house of his girlfriend, Elizabeth Bryce"

The Case Report

14.8 The "case report" (or "custody case report", in a case where the accused has been arrested by the police and is held in custody) is the report which is submitted by the police to the Procurator Fiscal alleging criminal conduct on the part of an individual. It details the particulars of the accused, draft charges, the circumstances giving rise to the alleged criminality, the evidence against the accused, details of

witnesses and details of any previous convictions or outstanding criminal cases. In general, the criminal case report, together with any other information obtained as a result of further enquiries etc, will form the basis of the Procurator Fiscal's decision whether to institute criminal proceedings against the suspect.

14.9 A custody case report against the accused Andrew Coulter was received by the Procurator Fiscal's Office on 6th November 1998. A further custody case report was received on 9th November in respect of the accused David Montgomery. This report also requested a Petition Warrant for the arrest of the accused Ronnie Coulter who had not yet been apprehended. These custody case reports were submitted on paper, not by e-mail.

Commentary

14.10 These were all normal routine procedures, which appear to me to have been in good order and adequate. What is significant from the family's point of view is that Surjit's wife and father are both identified - the wife as next of kin - as well as the fact that there were children, and the relationship with Elizabeth Bryce is delineated.

15. PROCURATOR FISCAL'S OFFICE: THE FIRST WEEK

This chapter examines the handling of the murder case by the Procurator Fiscal's Office in the week following the murder, up to the point where the decision was reached that Surjit's body could be released for cremation, on 13th November 1998. (The parallel account of police activity during that period is at chapters 11 and - especially - 12 above.)

Background - organisation of Procurator Fiscal's Office

15.1 In order to make the following narrative clear I shall need here to explain something of the organisation of the Hamilton office at the time in question. The account which follows is not exhaustive, but indicates the functions relevant to this Inquiry.

15.2 The office was divided into four main Units - the Solemn Unit, the Case Marking Unit, the Summary Proceedings Unit (which does not concern this Inquiry) and the Deaths Unit, each headed by a Principal Depute. Procurator Fiscal Deputes rotated between the units, normally on a quarterly or half-yearly basis.

The Case Marking Unit receives reports from the police in relation to crimes and decides whether to institute criminal proceedings, or whether further enquiries have to be conducted, and instructs these where necessary. The Unit also deals with enquiries from the police and others.

The Deaths Unit receives reports of sudden, suspicious, accidental, unexpected and unexplained deaths. The Unit will make enquiry as to the cause and the circumstances of the death. Legal staff will decide whether a post mortem is to be conducted or further enquiry made into the circumstances. Deputes will consider whether a criminal prosecution is to be brought in connection with the death or whether a Fatal Accident Inquiry is to be held. The Unit will also make decisions regarding release of the deceased's body and whether the release is for burial or cremation.

At the time of the Chhokar case, the Deaths Unit in Hamilton consisted of one Procurator Fiscal Depute (who was Acting Principal Procurator Fiscal Depute) and one member of administrative staff.

The Solemn Unit is responsible for the investigation and preparation of serious cases passed to it by the Case Marking Unit. Once an accused has appeared on Petition and been committed either for further examination or until liberated in due course of law, the papers will be passed to the Solemn Unit for precognition. This process

involves a full investigation of the circumstances surrounding the case by obtaining and examining relevant productions and interviewing witnesses. Precognition work is carried out both by Procurator Fiscal Deputes and by non legally qualified Precognition Officers. Once the investigation is complete, a document containing all relevant information is prepared by the precognoscer and sent to Crown Office for the consideration of Crown Counsel.

At the time of the Chhokar case, the Unit was staffed by a Principal Depute, three Procurator Fiscal Deputes and four Precognition Officers, one of whom was on maternity leave, and administrative staff.

Narrative

15.3 I took evidence about the Hamilton office's involvement during the week in question from Ian McCann, Procurator Fiscal Depute in charge of the Deaths Unit. He explained to me that the business would normally have been dealt with by the Marking Unit, but that he agreed to take some of it -

"...questions regarding the release of the body would normally be the responsibility of the Marking Unit or the person in the Marking Unit who was dealing with the reporting of the death to Crown Office.

Wendy Barr was dealing with the Summary Unit but was also substituting in the Case Marking Unit. She approached me and prevailed upon me to prepare the three-day murder report¹⁵ in the Chhokar case. I was asked to do this on 11 November 1998. That was the first time I had seen the police reports. I also had to get the full witness statements in this case and they arrived some time on 11 November 1998. The report was sent off to Crown Office on 12 November 1998. I would want to see the principal statements in a homicide case prior to drafting the three-day report. I think there may have been difficulties in e-mailing the statements and I remember that they were delivered by hand."

15.4 I have already noted, in chapter 12 above, Mr McCann's involvement in the question of whether Surjit's body could be released for cremation, which he described as follows -

"On looking at the correspondence file there appears to be correspondence from the defence solicitors on 13 November 1998. I was dealing with the defence solicitors in relation to the question of the release of the body and this was a matter that caused minor difficulty in that one of the agents authorised release for burial only. I authorised release for burial initially and I was then contacted by the administrative member of staff in the Deaths Unit to say that burial was not satisfactory in this case.

I contacted the defence solicitors and asked whether they would agree to a release for cremation. I think that it was force of habit on their part to authorise release for burial but said that they had no difficulty in releasing the body for cremation in this case. I then marked on the papers that the body could be released for cremation."

15.5 Mr McCann told me that the norm had been that in cases of murder the body was released for burial, but that Chapter 12 of the Book of Regulations which was reissued in May 1998 had made it simpler to release the body for cremation. Previously, cases had had to be reported to Crown Counsel for instruction on that question.

Commentary

15.6 There was urgent and critically important business to be done during this week in relation to the murder case itself, in amongst which the Procurator Fiscal's

Office had also to deal with an urgent family concern, namely the release of Surjit's body for cremation and not for burial. Mr McCann was the officer responsible (and the police had a note of the fact though, as I have shown previously, they overlooked it) and I have no criticism of the way he discharged his duties. Nevertheless there are points of procedure which give me concern.

15.7 The office appears to have been taken by surprise by the fact that Surjit Singh Chhokar was a Sikh (even though the very fact that he had 'Singh' as a name would indicate a strong likelihood that he would be a Sikh), and by the Sikh religious objection to burial. The fact that Surjit was a Sikh was also explicitly stated in the custody case report of 6 November in respect of the suspect Andrew Coulter. Mr McCann had access to this report when he prepared the three-day report for Crown Office. Mr McCann overlooked this. In my view it is essential that, in the circumstances where the Procurator Fiscal has to take authority over the disposal of a body, he should accept the duty (and have the means) of finding out the religious or cultural requirements of the next of kin. In a case such as this one, the police Family Liaison Officer ought to be able to supply the information, but the point is a more general one, applying to any sudden death. **I recommend that the Crown Office should draw up appropriate guidance on this subject for the Procurator Fiscal Service.**

15.8 I have already expressed strong criticism, in the consideration of the police family liaison, of the failure of communication which occurred between the Procurator Fiscal's Office and the police on the afternoon of Friday 13th November 1998, which left the Chhokar family under the sad misapprehension that Surjit's body could not be released for cremation. The police were, it seems to me, largely to blame for that, but I do not think the Procurator Fiscal's Office (though not Mr McCann personally) is exempt from criticism. There is no record of who the police spoke to in the Procurator Fiscal's Office that afternoon, nor of who was present in the office to take the calls; but I note that the procedure for obtaining release of a body for cremation had only comparatively recently been eased, and I think it possible that DS Smith may have been put in touch with a member of staff who was not properly informed about it. That may have to remain a matter of speculation, since there are no records of the calls which DS Smith claims to have made. A more definite cause for concern is that, when the clearance was given by Mr McCann, there is no record on either side that it was passed promptly to the police.

16. PROCURATOR FISCAL'S OFFICE: UP TO THE FIRST TRIAL

This chapter deals with the period during which the case was being prepared for trial, and the failure of the Procurator Fiscal Service to establish effective liaison with the family during that period.

16.1 The case was duly passed to the Solemn Unit, in accordance with the procedure outlined in the last chapter. The Unit was headed by Maureen Sinclair, Principal Procurator Fiscal Depute. Ms Sinclair described her job, and the pressures on her Unit, as follows -

"My job at that time was to deal with full committal cases every day. I had to read over the cases where people had been remanded following committal for further examination. I would read the statement and assess the case in terms of sufficiency of evidence. I would also be involved in allocating precognitions and in reading precognitions prior to them being sent to Crown Office. I also had management responsibilities. I think at that time there were four precognition officers (one of whom was on maternity leave) and three deposes within the Solemn unit. I was also responsible for the management of all the solemn courts in Hamilton and for indicting all solemn cases. I did the occasional sheriff and jury trial and was also responsible at that time for trying to take a fraud prosecution to trial.

The Hamilton office was under real pressure at that time, including the Solemn Unit. There was another murder case to be allocated. There was a spate of murder cases and a spate of custody cases. I think

there had been a murder in Strathaven and the Alexander Hall murder case was also being reprecognosced. I recollect that all the precognition officers had custody cases to precognosce. I remember thinking to myself, 'who am I going to give the Chhokar murder case to?'

At the time of the Chhokar case we had a lot of inexperienced Deputes. I was also down by two precognition officers. You can get periods when you get a lot of custody cases. I cannot remember how many custody cases we had at that time. There were a lot of murder cases in the system at that time. I remember feeling under pressure. The office had lost a lot of experienced people."

16.2 Ms Sinclair allocated the Chhokar case to Alan MacDonald. She described her decision, and the process of hand-over as follows -

"I was aware that Alan was relatively new to the Procurator Fiscal Service.... I was aware that Alan had had experience as a lawyer previously. Any work I had seen of Alan's was good. Alan was hardworking and enthusiastic. I had worked with Alan since September 1998 in the Solemn Unit but I had generally seen his work throughout the office, for example, in cases which he had marked.

In allocating the case to Alan, I would give him all the papers that I had. I would fill out a pre-precognition sheet which would, for example, instruct administrative staff to obtain forensic reports etc. At the bottom of this sheet I would hand write a note about the case.

Given that it was Alan's first murder precognition, I did speak to him directly about the case.... I highlighted to him that the legal issue was concert, that the three-day report done by Mr McCann would be helpful to him and I also told him to liaise with the next of kin. I told him to look at the major incidents book which is kept by the police in relation to the productions¹⁶. I also told him to come and ask for any help he required.

I cannot recall how often I reviewed progress with Alan. My practice was to try and go round everybody in the team. My plan was to do this weekly but I didn't always manage that because of time pressures. I did ask Alan how he was getting on and asked if he needed any help. He never indicated to me that he needed help. Prior to reporting the case to Crown Office, Alan came through to me to discuss certain legal issues and we had a lengthy discussion about them then.

This case did not present to me anything which was unusual, other than the concert issue.

In relation to the instructions I gave to Alan, I consider that I gave him sufficient instruction. It is only possible to do the Solemn Principal Depute job if you work at home as well as in the office. In an ideal world, yes, I would have liked to have given closer supervision. I think that may have assisted with liaison with the relatives. It would, however, have depended on Alan advising me of any difficulties he was experiencing."

Family liaison

16.3 The responsibility for taking the case forward devolved on Mr MacDonald at this point. He described to me his career up to that point -

"I studied at Glasgow University between 1986 and 1990. I did the Diploma in Legal Practice in 1991. I then undertook my traineeship with a firm in Elgin commencing in March 1992. It was a mixed practice, but the traineeship concerned court work, both civil and criminal. My traineeship ran from March 1992 to March 1994 and I

worked with the firm in Elgin for 1 year after that. I then moved to Glasgow and worked with Keith Tuck in Possilpark doing mainly civil work (70% civil - 30% criminal). That was from March 1995 until March 1997. The work consisted mainly of seeing people with complaints, filling in the legal aid form and noting their defence before conducting the trial. I joined the Procurator Fiscal Service in 1997."

16.4 Mr MacDonald's primary task was to prepare the precognition¹⁷ for submission to the Crown Office. This was demanding, particularly considering his inexperience at that time. But his duties were understood to include family liaison also. Ms Sinclair expressed it thus -

"In relation to instructions given in murder cases, ... as with a rape case or a child witness case, I stress the importance of liaison with the relatives as well.

I gave an oral instruction to liaise with the next of kin and to keep them up to date with what was happening in the case. I did not identify to Alan MacDonald who the next of kin were.

I would have identified the father, the wife and Mrs Bryce as the next of kin for the purposes of family liaison.

For me, 'to liaise' means to get in touch as soon as possible and to keep them up to date with proceedings. To me it is common sense and good manners. It is automatic to do it. I accept that it may not be automatic if it is your first murder case. Now I know that it is important for me to make that clear to precognoscers. Now I do not leave anything to chance, indeed, in all murders I have been involved in recently I have written myself to the family in the initial stages.

I would have chosen Mrs Bryce because she was living with Mr Chhokar. I would also have chosen the father and the wife because of the children...

In relation to my instructions about how to liaise, I cannot recall what I said to Alan. I may have said to him that he should write a letter.

I did not tell him to invite the family in for a discussion about the case or the role of the Procurator Fiscal. I do, however, consider that to be part of family liaison. I think families should know the role of the Procurator Fiscal. A lot of people do not know what we do and do not understand our job."

16.5 Mr MacDonald also was aware that he had to establish some liaison with the family, but he had no specific instructions on the matter, no experience to draw on, and was hard pressed with other aspects of the case. He told me -

"I had other duties at the time of the allocation to me of the Chhokar case. I had other cases to precognosce which were... sheriff and jury cases. I was seeing witnesses and preparing precognition material as well as preparing for trial and working on cross examination and re-examination of witnesses. I was doing this all at the same time. When in court, a full day would be from 10am until 4pm but the hours and amount of time in court can vary.

During the Chhokar case I was getting up at 5 [am] to do the precognition before attending to my jury sittings.... It would be nice to have more time to prepare for cases but there is a pressure of work.

I read all the relevant documents including the three-day report which was drawn to my attention. I didn't really think particularly about whether the instructions were sufficient. Neither did I receive any particular instruction about the Sikh religious aspect of the case. I was instructed merely to keep the next of kin advised but I don't recall the Sikh issue being significantly drawn to my attention. I would have

benefited from more extensive instructions if time would have allowed it.

There was a magnum opus of a shopping list¹⁸. It would be fair to say that a lot of it was cosmetic, as it didn't relate to the substance of the case and was more to do with how the precognition was put together.

Prior to conducting this case I had never been to watch a High Court trial.

When the shopping list letter came back I discussed this with Maureen Sinclair and although it was dreadful we went through each bit one by one and dealt with it. I felt terrible but Maureen was supportive and talked me through it.

There was discussion about liaison with the next of kin with Maureen Sinclair, but no-one was specifically identified.... I don't recall being told that it was imperative that I wrote to relatives, but I knew that I had to get in touch with the next of kin.

The decision about who to contact in this case was entirely a matter for myself ... At the time I was in possession of the police custody report, a full statement, lots of witness statements from the police, and the Sudden Death Report. Information about the family was contained in the police report and in the Sudden Death Report. I had a copy of the Sudden Death Report but I really only had a cursory read of it. I don't really understand the significance or importance of a Sudden Death Report in a murder case because you are in possession of other information. If the case does not concern a murder then the Sudden Death Report is all the information that you have to go on.

I am certain that I read the Sudden Death Report but that the information did not impact upon me. I realise that Mr Chhokar's estranged wife should have been identified as the next of kin, but that was not my thought process at the time. The second page of the Sudden Death Report gives more information regarding Mrs Bryce and Mr Chhokar's on-off relationship with his wife. I therefore worked out that the next of kin should be Mrs Bryce. The conclusion reached at that time seemed normal to me. I realise that the information contained in the Sudden Death Report paints a different picture, but I may have read that and made the decision anyway. I was aware that Mr Chhokar had a wife, but I decided that the next of kin should be his co-habitee and his father.

I realise that I made an oversight as far as Mr Chhokar's widow and children are concerned. ...The fact that there were children involved should have influenced me. There had been reference to the children and they had a right to know what was happening.

The impression I had was that the relationship between Mrs Bryce and Mr [Surjit Singh] Chhokar was long-standing as was the separation between Mr [Surjit Singh] and Mrs Chhokar.

There is conflicting information in the relevant statement and papers. It is stated that the witness Bryce had lived with the deceased for a number of years, but this is now known to be inaccurate. Neither did the report make it clear that Mrs Bryce did not speak to Mr Chhokar's relatives. It would seem that my decision as regards notification of next of kin was based on some faulty pieces of information from the reports.

I would agree that looking at the information which I had before me at the time, the police had provided adequate information in the Sudden Death Report to indicate the Chhokar's family situation. Indeed on reading the police report now it is clear that quite a lot of information regarding the communication issue is provided. I would still, however,

want more information regarding brothers, sisters and other relatives. It is always necessary to see how the lines and branches of the family tree operate so as to understand how the relevant information will be passed around the family.

When I first received the statement it is hard to say whether or not I was aware that [police] Family Liaison Officers were involved in the case.... I don't even think at the time I knew that Family Liaison Officers were generally used in sensitive cases..... I am not even sure whether Family Liaison Officers have been involved in any of the cases that I have been doing more recently."

Commentary

16.6 It is plain, from this evidence, that Mr MacDonald had to hand all the documentary material he needed in order to identify correctly the individuals whom he should deal with as 'family', but that he drew some wrong conclusions, most conspicuously in failing to recognise Surjit's widow as next of kin. I am convinced that he acted in good faith - he was very candid in the evidence he gave me, and very willing to acknowledge that he had made mistakes. If he had been able to take more time, among the many pressures upon him, he would very probably have correctly identified the people whom he ought to contact as next of kin. More to the point, if he had had adequate preparatory training for his job he would have been able to spot the relevant information quickly in the papers which he had before him: if he had known what to look for, it would have been the work of a few minutes to find it.

16.7 Since the consequences were so unfortunate for the family (as I shall show below) I have to ask whether this error could have been avoided. In this connection I have looked at

- the standing instructions which would have been available,
- training courses provided, and
- advice which could have been supplied by colleagues, including the line manager.

16.8 The **Crown Office and Procurator Fiscal Service Book of Regulations** contains some guidance on the subject of contacting next of kin at Chapter 12.20 (see Appendix 8). It states, amongst other things, that -

"In those cases where the Procurator Fiscal decides that it is necessary to interview a relative, this should be done as soon as possible. Although it may be necessary to give priority to cases which are likely to result in a prosecution, in every case involving a death there is a need for the minimum of delay ...

The purpose of the interview, apart from any formal content it may have, will be to explain the Procurator Fiscal's role, the possible outcomes of his enquiries, and to establish a point of contact within his office for the relative. It should be ascertained in the course of the interview whether the relatives wish to maintain contact with the Procurator Fiscal about the progress of the case...

It will be a matter for the Procurator Fiscal to decide who is the most appropriate relative to contact. If a relative is to be seen for purposes connected with the Procurator Fiscal's enquiries, that person will usually be the appropriate party to interview for the purposes referred to above. In other cases, however, it may not always be easy to decide who should be asked to attend for interview - for example, where a deceased had a common law wife as well as blood relatives. Usually, the person with the most immediate connection with the deceased will be the most appropriate party to be interviewed, and this may include a common law wife. In some cases, it may be necessary to see more than one relative, and to interview them separately."

16.9 The last paragraph of this contains sensible advice about whom to identify as 'next of kin', and is probably as much as can usefully be said in a procedural handbook; but the first paragraph would not alert the reader to any need for family liaison as such - it is specifically concerned with cases where the Procurator Fiscal sees a need for an interview but gives no clue that there is a need for contact with a family in any case.

16.10 There is a **training course** on precognition, but Mr MacDonald had not taken it at the time when he was handed this case. Ideally he should of course have had the training before he started work in the job. It is a fact of life however, in any busy organisation - not peculiar to the Procurator Fiscal Service - that such ideals are not always attainable in practice.

16.11 In any event, formal training courses are only one way, and not always the most effective way, in which individuals can learn their jobs: **on-the-job training**, in the form of advice from colleagues and supervision by managers, is at least as important an element in training.

16.12 **Colleagues** could have provided advice. There was ample experience available, among the other Deputes and among the Precognition Officers, which could have been tapped, if anyone had known how much assistance Mr MacDonald needed. I took evidence on this from one of the Precognition Officers in the Hamilton office, Angela Matthews. Mrs Matthews was involved in the Chhokar case for only two days, during the trial of Ronnie Coulter (the circumstances are described in the next chapter), but she also told me how she would herself have approached this case if she had had it for precognition -

"In a murder case, you would also get a copy of the Sudden Death Report and a copy of the Intimation from the Registrar. I think it is normal to get a copy of this and I certainly have always had it. This report gives you details of the next of kin.

... The first thing I normally do is write to the next of kin. I would also normally phone the reporting officer and find out who the family liaison officer was. I would contact the FLO and ask him who among the family had been nominated as the liaison person for the Procurator Fiscal's Office ... The FLO can often tell us who we should liaise with. I have never found it difficult to find out who I was dealing with from the police."

16.13 The prime responsibility for ensuring that Mr MacDonald had the guidance he needed rested with his **line manager**, Ms Sinclair. She accepted this, but she was hard pressed with work herself and decided that she would have to rely on him to approach her when he saw a problem. This was the critical decision. Mr MacDonald would report if he found a problem, but in fact he was so inexperienced at the time that he was himself unaware of his problems. His mistakes might have been avoided if he had been supervised more closely.

16.14 I do not believe Ms Sinclair was negligent; but I do consider that she made a serious misjudgment, in handing the case to a Depute who was as inexperienced as Mr MacDonald was at that time, and then leaving him to handle it without supervision. It was simply not enough to tell him to report to her if he found any problems: the fact was that he knew so little about the job that he was inevitably going to run into problems without knowing it. Other Deputes, more experienced, could help him when asked, and did. Experienced Precognition Officers could have helped him, but I was told that they were discouraged from doing so. These resources were available - the Principal Depute did not have to take the whole task of supervision on herself. The basic mistake was to leave him to work alone: somebody - either Ms Sinclair herself or another experienced member of staff designated by her - should have worked beside him on this, his first murder case, at every stage. I entirely accept Ms Sinclair's account of the pressures on herself and her office at the time; but if she found that she had not the resources to do the job properly, it was her responsibility to make the case to higher management.

16.15 In the light of this I **recommend** that the Crown Office and Procurator Fiscal Service should review the management training given to Principal Procurator Fiscal

Deputes.

16.16 There is one other way in which Mr MacDonald could have been saved from this failure, namely if he had been aware of, and in touch with, the police Family Liaison Officers in this case. As I have noted in the chapters dealing with them, they too missed some of the nuances of the family situation and cannot escape criticism; but they were at any rate better informed than the Procurator Fiscal's Office and could have helped avoid the worst errors.

The effect on the family

16.17 I turn now to examine in detail the dealings of the Procurator Fiscal's Office with the three individuals most closely affected - Surjit's girlfriend, Elizabeth Bryce, his widow, Sanehdeep Chhokar and his father, Darshan Singh Chhokar.

16.18 Mr MacDonald's account of his early actions in regard to these individuals is summarised in an internal letter sent on 31st August 1999 to the Crown Agent (marked for the attention of Susan Burns, Crown Office High Court Unit) -

1. I met with Mrs. Elizabeth Bryce on 14 December 1998. I had further contact with her before the trial of Ronnie Coulter on several occasions because she required to be re-precognosed and also to sign an affidavit for the Section 259 Notice. I explained to her before the trial that the case was proceeding only against Ronnie Coulter at that stage. It was also explained that a final decision had not been taken against Andrew Coulter and David Montgomery. A final decision would only be taken at the conclusion of the case against Ronnie Coulter.

2. I sent a letter to the deceased's father explaining that I was precognosing the case and inviting him to arrange an appointment with me so that we could discuss the case in more detail. I never heard from him. A copy of that letter has not been retained and is unfortunately not stored on computer. I found out from Mrs. Chhokar before the trial that the deceased's father was in India. I thought that this explained why he had not contacted me.

3. I did not write to the deceased's wife Mrs. Sandeep Chhokar as I viewed the next of kin as the deceased's father and Mrs. Bryce. From speaking to Mrs. Bryce it appeared that the deceased had been separated for a long time and had little contact with his wife. However a few weeks before the trial I was contacted on her behalf by Mrs. Kate Duffy of PETAL, 29 Clydesdale Street, Hamilton. She explained that Mrs. Chhokar was upset and anxious about the forthcoming trial. She also had concerns about the way in which Mrs. Chhokar had been precognosed by the defence agents. I had a meeting with Mrs. Chhokar and Mrs. Duffy a few weeks before the trial. I discussed all aspects of the case with her. I apologised and expressed my regret for not having sent her a letter or met with her sooner. I made it quite clear that she could contact me at any time if she had any more concerns. At the meeting it was explained to her that the case was proceeding only against Ronnie Coulter and that a final decision had not been taken against Andrew Coulter and David Montgomery. It was further explained that a final decision would only be taken at the conclusion of the trial against Ronnie Coulter. Throughout the case, Mrs. Chhokar has been receiving support and counselling from Mrs. Duffy.

4. On the morning of Ronnie Coulter's trial I met with Mrs. Chhokar again to try and reassure her about the forthcoming trial. I was able to explain at that stage that she did not need to give evidence. I also briefly met Mr. Chhokar (deceased's father) for the first time. There was insufficient time to talk about the case in detail and I only had time to explain to him that he did not need to give evidence.'

(This was substantially repeated in his letter of 15th May 2000 to the Deputy Crown Agent which was published as Annex A in the Crown Office Internal Report)

16.19 I deal now with each in turn.

Elizabeth Bryce

16.20 Mrs Bryce was a witness to the facts of the murder. Mr MacDonald would have required to precognosce her as part of the preparation of the case whether or not she had been bereaved by Surjit's death. He told me:

"I prepared a letter to send to Mrs Bryce. It was a general letter of introduction explaining that I was undertaking the case and giving my contact number in case she should feel the need to contact me at any time. Due to the pressure of work I did not manage to send out the letter to her before she was due to come in to see me in the office."

16.21 Mr MacDonald's first contact with Mrs Bryce was therefore when she came to be precognosced on 14th December 1998, more than five weeks after Surjit's death. I cannot construe that meeting as in any sense fulfilling the requirement of liaison: it came far too late. The Crown Office and Procurator Fiscal Service Book of Regulations itself states that any interview with a relative should be held as soon as possible. This meeting with Mrs Bryce was driven by the necessity of precognoscing her, not by her entitlement as a bereaved person. Mr MacDonald had himself identified (even if incorrectly) Mrs Bryce as 'next of kin', and by that fact should have seen her as not merely a witness. Even allowing for the pressure of work, which I acknowledge, the letter which Mr MacDonald says he prepared should have been sent, and it should have been sent much sooner.

16.22 Mr MacDonald did not at this point keep records (as he should have done) of his contacts with the bereaved and I do not know the dates or times or frequency of the further meetings which he had with Mrs Bryce. But it is plain from his letter quoted above that these too were driven by his requirements of her as a witness. It may be that these meetings were used as opportunities to bring Mrs Bryce up to date about the case; and I accept that Mr MacDonald explained to Mrs Bryce before the trial that the case was proceeding only against Ronnie Coulter at that stage and that a final decision about Andrew Coulter and David Montgomery would only be taken at the conclusion of the case against Ronnie Coulter. Nevertheless I have to conclude, from the dilatory start to his dealings with Mrs Bryce that Mr MacDonald had not taken on board his responsibility to her as a person bereaved by the murder.

Mr Darshan Singh Chhokar

16.23 Mr MacDonald's letter of 31st August 1999, part of which I have quoted above, states that he had sent a letter to the deceased's father inviting him to arrange an appointment to discuss the case in more detail; but that no reply was received (and no copy of the letter is extant).

16.24 I have tried to establish whether a letter was sent and, if sent, whether it was received. As Mr MacDonald states, there is no copy of the letter on the file. Mr MacDonald told me that Mr Aamer Anwar, speaking for Mr Chhokar after the trial, denied that any letter was ever received. Mr MacDonald said -

"I attended a meeting with the Regional Procurator Fiscal, Mr Brown, and the Chhokar family, represented by Mr Aamer Anwar. ... I ... explained to Mr Anwar that I had sent this letter to Mr Chhokar. I can't recall what Mr Chhokar's reply was but I know that he didn't answer me himself. It was Mr Anwar who said that he had not received a letter."

16.25 I raised this question with Mrs Angiolini, who had looked into it when she prepared her internal report for the Crown Office. She told me -

"When I spoke to Alan [MacDonald] he ... assured me that he had sent the letter to Mr Chhokar. I think I would have to see Mr Chhokar in order to make a judgment, for example, did Mr Chhokar have arrangements for receiving mail etc?"

I do not know that Mr Chhokar did not receive the letter. Mr Chhokar would be the only one who could tell you whether he did in fact receive the letter."

16.26 I agree with Mrs Angiolini, and would have wanted to hear from Mr Chhokar before reaching a conclusion. I do not have the benefit of Mr Chhokar's account of this matter.

16.27 I have also looked in detail into the circumstances in which a letter such as this might have been sent but no copy retained on the file. Mr MacDonald told me -

"I am very careless when it comes to throwing things out... On my desk I had miscellaneous pieces of correspondence in relation to the Chhokar case and I simply tossed them in the bin. ...I received no training regarding filing, but as a Solicitor in private practice my files were always immaculate and meticulously organised. However, when I joined the Procurator Fiscal Service I realised that basically things were just bunged in. That wasn't really down necessarily to a difference in work pressure, that was just the way that everybody operated. If you are the only one filing things properly, then what's the point in doing it. Ideally, of course, copy letters should be put in correspondence files by administrative staff. I can't recall everything that was thrown out, but this letter was not the only thing. ... The only time that I ever felt under pressure in this case was when I was putting it all together, as it was a hard copy¹⁹ case. Normally things are just obtained from the computer and alterations can be made before printing items out. In hard copy cases if alterations need to be made these changes need to be retyped, so it's always easier on the computer. Hard copy cases are not the normal way of dealing with these things now.

The system for sending out letters in the office was that I would write or dictate the letter and send it down to Solemn typing with an instruction slip - one of the typists would then type the letter and I would sign it before it was sent out. Someone in the Solemn typing unit, probably the same individual, will have typed the letters to Elizabeth Bryce and Mr Chhokar senior. I don't think anyone really keeps an eye on correspondence files. Correspondence should generally be put into such files, but I don't know if it's specifically my responsibility to do so. A copy should of course be kept with the correspondence. I would hand the letter down to typing with the file and would expect that the copy would be put into the file by the typist. I myself don't maintain correspondence files, the copying and maintenance of letters is a matter for the typist. All draft copies will go into the correspondence file, however, because you are dealing consistently with so many other things at once sometimes you will be forced to dictate a letter without the file and so when you get the letter back it becomes another piece of miscellaneous correspondence which you then have to attach to the relevant file. I am not sure that's what others did as well, but that's certainly what I did. ... I didn't deliberately throw any letters away, it wouldn't be in my interests to do so."

16.28 Mrs Angiolini told me of her own investigation of this point -

"[Alan MacDonald] said that he had spoken to others in the office including Andy Miller.... Alan claims that he got a style letter from Andy. When I interviewed Andy Miller he said he remembered speaking to Alan and that he may have shown him a style of letter which he had used.

Alan MacDonald indicated to me that it was a hard copy letter. No explanation was given to me as to why the system had not worked. I elicited from Alan MacDonald that he had seen the letter and had discarded it and from the Precognition Officer that such letters were not part of the computer-generated and stored correspondence system."

16.29 I followed this up with Mr Miller. Mr Miller is now a Principal Procurator Fiscal Depute in the Appeals Unit at Crown Office but in 1998 was a Procurator Fiscal Depute in the Hamilton office. He said -

"To the best of my recollection there was no style letter relating to those circumstances. I have no recollection of an office style letter in relation to that situation.

I may have shown Alan a letter from the file in another case which I had precognosced. Whether I did or not, it is likely that we discussed the kind of information which should go into such a letter.

If you dictated a letter you would either leave the tape, attached to the case papers, in your out tray marked to go to the typists or you would take it to the typing pool yourself. You would be given the papers back with a hard copy and a file copy of the letter. The hard copy was then signed by the Depute and this would go into the out tray. Generally speaking, the case papers would come back with the file copy already in the file. Sometimes the papers would come back with the principal copy and the file copy together and the Deputes would personally put the file copy into the file. There is a variable practice. Sometimes only the letter comes back and the papers are sent straight by the typists to administrative staff. A Depute might ask, for example, that the letter comes back for signature but the papers go to someone else for some reason. It is possible that you can get the principal copy back and not a file copy. That would be an oversight and it happens occasionally."

16.30 I would sum up this evidence as follows -

- If this had been a 'computer' case any letter would have been stored on the computer
- This was a 'hard copy' case, for which there was an established and effective procedure for putting copies of letters into the file
- If the letter had been a 'style letter', ie a letter in a stock form, a copy would certainly have been made and retained
- The letter was not a style letter, but one composed for the occasion
- It is possible, but beyond certain proof now, that the copy was misplaced among other ephemeral papers, and accidentally destroyed with them.

16.31 Whether or not a letter was in fact sent, Mr MacDonald believes that he sent one; but in any event he did not receive a reply - and when none came he took no action to follow it up. He told me -

"When I didn't get a reply from the letter I had sent to Mr Chhokar senior I didn't think to chase it up. It just wasn't a consideration, I was too busy getting on with the case. By the time I was ready to send out the introduction letters I was nearly ready to start seeing witnesses. I had between 14 December and Christmas to see witnesses. I took stuff home to do over Christmas and came back to get on with things and the consideration that I hadn't heard from Mr Chhokar senior didn't arise.

Mr [Surjit] Chhokar's widow later explained to me that her father-in-law had been away to India. This explained why he had not been in to see

me."

16.32 Even allowing for work pressures and inexperience, I find this deplorable. Mr Chhokar's son had been murdered. The Procurator Fiscal Service was giving priority to the task of bringing the suspected culprits to justice, and rightly so. But it is expected of a public service in this country that it will have a human face. The Crown Office and Procurator Fiscal Service professes to be committed to "be sensitive and responsive to the needs of the public, including victims, next of kin and witnesses". It would have been an elementary step in that direction to have made sure that the victim's father was aware of who was dealing with the case, what the course of events was likely to be and how he could keep in touch with developments. That was simply neglected. Elsewhere in this Report I consider the question of institutional racism. At this point we see, not institutional racism - I have already shown that Mrs Bryce, who is white, was also neglected in her role as a bereaved person - but institutional insensitivity regardless of race.

16.33 As well as the lack of humanity in considering Mr Chhokar, there were practical disadvantages to him, flowing from the failure of the Procurator Fiscal's Office to communicate with him. If he had been contacted in good time, it would have been possible for the office to explain to him what his position was likely to be as a witness, namely that he was liable to be called, as having identified the body, but would be unlikely to be called in practice. Furthermore, and crucially, it would have been possible to assess, and get his own view on, his ability to deal with correspondence in English, and his possible need for an interpreter if he were called as a witness in court.

16.34 I would add to this last point that these matters could have been dealt with more effectively if contact had been established between the Procurator Fiscal's Office and the police, and specifically with the police Family Liaison Officers appointed for this case.

Mrs Sanehdeep Chhokar

16.35 I have noted above that essential, even if incomplete, information about Surjit's relationship with his wife was to be found in the Sudden Death Report; and that Mr MacDonald overlooked it. He also missed the significance of the fact that they had children, and misread their ages, which were twelve and three. In consequence he formed the fundamentally mistaken view, based on Mrs Bryce's witness statements, that the widow was not to be treated as next of kin and therefore fell outwith his office's responsibility for family liaison.

16.36 This error was forced on his attention on 2nd February 1999, when Mrs Kate Duffy of PETAL telephoned him. She was calling on behalf of Sanehdeep ('Sandy'), and arrangements were made for all to meet.

16.37 I have been given accounts of this meeting by both parties. Mrs Duffy told me -

"I met with Sandy here at our premises. She had got a telephone call from the PF saying that the trial was due to start and that she was going to be a witness. She did not know anything about that. She did not know that she was going to be a witness and was upset. She asked me to phone the PF's office to clarify matters. I think she asked me to phone due to a lack of confidence on her part.

I contacted the PF's office and explained that Sandy had been distressed about the call and would like to meet with the Fiscal. I spoke to Mr MacDonald. I had not met Mr MacDonald before. It was Sandy who told me that Mr MacDonald had been the person who phoned her.

Sandy and I met with Mr MacDonald later that week. Sandy was also concerned about the defence precognition.

This meeting with Mr MacDonald was in February 1999. In this meeting, Sandy asked for contact to be made with her through me.

She asked the PF to contact me. I was happy to be of support to her but I felt there was more that the PF's office could have done for her. I felt that we could have had someone to liaise with her. It is not unusual, however, for me to be a contact point.

Mr MacDonald did apologise to Sandy for not getting in touch earlier. He said that he was not aware of the situation. He did offer that she could contact him at any time in the future.

I think previously there was a lack of contact prior to phoning her to say that she was going to be a witness. Sandy was feeling isolated because no one was keeping her informed. Her oldest daughter was asking her questions about what was happening.

It is fair to say that there was an element of bridge-building on Mr MacDonald's part. He was very genuine in his apology."

16.38 Mrs Duffy also explains the concerns about the precognition which had been taken by the defence -

"We had arranged for Sandy to be precognosced here at our premises. I was present during the precognition along with [a PETAL volunteer]. It was a female Precognition Officer who came and she was asking questions about Sandy and her husband having separated, had Surjit ever abused Sandy etc. Sandy was very upset by this. It was obvious to me and [the volunteer] that she was getting upset during this questioning.

We had not warned her that she might be asked these questions. We told her it would be in regard to the statement she had given to the police. I could not see what relevance there was in these questions.

The Precognition Officer said which firm she was from. I was quite concerned by her manner of questioning. ... [she] was very direct in her questioning of Sandy. I have never seen anyone being questioned in that way. She was severe in her questioning. She did not give the impression that she was listening to the answers which were coming out.

I do not know what caused that severity towards Sandy. I do not know if it was because she realised that Sandy was an Asian woman from a different culture and thought to herself, 'I'm going to get my point across'. I got the feeling that if Sandy had not been coloured it would not have happened in that way. It was almost like the Precognition Officer felt she had to make herself understood.

I have sat in on about 100 precognitions and this one clearly stands out from the rest. I have never seen anyone being questioned in that way. I would say that the Precognition Officer was abrasive."

16.39 Mr MacDonald's account is consistent with this -

"I didn't write a letter to Mr Chhokar's widow because the gist of what Mrs Bryce had told me gave me the impression that their separation was final. It may be false but that was my perception of the relationship between the 3 of them. I did, however, meet with Mr Chhokar's widow a few weeks before the trial. I didn't record the specific date or note anything about it specifically, as at that time I was no longer being meticulous about noting things. It was, however, probably some time in February.

I can't now remember when I was contacted by Kate Duffy, she may know better. I know that I was contacted by her at some point, and that Angela Matthews may have been involved, on behalf of Mrs Chhokar. She was anxious about giving evidence and upset regarding the defence precognition agent asking her personal details

about the deceased. She couldn't see the relevance of this and was worried about what might be asked of her in court. I was surprised the defence would want an interview with her, I was not sure about the merits of precognosing her but realise now that it would have been worth meeting with her. It would have been helpful to both of us if I had spoken with her. I don't think I would have been wise enough to warn her of the defence. Although I had worked as a defence agent I hadn't routinely done so in criminal cases. I don't really see that there was any relevance in precognosing her, she was one of two people who had identified the body, unless of course they had a particular agenda to pursue.

At this meeting we discussed the defence precognition people and their actions and why Mrs Chhokar was upset. I am not sure if I sent a letter to the defence about this, I am not really sure what I could have done. I can't recall whether they had asked her about the sexual habits of her husband. Mrs Chhokar was a bit upset when I was speaking to her about this. I can't remember what it was they had asked her. It was just the nature of it, asking her about Mr Chhokar and what he was like... By the time I found out that Mrs Chhokar was anxious about being a witness and being asked questions about her husband, she had already been questioned by the defence and the precognition had already been completed. I realise that it would have been helpful for these things to have been noted, but it seems slightly academic as I never expected her to give evidence in the trial. I realise that she may have been called as a defence witness, but that could only have been regarding the deceased's character. I realise now that if I had met with Mrs Chhokar I may well have been able to identify these potential problems. But my job was to prove the murder, and I couldn't take statements from everyone. She only identified the body."

16.40 This meeting took place on 12th February. It was clearly constructive and did much to repair the damage caused by the initial failure to identify Sanehdeep as next of kin. However, Mrs Duffy's evidence suggests that even after that meeting Mr MacDonald failed to register critical information about relationships within the Chhokar family, with the result that he mistakenly assumed that information would be shared within the family. His own account appears in his letter of 15th May 2000 to the Crown Agent, which states -

"Following on from that meeting, I assumed that the information given to Mrs Chhokar would then be passed to the deceased's parents. I had no information to indicate anything to the contrary. Only at a later date did I discover that the deceased's parents had effectively cut themselves from Mrs Chhokar and that there was no contact between them at all."

16.41 Mrs Duffy however contradicts this. When I referred her to this passage, she said -

"That statement is wrong. Sandy Chhokar did say that she had no contact with the deceased's parents at the first meeting we had with Mr MacDonald in February 1999. I remember vividly what Sandy said to Mr MacDonald. At this first meeting Sandy did tell Mr MacDonald that the deceased's parents did not even speak to their grandchildren.

Sandy was not part of the Chhokar family. There was never any other member of the family present at home visits etc, only Sandy and the children. If other elements of the family had approached us seeking help we would have got another two volunteers to help them.

Sandy explained to Mr MacDonald her reasons for coming to see him and she also wanted to explain the situation in the family. She told Mr MacDonald that she had her own house, that Surjit had a girlfriend who he had been with for approximately 5 years. She told Mr MacDonald that she had a child of 3 years by Surjit and that their

eldest child was 12 years old. She further explained to Mr MacDonald that Surjit's parents did not talk to her. Sandy loved her husband and was hoping for a reconciliation.

Sandy wanted to make Mr MacDonald aware that any communication he had with anyone else in the family was not being passed to her. She made it clear to the PF that she wanted to be kept informed of developments.

Sandy told me that she had last seen Surjit a number of weeks before his death. I had been told that he had been staying between his flat in Gowkthrapple and his girlfriend's flat.

Immediately after the murder, I was aware that Sandy had been in the family house. She had gone with Surjit's father to identify the body. I do not know if she was staying at that house.

The relationship between Sandy and Surjit's parents was difficult."

16.42 After she had given this evidence to me, Mrs Duffy checked the point again with Sanehdeep and told me -

"I have spoken to Sandy after we met on 31 January 2001. I asked her what was said at the first meeting and she said that the breakdown in the relationship between her and the deceased's parents was discussed at the first meeting. She said she knew this because that is why we went to the Fiscal's Office."

16.43 Mr MacDonald's recollection is that this was not raised until 5th July 1999, well after the first trial, when he received a telephone call from Mrs Duffy. That call followed Mrs Sanehdeep Chhokar's elder child finding out from the television that David Montgomery and Andrew Coulter were to be prosecuted. The Crown Office and Procurator Fiscal's Office had been relying on the assumption that information being passed to Mr and Mrs Chhokar would be passed to Mrs Sanehdeep Chhokar. The telephone call covered several issues. I have a copy of the manuscript note which Mr MacDonald made during the call which in part reads "the family - animosity between in-laws and Sanehdeep. They blame Sanehdeep." On 9th July, Mr MacDonald wrote to the Deputy Crown Agent, Frank Crowe, and told him of the level of estrangement. He also wrote to Mrs Chhokar and Mrs Duffy expressing his regret for what had happened and undertaking to contact Mrs Sanehdeep Chhokar directly regarding any future developments.

16.44 I have sought to identify precisely when Mr MacDonald was first told about the family dynamics; at the meeting of 12th February or during telephone call of 5th July. Mr MacDonald's letter of 9th July to the Deputy Crown Agent, informing him of the family split, would in part support the suggestion that the Crown Office and Procurator Fiscal's Service had until then been unaware of the family circumstances. Against this must be set Mrs Duffy's statement that it was discussed at the first meeting and the recollection of Mrs Sanehdeep Chhokar, the person most affected by all of this. At this distance and with the evidence available to me, I am unable to establish the precise sequence of events. What is clear is that one of the consequences of the lack of communication was that significant distress was caused Sanehdeep and to her elder child (see paragraph 20.11).

17. THE FIRST TRIAL

This chapter deals with liaison with the Chhokar family at the trial of Ronnie Coulter. It examines the reasons for failure in liaison and discusses the roles of the police, the Procurator Fiscal and the Advocate Depute.

The significance of the trial

17.1 For the victim of a crime, the trial is a focal point: it is the point at which they look to see justice done. Homicide however is unique, in that the victim - the person against whom the crime was committed - is dead. For all practical purposes

then the victims are the next of kin. They are sometimes described, aptly, as 'co-victims'. The experience was succinctly described to me by PETAL. PETAL is a self-help organisation dedicated to the support of people who have lost a loved one through murder; and most of its volunteer members have themselves had that experience. They therefore speak with authority on the subject. Their representatives whom I met, Paul Lockley and Kate Duffy, told me -

"There are three stages to the process - trauma, court and grief. The murder of a family member is your worst nightmare. It is the worst thing that could happen to a family. It is the suddenness and unfairness of it all. The family is not prepared for it. It is also out of sequence for many people, that is, they expect to die before their children. It puts the whole of their life upside down. All familiar landmarks in their life have gone. They become almost a non-person. You become the mother of the victim, the husband of the victim etc.

You may have to identify the body. You may also be precognosced. You then have to go to court and listen to the evidence. You are re-traumatised again and again."

17.2 The PETAL representatives explained to me the expectations with which relatives go to court -

"People think that they are going into court to have their say and tell everybody what happened. But that does not happen. They do not even get to say what they want to say as they are restricted in what they say. The whole process becomes very complicated. ...In the middle of it all is the death of a loved one but that seems to be forgotten. The whole thing is about the accused.

People think they go to court to get the truth but they don't get that. They do not even see an adversarial system. They see people who are quite friendly with one another. People also have their own expectations from television. The kind of atmosphere in the court does not seem adversarial. There is a suspicion about deals being done and it is difficult for families to understand. This undermines the confidence families have in the system. ...The overall impact on a family is devastating ... the Advocate Depute should speak to the family and explain what is going to happen. Families see the accused's lawyer going back and forth to speak to the accused. If the PF Depute was coming every day it would be better but ... even if the Advocate Depute was to meet with the family at the beginning to introduce him or herself and to make themselves known to the family. This would humanise the process as there would be some sort of contact with the family. Otherwise it just seems to be mythical people playing roles in court."

17.3 I shall return to some of these points below.

The family: getting to court

17.4 The trial of Ronnie Coulter began on Tuesday 2nd March 1999, before Lord McCluskey, and ended the following Tuesday, 9th March.

17.5 Previous chapters have recorded that Surjit's father, Darshan Singh Chhokar, had enquired of the police about the date of trial, and about interpreters, and that the Procurator Fiscal's Office had failed to establish a liaison contact with him. He was liable to be called as a witness (having identified the body), and presumably received his citation at some time after 28th January, but it seems likely that he arrived at court assuming that he was not to be called as a witness, whereas that could not have been guaranteed until the morning when the trial was due to start. If he had been called as a witness he would have had to manage without the aid of an interpreter, since no provision had been made, nor had any consideration been given by the Crown to the question whether he would need one. At any rate, he did arrive, along with his wife and other family members. The police had not contacted

him to see whether he would need transport to the court; so he had to make his own way there.

17.6 I have also recorded above the contacts between the Procurator Fiscal and the widow, Sanehdeep. She had been called by telephone to be told she would be a witness; was distressed by that; and had sought the assistance of PETAL, which arranged a meeting with Alan MacDonald, the Procurator Fiscal Depute responsible. The police Family Liaison Officer, PC Laverick had tried to contact her before the trial, but Sanehdeep had moved house and had indicated that she wanted future contact to be through PETAL. The police were ready to provide transport, but were told that PETAL would arrange it. Sanehdeep arrived at the trial knowing that she might be called as a witness, and was anxious about that.

17.7 Sanehdeep Chhokar knew before the trial that there would be only one accused standing in the dock, since she had been told that at her meeting with Alan MacDonald. Surjit's parents also had been told by the police in the early stages of the investigation that two of the three men arrested had been set free, but were given no explanation of that at any time. I have found no record that Mr and Mrs Chhokar were given any further information on the matter before the trial; and the press reports suggest that they were not. Mrs Sengha is quoted in The Scotsman of 11th March 1999 as saying -

"We expected three men to go on trial. When we arrived at the High Court and saw just one man on trial we were very confused. We have never been given any explanation why this happened."

During the trial

17.8 Mr MacDonald attended the trial on the first day (Tuesday 2nd March 1999). He had work on another murder precognition to do at the Hamilton office and therefore he had less time than he might have done to do any necessary work for the Advocate Depute, Frances McMenamin QC. Before the trial started, Miss McMenamin got agreement from the defence that Mr Chhokar and Mrs Sanehdeep Chhokar would not need to give evidence. Mrs Duffy told me -

"On the morning of the trial Sandy and I met with Mr MacDonald in a side witness room. He said that he hoped she would not be called as a witness. He then came back and said that she did not have to give evidence. She was very relieved that she did not have to give evidence. She even used the word 'relieved' herself. She was emotional."

17.9 Mr MacDonald also met Mr Chhokar, who was with a male relative, and told him that he did not need to give evidence. The meeting was simply an encounter in a corridor. Mr MacDonald was clearly very busy at the time. He told me -

"I had to deal with availability of witnesses etc. I was just trying to sort out the problems so that the trial could start. I didn't have time to spend more time with the Chhokars. When I met Mr Chhokar senior I shook his hand. I spoke in English, but I don't know if he understood. I just told him that he didn't need to give evidence. I didn't really stop to check whether or not he understood. I was very busy and I know that it's bad, but I had so much to sort out. The most pressing thing was just to get the case started."

17.10 The following day, Wednesday 3rd March Mr MacDonald was called out to deal with a murder at 0500 hours. Because he was tied up with that, he contacted his office and arranged for a Precognition Officer from the Hamilton office, Angela Matthews, who had had no previous involvement with the case, to go to court in his place. He had no further contact with members of the Chhokar family during the trial, and in fact was absent from it entirely after the first day.

17.11 The Precognition Officer attended on the second and third days but not beyond. She told me -

"On Wednesday, I came into the office at 8am. The first person who mentioned the case to me was Pat Andrew, my Higher Precognition Officer. The conversation was along the lines of, 'Alan can't make it to the Chhokar case, he was called out to a murder during the night, can you cover the Chhokar case?' I went straight from the office to the High Court.

When I got there, I was told that the next of kin were already sitting in court. ...I did not speak to the family. I did see them in court. I was to assist the Advocate Depute. I was not given any instructions at all regarding the next of kin. That did not surprise me. If a next of kin is looking for anyone from the Procurator Fiscal's Office, then they could ask any police officer and they would know that it was me. ...I assumed that liaison would have been done in the Chhokar case."

17.12 The Advocate Depute, Miss McMenamin, had only passing and accidental contact with members of the family (I comment on this below); and her Assistant (the 'Crown Junior') Mary Frances Ralston, Advocate, had none. Likewise Ruth Anderson QC, who stood in as Advocate Depute on the last day of the trial, had no contact with the family.

The end of the trial

17.13 On Monday 8th March, Miss McMenamin was made aware that she would be taking a case in Paisley on Tuesday 9th March. She would not therefore be in court for the last day of the trial. She has told me of the circumstances and how she explained the situation to the court -

"On the Monday morning before I went in to speak to the jury, I got information that I was going to have to go to Paisley on the Tuesday ... morning in relation to a case I had been involved with in Paisley in the previous December. ... Ruth Anderson was in the Paisley sitting.

By the Monday, having spoken to the jury in the Chhokar case, my input to the case in any material sense would have been at an end, therefore, technically another Advocate Depute can sit in for the verdict. That has happened in the past and I have sat in on other people's cases.

I was very conscious, as I always am, of my responsibility to stay in court for the defence speech, especially in a murder case. I think it is very important for the public perception and for the perception of the family that you are seen still to be interested in the case.

I explained to the clerk ...and asked him to explain to the judge, that I required to attend Paisley on the Tuesday morning. I also made it clear to the jury at the end of my speech that I was not going to be there on the Tuesday. I did not want them thinking that I just did not turn up. I explained the matter to them as a matter of courtesy because I am very conscious of the public perception. ...Everybody knew, therefore, that I would not be there on the Tuesday. "

17.14 Miss McMenamin explained to me how she handed over to Ruth Anderson QC on the Thursday afternoon -

"The court finished at approximately 3.30/3.45 and I thereafter presented another case to the court in which the accused was pleading guilty. That case probably took about 20 or 30 minutes and I was therefore finished at approximately 4 pm.

When that case was finished there was no-one left in the court. I then went out the side door as the back door to the court had been locked. Colin Armstrong [Clerk of Court] came out with me and as we were coming down the corridor I saw Ruth Anderson who was carrying my papers for Paisley. She handed the papers to me and Colin and I

brought her up to speed with the stage we were at in the Chhokar case.

I told Ruth Anderson that it was a murder trial and that I had left all my papers in court. I told her that the judge had not completed his charge and still had quite a considerable way to go with that. ...I did not leave my own notebooks with my speech etc in it as the Crown Junior would have her notes of the trial. I do not think I told Ruth Anderson anything about the circumstances of the case but I had left all the papers in court."

17.15 Miss Anderson told me of her part in the trial -

"I was in court first thing in the morning when the judge finished his charge and I thereafter did two other cases and then I was in court again when the jury came back with its verdict."

17.16 She told me further that nobody mentioned to her that members of the deceased's family were in court. Her understanding was that there would be liaison with the Procurator Fiscal Service and the police who would be the first point of contact with the family, but that it should not be any part of the Advocate Depute's role to engage with the family. However, she also said -

"I would never refuse to speak to members of a family if that request was made to me through the appropriate channels."

17.17 The jury returned a verdict of guilty to a reduced charge of assault. Miss Anderson did not move for sentence and the accused was therefore free to go. At this point Lord McCluskey addressed remarks to the jury. I have been provided with a transcript of what he said.

"Ronnie Coulter, for reasons that are entirely incomprehensible to me, the Crown has chosen not to move for sentence ...the Crown chose to put you alone in the dock. In the light of the Crown's decision not to ask me to impose a sentence, I have no power to impose a sentence. You are, therefore, discharged from further attendance at this Court.

Ladies and gentlemen, a young man was murdered in a public street by one or more of persons whose identities have been freely discussed in this case. For reasons that I cannot begin to understand, one, and only one, of those persons was placed in the dock and charged with the crime. That is a matter which, to me, as a judge of considerable experience, passes my understanding altogether. I cannot begin to understand how it happened and I shall be taking steps to see if I can discover what the reason was for the course that was taken. Unfortunately I know no more than you do about that particular background.

The Crown chose not to move for sentence, and no doubt that was because the accused, having been found guilty of what was a simple assault, and because he had already spent some 3½ months or thereby in prison, it would be excessive, in the Crown's view, to move for sentence. Whether that was a right decision or not is not a matter for me to comment any further upon.

In the meantime, I have to discharge you from further service, you're free to leave".

17.18 Miss Anderson was present during Lord McCluskey's comments, and left immediately afterwards to telephone the Crown Office about them. She had no contact with the family.

Commentary

17.19 The above narrative can be summarised very briefly. The family of the murdered man attended the trial, which lasted six days, and beyond fleeting and

hasty contacts on the first morning, when they were informed that they would not be called as witnesses (and could therefore watch the trial), and a brief greeting when the Advocate Depute happened to pass them (see paragraph 18.38 below), had no contact with the authorities and no explanation of what was going on. When the trial closed, with a guilty verdict on a reduced charge, no sentence passed, and the accused set free, there was nobody - apart from the judge in his public remarks - to give them any explanation of what had taken place or what, if anything, might happen next. Self-evidently, this is utterly unsatisfactory.

17.20 What should have happened? I shall comment on each party in turn - the police, the Procurator Fiscal, the Advocate Depute - and finally on what the judge said.

The police

17.21 The police are not responsible for the trial, and their Family Liaison Officer role is almost entirely reactive - to provide new information when there is information to give, but otherwise simply to respond to requests and enquiries from the family. I have examined in earlier chapters some shortcomings in liaison between the police and the Procurator Fiscal, particularly over the question of an interpreter, but when the day of the trial comes, the work of the Family Liaison Officer would normally be virtually complete.

17.22 Only two aspects of police work in relation to the trial were mentioned to me in evidence: provision of **transport to court** for the family, and **familiarisation visits** to court for them; and I shall deal with them briefly here.

17.23 PC Laverick was instructed by DCI Michael to contact the Chhokar family to arrange transport and discuss any concerns. DCI Michael explained to me -

"I see transport as a PF/Crown Office issue. I recognise that the police have been doing it on an ad hoc basis for years. This is due to the goodwill of police officers where, for example, the witnesses have no car or are in financial difficulties. It is also important to know when a trial is going ahead. We do not always get a lot of notice of that and therefore there is not a lot of time to organise things like transport for the family."

17.24 PC Laverick was also instructed by the Senior Investigating Officer to treat Sanehdeep as the primary focus for family liaison since she was the next of kin. PC Laverick in turn established that PETAL had made transport arrangements for her. I have no evidence that transport arrangements were made by the police for the extended family, who by this stage appeared largely to have dropped their contact with the police.

17.25 Court visits for the next of kin can assist in understanding the procedures and make the environment less alienating. PC Laverick explained that she did not need to arrange a court visit for Sanehdeep Chhokar -

"Court visits would have been done by PETAL. If PETAL hadn't been involved, however, I would have done that for Sandy. I have done visits for children in the past. I knew that PETAL had taken Sandy on a court visit prior to the trial."

17.26 She went on to say -

"There was nothing to stop me explaining to the family about the court process. There were no cultural differences which would prevent me from doing this. I may have done it in the Chhokar case but I don't remember. With hindsight, I would do that now. I would want the family to be familiar with the court. It is all part of customer care."

17.27 PETAL also explained to me their approach to court visits -

"If there is a trial pending, we would organise a pre-court visit by contacting the court social worker and thereafter showing them around"

court. We try to take them into the court that the trial is likely to be in. We show them where the witness box is, where the jury sits, where the Crown and Defence lawyers and the judge will sit. We make them aware that there will be productions sitting on the table. If they are being called as a witness we will try and reassure them that at any time they need a break, a drink etc that they should let the judge or court usher know. It would also depend on what the witness is being called to speak to, for example, identification of the body or witnessing the murder itself."

17.28 No court visit was offered to or requested by the other members of the family.

The Procurator Fiscal

17.29 At the beginning of this chapter I quoted some comments given to me by PETAL about what a family attending a trial such as this is likely to expect to see and do - *'to have their say and tell everybody what happened ... to get the truth ... an adversarial system ... but they don't get that ... They see people who are quite friendly with one another'*

17.30 Some of these expectations will be unrealistic: the prosecution is conducted in the public interest, which will not always and necessarily coincide with the private interest of the bereaved family; the accused too has a right to a fair trial; and the lawyers need to be on good professional terms so that they can do necessary business together, for example in agreeing not to call family witnesses. Nigel Emslie, QC, Dean of the Faculty of Advocates, giving evidence to me, put it thus -

"The Advocate ... has a professional duty of courtesy and respect towards colleagues and other officers of the court. The Crown has a duty to be independent, dispassionate and open, and to share information with the defence. This may sometimes involve direct personal contacts in open court ... In the name of the Crown he represents the interests of the community at large. He does not act on behalf of a live victim, or on behalf of the friends or family of a deceased in a fatal case".

17.31 The whole process of a trial, to anyone who has not seen it before, can be difficult to follow, or even unintelligible. The interests of justice are not served if the family of a murder victim cannot perceive justice being done; and common humanity demands that they be given some clue to the riddle. The person best able to explain what is going on is the person from the Procurator Fiscal's Office who has had responsibility for precognosing the case. Liaison with families takes time, and therefore carries costs, and these are not to be brushed aside; but the fact is that the Procurator Fiscal Service is the best source for information and explanation.

17.32 I note at this point that the Crown Office and Procurator Fiscal Service have now addressed these matters through the Victim Liaison Office scheme now under development. I look at that in detail in chapter 27. However, it became clear to me that, at any rate at the time of this trial, there was no system in the Procurator Fiscal Service for providing family liaison at a trial; nor apparently were there resources to provide an adequate presence throughout a trial.

17.33 I was given a very helpful explanation, by Angela Matthews, the Precognition Officer from the Hamilton office who attended the second and third days of the trial, of how she normally approached her task in regard to family liaison at court -

"Precognition Officers certainly think that it is good for the precognoscer to be at court for the trial. It provides continuity. It means there is a friendly face and a face that the victims know. We have thought it was very important. We think it is important for the family to have that continuity. It also helps us because we know that we have done our absolute best for that family. We can also explain to the

family what is happening in court. For example, if something is going to be heard outwith the presence of the jury, I will indicate to the next of kin that I will come out and speak to them once the decision has been made. Not being a lawyer, I think Precognition Officers can explain in less legal terms what is happening and that the family might understand that better. I would keep it very basic. I would tell them that the judge swears a witness in, the Crown then asks the first questions, the defence then asks questions, the judge may ask questions and then the Crown will get to ask anything else. I do not tell the families about verdicts. I have never thought about it. It might give us problems. For a lot of people something horrendous has happened to them, they then have a court case. To start telling them that the person may be found guilty or not guilty is too much for them to cope with. What I do tell them is that our job as the Crown is over when we get the case to the jury. I ...say that the verdict is a matter for the jury. ...Often a next of kin will ask, will he be found guilty? I would say that I don't know. I would say that there appears to be sufficient evidence but that the jury will make their decision."

17.34 This was a person with nearly 30 years' experience in the Service, who drew her practice not merely from a handbook or formal training but from the human skills she had acquired through experience. Mrs Matthews did not have the opportunity to provide such service in this case, having been called in without notice and having no previous knowledge of the case.

17.35 By contrast, and unfortunately, the Procurator Fiscal Depute assigned to the Chhokar case, Alan MacDonald, had no experience (he had never been in the High Court before this trial), had been given no instruction at all as to his role at court, whether in relation to the family or otherwise, and was burdened with other duties on other cases, including - as noted above - an out-of-hours call to another murder in the early hours of the second morning of this trial. He told me -

"I had never previously attended the High Court during my time as a Fiscal Depute. I don't know who instructed me to attend the trial. I can't recall if Maureen [Sinclair] specifically said I was to cover it. I just thought that was all what being a Fiscal was about - going to court was just another thing you did. I can't recall specifically what 'covering the case' meant. I had ideas of what I would do in my own mind. You don't get any training. That's just the job. ...I was under the impression that I was there primarily to assist the Advocate Depute. I was either told that or I heard others talking about it. I wasn't given any instructions or training in relation to family liaison at the High Court. The first day of the trial was a bit of a blur. I got there late, I had been trying to do something with another murder precognition."

I don't really think there's any specific policy about people attending Court during trials. If you had a murder trial, you could cover it for more than just the first day if you wanted to. It really just depended on what else you had to do. I just assumed you covered the whole thing and would go until you got called back to the office."

I don't recall whether I was told to go to the High Court for the first day or to cover the whole of the case. I don't think there was a specific time frame put on it. I learnt afterwards that you would usually go for the whole of the Crown case. I don't know how long I thought I was going to be there, I knew I had other cases to do. Even if you had a case at trial, you would still get other duties allocated to you on the rota. It's not as though you get a murder case and so you have a free week on the rota. You would need to ask to be excused from the rota and others would cover your work."

17.36 The primary task of the Procurator Fiscal Depute at a trial is to assist the Advocate Depute. I asked Miss McMenemy about the service she had received at this trial and she was critical. The detail of that is not within my Terms of Reference, so I shall not go into it, but it confirmed the impression of someone who

had been sent to court without any kind of instruction as to his role there. So far as providing any liaison with the family was concerned, one can only say that it was perfunctory at the beginning and ceased altogether after the first two days.

17.37 In saying this I do not primarily criticise Mr MacDonald, whom I found to be an honest and hard-working man, but the system of management which could send anyone so painfully unprepared into such a critical situation. What is apparent, with hindsight, is that the kind of advice which would have been useful to him was available within his own office, from Precognition Officers such as Mrs Matthews. I have discussed this in the previous chapter.

The Advocate Depute and the Advocate Depute's Assistant

17.38 Miss McMenamain told me of the circumstances of her encounters with the Chhokar family during the trial -

"I came out of the back door of the court one lunchtime with papers and I saw Mr and Mrs Chhokar and who I thought was their daughter. I think they were waiting for someone and I nodded to them.... but I did not say anything. I did acknowledge them and the daughter smiled back. ...Mrs Chhokar's eyes were downcast. They were standing with their backs to the wall and the impression I got was that they were waiting for somebody. I was going up the stairs to continue my preparation of the case. I was by myself at the time.

I think my next contact with the Chhokars was on the Thursday. I had parked my car in the car park and was heading into court. I was not wearing my wig or gown. Mr and Mrs Chhokar were leaning against a wall outside the court. I was aware of the fact that I hadn't spoken to them at all during the course of the trial. I stopped and said, 'How are you coping with everything?'. I do not remember them saying anything in response, but they nodded to me. I do not know if they recognised me without my wig and gown. I did not know that they needed an interpreter. I got no answer at all from them and my impression was that perhaps I was intruding on their grief. I was aware that there is a culture now to make sure there is liaison with families but I had never been involved in a Sikh death before and felt I was perhaps being intrusive. I thought that maybe they did not want to speak to me. This is based on ignorance about whether it is not part of the Sikh religion to discuss the death with somebody who is not of the same religion."

17.39 These were chance encounters, and when I asked Miss McMenamain why she had spoken to the family her reply was "*sheer human decency*". I asked her whether it was her normal practice to speak with the family during a trial. She told me that she would sometimes do so, in a murder or rape case, if it looked likely that the case was not going to prove or if she was going to have to accept a reduced plea; but would only do so at the request of the family, and only in the presence of the Procurator Fiscal, Precognition Officer or representative from Victim Support.

17.40 Miss McMenamain also told me that she had had no request from anybody in this case that the Chhokar family would like to speak to her. She also confirmed that she did not see it as the role of the 'Crown Junior' to take any part in family liaison, but that contact should always be through the Procurator Fiscal or Victim Support.

17.41 Finally I asked her what her practice was in relation to explaining a verdict. She said -

"I would at least have given the family an explanation afterwards if I had not done it prior to the verdict, i.e. discuss the possibilities as the judge would have explained these to the jury. I would have felt beholden to the family. I have done it in the past, that is, spoken to a family where the verdict has come back so differently from the charge. I think the family would look to the Advocate Depute to provide an explanation for that. If not to the Advocate Depute, they would look to

someone who knows or someone who could speak to the Advocate Depute."

17.42 Miss Anderson, who took over from Miss McMEnamin on the last day of the trial, also told me that any contact which she would have with a family at a trial would be in response to a request passed through the Procurator Fiscal's Office. Since there was nobody from that office present on the day in question, she left court without speaking to the family.

17.43 I do not consider that the Advocate Depute should have any direct contact with relatives or next of kin while a trial is in progress. The Advocate Depute's duty is that of a public prosecutor - as described in the evidence from the Dean of the Faculty, at paragraph 18.30 above - and that risks being compromised if there is contact with the relatives of a victim, and may also be misleading to them. The Advocate Depute should already have been briefed about the impact of the crime, from information obtained at precognition; and explanation of procedures and tactics in court should be provided by the Procurator Fiscal or Precognition Officer or, under the scheme now being developed, by the Victim Liaison Office.

17.44 The Advocate Depute's Assistant (the 'Crown Junior') has a critical role in the High Court, namely to follow the Advocate Depute's instructions during the course of a criminal trial. The Crown Junior is not a 'mere' note-taker. The accuracy of the Crown's notes during a criminal trial is a matter of pre-eminent importance. The Crown Junior is also invariably requested by the Advocate Depute - with little notice - to conduct complex legal research during the course of a criminal trial, and may on occasion be asked to examine a witness in Court. The Crown Junior will often be involved in the preparation and drafting of minutes for presentation to the court or jury.

Conclusion

17.45 Thus it came about that the Chhokar family were left at the end of the trial to go home, having seen the accused set free, with no word of explanation from anyone on the prosecution side. Whatever the legal merits of the case - and they are not within my remit - that was utterly unsatisfactory. It was inhumane; and it was a disgrace to the Scottish criminal justice system.

17.46 There is no one individual to be blamed for this debacle. It was a failure of the system. As it happened, the case concerned the murder of an Asian man by a group of white men, and the publicity which has followed it has highlighted that fact. That is certainly a relevant feature of the case - for example, if Mr Chhokar had been called to give evidence, no consideration had been given to the provision of an interpreter - but I do not find that it was the central feature. It is perfectly clear to me, from all the evidence I have been given, that if the victim and his family had been white, they would have suffered the same treatment. The mistakes over identifying the next of kin, the failure to make contact with the family and the neglect of them at the trial - these things could have happened to anyone. For all I know, they have happened before, perhaps many times. Institutional racism in the system would be bad; but what happened was even worse, since it could have happened to anyone, regardless of race.

17.47 There is also a wider issue to be addressed here, namely the interest of the next of kin in a homicide case. The events at this trial constitute, in my view, a self-evident case for the family being given at least an authoritative explanation of what is going on. However, the question arises, whether explanation is enough. One of the concerns of victims - that is to say, the next of kin of someone who has been murdered - is, as I quoted at the beginning of this chapter, that they have no 'voice', as victims or co-victims, in the trial. That raises a series of questions, which I shall consider in Chapter 27.

18. REACTION TO THE TRIAL

This chapter deals with the immediate aftermath of the first trial, when the Chhokar Family Justice Campaign was formed and became active, and the family and Campaign representatives had meetings with the Regional Procurator Fiscal in Hamilton and the Deputy Crown Agent in Edinburgh.

The judge's comments and the Lord Advocate's riposte

18.1 Lord McCluskey's comment at the end of the trial (quoted at paragraph 18.17 above) was widely reported in the media, as was the equally forthright reply from the then Lord Advocate, Lord Hardie, reported on 11th March -

"It is a matter of regret that a judge of such experience should make such public pronouncements in ignorance of the background to this case. Such uninformed and ill advised remarks do not serve the interests of justice and fail to appreciate the respective roles of the Lord Advocate and the Judiciary. Prosecution decisions fall within the independent exercise of the discretion of the Lord Advocate, who is not accountable to the High Court of Justiciary or to any of its judges for such decisions. From the preliminary report given to me I am satisfied that the action taken in this case was the most appropriate in the circumstances and the reasons for it are sound."

18.2 The consequence for the Chhokar family was dramatic too. Having been unknown to the public and largely ignored by the prosecuting authorities during the trial, they were suddenly propelled into full public view, and their comments reported in the press. These first comments are significant in relation to what was to follow -

On 11th March Surjit's father, Darshan Singh Chhokar is quoted as having said: *"Someone killed my son. Yet whoever it is they are not in jail."*; ²⁰

and Surjit's sister, Manjit: *"Within a week the police arrested three men for this crime, but it looks like something has gone wrong in the court system. We expected three men to go on trial. When we arrived at the High Court and saw just one man on trial we were very confused. We have never been given any explanation why this happened. The judge is obviously concerned and it is the right thing to do to have an investigation into this."*

18.3 These immediate reactions from the family emphasise injustice and a failure to explain to them what was going on. I cannot believe that this very public disagreement between the trial judge and the Lord Advocate can have brought any comfort to the Chhokar family. They were in any case dismayed at the outcome of the trial: the judge's remarks reinforced their feeling that justice had not been done - Mrs Sengha's comment confirms that - and the Lord Advocate's sharp response gave them no reassurance.

18.4 The remarks of Mr Chhokar and Mrs Sengha do not mention race as an issue; but in the climate of the time - the Macpherson Report on the Stephen Lawrence case had very recently been published - others did comment on it. The same article reported -

"Aamer Anwar, a race campaigner who was once beaten up by Strathclyde Police officers, described the Chhokar case as *"totally unacceptable. This shows that the Crown Office is in a total mess, and sends out a green light to racial attackers. Stephen Lawrence's attackers are still out on the street and so are the killers of this man."*

Race campaigners were angered by the Chhokar case. Mick Conboy, the policy officer for the Scottish Commission for Racial Equality, said it was bizarre and alarming in the week after the Stephen Lawrence Inquiry Report. *"It is appalling to say the least that you have got an Indian man dead, attacked by three white guys, and no-one is being held responsible for it. There is a tremendous amount of work to do in Scotland to ensure that our criminal justice system is up to scratch in recognising and dealing with racially-motivated crime. How is the black community supposed to have any confidence in justice?"*

18.5 The race theme was picked up by the family the following day -

"We are obviously asking ourselves if the fact that my brother was Asian is the reason why just one out of the three men who were charged with his murder were on trial," Mr Chhokar's sister, Manjit, 37, said. "Did the Crown Office not bother bringing three men to court because my brother was a Sikh? Was he less important? It sounds unbelievable, but the Stephen Lawrence case has shown that things like this do happen."

18.6 On 15th March the Chhokar Family Justice Campaign was formed and on 17th March it issued a letter to MPs seeking support for the campaign and its aims. The letter (reproduced at Appendix 3) criticised the conduct of the case and the approach to racial motivation; accused the criminal justice system in Scotland of institutional racism; and pointed out that "no effort has been made to explain the decisions of the Crown Office, and the Lord Advocate refuses to disclose the reasons for the actions of the Crown".

18.7 Meantime the Lord Advocate took action. Lord Hardie told me -

"I did not see the papers until after the acquittal in the first trial. I doubt if either of the Law Officers saw the papers prior to that. The first thing I knew about any difficulty was when Lord McCluskey made his pronouncement in court. I was in London at the time and received a call from Crown Office. ... I asked for a verbal report at that time from a senior official in Crown Office and this provoked my response to Lord McCluskey's comments."

18.8 He also called for an immediate written report from the Advocate Depute who had taken the case in court (this was submitted to him on 12th March) and for a report from the Hamilton Procurator Fiscal's Office. He recognised that there had been a failure in family liaison -

"As I understood it there was guidance to Procurators Fiscal that they should keep relatives informed of proceedings. My impression was that in general this did work. In the Chhokar case, it did not happen. It was clear that there had been a series of events which had prevented it. Mr Chhokar was in India at some stage and there was also a question of whether he understood what was happening. That question had not been addressed by anyone in the Procurator Fiscal's Office."

We ought to have been more careful to explain to the Chhokar family the procedures and what was happening. There ought to have been someone there from the Procurator Fiscal's Office to explain what was happening, for example, at the end of each day's proceedings. Someone ought to have taken this family aside and explained to them what precisely had happened. I think that is where we failed."

18.9 The Lord Advocate also arranged a meeting with Dr Moussa Jogee, Deputy Chairman of the Commission for Racial Equality, and the meeting took place on 19th March.

Meeting with the Chhokar family

18.10 The Lord Advocate's instruction that the local office should meet the family was conveyed in a letter of 17th March from Janet Cameron, Head of the High Court Unit, to Douglas Brown, the Regional Procurator Fiscal. It stated that -

"members of the deceased's family should be seen and it should be explained to them that, as had always been intended, following the disposal of the proceedings against Ronnie Coulter, further investigations will be carried out. The family will no doubt be interested in the reasons why all three of the accused who appeared on petition were not indicted for murder. The families should be reassured that the case was considered carefully by Crown Counsel who, on a

professional assessment of the evidence, took the decision that it was appropriate at that stage to indict Ronnie Coulter only."

The letter also said that the Lord Advocate wished the Regional Procurator Fiscal to review the standard of precognition work and the manner in which liaison with the relatives was handled.

18.11 Alan MacDonald wrote immediately to Mr Darshan Singh Chhokar and to Mrs Sanehdeep Chhokar offering them a meeting on 19th March. It was a very brief letter -

"Dear Mr Chhokar

DEATH OF SURJIT SINGH CHHOKAR

The Regional Procurator Fiscal, Mr Brown, would very much like to meet with you and any members of your family, if convenient, on Friday, 19 March 1999 at this office at 2.30 pm to discuss the death of Mr Chhokar and the recent High Court trial.

I look forward to hearing from you.

Yours sincerely

Procurator Fiscal Depute"

18.12 A letter in identical terms was sent to the widow, Sanehdeep Chhokar. She replied and arranged a meeting for 24th March, but later called off the appointment.

18.13 The meeting with the family duly took place on 19th March. It has been described to me by both of the officials who took part, namely Mr Brown, Regional Procurator Fiscal and Mr MacDonald. Mr Brown told me -

"I had a general chat with Janet Cameron about the preparation of the case, Lord McCluskey's outburst and how we should take things forward. I was instructed to see the family. The RPF [Regional Procurator Fiscal] would generally only get involved in this way if there was a particular issue of concern to Crown Office and they wanted it dealt with under the supervision of an RPF.

I met the Chhokar family along with Alan MacDonald. Mr Chhokar Snr, his wife and Aamer Anwar were present. There was also a woman with them and I understood her to be the solicitor. I met with them in my office here at Hamilton. The meeting was set up through Alan MacDonald. He wrote to the Chhokar family. I discussed with Alan what the meeting was to be about prior to the meeting taking place.

Mr Chhokar did not speak in English. Aamer Anwar was interpreting. Occasionally when I was speaking, Mr Chhokar apparently understood my questions and provided a response in his language to Mr Anwar.

Mr Chhokar's main concerns seemed to relate to the trial and the outcome of it. He wanted to know why Ronnie Coulter had got off. He wanted to know why that happened and he also wanted an explanation as to why the Advocate Depute had not moved for sentence. I explained that the verdict was a matter for the jury and I couldn't comment on it. As far as the Advocate Depute not moving for sentence was concerned, I said that I would raise that matter with Crown Office. It was a reasonably amicable meeting and the Chhokars seemed a reasonable family.

Mr Anwar commented about the lack of liaison with the family. He said there was no liaison in the court and the relatives were left wondering what had happened. There was no mention of race.

Mr Anwar concentrated on the trial and the lack of liaison there. He may also have raised the fact that there had been no information given to the family in relation to only Ronnie Coulter being indicted.

The Chhokar family was not critical of the police but were critical of the Crown and the prosecution service in deciding to prosecute only Ronnie Coulter and also in relation to the liaison aspects. The Chhokar family lacked understanding about what was happening as a result of a lack of information. In particular, they could not understand why we only prosecuted Ronnie Coulter in the first instance.

I am aware of the letter [the Chhokar Family Justice Campaign letter dated 17th March 1999] but I did not see the letter before I met the family in March 1999.

In relation to the Advocate Depute not moving for sentence I explained that I did not know the reason for that in this case. I further explained, however, that it is not unusual in murder cases where an accused is convicted of a much lesser charge for the Advocate Depute not to move for sentence.

Mr Anwar told me that the family wanted a full transcript of the trial. He asked for the transcript to be in English. I told him that whether the transcript would be authorised would be a matter for the Clerk of Justiciary. Mr Anwar then raised the issue of payment. I explained that Crown Office would not normally pay for transcripts but undertook to raise it with Crown Office. I did this because of the fact that the case was so unusual that I could not rule out that Crown Office would not pay for the transcript, though I thought this unlikely."

18.14 Mr MacDonald described and commented on the meeting as follows -

"I recall writing to Mr Chhokar and the deceased's widow on 17 March 1999, inviting them to attend the meeting with the Regional Procurator Fiscal and myself on 19 March. It was a brief letter. I didn't get a reply. I sent the first letter and got no reply, I then sent a second letter and got no reply, but they turned up at the meeting. I don't know what happened to the letter. I don't recall if a letter was also sent to the widow, but if it's in the file then I must have done. I don't recall why they were all invited to the one meeting. Inviting two different factions to the one meeting never dawned on me at the time because I did not know that there had been a falling-out.

The people present at the meeting were myself, the Regional Procurator Fiscal, the deceased's father and sister, Aamer Anwar and a female solicitor.... Mr Chhokar Senior's wife was also there.

The particular questions which were asked were why only one individual was prosecuted, why no motion was made for sentence and concerns about the level of contact with the family pre-trial. ... I think there was a later meeting with Mrs Chhokar on 24 March, but I was not there.

The Regional Procurator Fiscal explained that the decision to only prosecute one of the accused was based on the evidence and the continued investigation of the other two accused. I don't recall whether a timescale was given for the conclusion of this further investigation, but it was discussed. We just said that the case was ongoing and that the evidence couldn't be discussed. This wasn't really put into simple language, but we were dealing more with Aamer Anwar than the Chhokars and Aamer Anwar was interpreting. A point would be raised and sometimes an answer would be given and Aamer Anwar would interpret. Other times it would just go back and forth between us and Aamer Anwar. Sometimes he'd then go back and fill the family in. Maybe an official interpreter should have been present at the first

meeting, but it didn't occur to me to have one and no-one else suggested it.

If Mr Anwar was acting as solicitor then what about the role of Ian Smart, solicitor? They can't both have been acting.

The family seemed to accept that there could be no prejudice in relation to the ongoing proceedings and that certain things couldn't be mentioned at the press conference. Aamer Anwar accepted this on their behalf. Aamer Anwar appeared to accept it and the family appeared to accept it.

Aamer Anwar asked about the decision not to move for sentence - anything asked was raised by him. The Chhokars said very little. I think Mr Chhokar spoke and responded to Aamer Anwar's interpreting. I don't think a satisfactory answer was given for the fact that there was no motion for sentence. A legal explanation was given, namely regarding the Advocate Depute's discretion. I think it would be reasonable for the family to wonder why that happened. I don't know if they were influenced by Lord McCluskey's comments, that may be speculation. I don't know whether the Regional Procurator Fiscal asked if they were satisfied with the answer.

I don't think that the family walked out of the meeting satisfied, they still felt that clarification was needed."

18.15 Mr Brown's record of the meeting is contained in a letter to Frank Crowe, Deputy Crown Agent, on Monday 22nd March:

"I confirmed that the decision to prosecute only Ronnie Coulter initially was made on the basis of Crown Counsel's assessment of the evidence and that it had always been intended to investigate further in relation to the other 2 accused after the disposal of the case against him. I indicated that these further investigations may be concluded within a month and undertook to write to them at that stage to confirm the position.

I explained to them why I could not discuss the evidence and they appeared to accept this though naturally enough they had difficulty in understanding the outcome of the case against Ronnie Coulter. They accepted that every effort should be made to avoid doing anything which could prejudice the possibility of further proceedings in the case and undertook to bear that in mind at their press conference on Monday, 22 March.

As regards specific requests, they said that they would like a transcript of the evidence at Ronnie Coulter's trial in order that they would have a full picture as to what was said. They had obviously made some enquiries about this already and said that they had been quoted a figure of £500 a day for such a transcript. This was something they could not afford and they suggested that the Crown should pay. I told them that ultimately it was a matter for the Justiciary Office as to whether a transcript would be issued and that I thought it unlikely that this request would be granted not only because of the substantial cost but because the Justiciary Office only issued transcripts for certain limited purposes and did not generally do so in circumstances such as these. I did however undertake to pass the request on.

They also wanted to know why the Advocate Depute did not move for sentence. I explained that where an accused has been remanded in custody pending trial and is convicted of a much reduced charge the Advocate Depute has a discretion not to move for sentence but they were clearly not satisfied with this answer, no doubt being influenced by Lord McCluskey's comments. I accordingly said that I would seek an answer to this question.

They also raised the point about keeping relatives advised. Fortunately Alan McDonald, the depute who precognosced this case, did communicate with the relatives and in particular with Mrs Chhokar, the deceased's wife, who I am seeing on Wednesday 24 March, and their criticism seemed focused on what happened at the end of the trial when they were left wondering what had taken place and no-one said anything to them. This did not appear to be something for which they wished an answer and was rather said as a criticism. I told them that it was our policy to keep relatives advised."

18.16 Mr Brown followed up the meeting with the Chhokars by a letter of 1st April to Mr Chhokar. I deal with that below.

Commentary

18.17 This was a crucial meeting. Great damage had been done by the failure of family liaison before and during the trial, and this was the first opportunity to start to repair it. The way in which the meeting was convened and conducted reveals how little idea the Hamilton office had, even at that stage, of how to deal with a bereaved family -

- The style and presentation of Mr MacDonald's letter of invitation is heartless. It is a style in which an official might appropriately write to a citizen about, for example, the payment of a licence fee. It is not the style in which anyone should write to a father about the death of his son.
- The letter did not convey that the meeting was being called on the personal instruction of the Lord Advocate. Mr Brown's evidence testifies that it was an unusual step even for the Regional Procurator Fiscal to take part in a meeting such as this. Nothing seems to have been done to convey to the family that their concerns were now being taken seriously at the highest level.
- Mr MacDonald's assumption that Mr Chhokar would reply to a letter was naïve - the same mistake which underlay his original failure to make contact with the father. Lawyers and other professional people are used to doing business together by letter; but many citizens are not, and are unpractised and nervous about committing themselves to writing. In this case, there was also a question about whether Mr Chhokar would fully understand a letter written in English; and even more whether he would have been able to compose a reply in English.
- No thought had been given as to whether an official interpreter would be needed. This contrasts sharply with the police in their first contacts with the family, and was a basic error, as the following analysis of the meeting will show.

18.18 Mr Brown considered that it was an amicable meeting, but the family found it unsatisfactory, principally because it failed to give them answers to their questions. These were, as related by Mr Brown -

- Why Ronnie Coulter had got off;
- Why the Advocate Depute had not moved for sentence;
- Why only one man was prosecuted; and
- Whether the family could have a transcript of the trial.

18.19 When I met the Chhokar family and Mr Anwar on 16th February 2001, Mr Anwar had the following to say about this meeting -

"You also have to look at the attitudes within the Fiscal Service. When we first had a meeting with the RPF and the Depute Fiscal at

Hamilton, the attitudes left a lot to be desired. There was complete arrogance on the part of Douglas Brown. No answers were given to the family."

18.20 In similar vein a report in The Observer of 21st March 1999 states,

'No one explained why only one was in the dock. A meeting was held with prosecution officials on Friday, but they were unable to explain that, or why Coulter was not sent for sentencing.'

18.21 I have to say that I am not surprised that the family felt the way they did. Looking at their questions in turn I comment that -

- The family were given some explanation of the role of the jury in finding the accused guilty on a reduced charge. The explanation may or may not have been intelligible and acceptable to them; but since there was no official or independent interpreter present the officials could not know whether the answers they were giving were adequate.
- Mr Brown's letter to the Deputy Crown Agent records that he was unable to answer the question about not moving for sentence, except in vague terms; but he did give an undertaking to seek an answer. He subsequently sent a holding reply on this point, in a letter of 1st April to Mr Chhokar. I shall deal with that letter below.
- The central question in this meeting was why only one person had been prosecuted. The family had heard the trial judge in his closing remarks voice what they themselves were thinking; and the Lord Advocate had specifically instructed his officials to deal with it for the family. Mr Brown summarised the response he gave, in the first paragraph of his letter to the Deputy Crown Agent, quoted above. Mr MacDonald's observation was that no satisfactory answer was given. The main focus of Mr Brown's presentation seems to have been on the need not to compromise evidence which might be used at a later trial; and he was of course perfectly correct to emphasise that. However, the family were clearly not satisfied with the answer to their own question, for they continued to raise it repeatedly afterwards.
- The question of a transcript was dealt with in subsequent correspondence.

18.22 This would have been a difficult meeting to handle in any case, and it is unlikely that, however it had been handled, the family could have been given full satisfaction. However, the officials compounded the difficulty for themselves by failing at the beginning of the meeting to establish who the other persons present were, and in what capacity they were present. There were two persons who were not family members: Mr Anwar and an unidentified woman, who was assumed to be a lawyer. It was of course perfectly correct to admit them to the meeting, if the family wanted them there: the family was entitled to bring with them such friends and supporters as they felt they needed. But when strangers are admitted to a meeting it is not discourteous, and may be essential, to ask them to identify themselves and to state in what capacity they are attending. This was a failure of normal meeting etiquette, at the very least; but it was also a professional failure, considering that the hosts were lawyers and the business was legal, to establish whether the visitors were legally qualified or lay. Mr MacDonald at least was formulating the question in his mind - 'are you acting for the family?' - but the question was not asked, and confusion ensued.

18.23 This failure was compounded in the case of Mr Anwar, in that he was accepted as an interpreter, but was also, as the hosts quickly discovered, rather more than that. Mr Anwar was, and is, a campaigner. The family was, and is, fully entitled to seek the assistance and guidance of a campaigner or any representative that it chooses. However, Mr Anwar was also accepted as an interpreter, and that led to a confusion of roles, as Mr MacDonald's evidence clearly demonstrates. The result was that the officials got drawn into a dialogue with Mr Anwar, and in the

absence of an official interpreter they had no means of knowing what the family - the parents in particular - were being told or what they were learning from it. They had reason to doubt whether the Chhokar parents were being given explanations of the legal system which they could understand, but they were prevented from checking the explanations with the parents directly, and thereby hindered in their attempt to build up a rapport and a relationship of trust with them.

The widow

18.24 Surjit's widow, Sanehdeep, was not at the meeting, and she was given no feedback from it. As I have noted above, she made a separate appointment, but then cancelled it, saying that she would contact Mr Brown at a later date. Mr Brown drew the conclusion that she did not want to be involved further. He told me -

"The impression I got was that she did not want to make further contact and that she did not want to see me. You have to be sensitive and should not harass an individual into a meeting with you."

18.25 I accept that the inference which Mr Brown drew may have been correct, and showed some sensitivity. Nevertheless, I do not accept that he was entitled to assume that she had no further interest. She was entitled to get the same information as was given to the other members of the family, and she should have been given it.

Letter from the MP

18.26 The question of why only one person had been prosecuted was raised again, by Frank Roy MP (Motherwell and Wishaw) on behalf of the Chhokar Family Justice Campaign, in a letter dated 18th March to the Lord Advocate. Mr Roy asked that the Lord Advocate provide him "with any information as to the reason for proceeding against one person only, when it appears that three people were originally charged and appeared on Petition". He also asked if the Lord Advocate intended to take any proceedings against other people.

18.27 The Lord Advocate replied the next day. His letter explained that in general it was long established and accepted general practice not to provide detailed reasons for decisions about prosecution or non-prosecution in any case. He referred to the risk of cases which were still under investigation, such as the Chhokar case, being prejudiced by such comment. He explained that one of the issues to be considered in any case was the sufficiency of evidence to meet the high standard of proof in criminal cases (beyond reasonable doubt). He confirmed that the case was still current and would remain so until a final decision had been taken, and that before taking a decision on further proceedings, he had instructed further investigations.

Follow-up to the meeting with the family

18.28 On 1st April Mr Brown wrote to Mr Chhokar to reply to the two points which he had undertaken at the meeting of 19th March to follow up. Again I quote the letter in full, for it is as significant for its tone as for its content -

1 April, 1999

Dear Mr Chhokar

I refer to our meeting on 19 March.

You asked whether you could be provided with a transcript of the evidence at the trial of Ronnie Coulter. As I said at our meeting, it is a matter for the Justiciary Office (in terms of Section 94(2)(b) of the Criminal Procedure (Scotland) Act 1995) whether a transcript is issued and it may be that they will not be prepared to issue a transcript. Any request for a transcript has to be made to the Clerk of Justiciary, Justiciary Office, Parliament Square, Edinburgh EH1 1RQ, giving the reason for the request. As regards the cost of the transcript, I have

checked the position with the Crown Office and I regret that we will be unable to pay for it.

You also asked why the Advocate Depute did not move for sentence. I am however unable to say anything further about that.

I undertook to write to you in about a month from our meeting to let you know how our inquiries were progressing. I shall of course do that. At present it looks as if these inquiries will be completed by then and that I will have the case re-reported to Crown Office for a decision on further proceedings.

Yours sincerely

DOUGLAS A BROWN

Regional Procurator Fiscal'

18.29 I put it to Mr Brown that this could seem a cold-blooded response, such as might be appropriate to send to a solicitor - with its references to statute - but not to a bereaved parent. He replied -

"I was asked two very specific questions and I gave a specific response to that. It looks like a cold letter but I do not see it as something which should have been handled in a different way. The questions arose out of a cordial meeting and there were no bad feelings expressed. The family asked specific questions and I gave answers.

It seemed to me that Mr Anwar was very involved with the family and would pick up on everything for the family. I also got the impression that the lady with the family was a solicitor. I was not wanting to give a bland statement but gave an explanation, hence the reference to the Acts of Parliament."

18.30 I accept that in part. Mr Brown was right to be mindful that the recipient of a letter such as this might put it in the hands of his solicitor. Nevertheless it was addressed to the individual: nothing would have been lost, and there was something to gain in trust and goodwill, by the inclusion of some indication of personal sympathy with Mr Chhokar's situation. The Regional Procurator Fiscal is an official, answerable to a Minister, the Lord Advocate: no Minister would have put his signature to a letter drafted in these impersonal terms.

18.31 For the same reasons the content of the letter is unacceptable, in respect of the bald statement about the reasons for not moving for sentence - 'I am unable to say anything further about that.' It is true that at this point Mr Brown was acting on the advice he had received from Crown Counsel; but this was an opportunity at least to put on record the general explanation which Mr Brown had given at the meeting. The concept of 'moving for sentence' is familiar to those who work in the criminal courts, but it is unknown - and must seem inexplicable - to the general public. In the handling of this point, and in the other explanations which were given at the meeting, little or no account seems to have been taken, not merely of possible language difficulties for the Chhokar family but of the unfamiliarity of any member of the public who has not had experience of the criminal justice system.

18.32 I am aware of the sensitivities surrounding the need to avoid looking behind prosecution decisions and that this may have led to the Procurator Fiscal being cautious about what he told the family. However, it would have been possible for him to discuss questions of general approach and principle. Lord Hardie, in giving evidence to me, used the sort of terms which could have been used in discussion with the family:

"Ronnie Coulter was convicted of a simple assault not involving a weapon. If a weapon had been involved, the Advocate Depute would undoubtedly have moved for sentence. It is important to get the precise terms of the Jury's verdict which shows that Ronnie Coulter

was convicted of simple assault. Someone in custody on a charge of murder would have been in custody for three months prior to his trial. That is the equivalent to a six month sentence. Faced with the same facts I might have taken the same decision in not moving for sentence."

The family's solicitor

18.33 On Thursday 8th April Ian Smart, of Ian S Smart & Co, Solicitors, wrote to the Regional Procurator Fiscal to say that he had been asked to represent Mr and Mrs Chhokar. On the following Monday, 12th April, Mr Brown had a telephone conversation with Mr Smart and recorded on the file that Mr Smart had direct contact with the family who were concerned that the Procurator Fiscal's Office should get things right rather than rush to a decision. Mr Brown confirmed that everything would be very fully considered and that there was a possibility of a decision within a week. He told Mr Smart that he had undertaken to write to the parents. He recorded that Mr Smart was content for the Procurator Fiscal to communicate with Mr and Mrs Chhokar either directly or through him.

Second meeting with the family, at the Crown Office

18.34 There were no further meetings between the family and the Procurator Fiscal's Office at this period. However, on 16th April the family, accompanied by Mr Anwar and others, travelled to Edinburgh to ask to meet Ministers, namely the Lord Advocate and Henry McLeish MP, who was Minister of State at that time.

18.35 The Lord Advocate declined to meet them. Lord Hardie told me -

"I did not see the Chhokar family. I refused to see the deceased's parents and Mr Anwar. It was not appropriate for me to meet them at that stage until the case was concluded. ... I was quite happy to do that after the conclusion of the second trial. In the event, Colin Boyd met with the family just as I would have done had I been Lord Advocate."

18.36 Similarly the present Lord Advocate, Colin Boyd QC, who was Solicitor General at the time, told me -

"It was viewed as inappropriate for the Lord Advocate himself to meet the family. The Lord Advocate was considering whether to bring a prosecution against Andrew Coulter and David Montgomery. We were aware that there might be difficulties because of publicity surrounding the comments of the Lord Advocate and the trial judge. The Lord Advocate did not want to add to the potential difficulties. The first priority of the Lord Advocate was to enable, if possible, a prosecution against the 2 remaining accused."

He [the Lord Advocate] had met with other families in the past but only after the trial was concluded. He took the view that it would be difficult for the person involved in taking the final decision as to prosecution to meet with the family. He also took the view that it was not necessary for the family to meet with a Law Officer in order to have the position explained to them."

18.37 I agree with those views. Any decision to prosecute has to be taken in the public interest, and must not be seen to be compromised by pressure from any individual.

18.38 However, the Lord Advocate did not turn the family away. He instructed officials to meet them. An impromptu meeting therefore took place. The Deputy Crown Agent, Frank Crowe, accompanied by Susan Burns, High Court Unit, met Mr and Mrs Chhokar, Mr Anwar, Dr Serjinder Singh (an interpreter) and one other family supporter. The Crown Office note of the meeting (at Appendix 7) records the issues which were raised.

- Once again the questions of why only one person was on trial and why the Crown did not move for sentence were raised;
- there was pressure for a decision on whether the other two accused would be prosecuted;
- suggestions were made that there might be new evidence, and intimidation of a witness;
- the family's complaints about their treatment at the trial were repeated;
- Mr Crowe offered to discuss Mr Anwar's participation in racial awareness training for the Crown Office and Procurator Fiscal Service; and
- Mr Crowe said that there were lessons about keeping families informed which could be learned from the case. He was sorry that the points raised had caused additional grief. He said that family members were also witnesses and the police should have let the Procurator Fiscal know if there were any language difficulties. There had been an assumption that Mr Chhokar's English was fluent. He was now aware that an interpreter was needed and was keen to have someone to interpret for the family.

18.39 I have been given accounts of the meeting from two of the people who were present, namely Mr Crowe, the Deputy Crown Agent and Dr Serjinder Singh whom Mr Chhokar brought to the meeting as an interpreter. Mr Crowe said -

"...we heard that the family was coming through to Edinburgh to see Henry McLeish. He then decided not to see the family. A bus arrived in Chambers Street and the family wanted to meet with the Lord Advocate. It was not considered appropriate for the Lord Advocate to meet the family given that decisions still required to be taken regarding the other two accused. I was then delegated to see the Chhokar family. ... Mr and Mrs Chhokar, the sister, Aamer Anwar and 2 or 3 colleagues arrived at Crown Office ... There was certainly one other Sikh gentleman with the party.

We sat at a long table and Mr and Mrs Chhokar sat to my right with Aamer Anwar beside them. Most of the conversation took place through Aamer Anwar. There was another man who sat opposite me and he was introduced as an interpreter by Mr Anwar. He did not, in fact, interpret. It did not totally surprise me as I knew of Mr Anwar being a racial activist. It became obvious to me that it was quite a sensitive meeting but it was difficult because I was not aware how much was coming from Mr Anwar and how much from Mr Chhokar.

I found the meeting difficult because of the way the party sat in the room. It was important for me to address my remarks to Mr Chhokar. My understanding was that Mr Chhokar had a degree of understanding of English but that Mrs Chhokar did not have any English. I then addressed my remarks to Mr Chhokar and asked Mr Anwar to interpret. My impression was that communication was reasonably good in the circumstances and I thanked Mr Anwar for facilitation of that. I was relying on him as we did not have any interpretation facilities.

(The Crown Office had been given no notice of the meeting, and therefore could not in any case have done anything about an interpreter.)

I would like to think on a personal level that I have a good relationship with the Chhokar family. They have always been polite to me and I know it has been difficult for them, particularly due to the health problems of Mr Chhokar. I thought in my culture the proper thing was

to be respectful and direct my remarks to them and I appeared to be getting respect back from the Chhokars.

I felt Mr Chhokar had a level of understanding of the discussions and this was supplemented by Mr Anwar's interpreting. Mr Anwar obviously had some form of prepared speech at the beginning of the meeting. This included the phrase "they will be saying they murdered a Paki".

Aamer Anwar was more prepared for the meeting than I was in the sense that he had come to Edinburgh expecting to have a meeting with someone whereas as I had had relatively short notice to prepare for the family and consider how to address their needs at that time.

I did offer to give the family an explanation of what had happened in previous proceedings but Mr Anwar indicated they did not have time to go into that.

I do not think Mr Chhokar was at all well at the meeting. A lot of Mr Chhokar's feelings come from the heart and to some extent they result from a lack of understanding of the proceedings etc. ... Aamer Anwar is a trainee lawyer and lacks experience in a lot of areas. He has not been able to advise or reassure Mr Chhokar on lots of the obvious questions regarding the proceedings. I know that Mr Anwar had sought advice from several lawyers. It is not a solicitor/client relationship between Mr Anwar and Mr Chhokar but I am not saying that that is the ideal."

18.40 I asked Mr Crowe what he understood to be the purpose of the meeting. He said -

"To have the organisation branded as institutionally racist. We had seen some of the material from the Chhokar Family Justice Campaign, including questions about who had reduced the charge to one of simple assault. I think this was a theme Aamer Anwar was developing but I had to say that it was the jury who had convicted the accused of assault."

18.41 Dr Singh was at the same meeting, to support Mr Chhokar. Dr Singh is the manager of Glasgow Interpreting Services. He is of about the same age as Mr Chhokar and they came from the same part of the Punjab. I asked him whether Mr Chhokar's difficulties were caused by his lack of understanding of English or of the procedures involved. He told me -

"Both. His English is just good enough for day to day. He would not understand official procedures within the court. That was the impression I got from him. From my experience and from looking at his facial expressions, I do not think Mr Chhokar was thoroughly understanding what was going on or what was being said on his behalf. He could answer simple questions in English but he always spoke to me in Punjabi. In terms of his capacity to handle English as a speaking language I would say that he would be a 3 or at most 4 on a scale of 1 to 10. The way I gauged this was not just from him speaking but from his facial expressions when someone was speaking for him."

18.42 I asked Dr Singh about his recollection of the meeting at Crown Office on 16th April 1999, and his own part in it. He told me -

"...statements were to be read on behalf of Mr Chhokar. Aamer Anwar had prepared the statements. Mr Chhokar could understand broadly what was being said. He asked me to say something but by the time I was asking Mr Chhokar what he wanted me to say, Aamer Anwar intervened and said that he would say it. Mr Chhokar was very disappointed. Mr Chhokar knows that I am an interpreter."

There was then a meeting inside the Lord Advocate's office. I was there with Mr Chhokar, Mrs Chhokar, Aamer Anwar and a friend of mine. It was there that Aamer Anwar was acting as an interpreter. Mr Chhokar was saying certain things in Punjabi and Aamer Anwar was editing what was being said. Mr Chhokar became irritated. He turned to me and said, 'Why aren't you saying anything?' I said that Aamer Anwar was not letting me say anything. Mr Chhokar was frustrated.

...I do not think Mr Chhokar was always happy with the interpreting being done by Mr Anwar. I think the text of what Mr Chhokar was saying was not coming out ... He wanted to say things in emotional terms about his son. Aamer Anwar seemed to think this was the same thing being said over and over again. Aamer Anwar was more interested in terms of processing matters and the campaign. Mr Chhokar wanted to convey the impact of what had happened to him but he was handicapped in terms of language. The way you interpret things is often through body language and emotions. That is important in a Sikh person. I do not think Aamer Anwar understood that. He was more concerned about the media image.

If you are an interpreter you do not add or take away anything which is said, not just in text but also in intonation. If something is said in anger then the interpreter should convey it in anger. The interpreter should have the same impact on the listener as the person making the comment. If there is not that same impact then the interpreter is withholding something. If a person is acting as a spokesperson that is a different matter. He is not acting as interpreter. I think Mr Anwar's role as spokesperson did adversely impact on his role as interpreter for Mr Chhokar."

Commentary

18.43 This was a meeting quite unlike the preceding one at the Hamilton office. It took place in Edinburgh, with the Deputy Crown Agent, and under the direct authority of the Lord Advocate. It was not arranged in advance, and was held in the midst of a campaigning day by the Chhokar Family Justice Campaign, who had publicised their visit to Edinburgh and their intention to call on Ministers. The Campaign had its own agenda, but I have to assess this meeting in terms of its value to the members of the Chhokar family who were at the meeting.

18.44 From the accounts quoted above, it appears that the family could have learned little or nothing new about the matters which concerned them. The Deputy Crown Agent was at pains to communicate with them directly, so far as language allowed, but when he offered to give some legal explanation he was cut short by Mr Anwar. Mrs Sengha, Mr Chhokar's daughter, took some part in the discussion, but Mr Chhokar was, for various reasons, able to say very little. Dr Singh, who was an interpreter, was scarcely brought into the dialogue at all. Both Mr Crowe and Dr Singh observed that Mr Anwar was confusing the roles of interpreter and spokesman; and Dr Singh was sure that what Mr Chhokar wanted to say was being suppressed.

18.45 Nevertheless the meeting did serve a constructive purpose. It brought the family face to face with a high-ranking official, reporting directly to the Lord Advocate, and he gave them a sympathetic hearing and made a genuine attempt to be helpful to them.

18.46 Following this meeting Mr Crowe reported on it to the Lord Advocate, in the context of a more general submission about the case, on 27th April -

'An indication was given to the family that a decision would be forthcoming within the next month or they would be advised if the timescale was likely to take longer ...

... Mr Chhokar, Snr is not a fluent English speaker and his wife apparently speaks no English. The deceased's sister is a fluent speaker. Mr Anwar carried out interpreting duties but also pursued his own agenda. Fortunately, the party was augmented by another interpreter who was a Sikh who adopted a fairly reasonable approach.

Clearly, the family's lack of understanding of English has meant that they still do not precisely understand what took place at the previous proceedings. I offered to explain as best I could what took place at the earlier trial but Mr Anwar was anxious to continue his own agenda and then travel to the Scottish Office with the group to make a protest there also.

In the long term, after the case has concluded, there may be scope for meeting the family. As long as the family do not understand our procedures because of a lack of fluency in English, then the institutional racist tag could be levied against the Department. On the one hand the campaign is keen to see the others prosecuted for Mr Chhokar's murder but on the other hand seem keen to pore over a transcript of the previous proceedings and Mr Anwar seems to wish to bracket this case with the Stephen Lawrence case.'

18.47 This admirably accurate, complete and succinct report, coming from a very senior official, ensured that Ministers were fully aware of the situation, both as regards the political dimension and the needs and concerns of the family.

19. FROM MAY 1999 TO OCTOBER 2000

This chapter covers the period from May 1999 to the trial of Andrew Coulter and David Montgomery in October 2000. This was a period of protracted legal process. In the early months liaison with the various members of the Chhokar family was fragmented and, in relation to the widow and her children, seriously defective; but satisfactory arrangements were developed later.

19.1 The publicity following the first trial, in March 1999, and the emergence of the Chhokar Family Justice Campaign gave the case a public and political profile which Ministers and senior officials had to recognise; and the meeting with the family and the Campaign at the Crown Office on 16th April reinforced their sense of obligation to the family, or at any rate to Surjit's parents. The widow, Sanehdeep, was not part of the delegation which went to Edinburgh on 16th April, and distanced herself from the Campaign. Since the Procurator Fiscal's Office had failed to recognise the significance of this, her interests were unwittingly neglected for some time. I shall deal with this latter point first, setting it in the context of the activity which took place between 16th April and service of the indictment on David Montgomery and Andrew Coulter in early July 1999.

19.2 At the meeting of 16th April at the Crown Office, the family representatives had raised some points for further investigation; and the Deputy Crown Agent wrote the same day to the Regional Procurator Fiscal at Hamilton, Mr Brown, recording:

"The points of significance which arose at the meeting were that the deceased's sister indicated that the accused had been boasting that they had murdered the deceased. In particular, it was suggested that one of the accused had made such a claim to persons working in a carry out shop in Overtown. I suggest that police are instructed to follow up these enquiries. They also indicated that witnesses were frightened to speak up about the Coulters but this may be something to do with any reputation they have rather than particular threats. They also suggested that Miss Bryce was worried about her safety and it may be if it has not already been done, that Strathclyde Police need to speak to her and see if she requires any of their witness protection services."

19.3 Mr Brown set further enquiries in train. DI MacIver reported to him on 5th May 1999 that the police had interviewed people at fast food outlets in Overtown and that there was no evidence that the accused had mentioned the murder in either shop. It also reported that the police had interviewed Mrs Bryce who had said that she had no concerns or fears for her safety. Mr Brown reported this to the Crown Office on 11th May.

19.4 At the April meeting the Deputy Crown Agent had also given an undertaking to the family to keep them informed about the timing of the decision to be taken about the prosecution of the other two accused. Mr Crowe saw to this personally, through a series of letters to the family's solicitor, Ian Smart. He told me -

"I was also writing to Ian Smart. I knew Ian Smart from the past as I had worked on the Law Society Council with him. I think he must have got in touch with me first to let me know that he was acting for the Chhokar family ... It did not occur to me to send letters to Mr and Mrs Chhokar because they were so confused with the procedure. Mr Smart was their solicitor."

19.5 He wrote to Mr Smart at regular intervals -

· on 14th May he wrote - "In the light of Crown Counsel's consideration of the case papers additional lines of enquiry have been instructed. I would expect to be in a position to re-submit the papers ... by the middle of next month"

· and on 17th June - "the case papers are at present being considered by Crown Counsel and a decision is expected in the next few weeks"

· and finally on 2nd July - "I can advise you that Crown Counsel have instructed that David Montgomery and Andrew Coulter be indicted for the murder of Surjit Singh Chhokar."

19.6 These letters were not copied to the Hamilton office. There was of course no need to tell the Hamilton office about the progress of the case, since they were themselves dealing with it; but they were left to decide for themselves what communications to make to the family, and they were left unaware of the communication which was taking place between the Crown Office and the family solicitor. The Regional Procurator Fiscal, Mr Brown, took it on himself to write to Mr Chhokar, on 11th May to say that a decision on prosecution was expected shortly, and again on 14th May (the same day that the Deputy Crown Agent was writing to the Chhokars' solicitor) to say that further enquiries had been instructed and the decision would therefore be delayed. At that point however Mr Brown dropped the correspondence, on the assumption that Alan MacDonald, as the Procurator Fiscal Depute dealing with the case, would handle family liaison. He told me -

"...I had no further direct contact with the family. Alan was responsible for liaison. He told me that he was in touch with Aamer Anwar and I knew that the Deputy Crown Agent had also met the family. It is extremely unusual for that to happen. It is normally the person who is responsible for the precognition who acts as the liaison point. Crown Office, however, got involved and that involvement continued. There was no point in me also getting involved. There was no formal decision about who should take the liaison role. Crown Office got involved because Aamer Anwar went to Crown Office and got an audience with the Deputy Crown Agent."

I spoke to Alan MacDonald from time to time. I did not get much feedback from Crown Office. Alan would keep me briefed. I emphasised to him the importance of keeping the family advised. I asked him for information from time to time.

It was unusual for this to happen and Crown Office's involvement did, to a certain extent, make the liaison issue more complex. It is normally the precognoscer's responsibility without any liaison by Crown Office. I

appreciate, however, why Crown Office did get involved. There was no specific explanation as to why continuing liaison by Crown Office was going to occur."

19.7 Mr MacDonald however was not told any of this. He told me -

"I don't know whether contact was made with DI MacIver in Motherwell. Most issues were dealt with at this stage by the Regional Procurator Fiscal. ... Mrs Bryce's only real complaint was regarding the amount of television coverage. The only mention of her fearing for her safety was brought up by the family. I thought it was strange that they would bring it up. I don't know what the outcome was of the enquiry into the accused boasting about the murder, you would need to read the subject sheet. I don't know if anyone got back to the family about that. I only know that the police didn't manage to turn up anything. As of the 14 May 1999 my involvement with the critical matters of the case was limited. But I was meant to be the link with the second trial. I knew of some specific things which I had to deal with. The Regional Procurator Fiscal dealt with everything else."

19.8 Meantime, the Crown Office was assuming that the Hamilton office would be keeping contact with the widow. When I asked the Deputy Crown Agent whether he knew, when he met the deputation on 16th April, who constituted the family, he told me *"Mr and Mrs Chhokar, the deceased's sister and also his estranged wife"* but he did not consider that it was up to him to communicate with the widow - *"I understand that the Hamilton office was involved with the deceased's widow."*

19.9 It is clear from this evidence that there was no co-ordination at all of family liaison during this time. The Regional Procurator Fiscal admitted as much to me: when I asked him how the channels of communication were co-ordinated, he replied simply *"It wasn't co-ordinated."*

19.10 The result was that, when the decision was taken to indict the other two accused, the one person in the organisation who might have informed Sanehdeep Chhokar of what was about to happen, namely Alan MacDonald, had not even been told of it. My evidence on this point came from the Deputy Crown Agent -

"The service of indictment is done by the Principal Depute [at this time Jim Robertson] and not the Procurator Fiscal Depute [Alan MacDonald], so Alan may not have known about service of the indictment. A letter was, however, sent to the Hamilton office at the end of June asking them to serve the indictment on Andrew Coulter and David Montgomery. The letter asks the Hamilton office to let us know when the indictment has been served.

The Hamilton office knew of the indictment although they did not get a copy of my letter to Ian Smart dated 2 July. That letter was sent to Mr Smart as soon as we knew the indictment had been served. The Hamilton office had lines of contact with Mrs Chhokar and Mrs Bryce. I don't know if any steps were taken to convey the information to the widow. A general letter regarding the service of the indictment would have gone from Crown Office to the Hamilton office."

19.11 The indictment was reported in the press on Saturday 3rd July. On Monday 5th July Mr MacDonald received a telephone call from Kate Duffy, of PETAL on behalf of Sanehdeep Chhokar. His account is given in his letter of 15th May 2000 to the Crown Agent -

"David Montgomery and Andrew Coulter were Indicted at the beginning of July 1999. As I understand the position, that decision was intimated directly to them [sc. the parents] by the Deputy Crown Agent. The decision was not intimated to Mrs Chhokar (deceased's wife). Unfortunately, she heard about the decision on television. On 5 July 1999 I received a telephone call from Mrs Duffy on behalf of Mrs

Chhokar who had been upset to find out about the decision from the television. I wrote to Mrs Chhokar on 9 July 1999 ... During the telephone conversation of 5 July and a subsequent meeting with Mrs Duffy and Mrs Chhokar I found out that the deceased's parents terminated all contact with her and their grand-daughters, aged 14 and 12 years, shortly after the deceased's funeral."

19.12 Mrs Duffy's comment to me on this was -

"Actually it was Sandy's daughter who had put the television on and had seen a picture of her father. She went and told her mother and Sandy phoned me. She was extremely upset and did not know what to do. She did not understand what was being announced because of the shock of seeing Surjit's picture on TV."

19.13 I have commented in an earlier chapter on the mistake over the ages of the children, and on Mrs Duffy's emphatic statement that Mr MacDonald had been told as early as February that Sanehdeep was not on good terms with Surjit's parents.

Commentary

19.14 This evidence speaks for itself. It is a sorry tale. As with the earlier events, leading up to the trial and at the trial itself, the picture is not of individual negligence or, primarily, of institutional racism: this episode shows an organisation failing to assimilate the information available to it about a family, and failing to communicate within itself. As before, there is no one individual to blame; but every individual involved in these events, in the Crown Office and in the Procurator Fiscal's Office at Hamilton, contributed to some extent to an organisational failure.

From July 1999 to October 2000

19.15 The case against David Montgomery and Andrew Coulter was originally indicted to the High Court sitting at Glasgow commencing 16th August 1999. However the case was repeatedly adjourned as a result of the devolution issues raised and appeals which went ultimately to the Judicial Committee of the Privy Council, and the trial did not begin until November 2000. The detail of these various proceedings is outlined in Chapter 4 above.

19.16 After Mrs Duffy's telephone call of 5th July Mr MacDonald wrote to her and separately to Sanehdeep Chhokar, on 9th July. The letters were properly apologetic and sympathetic, promised to ensure that Mrs Chhokar would be contacted directly and kept advised of any developments, and offered a meeting on 27th July. Mr MacDonald also wrote on the same day to the Deputy Crown Agent to inform him of what had happened and to tell him of the situation within the family. It was arranged thereafter that Crown Office would continue to deal with the Chhokar parents and the Chhokar Family Justice Campaign, while the local Procurator Fiscal's Office would provide the liaison with Sanehdeep Chhokar.

19.17 Mr MacDonald recorded this meeting in a letter of 31st August 1999 to Mrs Burns, High Court Unit. I have discussed the meeting and this letter with him and with Mrs Duffy. Although there are some inaccuracies in the letter itself, I am satisfied that the meeting covered Mrs Chhokar's isolation and the effect of the rift between her and Surjit's parents. Mrs Chhokar expressed some concern about Mr Anwar's involvement. In particular she did not want media coverage of the case and was concerned about the effect which it would have on her children. At this meeting she also told Mr MacDonald that she was sure that the murder was not racially motivated.

19.18 Meantime, within the Crown Office, responsibility for the case passed to Mr Scott Pattison. He explained his role to me -

"From June 1999 to August 2000 I was a Principal Depute in the Crown Office Appeals Unit dealing solely with devolution issues and human rights issues. During that year I became operationally involved

with the case of HMA v David Montgomery and Andrew Coulter in my Appeals Unit capacity.

Devolution issue minutes were served by David Montgomery and Andrew Coulter in early August 1999. These minutes were passed to me in the Appeals Unit and I was responsible for the preparation of the Crown arguments with the Advocate Depute, Raymond Doherty QC. Numerous hearings took place before Scottish judges and a hearing also took place at the Privy Council in London. I was involved throughout in preparation of the Crown arguments.

... preparation for preliminary diets normally takes place in the High Court Unit in Crown Office. Preparation for the hearings before Lord Abernethy on 26 August 1999 and Lord Kirkwood in September 1999 (which were preliminary diets) was dealt with in the Appeals Unit simply because ECHR was very new at that stage and it was felt appropriate that I should deal with preparation of the arguments."

19.19 Mr Pattison described his relationship with the family and the Chhokar Family Justice Campaign as follows -

"The parents and sister of the deceased together with other friends and supporters and the campaign representative, Mr Anwar, attended every day of every diet in this case.

When I saw that the Chhokar family and Mr Anwar were present in court at the diet on 26 August 1999, I spoke to them at lunchtime and after the conclusion of proceedings that day. Thereafter I spoke to Mr Anwar and the family before and after each day's proceedings at all diets in the case.

I did not know the family structure at that point. I was either aware at that time or shortly thereafter that the widow and Mrs Bryce existed.

The length of the conversations varied depending on which stage the proceedings had reached. It was obvious that Mr and Mrs Chhokar did not have a good command of English but it was also obvious that Mr Anwar was conveying information to the family and interpreting for them. Mr Anwar seemed to understand what I was telling him. On occasion Mr Anwar would interpret when I was present but I later asked Mr Anwar if he was conveying the information to the family and I was assured that he always conveyed the information to the family after I had left to return to the office. I accept that I do not know for a fact that he conveyed the information to Mr and Mrs Chhokar.

I was not involved in the liaison with the deceased's widow or with Mrs Bryce. I was simply involved in liaison with the family members who attended at court. In my view it was for the High Court Unit to advise the Procurator Fiscal Depute at Hamilton who was involved in liaison with the other members of the family and I felt I had discharged my responsibility by advising the High Court Unit of the position.

It is fair to say that I developed a good relationship with the Chhokar family and their representative. Mr Anwar has commented on the liaison which took place during the devolution issue and the ensuing appeals as 'a model' of family liaison."

19.20 Throughout this period, from July 1999 to August 2000, family liaison was on the whole well co-ordinated and maintained effectively. While Mr Pattison kept in touch with Mr Chhokar and his family, Mr MacDonald at the Procurator Fiscal's Office in Hamilton kept in touch with Mrs Sanehdeep Chhokar and likewise with Mrs Bryce. Communication with Sanehdeep Chhokar was, at her request, mainly through Mrs Duffy of PETAL, and after November 1999 entirely so. Mr MacDonald explained -

"I stopped sending things to her because receiving the letters and having the police call round at the house with witness citations was getting upsetting."

19.21 In May 2000 Mr MacDonald wrote to Mrs Duffy -

"the last two Citations for Mrs Chhokar have been returned by the Police unserved. I should be grateful if you would confirm that she is still at the same address. It occurs to me that Mrs Chhokar can be told when the case is due to call and her Citation could be collected from this office or from you. This would mean that police officers do not need to go to her house if she finds this upsetting."

and this offer was gratefully accepted.

19.22 Even so, co-ordination was still sometimes imperfect. Mr MacDonald told me -

"There was a meeting on 19 March and one was arranged for Mrs Chhokar on 20 March, but that was cancelled. I don't know if there was a subsequent meeting arranged with Sandy. The Deputy Crown Agent met with the family and Mr Chhokar's sister on 16 April. It had not been explicitly said to me that Crown Office had taken over the family liaison issue, but I assumed from what was going on that they were doing it. But some of it was still down to me. I was aware that the other two accused were to be indicted. I knew that as I had done the precognition, but I wasn't asked to tell the family. I prepared the precognition, but nobody told me to make the family aware of this. I don't know whether the Crown Office were going to advise the family, it just kind of happened. That may have been why Sandy Chhokar found out the information from the television. I had to apologise to Sandy Chhokar about that again. I suppose Crown Office should have done that, but I thought it was just part of my job, although it may have been better for someone senior to do it. It may have been better to come from someone at the top. I don't know why that is, I told Crown Office of that, I just thought the appropriate thing for me to do was to write to people. I didn't know what Crown Office would do with that information. I don't know whether anyone else would have contacted Mrs Chhokar."

19.23 Mr Pattison's role in family liaison continued until the hearing at the Judicial Committee of the Privy Council (JCPC). Mr Anwar had continued to act as interpreter up to this point, but Mr Pattison suggested that it would be helpful to the family if an interpreter were provided for them at that hearing, and that was agreed. After the hearing Mr Pattison handed over his responsibility to Mr Crowe, the Deputy Crown Agent. Mr Crowe explained it thus -

"After the JCPC hearing the liaison role came back to myself and Susan Burns. Scott Pattison dropped out for two reasons - he was transferred to the Policy Group and the case was no longer an appeal but went back to being a trial. A difficulty then arose in that the Privy Council decided to issue the written reasons for their decision later. This was during the holiday period and it became apparent that we might not get the written judgment until October. We then heard that the trial could not be held until the written judgment was received. During that phase I was involved in telling the family what was happening. Mrs Bryce and the widow were not interested in the minutiae but Aamer Anwar and Mr Chhokar were interested in every detail."

19.24 Mr Anwar continued to act as interpreter until the hearing at the Privy Council, before which Mr Pattison suggested that an interpreter might be helpful and Mr Anwar and the family members agreed. Thereafter the Crown Office accepted that they should be responsible for providing interpreters, and gave close attention to that matter. Mr Crowe told me -

"Scott gave me the name of the Alpha Interpreting Services. I saw it as my job to get interpreters for the trial. Alan was invited to the meeting with the interpreters as he was to be the liaison person at the trial.

I met with the family and Mr Anwar on 10 October and the family were introduced to the interpreter, Mr Aziz. It was explained at this meeting to Mr Anwar and the Chhokar family that Mr MacDonald would make himself available at the beginning and end of each day of the trial to keep them advised of proceedings. This was also explained to Mr Aziz."

Commentary

19.25 The picture which this gives is of an organisation making a significant and successful effort to ensure that the family (and Mrs Bryce) were kept informed of the progress of the case. The liaison during this period was comprehensive, generally (though not always) well co-ordinated, and tailored to the differing requirements of the parents, Sanehdeep and Mrs Bryce. It seems to have been accepted as satisfactory by all of them.

20. PREPARATIONS FOR THE SECOND TRIAL

This chapter deals with the preparations for the second trial (HMA v David Montgomery and Andrew Coulter).

The Law Officers

20.1 The Law Officers took a personal interest in the arrangements for family liaison at the trial of David Montgomery and Andrew Coulter. The Lord Advocate, Colin Boyd QC, told me that it was one of his first priorities on taking office -

"I was appointed Lord Advocate in February 2000. In March of that year I was in the United States and in April I was at Camp Zeist. The main focus of my work at that time was the Lockerbie²¹ case. I started the Lockerbie trial and then came back to Crown Office in May 2000. I indicated that I wanted a meeting to discuss the Chhokar case. I took the view that I had to get up to speed with the case and also that I would be the one who would have to deal with the fall out of the case. I believed that the Chhokar case would cause more difficulties than the Lockerbie case."

20.2 As noted in chapter 4 above, the trial had to be several times postponed, since the High Court had ruled that it should not proceed until the written judgment from the Privy Council became available. The Crown Office was expecting to receive it in mid-October (in fact it was received on 19th October), and in anticipation of that the Deputy Crown Agent, Mr Crowe, wrote on 2nd October to the Regional Procurator Fiscal at Hamilton, Mr Brown, to make him aware of the interest taken by Ministers and of the arrangements to be made. The text of his letter was as follows -

"This case is likely to be adjourned on defence motion on 5 October to the sitting commencing at Glasgow on 23 October.

I enclose a copy of a recent letter received from the Judicial Committee of the Privy Council. As you know, the High Court in Scotland has ruled that trial cannot commence until JCPC's written judgement is available. It was hoped that this would be available in the first week of October so that the case could proceed in the 9 October Glasgow sitting.

The Law Officers are anxious for the case to be under way, if not concluded, before the second anniversary of Mr Chhokar's death on 4 November 1998.

I am making arrangements to have an interpreter present at the trial for the Chhokar family. It is envisaged that the interpreter would sit with the Chhokars on the public benches and keep them up to speed on events progressing in court.

The Law Officers are anxious that there should be full support from your office at this trial and I understand that Alan MacDonald, the precognoscer, is likely to be present for the duration of the trial. The Crown Agent has suggested that Mr MacDonald should visit the Lockerbie trial at Camp Zeist to see how the relatives are dealt with there. Having visited the court myself, I can see advantages in the Depute Fiscal assigned to the case meeting the relatives briefly after each day to make sure they understood the proceedings and to give them some idea in general terms of what witnesses are likely to be dealt with the following day.

It would be helpful therefore if you could make arrangements for Mr MacDonald to visit the Lockerbie trial and make contact with Ann den Beiman and her team who deal with the Lockerbie next of kin.

I hope to arrange a meeting with the family and prospective interpreters for the afternoon on Monday 9 October and would hope to arrange that we could meet at a central location in Glasgow in the late afternoon. Would Mr MacDonald be available for such a meeting?"

Meeting with the family

20.3 On 9th October Mr Crowe and Mr MacDonald met Mr and Mrs Chhokar, Mrs Sengha and Mr Anwar to introduce them to Mr Aziz, who had been recommended to the Crown Office as an interpreter. Mr Crowe's account to me was -

"I met with the family and Mr Anwar on 9 October and the family were introduced to the interpreter, Mr Aziz. It was explained at this meeting to Mr Anwar and the Chhokar family that Mr MacDonald would make himself available at the beginning and end of each day of the trial to keep them advised of proceedings. This was also explained to Mr Aziz ... I made it clear at the meeting that the interpreters were not our interpreters but were there to facilitate the family."

20.4 Mr Aziz also gave me his account of the meeting -

"The meeting was to clarify my qualifications. Mr Aamer Anwar was at the meeting and it was him who wanted to clarify my qualifications.

I have never had my qualifications checked before. I was asked to give my CV to Mr Khan of Alpha Interpreting Services to allow it to be faxed to Mr Anwar. This was unusual.

... Mr Anwar wanted to make sure that I had the right qualifications. He wanted the meeting but he already had a copy of my CV ... During the meeting Mr Chhokar did not test my capacity to act as interpreter. I did not find the meeting embarrassing, although it was unusual."

20.5 It is not clear from the evidence given to me whether anything explicit was said at the meeting as to whether the interpreter would be present at the meetings between Mr MacDonald and the family at the end of each day's proceedings in court. Mr Crowe thought not: he told me - *"There was no discussion ... about Mr Aziz not being involved in these briefing sessions. That came about later."* Mr Aziz had a different recollection: he said to me - *"On 9 October 2000 it was made clear to me that I was only to interpret in court and that Mr Anwar would interpret for Mr Chhokar out of the court."* At any rate, when the time came, the interpreter was excluded from those meetings and Mr Anwar insisted on acting as interpreter. I have commented earlier on Mr Anwar as interpreter; and I shall return to this point again, in the context of what happened at the trial.

20.6 Although this was the main business of the meeting Mr Crowe took the opportunity to discuss with the family the timing of the trial. He recorded this, and the family's point of view, the next day in an internal Crown Office minute, part of which runs as follows -

'I noticed that Mr Chokkar was in a visibly poorer condition than when I met him last year. He now walks with a stick and is apparently taking medication. He and his wife were very upset about the delays in bringing the matter to trial.

I indicated that I was doing everything in my power to bring the matter to trial as soon as possible and said that the latest information which we have is that the JCPC judgement is likely to be available in the week commencing 23 October. I indicated that the trial was scheduled for that sitting although the earliest it could start would probably be later that week or perhaps the week commencing 30 October. I indicated that I was aware that 4 November was the second anniversary of Surgit Singh Chokkar's death and indicated our wish that the trial should be under way before then if possible.

The Chokkars confirmed that they would be holding a remembrance service for their son on the weekend of 4 and 5 November and Mr Anwar advised that one or two trusted members of the press would be in attendance but he appreciated that publicity at this time might give the defence an opportunity to adjourn the case further.

After some discussion it became apparent that while Mr and Mrs Chokkar were anxious for the trial to proceed as soon as possible they wished to have a definite date to work towards. I explained that I was in the hands of the JCPC and thereafter the defence.'

20.7 On the same day Mr Crowe wrote to Mr Smart, the Chhokar family solicitor, to record the outcome of the meeting with the family, namely: that Mr Aziz seemed to satisfy the family of his credentials and that Mr Crowe would be arranging for him to attend through the trial and that he (Mr Crowe) was arranging back-up interpreters. He confirmed that Mr MacDonald would be making himself available at the end of each day's evidence to answer questions which Mr and Mrs Chhokar might have and to give an indication of the areas of evidence likely to be covered the next day. He recorded his undertaking given at the meeting that he would pursue the option of having the case adjourned until the 6th November sitting.

20.8 On 20th October Mr Crowe wrote again to Mr Smart, and also to Mr Anwar, sending each a copy of the JCPC decision and saying that it was hoped that the case would now proceed at the 6th November sitting of the High Court in Glasgow. He explained to me why he was writing to both -

"Some of this was a belt and braces approach to ensure that Mr and Mrs Chhokar got the information. The letters to Ian Smart were an extra which I did. I do not think by writing to him that I was causing any confusion. I spoke to Ian Smart ...and got the impression that while he was a conduit for information, Aamer Anwar was more involved with the case."

Interpreters

20.9 Mr Crowe also wrote to Mr Aziz to send him a copy of the trial charges and some background to the case including a reference to Mr and Mrs Chhokar having watched the first trial and having found the 'whole circumstances confusing and disturbing, not unnaturally'. Further arrangements for interpreters were handled by Mrs Burns, of the High Court Unit at Crown Office: a female interpreter and a reserve interpreter (Ms Gufoor and Mr Makar) were engaged; briefing notes about the case were sent to each; and a meeting between them and the family was held in early November, to ensure that the family were content with them, before the day when the trial began.

20.10 These careful and elaborate arrangements for interpreters were without precedent. Also without precedent was the fact that Crown Office paid for the service, which was provided specifically for the benefit of the family sitting in the public benches. Mr Crowe's comments to me on all this were -

"The idea of paying for interpreters to assist people in the public benches would have been unheard of 5-10 years ago. I sometimes question whether we had the authority to do that. We took the decision, however, that it was right and it was at no inconsiderable expense. It is a measure of how far we have gone in recent years. Even if we had identified Mr and Mrs Chhokar's needs at the first trial, the best we could have done was to try to explain the procedures to them using what friends they had who could speak English. No one would have authorised providing an interpreter - that was not within the rules.

I had received an instruction from the Solicitor General and therefore had authority to get an interpreter for the family albeit it wasn't perhaps strictly within the rules. We were also concerned about the difficulties an interpreter for the family may cause in court with noise levels and distractions.

It was decided to let the family meet the interpreter prior to the trial - that was a lesson we had learned from the JCPC hearing."

Logistical preparations

20.11 On 16th October Mr Crowe wrote to Dr David Griffiths, Assistant Procurator Fiscal and Head of High Court Unit, Glasgow. The High Court Unit is responsible for the efficient management of the business of the High Court sitting in Glasgow, and gives some assistance at court on cases from outside Glasgow to their colleagues from the local office. Mr Crowe told Dr Griffiths that

- it was hoped that the trial would be held in the 6th November sitting;
- Mr Aziz would be interpreting and that arrangements would need to be made for him to sit with Mr and Mrs Chhokar and provide a simultaneous translation; and
- Mr MacDonald would be liaising with the family and would meet them at the end of the day to explain the day's proceedings and to give an indication of what was likely to be covered the next day.

20.12 In the letter Mr Crowe also stressed that the Law Officers were keen that the matter should proceed as smoothly as possible, and that he would require to keep them advised of any significant developments. He briefed Dr Griffiths on the family relationships, with Sanehdeep Chhokar and Elizabeth Bryce, stating that the parents had no dealings with either of them; and pointing out that Mr MacDonald maintained contact with them. He advised Dr Griffiths that Mr Anwar would probably be in attendance also.

20.13 Dr Griffiths replied on 18th October, saying that he would be on leave in the week beginning 6th November and that he would ensure that whoever covered for him was aware of the issues in the case. It was arranged at the beginning of November that Mr George Macleod would fill this role. Dr Griffiths also spoke to Mr Norman Dowie, Court Manager of the High Court in Glasgow, and Inspector Haggarty of Strathclyde Police about the logistics of the trial, and arranged that Mr Dowie would take personal charge of the arrangements within the court building.

20.14 Meantime Mr MacDonald was also in touch with Mr Dowie about accommodation for the family. He had spoken to Mrs Duffy, Sanehdeep Chhokar's representative, on the telephone, and was also aware of the need to arrange a private secure room for members of the Chhokar family.

20.15 The Crown Office also gave particular care to publicity arrangements. A full brief on the whole case was prepared by their press office and submitted to Ministers for approval. The head of the press office, Howard Hart, had a meeting with Dr Griffiths at the High Court in Glasgow, to be shown the buildings and to meet key members of staff. Mr Crowe also took steps to ensure that media briefing was co-ordinated with the press officers of the police. He wrote on 20th October to Superintendent Ian Gordon, Media and Information officer at Strathclyde Police as follows -

'The Coulter and Montgomery case is better known as the Chhokar case and is scheduled to proceed at the sitting of the High Court at Glasgow on 6 November.

I expect a great deal of media attention to this case and to that end we have drawn up a media strategy and lines to take.

I would appreciate a brief chat with you in order that I can put your designated press officer on to Howard Hart, our press officer, to discuss and clear the lines we will take in this case.

As I see it, the main criticism will fall on the Crown in this matter but there may be criticism of the well intentioned decision of the police shortly after the murder to advise local community leaders that this was not a racist crime.

On occasions in the past the Chhokar case has been said to be the Scottish Stephen Lawrence case but I do not think the parallels are there. This is a matter which requires delicate but firm handling, so that any criticisms are directed to areas for improvement. I wish to be sure that no inaccurate allegations are made by critics and to that end we have a chronology of what took place in the case to rebut any unwarranted criticisms.'

Commentary

20.16 There are several points which should be noted on the arrangements up to this point -

- Ministers took a close interest. They recognised that mistakes had been made in family liaison at the first trial, and were determined to show that lessons had been learned. They were well aware of the public profile and political implications of the case after the first trial.
- Very senior officials, both in Crown Office and in the Procurator Fiscal's Office at Glasgow, took a direct involvement in the preparations for the trial, and a close interest in family liaison, as they were bound to do, given the level of ministerial interest.
- The close attention given to publicity arrangements - including co-ordination with the police press office - also was a reflection of ministerial interest.
- Arrangements for interpreters were well thought out and executed: interpreters of both sexes were provided, and a reserve interpreter was on stand-by; the interpreters were given a general briefing on the case to prepare them; and they were introduced to the family, so that the family could confirm that they were content to work with them.
- Matters which were important to the family were recorded, in the letters to their solicitor and to Mr Anwar.
- The officer who would have the chief responsibility on the day (Mr MacDonald) was appropriately prepared for his role, by being sent to see a model of liaison in action at Camp Zeist.

- The Deputy Crown Agent, who took charge of the operation, also showed a personal concern and human sympathy for the family and their welfare. This is the essence of family liaison.

- Relationships within the family were well understood, and arrangements tailored accordingly. These elaborate preparations were a response to the fact that the Chhokar parents were associated with a public campaign; but at the same time appropriate contact was maintained with Surjit's widow, Sanehdeep, who distanced herself from the campaign.

A possible demonstration

20.17 On 30th October Mr Crowe recorded the following note on the Crown Office file -

'I spoke to Amar Anwar this afternoon by telephone.

I indicated to him that we had heard rumours that there was to be a demonstration by the Chhokar Family Justice Campaign at the start of the trial. He assured me that this was not the case and quoted from a note which he was passing around the family and close supporters that there should be no placards, chants or the handing out of campaign material. He did indicate that there would be a number of supporters at the trial but had called for discipline. Similarly, he reiterated that at the memorial service scheduled to take place this Saturday for Surjit Singh Chhokar three "trusted" journalists would be attending. I reiterated to Mr Anwar that they should not publish any articles on the eve of the trial since it was crucial there should be no media coverage of the case prior to the jury being empanelled. Mr Anwar assured me that he trusted the journalist concerned.

I made it clear to Mr Anwar that I was in no way trying to restrict the freedom of speech but indicated to him that I was anxious that the case should proceed to trial on the due date and that there should be no opportunity for the defence to delay matters or cause difficulties due to unfortunate publicity or demonstrations that might be seen by unempanelled jurors.'

20.18 Mr Crowe passed this information on to Len Higson, Regional Procurator Fiscal at Glasgow, in these terms -

'I have spoken to A Anwar who assures me no demonstration is planned and a leaflet is going out to supporters warning them to be on their best behaviour. Other representations are being made to Mr Anwar warning him that the Crown will be in difficulties if unempanelled jurors are met with a demonstration.

As far as I can gather no demonstration is planned but large numbers of supporters are likely to turn up and this would have logistical problems. The Court will not be able to accommodate every one and I imagine a number of people will end up in the street outside. Are the Police and Courts ready for this?'

20.19 This message was forwarded to Dr Griffiths who responded -

'I have spoken to Norman Dowie and rather more briefly to Insp Haggarty. Norman will take personal charge of things within the building. In accordance with normal practice supporters will not be allowed into the actual courtroom until the jury has been empanelled. There is a relatively large unused room on the first floor where people can wait before being allowed in. Thereafter the number of people who can get in will be constrained by the size of the room. Norman will be holding a meeting with his staff and will emphasize to them that they have to treat supporters with courtesy but, if need be, firmness. There

is much other business going on elsewhere in the building which cannot be disrupted and counsel for Montgomery and Coulter will leap on any perceived inappropriate behaviour.'

20.20 The response was passed back to Mr Crowe, who commented -

'Have made contact with A. Anwar.

I told him Court space was limited and supporters would have to wait in a separate room while the jury is empanelled. He said he thought numbers would be no more than 50 and perhaps nearer 20-30. There would be some Councillors and Trade Unionists. He has clearly let all Chhokar Family Justice contacts know of the date but does not expect a huge turn-out.'

Commentary

20.21 This episode demonstrates, more clearly than any of the previous encounters, the incompatibility of the roles which Mr Anwar was undertaking, as a campaigner on the one hand, and as a representative of the family on the other. It had been pointed out to him more than once previously that publicity could jeopardise the trial, and thus defeat the ends of the campaign itself. More to the point, so far as this Inquiry is concerned, if inept publicity had derailed the legal process it would have worked exactly against the interests of the Chhokar family.

21. THE SECOND TRIAL: FIRST WEEK

This chapter deals with family liaison and dealings with the Chhokar Family Justice Campaign during the first week of the trial of David Montgomery and Andrew Coulter. There were few proceedings in court during this week, but much activity generated by the demands of Mr Anwar in his dual role of family adviser and campaigner.

Note: in tracing the course of events covered by this and the next chapter I have been able to draw on the notes and recollections of several witnesses, in particular Messrs Aziz, Crowe, Dowie, Griffiths, MacDonald, Macleod and Pattison, as well as the Advocate Depute, Mr Murphy and the trial judge, Lord Bonomy. It has thus been possible to assemble a much more complete account of events for this trial than for the first trial.

The first day: provision for the family and supporters

21.1 The trial was due to start on 6th November, and on that morning Mr MacDonald met Mr and Mrs Chhokar on their arrival at court, and showed them to a secure Witness Room which had been set aside for the sole use of the family for the duration of the trial. The Court layout and the involvement of prosecution and defence were explained to them. Another room was set aside for supporters. Norman Dowie, the Court Manager, High Court of Justiciary, Glasgow gave me this account of how the Chhokar family and their supporters were provided for -

"Some time during the week before the trial, I was approached by Alan MacDonald. He said that he wanted to make some special arrangements for the accommodation of the family of the deceased. He explained that he wanted a room for the Chhokar family which was basically a protected room. We had identified the North Court as appropriate for this trial. Behind the South Court there is a protected area and there is a protected witness room there. It is a suite with couches, en-suite toilet, table and telephone. I showed this room to Alan and he was keen that the family were given this room.

... The trial was due to start on Monday 6 November 2000. ... A number of things happened that morning.

I met the Chhokar family. I remember an older gentleman with a beard. I also remember meeting the mother of the deceased. We took the Chhokar family into the protected room. I think it was the mother

and father, the daughter and another man. We took them into the secure area before 10 o'clock. I had been in touch with the restaurant about arranging tea and coffee at the request of Mr MacDonald.

Alan MacDonald was the principal liaison for the family. I was simply the facilitator.

Mr Anwar was with two groups that morning. He was moving between the family and a group of approximately 20-30 supporters. In relation to the peripheral family and the supporters, I had already made arrangements and had spoken to Mr Anwar in the morning about that. We had unempanelled jurors coming into the Court and the protocol is that unempanelled jurors do not mix with members of the public. I had made arrangements for the extended family and supporters to use another room. I explained to them that once the jury had been empanelled, they would be invited up into the Court room.

The reason for doing that was to keep the supporters and the family away from unempanelled jurors. There are potential 50 unempanelled jurors for each Court and there are five Courts. Generally about 35 jurors will turn up and there were, potentially 35 unempanelled jurors for the Court in which the Chhokar trial was due to commence. There is a potential hazard if you have either witnesses or a member of the public who know and have information about the case being in the public area and starting a conversation about the case with a potential juror. There is a possibility of contamination of a potential juror.

Mr Anwar understood this. I spoke to him about it. I also explained that the supporters could use the restaurant area but they would have to be careful about who they mixed with. I spent some time discussing this with Mr Anwar, approximately 5 minutes.

We are not used to dealing with a large number of people at the beginning of a trial. Large numbers of people often come towards the end of a trial. There is always a concern when there is a large number of people in a small area."

Commentary

21.2 In my view these arrangements were appropriate and satisfactory. The authorities at the High Court had to accommodate some unusual features of this case, and they did so.

Missing witnesses: the trial postponed

21.3 In the event the trial could not start due to the absence of one of the accused, Andrew Coulter, and two Crown witnesses (Alexandra Tierney and Ronnie Coulter) who had produced soul and conscience certificates²². Sean Murphy, the Advocate Depute at this trial, told me -

"One of the accused had not been brought from prison and I had to instruct police officers to go to the prison and get Andrew Coulter as the prison did not have staff to bring him. There were issues about the press and soul and conscience certificate issues for certain of the witnesses."

21.4 The judge (Lord Bonomy) accepted the reasons which were given for Andrew Coulter's absence; and the case was adjourned to 8th November to allow further enquiries to be made into the health of the two witnesses.

21.5 This information was given to Mr Anwar and the family, and they did not challenge it. However, Mr Anwar later made an issue of it in the press.²³ Mr MacDonald's account of this to me was as follows -

"Aamer Anwar had to be satisfied regarding the absence of Andrew Coulter - if the judge was satisfied then I assumed that everyone else would be. I thought this had been satisfactorily addressed. Lord Bonomy was satisfied and so was Aamer Anwar at that time. Mr Anwar later raised the point in the newspapers and asked why Andrew Coulter had not been there. I didn't have an explanation at the time, as he had not been ordered out. I didn't know who should have ordered him out. I thought at the time that Aamer Anwar was satisfied; we couldn't have started anyway, as others were not there. When Aamer Anwar later raised this issue in the public domain I was surprised and disappointed. I could explain things until I was blue in the face but it was never enough. I didn't hear anything about the matter between the first day and the newspaper articles. Aamer Anwar approached me to find out why two witnesses could not turn up. Mr Anwar wanted to know who they were and why they were not there. I had instructions from the Advocate Depute regarding what I could say. He seemed satisfied, but he was dubious regarding why. I was apprehensive, I knew I had to be careful in case this was turned back on me at some point in the media."

Commentary

21.6 This dialogue did not seem significant at the time: it became significant afterwards, when Mr Anwar made an issue of it in the press. Mr MacDonald's comment reflects his growing unease as Mr Anwar used his standing as representative of the family to further his aims as a campaigner. This generated a distrust which impeded communication with the family.

A misunderstanding with Security

21.7 Two further incidents occurred that day which are significant for this Inquiry. The first is described by Mr Dowie in these terms -

"When the case called, one security man went to the room where the supporters were and brought them to the area outside the courtroom. This was prior to the jury being empanelled. I did not know that the security guard had done that. I saw the supporters and said to Mr Anwar that the jury had not been empanelled yet. He got quite indignant and said that the security guard had told them to move towards the Court. Mr Anwar was indignant, perhaps justifiably. ... People were upset and were emotional. I was aware of that. I was annoyed with the security guard. Once I had discovered that had happened, I apologised to Mr Anwar and to the girl who was with him. The group then went back to the room."

Commentary

21.8 This needs little comment. The security guard was out of order; people were upset; and the management, quite properly, apologised.

Campaign supporters

21.9 The defence raised with the judge the fact that outside the court supporters of the family were wearing ribbons. The judge required that they be removed. It was explained to the family that wearing the ribbons could constitute contempt of court. Mr MacDonald gave me this account and comment on the incident -

"Outside court the supporters were wearing ribbons. Mr Chhokar was annoyed when they were told they had to be removed. It could be contempt of court if they didn't remove them. Mr Chhokar was annoyed because his son had been killed. I did not know that Aamer Anwar had spoken to the Deputy Crown Agent about the court proceedings not being affected. The judge made a comment about the fact that the ribbons needed to be taken off. By the time I got out to deal with it, word had got round and people were taking the ribbons off before I got there. It was the defence who raised the issue before the

judge. The jury were not in the room at the time, they were in another part of the building altogether. It could change the whole proceedings. The ribbons issue was not a good start to the family liaison, particularly as it upset Mr Chhokar."

Commentary

21.10 As I have noted in the preceding chapter, the Deputy Crown Agent had already advised Mr Anwar that 'there should be no opportunity for the defence to delay matters or cause difficulties due to unfortunate publicity or demonstrations that might be seen by unempanelled jurors.' Mr Anwar professed to have heeded this warning, but he evidently did not succeed in impressing the weight of it on the campaign supporters. Not only did this incident give the defence a point to seize upon; it also caused distress to Mr Chhokar. I do not know whether Mr Chhokar had the significance of the matter explained to him, or if he did, whether he understood it; but I conclude that he was badly advised by Mr Anwar in this instance, to the detriment of his relationship with the officials.

The second day: Tuesday 7th November

21.11 On the next day Mr MacDonald telephoned Mr Anwar and explained that the information about the witnesses would not be available until Wednesday lunchtime and therefore nothing would happen in court the next day. Therefore, there would be no point in the relatives attending. On being asked, Mr Anwar stated that Mr and Mrs Chhokar were happy with the arrangements made for them and the support given.

Mr Chhokar as a witness: Tuesday 7th to Friday 10th November

21.12 Later in the same day Mr Anwar called on Mr MacDonald and asked him a number of questions about the trial, in particular when Mr Chhokar and Ronnie Coulter would give evidence. Mr Anwar said he was under the impression that the Deputy Crown Agent had given him an assurance that Mr Chhokar would give evidence and that this would be done at the start of the case. Mr MacDonald explained that the tactics and running order were a matter solely for the Advocate Depute (Mr Murphy) but undertook to discuss the matter with him.

21.13 I have taken evidence on this matter from several of those involved. I shall set it out at length -

Mr MacDonald -

"[at] 3:50pm I left a message for PETAL. [as he did each day - this would be for the benefit of Sanehdeep Chhokar] I also saw Aamer Anwar in the afternoon.

... Aamer Anwar said that the Deputy Crown Agent had told him that Mr Chhokar would be giving evidence early and therefore I was not to speak to Mr Chhokar again about it. Mr Anwar also wanted a running order, so that he would know when Ronnie Coulter would give evidence. I didn't know when this would be, but it would possibly be later on in the week. Mr Anwar asked me why the case was continued until Friday, rather than Thursday.

I expressed my concerns to the Advocate Depute that Aamer Anwar was too intrusive. I also called the Deputy Crown Agent to express my concern and clarify matters. I also phoned Elizabeth Bryce to explain what had happened at the High Court. It was then that Sean Murphy asked me to start taking minutes. It was difficult for me to perform my role as Fiscal Depute in relation to Mr Chhokar as a witness, if I was not able to speak to him. I was being told bluntly to keep away from Mr Chhokar.

...[On 9th November] I had received instructions from the Advocate Depute in relation to consulting with Mr Chhokar and precognosing

him with no one else there. ...

My instructions in relation to Mr Chhokar Snr were that I was to take his precognition with no one present. I was to ask him several things, (1) general background information, (2) about the identification of the body, (3) confirm when Mr Chhokar had separated from his wife, (4) confirm when Mr Chhokar Snr had last had contact with his son, (5) find out how often Mr Chhokar Snr was in contact with his son, (6) find out the full extent of the family, (7) confirm the sort of contact Mr and Mrs Chhokar Snr had with Mrs Chhokar Jnr and Elizabeth Bryce, (8) find out the nature of the break-up between Mr and Mrs Chhokar, (9) the circumstances in which the deceased met Mrs Bryce, (10) further background information, such as, if Mr Chhokar was called to give evidence, what he would be likely to be asked and in what context. I knew that on Friday it was likely to be background evidence only and therefore unlikely to be necessary for Mr Chhokar to be called.

... I took the statement in a separate room. There was only myself, Mr Aziz and Mr Chhokar there. Everyone understood what was going on, Aamer Anwar did not try to argue about it. I am not sure what his reaction to it was. Mr Chhokar did not say that he was unwilling to give evidence, we talked about it via the interpreter. He said that he didn't really want to give evidence, but that he would do so if the Crown thought it was something he should do. I don't know whether he thought that he had to give evidence, this became an area that he was unwilling to talk about without Aamer Anwar being present. He seemed uncomfortable and I formed the impression that he was apprehensive of doing something that Aamer Anwar might not agree with.

... [on 10th November] Mr Anwar did not seem content to leave the running order of the case to the Advocate Depute. He was saying that Mr Chhokar would give evidence and was detailing what it would be about. He didn't want Mr Chhokar still to be waiting to give evidence by the following Tuesday or Thursday. Aamer Anwar was saying that Mr Chhokar was only to be asked about the identity of the deceased."

Mr Aziz (the interpreter) -

"I do remember a statement being taken from Mr Chhokar by Alan MacDonald. Mr Chhokar indicated that he was not willing to give evidence. Mr Anwar wanted to put Mr Chhokar in the witness box but Mr Chhokar indicated to Mr MacDonald that he did not want to give evidence.

Alan asked me to help him in taking a statement from Mr Chhokar. Towards the end of this interview, Mr Chhokar said to me something like, 'They are asking me to give evidence but in fact I never saw anything. I was in bed, the police came to my house and told me that my son was dead. They took me to the hospital to identify the body. If it is not going to make any difference to any evidence, then why should I give evidence?'

I then explained to Alan that Mr Chhokar did not want to give evidence. Alan never asked Mr Chhokar to give evidence or not to give evidence. Mr Chhokar was not surprised that he may have to give evidence.

I was not left in any doubt that Mr Chhokar did not want to give evidence. He made it clear to me.

When we came back to the room the rest of the family were there along with Mr Anwar. I always spoke to Mr Anwar in English. I said to Mr Anwar, in English, that Mr Chhokar had said he did not want to give evidence. Mr Anwar was not happy. He was visibly unhappy. You

could tell by his face. He did not raise his voice. I think he did use the word 'fuck' as well but I'm not sure.

Mr Anwar said to Mr Chhokar, 'I did tell you that you were to give evidence. Why did you say that you didn't want to give evidence?'

Mr Anwar did not say in my presence that Mr Chhokar did not understand the word 'witness'. I do not know if Mr Anwar later spoke to Alan.

No other family member was insisting that Mr Chhokar gave evidence. Mrs Chhokar was in favour that Mr Chhokar did not give evidence. Mrs Chhokar said, in Punjabi, 'That's a good thing. It's just as well. He did not want to give his evidence in this case anyway'."

Mr Crowe said, in relation to Mr Anwar's statement that he had given him an assurance that Mr Chhokar would give evidence -

"No, that is not correct. I could not give that assurance and I explained to Mr Anwar that it was a matter for Crown Counsel. I said I understood his position and would pass that information on to Crown Counsel. I did sympathise with Mr Chhokar and I said I would report the matter to Crown Counsel for their decision. It is not within our power to excuse a witness from the High Court."

Mr Murphy (Advocate Depute) -

"At a very early stage there was a communication from Aamer Anwar via Alan MacDonald to me relating to talk of Mr Chhokar's right to give evidence. No witness has a right to give evidence, that is a matter for the trial Advocate Depute. Mr Anwar had made a specific request that Mr Chhokar give evidence about identification of the body and nothing else. That worried me because I can have no control over the defence line of questioning. I was aware that there was ill feeling between Mrs Bryce and the deceased's father and I did not know if the defence would play on that. The nature of the comment by Aamer Anwar was that Mr Chhokar would only like to give evidence about the point of identification. I asked myself the question, 'what does he know that I don't?' because that request caused me concern.

I also knew that it was likely to be a tough, no-holds barred trial by the defence. Subsequently, the defence did seek to bring out evidence of an assault by the deceased on Mrs Bryce. Mr Chhokar might have had information about that.

Following this, I sent Alan MacDonald down to reprecognise Mr Chhokar on the relationships involved. Alan came back and read the notes of the precognition to me.

... I said to Alan MacDonald to ask Mr Chhokar at the end of the precognition exercise his views about giving evidence. That was not the main purpose of the exercise but I have done that in previous cases. Alan read me the notes of the precognition and I recall these included that there was no contact between the father and Mrs Bryce and that the father blamed her for the break-up of his son's marriage. He had also said that he was not particularly keen to speak in court but if I considered it important for the Crown case then he would do so. On the basis of the information contained in the precognition I decided to discharge Mr Chhokar. Alan MacDonald would then have to go back and tell Mr Chhokar he would not be required as a witness. This would allow him to sit through the whole trial...

I was also concerned that in legal terms Mr Chhokar was not necessary as a witness. It might have been perceived by the defence as seeking a sympathy vote because the evidence was thin. I have no doubt that would have been said by the defence.

There was a difficulty the next morning. There had been some representation by Amer Anwar to Alan to me that Mr Chhokar had not understood the word 'witness'. As I understood it, the word 'witness' had not been used. Mr Chhokar had been asked if he wanted to give evidence. I did not understand Mr Anwar's representation. It didn't make sense and I was a bit suspicious. I then told Alan to take the notes of the precognition to the interpreter, Mr Aziz, and to check with him if they were accurate. The notes Alan had read to me were consistent with Mr Aziz's recollection."

21.14 The matter came to a head on the Friday morning, just before the trial proper was about to start. Mr MacDonald had learned at the precognition (supported by the interpreter) that Mr Chhokar did not wish to give evidence. He relayed this information to the Advocate Depute who was happy to discharge Mr Chhokar from giving evidence. At 12.15 pm he met Mr and Mrs Chhokar and other relatives (but not Mr Anwar). He explained that the case was about to start and that it would deal with photographs only. At 12.20 pm, with his colleague George Macleod also present, he explained to the relatives (and Mr Anwar) that the Court was about to empanel a jury, and that once the jury has been empanelled they would all be allowed into Court to hear the evidence.

21.15 Mr Anwar then informed Mr MacDonald that Mr Chhokar wanted to give evidence. He said that Mr Chhokar did not understand the word "witness" and that the family were insisting that Mr Chhokar should give evidence. Mr MacDonald reiterated that if Mr Chhokar was a witness then he could not go into Court and it would be wrong for anyone who had been in Court to relay information to him as a potential witness.

21.16 At 12.40 pm the jury was empanelled, and Mr MacDonald advised Mr Anwar in the presence of Mr and Mrs Chhokar and other relatives that following the interview with Mr Chhokar their views had been passed to the Advocate Depute and Mr Chhokar had been discharged as a witness. Therefore, Mr Chhokar would not now be called as a witness and was free to sit in Court.

21.17 Mr MacDonald's account of this to me was -

"... Mr Chhokar, via the interpreter, said he didn't want to give evidence. A few minutes later after [my] seeing the Advocate Depute and returning to the family room, Mr Anwar said that Mr Chhokar and the family wanted him to give evidence. This was the opposite of what Mr Chhokar had said to me. I felt that Mr Chhokar had nothing significant to say in evidence, but it wasn't my decision to say whether or not he was to give evidence. I was told afterwards that Mr Chhokar actually wanted to give evidence and I wanted to know how that had happened. At 12:20pm I went back into the room with George Macleod and Mr and Mrs Chhokar and Amer Anwar were present. We explained which witnesses would be called so that Mr and Mrs Chhokar would know what was going to happen. Amer Anwar was now saying it would be good tactics for Mr Chhokar to give evidence, he was essentially telling me what to do as a Fiscal Depute. I couldn't believe it. When Mr Chhokar said that he wanted to give evidence, I was surprised and frustrated. Only 5 minutes before everything had been different, now there was another issue to deal with. Amer Anwar said that there had been confusion because Mr Chhokar did not understand the word 'witness'. At that point I didn't know how to deal with that, I had been up and told the Advocate Depute about one decision and now I came back down to find that everything was completely different. If he was going to give evidence then he wouldn't be allowed into court, so we explained that. Finally, we said that if there was a problem he had to take it up at a later date, as the final decision had been made. Amer Anwar said that the family were insisting that Mr Chhokar gave evidence. Mr and Mrs Chhokar, Mr Aziz, Miss Gufoor, George Macleod, possibly the sister, Amer Anwar and myself were present.

When I went back to the room, Mr Anwar was angry or at least somewhere between annoyed and angry. He was visibly upset. You could tell by his face he was unhappy. I wanted Mr Aziz to tell me what had happened in my absence, but he did not want to get involved. The interpreters had had enough, you could sense they were becoming involved, but they just wanted to interpret. I was left with a dilemma, but we eventually said we had reached the end of the issue and had to move on. By this time I was beginning to feel that Aamer Anwar was not representing Mr and Mrs Chhokar very well, he was coming very close to committing a criminal offence and perverting the course of justice. He was interfering with the prosecution and the Advocate Depute said that himself. The Advocate Depute was affronted at Aamer Anwar telling him what the Crown tactics should be, I would have told Aamer Anwar that myself if I had backing and support. The word 'witness' was never used during my conversation with Mr Chhokar. We had spoken about giving evidence and talk of witnesses was not relevant. Hence it was irrelevant whether or not he had understood what a witness was."

Commentary

21.18 Mr Anwar, a trainee solicitor, had formed the view that the prosecution team was incompetent - he said as much at a later stage in the trial, and he has described them to me as "bungling idiots" - and set about to manage the prosecution himself. Mr MacDonald comments in the extract above that Mr Anwar came close to perverting the course of justice. I do not suppose that that was Mr Anwar's intention; but the officials perceived that risk and had to take appropriate action.

21.19 It is also hard to escape the conclusion, from the accounts quoted above, that Mr Anwar was putting pressure on Mr Chhokar, sometimes against his will. There were three witnesses to Mr Chhokar's statement that he did not want to give evidence - Mr MacDonald, Mr Aziz and Mrs Chhokar - and yet within a matter of minutes of learning of this, Mr Anwar claimed - also in the presence of several witnesses - that Mr Chhokar did wish to give evidence. We do not know what passed between Mr Anwar and Mr Chhokar in the few minutes when Alan MacDonald was out of the room. The interpreters, understandably, did not want to be drawn on that. But if Mr Chhokar was persuaded to allow it to be said that he did wish to give evidence it was against his will.

21.20 The point of concern here for this Inquiry is that communication between the prosecution team and the parents of the murdered man - family liaison - was utterly frustrated. The liaison officer, Mr MacDonald, had been cut off from direct communication with Mr Chhokar, and was only able to talk to him direct and in privacy under the conditions of a formal precognition, and that only because he was at that stage still technically a witness.

21.21 These problems were very apparent to all the officials involved with the case; and at some point during these days - the exact timing is not recorded - the Deputy Crown Agent instructed that two people should be present when speaking to Mr Anwar and that notes should be taken.

A confrontation with security

21.22 At 10.20 am on 10th November Mr MacDonald, on going to the secure Witness Room, met Mr Anwar. Mr Anwar was 'very annoyed'. He said he had been stopped by the Head of Security who had been aggressive with him and had tried to physically stop him taking a family member into the room. He asked whether the Security Guard would have treated a white solicitor in the same way. He said he wanted to make a complaint about the Security and made it very clear that he did not want anyone 'hassled' or turned away. Mr MacDonald said that he would deal with the matter so that Mr Anwar could have unrestricted access to that room without experiencing further difficulties.

21.23 I took evidence from several witnesses about this incident: Mr MacDonald; Mr Barclay Williams, the Security Supervisor at the High Court in Glasgow, who was the man who stopped Mr Anwar on this occasion; and Mr Dowie, the Court Manager -

Mr MacDonald -

"... there had been a problem with the security guards and Mr Anwar going into the witness room with a relative. They wouldn't let him in and there was a confrontation, the security guards got the people in the room to identify the person who was trying to get in by describing him by the colour of his turban.

... It was Aamer Anwar who raised the problem with the issue of the colour of the turban. He was very angry that he had tried to get into the room and had been stopped, he said that the relative did not want to get hassle. He asked me if a white solicitor would have been treated in the same way.

After the turban issue Mr Anwar was allowed to come and go as he pleased and it wasn't raised again. The person wearing the turban wasn't there when the comments were made. The security guard went into the room and asked those inside what colour of turban the gentleman was wearing. That couldn't have been heard by the wearer of the turban and so he couldn't have been offended by it. Aamer Anwar was aware of who was allowed to go into the room. I suppose I might do things differently now, I would set parameters, it was a family room. As far as I was concerned the definition of family included Mr Chhokar's mother and father, his sister and any relatives, but not strangers or supporters. Aamer Anwar knew that. I don't know whether or not the security guards knew that. I did not tell the security guards that I had given Aamer Anwar my pass. The security guard was just doing his job, it was quite right that he should have stopped both of them."

Mr Williams -

"Mr Anwar tried to get into the family room with another man. I thought he was a member of the public. They came from the unempanelled jurors' room. I challenged Mr Anwar and he said that he was with the brother or brother-in-law (I'm not sure) of the deceased. I then accompanied the men to the family room. I went into the family room and asked one of the family members to come to the secure entrance to identify the gentleman. I asked the deceased's sister or sister-in-law (I'm not sure) to come out and identify the man as her husband. I think I may have asked the lady what the man was wearing and I think the colour of his turban was mentioned."

Mr Dowie -

"The arrangement between Alan and myself was that only one person had authorised access to the secure unit and that person was Alan MacDonald. I cannot comment on the behaviour of the security guard but what he did in not letting Mr Anwar through to the secure area was correct on the basis of the agreement and instructions I had given. Any contact in the secure area would have to be through Mr MacDonald.

The security officers were aware that Mr Anwar was a representative of the community and at times would be accompanying the family although he was usually in the company of the supporters' group. I understood that Mr Anwar's principal role was that he was representing the community and the supporters who were there. With regard to the family, I simply understood his role to be there as support for the family."

Commentary

21.24 Mr Williams was doing his job quite correctly. He had to establish the *bona fides* of the stranger, and it was sensible to ask a person inside the room about what he would be wearing. The answer to Mr Anwar's 'would you treat a white solicitor the same way' would of course be Yes: the only discrimination which the security guard could make was between people who held a pass and those who did not.

21.25 More significant for this Inquiry is that this incident is the clearest evidence up to this point that Mr Anwar was out of sympathy with what Mr MacDonald was trying to do for the family, and had no patience with it. Mr MacDonald's perception was -

"I got the impression with Mrs [Sanehdeep] Chhokar that we were on the same side, but Aamer Anwar did not give me that impression. I suppose that Aamer Anwar was using me as a whipping boy for his complaints and concerns. If he had a problem and wanted something done, it was me that was approached. ... I felt there was a lack of respect for me as an individual. ... I would always treat people the way that I would expect to be treated myself. I felt demeaned by Aamer Anwar ..."

21.26 There is other evidence of this too, from later in the trial, which I shall come to in due course. I also came upon evidence incidentally, from Mr MacDonald's colleague Dr Griffiths, who told me -

"I did have some concern that Mr Anwar was perhaps taking advantage of Alan MacDonald. At one point Alan MacDonald came in to our office with a floppy disc and asked my secretary to type up a lecture which Mr Anwar was delivering at Strathclyde University on anti-racism. This request was refused on my instructions. There was a danger that Mr Anwar was taking advantage of Alan MacDonald and also a danger that Alan might be taken advantage of."

21.27 When Mr Anwar met with me, on 16th February 2001, he remarked -

"It was the same people involved in the two trials. I think they realised that the shit was going to hit the fan and they over-reacted. They were going around and getting glasses of water for the family. It was funny to see just how far you could make someone like a Fiscal Depute go to help somebody. It just shows how much they are going through the motions. It was if they were saying that everything is okay now, let's just move on."

21.28 Clearly, Mr Anwar was not interested in family liaison, since he treats it with derision.

Interpreters

21.29 As the family were about to go into court on 10th November there was a discussion regarding the use of the interpreters. Mr Anwar stated that there was an agreement with Crown Office that the interpreters would be used for Court purposes only. Mr Anwar would interpret at any meetings with the relatives.

21.30 I have noted above (at paragraph 21.5) that it is uncertain whether there had been such an agreement. The only additional point to make here is that Mr Anwar's proposition was accepted, and thus he further interposed himself between the officials responsible for family liaison and the family itself.

A meeting with the Advocate Depute?

21.31 In the course of the same discussion Mr Anwar said that it had been suggested that the Advocate Depute would meet with Mr and Mrs Chhokar that afternoon to introduce himself and to discuss the case. Mr MacDonald said that

Mr Murphy was prepared to meet with Mr and Mrs Chhokar at the end of the day in the presence of the interpreters and not Aamer Anwar. Mr Anwar continued to maintain that he had agreed with the Deputy Crown Agent that he (Mr Anwar) would interpret at any meetings. In the event, since Mr Anwar was unwilling to agree to a meeting without himself being present, there was no meeting with the Advocate Depute during the trial.

21.32 I got Mr Murphy's account of this -

"Alan MacDonald went to explain to the family that Mr Chhokar was not required. He came back with word that the family wanted to see me and I would then inform the defence that I was to meet with the family. The message then came back that the family were insisting on Aamer Anwar being present at the meeting, but as I understood it, it was Aamer Anwar who told Alan that. I explained to Alan that I had to maintain my position during the trial and that I could not meet a representative of a campaigning group in those circumstances. There is a question of prosecuting impartially in the public interest and the responsibility stops with me. I spoke to the Lord Advocate and explained to him that I would meet with the family and Aamer Anwar after the trial but was unable to do so during the course of the trial. The defence had brought to my attention a public rally at which Aamer Anwar was due to speak. Aamer Anwar was therefore involved in the political arena and I could not be seen to discuss the case with him.

I had concerns about Aamer Anwar's representations on the points of Mr Chhokar giving evidence and wishing to discuss my tactics during the case. I was suspicious in the sense that it was the second occasion when something had been narrated to me by Alan MacDonald from Aamer Anwar which was inconsistent with other information. The Deputy Crown Agent has no authority to bind Crown Counsel. The other difficulty in relation to discussing tactics etc is that these things can get out to the press.

If Aamer Anwar had been introduced to me as a family support person then I would have had no problem in meeting with him, but Mr Anwar had a very public role in this case."

Commentary

21.33 Mr Murphy had a clear perception of Mr Anwar's legitimate role as a campaigner, and rightly insisted that it could not be confused with that of an interpreter or family friend. He was aware, as Mr Anwar was not, that it would be highly prejudicial to the prosecution for him to have anything to do with a public campaigner during the course of the trial.

Provision of witness lists

21.34 Mr MacDonald has recorded that copies of the Indictment and Notices etc together with a full list of witnesses were made available on this and subsequent days to Mr Anwar and the relatives. I asked him about the background to this, and he told me -

"Aamer Anwar also wanted the Crown list of witnesses, I am not sure why, but I said he couldn't have it. This was intrusive. He said the police had it and the Clerk of Court confirmed it was in the public domain and so I thought there couldn't be any harm. I didn't really know why he wanted it, he later said it was on behalf of Mr Chhokar. He wanted a copy of the indictment and a list of witnesses. I put these in booklets for the family, but I didn't have this translated."

21.35 Mr Murphy told me a different story -

"I have a master running order [of witnesses] ... which goes to my Crown Junior and myself. I then have extracts of that each day for the defence and the court macer. It is never given to anyone else. That

running order sometimes bears no relation to what actually happens for unforeseeable reasons, usually problems over witness availability ... I think Alan MacDonald also had a copy of the running order, but he only had access to it in order that he was able to marshal the witnesses.

Alan MacDonald was told to give the family an overview of the evidence, for example, scene of crime officers, eye witnesses, pathology, etc. This would allow the family to know the direction the case was taking, and they would also need a forewarning of evidence such as the pathology evidence."

Commentary

21.36 Mr MacDonald was right to see this as intrusive. He should not have made witness lists available to a third party. There are several dangers in making witness lists available -

- Witnesses are often reluctant when called on to help the police and the courts: if they knew that their names and possibly their addresses or places of work could be put into the hands of victims' families or of a campaigner, they would be even less likely to co-operate.
- If the lists are put into the hands of a third party there would be nothing to stop him from carrying out his own investigations.
- The Crown should not release witness lists, lest the prosecution be jeopardised through allegations of potential interference with the evidence. That may, importantly, prejudice the right of the accused to a fair trial.

Note-takers, and segregation, in court

21.37 Later in the same day (10th November) Mr Anwar made two complaints. One was that his note-takers had not been allowed to sit in the front row of the public benches. The second complaint was that, on entering the court building, white supporters of the campaign were being directed to the canteen and Asian supporters were being directed to the unempannelled Jury Room; and in court itself white people were being directed to the left and Asians were directed to the right. Mr Anwar pointed out that it was not just Asian people who were supporting the campaign.

21.38 Mr Anwar returned to this issue in the public statement he made at the end of the trial, on 29th November, claiming that there had been a deliberate policy of racial segregation within the courtroom -

"Even at its most basic level, we noticed that on the first day of the trial the head of security adopted a deliberate policy of segregating the court room by pointing white people to one side of the court and blacks to the other, this continued until it was complained about. Why are court officials allowed to harass the black and Asian community as though they are criminals."

and he repeated it to me when I met him with members of the Chhokar family -

"There was segregation in the court. White people were made to sit at the left and Asians to the right. An assumption was made by the guards that white people would not be supporting the family. The majority of the 150 people there who were supporting the family were white.

There is a rudeness by people who deal with you. This was pointed out to the Crown. I said to the Crown 'once again your colour blind

approach did not even see segregation in court'. The response by them was that they were not in charge of that."

21.39 The police have responsibility for security in the courtroom and for the safety of everyone in the building. I took evidence on the police role from Inspector Eddie Haggarty of Strathclyde Police, Courts Branch. He explained the briefing he had had on this case, and put it in the perspective of his job generally -

"I was kept abreast of the plans being made in respect of this case by Norman Dowie and Dr Griffiths. We had a number of discussions about the case. They had intelligence about a possible demonstration and also about the numbers of supporters who were expected to come to Court. This case was a high profile murder case but we get lots of murder cases here. The most difficult type of situation for us to deal with is where, for example, a young boy has been killed by another boy in a street fight situation and the families come to Court, sometimes bringing weapons with them, and becoming very confrontational. The Chhokar case was one of the better cases to manage from our point of view."

21.40 In respect of the seating arrangements for note-takers he said -

"We always try to keep the front two rows clear because the dock is very close to the front rows and it is a security matter. I was made aware that individuals had complained that they were moved from the front two rows in the Chhokar case. No reason was given to me about why they wanted to sit in the front rows but it might have been that they had a difficulty in hearing the case. The two benches immediately behind the dock are not used. The benches to the side are used by the press ... The individuals in the Chhokar case were then directed to other parts of the Courtroom. After the intervention of the Procurator Fiscal, however, they were allowed to sit in the front two rows. I think Mr Macleod of the Fiscal's Office came and said that they were allowed to sit in the front two rows. I believe the Procurator Fiscal had phoned my Superintendent and as a result the matter was out of my hands."

21.41 With regard to segregation in the public benches he said -

"... the deceased's family had several white people with them. We generally try to separate one faction from another and indeed they generally separate themselves within the Courtroom. There were whites with the [Chhokar] family. We will try to separate different factions from a common sense point of view."

21.42 Mr Dowie, the Court Manager, also gave me a perspective on this issue -

"I did not see or observe any racial segregation. I was made aware of a police decision later on in relation to this but the decision was not explained on the basis of racial grounds but on the basis of separating the family and relatives of the deceased from the family and relatives of the accused. At the end of murder trials emotions are generally running high between the two families. These emotions can spark off riots and near riots. We are dealing with full-time experienced Court officers who look at the local circumstances within the courtroom. It is a matter of judgment for them. Had I been aware of someone complaining about racial segregation I would have acted quickly and asked the police about it. If I had been told that the segregation was on the basis of keeping the families apart, then I would not have interfered. If I had found out that there was segregation on racial grounds, I would have intervened. From what I understand from this situation, the police were following a recognised protocol where a large number of people from (two) separate groups were attending in court at the conclusion of the trial. It is not unusual in these situations

for both parties to behave up until the verdict and then all hell to break loose in court thereafter."

21.43 Finally, I asked the judge in the case, Lord Bonomy, whether he observed segregation of members of the public on the basis of their race. He said -

"People do often seem to be segregated in court depending on their relationship with the accused or deceased. I cannot tell on what basis there may have been segregation in the Chhokar case. The family was generally sitting in the same place in the court."

"I observed nothing in this case which was not normal practice. I suspect the police take steps to ensure separation between different groups of people. The separation of different groups appears to be under the control of the police for public order reasons. I have on occasions asked for additional security prior to a verdict being returned in a murder case because that is a point at which the emotions of the families and friends of those involved run high".

21.44 I accept these explanations.

Footnotes

12 See Appendix 16 for explanation of `concert'

13 Criminal Procedure (Scotland) Act 1995, section 281(1) provides that "...it shall be presumed that the body of the person identified in [an autopsy report lodged as a production by the prosecutor] is the body of the deceased identified in the indictment or complaint..." unless the accused gives prior notice that the contrary is alleged.

14 Manjit Sengha is quoted in The Scotsman of 11th March 1999 as follows - "We expected three men to go on trial. When we arrived at the High Court and saw just one man on trial we were very confused. We have never been given any explanation why this happened."

15 See Appendix 16 for explanation of this term

16 See Appendix 16. A `production' is a document or article which may be produced as evidence in court.

17 the document containing all information relevant to the case including draft charges, draft list of witnesses, summary of facts, all precognition statements etc

18 A standard form of letter from the Crown Office, containing further instructions to the precognoscer, which may include, for example, reprecognition of certain witnesses, a request for further productions, or that checks be made to ensure that all productions are labelled and numbered correctly.

19 A case where records are kept on paper, not on computer.

20 This and the following quotations are from The Scotsman

21 HMA v. Abdelbaset Ali Mohamed Al Megrahi and Al Amin Khalifa Fhimah

22 ie medical certificates or letters from a doctor testifying, on soul and conscience, that the individual is unfit to attend court

23 Chhokar Family Justice Campaign Statement read at a Press Conference following the verdict in HMA v. Montgomery and Coulter - 28th November 2000

[Back](#) | [Contents](#) | [Previous](#) | [Next](#)

**REPORT OF THE INQUIRY INTO THE LIAISON ARRANGEMENTS
BETWEEN THE POLICE, THE PROCURATOR FISCAL SERVICE AND
THE CROWN OFFICE AND THE FAMILY OF THE DECEASED SURJIT
SINGH CHHOKAR IN CONNECTION WITH THE MURDER OF SURJIT
SINGH CHHOKAR AND THE RELATED PROSECUTIONS**

BY DR RAJ JANDOO, ADVOCATE

VOLUME 1: REPORT

SP Paper 424

Session 1(2001)

22. THE SECOND TRIAL: REMAINING PROCEEDINGS

This chapter deals with the remainder of the second trial.

22.1 This is a long narrative, which I shall give uninterrupted. I comment on the whole trial at the end of the chapter.

Monday 13th - Tuesday 14th November: a further adjournment

22.2 On Monday 13th November, before the start of the trial the Crown was granted an adjournment in order that the police could conduct an enquiry on the basis of new information. No detail of that could be revealed at the time, so as not to jeopardise the police enquiry. Mr Murphy explained to me the circumstances -

"[it] could not be discussed with anyone. The worst possible scenario was that people found out what the police had been asked to do before the police operation was complete and therefore we did not want any public discussions about this. This related to the disposal of the knife which had been used in the murder. The police had previously searched for the weapon but there was no trace. One of the defence counsel had given more specific details about where to search. The defence obviously wanted the matter to be investigated."

22.3 It fell therefore to Mr MacDonald to explain to the Chhokar family why there had to be an adjournment, and that there would be no more proceedings that day. He told me -

"At 9.15am the Court opened. ... Andrew Coulter's solicitor ... said they knew where the murder weapon was. It was only the Defence and the Crown who knew that at the time ... The Defence were putting the Crown on notice regarding important evidence and that was sufficient for the judge to grant the opportunity for the Crown to investigate. ... this line of enquiry had to be kept secret, as the Crown wanted to get to the place first."

The case was adjourned for this reason, and I explained to the family what was going to happen. I met with Mr and Mrs Chhokar and Aamer Anwar, but I didn't go into specific details. Mr and Mrs Chhokar were a bit deflated. I was on pain of death not to discuss the issue, but I wanted them to know as much as possible. Aamer Anwar was probing to find out what the information was, he wanted to know how crucial and critical the evidence was. This didn't come as a surprise, but I was quite happy to say I couldn't talk about it. Mr Anwar's reaction was that he wanted to know what it was. I did not think that this interference

was legitimate, and in terms of liaison I had done what I could. Mr and Mrs Chhokar were not probing, it was Aamer Anwar who did it, I don't know if he later translated for the family. Lord Bonomy had commented that it was unsatisfactory, but that the Crown needed time to investigate and he could not intervene. This information was therefore in the public domain and it was translated for Mr and Mrs Chhokar. Aamer Anwar was present when this was said, but I expected him to want more information. He was not satisfied with what the judge said and he later got more information, but I don't know where it came from."

22.4 At 2.05 pm Mr MacDonald spoke to Mr Anwar by telephone. Mr Anwar said he had obtained more information about the adjournment and knew that a weapon was being looked for. Mr MacDonald confirmed that the enquiries had been completed, that nothing had been found and that the case would resume at 10.30 am on Wednesday. Mr MacDonald's comment on this to me was -

"I don't know who had given him the additional information, I said I couldn't say anything, but he knew anyway. ... It must have been either the press or the court officer who told him, but I don't know."

Family relations with Mrs Bryce

22.5 Mr Anwar also stated at this time that the family wanted to make contact with Elizabeth Bryce after the case just to put things right. Mr MacDonald's comment to me on this was -

"Aamer Anwar was in the habit of speaking to witnesses after they had given their evidence. ... I thought that this was trying to create a good image, as some of what Elizabeth Bryce said wouldn't look good, she was another 'loose cannon'. It wouldn't look good for Mr Chhokar or for Aamer Anwar's campaign. ... I asked Mrs Bryce about it, but she had told me that at the first trial, Mr Chhokar Senior had spat at her or on her and she did not want anything to do with them. I told Mrs Bryce that the family wanted to get in touch, but she said that there was no chance. She didn't want anything to do with them.

... The suggestion of a family reconciliation was after she had given her evidence.

All Aamer Anwar essentially wanted me to do was to have a word with her. I gave an undertaking to Mr Anwar to do so, I was used to it and I did. It was not really part of family liaison, but it was easier to do it than tell Mr Anwar to stuff it and do it himself. That would have been too confrontational. I wanted to keep Mr Anwar on my side, as I could not liaise with the Chhokars without him."

Further complaints

22.6 At 3.30 pm the same day Mr Anwar came to Mr MacDonald with complaints about (1) a one hour time delay on the video evidence, and (2) allegations of rape against Surjit Singh Chhokar: he said the family had not been warned of this.

22.7 On the matter of the video evidence, Mr MacDonald spoke to the Advocate Depute, who was well aware of the matter. Mr Murphy told me -

"In relation to the video evidence, there was a time lag on the video of one hour. This was caused because the clock had not been reset after the end of British Summertime. The technical difficulty was agreed by the defence and was the subject of a joint minute of agreement."

And Mr MacDonald said -

"I was standing outside and Mr Anwar came out of court and spoke to me. He was telling me to speak to the Advocate Depute, I told him not to worry as the Advocate Depute knew of the time delay ... Aamer

Anwar was annoyed, because he wanted everyone to know of the problems with the video, but it had all been dealt with at the first trial ... He didn't mention whether or not the family were annoyed, this was all about him. I was getting the impression that Aamer Anwar was getting too involved with the case prosecution. Mr and Mrs Chhokar were oblivious to the problems of video evidence. The family never spoke to me about video evidence, they never really spoke to me about anything to do with the trial."

22.8 The allegation of rape, of which Mr Anwar complained, had not in fact been mentioned in court. It presumably originated from the statement made to police on 5th November 1998 (the day after the murder) by the witness Jamie Rooney, which contained the comment *"About three or four weeks ago I was in the park next to the Community Centre ... Andy Coulter said to me, 'Did ye hear about it, that black bastard Chhokar raped a bird behind Almas'."* The police had researched the allegation at the time and had found that the only incident known had nothing to connect it with Surjit Singh Chhokar.

22.9 Mr Murphy told me -

"There had been no mention of rape in the course of the trial and certainly not in open court. That remark was not made in public and I don't know if it ever was. There was a rumour of misconduct on the part of the deceased but that did not come out in the evidence. There were various versions of the rumour. Some witnesses knew of the rumour and I had one of the witnesses reprecognosced. I also had contact with the police and I was told that they had no record of any rape complaint from that place and time. I do not know how Aamer Anwar knew about this and I specifically made no mention of it because it was of no relevance.

I had Jamie Rooney reprecognosced by Alan MacDonald ... Jamie Rooney's recollection was that the remark had been made approximately one year prior to the murder and tied in with the time Mr Chhokar worked at the Almas Restaurant. It has been explored to some extent in his precognition statement but they had not examined the 'while ago' comment.

The difficulty is that the 'black bastard' comment is inextricably linked with the rape allegation and therefore cannot be brought out without bringing out the character of the deceased."

and Mr MacDonald -

"Mr Anwar said that a rape issue had been raised in court. I was concerned about liaison. If it had been raised and the family did not know in advance then I would have been concerned. ... Aamer Anwar was annoyed, but I said I couldn't answer anything as I needed to know what was said before I could deal with it. Aamer Anwar gave the impression that the word 'rape' had been said in court. I was concerned for the family and said I would look into it. ... I met with Mr and Mrs Chhokar at 4.45pm and they did not mention the issue of rape. I would have hoped that they could have raised this with me if they felt the need to. Mr Chhokar voiced concerns later so I know he could have. I expect he would have raised it, if he felt he should have. I am not sure whether Aamer Anwar put my explanation of the rape issue to the Chhokars. It was really only him who was bringing this up ... I think that the Advocate Depute asked Elizabeth Bryce if Surjit Singh Chhokar got angry. It must have been noted whether or not there was any mention of rape in Court - if rape had been mentioned it would be in the transcript. It was not mentioned though."

22.10 At 4.45 pm. Mr MacDonald met with Mr and Mrs Chhokar and Mr Anwar after court. They said that the translation was working well although they found it difficult to hear Derek Ogg QC. Mr MacDonald did what was necessary -

"The interpreters did say that they couldn't hear Mr Ogg, this was a genuine concern for the Chhokars and it was dealt with. With the Clerk of Court, I had a microphone plugged in."

22.11 At that meeting Mr Anwar got angry and in relation to the Advocate Depute asked what he was playing at and called him "incompetent". Mr Anwar said that further enquiries would need to be made regarding the deceased's character. Mr MacDonald said that the specific comments made by Mr Anwar would be passed to the Advocate Depute.

22.12 Mr Murphy was not directly told that Mr Anwar considered him incompetent, but it reached his ears. He told me -

"There was apparently some meeting where Aamer Anwar had told Alan MacDonald what he thought of me. This was relayed to Crown Office. I think there was a general instruction not to bother me about that during the conduct of the trial but one of the other Fiscals at the High Court, not Alan MacDonald, had let it slip to me. I am not aware if the family also expressed any concern.

I got the case to the jury but the jury did not convict the accused. There were difficulties in relation to the evidence, especially relating to David Montgomery. The only way to get the charge against him to the jury was to be very careful in the way the evidence was presented. It was an art and part case against him, but there was a sufficiency. The Crown view at the second trial was that Andrew Coulter was the killer and therefore Ronnie Coulter and David Montgomery were art and part to the murder, but Ronnie Coulter had already been acquitted. The case against David Montgomery was very complicated.

The Crown function was fulfilled in this case and the murder charges went to the jury. It was not the strongest case evidentially because of eye witness difficulties, but we wanted to put the evidence we had in the strongest light."

Thursday 16th November

22.13 These topics were continued at the morning meeting with the family the next day. In relation to the Advocate Depute's question which apparently allowed an attack on the deceased's character, it was pointed out that the judge was entirely satisfied that the questioning was appropriate; and that the defence might go on to ask further questions. Mr Anwar asked for a copy of Surjit's criminal record. Mr MacDonald told me -

"I had a meeting with Mr and Mrs Chhokar and Mr Anwar at the beginning of the day in the morning. It was part of my liaison to bring issues to the attention of the family, namely that the character of their son may be attacked. Mr and Mrs Chhokar seemed satisfied, I am not sure about Aamer Anwar. I am sure he would have expressed a view if he had not been satisfied. As far as I was concerned the issue seemed settled. I also told them the running order for the day. Aamer Anwar was saying that the Crown had opened the door regarding the deceased's character. The Advocate Depute was 'pissed off' that he wasn't fully aware of parts of the deceased's character, which the defence could use."

22.14 At 4.30 pm Mr MacDonald met with Mr and Mrs Chhokar and Mr Anwar again. Mr Anwar said "Jesus Christ what is he like? This whole prosecution is incompetent". Mr MacDonald immediately stopped the meeting. He told me why he did so -

"I was offended by the comment, 'Jesus Christ what is he like? This whole prosecution is incompetent.' I hear a lot of swearing but that offended me. I am Christian and I go to Church as a Believer. I am Evangelical and I have a living faith. I am a Believer and have a

personal conviction. References to Jesus Christ and God offend me, when they are used out of context. I was offended as I had been trying to be sensitive to them and so would expect them to do the same for me. I thought that his comments were blasphemous, I thought that he shouldn't be saying that. I don't think that this was an over reaction. I live a Christian life and it is of supreme importance to me, it's not nominal. I left the room because I felt that his comments were an attack, over the top and that they had ramifications regarding what we were trying to achieve in helping Mr and Mrs Chhokar. I was also on my own, and I had been advised that that was not wise. ... I wouldn't talk to someone else like that, because it's offensive. I told George Macleod what had been said, I think I told everyone what had been said. I told them I found it a bit rich, when I was trying to be sensitive and aware. I didn't let Aamer Anwar talk, I just said that I was going to get Mr Macleod."

22.15 Mr Macleod confirmed to me that Mr MacDonald had been offended by Mr Anwar's comment.

22.16 A few minutes later Mr MacDonald returned with his colleague Mr Macleod. Mr Anwar complained that someone had been prevented from drawing sketches inside the Court: he was advised that they should speak to the Clerk of Court. Mr Anwar then renewed his criticism of the Advocate Depute and said "*He leaves a lot to be desired*" in terms of building up a picture and pulling the strings of the jury. He said "*Is he doing his PC Plod routine? That's not going to win the jury over*". Mr Anwar also criticised the Advocate Depute for not asking the witnesses to speak up or moving onto the next question without giving the witness a chance to answer. He continued that everyone who had listened to the evidence was expressing the same concern and that was the issue of the deceased as a person and a human being. The full horror of his murder and what he was like as a person had not come out properly in evidence. Mr Chhokar had not been allowed to give evidence about that and the Advocate Depute did not get evidence of this in the right way from Mrs Bryce. Mr Anwar stated that Mr Chhokar did not understand the word "witness" and it did not matter what spin was put on things to explain why he was not allowed to give evidence.

22.17 I invited Mr Murphy to comment. He said -

"I don't know if that is for me to answer. The whole prosecution cannot be incompetent if the case goes to the jury and the jury was out for four and a half hours as in this case."

22.18 Mr Murphy was aware that Mr Anwar was a first year trainee solicitor. He said -

"In that case, he cannot have conducted a trial. Sometimes the worst thing you can do is pull the heart-strings of the jury. Sometimes it is all about underplaying the evidence."

22.19 Towards the end of the meeting Mrs Chhokar stated that she was expecting justice and started to cry. Mr Chhokar was angry. His ancestors and forefathers had told him all about British justice and courts. This is why he came to the country. He said "*Is this what you call justice?*" Mr Chhokar could not understand why the accused in the dock were laughing. He said that "*if he had killed a white boy we would lock him up and throw away the key*". The manner in which Surjit had died and suffered had not come across as they would have liked it to in the evidence. At any rate, that was what Mr Anwar interpreted, as Mr MacDonald told me -

"Mr and Mrs Chhokar became upset, saying that they were both expecting justice. Mrs Chhokar spoke and then Mr Chhokar spoke in Punjabi and Aamer Anwar then calmly and firmly translated. I noted what Mr Anwar said for example regarding whether if a white boy had been killed we would lock up the killers and throw away the key. I needed to trust that Aamer Anwar was translating correctly, but there

was no independent check on this. It would have been better if we had had an interpreter present."

Friday 17th November

22.20 The next day there was the usual morning meeting with Mr and Mrs Chhokar and Mr Anwar before the start of Court. The relatives were advised about the running order and that the evidence would be distressing and stressful. They were also advised that they could leave court at any time and go, amongst other places, to the secure Witness Room for a break. Mr MacDonald told me -

"I had a meeting with the family before court and I organised two cappuccinos. The atmosphere was friendly in comparison to the night before. I ... told them they could leave court if they found it distressing. Mr Chhokar was not feeling well and later the family went home. The family didn't want to be in the canteen as Montgomery's relatives might be there, they wanted to know if they could get food in the visitors' room. I explained that was OK and told the security guards to let them do this. The family raised this issue and I dealt with it, this was an example of when I was allowed to do my job."

Getting Ronnie Coulter to court

22.21 Later that morning, at 11.45 am, Mr MacDonald had another discussion with Mr Anwar, which he described to me thus -

"Aamer Anwar had been asking questions about Ronnie Coulter getting to and from court, this was nothing to do with family liaison. Ronnie Coulter was an essential witness and there were concerns about getting him into Court, we were scared that he may do a runner. The police generally collected him and brought him to Court. That was arranged through DCI Michael. When arriving at Court Ronnie Coulter was taken to a witness room on his own. When he had finished with his evidence, Aamer Anwar thought that the police protection should come to an end so that he could be photographed and 'thrown to the wolves'. Aamer Anwar had an interest in Ronnie Coulter being photographed, Mr and Mrs Chhokar didn't ask about this, it was just Mr Anwar. I didn't view this in terms of liaison. Aamer Anwar actively wanted to terminate my arrangements with the police regarding Ronnie Coulter, he was wanting me to let Ronnie Coulter out of the building at a point designated by him. He wanted Ronnie Coulter to be photographed ... He was affecting security arrangements ... He was attempting to involve me in actively exposing a witness to the press and there was no connection between this and the family. ... I spoke to DCI Michael and two policemen came to pick him up. I had phoned DCI Michael and told him of Mr Anwar's suggestion, but the police kept to the previous arrangements. Although I didn't agree with it, I didn't want to have a situation where Aamer Anwar had asked me to do something and I didn't do it. Apart from not telling the Advocate Depute specifically what Mr Anwar had said about him, I always did what Mr Anwar asked. However I still managed to do what I needed to do, that is to deal with Mr and Mrs Chhokar, but I also had to try and deal with Mr Anwar, he was always going to be there. I was dealing with him to get peace and quiet to deal with the family and to avoid confrontation. I didn't want to jeopardise what I was trying to do with Mr and Mrs Chhokar."

Meeting with the Deputy Crown Agent

22.22 At 4.30 pm there was a meeting with Mr Anwar and the Deputy Crown Agent. Mr Crowe explained to me why he was present -

"I made it clear that I could not be in attendance at the trial on a daily basis. There was a problem during the trial while I was at a conference in Peebles. It was agreed that I should leave the conference and I

drove to Glasgow. When I arrived I saw the end of Ronnie Coulter's evidence. The liaison seemed to be breaking down and I got the impression that Alan MacDonald was not coping with the situation. I believed he was finding it difficult and that perhaps he had lost confidence in himself.

Aamer Anwar did not have confidence in Alan MacDonald. I do not know whether that was historic. I know about the problems between Alan MacDonald and Aamer Anwar from reading the notes prepared by Alan. On the day I travelled from Peebles I was to see the family to try and smooth things over. I had an interpreter with me. Mr Chhokar was polite but he was upset. I received a message that it had been a long day and he did not want to do any more that day. Alan and I then had a brief meeting with Aamer Anwar before he rushed off to speak to the press.

I had attended that day because there were problems surrounding the criticisms of the Advocate Depute, Sean Murphy.

I think it all goes back to the issue of confidence. We were trying to provide dialogue to the Chhokar family knowing that Aamer Anwar did not understand our procedures and knowing that he was not a qualified lawyer. There was to be an opportunity for the family to ask questions about the day's proceedings and what was likely to happen tomorrow. "

22.23 Mr MacDonald gave me some details of the meeting -

"At 4.30pm there was a meeting with Mr Anwar and the Deputy Crown Agent. ... The Deputy Crown Agent discussed Ronnie Coulter, the fact that all the evidence needed to be heard and the fact that the judge was not satisfied and thought that Ronnie Coulter may have committed a serious offence. Mr and Mrs Chhokar were at home at this point, it was only myself, the Deputy Crown Agent and Mr Anwar present. Mr Chhokar had not been feeling well. Aamer Anwar did not help Mr and Mrs Chhokar on the separate occasions when they were unwell. At this meeting Mr Anwar asked about meeting with Montgomery and Coulter's relatives in the canteen, the Deputy Crown Agent said that he knew it was a problem but that there was not much that he could do about it. I don't know if it ever happened. It had only been mentioned before hypothetically, if it had happened I am sure I would have known about it. Mr Anwar expressed concerns to the Deputy Crown Agent about the Advocate Depute. He was told that the Advocate Depute was very experienced. Mr Anwar referred to the evidence and the need to build up a picture, he said that the Advocate Depute's reference to Mr Chhokar's anger was incompetent. Mr Anwar said that he was not impressed with the Advocate Depute, he said that he was going through the evidence like someone going through a book from A to Z. Mr Anwar said that other people with experience were also saying the same thing, although he didn't name them. I didn't attempt to find out who he was talking about. The Deputy Crown Agent asked Mr Anwar to reserve his position and not make comments or criticisms until the end, he assured Mr Anwar that the Advocate Depute had the confidence of the Lord Advocate. Mr Anwar said that he doubted there would be a conviction, he said he was able to see an acquittal and that he was preparing the family for that."

Monday 20th November

Previous convictions of Surjit Singh Chhokar

22.24 On the Monday Mr Anwar again asked for a copy of Surjit Singh Chhokar's previous convictions. Mr MacDonald consulted Mr Crowe: he in return asked who was requesting the information and why they were asking for it. He said if it was for

the family, they could be given the information, but that it was not normal policy to disclose the full record.

22.25 Mr and Mrs Chhokar arrived only minutes before Court was due to start, and there was a very brief meeting. A running order was provided and again Mr and Mrs Chhokar were warned about the evidence being distressing. Towards lunch Mr Chhokar came out of Court as he was not feeling well. Mr MacDonald took him to the secure Witness Room. Mr Chhokar explained that he required medication which was in the car and that Mr Aziz, the interpreter was away to get it. If there was no medication he would need to go home but would come back later. Mr MacDonald has told me, *"This was the only time he spoke to me on my own."*

Leaflets and posters for a rally

22.26 At 1.25 pm Mr MacDonald spoke to Mr Anwar in relation to some leaflets which were being distributed regarding a rally on the coming Saturday. The defence had raised questions about the leaflet, and Mr MacDonald had been instructed to enquire where they had come from. Mr MacDonald's account is -

"Some of the supporters had it and Dr Griffiths also had to get involved. When I spoke to Mr Anwar I never got a straight answer, he told me that the leaflet was for Mr Chhokar to distribute in his own community. Someone said later that it was funny if it was for Mr Chhokar and his community that it was in English. Mr Anwar was also aware of the ribbons issue. I don't know who physically typed the leaflet or how many copies there were available and who had distributed it. I personally felt that it had come from Mr Anwar. The leaflets were certainly in the public domain, I think there was even a poster of it near the court, near the Mosque across the road from the Sheriff Court."

22.27 Mr MacDonald had to press his question during the afternoon: he asked Mr Anwar about it again between 2.30 and 3 pm, and again at 4.40pm. The court sitting was a long one, and the afternoon briefing session could not take place until 5.45 pm. By then, Mr and Mrs Chhokar were very tired and decided to go straight home. Mr MacDonald and Dr Griffiths had a meeting with Mr Anwar, which Mr MacDonald described to me as follows -

"We had our family briefing meeting at 5.45pm that day, the duration of the Court was preventing me conducting my family liaison. We were meeting without Mr and Mrs Chhokar, but I expected that the information would be passed on. I went in and Dr Griffiths was there. Aamer Anwar started talking about stuff and Dr Griffiths defined the purpose of the meeting. He took a grip and told Mr Anwar to stop questioning him. The meeting was then terminated. We knew at that stage that the demonstration had been fixed for after the trial. The demonstration was now closer to the trial than had originally been intended, because the trial had been delayed. It seemed that there had never been an intention to have the demonstration near the trial. Mr Anwar said that they didn't want to jeopardise the trial. He said that he wanted to make general statements about the state of racism in the criminal justice system. I can't recall whether the leaflets referred to the Chhokars specifically, there may have been something about the Campaign. Mr Anwar asked at the meeting whether something which was already in the press could be read out. The demonstration was connected to the trial."

I also had an account from Dr Griffiths -

"There was an issue in Court about leaflets which had been handed out at the Temple. A couple of men had apparently walked into Court with these leaflets and asked where the trial was taking place. This was brought to my attention and I spoke to Sean Murphy. Defence Counsel, Mr McBride and Mr Ogg, had also raised a question about posters publicising an anti-racism demonstration. There were

rumblings about the case having to be deserted in light of such matters. Alan MacDonald was tied up doing something else so I walked out of the building and looked for these posters. I found one poster on the back of the old market place. This poster was in English. There was a concern that jurors could see the poster on leaving Court. I reported this back to Sean Murphy and also spoke to Mr McBride and Mr Ogg. This matter eventually fizzled out."

Tuesday 21st November

22.28 The next day Mr and Mrs Chhokar again arrived just before the court was due to start. Mr MacDonald greeted them both and directed them towards the Court. He spoke to Mr Anwar and provided him with a running order and explained what the evidence would be like; and he asked Mr Anwar to arrange a briefing at the end of the day. This was arranged for 4 pm. He then telephoned Scott Pattison, who was present that day.

22.29 Mr Pattison told me how he came to be in court -

"I was asked by the Lord Advocate to attend the trial as his personal representative both to liaise with the family and also to pass translated correspondence to the family from the Lord Advocate indicating that he would be prepared to meet with them as soon as the trial had concluded. This meeting was to advise the family of the action which the Lord Advocate proposed to take in the commissioning of the two independent Inquiries which are now ongoing. In the last four days of the trial, I met with the family at the conclusion of each day's proceedings along with Mr MacDonald of the Hamilton office. I should say that during the second trial it was clear to me that Mr MacDonald had developed a good relationship with the Chhokar family. He had been meeting with them morning and evening and was clearly taking care of them during the proceedings."

22.30 Later in the day Mr Anwar asked, yet again, for a copy of the deceased's previous convictions. Mr MacDonald duly advised him that he could make the relatives aware of the content of the convictions if they wanted such information, but could not issue a copy.

22.31 The afternoon meeting took place at 4.50 pm with Mr Anwar, Mr and Mrs Chhokar, Dr Griffiths and Mr MacDonald. The officials explained what had happened in Court on Friday and Monday. They said that Ronnie Coulter had been told to come back at the end of the case when the judge would decide whether he had been in contempt of court. Dr Griffiths explained that either the judge could deal with the matter summarily or, if he did not, the prosecution would consider whether to prosecute Coulter for perjury. It was explained that that would be difficult, and the decision would be taken by Crown Counsel, not by the Advocate Depute. It was also explained that Alexandra Tierney could be dealt with in the same way.

22.32 Mr Chhokar then stated that he might not be able to understand everything that was going on but he had brains and eyes and he could see it at the first trial. There were lies and deceits from Ronnie Coulter and others. He had been in the army and was ashamed by what he had seen. Mr Chhokar also explained that he had seen someone walk free in the first trial and that the prosecution were supposed to do their job and get the killers. If the other two walked free from the lies then what was he supposed to do and feel? Mr Chhokar explained that his health had already suffered and that something had better happen to the accused. He wanted reassurance. Dr Griffiths explained that the problems of lying are a daily occurrence.

22.33 Dr Griffiths' impression of this meeting was -

"The family seemed to be content with the meetings. Mr Darshan Chhokar did not appear to be physically well. He was obviously under a huge amount of strain. He did say at one point, through the

interpreter, about having been in the British Army and believing in the system of British justice. He was obviously unhappy. As far as I could see, however, the Chhokar family was content with the content of the liaison meetings."

Wednesday 22nd November

22.34 The family arrived at court at 10.05 am, and there was no morning meeting with them as the day's proceedings had already begun. At 4.45 pm there was a meeting with Mr and Mrs Chhokar, Mr Anwar, Jelina Rahman (note-taker for Mr Anwar), Dr Griffiths and Mr MacDonald. The officials explained the number of witnesses left and that the Crown case would finish the next morning. Thereafter a Joint Minute of Admissions, containing evidence not in dispute, would be read out to the jury. Thereafter there might be a 'no case to answer' submission. This could be made in relation to any or all of the charges by either accused. It was not related to the quality of the evidence but was an argument in law that taking the Crown case at its highest there was insufficient evidence to proceed. It was further explained that the defence were entitled to make these submissions but they were not bound to do so. It was not known whether submissions would be made. If the no case to answer submission was successful then it was explained the particular charge to which it related would come to an end.

22.35 On this, Dr Griffiths told me -

"My next involvement was on 22 November when I again met the family along with Alan MacDonald. Discussions took place about the possible scenarios when the Crown case was closed. I am not convinced the family understood the concept of a no case to answer submission. The information which was given to them was being interpreted by Mr Anwar."

22.36 Mr Anwar asked what effect Ronnie Coulter and Alexandra Tierney's evidence would have on the Crown case and made reference to the judge's comment. Finally, it was explained that if either witness was found in Contempt of Court they could receive a maximum of two years' imprisonment.

Thursday 23rd November

22.37 At 11.15 am Mr MacDonald met Mr and Mrs Chhokar, Ms Rahman and the interpreter. The Crown case was closed and they were ready for the no case to answer submission. Mr Anwar was not there so Mr MacDonald went ahead with the meeting since the trial had reached a critical point and he wanted to explain to the family what might happen and to encourage them not to get upset. He explained to them what each of the charges was and who was on each charge. He also warned them about what the defence would argue regarding there being an insufficient case to answer. Mr MacDonald got the impression that they seemed to understand all of this. He told them that the prosecution would say that there was enough evidence and that the case should go to the jury. He explained that the jury would not be there, and that if the judge agreed with the defence, then that would be the end of the case. Mr Chhokar said that if the two were let off, then the family would continue to fight. Mr Anwar arrived at the end of the meeting and Mr MacDonald explained to him what had been said. Mr Anwar asked again about Ronnie Coulter and Alexandra Tierney.

22.38 At 4.50 pm Mr Pattison and Mr MacDonald had a meeting with Mr and Mrs Chhokar, Mr Anwar and Ms Rahman. They explained to the family that the case would be continued until the next day as the law was being argued out. The Lord Advocate had asked Mr Pattison to go to Court. He had a letter (with Punjabi translation) from the Lord Advocate to Mr and Mrs Chhokar suggesting a meeting after the trial finished and asking that Mr and Mrs Chhokar let Mr Pattison know when they would like to meet. Mr Chhokar asked that his thanks be passed to the Lord Advocate. Mr Chhokar said that he couldn't decide on whether or not to attend the meeting until there was a verdict. Mr MacDonald observed to me that Mr Anwar took a back seat during most of the meeting and confined his role to interpreting, though he did ask again about Ronnie Coulter and Alexandra Tierney.

22.39 Mr Chhokar repeated that the family lived in the same areas as the accused and would not accept a two or three year sentence. Mr Anwar had questions about perjury. The family were complaining that they had seen this before and didn't want the men to walk free. Mr Chhokar explained that he had to show face in his community, he said that this verdict would have an impact beyond themselves. Mr Pattison expressed his and the Crown Office's profound sympathy.

Friday 24th November

22.40 Mrs Chhokar took ill in court; Mr MacDonald, Ms Gufoor and Mrs Sengha got a first aider, took Mrs Chhokar into the family room and called an ambulance. Mr Chhokar stayed in court. Mr MacDonald's recollection is that Mrs Chhokar went in the ambulance on her own, that Ms Gufoor followed afterwards in her own car and that others went later.

22.41 At 4 pm Mr Anwar came out of court and spoke to Mr MacDonald. He did not ask about Mrs Chhokar but raised a comment made by Margaret Chisholm, Andrew Coulter's mother, when she was giving evidence. It referred to Ronnie Coulter referring to Surjit Singh Chhokar as a 'black bastard'. Mr Anwar wanted to know whether the Procurator Fiscal Service had known about the comment.

22.42 On this, I have Mr Murphy's account -

"I had concerns about Margaret Chisholm's evidence. Her son was on the indictment and she appeared on the defence list of witnesses. She had been there when Liz Bryce had said to Andrew Coulter that Mr Chhokar was going to go to the police. She was a witness to that conversation and I presume that was why the defence were calling her. I did not know she was to be called regarding Ronnie Coulter's alleged confession. Margaret Chisholm refused to be precognosced by the Crown but eventually we did have her precognosced. She did not raise that matter at the precognition which took place during the trial. She only said that when she got into the witness box. "

22.43 There was then a meeting between Mr Pattison, Mr MacDonald, Mr Chhokar, Mr Anwar and Ms Rahman. The family asked why Mrs Chisholm had not been used in the first trial. Mr MacDonald and Mr Pattison explained that the evidence had not been available. It was explained that Mr MacDonald had precognosced her twice and that she had made no mention of the 'black bastard' remark. Mr Anwar said that this justified what Mr Chhokar thought, namely that his son was killed because he was black. He explained that the family had received information (which had been referred to the Procurator Fiscal Service) that the accused had boasted about killing a 'Paki'.

22.44 I note here that the Procurator Fiscal had asked the police to investigate those comments and no evidence had been found. The information had been given by Mr Anwar in general terms during the meeting on 16th April 1999 with the Deputy Crown Agent. Mr Anwar had noted the request that if there was any more information it should be passed to the Crown Office or the Procurator Fiscal but nothing more was forthcoming.

22.45 Mr Chhokar said he would not believe that the Crown would have brought out the evidence. Mr Pattison explained that they would have put the question, if they had had the evidence. Mr Chhokar asked why the three accused were not prosecuted together, as it was his son who had been murdered. He said it had been a complete disaster. He said that if the case failed again, it would destroy his faith and break his heart. He emphasised that it was his son who was dead and said that everyone was asking what the hell the Crown was doing in court. Mr Anwar again questioned the competence of the Advocate Depute, saying that he was hopeless in court and that everyone else thought so too. He said that that day's cross-examination had been hopeless, he said that it was "crap". Mr Anwar said that he had expected better from this case. He said that Sean Murphy was a hopeless choice, he was not even a QC and it looked as if he was training on the job. Mr Chhokar said that the scales of justice have two sides, with the judge in the middle. He claimed that the defence were doing their job but the prosecution were

not doing theirs. They asked why no-one was telling the Advocate Depute that he was screwing up. Mr Pattison expressed sympathy to Mr and Mrs Chhokar. He explained that the Advocate Depute was very experienced and that he was sorry that they felt that way. It was explained that all that Mr Chhokar wanted was justice.

Monday 27th November

22.46 Mr MacDonald was ill. He arrived at court but Mr Pattison told him to go home.

Tuesday 28th November

22.47 Verdicts were returned. Andrew Coulter was found guilty of assault and sentenced to 12 months' imprisonment. He was also convicted of housebreaking and of uttering the stolen girocheque. David Montgomery was acquitted.

22.48 Mr Pattison gave Mr and Mrs Chhokar a third letter (with Punjabi translation) from the Lord Advocate offering his condolences and repeating his offer of a meeting. The letter explained that he had held an internal inquiry that had found faults in the way in which the family had been treated before, during and after the trial of Ronnie Coulter. He enclosed a copy of the report (including a Punjabi translation). He offered his apology for the failures. He also explained that further work needed to be done to complete the report and that that would be undertaken by this Inquiry. He hoped that Mr and Mrs Chhokar would agree to participate in that continuing review. He also said that Sir Anthony Campbell would be carrying out a judicial inquiry into the Crown decision making process and that he was committed to publishing the findings of both Inquiries.

Meeting with the Lord Advocate

22.49 On 29th November 2000 the Lord Advocate had a meeting with members of the Chhokar family at the Crown Office. He wished to apologise to the family about the way things had ended, but without being critical of the jury. He explained about the internal inquiry and its findings that they had failed to keep the family informed of proceedings. The Lord Advocate has told me that Mr and Mrs Chhokar were distressed. He explained to the family that the Crown Office were setting up two Inquiries and that he hoped these would give the family the answers they wanted.

22.50 Mr Anwar said that the family wanted a public inquiry.

Commentary

22.51 This chapter and the one before it show that while the trial was running in court another drama was being played out elsewhere in the building. The central players in this were: Alan MacDonald, who was charged with liaison with the family throughout, Mr Darshan Singh Chhokar and his immediate family, whose son was the murder victim, and Aamer Anwar, whose multiple roles have been described in the foregoing chapters. I shall deal with each in turn, and make my comments on the trial in that context.

· Mr MacDonald

22.52 Mr MacDonald's job was to look after the family, and he never lost sight of it. His preparations for their needs at the trial were thorough; and he was always observant of their needs and reactions, and attentive to them. This was no easy task, since he was forced very largely to deal with them through the medium of Mr Anwar, who had his own agenda and his own quite separate demands, and he remained patient and persistent in attending to his primary duty to the family. He was well supported, though not always kept well informed, by his colleagues at all levels, and by the Advocate Depute. A more experienced officer would probably have been firmer and more confident in dealing with Mr Anwar's demands, and might have won Mr Anwar's confidence; but that cannot be a personal criticism of the man himself.

22.53 I note also that, while dealing with the requirements of the immediate family and Mr Anwar as their intermediary, Mr MacDonald continued daily to ensure that the other two persons with a very close connection with Surjit Singh Chhokar - the widow, Sanehdeep, and the girlfriend, Elizabeth Bryce (who was also a key witness) - were kept informed of the progress of the trial.

· **Mr Darshan Singh Chhokar and his family**

22.54 Mr Chhokar's perception of the Scottish justice system emerges, with painful clarity, from his recorded comments in the closing stages of the trial - and he has repeated some of it to me, when I met him. Like anyone in his situation, he has suffered a loss which can never be made good, and his family likewise. Our response to that cannot fail to be one of profound sympathy. No human system of justice can replace a life that has been lost.

22.55 Nevertheless a question remains. Mr Chhokar is deeply disappointed in the criminal justice system; but we do not know, even yet, whether he has been given a clear understanding of what that system is or how it operates. At the simplest level, he is right to be disappointed: he knows his son was murdered, and nobody has been convicted. He is not alone in that; but that can be no comfort to him. I am concerned for him however for another reason, namely that the officials with whom he has had to deal have been impeded and frustrated in their attempts, in good faith, to explain to him what the system has been doing, and what its limits are. His own perception of criminal justice is shown by his reported remark²⁴ after this trial, when he said "If this had been India or Pakistan I'd have been forced to avenge my son. Our hands are tied here."

· **Mr Anwar**

22.56 In the light of what I have said in the previous paragraph, Mr Anwar took on a heavy responsibility when he made himself the champion of the Chhokar family. I do not in the least criticise him for taking on this task; but in the light of the evidence presented about him in this and earlier chapters I cannot conclude that he has discharged it either competently or honestly. My chief points of criticism are these -

22.57 The two roles which he took on, of interpreter for the family and organiser of a public campaign for them, are incompatible. As a campaigner he was, necessarily, a critic of the public authorities; but as an interpreter he had to relay to the family what the authorities wished to communicate to them, accurately and without bias. Nobody, among the public officials whom the family met, knew what he was saying to the family under the guise of interpretation: consequently they could not trust him.

22.58 In fact, the officials came actively to distrust him. In my view, they were right to do so. The incident which I have related in the previous chapter (paragraph 22.14 and following) over the matter of whether Mr Chhokar wanted to give evidence, demonstrates that he was untrustworthy as an interpreter of the family's wishes.

22.59 Secondly, **he interfered, or attempted to interfere, with the prosecution, to the point where his actions jeopardised their case.** The problems which he encountered during the trial, first over the matter of supporters wearing ribbons (paragraph 22.9) and then over the issue of leaflets and a poster (paragraph 23.27) suggest that he simply did not understand how such things could be used by the defence. This demonstrated his very poor understanding of how a criminal trial works. His criticisms of the prosecution, and of the Advocate Depute personally, have to be measured against this background, that he had no understanding of these matters. The prosecution may, or may not, be open to criticism in either or both trials - that is not a matter for this Inquiry - but whether it is or not, is not a matter of which Aamer Anwar is competent to judge. What I can judge is that his constant interference with the details of the prosecution, for example over the question of Surjit's previous convictions, was a severe impediment to attempts by the prosecution to communicate with the family. I can put it no better than Frank Crowe did to me, when he said - "*We were trying to provide dialogue to the*

Chhokar family knowing that Aamer Anwar did not understand our procedures and knowing that he was not a qualified lawyer. "

23. INSTITUTIONAL RACISM

This chapter addresses a central theme of the Inquiry: institutional racism. It argues that racism in general is a significant issue in Scottish society. This view is supported by convincing anecdotal evidence, but there is a need for more systematic research into its features. A working criterion for the presence of 'institutional racism' is proposed. On the basis of the evidence presented in earlier chapters it is shown that there were elements of institutional racism in Strathclyde police and in the Procurator Fiscal Service.

23.1 My Terms of Reference require me to consider "whether liaison arrangements were affected by institutional racism." This chapter does that, and concludes that they were, in some respects which I shall identify. Such a finding however, which relates to a single case, is not easy to interpret. It tells us something about the state of Strathclyde Police in the period 1998-2000, and something about the Procurator Fiscal Service and the Crown Office in the same period; but it cannot be used as a basis for generalisations about these bodies. Their handling of the Chhokar case is only a small sample of their work: the generality may be better than this, or it may be worse. What is more, it is a sample taken over a fairly short time span, and needs to be seen in the context of what came before and what has happened since, so that a judgment can be made as to whether the organisations have been getting better, getting worse, or neither.

23.2 For that reason I shall set the case in a wider context. I took evidence from senior police officers and senior officers in the Crown Office, and from the Lord Advocate and former Law Officers, about the development of race relations policies and strategies; and I received written submissions and other papers from ACPOS²⁵ and other sources, all of which I have found helpful. In the two chapters following this one I shall summarise what I found.

23.3 There is a wider context still. The term 'institutional racism' has been much used - especially since the publication of the Macpherson Report on the Stephen Lawrence murder - but not always well understood. Therefore, before examining the police, the Crown Office and the Procurator Fiscal Service, I shall try to clarify what 'institutional racism' means, and what it does not mean.

23.4 Before any of this however I think it necessary to assert that racism is an issue in Scotland, and to put some flesh on that assertion, for some would deny it.

Racism in Scotland?

23.5 I was given eloquent evidence by Councillor Bob Chadha, of North Lanarkshire Council. Mr Chadha is Indian by birth, came to the UK from Kenya in 1962 and has lived in Scotland since 1966. The greater part of his career here has been as a social worker, and he was a Justice of the Peace from 1972 to 1999. He speaks therefore from long and varied experience. In Chapter 7 above I have referred to his involvement with the Chhokar case, and I have criticised some of his actions; but on the subject of racism in this country generally I found him knowledgeable, balanced and reliable. I invited him to comment on racism in Scotland, and he said -

"I can offer an opinion based on my background and experience. It is not academic. It is based on a combination of my personal experience, the experiences of others in the community, my professional experience, my roles as local councillor and Justice of the Peace and my academic studies.

I do not have a problem discussing my own personal experiences of racism. I have nothing to hide. My personal experience is based on personal events. These strengthen your reasons for anger and motivate you towards moving things on.

I have experienced both direct and indirect racism. In 1979 I came to Cumbernauld from Aberdeen and went to work in [a] shop/restaurant there. I had never had any kind of direct prejudice until I worked there. People would call me 'black bastard', 'Paki', and would say things like 'Go home, this is our country', all the usual.

I have also experienced such comments during my time as a social worker. Other social workers may have made comments and sometimes clients did too. For example, if you were going into a house to take someone's children away they would call you a 'black bastard' etc.

Few colleagues would make comments but it was more the way they took the role of a superior. You become obliging and do not confront it. To take every issue and make it a racial one would be uncompromising. But I have tried to rationalise people's behaviour and have accepted it rather than confront them on all occasions.

I have also experienced racism in applying for promotion. The amount of applications I have made for a senior position is over one hundred. It was very often the case that you did not get promotion unless you were a shop steward. I was a shop steward, I was involved in politics, I played all the right cards but I didn't get promotion. I would see a white trainee come in and get promoted after just two years."

23.6 It was put to me by Mr Chadha and others that there is a belief that racism is an English, not a Scottish problem. He said -

"We have to recognise that racial problems exist in Scotland. Denial is a major part of the problem. It is not an English problem. Scottish people feel that they are under-rated by the English and that English rule had been imposed on them. Rather than face racism they often use the English as a scapegoat. I am against that. It doesn't matter where it occurs, racism is racism."

23.7 I also found the submission by the Black Community Development Project²⁶, a black-led voluntary sector organisation based in Edinburgh, pertinent -

"The major obstacle confronting black people in Scotland (Britain) today continues to be institutionalised oppression. As part of this process, racism is still the fundamental barrier preventing access to opportunity, privilege, power and social justice for the majority of black people, despite the existence of Equal Opportunity policies. ... We are hopeful that someday, we will get past the point of having to explain and defend our different cultures and for being black in Scotland."

23.8 Further evidence comes from a helpful background paper submitted to a workshop organised by The Scottish Executive, and held in Edinburgh, on Thursday 2nd March 2000²⁷, in which Vijay Patel cites instances of what he described as a number of pervasive myths in Scotland including:

"There aren't many black people living in Scotland"

"The Scots can't be racist because they've been oppressed by the English"

"They look after their own"

"They stick to themselves"

"They're all rich because they run all the shops and restaurants"

"Their children do well in 'our education system' and are over-represented in Universities."

23.9 Another 'myth' which has some currency is the idea that racism is a feature only of areas where there is a visible concentration of ethnic communities. The Commission for Racial Equality drew my attention to studies which have been carried out south of the Border by the Home Office -

"In England and Wales, a Home Office survey was carried out on a pro-rata basis of racist incidents and the ethnic minority population. The Metropolitan area came quite far down the list but areas such as Northumbria were much higher. The figures seemed to suggest that there was a greater chance of a racist incident in areas with a small and scattered ethnic minority population."

23.10 The Commission for Racial Equality also brought to my attention a further study, "Needs Not Numbers" by Philomena J.F. de Lima, published in 2001. The report was based on research which set out to explore and provide an insight into the experiences of minority ethnic groups across four rural areas of Scotland: Angus, the Highlands, North Ayrshire and the Western Isles. The Report suggests that "the experiences of minority ethnic groups are complex and multidimensional and cannot be understood using a simple urban/rural distinction."

23.11 I had the benefit of the results of two recent research projects conducted by Kay Hampton of the Scottish Ethnic Minority Research Unit [SEMURU], at Glasgow Caledonian University. Kay Hampton's research and analysis made a significant contribution to this Inquiry's ability to understand the picture of racism. Her work in both research projects was invaluable and I am grateful to her for bringing her findings to this Inquiry. In July 1998 she published a commissioned Report by Glasgow City Council, entitled 'Youth and Racism - Perceptions and Experiences of Young People in Glasgow'. In December 1999 she conducted research and prepared a Report on 'Experiences of Racism and Racial Harassment in South Lanarkshire' based on research in Cambuslang, Hamilton, East Kilbride, Clydesdale, Rutherglen, Larkhall, and Blantyre. This latter report is specially significant in that it found that racial experiences in these smaller, more scattered communities were no different from those found in inner city areas. Among the findings of the study I noted the following in particular -

- Racism was associated directly with discrimination based on 'skin colour'.
- Respondents generally associated racial harassment with prolonged abuse of people who are visibly different by individuals and institutions that are predominantly white.
- Whilst the majority of respondents felt that racial abuse occurred mainly as isolated incidents, the number of respondents albeit relatively small, who believed that racism occurred frequently or indeed, daily in areas where they lived, should not be ignored.
- A vast majority of the respondents believed that racial abuse was most likely to be instigated by white members of the community, especially young white males.
- Personal racism, both direct and indirect, was cited as the most likely type of racism to occur in South Lanarkshire, mainly in the form of verbal abuse and damage to property.
- More than half the respondents had experienced racial abuse personally.

23.12 I commend South Lanarkshire Council for its initiative in commissioning and supporting this research. I have also had regard to research studies published by the Scottish Executive Central Research Unit. There is a need for more such studies, in other parts of the country, to establish the true extent of racism in Scotland.

23.13 In the evidence presented to me directly there was a particular focus on minority communities' perceptions and experience of the police and the courts. Councillor Chadha again -

"... I also had a friend who ran a restaurant. The kind of racism that man suffered at the hands of local thugs and officials was bad. For example, if you phoned the police they would respond very late and did not take full account of the situation. At that time, the police would often have the attitude, 'it's only an Asian shopkeeper'. I know that the police have manpower issues and have to prioritise things but I and others felt that black people were the bottom of their priority. This was in the late 1980s/early 1990s and to some extent it is still practice.

There was evidence of delays by the police if people were in trouble. By that I mean suffering racial abuse. There was one incident where someone pulled [his] turban away and I had to rescue him. The police did not come for a long time.

Obviously if you go into the Sheriff Court at Glasgow, caretakers may look at you as a criminal even if you are well-dressed. I have had that as a social worker. I can understand that they have a lot of people to control and that they don't have a friendly manner. I think he said something like, 'Yous have to stand there'. I think he was shocked when I told him that I was a social worker. ... I got the feeling that he treated me that way because of my colour.

Blacks do not believe that the system will do justice to them. When you start examining everything, there is disparity - in the treatment they receive, the punishments they receive, the delivery of justice.

The perception at the moment is that there is one justice system for black and another for white. Whether it is true or not, that is the perception."

23.14 I heard from Mohammed Razaq, Community Relations Officer with the West of Scotland Community Relations Council, specifically reflecting on the Chhokar case -

"All the court officials were white. That does have an impact on you.

You do expect white people and white faces but I would also like and expect the odd person from an ethnic minority. It would give more confidence and would suggest that the system is moving on.

People also have concerns about what will happen if they call the police for assistance. There is a fear that the perpetrators may hide and watch the police, then come back and get revenge once the police have gone. There are also perceptions about police warnings instead of charging the perpetrators. Or even where they are charged by the police, the Procurator Fiscal may not take it up. Where a Procurator Fiscal drops a case, no explanation is given and that can lead to people getting upset and losing faith in the system."

23.15 And similarly from Stewart Petrie, a former executive committee member of the same body -

"In relation to the court system there are also problems. If you get involved in the court system whether as a victim or as a perpetrator, no-one ever gets back to you to update you on what is happening. Correspondence is also done in the form of standard letters. People may get a letter citing them for jury duty but they do not understand it.

I think it is fair to say that the ethnic minority communities do not have faith in the criminal justice system. I think that is due to a number of factors including personal experiences with the police, involvement in the court system, reading about other cases such as the Chhokar case and the fact that the highest ranking officer in Strathclyde Police from the ethnic minority is only of the rank of sergeant. There are also problems in relation to access to the Procurator Fiscal concerning release of the body. Jewish people have no problem and have

immediate access to the Procurator Fiscal. People from the Asian communities do not have that access. We have only now found out that there is a duty Procurator Fiscal. You have to push and demand for this type of information - nothing is given to you."

23.16 I also found that senior officials are themselves well aware of these criticisms, and do not refute them. ACC Pearson, of Strathclyde Police -

"To be blunt, a significant number within the ethnic minorities will have little faith in the criminal justice system. This starts with the police all the way through to the courts. Some I am sure have no faith at all in the system.

The complaints about the system are felt almost as strongly, however, by other communities. The perceptions are that there is an absence of care in dealing with a particular case, there are no explanations of what is going to happen and there is a lack of feedback and explanation in relation to the outcome of a case."

23.17 And the Crown Agent, Andrew Normand, made the very relevant point that poor service to the community at large hits minorities harder, when he told me -

"There will be some members of the ethnic minority groups who will have had contact with our organisation and found it to be unsatisfactory in the same way that other members of the community have found it to be unsatisfactory. The effect, however, on members of the ethnic minorities is greater because of our failure to meet their needs."

23.18 Finally, the Lord Advocate, Colin Boyd QC, said -

"I think we have to re-establish ourselves and achieve a place in the minds of the public. The circumstances of the Chhokar case do not help with that but I think it is better to apologise for our mistakes and thereafter to get on with things. I don't think there is any merit in closing the shutters and not speaking publicly about these issues"

23.19 It may be said that the evidence quoted here, apart from that from SEMRU, is anecdotal; but it is persuasive. At the very least it reinforces the case for more systematic research into these matters. In the light of all this evidence I reject as flawed any analysis which attempts to suggest that racism is not a significant issue in Scotland. Admittedly, Scotland is not England: it has never yet experienced events such as those which gave rise to the Scarman Report into the Brixton disorders in the early 1980s²⁸. The murder of Surjit Singh Chhokar is not a parallel to that of Stephen Lawrence, which was entirely racially motivated. Scotland and England have different legal systems, and different cultural and political histories: but they leave black and minority ethnic communities equally vulnerable to racist attacks and racial discrimination. Prejudice and hatred directed at immigrant and ethnic minority communities are to be found wherever in the world that such communities exist. It would be astonishing if Scotland uniquely were free of these ills. Having regard to the evidence before me, I feel bound to conclude that overt racism is a feature of Scottish society, and by no means confined to the inner cities. To think otherwise is dangerous complacency.

A plea for good research

23.20 I have indicated above the need for, and value of, systematic research into the incidence of racism in Scotland, and I have quoted from two pieces of such research. I should record here that I also received from Dr Elinor Kelly, Honorary Research Fellow in Race and Ethnic Issues, University of Glasgow some work of her own, which set out to analyse four trials which took place in Scotland, between 1925 and 1998 - Noor Mohammed killed in Glasgow in 1925, Hector Smith killed in Glasgow in 1975, Axmed Abuukar Sheekh killed in Edinburgh in 1989, and Imran Khan, killed in Glasgow in 1998. Dr Kelly says in her paper -

`There is an unexpected and troubling contrast to be made. In the cases of Noor Mohammed and Hector Smith the racist context of the crime was described and the question of whether there was a racial motivation for the crime was discussed seriously and weighed in the balance.... But in 1989, in the case of Axmed Sheekh the evidence of racist affiliations and racial abuse was put aside, and in 1998, the racial divisions between white and Asian gangs, and the racist behaviour of the accused in school were dismissed by prosecution, defence and presiding judge. ... Something changed in the behaviour of counsel and presiding judge between 1975 and 1989. That `something' is daunting in its implications. Serious questions have to be asked about the competence of senior members of the judiciary to administer justice in cases where there is a racist context to the crime and there may be racial motivation.'

23.21 These conclusions on her study were submitted as evidence before this Inquiry.

23.22 This was an interesting and provocative study, but the data presented is far too slender to support the conclusions. It is simply not possible, logically, to conclude from such a sketchy study, that `something changed ... between 1975 and 1989'. There is no explanation given why only four trials, spread over more than 70 years, were used. No account is given of changes which may have taken place in the legal context, either in terms of statute or precedent, over that time. Crucially, the report has to rely on newspaper reports alone of these various trials. Little detail is given of the evidence led or the arguments used by counsel: in fact, as the author admits, most of that information is simply not to be had. There may be a useful line of research to be followed in this particular subject, but it would be a complex one; and to be of any value it would have to be rigorous - both legally and statistically - which this is not.

Institutional racism

23.23 From the evidence before me it was clear that the expressions `institutional racism' or `institutionalised racism' were frequently used without a clear understanding of their meaning. I found that lawyers within the prosecution service were not confident with the use of the expression. Indeed in April 1999 when the Crown Office began advising its senior lawyers at management level about the emerging implications from the Macpherson Report for the prosecution service, there was an initial hostility and reluctance to accept that institutional racism had relevance for the Scottish prosecution system. The early view held by some in the prosecution service was that the Macpherson Report was concerned with issues affecting only the Metropolitan Police and was a problem peculiar to England. By contrast, senior police officers in Scotland had less difficulty in facing up to potential criticisms which may be levelled at their respective forces, although the Scottish Police Federation rejected the suggestion that the Scottish police service was institutionally racist. It was disturbing that so few witnesses including even some from the anti-racist movement had any real understanding of the concept. We were told by some that the definition used by Macpherson was thought to be `sophisticated and complex' and hence unclear and confusing.

23.24 The concept of `institutional racism' was used by Lord Scarman in his Report of 1981 into the Brixton Disorders:

`It was alleged by some of those who made representations to me that Britain is an institutionally racist society. If, by that it is meant that it is a society which knowingly, as a matter of policy, discriminates against black people, I reject the allegation. If, however, the suggestion being made is that practices may be adopted by public bodies as well as private individuals which are unwittingly discriminatory against black people, then this is an allegation which deserves serious consideration, and, where proved, swift remedy'. (Paragraph 2.22,- Scarman Report).

23.25 He enlarged on the point of `unwitting discrimination' later in his Report:

'The direction and policies of the Metropolitan Police are not racist. ... The criticisms lie elsewhere - in errors of judgment, in a lack of imagination and flexibility...'. (Paragraph 4.62, p 64).

and further -

'.. the failure to adjust policies and methods to meet the needs of ... a multi-racial society.' (Paragraph 4.97).

23.26 Sir William Macpherson, in his Report into the death of Stephen Lawrence [1999] revisited Lord Scarman's analysis of institutional racism and said:

'Whilst we must never lose sight of the importance of explicit racism and direct discrimination ... if the phrase "institutional racism" had been used to describe not only explicit manifestations of racism at direction and policy level, but also unwitting discrimination at the organisational level, then the reality of indirect racism in its more subtle, hidden and potentially more pervasive nature would have been addressed.' (6.15)

'Unwitting racism can arise because of lack of understanding, ignorance or mistaken beliefs. It can arise from well intentioned but patronising words or actions. It can arise from unfamiliarity with the behaviour or cultural traditions of people or families from minority ethnic communities'. (6.17)

23.27 The Macpherson Report makes a pointed and relevant comment on the limitations of a 'colour-blind' approach at para.6.18:

'As Lord Scarman said (Paragraph 4.97) there can be "failure to adjust policies and methods to meet the needs of policing a multi-racial society". Such failures can occur simply because ... officers may mistakenly believe that it is legitimate to be "colour blind" in both individual and team response to the management and investigation of racist crimes, and in their relationship generally with people from minority ethnic communities. Such an approach is flawed. A colour blind approach fails to take account of the nature and needs of the person or the people involved, and of the special features which such crimes and their investigation possess. ... it is no longer enough to believe "all that is necessary is to treat everyone the same. it might be said it is about treatment according to need.'

23.28 The Commission for Racial Equality (CRE), which also gave helpful advice to this Inquiry, said to Macpherson in paragraph 6.30:

'Institutional racism has been defined as those established laws, customs, and practices which systematically reflect and produce racial inequalities in society. If racist consequences accrue to institutional laws, customs or practices, the institution is racist whether or not the individuals maintaining those practices have racial intentions'. (Paragraph 2) '.... organisational structures, policies, processes and practices which result in ethnic minorities being treated unfairly and less equally, often without intention or knowledge'. (Paragraph 3)

23.29 Macpherson concluded that institutional racism consists of:

'The collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture, or ethnic origin. It can be seen or detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantage minority ethnic people.'(paragraph 6.34)

23.30 In approaching this Inquiry, I had to develop a concept of institutional racism which reflects not only the lessons learned from the Macpherson Report, but is

also informed by the wider debate and developing experience of the intervening years.

23.31 What then are the features of institutional racism? It can appear in four ways -

- The official policies or procedures of an organisation may be deliberately and overtly discriminatory against a racial group, as in the treatment of blacks under Apartheid or of Jews under Nazism;
- The official policies may be free of discrimination, but the informal culture - the 'canteen culture' - of the organisation may be prejudiced and hostile to racial groups;
- Official policies may be 'colour blind' and unintentionally discriminatory; or
- The informal culture may similarly be unintentionally discriminatory.

23.32 Argument about the definition of institutional racism can become academic, and there is a place for that; but for the purposes of this Report, which are essentially practical and focused on the implementation of policy, what is needed is a working criterion or rule of thumb by which to measure what happens. I agree with the Commission for Racial Equality, whose representative said to me -

"We were not keen to have an endless debate on definitions. We are principally interested in what organisations need to do to assess policies and how they impact on people. The emphasis of Macpherson seemed to be on unwitting actions. In some ways that was unhelpful because it was shifting the focus away from how the organisation operated to the individual. It is an extension of the bad apple theory which identifies individuals as the root cause for discrimination and disadvantage. It seems to leave the issue to be addressed at that level but in doing so misses the bigger picture".

23.33 In the light of all this, the criterion I adopt is as follows -

Institutional racism occurs wherever the service provided by an organisation fails - whether deliberately or not - to meet equally the needs of all the people whom it serves, having regard to their racial, ethnic or cultural backgrounds.

23.34 There are some corollaries I would draw from this immediately -

- It is necessary to take account of what is reasonable and practicable. There is a huge variety of ethnic groups in the world, and a local or national organisation cannot reasonably be expected to be equipped to deal with them all. Organisations are at fault if they are not equipped to serve those groups which are known to exist within their areas; but they cannot reasonably be expected to have provision to deal with a group which has no representation within their area. On the other hand, it is incumbent on them to identify accurately, by ethnicity or other relevant criterion, the composition of communities which they serve.
- Institutional racism is not confined to public sector organisations. It is just as likely to be found in private sector commercial enterprises as in the public services, and as likely to occur in a private law firm as in the Crown Office. It will be found too in voluntary bodies - clubs, charities, churches. The point was well made in the written submission which I had from ACPOS, which stated that institutional racism 'permeates society' and that society 'has a collective responsibility to acknowledge the permeating presence of institutional racism.'
- Institutional racism in an organisation does not imply that all, or any, of the individuals working within the organisation hold racist attitudes. As individuals, they may all hold impeccable views on race - but if the way the organisation works, as an organisation, is racist in its effect, that is institutional racism.

· The criterion given above is intended to be a conceptual tool, to aid discussion, not to be used legalistically or embodied in statute. Institutional racism is a disorder in an organisation, which is likely to occur from time to time, in greater or less degree and has to be tackled whenever it occurs or recurs. As such, it is an ailment which is curable, and the cure may be more or less effective, and more or less permanent.

Institutional racism in the police and the Crown Office and Procurator Fiscal Service

23.35 Measured against this criterion, did the liaison arrangements with the Chhokar family show evidence of institutional racism? In my view they did. **The police investigating team clearly had no idea of the impact which a major crime, such as a murder, has on members of a vulnerable minority community:** if they had been aware of that, they would not have dismissed Mrs Sengha's question '*Was it because he was black?*' Indeed, they should have anticipated it, as a question which the family was almost certain to ask, and which required a reasoned and considered answer.

23.36 Other significant evidence of institutional racism which I find is -

· Neither the police nor the Procurator Fiscal's Office were well-informed, as organisations, about Sikh custom and belief in regard to cremation. Some individuals understood, but others did not, and there was not adequate guidance or standing instructions available. In the end the family's wishes were met, but not before the family had been put through some days of needless misery. The shortcoming of the police and Procurator Fiscal Service in this respect is a clear example of *institutional* racism: there is no evidence whatever that any of the individual officers who had to deal with the Chhokar family and their request was personally unsympathetic to them, but an imperfect system hindered their attempts to help.

· Letters sent from the Procurator Fiscal's Office to Mr Chhokar, in English, presupposed a command of written English which he may not have possessed. This too is a matter of institutional practice rather than personal attitude.

· Similarly the Procurator Fiscal's Office was slow to discover that interpreters would be needed.

23.37 As against that it is only fair to say that the previous chapters show evidence that many of the individual officers who had dealings with the Chhokar family showed sensitivity to their needs and their situation, and personal sympathy with them. The police Family Liaison Officers DS Duffy and PC Laverick clearly brought relevant skills and experience as well as sympathy to their task; DCI Michael was also alert to the racial sensitivity of the case when he selected these officers; Alan MacDonald (eventually) and Scott Pattison provided conscientious family liaison during the various stages of legal proceedings; and Frank Crowe, the Deputy Crown Agent, also showed a personal concern for Chhokar family members. Whatever the institutional failings, there was no lack of personal sympathy.

23.38 These are the facts of just one case however. They are relevant, but they cannot on their own give a comprehensive picture of the state of the police or the Procurator Fiscal Service in relation to institutional racism or anything else. The wider picture, if it were available, might be better, or worse than this. Moreover, this case gives us a picture of the organisations over a fairly short time span - two years in total - but not of what had gone before or what has happened since. With this in mind I gathered information on the work that has been done within the Crown Office and separately the police service (and Strathclyde Police in particular) from the 1980s up to the present day. I review that in the next two chapters.

24. INSTITUTIONAL RACISM: CROWN OFFICE AND PROCURATOR FISCAL SERVICE

This chapter describes developments in awareness of race issues in the Crown Office and Procurator Fiscal Service since 1995.

First training in racial and cultural awareness

24.1 The Department's first training on racial and cultural awareness took place in the autumn of 1995. It was organised internally, by Frank Crowe, who was at the time Procurator Fiscal, Kirkcaldy, and with the co-operation of the Commission for Racial Equality. Attendance was voluntary and was designed for all levels of staff. There was no requirement to cascade the training regionally. The seminar was addressed by the Head of Community Involvement of Lothian and Borders Police, Dr Jogee of the Commission for Racial Equality in Scotland, Dr Robert Shiels of Crown Office Policy Group and a representative of Tayside Racial Equality Council. Delegates from the Commission for Racial Equality and Racial Equality Councils attended and participated in syndicate discussions which were based around case studies.

24.2 Mr Crowe, now Deputy Crown Agent, told me that the sessions led to a greater mutual understanding between the Crown Office and Procurator Fiscal Service on the one side and the Commission for Racial Equality and Racial Equality Councils on the other. It was followed up by another course in early 1996, which focused on the use of interpreters. Members of Crown Office Policy Group have since been regularly involved in providing training for interpreters.

Leadership Challenge

24.3 The Crown Office at this stage did not have a developed policy on racial awareness, although there was clearly some sense of commitment to the subject. The next development took place in the summer of 1997 when Lord Hardie, recently appointed Lord Advocate, signed up to the Leadership Challenge, an initiative developed by the CRE, which 'invites those in positions of influence and authority in all areas of Scottish society to take an individual and personal lead in promoting the principles of racial equality, to create a climate for change and to effect change with the goal of eradicating racial discrimination altogether'.

24.4 This was a significant personal initiative by a Minister. When I asked Lord Hardie about this he stressed that he carried the Department with him. He told me -

"I think I was leading the way no more than any Minister would lead the way in a Department. I do not want to claim credit for things that officials within the Service were doing. Race was high on my agenda and I was making that clear to officials. Officials would be under no illusion that race was high on my agenda. The officials responded properly and effectively in relation to this."

Publication of the Joint Statement on Crown Witnesses

24.5 In January 1998 the Joint Statement on Crown Witnesses was published by the Crown Office and Scottish Court Service. This was not specifically related to minority ethnic groups, but I think it relevant to be included here, since it would have an obvious application to anyone at all who was in the position of being called as a Crown witness. The Joint Statement was the work of a joint Crown Office/Scottish Court Service working group and was commissioned by the Crown Agent and the Chief Executive of Scottish Court Service. It sets out the shared and individual responsibilities of the Crown Office and Procurator Fiscal Service and Scottish Court Service in relation to Crown witnesses. It commits both Departments to:

"treat witnesses with courtesy and give a prompt response to their enquiries, including requests for information about case progress and disposal."

"treat all witnesses fairly and give consideration to their interests whatever their race, sex, religion, age or any special need."

24.6 It was circulated to the Procurator Fiscal Service in January 1998 and arrangements were made for joint training to be delivered.

Issue of revised Chapters 12 and 13 of the Book of Regulations

24.7 In May 1998 Chapters 12 and 13 of the Crown Office and Procurator Fiscal Service Book of Regulations which deal with "Deaths" and "Public Inquiries" (principally Fatal Accident Inquiries) were revised. Annex 3 to Chapter 12 contains information on religious and cultural requirements of various ethnic groups which require to be borne in mind by Procurators Fiscal when investigating deaths. During the summer of 1998 awareness raising seminars dealing with Chapters 12 and 13 of the Book of Regulations were held in Glasgow and Edinburgh for members of the Senior Civil Service. These seminars were addressed by members of Crown Office Policy Group.

24.8 This is a topic which figured prominently in my Inquiry, and it is essential that it should be covered adequately. In my view the content of Annex 3 is inadequate. For example, in the small section headed "Sikhs" it states only, 'do not like the concept of a post mortem, but will accept it if it is legally unavoidable.' It makes no mention of the fact, which it is essential for any Procurator Fiscal to know, that traditionally all Sikhs are cremated, not buried. I note that more detailed information is now contained in the "Cultural Awareness Guide", issued to all members of staff as part of the recent Racial and Cultural Awareness training programme but this information has not yet been consolidated into Chapter 12. **I recommend that it should be consolidated, urgently.** The guidance to which a Procurator Fiscal Depute would look in dealing with death cases ought to be complete in itself.

Re-issue of Judicial Studies Board paper on Body Language and Cross-cultural Communication

24.9 In August 1998, the Judicial Studies Board paper on Body Language and Cross-cultural Communication was re-issued to all legal and precognition staff. This is a useful paper principally aimed at prosecutors and judges. It was originally issued to all legal staff, including precognition officers in 1995. It sets out key areas where cultural differences can lead to mis-communication and misunderstandings in court.

24.10 Lord Hardie, the former Lord Advocate has stated -

"There is also a need for prosecutors to be aware of racial and cultural differences which can affect the way in which witnesses of differing ethnic origins are perceived while giving evidence. Without that awareness there is a risk that their evidence will not be given proper weight. Such a consequence would not only be discriminatory but could well result in a travesty of justice. Neither of these results can or will be tolerated. In August 1998, therefore, I re-issued to all Scottish Prosecutors a paper published by the Judicial Studies Board on Body Language and Cross-cultural Communication."²⁹

24.11 The paper was re-issued to legal staff and precognition officers as part of a major review and consolidation of existing policy guidance which took place within Crown Office Policy Group in 1997/98. This is important and timely practical guidance. Ruth Anderson QC told me -

"What I think we could all benefit from is factual information...about things like within the Jewish religion it is important that a dead person is buried that day or the day of the death or very soon after. That kind of thing causes tremendous distress; what the Sikh's view of certain things is; what is considered appropriate body language in one culture that might be misconstrued in another, all that kind of thing. That would be of assistance to us all. That doesn't seem to me to come under the heading of racial awareness training. That is cultural training and that I think is, from my perspective, where the emphasis should be.

...I think we should be aware because we shouldn't be giving offence when we don't mean to be offensive."

Crime and Disorder Act 1998

24.12 Significant new statutory provisions were made by Parliament in the Crime and Disorder Act 1998, which created the statutory offences of racially aggravated harassment and racially aggravated behaviour. The provisions came into force on 30th September 1998. It inserted Section 50A into the Criminal Law (Consolidation) (Scotland) Act 1995. The racial element in that charge requires to be corroborated. It also created the statutory racial aggravation in terms of Section 96 of the 1998 Act. The racial element in that context need not be corroborated.

24.13 Section 50A of the Criminal Law (Consolidation)(Scotland) Act 1995 provides:

Racially aggravated harassment

50A. - (1) A person is guilty of an offence under this section if he -

(a) pursues a racially-aggravated course of conduct which amounts to harassment of a person and -

(i) is intended to amount to harassment of that person; or

(ii) occurs in circumstances where it would appear to a reasonable person that it would amount to harassment of that person; or

(b) acts in a manner, which is racially aggravated and which causes, or is intended to cause, a person alarm or distress.

(2) For the purposes of this section a course of conduct or an action is racially aggravated if -

(a) immediately before, during or immediately after carrying out the course of conduct or action the offender evinces towards the person affected malice and ill-will based on that person's membership (or presumed membership) of a racial group ; or

(b) the course of conduct or action is motivated (wholly or partly) by malice and ill-will towards members of a racial group based on their membership of that group.

24.14 Section 96 of the Crime and Disorder Act 1998 provides that, where racial aggravation is libelled in a charge and proved in respect of any offence, the court shall, on conviction, take the aggravation into account in determining the appropriate sentence. I have quoted and commented on this section in Chapter 6 above.

24.15 Following the passage of these new provisions the Department consulted with the Commission for Racial Equality and issued guidance to Procurators Fiscal. Lord Hardie told me -

"In September 1998, prior to the Chhokar case, I went to the CRE and submitted to Dr Jogee a draft of guidelines which were to be issued to all prosecutors. It was the first time in history that a Lord Advocate had gone out to consultation to a specialist and had asked for advice. I did ultimately amend the guidelines following consultation with the Commission."

24.16 As Lord Hardie said, this consultation was unprecedented. It was also welcome: I hope it will be treated as a precedent itself by the Crown Office and future Ministers.

24.17 The guidance to Procurators Fiscal was issued on 29th September 1998. This stated that Procurators Fiscal should prosecute appropriate offences under the statutory provisions in preference to the existing common law provisions and instructed Procurators Fiscal that Fiscal Fines should not be issued for racially aggravated offences and that proceedings should not be taken in the District Court for such offences. This reflects the gravity of such offences and Procurators Fiscal must be aware of the level of penalties set out in Section 50A of the 1995 Act which

is higher than normally would be imposed on a first summary conviction for the common law offence of breach of the peace.

24.18 The nature of the guidance has been publicly repeated by both Lord Hardie and the present Lord Advocate in speeches to conferences organised by Grampian Racial Equality Council (June 1999) and Fife Racial Equality Council (March 2000).

24.19 Scott Pattison, who has responsibility for the Race Portfolio within the Policy Group at Crown Office, said to me -

"I am aware of some Deputies at training courses saying the policy is just too rigid and is not flexible enough, for example, where you have eight charges of racial harassment you cannot, under current policy, accept a plea of guilty to seven out of the eight charges. The policy removed the Fiscal's discretion for a reason, that is, it is an area which requires sensitivity. There is a feeling, however, that the policy may need some refinement."

24.20 I do not disagree with that. The guidance was basically sound, but there can always be room for improvement.

The Lawrence Inquiry Report by Sir William Macpherson

24.21 Sir William Macpherson reported to the Home Secretary on 15th February 1999. Among his recommendations were these -

33. That the CPS should consider that, in deciding whether a criminal prosecution should proceed, once the CPS evidential test is satisfied there should be a rebuttable presumption that the public interest should be in favour of prosecution.

34. That Police Services and the CPS should ensure that particular care is taken at all stages of prosecution to recognise and to include reference to any evidence of racist motivation...The CPS and Counsel to ensure that no 'plea bargaining' should be allowed to exclude such evidence.

24.22 There were also recommendations (48-54) relating to training in racism awareness and cultural diversity. Although the Macpherson Report did not relate specifically to the Scottish context the recommendations in the Report were considered by the Department and immediately accepted where relevant. In particular, and significantly, the then Lord Advocate, Lord Hardie, accepted recommendations 33 and 34 within six weeks of publication of the Stephen Lawrence Inquiry Report and issued guidance to Procurators Fiscal on 6th April 1999. This guidance stated that

- There should be a rebuttable presumption that the public interest should be in favour of prosecution where evidence of racial motivation exists;
- Racial motivation should be brought to the attention of the court at all stages of the prosecution; and
- Pleas of guilty should not be accepted which exclude available and admissible evidence of racial motivation.

24.23 This guidance was also made public in the speeches in Aberdeen and Fife by both the former and present Lord Advocates which are referred to above. Giving his evidence to this Inquiry, Lord Hardie told me -

"On 25 March 1999, I intimated publicly that I accepted recommendations 33 and 34 of the Macpherson Report. If you look at the Chhokar case in historical terms, you have a new Lord Advocate signing up for the leadership challenge, issuing draft guidelines to the CRE for comment and thereafter issuing guidance to the Service in

race matters. All of this occurred prior to the murder of Surjit Singh Chhokar. After the murder, recommendations of the Macpherson Report were accepted and guidance was reissued to the Service. These initiatives were not a gut reaction to the verdict in the Chhokar trial, as has been suggested by some of my detractors. The fact that many of them occurred before the murder proves the contrary."

Discussion of the implications of the Macpherson Report on the Department by the Senior Civil Service at Peebles

24.24 The impact of the Macpherson recommendations on the Department was discussed at the Senior Civil Service seminar at Peebles in April 1999. The seminar was addressed by a representative of Crown Office Policy Group, Mirian Watson. Senior Management of the Service were also in attendance.

24.25 Mrs Watt, Head of the Policy Group, Crown Office, told me -

"The first I can recollect any training under the broad heading of racial awareness is shortly after the Stephen Lawrence Inquiry during a Crown Office and Procurator Fiscal Service Senior Civil Service seminar held in the spring of 1999. This training focused on issues arising from the Macpherson Report. Such seminars are attended by senior Fiscals, that is, the Crown Agent, the Deputy Crown Agent, the Head of the Policy Group, RPFs, Assistant Solicitors, APFs and upper level Procurators Fiscal. It was then a 2½ day residential seminar. These seminars are held twice a year, in April and November. The seminars cover a range of management issues and current topics of interest. This particular seminar in April 1999 included a presentation on the Lawrence case and the Macpherson Report and referred to the criticism of the Crown Prosecution Service. The presentation made the point that the Crown Office and Procurator Fiscal Service needed to be alive to these kind of issues. It was in-house training provided by Mirian Watson of the Policy Group who at that time had the portfolio for racial awareness and racist crime."

24.26 Mrs Angiolini told me of her recollection of the presentation -

"The Lawrence Inquiry Report was published in February 1999. The Department had a Senior Civil Service seminar in April 1999 in which Mirian Watson presented the findings of the Macpherson Report. Mirian's presentation was very challenging. Members of the senior civil service were undoubtedly rattled but we held workshops which challenged their lack of knowledge in this area. This training was the beginning of the development of the action plan which was submitted to the Senior Management Team in June 1999.

Part of the difficulty is the Macpherson definition which, although valuable, is sophisticated. It is not generally understood and appreciated. The concept is still quite new and there is a difficulty/struggle with the concept because of what is traditionally perceived as racist, namely, sinister bigotry, hate, intolerance, violence and stupidity."

She went on further to explain -

"Mirian Watson's presentation was thought provoking. She asked questions such as, 'could Stephen Lawrence happen here?' 'Can you look to your own office and see attitudes which were present in the Stephen Lawrence case?'"

24.27 The Crown Agent, Andrew Normand, told me that the definition of institutional racism in the Macpherson Report was initially taken as an implied criticism of the professionalism of prosecutors in Scotland, for whom it is a basic rule that decisions should be taken objectively. He said that it had to be explained that the definition was not an attack on individuals but was intended to convey that

all organisations had to look at the systems they had in place and whether they met the needs of individuals.

Lord Hardie's Speech to the Grampian Conference ("The Stephen Lawrence Inquiry - the Way Forward in Scotland") - 15th June 1999

24.28 Lord Hardie re-affirmed his personal and ministerial commitment to eradicating institutional racism when he addressed this conference on 15th June 1999. In his speech he described his personal abhorrence of discrimination and his 'commitment to ensure that the Crown Office and Procurator Fiscal Service remains free from racial discrimination and institutional racism' -

"I am only too aware that the act of prosecution significantly affects a number of individuals; victims and witnesses as well as the accused. Everyone affected by the decision to prosecute is entitled to be treated in a manner which is free from any discrimination whether racial or otherwise. If there is any discrimination, it is our duty as prosecutors to identify the difficulty and remedy the situation as soon as possible. Failure by us to do so ignores the fact that Scottish society is multi-cultural and that Scotland is the richer because of the varied ethnic origins of her citizens..."

24.29 Lord Hardie outlined the Department's commitment to training all staff in racial awareness and that such training would be a core element of future departmental training courses. He indicated that officials were developing a strategy in relation to racial awareness and an action plan for further work in this field.

24.30 In response to questions from the media, Lord Hardie stated that criminal justice agencies must assume that institutional racism exists or else risk a position of complacency which could itself constitute evidence of the existence of institutional racism. As he put it to me -

"If you are trying to rebut the allegation that institutional racism exists in any organisation, then a good starting point is to assume that it exists and then look at the systems in place to ascertain whether in fact it does exist."

24.31 That statement puts into the plainest English what Macpherson called a 'rebuttable presumption'. It is the very negation of all complacency, and applies with equal force to any organisation in the land.

Drafting of Race Strategy Action Plan and approval by Senior Management Team

24.32 Keeping up the pace, Lord Hardie then commissioned Crown Office Policy Group to draft an Action Plan dealing with race matters. The plan was drafted in June 1999 and submitted to the Senior Management Team on 22nd June 1999. The plan covered prosecution and investigation of deaths policy, training, recruitment and retention and external relations. Action points in the plan were taken forward by Crown Office Policy Group, the Deputy Crown Agent and the personnel section. I understand that the plan is currently being updated to take into account the present and proposed initiatives of the Race Strategy Group.

Roll-out of Racial and Cultural Awareness Training/Anti-Racist Training

Mainstreaming of Race Training

24.33 A foundational training seminar was held on 28th September 1999. This was managed by Crown Office with the assistance of the Commission for Racial Equality. Crown Office witnesses emphasised to me that their Department recognises a need for expert help in race training, and relies heavily on the CRE and local Racial Equality Councils. The purpose of the seminar was to set in motion a national training programme. It was attended by Regional Procurators Fiscal and members of their staff nominated by them. Those who attended were to

form regional training committees charged with both organising, and delivering if appropriate, the training at regional level. Representatives of Racial Equality Councils and other groups were also present.

24.34 The seminar was addressed by Lord Hardie, Dr Jogee, Chief Constable Andrew Brown of Grampian Police, Jeannie Felsinger of Grampian Racial Equality Council and the Deputy Crown Agent. Syndicate discussion sessions took place in the late morning/early afternoon. These were chaired by Regional Procurators Fiscal and a feedback session took place. Handouts included a Judicial Studies Board paper dealing with naming systems in ethnic minority cultures and communities and a cultural awareness guide.

24.35 Regional Procurators Fiscal thereafter received a pack of materials from Crown Office with a covering letter from the Deputy Crown Agent asking them to take forward the training at regional level. This was not traditional cascade training in that all regions were invited to seek input from Racial Equality Councils and other local community groups in order that those with expertise might be involved directly in delivering the training alongside Crown Office and Procurator Fiscal Service staff who were at that time developing expertise.

24.36 The training programme was rolled out to the whole Service between September 1999 and May 2000. The training at regional level was attended by all staff. The Cultural Awareness Guide (the text of which was taken from a guide prepared by Lothian and Borders Police) was made available to all members of staff. This Guide gives a description of cultural aspects relating to Muslims, Jews, Hindus, Buddhists, Chinese and Sikhs, including details of religious beliefs, diet, naming systems and customs following death. The Guide also contains contact details for the Commission for Racial Equality and Racial Equality Councils as well as local community and religious groups.

24.37 Scott Pattison told me that there had been a mixed reaction to this initial training in racism and cultural awareness. He indicated that criticisms had been made by some of the Racial Equality Councils involved. It was felt by some that certain stereotypes were reinforced and further that those delivering the training should not have included members of the Department. Mr Pattison advised me that the Crown Office had taken advice from the Commission for Racial Equality on these matters. Mr Pattison also explained that evaluation forms are completed by participants at the end of any training course. These forms were analysed and a summary of findings was produced. He said -

"In relation to our own staff, some have said the training was helpful and would benefit from more training. Some have commented that they would wish the training to be more focused on their jobs and how it should impact on the individual. The initial training which was delivered tried to cover all staff in one session including RPFs, Deputes, typists etc. I think this was fine for an introductory training session but may have to be reviewed in the future."

24.38 I asked Mr Pattison whether Crown Office had rushed into this training without considering the issues properly. He told me -

"I can see how some might come to that view but I think the training was good and was successful. The Department accept, however, that issues have to be learned from the initial training which was delivered. There has been criticism that there was no consistency in the training across the Service and questions have been raised about how much of the training should be cascaded on a local basis and how much should be delivered by a dedicated team visiting offices around the country. The training which was delivered involved local offices contacting local Racial Equality Councils to assist in providing training. I think this has benefits because there may be differences in approach in relation to different regions of the country, for example, Aberdeen has a large Chinese community whereas other areas of the country may have a considerable Asian population."

24.39 During this roll-out of training, seminars took place for all staff who work in Crown Office itself. A number of Advocate Deputes also attended. As part of the training of Advocate Deputes the Bench Book prepared by the Judicial Studies Board in England was circulated to all Advocate Deputes. This is an extensive work which contains useful information concerning religious and cultural requirements of ethnic minorities.

24.40 The need for mainstreamed anti-racist training is also recognised by the Department and this has been taken forward by including appropriate content within existing training courses, notably the core course for new legal staff and the precognition core course.

24.41 Scott Pattison explained -

"In my view, the [initial] training was successful in achieving its overall aim of raising awareness of the issues and the requirement that all individuals be treated equally (meaning that individuals must be treated according to their needs as opposed to simply being given identical treatment). However, it is also clear that there is a challenge ahead of us in mainstreaming anti-racist training. In this regard the Race Strategy Group, chaired by the Solicitor General, has commissioned a proposal from Rowena Arshad of Edinburgh University and this will assist us in determining the appropriate content of mainstreamed anti-racist training within all our established training programmes. The view of the Department, which I share, is that the training which has thus far been delivered is very much a first step and that we require to be committed to ongoing training in this context."

24.42 Mrs Watt, Head of the Policy Group explained -

"Training on race matters should, wherever possible, feed into other courses where race is relevant, for example, the deutes' core course, the precognition core course. Last week there was a training course on plea adjustment which involved advice in relation to racially aggravated offences."

24.43 I understand the anti-racist training at courses continues on a regular basis and focuses on:-

- the Macpherson Report and its implications in Scotland;
- present prosecution policy and racially aggravated harassment and behaviour generally;
- the need to liaise appropriately, in terms of present policy in chapters 4 and 12, with victims and bereaved relatives in deaths cases;
- the need to be alive to the requirement that all individuals require to be treated according to their needs and not simply afforded identical treatment;
- the need to provide interpreting services and translations of documentation where appropriate.

24.44 The Crown Agent told me -

"In respect of anti-racism and racial awareness training, we have adopted a policy of mainstreaming that training. In any training where it is of possible relevance, it should be included. We see it in the same way as we see Human Rights training. We would want people to be able to recognise that there is an issue, for example, ethnic minority needs as second nature. We want all staff to be aware of these issues through mainstream training rather than seeing it as an 'add-on'. It is awareness. It has to be something with which staff are generally aware and in which they can home in on any relevant issues."

We do not have an answer on how to do it at the moment but we are taking advice from other agencies."

24.45 As indicated in Mr Pattison's evidence above, the Department has now commissioned a report from Edinburgh University to assist in the further mainstreaming of race training within the Department. He explained -

"The Department recognises a need for expert assistance in race training. We are heavily reliant on the Commission for Racial Equality and the local Racial Equality Councils. We are presently involving Rowena Arshad in a significant way. She is presently consulting internally within the Service and also with identified external experts in this field. She has undertaken to produce a report to the Service in June/July and the Department has asked her to give it proposals for the content of anti-racist training. The intention is simply to ensure that there is appropriate content within the standing training programmes. We believe there is a need to both mainstream training and to deliver dedicated training with an undiluted message.

Monitoring of training is important and we hope that Rowena Arshad will assist with that. She has recommended a competence-based approach, that is, monitoring the impact on individuals and how they act in particular circumstances. There are difficulties in monitoring the impact of training. How do you assess if an individual's behaviour has changed as a result of training? There are certain areas such as casework which can be monitored more easily."

24.46 Questions also arise about the availability and expertise of trainers in this field. Mr Pattison told me -

"I am not aware of too many expert trainers in this field and that is an issue. My experience is that the Department has attempted to get the best trainers for courses we are putting on. On the race issue, I do not think the Department has expertise to say who is an expert trainer and therefore we go to the Commission for Racial Equality and the local Racial Equality Councils for advice. Regional training committees should know whether a person is a good presenter but I do not think we are qualified to make a qualified assessment of the quality of the content of training. Local Racial Equality Councils have been co-operative and helpful but there is an issue as to whether they are the best to deliver training.

I am sure the Department will move on from the work being conducted by Rowena Arshad and will bring more experts in to assist us in this area."

24.47 This record of activity shows a Department which has recognised its responsibility and has begun to be outward-looking and proactive. Nevertheless, the work is not completed yet. There are critics, and their voices should be heard. I was impressed by the account given by representatives of the West of Scotland Community Relations Council, Maggie Chetty and Mohammed Razaq. They told me -

"We have done a lot of training over the years in different areas of the PF system and with new Deputes. I think, however, that there is a deeply rooted resistance to talk about racial discrimination. They appear to be more comfortable talking about cultural awareness. We would be happier talking about the Race Relations Act 1976 and the effect on service delivery. I have tried to be tough as to what I am prepared to come and talk about. It is not about categorising people but about trying to broaden their views. Cultural awareness training can simply create a new set of stereotypes..."

There is a tendency for people in planning training to cling on to cultural awareness. It feels more comfortable to deal with that than to

deal with racial discrimination. That attitude is widespread throughout Scotland and especially by professional people. I think people hold this attitude because they believe racial discrimination does not affect them. For example, if we are trying to get new Procurator Fiscal Deputes to appreciate patterns and frequency of harassment, they have difficulty because they have never seen it or experienced it. We had thought it might help if they were to be placed on a secondment to the CRC. The big social divide is also a factor. If you have friends who have experienced racial discrimination that helps...

The public debate has opened up much more broadly since the Stephen Lawrence case. The Prison Service, the Police and the Procurator Fiscal Service have taken issues on board in a serious way. The same can also be said of local authorities. I think that they have read the writing on the wall and realise that if they do not take a proactive approach, the Scottish Executive will be prescriptive about how it is to be done...

There are committed individuals within the Procurator Fiscal Service. We have had links with the Procurator Fiscal Service for approximately 7 years and have had someone on our Executive Committee. An individual, however, cannot take it all on board and there has to be commitment at a high level...

We have started the next course at Paisley University and there are six representatives from the Procurator Fiscal Department. This represents a new stage in training. We have always argued that in training we are not simply going to talk about cultural awareness. People need longer to untangle some of the issues and need to have more considered training in racial discrimination issues."

24.48 These are well-considered criticisms from an informed and experienced source. The Crown Office should take note of them. I am confident that they will.

24.49 I note next two recent initiatives which are encouraging examples of the changed approach of the Crown Office.

Translation of "Being a witness" leaflet

24.50 This leaflet which is sent to all Crown witnesses with their witness citation was translated into six main ethnic minority languages (Punjabi, Urdu, Bengali, Chinese, Arabic and Hindi) and was issued to the Service for use in January 2000. The leaflet explains the court process and what being a witness entails and also asks whether the witness will require the services of an interpreter when giving evidence in court. The use of the leaflet is presently being monitored by Crown Office Policy Group.

24.51 Mrs Watt told me that the Department was committed to providing information in languages other than English.

"We have a basic information leaflet for witnesses which accompanies citations to court. This leaflet has been translated into six languages and is also available on the website. There are plans in place to produce other information leaflets. The next one to be produced is one for victims of rape and sexual assault. We have had costings for the translation of that leaflet. There is a commitment to publish that leaflet soon."

24.52 The Department has also made a commitment in its Strategic Plan that new information leaflets being produced are available in translated versions.

Issue of Chapter 22 of the Book of Regulations

24.53 In July 2000 an additional Chapter of the Crown Office and Procurator Fiscal Service Book of Regulations was issued. Chapter 22 offers guidance on best practice in dealing with victims, next of kin and witnesses. Paragraph 22.9 refers to

the need to recognise diversity of cultures, religions and ethnicity and to provide translations of routine and case progress information normally issued in the course of an investigation and prosecution where it is known that a victim or bereaved relative's first language is not English. It recognises that victims and witnesses from black and ethnic minority groups may have specific additional difficulties or needs.

The Race Strategy Group

24.54 I have referred above to the Race Strategy Group. This was set up in July 2000 under the chairmanship of the Solicitor General, Neil Davidson QC, with the following remit: -

`To develop the departmental strategy for race issues and to ensure, oversee and monitor its implementation, including the commitments in the Strategic Plan for 2000-2003.'

24.55 The group meets every two weeks. It comprises the Crown Agent, the Regional Procurator Fiscal at Glasgow, the Deputy Crown Agent, the Head of Policy Group and Scott Pattison of Policy Group. The following matters are regularly discussed by the group: -

· Recruitment

24.56 The Solicitor General and a representative of Crown Office Policy Group have already met with ethnic minority law students at Strathclyde, Aberdeen and Dundee Universities. Visits to all the Scottish Universities to meet with ethnic minority law students will take place this year.

24.57 I asked Scott Pattison about the number of employees within the Service from the ethnic minority communities. He said -

"We are an equal opportunities employer and do have a handful of staff from a black or ethnic minority background. We only have a handful of staff in my view because we have never encouraged applications from the ethnic minorities. We have not been proactive in that regard. We are perceived as an all white institution and individuals from ethnic minorities are disinclined to apply. The Solicitor General and I now attend at universities and speak to students. We are gaining intelligence and this is a ground breaking exercise in engaging ethnic minority law students in dialogue. Hopefully we will also be speaking to ethnic minority school leavers. The Department now advertises in ethnic minority newspapers although the Scottish Executive's view, based on research, is that ethnic minority students do not read ethnic minority newspapers. Previously we have never faced and dealt with the perception that we are an all white employer. We are now attempting to break that down and we now positively encourage applications from ethnic minority students. I am not aware that we have a target for employing ethnic minority staff other than the general Executive targets on diversity and I am not convinced of the utility of having such targets.

I am not aware of whether there is anything in the recruitment procedures which discriminate against members of the ethnic minorities joining the Service. I have not been checking the applications but the Race Strategy Group has been looking at this issue. We have also been concerned about the training of interviewers and are aware of the need to be alive to cultural considerations. Staffing matters are not really matters for the Law Officers but they have become involved in relation to recruitment because of their own personal commitment."

24.58 Mrs Angiolini told me -

"In relation to recruitment policies, the Department is an equal opportunities employer. There is a challenge, however, in that

members of the ethnic minorities are not coming into law. We have to go back further to the schools and universities to resolve this issue. I think law may have certain psychological barriers, not just for people from the ethnic minorities but people from the working classes etc.

I have gone to Aberdeen University to meet students from the ethnic minorities to try and explore why they do not come into the Service or into law generally. This would not have been part of our thinking 6 or 7 years ago. I think it is going to happen but I think it is a question of time. I think there is a genuine desire to make sure that we approach this in the right way in order that any initiatives are not just cosmetic."

24.59 Derek Goh of the East Pollokshields Multicultural Centre in Glasgow, told me -

"But there are also problems of recruitment and retention. Organisations such as the Fiscals Service are fighting hard to recruit and retain staff."

24.60 Maggie Chetty, Senior Officer with the West of Scotland Community Relations Council, explained -

"In setting up the Ethnic Minorities Law Centre it has been a struggle to find black lawyers as they are not coming through the education system. I do not think that young people in schools are saying that they want to go into law to redress the balance and fight inequality. Youngsters may look at it as a white profession."

24.61 In my view the Crown Office is absolutely right to identify and raise questions of recruitment within the Procurator Fiscal Service - a department perceived to be 'all-white' has to face that issue.

· Review of reports of racial crime and Crown prosecution policy

24.62 A review of casework was completed by the group in December 2000. The review led to recommendations relating to the development of Crown prosecution policy and the reporting of racially motivated crime to Procurators Fiscal by the police. A joint Crown Office/ACPOS Working Group has been established to take forward the recommendations in the review report and relevant recommendations and suggestions from the recent Her Majesty's Inspectorate of Constabulary Report "Without Prejudice?" The Group is charged with drafting Lord Advocate's Guidelines to Chief Constables on the investigation and reporting of racially motivated crime to Procurators Fiscal. I understand the Commission for Racial Equality is to be consulted on the draft guidelines.

24.63 The review was conducted by Scott Pattison who told me -

"I think the initial idea was the Solicitor General's. The purpose of the exercise was two-fold -

- 1. A review of prosecution policy in which the decision-making process at the marking stage would be assessed.*
- 2. A review of the quality of police reports in race cases.*

Procurators Fiscal were instructed by a letter from the Deputy Crown Agent to copy all new cases of racially aggravated crime and all existing cases of racially aggravated crime which were significant. The review exercise covered roughly a 4½ month period from July to October 2000. One hundred and fifteen police reports were collated.

The reports were analysed on the basis of 7 questions, including -

- 1. Whether the police had highlighted the need for an interpreter.*

2. *Whether the Procurator Fiscal was advised that the case had been reported and recorded as a 'racial incident'.*

3. *Whether the Procurator Fiscal required to change the draft charges.*

4. *Whether the report contained an assessment of the impact on the victim.*

The results of the review were quite interesting and have formed the basis of work since then. The results showed that Procurators Fiscal were generally applying Crown policy in relation to the marking of racially aggravated crime. Fiscals know that the policy is robust and has to be complied with. In relation to the police reporting, it was noted that some charges were libelled under common law rather than the appropriate statutory charge and other charges were libelled under the Public Order Act.

A joint working group has now been established with the police and consists of Len Higson, the RPF at Glasgow, ACC Graeme Pearson of Strathclyde Police, DCC James Keenan of Central Police and myself. I am also taking the findings forward with the Police Diversity Group at Tulliallan which is considered to be specialist in this area.

In the vast majority of cases which were reviewed there was no assessment of language needs. I think there was a failure by the police to assess language needs and Procurators Fiscal are largely dependent on the information contained within the police report.

There was also no indication that incidents had been treated as racist incidents. There was an assumption by the police that the Procurator Fiscal would assume the incident would have been perceived as racist. This finding was acted on most quickly and was taken up with the police at an early stage. Guidelines are to be issued to the police including a guideline to copy the racial incident monitoring form to the Procurator Fiscal. Such forms contain a wealth of information but the police do not tell the Crown about it.

Further monitoring will be carried out and this will routinely be done by RPFs as part of their monitoring functions. RPFs will then feed it back to Crown Office which in turn will feed the results back to the police through the working group.

The joint working group is also looking at the Macpherson Report and the HMIC Review, "Without Prejudice?". The group has a strict remit of drafting Lord Advocate's Guidelines and the timescale for this is June 2001.

The review exercise made clear that there were some deficiencies in police reporting. The exercise only looked at the Procurator Fiscal decision-making at the case marking stage and not at the provision of information to victims or witnesses or with family liaison. The exercise did consider whether the Procurator Fiscal had followed through in relation to language needs."

24.64 I have been advised by Crown Office that the Department is committed to an ongoing review of prosecution policy and casework in this area and this will be taken forward by Regional Procurators Fiscal in a systematic way as part of their regional monitoring duties.

24.65 As indicated in Mr Pattison's evidence, guidance is to be issued to the police advising them to submit the racial incident monitoring form to the Procurator Fiscal in every case where such a form has been completed. The racial incident monitoring form should contain an assessment of the language needs of the victim or witness. Mr Pattison explained -

"There is an issue as to whether the standard police report should contain a section which deals with the needs of the victim, for example, language needs or needs arising from a disability etc. The police report should be telling us the ethnic background of the victim/witness/accused. If that information is not provided Procurators Fiscal will be instructed to chase that up."

· **Relations with the CRE and Racial Equality Councils**

24.66 Regular meetings take place with the Commission for Racial Equality. Quarterly meetings are now held centrally and are attended by the Race Strategy Group, Regional Procurators Fiscal and representatives of Racial Equality Councils. These meetings are intended to assist the Department in monitoring whether the race strategy is being implemented at Regional and local levels.

24.67 Mrs Chetty, of the West of Scotland Community Relations Council, told me of the relationship between that organisation and the Procurator Fiscal's Office in Glasgow -

"We have had John Service [Principal Procurator Fiscal Depute, Glasgow] on our Executive for 4 years. At a personal level he is involved and committed. He is now working closely with Len Higson [Regional Procurator Fiscal, Glasgow]. It takes time. We have a positive relationship with both Len and John. They are keen for us to second someone to the PFs office to train people. This would be an ongoing pattern of training. Also, the first group of PFs is coming to the Paisley University course. I think it is a hurdle they have had to overcome to come on that course."

"There are committed individuals within the Procurator Fiscal Service. We have had links with the Procurator Fiscal Service for approximately seven years and have had someone on our Executive Committee. An individual, however, cannot take it all on board and there has to be commitment at a high level."

"When Len Higson was in Grampian he had a close relationship with Grampian REC. He showed a willingness to contact them. He came back to Glasgow last year and he quickly got in touch with us. He wanted to come to the office and meet people and has made the proposal of a secondment. I think such an exercise would be very useful in both directions. We also have a long-standing relationship with John Service."

24.68 There is an important message here, about the value of multi-agency partnership working, which can (and should) also include the police. I return to that at the end of this chapter.

· **Interpreters**

24.69 The group has reviewed present arrangements concerning the instruction of interpreters for the criminal courts and after consultation will soon implement a revised policy in this context. Changes to policy and practice will include requirements in relation to the qualifications and experience of criminal court interpreters, pre-court briefing materials and training of interpreters and prosecutors to be held both centrally and regionally. The Department is also contributing to the Executive's Equality Unit-led group which is reviewing arrangements for the provision of interpreting services across the public sector in Scotland. Crown Office also chairs a criminal justice sub-group which, I have been advised, is making progress in relation to the training of court interpreters.

24.70 Scott Pattison explained -

"We have been reviewing the issue of interpreters and we accept there is a need to issue guidance in this context. We have been looking at the question of interpreters for 4/5 months. The Solicitor General and I have been consulting with various bodies including the

Crown Prosecution Service, Institute of Linguists, Interpreting Services, and the Scottish Forum for Interpreting and Translating. There is a significant need within the organisation to adopt a more structured approach to interpreters. After consultation with these organisations, guidance will be issued to Procurators Fiscal and that guidance will be kept under review."

24.71 After consultation with interpreting services a change to Crown practice and policy occurred on 10th August 2000. Interpreters instructed to assist Crown witnesses in giving their evidence have since been asked to attend with Crown witnesses at the Procurator Fiscal's Office to facilitate their obtaining of witness expenses. This helps to ensure that language difficulties do not affect the quality of service provided to individuals who have identified language needs.

24.72 Mr Pattison went on to explain imminent changes in the Crown's practice and policy in respect of the use of interpreters.

"In relation to interpreters, the Department will begin to insist on qualified and experienced interpreters being available. The Department is looking towards insisting on interpreters having the Diploma in Public Service Interpreting and also recent experience in court.

Interpreters will soon receive a letter of instruction and a code of conduct instead of a witness citation. There has been a substantial restructuring of approach across the board in relation to interpreter issues.

One instruction which I am sure will be issued to the Service is that where the police report is silent on the question of language needs, the Procurator Fiscal will require to chase that up pro-actively with the police."

24.73 Mrs Watt advised the Inquiry -

"There has been some training in the past on interpreters but we are planning more training in relation to this subject. Part of that training will be in relation to changes in our procedure. One of the changes in procedure is that we will be providing the interpreter with better information, for example, a copy of the complaint or indictment. I think it is a good idea to provide them with a copy because it gives the interpreter a brief idea of what the case is about."

24.74 I was also told that after a pilot project in the Procurator Fiscal's Office in Glasgow the Department subscribed to the Languageline telephone interpreting service. This has been available in all offices since January 2001. This service is being used at reception counters to ensure that, if a language barrier exists, both Procurator Fiscal office staff and the individual with a language need can have access to an appropriate interpreter. The Languageline when contacted can connect the caller to a central point who then in turn can connect the member of staff to an interpreter to assist in translation or the identification of the language spoken. The use of this service is being monitored by the Crown Office Policy Group.

24.75 The whole question of interpreters is a vitally important subject, impinging directly on the right to a fair trial, and the Crown Office is right to give it priority. I deal with the main considerations in a short chapter elsewhere in this Report (Chapter 29).

• The establishing of regional resource teams to co-ordinate race strategy nationally.

24.76 This has involved the identification of particular individuals within each region (at legal and administrative managerial levels) who have special responsibility for race matters including the co-ordination of regional training, regional recruitment of

administrative staff, and communication with Racial Equality Councils at regional level. This resource will also liaise regularly with Crown Office and the Race Strategy Group in relation to both national and regional initiatives to ensure effective co-ordination of strategy and that a consistency of approach is maintained.³⁰

24.77 Scott Pattison told me -

"The creation of the Race Strategy Group and the regional resource teams on race demonstrates that the Department is committed to a structured and professional approach across the country in relation to race matters."

24.78 This item is of fundamental importance. The public's confidence in the Service is at stake. It should be closely monitored by Ministers. **I recommend that the Quality and Practice Review Unit should conduct a thematic inspection of the Service's response on race matters, reporting to Ministers, within the next two to three years.** (I recommend similarly in relation to Victims in the appropriate chapter).

Research

24.79 The Department is currently providing assistance to the Scottish Executive's Central Research Unit in relation to the research being taken forward presently into racist crime in Scotland. I understand the researchers will interview Regional Procurators Fiscal in relation to the following matters: -

- perceptions of the effectiveness of the new racially aggravated/motivated offences;
- practical experience gained from prosecuting these offences;
- support (including translation and interpreting facilities) for victims of racist incidents; and
- liaison with other statutory and voluntary agencies, e.g. involvement in multi-agency groups.

24.80 The researchers will have access to a sample of case papers from concluded cases from each reporting police force. This research will be of further assistance to the Department in monitoring whether present prosecution policy is being implemented by Procurators Fiscal further to the Race Strategy review report of December 2000 (referred to above).

24.81 Scott Pattison explained -

"In relation to the Central Research Unit programme, they have asked to interview RPFs and have access to concluded case papers. They are to reach conclusions as to whether cases have been dealt with properly throughout their history and we will be looking to the findings of that research. Their study will assess decision-making but will also look towards aspects of support to victims and family liaison."

Secondments

24.82 I also learned that -

- A Crown Office 2nd year trainee solicitor was seconded to the Commission for Racial Equality to participate in the drafting of codes of practice under the Race Relations (Amendment) Act 2000.
- In 2000-2001 two members of staff were seconded from Grampian Racial Equality Council to the Procurator Fiscal's Office in Aberdeen where they worked as precognition officers.

· Two members of staff from the West of Scotland Racial Equality Council are currently seconded on a part-time basis to the Procurator Fiscal's Office in Glasgow.

Summary

24.83 The Crown Office cannot be cleared of the charge of institutional racism. That however is a charge which can probably be levelled at almost any organisation in the country. Lord Hardie's words, quoted above, are most significant: "*a good starting point is to assume that it exists and then look at the systems in place to ascertain whether in fact it does exist*". There is clearly considerable commitment within the Department to deal with anti-racism matters and this level of commitment is being driven by Ministers and senior members of the Crown Office and Procurator Fiscal Service. The Crown Office was a relative late-comer to the subject, compared with, for example, the police; but it has made up ground in a most encouraging way. There is much ground still to cover; but I leave the last word with the Crown Agent -

"I think there are many members of the ethnic minority communities who have no knowledge or awareness of the Crown Office and Procurator Fiscal Service. Their level of direct contact with the organisation is fairly limited. Their awareness of the organisation is likely to result from the press coverage of the Chhokar case, the statements issued by the Chhokar Family Justice Campaign and the person leading that campaign. Their perceptions of the Service, therefore, are likely to be negative.

That does matter. The whole community needs to have confidence in the public prosecution service. Members of particular groups within the community may be involved in the system in various ways. It is essential that such people are treated properly and are enabled to give their evidence. Those who sit on juries need to have a positive view of the system. The community from which an accused comes also has to have confidence in the system.

There will be some members of the ethnic minority groups who will have had contact with our organisation and found it to be unsatisfactory in the same way that other members of the community have found it to be unsatisfactory. The effect, however, on members of the ethnic minorities is greater because of our failure to meet their needs."

Postscript: partnership working and Racial Equality Councils

In paragraph 25.68 above I highlighted the value of partnership working, and especially to the value of Racial Equality Councils. The Racial Equality Councils have built up, over the years, a level of expertise which has the confidence of local communities and which could not be replicated except with further years of work. In the course of this Inquiry I heard, from several sources, a good deal about what local partnership working can achieve, and particularly in the Imran Khan case, which is pertinent to this Inquiry and was frequently cited by witnesses. This note sets out what I learned. It is a valuable case study.

1. Imran Khan was a 15 year-old schoolboy when he died, eight days after being attacked by white youths in the Pollokshields area of Glasgow. Twin brothers, Colin and Craig Gilmour, were tried for his murder. Following the trial, the jury convicted Colin Gilmour of attempted murder while his brother, Craig, was convicted of the assault to severe injury of one of Imran's friends. A Fatal Accident Inquiry was also held following the trial which considered the level of care Imran Khan received at the Victoria Infirmary in Glasgow.

2. The circumstances of Imran Khan's death attracted considerable publicity. Tensions ran high in the Pollokshields area, particularly amongst the youth. There had been concern for some time, centred mainly on Shawlands Academy, about a number of youths carrying weapons and frequent gang fights. After Imran's death, public demonstrations took place claiming that the attack was racially motivated.

3. I have heard evidence during this Inquiry that, from the earliest stages following Imran Khan's death, lines of communication were opened between the Strathclyde Police, the Procurator Fiscal's Office at Glasgow, the West of Scotland Community Relations Council and the family of Imran Khan.

4. Maggie Chetty, the Senior Community Relations Officer with the West of Scotland Community Relations Council, told me -

"In the case of Imran Khan, we were very involved with both the police and the Procurator Fiscal Service. We had a closed Executive Meeting during which both John Service of the Fiscal's Office and the police told us of what was happening. John Service has become highly influential and is well-respected by the CRC. He often comes for advice and listens. We kept the family advised and Derek Goh, in particular, was involved with the Khan family."

5. John Service, a Principal Procurator Fiscal Depute in the Procurator Fiscal's Office, Glasgow has been associated with the West of Scotland Community Relations Council for approximately seven years -

"I took over from another Depute about 6 or 7 years ago. I attend the Executive Committee meetings of the CRC as an observer along with other observers including the police, fire service, environmental health, Glasgow City Council etc ... The CRC covers a wide geographical area and in Fiscal Service terms covers the Glasgow jurisdiction, parts of North Strathclyde region and parts of South Strathclyde region. I am only there, however, as a representative of the Glasgow office. If matters arose in relation to other Procurator Fiscal areas, I would pass that information on to those relevant offices."

"The case came onto the agenda of the CRC very early on. I was able to explain from the perspective of the Fiscal's office in Glasgow what was happening with the case. I explained the precognition process and the timescales involved. This was explained both to the Committee and particularly to Maggie Chetty. There would be some discussion in open forum in which I conveyed basic information about the processes involved. In relation to the question of liaison, I spoke to Maggie Chetty."

6. Mr Service was not directly involved with the precognition of the case.

"The precognition was prepared by ... a Principal Depute. I was able to discuss the progress of the case with both [the precognoscer] and the then RPF, Alf Vannet. [The precognoscer] had made liaison contact with the family at an early stage but she also had a link with the CRC. As far as I am aware that link was used. There was communication with the family and [the precognoscer] but there was also my contact with the CRC."

"As the case was proceeding I could not go into evidential matters with the CRC but I was able to give reports on progress of the case."

7. Maggie Chetty explained -

"The [Community Relations Council] was involved from the outset. Derek Goh was probably getting calls just after the incident happened and he made a quick approach to the family and to the Councillor in whose area the incident had taken place. At that stage it wasn't a murder, it was a stabbing. Our initial contact through Derek was to ascertain whether the family needed any help or assistance.

We held at least two emergency meetings of our Executive and got in touch with John Service and the police at an early stage. We got reports from the police and the Procurator Fiscal about what they were doing and the Committee would then keep the family informed. There

were some issues surrounding the release of the body and we were involved in that. Imran Khan was a Muslim boy and there was a degree of urgency. We were constantly in touch with the police and the Procurator Fiscal Service to find out what was happening. They were reporting back to us at the Executive Meetings. We would have made those approaches to the Procurator Fiscal Service in the Chhokar case if we had been allowed."

8. Derek Goh, who is now based at the Multi-cultural Centre in East Pollokshields in Glasgow, told the Inquiry -

"The CRC had assisted in other murder cases including the case of Imran Khan. Both the CRC and Derek Goh were involved in that. ...I was also the only non-Muslim who was able to get into the inner circle of the Khan family. I had direct involvement with the Khan family. We were there as an additional and independent source of support and help to the family. We were there to assist in dialogue with the police and the Procurator Fiscal and to assist the family understand things. The family had turned down assistance from a lot of prominent Asian leaders. I had had a shop in the area and was seen by the people there to be OK."

9. The value of the involvement of organisations such as the Racial Equality Councils cannot be underestimated. In this tragic case, it appears to have been of benefit not only to the Khan family themselves but also to those involved with the communities in Pollokshields in trying to diffuse a highly charged atmosphere, particularly tensions amongst the young people in the community.

10. Derek Goh explained -

"There was always a CRC presence. The young group would keep me informed of the things that were going on. I think I had more trust from the younger community as my liaison work was mostly with them. We had a rapport with them. I think people saw the CRC as one of the few agencies who cared. Maggie Chetty was my boss at the time and was also involved."

11. John Service told me -

"The Imran Khan case was a tragic case which could have had huge after affects given the troubles, particularly at Shawlands Academy. Feelings were running high and it was a very volatile situation given the ages of the deceased and the accused ...

... There was a lot of adverse press coverage at the time and it was a difficult case evidentially. The case was prosecuted with vigour and the murder charge went to the jury. There was the potential for major fall-out afterwards. There were attempts by certain people to bring the Imran Khan case into the Macpherson sphere but that was not successful."

12. The multi-agency approach adopted in the case of Imran Khan is an example of good practice and was beneficial to all those involved. Derek Goh explained -

"There was a difference in approach in the Imran Khan case compared to the Chhokar case. In the Imran Khan case we were involved closely with the police and the Procurator Fiscal. John Service, the police and the CRC worked closely as a team in that case. If I had been involved in the Chhokar case, I would have adopted a multi agency approach. The approach would have been the same as that adopted in the Imran Khan case and I think that the result for the Chhokar family would have been different."

13. It appears from the information made available to me during this Inquiry that the problems surrounding a lack of proper family liaison with the Chhokar family did

not appear to be evident in the Imran Khan case. I asked Mr Service whether the involvement of a number of agencies contributed to this appearance.

"I am sure that it helped but I think you have to look at the family itself and their approach to the case. The family did not want publicity and they did not want it to be seen as a racially motivated crime."

25. INSTITUTIONAL RACISM: THE POLICE

This chapter summarises developing policy on race issues in Strathclyde Police over the past fifteen or so years. It argues that the police priority now should be to see that policy is translated into practice at the operational level, and that the police and the Procurator Fiscal Service can learn from each other in the pursuit of a common objective of eradicating institutional racism.

25.1 In this chapter I shall outline the development of policy and practice in Strathclyde Police, in relation to race issues. It is a tale of a slowly dawning awareness, in the late 1980s, that policing of the minority ethnic communities in the region required some special attention; followed by a much more urgent and systematic development in the aftermath of the Stephen Lawrence murder, and especially in response to the Macpherson Report on that case - a development which continues to the present time. At the end of the chapter I shall comment on the current state of police thinking generally, as reflected in the ACPOS Racial Diversity Strategy.

25.2 HM Inspectorate of Constabulary has recently published the report of a thematic inspection of police race relations in Scotland³¹; and I have been given access to the Strathclyde Police questionnaire response to the inspection. Needless to say, this chapter does not pretend to be a substitute for the work of the Inspectorate: rather, it reports on the evidence given to me by the police and others in the course of this Inquiry.

25.3 My Report concentrates on Strathclyde Police for the obvious reason that this was the Force involved with the Chhokar case, and the main source of evidence to this Inquiry. I do not attempt to generalise from it to other police forces. The information in the following paragraphs came mainly from Chief Supt George Burton and ACC Graeme Pearson.

Early police perceptions of minority communities

25.4 ACC Pearson gave me a candid account of how he had seen police awareness of the needs of minority communities develop during his own career in the Force -

"In 1979 I spent a year as a Detective Officer in Glasgow dealing, in particular, with the Chinese community in relation to extortion and violent crime. I became aware of how alienated within the local processes the community felt. I saw witnesses/victims who found it difficult to respond to and interact with authority. They brought with them knowledge of authorities in other countries. There was a reluctance on their part to deal with the authorities and some of these difficulties were caused by language problems. I saw them as having a particular difficulty to overcome in dealing with authorities, for example, in relation to local council licensing, members of the community found it difficult to have to process everything on paper. They found it difficult to understand.

I think there has been a number of changes since that time. We now have a second/third generation ethnic minority community. Some younger members are finding it difficult to deal with their own parents' culture but also the cultures of others in the community. In addition, I do not see the community as one single group, for example, I do not see an Asian community but see all different strata within that community. There is the older element with their traditions and conservative values. The younger generations are finding their own

personalities. The police need to communicate and respond to all these layers. The communities have become more demanding and have set out why they do not think things should be done in a certain way. I think that is a helpful approach.

I think in the 1970s/1980s the authorities including the police took a largely paternalistic approach to policing one homogeneous group. The Asian community was largely invisible in the 1970s and only became apparent when they were the victims of serious crime. The Force would only police and support that community as required.

This period also saw the beginning of the Community Involvement Branch but that was a largely specialised effort. There was a small group of officers including a small group who came from an Asian background which may have helped to educate the police. It was only through the 1980s that the Community Involvement Branch began to develop and that structures and policies were put in place. I think what happened was that after a lot of negotiations and developments, someone sat down within the group and devised a strategy around it."

Racial Incident Monitoring - 1987

25.5 Mr Pearson saw the establishment of the first Multi-Agency Racial Incident Monitoring (MARIM) Group in Strathclyde Police as a landmark. This group was set up in 'G' Division (covering principally the Govan area of Glasgow) in October 1987. Other MARIM groups were later established across Strathclyde. A key feature of these groups is, as the name indicates, that they bring a range of other agencies, both statutory and voluntary, into a working partnership with the police. The agencies involved variously include -

- social work and other local authority departments
- local Race Equality Councils
- victim support agencies
- health services.

Race Relations Policy, and first training in Race Relations - 1989

25.6 In April 1989 Strathclyde Police published its first Race Relations Policy. It was the first Scottish police force to do so. The policy clearly stated that -

"Strathclyde Police is opposed to racism. It is committed to taking all steps within its power which lead towards the elimination of unlawful discrimination and the promotion of good relationships between different racial groups."

25.7 The policy document was made available to every officer. It set out ten policy objectives and a programme of action for the Force in areas such as:

- the training of all staff in race relations issues;
- guidance in respect of the cultural and religious diversities of the communities within Strathclyde;
- the accurate recording, investigation and monitoring of racial incidents;
- the recruitment of ethnic minority employees; and
- increasing awareness among members of the minority ethnic communities of the role, powers and structure of the police - the purpose being to increase confidence in calling upon the services of the police.

25.8 This was an ambitious, but necessary, programme of action; and much remains to be done even now towards realising it. But it was a start. I agree with

ACC Pearson, when he described it to me as "*a reasonable first attempt in terms of what you would want to say in a policy statement*"

25.9 Chief Supt Burton told me that the first formal training in race relations which he could recall also took place in 1989. This was a single day with academics from Glasgow and Strathclyde Universities, and consisted mainly of a historical perspective of immigration, cultures and racist incidents. This was part of the Scottish Command Course for officers at Superintendent level and above.

Policing a Multi-Racial Society Training Programme - 1992

25.10 In the spring of 1992, Strathclyde Police introduced its "Policing a Multi-Racial Society" training programme, developed in partnership with Glasgow University. This training was designed for officers at Sergeant, Inspector and Chief Inspector level. It was rolled out to the Force, with priority to those involved in policing minority ethnic communities. The training was designed to be delivered to small groups of not more than 15 people, and 150-200 officers were trained each year.

25.11 This training programme continues today and has been revised to reflect changes in legislation as well as in Force policy and practice. I have had access to the manual which accompanies the two-day training course. It clearly shows the training to be comprehensive and wide-ranging covering such topics as -

- Prejudice and Discrimination;
- Right Wing Groups and their Impact on Communities;
- Racist Incidents and the relevant legislation;
- Asylum Seekers;
- Language, Culture and Interpreting; and
- Challenging Racism in the Police - Canteen Culture.

Publication of Revised Race Relations Policy - July 1997

25.12 In the light of research in Scotland and England, the Strathclyde Police policy on race relations was rewritten, expanding considerably on what had been in place for several years. The revised policy was launched in July 1997. It was issued to every police officer and civilian employee of the Force; and copies were placed in every police office. It was also published in six languages and distributed among minority ethnic communities and organisations. It covered such areas as -

- Liaison with Black and Ethnic Minority Communities, both at Force Headquarters and divisional level;
- Racially Motivated Incidents;
- Equal Opportunities;
- Recruitment; Training; Monitoring and Evaluation; and
- miscellaneous matters such as the Force Policy on Interpreters.

25.13 At the same time the Community Safety Branch published a guide to Interpreter Services. This included guidance on the source of interpreters, and on circumstances requiring, and procedure for engaging the services of a professional interpreter.

25.14 I was told that the development of this new policy was stimulated by several factors, not least the murder of Stephen Lawrence and the impact of that event on minority communities. Other relevant influences were the MARIM groups, the Force's relationship with the West of Scotland Community Relations Council, general developments in community policing, and discussions with the Commission for Racial Equality.

25.15 The 1997 document remains the current policy of Strathclyde Police, although it has been adapted to reflect changes in legislation and the adoption of the Macpherson definition of a racial incident.

Monitoring of Racial Incidents

25.16 A key feature of the policy was the reporting and recording of racial incidents, which resulted in the creation of the Force's "Racial Incident Monitoring Form", a comprehensive form which has to be completed by a police officer on receiving a report of a racial incident. Accurate monitoring of racist incidents is essential, so that police and public can see a truer picture of the extent of racism. The senior officers who gave evidence to me understood this, and were also aware of some of the problems involved in achieving it, not least in dealing with reluctance among the public, especially those who are the victims of such incidents, to report things to the police. They made a number of observations which deserve to be recorded here -

Chief Supt Burton -

"The general view at that time was that because of a lack of formal contact with the ethnic minority communities, there might have been a reluctance to report such incidents to the police. They might have the wrong impression of the Scottish Police Force based on backgrounds in Pakistan, India or Hong Kong. The Chinese community is also very private. They will absorb a lot of things without asking for help. This was a hurdle the police had to get over. I think it would be fair to say, from a minority perspective, that the police were not there for them.

...Strathclyde Police was not recording racial incidents and it is unfortunate that we did not make greater effort at an earlier stage to record them. Due to a lack of recording there was no co-ordinated approach to the problem. Indeed, there was nothing coming out of the statistics collated centrally to show that there was a problem of racism. Recording is critical - it improves intelligence and allows strategies to be developed to manage the situation."

and ACC Pearson -

"I suspect there is reluctance amongst some members of the community to report crime. As I understand it there is a reluctance among women in the community to come forward to the authorities. Many individuals have a deep sense of privacy and they do not feel that they should be talking about certain things to the authorities. They do not want to expose their emotions and their personal business publicly.

The conclusion could be drawn that there was a lack of confidence and a feeling that even if they were to report the incident would the response from the police be appropriate? There is now a third party reporting system where members of the community can go into a local community centre and report an incident to them. We do encourage that as a policy. We are attempting to overcome the perceived lack of confidence and to make the system of reporting incidents as easy for the community as possible. It is easier for them to go to someone they know in the community. It is important to access as many incidents as possible in order that we can obtain a more accurate picture of the problems faced by the community.

Reports of racially aggravated harassment rose from 48 to 135 in the last year, an increase of 87 incidents and a rise of 181%. Racially aggravated conduct rose from 223 incidents to 496, an increase of 122%.

We are building up a rigorous system of monitoring these reports. The ability to deliver on an intention, however, takes time. It needs an adequate IT process, admin process, training to be in place, and the

matter to be publicised both internally and externally so that people are aware. There is a commitment on the part of the Force in this regard."

25.17 This account was generally corroborated by Maggie Chetty, Senior Community Relations Officer with the West of Scotland Community Relations Council. She told me -

"We have worked hard to increase the number of racial incidents which are reported. The figures have quadrupled in recent years in terms of the police figures. We have also persuaded the police to form MARIM groups. The reports from those groups are very encouraging."

Publication of the "Religion, Culture and Sensitivities" Guidance Document

25.18 Towards the end of 1999, Strathclyde Police published a Guidance Document in relation to important issues concerning the main black and ethnic minority groups including, for example, religious beliefs and festivals/Holy Days, traditions, language, death customs and dietary requirements. This too was issued to all Force employees. Mr Pearson told me that this arose out of a process of self-examination by the Force during the time when the Macpherson Report was being prepared, and was also informed by experience with the Chhokar case. I was told that a number of minority ethnic organisations were consulted while this document was being prepared, and that a draft was also sent to the Commission for Racial Equality.

The National Picture - the ACPOS Racial Diversity Strategy

25.19 I received a useful and comprehensive submission from ACPOS. It is reproduced at Appendix 11. The Macpherson Report of the Stephen Lawrence Inquiry, published in February 1999, provided - as ACPOS puts it - "the catalyst for an overhaul in the way race issues and racism are dealt with by the police in Scotland". ACPOS convened a Working Group to consider the findings and recommendations of Macpherson. This led, in March 2000, to the publication of the Racial Diversity Strategy. The Commission for Racial Equality was consulted on the content of the Strategy and the Association of Scottish Police Superintendents and the Scottish Police Federation have also supported the Strategy.

25.20 The Strategy is an important document which sets out, in short compass, what is now expected of police forces in this field. The document, which is reproduced at Appendix 9, states that each police force will undertake its own programme for implementation of the Strategy and recognises that different forces are at different stages of development. Each force is required to report on progress to the ACPOS Cross Standing Committee by March 2002. The ACPOS Strategy focuses on six broad areas, namely:

- Reporting and Recording of Racist Incidents
- Investigation of Racist Crime
- Policing Our Communities
- Recruiting and Career Development
- Training
- Fair Practice.

Conclusion

25.21 In the previous chapter I concluded that the Crown Office could not be cleared of the charge of institutional racism. The same is true of the police. It would be astonishing if it were not so. But in saying that I repeat my view expressed at Chapter 24 that institutional racism is a disorder in an organisation, which is likely to occur from time to time, in greater or less degree, and has to be tackled whenever it occurs or recurs. As such, it is an ailment which is curable, and the

cure may be more or less effective, and more or less permanent. I believe that the police service, or at any rate those members of it whom I interviewed, recognise that and have some will to respond to it. The Commission for Racial Equality also, in their advice to me, commented on the value of the thematic inspection carried out by HM Inspectorate -

"In relation to institutional racism and what is to be done about it, the clear message to any organisation is to look at itself, look at what it does, look at the impact of what it does and plan what it is going to do about it. This model can be applied to any organisation and the approach adopted by HMIC thematic is a useful one to look at".

25.22 The police, Strathclyde Police in particular, deserve credit for recognising that they had much ground to make up in race relations, and for an honest appreciation of where they were failing. They deserve credit too for all these various initiatives, which were rational and necessary steps towards reform. The process is far from complete however. The Race Relations Strategy was already in being at the time of Surjit's murder, and yet the investigating team showed a basic lack of understanding of the significance of the racial dimension of the crime. Clearly, there was some gap between high-level strategy and policing at local level. **Minority communities cannot be confident that they are being policed fairly until they see high-level policies translated into action by every individual police officer.**

25.23 I have some **recommendations** to make in relation to this -

- the priority now should be to translate policies into guidance documents for the Force which are operationally based and above all give **practical** advice and instructions to police officers;
- in this process of translating policy into action the police should continue to rely on and develop partnership links with other bodies, both statutory and voluntary, through organisations such as the MARIM groups and Racial Equality Councils. The police have shown in the past that they are willing to tap into advice and expertise in local communities; and they should continue to do so.

Relationship with the Crown Office and Procurator Fiscal Service

25.24 Finally, I link this chapter with the preceding one, which deals with the Crown Office and Procurator Fiscal Service. In both these bodies, the prosecution service and the police, we see a parallel development of awareness of the racial dimension, and a similar response to it. In my view, both would benefit from a degree of partnership in this work. At other points in this Report I have been critical of the relationship between the Procurator Fiscal Service and the police, and I have recommended that there should be better communication and co-operation between them at this level. I see the same need at the policy level. They are in fact engaged on a common enterprise - their objectives are the same, in respect of race relations and the eradication of institutional racism - and they can only gain from learning to work together on these things.

26. VICTIM SUPPORT

This chapter discusses the needs of next of kin when there has been a murder and the roles of various agencies in providing support to them; and describes and comments upon recent developments in policy and practice in the Crown Office and Procurator Fiscal Service.

26.1 In chapters 17 and 18 above I have chronicled the dismal tale of the neglect of the Chhokar family by the Procurator Fiscal's Office up to and during the trial of Ronnie Coulter in March 1999. I also quoted there what the representatives of PETAL told me of what it is like for bereaved relatives of a murder victim to endure the procedures involved in investigation, prosecution and trial. It is worth repeating some of it here -

"There are three stages to the process - trauma, court and grief. The murder of a family member is your worst nightmare...

You may have to identify the body. You may also be precognosed. You then have to go to court and listen to the evidence. You are re-traumatised again and again.

People think that they are going into court to have their say and tell everybody what happened. But that does not happen. They do not even get to say what they want to say as they are restricted in what they say. The whole process becomes very complicated. ...In the middle of it all is the death of a loved one but that seems to be forgotten."

26.2 It is clear to me that the Chhokar case was not unique, but all too sadly typical of what any family (irrespective of race and culture) bereaved through murder might have experienced at that time. Where are the next of kin of a murder victim to look for support?

26.3 Part of the answer lies in the various voluntary and self-help organisations which exist. I have referred frequently in earlier chapters to the positive and effective role played by PETAL in supporting Sanehdeep Chhokar. I have also received extensive written evidence from Victim Support Scotland (VSS). Their submission is reproduced at Appendix 12. They were not directly involved with the Chhokar family until the second trial - the police Family Liaison Officers drew the family's attention to VSS on their first visit (see Chapter 10 above) but the family chose, as they were entitled to do, not to take up the reference. VSS contacts with the family at the time of the second trial are detailed in section 6 of their submission. Having heard and read about the scope and experience of VSS, I feel bound to observe that the family might have been spared much of their perplexity and misery if they had had VSS support from the beginning - but they were not to know that.

26.4 However, the voluntary bodies provide only part of the answer. There is also an essential role for the statutory agencies - the police and the Procurator Fiscal Service. That, and the relationship between statutory and voluntary, is the subject of this chapter.

Support for victims

26.5 A murder can be compared to a civil emergency. Civil emergencies arise when a disaster has struck a community: a murder is a disaster striking a single household. Disasters create massive, complex and urgent problems for those who are hit by them; and no one agency can meet all the needs. A range of agencies has to be brought into action: these will be diverse, some statutory and others voluntary, and each with its own separate organisation and its own lines of responsibility.

26.6 I gained some insight into the needs of families in a murder situation from the evidence given by VSS and PETAL. From it I draw the following rough analysis of needs -

- The human need. People feel grief, and have to find ways of coping with it. A family's grief is a private matter, and each family will have its own responses and its own needs, and must be free to find help in whatever quarter suits it best - or to rely on its own resources if it chooses.
- Moral support. The situation is both distressing and strange. Families need a 'friend' who can stand alongside them as they try to cope with the various situations which will arise, and give guidance and reassurance. (An example of this in the present case is the support given by PETAL to Sanehdeep Chhokar at the defence precognition.)
- Practical advice and guidance, over matters such as funeral arrangements, reclaiming the deceased's possessions, contacting Criminal Injuries Compensation, being a witness, familiarisation with court and getting to court.

· Authoritative and clear information about the progress of investigation, prosecution and trial.

26.7 There is a spectrum of needs here. At one end is the human need, which is very personal: this is obvious territory for self-help and voluntary bodies, rather than for the police and the Procurator Fiscal. At the other end is the need for information, which can only be provided by the 'authorities'. In between there is a range of things in which there is scope for both voluntary and statutory agencies, and therefore a need for co-ordination between them. It is clear to me that VSS in particular has acquired considerable experience in these matters, exemplified by the Support After Murder project described in their submission, which significantly is a joint venture in collaboration with PETAL and other bodies.

Co-ordination of support

26.8 I return to the analogy with civil emergencies. In a situation where several agencies have to be involved there has to be one agency which will take the lead in co-ordinating the response. Both in civil emergencies and in serious crime, the first line of response, on the scene, normally involves the police. But the police do not have authority to co-ordinate all other agencies. In a civil emergency it has been long accepted that the responsibility for co-ordination falls on the local authority. Where a murder or similar serious crime has occurred the responsibility for co-ordination must be taken by the Crown, represented by the Procurator Fiscal.

26.9 The Crown has been slow to recognise this. Its attention has been focused on its duties as the public prosecutor. That is right; but at the same time the Crown has overlooked, until very recently at least, the fact that behind the murder victim there is usually a bereaved family whose lives have been torn apart by what has happened, and who will have multiple needs, including a need for information about what is being done to apprehend and prosecute the perpetrators. Lord Hardie, in his evidence to me, made the point -

"I certainly thought that we did not do enough for victims and this issue was quite prominent in my thinking. I had experience dealing with the Lockerbie case in which I did the Fatal Accident Inquiry and I got to know a lot of the families involved. We tried to tell the family as much as we could in relation to those proceedings. I was influenced by the Lockerbie FAI and what had been done for victims, for example, there was a police officer who had built up a good rapport with many of the families and provided them with as much information as possible, consistent with the interests of justice

Early on in my term as Lord Advocate, I started to think about a system which would take on board all the agencies involved with victims under the auspices of the Procurator Fiscal because only the Procurator Fiscal could ultimately decide what information was given to victims. When devolution came along I saw that as an opportunity of establishing a victims unit. I envisaged the unit as including Victim Support Scotland, the Justice Department and the voluntary sector. The office would cut across all the agencies but my view was that to be effective, it had to be under the auspices of the Procurator Fiscal. For example, the police may not disclose information of a sensitive nature to voluntary organisations and will not provide details of the case to agencies other than the Procurator Fiscal. The Procurator Fiscal may be able to tell a family, for example, certain parts of the evidence in the case, including evidence contained in joint minutes of admission."

26.10 These ideas bore fruit, as I shall describe later. First however I discuss the 'entitlements' of victims in relation to a public prosecution.

What can victims expect?

26.11 VSS has a dual role: it is a practical support organisation for victims of crime, but it is also a campaigning one, which seeks to influence policy. In describing their

role of advocacy in relation to victim issues the VSS submission says -

'Victim Support Scotland's primary focus has always been on developing a network of community based services to provide practical and emotional support to victims of crime. The development of these services led to recognition that the vast majority of victims were ignored by the justice and social systems. Victims of crime had no rights in the court setting, even as witnesses victims had only limited rights such as the right to claim expenses. Victim witnesses had responsibilities, to give statements to the police, the procurator fiscal, defence solicitors and to give evidence in court.

Victims, including co-victims such as the family and friends of murder victims should be entitled ... to a high standard of practical and emotional support and to respect, privacy and confidentiality. There should be rights to play a central role in the criminal justice process and to be informed and consulted on case progress.'

26.12 The ideas in the second paragraph here go some way beyond Lord Hardie's concept: he focuses on 'information', but the VSS statement also brings in the concepts of victims playing 'a central role' in the process and being 'consulted' on the progress of a case. These are ideas which need to be handled with some care. In my view there are limits to the role which victims can play in the justice process, and it is important to be clear about what the limits are. These things are obvious to anyone who has been professionally involved in the criminal justice system, but may be less so to the general public; and for that reason I set them out here.

26.13 Fundamental to the system of justice in any society under the rule of law, is the right to a fair trial. It is a dreadful thing to be the victim of violent crime; but it is equally dreadful to be wrongly convicted of it. The courts have to hold the balance. The public prosecutor has to present the evidence fearlessly and vigorously, but always to remain conscious that the trial must be fair: it is not the prosecutor's job to secure a conviction at all costs. The prosecutor is not there to act for the victim nor to take instructions from the victim: the prosecutor must exercise an independent judgment. For similar reasons there can be no role for the victim in determining guilt, except insofar as the victim may be called as a witness. It is for judge or jury to determine guilt.

26.14 Nevertheless I regard it as beyond dispute that victims do have an interest which must be taken into account. They need explanations of the legal processes, and information from the prosecution about the progress of the cases in which they have an interest. They should have these things as of right; and the explanations and information should be conveyed, if at all possible, in terms which they can understand. The impact of the crime on the victim may also be a relevant consideration for the judge in passing sentence; and the prosecution should ensure that this is brought to the notice of the court.

Recent developments

26.15 There have been significant and welcome developments in policy and practice since the Chhokar case. I shall describe three here.

(1) The Scottish Strategy for Victims

26.16 In 2000 the Scottish Executive published its Scottish Strategy for Victims and an associated Justice Department action plan. The broad principles underlying the strategy are stated as -

- A recognition of the importance of victims and the need to provide practical and emotional support to assist the victim to recover
- A need to safeguard the victim from further crime or secondary victimisation
- A commitment to provide explanations to victims about the criminal justice and other processes with which they are involved

- A recognition that victims have a legitimate interest in the cases with which they are involved and so have a contribution to make
- A commitment to offer victims information on the progress of their cases or the processes with which they are involved.
- A recognition that victims should be enabled to have a voice throughout all stages of the criminal justice system.

26.17 This is rightly called a strategy - a broad and long-term plan. It will be judged by how, and how quickly, it is realised. Some elements, notably the last item, are expressed in vague terms and are frankly presented as 'aspirational'. However I note that the action plan includes a commitment to consult by autumn 2001 on procedures for victims' statements.

(2) Revised Crown Office Regulations

26.18 In July 2000 a new chapter - Chapter 22 - of the Crown Office and Procurator Fiscal Service Book of Regulations was issued. Its purpose is to identify the general duties which the prosecution owes to Crown witnesses and in some circumstances their families. I highlight here some passages which are particularly relevant to this Inquiry.

26.19 The duties of Procurators Fiscal, in their relationship with victims, next of kin and witnesses, are set out as follows -

- to take account of the interests of victims, next of kin and witnesses in assessing the public interest;
- to take account of the rights afforded to victims, next of kin and witnesses in terms of the European Convention on Human Rights, and the concomitant duties upon the State;
- to be sensitive and responsive to the needs of victims, next of kin and witnesses, in particular, the needs of vulnerable witnesses including children, witnesses with learning difficulties, witnesses with physical disabilities, hearing impaired witnesses and witnesses from minority ethnic groups whose first language may not be English;
- to provide information to victims, next of kin and witnesses who request it about the Criminal Justice System and the system of investigation of deaths;
- to provide information to those who request it about the case affecting them, having regard to requirements of confidentiality, balanced against the interests of victims and witnesses.

26.20 There are instructions about helping witnesses and others who may be unfamiliar with court proceedings, and anxious for various reasons -

- A witness may be fearful not only of the possible repercussions from being known as a witness, but also of having to attend court to give evidence.
- S/he may be apprehensive of the trappings surrounding the giving of evidence in court.
- A witness may be confused and upset at being cited for precognition, and particularly at being approached for precognition by a defence agent representing the accused.
- The unpredictability of the court process itself may leave a witness feeling victimised as citations may be countermanded at the last minute, cases adjourned, or witnesses kept waiting for lengthy periods, sometimes being released without having had to give evidence and with minimal explanation.

26.21 The duty on the prosecution to ensure that the court is informed about the effect of the crime on the victim is spelled out -

- The prosecutor is the main conduit of information to the court about the effect of a crime upon a victim and his or her family. Procurators Fiscal must consider whether it is necessary to obtain accurate, updated information about financial, physical or emotional effects to provide to the court at the time of sentencing. In the course of a trial, when a victim gives evidence it is clearly best practice to ask the victim how the crime has affected him/her.

26.22 Likewise the duty to keep next of kin informed about the progress of the case -

- Victims, next of kin and witnesses have an interest in case progress both before and at court. Research commissioned by Crown Office and published in 1995 into the information needs of victims emphasised their desire to be kept informed of case progress. Even if there is no progress to report victims and bereaved families find that information important.

26.23 There is also new and very specific direction about contacting next of kin. This section, if it is duly followed by Procurators Fiscal, should ensure that the mistakes made in respect of the Chhokar family will not be repeated -

- In death investigations there may be contact with the next of kin prior to any form of proceedings. It is desirable to make contact with the family at the outset when the case is reported where there is the prospect of criminal proceedings or a Fatal Accident Inquiry. The initial contact is likely to be by letter and should explain the role of the Procurator Fiscal in the investigation of the deaths and should be accompanied by relevant explanatory booklets [What Happens When A Death is Reported to the Procurator Fiscal and Criminal Proceedings and Fatal Accident Inquiries - Information to Bereaved Relatives]. Procurators Fiscal should offer next of kin the opportunity of a meeting at which time any further information and explanation about the criminal justice system and the system for the investigation of deaths can be provided.
- The initial letter should offer a point of contact should next of kin require information on the progress of the case. Special care will be required when dealing with families from ethnic groups to ensure that information is provided in the appropriate community language, if necessary.
- Initial contact is likely to be with the deceased's spouse or nearest relative, as identified to the Procurator Fiscal.
- Procurators Fiscal must remain alert to the possibility that there may be more than one person to whom these duties are owed, particularly in the instance of estranged family members. Difficulties can be encountered when the next of kin reside outwith Scotland. This should not, however, inhibit Procurators Fiscal from making the offer of a meeting, while recognising the difficulties this may entail.

26.24 This is very encouraging. It is evidence that the Crown Office has taken note of previous shortcomings, not least in the Chhokar case itself. It represents too a specific and careful implementation of the policy lines set forth in the Strategy for Victims.

(3) Victim Liaison Office pilot scheme

26.25 Lord Hardie's ideas, quoted at the head of this chapter, were realised in the Victim Liaison Office project. The Crown Agent, Andrew Normand, amplified the thinking behind it in his evidence to me. He said -

"There was a difficulty about possible confusion and a lack of co-ordination in relation to the provision of services to victims. I think it would have to be frankly acknowledged that the needs of some groups in the community were not recognised or fully recognised. Victim Support Scotland has been around for a while and there is contact between the Department and Victim Support Scotland in varying degrees in some parts of the country. The effectiveness of Victim Support Scotland was affected in some parts by data protection issues. There was also a question about the role of Victim Support Scotland and also the availability of volunteers.

There were also issues about the extent to which the Scottish Court Service should provide a service to victims. The overall responsibility at that time rested with the Home Department.

Action was taken to try and co-ordinate the approach by various groups. There was discussion between ourselves and the Scottish Court Service and this resulted in the production of the 'Joint Statement on Crown Witnesses' document. Progress was being made but there was still an issue of what the Procurator Fiscal Service should be doing. We had recognised that we had a responsibility to victims and next of kin."

26.26 Crown Office witnesses told me that consultants were commissioned in March 2000 to undertake a feasibility study of the Lord Advocate's proposal, to identify how it could be staffed and operated, and to evaluate the costs of the proposed service in relation to the benefits. The consultants' report was submitted to Ministers in September 2000. It concluded that the proposal was practical, would complement other initiatives for victims and witnesses, and would be good value for money.

26.27 Funding for the new service was secured in the Scottish Executive's Spending Review and the Lord Advocate announced the creation of the service to the Justice and Home Affairs Committee of the Scottish Parliament in September 2000. He emphasised that the Procurator Fiscal Service must respond to the greater expectations of the public by the provision of more and better general and case-specific information and by collaborating with other service providers to ensure support needs were met. The Lord Advocate stated that systems must be put in place *'to convey accurate information, consistently, sensitively and timeously. It must take place in a structured proactive way, with due regard to the needs of individuals'*. He told the Committee that the victim/witness service would be piloted and that there would be a new Victim Liaison Office in each of the six regions by Spring 2002.

26.28 The first pilot project was established at the Procurator Fiscal's Office in Aberdeen and has been functioning since November 2000. A second pilot project was established in April 2001 at the Procurator Fiscal's Office in Hamilton (which is of course the office which dealt with the Chhokar case). I was told that in these early stages of development of the project the Department has focused on three main areas -

- Providing general information about the criminal justice system and the Procurator Fiscal Service.
- Providing specific information about how a particular case is progressing.
- Identifying the support needs of victims and witnesses and referring them to organisations designed to look after those needs.

Victim Liaison Office - Aberdeen Pilot Project

26.29 The Victim Liaison Office (VLO) is based within the Procurator Fiscal's Office at Aberdeen. It currently provides a service for the geographical areas covered by the Aberdeen, Banff, Peterhead and Stonehaven offices. In her evidence to me,

Mrs Angiolini, the Regional Procurator Fiscal for Grampian, Highland and Islands, outlined the project at Aberdeen -

"The pilot project at Aberdeen is to inform the roll out of a full service across the country. The Aberdeen pilot consists of a Victim Liaison Officer, who has a social work background in the criminal justice system, and an administrative assistant..."

The target is to invite next of kin or victims to the service within 48 hours of the case being reported to the Procurator Fiscal. The next of kin or victim can then buy into the service offered by the VLO. If victims or next of kin do not respond there is a follow up contact. The service does, however, have to be opt in. There are data protection considerations.

Originally the scheme was to cover only solemn cases but the remit has now been extended to include summary cases involving racial crime and cases involving child witnesses.

The training implications of the VLO are huge. The Aberdeen pilot has informed the Hamilton pilot and they have now appointed a Victim Liaison Officer there. The Aberdeen pilot started on 13 November 2000 and training had started in September 2000. It is still at the very early stages as we were going from a blank canvass altogether.

The early indications are that the Victim Liaison Office makes a huge difference. The idea of the VLO was to try and recognise that there were pressures on the Procurator Fiscal which meant assistance was required in liaison with victims and next of kin. The service does, however, increase the workload on the Service because, for example, there are now requests for more court visits."

26.30 Initially the Victim Liaison Office sought to provide a service to victims and witnesses in solemn cases and to bereaved next of kin in all cases reported to the Procurator Fiscal where a Fatal Accident Inquiry or a criminal prosecution was in contemplation. I was told however that the scope of the Aberdeen pilot project has now been extended to include a number of categories of cases at Sheriff Summary level. The services of the Victim Liaison Office will now be provided to victims of domestic abuse in summary as well as solemn cases, in all summary cases involving any racial motivation and in all summary cases with a sexual connotation involving child or adult victims.

26.31 Mrs Angiolini told me that, although only in its developmental phase, the Victim Liaison Office in Aberdeen is identifying significant, previously unmet, needs of witnesses and victims in a wide range of cases -

"Review of some of the cases dealt with to date demonstrates the positive benefits to witnesses and next-of-kin where a service exists which can regularly provide next-of-kin with information and be a constant source of assurance about the progress of a case. The VLO has also established a prominent role in this office providing valuable information to prosecutors about the anxieties and concerns of next-of-kin which has, in turn, enriched the preparation of the prosecution in a number of cases.

The existence of the VLO in Aberdeen has undoubtedly raised the whole profile of victims very significantly within the office."

Victim Liaison Office - Hamilton Pilot Project, and national roll-out

26.32 The Victim Liaison Office in Hamilton has been operational since May 2001 and is based in the Procurator Fiscal's Office in Hamilton. The aim of the pilot is to provide information to facilitate the development of the national service and, at least initially, the service will be offered only to victims, witnesses and next of kin in cases referred to the Procurator Fiscal at Hamilton.

26.33 Although the Victim Liaison Office in Hamilton is being introduced as a pilot scheme, I was told that it has already been decided that the 'Victim Liaison Office' is a service which should be available nationally. A Victim Liaison Office will be created in each of the other regions of the Procurator Fiscal Service before 31 March 2002. Accordingly, the staff of the Hamilton Office have been recruited as permanent staff. Over 150 applications were received from people of different disciplines for the post of Victim Liaison Officer. The Inquiry has learned that the post was eventually offered to a Welfare Officer in a Government Department who had considerable experience in victims' issues and had been very active in Victim Support Scotland. An assistant has also been recruited to the Victim Liaison Office. The Crown Office and Procurator Fiscal Service recognises that additional staffing may be required as the pilot progresses depending on the uptake of services offered by the Victim Liaison Office.

26.34 It is clear to me that the Hamilton project has benefited from the information and experience already obtained in the Aberdeen pilot. I have been given access to the specifications for both the Aberdeen and Hamilton pilot projects. I reproduce below the Crown Office's specification for the Hamilton project. It provides the best indicator of the service which will be 'rolled out' nationally in the coming months.

Scope of the service

For the purpose of the pilot it has been considered appropriate to provide assistance to victims affected by the more serious and sensitive cases reported to the Procurator Fiscal. However, the service is not dependent on the commencement of criminal proceedings by the Procurator Fiscal. The pilot is directed at -

- Victims in all serious cases where the nature of the charge is indicative of solemn proceedings.
- The next of kin in cases involving deaths which are reported for consideration of criminal proceedings and death cases where a Fatal Accident Inquiry is to be held.
- The next of kin in all cases which would result in an invitation from the Procurator Fiscal to the next of kin to discuss the circumstances of the death.
- Victims in cases of domestic assault.
- Victims in cases with a racial aggravation and cases where it is known to the Procurator Fiscal that the victim perceives the offence to be racially motivated.
- Cases involving children who have been cited as prosecution witnesses.
- Victims in cases involving sexual offences.
- Any other victim, witness or next of kin where the Victim Liaison Officer considers that because of particular vulnerability the provision of services would be beneficial.

Commencement and conclusion of the service

The service will be available from the time that the police report is submitted to the Procurator Fiscal.

The service for an individual will end when -

- (a) a case has been concluded in court, the result intimated to the victim/next of kin/witness and the Victim Liaison Officer has responded to any residual concerns, including, for example, referral to other appropriate

agencies. Contact may have to be offered until the expiry of any appeal period; or

(b) a decision to take no proceedings, no further proceedings or an alternative to prosecution is taken and communicated to the individual. It will be for the procurator Fiscal to decide how this decision is to be intimated to the victim/bereaved next of kin/witness. The Procurator Fiscal may seek the assistance of the Victim Liaison Officer in the event of such intimation being made on a personal basis in the office.

The service to be provided

The range of services to be delivered includes -

- Provision of timely information about both case progress and about the criminal justice system

Case specific information will include notification of the outcome of all steps in procedure and intimation of any agreed plea. Leaflets about the criminal justice process are currently being developed and will also be available on request in the main ethnic minority languages. The service of an interpreter will be sought, as required, for eligible victims, next of kin and child witnesses and their carers for whom English is not a first language.

More general information and advice will be available about, for example, the return of productions, compensation orders, Criminal Injuries Compensation, notification of release of prisoners.

- Conveying bail information

After any appearance from custody the victim must be informed timeously of the accused's bail status and the details of any special conditions attached, together with advice on what to do if the accused breaches the imposed conditions.

- Liaison with the police in relation to witness intimidation/protection issues

- Provision of information about precognition and its role in the process

It would be of benefit to victims and witnesses who are to be cited to precognition to receive an explanation about the purpose and possible timing of precognition, both Crown and defence.

- Support, both general and at court

The Victim Liaison Office can give information about criminal procedure and the ways that the courts work and offer certain advice so as to reassure victims. The Office can also make arrangements for the victim to be accompanied to court by an appropriate support person. Where such assistance is not available the Victim Liaison Officer can personally accompany the individual to court to offer a measure of reassurance and support.

- Liaison with 'official' support persons, for example, child witness support/appropriate adult

Certain vulnerable witnesses are often supported by an individual attached to the criminal justice social work department or other relevant organisation. The Victim Liaison Officer will have responsibility for the provision of information about the criminal justice system and case specific information.

- Liaison and information sharing (with the consent of the victim) with relevant voluntary support and advisory agencies including, where appropriate, Victim Support Scotland

The Victim Liaison Officer will require to make an early assessment of an individual's needs which may result in a recommendation that he/she will be referred to a specialist voluntary agency for the support it can offer. Alternatively, the victim may elect to be put in touch with others who have undergone similar experiences. The Victim Liaison Officer will only pass personal details of a victim to a voluntary agency where the Victim Liaison Officer has written consent from the victim.

- Conduct of court familiarisation visits

It is understood that victims, next of kin, child and other vulnerable witnesses find court familiarisation visits particularly helpful. The Victim Liaison Officer will routinely offer to conduct such a visit where it is not possible for the Court Witness Service to assist.

- Escort to court

Victims, next of kin and certain vulnerable witnesses may require an escort and transport to attend court as well as special waiting arrangements. These witnesses and others who are the subject of intimidation might be greatly assisted by being escorted to court, allowed to attend by an entrance other than the public entrance and by arrangements to allow them to wait in a room other than the usual witness room. The Victim Liaison Officer should liaise between the witness and the relevant agencies to make the appropriate arrangements.

- Standby arrangements

Vulnerable witnesses may benefit from an arrangement which permits them to remain at home or other specified place until shortly before they are due to be called to give evidence. The Victim Liaison Officer will require to work closely with victims, precognoscors and the prosecutor to facilitate such arrangements.

- Signposting other support agencies, sources of advice and victims groups

The victim/next of kin/vulnerable witness may elect not to 'opt-in' to services offered by the Victim Liaison Office and may have wider or more general needs best served by another organisation. Any letter sent by the Victim Liaison Office to the victim/next of kin/vulnerable witness inviting him/her to 'opt-in' will include reference to further information about agencies which can be provided if requested.

- Facilitating meetings with a member of the legal staff

This may be of particular significance in cases where there has been an instruction that there should be no further proceedings or where a plea has been negotiated. Explanations with regard to amended charges and negotiated pleas should, where sought, continue to be delivered by the legal staff but could be provided at a meeting arranged by the Victim Liaison Officer at which the Victim Liaison Officer's role will be to ensure that the interests and concerns of the victim/next of kin/vulnerable witness are fully ventilated and that communication between the victim and the Procurator Fiscal is as clear and full as possible. If a case fails for evidential reasons, any explanation must be offered by legal staff and not by the Victim Liaison Officer, albeit that the Victim Liaison Officer may be present in his/her supporting role.

The Victim Liaison Officer may also be a valuable support and facilitator in interviews regarding deaths.

What the service will not include

The Victim Liaison Officer will require to emphasise to victims/next of kin/vulnerable witnesses or their carers that he/she cannot enter into discussions about the evidence in a case. It is imperative that the means of delivering the service avoids any risk - real or perceived - of the contamination of evidence.

The Victim Liaison Officer will require to emphasise to victims/next of kin/vulnerable witnesses or their carers that he/she cannot enter into any discussion about the merits of a decision taken by a prosecutor.

Commentary

26.35 This is an impressive specification, which I have thought worth quoting in full. The Crown Office has shown itself responsive and willing to learn. It should continue as it has begun. I **recommend** that the Crown Office put in place arrangements for monitoring and regular review of the development after it has been rolled out nationally.

26.36 I have only a few specific comments to add -

- The Lord Advocate has described the service as an **'opt-in'** service, that is to say, it is there for victims, next of kin and witnesses to be taken up, or not, as they choose. I believe that that is absolutely right. This is a service offered to people who are likely to be anxious, upset and often frightened: their wishes must be paramount. What is more, the data protection legislation has to be observed in respect of passing information, without the knowledge or consent of the subject, to third parties (such as victim support agencies).
- Despite that limitation on working with voluntary bodies such as VSS, it is clear to me that statutory and voluntary bodies have much to learn from each other in a project of this sort, and that the success of the service will depend on their working together.
- I note that the role of the Victim Liaison officer and that of the Procurator Fiscal are distinct and will be kept distinct. That is right, for they are distinct functions and should not be confused with each other. Equally however, though they are distinct, their working relationship will need to be close, so that the Procurator Fiscal can gain the information about the victims that may be needed in court, and so that the victims can have access to the information they need about the progress of the case.
- There is an obvious need for the VLO to have a clear understanding and a good working relationship with the **police**, and especially with

police Family Liaison Officers. Police family liaison can start (as it did in the Chhokar case) within hours of the crime itself, and before any report has gone to the Procurator Fiscal, which would be the trigger for VLO engagement. The general point about working with the police has been grasped in the pilot projects: but there is still work to be done on this, and it must be followed through.

27. POLICE FAMILY LIAISON: RECENT DEVELOPMENTS

This chapter describes and commends recent developments in police family liaison, and recommends that HM Inspectorate give priority to a thematic inspection of the topic, and that Justice Ministers give special attention to the eventual report.

27.1 The previous chapter has described recent developments in the Crown Office and Procurator Fiscal Service in relation to victims and next of kin. This chapter is a parallel description and commentary in relation to recent developments - which are substantial - in police family liaison.

27.2 ACPOS, supported by the Association of Scottish Police Superintendents, in their evidence to me said -

‘One of the most significant mediums for the police to communicate with victims and their families, particularly in cases of murder, is through the use of trained family liaison officers (FLOs). For many years the use of family liaison officers has been an integral part of the police response and investigation of serious crime. The role has now become more structured with the introduction of national and local training courses, a job description, clear lines of management responsibility, and the use of operational log books to account for actions taken and the supporting rationale behind them.

The national FLO training course contains an input on racism awareness and cultural diversity. The content of the course was made available to the Justice Minister's Steering Group and the comments received informed a review of the training material. An independent member of the Steering Group was also invited to attend the week long training course. This invitation was accepted and the constructive comments and suggestions received during and after the course were used to improve the quality of the training.

The need for family liaison officers to be trained to deal with not just victim's families, but also their friends and representatives (often referred to as intermediaries), is being addressed through training presently being designed for the role of the family liaison officer co-ordinator. This will take account of experiences in England and Wales, as well as any experiences the Scottish context is able to offer’.

27.3 In the evidence and papers submitted to me I see three strands or levels of development, which I shall describe in turn -

- ACPOS guidance - principles of good practice formulated at the most senior level and promulgated to police forces
- Selection and training - a national initiative to identify and train officers from the appropriate ranks as Family Liaison Officers
- The family liaison log - an operational document designed to ensure that appropriate contacts are made and the details duly recorded for the Senior Investigating Officer

ACPOS guidance

27.4 ACPOS guidance states -

The Senior Investigating Officer, at the beginning of a major investigation, should formulate a Family Liaison Strategy which should be the subject of regular review. (The nature of this strategy and information provided to family members will depend on the circumstances of the case. The disclosure of information to any individual or organisation outwith the Police investigation team requires careful consideration by the SIO. The strategy should facilitate the provision of relevant information to the family provided it does not relate to sensitive issues or is likely to jeopardise or compromise operational effectiveness or security. The release of information is a matter for the professional judgement of the SIO. Family Liaison Officers should not disclose information about the investigation to relatives or others without the authority of the SIO.)

Whenever possible fully trained Family Liaison Officers will be deployed during major investigations. Forces are strongly encouraged to consider the use of mentors for Family Liaison Officers.

Family Liaison Officers should be dedicated primarily to this role for the duration of the investigation. Any decision to deploy Family Liaison Officers on duties unconnected with the family should be recorded by the SIO or their deputy in the Policy File which should include the rationale supporting this decision. Such duties should also be recorded by Family Liaison Officers themselves.

The Senior Investigating Officer and/or their deputy, during a major investigation, notwithstanding the deployment of Family Liaison Officers, should maintain personal contact with the victim's family in order to assess the quality of service provided, intervene to address or remedy any complaint or dissatisfaction and prevent any perceived marginalisation.

Complaints from family members, together with actions taken to remedy or address those complaints, should be recorded in the Investigation Policy File by the SIO or their deputy. Requests from family members which are declined or acceded to should similarly be recorded together with supporting rationale. Any complaint or denied request should be notified to the Senior Investigating Officer's line manager.'

More detail can be found in Appendix 10 which is an extract from the Association of Chief Police Officers *Murder Investigation Manual* which has been adopted by ACPOS.

Selection and Training of Family Liaison Officers

27.5 Family Liaison Officer is now identified as a specialist role, requiring specialist training; and there is a formal selection process. Factors which are taken into account in selection include communication skills, planning ability, flexibility, team work, interpersonal skills, resilience and control (ability to cope with pressure and stressful situations), drive and determination, and previous investigative interviewing experience. The selection process requires the applicant to consider the additional stress and strain which the role might place on their existing family and domestic relationships. Successful applicants are required to attend a week long Family Liaison Officers' Course at the Scottish Police College, which was introduced in 1999. I got some insight into how this development has been received in Strathclyde Police from ACC Pearson -

"There is not a huge demand to attend the FLO training course, I think because the duties of an FLO can be intensive and draining. Many officers might also want to be involved in the main stay of the investigation work. There is not, however, a shortage of volunteers for the FLO work".

27.6 The aim of the course at the Scottish Police College is stated as follows -

`To provide the knowledge, skills and understanding required for individuals to operate effectively in the post of Family Liaison Officer particularly focusing on the need to facilitate good communication between the family and the police service. Also to act as the first point of reference in all matters pertaining to police enquiries and subsequent legal proceedings.

The course content is delivered by subject authorities, who are experienced in both the practical facets of the role as well as having carried out considerable research into the selection, training and support of officers in this post. They will be supported by police officers, support staff and speakers from professions who fulfil specialist related roles'.

27.7 The syllabus contains elements concentrating on -

Developing the skills to undertake the role;

Understanding the factors affecting a family in grief;

Understanding the effects on the self of being exposed to a family in grief after a traumatic death;

Developing an awareness of the needs of the ethnic minorities in relation to family liaison;

Understanding the role of support services and how to access them;
and

Appreciation of the needs of the police service, the bereaved family and the related professions.

27.8 The course defines the role of FLO, gives sessions on active listening, responding, the process of grief, anger, guilt, beginnings and endings (how to start and how to withdraw from relationships with the family), supervision and support, feelings and how people avoid them, dealing with emotion, family dynamics, cultural and ethnic influences, and children and death, as well as the role of the SIO, Victim Support Scotland, Support After Murder, the role of the undertaker, investigating deaths, European Convention on Human Rights, accessing other agencies and developing a referral list, family rights, role of the Force press officer, and the FLO and intelligence gathering.

Commentary

27.9 In my view, these are welcome and timely developments. As described, the training course should give an extensive grounding to the officers preparing to undertake the role of family liaison officer. Feedback from those attending the course, and their line managers, indicates that they have found the course valuable.

Record keeping

27.10 Family Liaison Officers are now required to keep a Family Liaison Log recording the police officers involved (from SIO to deputy Family Liaison Officers), details of the victim's family including their relationships, details of non-family members involved (e.g. VSS, solicitor, religious or community representatives), all liaison contacts including the people involved, the method of contact and what was discussed, and all support interviews with the SIO or a deputy. This is comprehensive and a significant improvement on the position in 1998-99 when the absence of such a log led to a disjointed approach to the Chhokar family.

Commentary and Recommendations

27.11 It is clear that the police approach to family liaison has progressed immensely in the past three years. It now has structure and method and is

supported by training and senior management commitment. This is a lot to have achieved in that time.

27.12 In Chapter 26 above I emphasised the critical need to see that high level policies are translated into action by every individual police officer. I repeat that here. The fact that there is already a Family Liaison Log is a significant step along that road. But the police must not rest on that. The responsibility is, in the first instance, on each force to monitor itself, but I also **recommend that HM Inspectorate of Constabulary make it an early priority to conduct a thematic inspection of family liaison, and that Justice Ministers give special attention to the report of that inspection.**

27.13 In the previous chapter I have recommended that those who are responsible for developing and rolling out the Victim Liaison Office scheme within the Procurator Fiscal service should pay special attention to developing working protocols with the police. **That recommendation equally applies to the police.** Police and Procurator Fiscal are serving the same clientele in this matter: it is essential, and to their mutual interest, that they should work together closely on it. Their respective services must dovetail if they are to serve their clients effectively and economically. The details will have to be worked out by those, on both sides, most closely involved. I note, for example, that the police family liaison procedures extend to familiarisation with court procedures and support at court. These may well be appropriate and helpful; but there is an obvious need that in a matter such as that, for the police and the Procurator Fiscal Service to work together. That is only one example: for the Procurator Fiscal, family liaison begins rather earlier than that - and I have recommended that it should begin as soon as the case reaches the Procurator Fiscal - and that is all the more reason for close working with the police.

27.14 I have one criticism of detail. From the information given to me it appears that ACPOS has adopted the ACPO manual in its entirety. One of the items in the manual prescribes that Family Liaison Officers should provide and explain the contents of the Home Office Pack for Families of Homicide Victims. That pack contains much material which relates specifically to England and Wales, and does not deal with the separate legal system in Scotland. It would therefore be unhelpful and misleading to a Scottish household. I **recommend** that a parallel Scottish pack be produced as soon as possible.

28. INTERPRETERS

This chapter summarises issues relating to the provision of interpreters within the criminal justice system, which have come to the notice of the Inquiry.

28.1 The possible need for interpreters for the Chhokar family is a thread which runs right through the narrative of this Report, from the first police family liaison visit in November 1998 through to the second trial two years later. If Darshan Singh Chhokar had been called at any stage to give evidence other than formally, and to be cross-examined, he would have needed an interpreter. I consider therefore that it is appropriate that I should briefly examine the issues which arise.

28.2 Interpreters may be needed at each stage in a case -

- For police family liaison with victims or relatives of victims
- For taking police witness statements
- At precognition
- In court, for witnesses or the accused

28.3 Police and prosecutors must always keep in mind that inadequate provision of interpreters may jeopardise a prosecution; since it may give grounds for a claim that the right of the accused to a fair trial, under the European Convention on Human Rights, has been violated. Precognition too is especially significant for victims or relatives, since this is the point at which they will have the opportunity to

state the impact which the crime has had on them - information which the prosecutor may then bring out in court.

Assessing the need for an interpreter

28.4 This places a heavy responsibility on police and prosecutors, which will not always be easy to discharge, to assess a person's need for an interpreter in any of the situations listed above. Often it will be obvious, either that the person is a fluent English speaker, or on the contrary that the person has little or no knowledge of English. The assessment becomes much more difficult however in any case where a person has English as a second language and a knowledge of it which is less than perfect. Mr Chhokar is a case in point. As this Report shows, the police officers who met him in the context of family liaison observed that he had reasonable conversational English, enough to carry on his business or to have a conversation about dogs; but equally, two professional interpreters who gave evidence to the Inquiry assessed his English, independently of each other, as 'about 40%'. That level of competence would not be adequate for any person who had to cope with the stress of police interview or giving evidence and being cross-examined in court. As he himself put it, in a press interview *"I can only understand a little English. I understand how much things cost. I understand everyday things. But I don't understand the legal arguments which surround my son's death"*.³²

28.5 It would not be fair or practicable to require a police officer or a Procurator Fiscal to make an accurate linguistic assessment in such cases. However, they must make some assessment; and if in doubt they should offer an interpreter, even at the risk of causing some offence. In the end, the person concerned has the right to refuse. Where the offer is accepted, the person should, if possible, be given the opportunity to meet the interpreter and verify that they are content with him or her, before any formal proceedings take place.

What is required of an interpreter

28.6 At various points in this Report I have referred to and quoted evidence given to me by two interpreters who were involved in one way or another with the Chhokar family, Dr Serjinder Singh and Mr Salman Aziz. They gave me their professional views on what is required of an interpreter: it is a good deal more than fluency in two languages, though that is an obvious requisite. The other requirements which they mentioned were -

- Faithful interpretation, without adding to, omitting or changing what is said on either side.
- Confidentiality
- A sufficient knowledge of legal process and terminology

28.7 I note here that there is now, in England though apparently not yet in Scotland, a National Register of Public Service Interpreters. It has a published Code of Conduct, which amplifies these requirements.

Responsibilities of police and courts

28.8 The police and the court authorities have responsibilities too, in addition to that mentioned above, of making the best assessment they can of whether an interpreter is required -

- They need to understand how interpreters work. An interpreter is not a machine, and interpreting is not a mechanical process but something much more complex. Anyone who has had to study or work in a foreign language at anything beyond an elementary level will understand this: for those who have not had that experience it may be harder to appreciate that very often word-for-word translation from one language to another is simply impossible. Police and court officials also must be aware of -

- the difference between simultaneous and consecutive interpreting. Simultaneous interpreting, where it is possible, is quicker, but extremely taxing for the interpreter and cannot be sustained for long periods without a break. Consecutive interpreting - ie where the speaker speaks and then pauses while interpretation takes place - necessarily takes about twice as long as normal dialogue; and also requires that the speaker pauses frequently.
- the need for the interpreter sometimes to converse with the other person so as to clarify what has been said. It has sometimes happened in court that counsel or the judge has suspected that a secret conference is taking place with a witness: it is reasonable in such cases to ask the interpreter to explain what has been going on.
- the need to allow the interpreter to intervene when necessary, to bring to notice any difficulties or problems which are arising in interpretation
- It is also essential, though not always easy in many court buildings, to make adequate provision for the interpreter to communicate with the witness or accused: for example, they need to be in line of sight of each other, and the interpreter needs to be able to hear everything that is said on both sides.
- On occasion an interpreter may need special protection, so as not to come in contact with other witnesses or members of the public, such as a member of the jury.

28.9 I note that there are changes planned in the Crown's practice and policy (see paragraph 25.72) under which interpreters are to receive a letter of instruction and a code of conduct instead of a witness citation. This is encouraging.

28.10 Most of the same considerations apply to the situation where a witness who is English-speaking but deaf requires the help of a signer: if adequate and appropriate provision is made for foreign language interpreters it would also carry the beneficial consequence of assisting signers too.

28.11 Finally I note that full and adequate provision for interpreters is an unattainable ideal, for the simple reason that there are so many languages - and dialects of languages - which may be encountered that it will sometimes be impossible to find a competent interpreter to deal with a situation. That however is no reason for not aiming at the best that can be done.

Victims and next of kin

28.12 The arrangements made for the Chhokar family at the second trial were unique: normally, persons attending in the public benches would be expected to make their own arrangements. However, in the context of the developing Victim Liaison Office scheme it seems inevitable that there will be occasions when an interpreter is required if the liaison service is to be delivered effectively; and I **recommend** that Crown Office consider the needs and make provision accordingly.

29. LEGAL EDUCATION AND TRAINING

This chapter argues that issues surrounding public confidence in the criminal justice system, and especially the perceptions which ethnic minorities have of the system, have to be addressed in legal education and training. This is seen as an issue for the entire legal profession, and for those involved with it. A specific point regarding precognition agents is emphasised.

29.1 The evidence which I quote in Chapter 24 leaves me in no doubt that minority ethnic communities in Scotland do not have confidence that the police and the courts give them the same standard of justice as the white community. Whether their perception is true or not, the very fact that the justice system is distrusted ought itself be a matter of grave concern to those who work in the system. The

Royal Commission on Legal Services in Scotland, chaired by The Rt Hon Lord Hughes, in 1980³³ stated its primary objective as *'to point the way to what we think will be the way to improvements in the provision of legal services for the people of Scotland'*. The 'people of Scotland' today are a multi-racial and multi-cultural community. The challenge to the legal system today is to prove that it can and will serve them all according to their needs. At present it is not doing so.

29.2 This is a challenge to those responsible for the education and training of the legal profession. Again I refer to the Royal Commission -

"What is taught, how it is taught, and the attitudes of those who teach it, will all affect the intending lawyer's perception of the role of law and of legal services in the society which he will serve. Those engaged in educating and training lawyers should aim to provide, in sufficient numbers, people qualified to provide legal services of high quality and appropriate scope."

29.3 In the course of this Inquiry, whenever I interviewed a witness who was legally qualified I usually began by asking what training in racial awareness they had received. None of those whom I asked had received any training at university during their degree course or during their legal traineeship. Most of the Advocates had received no such training at all. All of the Crown Office and Procurator Fiscal Service employees had received racial and cultural awareness training within recent years. It is encouraging that this kind of training is now being provided at least to some practising lawyers. I had a useful meeting with the Faculty of Advocates, and correspondence with the Law Society of Scotland, about these matters. It is clear to me that there is now a need to ensure that equivalent training is incorporated in the basic training of every lawyer. This should be pursued vigorously by the Law Society of Scotland and the universities.

29.4 What are the needs? It is not for this Inquiry to attempt a detailed specification of training needs; but the evidence which I have quoted throughout this Report gives some clues. Two themes I would mention especially -

- Public understanding of the legal process. It is easy for those whose daily business is in the courts to forget that their procedures are very strange, and often incomprehensible, to ordinary citizens who get drawn into them. What is more, the ordinary citizen may come with serious misapprehensions about the nature of the process. The concept, and the implications, of a 'fair trial' are not well understood by the public: it can be hard, especially for the victims of crime and their families, to grasp that the Advocate Depute is not 'their' lawyer, and that the prosecution and the defence have also to be able to do business together in order to manage a trial properly; that the judge is not an examining magistrate but is there to hold the ring in an adversarial argument; and that the jury is independent of judge and counsel alike. This places a responsibility on those who come into official contact with victims and families: they need to know how to explain such things in ordinary language.

- It is doubly necessary that any official who is dealing with victims and families should be aware of and sensitive to the special needs of members of minority ethnic groups - alert to difficulties of language and the need for interpreters on occasion, and always aware that the people they are dealing with will probably come with a degree of extra anxiety that they are at a disadvantage, and quite likely with some suspicion that they will be discriminated against.

29.5 The imperative need for racial awareness applies to the legal system as a whole. It is not peculiar to those who are in the 'public sector' - the Crown Office and the Procurator Fiscal service. Every lawyer in Scotland, solicitor, advocate or judge, who deals with justice in any capacity, is a part of the justice system, and in that sense a public servant - they all owe a duty to the public. It applies to any lawyer in private practice as much as to a Procurator Fiscal or an Advocate Depute. Hence the need to see that these things are built into the training of all lawyers. Institutional racism is just as likely to be found in a solicitor's practice, and just as much an evil there, as it is in the Crown Office.

29.6 The Commission for Racial Equality endorsed this perception, and saw a leading role for the Crown Office in relation to the legal profession as a whole -

"The Crown Office is doing a lot in terms of training and the Solicitor General has formed a Race Strategy Group. We had early conversations with the Lord Advocate and suggested that we might want to look at racially aggravated offences as they were coming through the system and to analyse how the police and Procurator Fiscal Service were responding. We also had a conversation about recruitment issues as the legal profession is seen as being almost entirely white. There was public consultation in relation to judicial appointments. We stressed that the most immediate issue was not progression through the profession, rather it was initial entry to the profession. We saw Crown Office as one of the key players and considered that they could initiate debate with other key players in the profession such as the higher education authorities, the Law Society of Scotland etc".

29.7 To that I would add that the scope of the 'system' is not restricted to lawyers: everyone who staffs a court in any capacity, at the enquiry desk or in the canteen as much as in court itself, is a part of the 'system'. It is the responsibility of those who manage the courts to ensure that all their staff are sufficiently trained in racial awareness.

Precognition agents

29.8 In the course of this Inquiry my attention was drawn specifically to one small corner of the 'system', namely precognition agents, who interview witnesses on behalf of the defence. In paragraph 17.38 above I quote the account given by Mrs Duffy, of an aggressive and distressing precognition interview to which Sanehdeep Chhokar was subjected. This was in no way the responsibility of the Procurator Fiscal or the police - it was a **defence** precognition, which would have been arranged by the defence solicitors - but since it formed part of the whole legal proceedings, and especially since the account given by Mrs Duffy suggests a racist attitude by the interviewer, I consider that it falls within my Terms of Reference.

29.9 There has apparently been little attention given to the subject of precognition agents, either by policy-makers or researchers, although I have noted a paper published in 1999 by the Scottish Executive Central Research Unit³⁴ which reports on a pilot study of precognition agents in one area. That study found that almost all the witnesses who took part in it had complaints about the way they were treated. The researchers also report that Victim Support Scotland and the Witness Support Services at Ayr and Kilmarnock had anecdotal evidence of witnesses being frightened and even intimidated by precognition agents.

29.10 It also emerges clearly from the study that there is no regulation, professional discipline or system of training for these people, and no standard vetting procedure for their recruitment by solicitors. **I find this state of affairs wholly unsatisfactory: the responsibility for dealing with it should lie with the Law Society of Scotland in the first instance, and I recommend that the Society give it urgent attention.**

30. THE CROWN OFFICE INTERNAL REPORT

This chapter examines the Crown Office 'Internal Report' which was commissioned by the Lord Advocate. The report was originally prepared as a confidential document, but was published before it had been completed. The methodology was inadequate. The conclusions however largely accord with the findings of this Inquiry.

30.1 My Terms of Reference required me 'to consider the internal report commissioned by the Lord Advocate'. This report is reproduced at Appendix 2.

Background

30.2 The report was commissioned by the present Lord Advocate in May 2000. The Crown Agent instructed Mrs Elish Angiolini, who was at the time about to take up office as Regional Procurator Fiscal, Grampian, Highland and Islands, to prepare the report, with the objective -

‘to establish, so far as possible -

- whether liaison with the deceased's family members in the case was satisfactory;
- whether such liaison was in accordance with the objectives and values of the Department as well as contemporary policy and practice; and
- any need for change to policy or practice and to make recommendations for departmental consideration’.

30.3 No public statement was made at the point when the report was commissioned. It was conceived as an internal report, for the information of Ministers in the first instance. The report was however published, on 27th November 2000, the day before the end of the trial HMA -v- Montgomery and Coulter.

30.4 The author's introduction makes clear that she did not consider that her report was complete. She notes that

‘the report cannot ... be completed until the case is concluded and without full consultation with the family of the deceased. Similar consultation will be necessary with Mrs Duffy of PETAL and Mr Aamer Anwar who have provided a close supporting role to the relatives of the deceased during the course of the case. Finally, it is recommended that following completion of the case discussion should also take place with Strathclyde Police regarding the part played by the Police in liaising with the relatives of the deceased. Discussion with the Commission for Racial Equality on the racial, religious and cultural aspects emerging in this case would also be helpful ... and since that consultation may have a significant bearing on any conclusions or recommendations, this report provides a preliminary view only...’

30.5 This is, to say the least, a curious state of affairs: a report for internal use, which is then published; and one which is published before the author has finished it. I considered that I could not review the report itself and give any fair commentary on it without first getting some understanding of how and why it was commissioned in the first place, and why it was published when it was.

Genesis

30.6 The Lord Advocate told me that the Chhokar case was among his first priorities after taking office: he was appointed in February 2000, was abroad during March and April, and turned to this case immediately on his return to Edinburgh in May. He told me -

“Following discussions with the Crown Agent, it seemed to me that we required an Inquiry into the factual background of the case which could then inform decisions about how to handle the aftermath of the second trial.

The important thing was that I wanted to know what lessons could be learned from the case and I could not do that without knowing what had happened.

By 26 May 2000, that idea had firmed up into an Inquiry which would have two parts - an interim part and a conclusive part. In the earlier part of May I was looking for an Inquiry of sorts to find out what had happened by speaking to individuals involved, finding out what had gone wrong and what we were going to do about it. It was an

unrefined proposal at that stage. By 26 May I had decided ... that we required to have a more structured Inquiry."

30.7 The Lord Advocate also foresaw that he would have to be ready with some form of public response at the end of the second trial -

"We did, however, require to have some form of report before the conclusion of the second trial in order that I knew what had happened and could therefore respond publicly."

30.8 He also wanted a fair and accurate report, and saw Mrs Angiolini as an officer who could be relied on to produce that -

"I saw Elish Angiolini as the best choice considering her background in the Policy Group. I knew her as having an independent approach. She had done other reports in the past and was not afraid to speak her mind. I did not think she would be unfair and I was looking for a fair and accurate report."

30.9 The Lord Advocate told me that, at the point when the report was commissioned, he had not considered whether an interim report would be published or how the report would be handled. His focus was on getting a report which would inform himself and his Department. Although publication had been discussed as a possibility, the decision to publish was, he told me, taken much later.

30.10 No specific timescale for the report was laid down: Ministers saw that they would need it (or at least an interim report) for the end of the trial, but at the time nobody could predict when that would be. The Crown Agent, Mr Normand, confirmed this when he told me -

"The first rough draft of the report was produced towards the end of July 2000. I think Elish Angiolini produced it just in case the Privy Council hearing went against us in order that the Lord Advocate could assess the situation. The Privy Council result was to our advantage which gave Elish Angiolini more time to polish up the draft which then went to the Lord Advocate in early August 2000. ...

The intended audience at that time was internal, essentially the Lord Advocate."

30.11 Mrs Angiolini also confirmed that her understanding was that she was to report in two parts, the first part being a report to the Lord Advocate before the case concluded, and the second involving interviews with the family and other parties, and probably in collaboration with the Commission for Racial Equality. Much of this appears in the text quoted above, and she amplified it for me -

"My own understanding was that I was going to go on to interview the family, the police, other parties etc. ... This report was a preliminary view only, and the recommendations were also only preliminary. The case was sub judice. The report could only therefore present a partial picture of the situation which could give the Lord Advocate an indication of whether there was a basis in the criticism and the cause of the problems as well as what action might be taken by him before the case concluded. It was then my understanding that I may be asked to assist an independent inquirer, perhaps from the CRE, to go out and investigate and then to test the findings. In doing that, I would have to revisit certain parties and test the information. Certain facts had been attributed to individuals and these parties had to be interviewed and previous assertions tested."

The decision to publish

30.12 Neither the Lord Advocate nor the Crown Agent was able to tell me when the decision was taken to publish Mrs Angiolini's report, except that it was taken at a

very late stage. The Crown Agent told me that the reasoning was that it would be desirable to let the Chhokar family see an interim report, and therefore it would have to be published -

"I am uncertain about the timing ... but I think some time in August 2000 the Lord Advocate may have raised the question of a need or possible need for wider circulation of the report, although whether that extended to publication of the report I am not sure. I cannot remember if it was linked to the view that since the Chhokar family would require to be seen in relation to completion of any review, it would be desirable to let them see an interim report. If the Chhokar family had access to the interim report, due to the reality of the campaign, it would have made its way into the public domain in any event."

30.13 The Crown Agent was aware that the report was not ready for publication -

"It was not prepared as a document which was to go into the public domain. The version that was published was revised at high speed in order to have something available at the appropriate time and we also had to have the documents translated."

30.14 The publication of the report took its author, its subjects, and the Department at large, by surprise. The content of it, and the fact that it was published, without warning, caused dismay and anger, as several witnesses testified to me.

30.15 **Elish Angiolini** herself told me that she had been instructed to prepare a confidential report, and had so informed those whom she interviewed. Her comment on the publication was -

"I was informed to tell Alan MacDonald that it was not a disciplinary matter and was confidential. To then find out that my word to him had been broken given the publication of the report was a matter of horror to me. I was not consulted about the decision for publication nor was I asked for a view in relation to that."

30.16 **Alan MacDonald**, who is not named in the report (all names of officials are suppressed) but who is identifiable as the main witness and whose actions are the main focus of criticism, told me -

"The Regional Procurator Fiscal told me that [the report] was eventually to be made public ... I saw a copy of the draft report because the Regional Procurator Fiscal had one. He suggested to me at that time that it might be made public, but that no decision had been taken as yet. I was asked then for my comments about the draft report ... no copy was sent to me."

30.17 Mr MacDonald was bitterly critical of the way in which evidence had been taken from him, and the way in which it was used in the report. I shall return to that below.

30.18 **Douglas Brown**, as Regional Procurator Fiscal, had the Hamilton office under his command. He told me about his concerns for his staff, and the effect of the report on them -

"I was told that it was going to be an internal report ... I asked the Crown Agent what type of inquiry it was. I raised with him whether it was a disciplinary inquiry because if it was then certain procedures would have had to be put in place. I was asked to speak to the people involved and tell them about the nature of the inquiry ..."

I asked him what was his own reaction to publication of the report -

"I wasn't happy. The deputes had co-operated with the investigation because of assurances that I had given them. It seemed now that I was going back on those assurances"

- and what the effect on the staff had been -

"It had a very bad effect. There was a lot of discussion in the office about how badly this office had been treated. The expression 'hung out to dry' was used. There was a great deal of anger expressed by deutes about how the issue had been handled."

30.19 **John Service**, Principal Procurator Fiscal Depute in Glasgow, and Secretary of the Procurators Fiscal Society; confirmed the staff view -

"I am aware that there has been some concern raised about the release of the report into the public domain. The concern centres on the fact that those who participated in providing information to the internal investigator had no warning that it was going to be released into the public domain."

In relation to the status of this Inquiry, I know that anything I say will be in the public domain and I have been forewarned of that. If you are not warned of that, then the question of fairness to individuals arises. Individuals should be aware of that possibility from the outset. If this has become a new departmental practice, then people should be made aware of that."

30.20 **Frances McMenamin QC**, who was Advocate Depute at the first trial and in that connection also figures in the report, told me -

"I knew that Elish Angiolini was doing a report. I learned about this when I was on the train. I received a call from her on my mobile 'phone. A good three or four weeks later I got another call from her. I spoke to her on the phone for about fifteen minutes ... I understood she was seeking information for the assistance of the now Lord Advocate. I understood an internal document was being prepared with a view to improving procedures ... I said that I had done a report for the Lord Advocate and I faxed a copy of that to her ..."

I did not know that Elish Angiolini's report was going to be made public. I was stunned when the report was published. No one had told me the report was to be public and I had had such a brief contact with her. I was stunned and annoyed that I had not been sent a copy of the report."

30.21 **Kate Duffy**, representative of PETAL, unlike the departmental officials and the Advocate Depute, is named in the report. She had never been interviewed or consulted, or officially told that any report was being written (Alan MacDonald took the initiative and told her himself when he learned that it was to be published). Her reaction was -

"I was incensed and disgusted when I read the report. I do not know who has read this report. I was never told that my name was going to be made public. The report does not show PETAL or myself in a good light. Anything that we speak to a family about is totally confidential. When I speak to the Fiscal about that, I expect that confidentiality. I feel that confidentiality has been breached. On top of that the report is inaccurate."

I feel that I have been used. I feel that the PF's Department are looking for someone to blame and have chosen this voluntary organisation."

Commentary

30.22 The Lord Advocate's decision to publish the report was, on this evidence, ill thought out, damaging to the morale of his own Department and damaging to relations with a valued voluntary body. It bears the marks of a decision taken in haste and without circumspection. I do not criticise the Minister for his view that he

had to have a line to take with the public and with the Chhokar family at the end of the trial - that was a political decision for him to take. But he had got into the position that, when the time came, he had nothing to offer publicly but this unfinished report; and he got into that position because he and his senior officials had failed, from the beginning, to determine, for the author of the report or in their own minds, whether the report was being written for publication or for confidential information.

30.23 Let me make it clear that I am not criticising the Minister for being open about shortcomings found in his own Department. Quite the contrary: he had seen drafts and knew that they contained bad news for the Department; and he took the honest and brave line that it must be exposed. He also recognised afterwards that the publication had hurt staff relations, and he expressed frank regret for that.

30.24 The hasty manner of publication might more easily be forgiven if the report itself were a sound one. However, it was not. I turn to that question next. As will appear, the methodology was inadequate, and the findings sketchy and partly inaccurate. Since that reflects on the author, I have to preface my examination of her work by repeating that she herself did not consider it was complete when it was published, and that she understood that she was to produce a report for internal consideration only.

Methodology of the report

30.25 This was far from being a routine review. The Lord Advocate told me that there was no formal provision for a review of a case, nor was it usual to hold such reviews. Thus there was no established procedure to follow: Mrs Angiolini had to devise her own.

30.26 Her task was a sensitive one, since it involved reviewing the work of colleagues. She was well aware of that. She told me -

"Inspection of any description is always uncomfortable. People are defensive and are not happy with the circumstances. Perhaps some inspections should be done independently."

30.27 More specifically, Mrs Angiolini had to establish whether her findings could have disciplinary consequences for individuals. She told me -

"Prior to meeting Alan MacDonald I clarified with the Lord Advocate and Crown Agent whether it was to be a disciplinary inquiry. If disciplinary proceedings are contemplated then formal procedures have to be followed. The Lord Advocate said to me it was not to be a disciplinary inquiry."

30.28 It is also relevant to note what was Mrs Angiolini's own position at the time. She had been Head of the Policy and Practice Group in Crown Office for four years; had recently been promoted to Regional Procurator Fiscal at Aberdeen but had not yet taken up the post; and she was on maternity leave and preparing to move house from Glasgow to Aberdeen. Thus she was between posts and did not have a regular office base, with the support services which go with that. It was in those circumstances that she had to organise and structure her review.

30.29 She began by calling for papers, and then interviewing those whom the Lord Advocate instructed her to interview. She told me -

"I asked for all the papers there were. I was given the correspondence file as a starter. I then asked for the police reports, the precognition and any other relevant documents. I did not go to the Hamilton office to uplift these papers, they were delivered to me."

I spoke with Alan MacDonald (PFD), Angela Matthews (PO), Maureen Sinclair (Principal PFD), Ian Murray (APF) - by telephone, Susan Burns (Principal PFD, High Court Unit, Crown Office), Scott Pattison (Principal PFD, Appeals Unit, Crown Office), Andrew Miller (formerly Principal PFD, Hamilton, now Appeals Unit, Crown Office), the DCA

and the Advocates Depute. When I was carrying out my investigations, the RPF at Hamilton was now Douglas Brown. When Alan was precognosing the case, the RPF had been Frank Crowe. My discussions with Frank were only in respect of the Crown Office stage."

Papers

30.30 Mrs Angiolini was unable to tell me more precisely which files and papers she had examined; but she did tell me that she had not seen the Sudden Death Report. As my own narrative in this Report shows (Chapter 17), that was a critical omission. That document contains essential information about Surjit Singh Chhokar's relationship with his wife and his girlfriend, which should have informed the Procurator Fiscal's liaison with them from the outset. It was the Depute's failure to pay attention to this document which was at the root of much of the overall failure of liaison. The fact that the Internal Report omits this point, is enough in itself to vitiate the credibility of the whole report. It also accounts for the report's unfair and inaccurate estimate of the police role in the case.

30.31 Mrs Angiolini's account of this is perplexing. She said -

"I haven't, however, seen a Sudden Death Report and was not aware that one existed. It was not located in the files I was given by Crown Office. I don't think the Depute, Alan MacDonald was aware of it either - he told me about having seen two police reports, ie of 6 and 9 November. He said that was the only information he had."

and later she told me -

"The report is not just incomplete but it is also inaccurate, for example, regarding the Sudden Death Report. It cannot be accurate until I had the full picture which I would have had I gone to interview the police as indicated in the report."

Commentary

30.32 This is at variance with Mr MacDonald's evidence to me, quoted in Chapter 17, in which he said he was certain that he had seen the Sudden Death Report but had not grasped its significance. If he had seen it, how is it that it was not among the papers which the office provided to Mrs Angiolini? I have not been able to resolve that question; but I do note that Mrs Angiolini, a very experienced official, apparently did not find it surprising that there was no Sudden Death Report among the papers sent to her. This too raises questions which I have not been able to resolve, as to the practice in Procurator Fiscal's offices generally about handling Sudden Death Reports in homicide cases.

Interviews

30.33 As well as having to do her paperwork at home, Mrs Angiolini had to improvise arrangements for interviews. As her account above shows, several were interviewed only by telephone; and Miss McMenamin took a call from her on a mobile phone, in a train. The interviews themselves were, I understand, arranged by telephone, not by letter. The interview with Mr MacDonald, which is arguably the most critical of all, was held in a café. Mr MacDonald's account of that is as follows -

"I didn't really think about how appropriate it was for us to be having this discussion in a public place, while one case was still alive. I didn't think about it at the time and I was comfortable with the venue. It was only when I thought about it afterwards that it troubled me. She used an A4 notepad to note what I was saying. She didn't offer to tell me about what papers she had or who else she had spoken to. I knew that she was going to speak to Angela Matthews and Maureen Sinclair, but I wasn't sure who else she would speak to. She asked questions and noted the answers, she also told me that the report would go to the Lord Advocate. She didn't say whether or not it would

have a bearing on my career. She didn't indicate whether the report might lead to disciplinary proceedings."

Commentary

30.34 Mr MacDonald's evidence is not always reliable as to detail - in common with other witnesses who spoke to me, he had to rely on memory for much of his information. In the above account, I do not accept the last statement quoted: it contradicts what Mrs Angiolini told me and also suggests that he had not remembered being told the same by the Regional Procurator Fiscal (both quoted above), viz that this was not a disciplinary inquiry. In my opinion, this statement of his suggests that he was naïve - he was just not 'street wise' in the ways of his Department.

30.35 What is not in question however is that the interview did take place, in a café, and that Mr MacDonald was given neither sufficient notice nor any note of the proceedings afterwards: in short, the procedure was utterly informal. I make allowance for all the circumstances, which I have set out above; but even so I have to question whether such a very informal interview was a sound basis for any kind of report, however provisional, to the Lord Advocate. Mr MacDonald was right to ask whether it would affect his career - even if disciplinary action was not in question, he had his reputation within the Department to think of. If the interview had been followed up - Mrs Angiolini envisaged that it would be, but in the second stage - one could perhaps have viewed it as an acceptable way of starting; but it was not. In the circumstances Mr MacDonald did not, in my opinion, get a fair hearing.

Verdict on the report

30.36 In the light of this analysis I need hardly say, but shall do so to put the matter beyond doubt, that I have not relied on the Crown Office internal report in preparing my own. I have not relied on it nor have I felt bound by any of its facts, analysis, conclusions or recommendations. I have gone back to the primary sources, and this Report presents my findings on that basis. I did of course have the advantage of not being *sub judice* - this Inquiry started after the conclusion of the second trial - and I could therefore speak to people outside the prosecution service and in particular to the police, as Mrs Angiolini expected to be allowed to do if she had been allowed to finish her task.

The Lord Advocate's response to the internal report

30.37 The Lord Advocate told me that he was not aware of Mrs Angiolini's methodology in conducting her investigation; and on the same question the Crown Agent told me only -

"I do not recollect being asked by her about the methodology. I know that she was anxious to ensure that there was not any obvious embarrassment to those she interviewed. I know that she discussed the case over coffee in a restaurant with Alan MacDonald. I am also aware that there was a problem in getting hold of Frances McMenamin."

30.38 The Lord Advocate was satisfied that the report covered the ground intended in his instructions. His reaction to the report -

"... was one of sadness. I thought that we had not done ourselves any credit. There was also a feeling of anger. I felt angry that we had let ourselves down but that we now had to focus that appropriately. It opened ourselves to the charges of institutional racism.

It became immediately apparent that there were extremely interesting recommendations in the Angiolini Report but it did not seem right for me to say that those were to be implemented irrespective of the findings of your Inquiry.

There might also be questions of it being an internal report and perceptions that the Lord Advocate was hiding its findings".

30.39 With regard to the last point, the Lord Advocate had the report published almost exactly as it stood. I have seen an earlier draft, and note only two items removed. One is an action plan which Mrs Angiolini appended to her recommendations: I shall refer to that at appropriate points below, in reviewing the recommendations. It was appropriate to remove them at the time, since Ministers had decided to set up this Inquiry and wished to consider them in the light of this report. The other item removed is declared in the text, at page 16, and concerns Mr Darshan Singh Chhokar personally. I draw attention to it here only because it was criticised by Mr Anwar and others at the time. I feel bound to publish the original text here, so as to demonstrate that it was in fact removed in good faith.

30.40 Page 16 of the report, as published, contains the following -

'The Advocate Depute who conducted the trial has explained that while, in general, it is her practice to speak to relatives of the deceased during the trial, circumstances peculiar to this case made such communication difficult.

NOTE: These circumstances will be explained privately to Mr Chhokar. The Crown does not believe that it is appropriate to publish them.'

30.41 On 3rd December 2000 Scotland on Sunday carried this report -

'Scotland on Sunday can also reveal that the Crown Office attempted to cover up the reason why a prosecutor snubbed the Chhokar family.

An official report into the way the prosecution dealt with the family claims the leading lawyer in the case, Frances McMenamin QC, could not talk to them because of unexplained "peculiar circumstances".

We can reveal that the problem was that McMenamin was also dealing with a VAT fraud trial in which Chhokar's father, Darshan, was a potential witness and she feared a conflict of interest.

The case involved the evasion of whisky duty worth pounds 1.6m, and in July last year three men were sentenced to a total of over 11 years in jail. Darshan Chhokar was not called to give evidence.

Last night Anwar said there was no reason for the Crown to keep this information secret.

He asked: "Why did they not contact the family and ask if they could put it in the report? We did not have a problem with it being published. The Crown Office put it in there to throw a spanner in the works. I was shocked when I read it.

"Were they trying to imply Mr Chhokar was part and parcel of the whole case when he was not? It's an implicit threat to back off. If you do persist with this then other things could come out. That is a disgusting way to treat the family."

Opposition politicians last night condemned the Crown Office over the disclosure.

Tory justice spokesman Phil Gallie said a conflict of interest could have been avoided by simply ensuring that the advocate depute concerned was not involved in both cases.

"The fact that this was kept secret magnifies rather than diminishes this. It seems a pretty weak excuse," he said.

SNP shadow justice minister Roseanna Cunningham also cast doubt on the advocate depute's logic, arguing that if she had identified a conflict of interest then she should have withdrawn from the case.

30.42 The passage which had been removed from the report was as follows -

'During the months and weeks preceding the trial the Advocate Depute had been very closely involved in the investigation and precognition of a serious Customs fraud being dealt with by the Procurator Fiscal at Glasgow. The deceased's father, Mr Darshan Chhokar had been a potential accused in the case although, ultimately, it was decided that he should be used as a Crown witness. The Customs case involved CCTV footage of Mr Chhokar. It was likely that the Advocate Depute would prosecute this case at a subsequent High Court sitting.

On receipt of her papers for the sitting, including the Ronald Coulter case, she did not appreciate that Mr Darshan Chhokar was the same individual involved in the Customs case. Only on seeing Mr Darshan Chhokar at the commencement of the trial did she realise that he was involved in a sensitive and difficult way in the Customs case'.

30.43 I regret having to publish this, but find it necessary in order to demonstrate that there were indeed good and humane reasons for suppressing it. I would not have had to do so if the family's spokesman had not chosen to pick on it in public to make a spurious point, which did not serve the family's interests.

The report's recommendations

30.44 I turn now to the recommendations in the Internal Report, which I shall quote in full.

(1) It is recommended that in all cases reported to the Procurator Fiscal involving death, the identity of the Police Family Liaison Officer should be identified in the report and that the Police are reminded of the need to identify for the Procurator Fiscal problems which may be encountered with regard to liaison with next-of-kin or relatives of the deceased. The Police report should also identify a member of the family who, in the first instance, can act as an appropriate initial contact point for other relatives who are to be informed of developments in the case.

30.45 I **endorse** this. It needs now to be considered by Crown Office and police in the context of the developing Victim Liaison Office scheme. The view developed in this Report is that, in general, there should be an established system of communication between the Procurator Fiscal and police family liaison teams: the link should be established at the earliest possible point, and this recommendation would achieve that.

30.46 I make a **supplementary recommendation**, arising from the point that the Internal Report neglected the significance of the Sudden Death Report in a homicide case. I recommend that **once a case has been allocated for precognition the precognoscer should take account of all documents supplied by the police, including the Sudden Death Report, in identifying next of kin or others who should be contacted for family liaison purposes.**

(2) It is recommended that given the increasing occurrence of complex and estranged family relationships communications by the Procurator Fiscal Service with next-of-kin or relatives of the deceased cannot be based solely on the legal notion of next-of-kin and that the Service is reminded of the instructions provided in Chapter 12 of the Book of Regulations regarding the wider legitimate interests of other close family members or partners of a deceased. This is particularly necessary where religious or ethnic family structures place great significance on the role of

the head of the extended family. It is noted that the new Chapter 22 of the Book of Regulations takes this need into account.

30.47 I **endorse** this recommendation, which appears to have been effectively implemented already.

(3) It is recommended that once a case has been allocated for precognition, the precognoscer should make early contact with the Police Family Liaison Officer to obtain up-to-date information on appropriate liaison with next-of-kin.

30.48 I **endorse** this, with the same rider as for Recommendation (1) above.

(4) It is also recommended that where the victim and/or his family belong to an ethnic or religious minority that the police report should make reference to any particular needs arising with regard to funeral arrangements or other religious rites flowing from the death.

(5) It is recommended that Police are reminded of the need to identify this requirement in the police report in all relevant cases and also *in gremio*³⁵ of the witnesses full statement.

30.49 I endorse these recommendations, so far as they go; but see them as a wider issue. Funeral arrangements and the disposal of the dead are matters of profound concern to **all religious and ethnic groups, and must be taken into account and, so far as possible, respected by the authorities.**

(6) The Police should also identify the type of interpreter required.

(7) Where next-of-kin are not witnesses the police report should still identify the need for an interpreter in any communications which the crown may have with the family.

30.50 These are useful recommendations, but I would enlarge them, as follows: **the police should, in the case of any witness or next of kin who appears to need the assistance of an interpreter, pass on to the Procurator Fiscal their assessment of that person's ability in English and the type of interpreter that may be required. Procurators Fiscal should bear in mind that facility in the spoken language may not be matched by an equal ability to read and write in English, and in any case of doubt should consider whether to include a translated version of any letter to the persons concerned.**

(8) It is recommended that the issue of payment of expenses for interpreting services for next-of-kin in cases involving death are considered by the justice department as a victim issue as well as payment of reasonable expenses for next-of-kin to attend the trial diet.

30.51 I note this recommendation. This Inquiry has not examined the question of payment of expenses.

(9) This case took place before the commencement of the Department's training programme on cultural awareness and does appear to demonstrate a lack of awareness and sensitivity at that particular point in time to the racial issues which may require to have been addressed in the case.

30.52 This is not in the form of a recommendation, but is an observation which this Inquiry has examined in detail.

(10) With hindsight, the Depute clearly required closer and detailed instruction and supervision in his work and, for the particular purposes of this review, in the matter of liaison with

next-of-kin. While he was alerted to the need to liaise by both senior colleagues and his Line Manager he did not appear to have appreciated the extent to which such liaison should take place. The need for such supervision may not have been appreciated because of the Depute's apparent confidence but the Regional Procurator Fiscal has recognised the general need to improve supervision of precognitions in Hamilton.

30.53 This too is a conclusion or judgment rather than a recommendation. My observations on this matter are given in Chapter 17. Mrs Angiolini's Action Plan indicated that the Training Division should ensure that all staff engaged in precognition work have an early opportunity to complete the Precognition Course, and that course should deal specifically with the issue of next of kin. I have made a recommendation on training in Chapter 17 also.

(11) It is clear that the whole course of action regarding communication and liaison with the deceased's father, widow and partner fell below the standards of practice instructed in Chapter 12 of the Book of Regulations and did not comply with the Department's value of sensitivity to next-of-kin or victims. The parents of the deceased and his widow were not provided with an acceptable level of communication and liaison by the Service during the preparation of this case. This has undoubtedly been the cause of much unnecessary additional distress and pain for the family.

30.54 Again this is an observation, and one with which I heartily agree, as this Report demonstrates. The Action Plan indicated that the Chhokar family should be given an apology: in fact the Lord Advocate met them after the trial to do just that.

(12) It is considered that the lack of communication with the deceased's family was partly due to the pressure of work placed on the Depute at the Hamilton office at that time, to inexperience and lack of training and supervision. The precognition officer's view that it was necessary to return to the office as soon as possible to maintain output of precognitions is a common perception of time spent at the High Court and militates against the provision of a quality service to victims, witnesses and next-of-kin as well as to Crown Counsel. This observation raises wider issues of liaison with witnesses and the management of High Court trials.

The Strategic Plan states the intention to improve the quality of service to witnesses. The Feasibility Study commissioned by the then Lord Advocate and the Justice Minister on the provision of a Victim and Witness Service has been submitted to Ministers. More recently the Scottish Executive announced increased resources for the Crown Office and Procurator Fiscal Service as a consequence of the Comprehensive Spending Review. In particular, the funding for a Victim and Witness Service proposed by the Lord Advocate and endorsed by the Feasibility Study has been made available. In addition, the commencement of a Pilot on Victim Liaison with next-of-kin in Aberdeen will provide an opportunity to inform how the quality of service to victims and next-of-kin can be improved.

30.55 I agree with these observations. In Chapter 27 I have reviewed the Victim Liaison Office scheme, which is designed to remedy the identified defects.

(13) The adequacy of current training and supervision of precognosing staff in this context should also be addressed.

30.56 I endorse this.

(14) The roll-out of the Victim Assistance Service will provide a unique opportunity to ensure that the experiences of the next-of-kin in this case are never encountered again. Until the roll-out is complete, it is recommended that the ability of the Service to provide an adequate level of support to victims at court while maintaining the necessary level of output of precognitions should be addressed by the Senior Management Team, particularly given the additional pressures brought to bear following incorporation of Convention Rights in the Scotland Act and those which arise from commencement of the Human Rights Act.

30.57 I **endorse** this recommendation. I recognise that it has resource consequences for the Procurator Fiscal Service, and that difficult decisions will have to be made about priorities from day to day. On the other hand, if the Procurator Fiscal has established a contact with the police Family Liaison Officers at the earlier stages of a case, when the case comes to court there should be scope for some sharing of the duties of family liaison: police family liaison extends to court, and advantage should be taken of that.

(15) It is also recommended that an enhanced, proactive role for Crown Juniors should be examined by the Home Advocate Depute to deal with circumstances where, for whatever reasons, inadequate resources are available from the Service.

30.58 I **do not accept** this recommendation, for the reasons I have given in Chapter 18.

(16) It is recommended that when Crown Office becomes involved in any liaison with witnesses or next-of-kin that a clear agreement is reached with the Procurator Fiscal about how this liaison should be taken forward and that all correspondence to next-of-kin is copied to the Procurator Fiscal for information. The complex and difficult circumstances of this case made such liaison between the Procurator Fiscal and Crown Office critical.

30.59 I endorse this recommendation. The situation may not arise often, but the procedure recommended is obvious good practice.

(17) It is recommended that important lessons should be learned from this case and that the difficulties encountered should be fed into subsequent training and guidance for the Service in cases involving witnesses or next-of-kin from an ethnic minority as well as any other case where a complex family structure may demand a more concentrated level of communication and liaison.

30.60 I **endorse** this recommendation.

(18) Further, this case highlights the extent of the pressures on the Crown in preparing serious and complex cases within the 110 day period and at the same time carrying out effective liaison both during precognition and at the trial. Lord Hardie, as the Lord Advocate, recognised the deficiencies which exist in the level of support to witnesses and victims. As a result of that recognition he commissioned the Feasibility Study to ascertain how support to witnesses and victims could be improved. The report of that Feasibility Study together with the Aberdeen Pilot provide unique opportunities to seek systematic improvement to the standard of liaison and service to witnesses, victims and next-of-kin. The Aberdeen Pilot should provide a useful platform to evaluate the extent to which such support can be improved.

30.61 I **endorse** this recommendation also. I have dealt with the pilot Victim Liaison Offices in chapter 27.

Conclusion

30.62 I have gone through the recommendations in detail, partly because it was expected of me that I would comment on them, but also to make the point that although I reject the report on which they are based I consider the conclusions sound. In a sense, my entire Report is my comment on them, and is intended to put the supporting argument on a sounder footing. I also find it encouraging that so much of what has been recommended by Mrs Angiolini has been taken on board by Ministers and the Crown Office, and that appropriate action is in hand.

31. THE POLICE INTERNAL REVIEW

This chapter describes the Strathclyde Police internal review of the murder enquiry; and argues that the remit given to the reviewing officer was vague and unfocussed, and the review itself lacked rigour. Recommendations are made for the conduct of future reviews.

The decision to hold a review

31.1 After the conclusion of the trial HMA -v- Ronnie Coulter on 9th March 1999, the Assistant Chief Constable (Crime) at Strathclyde Police, Mr Jim Orr, decided that there should be a review of the murder enquiry. Strathclyde Police have a standing provision, in their 'Major Crime Logistic and Resource Management Policy', for a review of a major crime investigation. It is described in that document as follows -

'Any review of a major crime investigation must be seen as an activity planned to assist and support the Senior Investigating Officer in the identification of offenders. It is however, equally important to conduct such reviews to identify good and bad practices in order to assist future investigations'

31.2 Such reviews are mandatory in the case of any unsolved major crime investigation, but the ACC (Crime) has discretion to set up a review of 'any other such matter'. The reviews are described as independent, by which is meant that the person appointed to carry out a review must be an officer of at least equal rank to the Senior Investigating Officer in the case under review, and must be someone who has not been involved in the case.

31.3 This review therefore was by no means routine. The murder of Surjit Singh Chhokar was not an unsolved investigation: it was a 'category C' murder³⁶ and as such would not normally be subject to a review. ACC Orr told me that he would be advised on such matters by the Head of the CID, who at that time was Det Chief Supt George Leitch. I asked both officers what had led to the decision to hold a review of this case. Mr Leitch told me -

"As the trial went on, we knew that it was not going to turn out well. The comments by Lord McCluskey at the end of the trial certainly highlighted the case. In certain circumstances, such as cases of public concern, it is standard practice for the Area Detective Superintendent to submit a briefing paper. Detective Superintendent Jim Gemmell submitted such a briefing paper after the trial ... In plain terms, the police were aware that there were going to be problems with this case".

and Mr Orr -

"I was undoubtedly advised in relation to the outcome of the trial of Ronnie Coulter and was presumably briefed by George Leitch. I would also be aware of the media reporting, including the comments between Lord Hardie and Lord McCluskey, and this is an area in which I would begin to ask questions. I would have asked questions relating to the fact that there had been a murder, that there had been no conviction, that there appeared to be a circumstantial case involving three people and two had not been proceeded against. There was

also clearly an issue with regard to the family and the public in respect of the verdict".

Mr Orr added that he saw the outcome of the case as something which would affect public confidence in the police; and he therefore needed *"to establish what had happened"*.

Appointment and Terms of Reference

31.4 On 24th March Det Supt Jeanette Joyce was appointed to carry out the review, by a memorandum issued by Mr Orr. The memorandum stated -

'Please note that I am appointing you as the Review Officer in respect of the murder of Surjit Singh Chhokar in Wishaw on 4 November 1998.

Given the current sensitivities of this detected case, the review should be comprehensive, but discreet. At this stage I do not envisage a requirement to interview any witnesses other than the Senior Investigating Officer and the Family Liaison Officers.

Your review should focus specifically on the thoroughness of the investigation and the quality of evidence presented to the Procurator Fiscal. Family Liaison should also be examined, particularly the role of the appointed Family Liaison Officer and access by members of the deceased's family to the Senior Investigating Officer.

You may wish to consider appointing a Detective Inspector to assist you in your enquiries.

Detective Chief Superintendent Leitch 'H' CID (Operations) is available to discuss the methodology of the review and any other related issues which you wish to raise.'

31.5 I note here that Strathclyde Police were unable to produce a signed copy of this memorandum. Det Chief Supt Leitch was certain that he would not have passed an unsigned copy to Det Supt Joyce; and ACC Orr confirmed to me that the text of the unsigned memorandum reflected his instructions; but none of the three officers concerned had a copy of the signed version. Mr Orr also sent a 'Briefing Note for the Chief Constable' dated 24th March 1999. It too was an unsigned document. It consists of an accurate paraphrase of the Memorandum to Det Supt Joyce; but again Strathclyde Police could not produce either the signed original or a photocopy of it. I do not doubt that there were signed originals of these documents, but the fact that they have both been lost may be a clue to the way in which the Joyce report itself was handled after it was submitted. I return to that subject below.

31.6 Det Supt Joyce was a very experienced officer. In the course of a career of almost 25 years in the CID she had investigated a number of murder cases, some of which had been the subject of internal reviews. She had not however previously conducted a review of a murder enquiry herself. ACC Orr said he did not know that Det Supt Joyce had never carried out a review previously; but this did not perturb him because as he told me *"Det Chief Supt Leitch would provide her with any assistance she required"*. He told me that he had confidence in her abilities because Det Chief Supt George Leitch recommended her. Det Chief Supt Leitch, for his part, said that if his selection of the reviewing officer was not appropriate ACC Orr would have overruled it.

31.7 I do not question the judgment of these senior officers in selecting Det Supt Joyce for this assignment. However, considering the unusual nature of this review, and the fact that Det Supt Joyce had not conducted a review before, I expected to find that they had briefed her closely and carefully for it. It was not so. When I asked Det Chief Supt Leitch how he had briefed her, he was unable to give any specific information: he said -

"Jeanette Joyce is an experienced officer. She would be told of her appointment by telephone and asked to come into Headquarters. I would then have given the Memo instructing the review to her. I would briefly talk it over with her, along the lines of, 'Here are your Terms of Reference, we would like you to focus in this aspect or that aspect, and do you require any assistance?'. I do not remember her coming to me with a problem and I would have been surprised if she had. My recollection is that she was instructed to carry out the review and she went away and did that."

31.8 Mr Orr took no part in briefing either. He told me -

"I did not have any say in the methodology adopted by Jeanette Joyce. George Leitch would have given her guidance in regard to the review and she would have had access to the guidelines for conducting reviews. She would have an unfettered hand in conducting the review."

31.9 Det Supt Joyce herself confirmed these accounts. She told me - *"The Assistant Chief Constable or the Detective Chief Superintendent did not give or raise with me instructions as such about how to approach the review"*. It was left to her judgment as to how she would carry out the review. She said she had sight of some earlier Reviews involving other unrelated enquiries and that she had regard to the guidelines contained in the Strathclyde Police Major Crime Logistic and Resource Management Policy. These however could scarcely have assisted her much, given that the circumstances of this review were unprecedented.

31.10 Conspicuously absent from this evidence is any mention of a racial dimension to the review. Mr Orr told me that he considered it would be implicit in the terms of reference. Det Supt Joyce told me that -

"The fact that the accused was of the Sikh religion did not make any difference to the way I approached the review in the Chhokar case. I did the review within the parameters set down by the Assistant Chief Constable."

I remember reading articles in the newspapers about this case. I do not think that race was being made an issue. I think there was more outcry at the fact that Ronnie Coulter had walked out of court on a lesser charge. I was obviously aware of Mr Anwar's involvement from DS Ian Duffy."

I was aware that the Macpherson Report into the Stephen Lawrence case had been published but I did not read it prior to commencing this review. I think it had just been published. I did not take into account the Macpherson Report in preparing my review. I believe ACPO(S) was establishing a Working Group to examine the issues arising from Macpherson from a Scottish perspective and obviously my report was complete before the Report compiled by the Working Group. I have to approach the review based on the actions of the officers in this case."

I was satisfied that there was not a race dimension in this case. I was satisfied having spoken to Lynn Laverick and Ian Duffy that they were honest genuine people and would put a family at their ease. Ian Duffy and Lynn Laverick tried to promote the best relationships and communication that they could in this case. I am quite happy that they did do a good job."

31.11 I infer from this statement that Det Supt Joyce accepted the view of the Senior Investigating Officer that, since the crime had an obvious non-racial motive it had no racial significance; and that she was satisfied that the Family Liaison Officers showed no racial prejudice in dealing with the family. As to the latter, I am certain that she was absolutely right. As to the former, I have already demonstrated in Chapter 6 above that the Senior Investigating Officer dismissed the race question too readily, overlooked the significant interest of the family and omitted to

take evidence from them. As will appear below, Det Supt Joyce's review failed to uncover any of this: indeed it is clear from her statement that *"The fact that the accused was of the Sikh religion did not make any difference to the way I approached the review"* that she did not herself see the racial and cultural aspect of the case as in any way significant.

The conduct of the review

31.12 Det Supt Joyce conducted her Review from London Road Police Office. She said she had free access to documentation and she was able to confirm to me which documents she had seen and read. *"We got the relevant paper work in the case including a copy of the custody report, the hand-written and typed witness statements, copies of the police custody records, the Major Incident Room cards and actions and the SIO policy book."* She told me that during the course of the review she spoke with DCI John Michael, DI Maclver, DS Ian Duffy and PC Lynn Laverick. She did not include DS Smith in her schedule of interviews, although he had been a Family Liaison Officer; but she did include DC Owen Bradley, who had not. She told me that she had not worked with these officers prior to her review. She said that she interviewed Sgt Ian Duffy and PC Lynn Laverick separately for approximately one hour each. Det Supt Joyce could not recollect if she spoke with Owen Bradley by telephone or in person.

31.13 Det Supt Joyce told me that she thought she spoke with both DCI John Michael and DI Maclver together. If she did so, it was an elementary mistake. If, as an experienced police officer, she had had to interview these two men (whom she recognised as working as a team) in connection with a criminal enquiry she would certainly have taken care to see them separately - she should have been very aware of the risk of 'contamination' of evidence and of the likelihood that each officer could reinforce or justify each other's acts or omissions or failings. The very fact that Det Supt Joyce even thought, in recollection, that she spoke to them together is indicative of a lack of rigour in the approach to this review.

The report

31.14 The report was delivered to Det Chief Supt Leitch on 9th June 1999. I have been given access to the entire report. It contains material which cannot be published, for operational reasons, but I can give an outline here, and I shall reproduce those passages which are relevant to this Inquiry. It conforms to what I understand to be a fairly typical report of an internal police review. Indeed I was told by Det Supt Joyce that she had looked at a number of earlier reviews so that she could get an idea of a 'style'.

31.15 The report runs to 26 pages of single-spaced typing on A4 paper. The main bulk of it (19 pages) is made up of a narrative of the criminal investigation. This is not for me to pass comment on, except to say that the papers I have had to review in this Inquiry seem very largely to confirm it as an accurate and useful account; and as such to reveal what from the police point of view was a fairly routine operation skilfully completed in a professional manner. The ground covered by this section of the report is -

- The victim: basic biographical details about Surjit Singh Chhokar and his relationships
- The murder
- Initial actions by the police, including the Forensic Science Laboratory and the Identification Bureau
- The appointment of the Senior Investigating Officer
- The post mortem
- Subsequent lines of enquiry, witnesses, house-to-house enquiries, suspects and their relatives and known associates

- Use of CCTV evidence; Search of the scene of crime; Vehicles and weapons; Use of itemised billing
- Interview of accused persons; identification parades; house searches

31.16 The remainder of the report is under two headings, viz. 'Strategic issues' and 'Conclusions', as follows -

Strategic issues

- Policy book
- Incident room
- Use of intelligence analyst
- Media strategy
- Family liaison
- Use of Identification Bureau/Forensic Science Laboratory
- Reporting of case to Procurator Fiscal
- Conclusions
- Points of good practice
- Learning points

31.17 Several of these sections are relevant to this Inquiry. I shall deal with them one by one.

The Management Policy book

31.18 The report states under this heading simply that 'The Management Policy File has been completed as per the guidelines laid down by ACPO Crime Committee and agreed to by ACPOS Crime Committee.' Be that as it may, the file contains no record of the appointment of the Family Liaison Officers or of their contacts with the family. The only references to any matter relating to the family are -

- two entries on 13th November 1998 in connection with the release of the body for cremation (quoted in this Report at paragraph 12.9 above)
- one entry, which is also the first specific mention of family liaison, dated 26th February 1999, which reads 'Instructed PC Laverick FLO to make contact Chhokar family re impending trial to arrange any transport needs and discuss any concerns they may have; and
- one entry on 15th March 1999 - 'Instructed D/S Duffy to contact Chhokar family to maintain liaison due to recent media publications and any concerns the family may have'.

Incident Room

Use of intelligence analyst

31.19 These two items concern operational matters, which are not for this Inquiry

Media strategy

31.20 This is a short section, which I quote in full -

`Due to the reasonably "tight" nature of the enquiry and the positive line of enquiry pursued from the outset the only press release of any note was the first one timed at 1050 hours, 5 November 1998.

Detective Inspector Maclver was quoted as saying "Although the enquiry is at its early stages, we are following a positive line of enquiry and I can say that there does not appear to be any racial motive involved".

Both DCI Michael and DI Maclver are content with the calibre of the press release due to the fact that there was nothing to suggest a racial motive. I personally do not find it particularly disturbing as a racial motive is not completely ruled out in the release. However with the benefit of hindsight the following media release may have been the preferred option, "although the enquiry is at its early stages, there is no evidence to suggest racial motivation and a positive line of enquiry is being pursued.'

31.21 This is inaccurate and misleading. If Det Supt Joyce had spoken to Chief Supt Sandy Forrest, who was the Divisional Commander at the time, she would have heard a very different story, which in fact contradicts the statement in her report. I have dealt at length with this episode, and with Det Supt Joyce's reading of it, elsewhere (see Chapter 7). At this point I observe simply that if DI Maclver told her that he was content with the calibre of the press release he may have been inhibited in speaking more frankly to a senior colleague in his own force; for Mr Forrest's account of it to me was that Mr Maclver was `outraged' at the words attributed to him in the press release.

Family liaison

31.22 I shall quote the section on Family Liaison in full. It is rather longer than the preceding one, but is of course central to this Inquiry -

`The Chhokar family were initially dealt with overnight 4/5 November 1998 by Detective Constable James Dyas who was nightshift duty and who conveyed Mr Chhokar and Sanehdeep Chhokar being father and estranged wife of the deceased to the mortuary at Law Hospital, Carlisle, to allow identification.

On 5 November 1998 Detective Sergeant Ian Duffy and Constable Lynn Laverick were appointed Family Liaison Officers and visited family members on three occasions to update them about the arrests as well as the fact that two of the accused had been subsequently released before second appearance. Constable Laverick kept in regular contact with the Chhokars until the time of the funeral. (About 2 weeks after the murder). An interpreter was considered and offered, however this line was not pursued as both the deceased's sister and estranged wife spoke/understood English perfectly. Mr Chhokar Sr himself spoke English but not as fluently as the aforementioned women. Having spoken to both Detective Sergeant Duffy and PC Laverick, I feel the choice of personnel for family liaison was correct. DS Duffy came over as an honest, genuine man. PC Laverick knew both the deceased's sister and estranged wife due to the fact that she (PC Laverick) resides in Law.

The Chhokar family were given a localised leaflet devised by Chief Superintendent Forrest Divisional Commander entitled "Advice and information following a Sudden Death" and a leaflet from an organisation named PETAL (People Experiencing Trauma and Loss) which was founded in October 1994 by two women, one being the mother of murdered teenager Amanda Duffy. These leaflets are printed in English.

Additionally, Detective Inspector Maclver spoke on the telephone to the deceased's sister and estranged wife on a number of occasions

throughout the enquiry. They were also given his name and telephone number to contact if any concerns arose.

The female members of the Chhokar family, through the police were allowed access to the remains of the deceased within the Undertakers premises to wash the body, in fitting with their culture.

After the funeral PC Laverick kept in contact with Sanehdeep Chhokar who she believed to be the next of kin but not the remainder of the Chhokar family.

The Policy File clearly shows that on 26 February 1999 at 5pm PC Laverick was instructed by DCI John Michael to make contact with the Chhokar family regarding the impending trial to arrange transport needs and discuss any concerns that they may have had. According to PC Laverick she attempted to contact Sanehdeep Chhokar during the weekend preceding the trial without result. It was the understanding of PC Laverick that PETAL were conveying the deceased's family to the trial and she did not make contact with them. It should be noted that during the weeks leading up to the trial Chhokar Snr telephoned DC Owen Bradley twice asking him if it was in order for him (Chhokar Snr) to sit in court and listen to the trial.

I have spoken to DC Bradley who avers that about one month before the citations for the trial were served, Mr Chhokar telephoned him enquiring as to trial dates. DC Bradley made enquiry at the Procurator Fiscal's office at Hamilton, found out the trial date and informed Mr Chhokar. About one week before the High Court Sitting, Mr Chhokar telephoned and again spoke to DC Bradley and asked if it was permissible for him to sit in the public benches of the Court with an interpreter to listen to the trial. DC Bradley informed Mr Chhokar that if he required any further assistance he should contact the Police.

Unfortunately, it would appear that no one told Mr Chhokar that there would only be one accused in the Dock, everyone assuming that he would know this.

After the trial and about 10am on 15 March 1999 DCI Michael instructed DS Duffy to contact the Chhokar family to maintain liaison due to the recent media interest as a result of the trial and to address any concerns the family may have. DS Duffy attended on that date however Mr Chhokar wanted a meeting at which his daughter Manjid would be present and this was arranged for the following day (16.3.99).

About 11 am on Thursday 16 March 1999 DS Duffy attended at the Chhokar dwelling at which time Mr Anwar was present. He stated he was the spokesperson for the Chhokar family. During the interview which occurred thereafter Mr Anwar put forward to the Detective Sergeant a number of questions all of which were related in his opinion the main reason for the assault, namely the race issue. Mr Anwar and the Chhokar family were reassured that the incident was not race related. DS Duffy "cut" the interview short and reported back to senior officers.'

31.23 This section of the report, which deals in the space of 11 paragraphs with a train of events to which I have given seven chapters of this Report, is not merely condensed: it is superficial, significantly inaccurate, and misses a number of critical points -

- Since Det Supt Joyce omits to note that DS Smith was also appointed as an Family Liaison Officer, as a reserve, and she did not interview him. If she had done so she might perhaps have learned of the distressing confusion caused by the failure of the police to recognise the significance of cremation for Sikhs. The report entirely misses that point.

- Manjit Sengha's question at the first visit - 'Was it because he was black?' - likewise passes unnoticed and unrecorded.
- The report notes that after the funeral the police contact with the family was via PC Laverick to Sanehdeep Chhokar; but the inaccurate assumption that Sanehdeep was in contact with Surjit's parents is not noted. PC Laverick herself could have corrected that, if she had been asked.
- It is stated that there were three visits to the family. In fact there were at least four, and the precise number is not known because notes were not kept of the visits.
- There is no comment made on the fact that the police were unprepared with any explanation of the decision to release two of the suspects.
- The Family Liaison Officers' own assessment of the need for interpreters is accepted at face value. The writer thinks it significant that the leaflets given to the family are in English, but draws no conclusion. Nor is there any comment on the fact that no assessment was made as to whether all members of the family could read English. I have commented on that in the chapter dealing with those visits.
- There is no comment made about the manner in which DS Duffy terminated the meeting with the family on the 16th March 1999 when he met Mr Anwar. The report refers to Mr. Anwar as being 'spokesperson for the Chhokar family'; however DS Duffy was clear in his evidence to me that Mr Anwar told him that he was representing the Chhokar Family Justice Campaign and it was for that reason that he felt that the Senior Investigating Officer should speak with Mr Anwar. The report makes no assessment of the effect on family liaison of Mr Anwar's intervention, nor of the police reaction to it. It does not state, though it may be taken to imply, that family liaison broke down at this point, but no conclusion is drawn as to whether that was satisfactory or not, or whether there is anything to be learned from it for future practice. The picture simply goes blank.

Use of Identification Bureau/Forensic Science Laboratory

31.24 This is an operational matter.

Reporting of case to Procurator Fiscal

31.25 This section is a formal record of the reports which were made. It is satisfactory so far as it goes; but its form is indicative of a weakness in the basic terms of reference of the report, namely that it is a report on police activity based exclusively on internal police evidence. Det Supt Joyce was advised at the outset, by ACC Orr, that 'I do not envisage a requirement to interview any witnesses other than the Senior Investigating Officer and the Family Liaison Officers'. I do not believe that any report on police investigation of a major crime can be adequate if it does not take any account of the working relationship with the Procurator Fiscal, under whose direction such investigations are supposed to take place. I shall return to this at the end of this chapter.

Points of good practice

31.26 Several items are listed briefly under the heading 'Points of Good Practice'. They are all operational, and I do not comment on them.

Learning points

31.27 Under the heading of 'Learning Points' is a significant paragraph about family liaison, as follows -

'Dedicated Family Liaison Officers must be appointed to deal with family members, and keep them updated with the progress of the enquiry/proceedings. Visits to the family must be recorded. In cases of an ethnic family, an interpreter must be offered and consideration given to appointing an ethnic officer as Family Liaison Officer or as part of the Liaison Team. Additionally, leaflets should be given to the family in a language which is understandable to all members. (The appointment of trained Family Liaison Officers will hopefully remedy the situation in the future)'

31.28 I endorse the point made in parenthesis at the end, of course; but my purpose here is to examine the report from the standpoint of the time at which it was written, and from that point of view it exposes what a limited grasp this senior police officer had of the issues at stake. The terminology used - 'ethnic family', 'ethnic officer' - is itself inappropriate; but, what is worse, the underlying assumptions are incorrect. It is not, and was not, and should not be the aim of the police that each ethnic community should be policed by officers drawn from that community. The point is that the police as a whole should be equipped and informed so as to police the community as a whole. The Family Liaison Officers should be trained and briefed so as to know what to expect, in terms of customs, religion and culture, from all the communities within the Force's area, and to be able to respond to each appropriately, according to its needs.

31.29 So much for the content of the review report. Before commenting on it as a whole I record what I learned about its fate when it was handed in.

What was done with the report?

31.30 I asked Mr Leitch whether anything was done with the report when it was submitted. He told me -

"The short answer is, no. At the very most, Jeanette Joyce would make a passing comment about the review at Area Detective Superintendent level.

The Deputy Chief Constable and the Chief Constable have not added any comments to the Review Report. The report would then be filed."

31.31 The question remains: what was the purpose of this report? I asked ACC Orr whether the dominant purpose of the report was to take the heat out of adverse publicity. He said -

"No, this report was discreet. It was not known outwith the police force that the police had instructed a review. It was a professional response to an issue which had emerged.

The purpose of the review is to confirm that the enquiry was carried out in a professional way."

31.32 I also learned that the report was not seen by the Senior Investigating Officer nor by his team. So much for

'an activity planned to assist and support the Senior Investigating Officer'.

Commentary

31.33 I have to say that I find the explanations given me by these senior officers evasive and unconvincing. Why did the police commission this review? They were under no obligation, in terms of their own policy, to do so - this was not an unsolved investigation. They perceived, accurately, that after the first trial there were hard questions to be answered by the criminal justice system as a whole, and that public faith in it, including faith in the police, was shaken. They also knew, in general if not in detail, that their own investigation of the crime had been speedy and effective - they had identified the suspects quickly and had caught them. How then was public confidence going to be won by carrying out a 'discreet' internal review, which could

not be published? What purpose of any sort does a review serve, if it is simply put away without comment?

31.34 In the previous chapter I criticise severely the internal report produced by the Crown Office, but in doing so I also pay tribute to the intention of the Lord Advocate, which was to find out and expose publicly what had gone wrong in his Department, so that the Department could move on and take steps to remedy the defects uncovered. In this police review however I find no such spirit of honest openness, nor any serious will to find any weakness in police procedure. That is not the way to win public confidence.

Recommendations

31.35 Police internal reviews are never going to be truly effective if they are set up and conducted as this one was. I have therefore a number of recommendations -

- Reviews of detected major enquiries need to be truly **independent**. A review carried out by a fellow-officer in the same force is not independent. At the least, the Force should consider asking a senior officer from another force to carry out the review.
- Reviews should have **specific** terms of reference. The reviewer is there to find out what went wrong. In the case of an unsolved investigation that is probably self-evident. In any other case, such as this one, the reviewer needs to be told what the point of the review is, and where the perceived weaknesses are.
- Reviews should be carried out **rigorously**. The standards of interviewing and evidence-gathering should be the same as the police are accustomed to following in a criminal investigation.
- Reviews should be carried out in consultation with the **Procurator Fiscal**. The Procurator Fiscal has direction of an investigation in any case; and may be able to give directions to assist the police in an unsolved investigation. Similarly, the Procurator Fiscal needs to be told if the review itself throws up questions of new or incomplete evidence.
- Review reports should include an **action sheet**; and decisions following from the review should likewise be recorded with the review report.

32. CONCLUSIONS AND RECOMMENDATIONS

32.1 The first purpose of any inquiry is to find out what happened, and report it; and that is what I have sought to do. Some of what I report is already well known, but much is not and needs to be known, so that the public may take an informed view on this very contentious case. I have been immensely helped by my many witnesses, who were all co-operative. I make no apology for quoting their oral statements, and the documents they submitted, at length. This was the more necessary because this was not a public inquiry: I thought it essential that the reader of this Report should hear witnesses in their own words as far as possible, and I have made minimal use of paraphrase.

32.2 This Inquiry was set up in the shadow of Sir William Macpherson's Report on the Stephen Lawrence case: inevitably parallels will be drawn between the murder of Stephen Lawrence and the murder of Surjit Singh Chhokar. It will be apparent to any reader of this Report that the parallels are not there. Surjit Singh Chhokar was not picked on at random by a gang who did not know him: at least one of his assailants was a regular associate of his, and had a motive for attacking him which had nothing to do with his race. His girlfriend, who was an eye-witness, did not see it as a racist attack; neither did his wife. The police response was quite different too: their first concern was with the man himself, to save his life if possible. I found no trace whatever of personal racism in any police officer whom I interviewed, and those officers who attended the scene or had dealings with the family seemed to me exemplary in their attitude to their various tasks.

32.3 However, this Inquiry was required not just to find out what happened and report on it, but to pass a judgment in respect of institutional racism. An organisation can have racist features in its ways of working even where none of the people working in it are racist. I have taken some pains to set out what my criterion is for institutional racism, namely: 'Institutional racism occurs wherever the service provided by an organisation fails - whether deliberately or not - to meet equally the needs of all the people whom it serves, having regard to their racial, ethnic or cultural backgrounds.' I have also stressed that institutional racism is a disorder in an organisation, which is likely to occur from time to time, in greater or less degree, and has to be tackled whenever it occurs or recurs. There is a great difference between saying 'this organisation is institutionally racist' and 'there is institutional racism in this organisation'. The former statement condemns the entire organisation; the latter says only that there is something wrong with it. If I say - as I do - that there is institutional racism in Strathclyde Police and in the Crown Office and the Procurator Fiscal Service, I do not mean that these bodies are totally corrupted by it, but that it is present in some measure, and to the extent it is present it weakens the services they provide to the community as a whole. I say this, not to mitigate the faults of these bodies, but to signify that the faults are remediable.

32.4 What is more, not only are the faults remediable, but there are encouraging signs that steps are being taken to cure them. If this Report were concerned only with events up to the Spring of 1999 it would have presented a sorry picture indeed; and my findings and recommendations would have had to be severe and radical. However, much has been done in the time since then, both by the Crown Office and the police: some of the initiatives which have followed have been stimulated by the Chhokar case, and some by the Stephen Lawrence Inquiry Report, but many were likely to have developed anyway. I have taken full account of these developments, and my findings are tempered by that.

32.5 Nevertheless, there is still a great deal of ground to be covered before the public can be satisfied that the police and the prosecution authorities are clear of institutional racism and have a fully adequate service to victims and relatives of victims. Within the minority ethnic communities in Scotland, confidence in the police and prosecution authorities is still fragile at best. Both police and prosecution authorities should make no mistake about it: they have still a long way to go.

32.6 In developing my recommendations I have taken two principles as cardinal -

- **Public confidence in the police and prosecution authorities is an essential feature of a criminal justice system that values justice and liberty in a democratic society.**
- **The processes of the criminal justice system should treat all victims and witnesses with courtesy, compassion and respect for their personal dignity; and should be responsive to their needs.**

General recommendations

32.7 I have made a number of recommendations at various points throughout this Report; and for convenience and record I shall catalogue them below. Before that however, I have a small number of key recommendations; for the prosecution authorities and the police respectively, and for both jointly. These I regard as crucial: if they are followed, the detail of the other recommendations should follow naturally.

· The Crown Office and Procurator Fiscal Service

Recommendation (1) An Inspectorate of the Crown Office and Procurator Fiscal Service should be established, headed by an independent Inspector. The Crown Office Quality and Practice Review Unit should be reinforced and reconstituted as a support unit to the Inspectorate. The Inspectorate's reports, like those of other Inspectorates, should be made public.

The Crown Office has for too long been perceived as a faceless organisation, arrogant, secretive and accountable to no-one. The

Inspectorate would be a means to introduce a measure of accountability, which is essential for public confidence - without however prejudicing the necessary independence of the Lord Advocate in prosecution decisions. Its remit should include regular auditing and monitoring of the quality of professional practice throughout the Service. This will identify policy practice 'gaps' in individual offices and provide a useful mechanism for developing best practice and disseminating that to the Service as a whole. Findings should serve to inform the Training and Policy Unit as to best practice.

Recommendation (2) The Crown Office Inspectorate should conduct a thematic inspection of the Service's response on race matters, reporting to Ministers through the Race Strategy Group, within the next two to three years. The inspection methodology should be thorough: it should not be limited to a paper exercise and should include input from external sources.

· **The Police**

32.8 Relations between Strathclyde Police and the black and ethnic minority communities remain fragile. There remain serious questions of trust and confidence in the police which will not readily go away. Strathclyde Police has adopted the ACPOS Racial Diversity Strategy; and that outlines the steps necessary for the Police Service to achieve racial equality within its organisation and in the service it provides. It is however a purely advisory document that does not have the force of law behind it. The police need to translate fine words and strategies into operational practice and procedure, **and need to be held to public account for it. Nothing less will do.**

Recommendation (3) The police should give priority to translating policies into guidance documents for the Force which are operationally based and above all give practical advice and instructions to police officers.

Recommendation (4) In the process of translating policy into action the police should rely on and develop partnership links with other bodies, both statutory and voluntary, through organisations such as the MARIM groups and Racial Equality Councils. The police have shown in the past that they are willing to tap into advice and expertise in local communities; and they should continue to do so.

Recommendation (5) HM Inspectorate of Constabulary should make it an early priority to conduct a thematic inspection of family liaison, and Justice Ministers should give special attention to the report of that inspection.

· **Procurator Fiscal Service and Police jointly**

32.9 The Crown Office Internal Report made a number of recommendations aimed at ensuring that the police pass on relevant information about family relationships, the need for interpreters and similar matters, and for putting the Procurator Fiscal in touch with the police Family Liaison Officers. I have come to the same conclusions about these things, and endorse the relevant recommendations. However, the Crown Office recommendations are one-sided: they are all couched in terms of what the police should do for the Procurator Fiscal. Technically that is correct: the Procurator Fiscal has power to direct the police in the investigation of a case. But a feature which emerged at several stages in this Inquiry was that to a large extent the Procurator Fiscal's Office and the police operate autonomously in relation to each other: it was clear to me that there was little or no perception that the two organisations are engaged on a common task and need to work closely together with each other at each stage. Each needs the other; and each needs to realise that it needs the other. I make a number of specific recommendations below for improving liaison between them: they can be subsumed under the general recommendation that

Recommendation (6) There should be a more structured system of communication and liaison between the Procurator Fiscal and the police, from the earliest stages of an investigation right through to trial, and in particular with police Family Liaison Officers.

Recommendation (7) There should also be systematic communication, co-operation and exchange of ideas between Crown Office and the police at the most senior levels.

Chief Inspectors, Sergeants and Constables cannot be expected to work easily together with Procurator Fiscal Deputes and Precognition Officers if Chief Constables and the top management of the Crown Office are not also working together. In terms of this Report, they have to engage on a common enterprise - in respect of race relations and the eradication of institutional racism their objectives are the same - and they can only gain from working together on these things. They should learn from each other. I was heartened to be told by witnesses that there is now a joint Crown Office/ACPOS liaison group. In my view, that will be a key body to take forward the recommendations from this Report, and it will have a substantial agenda.

Specific recommendations

32.10 I turn finally to specific recommendations, which I shall group as above, into those concerning the police, the Crown Office and Procurator Fiscal Service; and both jointly. There is also a recommendation, at the end, addressed to the Justice Department, and one addressed to the Law Society of Scotland.

The Crown Office and Procurator Fiscal Service

· Victims and Witnesses

Recommendation (8) The Crown Office Inspectorate should conduct a thematic inspection of the Service's response on victim and witness issues (including the operation of the Victim and Witness Liaison Office) within the next three to four years. This report should be submitted also to the Scottish Executive Justice Department.

Recommendation (9) For district Procurator Fiscal Offices a pilot '24 Hour Helpline' number, or some equivalent local service, should be set up.

I note that the Victim Liaison Office is being set up on a regional basis, but it is not clear how this will serve people living remote from the regional centres. It will be difficult to support a victim or witness living in, say, Hawick, when the regional office is in Edinburgh and the case might be tried in the High Court in Glasgow, to provide the sort of information and assistance which is given at the regional VLO Office.

Recommendation (10) Crown Office should consider needs for interpreters within the liaison service, and should make provision accordingly.

Recommendation (11) The following recommendation from the Internal Report should be implemented -

The roll-out of the Victim Assistance Service will provide a unique opportunity to ensure that the experiences of the next-of-kin in this case are never encountered again. Until the roll-out is complete, it is recommended that the ability of the Service to provide an adequate level of support to victims at court while maintaining the necessary level of output of precognitions should be addressed by the Senior Management Team, particularly given the additional pressures brought to bear following incorporation of Convention Rights in the Scotland Act and those which arise from commencement of the Human Rights Act.

· The Prosecution Service and Race Relations

Recommendation (12) The Race Strategy Group should continue to develop equal opportunity strategies, building on the commendable initiatives already taken by the Group.

Recommendation (13) The Race Strategy Group should instruct internal audit and inspections to be carried out by the Crown Office Inspectorate at regular intervals in all regional and district offices in order to ensure uniform compliance with its race relations policies and strategies.

Recommendation (14) The Race Strategy Group should issue instructions to each Regional Procurator Fiscal Service to establish formal and specific 'regional' groups inviting members of vulnerable minority communities on to those groups.

The Crown Office must take urgent steps to re-establish public confidence that has been damaged as a result of this case. There is now clear acceptance by the Crown Office that steps must be taken to overcome such negative perceptions and they have also recognised that community consultation is one way for them to build bridges and create trust with vulnerable minority communities and victims. There are instances where the Procurator Fiscal Service is engaging in the process of community consultation and there is clear history of positive and improved relationships between some Race Equality Councils and examples of two-way secondment. This is vital not just to elicit views but also to build bridges and create trust. Gaining the confidence of any community must be viewed as a long-term activity by the Crown Office: it will not be achieved overnight, and once achieved it will need to be maintained.

Recommendation (15) The Race Strategy Group should gather information on the ethnic origin of persons with whom the Service has come into contact either as victims, witnesses or offenders. Its findings should be reported and made public.

Recommendation (16) The Race Strategy Group devise a new and thorough cultural awareness guide. The 'Cultural Awareness Guide' should also be consolidated into the Book of Regulations.

An excellent model, which both Crown Office and police could study with profit, is 'Policing Diversity' Metropolitan Police Service Handbook on London's Religions, Cultures and Communities'.

Recommendation (17) The Procurator Fiscal Service should prepare translated versions for issue alongside the witness citation, in cases where either their own contacts with witnesses or advice from the police indicates that the recipients may have difficulties with the English language. In this connection it is also necessary to bear in mind that a person may have some facility in the spoken language without necessarily having a high level of literacy in it.

Recommendation (18) Where the Procurator Fiscal has to take authority over the disposal of a body, he should accept the duty (and have the means) of finding out the religious or cultural requirements of the next of kin. The Crown Office should draw up appropriate guidance on this subject for the Procurator Fiscal Service.

· Family liaison

Recommendation (19) The Crown Office should confirm that the following points have been dealt with in the recent revisions of the Book of Regulations, or amend where necessary -

- If one member of a family is to be seen as a contact point and expected to pass information to others, then this should be agreed with that person and with the other family members to whom that person is expected to pass the information.
- In line with the existing guidance, the Procurator Fiscal should interview a member of the family as soon as possible after the death.
- The Procurator Fiscal should establish one contact point for family liaison for each case. All calls about the case which might relate to family liaison issues should be referred to that contact point and where

this is not possible a note should be taken and passed to the person concerned.

- When a case has been allocated for precognition the precognoscer should take account of all documents supplied by the police, including the Sudden Death Report, in identifying next of kin or others who should be contacted for family liaison purposes.

Recommendation (20) The Lord Advocate should issue guidelines to the police confirming that any press release or other communication to parties other than next of kin (or other individuals personally associated with the victim) should be under the authority of the Procurator Fiscal, after consultation with the Senior Investigating Officer.

Recommendation (21) The Crown Office should act, if it has not already done so, on the following recommendations of the Internal Report -

It is recommended that given the increasing occurrence of complex and estranged family relationships communications by the Procurator Fiscal Service with next-of-kin or relatives of the deceased cannot be based solely on the legal notion of. next-of-kin and that the Service is reminded of the instructions provided in Chapter 12 of the Book of Regulations regarding the wider legitimate interests of other close family members or partners of a deceased. This is particularly necessary where religious or ethnic family structures place great significance on the role of the head of the extended family. It is noted that the new Chapter 22 of the Book of Regulations takes this need into account.

It is recommended that once a case has been allocated for precognition, the precognoscer should make early contact with the Police Family Liaison Officer to obtain up-to-date information on appropriate liaison with next-of-kin.

It is recommended that when Crown Office becomes involved in any liaison with witnesses or next-of-kin that a clear agreement is reached with the Procurator Fiscal about how this liaison should be taken forward and that all correspondence to next-of-kin is copied to the Procurator Fiscal for information. The complex and difficult circumstances of this case made such liaison between the Procurator Fiscal and Crown Office critical.

It is recommended that important lessons should be learned from this case and that the difficulties encountered should be fed into subsequent training and guidance for the Service in cases involving witnesses or next-of-kin from an ethnic minority as well as any other case where a complex family structure may demand a more concentrated level of communication and liaison.

· **Management**

Recommendation (22) In the light of the experience in the Hamilton office in the early stages of the Chhokar case -

- Arrangements for the transfer of staff between offices and regions should be reviewed.
- Deputes who do not have experience of major crime cases, such as murder, should not have such cases allocated to them unless either they have received appropriate training, or they are assigned to work alongside or under an experienced member of staff throughout the case.
- The management training given to Principal Procurator Fiscal Deputes should be reviewed.

The police

32.11 I have a number of specific recommendations to the police. They are listed below.

· Family liaison, and links with the Procurator Fiscal

Recommendation (23) The following recommendations of the Crown Office internal review should be acted upon -

It is recommended that in all cases reported to the Procurator Fiscal involving death, the identity of the Police Family Liaison Officer should be identified in the report and that the Police are reminded of the need to identify for the Procurator Fiscal problems which may be encountered with regard to liaison with next-of-kin or relatives of the deceased. The Police report should also identify a member of the family who, in the first instance, can act as an appropriate initial contact point for other relatives who are to be informed of developments in the case.

It is also recommended that where the victim and/or his family belong to an ethnic or religious minority that the police report should make reference to any particular needs arising with regard to funeral arrangements or other religious rites flowing from the death.

It is recommended that Police are reminded of the need to identify this requirement in the police report in all relevant cases and also *in gremio*³⁷ of the witnesses full statement.

The Police should also identify the type of interpreter required.

Where next-of-kin are not witnesses the police report should still identify the need for an interpreter in any communications which the crown may have with the family.

Recommendation (24) The police should, in the case of any witness or next of kin who appears to need the assistance of an interpreter, pass on to the Procurator Fiscal their assessment of that person's ability in English and the type of interpreter that may be required.

· Police internal reviews -

Recommendation (25) When setting up an internal review of a detected major enquiry, the police should consider asking a senior officer from another force to carry out the review.

Recommendation (26) Internal reviews should have specific terms of reference.

The reviewer is there to find out what went wrong. In the case of an unsolved investigation that is probably self-evident. In any other case the reviewer needs to be told what the point of the review is, and where the perceived weaknesses are.

Recommendation (27) The standards of interviewing and evidence-gathering in internal reviews should be the same as the police are accustomed to following in a criminal investigation.

Recommendation (28) Reviews should be carried out in consultation with, and under the general direction of the Procurator Fiscal.

The Procurator Fiscal has direction of an investigation in any case; and may be able to give directions to assist the police in an unsolved investigation. Similarly, the Procurator Fiscal needs to be told if the review itself throws up questions of new or incomplete evidence.

Recommendation (29) Review reports should include an action sheet; and decisions following from the review should likewise be recorded with the review report.

· **The police and the media**

Recommendation (30) In any serious incident such as a murder, where it seems possible that a racial motive may be perceived by the public, any communications with the public or members of the public should be co-ordinated throughout the Force, and always with the Senior Investigating Officer.

Recommendation (31) In any serious incident such as a murder, communications with the public or members of the public should be appropriately co-ordinated with police contacts with the family of the victim.

The police are already well able to handle situations where the family have not yet been contacted and do not know there has been a death. The media are also aware of this kind of situation and respect it. The same sensitivity should be observed, by police and media, when the family do know, before anything is said to any third party or to the media.

Recommendation (32) Contacts with 'community leaders' should always be made on the basis of a clear understanding by both parties, either that the information given will be held in confidence or that it may be used in public; and the officer making the contact should record what has been said.

Recommendation (33) No communication should be made to the media or to any other party, apart from the family, without consultation with the Procurator Fiscal or, where appropriate, the Crown Office.

Police and Procurator Fiscal jointly

Recommendation (34) At the earliest possible stage, the Procurator Fiscal's Office should contact the police Family Liaison Officers to establish the family structure and to find out with whom the police are liaising. The police and Procurator Fiscal should agree on how to deal with each part of the family (e.g. who is treated as next of kin, who should be contacted). This first contact should also confirm particular needs, for instance whether there is a need for an interpreter and if so whether for all members of the family and in what circumstances (e.g. not needed for Family Liaison Officer visits, but needed for court).

Recommendation (35) The police and the Procurator Fiscal should note all contacts with the family and share them with each other.

Recommendation (36) Funeral arrangements and the disposal of the dead are matters of profound concern to all religious and ethnic groups, and must be taken into account and, so far as possible, respected by the authorities. Police and Procurators Fiscal should address this issue as a matter of routine.

Recommendation (37) Protocols should be established to determine the link, during a trial, between the duties of the Procurator Fiscal Service to families and those of the police.

Recommendation (38) The Crown Office and the police should review policy jointly on provision of interpreters for victims and next of kin.

The Scottish Executive Justice Department

Recommendation (39) A Scottish equivalent of the Home Office Pack for Families of Homicide Victims should be produced as soon as possible.

The Law Society of Scotland

Recommendation (40) The Law Society of Scotland should consider drawing up guidance on the selection, vetting and training of precognition agents, and a code of practice for their operations of such agents.

Footnotes

24 The Sunday Herald, 3rd December 2000

25 Association of Chief Police Officers in Scotland

26 Submission to the Scottish Executive Stephen Lawrence Inquiry Steering Group, October 1999

27 Published by the Scottish Executive in 'Researching Ethnic Minorities in Scotland', 2000

28 The Brixton Disorders 10-12 April 1981, Cmnd. 8427

29 Lord Advocate's Address to the Grampian Conference "The Stephen Lawrence Inquiry -The Way Forward in Scotland", 15 June 1999.

30 On 11th May 2001 the Crown Office issued a Circular on the Race Relations Amendment Act 2000. The guidance sets out the effect of the legislation and the Department's strategy for complying with the duties imposed by the Act.

31 Without Prejudice? A thematic inspection of police race relations in Scotland; HM Inspectorate of Constabulary in Scotland. ISBN 1 84268 449 3

32 The Daily Mail, 16 June 1999

33 Cmnd.7846

34 'The Work of Precognition Agents in Criminal Cases' by David J Christie and Susan R Moody

35 In the body of

36 A category A murder is one of grave public concern, for example, the murder of a child or a politician. A category B murder is where the identity of the offender is not readily known. A category C murder is one where the identity of the offenders is known at an early stage.

37 In the body of

[Back](#) | [Contents](#) | [Previous](#)

**Inquiry into Crown Decision-Making in
the Case of the Murder of
Surjit Singh Chhokar**

Chairman: The Rt. Hon. Sir Anthony Campbell

Appendix I

Documentary Productions referred to in the Inquiry Report

Document	Page
Post Mortem examination report by Dr Marjorie Black and Dr Jeannette McFarlane dated 12 November 1998	5
Detention form for Andrew Alexander Marshall or Coulter dated 5 th November 1998	15
Report of Identification Parade for David Montgomery and Andrew Coulter dated 11 November 1998	16
Report of Identification Parade for Ronnie Coulter dated 11 November 1998	17
Three Day Report dated 12 November 1998	18
Supplementary Report dated 13 November 1998	26
Memo from Reporting Officer to Precognoscer dated 1 December 1998	28
Fingerprint Report dated 22 December 1998	29
Letter from Precognoscer to Crown Office dated 18 January 1999	31
Letter from Precognoscer to Forensic Science Laboratory dated 18 January 1999	32
Letter from Precognoscer to Reporting Officer dated 18 January 1999	33
Marking Instruction dated 19 January 1999	34
Shopping List letter from Indicter to Precognoscer dated 25 January 1999	35
Letter from Precognoscer to High Court Unit dated 18 February 1999	46

Document	Page
Memo from the Solicitor General to the Lord Advocate dated 18 March 1999	51
Memo from the Lord Advocate to the Solicitor General dated 30 March 1999	55
Letter from the DCA to RPF Hamilton dated 12 April 1999	57
Map of the Overtown/Gowkthrapple area prepared by Strathclyde Police	58

11 DEC 1998

DEPARTMENT OF FORENSIC MEDICINE & SCIENCE
 The University of Glasgow, Glasgow G12 8QQ
 Direct Line: 0141-330 4574 Fax: 0141-330 4602



UNIVERSITY
 of
 GLASGOW

REFERENCE: SM/981483
 Your Ref: 98400935

12th November, 1998

Post-mortem Report
The Case of Surjit Chhokar

Acting on the instructions of Frank R. Crowe, Esq., Procurator Fiscal at Hamilton, we the undersigned at 1300 hours on Thursday 5th November, 1998, within the City Mortuary, Glasgow, made a post-mortem examination of the body of Surjit Chhokar, aged 32 years, c/o 24 Garrion Street, Overtown, Wishaw, who was pronounced dead at 0007 hours on Thursday 5th November, 1998, within Law Hospital, Carluke.

The body was identified to us by:

Darshan Singh Chokkar
 Father of the deceased
 10 Strathdearn, Law.

Sanehdeep Chhokar
 Wife of the deceased
 52 Lawhill Road, Law.

EXTERNAL EXAMINATION

The body was that of a normally nourished young adult male, measuring 5'9" in height, and of slim build, of appearance consistent with the stated age of 32 years, with black hair and brown eyes. The mouth contained natural teeth which were in good condition.

The clothing had been removed prior to the examination.

The face was pale, there were no petechial haemorrhages.

The nails were fairly short and were uneven.

Signature

Signature

The Case of Surjit Chhokar -2-

Rigor mortis was fully established. Post-mortem hypostasis v of the body.

22

Marks related to hospital treatment

There were a number of therapeutic needle puncture marks related to treatment as follows;

- a) On the right side of the neck there were two therapeutic needle puncture marks.
- b) Over the right upper chest, 4 cm. to the right of the midline 5 cm. above the nipple, there were five needle puncture marks in an area 1.6 x 1 cm.
- c) On the left upper chest 5.5 cm. to the left of the midline, 4 cm. above the nipple, there were three needle puncture marks in an area 2 x 0.3 cm.
- d) On the front of the right elbow there were three therapeutic needle punctures, one to the ulnar side and two to the radial side.
- e) Over the front of the left elbow there were multiple needle puncture marks with surrounding bluish bruising.
- f) 1.5 cm. above the left medial malleolus there was a surgical 'cut-down' incision 2.5 x 0.5 cm.

There were a number of injuries and marks as follows;

Head and Neck

1. On the left side of the scalp, 6.5 cm. above the top of the ear insertion, there was an almost vertical **superficial laceration**, 1.2 cm. long with a surrounding band of abrasion up to 0.5 cm. wide, and surrounding reddish/purple bruising in an area 2.5 x 2 cm.
2. Across the edge of the left earflap, 3 cm. below the top of the ear there was an **incised wound**, 0.6 cm. long, with surrounding bruising up to 0.6 cm. in diameter.
3. On the scalp behind Injury No. 2, 1.2 cm. behind the ear insertion, there was a **superficial incised wound**, 0.5 cm. long, with a surrounding faint bluish bruise, 0.4 cm. across. 0.5 cm. above this wound and almost in a line with it, there was a very **superficial incised wound**, 1 cm. long.

Seena *Muse*

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The Case of Surjit Chhokar

-3-

4. On the left side of the bridge of the nose there was a linear group of three **abrasions/superficial puncture wounds**. The most medial of these lay 0.5 cm. to the left of the midline. It measured 0.2 x 0.1 cm. 0.2 cm. lateral to this there was a band of abrasion 0.1 cm. across. 0.1 cm. lateral to this latter abrasion there was an abrasion 0.2 x 0.1 cm.
5. 1.2 cm. below Injury No.4, at the junction of the nose and the cheek, its upper end 1.4 cm. below the inner angle of the eye, there was a linear oblique **abrasion/superficial incised wound** extending downwards and laterally, 1.5 cm. in total length.
6. On the right side of the neck, 6 cm. below the ear insertion, 8 cm. to the right of the midline, there was a reddish/purple bruise, 2.8 cm. across by 1.8 cm. above/down, with overlying stippled superficial abrasion in an area 0.8 x 0.5 cm.

Trunk

7. **STAB WOUND A** Over the **left upper chest** at a level 135.5 cm. (53 3/8") above the level of the heel, 4 cm. to the left of the midline, 4 cm. above the centre of the nipple, there was an almost horizontal **stab wound** 1.2 cm. long, gaping to 0.4 cm. across. With its edges apposed this wound was **1.4 cm. long**. The medial end of the wound was sharp. The lateral end of the wound was slightly squared.

Track of Stab Wound A

This wound passed **directly backwards** and in an **almost horizontal plane**. It penetrated the subcutaneous tissues of the chest wall, sliced across the edge of the **breastbone** and penetrated the chest cavity through the second intercostal space. The track then passed into the tissues of the upper mediastinum. It just penetrated the anterior wall of the pericardial sac but did not injure the heart or other major vessels or any other vital structures. The **total depth** of this wound was **3.5 cm.** (of which 3 cm. comprised the depth from the skin surface to the inside of the ribcage and 0.5 cm. the depth within the mediastinum).

Sanjay K *Muse Ban*

b

8. **STAB WOUND B** Over the upper abdomen at a level 122 cm. (48") above the level of the heel, 0.8 cm. to the left of the midline, 9 cm. below the centre of the nipple, just below the edge of the ribcage, there was an almost horizontal obliquely orientated stab wound, extending upwards and laterally. This wound was 2.1 cm. long, gaping to 0.7 cm. across. With its edges apposed it was 2.2 cm. long. The outer end of the wound was squared and was 0.3 cm. wide. The medial end of the wound appeared sharp.

Track of Stab Wound B

This wound passed backwards, towards the right side, and in an almost horizontal plane. It passed through the subcutaneous tissues, almost severed the cartilage of the xiphisternum of the lower end of the breast bone and entered the lower edge of the chest cavity, passing into the anterior wall of the pericardial sac. It then transfixated the heart, entering the lateral border of the right ventricle, passing within the ventricular wall, entering the ventricle at the base of the tricuspid valve cusp, then just penetrating the right atrium. The wound track continued within the wall of the atrium, exiting the heart just above the atrio ventricular groove, where it had severed the right coronary artery, and then passing out of the pericardial sac. The wound continued through the right side of the diaphragm and then penetrated the upper surface of the liver to a depth of 1.5 cm. The total depth of this wound was 8.9 cm. (of which 1.9 cm. comprised the depth from the skin surface to the inside of the chest wall, 5.5 cm. the depth across the pericardial sac and 1.5 cm. the depth of the wound within the liver).

9. **STAB WOUND C** Over the left upper abdomen, at a level 112.5 cm. (44 1/4") above the heel, 8.5 cm. to the left of the midline, 8.5 cm. above the umbilicus there was an almost vertical stab wound 1.8 cm. long, gaping to 0.8 cm. across. With its edges apposed this wound was 2.2 cm. long. The upper end of the wound was squared, the lower end of the wound appeared sharp. On its medial edge, 0.7 cm. above its lower end there was a transverse superficial incised wound running medially and slightly downwards 2.4 cm. long.

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M. S. B. 7

Track of Stab Wound C

This wound penetrated the abdominal wall and entered the abdominal cavity just below the edge of the ribcage, causing a tiny nick in the cartilage of the 9th rib. The direction of the wound track, was **backwards, towards the right side, and almost horizontal**. Within the abdomen the wound had penetrated the mesentery of the small bowel, cut across the upper edge of the transverse colon, forming a 1.2 cm. long, slit in the bowel wall, with an adjacent shallow slit on the transverse mesocolon and an associated bruise, 4 x 2 cm, and continued towards the right side, ending on the serosal surface of the anterior wall of the first part of the duodenum where there was a 5 cm. long shallow slit and an associated bruise. The **total depth** of this wound was approximately **11.2 cm.** (of which 2.7 cm. comprised the depth from the skin surface to the inside of the abdominal wall and 8.5 cm. the length of the wound track within the abdomen).

Right Arm


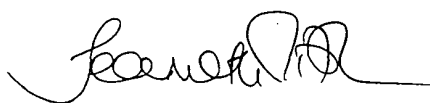
10. Over the radial side of the base of the thumb there was a very superficial incised wound, 1.5 cm. long.
11. Over the interphalangeal joint of the thumb there was a dried healing abrasion 0.2 x 0.1 cm.
12. Over the back of the distal interphalangeal joint of the little finger there was a superficial abrasion 0.2 x 0.1 cm.

Left Arm

13. Over the back of the proximal interphalangeal joint of the little finger there was a dried abrasion 0.2 x less than 0.1 cm.

Right Leg

14. On the shin, 7 cm. below the knee, there was a pigmented area of almost healed old injury 3 x 1 cm.
15. 7 cm. above the ankle there was a healing skin defect 0.7 x 0.4 cm.
16. Over the medial malleolus there was an area of bluish/purple bruising 4 x 3.5 cm.



The Case of Surjit Chhokar

-6-

23

Left Leg

17. Over the anterolateral aspect of the thigh, 23 cm. above the knee, there was an almost horizontal, very **superficial incised wound**, extending just through the skin, 3.6 x 0.3 cm. At both ends of this wound there were abrasion tails, the anterior 0.4 cm. long, the posterior 0.7 cm. long.

18. On the shin, 6 cm above the ankle, there was a healing skin defect 1 x 0.6 cm.

OLD SCARS

There were a number of scars as follows;

- S1. There were old acne scars on the face, and over the buttocks and the back of the thighs.
- S2. Over the right side of the chin, 2 cm. to the right of the midline there was a vertical scar, 1.6 x 0.3 cm.
- S3. Between the knuckles of the right index and middle fingers there was an area of old scarring 2.5 cm. in maximum diameter.
- S4. Over the outer side of the left upper arm, 20 cm. below the top of the shoulder there was an old scar 2 x 0.5 cm.
- S5. Behind Injury No. 16, there was an old vaccination scar.
- S6. On the back of the left upper arm, 7 cm. above the elbow there was an old scar, 1.1 x 0.2 cm.
- S7. On the back of the left forearm, 4 cm. above the wrist there was an old scar, 7 x up to 0.6 cm.
- S8. There were old scars around the left knee.

Surjit Chhokar *Muse Bran*

The Case of Surjit Chhokar

-7-

24

INTERNAL EXAMINATION

Head and Neck

The scalp showed an area of bruising 5 x 2 cm. beneath the laceration noted externally (Injury No. 1). The skull vault and base were intact. The brain (1140g) was normal externally and on sectioning. The meninges and basal vessels were normal. The mouth and tongue were normal. The cervical spine was intact. The laryngeal skeleton and neck structures were healthy and intact. The thyroid gland was normal.

Thorax

Stab Wound A had sliced across the front of the sternum and entered the chest cavity through the adjacent left 2nd intercostal space.

There was a 1.3 cm. long slit across the xiphisternum, which was almost totally severed, related to the track of Wound B.

There was 1500mls of blood in the right chest cavity. The left chest cavity was clear and dry.

The trachea and main bronchi were clear and unobstructed. The lungs (right 260g, left 320g) were uninjured. The right lung was partially collapsed. There was a tiny nick in the upper part of the anterior wall of the pericardial sac, related to the track of Wound A. There were two slits in the pericardium related to the track of Wound B. The entry wound on the anterior wall was 2.5 cm. long. The exit wound, which was 2 cm. in length, was on the right side, at the junction of the pericardium and the diaphragm.

The heart (460g) was enlarged and showed concentric left ventricular hypertrophy. The aortic valve had three cusps which were thickened and showed nodular calcification, together with partial fusion of their commissures. The appearances were consistent with rheumatic aortic valve disease. There was a 2.1 cm. long slit in the lateral border of the right ventricle, its upper end level with the atrio-ventricular groove, related to the entry of Wound B. Behind this, on the border of the atrium just above the edge of the atrio-ventricular groove, there was a 0.6 cm. long slit related to the exit of Wound B from the heart. The right coronary artery had been severed by the wound. The left anterior descending and circumflex arteries were healthy and widely patent and were uninjured. The thoracic aorta was normal and uninjured.

Lawrence P. O.

M. S. B. B. B.

10

The Case of Surjit Chhokar

-8-

25

The oesophagus contained a little regurgitated gastric contents, it was otherwise normal. There was a 0.6 cm. long slit in the right leaf of the **diaphragm** related to the track of Wound B.

Abdomen

The peritoneal cavity contained a thin smear of blood. There was a slit in the muscles of the anterior abdominal wall just below the edge of the ribcage, associated with a tiny nick in the cartilage of the 9th rib, related to the track of Wound C. The stomach, which contained a small quantity of whitish food material, was normal and uninjured. There was a 3.4 cm. long slit in the **mesentery of the small bowel**, related to the track of Wound C, together with a 5 cm. long shallow slit in the peritoneum overlying the front of the first part of the **duodenum**. On the upper edge of the centre of the **transverse colon** there was a bruise, 4 x 2 cm. with an associated 1.2 cm. long, slit in the wall of the colon, also related to the track of Wound C. The small bowel and large bowel were otherwise normal and uninjured. The **liver** (1460g) showed a small slit on the upper surface of its right lobe, 6 cm. to the right of the falciform ligament, related to the track of Wound B. The gall-bladder, biliary tree, pancreas, spleen and adrenal glands were uninjured and normal. The abdominal aorta showed a few intimal fatty streaks. The renal artery ostia were patent. The kidneys were normal externally and on sectioning. The ureters and bladder were normal. The generative organs were unremarkable.

Skeleton

There were injuries to the sternum, the xiphisternum and the cartilage of the 9th rib related to the tracks of Wounds A, B and C, as described above. The skeleton was otherwise intact.

Sanjay

Muse Star

11

26

PRODUCTIONS

The following samples were taken and handed to the police;

- 1. Head hair, plucked and cut.
- 2. Pubic hair, plucked and cut.
- 3. Mouth swab.
- 4. Penile swab.
- 5. Anal swab.
- 6. Rectal swab.
- 7. Liver.
- 8. Blood.
- 9. Urine.

CONCLUSIONS

We were informed that late in the evening of Wednesday 4th November, 1998, this man was injured in an altercation outside the house of his partner at 24 Garrion Street. The emergency services were summoned and he was taken to Law Hospital where he was found to have suffered stab wounds. He was asystolic on arrival at hospital and attempts at resuscitation were unsuccessful.

Post-mortem examination showed that he had sustained a total of three stab wounds to the front of the trunk. One of these wounds (Injury No.8, Stab Wound B) had transixed the right ventricle of the heart, resulting in massive haemorrhage, and had also penetrated the diaphragm and the liver. Death was due to blood loss from this wound. Of the other two wounds, one (Injury No. 7, Stab Wound A) had penetrated the chest and the pericardial sac but had not injured any major structures. The other wound (Injury No.9, Stab Wound C) had penetrated the abdomen and nicked the transverse colon. This wound was also potentially life threatening.

There were small superficial incised wounds to the left side of his nose, around the left ear, and also a shallow incised wound to his left thigh. These wounds were not life threatening.

There was a laceration to his scalp, consistent with him striking his head on the ground.

Sanjay K *Muse Sid*

The Case of Surjit Chhokar

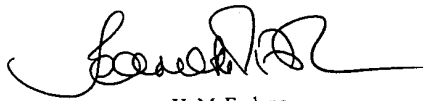
-10-

As an incidental finding, he was found to have rheumatic aortic valve disease, but this did not contribute to his death.

CAUSE OF DEATH

1a: STAB WOUND TO HEART

Attested on soul and conscience



Jeannette H. McFarlane
B.Sc., M.B., Ch.B., (Hons),
M.R.C.Path
Consultant Forensic Pathologist
Forensic Medicine & Science Dept.
The University of Glasgow



Marjorie Black
M.B., Ch.B., M.R.C.Path., Dip. F.M.
Consultant Forensic Pathologist
Forensic Medicine & Science Dept.
The University of Glasgow

5:67:1

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A⁴

"P" Division Ref. No. PP0001198 P.F. Ref. No.

**CRIMINAL PROCEDURE (SCOTLAND) ACT 1995
STATEMENT TO BE COMPLETED BY OFFICER DETAINING SUSPECT
UNDER SECTION 14**

In terms of the Criminal Procedure (Scotland) Act 1995, Section 14,
I, (designation of detaining officer) DAVID AITCHISON DET SAT
detained (name of suspect) ANDREW ALEXANDER MARSHALL OF COULTE
of (address of suspect) 17 CAPLAN TOWER GARDENS, WISHAW
at (time) (a) 1802 on (date) 5.11.98 at (place detention commenced) WISHAW POLICE OFFICE

Has the suspect been detained on the same grounds in pursuance of any other enactment? YES/NO
If yes, quote statute and section
Previous detention commenced at (time) 4 on (date) and concluded at (time) on (date)
Note cumulative detention time must not exceed 6 hours

At the time (a) the above-named was so detained I informed him/her that I was detaining him/her Under Section 14 of the Criminal Procedure (Scotland) Act 1995 because (state circumstances giving rise to suspicion) STATE FROM AN OFFICIAL CRIMINAL INVESTIGATION

I suspected that he/she had committed an offence punishable by imprisonment, namely (state general nature of the offence) MURDER
that the reason for his/her detention was to enable further investigations to be carried out and that he/she was under no obligation to answer any question other than to give his/her name and address. When detained the above-named declined to comment/stated

(If statement lengthy use separate sheet(s), each sheet to be signed by detainee and officers concerned)

I thereafter took the above-named to WISHAW POLICE OFFICE
(police station or other premises) and time his/her arrival there at 1807
Signature of Officer Detaining [Signature] Corroborating Officer [Signature]

PROCEDURE ON DETENTION UNDER SECTION 14
Detention accepted/registered by station or other officer Signature [Signature]
Name DAVID MURPHY Number 091212 Time 1806
(If detention is accepted complete the form as appropriate. If detention is rejected proceed either to release or arrest suspect and complete Forms B and C.)

STATEMENT TO DETAINEE BY STATION OR OTHER OFFICER Time 1806
It has been reported to me that you have been detained under Section 14 of the Criminal Procedure (Scotland) Act 1995. I must inform you that you are under no obligation to answer any questions other than to give your name and address.
What is your name? ANDREW ALEXANDER MARSHALL (AKA COULTE)
What is your address? 17 CAPLAN TOWER, WISHAW
What is your date of birth? 22-6-81
The above-named declined to comment/stated

(If statement lengthy use separate sheet(s), each sheet to be signed by detainee and officers concerned).
Signature of Station or Other Officer [Signature]
Corroborating Officer [Signature]



STRATHCLYDE POLICE

REC NO 24 23
5:13

REPORT OF AN IDENTIFICATION PARADE

- 1. Held at 14:30 hrs. on (day and date) WEDNESDAY 1998 within CUMBERNAULD POLICE OFFICE
- 2. Name(s) of Suspect(s)/Accused 11 NOVEMBER

A	<u>DAVID MONT GOWERY</u>	D
B	<u>ANDREW MARSHALL COLTHER</u>	E
C		F

- 3. Officer conducting parade DI MCANN Officer witnessing parade DC MASON
Officers assisting with witnesses: PO ARMUR
Officer in charge of the case DI MACFARLANE (PRESENT/ABSENT)
- 4. Nature of Enquiry MURDER

A. PRELIMINARY

- 5. (a) TO BE READ TO SUSPECT(S) ONLY
"I propose to hold an identification parade the purpose of which is to secure any available evidence of identification in connection with the allegations"

You are not obliged to take part in the identification parade. Do you agree to take part in the parade?"

A	—	YES/NO	D	—	YES/NO
B	—	YES/NO	E	—	YES/NO
C	—	YES/NO	F	—	YES/NO

Time.....

or

- (b) TO BE READ TO ACCUSED ONLY
"I require you to take part in an identification parade the purpose of which is to secure any available evidence of identification in connection with the allegation(s) on 11th NOVEMBER 1998 in GARRISON ST OVERTOWN WISHAW you DI MURDER SURJIT SINGH CHHOKAR AGED 32 YRS"

Time..... 1208

Initials of Officer conducting parade..... [Signature]

Initials of Officer witnessing parade..... [Signature]

04/8
15

COPY PRO NO: 25

5:13:1



STRATHCLYDE POLICE

48

REPORT OF AN IDENTIFICATION PARADE

- 1. Held at 1.534 hrs. on (day and date) WEDNESDAY, 1998 within COMMUNAL
- 2. Name(s) of Suspect(s)/Accused 11 NEWPAPER POLICE OFFICE

A <u>PAULIE COLTER</u>	D
B	E
C	F

- 3. Officer conducting parade DI MCANN Officer witnessing parade DI MCANN
Officers assisting with witnesses: PO ALLEN
Officer in charge of the case DI MATEYR (PRESENT/ABSENT)
- 4. Nature of Enquiry MURDER

A. PRELIMINARY

- 5. (a) TO BE READ TO SUSPECT(S) ONLY
"I propose to hold an identification parade the purpose of which is to secure any available evidence of identification in connection with the allegations"
.....
.....
You are not obliged to take part in the identification parade. Do you agree to take part in the parade?"

A — YES/NO	D — YES/NO
B — YES/NO	E — YES/NO
C — YES/NO	F — YES/NO

Time.....

- or (b) TO BE READ TO ACCUSED ONLY

"I require you to take part in an identification parade the purpose of which is to secure any available evidence of identification in connection with the allegation(s) ON 11 NOVEMBER 1998 IN GARRISON ST, OVERTOWN, WISHAW, YO
DID MURDER SURJIT SINGH CHOKAR AGED 3"

Time..... 12:10

Initials of Officer conducting parade [Signature]
Initials of Officer witnessing parade [Signature]

04/1
16

F.70

276

CO Ref
PF Office HAMILTON
PF Ref IMCC/SL
Dispatched 12 November 1998
Received 13.11.98:.....
REPORT.

REPORT

NAME(S)

ANDREW ALEXANDER MARSHALL 22.06.81
RONNIE COULTER 22.05.68.
DAVID SHIELDS MONTGOMERY 27.02.77.
(DEATH OF SURJIT SINGH CHHOKAR)

CHARGE(S)

MURDER.

CROWN COUNSEL'S INSTRUCTIONS

Please note that the attached Report has been delayed awaiting information from the Police and that instructions are required in relation to the full committal of the accused Andrew Alexander Marshall as a matter of urgency, the full committal hearing in his case having been fixed for Friday 13 November 1998 at 2 pm.

17

276

REPORT
BY
PROCURATOR FISCAL, HAMILTON
RE
APPEARANCE ON PETITION
FOR MURDER OF
SURJIT SINGH CHHOKAR

- (1) ANDREW ALEXANDER MARSHALL (BORN 22 JUNE 1981)
- (2) RONNIE COULTER (BORN 22 MAY 1968) and
- (3) DAVID SHIELD MONTGOMERY (BORN 27 FEBRUARY 1977)

The above 3 accused have appeared separately on Petition each charged with murder of Surjit Singh Chhokar. They have each been committed for further examination and remanded in custody. The usual Psychiatric Reports have been instructed and are awaited.

ANDREW ALEXANDER MARSHALL (otherwise known as ANDREW ALEXANDER COULTER) is 17 years of age. He is single, unemployed and has no previous convictions. He usually resides at 17 Caplaw Tower, Gowkthrapple, Wishaw. He appeared on Petition on Friday 6 November 1998. He made no plea or declaration. A full committal hearing and judicial examination have been scheduled in his case for Friday 13 November 1998 at 2 pm.

RONNIE COULTER, aged 30 years, is single, unemployed and usually resides at 8 Caplaw Tower, Gowkthrapple, Wishaw. He is the uncle of his co-accused ANDREW ALEXANDER MARSHALL (otherwise COULTER). RONNIE COULTER has a record of previous convictions, including convictions for violence and dishonesty. He appeared on Petition on 10 November 1998. He made no plea or declaration. A full committal hearing and judicial examination are scheduled in his case for Tuesday 17 November 1998 at 2 pm.

DAVID SHIELDS MONTGOMERY is 21 years of age, single and usually resides with his grandparents at 7 Barr Street, Motherwell. He is unemployed. He has 2 minor previous convictions. He is also known by a nickname, "Chez". DAVID MONTGOMERY appeared on Petition on 9 November 1998. He made no plea nor declaration. A full committal hearing and judicial examination are proposed in his case for Monday 16 November 1998 at 2 pm, although this may be postponed until 17 November 1998 if so advised.

Copies of the relevant Petition are attached. It will be noted that there are separate Petitions for each accused, but that the charge in each case is identical.

INFORMATION PRESENTLY AVAILABLE

Surjit Singh Chhokar (now deceased) was married but separated from his wife who resides in Law Village. At the time of his death he was resident c/o his girlfriend Elizabeth Bryce at 24 Garrion Street, Wishaw. He also had the tenancy of a Council flat at 65 Caplaw Tower, Gowkthraple, Wishaw which he used as a postal address. He claimed unemployment benefit and the Giro payments were posted to the flat at 65 Caplaw Tower. Notwithstanding the receipt of unemployment benefits, he was in employment as a waiter at a restaurant in Bellshill.

At approximately 12.15 am on Wednesday 4 November 1998 Surjit Singh Chhokar and his girlfriend Elizabeth Bryce went to his flat at Caplaw Tower to uplift the now deceased's Giro payment order. The now deceased went into the tower block but returned soon after and informed Elizabeth Bryce who had remained outside that his house had been broken into and that his Giro cheque was missing. They went to the local unemployment benefits office to make enquiry and there they were told that the Giro had been cashed by an 'ANDREW COULTER'. ANDREW COULTER was known to both Elizabeth Bryce and the now deceased.

At about 3 pm on 4 November 1998 the now deceased left 24 Garrion Street, Overtown to go to his work at the New Poonam Restaurant, Bellshill. Thereafter, about 3.40 pm, Elizabeth Bryce went to the home of Margaret COULTER (the mother of the accused ANDREW MARSHALL (otherwise COULTER)) to speak to her about the encashment of the Giro. Elizabeth Bryce then returned to her home at 24 Garrion Street. Shortly thereafter, there was a confrontation outside Elizabeth Bryce's house involving Elizabeth Bryce and the accused ANDREW ALEXANDER MARSHALL. The accused's mother, Margaret COULTER, his sister Rhona COULTER and her boyfriend, the accused DAVID SHIELDS MONTGOMERY were all present when this occurred. Briefly, the accused ANDREW MARSHALL alleged that the now deceased had given him the Giro on the morning of 4 November 1998 and asked that he encash it for him. Elizabeth Bryce stated that that would not have been possible as the now deceased had been in her company all that day. She further stated that the Police would probably become involved as the cashing of the cheque was a fraud. Elizabeth Bryce states that the accused ANDREW MARSHALL then said "If that's the case, he'll be getting it". Before the accused ANDREW ALEXANDER MARSHALL and others in his company left, he arranged with Elizabeth Bryce that he would return to her house at 24 Garrion Street at about midnight when he was expected to return from his work.

At about 11.30 pm on 4 November Elizabeth Bryce looked out from the window of her home at 24 Garrion Street and saw the now deceased, Surjit Singh Chhokar draw up in his car. She saw him stop outside the front of her house and step out of his car. She saw that he was smiling and he was carrying a bottle and a carry-out meal. She saw him walk towards the gate

28

leading to her house then lost sight of him for a few seconds. She then heard screams from outside. She states that she saw the 3 accused ANDREW MARSHALL COULTER, RONNIE COULTER and DAVID SHIELDS MONTGOMERY participating in an attack on the now deceased. She provides scant detail of the precise actings of the individual accused. She speaks of seeing the now deceased being pulled by the 3 accused. She states that when she initially saw them ANDREW MARSHALL was in front of the now deceased holding the front of his clothing with both hands whilst the 2 others were pulling at the now deceased's arms. She also speaks of seeing ANDREW MARSHALL pushing the now deceased backwards whilst the other 2 were pulling him away. Elizabeth Bryce ran outside, by which time the 3 accused had dragged the now deceased to the opposite side of the roadway away from where his car was parked. She shouted that she was getting the police and speaks then of one of the 3, apparently DAVID SHIELDS MONTGOMERY, running off followed soon after by the remaining 2 accused. She speaks of seeing one of the accused, apparently RONNIE COULTER, swinging an object which she estimates as being some 2 feet in length and as being possibly a chain at the now deceased before running off.

Thereafter the now deceased staggered back towards his car and said "I've been stabbed". He then collapsed onto the footpath and at that point, Elizabeth Bryce saw that his clothing was heavily bloodstained. The now deceased then lost consciousness. An ambulance was summoned and he was conveyed to Law Hospital, Carluke where life was pronounced extinct at 0008 hours on 5 November 1998.

A post mortem examination was conducted on 5 November 1998. The cause of death was certified as 'Stab Wound to Heart'. It was found that Surjit Singh Chhokar had sustained 3 stab wounds to the front of his body. The fatal wound was on the left side of his chest entering almost horizontally. This wound penetrated the right ventricle of the heart, the diaphragm and the right lobe of the liver. It was approximately 9.9 centimetres in depth and 2.2 centimetres in width. The second wound to the left upper abdomen had damaged the colon and would have required surgery. It was regarded as a life threatening injury. The third wound to the trunk was on the left side of the chest, penetrating the chest and pericardium. This did not injure any vital structure. The Pathologists are of the view that all 3 of these wounds could have been caused by a single edged blade, perhaps a domestic knife with a sharp blade. A blade length of between 8 and 9 centimetres with a maximum width of 2.2 centimetres could have caused these injuries.

There were a number of other less serious injuries to the body. There was a laceration and bruising to the left side of the head, which could have been caused by a fall or a blow with a blunt object. There was an incised wound at the left ear, superficial incised wounds to the left side of the nose and right thumb and a superficial incised wound to the left thigh.

20

RESULTS OF POLICE INVESTIGATION TO DATE

The police investigation to date has not unearthed any eye witness to the fatal attack on Surjit Singh Chhokar, other than his girlfriend Elizabeth Bryce. A Gas Technician, Mr. John Paul Fitzgerald, who was in the area at the time saw 2 men run off following the attack and Mr. Fitzgerald saw the now deceased badly injured and sought to render assistance. Mr. Fitzgerald gives a rough general description of these 2 men which could match that of the accused ANDREW COULTER and DAVID MONTGOMERY. However at an Identification Parade held on 11 November 1998 he was unable to positively identify either. A nearby resident, Mr. Thomas Muir speaks of seeing the youth wearing a baseball cap striking the now deceased on the upper part of his body with what appeared to be a stick and then running away. He then refers to Elizabeth Bryce screaming and seeing the now deceased lying on the ground. Mr. Muir also attended the Identification Parade held on 11 November but was unable to identify any of the accused.

There is however other evidence available which appears to establish that the 3 accused travelled together to Garrion Street with intent to assault Surjit Singh Chhokar and that all 3 participated in the fatal attack.

Examination of CCTV recording reveals all 3 accused leaving Caplaw Tower/Caplaw Place at approximately 2319 hours on 4 November 1998 and drive towards Overtown. The accused DAVID MONTGOMERY and ANDREW COULTER are seen to return to Caplaw Place/Caplaw Tower at 2336 hours, shortly after the time of the assault. The distance from Caplaw Tower to Garrion Street where the fatal attack took place is approximately 1.4 miles. The accused RONNIE COULTER is seen on CCTV arriving back at Caplaw Tower at 0004 hours on 5 November 1998. He is understood to have travelled on foot from the scene of the attack.

A number of witnesses have been traced who speak of the accused RONNIE COULTER and ANDREW MARSHALL (or COULTER) discussing an intention to assault the now deceased. These discussions took place within RONNIE COULTER's home at Caplaw Tower. Jamie Rooney states that he was present and tried to dissuade them from their intention to go to see the now deceased. Donna Campbell who is the girlfriend of the accused ANDREW MARSHALL (or COULTER) speaks of being in the accused RONNIE COULTER's flat during the evening of 4 November. She speaks of ANDREW MARSHALL (or COULTER) stating that he was going to batter the now deceased with a bat and break his knee-cap and gouge his eyes out. He indicated that he had to telephone the accused DAVID MONTGOMERY at 11.30 pm to arrange transport. She also speaks of the accused ANDREW COULTER and RONNIE COULTER going to the now deceased's unoccupied flat at Caplaw Tower to steal his cooker. ANDREW MARSHALL speaks of forcing entry as he had done earlier to obtain the Giro. Corrine Campbell speaks of being in the accused RONNIE COULTER's house at about

5.30 to 6 pm on 4 November and hearing ANDREW MARSHALL or COULTER and RONNIE COULTER discuss their intention to assault the now deceased after he returned from his work. They also stated that the accused DAVID MONTGOMERY would give them a lift in his car. She speaks of ANDREW MARSHALL or COULTER stating that he would take a bat with him and she also heard ANDREW MARSHALL or COULTER and RONNIE COULTER discuss abducting the now deceased, battering him and throwing him off a bridge and burning his car and gouging his eyes out. She also speaks of ANDREW COULTER and RONNIE COULTER discussing the sale of the cooker from the now deceased's flat at Caplaw Tower.

Margaret Chisholm, the mother of the accused ANDREW MARSHALL or COULTER and sister of the accused RONNIE COULTER speaks of the confrontation with Elizabeth Bryce concerning the stolen Giro and of the arrangement that the accused ANDREW MARSHALL should come to meet the now deceased at 24 Garrion Street at 11.30 pm to sort matters out. Margaret Chisholm also speaks of receiving a telephone call from her son ANDREW MARSHALL (or COULTER) on 5 November following the killing when he stated "I hit him. Chhokar's dead, but it wisnae me mam".

Jean MONTGOMERY, the sister of the accused DAVID MONTGOMERY speaks of him telling her that he had driven his 2 co-accused to Garrion Street to see the now deceased about the stolen Giro. She states that DAVID MONTGOMERY told her that the accused ANDREW MARSHALL and RONNIE COULTER became involved in a fight with the now deceased and of RONNIE COULTER running off and ANDREW COULTER on returning to his car saying "I didn't even know RONNIE had a knife" and telling him that RONNIE COULTER had stabbed the now deceased before running away.

Alexandra Tierney is a girlfriend of the accused RONNIE COULTER. She states that at about 8 am on 5 November 1998 she received a telephone call from RONNIE COULTER and that she met him later that day when he told her that ANDREW MARSHALL or COULTER had used a bat, that he RONNIE COULTER had a wee knife but that DAVID MONTGOMERY didn't have any weapon. He asked Alexandra Tierney to dispose of clothes and also a boxed set of kitchen knives which had one missing. These items have subsequently been recovered by the police. They have obtained a similar set of knives and advise that the missing knife may be consistent with the description of the murder weapon.

The Police have recovered clothing from all 3 accused. This appears in the main to have been washed. It will, however, still require to be examined for bloodstains and fibre. Detective Constable Dyas who took possession of shoes from the accused DAVID MONTGOMERY speaks of noting an area of staining to the tongue and lace of the right shoe.

The accused have each been interviewed by the police. Full transcripts are still awaited. Brief details are included in the respective Police reports and related subject sheets.

The accused ANDREW MARSHALL admits cashing the now deceased's Giro cheque, but states that the now deceased asked him to do so for a payment of £20. He admits being at Garrion Street at about 11.30 pm on 4 November. He denies that anyone else was with him and states that the now deceased had come towards him with a bottle and that he, ANDREW MARSHALL had hit the now deceased on the side of the arm with a bat which he had taken with him and then ran away. He states that the now deceased then ran into his home. He was cautioned and charged and replied "I only hit him once with the bat".

The Police interview with the accused RONNIE COULTER appears to contain no relevant admissions other than confirming that he is the person shown on the CCTV video still leaving Caplaw Tower shortly before the occurrence of the murder and that he could be the person returning at 8 minutes after midnight.

The accused DAVID MONTGOMERY admits driving his 2 co-accused to Garrion Street. He states that the accused ANDREW MARSHALL (or COULTER) hit the now deceased with a bat which he was carrying. He states that the now deceased was swinging a bottle about. He states that RONNIE COULTER then joined in the attack on the now deceased by hitting him. He states that he thought RONNIE COULTER was punching the now deceased and denies having seen any knife. DAVID MONTGOMERY states that he was intending to hit the now deceased and by that he states that he meant he was going to punch him, because he was in a 'barney' with his friend ANDREW MARSHALL. However he states that he couldn't get near the now deceased as RONNIE COULTER was between them. He also admits driving ANDREW COULTER home after the attack in his car.

RECOMMENDATIONS

I would consider that there is sufficient evidence at this stage to fully commit all 3 accused on a Petition charging them as acting together in the murder of Surjit Singh Chhokar. It would also appear appropriate to include a charge of uttering in respect of the accused ANDREW ALEXANDER

MARSHALL pertaining to his encashment of the Giro cheque addressed to the now deceased.

Reported by

Ian McCann

IAN MCCANN
Procurator Fiscal Depute

HAMILTON: 12 November 1998
IMCC/SL/98715661

2A

SUPPLEMENTARY REPORT 27
BY
PROCURATOR FISCAL, HAMILTON
RE
APPEARANCE ON PETITION FOR MURDER
OF SURJIT SINGH CHHOKAR

1. ANDREW ALEXANDER MARSHALL
2. RONNIE COULTER
3. DAVID SHIELDS MONTGOMERY

I refer to my Report dated 12 November 1998 and to Mr. Gallagher's subsequent telephone call. I understand that Crown Counsel wishes the issue of concert to be addressed specifically with reference to use of the knife. I apologise for not making my position clearer in this regard in my previous Report. I would offer the following comments:-

1. Elizabeth Bryce speaks of all 3 accused being involved in the attack on the now deceased. She does not however see any of the accused with the knife and does not realise that the now deceased had been stabbed until the 3 accused have ran off. Mrs. Bryce's account of the incident is summarised at the last paragraph of page 2 and the first 2 paragraphs of page 3 of my previous Report. She describes all 3 accused as participating in the attack on the now deceased.
2. ~~It~~ Information obtained, thus far, from the police investigation strongly suggests that the accused Robbie Coulter used the knife. This being so, it is necessary to establish that the co-accused were at least in part responsible for the death.
3. In the case of Andrew Marshall (or Coulter) this can be established from evidence of a common plan to assault the now deceased, more particularly to inflict lethal violence on the deceased and, in so far as Andrew Marshall is concerned to use a weapon of a lethal nature, namely a baseball bat, for that purpose. The evidence that there was such premeditation can be derived from the accounts of Donna Campbell and Corrine Campbell and which is summarised at the final paragraph of page 4 and the first paragraph of page 5 of my previous Report. In particular, Andrew Marshall is said to have stated that he was going to batter the now deceased with a bat and break his kneecap and gouge his eyes out. Additionally, Andrew Marshall and Ronnie Coulter are said to have discussed an intention to assault the now deceased after he had returned from his work; to abduct him; batter him; throw him off a bridge; burn his car and gouge his eyes out. This clearly can be construed as indicating an intention on their part not simply to inflict minor violence on the now deceased but to inflict lethal violence.

237

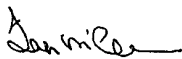
4. There is evidence to show that Andrew Marshall took with him a weapon which can well be regarded as a lethal weapon capable of causing death or serious injury. He admits in his police interview and in his reply to caution and charge that he struck the now deceased with a bat. I am informed by the police that a baseball bat containing a lead weight and wrapped in black tape has been recovered, having been concealed within a Hoover within the accused Andrew Marshall's home. This would appear to have been the weapon which he carried with him. Whilst I accept that the baseball bat is not the weapon which caused the fatal injury to the now deceased, its carriage and use by Andrew Marshall further demonstrates his expectation that a lethal weapon would be used in the attack on the now deceased. It is also a reasonable inference that not only Ronnie Coulter but also David Montgomery would have been aware, given its bulk, that Andrew Marshall had the baseball bat with him.

It also appears from the account given by Elizabeth Bryce that the 3 now accused persisted in the attack until she intervened. This would tend to suggest that the 3 accused persisted in the attack after use of the knife. It will be noted that there were 3 penetrating knife injuries to the trunk and further incised wounds to the ear and thigh. It would appear reasonable to infer that even were the co-accused unaware that one of the number had a knife prior to the assault commencing, this would have become apparent in course of the attack. I would refer to Walker and Raiker v- HM Advocate 1985 SCCR 150 (at page 156).

I would also refer Crown Counsel to Docherty against HM Advocate 194 SLT 247 and to the opinion of Lord Moncrieff at pages 248 and 249 (copy attached for convenience).

I look forward to receiving Crown Counsel's final instructions with regard to the full committal of Andrew Marshall as soon as possible and would thank Mr. Gallagher and Crown Counsel for giving this matter such prompt attention.

Reported by



IAN MCCANN
Procurator Fiscal Depute

HAMILTON: 13 November 1998
98715661/IMCC/SL

Alan M. Doucald

2

DEC98\S\P1F3515

STRATHCLYDE POLICE

Division: 'P'

Station: MOTHERWELL

Date: 1 DECEMBER 1998

Ref: N\KMcI\GMCK

SUBJECT: MURDER OF SURJIT SINGH CHHOKAR
C/O RONNIE COULTER, ANDREW COULTER or MARSHALL
AND DAVID MONTGOMERY
P.F. REF NO: 98715661

*in back, glass + keys
back
M. M. Doucald
2886*

1 I refer to the above subject and have to report as follows.

2 On 1 December 1998 notification was received from Mr Charles Stewart, SCRO Fingerprints, Pitt Street, Glasgow of two fingerprint impressions identified on the case of kitchen knives recovered through the witnesses Jo Buchanan and Alexandria Tierney.

*at end of case
Coulter*

3 A fingerprint impression found on the inside surface of the case holding the knives has been identified as Ronnie Coulter.

back - from food

3.1 A fingerprint impression on the blade of a large kitchen knife within said case has been identified as that of Andrew Coulter or Marshall.

in back

4 All requests for fingerprints have now been completed. Mr Stewart will prepare the formal report for onward transmission to the Procurator Fiscal's Office, Cameronian House, 3/5 Almada Street, Hamilton.

Procurator Fiscal's

5 I respectfully request this information be forwarded to the Procurator Fiscal's Office, Cameronian House, 3/5 Almada Street, Hamilton for the attention of the Fiscal allocated this enquiry.

from

(128)

Signature:
Name: Kenneth MacIver
Rank: Detective Inspector
Reg No:

Detective Chief Inspector
Transmitted:

Detective Chief Inspector

Procurator Fiscal's Office
Cameronian House
3/5 Almada Street
HAMILTON



27

SCOTTISH CRIMINAL RECORD OFFICE
FINGERPRINT SECTION

CASE AGAINST: **RONNIE COULTER**

REPORT (In terms of Section 280 of the Criminal Procedure (Scotland) Act 1995).

We, Charles Stewart, Rhonda Clark, Hugh Macpherson and Lorna McQueen, authorised by the Secretary of State for the purposes of Section 26(2) of the Criminal Justice (Scotland) Act 1980 and Section 280(5) of the Criminal Procedure (Scotland) Act 1995, hereby report as follows:-

On the dates shown in the Scottish Criminal Record Office, Fingerprint Section, we received from Strathclyde Police the following articles for examination.

9 NOVEMBER 1998 - FINGER AND PALM PRINT FORM IN THE NAME OF
RONNIE COULTER

17 NOVEMBER 1998 - PHOTOGRAPHED IMPRESSION NUMBERED
PB00601198 QD1

The result of our examination is as follows:-

It was found that the aforementioned photographed impression was identical in the sequence of ridge characteristics with the left thumb print on the finger and palm print form in the name of Ronnie Coulter.

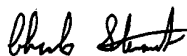
Charles Stewart
Hugh Macpherson

Rhonda Clark
Lorna McQueen

To illustrate this identification, enlargements were prepared of the impression numbered PB00601198QD1 and of the left thumb print on the finger and palm print form in the name of Ronnie Coulter.

Sixteen ridge characteristics in sequence and agreement were marked on each. These enlargements, which are shown on page 2 of the book, can be related to the relevant impression on the finger and palm print form and the photographed impression.

We have no doubt that the aforementioned photographed impression contained in the book was made by the person whose fingerprints are shown on the finger and palm print form in the name of Ronnie Coulter.



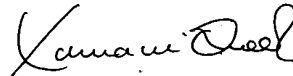
Principal Fingerprint Officer
Scottish Criminal Record Office



Fingerprint Officer
Scottish Criminal Record Office



Principal Fingerprint Officer
Scottish Criminal Record Office



Senior Fingerprint Officer
Scottish Criminal Record Office

22 December 1998



PROCURATOR FISCAL'S OFFICE
Cameronian House, 3/5 Alameda Street, HAMILTON ML3 OHG

Rutland Exchange Box No. HA7

Tel 01698 284000

Fax 01698 422929

Procurator Fiscal: Douglas A Brown

The Crown Agent
Crown Office
DX ED310
EDINBURGH

Your reference 98907670/98926171

Our reference 98715661/AMCD/AMB

Date 18 January 1999

Dear Sirs

CASE AGAINST RONNIE COULTER + 3

Initial Forensic Examination indicated the presence of blood on clothing belonging to Ronnie Coulter, Andrew Coulter and David Montgomery. The results of the DNA Analysis were not known until 15 January. The precognition was prepared on the basis that it could have been the deceased's blood on the clothing.

The Forensic Analysis has proved negative for the presence of the deceased's blood. However, in relation to Label Number 14, a pair of jeans belonging to Andrew Coulter, widespread blood staining was noted on the front of both legs and inside both front pockets and on the upper bag of the right leg. I have instructed further analysis and would hope the results to be available by 22 January 1999.

Yours faithfully

A MacDonald
Procurator Fiscal Depute

Enc.

8



PROCURATOR FISCAL'S OFFICE
Cameronian House, 3/5 Almada Street, HAMILTON ML3 OHG

Rutland Exchange Box No. HA7

Tel 01698 284000

Fax 01698 422929

Procurator Fiscal: Douglas A Brown

The Forensic Laboratory
Strathclyde Police
173 Pitt Street
GLASGOW

Your reference

Our reference 98715661/AMCD/AMB

Date 18 January 1999

FOR THE ATTENTION OF ANDREW DAVIDSON
AND LARA LEE

Dear Sirs

CASE AGAINST RONNIE COULTER, ANDREW COULTER and DAVID MONTGOMERY

I note that DNA Analysis of blood stain 9A was negative. I also note from the Forensic Report that there was "wide spread" blood staining on the jeans marked accused Andrew Coulter labelled "in mirror wardrobe, main bedroom, 17 Caplaw Place, Wishaw". I should be grateful if further blood stains could be lifted from the jeans and analyzed.

Please report as soon as possible and no later than 22 January 1999. I look forward to hearing from you.

Yours faithfully

A MacDonald
Procurator Fiscal Depute



PROCURATOR FISCAL'S OFFICE
Cameronian House, 3/5 Alameda Street, HAMILTON ML3 OHG

Rutland Exchange Box No. HA7

Tel 01698 284000

Fax 01698 422929

Procurator Fiscal: Douglas A Brown

The Divisional Commander
Strathclyde Police
'P' Division
MOTHERWELL

Your reference

Our reference 98715661/AMCD/AMB

Date 18 January 1999

FOR THE ATTENTION OF D. I. MCIVOR

Dear Sir

CASE AGAINST RONNIE COULTER + 2

When Andrew Coulter was examined on 6 November 1998, he had injuries to his hands. He explained that the injuries had been caused when he was working in a Slaughterhouse. I note from the police report that Andrew Coulter is unemployed. I should be grateful if enquiries could be made to confirm whether there is any truth in this.

Please report no later than 22 January 1999.

Yours faithfully

Procurator Fiscal Depute

F.70

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TB
6.3.90
Gasson
1.3.90
Prec

CO Ref 98907670/98926171
PF Office HAMILTON
PF Ref 98715661/AMCD/AMB
Dispatched 18 JANUARY 1999
Received 19/1/99.....

PRECOGNITION

NAME(S)

RONNIE COULTER 22/5/68

22/6/81

ANDREW COULTER

AND

DAVID MONTGOMERY

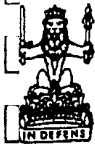
27/2/77

CHARGE(S)

MURDER 4/11/98

CROWN COUNSEL'S INSTRUCTIONS

Please advise High Ct.
This is extremely thin for 2 agree
that there is no case against Ronnie
Coulter. Evidence should consider
the statements on p.52 as done
with duty A.O. © 19/9



CROWN OFFICE

25 Chambers Street, Edinburgh EH1 1LA

Rutland Exchange Box No. 310

Telephone: 0131-226 2626
 Direct Dial: 0131-247 2710
 Fax(GP-3): 0131-247 2712

COPY

The Procurator Fiscal
 Procurator Fiscal's Office
 Cameronian House
 1/5 Almada Street
 HAMILTON

Your reference 98715661

Our reference
 98907670/98926171 SMB/rae

Date 25 January 1999

Please mark your reply for the
 attention of: S M BURNS

Dear Sir

CASE AGAINST RONNIE COULTER
 RECOGNOSKER: A MACDONALD

I enclose two copies of the draft Indictment, along with notice of
 previous convictions and return the proceedings for reference.

Please revise the drafts and return one copy of the indictment
 along with the proceedings as soon as possible.

1. F32

Submitted.

2. Time-Bars

Noted as 6 March 1999.

3. Narrative of the Facts

Please amend the narrative to make reference to the
 fingerprint evidence against Ronnie Coulter which is
 currently not contained in the narrative.

4. Analysis of the Evidence

I note at page 45 mention is made of forensic evidence.
 This is not mentioned anywhere else in the precognition and
 it should be noted in the narrative whether or not this is
 verbal information received from the lab and whether or not
 the report is yet available. I note from your problem sheet
 that further forensic analysis has been instructed. You
 should also specify what this is and what the purpose of it
 is.

28

2

5. Statement of Uncontroversial Evidence

Not submitted.

6. URN

Noted as S655831/84G.

7. Charges

Crown Counsel have instructed proceedings against Ronnie Coulter alone at this stage. The position concerning Andrew Coulter and David Montgomery is to be reviewed following the trial of Ronnie Coulter.

Prior to revisal please confirm with the pathologists whether there were any injuries sustained by the deceased which could have been caused by a baseball bat. ✓

It is essential that you confirm with the pathologists whether or not the stabbing injuries sustained by the deceased came from one blow. This directly affects the drafting of the charge and must be clarified prior to revisal.

8. Productions(i) Items raised in the problem sheet

Nil.

(ii) Items not raised in the problem sheet

- (a) There are no executions of service of the judicial examination contained in the precognition. There is also no indication whether or not the judicial examination was served. Prior to revisal please confirm that the judicial examination was served on the accused and his solicitor. If not, you will require to make an application in terms of section 37(9) for an extension of the time limit for serving the judicial examination transcripts. This must be done if the transcripts have not been served within 14 days.
- (b) I have deleted the following productions as they appear to me to be of no evidential value or relate to Andrew Coulter or David Montgomery: productions 5, 11-16, 17-19, 24, 35-39, 46, 47, 49, 50, 51 and 53.
- (c) Please note that although 49 and 50 have been deleted the deceased's name is spelled incorrectly on both these forensic reports. If they are to be used in any subsequent proceedings then fresh copies of these reports with the deceased's name spelled correctly must be obtained.
- (d) I have deleted the following labels for the same reasons: 1, 2, 8-23, 39, 31-48, 52-57. Please confirm you agree with this. With regard to labels 8 and 9, although they have

35

been deleted as not of evidential value, there was no-one speaking to recovering them from the deceased. It would appear that Sister Blackie should have spoken to this but there was no statement from her in the precognition.

- (e) With regard to label 15, there is no-one in the precognition speaking to the taking of this blood sample from the deceased, nor where or when it was taken. It appears to me not to be of any evidential value but if there is likely to be any forensic evidence relating to blood from the deceased then this will require to be addressed.
- (f) I am of the view that witness Tierney should speak to label 24 but there is no mention of this in her precognition. Please clarify and amend the precognition accordingly.
- (g) Please confirm why only witness Tierney speaks to label 26. Surely witnesses Aitchison and Quigley should also speak to this. Please clarify.
- (h) Prior to revisal, please clarify what the description of label 27 is. It is described throughout the precognition as either "box of knives" or "box of knives and chopping board". This must be correctly described on the list of productions served with the indictment. I have deleted mention of the chopping board because I can find no-one speaking to this anywhere in the precognition. Please confirm that this is appropriate.
- (i) Please confirm the position concerning label 29 as only witness Tierney appears to speak to this. Aitchison and Quigley would appear also to be in a position to speak to this.
- (j) Labels 33, 34 and 35 appear to have been missed out of witness Tierney's statement. Please confirm the position concerning them. Does she speak to these?
- (k) Please advise me of the position concerning label 40. Why does only DS Aitchison speak to this?
- (l) I can find no-one in the precognition speaking to label 46 and 47. Please clarify the position concerning them. They have been deleted as mentioned.
- (m) There is no-one in the precognition other than the two pathologists who speak to label 57. I note your remarks say that this came from label 40. You do not say who took it out of label 40, where, when and why. I am unclear whether this was done by you at precognition of the pathologists. If this was the case then you must not do this in future. The pathologists should have been shown label 40 as it appears. If you create additional labels you will be added to the indictment as a witness. I have deleted label 57. The pathologists should be reprecognosed about this and the other matters raised under Number 9 and they should be shown

231

4

- label 40 in its entirety and can make their comments in context.
- (n) Parts of the copies of productions 43 and 44 in the precognition are upside down. Please rectify this.
 - (o) Please insert label or production numbers on the fingerprint report.
 - (p) Please lodge witness Tierney's tape as a label. There is no need to have it transcribed and DC Way who speaks to it has already been included on the draft indictment.
 - (q) There is no execution of service of Ronnie Coulter's police interview. I have therefore deleted production 27 meantime. Prior to revisal, if you can confirm that you are physically in possession of the execution, it can be added back to the draft indictment. If not, it must be added by section 67 notice when the transcript is served. ✓
 - (r) I note production 54, the fingerprint form for Ronnie Coulter is a certificate. I would refer you to the terms of section 284 of the Criminal Procedure (Scotland) Act. The certificate must be served on the accused 14 days prior to trial. Please ensure this is done.
 - (s) I note that access to Andrew Coulter's flat where the Hoover, bat and hat were found was obtained by using true keys. Where did these keys come from? Please explain the position prior to revisal and, if necessary, add the keys and any witnesses required to speak to this. If it is not available prior to revisal then this will require to be done by section 67 notice. Please confirm what label 38 is. I have amended the description to a bat rather than a baton on the draft indictment. ✓
 - (t) Please clarify the position concerning the still photographs. At page 441 witness McCulloch speaks to witness Mitchell obtaining four still photographs where witness Mitchell says he only obtained two. Please clarify this prior to revisal. ✓
 - (u) None of the books of photographs was submitted. I have therefore been unable to confirm that all the photographs are necessary and correspond to the description given of them in the statements of the photographers.
 - (v) Please confirm whether or not either of the pathologists attended the locus. If so, where is the locus report? Please confirm the position prior to revisal. If one of the pathologists did visit the locus you will require to precognosce her on this and add the locus report by NG section 67 notice if it is not physically in your possession prior to revisal.

37

9. Precognitions/Statements of Witnesses(i) Items raised in the problem sheet

- (a) I note you are awaiting a statement from Dr Walker. This is not required in connection with the prosecution of Ronnie Coulter but he will require to be precognosed in detail concerning Andrew Coulter and this statement included in the precognition for Crown Counsel to consider Andrew Coulter's position.
- (b) I note the statements of the forensic scientists will be included if necessary when the analysis is complete. The forensic scientists, together with any productions and labels spoken to by them, should be added by section 67 notice if they are of any evidential value.

(ii) Items not raised in the problem sheetElizabeth Bryce

- (a) Please reprecognosce witness Elizabeth Bryce. The precognition as it currently stands is inadequate. On page 588 of the precognition where the police read out a section of her police statement in the course of Ronnie Coulter's interview there is more detail of what exactly happened than is contained in your precognition. Please explain in detail in her precognition how the accused had hold of the deceased. Please clarify what Andrew Coulter "holding the deceased's chest" means. Were the accused just holding the deceased? If not, what were they doing? Was anyone making any motions consistent with stabbing movements? How did Ronnie Coulter swing the item? Did it look like a baseball bat? Was Elizabeth Bryce shown the baseball bat? Can she explain how it looked flexible or bendy? Was she shown the knife? Can she say if she saw anything glint? How far away was she? Can Ronnie Coulter's hat be described as a tammy?
- (b) Please put her police statement in the precognition for information. I am unclear if the precognition is sparse because of the manner in which it was carried out or because Elizabeth Bryce was having difficulty remembering what happened. This should be clarified. If she was having difficulty remembering, her police statement together with the police officer who took it should be added by section 67 notice. Please note there is no indication anywhere in the precognition who took Elizabeth Bryce's police statement. If it is to be added, a statement from that officer should also be included in the precognition.
- (c) I note the deceased made statement of the "They stabbed me" to witness Elizabeth Bryce just before dying. Please prepare the appropriate notice in terms of section 259(5) of the Criminal Procedure (Scotland) Act to allow the hearsay evidence of what the deceased said to Elizabeth Bryce to be included.

- (d) I have deleted the following witnesses as, in my view, they appear unnecessary to the prosecution of Ronnie Coulter: Dowsland, Drummond, Simpson, Brown, Weir, Rhona Coulter, Jean Montgomery, Jean Montgomery, Junior, Paul Montgomery, Margaret Ann Chisholm, James Brown, Janet Sommerville, Mary Drummond, Ina Stewart, Esther Harvey, James Stronach Montgomery, Spencer Holmes, David Taylor, Lesley Wilkie, Kenneth MacFarlane, Sanauliah Bhutta, Parmod Kumar, Alan Blincow, David Walker, George Hogg, John Magilton, Andrew Kenneth Davidson, Thomas McCrossan, Robert Cusick, David McNeill, James Conner, Thomas O'Brien, Lawrence Keatings, James Dyas, Hazel Gilmour, June McKay, Ian Bulloch, Kurt Addison, Evelyn Scott, George McCutcheon, Caroline Freel, Douglas Denholm, Graeme Paul, Derek Forsyth, David Hamill and all the "For Information Only" witnesses.
- (e) I have included Detective Constable Edward Waye and witness Douglas, not further described, who obtained the first statement of Donna Campbell. Neither of these officers were included anywhere in the precognition despite the fact you had lodged statements taken by both of them as productions. In addition DC Waye actually recovers the baseball bat and hat inside the hoover at Andrew Coulter's flat.
- (f) Please confirm you agree with the witnesses who have been deleted.
- Alexandra Tierney
- (g) When she was shown the box of knives by the accused what did the accused say to her.
- (h) Please put the label numbers beside the items where they are listed on page 148.
- (i) Please note it is not acceptable to describe labels 24 to 32 as "the clothing etc" given to Alexandra Tierney by Ronnie Coulter. Each item must be specifically described against its own production or label number.
- (j) Please clarify what Alexandra Tierney has to say about each item that was recovered.
- (k) Your abbreviated list included in her precognition in particular does not mention label 24, cardboard, label 25, plastic bag, label 26, carrier bag, label 29, bag. It does mention a jacket and label 33 is a jacket which is obviously not included in your list of labels 24 to 32.
- (l) At the end of her police statement she refers to all productions in the correct way. Her precognition should also refer to them in this manner.
- (m) Please confirm the position concerning labels 34 and 35 which, according to DS Aitchison, were found in the bag recovered. The precognition of Alexander Tierney must

7

confirm exactly what was found in the bag that was shown to her and she must confirm that what was found in the bag and shown to her was what was placed in the bag by Ronnie Coulter before being given to her and then passed on to witness Buchanan.

- (n) Please explain exactly what the actions were of Ronnie Coulter which made her assume he had taken a knife.
- (o) How did it come about that he showed her the box of knives in the first place?
- (p) I am of the view that her statement, together with the police officer who took the statement, should be added to the indictment. DC Waye and the statement have already been included on the draft indictment.
- (q) As previously discussed, please include a statement by DC Waye in the precognition. The tape which recorded DC Waye reading over Alexander Tierney's statement to her should also be lodged. It does not need to be transcribed. Please confirm that she signed each page of her police statement.

Joseph Buchanan

- (r) Please refer to all the labels individually in the body of his precognition. Again, a list of labels 24-32 in his precognition is wrong as label 33 was obviously also in the bag. Please list each individual label against its number as previously discussed.
- (s) I note that Buchanan's statement was read over to him on tape. Please lodge the tape as a label. There is no need to transcribe it. DS Aitchison is already on the indictment and took the statement. If necessary, this tape and any other productions not available prior to revisal will require to be added by section 67 notice.
- (t) Please amend the statements of the ambulance men to make reference to the medical records which contain their ambulance form.
- (u) Please clarify whether witness Gaittens viewed the tape before giving it to the police. If so, please amend his statement to refer to this.
- (v) I note that Constables Hogg and Magilton corroborate the obtaining of a blood sample from the accused by Dr Blincow. They have been deleted because the blood sample is of no evidential value but for future reference you should note that even where they corroborate a doctor obtaining a sample, their statements should be included with the statements of police officers.

Witnesses Stewart and Clark

- (w) It is not helpful to get to page 322 of the precognition before finding there is fingerprint evidence against Ronnie Coulter and even less so to find a statement and report which do not indicate where the lift was taken and to have to go to page 395 and cross-reference reference numbers to ascertain which print related to Ronnie Coulter and which print was found where.
- (x) Please amend the statements of witness Stewart and Clark by adding a note to the end of each of them to narrate that witnesses Dawson and Hunter took the lift, where and when it was found. Please also narrate the page numbers of witnesses Dawson and Hunter's statements in Stewart and Clark's statements to assist Crown Counsel. Please also mention that witnesses Bradley and Murdoch take Ronnie Coulter's fingerprints and give the page numbers of their statements.
- (y) Please amend the statements of witnesses Dawson and Hunter to indicate which print is Ronnie Coulter's and which is Andrew Coulter's.
- (z) Please confirm if witness Clark's name is Rhona or Rhonda prior to revisal as she is described as both. Please also note that her statement in connection with Andrew Coulter, which is not currently required, refers to Ronnie and not Andrew, which has caused further confusion. ✓

Pathologists

- (aa) Dr MacFarlane's precognition as it currently stands is useless in the absence of the photographs which were not submitted.
- (bb) Please clarify if she was shown the baseball bat. Can she say which, if any, injuries were caused by it? Was she shown the box of knives? I note that Andrew Coulter's fingerprint was found on the large knife. Could that knife have caused the injury? Can she say? Is she satisfied that the size and type of knife which it is believed was used could have caused the injuries?
- (cc) Please reprecognosce her thoroughly concerning this and the other matters raised in this letter.
- (dd) Dr Black's statement is inadequate. She does not appear to have been precognosced. She must be precognosced fully covering all the aspects referred to in connection with Dr MacFarlane.

Police

- (ee) Please note the first police statement included in the precognition are usually those of the officers who attend the scene and not those who carry out the ID parade. Please

move the statements of witnesses McCann and Mason to the position they are now in on the list of witnesses.

- (ff) Please note that where a witness has more than one statement in the precognition each statement until the last should say "Further states" to notify the reader that there are further statements for that witness.
- (gg) The police witnesses have been rearranged on the draft indictment to group witnesses together where they corroborate each other or speak to similar subjects.
- (hh) I note in DS Aitchison's statement you describe the label productions as "a quantity of clothing". This is not acceptable. Each item must be specifically described against its number.
- (ii) Please clarify what the position is concerning labels 26 and 29 as they are not mentioned in DS Aitchison's statement.
- (jj) It is not helpful to have DS Aitchison's statement at page 475 and the officer who corroborates the recovery of the labels in the bin bag at page 687 in a totally different volume. Crown Counsel, when conducting this trial, are likely to wish to lead both officers in close proximity to each other. It is virtually impossible to conduct a trial when working between different volumes of the precognition. Consideration has to be given to the order in which the witnesses are placed in the precognition to allow the straightforward presentation of the evidence.
- (kk) This also applies to witnesses Bradley and Murdoch who conduct the interview of the accused Ronnie Coulter and we find witness Bradley's statement at page 526 and witness Murdoch's statement at page 694.
- (ll) Please note that in witness Quigley's statement witness Buchanan's name is spelled wrongly throughout the precognition. Please also clarify the position concerning labels 26 and 29. Witness Buchanan's name in the statements should be amended.
- (mm) I note DS Aitchison obtained a set of knives from witness Lynn Noone which were the same as the set thrown away by Ronnie Coulter. Where is the statement from Lynn Noone? Was she shown label 27? Could she confirm it was a box of knives produced by her company? Could she say the set she sent to the police was the same type of set? Could she say the missing knife was the size of the equivalent one in label 40? Please clarify and amend the precognition accordingly. If a statement has not yet been obtained from Lynn Noone, then one should be obtained immediately and she should be added by section 67 notice.
- (nn) The precognition should be reordered to place the statements of witnesses corroborating each other or speaking to similar

10

subjects together to allow for the presentation of the evidence in a more straightforward manner.

- (oo) Please confirm prior to revisal whether witness Rooney's name is James or Jamie.

10. Case Preparation

(i) Items raised in the problem sheet

Nil.

(ii) Items not raised in the problem sheet

- (a) There are no psychiatric reports for any of the potential accused in the precognition. Prior to revisal you must confirm that Ronnie Coulter is sane and fit to plead having been examined by two psychiatrists. Their reports must be included in the precognition before the statements of witnesses.
- (b) Please remove all the productions from throughout the precognition and combine them in one or, if necessary, two separate volumes of productions. It is far easier for the Advocate Depute to conduct a trial with a separate volume of productions.
- (c) Please confirm that the accused will be in Barlinnie for service of the indictment.
- (d) Please rearrange the police statements into the order as they are now contained on the list of witnesses. Reference is made to Chapter 4 of the Book of Regulations. Chapter 4.01(vi).
- (e) I am concerned about what was actually recovered in the bin bag. You must amend the precognition and narrate each individual label in the statements of witnesses speaking to them. You must ensure prior to revisal that every label recovered in the bin bag is spoken to by all the witnesses speaking to it. If you cannot confirm this then at revisal labels 26 and 29 should be deleted.

Andrew Coulter and David Montgomery

- (f) As indicated, Crown Counsel have deferred consideration until the outcome of proceedings against Ronnie Coulter. I note a fingerprint was found on the large knife in label 27 and in the Analysis of Evidence you comment that this appears to be neutral. Please investigate this. Please have fingerprint officers consider the positioning of the fingerprint and whether it is a recent fingerprint. Please have the knife forensically examined for the presence of blood. I note you will precognosce Dr Walker. Please ensure he is fully precognosced and shown labels 27 and 40.

238

11

- (g) The defence must be informed of the existence of the forensic reports and the fingerprint report for Andrew Coulter. Should they wish them to be lodged, they should be added by section 67 notice together with any witnesses speaking to them.

Unless the indictment has been so extensively revised that the precognition will be required to consider the terms of the final indictment, there is no need to return the precognition with the revised draft indictment.

When replying, please quote the full Crown Office reference and the sitting. Please also refer the relevant parts of your reply to the paragraphs as numbered above where appropriate.

Every effort is made by the staff in Crown Office to get the AD's and Assistant's papers to them on the Friday, 10 days before the start of the sitting. This is to allow reasonable time for preparation and for discussion with Defence Counsel and the Legal Manager at the High Court sitting as encouraged by the Home AD in his letter attached to CO Circular No 2152/2.

It is essential therefore that you should submit the AD's and Assistant's papers and all necessary copy productions to Crown Office as soon as possible and in any event **NO LATER THAN 19 February 1999**. If for any reason this is not possible please make contact immediately with Mr Avinou in this office to explain the reason for the delay and to confirm when the papers will be submitted. He will then be able to advise the AD accordingly. If you have a number of sets of papers for a particular sitting please do not delay those which are ready in order to submit them together with a case which may be subject to some unavoidable delay.

Any photographs which require to be copied should be submitted to Crown Office by 1 February 1999, together with an order form.

Yours faithfully

S M BURNS
High Court Unit

Enc

44



PROCURATOR FISCAL'S OFFICE
Cameronian House, 3/5 Alameda Street, HAMILTON ML3 OHG

200

Rutland Exchange Box No. HA7

Tel 01698 284000

Fax 01698 422929

Procurator Fiscal: Douglas A Brown

THE CROWN AGENT
CROWN OFFICE
DX ED310
EDINBURGH

Your reference 98907670/98926171

Our reference AMCD/JM/98715661

Date 18 February 1999

FAO: S M BURNS

Dear Sir

HMA -v- RONNIE COULTER
HIGH COURT SITTING AT GLASGOW ON 1 MARCH 1999

I refer to your letter of 25 January 1999 and would respond fully to the points raised in that letter.

(1) F32

Agreed.

(2) TIME BARS

Agreed.

(3) NARRATIVE OF THE FACTS

Amended.

(4) ANALYSIS OF EVIDENCE

Noted. An explanation was given in a covering letter but it will in future appear in the Narrative. Further forensic analysis was negative.

(5) STATEMENT OF UNCONTROVERSIAL EVIDENCE

Noted. The information which should have been contained in the statement of uncontroversial evidence is now contained in the Joint Minute of Admissions. Copy attached.

(6) URN

Agreed.

45

- (n) Noted. Witness Tierney's tape is lodged as a label.
- (q) I am now in possession of the execution of service of the transcript. The execution will be added by Section 67 Notice.
- (r) Noted. The execution will be added to the Section 67 Notice.
- (s) Originally, police officers forced entry to Andrew Coulter's flat to look for him. The council were contacted to secure the flat and fit a new lock. The new keys were given to the police. The police carried out a further search of the flat having gained entry by using the true keys. These keys were then given back to Andrew Coulter so that he could enter his flat. The keys have been returned to Andrew Coulter. In relation to Label No 38 as per the telephone call, the article is now described as a piece of wood and metal. The piece of wood originally had black tape wound around it but the black tape was removed when the piece of wood was examined for fingerprints. It may be that the article is more correctly described as "piece of wood and metal and tape".
- (t) It is witnesses McCulloch and Stark who speak to obtaining 4 still photographs. Two were of Andrew Coulter and 2 were of Ronnie Coulter. The 2 still photographs of Ronnie Coulter were shown to him during the police interview.
- (u) Noted.
- (v) Neither of the pathologists attended the locus. There is no locus report.

(9) PRECOGNITIONS/STATEMENTS OF WITNESSES

(i) ITEMS RAISED IN PROBLEM SHEET

- (a) Noted.
- (b) Noted. The forensic analysis is now complete and is of no evidential value.

(ii) ITEMS NOT RAISED IN PROBLEM SHEET

- (a) Witness Elizabeth Bryce has been reprecognosed. The matters referred to in this paragraph have been dealt with in her precognition.
- (b) Witness Elizabeth Bryce's precognition is now more detailed than her police statement. There is no need to include the police statement with the precognition.
- (c) Noted. Affidavit and notice prepared. Affidavit to be sworn on 18 February 1999. Will be forwarded.
- (d) Agreed. However, I have added PC Connor by Section 67 Notice. He drove from the flats at Caplaw Tower to the locus. Although this evidence relates primarily to David Montgomery it does show that Ronnie Coulter had sufficient time to leave the block of flats and arrive at the locus if he travelled by car. This in my opinion is of some evidential value.

- 4 -

202

(e) Noted and agreed.

(f) Agreed.

(g) On being shown the knives, the accused Ronnie Coulter said it was a shame because it was a good set of knives. Witness Tierney claims that she was unwell at the time and did not ask anything further. Accused Ronnie Coulter didn't say anything further about the knives except to point to the missing one. Again when he was doing this, witness Tierney says that he did not say anything and she did not ask.

(h) Noted.

(i) Amended.

(j) This has been attended to in the precognition of Alexander Tierney.

(k) The precognition has been amended to take account of this.

(l) Agreed and noted.

(m) Witness Tierney identified labels 34 and 35 as being articles which were shown to her by the police at the police statement. She did not sign the labels and could not identify the articles because she did not see the accused Ronnie Coulter putting them into the bag. She could not say whether they belonged to Ronnie Coulter and she had not seen them before.

(n) Witness Tierney explains that given what she knew about the murder, and the fact that Ronnie Coulter was disposing of clothes and a box of knives with one missing and given also that he had used a knife before, she assumed that the accused Ronnie Coulter had taken a knife with him.

(o) Witness Tierney explains that because of her illness she was in and out of the toilet a lot. During this, the accused Ronnie Coulter was filling up a bag with wet clothing. He then produced the box of knives from the kitchen and simply showed them to her.

(p) Agreed.

(q) Agreed. The tape is lodged as a label.

(r) This witness only speaks to label 27, the box of knives and label 25. He signed the label 25 but not label 27.

(s) The tape is lodged as a label production.

(t) Noted and Amended.

(u) Witness Gaittens did not view the tape before giving it to the police.

(v) Noted.

(w) Agreed.

(x) Agreed and amended.

(y) Amended.

47

(z) This witnesses name is Rhonda.

(aa) Noted.

(bb) Dr MacFarlane was shown the piece of wood and metal. The abrasion to the head and neck may have been caused by the piece of wood and metal but it would be a very glancing or minor blow. She was shown the box of knives. The largest knife which had Andrew Coulter's fingerprint on it could not have caused the injuries. She is satisfied that the size and type of knife which it is believed was used could have caused the injuries.

(cc) This witness was reprecognosed regarding the above matters.

(dd) Dr Black was reprecognosed covering the above aspects as well.

(ee) Noted and agreed.

(ff) Noted.

(gg) Noted.

(hh) Agreed and the precognition has been amended.

(ii) DS Aitchison speaks to labels 24 through to label 35.

(jj) Noted and agreed.

(kk) Noted and agreed.

(ll) Witness Quigley's precognition has been amended. This witness also speaks to labels 24 through to 35.

(mm) Lyne Noore cannot be traced. A statement has been obtained from Vinod Dave in England by the police. He was shown labels 27 and 40. He advises that both sets of knives are the same.

(nn) Precognition has been reordered. The productions have been placed in separate folders.

(oo) The witnesses name is Jamie Rooney.

(10) CASE PREPARATION

(i) ITEMS RAISED IN PROBLEM SHEET

Nil.

(ii) ITEMS NOT RAISED IN PROBLEM SHEET

(a) Ronnie Coulter is sane and fit to plead having been examined by 2 psychiatrists.

(b) Noted and amended.

(c) The accused is still in Barlinnie for service of the indictment.

(d) The police statements have been reordered.

(e) The precognitions have been amended accordingly to speak to all the items recovered in the bag.

(f) The Scenes of Crime Officers advise that they cannot determine how long the fingerprint would have been on the large knife. In any event, the pathologists advise that the large knife could not have caused the stab wounds. When Dr Walker is precognosced, he will be shown labels 27 and 40.

(g) Noted.

(11) ADDITIONAL COMMENTS

(a) After receiving witness Vinod Dave's statement on 16 February 1999 I telephoned him to clarify. He was shown labels 27 and 40 but I was concerned that he was not shown them properly. He advises that both boxes were opened partially, inside the plastic production bags. It appears that he could have been given a better look but did not confirm the boxes and knives were the same.

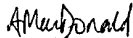
(b) Labels 34 and 35 could not be identified by witness Tierney. These items bear a resemblance to clothing worn by Andrew Coulter that night. I tried repeatedly to have witnesses Donna Campbell and Corrine Chambers view these labels, but they failed to turn up. It would be worth drawing to the Advocate Depute's attention that I think both of these witnesses can identify the labels.

(c) Two labels are attached to label 25. Different signatures appear on both. I have numbered one of them 25 but I have not put a number on the other.

(d) Production 40 is a certified copy petition for Andrew Coulter. The reason being the police were looking for evidence re Andrew Coulter and accordingly entered 17 Caplaw Tower to do so. The authority to enter that address came from Andrew Coulter's Petition Warrant.

If you require any further clarification of any points raised herein or any further assistance please do not hesitate to contact me.

Yours faithfully



A MACDONALD
Procurator Fiscal Depute



Lord Advocate

I have now read the
 recognition. I have the
 following comments.

① I believe we prosecuted
 the right man i.e. the knife
 man.

② In my opinion there
 was a sufficiency of evidence
 against Andrew Coultie but
not David Montgomery.

③ The case against Andrew
 Coultie, however, relies on

concern. While I have not studied the 3 day report I note that there is concern at that stage as to how we prove knowledge of the knife. However given the nature of the conversation in the house and the fact that they set off to do his ham suggests to me that we would have had a sufficiency. I accept others may take a different view.

(4) Even if Ronnie Boulter speaks up I believe that the



prospects of a conviction are slim.

(5) I think that the better course of action in this case would have been to indict Ronnie and Andrew Loutts and to use David Montgomery as a witness. Had we done so a more complete picture would have emerged. I think the prospects of getting a conviction against at least one of the two per meade would have

been very much higher.
The A.D. in this case had
to fight with one hand
tied behind his back.

I will be happy to
discuss.

CB

18/3/99.



Sol. Gen

I agree that with the benefit of hindsight we ought to have progressed Montgomery on such.

In the meantime, we should wait to see what the prosecution -
 says of Ronnie Coulter's produce.

The police should also make inquiries to ascertain whether Andrew Coulter ever worked in a slaughterhouse at the relevant time. We should also
 P.T.1.

obtain evidence about the
order Giv. Carter.

As far as racism is concerned
see presentation of Jamie Rooney!

We can review Montgomery's points -
due course

Act

30/3/99.



CROWN OFFICE
 25 Chambers Street, Edinburgh, EH1 1LA
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 Fax: 0131-247-2727

*REGY 183
 BLU to DCA
 on 12/5.*

12 April 1999

Your Ref:- 98715661
 Our Ref:- 98907670 FRC/LB

D A Brown Esq
 Regional Procurator Fiscal
 Procurator Fiscal's Office
 Cameronian House
 3/5 Almada Street
 HAMILTON, ML3 OHG

Dear Mr Brown

H.M.A -v- RONNIE COULTER AND OTHERS

I refer to previous correspondence. The case papers have been reconsidered by Crown Counsel. They wish to see Ronnie Coulter's precognition on oath as soon as it becomes available. Meantime, Crown Counsel instruct that the police be asked to make enquiries to ascertain whether Andrew Coulter ever worked in a slaughterhouse at the relevant time. Please also obtain evidence about the stolen giro and cooker.

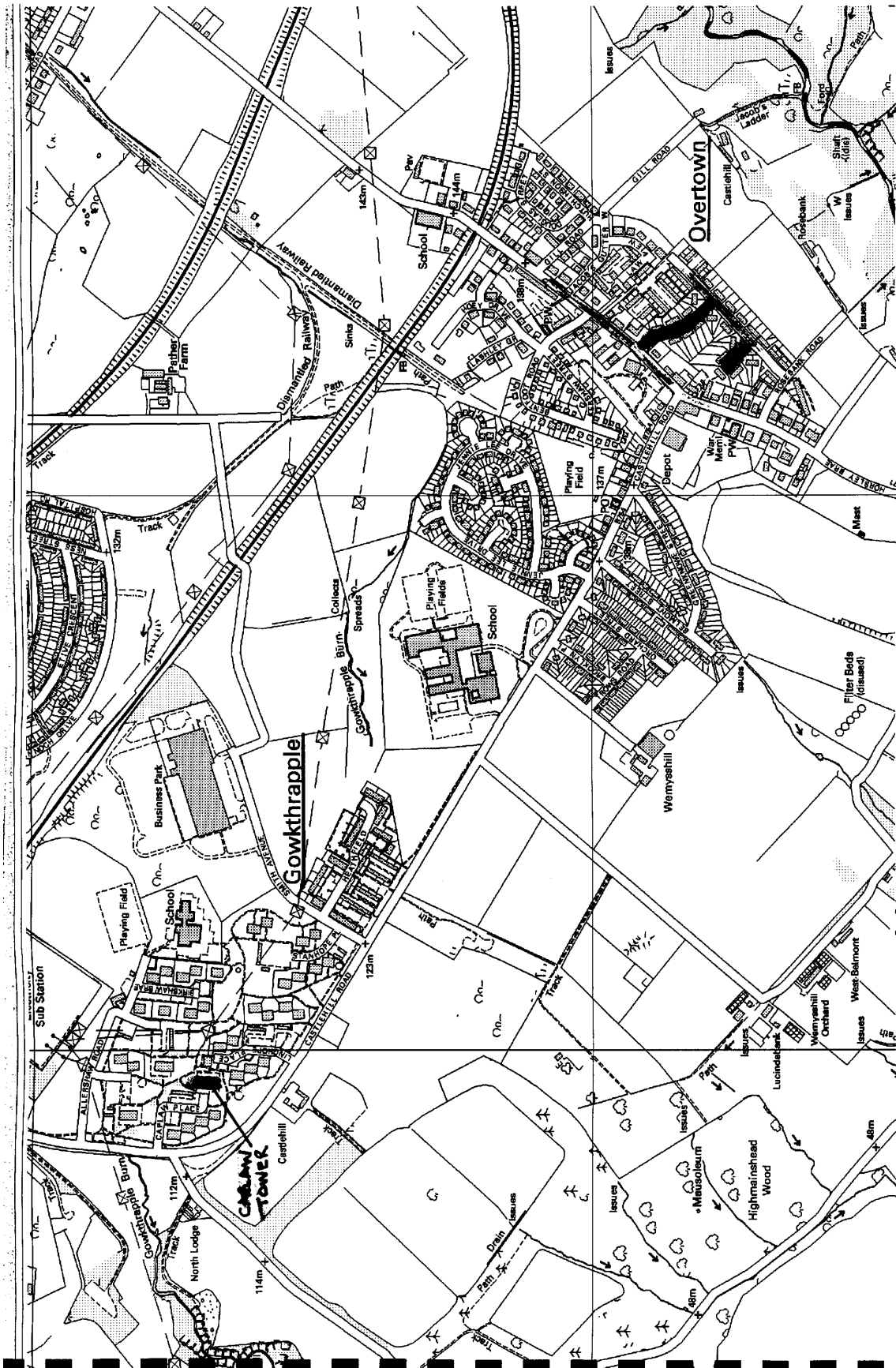
Montgomery's position will be considered by Crown Counsel in light of what transpires from Ronnie Coulter's precognition on oath and any other information which you have.

Yours sincerely

F R Crowe
 Deputy Crown Agent



INVESTOR IN PEOPLE



CARNO TOWER
 CROOKLE PLACE
 GARRAN STREET
 GULLAUN STREET
 MAIN STREET

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