Case No: 20011745 S1

Neutral Citation No: [2002] EWCA Crim 2912

IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CRIMINAL DIVISION)
REFERNCE BY THE CRIMINAL CASE REVIEW COMMISSION
UNDER SECTION 9 OF THE CRIMINAL APPEAL ACT 1995

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 12th December 2002

Before :

LORD JUSTICE KAY
MR JUSTICE WRIGHT
and
MR JUSTICE HENRIQUES

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Between :

R	**Respondent**
- and -	
JEREMY NEVILL BAMBER	**Appellant**

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- -

Mr M. Turner QC and Mr M Duck instructed for the Appellant
Mr Victor Temple QC, Mr J Laidlaw and Ms A. Darlow instructed for the Respondent

Hearing dates : 17th October 2002 to 1st November 2002

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JUDGMENT : APPROVED BY THE COURT FOR HANDING DOWN (SUBJECT TO EDITORIAL CORRECTIONS)

Lord Justice Kay :

1. On 28 October 1986 Jeremy Nevill Bamber was convicted of 5 counts of murder by a majority of 10-2 following a 19 day trial in the Crown Court at Chelmsford before Drake J and a jury. He was sentenced to life imprisonment with a recommendation that he serve a minimum of 25 years.

2. Following his trial he sought leave to appeal against conviction. His application was refused on the papers by the single judge but was renewed to the full court. On 20 March 1989 the full court presided over by the Lord Chief Justice, Lord Lane, heard his renewed application for leave. The court dismissed his application.

3. The case comes back before this court following a reference by the Criminal Case Review Commission ("the CCRC") under Section 9 of the Criminal Appeal Act 1995. As we shall explain the reference came about solely because of fresh scientific evidence. However, once the reference has been made, under the legislation as it presently stands, it is open to those advising the appellant to take any point that they wish. That is so whether the other point is related to the initial reference point or not and there is no requirement to obtain the leave of the court to pursue a particular ground as there would be on any other form of appeal against conviction. Those representing the appellant have availed themselves of this opportunity and 16 grounds of appeal have been raised before the Court, although 1 has not been pursued at the hearing.

4. The case, since it involved the killing of five members of the same family allegedly by a sixth member of the family, not unnaturally attracted considerable media attention. As a result the basic facts may well be recalled by many who will read this judgment or hear of it. It is nonetheless important that we start by setting out in some detail the facts established by the evidence and the cases for both the prosecution and the defence.

5. The killings occurred in the early hours of 7 August 1985. All five of those who died met their deaths from gunshot wounds. They were the appellant's parents, Ralph Nevill Bamber and June Bamber, his sister, Sheila Caffell, and his sister's 6 year old twin sons, Nicholas and Daniel Caffell. There was no dispute at trial that four of the five had been murdered. In respect of the fifth, Sheila Caffell, there was an issue, which lay at the very heart of the case, as to whether she had been murdered as the prosecution alleged or whether she had taken her own life as the defence contended.

6. Unusually in a case of this kind, it was accepted at trial that there were only two possible explanations for the dreadful events of that night. The first, as alleged by the prosecution was that the appellant had killed all five members of his family, shooting them with a .22 rifle with the probable motive of inheriting the whole of the family estate. The second, the defence case, was that Sheila Caffell, who had a history of mental illness, had murdered her parents and her two sons with the rifle, and had then turned the gun upon herself in an act of suicide. The view realistically accepted by all

at trial was that the facts that were common ground enabled any other possibility to be ruled out.

7. The police were first alerted that something out of the ordinary had occurred when they received a telephone call from the appellant. The call was logged at 3.36 a.m. but there was evidence that made clear that it must have been at least 10 minutes earlier. The caller was the appellant and having given his name and address he said:

> "You've got to help me. My father has rang me and said "Please come over. Your sister has gone crazy and has got the gun." Then the line went dead."

He went on to say that his sister had a history of psychiatric illness and he confirmed that there were guns at his father's house, which was White House Farm, Tolleshunt D'Arcy in Essex. The telephonist contacted the Police Information Room and a police car was despatched to the father's address. The appellant was asked to meet the police there.

8. When the police attended at the farm, they were joined by the appellant. There was no sound from the farm save for the barking of a dog and fearing that they might be in a hostage situation the police decided to wait until daylight. At about 7.45 a.m., armed officers entered the farm and found all 5 occupants dead from gunshot wounds. Mr. Bamber lay dead in the kitchen, his wife was dead on the floor in her bedroom, the boys were dead in their bed and Sheila Caffell was lying on the floor of the same room as her mother. Across her chest and pointing up at her neck, through which the wounds that had killed her had been fired, was the rifle used to shoot all five members of the family. Beside her body lay a Bible. The scene certainly gave the appearance that Sheila Caffell had shot herself, and the likelihood that this was the case was reinforced by information given to the police by the appellant.

9. A police inquiry into the matter was at once initiated and it is clear that the senior police officers involved, and to some extent the pathologist who attended, readily accepted at that stage that they were dealing with five deaths for which Sheila Caffell was responsible. However there seem to have been some junior officers, who from an early stage believed that everything did not add up. This view was soon echoed by a number of members of the wider family. It was not though until early September that the real possibility that someone else might have killed all five was properly addressed and there was a change in the senior investigating officer. The appellant's ex-girlfriend then came forward and gave information to the police. This caused the focus of attention to move to the appellant and another said to be connected to him. Further inquiries were made and as a result the appellant was charged with the five murders.

10. The rather unusual history of the investigation as recounted is important to appreciate and bear in mind because the attitude and behaviour of the police needs to be interpreted and understood against that background.

11. With that introduction, it is next necessary to review in some detail the respective cases at trial. We have been greatly aided by helpful summaries prepared by counsel upon which we shall draw gratefully. It is convenient first to set out the background to the killings.

Background to the killings

12. Ralph Nevill Bamber, (who was known as Nevill Bamber and we shall refer to him in that way) was 61 at the time of his death. He was a farmer and a local Magistrate and lived with his wife June at White House Farm. He was a well-built man, 6' 4" tall and in good physical health. Those who knew him spoke of him as a good and fair man. He kept a number of guns including shotguns and the rifle, which was to feature in the killings, at the farm. He shot on his own farm as well as attending shoots locally. A number of witnesses called at the trial spoke of the care with which Nevill Bamber treated the weapons kept at the farmhouse. He would clean the guns following use and would not allow them to be left lying around.

13. The rifle was a .22 Anshutz automatic rifle. Together with a Parker Hale sound moderator (silencer) and telescopic sights, it had been bought by Nevill Bamber on 30 November 1984. 500 rounds of ammunition had also been purchased. There was evidence that the gun was used to shoot rabbits and would only ever be used with the sound moderator and the telescopic sights attached. A screwdriver was required to remove the telescopic sights but there was evidence that this was not normally done because of the time it took to realign them

14. June Bamber was also 61 years old. Religion had always played a strong part in her life. In her latter years her interest in this regard had to an extent come to dominate her thinking, to a point that might have been thought to be obsessive. In 1982, she received treatment at a psychiatric hospital in Northampton.

15. Nevill and June Bamber married in 1949 and shortly afterwards took a tenancy of White House Farm. They were unable to have children of their own and adopted two children, Sheila and Jeremy, the appellant.

16. Sheila Caffell was born in 1957 and was 28 at the time of her death. She was educated privately, before attending secretarial college in London and then working as a model. When in London she met Colin Caffell and they married in May 1977. On 22 June 1979 their twin sons were born. Daniel and Nicholas Caffell were six when they were killed.

17. Shortly after the marriage Sheila's mental health began to fail and the couple divorced in May 1982. During 1983 Sheila was admitted to a psychiatric hospital and subsequently was diagnosed as a paranoid schizophrenic. In March 1985 she was re-admitted to hospital before being discharged a little under four weeks later. For the months before their death, the children had been living with their father, although seeing their mother frequently. On 4 August 1985 (three days before the killings)

Colin Caffell had taken his ex-wife and children to spend a few days with their grandparents at the farm in Essex.

18. The appellant, Jeremy Bamber, was born on 13 January 1961 and is now 41 years old. He too was educated privately before he attended college in Colchester and then spent time in Australia and New Zealand. For the year or so before the killings the appellant had worked with his father at the farm. He lived at 9 Head Street in Goldhanger, a house, which had been bought by his parents. The village of Goldhanger is some 3 to 3½ miles from White House Farm. By car it would take some five minutes to travel between the two. On a bicycle it would take about fifteen minutes by the shortest route.

19. In 1983 the appellant met Julie Mugford a student at Goldsmith College in London and they began a relationship which lasted until shortly before his arrest in September 1985.

20. The Bamber family had interests in other farming properties in the area and also in the Osea Road Caravan site which was owned jointly by June Bamber, her sister Pamela Boutflour, Ann Eaton (June's niece) and the appellant. The value of the joint estate which the appellant stood to inherit after the killings was some £435,000.

Relevant events before 7 August 1985

21. Anthony Pargeter, Nevill Bamber's nephew and a competition standard shot, stayed at White House Farm between 26-28 July 1985. He saw the .22 rifle in the gun cupboard in the ground floor office. The telescopic sights and sound moderator were attached and the gun appeared in a "new" condition. There were no scratches or marks upon it. Later the appellant, himself a good shot, took the rifle out for some target practice.

22. The Bamber's housekeeper/cleaner saw Sheila Caffell several times during the course of Monday, 5 August. She saw nothing unusual in Sheila's behaviour. The next day, Sheila was seen with her children on several occasions by Julie and Leonard Foakes, who were working on the farm. She appeared happy and all was apparently well.

23. Barbara Wilson, the farm secretary telephoned the farmhouse at 9.30 p.m. and spoke to Nevill Bamber. He was not cheerful and Mrs Wilson thought she had interrupted an argument. In evidence she described Nevill as abrupt, very impatient and very short. Pamela Boutflour, June Bamber's sister also telephoned the house that evening at about 10 p.m. She spoke first with Sheila Caffell who was quiet and then to her sister. Mrs Boutflour noted nothing unusual in her sister's mood or in their conversation.

The appellant's telephone call to the police

24. In the early hours of Wednesday, 7 August the appellant telephoned Chelmsford Police Station on a direct line number as opposed to the 999 emergency call system and spoke to PC West. He said, "You've got to help me. My father has just rung me and said, "Please come over. Your sister has gone crazy and has got the gun." Then the line went dead". He explained that he had tried to ring his father back at White House Farm but he could not get a reply.

25. Using a radio link PC West contacted Malcolm Bonnet at the Chelmsford H/Q Information Room. PC West then spoke to the appellant again, who complained at the time the officer was taking. He said, "When my father rang he sounded terrified". The appellant was told to go to the farm and to wait there for the police. PC West described the appellant as sounding "very laconic" and calm during the first part of their conversation and said that there was no sense of urgency. When he spoke to him again the appellant appeared "more urgent and distressed in his manner".

26. PC West recorded the time of the appellant's call as 3.36 a.m. At trial it was accepted that the officer had misread a digital clock. The officer's contact with Mr Bonnett was recorded as being at 3.26 a.m. and it seems clear that the appellant's call must have been at 3.26 a.m. or very shortly before.

27. At 3.35 a.m., Mr Bonnet arranged for a police car to go to White House Farm. A check made by a British Telecom operator of the telephone line to the farm was made at 4.30 a.m. The receiver was off the hook and all the operator could hear was the sound of a dog barking.

The arrival of the police at White House Farm

28. PS Bews, PC Myall and PC Saxby drove from Witham Police Station passing the appellant in his car on their way to the farm. He was travelling at a speed very much slower than their vehicle. Ann Eaton's evidence was that the appellant was normally "a very, very fast driver". The appellant's car arrived at the farmhouse 1-2 minutes after the police vehicle.

29. The appellant told the officers about the telephone call from his father, adding that it sounded as though someone had cut him off. When asked if it was possible that his sister was inside with a gun he said yes. He told the police that he did not get on with her. He was asked if it was likely that his sister had gone berserk with a gun and he replied, "I don't really know. She is a nutter. She's been having treatment." When asked why his father had called him and not the police, he said that his father was not the sort of person to get "organisations" involved, preferring to keep things within the family. When asked why he had not dialled 999, the appellant said he did not think it would make any difference to the time it would have taken for the police to arrive.

30. Having walked to the house from the lane there was further conversation. The appellant told the police that Sheila Caffell could use a gun. He said they had gone target shooting together and she had used all the guns in the house before. In the light of what they were told the uniformed officers requested armed assistance before any attempt to search the house was made. The appellant dictated a list of the firearms kept at the house. He told the police that he had loaded the .22 automatic rifle the previous night because he thought he had heard rabbits outside. He said he had left the gun on the kitchen table with a full magazine and a box of ammunition nearby. Those who saw the appellant at the scene at that time described him as remarkably calm. At some stage during their conversations that morning PC Myall and the appellant spoke about motor cars. The appellant said that the Osea Road Caravan Site company, "would be able to stand him a Porsche" car at some point during the year.

31. Armed officers from the Essex Police Tactical Firearms Unit arrived at the farm at about 5 a.m. There was further conversation with the appellant. At about 5.30 a.m. he said to PS Adams, "What if anything has happened in there, they are all the family I've got". He became visibly upset and asked to telephone his girlfriend, Julie Mugford, who was later driven to Essex from London.

32. Reconnaissance of the farmhouse revealed all the doors to be shut, as were the windows save for one in the main bedroom on the first floor. At about 7.30 a.m., the decision was made to enter the farmhouse and not long afterwards officers moved into place. Through the kitchen window, an officer observed the body of what appeared to be a woman but was in fact Mr. Bamber. Entry was then forced through the rear door which had been locked from the inside.

The discovery of the bodies and the scene within the house

33. In the kitchen the police found Nevill Bamber's body slumped forward over an overturned chair next to the hearth, so that his head was just above a coal scuttle. The police evidence was that there were other chairs and stools upturned and broken crockery, sugar and what appeared to be spots of blood on the floor. A ceiling light lampshade had also been broken. It will be necessary to address further these matter later but on the evidence available at trial, it appeared as though a violent struggle had taken place. On one of the surfaces there was a telephone with the receiver off the cradle. A quantity of .22 shells was beside it.

34. Subsequent searches of this room revealed Nevill Bamber's blood stained wristwatch under a rug and a piece of broken butt from the rifle on the floor.

35. Upstairs the bodies of June Bamber and Sheila Caffell were found on the floor of the main bedroom. That of Mrs Bamber was very heavily bloodstained and lay by the doorway. Sheila Caffell's body was by her parents bed. The .22 rifle (with the sound moderator and telescopic sights removed) was on her body with her right hand resting lightly upon it and with the muzzle of the weapon just below wounds to her neck.

Immediately to her right, resting on the upper right arm and the floor, was a Bible that belonged to June Bamber.

36. The bodies of Daniel and Nicholas Caffell were found in their beds in another bedroom.

37. Firearms officers inspected the gun cupboard in the ground floor office to make sure that the other weapons were safe. Unaware of the possibility that anything in that cupboard might have played a part in the killings, neither they nor any other police officer sought to examine the cupboard or search for any sound moderator or sights for the .22 rifle.

38. At 8.10 a.m., Dr Craig attended the scene to formally certify the deaths. In cross-examination at the trial he said the deaths could have occurred at any time during the previous night. The appearance of Sheila Caffell's body suggested to him that the wounds had been inflicted by her own hand. In answer to the judge the witness made it clear this was not an opinion the jury should rely upon as a true indication that the injuries had been self-inflicted.

39. Dr Craig also saw the appellant outside the farmhouse. He said he appeared to be in a state of shock. At one stage he broke down and cried and he also appeared to vomit. The appellant told the doctor there had been "some considerable discussion" amongst the family about the future of Sheila Caffell's children the previous evening, during which the question of their being fostered had been raised. He said that the family was concerned that his sister had been abusing the children.

Post-mortem examinations

40. The bodies were taken to the Chelmsford and Essex Mortuary where post- mortem examinations were conducted. The bodies of Nevill Bamber and Sheila Caffell were examined on 7 August, and those of June Bamber and the twin boys the following day.

41. Nevill Bamber, who was wearing his pyjamas had been shot eight times. There were two wounds to the right side and two to the top of the head. If not immediately fatal, the combined effect of these four injuries would have been immediate unconsciousness and incapacitation. There was a wound to the left side of the lip and another to the left part of the lower jaw. This injury caused severe fracturing of the jaw, of the teeth in that area and damaged soft tissue in the neck and the larynx. These features of this particular injury and the resultant flow of blood into the mouth meant, in the pathologist's opinion, that Nevill Bamber would not have been able to engage in purposeful talk. There were also gunshot wounds to the left shoulder and a grazing wound above the left elbow.

42. The examination of Nevill Bamber's body also revealed black eyes and a broken nose, linear bruising to the cheeks, lacerations to the head, linear type bruising to the right forearm, bruising to the left wrist and forearm and three circular burn type marks to the back. The linear marks were consistent with Mr Bamber having been struck with a long blunt object, possibly a gun.

43. Mrs Bamber was bare footed and dressed in a nightdress. She had received seven gunshot wounds, of which one to her forehead and one to the right side of the head would have caused death very quickly. She also suffered shots to the right side of the lower part of her neck, the right forearm, two injuries to the right side of the chest and to the right knee. There was a great deal of blood on her body and clothing and from its pattern, it appeared that at some stage of the attack she had been in an upright position

44. Daniel had received five wounds from a gun to the back of his head, which appeared to have been fired in an arc and in quick succession. Nicholas had three gunshot wounds to his head.

45. Sheila Caffell was also dressed in her nightwear and bare-footed. She had received two contact or near contact bullet wounds to her throat. The higher of the two wounds would have killed her almost instantaneously. The lower of the two would have been a fatal injury but not one where death would have occurred immediately and a person having suffered such an injury may have been able to stand up and walk around for a little time. The lack of heavy blood staining to Sheila Caffell's nightdress suggested that this had not happened here. The lower of the two injuries must have been the first since it had led to haemorrhaging inside the neck and this would not have occurred to the same extent if the other wound, which would have been immediately fatal, had preceded it. Dr Vanezis gave evidence that the nature of the blood stains to the nightdress suggested that Sheila Caffell was sitting up when she received both injuries. After the second injury she would have immediately fallen back. There was no evidence of any other mark or injury to Sheila Caffell's body such as might be suffered during a fight or in a scuffle.

46. From the pathological evidence alone, the pathologist could not say, one way or the other, whether Mrs Caffell had been murdered or had taken her own life.

The condition of Sheila Caffell's body and her clothing

47. The firearms officers who were the first to see her body noted that her feet and hands were "perfectly clean". Her fingernails were well manicured and not broken and there were no marks or indentations on any of her fingers. All her fingertips were clean and free from any blood, dirt or powder and there appeared to be no trace of any lead dust or coating which is usual when handling .22 ammunition.

48. The act of loading the magazine of an automatic weapon (carried out at least twice in this case) would be expected to leave visible traces of the lubricant and the materials from the bullets on the hands.

49. DC Hammersley, the Scenes of Crimes Officer placed plastic bags over Sheila Caffell's hands and feet before her body was removed from the farmhouse. He saw some blood staining to the back of the right hand, but apart from that the hands, to his eye were clean and the nails intact. The deceased's feet were also free from blood staining and from any debris such as sugar.

50. Following removal of the bags at the mortuary, Sheila Caffell's hands and forehead were swabbed. Extremely low traces of lead were detected when the swabs were examined. Such levels being consistent with the levels found from the handling of every day things around the house. These results were compared to hand swabs taken from volunteers at the laboratory who were required to load the magazine with eighteen rounds of ammunition. Significantly higher traces of lead were found than those recorded on the hands of Mrs Caffell. The scientist Mr Elliott gave evidence that if Sheila Caffell had loaded eighteen cartridges into a magazine he would have expected the hand swabs to have revealed appreciably higher deposits of lead.

51. Mrs Caffell's nightdress was bloodstained. When tested the blood was consistent with being her own blood. The garment was also examined for the presence of any firearm discharge residues or oil from the rifle. No such traces were found. The scientist gave evidence that there would be a strong chance of finding such residues or markings on the clothing of an individual who had fired a rifle twenty-five times.

52. The Bible found by Sheila Caffell's body, belonged to her mother and was normally kept in a cupboard to the right of her bed. It was examined for fingerprints. Many belonged to June Bamber and there were a small number of insufficient detail for comparison, save for one which appeared to have been made by a small child.

53. Analysis of samples of Sheila Caffell's blood and urine taken during the post mortem examination indicated that she had consumed cannabis some days before her death and she had made therapeutic use of the prescribed anti-psychotic drug, haloperidol.

Search and examination of White House Farm

54. The senior police officers who attended the scene, led in the initial stages by DCI Jones (who died in May 1986), came quickly to the view that Sheila Caffell had murdered her parents and children before committing suicide. Inevitably this had an impact upon the nature and thoroughness of the searches and examination of the farmhouse.

55. The house appears to have been photographed first, with particular attention paid to the bodies and the rooms in which they were found. Thereafter samples and swabs

were taken from some of the blood-staining. There was then a search directed principally at the recovery of bullets and cartridge cases and the seizing of other exhibits.

56. It seems clear that there was not the carefully ordered scientific examination or detailed search of the type that would have occurred today. Other guns were left at the premises and there was no attempt, at that stage, to search for any sound moderator or sights that may have been associated with the murder weapon. There were attempts to examine possible means of entry and exit. As other lines of enquiry progressed officers and scientists returned to the address on a number of occasions to conduct further searches and examinations. One of the grounds of appeal relates to the examinations made of the windows and we will detail these when we consider that ground.

57. Five carpet samples taken from the main bedroom were examined and found to bear numerous spots of dripped blood. These were tested and found to match the blood groupings of June Bamber. Wallpaper from the hallway to the left-hand side of the kitchen door was found, on examination, to be stained with human blood consistent with the blood grouping shared by Nevill Bamber and the twin boys. Since the boys seem to have been shot in their beds, it is a clear inference that this was Mr. Bamber's blood.

The finding of the cartridges and nature of the wounds to the deceased

58. In all twenty-five cartridge cases were recovered from the scene and the firearms expert gave evidence of his opinion as to which of these could be associated with each particular victim.

59. Two bullets were recovered from June Bamber's side of the double bed in the main bedroom and were consistent with the shots that had caused the injuries to her right shoulder, chest and forearm.

60. Found in or just outside the bedroom were thirteen cartridge cases. Seven would account for the shots into June Bamber, two for the wounds suffered by Sheila Caffell, leaving four cartridge cases that had been fired at Nevill Bamber. Three further cartridge cases were found in the kitchen, with a further case on the stairs leading up from the kitchen. If one accepts that the four shots to the head which would have immobilised and killed Nevill Bamber were fired in the kitchen where his body was recovered, it would follow that he had received the less serious injuries upstairs in the bedroom and was then able to make his way downstairs where he was subsequently killed.

61. The last eight cartridge cases were recovered in the children's room and accounted for the injuries they suffered.

62. Mr Fletcher also gave evidence of the range at which the shots had been fired. The lower (and not immediately fatal) of the injuries suffered by Sheila Caffell was caused when the muzzle of the gun was within three inches of the throat. The upper injury was a contact shot.

63. Of the seven injuries suffered by June Bamber, five were shots from the gun held at least one foot away from the body. The bullet wound between the eyes was fired from less than one foot away, and could have been with the gun in contact with the skin, although he viewed that as unlikely. Mr Fletcher was unable to estimate the range of the shot which had caused the injury to the right side of Mrs Bamber's chest.

64. In respect of the eight shots into Nevill Bamber's body, the six to his head and face were fired when the rifle was within a few inches of the skin. The remaining injuries to the arm were caused when the gun was at least two feet from the body.

65. As regards the twins, four of the five injuries suffered by Daniel were caused when the gun was held within one foot of his head, the fifth was from over two feet away. The three wounds to Nicholas were contact or close proximity shots.

Telephones

66. There were normally four telephones at White House Farm (although there was only one telephone line). A cream old-fashioned finger-dial telephone kept in the main bedroom (the bedroom telephone), a blue digital telephone in the first floor office (the office telephone), a cream cordless telephone kept in the kitchen but used around and outside the house (the cordless telephone) and a fawn digital telephone also kept in the kitchen (the kitchen telephone). The only telephone with a memory recall feature was the cordless telephone but this had been faulty and was collected for repair on the morning of 5 August 1985.

67. The telephone that had been found with the receiver off its cradle in the kitchen was in fact the bedroom telephone, which had been moved downstairs. The kitchen telephone had been hidden amongst a pile of magazines in the kitchen. The office telephone was in its normal place.

68. There was no evidence of telephone billing information of the sort which would be available these days. There was, however, expert evidence called as to the effect of a telephone call having been made from White House Farm to Goldhanger which was then abandoned by the caller with the receiver being left off the cradle, as claimed by the appellant. If such a sequence had occurred, the telephone link would have remained open either until the handset at White House Farm was replaced or until the handset at Goldhanger had been replaced and left in position for a period which could vary from 1 to 2 minutes, when an automatic interruption of the link would take place. Until one or other of these events, the appellant would have been unable to make any call from the Goldhanger telephone.

Examination of the rifle

69. The rifle was a German made Anschutz model 525 .22 self-loading rifle in good working order. Cartridges are loaded into a magazine, which has a capacity of 10. It is, as the jury found when they conducted the exercise themselves, progressively harder to load as the number of cartridges increases. Loading the tenth is exceptionally hard. Assuming a full capacity at the commencement of the shooting at the farm, the discharge of the rifle twenty-five times would require it to be re-loaded a minimum of two more times.

70. The stock was damaged, with a piece of wood missing. The broken piece of wood found on the floor in the kitchen was the missing part of the stock.

71. The rifle bore blood smearing on the barrel in the region of the fore-sight and around the mechanism and there were splashes of blood to the left side of the weapon. The appearance of the blood staining was consistent with it having been used to strike somebody who was already bleeding. On analysis the blood was found to be human blood but tests to determine grouping were unsuccessful. A "pull-through" on the barrel of the rifle was conducted for any traces of blood within the weapon. There were none.

72. The weapon was also examined for fingerprints. A print from the appellant's right forefinger was found on the breech end of the barrel, above the stock and pointing across the gun and Sheila Caffell's right ring fingerprint was found on the right side of the butt, pointing downwards. There were three further finger marks on the rifle, each of insufficient detail for identification purposes.

Recovery of the sound moderator

73. On 10 August 1985 members of the family, who were far from convinced that Sheila Caffell had been responsible for the killings, went to White House Farm with the executor of the estate, Basil Cock. During the afternoon David Boutflour found the sound moderator together with the telescopic sights for the murder weapon at the back of the gun cupboard in the downstairs office. His father, his sister Ann Eaton, the executor and the farm secretary all witnessed the recovery.

74. The silencer was taken to Ann Eaton's address for safekeeping and that evening members of the family examined it. They noticed that the "gun blue" of the surface had been damaged and there appeared to be red paint and blood upon it. The moderator was packaged up and the police were informed of the discovery. When collected by DS Jones on 12 August he noticed a grey hair, about an inch long attached to it. By the time the moderator had been delivered to the Forensic Science Service at Huntingdon the hair had been lost.

Scientific examination of the sound moderator

75. Traces of blood in the form of smears were found in three places on the outside of the moderator: on the flat surface at the muzzle end, in the knurled end and in the ridge at the gun end of the device. The blood on the outside of the moderator was confirmed to be of human origin but there were insufficient quantities to permit grouping analysis.

76. Inside the moderator, on the four or five baffles nearest to the end from which the bullet would exit, there was a considerable amount of blood. At one point blood had pooled to form a flake when it dried, and this flake was subjected to group testing. Results were obtained for four of the five tests performed. Mr Hayward, the forensic scientist said that they showed that the blood could have come from Sheila Caffell but not from any of the other individuals involved. Mr. Hayward said that there was a possibility that the blood could be a mixture of blood from more than one person and if it was, a mixture of blood from Nevill Bamber and June Bamber could account for the findings in the grouping tests. However he judged that possibility to be a "remote" one.

77. Mr Hayward added in evidence that he would be very surprised to find blood from a person, who had not been shot with a contact or very close contact shot, inside the muzzle of the moderator. He concluded that since (a) the blood inside the moderator belonged to the same group as Sheila Caffell and (b) there was no blood within the barrel of the rifle of the gun, that she had been shot whilst the moderator was fitted to the rifle.

78. Mr Fletcher, the firearms expert also expressed the opinion to the jury that the sound moderator had been fitted to the gun when Sheila Caffell had been shot. He attributed the presence of blood within the device to the phenomenon of "back-spatter". This occurs when the expansion of gases created by a bullet being discharged creates back pressure which in turn propels blood from the wound back towards the weapon. This effect is only seen when the muzzle of the weapon is in contact with, or very close contact to, the victim.

79. Exercises and tests conducted at the laboratory established that it would have been physically impossible for a woman of Sheila Caffell's height and reach to have operated the trigger and shot herself with the sound moderator attached to the weapon. She simply could not have reached it. Thus she could only have committed suicide if the sound moderator had been removed from the rifle.

80. Having seen what they believed to be red paint on the moderator, members of the deceased's family returned to the farmhouse and examined the red painted mantel shelf above the Aga in the kitchen. On the underside they found what appeared to be recent damage. On 14 August 1985 the underside of the mantel shelf was examined by one of the scenes of crime officers, DI Cook. He found score marks and took a sample of the paint from the area. The paint sample was compared with the paint

recovered from the knurled end of the moderator and each was found to contain the same fifteen layers of paint and varnish. On 1 October 1985 casts were taken of the marks and impressions found on the underside of the shelf. These were also consistent with having been caused by the moderator and there had been more than one contact between it and the shelf.

Sheila Caffell and her mental state

81. Clearly of importance to the theory that Sheila Caffell killed the others and then took her own life was available evidence about her and her mental state at the time. This, of course, became an important part of the defence case, and it is convenient to review this aspect of the matter at this stage.

82. According to Pamela Boutflour (June Bamber's sister), Sheila Caffell was not a violent person and she had never known her to use a gun and in the opinion of the witness she would not know how to use one. The evidence of Ann Eaton (June Bamber's niece) was that she had never seen Mrs Caffell with a gun and that she "would not know one end of the barrel of a gun to another". The witness added that Sheila Caffell was not a practical person and had very bad hand-eye co-ordination. Other witnesses called during the trial also said they had never seen her with a gun, save for an occasion when she had been photographed carrying one as part of a modelling assignment.

83. Colin Caffell (her ex-husband) said that although there had been violent outbursts by Sheila during their time together, this had involved the throwing of pots and pans and the occasional striking of him. To his knowledge she had never harmed the children or behaved violently towards anybody else.

84. The defence at trial called Dr Ferguson, a Consultant Psychiatrist at St Andrew's Hospital in Northampton, who had the care of Sheila Caffell between August 1983 and her death. Mrs Caffell had been referred for treatment by her general practitioner and seen by Dr Ferguson for the first time on 2 August 1983. Then she was in a very agitated and psychotic state and he admitted her for in-patient treatment on 4 August. Dr Ferguson came initially to the diagnosis of a schizo-affective disorder characterised by disturbance of thinking and perception. She was depressed in a paranoid way, struggling with the concept of good and evil and caught up with the idea that the Devil had taken her over and given her the power to project the Devil's evil to others including her twin sons. In particular she spoke of a fear she could create in her children an ability to have sex and do violence with her. In the discharge letter Dr Ferguson made reference to her morbid thoughts, which included the idea she was capable of murdering her children or communicating an ability to them to kill. He said she had spoken of suicidal thoughts although he did not regard her as a suicide risk. Miss Caffell responded to the treatment at hospital and was discharged on 10 September 1983.

85. Dr Ferguson continued to see Sheila Caffell as an outpatient and during that period made a firm diagnosis that his patient was suffering from schizophrenia. During that period she was prescribed the anti-psychotic drug, Stelazine. Whilst she was then pre-occupied with her ability to have more children, there were less obvious signs of mental illness and no evidence of acute disturbance.

86. On 3 March 1985 Sheila Caffell was re-admitted to hospital in Northampton. Then she was agitated, very disturbed and in an anxious state. Her thinking was again very involved with the concepts of good and evil, but on this occasion more directly related to excessive religious ideas. She made no reference to any thoughts concerning her children or parents. As before she responded to treatment and was discharged on 29 March 1985.

87. Thereafter Sheila Caffell received monthly injections of Haloperidol, a drug used to treat agitated states which had anti-psychotic and tranquillising properties. It also has sedative side effects at the levels prescribed.

88. When told on 8 August 1985 that Sheila Caffell had killed her parents and children and then herself, Dr Ferguson said this did not fit "his concept" of his patient. He did not feel she was someone who would actually be violent to her children or towards her father, although she was a highly disturbed woman and had expressed disturbed feelings towards her mother.

89. In cross-examination Dr Ferguson agreed that Mrs Caffell's condition was well known to her family. There had never been manifestations of violence either when her illness was being managed or when in a highly disturbed state in hospital. In the context of what was alleged to have occurred Dr Ferguson found it possible to conceive of Sheila Caffell wanting to harm her mother or herself but "difficult to conceptualise her harming her children or her father". He had always felt Sheila loved and cared for her children and saw her father as a very secure, caring and strong support in her life.

90. Dr Bradley, another Consultant Psychiatrist, was also called by the defence during the trial to give general evidence of the features of "altruistic" killings and to confirm that it was not unusual that a female murderer should not have a history of previous violence. He also gave evidence that where parents kill children there may be an element of "over-kill" or the infliction of excessive violence.

91. Professor Knight, another defence witness, lent support to Dr Bradley's evidence as to the feature of excessive violence in parental killings. He also spoke of instances where the murderer (having killed their spouses in most cases) has then gone about some mundane or "ritualistic" task, such as cleaning up before committing suicide. In cross-examination he accepted the proposition contained in an article, which he himself had written some years earlier, that "women almost never commit suicide by shooting".

92. A number of other witnesses were called on the appellant's behalf at trial as to Sheila Caffell's mind. They included Farhad Emami (Freddie), a friend who gave evidence as to her mental state before the second admission to hospital, her relationship with her parents and her mood and appearance in the months before her death.

93. Also called on the appellant's behalf were Miss Grimster who had seen Miss Caffell on 30 March 1985. The deceased said she saw herself as a white witch and said she had once contemplated suicide. Nurse Heath from the Nottingham Hospital spoke of her low mood on one occasion and of a more optimistic one on another. Sandra Elston who saw Sheila Caffell on 31 July 1985 said the deceased appeared well and her only concern was about a poor haircut she had recently had.

Julie Mugford

94. Julie Mugford was 21 years old at the time of the offences and a student at Goldsmiths College at the University of London. She met the appellant in 1983 whilst working in Colchester during one of the vacations and they became boyfriend and girlfriend. During the relationship she met the appellant's parents, his sister and her children. In December 1984 the appellant had proposed to her.

95. On the day after the killings, Miss Mugford made a statement to the police. In that statement she said nothing adverse to the appellant. She spoke of receiving a telephone call from him at about 3.30 a.m. on the night of the killings. She said that he "sounded disjointed and worried" and he said "There's something wrong at home." She had been sleepy and had not asked what it was.

96. On 7 September, Julie Mugford contacted the police and told them that she had omitted matters from her earlier statement. She then gave a very different account that she was to repeat to the jury in evidence.

97. She said that after she met the appellant, it quickly became obvious to her that the appellant disliked his family. He resented his parents whom he claimed, "tried to run his life" and he said he did not get on with Sheila Caffell. He was angry that she lived in an expensive flat in Maida Vale, which was maintained by his parents. Between July and October 1984, he said that his parents were getting him down and he said that he wished "he could get rid of them all". In evidence Miss Mugford said this included his sister and children because "if he was going to get rid of them it would have to be all of them". The appellant explained to her that his "father was getting old, his mother was mad … Sheila was mad as well … and in respect of the way the twins had been brought up, … they were emotionally disturbed and unbalanced". The appellant also told Julie Mugford he had seen copies of his parents' wills.

98. Miss Mugford's evidence was that the conversations about killing the appellant's family became more frequent between October and December 1984. At first he spoke of being at the house for supper and then drugging the family before driving back to Goldhanger in his car. He said that he then intended returning to the farmhouse on

foot or on bicycle and burning the house down. The appellant then appeared to realise that it would be difficult to burn the premises down especially since it would have the consequent effect of destroying the valuables within the property.

99. Later the appellant said he had decided to shoot his family and he told her that he had discovered that the catch on the kitchen window did not work and he could gain access to the house in that way. The appellant said he planned to leave the address by a different window, which latched when it was shut from the outside. He spoke of Sheila Caffell being a good scapegoat because of her admission to hospital during Easter 1985 and said that afterwards he would make it seem as if Sheila had done it and then killed herself.

100. Julie Mugford spent the weekend before the killings with the appellant in Goldhanger. During that period he dyed his hair black and she saw his mother's bicycle at the address. Other witnesses saw the bicyle at the appellant's home following the killings. Robert Boutflour saw mud on the walls of the tyres but not on the tread, as if it had been through deep mud.

101. At about 9.50 p.m. on Tuesday, 6 August the appellant telephoned Miss Mugford. During their conversation that evening he said he was "pissed off" and had been thinking about the crime all day and that it was going to be "tonight or never". The following morning she was awoken by a telephone call from the appellant to her lodgings in London. The appellant said to her, "Everything is going well. Something is wrong at the farm. I haven't had any sleep all night … bye honey and I love you lots". Miss Mugford did not take him seriously and went back to sleep. As to the timing of this call, Miss Mugford said in evidence said that it was between 3.00 and 3.30 a.m.

102. A number of Miss Mugford's housemates were disturbed by the telephone call and provided additional evidence as to timing. One, Helen Eaton, had been consulted by Julie Mugford, when the latter was first making a statement to the police about it. She put the time at 3.00 a.m. in evidence but agreed in cross-examination that it might have been as late as 3.30 a.m.

103. Another flat mate, Sue Battersby, said that she was positive that when she was disturbed, she had looked at her clock and the time shown was 3.12 a.m. However, she pointed out that she was in the habit of keeping her clock about 10 minutes early and police checks made on the clock confirmed this to be the case. If her evidence was right and if the clock was, as the evidence suggested, ten minutes fast, the time was probably no more than a minute or two after 3 a.m.

104. Joanna Woad gave evidence that when she heard the telephone, she looked at her digital clock and all that she noted was that the time was 2 something. This meant that according to her clock the time was between 2.00 and 2.59 a.m. If it was at the end of that bracket, it differed very little from the time suggested by Susan Battersby's evidence.

105. Miss Mugford described how later during the morning of Wednesday, 7 August 1985, the appellant telephoned her again. He said he could not speak for long, Sheila had gone mad and he told her not to go to work because a police car would come and pick her up. Miss Mugford was then taken to the house in Goldhanger, where out of earshot of the police officers, the appellant told her, "I should have been an actor".

106. That evening when they were alone, Miss Mugford said that she asked the appellant whether he had done it. He said he had not, but that he had arranged for a friend of his, Matthew MacDonald, to kill his family. He spoke of what he had told MacDonald as to ways of getting in and out of the farmhouse undetected and he said that one of his instructions was for MacDonald to ring him from the farm on the telephone which had the memory redial facility so that if the telephone was checked by the police it would provide him with an alibi.

107. The appellant reported that MacDonald had said that everything had been done as instructed but there had been a bit of a struggle with the appellant's father. He said MacDonald had told him, "for an old man he was very strong and put up a fight" and that MacDonald had then become angry and shot seven bullets into Nevill Bamber. The appellant said that Sheila Caffell had been told to lie down and shoot herself last. He said that MacDonald had then placed a Bible on her chest to make it look as though she had killed in some sort of religious mania. The appellant said the children were shot in their sleep and so they had not felt anything and there was no pain. He told Julie Mugford that MacDonald had been paid £2,000 for the killings.

108. As a result of hearing this account, the police arrested not only the appellant but also MacDonald. Their inquiries showed that Macdonald could not have been at the farm that night and he was called by the prosecution to give evidence, that was not disputed, to confirm that he had nothing to do with the shootings.

109. In the course of her evidence Miss Mugford explained that initially she did not want to believe what the appellant had told her but then she became scared and the appellant had threatened her that if anything happened to him she would be implicated.

110. She and the appellant spent the following weekend with Colin Caffell and on 12 August she went to the house in Goldhanger with the appellant. There he told her that the police had been a bit slack because they had not done all the fingerprinting at White House Farm. On 16 August Miss Mugford attended the funerals of Nevill and June Bamber with the appellant and then on 19 August the funerals of Sheila Caffell and her children. During that period the witness spoke of the appellant taking her out for frequent meals, and buying expensive clothes for himself and for her. She described the appellant's mood during this period as "very happy". After one of the funerals they drank champagne and cocktails.

111. Miss Mugford spent the weekend of 17-18 August 1985 with the appellant in Eastbourne and it was then that she began to ask how he could behave as he was

doing. She kept telling him "£2,000 for five lives". The following week the couple went to Amsterdam for two days, staying in expensive hotels and eating out. On 27 August Miss Mugford returned alone to her lodgings in London and she told her friend Susan Battersby of what the appellant had done.

112. On Saturday 31 August Julie Mugford asked the appellant whether he loved her. He said he did not know. Again they spoke about the murders. Miss Mugford said she could not cope with him behaving so normally and asked why he had told her what had happened. She said she felt guilt for the two of them. The appellant told her he was doing everybody a favour and there was nothing to feel guilty about. Later that night the appellant told her that she was the best friend he had ever had and he had entrusted his life to her.

113. On Tuesday 3 September the couple met again in London at the flat which had belonged to Sheila Caffell. Again Miss Mugford raised the question of their relationship and his part in the killing. During their conversation the appellant received a telephone call from an ex-girlfriend and Miss Mugford heard him asking her out. She became angry and threw an ornament box at a mirror and then slapped the appellant. He became very angry and twisted her arm up behind her back. Four days later, she went to the police.

114. During the course of making her witness statements in September, Julie Mugford admitted that at Easter 1985 she had helped the appellant steal money from the offices of the Osea Road Caravan site which was owned by the appellant and various members of the family. On this occasion he had stage-managed the scene to give it the appearance of a burglary by an outsider. Some £970-£980 had been stolen which was used in part to buy a lavish meal.

115. Miss Mugford also admitted that she had used a cheque book belonging to Susan Battersby which had been falsely reported as stolen to obtain some £700 of property in Oxford Street. She told the jury that she and Miss Battersby had repaid the money to the bank in October 1985 and that she had been cautioned for the offence.

Other evidence of the appellant's dislike of his family

116. Other evidence was given which supported the evidence of Miss Mugford that the appellant disliked his family. Mary Mugford (Julie's mother) said the appellant had often told her that he hated his adoptive mother and he described her as quite mad.

117. During the winter of 1984 the appellant told one of the farm workers, "I'm not going to share my money with my sister" and he had always given the impression he did not get on with Sheila Caffell.

118. James Richards, another student from Goldsmiths College who had met the appellant through Julie Mugford, heard him talk of his parents in about February 1985. He

claimed they kept him short of money and that his mother was a religious freak. He said, "I fucking hate my parents".

119. In about March 1985, in the context of a discussion about the security at the Osea Road caravan site, the appellant told his uncle Robert Boutflour, "… I could kill anybody … I could easily kill my parents".

120. Witnesses were called on the appellant's behalf in respect of this aspect of the case. They included a sales representative and a chartered surveyor who said they had met the appellant and his father and that they had never heard the appellant say anything nasty about his family.

The appellant's witness statements, arrest and interviews

121. In his witness statement of 7 August 1985, the appellant dealt with his family background, dealing in particular with Sheila's mental health. He alleged she had hit her children, spoke of her depression and what he termed her "paranoia schizophrenia" and told the police about her admissions to hospital. After her second discharge he said she was unable to cope and appeared vacant. He said he and his sister had had an amicable relationship and he understood the problems she faced.

122. The appellant said Colin Caffell had brought Sheila and the children to the farm on Sunday, 4 August where they were to stay for a week.

123. On Tuesday, 6 August he described working at the farm until 8-9 p.m. before returning to the farmhouse for supper where he stayed for about half an hour. The appellant said there was a discussion between his parents and Sheila about future plans for the children and mention was made of foster parents. She appeared "vacant" during this conversation.

124. During this conversation the appellant said he saw rabbits outside the house so he took the .22 rifle from the office/den, loaded it with eight to ten rounds from a box of ammunition that he left in the kitchen and went outside. In fact he fired no shots outside and he then left the gun in the kitchen having removed the magazine and the bullet which was in the breach. The appellant said he had left the farmhouse shortly before 10 p.m. Nobody then appeared distressed and he drove home. He went to bed at about 11 p.m.

125. The appellant said he was awoken at about 3.10 a.m. by the telephone call from his father. His father told him, "Sheila's gone crazy, she has got a gun". After a few seconds the line went dead. He tried to call back immediately and found the telephone at the farm to be engaged. He then telephoned Chelmsford Police Station and thereafter went to the farm to meet the police. Before leaving he called Julie Mugford at about 3.25 a.m.

126. In a second witness statement made the following day, 8 August 1985, the appellant gave a little more detail of the conversation which he said had taken place between his parents and Sheila Caffell. He also said the sights and the silencer were not with the rifle. The appellant said his sister had not previously fired the gun, although she had walked with him when he had been out shooting with his father.

127. Following Julie Mugford's visit to the police, the appellant was arrested on 8 September 1985 and interviewed during the course of the following three days.

128. Throughout the interviews the appellant maintained his innocence and the account that he had given in his witness statements. He denied any form of confession to Julie Mugford or any talk of planning to kill his family. He said she was lying because he had jilted her.

129. In respect of the additional matters raised during the interviews he said that his relationship with his mother had improved during the course of the last two years and things had been more loving between them. He said he loved his sister and did not dislike his parents. He denied they kept him short of money.

130. The appellant admitted committing the burglary with Julie Mugford at the Osea Road Caravan Site on 23/24 March 1985 when £980 had been stolen. He said he had done it to prove that the security at the site was poor.

131. He told the police that he had seen the draft wills his parents had made leaving their joint estate to be shared between him and his sister.

132. The appellant agreed that his mother's bicycle had been at his home during the week before the killings.

133. He said that he had fired the rifle with the sights both on and off. He claimed that the gun would not fit into its case with the silencer attached and so it was used mainly with the silencer off.

134. At one point during the interviews the appellant said that following the call from his father he had telephoned Julie Mugford before the police. It was pointed out to him that in his earlier witness statements he had said he rang the police immediately upon receipt of his father's call and only after calling the police had he rung Miss Mugford. He responded that he may be confused about the sequence of telephone calls. He could not explain why having received the call from his father he had not immediately telephoned 999.

135. He told the police that there were occasions when he gained entry to his parents' home by way of a number of the downstairs windows including those in the kitchen

and the bathroom. He explained that he used a knife to move the catches in order that the window could be opened from the outside.

136. The appellant was bailed from the police station on 13 September 1985. Some days later he went on holiday to the South of France. On his return to this country on 29 September he was re-arrested and charged with the five murders.

The Appellant's Evidence at Trial

137. No transcript has survived as to the appellant's evidence in chief, although it seems clear from the summing up that it was entirely consistent with that which he had told the police. A transcript of his cross-examination is available. In cross-examination the appellant said Sheila Caffell had frequent delusions and had spoken to him of suicide.

138. He admitted that the burglary at the caravan site had been motivated by greed and that by breaking a window and scattering papers around he had deliberately sought to give the impression it had been committed by somebody other than him.

139. Apart from Julie Mugford the appellant suggested that other witnesses had told lies about him during the trial. They included Mrs Mugford, James Richards, Dorothy Foakes and Robert Boutflour.

140. He admitted enjoying the good things in life – restaurants, wine bars, travelling, fast cars etc. In respect of the conversation with PC Myall about the Porsche car, the appellant said he was in fact referring to a kit model car made by a company called Covan Turbo who produced vehicles looking very similar to Porsche vehicles but at a cost of between £1-2,000.

141. The appellant claimed to have returned to the farmhouse within a day or two of his release from the Police Station, i.e. a day or two from the 13 September, and gained entry via the downstairs bathroom window. He said he had done this because he had left his keys in London and needed some documents for his trip to the South of France. The appellant did not accept that that had been an unwise thing to do bearing in mind the circumstances nor that it would have been easy for him to have borrowed keys from the housekeeper who lived nearby.

142. He described his father as reasonably careful with guns and agreed that had Mr Bamber seen the rifle lying around in the kitchen he would have put it away in the gun cupboard. He agreed it would have taken him 30 seconds to have returned the gun to its cupboard and that he had been lazy.

143. The appellant confirmed he had not seen his sister fire a gun as an adult.

144. Having received the telephone call from his father, the appellant said that it had not crossed his mind to use the 999 system to call the police. Instead he described spending a little time looking up the number for Colchester Police Station. On that particular page of the directory (which he was shown in the witness box) it reads in bold type, "In emergency call the operator (dial 999 where appropriate) and ask for the police". The appellant agreed that on his account, even though his father had asked him to come quickly, he had then telephoned Julie Mugford and then driven slowly to the farmhouse. He agreed it would also have been possible for him to have called one of the farm workers. He said he had not considered that.

The Prosecution Case at Trial

145. The prosecution case at trial was that the appellant, motivated by hatred and greed, had planned and carried out the killings. Having left White House Farm at about 10 p.m. on Tuesday 6 August 1985 he had returned by bicycle (taking a route which avoided the main roads) in the early hours of the following morning.

146. He had the means and knowledge to gain entry to the address, one such route being through the bathroom window. He then took the rifle, with the sound moderator attached as normal, and made his way upstairs to where the members of his family were sleeping.

147. The precise sequence of the killings was unclear. June Bamber was shot whilst still lying in bed but had managed to get up and walk a few steps before she collapsed and died by the main bedroom door. Nevill Bamber was also shot in the bedroom but was able to get downstairs into the kitchen where there was a violent struggle before he was overwhelmed and then shot a number of times in the head. The children had been shot in their beds as they slept.

148. Sheila Caffell, probably in a sedated state from her medication, was also shot in the bedroom. When she was dead the appellant set about arranging the scene to give the impression that it had been she who had murdered her family before taking her own life. The appellant then discovered, as he laid the gun upon her body, that it would not have been possible for her to have shot herself with the sound moderator attached since her arms were not long enough to reach down to the trigger. He therefore removed the silencer from the gun and then positioned the Bible by the body, knowing Sheila had been preoccupied with religion in the weeks before her death.

149. The appellant returned the moderator to the gun cupboard and before leaving the address called his home at Goldhanger, leaving the receiver off the hook, thus lending support to the alibi he would later rely upon. He then left the premises, one available route being to climb out of the kitchen window, banging it from the outside to drop the catch back into position and then cycled home.

150. Shortly after 3 a.m. he telephoned Julie Mugford, before calling the police at 3.26 a.m. He chose not to make a 999 call, drove slowly to the farmhouse, gave misleading

information about his sister and her knowledge of guns to create as long a delay as possible before the bodies were discovered.

151. The prosecution relied upon the following areas of evidence:

i) The appellant's expressed dislike of his family;

ii) His speaking of his plans to kill his family and thereafter his confessions to his girlfriend, Julie Mugford;

iii) The finding of his mother's bicycle at Goldhanger;

iv) The appellant's admitted ability to effect covert entry into and exit from the farmhouse and the finding of the hacksaw blade outside the bathroom window. His claim to have entered the house in that way after the first arrest was an attempt to explain these findings;

v) Because on the facts of the case it could only have been the appellant or Sheila Caffell who carried out the killings, the factors below proved they were not the responsibility of the appellant's sister:

a) Although seriously mentally ill, there had been no indication of any deterioration in her mental health in the days before the killings. Neither had she expressed any recent suicidal thoughts and the expert evidence was that she would not have harmed her children or her father;

b) Save for the appellant nobody had seen her use a gun and she had no interest in them. Sheila Caffell also had very poor co-ordination and would not have been capable of loading and operating the rifle nor would she have had the required knowledge to do so;

c) She would not have been able physically to have overcome her father (who was fit, strong and 6' 4" tall) during the struggle which undoubtedly took place before his death in the kitchen;

d) Her hands and feet were clean. They were not blood stained and neither was there any sugar upon them;

e) Hand swabs from her body did not reveal the levels of lead to be expected in somebody who must have re-loaded the magazine of the gun on at least two occasions; and

f) Her clothing was relatively clean and she was not injured in the way that might be expected of somebody involved in a struggle. Her long fingernails were still intact and undamaged.

vi) The sound moderator had on any view been attached to the rifle during the fight with Nevill Bamber in the kitchen. But if Sheila Caffell had committed suicide it must have been removed before she shot herself. The following aspects of the evidence established it was still in place on the gun when the appellant's sister was murdered:

a) The blood grouping analysis proved (on the particular facts of the case) that Sheila Caffell's blood was inside the moderator; and

b) Had the appellant's sister murdered the other members of her family with the moderator attached to the gun and then discovered she could not reach the trigger to kill herself, the moderator would have been found next to her body. There would have been no reason for her to have removed it and returned it to the gun cupboard before going back upstairs to commit suicide in her parents' room.

vii) The appellant's account of the telephone call from his father could be proved to be false for the following reasons:

a) His father was too badly injured to have spoken to anybody;

b) The telephone in the kitchen was not obviously blood stained;

c) As a matter of common sense, Nevill Bamber would have called the police before the appellant;

d) Had the appellant really received such a call, he would have immediately made a 999 call, alerted the farm workers who lived close to the farmhouse and then driven at speed to his parents home; and

e) Instead he had spoken to Julie Mugford before calling the police. When he subsequently contacted the Police, it was not by way of the emergency system.

viii) He stood to inherit considerable sums of money.

The defence case at trial

152. The defence answered the prosecution case in the following way:

i) The witnesses who spoke of the appellant's hatred and dislike of his family were either lying or had misinterpreted what he had said;

ii) Julie Mugford, the jilted girlfriend, had also lied to prevent anybody else being with the man she had loved;

iii) Nobody had seen the appellant cycling to and from the farm in the early hours of 7 August;

iv) Because the appellant had on a number of occasions before and after the killings entered the house by various ground floor windows there was no probative value in the finding of the hacksaw blade etc;

v) Sheila Caffell had killed her parents and children and then taken her own life for the following reasons:

a) She had a very serious mental illness and it was known that even those with no previous history of violence had killed. She had expressed the morbid thought of an ability to kill her own children;

b) Those who carried out "altruistic" killings had been known to indulge in ritualistic behaviour before committing suicide. Sheila Caffell may have replaced the moderator, changed her clothes and washed herself before killing herself, thus explaining the absence of blood staining, the minimum traces of lead on her hands and absence of sugar on her feet;

c) Having lived on a farm and been present at shoots, the appellant's sister would have understood how to load and operate the rifle;

d) The gun, the magazine and the rounds of ammunition had been left close at hand by the appellant in the room where he had heard an argument about placing the children in foster care;

e) The defendant bore no obvious signs of injury;

f) No bloodstained clothing of his had been recovered by the police; and

g) Dr Craig, Dr Vanezis and the first senior investigating officer had all proceeded on the basis that Sheila Caffell was responsible for the killings.

vi) There was a possibility that the blood in the moderator was not from Sheila Caffell, but represented a mixture of Nevill and June Bamber's blood;

vii) In respect of the telephone call from his father, the appellant had not initially appreciated the seriousness of the situation and then had become frightened to go to the farm alone.

The summing up

153. When Drake J. summed up to the jury, he suggested that there were three "crucial questions". The first, and he made clear that they were not in any order of importance, was whether they believed Julie Mugford? If they were sure that she had told the truth it meant the appellant had planned and carried out the killings. The second was whether they were sure that Sheila Caffell did not kill the members of her family and then commit suicide? The third was whether there was a telephone call in the middle of the night from Nevill Bamber to his son? If there was no such call then it inevitably undermined the whole of the appellant's story and he could have had no reason to have invented it, save to cover up his responsibility for the murders.

154. In dealing with the second question, whether Sheila Caffell may have killed the others and then committed suicide, the judge made clear that answering this question involved a number of different considerations. He suggested that one was "clearly of paramount importance", namely whether the second and fatal shot to Sheila Caffell was fired with the silencer on. If it was, she could not have fired that shot. He made clear that there were other considerations and the jury could come to the conclusion that Sheila Caffell did not carry out the killings "even without reference to the sound moderator". He added that the evidence relating to the sound moderator could, however, "on its own" lead them to conclude that the appellant was guilty.

The application for leave to appeal

155. The appellant sought leave to appeal against his convictions on grounds drawn by those who represented him at trial. The grounds upon which leave was sought related to the judge's summing up, alleging (a) that he had inaccurately assessed significant aspects of the prosecution case and omitted to refer to crucial aspects of the defence case, and (b) that he had with persistence and strength expressed opinions adverse to the defence.

156. Following rejection of the grounds by the single judge, the matter was heard by the full court. The Court rejected the criticisms of the summing up and refused leave. Lord Lane, LCJ giving the judgment observed:

> "What is sometimes overlooked is that a direction to the jury reflects the sort of case with which the Judge was dealing. A strong prosecution case will inevitably result in what may be strong comments. Exactly the same with a strong defence case, that may justify strong comments."

157. It seems clear from the judgment as a whole, that the Court were of the opinion that this was a strong prosecution case that merited the comments about which complaint was made. The court, therefore, rejected the proposed grounds and concluded that there was "nothing unsafe or unsatisfactory about this conviction",

158. With one exception, none of the grounds raised before us relate in any way to the matters put before the court on the earlier occasion. The one exception relates to the fact that stories emanating from Julie Mugford had appeared in the press shortly after the trial. This was despite the fact that the prosecution had informed the defence, following discussion with the witness, that she had not sold her story to the press nor was it her intention so to do. One of the grounds relates to the same matter and we will deal with it further when we come to consider that ground. In every other respect, the application for leave to appeal has no relevance to the issues we have to determine.

Events after refusal of permission to appeal

159. At the trial, with justification, Drake J. was critical of the thoroughness of the police investigation in its early stages, when on the jury's verdicts, the police had too readily accepted that this was murder by Sheila Caffell and her subsequent suicide, when the true picture was very different. The Essex Police held an internal police inquiry to look into these criticisms. This was conducted by an officer, Detective Chief Superintendent Dickinson, who subsequently reported to his Chief Constable on the matter. It is alleged that that report reveals evidence that was suppressed by the police, or which, at the very least, was not known to the defence at trial.

160. The appellant subsequently made a formal complaint to the Essex Police about their handling of his case. In 1991, the City of London Police at the request of the Home Office, carried out an investigation of the appellant's complaint. To conduct that inquiry a vast amount of documentation was gathered, access to which has been given to the appellant's legal advisers and some of the material gathered in that way is relied upon in support of the grounds of appeal.

161. On 24 September 1993, the appellant petitioned the Home Secretary seeking a reference to the Court of Appeal. During consideration of the petition, the Home Office declined to disclose to the appellant expert evidence that it had obtained.

162. On 25 July 1994, the petition was refused.

163. On 28 November 1994, the appellant succeeded in a challenge by way of judicial review of the decision refusing to supply the expert report. The Home Office then supplied the evidence and agreed to reconsider the petition in the light of any further representations that might be made on behalf of the appellant.

164. There then followed a lengthy period of correspondence but no further representations were made. The CCRC in its reference (at paragraph 5.4) records:

> "However it is clear from the correspondence that the case was still live and awaiting further representations at least at the end of 1995."

165. In February 1996, the Essex police destroyed many of the original trial exhibits without reference to the appellant or his legal representatives. It might have been necessary for this court to examine the circumstances in which this had happened. The police officer responsible contended that it was done without his appreciating that there was any on-going legal process that might require the further use of the exhibits. However, during argument it was agreed that the court could protect the appellant's position by making assumptions in his favour and that, therefore, it was unnecessary to resolve precisely how this came about.

166. In April 1997, responsibility for reviewing alleged miscarriages of justice passed to the CCRC. The appellant's case was treated as still live, and was effectively transferred to the Commission to complete the review.

167. After receiving representations on behalf of the appellant and making investigations of its own, the CCRC referred the matter to this Court. The sole basis of referral related to fresh evidence in the form of DNA testing of the sound moderator. It expressed its decision in the following terms:

> "In the Commission's view, the new DNA evidence undermines a key aspect of the Crown's case as presented to the jury and to which the trial judge gave considerable emphasis in his summing up. The new evidence is admissible, is capable of belief and affords a possible ground for allowing the appeal. There is a reasonable explanation for the failure to adduce this evidence at trial, in that the DNA techniques used were not available at that time."

168. The Commission considered various other matters but concluded that none in themselves would afford a basis for allowing an appeal but considered that some had relevance to any suggestion that the other evidence was of a quality that would enable the conviction to be maintained. The Commission's conclusion was that if the evidence about the blood in the sound moderator could not be viewed as having the significance attached to it at trial, then the rest of the evidence would not be sufficient to maintain a conviction.

Grounds of appeal

169. We turn, therefore to consider the grounds of appeal that have been presented to the court. They fall into two distinct groups, the first group, and numerically much the larger, relates to documentation and other evidence which it is suggested was not made available to the defence before or at trial. The resulting grounds make allegations of a failure to disclose and suggest in the first place that these various failures render unsafe the resulting convictions. Grounds 1 to 13 come within these broad descriptions. However, in the grounds and in the opening of the appeal, many significantly more serious allegations were made against the police because it was suggested that there was evidence of a conspiracy to pervert the course of justice by deliberately concealing evidence helpful to the appellant. The allegations extended beyond mere concealment and involved actual fabrication of evidence adverse to the appellant. These allegations were reflected by ground 16 which alleged that "in the light of the activities" of three named police officers "the prosecution case as a whole is tainted and therefore unsafe".

170. As observed by Mr Temple, QC, who has represented the prosecution at this appeal, there was a stark contrast between the allegations made on behalf of the appellant in the opening of this appeal in the full glare of media publicity, and the case that Mr Turner, QC, on behalf of the appellant felt able to advance when the evidence had been examined. It should be understood, particularly since his closing remarks did not attract the same degree of media coverage, that the appeal in this regard is a very different one that we now have to consider than might have been anticipated from the opening. Some of the very serious allegations made against police officers were manifestly wrong, and Mr Turner has recognised that position by not pursuing such matters once the fact became apparent.

171. Nonetheless Mr Turner does maintain the suggestion that there is sufficient evidence of police wrong doing as to render the convictions unsafe.

172. The other and distinct aspect of the grounds relates to the blood in the sound moderator. The position has moved on evidentially from that as understood by the CCRC but ground 15 essentially raises the matter upon which the reference was made relating to DNA.

173. Ground 14 also relates to the testing for blood in the sound moderator, but is distinct from the issues of DNA referred by the Commission. The two matters clearly need to be considered in conjunction with one another.

174. We propose, therefore, to consider each of the grounds 1 to 13 individually. We will then turn to consider grounds 14 and 15 relating to the blood. Then we will look at the overall position and consider the cumulative effect of the various matters under ground 16. Finally, we will refer to an application by the prosecution to call fresh evidence in support of its contention that the convictions were safe.

Ground 1a – hand swabs from Sheila Caffell

175. Ground 1 as presented to the court can conveniently be split into two distinct parts and we will consider each in turn. Each part relates to hand swabs taken from Sheila Caffell during the post-mortem examination and the subsequent examination of these swabs. The first part alleged that information was withheld from the defence about the examination of these swabs and suggests that this was not merely the result of inadvertence. It is contended that the evidence demonstrates impropriety by the police in deliberately concealing the true picture. The further suggestion is made that the police may not have submitted the genuine swabs but rather obtained similar swabs from some other source and substituted them for the swabs taken from Sheila Caffell in order to produce a result favourable to the prosecution.

176. It is necessary to start by examining those parts of the evidence which are not in issue. It is clear that the police from an early stage appreciated the possible significance of the state of Sheila Caffell's hands and of anything that might connect them with the use of the gun. To preserve any available evidence, the hands were covered with plastic bags before the body was removed. When the post-mortem examination of the bodies of Nevill Bamber & Sheila Caffell took place later that day an officer, DC Hammersley, took swabs from the hands of Sheila Caffell using a special kit made for taking samples for testing for firearm residues. He labelled the swabs with the reference DRH/33. There is evidence from which it can be established that these samples were taken at 3.15 p.m. on 7 August.

177. At trial Brian Elliott, a scientist from the Home Office Forensic Science Laboratory, gave evidence that the item DRH/33 described as "Swabbing Kit – hands of Sheila Caffell" had been received at the laboratory on 13 September 1985. He said that tests had been carried out for the presence of lead and that only "very low levels of lead have been detected on the two hand swabs". He further reported that tests had been carried out on two members of the laboratory staff who had loaded eighteen cartridges, similar to those used to shoot those who died at White House Farm, into the magazine of the rifle, and "significantly higher levels of lead" had been detected. Clearly if this evidence was right it cast doubt upon Sheila Caffell having loaded the cartridges into the gun and thus to her having killed the others and then herself.

178. The defence in part countered this evidence by reference to the ritualistic cleansing theory to which we have made reference.

179. Mr Turner, however, points to a number of documents that he submits, if known about by the defence, would have altered the approach taken to this aspect of the evidence and might well have avoided the need to embark upon the ritualistic cleansing theory, which from the summing up, did little to impress the trial judge, and therefore, in all probability, the jury.

180. The first document to which reference is made is a form that accompanies a submission of an item or items to the laboratory by the police (known by its document

reference as a HOLAB 3 form). The form in question, completed by DS Davidson, shows that the item DHL/33 was submitted on 9 August 1985 for testing for firearms residue with a submission serial number of 17. The form is marked "Item 17 not accepted at Lab". This is a document that came to light as a result of the City of London Police inquiry.

181. Light is thrown on the circumstances of the rejection by a further document again coming to light in the same police inquiry. The document is a message memorandum from the Home Office Science Laboratory file recording the passing of a message from DS Lovell, one of the police liaison officers at the laboratory responsible for receiving items for examination, to DCI Wright, one of the officers then responsible for the inquiry into the shootings. It reads:

> "Advised that item 17 not accepted at Lab due to contamination risk as it came into Laboratory with firearms (not connected with this case). D/C/I Wright not pleased with circumstances of rejection."

182. The next documentation said to be of significance in this regard are copies of the HOLAB 3 forms that accompanied the swabs when they were submitted again on 13 September 1987. When the forms were originally prepared using a typewriter, there were two items listed for submission, a blood sample and a Citroen motor car. They were numbered as Serial Numbers 73 and 74, the numbers running on from earlier submissions. On the forms there had been the hand-written addition of a third item, the hand swabs from Sheila Caffell. This item has been given the next consecutive serial number 75. Two other features of the forms are said to be significant. The first is that on each copy the description of when and where the samples were taken records the time of taking as 11 a.m. on 7 August. The second, and the one upon which greatest reliance was placed, is that whilst two of the three copies that have been produced records the item's identifying mark as DRH/33, the third gives it as DRH/44.

183. Mr Turner made the point that nowhere does the form record that the submission is a resubmission of an item and that the fact that the item has been earlier rejected is not in any way made apparent. He drew to our attention another form from the same inquiry upon which the fact that the rifle and the sound moderator were being resubmitted was made clear.

184. Mr Turner next drew attention to the notes made at the laboratory during the examination of the swabs. The notes made no reference to the earlier submission and hence, it is suggested that one can conclude that the scientist was unaware that he was examining an item rejected on the earlier occasion by the laboratory.

185. Mr Turner submits that there is evidence that the fact of the rejection was widely known to investigating officers, to some members of the forensic science service and to the office of the Director of Public Prosecutions ("the DPP"), responsible for the preparation of this case for trial. He points to a memorandum of a meeting at the

forensic science laboratory on 18 September 1985, before the examination of the hand swabs had been done. Amongst those present were Detective Superintendent Ainsley, by then in charge of the investigation, and DCI Wright to whom the original message about the rejection had gone and whose displeasure is recorded. The memorandum of the meeting made by the firearms examiner, Mr. Fletcher, includes:

> "Statement to explain why handswabs not examined."

186. Mr Turner then drew attention to two reports made by Detective Superintendent Ainsley for submission to the DPP. In an interim report dated 23 September 1985, Mr Ainsley records that the handswabs were submitted but were rejected by the laboratory. In the second and final report, which starts by suggesting that the writer will cover all the points made in the interim report "thereby negating the necessity to refer back", there is no reference to the rejection of the handswabs and the only reference to this item reads:

> "… Mr Elliott, also gives evidence of examination of hand swabs taken from Sheila Caffell and of tests carried out thereafter which prove yet again that Sheila did not handle the bullets used that night."

187. A further report by Mr Ainsley is relied upon. The report is headed "Initial Investigation". It makes reference to "matters raised at trial", and bears a date 20 October 1986, that is during the currency of the trial. There is no evidence of the purpose for which it was prepared or to whom it was addressed. From its contents, it appears most likely that it was directed at the criticisms being made at trial of the inadequacy of the initial inquiry. Since 20 October was the day before Mr Arlidge QC, leading counsel for the crown made his final speech to the jury, it seems most likely that the report was written for the use of prosecuting counsel. It contains the following reference to the handswabs:

> "The hands – were swabbed – swabs rejected by the laboratory. Later raised by D/Superintendent Ainsley in conference at the laboratory when the laboratory again stated that it was too costly to do and that it would be expected to show a positive result as the body of Sheila was in a room contaminated by gunfire. D/Superintendent Ainsley made issue that the swabs should be examined and if not done he wished a statement to explain why it had not been done. As a result they were examined and found to be virtually negative of residue, i.e. lead, oil and propellant."

188. Mr Turner submitted that the three reports were evidence that Mr Ainsley was a party to a conspiracy to conceal the fact of the rejection from the defence and, therefore, from the jury. He contended that it was significant that there had been mention in the interim report of the rejection but none in the final report. He suggested that the court could infer that Mr Ainsley had deliberately included the passage saying that the full report "negated the need to" read the interim report so that the rejection would not be noted by those responsible for the prosecution. He further submitted that the passage

in the report prepared during the trial again showed Mr Ainsley seeking to hide the true position by giving a false explanation for the rejection suggesting that it was a matter of cost rather than contamination.

189. Mr Turner invites the court to conclude that the circumstances of the re-submission demonstrate a determination by the police to have the swabs examined by the laboratory whilst concealing the earlier rejection. It is suggested that a number of features of the documentation should lead to this conclusion. The HOLAB 3 form describing the item as DHL/44 on its re-submission had a number of features that would have concealed the fact that it was the same item that had earlier been rejected. The wrong identifying mark had been given concealing its true identity as DRH/33. It had been given the serial number 75 which differed from the original submission where it was serial number 17. The description of when the swabs had been taken on the form suggested that it was at the 11 a.m. on 7 August so that it had the appearance of being an earlier sample to DRH/33 which was in fact taken at 3.15 p.m. on that day. There was no mention on the form of it being a resubmission. Thus, it is said that anyone looking at the form would be misled into thinking that they were examining a quite distinct set of swabs.

190. The notes of the scientist showed that the item was handed directly to the scientist and it is suggested that this must have been done to bypass DS Lovell who had been involved in the earlier rejection.

191. The final part of the evidential material relied upon on behalf of the appellant in this regard are records that relate to exhibits gathered during the inquiry. The first such item is the Major Incident Property Register. This records in respect of item DRH/33 under a heading of where stored "Retained by S.O.C." and then apparently by way of a subsequent addition "13/11 F/cell". The only other recorded information is that the item was destroyed in 1996. The second document to which reference is made is a Scenes of Crime Exhibit List. This records that DRH/33 went "To lab. 9/8/85".

192. It is on this material that Mr Turner advances the possibility that DRH/33 was never examined in September 1985 and that either further swabs were taken from Sheila Caffell's body or alternatively swabs which had never been taken from Sheila Caffell at all were substituted. Mr Turner's submission as it appears in his skeleton argument is:

> "It is submitted that had DRH/33 been the swabs examined, firstly the exhibit books would have recorded the fact of submission on 13/09 and secondly, if they were examined it is unlikely they would have existed in February 1996, to be destroyed. It is submitted that the overwhelming probability is that a second clean set of hand swabs were submitted in place of DRH/33."

193. With every respect to Mr Turner that seems a very flimsy basis upon which to consider making the very serious allegations of serious criminal misconduct that he

has made. It pre-supposes that a resubmission of the item would of necessity be recorded on one or other of these records; it overlooks the fact that there is no record on either document of the return from the laboratory of the items in August to the custody of the keepers of either record; it suggests with no sort of evidential basis that neither the item nor the remaining parts of it would have been returned by the laboratory following examination; and it puts forward the inherently unlikely proposition that after the substitution of a false set of swabs, the original swabs were retained so that they could be placed in the female cell in November and be destroyed in 1996 even though it would have been known to the scientists that the examined swabs had been destroyed during their examination.

194. Having looked closely at all the available documentation, it was the view of the court that whilst superficially the proposition that there might have been an element of deceit of the scientists in the first place and thereafter of the defence and the jury by the deliberate concealment of the fact of the earlier rejection might be tenable, any more rigorous examination of the facts showed that the proposition was unsustainable. We will explain shortly why we reach such a conclusion. However, the court was conscious of the fact that in cases where a miscarriage of justice is alleged, the truth may only be revealed by the fact that a tip of the iceberg emerges above the surface. Accordingly, we decided out of an excess of caution, to grant an application made by Mr Turner that he should have the opportunity of cross-examining witnesses who could give evidence about these matters. The court, therefore, required three witnesses to give evidence and having been called, each was cross-examined by Mr Turner and questioned further on behalf of the prosecution by Mr Temple. Their evidence was so transparently right that Mr Turner did not, even when reminded that he had not done so, feel able to challenge the evidence of one of those who must have been implicated if the sort of allegations of gross impropriety that he had made in opening the case were true.

195. The first of these three witnesses to give evidence was Peter Wingard, who was a Senior Scientific Officer at the laboratory at the relevant time, later became a Forensic Service Manager for 4 or 5 years and is now retired. He had been responsible for examination of the laboratory records when a request for information was sent to the laboratory by the appellant personally. He had subsequently supplied the available documentation to the City of London police inquiry, from where it was subsequently made available to the appellant's legal advisers. Mr Wingard was able to give evidence of the system of submissions to the laboratory at the time, and also to confirm which of the documentation before the court would have originated from the laboratory.

196. Mr Wingard explained that the rejection of the item would be made by the police liaison officer acting upon standing instructions that where swabs were submitted having been in the vicinity of firearms they should be rejected. The liaison officer would not necessarily consult a scientist before making such a decision. He rejected the suggestion that once rejected in this way, there would be no way in which the laboratory would examine such items thereafter if it was aware that they had been resubmitted. He explained that there was a significant difference between an examination of the swabs required to provide evidence that a person had discharged a firearm where the testing could as a result of the contamination produce a false result

suggesting that the person had had contact with guns, and a test the purpose of which was to provide evidence that a person had not been in contact with a gun. In the latter case the issue of contamination ceased to be a factor since it could never decrease any findings only add to them.

197. Mr Wingard was asked whether in any event he would expect to see a record of the rejection in the statements provided by the scientists. He said that it would very much depend on the reason for the rejection and its possible effect on the outcome of the tests. It was not normal to recount the history unless it had a bearing on the evidential value of the conclusions. If rejection might in any way invalidate conclusions that might be drawn from the evidence of the tests, then he would expect that it would be recorded. However, that was not the situation here since there was no way in which contamination by proximity to firearms could have decreased the quantity of lead found on the swabs from Sheila Caffell's hands. The rejection, and the reasons for it were, therefore, not relevant to the inference suggested from the testing that Sheila Caffell had not been responsible for the repeated handling of the bullets. He made clear that the testing was for the presence of lead, and was not testing for firearms residue as such.

198. Mr Wingard said that it was commonly the case that items were resubmitted to the laboratory with a different serial number to the original submission, and scientists paid little regard to this number. The identifying feature upon which they relied was the Identifying Mark. This would first and foremost be on an exhibit label which would be attached to the item itself on submission, and would also appear on the HOLAB 3 accompanying the submission.

199. The next witness called by the court was DS Lovell, the liaison officer at the laboratory involved with the August rejection. He explained that no item would be submitted to the laboratory without first being seen by him or one of the other liaison officers. Where a scientist received an item directly as had happened with the swabs on resubmission, the scientist would come to the reception area and collect the item directly but the liaison officer would still be responsible for checking it in. It would simply avoid the item going through the normal internal process of delivery to the scientist but it would not avoid the liaison officer being involved in checking it in. He had played such a part on the resubmission because his writing was on one of the copies of the HOLAB 3 form. Thus the suggestion that the swabs had gone directly to the scientist to avoid DS Lovell so that he would not notice that it was a resubmission was clearly wrong.

200. DS Lovell explained that three copies of the HOLAB 3 would accompany the item to the laboratory. The laboratory would retain two copies and the third would be endorsed by the receiving officer and handed back to the person delivering the item by way of receipt. A part of his responsibility would be to check the items received by the laboratory against the HOLAB 3 form by reference to the identifying mark that they bore. He had not noticed a discrepancy in this regard on this occasion either between the item and the HOLAB 3 forms or between the three copies of the forms. He looked at the three copies of the form that have been traced. Each had been stamped by him with his personal stamp and with the laboratory date stamp.

Examination showed that two of the copies of the form gave the identifying mark as DRH/33 and one gave it as DRH/44. He could be sure that he had received each from the stamps. The DRH/44 was one of the two copies retained by the laboratory since it bore hand-written notes that he had made.

201. In relation to the rejection in August, DS Lovell explained that he would have consulted a scientist before rejecting the item. He could not remember the circumstances of its resubmission because it was so many years after the event but because of the nature of the case and the contact that there had been between the police and the laboratory relating to it, he thought that he may well have been expecting it back when it arrived.

202. DS Lovell explained that when items relevant to a case were referred to the laboratory, the case would be assigned a reference number. All documentation would be labelled with that number and kept on that file. Exhibits submitted for firearm examination would be given a distinct number and a separate file would be opened for documents relating to that examination. It is clear from the items recovered that all the documentation within the laboratory was dealt with in accordance with that system and thus could readily be produced when queries were raised some years later.

203. The third witness called in this respect was DS Davidson. DS Davidson was responsible for completing the HOLAB 3 forms relevant to the resubmission. Since he was the one who had written on the one copy DRH/44 and on the other two DRH/33, it must follow that since he would know that all three should bear the same identifying mark, if there was a police conspiracy to deceive the laboratory and others, he must have been a party to that conspiracy. The only other possible explanation apart from the conspiracy allegation for the difference was an inadvertent slip on his part.

204. DS Davidson explained that when a submission is made, four copies of the form HOLAB 3 are completed. Three go to the laboratory and the fourth is necessary because the officers do not submit items directly to the laboratory. They submit the items to the Essex Police headquarters and the fourth copy is for use at headquarters. Arrangements are then made for the onward transfer of the items from that central location to the laboratory. Thus items from a number of cases may be submitted at the same time. Clearly that happened here because the rejection of the swabs came about because items unrelated to this case were transported at the same time. Bearing in mind how significant an inquiry this was relating to five shootings, one can well see why DCI Wright would be displeased that the action of those at headquarters had caused the rejection of an item that the investigating officers wanted examined.

205. DS Davidson said that he could remember that having already typed the two items on the list, he received a telephone call, he thought from DCI Wright, to add as a third item, the swabs. He could remember that there was some urgency about the matter but he could not recall the detail of the conversation. He did not think that he was aware that it was a resubmission and he was unaware of anything concerning the rejection. He had added the swabs to each of the copies. He was unaware that he had

put the wrong identifying mark on one copy and it was simply a slip on his part. He was asked why each of the forms recorded that the swabs had been taken at 11 a.m. when DRH/33 had been taken at 3.15 p.m. He said that it was an error that he had made and he explained that he had available to him forms that he had completed as the items were gathered (CID/6 forms), these correctly recorded the time as 3.15 p.m. but showed other items recovered at 11 a.m., and in his hurry he had misread the forms.

206. Having received the explanations given by the witness, Mr Turner completed his cross-examination without suggesting to the witness any impropriety on his part and without challenging the explanations that had been given. Mr Temple, on behalf of the prosecution, queried whether this was inadvertence on the part of Mr Turner or whether in the light of the evidence given, Mr Turner now accepted that the allegations of improper conduct could not be sustained. Mr Turner told the court that it was not through inadvertence. The court was not surprised by Mr Turner's altered position because the evidence appeared to us to be manifestly truthful. Thus the calling of the witnesses far from supporting the conspiracy had caused the appellant's counsel to see that it could not be maintained.

207. Mr Turner asked the court to call one further witness in this regard, the scientist who had examined the items. We queried what he hoped to achieve by cross-examination of the witness and he indicated that he wanted to establish that the witness was unaware of the earlier rejection of the swabs when he examined them. That evidence was available in statement form and we were prepared to accept that proposition without the need to hear oral evidence. However, it has to be said that any proper examination of the file by the scientist would have revealed that fact because it is clear from the laboratory notes that the scientist had checked the identifying labels of the item and was fully aware that he was dealing with DRH/33 in respect of which there was information on file about its earlier rejection.

208. The allegations made in opening that there was evidence to show gross criminal misconduct by the police in respect of the swabs have thus turned out to be wholly groundless to the point where the appellant's counsel felt no longer able to maintain them. Quite apart from the evidence of DS Davidson, there were a number of reasons why these allegations were patently wrong:

i) The evidence of the contamination was not in any way damaging to the prosecution case. As Mr Wingard pointed out, it could not, even if known, adversely affect the inference that the prosecution sought to draw from the tests. If the swabs had become contaminated that would point towards Sheila Caffell having had contact with the gun rather than away from it. Any results, therefore, might give an increased reading that might favour the defence but could not adversely affect the defence. Whilst we accept that a corrupt police officer might go to extreme lengths to cover up evidence helpful to the defence, it makes no sort of sense for such an officer to commit serious criminal offences to hide evidence that which is either neutral or favours the prosecution.

ii) The suggestion that Detective Superintendent Ainsley sought to conceal the fact of the rejection in his final report cannot be right. He had raised it with the laboratory staff at the meeting on 18 September requiring a statement to be made to explain why the hand swabs had not been examined. Since the hand swabs were at the laboratory awaiting examination at the time, this is inconsistent with the allegation that he was trying to hide the earlier rejection from the scientists.

iii) There would be no point in submitting a HOLAB 3 form with the false reference to DRH/44, whilst at the same time submitting another copy with its true identifying mark recorded and with the item labelled with the correct mark, as it clearly was from the scientist's note. A moment's thought would have caused any police officer to realise that the examining scientist would inevitably look at the exhibit label, not least to sign it so that he could later identify the item that he had examined.

iv) The documentary evidence about the keeping of the swabs did not lead to the suggested inference. It did not record the return of DRH/33 after the initial rejection and DS Davidson said that he had not seen the item again after it was sent to headquarters in August. Between August and resubmission, it must, therefore, have been at headquarters and as such would not have appeared on the documents produced.

209. We have not the slightest doubt that the only failing by the police revealed in their dealings with the swabs are some relatively minor form completing mistakes by DS Davidson. On these relatively minor failings the whole edifice of a conspiracy theory was constructed and unsurprisingly when tested it came crashing down.

210. Thus the only true complaint that can be made is that the defence were not told at trial that the initial submission of the hand swabs had been rejected. We have to ask ourselves whether this in any way invalidates the jury's findings. We ask ourselves what possible use could have been made of that fact if it had been known to the defence. They could not have used it to challenge the findings from the test of the swabs because, as already explained, it could not have affected the results in any way adverse to the interests of the appellant. They could not have used it to make any collateral attack on the care taken by the officers in the case because the sending of the item at the same time as other items unconnected with the case was in no way the failing of the officers involved in the inquiry but rather that of the officers dealing with the onward transmission at headquarters. Thus we are satisfied that even if this information should technically have been disclosed, the failure to do so can have had no impact upon the jury's verdicts.

211. In terms of the overall consideration of the police conduct, they had brought the matter to the notice of the lawyers handling the case on behalf of the prosecution. That is the limit of their responsibility in terms of disclosure. Once the lawyers had been alerted as they undoubtedly were by the discussions in the presence of the DPP.'s representative at the meeting at the laboratory and by the interim report

directed to the DPP the responsibility for decisions as to whether a fact that needs to be drawn to the attention of the defence is for the lawyers. Thus these matters cannot reflect on the police as being a part of some deliberate attempt to hold back information from the defence.

212. Although it is not necessary for us to go further and consider whether the prosecution lawyers were at fault since it can have no bearing on the safeness of the conviction, in fairness to them we should perhaps record that we are not persuaded that they were at fault. It was not the practice at that time routinely to produce documents as part of the disclosure process that related merely to the transmission process of items for scientific examination. They were always available for inspection both at the police station and at the laboratory if required, but the normal procedure was to await some request in this regard. This would most frequently happen when a defence expert visited the laboratory and would request sight of the laboratory file. The defence had instructed an expert to look into the firearm side of the case and he had visited the laboratory. The prosecution were, we are satisfied, entitled to assume that he had either looked at the file or that he was satisfied that it was unnecessary. However, clearly if the possible contamination might have produced results that were unfair to the accused, the whole picture would have changed and there would have been an overriding duty on the prosecution lawyers to ensure that the defence lawyers were not misled by not receiving this information. But, as we have made clear more than once that was not the situation here.

213. Thus we reject this first ground of appeal and we are equally satisfied that there is no misconduct revealed by this aspect of the case that falls to be considered when we come to ground 16, the general allegation of misconduct against the police.

Ground 1b – the testing of the hand swabs from Sheila Caffell

214. Mr Turner raised as a subsidiary ground to the matters already considered a further ground relating to the swabs. He said that as a result of the disclosure fresh evidence had been obtained that cast doubt upon the scientific conclusions put forward by the prosecution at trial in respect of the tests on the swabs and he sought leave to call fresh evidence. For our part we could not see how the evidence could in any way be said to relate to the alleged non-disclosure nor how it came within the ground of appeal in this regard. Nonetheless, we thought that we ought to consider the matter without regard to any technicalities.

215. At trial Mr Elliott had given evidence of the results of testing the swabs for lead, which included information about other elements detectable on the swab. He had also given evidence of the comparative tests carried out on other scientists after they had handled ammunition from the same source as that used in the killings and loaded it into the magazine. The tests were said to demonstrate appreciably higher lead levels on the scientists' hands than were found on the swabs taken from the hands of Sheila Caffell. This was put forward as evidence that Sheila Caffell had not handled the cartridges in a manner consistent with her being the killer.

216. At trial, Mr Rivlin QC, who appeared for the appellant at trial, sought to counteract this evidence in two ways. First in cross-examination of the scientist, he drew his attention to traces of other elements in the test results from the swabs, iron and copper, and queried whether these were significant. The scientist said that they were no more than might have been obtained from the atmosphere. He did not think the copper could have come from the bullets unless they had been scratched. The other defence approach to this evidence was the theory of ritualistic washing to which reference has earlier been made.

217. The evidence which Mr Turner sought to call was that of Dr Lloyd, a chemist. He contended that Dr Lloyd's evidence would cast doubt upon the test findings and that if it had been available at trial, it might very well have obviated the need to advance the ritualistic washing theory that the jury may well have found unsatisfactory.

218. Dr Lloyd's conclusions, as apparent from a report with which we were supplied, were principally that the lead found on the handswabs from Sheila Caffell and from those tested in the laboratory came from petrol combustion residues and was not connected with the handling of bullets. Secondly that the handswabs from Sheila Caffell were not qualitatively different from those from the testees. He was critical of the laboratory test saying that swabs should have been taken both before the handling of the bullets so that a comparison could have been made between the two. Accordingly in his opinion the test results were of no assistance to the determination of whether or not Sheila Caffell had handled the cartridges in the same manner as the testees.

219. Section 23(2) of the Criminal Appeal Act 1968 requires the court to have regard to four matters in deciding whether to admit fresh evidence:

> "(a) whether the evidence appears to the Court to be capable of belief;
>
> (b) whether it appears to the Court that the evidence may afford any ground for allowing the appeal;
>
> (c) whether the evidence would have been admissible in the proceedings from which the appeal lies on an issue which is the subject of the appeal; and
>
> (d) whether there is a reasonable explanation for the failure to adduce the evidence in those proceedings".

220. In a number of cases this court has made clear that it will not readily admit expert evidence as fresh evidence where the necessary expertise was available at the time of trial (see e.g. Lomas, 53 Cr. App. R. 256 & Jones (Steven) [1997] 1 Cr. App. R. 56). To do otherwise would permit an appellant to shop around for an expert after conviction and upon finding one favourable to his case mount an appeal based on the views of that expert. To allow that would subvert the trial process and generally speaking the time for advancing expert evidence is before the jury and not after conviction.

221. Mr Temple for the prosecution opposed the application. He submitted that it was clear that the appellant had sought expert advice before trial from Major Meads, a firearms expert, who in turn had consulted Mr Edwards, a chemist. There was, he submitted, nothing new about the scientific knowledge that gave rise to this evidence. With that view we agree.

222. Mr Temple further submitted that the evidence would not in any event provide a basis for allowing the appeal. He submitted that a study of the summing up revealed the relative unimportance that this aspect of the evidence took in the case. The judge had made reference to it at two points in the summing up. He had referred to it in conjunction with the cleanliness of Sheila Caffell's body and had put it not as an individual item but as part of an overall picture. At page 84F of the transcript he said:

> "Then another point is that when she was found, there was no blood marks on her feet – on the soles of her feet. Well, you may think that is a matter of considerable importance because she had been involved in the fighting with her father as well as killing her mother, surely it is inconceivable that her feet would have been clean in the way that they were found to be, and in the way you see them to be clean from the photograph. What is suggested on behalf of the Defence is that after killing, at any rate, the father and the mother, she went and washed; and tied up with that piece of evidence is the fact that there were no marks of lead on her hands."

223. Mr Temple says that the passage makes clear that even without the evidence relating to the lead, it is clear that the defence were having to rely on the theory of ritual washing to explain the clean feet and that the evidence even if called at trial would not have removed the need to rely on this theory.

224. The judge continued:

> "Well, now, so far as that is concerned, you have had the opportunity yourselves to load the magazine, and see what happened to your hands which you will bear in mind, whether you think it likely that she would have had lead marks on her hands. If she would have done, then the Defence answer that by saying well, nevertheless she may have washed between loading the magazine the second time and killing herself."

225. The judge then dealt with Mr Rivlin's cross–examination on this topic and concluded by saying (page 85F):

> "As to the suggestion that she may have washed, well it is a matter to which I am sure you will give thought because it may be an important part of the evidence in this case that her hands and feet did not bear upon them either blood on her feet, or

> marks from the bullets on the hands, that one might have been expecting."

226. At page 90 F, the judge mentioned this aspect of the matter for the second time saying:

> "I have reminded you of the fact – and it is a fact – that when she was found she had no marks of blood on the soles of her feet and no marks of having handled bullets on her hands."

227. The first thing that struck the court about those passages is that the judge was not inviting the jury to consider whether tests showed traces of lead on Sheila Caffell's hands but rather "marks of lead". In other words some visible signs that she had handled the bullets rather than a conclusion from a scientific test. He was reminding them that they could rely on their own observations when they had loaded the magazine and this cannot have related to the tests because the jury had done none. In one sense it mattered not whether the marks were of lead or something else because what the judge was inviting the jury to consider was whether loading the magazine was likely to have produced hands that were visibly dirtier than those of Sheila Caffell.

228. The reason why the judge approached the matter in this way becomes apparent when the evidence of Mr Fletcher, the prosecution's firearms expert is considered. Mr Fletcher gave the jury a demonstration of loading the magazine with the bullets. He commented that in his experience loading a full magazine would leave marks on the hands adding "in this case you get a black discolouration". (Transcript PMS/10 page 18B). When he was cross-examined by Mr Lawson, junior counsel for the appellant at trial, he was asked about this part of his evidence and said (Transcript PMS/10 page 47H):

> "Well they are my own observations, and I think the observations of the court yesterday when the demonstration was made, that by loading cartridges into the magazine you get residues on your hands from the bullets and cartridges."

229. Thus it seems to us clear that having witnessed the demonstration, the judge was clearly inviting the jury to consider not the rather technical scientific evidence of the testing for lead but that which they had witnessed with their own eyes, and which they were in a particularly good position to judge because they had been given the opportunity of handling the material themselves.

230. We should perhaps point out that quite apart from Mr Fletcher's evidence, the matters were also apparent in the notes that he made of the experimental loading of cartridges. He had noted after the first loading "some lead specks and frags and some discolouration"; after the second "Further specks and frags and darker discolouration"; and after the third "quite a few specks and fragments of lead and grey/black discolouration". (See memorandum of Dr Lloyd dated 14 October 2002).

As Dr Lloyd points out it may have been an assumption that the particles were lead, but the fact that the hands became dirty was noted on that occasion as well.

231. Thus even if the scientific testing for lead could have been discredited, it would not have answered the essential point that if Sheila Caffell had loaded the magazine in the way that the killer did, she must have cleaned her hands afterwards. The ritualistic cleaning theory, with all its imperfections, was thus the essential matter upon which the jury had to concentrate.

232. We concluded in such circumstances that there was no valid reason why this evidence could not have been put before the jury by seeking to call an appropriate expert unless it was the case that Dr Lloyd's views were not ones shared by others and, even more importantly, that even if the evidence had been given at trial, it could not have altered the outcome of the trial. Accordingly we declined to admit this fresh evidence and any other evidence consequent upon it and this aspect of ground 1 fails as a result.

Ground 2 – disturbance of the crime scene

233. The appellant contends that officers of the Tactical Firearms Group ("TFG") upon entering the premises themselves knocked over chairs, stools, and a sugar bowl but falsely contended at trial that such disturbance preceded their entry. This is relevant to the suggestion that there was a violent struggle between Mr Bamber and his killer before he was killed and the prosecution contention that Sheila Caffell would have been incapable of overpowering her father. Further if there was no violent struggle, the absence of any indication of such on Sheila Caffell was not of significance.

234. Additionally the appellant contends that the Crown failed to disclose a police action record, Action 94 in which DI Cook was asked to examine for sugar the bag in which the body of Sheila Caffell had been transported from the farm to the mortuary. He reported back to DCI Wright in the following terms:

> "There was no sugar on the floor it was all confined to an area under the table and if it was, officers would have been walking in the same
>
> Sugar was later found because the table was moved and sugar swept around. No sugar in body bag"

235. The complaint of non disclosure in relation to Action 94 is that whilst, as was the practice in 1986, no general disclosure took place in relation to any action or message, this particular action was clearly of importance to the defence and thus the prosecution were under a positive duty to bring it to the attention of the defence and failed so to do.

236. The assertion in the first part of this ground namely that officers knocked over chairs, stools and a sugar bowl is based in part upon Action 94 but also upon three other

documents. Firstly the report of the Essex Review in which the reviewing officer, Detective Chief Superintendent Dickinson, wrote:

> "The kitchen was in some disorder. A number of chairs had been knocked to the ground, the table had been pushed forward causing some items of crockery to fall to the floor, including a sugar basin and two stools had been knocked over. It is now believed the stools were possibly knocked over by members of the TFG whilst making their way through the kitchen"

237. The Review does not disclose the source of such belief and accordingly affords no evidential support for the appellant's contention.

238. We have looked at a number of statements taken recently by the prosecution to check that they do not reveal any possible source of this hearsay. In a statement dated 9 May 2000, DI Cook stated that any information he had relating to the subject was "sort of hearsay as far as I was concerned". He said he could not categorically recall any of the officers saying that they knocked the chairs over or the stools or whatever they are, "but certainly I can't recall specifically saying the sugar. I cannot recall who the third party was who may have told me. I don't believe it was the firearms team". We have been supplied with statements from every member of the firearms team all of whom positively assert that save for moving two stools they moved nothing and disturbed nothing upon entering the kitchen.

239. We have considered with great care the statements of PC Collins and PC Delgado who must have been the two officers who entered first at about 7.30 a.m. on the 7 August. PC Collins in a statement of the same date describes forcing an entry into the house and seeing the body of a male person positioned over an upturned chair, which balanced against a cupboard. Having described that person and concluding that he was dead he said:

> "On looking around the kitchen I saw upturned chairs and stools and broken crockery on the floor, and on the floor on the far side of the room there were small spots of what appeared to be blood. It appeared that a violent struggle had taken place within this room".

PC Delgado made a similar statement.

240. Mr Turner draws our attention to the fact that on the 19 September 1985 all the police officers who attended at the scene were summoned to attend at Witham Police Station for a round the table conference with Investigating Officers. On the following day, 20 September 1985, PC Delgado made a further statement in which he said:

> "in the kitchen by the doorway to the hall were two stools which were laying down on the floor blocking a covering position into the hall, these stools were moved to near the kitchen table. In the hallway the door to the cellar was forced

> open to allow access, it appeared the door was stuck with old paint and had not been opened for some time. PC Collins attempted to go down the cellar stairs, which gave way beneath him. A window in the dining room was unlocked and opened to allow an escape route if needed, this window was later shut and secured. The door to the bedroom opposite the children's room was locked and this was forced to allow access".

241. On 30 September PC Collins made a second statement in which he said:

> "I moved two kitchen stools which were laying down near to the hallway entrance. I moved these stools about 2 or 3 feet but left them in a similar position as they were found. I moved them to enable me to carry on my search of the house as safe as possible. In the hallway a cellar door was forced open, the door appeared to have not been open for a long time. I opened a window in the dining room which I first had to unlock by moving a small catch to allow an escape route for an officer I had left to cover the stairway from the doorway of the dining room. To my knowledge nothing else was moved or disturbed".

242. We take the statements of PC Collins and PC Delgado as clear statements that apart from moving two stools they moved no other furniture. The statements from some 10 other TFG officers indicate that there was no other movement of furniture and certainly no spillage of sugar attributable to any officer. On the other hand the crime scene was disturbed in the sense that the door to the cellar was forced, the cellar stairs gave way, the dining room window was unlocked and opened and a bedroom door was forced.

243. The second document advanced by the appellant in support of the proposition that furniture was moved and sugar was spilled by the officers is the City of London Police Review of 1991 which makes reference to a statement taken from DI Cook in which he stated:

> "I later learned that the chairs and brown sugar had been knocked over by the firearms unit when they rushed about the house looking for Sheila".

This again is necessarily hearsay evidence or hearsay upon hearsay.

244. A statement was made to the same inquiry by Ann Eaton in these terms:

> "I think it was then I asked if Sheila had sugar on her feet, this was based upon my observation of sugar grains being all over the floor of the kitchen but I later found out that it had been knocked over the floor by a police officer. When it was I was not told, but it was apparently done when they were clearing

> the house up. If that was the case they must have really knocked it over as it was all over the kitchen".

245. This statement is also based upon hearsay and is at odds with the sworn evidence given at trial. It cannot possibly be right because there is clear photographic evidence of the sugar bowl and the sugar on the floor on the morning of 7 August with Mr Bamber's body still in place when no clearing up of the house had then taken place.

246. Finally it is said that Detective Superintendent Ainsley's interim report of 23 September 1985 and his final report of 7 November 1985 both contain the following paragraph:

> "Whilst it is fair to say that the Tactical Firearms Group when searching the premises take the utmost care not to disturb the scene, there is of necessity a certain amount of disturbance and as will be seen from their statements, this was no exception"

247. It seems to us that there is nothing in this passage, which is inconsistent with the "disturbance" identified by PC Collins and PC Delgado in their second statements (namely forcing doors and opening windows). It may well be significant that the round table meeting of the TFG officers and others took place on 19 September. PC Delgado made his statement the following day and the interim report was written three days after that.

248. Application was made pursuant to s.23 of the Criminal Appeal Act 1968 by Mr Turner inviting the Court to call Mr Cook so that he might cross-examine him. We refused that application. Mr. Cook arrived at the farmhouse at 9.20 a.m., one hour and fifty minutes after the entry by the TFG officers. He had gone there accompanied by a photographer and he had arranged for the photographer to photograph the scene beginning with the kitchen at approximately 10.00 a.m. It necessarily follows that any attempt at giving evidence about disturbance of the scene could not result from his own observations since it is not suggested that he observed any disturbance as it took place. The nearest Mr Turner came to suggesting a basis for Mr Cook to give evidence about these matters was that the photographs did not realistically or accurately depict the state of the kitchen. We do not accept that proposition. The photographs are of excellent quality and accurately depict the scene of the crime. DI Cook could not give any admissible additional evidence supporting the appellant's proposition that the TFG knocked over chairs, stools and a sugar bowl.

249. We have considered the potential impact that Action 94 might have had on the jury. We think it is wholly unrealistic to suggest that the jury might have been persuaded by it that there had not been a violent struggle in the kitchen. Even if one discounts the evidence of the overturned stools and chairs and the broken sugar bowl, there was sufficient other evidence to suggest a violent struggle. Mr Bamber's body lay across an overturned chair that can have had nothing to do with the actions of the TFG, the light fitting was broken, there were the injuries apart from the shot wounds to Mr Bamber, there was the piece broken off the rifle stock, there were score marks under

the mantelpiece where it had been struck by the sound moderator attached to the rifle, and there was Mr Bamber's watch lying damaged under a rug on the other side of the room.

250. DI Cook's comments on the Action 94 are unsatisfactory in themselves. The words "There was no sugar on the floor it was all confined to an area under the table and if it was, officers would have been walking in the same. Sugar was later found because the table was moved and sugar swept around" are in themselves potentially contradictory depending upon how they are read. It should not be forgotten that DI Cook was one of the officers who had supported the murder/suicide conclusion and that at the date of Action 94, different officers had taken over responsibility for the inquiry and concluded that the original investigation had missed significant evidence. In such circumstances DI Cook had every motive to seek to support his original view by reading into matters that had been reported to him more than was the reality of the situation.

251. We find that there is nothing in the hearsay comments recorded in the Action 94 that even if they could have been introduced into evidence could realistically have been thought to lead to a conclusion other than that there had been a violent struggle in the kitchen.

252. Looking at the Ainsley Reports, we consider that the comment "there is of necessity a certain amount of disturbance" was entirely in accord with the evidence of the TFG officers. A sledgehammer was taken to a door, a window opened, a door unlocked, a chair moved, stools moved, a cellar door forced, a window unlocked and the door opposite the children's room forced. We reject the submission that Ainsley's reports in any way support the appellant's submission that the firearms officers "knocked over the chairs, stools, and a sugar bowl".

253. As to the Essex Police Report, we can find no evidential support for the hearsay suggestion that "It is now believed the stools were <u>possibly</u> knocked over by members of the TFG". By the time of that inquiry, there must have been a number of officers who had every motive to down play the failure to spot important factors in the early stage of the inquiry and the situation was such that just such a proposition might very well be floated. However there is nothing to cause us to believe that it originated from anyone who could give first hand information about the matter.

254. As already explained Ann Eaton's recollection years after the event of what she had been told cannot be factually right whether or not she correctly recalled that which she was told.

255. We find there to be no substance whatsoever in this ground of appeal. The firearms officers have been consistent throughout. Mr Turner indicated that he would not wish to cross-examine them in the event of the Crown successfully applying to call them.

256. The issue of the absence of sugar on Sheila's feet was of minimal significance in the trial. In the summing up all the references to Sheila Caffell's feet were to the absence of blood rather than sugar. In the prosecution case summary it was said:

> "The only blood to be found on the body was that of Sheila Caffell nor was there any debris or blood on the soles of her feet" and in their closing speech: "Compare Sheila to June. June is covered in blood, blood on her feet".

257. The defence faced the task of explaining the absence of blood on Sheila's feet with the implausible suggestion that she may have worn socks or washed her feet before committing suicide. In the circumstances the absence of sugar on Sheila's feet added nothing to the prosecution case.

258. As the Judge said at p.84 F in the passage to which we have already referred:

> "there were no blood marks on the soles of her feet. Well, you may think that is a matter of considerable importance, because if she had been involved in the fighting with her father as well as killing her mother, surely it is inconceivable that her feet would have been clean"

259. There is simply no evidence available to contradict the evidence of the firearms officers that save for moving one chair and two stools there was no disturbance of furniture and the sugar bowl was not disturbed by them. Their recent statements indicate a search effected slowly and carefully with the minimum of noise and carried out in relative silence with officers believing that Sheila Caffell may still be alive with a gun in her hand. They were trained to create as little disturbance as possible and not to move or touch anything unless it be for reasons of safety or self-preservation. The situation in which they found themselves with the possibility of an armed person somewhere in the premises meant it was both necessary and sensible to go into the farm house with the minimum of noise and disturbance until they were satisfied that an armed person would not suddenly emerge and confront them.

260. We are sure that none of the matters placed before us could possibly have resulted in the jury reaching a different conclusion on any material aspect of the case. This ground of appeal fails there being no evidence to support it.

Ground 3 – evidence relating to windows

261. Ground 3 alleges that the prosecution failed to disclose at trial clear evidence which demonstrated that no reliance could properly be placed on their assertion that the downstairs bathroom and kitchen window were used by the appellant to gain entry and exit to the farm house on the night of the murders.

262. It was the Crown's case that the appellant entered White House Farm, for the purpose of carrying out the murders, by the downstairs bathroom window and left the premises by the kitchen window.

263. Police Sergeant Golding gave evidence that at 2.30 p.m. on 7 August he commenced to secure the ground floor and found all windows to be secure and fastened with the exception of two windows. One was in the ground floor bathroom, which was in a closed position with the catch open. He secured the window by closing the latch. The other was a transom window, which formed part of a casement type window in the kitchen. The transom window was open approximately halfway. He secured the window.

264. In contrast with Sergeant Golding, DCI Jones made a statement dated 7 October 1985 in which he reported that he had attended at the farm at approximately 9.15 a.m. on 7 August and he had proceeded to check every room on the ground floor of the house and found that on the ground floor all the windows in the house were secure and locked except the window to the dairy. That statement was read to the Jury as part of the Defence case.

265. Complaint is made that part of Mr Ainsley's Final Report was not disclosed to the Defence in which he wrote:

> "There was no apparent entry to or exit from the house and D.Chief Inspector Jones did in fact examine the inside of all ground floor windows and noted that they were all shut and secured on their latches. The scene was photographed. It seems however that after the inspection of D.Chief Jones some person had partially opened the transom window in the kitchen and also opened the catch on the ground floor bathroom windows. I have been unable to discover the person responsible but there was comment made of the smell in the kitchen and the flies gathering. There is no reason to believe that the bathroom window was opened, but following the departure of the Scene of Crime officer, the witness Police Sergeant Golding secured the windows mentioned."

266. We reject the complaint that this portion of the police report should have been disclosed. It is no more than a commentary on evidence, which had been reduced to statement form and served upon the Defence. The conflict between the two versions was there to be seen on the face of the statements (Golding p. 102) and (Jones p.987/8). This point was plainly not lost on the Defence who read the statement of Jones as part of their case and commented upon the conflict in their closing speech.

267. The second ground of complaint is that whilst the Defence were made fully aware that Scene of Crime officers carried out a thorough examination of the scene on the 8 and 9 September, the terms of reference for the search of the scene were not disclosed to them and in particular they were not told that specific attention was paid to entry and

exit marks at White House Farm. The examination had not revealed any scratch marks on the bathroom window. Our attention was drawn to a case diary kept by Mr Ainsley in which was recorded under 8 September:

> "Scenes of Crime to visit 9 Head Street under the command of DI Cook and White House Farm under the command of DCI Wright and to carry out a full, thorough Scene of Crime examination, fingerprints and scientific in particular in relation to entry and exit marks at White House Farm".

268. The examination of the Farm for entry and exit marks became particularly significant. On the 1 October 1985 Brian Elliott a forensic scientist examined the window catch and surrounding area of the downstairs bathroom/toilet sash window. He noticed that the brass catch had been scratched on the inner edge and that there was damage to the white paintwork on the adjacent faces of the top of the bottom sash and the bottom of the top sash. The white paint on the outside of the window including the outer face of the top of the bottom sash appeared clean and fresh.

269. He concluded that the damage to the sash window and catch was consistent with a thin blade having been inserted between the closely fitting sashes of the window in an effort to force the catch open. Furthermore this attack occurred after the outside of the window had last been painted. There was evidence that the windows had been painted in June and July.

270. It was the prosecution case that the marks on the paintwork had been made by the appellant when entering the Farm during the late evening or early hours of the 6 or 7 August in order to commit the murders.

271. It was the defence case, revealed for the first time at trial, that the appellant made those marks following his release after Police interview on or about 16 September upon his return from London having forgotten his keys. It was of potential advantage to the defence to demonstrate that the window in question was examined on the 8, 9, or 10 September and that at that time no marks were found on the window.

272. There is no doubt that the prosecution did disclose the fact that a scene of crime examination did take place at White House Farm on September 8 and 9. The defence were served with statements of DS Finch, DS Lunn and DC King. A fingerprint examination took place. Carpet fibres were taken and the side lounge window was photographed and swabbed and paint samples were taken from the side lounge window. Whilst none of their statements contain any negative observations or findings, it must have been obvious to the defence team that a scene of crime investigation into points of entry and exit was in fact taking place. We agree with the submission that in the circumstances of this case negative findings might usefully have appeared in these statements although we are satisfied that no impropriety occurred. Since the prosecution knew nothing of the use said to have been made of this window by the appellant following his release from custody, they cannot have appreciated the potential importance of this evidence to the defence. We are equally

satisfied that this very experienced defence team must have known by way of deduction what the general purpose of the visits were on the 8 and 9 September. However as Mr Temple concedes the time certainly came when the specific purpose of these visits became disclosable and it was so prior to trial.

273. Further complaint is made that the prosecution failed to disclose the fact that DC Barlow examined the windows of White House Farm on 22 August 1985 and noted nothing of significance in relation to the bathroom window. His statement of 21 November 1985 indicates that:

> "on Thursday the 22nd of August I was on duty when I went to White House Farm. There I made an examination of the kitchen window"

There is no reference in the statement to the bathroom window.

274. In notes written for the Essex Review (after trial) he wrote:

> "22/8/85 first opportunity to go to White House Farm. Examined all the windows. Most are sash type and could be opened from outside but could not be closed"

He makes no suggestion of finding any entry mark associated with the bathroom window.

275. It is also of significance that he recorded on 20 August 1985:

> "They (Robert Boulflour and Ann Eaton) thought the windows could be locked from outside the premises making particular reference to the window behind the bushes by the Geese pond facing towards the tennis court".

This would appear to be the kitchen window and provides the explanation for DC Barlow's examination of the kitchen window.

276. It is never easy for officers engaged in major enquiries to know to what extent they should include negative findings, which may be very numerous in their statements. In the case of DC Barlow we conclude that he should have included the fact that he examined all the windows on the 22 August. We find no evidence to indicate that he deliberately omitted this negative finding. Again this information should have been disclosed prior to trial.

277. Further complaint is made that the prosecution failed to disclose the fact that having been released from custody on 13 September the appellant was continuously under surveillance until 1.30 a.m. on 16 September. It is said that there was no disclosure of this fact but we note from a Kingsley Napley attendance note of 3 September 1986 that the appellant "confirmed that he <u>was</u> under surveillance after his release from custody".

278. Mr Turner complains that failure to disclose the exact details of the surveillance put the defendant as he then was at a disadvantage when drafting his proof of evidence. In particular it would have assisted him to recollect when he left the note in the office. Since the appellant knew he was under surveillance we need not consider whether there should have been disclosure of the fact but we note that the Attorney General's guidelines of December 1981 in force at the relevant time gave a discretion to withhold material where "it contains details which, if they became known might facilitate the commission of other offences or alert someone not in custody that he was a suspect, or it discloses some unusual form of surveillance or method of detecting crime".

279. In evidence the appellant stated that he had returned to the farm the night after his release or the night after that – i.e. on the 14 or 15 September. In evidence he said:

> "After my arrest at Chelmsford I went to London, came back and had not got my key. I needed car documents kept in the office for a holiday and I got in the loo window. I left a note on B.Wilsons desk to ask her to pay my solicitors bills".

280. Had prosecuting counsel been informed that the appellant was in fact under surveillance and in London at the time a potentially devastating cross-examination followed by the calling of rebuttal evidence would have caused the defence much embarrassment. Mr Turner contends the matter could have been simply explained away as a mistake as to dates, the actual visit occurring on 16 or 17 September as in fact he had instructed his solicitors. We have seen his proof of evidence to that effect.

281. Since prosecuting counsel was not given this information, the appellant avoided this potential crisis and since the appellant knew of the surveillance no possible disadvantage accrued to him by reason of its non-disclosure.

282. We must of course consider whether the combination of failing to disclose in the statements of DS Finch, DS Lunn, and DC King the fact that an examination for entry and exit marks had been carried out and the further failure in DC Barlow's statement to disclose that he had examined all the windows has adversely affected the safety of the convictions.

283. In interview the following passage appeared:

> "Appellant: There are many ways to get into the house i.e. windows"
>
> Question: "What do you mean, insecure windows?
>
> Appellant: "Insecure windows, secure windows, it makes no difference".

284. On the 12 September, 2 days later he was asked:

> "Question: Have you ever got in a window by putting something in between the window frames, like a knife, to move the catch so you could slide the window open?
>
> Answer: "Yes".
>
> Question: Which window?
>
> Answer: Downstairs toilet and lounge window".

285. Having been interviewed he was released on bail and thereafter asserts that within a day or two he went to the White House Farm and climbed in through the very downstairs toilet window and thereby provided an explanation for the marks on the window frame. This resulted in his being asked in evidence the very pertinent question whether it was unwise to go back within 2 days of being questioned about climbing in and out of the downstairs toilet window to and leave marks on that very same window in order to get into and out of the house.

286. The prosecution had established conclusively and without challenge the appellant's ability to enter and leave the White House Farm when it was apparently secure from his own answers. Julie Mugford confirmed the fact. The Crown did not have the burden of proving by which window and by which mechanism the entry was made. The Crown proved capacity both to enter and leave. There was no issue. As the trial Judge said (at page 10E):

> "… how he got there and out again whether by the kitchen window or any other means, though of interest, cannot affect the outcome of the case"

287. The only way in which the window evidence could have been of importance in the jury's decision is if despite other evidence pointing to the appellant as the killer, they might have been prevented from reaching that conclusion by doubting that he could have got in and out on the night in question with the windows being found next day in the condition in which they were found. On the appellant's own admissions, no such doubt could arise.

288. It follows that any failure to disclose earlier examination of windows cannot affect the safety of this conviction.

Ground 4 – timing of telephone call to Julie Mugford

289. Ground 4 relates to the first telephone call made by the appellant to Julie Mugford on the night of the killing. The prosecution contended at trial that this preceded the telephone call to the police, whilst the appellant asserted that it was made after he had telephoned the police and before he left home to go to the farmhouse. It has to be said that whichever version is right, it was remarkable that the appellant made such a call.

On his own version he had just received a dramatic plea for help from his father, he had rung the police and had been asked to go to meet officers at the farm. Yet he delayed for long enough to make a telephone call to someone many miles away, who could not possibly help in the situation. However, it clearly was even less likely that he would have telephoned before he rang the police and if the call was shortly after 3 a.m. it was wholly inconsistent with his account and only consistent with the account of Julie Mugford as to the nature of that call. Thus timing of that call, if it could be determined by the jury was of importance.

290. Ground 4 alleges that evidence was withheld from the defence at trial which supports the assertion he made at trial that the call to Julie Mugford was at about 3.30 a.m. and no earlier. Alternatively it is suggested that there is now fresh evidence that supports that contention.

291. A further and related complaint is made that a document was not disclosed which revealed that Susan Battersby, one of Julie Mugford's flatmates, who gave evidence that the call was at 3.12 a.m., had been less assertive in respect of the timing of the telephone call, indicating that it was either at 3.12 or 3.20 a.m. when she was seen by the police.

292. The source of the first part of these allegations is a hand-written note made by Ann Eaton, who was present with Julie Mugford when she was seen by the police and made a statement on the day after the killings, 8 August. Ann Eaton made a statement to the police on 8 September. In that statement, Ann Eaton said:

> "I recall that the officers were asking Julie what time she had received the second telephone call from Jeremy. She said it was 3.30 a.m. The police officer said that it was very important and that it must be right. Julie asked the officer if she could ring her flat in London to confirm the times. The officer agreed and she made a telephone call apparently to her flat. She spoke to somebody and queried the time, then turned and said, "3.15 a.m."

293. Later in the same statement Ann Eaton said that on reaching home, she had made notes on a card of the events of 8 August and that she had retained the card that was handed to the police and given a reference CAE/4. The card recorded the fact that Julie had given a statement and then apparently added in brackets alongside at some later stage was:

> "There was trouble getting right time of 3.15 phone call. A London friend was phoned."

294. No reference was made in that statement to any other notes made by Ann Eaton on 8 August. The document that those advising the appellant have now discovered came to light as a result of the City of London Police inquiry. Ann Eaton was seen as a part of that inquiry and made a statement. She described how her September 1985

statement had been taken by an officer DS Davis. She said that he had allowed her to have time to use her 1985 diary and "loose note cards" to put things in date order. She said that she had retained the documents and had handed them to the City of London police. One of the documents was a different set of notes made in pencil on a card which recorded the taking of the statement from Julie Mugford (it was given a reference in the inquiry of CAE/4A). It said about the timing of the telephone call:

> "Stan Jones talked to Julie about the phone call. Julie said her flat mate said 3.30 a.m."

295. The first complaint under this ground relates to the card CAE/4A. It is said that the prosecution failed to disclose this card or that in the alternative it is fresh evidence that the court should consider in determining the safety of the conviction.

296. There can be no doubt that the defence were unaware of this note at trial. We, therefore consider, whether it is a document that the prosecution were under a duty to disclose, whether there is any reason to think that the police or Ann Eaton may have deliberately concealed its existence, and whether in any event it could have been used by the defence in a way that would have had an impact on the jury's verdicts.

297. We think that it is clear from the content of the two notes that the card CAE/4A was made first probably as the events were unfolding. The card CAE/4 was what appears to be an expanded version of those notes although not containing all the same detail made at some later stage, possibly that day when Ann Eaton got back home as she recalled in her September 1985 statement. At some later stage additions were clearly made to the second note and it seems likely that they included the reference to the "3.15 phone call".

298. The first question that we must consider is whether the police were in possession of the card CAE/4A so that it could have formed a part of the disclosure. We conclude that it was not in their possession. The card CAE/4 had been taken from Ann Eaton and was treated as a potential exhibit at trial. It was undoubtedly in the possession of the police. The other card must have been in the possession of Ann Eaton after she had made her statement because she was able to produce it to the City of London Police.

299. Hence we are dealing with a case either of suppression by the police and/or Ann Eaton, or with a straightforward case of fresh evidence and not with a case of inadvertent non-disclosure by the police.

300. We have looked carefully to see whether any evidence exists that suggests that DS Davis was aware that there were two cards that gave potentially important conflicting information and we have found none. In a statement made by Ann Eaton in 2000, she referred (pages 36 and 37) to the note CAE/4A and said that she had made additions to CAE/4 at the time of making her statement or shortly before. That was a conclusion to which we had independently come.

301. The only evidence that suggests that the card CAE/4A was being used by Ann Eaton is the reference by her in her statement to the City of London Police made some years after the event. In that statement she referred to having retained the notes she had consulted in making her statement and she seems not to have recalled that the card CAE/4 had been taken from her by the police. Thus her recollection was at least in this regard faulty. There is, therefore, no evidence upon which we feel any reliance can be placed that she had both cards CAE/4 and CAE/4A with her when she made her statement. Equally there is not a shred of evidence to suggest that DS Davis inspected both sets of notes and decided only to produce that which in this one respect fitted in with the emerging case against the appellant. Accordingly we find no evidence of any impropriety on the part of DS Davis.

302. So far as Ann Eaton is concerned, we can see nothing that would permit of a conclusion that she was behaving improperly. She is no lawyer or policeman. The significance of any conflicting rough notes would not be apparent to her in the same way that it would be for a person engaged professionally in police inquiries. These were no more than rough notes made by someone who not unnaturally must have been devastated by the events of 7 August and its aftermath. We can see no reason to believe that she was deliberately suppressing information that she realised might be of significance.

303. Thus on a realistic appraisal of the available evidence, this falls to be considered as an instance of fresh evidence that has emerged since trial and we must consider whether or not, if known by the defence at the time, it could have had any impact on the trial and the resulting convictions.

304. To consider this aspect of this ground, it is necessary to look at the available evidence at trial. The starting point has to be what Julie Mugford said at trial and in earlier statements. In the statement that she made to the police on the 8 August following a telephone call to one of her house mates, she said that the phone call had been at about 3.30 a.m. In a later statement she said that she had since learnt from Susan Battersby that it was at 3.15 a.m. In evidence she said that she had been woken by the telephone call between 3 a.m. and 3.30 a.m. She said that she had not looked at any watch or clock. In cross-examination, her first statement was put to her and the passage including the approximate time of 3.30 a.m. was read to the jury and she acknowledged that that was what she had said at the time. Mr Rivlin did not choose to establish that she had spoken to one of her flatmates before committing herself to the time of 3.30 a.m. although that fact was apparent from the evidence available to him. Doubtless this was because he thought it was of greater advantage that her independent recollection was 3.30 a.m. rather than establishing that it was or may have been somebody else's recollection. In any event the evidence that she had given did not conflict as to timing with the defence case.

305. Helen Eaton (unrelated to Ann Eaton) was the housemate to whom Julie Mugford spoke whilst making her statement on 8 August. She first made a statement on 11 September in which she said that the phone call was at about 3 a.m. She confirmed that she had spoken to Julie Mugford when the latter was making her first statement and added:

> "I told her that it was about 3 a.m. I should add that I am not exactly certain about the time of that phone call, although for some reason I thought it was made at about 3 a.m."

306. In evidence Helen Eaton again put the time at about 3 a.m. like Julie Mugford she accepted in cross-examination that it could have been at about 3.30 a.m. She told the jury that she had not looked at her watch at the time and that she could not be accurate as to time within half an hour.

307. Douglas Dale was in the house at the time. He made a statement on 9 September saying that he had heard the phone at about 3 a.m. He also gave that evidence at trial. But when cross-examined he said that it could have been about 3.30 a.m. He said that he had never looked at the time and had probably been told the time the next morning by others.

308. Since Julie Mugford and each of the last two witnesses had given evidence that they had not looked at any clock when the telephone rang, it followed that any estimation of the time that they made was of necessity either a guess or based upon information from someone else. The other two occupants of the flat each said that they had looked at the time when the telephone rang and they were able to remember to differing degrees what time was recorded.

309. Joanne Woad first made a statement on 16 September. In that statement she said that she thought the time was about 2 a.m. On 3 October, she made a further statement in which she explained why she had said about 2 a.m. She said:

> "In my original statement I stated that this call was at 2 a.m. To be more precise I can add that when I awoke I remember looking at my digital radio/alarm clock at the foot of my bed and reading the hour figure as "2". I do not remember noting the minute reading and therefore the time could have been anywhere between 2 a.m. and 2.59 a.m."

310. In evidence Miss Woad gave precisely the same account and she would not accept in cross-examination that she was wrong.

311. The last of the flatmates, Susan Battersby, made a statement on 10 September. In that statement she said that she had been woken by the telephone and had looked at her radio clock and noticed that it was 3.15 a.m. She went on to point out that the time might not be accurate because she kept her clock 10 minutes fast. On 19 December, she made a further statement. In that statement she again referred to the telephone call being at 3.15 a.m. but later in the statement she said:

> "I can say that sometime during the evening of Thursday 8 August 1985, I telephoned Julie at Jeremy's house in Goldhanger. I spoke to Julie in relation to the time of the telephone call from Jeremy to our flat during the early hours of

> Wednesday 7 August 1985. I told Julie that Jeremy had phoned her at 3.12 a.m. I can now remember that when I looked at my clock radio display, the time showed 3.12 a.m. Previously I had said the phone call was at 3.15 a.m. I am positive the time was 3.12 a.m. I was aware that Julie wanted to know the time of this phone call as she had phoned the flat trying to contact me that day when she spoke to Helen Eaton."

312. In her evidence to the jury Susan Battersby was adamant that the time shown by her clock was 3.12 a.m. and that she had kept her clock approximately 10 minutes fast. The prosecution supported her evidence about keeping the clock fast by calling evidence from her boyfriend and also by evidence from a police officer who had been to check the timing on her clock at a later date without forewarning her. In cross-examination the fact that she had originally said that the time was 3.15 a.m. was put to her. She explained that she had been quite nervous when she made her first statement and had not then appreciated the importance of giving the time exactly. Later she had thought about it and she could picture in her mind the time as being 3.12 a.m. and she remained certain that that was the time shown on the clock.

313. If the jury were to disbelieve the appellant's evidence as to the timing of the telephone call, it could only have been because they were sure about the evidence of one or other of Joanne Woad and Susan Battersby. They could have accepted both to be right because if Joanne Woad was right the time could have been 2.59 a.m. and no precise check had been made as to the accuracy of her clock. If Susan Battersby was right, it was at approximately 3.02 a.m. and whilst it was known that she kept her clock approximately 10 minutes fast there was some room for some slight variation.

314. To detemine whether the document CAE/4A was capable of having an impact upon any conclusion that the jury might have reached, it is necessary to consider what use could have been made of it at trial and whether even if used it could have altered any conclusion that the jury might have reached about the evidence of Joanne Woad or Susuan Battersby either by demonstrating some weakness in their evidence or by supporting the evidence of the appellant.

315. The document did not purport to record anything observed or heard directly by Ann Eaton other than that after speaking to Helen Eaton, Julie Mugford had said that her flatmate said that it was 3.30 a.m. Such evidence is hearsay evidence as to what Helen Eaton herself said. Based upon this document, Helen Eaton could have been cross-examined about what time she had said to Julie Mugford but the document would not have been admissible to disprove any answer that she gave.

316. Even without knowledge of CAE/4A, Julie Mugford could have been asked questions about the conversation which she had had with Helen Eaton. If she said that Helen Eaton had given a time other than 3.30 a.m. she could have been asked why having said that she needed to telephone the flat before giving the time, she had still said 3.30 a.m. in her statement. All of this was possible without any need to know about, or to refer to, CAE/4A.

317. Thus it is very difficult to see how knowledge of CAE/4A could have altered the approach which Mr Rivilin chose to adopt. But even accepting in that some way it could have led to other cross-examination we have to consider whether that cross-examination could possibly have had any impact on the jury.

318. This evidence did not in any way reveal any defect in the evidence of the only two witnesses upon whom the jury would have had to have relied in reaching a conclusion adverse to the appellant. Neither Joanne Woad nor Susan Battersby was a party to the discussion on the telephone whilst Julie Mugford was making her statement. The evidence was clear on the point that each of them was out of the flat at that time. The most the evidence revealed was that Helen Eaton had thought the time was about 3.30 a.m. and that Julie Mugford having consulted her was prepared to adopt that time. However, crucially both Julie Mugford and Helen Eaton had said consistently that they themselves had never looked at the time when the telephone call was received during the night. Each accepted that the time could have been as late as 3.30 a.m. in evidence and the jury knew that. We fail to see how the jury could have attached any further weight to their estimate of the time made on the 8 August when it was not said to be based upon them actually looking at a clock. In any event the jury knew that Julie Mugford gave that estimate in her statement made on that very day.

319. Thus we are satisfied that even if the jury were able to know of the existence of this document, it could not in any reasoned way have enabled them to have resolved the conflict between Joanne Woad and Susan Battersby on the one hand and the appellant on the other hand in a way different from any conclusion that they may have reached on the evidence which they heard. Accordingly this fresh evidence can form no basis for doubting the safeness of the conviction.

320. The other document referred to under this ground is a police action form. On 9 September 1985, Detective Superintendent Ainsley issued a written action requiring that Susan Battersby should been seen and a statement should be taken from her. The action recorded that the statement was required:

> "Re knowledge of Jeremy Bamber and in particular relation to telephone calls received on 7 and 30 August 1985."

321. This action was issued to DI Bright. The following day the first statement was taken from Susan Battersby. As we have already recorded in that statement she said that the telephone call was at 3.15 a.m.

322. The action record has on it under "result of the action":

> "10 p.m. tues?
>
> 3.12? 3.20? 7/8/85
>
> Tues 27.8.85

Statement obtained

Statement under caution obtained

PDF attached"

323. Alongside the reference to statement obtained apparently in a different hand and at right angles to the writing there appears in a circle 3.15.

324. It is common ground that this police action was not seen by the defence. Mr Turner suggests that it was deliberately suppressed. We cannot accept that this is so. None of the police actions or police messages were disclosed to the defence. However, we are satisfied that at the relevant time when this case was being prepared for trial, it was not routinely the case for such documents to be disclosed. Mr Edmund Lawson QC who acted as junior counsel for the appellant at trial gave evidence to us and in evidence said that he could never recall seeing such a police action in any case at or prior to that date. His experience corresponds entirely with that of each of the members of this court, all of whom were involved as counsel in major criminal cases in the mid-1980's. We are thus entirely satisfied that the document was not disclosed because at that date it was not the practice for such documents to be disclosed.

325. However, even rejecting the suggestion of deliberate suppression of the document we have to consider whether the document reveals information which in itself ought to have been drawn to the attention of the defence.

326. Mr Turner's submission is that the document gives rise to the inference that Susan Battersby gave at least two different times when she was seen by the police on that occasion, namely 3.12 a.m. and 3.20 a.m. and that this would have been further information that the defence could have utilised to show that she was not sure of the time in the way that she had purported to be before the jury.

327. We fail to see how anyone could draw from the document and the rest of the evidence on this matter, the inference suggested by Mr Turner. The action does not purport to be a record of anything said by the witness. It is an internal document for the use of DI Bright. That which was to be said by the witness was to be recorded in statement form and the statement recorded the time as being 3.15 a.m.

328. It seems to us that before taking the required statement DI Bright would inevitably inform himself of the evidence available and of the inferences that the police thought might be drawn from such evidence before going to see the witness. We think, examining just the document, that the most likely explanation for these notes that appear before the record of taking the statement are that they were jottings made by the officer pre-interview. Certainly nothing in the subsequent statement would in any way allow of an inference that the witness was saying anything other than that the time was 3.15 a.m. There is no mention in her statement of either 3.12 a.m. or 3.20

a.m. Each of those times are consistent with the case against the appellant and contradicted his account and there would be no reason why those times should not have been given if the witness was putting them forward. The action refers to the "27 August". However examination of the statement shows that this specific date does not appear in the statement and the witness speaks of events happening on either 26 or 27 August. This does not seem consistent with her putting forward the 27 August in the course of any conversation as a precise date as would be suggested if Mr Turner's inference as to the meaning of the notes that precede the record of the taking of the statement were correct.

329. We were aware that if we had taken a different view on looking at the document, the prosecution would have sought to call DI Bright who would have advanced exactly the explanation that seemed to us the only sensible one. We could see nothing that the defence could have put to that officer which in any way could have justified a different conclusion.

330. Thus we concluded that there was no information recorded on the police action form that required to be disclosed to the defence and that the action itself could not have had any impact upon the jury's conclusions. For these reasons ground 4 is in our judgment wholly without merit.

Ground 5 – evidence relevant to the credibility of Julie Mugford

331. Ground 5 raises issues relating to Julie Mugford. When she had given a statement to the police in September 1985, she had made admissions of dishonest conduct in which she had been involved. She referred to a burglary offence committed jointly with the appellant and to a cheque book fraud committed jointly with Susan Battersby. She was not prosecuted for either offence nor was Susan Battersby prosecuted for the cheque book fraud which she too had admitted to the police. The first limb of ground 5 is a complaint that the prosecution failed to disclose the fact that both Julie Mugford and Susan Battersby were given immunity.

332. As Mr Temple points out, in answer to that aspect of the matter, Julie Mugford and Susan Battersby were not granted immunity as such but a decision was taken by the DPP not to prosecute. We therefore read this ground as being a complaint that the documentation relating to the decision not to prosecute each of the witnesses was not disclosed to the defence.

333. The jury knew about the admissions made to the police. They further knew that neither of the girls had been prosecuted for these offences. Julie Mugford told the jury that she had "got a caution for it". When the judge summed the case up to the jury, he referred to her receiving "a police caution". Mr Turner's submission is that the jury were misled by being told that she had received a "police caution", and that the prosecution were under a duty to correct this wrong impression.

334. It is undoubtedly correct that Julie Mugford had not received a formal police caution in the sense that that expression is clearly understood by police officers and lawyers. It may be that the trial judge in translating Miss Mugford's reference to a caution into a formal police caution had misunderstood the position. However it seems unlikely to us that the jury would have understood the significance of a formal police caution as opposed to any other warning as to her future behaviour.

335. However, whether or not the jury understood the legal distinction of a formal police caution, we fail to see how this could have had any possible impact upon their considerations. What mattered in assessing the weight to be given to the witness's evidence was their own admitted dishonesty, and how they had behaved in relation to such dishonesty, not how the authorities had responded to their admissions. Any failure to correct the judge's reference to a formal police caution cannot be laid at the door of the police since the position was clearly understood by the lawyers and hence such a failure could not in any way taint the evidence of the police officers involved in the inquiry.

336. We turn, therefore, to consider the second aspect of this ground. After revealing these matters to the police, Julie Mugford and Susan Battersby went to Susan Battersby's bank, the victim of their cheque book fraud, to inform the bank of their dishonesty. The second limb of this ground contends that the prosecution failed to disclose the action of DS Jones and other unidentified officers in respect of the cheque fraud perpetrated by Julie Mugford and Susan Battersby on the Midland Bank. Mr Turner in his skeleton argument explains this part of the ground by alleging:

> "... contrary to the evidence given at trial, Susan Battersby and Julie Mugford's attendance at the Midland Bank had been orchestrated by the police and unidentified officers had almost certainly encouraged the bank to take the stance that they did."

337. In order to consider these allegations it is necessary to look in more detail at what occurred. Julie Mugford went to the police on 7 September 1985 and gave them the account which she was to repeat in evidence. She made a detailed statement on the following two days, 8 and 9 September. On 10 September she made a further statement. In the course of the taking of that statement, she spoke about smoking cannabis that the appellant had purchased. She then spoke of other things that she suggested the appellant had done and she went on to say:

> "I would like to tell you about the burglary I committed with Jeremy."

338. At that point she was cautioned and told that she did not have to say anything but she went on to give the police details of that burglary. Having dealt with that matter, she then revealed that she had also committed the cheque fraud with Susan Battersby.

339. Susan Battersby was also being interviewed on the same day and at the same time and she independently admitted the cheque book fraud to the police. She made a written

statement to the police under caution. That statement commenced by expressing her belief that she would not be taken before the court as a result of making the statement. She added:

> "I have made a witness statement relating to the death of five people and I understand my credibility is important."

340. All these facts were clearly known to the defence and they were in a position to make such use of them as they saw fit. The first document that Mr Turner submits is significant and which had not been disclosed to the defence is a police action form (Action no. 148) dated 13 September 1985. The nature of the action is given as:

> "Two officers to investigate cheque offences admitted by Mugford...take possession of this property where ever it may be."

341. Included within the section for the result of the action is the account number for the relevant account and there then appears the following passage:

> "Please note – Battersby has supplied this information even though she is an accused person. I have given her one week from 23/9/85 to change banks so that she will be inconvenienced as little as possible."

342. On 4 October, Susan Battersby and Julie Mugford went to the bank. They saw there Alan Dovey, an accountant with the bank who was acting as Branch Manager. A statement from Mr Dovey recording this visit was served upon the defence. Mr Dovey's statement included:

> "I can say that on 4 October 1985 Miss Battersby came to the bank to see me with another girl who I know as a Miss Julie Mugford. Miss Battersby then informed me that she had not lost her cheque book but had been dishonest. Both stated that they were involved in the passing of the cheques. As a result of what they said I accepted their offer of paying the money back to the bank. In fact £320 has been paid to date and arrangements have been made for the outstanding amount to be paid at the rate of £50 per week. I can say that the bank was the loser in this matter and not the shops who accepted the cheques.
>
> I am authorised on behalf of the bank to say that in view of the fact that the girls have confessed and agreed to pay back the monies the bank do not wish to prosecute in this case."

343. Julie Mugford gave evidence to the jury about the visit to the bank. She said that she had gone to the bank to explain what had happened and she said that this was not on the advice of the police.

344. When the judge dealt with this aspect of the matter in his summing up (Transcript page 19C), he said:

> "It is the defendant's case, of course, that Julie Mugford's evidence in this case is fabricated, and that she is a brazen, blatant liar, so Mr Rivlin introduced the matter of her previous cheque offences in order to suggest to you then that it was shown that she has been dishonest in the past and so that you can bear in mind that part of her character when assessing whether to believe her not on the evidence she has given in this trial. That is the degree to which that evidence is relevant. Of course, the fact that a person has committed some offence, or has at some time lied in the past, in no way proves that they can never again tell the truth and you might think particularly so, on oath in a murder trial. It does not prove that at all. It is merely there for you to have in mind when you come to weigh up her evidence.
>
> In considering whether her past dishonesty affects your assessment of her as a witness in this case, no doubt you will bear one or two things in mind, namely that she volunteered her past offences to the bank who had lost the money when she went to them about a month after she had made her statement to the police in this case, and volunteered to them that if they look back they would find frauds for which she was responsible. She told you that she went there voluntarily and re-paid the money that had obtained, and it seems, does it not, that without her voluntary revelation of her own part in those offences, she would never have been caught for them. They would have never come to light, and it was in those circumstances that she was not in fact prosecuted for them. She received a police caution."

345. Apart from Action no. 148, the appellant relies on evidence available from the acting bank manager, Mr Dovey. On 20 March 2002, he was asked to recall the events which had happened over sixteen years before. He explained that he had made notes about the meeting in bank reference books and that he wished to consult those notes. Unfortunately it transpired that the records were no longer in existence having been destroyed in the course of the bank's normal processes. Mr Dovey had, therefore, to rely on his unaided memory. He indicated that when Susan Battersby and Julie Mugford saw him on 4 October 1985 he had received an internal phone call telling him that Susan Battersby was coming to see him and following the meeting he should report back to the Chief Inspector's Department. When Susan Battersby had arrived, she had been accompanied by a police officer in plain clothes and by Julie Mugford. The officer had introduced the other two and indicated that Susan Battersby had something that she wished to say. Miss Battersby had then revealed the cheque fraud and offered to repay the money defrauded. He then said:

> "Once I had finished dealing with Miss Battersby, the officer then told me that Miss Battersby was to be a witness in a court

> case some months in the future, and that she did not want this matter, i.e. the cheque and cheque card, weighing on her mind. I got the distinct impression that the emphasis was on the girls, and it was their consciences that led to the meeting. I had been asked today if the officer, either directly or indirectly, put me under any form of pressure to take a certain course of action e.g. not to prosecute. I can say quite happily that he did not. He did condense the girl's desires, and said words to the effect that the girls wanted to come in and tell the truth, wanted to pay the money back, not be branded thieves, and hopefully not to be prosecuted."

346. Mr Dovey said that he had made the decision not to prosecute himself and then had discussed the matter with someone in the Chief Inspector's Department who had given approval for the course of action he proposed. Arrangements were then made for the repayment of the money over the following weeks and the girls then left.

347. In his statement, Mr Dovey recalls that at that stage the officer said that he would be back with "a typed statement" for him to sign in the next couple of weeks and that he too had then left.

348. He said that an officer, he believed that it was the same officer who had come before, came back with a prepared statement which he read and after satisfying himself of its contents signed. The statement, which is not typed but hand written, is dated 14 October, ten days after the visit to the bank.

349. Mr Dovey in his statement finally repeated that he had not been put under any pressure to reach a conclusion one way or the other.

350. The officer who wrote the statement signed by Mr Dovey in October 1985 was DS Jones. Mr Turner draws attention to the fact that there are two alterations to that statement, each of which are initialled by the witness and each changes the description of Mr Dovey's position within the bank from bank manager to accountant. He submits that an inference can be drawn from these alterations that the statement was prepared at a time when Mr Dovey was not present and was as Mr Dovey himself recalls only taken to him for signing after preparation.

351. The prosecution have explored whether the statement made by Mr Dovey in March 2002 is right. Further statements have been taken from Julie Mugford (now Julie Smerchanski), Susan Battersby and DS Jones. Each of the girls insist that there was no police officer present when they went to see Mr Dovey. DS Jones asserts that he was not present on this occasion and produces his diary that shows that he had a rest day on the day when the visit was made to the bank. Miss Battersby said that she could not remember how the visit came about but she thought that she must have telephoned the bank and asked for an appointment with the manager.

352. During preparation for trial, the defence solicitor wrote to the DPP asking to be supplied with "a list of all the occasions on which there has been oral communication between the police and Julie Mugford, with a brief description of the purpose of such communication against each date".

353. We have been shown a letter addressed to the DPP in which the police dealt with this request. They suggest that it was "totally unreasonable" to have to provide a list of all communications. They said that a list would be made available at trial listing "all personal visits to the witness". That list when it was made available, did not record any contact on the day of the visit to the bank.

354. Although this aspect of the case was advanced in the ground as a straightforward example of non-disclosure, Mr Turner contended that in the alternative the court should hear the evidence of Mr Dovey as fresh evidence and should conclude that the jury had been misled in an important regard by the evidence of Julie Mugford; that if the true position had been known, the judge's summing up in this regard would have been very different; that the list provided to the defence had been deliberately misleading; and that such matters meant that Julie Mugford's evidence, an important part of the prosecution case, may not properly have been assessed thereby rendering the convictions unsafe.

355. We considered first the question of non-disclosure. So far as Action no. 148 is concerned, bearing in mind that police actions were not normally disclosed at that date, there was nothing in its contents which in our judgment demanded that it should be brought to the attention of the defence. It revealed no more than that a witness, Susan Battersby, who had admitted criminal offences whilst purporting to assist the police in respect of a major inquiry into five deaths which might have been murders, had been shown a degree of consideration by a police officer. In all the circumstances, we find it difficult to see how that could properly have been the subject of any criticism that might have had the slightest impact upon the outcome of the case. Since it would not, there was no requirement that this fact should be drawn to the attention of the defence.

356. As to all other matters, the prosecution case was, and still is, that no police officer attended the bank. There was no evidence available to the prosecution to contradict their case in this regard and accordingly there was no requirement for disclosure. It seems to us that this aspect of the case falls to be considered as a straightforward instance of fresh evidence apparently contradicting an aspect of the prosecution's case as presented at trial.

357. Whilst we had grave doubts as to whether even if these matters were made out, they could possibly lead to a conclusion that the verdict was unsafe, we nonetheless thought it to be in the interests of justice to permit Mr Turner to call Mr Dovey to give evidence before us. We have no doubt that Mr Dovey was an honest witness doing his best to assist the court but a great deal was being asked of his unaided recollection in recalling matters so long ago. There were differences between his evidence in the witness box and the statement which he made in March 2002. In the witness box he

said that he did not know of any connection between the matters he was dealing with and any police inquiry. He further said when speaking of the phone call from the Chief Inspector's Department that he only "vaguely remembered" getting such a call. None of this surprises us after such a lapse of time particularly when the notes which he made in order to remind himself if necessary of these events are no longer available. There was, however, no doubt in his mind that a police officer had been present.

358. Having heard Mr Dovey, we had to decide whether it was necessary to hear further evidence from the prosecution witnesses. We concluded that it was not. In our judgment it is now impossible after such a long lapse of time to resolve this factual conflict. Material which might have been of critical importance has been destroyed. All concerned, and not simply Mr Dovey, are relying on memories which in matters of detail are almost certainly imperfect. But even if the court could resolve the factual conflict, we think it impossible to draw any satisfactory conclusion as to what was happening at the time. As, Lord Woolf, CJ observed in Hanratty [2002] EWCA Crim. 1141; [2002] 2 Cr. App. R. 30 at paragraph 99:

> "Another difference between a case such as this and a case which has only been tried recently is that this court can expect in the latter type of case to be provided with an explanation for situations which give rise to a suspicion of possible impropriety. There may be an explanation for what happened which shows that there is no cause for suspicion, but this may be impossible to discover due to the passage of time."

359. We think that it is of the greatest possible significance that Mr Dovey has said throughout that no sort of pressure was brought to bear upon him to take any particular course of action. Mr Dovey also said that during the meeting he got the impression that the girls said what they did out of a sense of guilt. He said that it was highly unusual for those who had defrauded the bank to make offers of repayment and that it was these factors, and these factors alone, that had a bearing on his decision.

360. We are conscious of the fact that Mr Edmund Lawson QC, in a statement put before the court, said that he found it difficult to say unequivocally that the defence would have made use of this information even if they had been aware of it. He said of this matter that "it may seem relatively unimportant". He observed, however, that if it showed the police to have been dishonest in that there were denials of what had really happened, then there might have been a use to be made of it to attack police credibility.

361. We are far from persuaded that anything done by the police or by the witnesses was improper on any version of the facts. Insofar as there is now a conflict between the witnesses, we are not persuaded that such conflict would have manifested itself, if these matters had been explored whilst memories remained fresh and notes still survived. Accordingly we are not in any way persuaded that this aspect of the case, which was to an extent removed from the critical features of the case, gives us any cause to doubt the safety of the convictions. We do not accept that any impropriety

by the police has been established on the evidence available, either as to their conduct at the time of the visit to the bank or by way of some attempt to cover up their role in the matter.

362. Even if we were persuaded that an officer visited the bank with the girls, we would be far from persuaded that it was DS Jones. The fact that he was recorded as being on a rest day suggests to us that it was unlikely that he would be at the bank. The point made by Mr Turner about alterations, in our judgment, loses force when it is appreciated that Mr Dovey was acting as manger of the branch at the time and we can see how the alterations could have come about whether Mr Dovey was present or not when his statement was drafted.

363. The final limb of ground 5 relates to the fact that Julie Mugford sold her story to the newspapers. As we made clear earlier in this judgment one ground of appeal raised before the court at the original appeal and rejected by the court as unarguable related to this same topic.

364. Mr Turner explained to the court that there was now evidence available to show that when Julie Mugford indicated through the prosecution that she had not sold her story to the press at the time of trial that this was simply untrue.

365. We can deal with this aspect of the case shortly because by the conclusion of the evidence, Mr Turner acknowledged that he was unable to establish on that this was so.

366. He, therefore, did not address us in his closing speech to argue that there was any significant difference between the ground that had earlier failed and the present ground and accordingly it must fail as it properly did before.

Ground 6 – letter from Colin Caffell

367. Much attention was devoted at trial to consideration of the state of Sheila Caffell's mind. It was common ground that she was a schizophrenic, and indeed she had been in St. Andrew's Hospital Northampton between 3 and 29 March 1985 when she had become acutely ill. Dr Ferguson, the consultant psychiatrist who was in charge of her case gave evidence for the defence, and his view was that she had responded fairly quickly to medication so that by the time she left hospital her illness was reduced to a manageable state. He did not think she was a significant suicide risk, and the suggestion that she had killed her family, particularly her father and her own children did not fit in with his concept of her.

368. The defence called another consultant psychiatrist, Dr Bradley, who had never treated nor indeed even met Sheila Caffell, and who gave the court the benefit of his opinion from the medical notes. His evidence amounted to no more than that he had

experience of cases where mentally disturbed persons who believed that it would be for the good of the victims had killed children and others.

369. In addition, there was a body of evidence from non-expert witnesses who had spoken to or been in contact with Sheila Caffell in the days immediately preceding these killings. The trial judge devoted some eight pages of his summing up to all this evidence, and summarised its effect in the following way:

> "Most of them saw signs of Sheila's illness which agreed entirely with Dr Ferguson's evidence about it. None of them, at any stage, knew of any physical violence by Sheila, although on occasions when she was acutely ill - as when Freddie saw her just before she went into hospital in March - they were frightened that she might become violent. All of them agree that she was loving - very loving - and caring for her twin sons. There was evidence that she sometimes had a difficult relationship with her mother. Everyone seems to agree that she was very attached to her father, and that he was the person who had a remarkably calming effect upon her. Dr Ferguson said that in his view she treated him as her mentor - a source of help and someone who could calm her when she was in trouble. There is no evidence from anyone of her ever expressing any violence towards her parents."

370. However, the appellant gave evidence of what is now described as an argument or quarrel between Sheila Caffell and her parents on the evening preceding the killings when he was present. The evidence that he gave was summarised by the trial judge in the following terms:

> "The defendant in his evidence told you that on the evening of the 6th August, when he went into the farmhouse from time to time, his mum and dad, and Sheila, were having a meal and there was a discussion going on about what could be done to help Sheila's problems. He said that during that discussion mention was made of fostering to help with the children, not in the sense, apparently, of the children being taken away from Sheila, but in the sense of some local family being found who would help with the children - a local family near to the farm. He was asked how Sheila had reacted to that suggestion and he said "Well, she replied that she would rather stay in London, but generally did not appear to pay much attention". It does not appear from any evidence that Sheila was excited or disturbed by any such suggestion, or that she was in a highly disturbed state, or showing signs of that at the farm that evening."

371. The complaint under this ground of appeal is that there was in existence material that might have been relevant to Sheila's attitude towards her children in the form of a letter to Nevill Bamber drafted by Sheila's former husband, Colin Caffell (but never sent), shortly after her release from hospital on the 29 March. That letter expressed

his concern about the effect that Sheila's mental condition was having on her ability to look after the two boys properly, to pay attention to their needs and requirements, to get them off to school in time and generally take care of them. He was also concerned about the influence that Mrs Bamber had upon the two boys. In fact, it appears from the evidence that he gave at trial that he himself was caring for the two children for about 95% of the time. He was seeking Nevill Bamber's support in convincing Sheila that the boys should continue to stay with him most of the time, and that he should have full control over their well-being. It is to be noted that he and Sheila had joint custody of the children.

372. This letter was referred to in a disclosed statement made by Mr Caffell on 11 September 1985. He actually produced the letter to the police officer who took the statement, and it was given an exhibit number (ARD/1) although technically it could never have been an exhibit. In such circumstances, the suggestion that this letter was never disclosed to the defence is, we have to say, manifestly unsustainable. So also is the assertion, implicit in the appellant's skeleton argument on this ground that the police at least in breach of their duty to ensure that all relevant material was disclosed failed, deliberately or inadvertently, to ensure that this material was drawn to the attention of the defence team. The reference to the document in the disclosed statement alerted the defence to its existence and it was for the defence to satisfy themselves as to whether or not it was relevant to the case that they wished to present to the court.

373. That conclusion is enough to dispose of this particular ground of appeal, but in deference to Mr Turner's submissions on the point we go further and express our view that this draft letter, even though it may have reflected Mr Caffell's views, was of minimal if any relevance to the issues that the jury had to consider. The letter was never sent; and there is no evidence that Mr Caffell's views, or his request was ever conveyed to Nevill Bamber, Sheila Caffell or any other member of the family. Mr Caffell himself was not present on the evening of 6 August when the discussion described by the trial judge took place. The most relevant evidence of Sheila's reaction to the suggestion that the boys should be fostered was that given by the appellant himself and related to a point in time only a matter of hours before the killing took place. It may be noted that for a period in 1982 and 1983 the boys had been cared for by a day foster mother living near Sheila Caffell in Camden, under the auspices of Camden Social Services, and this arrangement appears to have caused no difficulty. The arrangement being discussed on the evening of the 6 August, from the evidence given by the appellant, seems to have been of a similar nature.

374. However, Mr Turner sought permission to call before us further psychiatric evidence, primarily from Dr Ferguson. In the statement tendered to this court in support of this application Dr Ferguson suggests that if he had been aware of the letter from Colin Caffell with the possible scenario that he might take over full time care of the children from Sheila coupled with the possibility that Nevill Bamber might have pleaded Colin Caffell's case, he would have suggested that this could have had a potentially catastrophic effect on Sheila Caffell. This would have been partly because she would have been resistant to the suggestion of having her children removed from her care and partly because it might have transformed her image of her father from a support and mentor into that of a hostile figure.

375. However, it is clear that Dr Ferguson had already dealt with a broadly similar scenario in his evidence in chief. The evidence runs:

> "Q. Having regard to your knowledge of Sheila, do you follow, how would you have expected her to have reacted to a suggestion that the children should be removed from her care?
>
> A. I would have expected her, were this to be put to her suddenly, to be a very substantial threat and I would have expected her to react very strongly to what to her would be the loss of her children. I would not have expected her to be passive about that. "

376. He went on to say he had no way of knowing what form a strong reaction would take, whether it would be to become more psychotic, or more helpless or angry. He took the view that it would however be a very strong threat. He was asked by the trial judge what her likely response would have been to the prospect of daytime foster parenting. The Doctor replied that he did not think that she would have interpreted that as losing her children, and indeed she acknowledged considerable help in that regard.

377. It appears to us that when Dr Ferguson provided his most recent statement in support of this application he overlooked the fact that the letter written by Colin Caffell was never sent and there is no evidence that it ever came to Nevill Bamber's knowledge. He also does not appear to be aware of the very considerable extent to which Colin Caffell was, at the material time, already responsible for the day to day care of the two boys. In the circumstances it does not seem to us that Dr Ferguson is in any position to add significantly to the evidence that he gave to the jury in October of 1986. No new issue is raised which was not already fully before the jury, and in the circumstances it did not seem to us necessary or expedient in the interests of justice that further evidence on this topic should now be admitted before this court and we declined to hear such evidence. There is thus nothing of any substance in this ground and we reject it.

Ground 7 – the statement of Colin Caffell

378. The appellant complains that the Crown failed to disclose at trial the original hand written statement of Colin Caffell, which demonstrated that the typed version of his statement was incorrect. Further and alternatively, the police failed to disclose the fact that Colin Caffell had complained in respect of the discrepancy, and that they had failed to correct it.

379. In the statement dated 11 September 1985, Colin Caffell dealt with the general background and history of his relationship with his ex-wife and with other members of the Bamber family. In the course of this statement he referred to a discussion that

he had had with the appellant on the 3 August 1985, after a party. The relevant passage in the original statement reads:

> "After he'd dropped Sheila off he returned and we talked. During the course of which he mentioned that he also had been the subject of pressure to marry from his parents as I had been. He felt that I'd had a rough deal all along in respect of Sheila's illness and the attitude of the Bamber family to me. I've always been treated like an outsider."

380. When that statement was transcribed by a typist, the penultimate sentence of this passage was recorded as "he felt that he'd had a rough deal all along...". Having looked at the original hand-written statement we can readily understand how the typist came to make such a mistake, and indeed Mr Turner accepts that it probably was a genuine error. Furthermore, on reading the typescript, it is plainly obvious that there is some mis-typing in that script, as the passage as typed does not read sensibly or logically.

381. The suggestion that the original hand-written statement was not disclosed is nonsensical. The hand-written statement in accordance with the usual practice would have been lodged with the court, and was available for inspection by all parties. No suggestion to the contrary has been put forward by counsel or solicitors instructed at trial. Furthermore, it also conceded that this particular passage of Mr Caffell's statement was not led from him in evidence, nor was it cross-examined to. In the circumstances this error, insignificant as it is, cannot conceivably have any impact upon the safety of the verdict.

382. However, the appellant's contentions go further. About a year after he made that statement Mr Caffell wrote a private and confidential letter to Detective Superintendent Ainsley drawing his attention to the error. The letter complains that when Mr Caffell commented to DS Jones about this he said words to the effect "Oh, it's only a typing error, don't worry about it. It's correct on the hand-written statement isn't it? That's all that matters, so just sign it. If you change it, we'll have to have it all typed out again." The letter continues:-

> "This has been niggling me for some time and I feel it must be important to have been included in the typed statement. When I asked Stan Jones about it again last week he said "leave it, whatever you do don't say anything about it in the witness box, it'll cause allsorts of trouble if you do"."

383. In a statement made recently, Detective Superintendent Ainsley says that he "does not actually recollect the letter". The letter was addressed to Mr Ainsley at Police Headquarters and he believed that it would have been forwarded to Witham where it would have been opened by the Incident Room staff. He says that he is surprised that nobody spoke to him about it. Mr Turner is critical of this response and suggests that it demonstrates further the dishonesty of Mr Ainsley and his willingness to cover up wrong doing in the inquiry. He points to the fact that the letter was not only

addressed personally to Mr Ainsley but was also marked "Private and absolutely confidential." He argues that such a letter would inevitably be shown to Mr Ainsley even if not personally opened by him. It should be noted, perhaps, that there is nothing in Mr Ainsley's recent statement to show whether the envelope as well as the letter was drawn to hids attention.

384. On 15 September 1986, following receipt of the letter, DS Jones visited Mr Caffell to discuss his letter and the upshot of the discussion is recorded in Action No. 245 with the words "Mr Caffell realises he had got the facts wrong". The typing error went uncorrected.

385. The appellant contends that this episode is indicative of a mindset in the police officers in charge of the investigation in this case, certainly DS Jones and possibly also Mr Ainsley which made them willing to commit wrongful acts in order to obtain convictions. He suggests that this conduct indicates dishonesty and goes so far as to suggest that DS Jones was effectively counselling Mr Caffell to pervert the course of justice. This seems to us to be a grotesque exaggeration of the situation.

386. The original mistake was, as we have already made clear, no more than the sort of typing mistake that is inevitably to be found in a case where the documentation is on the sort of scale to be found in this case. It reveals something of the careful approach of Mr Caffell that he spotted the error and thought that a correction was required. When it was pointed out to him, DS Jones should have taken steps to see that the error was corrected. To suggest that he did not do so in order to secure a conviction at all cost does not stand up to even a moment's thought. The mistake was unlikely to mislead anyone since it was obvious from the context; the original was with the court's papers for examination; and no assessment of the position could possibly lead to a conclusion that even if not spotted this error would impact upon the outcome of the case.

387. That DS Jones did not take steps to ensure that an alteration was made has to be seen in the circumstances then prevailing. As Mr Temple points out, the officer was undoubtedly heavily engaged in preparations for the imminent trial, and he had many other things to do, which were undoubtedly more critical to ensuring that justice was done at the trial. The topic that was discussed in Mr Caffell's statement was entirely irrelevant to the issues at trial, as the subsequent decision of each side to raise the matter demonstrates.

388. The other aspect of the matter deserving of scrutiny is the conduct of the police once Mr Caffell had written to Mr Ainsley. We again remind ourselves of the observations of the court in Hanratty quoted above that it may well be impossible to discover the precise explanation for situations which give rise to a suspicion of impropriety years after the event. We think that if you make that allowance, it is wholly impossible to conclude from the fact that Mr Ainsley does not recall Mr Caffell's letter many years later that he is participating in some sort of cover up. Even if he did see that letter at that time, as Mr Turner suggests that he must, it does not surprise us that now he does not recall it.

389. Mr Ainsley makes the point in his statement that Mr Caffell was not a man who was easily fobbed off if issues he raised were not dealt with to his satisfaction and the very contents of his letter seem to us to demonstrate the truth of that assertion. It seems quite clear to us that the visit of DS Jones did reassure Mr Caffell that he was not being asked to do anything that was improper or inevitably he would have pursued the matter further. That is a view we would have formed on the available evidence but in any event it is supported by a statement taken from Mr Caffell on 13 August 2002 in which he said:

> "I have been asked about the letter that I wrote to Mr Ainsley prior to the trial. Having read it I have a memory that Stan Jones visited me and showed me my original statement which was correct. I don't remember specific times or dates of his visits. I do know that seeing the statement put my mind at rest and as a result I was not concerned in the lead up to giving my evidence. The concerns in my letter were no longer in my mind. Stan Jones was a jovial type but was keen to stress that the police knew what they were doing. I understand that Jeremy Bamber's defence team having read this letter, suspect that there was some sort of skulduggery on the part of the police. I was not under this impression and saw the error in the statement as a clerical mistake."

390. We have little doubt that if, as seems to be the suggestion, DS Jones had invited Mr Caffell to lie either about the contents of his statement, or about the failure to alter the mistake, Mr Caffell was, and is, not the sort of person who would be persuaded that there was no "skulduggery" going on. It is clear from all the documentation relating to Mr Caffell that above all else he wanted to know what had really happened on the night when his sons were killed and that if he observed anything that might have deflected from his learning the truth, he would not have let the matter lie.

391. Accordingly, although we cannot now establish all the facts of what occurred in respect of this letter, we are sure that the only reasonable conclusion is that it reveals no failure on the part of the police to act properly other than the failure of DS Jones to ensure that the typing mistake was corrected, which for the reasons already given can have had no significance at trial. We therefore reject this ground.

Ground 8 – photograph showing carving of the words "I hate this place"

392. Ground 8 is a complaint that the prosecution failed to disclose at trial a photograph, which had been taken at the farmhouse, and which was numbered 101. The photograph reveals the words "I hate this place" carved on the cupboard doors of the room in which the twins were sleeping when they were shot. The basis for the assertion that this photograph was not disclosed lies in the fact that no member of the defence team can remember seeing the photograph.

393. On the 16 April 1986 Messrs Kingsley Napley wrote to the DPP asking for a full set of photographs taken at the farm. By letter dated 18 April 1986 they were told that the only complete set of photographs was held by the police. On the 8 July 1986 Messrs Kingsley Napley wrote to say, "we and Counsel have now taken the opportunity to consider the "master bundle" of photographs". On the 23 September they wrote asking for 2 sets of 25 specific photographs contained within the master bundle. The numbers proximate to photograph 101 were 65, 66, 107, 108, 109.

394. We are asked to deduce that photograph 101 must have been removed from the bundle when the "master bundle" was shown to the defence team. The submission is that this was a deliberate act of withholding evidence motivated by an improper purpose namely to prevent the defence seeing evidence capable of assisting them. We unhesitatingly reject that submission. The photographs in the master bundle were numbered sequentially. Had photograph 101 been removed its absence would necessarily have been obvious to the defence team as Mr Terzeon, the appellant's solicitor at trial, conceded in cross-examination before us. It is obvious from the terms of Kingsley Napley's letter of the 23 September 1986 that the "master bundle" was scrutinised with great care and we are quite sure that if number 101 had been missing its absence would have been noted by the defence team. We have examined the "master bundle" which bears the reference number A124/85 and is date stamped 25 September 1985. It contains photograph 101 and we dismiss as fanciful the suggestion that the photograph was removed for the purposes of deliberate non-disclosure. We are not altogether surprised that the defence team sixteen years after the event are not able to remember each and every photograph in a bundle containing 215 photographs. Further the defence team visited the farmhouse on 4 occasions and had every opportunity to see the carving themselves.

395. The suggestion that a corrupt police officer might see this photograph as having such a significance as to be motivated to withhold it is another of the submissions made to us that does not seem to us to have any relationship to reality. The prosecution had disclosed a great deal of material that clearly demonstrated Sheila Caffell's disturbed state of mind. The idea that this relatively unimportant additional fact might be thought so significant as to merit the taking of measures to conceal it is manifestly wrong. Any such officer would appreciate that removal of one of a numbered series of photographs would almost inevitably be commented on and would know that the carving was still in place to be seen by anyone who visited the farmhouse as inevitably the defence team would.

396. We are quite satisfied that the photograph was disclosed and that by reason of its minimal relevance has been forgotten. Further it is inconceivable that even in the event of non-disclosure the safeness of the conviction is adversely affected. Even if authorship of the carving could be established, and we were of the opinion that Sheila Caffell is the most likely author, we are unable to see that any issue in the trial would be materially affected. The carving could not be dated and we cannot see that even if written by Sheila Caffell any different picture of her state of mind would have emerged.

397. The jury had heard the medical evidence, principally that of Dr Ferguson. Between August 1983 and her death Sheila had suffered a psychotic illness requiring inpatient treatment. She had disturbances in her thinking process. She had severe mood disturbances. She had used cannabis and cocaine. She suffered from schizophrenia, which could produce hallucinations, delusions and mood disturbances.

398. If the jury saw photograph 101 and concluded that Sheila Caffell had carved the words "I hate this place" on the cupboard, such a fact would in our judgment be entirely consistent with the picture which the jury must themselves have formed of Sheila from the evidence which was placed before them. It would have told them nothing new and accordingly it is not possible that the appellant was prejudiced.

399. The application to call Dr Ferguson, to which we have already referred, was an application so that he could express views on this aspect of the case since he had not seen the photograph at the date of trial. In his additional statement prepared for this appeal, he said:

> "Assuming Sheila Caffell wrote this inscription it would not have surprised me. Firstly, because of her immaturity which I had observed, and secondly that I had formed the impression that she was not always comfortable when staying at the farmhouse"

400. This does not suggest that anything of novel significance arises from consideration of these words.

401. Dr Bradley for his part wrote in his further report written for this appeal:

> "On the assumption that Mrs Caffell was responsible for it, it is my view that it could have represented her feelings about the parental home, even though such feeling might well have fluctuated from time to time".

402. Such observations would not in our judgment have added anything to the Jury's deliberations.

403. We rejected an application to call Dr Ferguson to give additional evidence about this matter. We did so because we were sure that the photograph was disclosed and in any event we were equally sure that had there been non-disclosure of this photograph it would not have affected any issue in this trial.

404. For those reasons this ground of appeal must fail.

Ground 9 – the Bible

405. Ground 9 is an allegation of non-disclosure relating to the Bible found beside Sheila Caffell's body. The precise complaint is that the prosecution failed to disclose at trial the pages at which the Bible had been opened. Mr Turner draws attention to two distinct matters, two photographs of the Bible and documents relating to an inquiry made to a local Rector about the relevant pages.

406. Photographs of the scene, which were before the jury at trial, clearly showed the Bible lying open but face down beside Sheila Caffell's body. Since the Bible was face down, it is not possible to ascertain from these photographs the pages at which the Bible lay open.

407. Two further photographs of the Bible have been located by those advising the appellant. When they were taken and by whom they were taken is not known. It is clear from the photographs themselves that they were not taken at the scene. But must have been taken at some other location following the removal of the Bible as a potential exhibit by the police. The photographs record the blood staining on the Bible. From this staining it is immediately obvious that the Bible has been shut whilst the blood remained wet because marks on one page are mirrored on the adjoining page.

408. The pages on which the heavy staining appears in these photographs are pages including part or all of Psalms 51-55. It is said that these pages are significant and represented "Sheila Caffell's suicide note". A number of passages are highlighted and it will suffice if we give one example, taken from verse 14 of Psalm 51:

> "Save me from blood guiltiness O God…"

409. The evidence suggests that the two photographs were not brought to the attention of the defence and Mr Turner once more submits that the only explanation for this is wilful concealment by the police.

410. In addition complaint is made that a visit to discuss the relevant pages with the local Rector was not disclosed to the defence. This allegation stems from documents which came to light during the subsequent inquiries. These documents record that on a day ,which seems to be early in the inquiry into the shootings, DC Barlow was instructed by DI Miller to see the Rector to see if there was any significance in the open pages. Since at that stage the case was thought to be one in which Sheila Caffell had committed suicide, such an inquiry seems a natural one to have made. The only record of the outcome of that instruction appears in a note made by DC Barlow at a much later date which reads:

> "I did see the Rector but he couldn't help us in any way on (the) point…"

411. Mr Barlow has since that time been forced to retire from the police force following a severe stroke. He does not now think that he did see the Rector. However, so far as we can tell, his record quoted above was not drawn to his attention and we conclude that he did see the Rector. We are not, however, surprised that a fruitless inquiry made almost 17 years ago does not stick in his memory following his enforced retirement from the police.

412. Mr Turner submits that there was a duty on the prosecution not only to disclose the photographs but also the fact of the visit to the Rector.

413. The only value of the photographs would be if the Bible itself was not available for inspection since if it was, the page at which it was open could very readily be found. We permitted both Mr Terzeon, the defence solicitor at trial, and Mr Edmund Lawson QC, junior counsel at trial, to give evidence about this aspect of the case. Mr Terzeon suggested that he had particularly wanted to ascertain the pages at which the Bible was open. He said that as a result he had asked the police and been told that the pages were not known. When he was asked why he had not looked at the Bible itself, he said that it was his recollection that it had been missing at the time.

414. If Mr Terzeon's recollection was right, we find it astonishing that nowhere is this recorded in any document nor does Mr Edmund Lawson have any recollection of any such problem. The fact that the police had lost an exhibit at some stage that the defence were anxious to view is we suggest the sort of detail that tends to stick in trial counsel's mind even when other details fade. Further Mr Terzeon had no recollection of the Bible being produced at trial as it undoubtedly was. If it had been missing and if the defence were attaching to it the importance that he now suggests, it must surely have come to his attention and would, we have no doubt, been carefully scrutinised. Such scrutiny would inevitably have revealed the relevant pages because the pages were so heavily bloodstained. Blood had also dripped down the edges of the pages on one of the sides when it was opened. Thus by turning to the end of this mark on the page edges one could immediately identify the bloodstained pages with little effort.

415. We are satisfied that whilst Mr Terzeon is doing his best to assist the court, his recollection in this regard is faulty. Even if he was right, any deficiency in this regard would have been cured when the Bible was produced at trial.

416. The fact that the defence made no play of the Bible's pages may very well have something to do with another aspect of the matter. The more each member of the court looked at the photographs in order to deal with this point, the more difficult we found it to reconcile the actual bloodstaining with the defence case. The largest area of blood seems to have got onto the Bible when it came into contact with a pool of blood beside the body. As already observed the Bible must have been shut whilst the blood was wet. It does not seem very likely that it was still wet hours after the event when the police might have handled it. If this is so, it was shut by someone and then reopened to lie beside the body after Sheila Caffell had been shot. These matters along with other considerations of a similar kind were placed before us by the prosecution on an application to call fresh evidence with which we will deal later. It

did not, however, require fresh evidence for us to see that there was a potentially powerful point that might have been made in this regard by the prosecution at trial.

417. The explanation why the pages at which the Bible was open was not explored by the defence may be explicable by these matters. Counsel with the experience of Mr Rivlin QC, and with his acknowledged reputation for thoroughness, may well have decided that far from helping these matters might have presented a yet further major hurdle for the appellant to overcome and consequently decided to leave well alone. In any event we are satisfied that production of the original exhibit provided all the information that the photographs would have revealed and that there was no failure to disclose in this respect.

418. The information that the Rector had been visited was, on all the available evidence, of no help to anyone. The record shows that he could not help in any way. Thus there was nothing that could assist the defence and accordingly nothing that required to be disclosed.

419. We are satisfied, therefore, that there was no failure by the prosecution to disclose any material in this regard that required to be disclosed. Even if we had reached a different conclusion, we fail to see how it would have assisted the appellant. The pages only became relevant if Sheila Caffell had turned them up but that begged the very question that the jury were going to have to answer, namely who killed Sheila Caffell. Was it Sheila Caffell who opened the Bible as a part of her suicide or Jeremy Bamber who did it as part of a plan to make it look as if Sheila Caffell had committed suicide? Mr Turner suggests that if it was the appellant it is remarkable that he did not himself pursue this aspect of the matter. However for the appellant to suggest that these pages were of some critical significance required him to know what they were. If he was the killer, he could hardly make any great play of this aspect of the case without risking others realising that he had more knowledge about the matter than he would have had if he was innocent.

420. For these reasons, but particularly because we are satisfied that there was no failure to disclose matters of significance this ground fails. We should add that we were asked to hear evidence from Dr Ferguson in respect of the significance of these pages but we are satisfied that the evidence was available to the defence at trial and that in any event Dr Ferguson could not assist on the critical question as to who chose to open the Bible at this page. We, therefore, declined to hear this evidence.

421. For the sake of completeness, we should record that those acting for the appellant had obtained a statement from Dr Gillingham, a theologian, dealing with the theological significance of the pages at which the Bible was open. No application was made to us to admit this evidence. If it had been, we would have rejected the application. Such evidence could have been obtained for the trial because we are satisfied that the relevant passages could have been obtained by those acting for the appellant. In any event we do not consider that this evidence would have been admissible at trial because there was no evidence to suggest that Sheila Caffell had any particular theological training or expertise which would have enabled her to read more into the

passages than would have been apparent to the jury from looking at the passages themselves. Further we have no doubt at all that even if admissible, this evidence could not have had any impact on the jury's verdict.

Ground 10 – the question of inheritance

422. Ground 10 is a complaint that the prosecution failed to disclose that Robert Boutflour, the appellant's uncle, who gave evidence for the prosecution, whilst having no direct interest in the Bamber estate was aware that if the Appellant inherited, he intended to sell what he could, thereby disposing of what had been a part of Robert Boutflour's wife's family's estate.

423. June Bamber's sister, Pamela, was married to Robert Boutflour. He gave evidence that in about March 1985 the appellant had made a remark "Oh Uncle Bobby, I could kill anybody. I could easily kill my parents." This allegation was categorically denied by the appellant, and when he was in the witness box and under cross-examination he was asked by Mr Arlidge QC whether he knew of any reason that Mr Boutflour might have for making such an untrue allegation. The appellant's reply was (transcript PMS/15 page 54):

> "I can only surmise reasons. I don't know any specifics, but I can only surmise reasons, and I think it is very dangerous to do so."

424. On the same day, the jury asked a question of some relevance. We have the jury note, and it reads:

> "If Jeremy Bamber was found guilty and imprisoned for many years, who would be the beneficiaries of the Bamber estate and monies?
>
> Could it be his uncle and family?
>
> A possible reason or motive for Robert Boutflour's statement about Jeremy being able to kill his own parents."

425. As a result of this question, a statement was taken from Mr Boutflour dealing with his understanding of the legal position. This was to the effect that on the assumption that the five deceased persons died in order of seniority he personally would have had no claim on the estate and would not have benefited in any way. However, Mr Lawson, QC, no doubt having carried out the necessary research, produced an agreed note for the jury which is acknowledged before us as being an accurate statement of the law. This can also be summarised to the effect that if the deceased died in order of seniority (presumed in the absence of contrary evidence) or if Sheila was found to have survived her parents then, subject only to any specific legacies in any wills (as to which no-one had any information) the Bamber estates would pass to June Bamber's and Pamela Boutflour's mother, Mabel Speakman. At the relevant time Mrs Speakman was a very old lady and died shortly thereafter. Accordingly and subject to

any specific bequests, and the establishing by the Court of the order of death, there was a real possibility that the Boutflour family, in the person of Pamela Boutflour, would benefit if any interest that Jeremy Bamber might otherwise have had in those estates were forfeited by reason of his conviction for murder.

426. Plainly, this was an issue to which the entire defence team must have been alive - as was the jury. However, in the internal Essex Police review conducted by Superintendent Dickinson, the following passage appears:

> "44….The conviction of Jeremy Bamber for murder is likely to result in material benefit to the Boutflour family. It was known to the Boutflours that had Jeremy inherited the estate he intended to sell what he could, thereby disposing of what had been part of the Speakman family estate. In addition to this, he would have sold an area of land which, unknown to any member of the family, Ralph Bamber had purchased intending to sell it at a later date to Peter and Anne Eaton when they had sufficient funds. This piece of land had previously been owned by the Eaton family.
>
> 45.It is not suggested that this interest in any way influenced the Boutflours in what they told the police during the investigation: it was however known to the senior investigating officer during the initial stages and may have been a factor which affected the level of credence he placed upon the information given by the relatives."

427. No-one is able to supply the basis for the comments contained in these paragraphs. The senior investigating officer during the initial stages was DCI Jones, and he tragically died in an accident in the Spring of 1986, prior to trial. Mr Robert Boutflour is now a very old man and is, we are told, unfit to give evidence. But there is not now and never has been any admissible evidence available to the prosecution which could or should have been disclosed to the defence, since Mr Turner rightly concedes that the views or beliefs of an investigating officer are immaterial and inadmissible. If anybody had any evidence to give in respect of this topic it could only have been Mr Jeremy Bamber himself, as the so called "knowledge" of the Boutflours could only have been based upon something that he himself had said. He declined to proffer any such explanation when invited to do so by Mr Arlidge QC in cross-examination, and if he thought that there was any realistic possibility that such a consideration might have influenced Mr Robert Boutflour in the evidence that he was willing to give then we can see no reason why he should not have put it forward for the jury's consideration. As it seems to us, by no stretch of the imagination can the contents of the paragraphs quoted from the Essex review be regarded as fresh evidence. In truth they are not evidence at all. In our judgment there is nothing in this ground of appeal either. Equally it seems to us that even if evidence was available to show that Robert Boutflour was aware that the appellant intended to sell his inheritance, this could not have had any significantly greater impact on the jury than the correct answer to their question which was given to them.

Ground 11 – the proposed purchase of a Porsche by the appellant

428. This ground was abandoned before the hearing and nothing further need be said about it.

Ground 12 – the telephone in the kitchen

429. Ground 12 complains that at trial the prosecution failed to disclose the fact that an officer had used the telephone at White House Farm on 7 August, thereby potentially destroying evidence and disturbing the original scene. This ground of course closely related to grounds 4 and 4a but nevertheless stands as a ground in which non-disclosure is again raised.

430. At trial the evidence was that when the kitchen was entered the telephone in the kitchen was off the hook as can be seen in a number of photographs particularly photographs 13 and 14. The defence contended that the telephone off the hook was entirely consistent with Nevill Bamber having phoned the Appellant. The Prosecution countered this by alleging that the Appellant had set the scene. They drew attention to the fact that Nevill Bamber was severely bloodied and that the telephone had no visible blood upon it although no swabs were taken from it.

431. Complaint is made that the Crown failed to disclose at trial the fact that an officer of the TFG had used the telephone in the office at White House Farm. Detective Superintendent Ainsley wrote in both his full and interim report:

> "In the company office on the first floor was a blue coloured telephone with a digital display memory. There is no evidence to suggest this telephone was used on the night in question but it was used by an officer of the Essex Police Tactical Firearms Group after the farmhouse was entered".

432. In order for the office telephone to be used it is necessary either to replace the kitchen hand piece on the phone or disconnect it or depress the black buttons on the phone. The telephone was plugged in to a point in a different room and hence was capable of being unplugged without any need to disturb the crime scene in the kitchen.

433. Mr Turner submits, however, that if Mr Ainsley's reports had been disclosed to the defence at trial, they could have canvassed the real possibility that the hand piece was indeed replaced on the kitchen phone to enable a phone call to be made on the office phone and thereafter the hand piece was removed again to recreate the scene of crime.

434. Mr Turner places some reliance on a statement of the 11 November 1986 made by DS Davidson, the scenes of crime officer who arrived at the farmhouse at 8.40 a.m. He wrote:

> "When I got there, there were policemen everywhere so it seemed. I spoke to some Uniform officers in the farmyard but I could not find out exactly what happened".

435. Later he wrote:

> "The impression I got when I arrived was that the scene was not being preserved and I was surprised to see those officers in the house".

436. We were also invited to look at photograph 13 in the jury bundle which shows blood staining on the kitchen working surface a foot or so from the kitchen telephone.

437. Mr Ainsley has been asked what the source was of his information that a phone call was made from the office. In a recent statement dated the 24 September 2002 he wrote:

> "Obviously somebody told me they'd used the phone because I've got it in my report and it would have been the subject of a written report of some type".

438. No such written report has been found. Mr Ainsley also wrote:

> "From my best recollection it was a totally separate line a different telephone line altogether".

439. This of course was inaccurate as would have been obvious to anyone actually using or trying to use the office phone.

440. It is clear the Mr Ainsley cannot identify the source of his information. Statements have been taken from all 10 firearms officers who were inside the farmhouse. They all deny using the telephone. They had no need to use the office telephone. Each had his own police radio and in any event each was trained not to disturb the scene of any crime.

441. Mr Turner applied to call Mr Ainsley so that he might cross-examine him about this matter. We refused that application on the grounds that he could give no evidence from his personal knowledge about the matter and he was unable to identify the source of his information. We did not consider it to be in the interests of justice to receive hearsay evidence from an unidentified source, not least when it would be directly contradicted by 10 witnesses whom Mr Turner quite understandably did not wish to cross-examine.

442. We have concluded that even if a phone call was made from the office and even if the hand piece on the kitchen phone was replaced for that purpose and removed after the phone call, we cannot envisage that the acts of replacing and removing the hand piece could possibly remove all visible trace of any blood which might have been transferred onto the hand piece when Nevill Bamber made the phone call in issue. We have had regard to the extent of Nevill Bamber's injuries and also to the blood visible on the work surface. We conclude that the possibility of blood being removed

without visible trace from the kitchen phone hand piece by acts of replacing and removing the hand piece to be fanciful. There is no admissible evidence that any phone call was made by a TFG officer, nor indeed would there have been had Mr Ainsley's report been disclosed. As we have earlier commented it is not common practice to disclose police reports written in the preparation of a case for trial. We reject the submission that the possible making of a phone call from the office was deliberately withheld by investigating officers. Had they been involved in such an activity the information would not have been communicated to the DPP and to Counsel.

443. We do not believe there was any disturbance of the crime scene. Mr Davidson's statement made no mention of any actual disturbance nor do we consider there to be a realistic possibility that any blood was removed from the kitchen phone hand piece. This ground, as was the case with ground 2, depends upon unsubstantiated hearsay and must necessarily fail.

Ground 13 – scars on the appellant's hands

444. With all respect to the appellant's team, we have found this ground of appeal incomprehensible. Indeed, and in fairness to him, Mr Turner conceded at the outset of his submissions that he did not put this forward as a free-standing ground of appeal, and preferred to rely upon it as no more than an element in the factual background to his overarching allegation of unsatisfactory police behaviour. Nevertheless, for the sake of completeness, and in order to assess whether this particular complaint adds anything to the overall strength of the appellant's case, we are satisfied that we should consider and deal with it, albeit briefly.

445. The starting point for such consideration is the fact that at no point during the trial was any evidence led from any witness, nor any witness cross-examined, to establish or suggest that the appellant had at any material time had any scars or scratches on his hands. Indeed, on the hand-written postcard note from Ann Eaton (CAE/4) which was disclosed at trial, the entry for the 8 August recorded "No scratches on his hands - no shaking at all".

446. At one stage during his interview on 12 September 1985 DS Jones asked Mr Bamber to show him his hands, and he examined both the palms and the backs. He offered no explanation to the appellant as to why he had done this, but it seems highly likely that the stimulus for this action was a telephone call that appears to have been made on the previous day to the police by Anthony Pargeter, who was Nevill Bamber's nephew. He is said to have reported having seen small "circular scars" on Jeremy Bamber's right hand. This piece of information triggered a series of actions. By Action no. 96, on the 12 September 1985 DI Bright was instructed to take a further statement from Mr Pargeter on this matter. No result of this action is recorded, and no formal statement from Mr Pargeter appears in the documentation in the case. This may well be because of the other information that was forthcoming on the matter. By Action no. 97 of the same date DS Jones was instructed to interview the appellant on the

same topic - and DS Jones' response referred to the notes of interview and reported that there were no marks visible.

447. On the 14 September 1985 by Action no. 200, DC Thomerson was instructed to take a statement from David Boutflour (the son of Robert Boutflour) to include, among other matters, any sightings of cuts on the appellant's hands on the day after the killings. This action produced a statement from David Boutflour which included a passage in which he stated that on the Wednesday or Thursday after the killings Jeremy Bamber had made a comment to him about having received two small cuts on his hand while working on the farm. "As he made this comment he showed me the palm of his right hand, but as I was about 5 feet away from him at the time I could not see the scratches to which he referred." This passage did not appear in the edited statement of this witness, which was served on the defence as evidence for use at trial. On 16 September, by Action no. 201, instructions were given for the trigger guard of the rifle to be examined by the Forensic Science Laboratory for blood. There is no record of any result.

448. By Action no. 302 on 19 September 1985 DS Jones was asked to submit a report about these matters, and in his reply DS Jones repeated that when Mr Bamber had been interviewed "There were no visible signs of scars etc". He added that if and when the appellant was re-interviewed an ultra violet light could be used to examine his hands again. This suggestion was picked up on the 24 September 1985 in Action no. 396 when DS Jones was instructed to carry out such an examination; but his response as recorded on the action sheet was "Bamber charged; above not done on instructions of A/D/C/ Superintendent Ainsley." Indeed, on the 26 September 1985 a letter from the office of the DPP indicated that in the view of the Director the appellant should not now be further interviewed.

449. As has already been made clear, the prosecution case against the appellant was conducted on the basis that there was no sign of any injuries to his hand subsequent to the killings. The complaint that the prosecution had kept the defence in ignorance of material which would have permitted them to mount an attack on the veracity of Mr Pargeter is misconceived; there was never any necessity to mount any such attack. Mr Pargeter had never given any evidence which incriminated the appellant in any way. So far from the prosecution seeking to advance dubious evidence hostile to the appellant's interests, it appears that they were unwilling to advance any suggestions by Mr Boutflour or Mr Pargeter that they were not able to confirm for themselves to be soundly based. One of the more remarkable contentions in the appellant's skeleton argument on this topic is the assertion that the defence "were kept in ignorance of the fact of the officer's examination of the appellant's hands....". The appellant, of all people, plainly knew himself that that had happened.

450. Finally, the decision not to pursue the instruction given under Action no. 396 and not to re-interview the appellant again was entirely consistent with code C under the Police and Criminal Evidence Act 1984, given that by that time the appellant was either about to be or indeed had just been charged.

451. In our judgment there is no foundation whatsoever for the suggestion that the matters complained of under this ground of appeal resulted in any prejudice to the appellant in the conduct of his defence. Nor, in our judgment, do the facts underlying these complaints provide any support for the assertion that the police officers concerned were determined to withhold information from the appellant or his advisors in an attempt to influence the evidence in favour of a prosecution. In reality, the opposite appears to be the case.

Grounds 14 and 15 – blood in the sound moderator

452. Grounds 14 and 15 each relate to different aspects of the evidence relating to the blood in the sound moderator. They are distinct matters but clearly need to be considered together because they relate to the same important aspect of the prosecution case. Ground 14 is an attack upon the blood testing evidence called at trial based upon fresh evidence which it is suggested would have cast doubt upon the prosecution evidence in this regard if it had been available to the jury. Ground 15 is the sole ground upon which this case was referred to the Court by the CCRC. It is based upon the testing of the sound moderator for DNA, a technique that was not available at trial.

453. We have set out at paragraphs 75 to 80 a summary of the evidence at trial relating to the scientific examination of the moderator. The critical part of that evidence was the analysis of the flake of dried blood found inside the sound moderator. The evidence was given by Mr Hayward, a biologist who was working at the Forensic Science Laboratory at the time of the examination although he was in private practice by the date of trial. In his evidence he described how he had found "a considerable amount of blood" inside the moderator deposited in the spaces to the sides of the baffles around the edge of the silencer. He was asked if he had tested "any" of that blood. He said that he had and that it was human blood. He said that he had obtained grouping reactions for group A, EAP BA, AK I, Hp 2-1. He had done a PGM grouping test but it gave negative results. He said that these grouping results were consistent with the blood coming from Sheila Caffell but not solely from any of the others who had been shot.

454. Mr Hayward then said that you could get different reactions if there was more than one person's blood present and he said that it was "a remote possibility" that the blood that he had tested was a mixture of blood from Mr and Mrs Bamber. Mr Bamber's blood was group O, PGM 1+, BAP BA AK1, Hp2-1. Mrs Bamber's blood was group A, PGM 1+, EAP BA, AK2-1, Hp2-1. If these bloods were mixed together, you could get the results recorded from the blood tested from the moderator. However, if there was sufficient of Mrs Bamber's blood present to give the clear cut group A result, he would have "stood a good chance of detecting the AK2-1 which would have gone with it". He said that there was nothing to suggest to him that there was blood from more than one person present.

455. Mr Hayward said that the conclusions of Dr Vanezis, the pathologist, and Mr Fletcher, the firearms expert, supported his view that the blood was from Sheila

Caffell alone because their findings suggested that only Sheila Caffell had been shot with the gun in contact with her skin or from "very close range" and he would have been very surprised to find blood within the moderator from a person who had not been shot with the end of the moderator in contact with that person or at least very close to it. He was asked what very close meant and he said that that was a matter for Mr Fletcher, the firearms expert.

456. Mr Hayward also gave evidence about examining a pull through used to examine the inside of the barrel of the rifle itself. He said that there was no blood at all on it. He expressed his conclusion as (Transcript PMS/2 page 18B):

> "Since the blood from inside the sound moderator belonged to the same group as Sheila Caffell, and since there was no blood inside the barrel of the rifle, I was led to the conclusion that Sheila Caffell had been shot whilst the sound moderator was fitted to the rifle."

457. Mr Fletcher, the firearms expert, gave evidence to explain how blood got into the moderator if it was attached, or into the barrel if there was no moderator attached. He said that the mechanism was complicated and not then fully appreciated. However, the expanding gas when the bullet left the muzzle was under normal circumstances distributed into the atmosphere. However with a contact shot there was no opportunity for this escape and the gas would follow the bullet into the wound as it expanded. Back pressure would then build up forcing the gas back out of the wound taking with it blood and tissue which would in effect be blasted back into the barrel if there was no moderator or into the moderator if one was attached. He said that even without direct contact, the same effect might occur but only if the gap between the end of the barrel, or the moderator if attached, and the skin was less than one millimetre. He said that the likelihood of such an occurrence was to an extent dependent on the part of the body to which the shot was delivered and the amount of blood present at that point.

458. If the shot to Shelia Caffell, which was a contact shot to the throat, had been fired without the moderator in place, he would have expected to find blood in the barrel of the gun. If the moderator was attached it was "virtually certain" that Sheila Caffell's blood would get into the moderator. There was, he said "a very slight possibility of it not happening, but very slight".

459. Mr Fletcher was asked about the wounds to Mr and Mrs Bamber and whether they could have been contact wounds or wounds at such proximity that blood might have been propelled back into the moderator. He said that Mr Bamber had a wound that could have been a contact wound and that Mrs Bamber had one wound where there was a slight possibility that it was a contact wound. He concluded by saying (Transcript PMS/10 page 58):

> "The most likely explanation for the blood being in the sound moderator is that it was fitted to the gun at the time the contact wound to Sheila Caffell's neck was fired. There is a very very

> slight possibility that I am wrong in my opinion, but I don't think so."

460. In dealing with this evidence, the defence were limited by the evidence available from their own expert. They called no such evidence at trial but the material that they had obtained pre-trial has been disclosed in the course of this appeal. The defence had instructed Dr Patrick Lincoln, whose expertise in such matters was well known. On 29 April 1986, he visited the forensic science laboratory and examined the relevant material. He carried out tests on all seventeen baffles. The first eight plates all gave weak or very weak positive reactions for blood. There was no blood clearly visible to the naked eye and Dr Lincoln concluded that "such findings could be consistent with an item having been previously swabbed by a forensic scientist to remove blood stains for testing". The other nine plates "did not produce any evidence for the presence of blood". He agreed with Mr Hayward's conclusion that the combination of blood groups revealed in his testing of the inside of the moderator could have come solely from Sheila Caffell but did not come from any one of the other individuals. He said that it was not clear from Mr Hayward's statement that he had obtained the blood from which the different group testings had been done from the same area of the moderator. If they were not from the same area, then the results could have originated from more than one individual.

461. On 8 September 1986, Dr Lincoln again went to the laboratory and this time met and discussed the matter with Mr Hayward. As a result of this meeting, Dr Lincoln appreciated that the blood tested all came from a single flake trapped under the first or second baffle. In a letter to the defence solicitors, Dr Lincoln said that Mr Hayward "used this single flake to produce a solution from which he was able to determine the groups". He said that this meant that the possible explanation he had earlier suggested as to a combination of more than one persons blood no longer applied.

462. In one respect Dr Lincoln was in error. Whether that error was from something said by Mr Hayward or simply from an assumption made by Dr Lincoln cannot now be ascertained and matters not. The error was to suggest that the whole of the blood flake was dissolved and the resulting solution was used for all the tests. In fact what had happened was that the flake had been divided into a number of parts and each part had then been used for a separate group test. Thus the tests were not done on liquid drawn from the same solution made from the whole flake but on separate solutions each made from distinct parts of the flake. We have no means of knowing whether correction of this error would in any way have altered Dr Lincoln's view.

463. Ground 14 is based upon evidence from a fresh expert instructed by the defence (Dr Lincoln no longer being available to them), Mr Mark Webster, a forensic scientist in independent practice. He was asked to consider the possibility that the blood tested by Mr Hayward might have been a combination of the blood of Mr Bamber and Mrs Bamber.

464. Mr Webster made a number of points:

i) He suggested that the flake, which was a quarter of an inch across, might not have been a flake of blood but a flake of soot splattered with blood that had been mistaken by Mr Hayward for a flake of blood. His one basis for this rather surprising suggestion was that he had noted a flake of soot on one of the baffles.

ii) He accepted that if the blood from Mr and Mrs Bamber had become "intimately mixed", the results certainly could not have been mistaken for Sheila Caffell's blood alone.

iii) However, "if the blood from the two sources did not become completely intimately mixed, then the test could not be guaranteed to detect the mixture".

iv) If the sample tested was a blood stained flake of soot, this increased the chance that the two different sources of blood might not have been completely intimately mixed.

v) If the sample was not completely intimately mixed, the grouping test might be carried out on different portions of the sample and hence each might detect only the blood of one of the persons responsible for the mixture.

vi) Whilst he accepted that the method of testing was the standard approach to blood grouping at the time, it was only applicable to "a run of the mill" case where it was known that each bloodstain was from a single individual. When there was a risk that it might be from more than one blood source, as here, Mr Hayward should have taken steps to ensure that the different group tests were carried out on the same material. This could have been achieved either by dissolving the whole flake and forming a single solution or by crushing the flake and pulverising it to ensure that all parts were completely mixed.

vii) In the circumstances it was wrong to characterise the possibility that the group testing results came from a mixture of the blood of Mr and Mrs Bamber as "a remote possibility" and it should have been considered to be a real possibility.

465. Having read Mr Webster's report and having regard to the potential importance that the jury might have attached to this aspect of the case. We thought it right, at the very least, that we should hear Mr Webster's evidence and the crown asked leave, which we granted, to call Mr Hayward so that we could hear his answers to Mr Webster's criticisms. We are conscious that in considering Mr Webster's evidence that the test is not what conclusion we might draw from the evidence but what possible impact it might have had on the jury's consideration if given at trial.

466. There were a number of features of Mr Webster's evidence that we found less than satisfactory and we have little doubt that if it had been placed before a jury they would have shared that view. Firstly, there is Mr Webster's suggestion that Mr

Hayward might have mistaken a flake of soot which was blood stained for a flake of dried blood. Mr Hayward had given evidence at trial of a close visual examination of the flake. He was an experienced forensic scientist. If he had made the sort of mistake suggested by Mr Webster, it must have represented a significant failing in the performance of his duties in what was clearly a highly important case. There was no suggestion, then or now, that Mr Hayward was other than a competent and careful forensic scientist. Before such a suggestion was made by another forensic scientist, one would expect to see some evidential basis for that suggestion. There was absolutely none. That fact that soot was found on the baffles did not begin to suggest that Mr Hayward would have made the sort of error suggested.

467. The next feature of Mr Webster's evidence which left us unimpressed was the way in which he criticised Mr Hayward for assessing the chance that the blood was not a mixture as being a remote chance. He said that a remote chance was equivalent to the chance that he might be struck by lightning as he left the court building. We think that that was to suggest something far less likely than that which Mr Hayward had sort to convey to the jury. Forensic scientists are used to putting probabilities on a scale that a jury can understand. At one end of the scale is a very strong chance, at the other a remote chance. To suggest that it was giving the chance as being so unlikely that it could effectively be discounted is to distort what Mr Hayward was saying. Mr Webster's own assessment of the chance as a "real" chance is unhelpful. Whether there is a very strong chance of something happening or a remote chance of it happening, it is a real chance. A real chance does nothing to assess the likelihood of something happening in a way that a jury could properly understand.

468. The final and most important criticism of Mr Webster is as to his findings in relation to the possibility of a mixture of blood drying in such a way that it would not thoroughly mix. We should have thought that before advancing such a theory, a scientist would inevitably satisfy himself that there was a proper basis for the theory. That might be done by some form of experimentation, by drawing upon identifiable findings in other cases of relevance or by reference to the recent conclusions of other scientists. So far as we can judge, Mr Webster has done none of these things. He rejects experimentation because he asserts that it is impossible to reproduce the exact situation that arose in this case and because he did not have available to him sufficient facilities to do anything that came close to the circumstances of this case. He pointed to one instance he had come across where a single bloodstain was a mixture of more than one person's blood, which had not completely mixed. When asked to identify the relevant case, he was unable to do so and when asked for further details it transpired that it was blood that had soaked into cloth and not, as had occurred in this case, blood that had fallen upon a non-porous surface, a wholly different situation.

469. Mr Webster was asked about support for his theory amongst other scientists or in published material. As to the former, he said that his theory had been "looked at by an extremely senior forensic scientist from Germany and he thinks that it is a theory worth consideration". As to the latter he referred to a paper by Stringer, Vintner, Stowel and Thomson which included the passage:

> "In forensic investigations, it can be mistakenly assumed that a particular blood stain originated from a single individual. In

> our experience, there have been occasions when blood stains consisting of blood from more than one individual have occurred; for example crime scenes where more than one person has been stabbed. Grouping of blood mixtures in such cases can give rise to false exclusions."

470. We find no support for Mr Webster's theory in that passage. Of course, the danger has to be recognised or an error may occur. Mr Hayward was clearly alert to that danger and recognised in his evidence the possibility that it might have occurred in this case. He explained why he thought it was only remotely likely that it might have happened. What the passage quoted does not do is to provided the slightest support for the theory of a blood flake coming from two sources onto a non-porous surface which did not mix sufficiently for false conclusions to be drawn from grouping tests.

471. Mr Webster was at pains to point out that he did not have the resources to carry out testing sufficiently related to the circumstances of this case but as far as we are aware, he has not done any testing to examine the circumstances in which a small pool of blood could be created on a non porous surface to give rise to a misleading result, let alone any testing of anything comparable to the present situation.

472. Mr Hayward, in contrast, has we are satisfied taken some steps to satisfy himself that he is right. He started from the proposition clearly supported by evidence that within the sound moderator there would be a very turbulent motion when the rifle was discharged. This by its very nature would produce forces that would tend to mix the blood from the two sources. In addition, the unscrewing of the sound moderator to remove it involved a twisting motion through a number of complete turns, which again would facilitate mixing. Starting from this proposition, it seemed to Mr Hayward that the only likelihood of an unmixed flake of blood would be if the blood from one source dried and blood from the other source then fell upon it. That possibility was recognised and experiments were carried out to see what happened when blood was in the moderator and other shots were discharged. First the temperature of the sound moderator was established after 25 shots had been fired through it. The temperature was found to be 24.5 degrees centigrade, which is substantially less than body temperature, and hence not likely to result in any speedy drying of the blood on the moderator. The further test that was carried out was to introduce blood onto the baffles and cause the rifle to be fired to see whether the blood did in fact dry. It did not and hence the conclusion was drawn that the blood would not have dried more quickly in the moderator than on some other non-porous surface. Having regard to the time span involved, it was therefore unlikely that blood from one person would have dried before the other person was shot. It seems to us that this investigative approach is precisely the sort of experimentation that one would expect from a scientist before a theory was advanced as being capable of being relied upon.

473. Mr Hayward, notwithstanding this further experimentation, still acknowledges the possibility of the flake being from Mr and Mrs Bamber just as he did at trial. He still assesses that possibility as remote.

474. We cannot see that Mr Webster's evidence unsupported by any experimentation or other credible basis would have had any significant impression on the jury. The jury could not convict solely on Mr Hayward's conclusion in any event because he himself acknowledged the remote possibility that it was wrong. The jury could only have been sure when they considered other aspects of the case both relating to the moderator and to quite distinct issues. As to the moderator, there was the remarkable proposition raised by the defence case that Sheila Caffell having killed her family found that she could not shoot herself with the moderator on and instead of simply taking the moderator off and putting it down, went downstairs to an office, put the moderator in its proper place in the gun cupboard and then returned to her parents' bedroom where she sat or lay down on the floor and shot herself. There was in addition not merely the presence of the blood flake in the moderator but the absence of any blood in the barrel of the gun, the end of which would have been in contact with her neck when the shot was fired.

475. Accordingly, having looked carefully at this aspect of the case, we can see nothing in the fresh evidence, which persuades us that there was any prospect of the jury reaching a diffident conclusion if they had heard that evidence. Thus there is nothing to render the conviction unsafe. We do, however, need to bear in mind the possibility that that position might be different following consideration of the DNA evidence and we will revert to it after considering the next ground.

Ground 15 – DNA evidence

476. Ground 15 is the ground upon which the case was referred to this court by the CCRC. At the date of the investigation into this case DNA testing was not available for consideration of the source of body fluids. Hence the blood samples and blood staining was not subjected to such testing and was only subjected to the much less sensitive blood group testing to which we have already referred. During the course of the subsequent investigations, it was appreciated that DNA testing of the sound moderator was a possibility. Accordingly it was carried out and it was the conclusions of that testing that caused the CCRC to refer the case to this court. Since that date further DNA testing has been carried out and it is necessary to consider not only the information available to the CCRC but also that which has been discovered since.

477. The CCRC recorded the information available to it as:

> "10.2 The silencer had been submitted by the Commission to the FSS for examination in order to establish whether there was more than one person's DNA inside it. On the 6 March 2000, the Commission was informed that the tests had identified the DNA of at least two people inside the silencer and that there was both male and female DNA present. The female DNA was stronger than the male DNA and was present all the way through the inside of the silencer. They were not able to say that the DNA readings were derived from blood, and they

were not able to identify from whom the DNA had originated.

10.3 Further inquires were commenced at this time with Essex Police in order to establish whether any blood exhibits existed from which sample references could be taken for June Bamber and Sheila Caffell. Inquiries into other areas raised in Mr Bamber's application were being undertaken at the same time. The Commission was subsequently informed that Essex Police had destroyed all the blood based exhibits in February 1996."

478. On this information the CCRC decided that "the DNA results as they stood began to support the theory put forward by the defence at trial". They decided to take steps to see whether the female DNA found within the moderator came from Sheila Caffell. To this end they located Sheila Caffell's natural mother and obtained a sample of her DNA. The evidence of the testing of this sample was recorded as:

> "The results of these tests were that…the DNA in the silencer could not have come from Sheila Caffell".

479. The Commission concluded:

> "10.10 Whilst it might be arguable that the recent DNA tests do not establish that the source of the female DNA was blood, the Commission believes, as a matter of probability, that it is from blood because it was found deep within the silencer. Given the record of handling of the silencer by the scientists, the Commission does not believe that any possible contamination from them is likely to have been found that far down inside. Also, given that it is an accepted fact that blood was in the silencer in 1985, the Commission considers that it is much more likely that the DNA is from the blood found in the silencer at the time. Considering the length of time that has past and the fact that much of the blood was swabbed out for blood grouping, the Commission does not consider that the negative KM result strengthens the possibility that the DNA does not originate from blood. In any event, the Commission considers that the absence of Sheila Caffell's DNA is significant.
>
> 10.11 The Commission considers that the fresh evidence relating to the silencer severely undermines the Crown's case against Mr Bamber as it was presented to the jury. …"

480. Whilst acknowledging the careful approach of the CCRC, there were respects in which it is apparent that even on the information available to them, their conclusions fail to recognise the totality of the evidence available.

481. The evidence of Mr Hayward was not to the effect that all the blood in the moderator had been tested but rather that some of that blood had been tested. Thus this was not a case where the scientist was saying that the only blood in the moderator came from Sheila Caffell. His evidence was that the blood tested came from Sheila Caffell although he acknowledged the remote possibility that even that blood was a mixture of blood from Nevill Bamber and June Bamber.

482. No questions were asked at trial of Mr Hayward to establish what part of the blood he had tested. The position was, however, known to the defence through their own expert Dr Lincoln. Dr Lincoln had seen the evidential material upon which the group testing results were based and agreed with the conclusions. He recorded that evidence in the course of his report of 19 September 1986. He said that Mr Hayward had "found a flake of blood trapped under the first or second baffle plate" and that it was this flake that was tested and produced the groupings A, EAP BA, AK1, Hp2.1 upon which reliance was placed by the prosecution. Dr Lincoln further recorded:

> "Mr Hayward states that he could detect visible staining on the "upper baffle plates" and that he swabbed these plates so that the blood was taken onto cotton material which could subsequently be used in grouping tests. On this material Mr Hayward successfully determined the ABO and EAP groups and showed the blood to be groups A, EAP BA."

483. This finding from the swabbing of the upper baffle plates was thus consistent with blood from either June Bamber or Sheila Caffell or even a combination of blood from the two of them but not in any way from blood from Nevill Bamber or Nicholas Caffell.

484. Thus, even if one accepted that the DNA found on the baffle plates at a much later date came from blood from June Bamber deposited on the baffle plates during the shootings, it was not in any way inconsistent with the conclusions drawn from the testing of the flake which material that had been destroyed by the very nature of the examination process and hence could not be subjected to DNA testing. Thus the evidence did not as the Commission suggested "severely undermine" the prosecution case.

485. Further the Commission had rejected the possibility of contamination affecting plates deep into the moderator. That conclusion did not fully take into account all the available evidence relevant to the issue of contamination. The CCRC considered "the record of handling of the silencer by the scientist" but that represented only one possible source of contamination in the case. In addition their conclusion that "it is much more likely that the DNA is from the blood found in the silencer at the time" failed to address the detailed findings that were made at the time. We will return to

these issues at a later stage. It is, however, against this background that ground 15 is raised by the appellant and reads:

> "Fresh DNA evidence, not available at trial, and now available supports the contention that blood in the silencer, said to be that of Sheila Caffell was in fact a mixture of the blood of Ralph and June Bamber. The appellant has been denied the opportunity of strengthening this ground by the deliberate destruction of exhibits by the police in February 1996 in breach of their own guidelines as to the destruction of such exhibits."

486. To consider this ground, it is necessary to examine the evidence about the testing for DNA and to record the evidence which we have before us as to the conclusions that can be drawn from the testing in this case.

487. The evidence reveals that the form of DNA testing carried out was Low Copy Number (LCN) DNA profiling. This form of DNA profiling is designated to increase the sensitivity of earlier types of DNA profiling so that, in theory, only a few cells are required for successful analysis. As a result mixed DNA profiles, (i.e. profiles containing DNA originating from more than one individual) can be anticipated. LCN DNA profiling tests do not provide any information about the type of body fluid tested or when it was deposited on the item. Because of the sensitivity of the test, the possibility of contamination must be taken into account. Rigorous procedures have been drawn up to eliminate so far as possible any contamination in the gathering and examination of items from crime scenes. Because DNA testing was not available at the time of these killings (let alone LCN DNA testing) such procedures were not in place at the time when these items were gathered and first tested. In addition, at the trial no precautions would have been considered necessary to protect the integrity of the exhibits because it was not then anticipated that further testing would take place.

488. In order to test for DNA within the moderator, the moderator was dismantled and the seventeen baffles were divided into three groups for analysis; A) baffles 1-7, being those closest to the bullet exiting end, B) baffles 8-11 and C) baffles 12-17. This was done because there was an expectation that the amount of DNA on any single baffle would be very small. Thus in order to have the best chance of obtaining a DNA profile, each group was swabbed with the same swab rather than using a separate swab for each baffle.

489. In a statement before the court, Linda Groombridge, a biologist with the forensic science service recorded the findings (which are common ground):

> "The DNA results obtained from the three samples indicated that mixtures of DNA from at least two people had been detected in each sample. The results showed a high degree of similarity between them and appear to consist of an incomplete major female profile and a minor contributions, possibly from a male. The minor contributions consisted of two components only, the same in each sample. The indication that these

> components could have come from a male was present in samples B and C only.
>
> Often it would not be possible to determine the sex of the body fluid from which the DNA originated using this technique, however, in my opinion the major profile obtained in these samples was sufficiently strong for me to make this assumption. As DNA profiles were detected in each of the three samples, at least one of the baffles in each of them must have been stained with DNA. It is not possible to distinguish which of the individual baffles may have been stained with DNA."

490. Samples obtained from Sheila Caffell's natural mother and from other sources enabled the scientists to say with confidence that the major component did not come from Sheila Caffell. Because the blood sample of June Bamber no longer exists, it has not been possible to do a direct comparison between her DNA and that of the major component. However, it has been possible to obtain a sample from June Bamber's sister, Pamela Boutflour, which because closely related relatives are statistically more likely to have shared components than unrelated individuals, has enabled conclusions to be drawn. That evidence shows that it is about 3,500 times more likely that the major source of DNA was from a full sister of Pamela Boutflour, i.e. June Bamber, compared to it being from an unrelated female. Both Mr Clayton and Miss Tomlinson, the DNA experts from whom we have heard, assessed this as strong evidenced that the major component therefore comes from June Bamber.

491. A part of this ground of appeal relates to the destruction of June Bamber's blood sample. It is not suggested that that can be used as a free standing ground of appeal but it is combined with the DNA evidence to suggest that the appellant may have been deprived of the chance of advancing even stronger evidence that the DNA was from June Bamber. On the evidence of the two scientists, we would feel that the only safe course for us to take is to conclude that the major component of the DNA on the baffles did originate from June Bamber. When we made clear to Mr Turner that this would be our approach and queried whether in such circumstances the destruction of the samples from June Bamber could be said to prejudice the appellant, Mr Turner recognised the force in the point and after taking specific instructions from the appellant decided not to pursue that aspect further. We have therefore not considered the circumstances in which the blood samples were destroyed since they have no bearing upon any other aspect of this case.

492. The minor components of the DNA on the baffles have yielded such very limited amounts of information that the scientists conclude that apart from evidence that there is DNA from at least one male present, no meaningful comparison can be made.

493. Since the CCRC referred this case to the court, further DNA testing has taken place of other parts of the moderator. Seven swabbings have been taken from internal parts of the moderator apart from the baffles. All seven results indicated that DNA from more than one person was present. The results were complex and incomplete and it was not

possible to determine how many people had contributed to the DNA from the mixture. The predominant contribution appeared to have come from a female or females.

494. When comparisons were possible, components matching Sheila Caffell's DNA profile were detected in five of these seven results. The other two results also contained components which matched those of Sheila Caffell, but not at all of the ten areas of DNA tested where information was available for comparison.

495. Some of the components detected did not match the profile of Sheila Caffell or the Caffell twins.

496. In the interpretation of the results, Dr Clayton called on behalf of the appellant and Miss Groombridge, called on behalf of the prosecution disagreed to a limited extent. Both agreed that Sheila Caffell could have contributed to this mixture of DNA but Miss Groombridge was prepared to go further and say that the findings provided support for the proposition that she had contributed to the mixture. She was, however, unable to determine the level of support provided. In her evidence to the court she explained her reasoning. Seventeen of the twenty bands attributable to Sheila Caffell had been detected in DNA from the internal swabbings. Random chance would have suggested thirteen common bands would be found and hence since there was significantly more than thirteen, it provided some support for the DNA of Sheila Caffell being in the moderator. However, Miss Groombridge was unable to perform any sort of statistical evaluation of the likelihood of this happening and hence unable to assess the strength of the support. Dr Clayton, whilst acknowledging the respect that he had for Miss Groombridge's views and whilst recognising the possible validity of the point that she made, felt that it was unsafe to draw any such conclusion. Whilst we recognise that there may very well be merit in Miss Groombridge's evidence in this regard, we doubt very much whether a jury would have been prepared to place any significant reliance upon it so that it might have altered any view which they otherwise would have reached.

497. We, therefore, consider the matter on the basis that the conclusions to be drawn from the DNA evidence are:

i) June Bamber's DNA was in the sound moderator at the time of the DNA examination;

ii) Sheila Caffell's DNA may have been in the sound moderator but it was not possible to conclude one way or the other whether it was; and

iii) there was evidence of DNA from at least one male.

498. The next issue is can it be said that any of the DNA came from blood. As already made clear the DNA testing itself could not provide an answer to this question. It is

necessary therefore to look at the available evidence about the presence of blood in the moderator. This can be summarised as follows:

i) Mr Hayward gave evidence of having found "a considerable amount of blood" on the "few" baffles nearest to the muzzle end. He had not noted the number of baffles but from recollection thought that it was about five.

ii) Mr Fletcher, the firearms expert, gave evidence that he had seen blood which went down as far as the fifth baffle and he thought that there might have been a little further in as well, may be the sixth or seventh baffle.

iii) Dr Lincoln recorded that on the 29 April 1986, he examined all seventeen baffles and obtained weak or very weak positive reactions indicating the presence of blood on the first eight baffles. There was no blood visible to the naked eye. He thought the findings could have been consistent with swabbing to remove bloodstains for testing. Tests on the remaining nine baffles proved negative.

iv) On 8 September 1986, Dr Lincoln discussed the matter with Mr Hayward and Mr Hayward told him that there was visible blood on the first four, five or six baffle plates and "the blood staining appeared to diminish as one progressed through the baffle plates". Mr Hayward said that he had swabbed the upper baffle plates and obtained the groupings A, EAP BA. Mr Hayward had also described to Dr Lincoln the removal of the flake found trapped beneath either the first or second baffle.

v) On 29 March 1999, Mr Martyn Ismail, another forensic scientist and Mr Mark Webster, the defence expert, examined the sound moderator for the presence of blood. No visible signs of blood were found and a number of discrete tests for blood were performed but no blood was detected. More extensive chemical tests were not performed because they might have reduced the chance of obtaining DNA profiles.

499. Thus it is clear that no blood was ever seen by any of those who had examined the baffles on any baffle beyond the eighth one from the bullet exiting end and nor have any tests revealed the presence of blood beyond this point. Dr Lincoln in April 1986 specifically tested all the baffles for blood and found no trace of any beyond the eighth baffle.

500. In these circumstances we find it impossible to conclude that any particular finding of DNA necessarily came from blood. The possibility that blood was the source of any or all of the DNA recovered remains because firstly the LCN DNA tests may be more sensitive than any of the tests carried out for blood. Further detection of blood by testing may not be possible as a result of the blood degrading through the passage of time, exposure to heat or exposure to moisture.

501. Thus we think that the CCRC's conclusion that the DNA was likely to have come from "the blood found in the silencer at the time" which was said to be justified "because it was found deep within the silencer" cannot be sustained. The DNA was certainly not from the flake of blood removed for blood grouping purposes and whilst some or all of the DNA that was found within the moderator may have originated from blood, a conclusion that it all did is not one that can be properly drawn.

502. That leads to the next major consideration, namely, how could the DNA, whether from blood or some other bodily fluid, have got into the moderator otherwise than as a result of back splattering in the course of the killings. This raises significant issues of contamination. These were dismissed somewhat readily by the CCRC but it seems clear to us they either failed to establish the full history of the moderator after its discovery or alternatively ignored important aspects of that history. In the passage already quoted the Commission considered the "record of handling of the silencer by the scientist" and concluded that no contamination from the scientist was "likely to have been found that far down inside". That conclusion certainly ignores, at the very least, the examination by Dr Lincoln who removed all the baffles and tested them all so that contamination of baffles, whether deep inside or not, was a possibility. Even more importantly it failed to consider the use made of the moderator as an exhibit at trial where no sort of precautions would have been taken.

503. Mr Webster the defence expert deals in some detail with the aspect of contamination in his report dated the 22 September 2002 between paragraphs 60 and 110. That passage included:

> "66. LCN DNA profiling is extremely sensitive. This can limit the relevance of results obtained by the technique; LCN DNA profiling can detect minute traces of DNA not relevant to the incident in question.
>
> 67. LCN DNA profiling can detect traces of DNA originating from individuals involved in the incident in question, but which has been transferred from one location to another after the incident.
>
> 68. LCN DNA profiling will often detect DNA completely unrelated to the crime. It sometimes detects DNA originating from people who had dealings with the exhibit before and after the crime and DNA from people involved in the manufacture of reagents and test equipment.
>
> 69. These characteristics of LCN DNA profiling often limit the relevance of results obtained when applied to any case. In my opinion, there are specific features of this case <u>that render the results obtained completely meaningless</u> (our emphasis added).
>
> 70. There appears to have been opportunity for DNA originating from individuals involved in the incident to

be transferred from other sites into the sound moderator, and many opportunities for DNA from other individuals not connected with the incident to be deposited inside the sound moderator because of the way it was handled after the crime.

71. The destruction of reference samples taken from Ralph and June Bamber causes further difficulties. If these were still available, it would be possible to determine whether the DNA found in the sound moderator originated from them or originates from individuals unconnected with the incident.

72. Even given these limitations of LCN profiling, I do consider that the tests were worth attempting. The results obtained would have been of value if the distribution of DNA within the sound moderator detected by the LCN DNA profiling test reflected the distribution of blood within the sound moderator when it was originally tested. Unfortunately they do not.

73. Indications of blood were originally detected on the end cap, the washer, the first eight baffles and the screw threads at the end of the sound moderator. No blood was detected on the remaining nine baffles.

74. Ms Grombridge reports that DNA has been detected throughout the sound moderator and states that some of the DNA within the sound moderator could have originated from Sheila Caffell.

75. Plainly, the distribution of DNA detected does not reflect the distribution of blood originally present within the sound moderator. For example, DNA has been detected on baffles 13-17 where no blood had previously been detected.

76. Therefore, some action not necessarily associated with the deposition of blood must have caused DNA to be transferred to various areas of the sound moderator, including DNA that could possibly have originated from Sheila Caffell.

77. There appears to have been many opportunities for DNA from a variety of sources to be deposited on and in the sound moderator and for DNA to be transferred between different areas of the sound moderator as a result of the way the sound moderator was handled after the incident."

504. Mr Webster then reviewed in detail the history of the handling of the moderator and the various opportunities for contamination. He considered the fact that Dr Lincoln had taken out all the baffles and tested them all. He referred to the fact that both Mr Hayward and Mr Fletcher had handled the moderator in the witness box, a place where other exhibits were produced without any precautions being taken to avoid contact. He pointed to the fact that the judge specifically told the jury that they could "empty the baffles out later" and that it could not be established what use had been made of the moderator by the jury during their deliberations or what other exhibits may have been in their possession. He observed that the judge had told the jury that if they handled any of the clothing, they should put on plastic gloves for their own protection, thus giving rise to the possibility that blood stained items were examined by the jury with no precautions being taken to ensure that if they then went to handle the baffles there was not contamination.

505. Mr Webster concluded at paragraph 102:

> "The CCRC, in their statement of reasons, more or less excluded the possibility of contamination. In my opinion, the Commission was wrong to do so."

506. We have no doubt at all that if this evidence had been placed before a jury, they would have concluded, as we do, that in accordance with the emphasised part of Mr Webster's report quoted above, the DNA testing results were rendered completely "completely meaningless".

507. Thus we are satisfied that the DNA evidence does not lead to any conclusion that the verdicts were unsafe. They do not in any way establish how June Bamber's DNA came to be found in the moderator many years after the trial. Even if one were to reject the possibility of contamination and conclude that June Bamber's blood got into the moderator during the shooting, that would not mean that Sheila Caffell's blood was not in the silencer. The flake of blood that was group tested was independent of the DNA found on the baffles which was attributed to June Bamber. The evidence about the blood testing is not, in our judgment, in any way diminished by the DNA findings, even if one ignored the whole issue of contamination at a later date.

508. In our judgment having reviewed the whole of the evidence about the blood, there is nothing to suggest that the evidence of Mr Hayward in this regard is wrong. The evidence did point to the blood being that of Sheila Caffell but he was right to acknowledge the remote possibility that there was a mixture of blood from June Bamber and Nevill Bamber. That possibility could only be overcome by considering the other aspects of the evidence, the lack of any blood in the barrel of the rifle, the finding of the moderator carefully put away in its proper place and all the other unrelated aspects of the case. We can find nothing to suggest that the evidence that was placed before the jury was misleading nor that the jury would not have given careful consideration to this aspect of the case. Accordingly we reject this ground.

Ground 16 – police misconduct

509. The final ground of appeal is a generalised allegation that as a result of "the activities of Detective Superintendent Ainsley, DS Jones and DCI Wright as detailed in grounds 1 to 13, the prosecution case is tainted and the convictions therefore unsafe. We have already recorded our conclusions on the individual grounds and have made clear that we find none of the allegations of serious misconduct made out. Before reaching final conclusions about the individual allegations, we have deliberately reconsidered the matter to see whether looking at the wider picture gives rise to any concern that in looking at matters of detail, we might have missed evidence of the kind that only is capable of being perceived by having regard to a number of smaller matters. We can see no reason to revise our view on any of the matters and we have found no evidence at all to support the allegations of serious wrongdoing by the police that is suggested.

510. As Mr Temple observed in his closing address to us, one of the striking features of this case was the difference between Mr Turner's opening address and the speech that he felt able to make once the evidence had been examined. In the former, suggestions of a widespread conspiracy to present a false case and to deprive the defence of material that would assist them in answering the case were made. By the close of the case, many of those allegations had been abandoned because they were patently obviously unjustified once the evidence was scrutinised.

511. This case has been scrutinised since conviction with as much care as probably any comparable case. In our judgment nothing has emerged to cause us to believe that there was any improper conduct by the investigating officers that threatened the integrity of the trial process, such as is alleged in this ground.

Conclusion

512. Having considered and rejected each of the grounds advanced on behalf of the appellant, it follows that this appeal must be dismissed. Each member of the court has reached the conclusion that there is nothing in any of the matters raised before us that throws doubt upon the safety of these convictions.

513. It should be understood that it is not the function of this court to decide whether or not the jury was right in reaching its verdicts. That is a task that is wholly impossible in virtually every case because this court does not have the advantage of hearing and seeing the witnesses give evidence, and deciding which of the witnesses are trying to tell the truth and which of those who are trying to do so are accurate in their recollection. Our system trusts the judgment of a group of 12 ordinary people to make such assessments and it is not for the Court of Appeal to try to interfere with their assessment unless the verdicts are manifestly wrong, or something has gone wrong in the process leading up to or at trial so as to deprive the jury of a fair opportunity to make their assessment of the case, or unless fresh evidence has emerged that the jury never had an opportunity to consider. We have found no evidence of anything that occurred which might unfairly have affected the fairness of

the trial. We do not believe that the fresh evidence that has been placed before us would have had any significant impact upon the jury's conclusions if it had been available at trial. Finally the jury's verdicts were, in our judgment, ones that they were plainly entitled to reach on the evidence. We should perhaps add in fairness to the jury that the deeper we have delved into the available evidence the more likely it has seemed to us that the jury were right, but our views do not matter in this regard, it is the views of the jury that are paramount.

Prosecution application to call fresh evidence

514. It remains for us to give reasons why we refused an application to call fresh evidence made by the prosecution. Of course, in the light of our conclusions as to the merit of the appeal, this now becomes academic but it is right that we should indicate the nature of the application and our reasons for rejecting it albeit that they can now be given relatively briefly.

515. Mr Temple sought the court's leave to call Mr Martyn Ismail, a Senior Scientific Officer and Major Crime Service Manager with the Forensic Science Service to give evidence as to conclusions that could be drawn from a study of the distribution of blood staining associated with the body of Sheila Caffell, as depicted in the photographs. That application was opposed by Mr Turner. It was conceded that following the decision of this court in the case of Hanratty to which reference has already been made the court does have power to admit fresh evidence in support of a conviction where that evidence has become available since trial (see paragraphs 101 and 102 of the judgment in Hanratty).

516. Mr Turner's first objection was that this was not evidence that could not have been called by the prosecution at trial. He submitted that evidence of blood staining interpretation was available in the 1980s and the fact that the prosecution had not sought to look at this dimension of the case at that time should not mean that they can now introduce the evidence to support their case, if it was viewed by the court as unsafe to rely on the convictions in other respects. Mr Temple contended that whilst the study of and drawing inferences from blood staining patterns may have been available in the 1980s, it was in its relative infancy and with the passage of time since that era, the skills have become more developed so that in consequence greater reliance can be placed on such evidence. He relied in this regard on a statement from Mr Ismail which accepts that there have been references to the interpretation of blood patterns going back to the story of Cain & Abel in the Bible and that the first scientific work was published in 1939 but contends that in the United Kingdom, the first practical courses on the subject were not run until 1988. He concludes:

> "In 1985 forensic scientists in this country would have been trained to interpret blood patters at scenes and on objects such as clothing and weapons. However, in my opinion, scientists today are more aware of the potential of blood distribution and practitioners are more confident in its use due (to) greater support and background knowledge."

517. Mr Turner's further ground for opposing the admission of this evidence was that it was not a matter that could be fully considered without placing it against many other aspects of the evidence called at trial, such as the pathologist's evidence and the evidence as to how the crime scene may have been altered between the moment when the farmhouse was entered and the taking of the photographs. He argued that unlike a distinct piece of evidence such as the DNA evidence in Hanratty, it was wholly impossible for the court to gauge the impact that this evidence might have had on the jury without the court being in a position to hear all these other aspects of the evidence that were before the jury. He pointed to a number of specific areas in which he argued that the evidence of Mr Ismail was capable of attack by reference to other evidence in the case. The most clear cut of which was that Mr Ismail had referred to a bloodstain on the upper right thigh of Sheila Caffell's nightdress that was clearly caused by a bloody hand print. He said that he understood that Dr Vanezis, the pathologist, had given evidence that there was no blood on the palm side of Sheila Caffell's hands. Therefore, he concluded, this staining must have been deposited by another individual. However, whilst Mr Ismail rightly recorded the evidence of Dr Vanezis, Mr Turner was able to point to a note made by Dr Vanezis at the time of the post-mortem examination that read:

> "bloodstained palm prints on nightdress matches bloodstains appeared to have transferred from R hand. "

518. To decide whether we considered that the interests of justice required that we heard Mr Ismail's evidence, we first had regard to the evidence that it was said that he could give. From the blood staining he concluded that following the second and fatal shot Sheila Caffell was lying almost flat on her back with her head propped against a bedside cabinet. For her then to slide to be found in the position depicted in the photographs would have required the downward force to be greater than the friction of her body against the floor. In his opinion this simply was not possible as there would only be the weight of the head providing the downward force. Therefore he concluded that an additional force would have been necessary. It could not have come from Sheila Caffell since the second shot would have been instantly fatal and thus she must have been moved by someone else, for example with her legs being pulled. He also considered that the weight and the friction between her skin and her nightdress was likely to have been less than the weight and friction between the nightdress and the carpet. Therefore, he would expect movement of the body within the nightdress rather than the body and clothing sliding together across the carpet. He pointed out that the photographs demonstrated this effect at the back of the nightdress with the nightdress staying rucked up in its original position. However the front of the nightdress had not demonstrated this effect. Accordingly Mr Ismail concluded that the nightdress had been pulled down after Sheila Caffell slid into her final position. Since on the evidence, she was dead by this stage, Mr Ismail concluded that some one else had arranged her nightdress.

519. Having studied with care the statement of Mr Ismail, we concluded that this was expert evidence capable of belief. Indeed if it had been given and if cross-examination had not revealed flaws in it (which we consider unlikely bearing in mind that there was no application to call any expert evidence to contradict it), had we been on a jury hearing such evidence we might well have been very impressed by it. That

evidence in itself could have led to a conclusion of guilt quite apart from the many other matters relied upon by the prosecution at trial. However, we were not satisfied that evidence of this kind was not available at the date of trial if the prosecution had sought to explore these matters and more importantly we thought that Mr Turner was right in his submission that it was very difficult to gauge with sufficient certainty the reaction of a jury to it particularly when we could not judge it against all the related evidence in the trial, which we had not heard.

520. Our conclusion was that we should not therefore admit the evidence and we have had no regard to it in reaching our conclusion. It can, however, be said about it that if it had been called at trial, it may well have represented yet another formidable string to the prosecution's bow in a case where even without any regard to that evidence, it has to be said that the prosecution were able to put forward a very strong case pointing to guilt.

General observations

521. We would finally wish to make two general observations before leaving the case. The first is to pay tribute to the industry and efficiency of all concerned with the presentation to the court of this appeal. There is now a mountain of paperwork that relates to these matters but as a result of co-operation between the two sides the relevant documentation was marshalled together in a way that provided us with the maximum assistance in understanding the points to be made by each side. For that we are very grateful just as we are for way in which argument was presented orally by both Mr Turner and Mr Temple. Without these advantages this case would have taken up more of the court's time than it did.

522. In this regard there is one further observation that we feel compelled to make. That is that it seems to us that there is a significant deficiency in the statutory framework that provides for a reference by the CCRC to this court of a matter. We have no difficulty at all with the concept that there should be a machinery to review potential miscarriages of justice, where no other avenue of appeal remains. Once a matter has been referred to this court it is clearly right that the court should fully consider those matters that have caused the case to be referred by the CCRC. However, it does seem remarkable to us that the appellant, following a referral to the court, is then entitled to raise any matter he wishes as a ground of appeal without either it having been deemed worthy of consideration by the CCRC or the leave of the court having first been obtained. We have no doubt that some of the matters that occupied the time of the court raised on behalf of the appellant were of such little merit that the court would, if it had power, have refused leave to argue them. As a result notwithstanding the economical advocacy of counsel and the efficient preparation of the case, the case lasted some days longer than could be justified by some of the points that were taken. We would not want to see an appellant shut out from trying to raise a point following a referral but we can see no justification for not having the filter present in such circumstances of requiring leave to raise additional matters to those referred by the CCRC that is present in all other appeals brought by a convicted person. The Court of Appeal Criminal Division is pressed to deal sufficiently expeditiously with the caseload that it has and time unnecessarily wasted means that cases where the court

subsequently determines that someone is wrongly detained in prison are delayed. We hope that thought will be given to making this relatively modest change to the legislation that would enable the court to make more efficient use of its time.