

The Report on an Inquiry into an Allegation of a Conspiracy to Pervert the Course of Justice in Scotland

To the Right Honourable the Lord Rodger of Earlsferry QC
Her Majesty's Advocate

By W A Nimmo Smith QC and
J D Friel, Regional Procurator Fiscal of North Strathclyde

Return to an Address of the Honourable the
House of Commons dated 26th January 1993

*Ordered by the House of Commons to be printed
26th January 1993*

EDINBURGH: HMSO

The Report on an Inquiry into an Allegation of a Conspiracy to Pervert the Course of Justice in Scotland

To the Right Honourable the Lord Rodger of Earlsferry QC
Her Majesty's Advocate

By W A Nimmo Smith QC and
J D Friel, Regional Procurator Fiscal of North Strathclyde

Return to an Address of the Honourable the
House of Commons dated 26th January 1993

*Ordered by the House of Commons to be printed
26th January 1993*

EDINBURGH: HMSO

ISBN 0 10 237793 6

The Right Honourable the Lord Rodger of Earlsferry QC
Her Majesty's Advocate

In discharge of the remit set out in your letter to us dated 18 September 1992, we have the honour to submit our Report herewith. Although it is submitted to you, since it is intended for publication we propose hereafter to refer to you in the third person. You took office on 22 April 1992, and accordingly when describing events after that date we shall call you "the Lord Advocate". References to "the Lord Advocate" prior to that date are to your predecessors in office.

Yours sincerely

W A NIMMO SMITH QC

J D FRIEL

Edinburgh,
15 December 1992

THE REPORT ON AN INQUIRY INTO AN ALLEGATION OF A CONSPIRACY TO PERVERT THE COURSE OF JUSTICE IN SCOTLAND

CONTENTS

	<i>Paragraphs</i>	<i>Page</i>
Part 1 Our Remit	1.1 to 1.17	1
Part 2 The Judiciary, the Crown and the Police	2.1 to 2.15	8
Part 3 Homosexuality and the Criminal Law	3.1 to 3.7	13
Part 4 Homosexuality and the Holding of Judicial Office	4.1 to 4.3	16
Part 5 The Resignation of Lord Dervaird	5.1 to 5.4	17
Part 6 Colin Tucker's Statement or "List"	6.1 to 6.32	19
Part 7 Rumours about Members of the Legal Profession	7.1 to 7.13	28
Part 8 "Jason" the Rent Boy and the "Gay Judges Scandal"	8.1 to 8.8	31
Part 9 Michael Junior's Story about a "Judge"	9.1 to 9.6	34
Part 10 Allegations by Stephen Conroy against Sheriff Douglas Allan	10.1 to 10.33	36
Part 11 Other Allegations against Sheriff Douglas Allan	11.1 to 11.19	53
Part 12 The Orr Report	12.1 to 12.28	58
Part 13 Robert Henderson QC	13.1 to 13.22	66
Part 14 <i>HMA v Arthur Colin Tucker</i>	14.1 to 14.22	72
Part 15 <i>HMA v Gordon Michael May and Arthur Colin Tucker</i>	15.1 to 15.24	79
Part 16 <i>HMA v Neil Bruce Duncan and Others</i>	16.1 to 16.43	85
Part 17 <i>HMA v Stephen Mark Conroy</i>	17.1 to 17.16	96
Part 18 Conclusions	18.1 to 18.14	100

1. OUR REMIT

1.1 On 11 September 1992 there were reports in the press and on television of the contents of an internal report by a senior officer of Lothian and Borders Police to the Chief Constable, a copy or copies of which had been leaked. We shall for convenience refer to this document as “the Orr Report” because, although it was signed by Detective Chief Superintendent William Hiddleston, it was written by Detective Chief Inspector Roger Orr. While we shall have occasion to discuss passages of the Orr Report at some length later in this Report, certain of its features could conveniently be mentioned at this stage. After an introduction it has the following headings:

- “1. BURNETT WALKER, W.S.—IAN McFARLANE WALKER, AND ARTHUR COLIN TUCKER”,
- “2. ARTHUR COLIN TUCKER AND GORDON MAY”,
- “3. ROBERT EWART HENDERSON, Q.C.”,
- “4. OPERATION PLANET—THE RENT BOY CASE” and
- “5. STEPHEN CONROY AND SHERIFF DOUGLAS ALLEN” (*sic*).

It ends with a conclusion, the second paragraph of which is in the following terms:

“When all aspects are viewed together and the various links examined, the overwhelming conclusion has to be that a number of enquiries remain to be done in order to say accurately that all information in possession of the police has been fully investigated. The inference is one of the existence of a well established circle of homosexual persons in Edinburgh with influence in the judiciary who may or may not have exercised that influence but who have formed associations which in themselves lay them open to threats or blackmail. It may well be the case that homosexuality *per se* is no longer considered detrimental to the standing of a person holding public office. However, the circumstances set out in this report indicate that homosexuality may well have been used as a means to seriously interfere (*sic*) with the administration of justice.”

1.2 Whatever may have been the intention of the author of the report, this last paragraph has been widely understood to contain an allegation that there has been a conspiracy to pervert the course of justice which has resulted in decisions having been taken by the Crown in the particular cases mentioned in the Orr Report for the improper motive of preventing the public exposure of prominent members of the Scottish legal establishment as being practising homosexuals or as having engaged in homosexual activities; in any event, we have thought it necessary to treat the Orr Report as containing such an allegation. The leaking and the press and television coverage of the Orr Report have put this allegation into the public domain and have caused legitimate public concern about the integrity of the system for the prosecution of crime in Scotland.

1.3 On 14 September 1992 we were invited to undertake this Inquiry and started work forthwith. As it happened, the Lord Advocate was prosecuting in Glasgow that week and was not immediately available to discuss with us the terms of our remit. These terms were finalised in letters to each of us dated 18 September 1992, in the following terms:

“I am grateful to you for accepting the task of reviewing the decisions taken in the cases which have already been identified to you. At the risk of stating the obvious, I must stress that I wish you to exercise the fullest possible independence of judgment in conducting your investigation. I understand, however, that you would find it useful to have a written indication of your authority and your remit.

Authority

You have been provided with a copy of the leaked report to the Chief Constable and previous relevant papers. There are several cases identified in that report and you may, with my authority, call for any case papers in relation to these reports. You may also call for any papers which relate to the allegations made in the report. You further have my authority to interview myself, the Solicitor General, any serving Advocate Depute and any member of the staff of Crown Office and the Procurator Fiscal Service in connexion with these matters. You may wish to interview other parties, but, as you will appreciate, for the most part I have no authority over other people and I think such interviews could only be arranged by agreement with the individuals. Should you meet with any difficulty in this regard, I would like to consider the matter again.

Remit

The basis of the allegations now made appears to be that decisions taken in relation to the cases referred to were taken for improper reasons, namely to prevent disclosure of information which would identify certain individuals as homosexuals. The purpose of your inquiry is to seek to ascertain whether there is any evidence to suggest that the decisions were taken for such improper reasons. I would further wish you to consider the actions taken by Crown Counsel and those in Crown Office and the Procurator Fiscal Service who were aware of the allegations, with a view to establishing whether there is any evidence to suggest that they were influenced by improper considerations similar to those defined above.

Clearly you will wish to establish on what evidence the police report reached its conclusions, and to explore that evidence to any extent which appears to you to be necessary.

It is not, as such, part of your remit to comment on whether the judgment of Crown Counsel or Procurators Fiscal or deputies was correct on the merits of the particular cases, although clearly you may require to take account of such judgment before you can decide whether the nature of any decision was such as to indicate that it may have been reached for the improper reasons which I have mentioned. Nor is it a part of your remit to enquire into whether any individuals have engaged in homosexual practices, except in so far as that may relate to the primary purpose of the inquiry.

Report

Once you have concluded your review, I would be grateful if you would report, in writing, to me. If you conclude that there is evidence to support any of the allegations, then the question of possible criminal proceedings would arise and, to that extent, the possibility of publication would be affected. Otherwise, I should wish to publish as much of your report as possible, bearing in mind the principle that the Crown does not disclose the reasons for certain decisions in relation to prosecutions of identifiable individuals. I should accordingly be grateful if you would consider writing your report in such a way that as much as possible of it can be made public. I should also like you to recommend which parts, if any, should be made confidential.

Finally, with the exception of the matters specifically excluded from your remit, I would not wish to constrain you by the terms of this letter from extending your inquiry into any area which you may consider relevant to it."

The terms of our remit were made public on the same date.

1.4 The Lord Advocate has the overall responsibility for both the investigation and the prosecution of crime in Scotland. Normally he leaves the investigation of crime in the hands of Procurators Fiscal and the police, as we discuss below, but it is open to him to investigate crime by himself or through others of his choosing. In this instance he has chosen us to conduct an investigation in his name and with his authority into the allegation arising from the Orr Report. An allegation that there has been a conspiracy to pervert the course of justice is of course an allegation that there has been a course of criminal conduct. It has been clear to us from the outset that our Inquiry is in substance a criminal investigation.

1.5 We have taken a liberal view of our remit. We have conferred with the Lord Advocate from time to time, and have indeed questioned him, as was contemplated by him; but we have received no directions from him and have taken our own decisions at all times as to the course our Inquiry should take. We have taken possession of all the papers held in the Crown Office relating to the cases in question. We have been given full use of the resources of the Crown Office, and would like in particular to thank the Crown Agent, Duncan Lowe, and the Deputy Crown Agent, Alfred Vannet, for the help they have given in ensuring that our requests were met.

1.6 At an early stage the Chief Constable of Lothian and Borders Police, Sir William Sutherland, appointed Assistant Chief Constable Graham Power to be our liaison officer with the police. He, and in his absence Assistant Chief Constable Thomas Wood, undertook the responsibility of securing the attendance for interview of serving and retired police officers and of instructing the carrying out of various inquiries on our behalf. Our every request to the police was attended to promptly, efficiently and with courtesy; we make a particular point of saying so at this stage because we shall have some hard things to say about some police officers later in this Report. Our remit does not extend to investigation of the person or persons responsible for the leaking of the Orr Report. A separate internal police inquiry has been conducted into that matter by Chief Superintendent Harry Gilmour, with whom we have exchanged information and opinions from time to time. He has provided us with a summary of his report to the Chief Constable. We should like to thank him for his willing co-operation.

1.7 Our remit gave us authority over serving Advocates Depute and members of the staff of Crown Office and the Procurator Fiscal Service. We received full co-operation from all those falling within these categories whom we wished to attend for interview or to carry out inquiries on our behalf.

1.8 As our Inquiry progressed it became apparent that there were a large number of other persons whom it would be appropriate for us to interview. Except as mentioned below, all such persons responded readily to our approaches and attended voluntarily for interview, although we had no power to compel them to attend or to answer questions or to hand over documents during the course of an interview. All interviews were conducted by both of us face to face with the interviewees except in a few instances, which we have indicated in the text, where the evidence seemed relatively minor and sufficiently uncontroversial to justify the taking of the evidence by one of us alone either in person or by telephone.

1.9 The following persons were interviewed by us, their names being listed in alphabetical order:

Douglas ALLAN, Sheriff of South Strathclyde, Dumfries and Galloway at Lanark, and formerly Regional Procurator Fiscal, Lothian and Borders
Dean BARNES
Thomas BELL, Sergeant, Lothian and Borders Police
James BETHELL, Reporter, "The Sunday Times"
David BLAIR-WILSON, Solicitor, Edinburgh
Edward BOWEN QC
Douglas BROWN, Assistant Solicitor, High Court Unit, Crown Office
Karen BROWN
Peter BROWN, Sergeant, formerly Detective Sergeant, Lothian and Borders Police
David BURNS QC
Ian BURRELL, Assistant News Editor, "Evening News"

Alastair CAMPBELL, Advocate
 Hector CLARK, Deputy Chief Constable, Lothian and Borders Police
 Isabel CLARK, Procurator Fiscal Depute, Edinburgh
 The Honourable Lord CLYDE, Senator of the College of Justice
 Stephen COMERFORD, Constable, formerly Detective Constable, Lothian and Borders Police
 Stephen CONROY
 Stephen CONROY, Senior
 Hugh CORBETT, Detective Sergeant, Lothian and Borders Police
 Kevin CRAWFORD
 William CROOKSTON, Detective Chief Inspector, Lothian and Borders Police
 Frank CROWE, Procurator Fiscal, Kirkcaldy, formerly Assistant Solicitor, High Court Unit, Crown Office
 Leslie CUMMING, Chief Accountant, The Law Society of Scotland
 Thomas DAWSON QC, Solicitor General for Scotland
 Ian DEAN, formerly Crown Agent
 Leeona DORRIAN, Advocate
 Brian DOUGLAS, Advocate
 Kevin DRUMMOND QC
 Gordon ELLIS, Depute Clerk of Justiciary
 Christopher FEW, Police Constable, Northamptonshire Constabulary, formerly Detective Constable, Lothian and Borders Police
 Mark FITZPATRICK, Advocate
 Hugh FOLEY, Principal Clerk of Session and Justiciary
 David FORSYTH, Reporter, "Evening News"
 The Right Honourable the Lord FRASER OF CARMYLLIE QC, Minister of State at The Scottish Office, formerly Lord Advocate
 Martin FRUTIN
 Brian GILL QC, Keeper of the Advocates' Library
 William GILLON, formerly Depute Clerk of Justiciary
 Michael GLEN
 Richard GODDEN, Solicitor, Edinburgh
 Robert HENDERSON QC
 Thomas HEPBURN, formerly Detective Chief Inspector, Lothian and Borders Police
 William HIDDLESTON, formerly Detective Chief Superintendent and Head of CID, Lothian and Borders Police
 The Right Honourable Lord HOPE, Lord President of the Court of Session and Lord Justice General
 Allan HUTCHISON, Chief Reporter, "The Scotsman"
 Ian IRVING, Detective Inspector, Lothian and Borders Police
 Alan JOHNSTON QC, Dean of the Faculty of Advocates
 David JOHNSTON, Reporter, Radio Forth
 Richard KEEN, Advocate
 Robert LEES, Regional Procurator Fiscal, Lothian and Borders
 Robert LEITCH, formerly Detective Inspector, Lothian and Borders Police
 Magnus LINKLATER, Editor, "The Scotsman"
 Duncan LOWE, Crown Agent, formerly Regional Procurator Fiscal, Lothian and Borders
 Gordon McBAIN, Solicitor, Edinburgh
 Paul McBRIDE, Advocate
 The Right Honourable the Lord McCLUSKEY OF CHURCHHILL, Senator of the College of Justice
 William McDOUGALL, Higher Precognition Officer, Procurator Fiscal's Office, Edinburgh
 Norman McFADYEN, Assistant Solicitor, Fraud Unit, Crown Office
 Kenneth MACIVER, Assistant Procurator Fiscal, Edinburgh
 Andrew McLAUGHLIN
 Elish McPHILOMY, Senior Legal Assistant, Crown Office
 Iain McSPORRAN, Procurator Fiscal Depute, Edinburgh

Maria MAGUIRE, Advocate
 Elaine MATTHEWS
 Hugh MATTHEWS QC
 The Honourable Lord MILLIGAN, Senator of the College of Justice
 John MITCHELL QC
 James MUIR, Solicitor, Shotts
 John MURRAY QC, Dickson Minto Professor of Company and Commercial Law, Edinburgh University, formerly Senator of the College of Justice
 Neil MURRAY QC
 Isabel NICOL, formerly Detective Sergeant, Lothian and Borders Police
 Lawrence NISBET, Advocate
 Derek OGG, Advocate
 Charles ORR, Sergeant, formerly Detective Sergeant, Lothian and Borders Police
 Roger ORR, Chief Inspector, formerly Detective Chief Inspector, Lothian and Borders Police
 The Honourable Lord PENROSE, Senator of the College of Justice, formerly Home Advocate Depute
 Richard PRENTICE, Assistant Chief Constable, Lothian and Borders Police
 James REILLY, Advocate
 Brian REYNOLDS, Sergeant, Lothian and Borders Police
 The Right Honourable Malcolm RIFKIND QC MP, Secretary of State for Defence, formerly Secretary of State for Scotland
 Peter ROBERTSON, formerly Detective Inspector, Lothian and Borders Police
 The Right Honourable the Lord RODGER OF EARLSFERRY QC, Lord Advocate, formerly Solicitor General for Scotland
 Linda RUXTON, Assistant Procurator Fiscal, Glasgow, formerly Senior Procurator Fiscal Depute, Edinburgh
 John SIMPSON, Advocate
 Robert SINCLAIR, Depute Clerk of Justiciary
 Walter Easton SMITH
 Michael SOUTER, Inspector, formerly Detective Inspector, Lothian and Borders Police
 Donald STEWART, Inspector, Lothian and Borders Police
 The Honourable Lord SUTHERLAND, Senator of the College of Justice
 Sir William SUTHERLAND, Chief Constable, Lothian and Borders Police
 Colin TUCKER
 Peter WATSON, Solicitor, Glasgow
 John WATT QC
 Thomas WELSH, Advocate
 Peter WILSON, Superintendent, Lothian and Borders Police

1.10 Of the journalists we have spoken to, we have listed only those whom we have interviewed in the sense that they have given information in response to questions by us. We have had occasion to speak to a number of other journalists who have been interested in the progress of our Inquiry. We have also spoken to a variety of other persons, principally with a view to enlisting their help in making contact with others whom we wished to interview. Only two persons whom we wished to interview declined to attend. These were Tam Dalyell MP and a rent boy (or male prostitute) called “Jason”. Mr Dalyell was kind enough to explain to us by telephone that he remained “implacable” in his refusal to attend for interview, and was amused by the consequent juxtaposition of his name with that of “Jason”.

1.11 In approaching persons whom we wished to interview we had to resort to whatever expedients seemed best suited to persuade each individual to attend, but we ensured that a number of basic points were conveyed to each. These were, firstly, that we were effectively to be regarded as the Lord Advocate; secondly, that our Inquiry was in substance a criminal investigation; thirdly, that our sole desire was to establish the truth of the matters we were inquiring into; and fourthly, that our interviewees could be assured of our discretion about their attendance

for interview and our respect for the confidentiality of information which was not strictly relevant to our Inquiry. As a result we have been able, as far as we can tell, to inspire confidence in almost all of those whom we have interviewed.

1.12 It would be convenient at this point to mention that at our request Assistant Chief Constable Power circulated a memorandum dated 23 September 1992 to all Chief Superintendents stating that if any member of the Force who was not called by us to give evidence felt that he had useful evidence to give, he should be encouraged to make contact with Assistant Chief Constable Power who would make arrangements for him to speak directly to us. A similar statement was made in the Force Information Bulletin of 25 September 1992. We are satisfied that these steps have resulted in our having interviewed all police officers with relevant information to give.

1.13 There was no fixed pattern to each interview. With a few exceptions, interviews took place on Crown Office premises. No other person was present during an interview apart from us and the interviewee. We each made a separate contemporaneous written record of each interview. After outlining to each interviewee the scope of our Inquiry and the matters in respect of which we wished to ask questions, we then proceeded to ask questions in a form which seemed best suited to the occasion. With a few exceptions our interviews were relatively informal discussions rather than interrogations similar to cross-examination. As a matter of policy we tried to tell each interviewee no more about the evidence we had taken from others than was necessary for the formulation of questions or to explain the reasons for asking questions. We did, however, make a point of putting to each witness, for his comment, what had been said by others about the witness or about the matters to which the witness spoke. In the case of some witnesses it thus became necessary to ask them to attend for more than one interview, and in a very few instances three or more interviews became necessary.

1.14 While we had no control over what witnesses might choose to say in private or in public before or after being interviewed by us, we believe that on the whole our own discretion was matched by that of witnesses, with the result that there was little public discussion about specific aspects of our Inquiry while it was in progress. Such public discussion would have been unwelcome to the extent that it might have inhibited witnesses from agreeing to attend for interview or from giving us as much information as they did.

1.15 It is in the nature of the matters which we have investigated that very often no written record was made of them by the witnesses at the time. Where such written records survive, we have taken possession of them, and mention them in the text of this Report. For the most part, however, we have had to rely on the recollections of witnesses who would have had no idea at the time when the events took place, sometimes as much as three years ago, that they would be called on to give evidence about them. As a result, recollections and perceptions of events have varied. Where there have been material discrepancies in the evidence we discuss those discrepancies. Where there have been minor discrepancies we have not thought it necessary to treat them in detail and have instead compiled a narrative which at least closely approximates to the true events. Overall, we believe that we have been able to establish as much of the truth as anybody could have done after this passage of time. The truth as we have established it may be more banal than what some have chosen to believe, but we hope that even a sceptical reader will be satisfied with the substantial accuracy of what we have to report.

1.16 There are two main omissions from our Report. Firstly, witnesses were prepared to confide in us about their private lives, on our assurance that we would make no more mention of them than was strictly necessary for the purposes of our remit. Where we have found it necessary to report on aspects of witnesses' private lives we have deliberately done so in a way which is intended to frustrate merely prurient curiosity. Secondly, there can be no question of our reporting on prosecution decisions in such a way as would facilitate public debate about their correctness. There is a very sound reason for this, which seemed to be unanimously accepted by those of the witnesses who had an interest to discuss it with us. This is that to put into the public domain the subject matter of prosecution decisions would be to expose persons to a form of public trial without giving them an

opportunity to defend themselves. The only proper place for a person to be exposed to a criminal allegation by the Crown is a criminal court. Every person who is suspected or accused of having committed a criminal offence enjoys a presumption of innocence, which means that he or she is only to be taken to have committed the offence if the Crown has discharged the burden of proving his guilt beyond reasonable doubt, by the leading of evidence of the sufficiency and quality required by law, in a criminal court. Accordingly in those cases where a decision was taken either not to initiate a prosecution or not to proceed on certain charges, or to proceed on reduced charges, we intend to do no more than summarise the procedure which was followed and the views of those who were involved in the taking of the decision in question.

1.17 We would conclude this introductory passage with an expression of our thanks to Valerie Dawson, who prepared the typescript of this Report with efficiency, discretion and unfailing good humour.

2. THE JUDICIARY, THE CROWN AND THE POLICE

2.1 In the course of our Inquiry we discovered that there existed considerable confusion in the minds of some witnesses as to the functions of the various participants in the criminal justice system. We therefore consider it appropriate at this stage to discuss the system.

2.2 There are twenty four Judges who sit in the Court of Session and the High Court of Justiciary, of whom the most senior is Lord Hope, the Lord President of the Court of Session and Lord Justice General. They are appointed by the Queen and hold office until they retire or resign. They can only be removed from office in consequence of an address to both Houses of Parliament, a procedure which has not been used for many years. In the High Court of Justiciary they preside over criminal trials in which one party is the Crown and the other party is the accused. Legal arguments are heard by Judges sitting on their own, but all evidence is led in the presence of a jury. The jury decides, in the light of legal directions from the Judge, what view to take of the evidence and what verdict to return. We have found a surprising ignorance, even among some quite senior police officers, about the position of the Judiciary in relation to criminal prosecutions in Scotland. It therefore needs to be clearly stated that the Judiciary are entirely independent of the prosecuting authorities (collectively referred to as "the Crown"), and have no say in decisions as to whether or not prosecutions should be initiated, and if so on what charges, and as to whether or not pleas of guilty should be accepted or charges should be withdrawn. The usual expression of the Crown's position is that the Crown remains master of the instance throughout. Judges do of course make decisions about the legal implications of charges or of evidence led by the Crown, but they do so in open court where their decisions are subject to public scrutiny. Since all the cases with which we are concerned which resulted in prosecutions were heard in the High Court we need not mention the lower courts, beyond stating in passing that a Sheriff is a judge and that the same considerations apply to relations between a Sheriff and the Crown and to the conduct of proceedings before a Sheriff.

2.3 Judges of the Court of Session and the High Court are served by clerks of court, headed by the Principal Clerk of Session and Justiciary, who are public servants. Their function is to assist in the administration of justice by securing, so far as is practicable, the availability of Judges to hear cases which are brought before the court and by assisting the Judges in procedural and administrative matters in the interests of efficiency. Hugh Foley, the Principal Clerk of Session and Justiciary, has described the position in these terms:

"We serve the Bench and through the Bench the public. The Crown is just another litigant, though our biggest customer."

When a Judge sits in court a clerk of court is always present to keep a record of the proceedings and otherwise to assist the Judge. The clerk will often act as a channel of communication between the Judge and the counsel attending a sitting of the High Court in connection with matters affecting the progress of the sitting.

2.4 The expression "the Crown" includes the Law Officers, the Advocates Depute, and the Procurator Fiscal Service, headed by the Crown Agent. The Law Officers are the Lord Advocate and the Solicitor General for Scotland, who are members of the Government and are appointed by the Prime Minister of the day. They are answerable to Parliament for the performance of their duties, as are all Government Ministers. As we have already stated, the Lord Advocate has the responsibility for both the investigation and the prosecution of crime in Scotland, as well as other functions which are not relevant for present purposes. The Lord Advocate grants commissions to Advocates Depute, whose numbers have

recently been increased from twelve to thirteen. They are drawn from the practising membership of the Faculty of Advocates. Their commissions empower them to take all prosecution decisions in the Lord Advocate's name as if he were taking them himself. The relevant part of such a commission, the terms of which have been in use for many years, is as follows:

“to compare for me and in my name as Her Majesty's Advocate before the High Court of Justiciary at Edinburgh, and before the different High Courts of Justiciary held in Scotland, and to make and subscribe all applications and Petitions to the Judges thereof, and to raise and subscribe and insist in all Criminal Actions, Indictments, Complaints, Prosecutions and Trials that may be brought into said several Courts or any of them; and also with power to him to restrict libels, to desert diets, and to crave judgment as he shall see cause, and generally to do everything necessary in the premises that I could do myself if present”.

The consequence of this is that an Advocate Depute may, among other things, accept reduced pleas or drop charges or even withdraw whole indictments without reference to the Lord Advocate. Some police officers seem surprisingly ignorant of the extent of the discretion which the Lord Advocate's commission confers on an Advocate Depute. The Law Officers and the Advocates Depute are referred to collectively as “Crown Counsel”.

2.5 The Crown Agent and the other members of the Procurator Fiscal Service are public servants. Crown Counsel are served at the Crown Office by the Crown Agent, the Deputy Crown Agent, and other staff, of whom we would particularly mention the staff of the High Court Unit and the Fraud Unit. Outside Crown Office, there is a Regional Procurator Fiscal in each of the six Sheriffdoms of Scotland. In addition there is a Procurator Fiscal appointed to each Sheriff Court District within the region. Procurators Fiscal function as the Lord Advocate's local representatives.

2.6 While one of the main functions of the police is to investigate crime, their investigations are subject to advice and instructions from the Crown. The position of the police in relation to the Crown is to some extent regulated by statute, in particular by section 17 of the Police (Scotland) Act 1967, which provides for the making of reports by the police to the appropriate prosecutor, and by section 9 of the Criminal Procedure (Scotland) Act 1975, which provides for the issuing by the Lord Advocate of instructions to a Chief Constable with regard to the reporting, for consideration of the question of prosecution, of offences alleged to have been committed within the area of such Chief Constable, and imposes the duty on a Chief Constable to whom any such instruction is issued to secure compliance therewith. But the office of Lord Advocate has existed since long before the creation of any police force, and his functions and responsibilities have not been diminished by the availability of the police to conduct criminal investigations. The fundamental principle is that he has the right to investigate any alleged crime at any time. The position is well stated in the Opinion of Lord Justice Clerk-Thomson in *Smith v HMA 1952 JC 66* at pp.71–72:

“When a crime is committed it is the responsibility of the Procurator-fiscal to investigate it. In actual practice much of the preliminary investigation is nowadays, especially in the larger centres of population with highly organised police forces, increasingly conducted by the police under the general supervision of the Fiscal. This is due to the remarkable development in recent years of the efficiency of the criminal investigation departments of the police forces, especially on the technical side of crime detection. However, the duty of the police is simply one of investigation under the supervision of the Procurator-fiscal and the results of the investigation are communicated to the Procurator-fiscal as the inquiries progress. It is for the Crown Office and not for the police to decide whether the results of the investigation justify prosecution. The two functions are quite distinct. In carrying out their initial investigation the police perform a public duty. Their investigation is entirely private and no one else is entitled to take part in it. As the police have a monopoly, two results follow. First, the manner in which they are allowed to carry out their investigation is regulated by

certain rules. Second, as they are the sole investigators, and no more than investigators, it is their duty to put before the Procurator-fiscal everything which may be relevant and material to the issue of whether the suspected party is innocent or guilty. We repeat, it is not for the police to decide what is relevant and material but to give all the information which may be relevant and material.

Clearly in reporting the results of their investigation, the police must exercise a power of selection. It would be absurd to suggest that all their results should be submitted. But a cautious officer will remember that he is not the judge of what is relevant and material and will tend to err on the safe side. If he is in doubt, he should consult the Procurator-fiscal. He will also remember that, as he and he alone has the opportunity of the initial investigation in the public interest, he must put the result of his investigations fairly before the Fiscal in order that the Crown may have a fair basis on which to decide whether or not to prosecute.

On the basis of the information provided by the police the Crown prepare the precognition and carry out any necessary further investigation to enable them to decide whether to prosecute. If it is decided to prosecute, an indictment is prepared.”

2.7 Very often the police will have completed their investigation of the crime before the Crown becomes involved. One of the more senior officers who has been involved in the investigation, referred to as the Reporting Officer, will be allocated the task of reporting to the Procurator Fiscal. For that purpose he prepares a report to the Procurator Fiscal summarising the circumstances. In the case of serious crime the Procurator Fiscal will carefully consider the available evidence and if he considers that proceedings are appropriate will bring the accused before the Sheriff on petition. Thereafter the police will be required to submit witness statements to the Procurator Fiscal and may also be required to carry out further investigations. The Procurator Fiscal will subsequently carry out his own investigation by taking precognitions from the more important of these witnesses and other witnesses identified in the course of precognition. He may of course treat witness statements taken by the police as adequate without precognition, particularly in the case of signed statements by police witnesses. He may again at that stage direct that further investigations be carried out by the police. When the process of precognition is complete the Procurator Fiscal will submit the precognitions together with his own summary and assessment of the evidence, and his conclusions and recommendations, to Crown Office.

2.8 These papers will be seen in the first place by an Advocate Depute. It is impossible to predict in advance which Advocate Depute will see the papers because all Advocates Depute who are not engaged in court attend each morning for the purpose of marking papers and take the papers in each case at random from among all the papers which have reached Crown Office that day. Any papers not so marked are marked later that day by the duty Advocate Depute, who attends for duty according to a weekly rota which frequently changes. The Advocate Depute who marks the papers may instruct further investigation before making a decision, but otherwise will decide whether or not there should be a prosecution, which person or persons should be prosecuted, and on what charge or charges they should be prosecuted. The Advocate Depute will also decide in which court the prosecution should be brought, but for present purposes we shall assume that the decision is to prosecute in the High Court. The Advocate Depute will give a written instruction to the High Court Unit. That Unit will thereafter consider the case in detail and prepare a draft indictment setting out the proposed charges and lists of productions and witnesses. The draft indictment will thereafter be forwarded to the Procurator Fiscal for revision. Following revision the High Court Unit will prepare the final indictment and allocate the case to a sitting of the High Court before the final indictment is signed by an Advocate Depute and served on the accused. In cases where the accused has been in custody since his first appearance on petition all of this requires to be done within 80 days from the date of full committal, so that the accused can be brought to trial within 110 days. If

the accused has been allowed bail he must be brought to trial within one year after his first appearance on petition.

2.9 One of the Advocates Depute is appointed by the Lord Advocate to be Home Advocate Depute and has the responsibility of co-ordinating the appearances of Advocates Depute at various sittings of the High Court throughout the country. Very often it is not possible to predict until near the time of the sitting which Advocate Depute will be free to prosecute the cases set down for a particular sitting. Moreover, sometimes there are not enough of the regular Advocates Depute available to prosecute at all the sittings, in which event the Crown Agent will engage a suitably experienced practising Advocate to serve as an *ad hoc* Advocate Depute for the duration of a particular sitting. Incidental instructions, for example instructions excusing witnesses from attendance, which require to be given in the period prior to a trial may be given by any Advocate Depute who happens to be available, and not necessarily the Advocate Depute who is to undertake the prosecution. The papers for the cases which are to be prosecuted at any sitting are usually made available to the Advocate Depute who is to undertake the prosecution only a relatively short time, at most about ten days, before the start of the sitting. That will be his or her first opportunity to form an impression of the strengths and weaknesses of each case. Even after a sitting has started, if there is more than one Judge sitting, cases may be switched from one court to another at short notice.

2.10 After an accused has appeared on petition he will normally have obtained the services of a solicitor with the benefit of legal aid. After service of the indictment with lists of productions and witnesses the solicitor will arrange for precognitions to be taken from at least the more important witnesses. Sometimes the Crown will have made a witness list available to the accused's solicitor at an earlier stage, so that he or she can take precognitions before service of the indictment. The solicitor will take steps to instruct counsel to appear on behalf of the accused. Once the precognitions are available and counsel has had an opportunity to consider them there will be a consultation between the accused and his counsel and solicitors, at which the accused can give instructions as to the position which he proposes to adopt in relation to the charges in light of the evidence disclosed by the precognitions. As a result, in the period immediately before the trial, counsel for the accused is often instructed either to tender a plea of guilty to the charges in the indictment or, more often, to attempt to negotiate with the Advocate Depute a plea or pleas which will be acceptable to the Crown.

2.11 In assessing the strengths and weaknesses of a case Crown Counsel are able to use their experience in deciding on the impression which any evidence is likely to make on a jury. Above all they are in a position, by virtue of the commissions they hold, to take account of the public interest in deciding how best to proceed. In this respect their position is entirely different from that of the police. In deciding whether or not to accept a plea proposed by counsel for the accused an Advocate Depute may speak to the Reporting Officer with a view to being satisfied on any matters where the view of a police officer would be of assistance. But the decision whether or not to proceed on any particular charge is taken by the Advocate Depute on his or her responsibility alone. The Advocate Depute will often seek the advice of the Procurator Fiscal or his representative who has prepared the case for trial, but again any decision is the responsibility of the Advocate Depute alone. Once a decision has been taken it will be reflected in the appropriate formal procedure in court. As we have already stated, the Judge has no part to play in the taking of any such decision.

2.12 While we have described what normally happens, there are many cases in which other steps are taken. Where a very serious crime, particularly a murder, has been committed, the Procurator Fiscal will be involved from the earliest stages of the investigation. The police will also seek the assistance and direction of the Procurator Fiscal in many other cases of difficulty, complexity or sensitivity. The Procurator Fiscal may report to Crown Office at any stage, either for the information of Crown Counsel or with a view to obtaining Crown Counsel's instructions. An Advocate Depute may decide to refer a particular point to a Law Officer for a decision which is then made the subject of an instruction by Crown

Counsel. Special procedures are followed in murder and rape cases, which we need not explain further here. Apart from written reports and instructions, there may be meetings at any stage between the Procurator Fiscal and an Advocate Depute, between an Advocate Depute and a Law Officer, or sometimes between all three of them. Decisions taken at these meetings are sometimes, but not always, reflected in written instructions. As will be seen, matters of great sensitivity may be discussed at such meetings without any written instruction being given.

2.13 The Crown Office Fraud Unit is responsible for the investigation and preparation, in co-operation with the police and other agencies, of cases of serious and complex fraud, in particular where the crimes have been committed in areas served by smaller Procurator Fiscal offices. In appropriate cases, officers are nominated by the Lord Advocate to exercise special powers under section 51 of the Criminal Justice (Scotland) Act 1987. This section provides that where it appears to the Lord Advocate that a suspected offence may involve serious or complex fraud, and that, for the purpose of investigating the affairs or any aspect of the affairs of any person, there is good reason to do so, he may give a direction nominating any person (other than a constable), referred to as a "nominated officer", to exercise the powers and functions conferred by sections 52 to 54. Section 52, in particular, as subsequently amended, confers wide powers of investigation on a nominated officer.

2.14 It will be understood from the foregoing discussion that it is possible for an allegation that a crime has been committed to be brought to the notice of the Crown and for all subsequent investigation and prosecution decisions to be undertaken by the Crown with no, or only incidental, involvement of the police. Our investigation falls into this category.

2.15 It follows from what we have said that, even though the police may not have been involved in the investigation, and in any event are not involved at a stage when prosecution decisions are taken, such decisions cannot be taken without the knowledge of at least one Advocate Depute, one member of the permanent staff of the Crown Office, and one Procurator Fiscal. Moreover it is impossible to predict with confidence which individuals of these descriptions will be involved in the taking of any particular decision. Thus if someone in a position of authority wished to procure the taking of a decision in a way which suited his own ulterior motives otherwise than in accordance with law, he would in effect have to be able to induce the concurrence of all the Advocates Depute, all the permanent staff in the High Court Unit of the Crown Office, and every Procurator Fiscal who had been concerned with reporting the case to Crown Office. The functions and interests of these groups of persons are not identical, except that they are all concerned with the investigation and prosecution of crime under the rule of law, and we have been unable to postulate how, even in theory, one individual could induce the concurrence of all of them with such a decision. We shall of course relate this observation to the particular cases mentioned in the Orr Report when we come to discuss them.

3. HOMOSEXUALITY AND THE CRIMINAL LAW

3.1 Although it has been no part of our Inquiry to investigate homosexual behaviour as such, we have incidentally learned a great deal about a wide range of homosexual behaviour. It varies from stable and faithful relationships, openly conducted, at one extreme, to more or less clandestine promiscuity and prostitution at the other. Anyone who has read the indictment in the case of *HMA v Neil Bruce Duncan and Others* (referred to in the Orr Report as “OPERATION PLANET—THE RENT BOY CASE”) will gain an impression of some types of homosexual behaviour. One matter which we should perhaps mention here is the use of some licensed premises as places where homosexuals meet and, if they are so inclined, arrange for subsequent sexual activity to take place. Such places, commonly called “gay bars”, include, at least by repute, licensed premises in Edinburgh called “The Laughing Duck” and “The Blue Oyster”.

3.2 Whilst there seems to be no type of homosexual behaviour which, allowing for anatomical differences, cannot be paralleled in heterosexual behaviour, the criminal law relating to homosexual behaviour differs from that relating to heterosexual behaviour. Prosecution of unlawful homosexual conduct in Scotland can be instituted under section 80 of the Criminal Justice (Scotland) Act 1980. This section provides that a homosexual act in private is not to be an offence provided that the parties consent thereto and have attained the age of 21 years. Other than in these circumstances, it is an offence to commit or to be party to the commission of, or to procure or attempt to procure the commission of a homosexual act otherwise than in private or without the consent of both parties to the act, or with a person under the age of 21 years. An act which would otherwise be treated for the purposes of the 1980 Act as being done in private is not to be so treated if done when more than two persons take part or are present, or in a lavatory to which the public have, or are permitted to have, access whether on payment or otherwise. The common law also provides a range of crimes which can be used to prosecute acts of gross indecency of both a heterosexual and homosexual nature. These crimes include the offence of breach of the peace, shameless indecency and lewd and libidinous practices.

3.3 We are aware that, as we shall discuss more fully when we come to that case, counsel for some of the accused in the case of *Duncan and Others* proposed to argue that apart from the provisions of the 1980 Act and apart from the common law crime of sodomy no crime is committed when males over the age of 16 years engage in homosexual activity. That is not an argument which has been tested in court and we prefer to proceed on the basis that the law is as stated in the preceding paragraph.

3.4 In the case of *Duncan and Others* most of the charges proceeded on the basis of common law, although some were based on the 1980 Act. In the period after that case was disposed of in January 1991 there was some public concern about the appropriateness of basing charges on the common law rather than the statute. In particular, Derek Ogg, Advocate, who had acted as counsel for one of the accused, made comments to that effect which were quoted in an article published in “The Glasgow Herald” on 20 February 1991. At about the end of March 1991 Elish McPhilomy, Senior Legal Assistant at the Crown Office, was asked to prepare a background paper on the prosecution of consensual homosexual offences. Her paper concluded that if a policy direction was considered to be appropriate and necessary with regard to homosexual offences, some consideration might be given to the following aspects:

- (1) The minimum age for homosexual relations.

- (2) The need for preventive prosecution directed at the male trade in prostitution with use of section 46 of the Civic Government (Scotland) Act 1982.
- (3) The restriction of prosecution of the client or older man to those situations demonstrating in particular a clear breach of trust, or the overcoming of will by drugs, threats etc.
- (4) The treatment of homosexual and heterosexual acts of indecency on an equivalent basis.
- (5) The use of statutory provisions rather than common law charges wherever possible.

3.5 This background paper was discussed at a meeting held on 29 April 1991 attended by, among others, Lord Fraser, the Lord Advocate, Alan Rodger, the Solicitor General, Duncan Lowe, the Crown Agent, and Alfred Vannet, the Deputy Crown Agent. In the course of the discussion the Lord Advocate suggested the writing of a letter to the Association of Chief Police Officers of Scotland. In due course a letter dated 1 July 1991 was written by the Crown Agent to Sir William Sutherland, Chief Constable of Lothian and Borders Police, as Honorary Secretary of ACPOS. This letter stated that the Lord Advocate wished to ensure that prosecution policy in relation to homosexual offences was based on a careful analysis of where the public interest lay and that there was a clear understanding of the type of conduct requiring the imposition of a criminal sanction. It continued:

“It will clearly be necessary for police reporting practice to reflect that policy and Chief Constables will no doubt wish to consider a consistent enforcement approach.”

It concluded by stating that the Lord Advocate was currently reconsidering elements of prosecution policy in this area.

“It is of importance that this exercise takes into account any special features of police policy and practice which you regard as pertinent to this issue and the Lord Advocate would be pleased to consider the views of the Association before finalising his instructions in the matter.”

Sir William replied by letter dated 30 August 1991 referring to guidelines which had been issued by a previous Lord Advocate on 1 February 1981 and discouraging any change in existing prosecution practice. The letter also suggested that a “careful analysis of where the public interest lies” was a matter for Parliament.

3.6 Consideration was given to the views of ACPOS as well as those of other persons who had communicated with the Lord Advocate. There was also press coverage of the matter. In due course Crown Office Circular No.2025 dated 28 November 1991 was issued to Procurators Fiscal. This circular stated that the Lord Advocate considered that the public interest was not served by routinely prosecuting all persons who participated in those consensual homosexual acts which remain unlawful. It then set out guidelines which included the following:

“Where both of the participants are over 16 years but one or both are under 21 years and the act has taken place in private and where there are no circumstances pointing to exploitation, corruption, or breach of trust, prosecution would not be appropriate.”

3.7 The terms of the circular became public and extensive publicity and correspondence with the Lord Advocate ensued. The Lord Advocate apparently took the view that there was public misapprehension about the significance of the review which he had undertaken, which was fuelled by speculation that he intended to effect a unilateral change in the law on the age of consent; that was not his intention, as such a change in the law would be a matter for Parliament. The circular was, however, reconsidered and on 20 December 1991 a new Crown Office Circular No.2025/1 was issued to Procurators Fiscal. This circular made reference to the continuing review, and set out new, provisional directions by the Lord Advocate which replaced the directions contained in the previous circular. These directions included:

“1. Where both of the participants are over 18 years but one or both are under 21 years and the act has taken place in private and where there are circumstances pointing to exploitation, corruption, or breach of trust, prosecution would be appropriate. Where the Procurator Fiscal

- receives a report involving individuals in this age group and none of these circumstances is present, but the Procurator Fiscal considers there are other circumstances which would justify proceedings, a report should be made to Crown Office for consideration by Crown Counsel.
2. Where both of the participants are over 16 years but one or both are under 18 years and the act appears to have been consensual and in private, the Procurator Fiscal should report the case to Crown Office for consideration by Crown Counsel.
 4. Where it appears that one of the parties has engaged in homosexual acts *before* the occasion under consideration and has acted as a prostitute, there is little justification in pursuing the client of such an individual, while ignoring his activity as a prostitute....”

We understand that the review continues, and meantime the circular of 20 December 1991 sets out the Lord Advocate’s current directions.

4. HOMOSEXUALITY AND THE HOLDING OF JUDICIAL OFFICE

4.1 The Lord President of the Court of Session and Lord Justice General, as the senior Judge, is obliged to concern himself, where necessary, with the private lives as well as the judicial conduct of the other Judges. He is accordingly under the necessity of forming and, where appropriate, giving expression to views about such matters as the sexual behaviour of Judges. Lord Hope, the current holder of these offices, has kindly put us in a position to summarise what we understand would be the view to be taken of homosexual behaviour by a Judge. This is the view which he took when the point originally came to his attention and has remained his view throughout.

4.2 Conduct which constitutes a criminal offence would necessarily be incompatible with judicial office. Otherwise the question is a very difficult one, which must depend upon the circumstances of each case. Homosexuality *per se* would not be a bar to judicial office if it took the form of a stable relationship which was not kept secret and which would not give rise to suspicion that the person in question was at risk of being blackmailed or to the actual opportunity of blackmail. The point may be made that heterosexual conduct may give rise to the same risks, and it is not thought that any material distinction need be drawn for this purpose between homosexual and heterosexual conduct. To the extent that homosexual behaviour may tend to be conducted clandestinely and promiscuously, any Judge who engaged in such behaviour might engender the suspicion that he would not be able to exercise a sound judgment, and might expose himself to the above risks. In addition there is the risk that through his activities the Judge may have come to know something about an accused person or a witness who appears in his court without wishing to disclose that he has done so because of the circumstances in which he has come to know it. There is also the risk that he, and consequently his judicial office, may become the subject of ridicule.

4.3 In summary, behaviour which is carried on in secret, recklessly or promiscuously may be regarded as giving rise to risks. These risks are in particular the risk of blackmail, the risk of a lack of objectivity in the performance of judicial functions and the risk of bringing the Judiciary into disrepute.

5. THE RESIGNATION OF LORD DERVAIRD

5.1 After a career at the Bar, John Murray QC was elevated to the Bench of the Court of Session in 1988 with the judicial title of Lord Dervaird. His resignation was accepted on 22 December 1989. Since then he has become Dickson Minto Professor of Company and Commercial Law at the University of Edinburgh. His resignation was unprecedented, at least in recent Scottish legal history. We think it necessary to give a brief account of the circumstances of his resignation. For that purpose we have obtained evidence from Lord Hope, Malcolm Rifkind QC MP, Secretary of State for Defence, and formerly Secretary of State for Scotland, Lord Fraser of Carmyllie QC, Minister of State at the Scottish Office, and formerly Lord Advocate, the present Lord Advocate, who was then Solicitor General, and Professor Murray himself.

5.2 By the week beginning Monday 18 December 1989 there were a number of rumours in circulation relating to alleged homosexual activity by Lord Dervaird. Subsequent events and subsequent rumours have caused recollections to vary and it is not now possible to speak precisely about the rumours which were current at the time. We believe, however, that there were at least three classes of rumour, of which we need mention only two here. One rumour derived from talk about the contents of a Statement by Colin Tucker, which we discuss fully in Part 6 of this Report. The other, quite separate, rumour was to the effect that a newspaper was about to print a story about Lord Dervaird, alleging, we believe, the supposed use of certain premises for certain purposes. This latter rumour was quite untrue. It was, however, reported to the Lord President. On Wednesday 20 December the Lord President asked Lord Dervaird to speak to him in Parliament House and informed him of this rumour. Lord Dervaird denied its truth, but went on to say that it would not be untrue to say that he had had homosexual relations. He then went on to inform the Lord President of certain matters. He has told us that in particular he informed the Lord President that he had been indiscreet in that he had, during the period since his elevation to the Bench, carried on a homosexual relationship with a certain person, secretly but in such a way that they had been seen together in certain places in London. We do not think it necessary to elaborate on this or on any other matter which he admitted to the Lord President. There were further meetings between the Lord President and Lord Dervaird on the evening of the same day and on Thursday 21 December, at the last of which Lord Dervaird tendered his resignation.

5.3 The Lord President informed the Secretary of State for Scotland of the position and a meeting was arranged for the morning of Friday 22 December, which was held in St Andrew's House. The meeting was attended by the Lord President, the Secretary of State, the Lord Advocate, and the Solicitor General. At the meeting there was discussion of the behaviour which Lord Dervaird had admitted to the Lord President. On the basis of those admissions it was concluded that his behaviour was incompatible with his continued tenure of judicial office and that accordingly his resignation should be accepted. Steps were taken for his resignation to be announced later that day. This was duly done, and there was extensive publicity, particularly on Saturday 23 December. No reason for the resignation was announced, in order not to inflict further humiliation on Lord Dervaird or distress on his family.

5.4 We would not wish it to be thought that Lord Dervaird's admissions to the Lord President constituted admissions of criminal conduct, or that the conduct which he admitted fell into all the categories which we have mentioned above. He would assert, and we have no reason to dispute, that his conduct did not expose him to the risk of blackmail. We have no reason to believe, nor would we wish

it to be thought, that Lord Dervaird's official conduct as a Judge had in any way been affected by the matters which led to his resignation. The features of secrecy and indiscretion which he has mentioned to us are what led to his tendering his resignation.

6. COLIN TUCKER'S STATEMENT OR "LIST"

6.1 Arthur Colin Tucker (usually called Colin Tucker) stood trial in the High Court in Edinburgh in December 1989 on charges of embezzling money from clients of the firm of Burnett Walker WS. Colin Tucker was a solicitor and had been for some time a junior partner to Ian Walker, who had a longstanding connection with that firm. Ian Walker himself committed suicide on 4 June 1988 during the course of an investigation into his firm's affairs. We discuss this investigation and Colin Tucker's trial in part 15 of this Report. It is sufficient for present purposes to indicate that Colin Tucker did not dispute that he had been involved in the taking of money from the accounts of clients of Burnett Walker, and at his trial the evidence to that effect was not challenged. His defence, which only emerged in the course of his own evidence, was that he had been involved in the taking of the money at the behest of Ian Walker who had a hold over him because he (Colin Tucker) was a homosexual.

6.2 In the period prior to his trial Colin Tucker instructed as his solicitor David Blair-Wilson who in turn instructed as counsel Robert Henderson QC and John Watt, Advocate (now QC). There were a number of consultations at which Tucker discussed the forthcoming trial with his counsel and solicitor. At one such consultation, in about August or September 1989, Robert Henderson asked Tucker to write a "potted life story" covering the period when he was a partner in Burnett Walker, so that he could "get a full picture" of Tucker's life. Tucker proceeded to write a document which he headed "Statement by ACT" (ie his initials). Tucker has insisted to us that it was solely at Robert Henderson's request that he wrote the Statement, and he would not otherwise have done so. It was written on 16 leaves of lined A4 paper, with holes punched at the side, taken from a block of such paper, of the kind used for students' notes. He wrote on both sides of the paper, so that the Statement extended to 32 pages.

6.3 With Tucker's permission, we have the original manuscript of this Statement in our possession. The first half of it, more or less, deals with the financial affairs of Burnett Walker while Colin Tucker was junior partner to Ian Walker, including the transactions which gave rise to the embezzlement charges. The second half, more or less, is taken up with an account of the alleged homosexual behaviour of both Ian Walker and Colin Tucker. According to this account, Ian Walker, although outwardly a respectable married man, was a promiscuous homosexual who had sexual relations with a wide range of people. According to Colin Tucker's own account of himself he also was a promiscuous homosexual who had sexual relations with a wide range of people. It is alleged that there was a sexual relationship between Ian Walker and Colin Tucker, in which Walker was the dominant partner. There are many names in the Statement. In a sense it might be called a list; but in the proper sense of that word a list would not necessarily contain more than names, while the Statement amounts more to a catalogue of the alleged sexual exploits of Walker and Tucker.

6.4 Apart from Walker and Tucker there is only one person whose name appears in the Statement whom we think it necessary to identify. In one paragraph mention is made of Lord Dervaird, who at the time the Statement was written was of course a Court of Session Judge. He is referred to both by his judicial title and by the name, John Murray QC, by which he was previously known. There is an allegation of homosexual behaviour by him, apparently during the period prior to his elevation to the Bench, which we need not repeat here. Suffice it to say that this was an allegation which would have caused some consternation had it gained any currency prior to Lord Dervaird's resignation, and indeed did so. As we have already stated, however, we do not believe that this allegation played any part

in the events which culminated in Lord Dervaird's resignation. We should make it clear that what we have recorded here is no more than an allegation which may be read in Tucker's Statement. The other evidence we have been given would serve to date any event to which the allegation relates as having happened at a time several years before Lord Dervaird's elevation to the Bench.

6.5 Apart from the allegation relating to Lord Dervaird there is no allegation in the Statement, directly or by implication, of homosexual behaviour by any prominent member of the Scottish legal establishment. In particular there is no such allegation in the case of any Judge of the Court of Session, any Sheriff Principal, any full-time Sheriff, any Law Officer, any Advocate Depute, any member of the permanent staff of the Crown Office, any Regional Procurator Fiscal or any other senior member of the Fiscal Service. In short, there is nothing in the Statement which, if published, would "blow the lid off" the Scottish legal establishment, as we have heard it put.

6.6 When Colin Tucker had written the Statement he posted it to David Blair-Wilson who immediately passed it to Robert Henderson. Robert Henderson read it and marked various passages in red ink. The heaviest markings are on the paragraph containing Lord Dervaird's name, where the name is underlined and marked with red crosses and Robert Henderson has written "Murray" in the margin. There is no obvious consistency or purpose to these markings, because passages such as this were of no apparent relevance to Tucker's defence. Robert Henderson brought the Statement with him to the next consultation. There was little discussion of it, although he remarked to Tucker on the "interesting life" Tucker had led. There was discussion about having the Statement typed for use by Counsel at the forthcoming trial. David Blair-Wilson was unwilling to have it typed in his office, or even to take possession of the Statement, because he was concerned about the security risks which were posed by the nature of the information in the Statement. John Watt agreed to type the Statement on his computer, which has word-processing facilities, and accordingly took possession of the manuscript Statement. Thereafter he retained possession of the manuscript Statement until during the course of our Inquiry, when it came into our possession.

6.7 John Watt used a printer attached to his computer to make copies of the typed version of the Statement for the use of Robert Henderson and himself. He is under the impression, although he would not insist on it, that he also made a copy for David Blair-Wilson; for his part David Blair-Wilson insists that he has never had such a copy, for the same security reasons. The typed version was headed "Statement by Act", in place of Tucker's initials. This apparent formality led to confusion in the minds of some of those who subsequently read it. When printing copies John Watt used A4 sized paper, pale cream in colour, which is made available in the Advocates' Library for the use of members of the Faculty of Advocates. At one point Robert Henderson described his copy as being typed on yellow paper, but when we showed him a copy which John Watt had printed for us, using the pale cream paper, he agreed that that looked like the copy which was originally given to him. We do not have information which would allow an exact time-scale to be established, but we assume that the typed copies were available not long after the consultation at which the manuscript was discussed, and in any event before the trial began. At the trial Henderson had some of his papers, including his typed copy of the Statement, in a ring-binder, and consequently his typed copy had holes punched in its margin.

6.8 It should be stated at this point that counsel who receive information from their clients owe a duty of confidentiality to their clients in respect of that information. They may not properly disclose such information to or discuss it with any person other than the instructing solicitor and other counsel instructed for the same client, except with the permission of the client. It appears, however, that on reading Tucker's Statement Robert Henderson experienced such consternation that he was unable to keep to himself what he had read about Lord Dervaird. In his first interview with us he said that he had said something about this information to "one or two" people. When we pressed him, he said that one of these people was Brian Gill QC, Keeper of the Advocates' Library, to whom, according to Robert Henderson, he gave this information "in the interests of the Faculty".

6.9 The giving of confidential information to an office-bearer of the Faculty of Advocates is regarded as proper if it is given in order to enable the counsel in question to obtain guidance as to his own professional conduct. We can give an example. On reading the Statement John Watt was concerned about his professional position because he felt that he would be in difficulty in appearing as counsel before Lord Dervaird while he was in possession of information of this kind about Lord Dervaird's private life. He accordingly sought the guidance of the Dean of the Faculty of Advocates, Alan Johnston QC, and gave him a copy of the Statement to read. Alan Johnston has confirmed to us that as a result he learned of the contents of the Statement. We have no reason to suppose that John Watt disclosed the contents of the Statement to anyone else until very recently, after the beginning of our Inquiry. We conceive that it would not be proper to give such information without the client's permission "in the interests of the Faculty" or for any other reason extraneous to the professional conduct of the client's case.

6.10 However that may be, Brian Gill has no recollection of being given such information by Robert Henderson. Indeed, he recalls having had a conversation with Lord Dervaird shortly before his resignation. They were speaking about agricultural law and Brian Gill had no inkling of rumours about Lord Dervaird and still less that there might be any reason to think that he might be about to resign.

6.11 At a later interview Robert Henderson said that he may have told a number of people "sitting at the lunch table" about the existence of Tucker's Statement, the inclusion of Lord Dervaird's name in it, and the fact that there were "other names". He said to us: "There's clearly been a leak. I'm prepared to take responsibility for it." He also told us that he may have said to others that Tucker had written out a Statement and there were a lot of names. "I may well have said to my close chums 'I've got a right old pickle trying to keep this from coming out'." He said that he might have used the word "list". We believe that this loose talk is what gave rise, prior to Tucker's trial, to rumours about the existence of a "list" containing names other than that of Lord Dervaird. We would relate this to what Robert Henderson has said to us, and we believe to others, that Tucker's intention, if he was convicted at his trial, was to expose the persons named in the list. It is not confirmed by Tucker, John Watt or David Blair-Wilson that Tucker ever expressed any such intention, and we cannot account for Robert Henderson's having stated that it was so except by reference to Robert Henderson's own mind.

6.12 Tucker's Statement was not in fact of any great use to his counsel at his trial. In the ordinary course, after a trial has been completed, counsel for the accused returns the papers to the instructing solicitor. The papers are, on a proper view, the property of the client, and the solicitor has possession of them or sends them to counsel in his capacity as agent for the client. John Watt appears to have returned his papers to David Blair-Wilson. These would have been expected to include his typed copy of Tucker's Statement, although David Blair-Wilson cannot recall having received it and is unable to account for it. John Watt did, however, retain the manuscript of the Statement. It is unclear to us why he did so, although we have no reason to suppose that he acted from any improper motive. Robert Henderson told us that he believed that he himself had retained possession of the manuscript, but had been unable to find it when he looked for it in his house quite recently. We do not understand why he should have entertained such a belief, when it is clear that he did not have possession of the manuscript from the time when it was taken by John Watt. Robert Henderson did, however, retain his own typed copy of the Statement. In his instance, for reasons which will become apparent, we are bound to express more reservation about his motives for doing so.

6.13 In the weeks following Tucker's acquittal of the embezzlement charges and Lord Dervaird's resignation (which events, as we have sought to explain, were little more than coincidental), rumour and speculation became rife about the alleged homosexuality of other Judges and the inclusion of other names in Tucker's supposed "list". We discuss the alleged homosexuality of other Judges in a separate part of this Report. As we have said, belief in the existence of the supposed "list"

appears to have originated from Robert Henderson's disclosure of information in Tucker's Statement and the related loose talk.

6.14 In the period after his trial Tucker came under pressure from at least two newspapers to sell them his "story", with particular reference to the "list". His position, which we accept, has been consistent throughout, and this is that he refuses to have any dealings with the press. He insists that all the information that he has to give about the alleged homosexual behaviour of any prominent lawyer is contained in the Statement which he wrote at Robert Henderson's request for use at his trial and not otherwise. At one interview Robert Henderson told us that Tucker was in possession of much other information, which he had not included in the Statement. This included information about Court of Session Judges, in particular one whom Robert Henderson named to us and in relation to whom he claimed that Tucker was able to give "chapter and verse". Robert Henderson even asserted that this latter Judge's name appeared in the manuscript of Tucker's Statement, even if it did not appear in the typed version. The two versions are in fact identical, and the name does not appear in either.

6.15 We do not believe that Tucker was in possession of any such information. On the contrary, Tucker, John Watt and David Blair-Wilson do not support any suggestion that Tucker had more information to give than was contained in his Statement. When rumours began to circulate indicating an apparent leak of the information at Tucker's disposal, these rumours reached David Blair-Wilson. There was an occasion when he met Tucker at the airport on his arrival to attend a consultation and taxed him with an apparent lack of discretion which had led to such rumours. They have both described to us a heated argument in the course of which Tucker denied having given any information to anyone else. In the period after Tucker's trial, however, David Blair-Wilson himself was asked by a number of persons about the supposed existence of Tucker's "list". While we have no reason to believe that he made any positive statement about the existence of a list, his denials, or refusal to make any comment, appear to have taken such a form as to encourage in some people a belief in the existence of a list.

6.16 Both Tucker and David Blair-Wilson have described to us how, at a consultation after Tucker's trial in connection with forthcoming disciplinary proceedings against him as a solicitor, Robert Henderson showed a keen interest in other information which Tucker might be able to give and also, while purporting to speak for "The Sun" newspaper, stated that that newspaper would be willing to pay Tucker "a six figure sum", ie at least £100,000, for his "story". According to them Robert Henderson asked Tucker about two Judges, whom he named, but of each of whom Tucker said: "I wouldn't know him if he walked through that door". Lord McCluskey said to us that, according to what Robert Henderson told him after Tucker's trial, Tucker had sold his story to "The Sun" for £100,000 or £200,000 (he could not remember which sum), but "The Sun" was not allowed to name names unless Tucker was struck off as a solicitor. Tucker was in fact struck off on 3 October 1990, but no such story appeared in "The Sun" or any other newspaper at that time. Nor, for that matter, did any such story appear around the time of his trial, along with Gordon May, in May 1991.

6.17 We cannot avoid the conclusion that Robert Henderson has been one of the main instigators and perpetuators of the belief that there was a document, whether or not in the form of a "list", containing information relating to persons other than Lord Dervaird and, in particular, other Judges. Even after our Inquiry began he made statements to journalists which did nothing to dispel such a belief. On the contrary, David Johnston, the Editor of News and Current Affairs with Radio Forth, has told us that in a conversation he had with Robert Henderson in the Carlton Highland Hotel on about 17 September 1992, Robert Henderson told him "that if Tucker's "list" ever did come out it would ruin a lot of careers/reputations, not only in the legal establishment but in many other circles". He also said, according to Johnston, that he could not let it out of his possession because to do so would be a total breach of his professional duty. In a conversation with Alan Hutchison, Chief Reporter of "The Scotsman", and two other reporters, on about 24 September 1992 in a bar at the Waverley Station, at which Michael Glen (see paragraph 11.3) was present, Robert Henderson said that he had a full

file on his business dealings, which he kept at his home and also in a safe at another location, containing information which would "rock the establishment", information of a kind which would have the reporters "salivating all the way to the telephone". We have of course pressed Robert Henderson about these statements. At one interview he said that he was referring only to the leaked Orr Report, of which he had a copy in his briefcase at the time, but at a subsequent interview he explained the matter in a different way, which we now summarise.

6.18 When certain aspects of Robert Henderson's financial affairs first came under investigation, as we discuss in part 13 of this Report, he took certain precautions. According to him, he expected that the police would arrive with a search warrant to search his house for documents. He accordingly prepared a photocopy of certain documents which he intended to hand to the police in such an event, and he gave the principals in a manilla envelope, to Leona Dorrian, Advocate, for safekeeping. She has been a friend as well as a colleague of his for many years. She took receipt of the envelope on 18 August 1989, a date which she wrote on it herself, and retained it in her possession continuously until, by arrangement with Robert Henderson, she exhibited the envelope and its contents to us. Robert Henderson had no access to the envelope in the meantime. We looked through the papers and are satisfied that they relate solely to his financial affairs. There is no question of the envelope's containing a "list" or any other document relating to the alleged homosexual behaviour or any other aspect of the private life of any person. We have no reason to suppose that anyone else holds papers on behalf of Robert Henderson. In particular we are satisfied that one Elaine Matthews, to whom we refer in part 7 of this Report, does not hold and never has held any such papers. Our conclusion must therefore be that Robert Henderson has chosen to let it be believed that he is in possession of information of a kind which he does not possess.

6.19 It is now appropriate to mention other actings of Robert Henderson in relation to his typed copy of Tucker's Statement. As we have already stated, he retained possession of it after the conclusion of Tucker's trial. As it happens, the investigation which the police called "Operation Planet" and which culminated in the prosecution of Duncan and others started on 24 January 1990. During the course of the investigation Duncan Lowe, who was then Regional Procurator Fiscal in Edinburgh, instructed Detective Superintendent George Ritchie that Colin Tucker should be interviewed. Duncan Lowe, who is now Crown Agent, is now unsure as to the circumstances which led to his giving the instruction, although he is certain that he would have discussed the matter with the then Crown Agent, Ian Dean. His reasons for giving the instruction were either because the police felt their inquiries would be incomplete without Tucker's being seen, as his name tended to crop up in connection with homosexual matters, or because there was a request from Crown Office, possibly as to whether Tucker had information in relation to that case which would have involved Judges. It should be emphasised that at such an early stage in the "Operation Planet" investigation it was not known what evidence might come to light about any person, and rumour and speculation about the alleged homosexual behaviour of Judges other than Lord Dervaird were rife at the time. Detective Superintendent Ritchie, who later, as a Detective Chief Superintendent, became Head of the CID, unfortunately died on 6 August 1991, so we have been unable to obtain his evidence. Duncan Lowe does recall that Ritchie was reluctant to carry out the instruction. The Reporting Officer in "Operation Planet" was Detective Inspector Peter Robertson, stationed at West End Police Station in Edinburgh, while Ritchie had overall responsibility for the investigation. Ritchie was particularly sensitive about the possibility of evidence being discovered about the possible involvement of prominent lawyers in the "gay scene" in Edinburgh and in particular of possible relationships between prominent lawyers and "rent boys", ie male prostitutes. He accordingly maintained a degree of personal involvement in the steps which then ensued.

6.20 Although Duncan Lowe is unclear in his recollection of the origins of his giving the instruction, we think it likely that he acted on a request from Crown Office rather than on his own initiative. This is consistent with the recollections

of Lord Fraser and Ian Dean, and it is intelligible that the then Lord Advocate should have instructed that Tucker be interviewed. Duncan Lowe is much more confident in saying that the instruction he gave was not to obtain Tucker's "list" or any existing document, but rather to take a statement from Tucker which might be of relevance to the current investigation. Robertson has told us that when Ritchie repeated the instruction to him, he understood that the instruction was to obtain the "list". We are not convinced that that was in fact his understanding at the time, because we can find no support for it in the evidence of either Tucker or David Blair-Wilson. After unsuccessful approaches had been made to Tucker, David Blair-Wilson informed Robertson that Tucker would be at David Blair-Wilson's house one Sunday. Ritchie and Robertson accordingly went to David Blair-Wilson's house, arriving there just as John Watt left. As we understand it, there had been a consultation about the forthcoming disciplinary proceedings against Tucker as a solicitor. According to Tucker, all that the police asked him was whether he knew anything about the rent boy scene in Edinburgh, and he said that he did not. He was not asked for the "list" or any other document. In any event, if the police wanted to obtain any document from Tucker, they did not succeed.

6.21 A few days later Robertson happened to meet David Blair-Wilson at court and referred to his failure to obtain information from Tucker. David Blair-Wilson made some suggestion that Robert Henderson might be able to help. His explanation for this is that if in doubt he would always refer a matter to Senior Counsel for a decision. Robertson had met Robert Henderson previously because Robert Henderson had played golf on a number of occasions with Detective Constable Stephen Comerford and on one occasion Robertson had been a member of a foursome which had been entertained by Robert Henderson at Muirfield. Because Comerford knew Robert Henderson better than Robertson did, Robertson decided to use Comerford as a go-between in making an approach to Robert Henderson. Comerford arranged for Robert Henderson to meet them for lunch in Dubh Prais Restaurant in the High Street in Edinburgh a few days later. We have not been able to fix the date of this lunch, but it was in about February or March 1990.

6.22 At lunch arrangements were made for Robertson and Comerford to go to Robert Henderson's house in Gullane that evening, and they duly did so. There he entertained them for a time. A quantity of wine was consumed, as it had been earlier in the day, and Comerford fell asleep. Before Robertson and Comerford left Robert Henderson handed over to Robertson his typed copy of Tucker's Statement. He had no authority from Tucker to do so. In Robert Henderson's words, what he did "can't be reconciled with my duties to Tucker". When we told Tucker what his Senior Counsel had done he said he was appalled.

6.23 Robert Henderson's explanation for having handed over his copy of Tucker's Statement was that he did so in "wider interests". According to him, Robertson had indicated that his inquiry included the possibility that Judges, whom he named, might be involved, and he handed over the Statement in order to convince Robertson that that was not so. We do not find this a convincing explanation. Robertson himself has made it clear to us, and we are able to verify from the case papers, that there was never any mention of any particular Judge's name in the "Operation Planet" investigation or at the time of the subsequent trial of *Duncan and Others*, and so there was no need for Robertson to be persuaded. In any event, given Robert Henderson's own statement to us that Tucker had more information at his disposal than was contained in his written Statement, handing a copy of that Statement to the police would not have resolved the matter. We are forced to the conclusion that Robert Henderson handed it over because he perceived that by doing so he might gain some personal advantage.

6.24 The preceding narrative of the handing over of the Statement requires further explanation. As it happens, we first interviewed Robertson before we first interviewed Robert Henderson. Robertson at that time told us that Robert Henderson had handed him the copy Statement, but he omitted from his account any involvement of Comerford or the fact that the three of them had had lunch together. He claimed instead that he met Robert Henderson at court and arranged

with him to go to his house to collect the copy Statement. Apparently in giving this false version he was motivated by a desire to protect Comerford. Thus when we thereafter first came to interview Robert Henderson we were not in possession of a full account from Robertson. At that time we had a photocopy on white paper of the copy which Robert Henderson had handed to the police and which had been handed to us by Sir William Sutherland. When we showed it to Robert Henderson he said: "I didn't know a copy of that Statement had got into the possession of the police." When we put it to him that Robertson had told us that he had handed a copy to Robertson he said: "Absolute nonsense. I never had a typed copy." When we went over Robertson's (incomplete) account with him he was, of course, able to deny its accuracy because he was able to say that the only time that Robertson had been to his house Comerford had also been there: "He has never come to Gullane on his own." When we pressed him repeatedly he said: "I don't recollect giving him a copy, but if he says I did, I did." He also said: "If I gave him a copy of the Statement that is the only possible occasion and I have no recollection of that." This was obviously unsatisfactory, particularly as later in the same interview Robert Henderson said: "Before you judge me too harshly, this has been hanging over me for five years and I am scrambled." This was a reference to the investigation which we discuss in part 13 of this Report.

6.25 We therefore had a further interview with Robertson and an interview with Comerford. Robertson's further account brought Comerford into the picture, but still not fully, as he claimed that Comerford remained in ignorance of the purpose of the visit to Gullane. Comerford, however, made it clear to us that he was aware of the purpose of the visit and that it had resulted in the copy Statement's being handed over. At a third interview Robertson agreed that Comerford was aware of the purpose and the outcome of the visit. At our second interview with Robert Henderson he accepted the substantial accuracy of what both Robertson and Comerford had by that time told us. He still, however, disputed that the photocopy in our possession was a copy of what he had handed over. Not only did he say that the copy he had handed over was on coloured paper, he thought that both the typeface and the layout on the page were different. He said: "I am almost sure that what you have is completely different." At a third interview we showed him a printout which John Watt had prepared for us on cream coloured paper. Robert Henderson recognised that that was the colour of the paper used for his original copy, and accepted that he "must be mistaken" about there being two typed versions.

6.26 Robert Henderson told us that as far as he was concerned he handed his copy to Robertson for Robertson alone to read. Robertson in fact handed it to Ritchie, as might have been expected, because it was the nearest he could get to obtaining a statement otherwise than by interviewing Tucker. We have not been able to recover the copy which was handed to Ritchie. The most likely possibility is that it was destroyed with other papers of his after his death; though of course it may still exist in the possession of one of Ritchie's former colleagues. Ritchie himself asked Robertson to prepare a copy to be handed to Detective Inspector Michael Souter of the Fraud Squad based at Police Headquarters, and this was done. Robertson indicated to Souter that he had something to send him, so when Souter received it through the internal mail system he knew that Robertson was the sender. Souter showed it to Detective Sergeant (as he then was) Peter Brown, also of the Fraud Squad, who read it. Brown attempted at one stage to deny to us that he had read it, but at another stage made it clear that he had, and that names had "popped out" at him. Souter kept the copy either in an unlocked desk drawer or in an unlocked cabinet used by the Fraud Squad. It was accordingly possible for anybody with access to the room used by the Fraud Squad to read the copy, or to make a further copy from it. We mention this because we have seen some newspaper reports which betray a knowledge of information derived either directly or indirectly from Tucker's Statement, and it is obviously possible that the newspapers have obtained that information from one or more police sources.

6.27 It appears that Ritchie wanted Souter to have a copy of the Statement because it might have been relevant to the work of the Fraud Squad by virtue of information it contained about Ian Walker's and Colin Tucker's financial dealings,

though that was not in fact the case. The Statement contained no information which was of relevance to Robertson's "Operation Planet" investigation. We do not of course have the benefit of Ritchie's evidence as to why he kept the copy which Robertson had obtained from Robert Henderson, but we are satisfied that he did so without disclosing to the Crown that he had possession of it for a period of almost a year. We are satisfied that he did not show it to Duncan Lowe when it first came into his possession. This reinforces us in the view that Duncan Lowe had not given a specific instruction that Tucker's "list" be obtained. If he had given such an instruction he would have been bound to ask Ritchie about the outcome, and would have been told in 1990 that the copy Statement had been obtained.

6.28 We discuss in part 10 of this Report allegations made by Stephen Conroy against Douglas Allan, formerly Regional Procurator Fiscal at Edinburgh and now Sheriff at Lanark. After these allegations had been set out in a memorandum dated 21 February 1991 from Detective Inspector Souter to Detective Chief Superintendent Ritchie, Assistant Chief Constable Richard Prentice telephoned Duncan Lowe, at that time Regional Procurator Fiscal at Edinburgh. He arranged a meeting with Duncan Lowe which took place in early March 1991 and was attended by Ritchie, Souter, and Detective Chief Inspector (now Superintendent) Peter Wilson. At this meeting copies of Souter's memorandum and an earlier memorandum dated 6 December 1990 by Detective Constable Christopher Few to Wilson were handed to Duncan Lowe. There was no discussion of the Tucker Statement. We are convinced that if Duncan Lowe had been aware of it at that time he would have mentioned it to see if there was a possible connection between it and those aspects of Conroy's allegations which related to the investigation into the financial affairs of Burnett Walker.

6.29 As we shall more fully narrate, after that meeting Duncan Lowe met the then Crown Agent, Ian Dean, and thereafter the then Lord Advocate, Lord Fraser, when it was decided what instructions should be given about Conroy's allegations. It was only after those instructions had been carried out, and Conroy and his former partner Kevin Crawford had been interviewed on tape by other police officers, that later in March 1991 Ritchie called on Duncan Lowe and gave him a copy of Tucker's Statement. He refused to disclose how he had obtained it. Ritchie simply told him that the Statement was something which he thought he ought to see. He was to have possession of it for a few days before, as Ritchie insisted, it was to be returned to him.

6.30 During those few days Duncan Lowe took the Statement and showed it to the Crown Agent and the Lord Advocate. It was decided that no further action was required in light of the information contained in the Statement. When the copy was returned to Ritchie, Duncan Lowe did not keep a copy of it. Thereafter Ritchie allowed Detective Chief Inspector (now Superintendent) Peter Wilson to see the Statement because he was the Reporting Officer in the case against May and Tucker (see part 15) and as it might have had relevance to that case. In fact Wilson did not find it to be of any relevance. Some police officers had the impression that the Statement had originally come into the possession of the police from a Procurator Fiscal. We believe that this impression can be explained by the above narrative.

6.31 In addition to the original manuscript we now have in our possession the following copies of the Tucker Statement:

- (a) a copy which John Watt printed for us (see para. 6.7);
- (b) a copy which John Watt prepared at David Blair-Wilson's request, and with Tucker's permission, during the course of our Inquiry, with a view to obtaining legal advice about their respective positions from Gordon McBain, solicitor, Edinburgh, and which the latter handed to us;
- (c) Souter's copy of the copy which Robert Henderson handed to Robertson;
- (d) a copy of (c) prepared for our use, which the Chief Constable handed to us; and
- (e) another copy of (c) prepared for the use of Chief Superintendent Gilmour, which he handed to us, along with (c).

John Watt, acting on Tucker's instructions conveyed to him by David Blair-Wilson, has deleted the relevant file from his computer disk. Any other copy still in existence must be a copy made or kept for questionable purposes by a police officer without Tucker's authority. At an appropriate time we shall comply with Tucker's request to us to destroy his manuscript and the above copies.

6.32 Before leaving the question of Colin Tucker's Statement we should mention that we have made a point of raising with every witness who has read it the question of what may be taken from it as to its contents and the effect that publication thereof might have on the Scottish legal establishment, and all such witnesses concur with the description which we have given in paragraphs 6.3 to 6.5 above.

7. RUMOURS ABOUT MEMBERS OF THE LEGAL ESTABLISHMENT

7.1 Since the motive for the alleged conspiracy to pervert the course of justice is said to have been the desire to prevent the exposure as homosexuals, or as having engaged in homosexual activities, of prominent members of the Scottish legal establishment, we have thought it a necessary part of our investigation to consider whether the reasons for such a motive might exist. To that end we have asked witnesses, where appropriate, to repeat to us rumours or allegations they have heard about the homosexual behaviour of such persons, so that we might consider whether there was scope for investigation with a view to discovering whether such persons were compromised.

7.2 The rumours which have come to our notice are many and varied. A rumour can of course be invented by anyone who is disposed to do so, and thereafter passed on and embellished by those who are likewise disposed to do so. By its nature, therefore, a rumour may gain currency without its having any foundation in fact or an identifiable source, and gain weight by repetition.

7.3 The rumours about Tucker's "list" after Lord Dervaird's resignation were associated with rumours to the effect that a number of other Court of Session Judges were similarly compromised by homosexual behaviour. The Lord President, Lord Hope, considered, and where appropriate investigated, these rumours and was satisfied that they were all unfounded. He has made it clear to us that he remains satisfied that these rumours were unfounded. He is also confident that if any Court of Session Judge felt that he had been compromised by his sexual conduct then that Judge would seek an interview with him and would make a full disclosure of the relevant facts. Thereafter such consequences would follow as would be appropriate. It will be remembered that in the case of Lord Dervaird his resignation followed frank admissions by him. No attempt was made to protect him or to prevent his resignation, but instead the Lord President discussed the matter promptly and fully with the Secretary of State and the Law Officers. We have no reason to suppose that any other Judge who was similarly compromised would receive different treatment.

7.4 It is of importance to note that, although we were reminded of the rumours which were current in early 1990, not one single person to whom we spoke attached any credence to them. There was no suggestion that any of them was capable of substantiation, or that the Lord President was wrong in holding himself satisfied that there was no substance to any such rumour. We have carefully considered whether any useful purpose would be served by the repetition of these old rumours in this Report, and have concluded that we should not repeat them in a way which would in effect revive them or relate them to any identifiable Judge. Apart from anything else, the rumours of which we have been reminded were so various, so far-fetched, and related to so many Judges that it would be impossible to treat them seriously.

7.5 We have spoken to some of the Judges to whom the rumours related. They have all denied that there was any truth in the rumours relating to them. Otherwise their reaction to the rumours and to recent press stories of a "gay judges scandal" has ranged from anger and distress to expressions of ridicule. None of them has been able to make any conjecture as to why he should be the victim of rumours and as to how rumours relating to him should have originated. Quite apart from the rumours relating to individual Judges, it should be appreciated that in a small community of twenty-four Judges every rumour, for example about a "gay judges scandal", which is reported in the press, and which fails to identify any individual, taints every individual and consequently causes deep resentment. Those who circulate and publish such unfounded rumours are at best ignorant of or indifferent

to the effect on all the Judges; and at worst are motivated by malice of the most evil kind.

7.6 We have spoken to no Judge who would, if he believed a fellow Judge to be compromised, do anything other than leave him to face the consequences. Indeed, we are sure that if a Judge believed a fellow Judge had engaged in such unambiguous behaviour as sodomising a teenage rent boy he would not hesitate to report his belief to the appropriate authorities. Our Inquiry has disclosed no evidence of homosexual behaviour which might be capable of compromising any Judge in his holding of judicial office. We are confident in the conclusion that no serving Judge has been compromised.

7.7 In addition to rumours about Judges, we have had to consider rumours about the present Lord Advocate. Detective Sergeant Charles Orr told us that James Bethell, a reporter employed by "The Sunday Times", had approached him for help in tracing a woman, Elaine Matthews, who was believed to be a witness to an incident in the New Club in Edinburgh when Robert Henderson had threatened Alan Rodger. Accordingly, we decided to ask Bethell to attend for interview.

7.8 At interview Bethell told us that the "general theory" was that Robert Henderson had in some way acquired compromising material relating to Alan Rodger and had used the material to protect himself from criminal investigation. Of the alleged incident in the New Club, he said that the story was that Elaine Matthews witnessed a meeting in which a folder of compromising material "was apparently brandished by Henderson in the New Club foyer." According to this story Robert Henderson and Alan Rodger were sitting together while the witness was some distance away. It was her assumption that the occasion was one of blackmail. Bethell said: "I've been told this third person believes this scenario was one in which Henderson was blackmailing Rodger." This was his reason for wishing to trace Elaine Matthews. He did not profess any belief in the story, or claim that there might be any evidence to support it apart from what Elaine Matthews might say.

7.9 Bethell gave us no assistance as to the origins of the story. We found that it was a story known to other journalists, though in one version the story differed in that Elaine Matthews did not feature as a witness to the alleged incident but nevertheless was understood to be able to give information about it.

7.10 We have investigated the story and found it to be entirely untrue. As it happens, Robert Henderson and Alan Rodger appeared against each other as counsel in an appeal which was heard on 7 and 8 November 1991. Richard Keen, Advocate, was Alan Rodger's Junior Counsel. The hearing of the appeal finished before lunch on the second day. The three counsel walked from Parliament House to the New Club for lunch. At the New Club they had lunch together with Lord Grieve, a retired Judge, followed by coffee, after which Alan Rodger returned to Crown Office. We think it likely that he left before either Robert Henderson or Richard Keen. No clear recollection survives of the conversation at lunch, though it is certain that there was no dispute of any kind. Robert Henderson did not have a file of papers and indeed brought nothing with him from Parliament House. He had arranged to call on Elaine Matthews that afternoon. She has been interviewed by us and is able to confirm from a diary entry that he did visit her on that date. She remembers that he was late and that he gave as his reason for the delay that he had been having lunch in the New Club with Alan Rodger and Richard Keen. She told us that he said nothing that would support James Bethell's story.

7.11 It is impossible to think how the untrue story should have originated. Elaine Matthews did not witness and was not told of any such incident. We have no reason to believe that she has ever said otherwise. We cannot understand why journalists should believe that she has information about the story.

7.12 We would have been content to let the matter rest at that if it were not for further statements to us which we must now discuss. At interview with Robert Henderson we took up with him the alleged incident in the New Club. He denied that any such incident had taken place. He then, however, went on to say that shortly after 23 October 1991 Peter Watson of Levy and Macrae, Solicitors, Glasgow, told him that Scottish Television had damaging information relating

to Alan Rodger. David Blair-Wilson told us at interview that Robert Henderson had made a similar statement to him. Peter Watson “legals” for STV, ie he advises them on the legal implications of matters which they have it in mind to broadcast. When we spoke to him, he denied that he had said anything of the sort to Robert Henderson. Indeed, he has since confirmed to us on behalf of STV that the Lord Advocate has never featured as part of any investigation by them, which is why he could not have said to Robert Henderson what Robert Henderson alleged he had said. We cannot thus trace the story beyond Robert Henderson.

7.13 There is no evidence whatever that Lord Rodger is or ever has been in any way compromised, either as Solicitor General or as Lord Advocate. We questioned him about the rumours we had heard, and it was clear that they had never previously come to his notice. Had we discovered any such evidence, or even grounds for suspicion, however, we would have regarded it as our duty to report directly to the Prime Minister with a view to his taking appropriate action. We put this to the Lord Advocate, who agreed that that would be our duty.

8. “JASON” THE RENT BOY AND THE “GAY JUDGES SCANDAL”

8.1 The information contained in this part of our Report is derived solely from stories in the “Evening News” and from interviews with Ian Burrell, formerly Crime Reporter and now Assistant News Editor, and David Forsyth, Reporter on the staff of that newspaper. According to Burrell, when the police investigation known as “Operation Planet” started in January 1990 he learned about it from police sources. He began to look into background information which could be published after the trial. As the investigation progressed “more and more people were in the frame” and the size of the story was such that Forsyth was brought in to help him. By way of background research, according to Burrell, contact was made with a male prostitute or rent boy who might provide general background material for a “colour piece”. Again, according to Burrell, Forsyth arranged for Burrell and Forsyth to meet this rent boy one evening, perhaps in about mid-1990. This rent boy was not apparently familiar with the “rent boy scene” in Edinburgh, but said that he knew somebody else who operated in Edinburgh and was on the rent boy scene. At the request of Burrell and Forsyth this first rent boy arranged for them to meet the person in question. This person’s real name is not “Jason”, which is a pseudonym, but we have no other means of identifying him. As we understand what we have been told by Forsyth, he would regard Burrell as having been more instrumental in arranging the meeting which took place with “Jason”, but he agrees with Burrell that such a meeting took place.

8.2 According to Burrell, there were in total three meetings with “Jason”, a first meeting at which they built up his confidence in them, a second meeting at which they obtained his story from him and a third meeting which they put to him the results of points which they had attempted to check. There is substantial agreement between the journalists, neither of whom has kept his notes, as to what “Jason” told them. Most of what he told them is contained in a story published in the “Evening News” of 13 February 1991. That story was published on the same page as extensive coverage of the outcome of the case against *Duncan and Others*, in which the accused who had plead guilty had by then been sentenced. In that story “Jason” was described as being 18 years old, brought up in Manchester, “blond-haired”, and an habitual rent boy or male prostitute. He claimed that one of his first “punters” in Edinburgh picked him up in a car near Regent Road and drove him to Waverley Station where he bought condoms and then drove him out of the city centre to a big house, near which he made “Jason” duck down out of sight in the front seat of the car. “Jason” was taken into the house where he was left to wait in a room lined with books, in which he saw a photograph of the “punter” on the wall showing him wearing “some sort of long robes”. Thereafter he was taken into a bedroom where the “punter” sodomised him.

8.3 We have of course pressed Burrell and Forsyth for further detail of “Jason’s” story. According to them the car was red, and according to Burrell “Jason” thought that it might be of a Japanese make, large but not particularly expensive. They both said that according to “Jason” the “punter” said that the house they were going to belonged to the “punter’s” sister. Forsyth said that according to “Jason” the house was set back from the street and was large, but “Jason” was otherwise unable to describe it. They both said that according to “Jason” he normally wore spectacles, but was not wearing them on that evening, except when he was left alone in the room where the photograph was. Neither of them was able to repeat any description which “Jason” could give of the layout of the house or the nature of its furnishings. Burrell described an attempt to take “Jason” by taxi to retrace the route from Waverley Station to the house, but said that they became “stuck in George Street”. According to Burrell “Jason” was able to describe the “punter”

as being maybe 5'9" tall, thin, perhaps in his 50s, and balding. He showed "Jason" some photographs, but Jason was unable to come up with any plausible identification. Neither Burrell nor Forsyth was prepared to say to us that they understood "Jason" to be describing a person who was a Judge.

8.4 In the Orr Report the following passage appears in the section headed "4. OPERATION PLANET—THE RENT BOY CASE":

"During the initial appearance of the accused rumours began to circulate concerning the existence of a rent boy whose identity was known to the press and who had been interviewed by them. This individual later became known by the pseudonym "Jason". He is alleged to have detailed being uplifted in the city centre by a respectable male in a large car and being driven to a spacious house in Queensferry Road and whilst apparently awaiting his client he saw a photograph of the client dressed in what are described as long red robes. This information was published along with certain other articles following conviction of the principle (*sic*) accused."

We are not aware of any source of information about the "Jason" story, prior to the leaking of the Orr Report, apart from the "Evening News". There are, however, two items of information in the Orr Report which are not derived from the "Evening News" story. These are, firstly, that the house was in Queensferry Road and, secondly, that the long robes were red. These items appear to be police embellishments of the original story as there is no other source for them. If Burrell and Forsyth had had these items of information they would have investigated them further and would have included them in their story.

8.5 After the leaking of the Orr Report and the beginning of our Inquiry the "Evening News" carried a story in its edition dated 25 September 1992 by David Forsyth and another reporter headed "Every Word is True" and sub-headed "Pledge by Rent Boy in Gay Judges Scandal". The story started with the paragraph "The rent boy at the centre of the gay judges scandal, today broke his 19-month silence to say: "I stand by everything I said". The last three paragraphs were clearly intended to link the "Jason" story with certain events which happened at the time of the case against *Duncan and Others* which we discuss in part 16 of this Report. The third paragraph states: "Now in his early 20s Jason told how a wealthy client took him to a plush Edinburgh house where he saw a photograph of the man dressed in long red robes." Forsyth was able to give no clear explanation for describing "Jason" as being "the rent boy at the centre of the gay judges scandal". As we have said, according to both Burrell and Forsyth there was no evidence, apart perhaps from the mention of long robes, which might identify the "punter" as a Judge. Forsyth accepts that the description of the long robes as being red was derived from the Orr Report and was an error on his part because it was not derived from any information given to the reporters by "Jason".

8.6 Although the story of 25 September 1992 was based on a fresh interview with "Jason", Forsyth told us that "Jason" had nothing to add to the information contained in the original story of 13 February 1991. The information available to us from the original story as published and from Burrell and Forsyth does not lead us to the view that there is any evidence to support the conclusion that the "punter" was a Judge. Long robes, including those which are wholly or partly red, are of course worn by clergymen and academics as well as by lawyers. The robes worn by Judges of the Court of Session and High Court of Justiciary for civil and criminal business respectively are partly red. They are never worn without either a short or a long wig. If a Judge was photographed wearing robes we would expect him to be wearing a wig as well. No mention is made of a wig in the "Jason" story. The evolution of the story from its original publication through the Orr Report to its more recent publication serves rather as an illustration of the way in which an originally tenuous story can become embellished through a failure to pay proper attention to questions of detail.

8.7 At best what we have been able to learn from the "Evening News" and its reporters represents hearsay evidence. We are prepared to believe that Burrell and Forsyth did interview a person claiming to be a rent boy who gave them the information reflected in the story of 13 February 1991. The best evidence of that story would, however, come from "Jason" himself. If we had had an opportunity

to interview “Jason” we would have been able to press him on points of detail which might have enabled us to check his story in ways not available to the reporters. If “Jason” is to be believed, a person of some apparent standing in the community sodomised him when he was under 21 years old and accordingly committed a crime. There is accordingly every reason why we would have wanted to obtain evidence from “Jason” at first hand. Since we had no means of contacting him except through Forsyth, who had seen him before the story of 25 September 1992 was published, we asked for Forsyth’s co-operation in putting a request to “Jason” to make himself available for interview by us. We have no reason to suppose that Forsyth did not act on that request. We have been in frequent communication with Forsyth, and understand from him that he has told “Jason” twice of our wish to interview him, but “Jason”’s reaction has been that he is worried about losing his job, and has nothing to add to what he originally told the journalists.

8.8 Since “Jason” has chosen to co-operate with journalists and not with the Lord Advocate’s representatives we can only suppose that his interests lie elsewhere than in helping an investigation into an allegation of criminal conduct. Burrell and Forsyth both stated that “Jason” received no payment from them, but it is clear that the desire for notoriety and to cause mischief affects some people regardless of financial considerations. Our conclusion must be that the “Jason” story yields no evidence of value to our Inquiry.

9. MICHAEL JUNIOR'S STORY ABOUT A "JUDGE"

9.1 On 3 and 8 September 1992 Michael Junior gave a statement to a Detective Inspector of Strathclyde Police at Stewart Street Police Office, Glasgow. In the statement he described his earlier history, including a period of service in the French Foreign Legion. He then stated: "When I came back from the Foreign Legion I got involved in the "gay scene" and involved in extorting money from homosexuals." He described his allegedly becoming involved with men who controlled the activities of rent boys and used them to obtain information about the identities of men who had used their services in order to blackmail them. He described how he himself became a male prostitute. He described one incident in particular, which took place in about November 1991. He said that three men, whom he named, took him by car to Edinburgh where they went to "The Blue Oyster". There he was introduced to a man called Ian, with whom he sat talking and drinking until about 3 am, when they left "The Blue Oyster" and went in the man's car, which he described, to a house, which he also described. At the house they discussed what sexual services Junior was to perform. According to him: "I asked Ian what he done for a living and he said he sat on "the High Benches" and from that I presumed he was a "Judge". He then described how they were engaged in sexual activity when there was a ring at the doorbell. The man went to answer the door. Junior heard a scream, and a short time later one of the men who had brought him to Edinburgh burst in with his face masked and with a butcher's knife in his hand, followed by another of the same men. They made him lie down and handcuffed him. There were sounds of an assault on and robbery of the man whose house it was. After about 15 minutes the robbers left. Junior freed himself, dressed, and found the man lying injured on a bathroom floor. Junior then left the house, made his way to the city centre, and took a train to Glasgow. He described the man as "about 55 to 60 years of age, heavy build, with a fat stomach, a kind of English spoken polite accent, light brown hair going grey receding at the front. He was about six foot tall, I never saw him wearing glasses, I never noticed any marks or scars or tattoos on him". No report of an alleged assault and robbery was made to the police.

9.2 On 16 September 1992 Michael Junior gave a statement to officers of Lothian and Borders Police at Rutherglen Police Station, Glasgow. In that statement he described again how in about November 1991 the three men took him by car to Edinburgh, where they went to "The Blue Oyster" and he was introduced to a man. On this occasion he stated that the man's name was "either Alan or Ian, I can't remember his right name." He stated: "I would describe the man as 5'10" to 5'11" tall, chubby build, age about 60, he had grey hair and was balding on top. He was wearing a crew neck jumper with a cravat underneath. He had a blazer style jacket and light trousers." He stated that he and the man sat talking and drinking together. "During conversation he told me that he was a Judge." Eventually they left "The Blue Oyster" and went in the man's car to the man's house. On the journey sexual activity took place between them. At the house further sexual activity took place between them, which was interrupted by the assault and robbery. In this statement Junior gave a fuller account of purported conversations between him and the man and features of the house and its furnishings. He stated: "When I was in the house I saw a black robe and a wig lying in one of the rooms. I also saw a red robe hanging up but I can't remember which room that was in."

9.3 Because of the allegation that there had been an assault and robbery the police investigation has been as thorough as is possible. Attempts have been made, in reliance on Junior's descriptions, to identify both the car and the house, but without success. Junior himself has been unable to direct police to the house, even though

he says that he made his way from it by foot to the city centre. Further inquiries by the police have not confirmed the alleged involvement of the three men. One died on 28 December 1991. The other two have been traced and interviewed, and have denied that they travelled to Edinburgh with Michael Junior as alleged by him.

9.4 Our concern obviously is with the allegation that the man whom Junior met and who was assaulted and robbed was a Judge. There are obvious discrepancies in the two versions of Junior's statements to police made only a few days apart. The physical description of the man is materially different, as can be seen by comparing the two passages we have quoted. In the first version Junior was confident about the man's name whilst in the second he was unable to say which of two names it was. In the first the only statement made by the man which might have indicated his occupation was made at his house and was that "he sat on the High Benches". In the second statement the man told Junior at "The Blue Oyster" that he was a Judge. In the second statement for the first time Junior described, among other embellishments, that while he was in the house he saw a black robe and a wig in one room and a red robe in another room. Judges do not keep their robes at their houses and in any event no Scottish Judge has both a black robe and a red robe.

9.5 Michael Junior has made a number of statements to newspaper and television reporters who have reported them as either truthful or untruthful, depending on the story being reported. While we have taken note of these reports we have found nothing in them which would add to the much fuller statements taken by the police.

9.6 In the whole circumstances we have not thought that it would be of any value to us to interview Michael Junior ourselves. On his own admission he is a blackmailer as well as being a male prostitute. His willingness to make such an admission and to describe his activities to reporters as well as to police officers suggests a wish for notoriety. There may also have been the prospect of receiving payment from reporters. The discrepancies in his statements, the embellishments added to the later version, particularly those features pointing to the man's allegedly being a Judge, and the complete absence of corroborative evidence suggest that the whole story, or at least those parts of it material to our Inquiry, is pure invention on Junior's part.

10. ALLEGATIONS BY STEPHEN CONROY AGAINST SHERIFF DOUGLAS ALLAN

10.1 Douglas Allan had a career in the Procurator Fiscal Service which culminated in his serving as Regional Procurator Fiscal in Edinburgh from April 1983 until he was appointed Sheriff of Lanark on 1 August 1988. The grave allegations which were made against him by Stephen Conroy related to the time when he was a Regional Procurator Fiscal. We are not aware of any allegations against him relating to the period since he became a Sheriff. There is accordingly no need for us to say anything more about him in that latter capacity. We should emphasise at the outset that we have not found a shred of evidence to support any allegation against Douglas Allan. All those to whom we have spoken who had personal knowledge of him during the period when he was Regional Procurator Fiscal spoke highly of him in both personal and professional terms. Even those who thought that the allegations were such as required to be investigated spoke highly of him.

10.2 Stephen Conroy has been employed by several different firms of solicitors as a court runner and in similar relatively inferior capacities. According to him, he entertained for a time an ambition to become a solicitor. Thereafter he was engaged in various business ventures until he was committed in custody on 9 April 1992 on a petition containing several charges of fraud. Following a plea of guilty he was sentenced on 20 July 1992 to six years' imprisonment. Conroy appears to us, from the papers we have read, from information we have received from others, and from our own experience of interviewing him in prison, to be a man who is not only prepared to be deliberately dishonest, but also to have an imagination over which he has only intermittent control. We found that when he makes an effort, and remains calm, he can give truthful answers to questions. But he easily loses control of his imagination and becomes voluble. At such times he pours out his fantasies, particularly about people he claims to be homosexuals in positions of influence. The word "photograph" readily acts as a trigger for the outpouring of his fantasies. When we pointed out to him that two accounts he had given, within a few minutes of each other, of photographs which he claimed to have seen (and which would not in any event been of relevance to our Inquiry) were mutually inconsistent, he appeared almost frightened by the way in which his imagination had led him to speak. Consistently with his former ambition to become a solicitor, he is inclined to fantasise about being himself a figure of some consequence in the legal world and associating with prominent lawyers. Richard Godden, who was formerly an advocate and is now a solicitor, and Mark Fitzpatrick, Advocate, have both described to us an occasion on which they found Conroy wearing a gown in Parliament Hall and told him he should not do so. In addition to these characteristics he is correctly described by others who have had dealings with him as being devious and manipulative. In all, it is hard to see how his allegations ever came to be taken seriously.

10.3 Conroy's allegations against Douglas Allan came to the notice of the police in the following circumstances. For a time Conroy and Kevin Crawford were partners both sexually and in business together. They appear to have run a number of shops in the course of their business. In early 1990 both their sexual and business relationships came to an end. Crawford was thereafter harassed by Conroy, according to him, and decided to make a complaint to the police. He went to Police Headquarters on 5 December 1990, where he saw Detective Constable Christopher Few (now a Constable in Northamptonshire Constabulary). Crawford made a number of allegations against Conroy, which Few recorded in a memorandum dated 6 December 1990 to Detective Chief Inspector Peter Wilson,

headed “Allegation of Fraudulent Activity—Stephen Mark Conroy”. The only allegation which is of significance for present purposes reads as follows:

“10. Being in possession of compromising photographs of a Procurator Fiscal and using these to obtain confidential information in possession of the Procurator Fiscal’s Office, to avoid prosecution for offences and to have had Crawford’s prosecution for assault pursued with greater vigour than would otherwise have been the case.”

10.4 Few informed us, in the course of a telephone conversation, that Crawford named the Procurator Fiscal as Douglas Allan. Because the allegation was of such sensitivity he did not put the name in the memorandum, but did report it to his superiors. Wilson instructed Detective Inspector Michael Souter to look into the matter. As we understand it, it was from Few that he learned that the Procurator Fiscal’s name was Douglas Allan. As will be seen when we discuss the case against Colin Tucker in part 14 of this Report, Souter had already formed a view of Douglas Allan’s role in the investigation into the financial affairs of Burnett Walker WS. According to Souter, Crawford’s mention of Douglas Allan’s name “started ringing bells”.

10.5 Souter made contact with Crawford who agreed to be interviewed on a confidential and informal basis on 3 January 1991. At this meeting he repeated allegations of criminal conduct against Conroy which he had previously made to Few. Souter reported on this meeting and subsequent inquiries in a memorandum dated 21 February 1991 to Detective Superintendent George Ritchie. According to the memorandum:

“At the initial meeting with the reporting officer Crawford was asked to elaborate on the matter concerning Mr Douglas Allan and confirmed that he had informed DC Few that these photographs existed. He claimed that during the summer of 1988 he had been in the “Laughing Duck” public house 24 Howe Street, Edinburgh, along with Conroy and another male homosexual associate of Conroys, *David Blair Wilson*, then of Wilson Terris & Co., 22 Hill Street, Edinburgh, when he noticed another male customer continually looking at Conroy and smiling to him. As he was having a relationship with Conroy he asked who the apparent admirer was and was informed by Conroy in the hearing of David Blair Wilson that it was “Douglas Allan” the Procurator Fiscal, the “Top Law man in Edinburgh”. Conroy and Wilson informed Crawford that David Blair Wilson had compromising photographs of Douglas Allan along with a “young guy”, Crawford’s understanding was that although Conroy was present he was not the young man involved in the photo session.”

10.6 Although the meeting on 3 January 1991 was between Souter and Crawford alone, thereafter the investigation was carried out by Souter and Detective Sergeant Peter Brown together. There was a further meeting between them and Crawford on 14 January 1991, when Crawford repeated much of what he had said on 3 January. On 25 January 1991 Souter and Brown met Conroy in Parsons Green Terrace, Edinburgh. According to the memorandum he “agreed to speak off the record regarding his involvement as a juvenile with homosexuals in the legal profession and although he denied that he had personally had sexual relationships with anyone he claimed that he was aware of the homosexuality of” a number of persons whom he named, one of whom was Douglas Allan. The memorandum proceeds:

“He claimed that his only knowledge of these men was hearsay but that Douglas Allan is a friend as is his own solicitor David Blair Wilson. He claimed that these people had all at some time attended parties ... in Palmerston Place, Edinburgh, at which young men attended and where alleged sexual activities occurred.”

He agreed to provide a written account of these matters, but in the event he did not do so.

10.7 The memorandum proceeds:

“At 0900 hours on Monday, 11th February, 1991, Kevin Crawford telephoned the reporting officer at the Fraud Squad and related an incident

which he claimed had occurred about 0130 hours on Sunday 10th within the "Blue Oyster Club" in Rose Street Lane, Edinburgh, when he had seen Conroy and "Douglas Allan" talking together apparently about him and laughing. He claimed that this had enraged him and as he was somewhat intoxicated he had struck Conroy while Douglas Allan and Conroy had been dancing together. Douglas Allan and others present had separated them and the incident much to Crawfords surprise was not dealt with by the Stewards who would in normal circumstances have been expected to have severely ejected Crawford. Crawford left shortly after this incident. As this account did not seem credible the reporting officer endeavoured to obtain a photograph of Mr John Douglas Allan in order to confirm or otherwise that he was the person that both Crawford and Conroy spoke off. At 1500 hours on Friday, 15th February, 1991, the reporting officer and Detective Sergeant Brown uplifted Crawford from his place of employment and showed him this photograph circa 1987 of Douglas Allan, he failed to identify him as the man he knew as Douglas Allan saying that his hair is all wrong and that the man he knew as Douglas Allan was similar but more like "John Major" than the man in the photograph. He repeated the information about the incident in the Blue Oyster and was adamant that the man was the Procurator Fiscal "Douglas Allan".

At 1630 hours that same date David Blair Wilson telephoned the Fraud Squad Office and informed the reporting officer that his client Conroy would not be supplying any other information to the Police. Wilson expressed his anger that the Police had raised his own name in this matter and was assured that although his name may have been mentioned it had not been raised by the Police. He then continued that we should not pay too much attention to what Conroy may say as Conroy has a personality problem for which he sees a Consultant, and that he, Wilson, always takes with a pinch of salt anything which Conroy tells him."

10.8 After a sentence about David Blair-Wilson's private life the memorandum further continues:

"He raised the subject of Arthur Colin Tucker and Gordon Michael May and advised that he, Robert Henderson Q.C. and another would be defending May in the forthcoming Teague Homes trial and that the defence would not be based on homosexuality. Wilson said that he was a personal friend of Tucker as well as his Solicitor but even he had been amazed at the "not guilty" verdict recorded at Tuckers trial but that this was due to an inept prosecution and the Law Society dragged their feet, and that the defence arguments should never have been accepted. He claimed that he felt that the Police were under the impression that there is a homosexual conspiracy going on in Edinburgh involving the legal profession and asked why the Fraud Squad were concerning themselves with homosexual matters. He then went on to speak of Crawford and Conroys differences, then spoke of the Lord Advocates Guidelines regarding the non prosecution of consenting adults aged between 18 and 21 years. He was advised that these were only guidelines and that the Law said 21 years of age and therefore the Lord Advocate would consider the circumstances and merits of each case. He offered that if I wished to speak with him I should contact him at any time and not raise the matter with others.

At 1100 hours on Monday, 18th February, 1991, Conroy telephoned the reporting officer at the Fraud Squad and stated that he had only approached David Blair Wilson because he did not know who to turn to for help. Crawford had been bothering him over the telephone and urging him to go to the Police and "tell all", he had taped these calls. He then went on to tell how Crawford has assaulted him in the "Blue Oyster" while he was dancing with the "Sheriff of Lanark, Douglas Allan". He agreed to meet with the reporting officer and Detective Sergeant Brown on Tuesday, 19th at 1530 hours in Carrington Road, Edinburgh.

On Tuesday, 19th Conroy telephoned early in the day and asked the reporting officer if the meeting could be on a one to one basis but was

told this would not be. He attended as agreed and again wished to speak informally. He related his account of the incident at the Blue Oyster Club which was in accord with what Crawford had claimed. He was then shown a number of photographs (attached) and had no hesitation in identifying as "Douglas Allan" the former Regional Procurator Fiscal Mr J.D. Allan although he stated that the subject wore a toupee when attending the "Club".

He claimed to have known Douglas Allan for about three or four years but denied that there had ever been anything improper between them. He claimed that their contact had been confined to talking at the "Laughing Duck" or the Blue Oyster Club or dancing at the latter. He further claimed that he had during 1988 attended at the house of RAJ Godden ... when he had been shown 6 or 8 quarto sized photographs of naked men indulging in indecent activities (he declined to elaborate) and that he had immediately recognised Douglas Allan who he knew at that time..."

This part of the memorandum concludes with the sentence:

"While Crawford and Conroy are speaking to the Police for differing reasons and they are now antagonistic towards each other the hearsay information obtained from Crawford is being given some substance by the information given by Conroy which is more than mere hearsay."

The memorandum then moves on to a discussion of the cases against Tucker, May and Tucker, and Duncan and others and the proposed case against Robert Henderson QC. In respect of the case against Duncan and others the memorandum states:

"That Conroy has stated that the indecent photographs he was shown by Godden were taken ... in Palmerston Place may link these matters to the recent proceedings involving rent boys and male homosexuals ... which Alistair Darling MP has involved himself in by declaring his intention of examining the role played by the Crown Office in the decision to dismiss many apparently proveable charges."

The memorandum concludes with the following passage:

"If Crawfords original claim that Conroy was able to manipulate the criminal justice system because of his knowledge of illegal homosexual activities members of that system have involved themselves in is true—and nothing to discredit his information has yet been found—then a serious problem may exist in the administration of Justice in Edinburgh and elsewhere in Scotland which may be highlighted by either the Press or Mr Darling in the very near future. If it is revealed that Lothian and Borders Police had been made aware of the allegations referred to in this report and failed to take appropriate action in these matters then considerable criticism or even suspicion may be directed at the Police.

While enquiries have been made and have established evidence that Conroy has been involved in fraud no action has yet been directed beyond the informal interviews with Crawford and Conroy regarding the illegal homosexual allegations. It is felt that Crawford will be willing to make a statement on tape if asked, and Conroy could soon be cultivated to a similar position, although this may prove more difficult as David Blair Wilson has obviously attempted to frighten him away from placing any trust in the Police in general and the reporting officer and Detective Sergeant Brown in particular."

10.9 We have quoted from the memorandum at some length in order to show not only the nature of the information which was given to Souter and Brown but also the link which was then made in the minds of Souter and, presumably, Brown between otherwise apparently unconnected cases. Souter had of course by then had possession for some months of a copy of Tucker's Statement, which Brown had read. This may have inclined them to give credence to allegations of homosexuality made against prominent lawyers. As will be seen when we come to discuss the Orr Report in part 12 of this Report, the link made in Souter's memorandum is the same as that made in the letter from David Johnston to Tam Dalyell MP,

in the letter from Tam Dalyell to the Chief Constable and in the Orr Report. Since the Orr Report was, according to its author, largely based on information supplied by Souter and Brown, it is impossible to avoid the conclusion that either Souter or Brown or both have been, directly or indirectly, the source or sources of information at every stage about the alleged link.

10.10 The photographs which were shown by Souter and Brown to Conroy, as recorded in the memorandum, and which were referred to in subsequent interviews by police officers of Crawford and Conroy, are now in our possession. Of the two showing Douglas Allan, one is a colour photograph taken at a Burns Supper at Police Headquarters, showing Douglas Allan in a kilt, the Chief Constable, Sheriff William Christie and the Deputy Chief Constable. The other is a poor photocopy in black and white of a photograph taken on the same occasion, showing at least 13 persons, of whom Douglas Allan is third from the right and a police officer is fifth from the left. There is little apparent resemblance between these two apart from the fact that they are both wearing glasses. Sheriff Allan has expressed resentment to us at the use, for the investigation of allegations of criminal behaviour by him, of photographs taken at a private social occasion at Police Headquarters.

10.11 On receipt of Souter's memorandum Wilson discussed its terms with Ritchie and they decided that, however incredible the allegations against Douglas Allan might seem, it was necessary to take the matter to Duncan Lowe, the then Regional Procurator Fiscal. Accordingly Assistant Chief Constable Richard Prentice telephoned Duncan Lowe and arranged a meeting, which took place in early March 1991, and was attended by Ritchie, Wilson and Souter. Copies of the memoranda by Few and Souter were given to Duncan Lowe. No mention was made of the Tucker Statement. There was a brief discussion, during which Duncan Lowe said that he wanted to consider the matter further. He did not tell the police officers what he intended to do. What he in fact did was to arrange to see Ian Dean, the then Crown Agent, and to show him the Souter memorandum. They discussed the matter at length, and it was decided that the Crown Agent would arrange for the Lord Advocate, Lord Fraser, to see the Souter memorandum and discuss it with Duncan Lowe. A meeting was accordingly arranged with the Lord Advocate, which was attended by Ian Dean and Duncan Lowe. There was a full discussion of the memorandum. The meeting concluded with a decision that Crawford and Conroy should be interviewed on tape by police officers.

10.12 After the meeting with the Lord Advocate, Duncan Lowe instructed Ritchie to have Crawford and Conroy interviewed on tape. The instructions were given by telephone on 8 March 1991 and were recorded in a file note. Their terms included instructions that the interview should be carried out by different officers from those previously involved because of the ongoing criminal inquiry, and that the statements should be specific as to whether Crawford and Conroy were alleging criminal conduct by Douglas Allan. Ritchie accordingly instructed Detective Inspector Ian Irving and Detective Sergeant Hugh Corbett, both members of the Serious Crime Squad, to carry out the interviews. For that purpose they were given use of copies of the memoranda by Few and Souter and of the photographs which we have described.

10.13 Crawford was interviewed on 12 March 1991, and again, on a matter which is not relevant for present purposes, on 22 April 1991. Conroy was interviewed on 17 April 1991. We have transcripts of these interviews. While they are lengthy, nothing of substance was added by either Crawford or Conroy to what they had already told Souter and Brown. In order for the quality of the evidence to be understood we think it appropriate to quote certain passages.

10.14 In the transcript of the interview with Crawford on 12 March 1991 the following passage appears:

“DI Could you please express in your own words what you know about the former Regional Procurator Fiscal and now Sheriff of Lanark. I would suggest that you start from the beginning possibly when you first heard or met him right up until this last time that you saw or met him so if you just relax and just tell me how you know or what caused you to make these allegations and

how you know ehh the Regional Procurator Fiscal. Could you commence?

SUSPECT Ehh it was roughly about four to five years ago that I met Stephen Mark Conroy in a gay bar called Fire Island I had been in a relationship with Stephen for about a year and we were in a disco one night which is the Laughing Duck ehh Public House in Howe Street. Stephen had pointed out a gentleman ehh to me and had turned round and said that that is the Procurator Fiscal from Edinburgh. Stephen had said that he had something over the Procurator Fiscal we used to go a place called Tokyo Joes where a lot of lawyers and people in the Court who knew Stephen Stephen had worked in the Court or worked for a company called Drummond and Company and this is how he knew the people in the court and it was common knowledge through Stephen that a lot of people in the court were gay or on or homosexual and ehh they vacated the gay bars and gay clubs Stephen had pointed this chap out to me and said that himself and David Blair Wilson had been at a party one night and the P.F. or Procurator Fiscal ehh was at the party and that they have photographs he said that that man will do him favours he said because of what he has got. He says I can pull strings in high places.

DI Who said this?

SUSPECT Stephen Mark Conroy. He says that they were at a party one night with David Blair Wilson and the chap was there and that David Blair Wilson has polaroid photographs of the Procurator Fiscal with a gentleman who is under the age of consent of 21 ehh I've never actually spoke to the chap but the Procurator Fiscal who was pointed out to me has never ever spoke to Stephen now I've been in a sorry I was in a relationship with Stephen for almost five year for all the time that we went to pubs clubs ehh or discos or anything whenever this chap was in the pub or on the same premises they never ever spoke they would just acknowledge each other by letting on nodding heads and just acknowledge each other but never ever spoke in public ehh until recently about two months ago probably less than that that I was in a place called The Blue Oyster on Rose Street in Edinburgh ehh I had been coming down to Fettes regarding this situation and my allegations Stephen was talking to the Procurator Fiscal or the person who he was saying the Procurator Fiscal and who he had the photographs over and the chap who would do him favours ehh this was the first time I had ever seen them actually talking together in the whole five year it was almost every weekend that we were out in a pub or a club so over the period of five years they had never spoke to each other now they are speaking to each other ehh I was leaving the disco and Stephen turned and says as I walked past him we can soon sort him out look what the cat dragged in so I ignored it and I was leaving the premises then I went back in a temper and I grabbed Stephen by the back of the hair of the dance floor and had a word in his ear the chap who that with him who I know or I am led to believe is a Procurator Fiscal backed of and he didn't want anything to do with it but before I actually done that was dragged Stephen of the dance floor the two of them were very cocky and like trying to rub me up.

DI You mean by that you mean by ehh trying to . . .

SUSPECT Trying to wind me up basically.

DI Yes aye.

SUSPECT Standing beside me in the disco the person who I am led to believe is the Procurator Fiscal standing smiling over now the chaps never spoke to me but he has always known who I am and I have always known or led to believe who he is he never ever speaks to anybody

in the disco he comes in stands watches everything that goes on and leaves ehh but this night he was standing with Stephen having a conversation with Stephen and they were basically winding me up ehh as I was leaving I walked past them he had said that that ehh ohh we can soon sort him out look what the cat dragged in sort of thing.

- DI Who had said that?
- SUSPECT Stephen had said it and the chap who I am led to believe is the Procurator Fiscal was in conversation with Stephen and just laughed so in a temper I dragged Stephen of the dance floor then the other guy backed off but this was Stephens front for anything or whenever he was up to tricks Stephen would phone the court or he would phone the P.F.'s office and he has done it in front of me ehh at the time when he had said what was going on asked questions about different things he wanted to know and he received information from the Procurator Fiscals office.
- DI In relation to what?
- SUSPECT He just used to phone up and say ohh I would like to find out this Stephen was ehh or he got in trouble with a credit card and he had used a credit card ehh when he was living in Springfield Street it is off Balfour Street I think and what had happened was the credit card was sent to a block of flats there is six in the flat Stephen had opened it up the credit card didn't belong to him Stephen had used the credit card and it was later found out that he was on camera and the police proved it was Stephen Stephen was worried about it and then he had turned round and said to me no problem I'll get that sorted out I've got friends in the Procurator Fiscals Office i.e. Mr Douglas or Douglas Allan or Douglas James Allan.
- DI Was it who was it he actually phoned at the . . .
- SUSPECT He phoned the P.F.'s office.
- DI Mmhh now the P.F. office there are numerous Procurator Fiscals within that area.
- SUSPECT He was phoning.
- DI In that office.
- SUSPECT He was trying to phone Douglas James Allan
- DS I take it you were present when he made that phone call?
- SUSPECT I was in the room yeah.
- DS Do you know what number he dialled?
- SUSPECT No not off hand no.
- DS How do you know it was the Fiscals office that he was on to?
- SUSPECT Ehh because he had a law directory it was a standard law directory for lawyers to list every solicitor.
- DI Where is that that directory?
- SUSPECT Stephen had it you can only obtain it from a solicitor or if you have worked in a solicitors office it is supplied to them to acknowledged solicitors within the City and in there he had the number.
- DS Right did he speak to who you think was Mr Allan ehh within your hearing?
- SUSPECT I am led to believe that it was Mr Allan on the other end of the phone he asked him if he could meet meet him to help sort or something out ehh Stephen the same the same week had phoned David Blair Wilson and met David Blair Wilson in a public bar called Tokyo Joes and had a conversation with David Blair Wilson.
- DS How long ago are we talking about?
- SUSPECT Mmmh three and a half three and a half years ago.

- DI So how long is it since he possibly was in possession of these photographs?
- SUSPECT As far as I am led to believe it is David Blair Wilson who holds the photographs because Stephen says that if anything ever happened or he needed to use the photographs for anything that David Blair Wilson has them in a safe place.
- DI Do you know where about?
- SUSPECT No.
- DS Have you any idea who took the photographs?
- SUSPECT No, not at all.
- DS Have you ever seen the photographs?
- SUSPECT No all this was said to me was Stephen by Stephen that David Blair Wilson holds the photographs for when he needs them or when Stephen needs them to pull a favour.
- DI When the photographs were taken how long ago is it since the photographs were taken do you think just an estimate?
- SUSPECT Five year ago.
- DI You think about five year ago and where is it supposed to have taken place about?
- SUSPECT It is supposed to have taken at a house a public a party within a house.
- DI Do you know where about?
- SUSPECT It was somewhere in the new town I know that.
- DI But you don't know whose house.
- SUSPECT I don't know the address, I don't know the address or whose house it was taken at a party.
- DI And what was supposed to be in this photograph or these photographs?
- SUSPECT What is supposed to be in the photograph was the Procurator Fiscal Douglas James Allan with a homosexual guy under the age of 21 and this is what Stephen and David Blair Wilson were holding over him that they had ehh polaroids of the Procurator Fiscal ehh in a sex act with someone under the age of consent of 21.
- DI Do you know who that young person is?
- SUSPECT No.
- DI Who would know who that young is?
- SUSPECT Stephen Conroy or David Blair Wilson.
- DI They would know who it was?
- SUSPECT Mmhh.
- DS And is it just the two of them?
- SUSPECT As far as I am led to believe it was the only the two that the was only only name mentioned by Stephen was David Blair Wilson."
- 10.15** Another passage we think we should quote from the transcript of Crawford's interview is as follows:
- "DI The can you describe to me the man you know as a Procurator Fiscal?
- SUSPECT The best description I could give you of him is John Major the Prime Minister that's who he reminds me of John Major's height, build, looks, hair, glasses.
- DI What height do you think he is?
- SUSPECT (sniff) 5'8"—5'6" ehh sorry 5'8"—6 ft.
- DI What sort of build?
- SUSPECT Medium build he is a man of say late forties ehh stocky but trim he is not fat he is not a heavy he is just trim guy ehh glasses.
- DS What sort of glasses does he wear?

SUSPECT Steel rimm glasses silver steel rimmed ehh.
 DI Does he smoke?
 SUSPECT No.
 DI Does he have a moustache?
 SUSPECT No ehh I have never seen him smoke ehh steel rimmed glasses.
 DS What about the hair style was it natural or was he would he wear a hair piece?
 SUSPECT No ehh he's grey hair grey hair medium length cut cut tidy.
 DI Was it very grey?
 SUSPECT Yeah it was more of a silver silvery grey.
 DI It has no been dyed or anything like that?
 SUSPECT No.
 DS And how high a forehead was he receding at all or no?
 SUSPECT He was receding slightly ehh let let me think (pause) he had it short tidy and combed over to one side.
 DS Mmhh.
 DI What was he wearing what does he normally wear?
 SUSPECT Always wears casual clothes ehh sometimes trainers just casual trainers ehh casual slacks and casual jumper it was always.
 DI What is casual what is casual slacks?
 SUSPECT Ehh might be fawn fawn trousers ehh like an older guys taste in clothes just a casual plain shirt a dress dress shirt but just plain nothing on it ehh and just casual trainers just plain trainers not a designer trainer just a plain."

10.16 It will be understood from the passages we have quoted from the transcript of the interview with Crawford that the only direct evidence which he was able to give related to seeing a person whom he believed to be Douglas Allan. Everything else about this person was hearsay.

10.17 The transcript of the interview with Conroy on 17 April 1991 is impossible to summarise. We shall quote some of the more significant passages. One passage reads as follows:

"DI Could you please express in your own words what you know about the former Regional Procurator Fiscal and now Sheriff of Lanark, I would suggest you start from the beginning possibly when you first heard or met him right up until the last time you saw or met him. Now do you understand that?
 SUSPECT Yes I do.
 DI Now if you possibly if you could start off and if you maybe tell me a few if you what is the name that you know him by?
 SUSPECT I know him by Douglas Allan ehmm I was introduced to him ehmm I was doing a traineeship with the Law Society to become a solicitor ehmm I met Mr Allan at various just parties and meetings you know ehmm through the law people that I now ehmm I was more impressed in meeting him because of who he was ehmm he was always very pleasant ehmm I might add that these were outside sort of homosexual places these were you know bars normal bars and things like that ehmm he was always very pleasant didn't strike me as being homosexual ehmm until ehh I met him in a gay pub a couple of times the Laughing Duck ehh but I think he disguises himself when he goes in I don't think he uses his own name although I know him as being Douglas Allan ehmm I d I have never seen him leave with anybody and he certainly hasn't left with me ehmm he has been in and he has always been very pleasant and just spoke ehmm he has never mentioned to me whether you know what he is in for or whatever ehmm it has just been a general discussion of how you doin things like that ehh I have gone to dinner with him once or twice ehmm

just generally just out you know more to further my career ehmm not in any sexual sense at all and never had done ehmm at a later date I know a lot of Edinburgh solicitors and advocates and things like that involved in the gay scene ehmm I heard from one advocate a Mr Dick ehmm Godden that eh that were several photo's of Mr Allan in homosexual acts which I was very surprised at ehmm because as I say I had never seen Mr Allan directly involved in any way whatsoever ehmm Mr Godden showed me photographs that I could identify as being very like Mr Allan to me ehmm I would be more than sure ehmm I haven't really it is very difficult because when Mr Allan goes out to a gay club although he is receding on top he tends to wear a wig ehmm which can sometimes be confusing because the photographs were black and white ehmm and there were several people involved which made them confusing to look at ehmm I don't know what Mr Godden did with these photographs I never used them for any compromise or anything on my behalf eh although my former partner Mr Crawford had asked on several occasions that I do so ehmm I really don't know as I said to you already it is very difficult to confirm something like that so I had never considered using them at all ehmm I thought Mr Allan more as a friend and not as a sort of person I would go and compromise ehmm I seen the photographs and there was a lot of laughing and joking around the legal fraternity with them ehmm when I say legal fraternity I sort of mean the gay legal fraternity ehmm but I don't know what they were used for I would be aware that Mr Godden still had them in his possession or ehmm maybe one of the other advocates or lawyers I don't know where they are at the moment I don't have any ehmm and really that's about it ehmm Mr Crawford eh is a very difficult person to explain he is the type of person that loves to be involved in something like that and he thinks that Mr Allan is corrupt ehmm and that I am corrupt and that the rest of the legal fraternity are corrupt that I worked within when I worked there ehmm I am sure there is corruptness in every fraternity ehmm be it gay or straight or whatever ehmm I have never found Mr Allan in any way to be eh you know the type of person that would do that although I have heard rumours before ehmm but I put them down to rumours cause they have never signified anything else to me ehmm you know Mr Crawford as I say I was in a disco the late the most recent was in the Blue Oyster disco several months ago after ehmm your colleague Mr Souter had interviewed me and eh Mr Crawford was there with a another friend ehmm who I would believe would be his friend they were very abusive to me and I ignored them and walked on eh it just happened that Mr Allan was in the bar that night and he had seemed to know just exactly what was going on already which cautioned me to a certain extent because I felt that ehmm there is somebody else involved somewhere else along the line ehmm because I had only spoken to Mr Souter and I had been assured that nobody else would find out ehmm Mr Allan asked me what the hell had been going on and I told him no no no more basically that people had asked me and not naming anybody ehmm we discussed it and he said that he would sort it out ehmm I don't know what that entails ehmm we were walking past Mr Crawford and Mr Crawford made suggestions towards Mr Allan and me ehmm we continued to walk on as if it didn't bother us we were going to dance and Mr Crawford ehmm tried to lunge at us ehmm he never intercepted and his friend pulled him back ehmm all I know after that is that you know is that I was dancing with Mr Allan ehmm on the dance floor and ehmm I was pulled from behind

by the hair and dragged across the floor ehmm and sworn at and told that I was having my throat slit ehmm and this was Mr Crawford but it really didn't hit me until a few minutes later and he had left the club by the time I had got out into the lane to actually challenge him back but ehmm after that I was eh the victim of several abusing phone calls ehmm which I have taped on my answering machine basically saying to me that you know things were going to happen to me and things like this which worried me ehmm as yet I am still in one piece eh you know I have if it's any extra help I have known other people to know Mr Allan ehmm not in the legal fraternity I have spoken to other friends before who have said you know because I thought I was big if you like I've said do you know who that is and I know him you know he is the Procurator Fiscal ehmm I didn't know that to be a compromise but other people one or two namely have said to me no he is somebody else he is Tom Hanks or something you know for example you know ehmm so I was aware that Mr Allan didn't identify himself to people that wouldn't know him or wouldn't normally know him because of his job ehmm anything you want to ask me?

DI Did, what name did he use then if he went out to one of these gay clubs?

SUSPECT Well I don't know he always I've just spoken to him as being Douglas I know his name is James Douglas Allan but he has always asked me to call him Douglas.

DI Ehmm.

SUSPECT Ehmm so it's more of a formal sort of relationship you know where you meet and you know I can call him his first name I don't call him Mr Allan ehmm I can't really remember I would be telling a lie eh ehmm I'm quite unsure what he calls himself when he goes out but I just know that a couple of people have said to me before on different occasions ehmm you know that's not Mr Allan that's Mr so on so he works in the computer department or something and I have just left it at that knowing that you know who he really is ehmm and thinking well maybe the guy doesn't want to sort of you know being in the profession that he is in he can be I would imagine that he could be liable to be sort of blackmailed or something like that so I thought maybe for his own reasons ehmm he doesn't you know let go on who he is and I believe he had been married or was married so I thought may be for these circumstances he hadn't you know ehmm he had declined to give them his name and maybe given somebody else which happens a lot in the gay scene a lot of people don't tell you who they are and there is a lot of it's the kind of scene that a lot of people tell lies on it's you know people seem to want to be other people ehmm you know everybody on the gay scene wants to draw attraction to themselves so they often say that they are this or they are that or you know they're a Sheriff or when they're not you know ehmm.

DI But you think that the Mr Allan that your talking about is definitely right?

SUSPECT Oh yeah."

10.18 Conroy then went on to describe meeting Douglas Allan in Queensferry Street and going out for dinner with him in the Howard Hotel in Great King Street. We now quote another passage from the transcript:

"DI Could you describe him to me please?

SUSPECT Yep. He is quite tall receding hair and he wears glasses eh when he went for dinner he never had anything on his head but he often wears when he goes to the Laughing Duck or the Blue Oyster

where I have met him on several occasions a wig on top ehmm or a toupee whatever you call it eh which changes his facial a little you could be you could mistake him for being a different person ehmm.

DS But you'd been in his company on both with the wig and without?

SUSPECT Yeah.

DS Would know him either?

SUSPECT Professionally he doesn't wear a wig apart from on the bench now I would imagine he would wear a wig ehmm professionally when I have met him before he didn't have anything on ehmm outside for some reason or another which has mixed me up on a couple of occasions ehmm although I would know his face eh he has won a toupee or whatever you call them.

DI Right, what age would you say he was?

SUSPECT Forties (sigh).

DI Age forty. I am going I'll show you this picture it is a 1 2 3 (pause) there are about thirteen to fourteen men in the picture could you have a look it's not a very clear picture it's a photocopy could you examine that and see if Mr Allan the Mr Allan you know is in that group?

SUSPECT (long long pause) that one that gentleman there is not clear ehmm (long pause) it would look more like that gentleman to me.

DI This one this gentleman here?

SUSPECT Or that one but that one's a bit it's cause I can't see this ones face more I've seen clearer photos of your colleague.

DI Have you ever?

SUSPECT Which I have identified.

DI Ever seen that that photograph this particular one?

SUSPECT I've been shown one similar to that.

DI Who showed you it?

SUSPECT Your colleague Mr Souter.

DS That's okay. Right sorry yeah now in that photograph that your indicating to a person that you know as Mr Allan it appears to be the third person along from the right hand side of the photograph.

SUSPECT I'm confused this gentleman looks very like him but then again ehmm the hair would the hair would make me say no this gentleman here.

DS That's the one.

SUSPECT But I couldn't see.

DS The third from the right.

SUSPECT Yes it is.

DS We think is more likely to be the one.

SUSPECT Yeah.

DS Thank you. Could I ask you about the photographs that you mentioned there you say that eh a person or one of the persons in the photograph was Mr Allan, is that correct?

SUSPECT Ehmm.

DS You have seen these photographs?

SUSPECT I've seen the photographs.

DS How many photographs are we talking about?

SUSPECT About four or five.

DS Are they polaroid or are they been developed?

SUSPECT They looked I wouldn't know the difference really ehmm they are big photos you know they are maybe about this size A4.

DS Well polaroid are normally much smaller than that so eh.

- DI They are quite large about one foot even well than what six or seven.
- SUSPECT About five or six.
- DI Five or six.
- DS Are they colour photographs or black and white?
- SUSPECT Black and white.
- DS How many persons would be in the photographs?
- SUSPECT Three or four at the most in one photograph.
- DS And how many photographs are we talking about?
- SUSPECT Five or six.
- DS Right."

He also stated that the persons in the photographs were all male and were naked. We see no need to quote further from his descriptions of the photographs.

10.19 In reporting on these interviews to the Procurator Fiscal both Irving and Corbett described Conroy as devious. Robert Lees succeeded Duncan Lowe as Regional Procurator Fiscal at Edinburgh on 1 April 1991. Before then Duncan Lowe had made him aware of the terms of the Souter memorandum. After Crawford and Conroy had been interviewed and the transcripts and report were available there was a meeting at Crown Office attended by the Lord Advocate, Duncan Lowe, who was by then the Crown Agent, and Robert Lees. It was decided that David Blair-Wilson should be interviewed about those aspects of Conroy's allegations which suggested that Douglas Allan might have been compromised. Robert Lees accordingly arranged a meeting with David Blair-Wilson, which took place on 10 May 1991. Kenneth Maciver, Assistant Procurator Fiscal, was also in attendance. At the meeting David Blair-Wilson said that he had never met Douglas Allan, had not seen him in any of the premises referred to by Conroy, and denied any knowledge of the photographs referred to by Conroy. He stated that with his familiarity of the "gay scene" he would have known if Douglas Allan was a homosexual, and had heard nothing to that effect. According to Robert Lees, David Blair-Wilson said: "If you're going to base any case on Conroy, double and triple check it, he is a liar." Robert Lees gained the overall impression that David Blair-Wilson was telling the truth. Thereafter Robert Lees returned to the Crown Office to report to the Lord Advocate and the Crown Agent. He told them his views about his meeting with David Blair-Wilson and it was decided that because there was no evidence of the existence of the photographs referred to by Conroy there was accordingly no evidence to justify taking the inquiry further.

10.20 A newspaper called "The Sunday Scot" appeared as a publication for a short time. In its edition of 12 May 1991 there was an item entitled "Gay Boy and the Sheriff" which repeated Conroy's allegations, but without naming Douglas Allan. While it is possible that either Conroy or Crawford gave the story to the newspaper, another distinct possibility is that it came from a police officer who knew of the contents of Souter's memorandum of 21 February 1991 and was dissatisfied with the steps which had been taken. Sheriff Allan was aware of the publication, but decided that because he was not named in it there was no action which he could usefully take. His attitude to further newspaper stories published since the time that Conroy appeared in court in July 1992 has been that he expects the truth to emerge in our Report.

10.21 At an early stage of our investigations it became apparent that Conroy's position in relation to his allegations against Douglas Allan might be materially different from what it had been eighteen months previously. On 22 September 1992 Conroy telephoned Police Headquarters from prison and said that he wanted to see Detective Inspector Michael Souter as he had information for him. It was decided that he should be seen, not by Souter, but by Detective Inspector Irving and Detective Sergeant Corbett, who had previously interviewed him on tape. They interviewed him, again on tape, at HM Prison, Glenochil, on 23 September 1992. We have a copy of the transcript. What Conroy had to say to the two officers was even more incoherent than it had been on the previous occasion, but we quote briefly from it. At one point he said:

“When I met you down at Fettes Headquarters I was under a lot of pressure, I did tell you several untruths into the Douglas Allan situation. I exaggerated by you know, the relationship with him if you like, my knowledge of him because you know I was worried when Mr Souter and Mr Brown charged me, and although I knew somethings I didn’t know quite what I knew so I made them up to the extent to try you know, save me from being charged on the fraud matters.”

When, rather later in the interview, he was asked what untruths he had told the officers on the previous occasion, he said:

“Just really the situation with Douglas Allan, you know the club, the nightclub in question, I am not a hundred percent certain I was with Mr Allan, you know, maybe its other people who identified them as being so and when I seen a photograph given to Mr Souter he did certainly look like him, but you know I don’t know ...”

When we interviewed Irving and Corbett separately they concurred in an assessment of Conroy as being a very devious person.

10.22 Among various stories which appeared in the press during September 1992 we took particular note of one which appeared in “The Observer” on 27 September, headed “Gay Hunt Police Offered Me Deal” and which started:

“Lothian and Borders Police were so keen to prove the existence of the “magic circle” of gay lawyers and judges that they offered to drop the case against fraudster Stephen Conroy in exchange for evidence of a gay conspiracy.”

During the story Conroy is quoted as having said to the journalist who wrote it:

“I did know lawyers and I did know a Sheriff, but no relationship ever took place and as far as I know no photo ever existed. I saw the Sheriff once in a gay bar, it’s true, but I don’t even know if he is gay. A lot of straight people go to gay bars.”

10.23 On 2 October 1992 Conroy wrote a letter to us in which he stated:

“My experiences, with the Lothian Borders Police, and other events should be made known to you. I feel this information can only be constructive, and in my opinion it is only fair that I be given this opportunity to portray the *truth* to you directly on this unsavoury scenario.”

10.24 Although there was every reason to continue to treat Conroy’s original allegations against Douglas Allan as untruthful without further investigation, we came to the view that we should investigate the matter ourselves and that we should interview Conroy. Accordingly in the first place we interviewed the persons who had featured in the original allegations as having knowledge of the compromising photographs of Douglas Allan. Richard Godden told us that he knows Mark Fitzpatrick well. He regards Stephen Conroy as a slight acquaintance. He does not know David Blair-Wilson, although he may have met him. He has never met Douglas Allan or even seen him. He does not think that Conroy has ever been in his flat. He does not know Kevin Crawford and has never met him. He knows his name because Conroy mentioned him as his boyfriend. He had no knowledge of the existence of the allegedly compromising photographs. Mark Fitzpatrick said that he knows Conroy, but did not recall ever being in his company in Godden’s flat. He does not know Douglas Allan and has never seen or heard of the allegedly compromising photographs. When we interviewed David Blair-Wilson his position was the same as it had been when he was interviewed by Robert Lees and Kenneth Maciver.

10.25 Arrangements were made for Conroy to be brought to HM Prison, Saughton, to be interviewed by us. We made it clear to him that we were interested only in discovering the truth and that we were not in a position to do him any favours. We told him to concentrate on our questions and to give direct answers to them. He told us that he does not know Douglas Allan personally. He said that he does know him by sight because of having seen him in Parliament House when he was Regional Procurator Fiscal. He also saw him once or twice in Queensferry Street near to his office, at a time when Conroy had a hairdresser’s business in

Lynedoch Place. He has never spoken to him. Conroy was in "The Blue Oyster" on one occasion and saw somebody who was not Douglas Allan, but was very like him. He has no reason to believe Douglas Allan is a homosexual. He has never been in the same company as Douglas Allan. He has never had a meal with Douglas Allan. He has never seen a photograph depicting Douglas Allan apart from those shown to him by police officers, which we showed to him again. He has never regarded himself as being in a position to procure any kind of favour from Douglas Allan. He has no reason to say that Douglas Allan would do anything to bring himself or his office into disrepute. He has no direct knowledge of any impropriety by Douglas Allan. Of his allegations against Douglas Allan he said:

"I am trying to be as honest and frank as I can. I have been dishonest before. It is time to be honest. It was blatant dishonesty."

At a later stage he said:

"I'd like to apologise. I feel I have made people's positions difficult through not being honest. I was under pressure."

10.26 He tried at some length to make out that he had made the allegations against Douglas Allan because he had been put under pressure by Souter and Brown who had indicated that if he helped them with their "magic circle" theory they could hinder the investigation into his criminal activities. We do not elaborate on this because the police first heard of Conroy's allegations from Crawford and there is no question of Souter and Brown having caused Conroy to make the allegations. This is not to say that they did not take a keen interest in the allegations once made, which may well have led Conroy to believe that if he persisted in making the allegations he might induce them to favour him.

10.27 As we have mentioned previously, the word "photograph" acted as a trigger to Conroy. At times he became agitated and voluble and described photographs, not showing Douglas Allan, which he claimed Richard Godden had shown him and Crawford at Godden's flat. We have no reason to suppose that there is any truth in this.

10.28 We interviewed Kevin Crawford after we had seen Conroy. He emphasised to us that the allegations about Douglas Allan which he had repeated when he was interviewed by Irving and Crawford were based on hearsay from Conroy, though he was prepared to believe them. He insisted, however, that though he had not seen any compromising photographs of Douglas Allan, he had been in Richard Godden's flat with Conroy. He gave a description of Richard Godden which included his having a beard and moustache and greying hair swept back, wearing 1940's style clothes and having 1940's style furniture in his flat. We have confirmed with Richard Godden that this information is not correct. He has dark hair. He has never had a beard. He once grew a moustache for a theatrical production about eight years ago but shaved it off afterwards. The descriptions of his clothing and furniture are not correct.

10.29 On a more important matter, Crawford insisted to us that he had seen a man, whom he believed to be Douglas Allan, about twelve times in "The Blue Oyster". This was over a period from about December 1987 into 1988. Crawford had been with Conroy on these occasions. Only Conroy had spoken to the man. The occasions were Friday or Saturday nights, when the man had stayed from about 12.30 or 1am until about 4am. He wore a loose shirt, fawn slacks and plain white trainers. When we showed him the photographs he had seen previously Crawford identified the police officer standing fifth from the left in the black and white photocopy photograph as being the man. He also identified Douglas Allan in the colour photograph as being the man. He insisted to us that it was one and the same man who was shown in these photographs.

10.30 It should be added at this point that, at his request, we interviewed Stephen Conroy, senior, Conroy's father. He was concerned about the effect on himself and other members of his family of the publicity about his son and the allegations attributed to him. He described his son as being manipulative, very immature about some matters, and inclined to fantasise. According to Stephen Conroy, senior, his son has never made allegations in his hearing about Douglas Allan, about compromising photographs or about homosexuals who were liable to be

blackmailed. He said that it was Kevin Crawford who made such allegations. When we read out to him a passage from the transcript of Conroy's interview with Irving and Corbett he was not able to reconcile that with what his son had otherwise said to him. He described to us an occasion in about April or May 1991 when he was at his son's flat and Souter and Brown had visited his son in the course of their investigation into the frauds committed by him. According to Stephen Conroy, senior, who overheard part of what was said, they were much more interested in talking about compromising photographs of homosexuals than about fraud.

10.31 At a stage when we had interviewed both Conroys and, as it happens, on the day on which we interviewed Walter Easton Smith, we received an unsolicited letter from Conroy dated 24 November 1992 enclosing an unsealed letter to Douglas Allan, with a request that we make sure that it be given to him. We reproduce the text of the letter to Douglas Allan in full:

“Stephen M Conroy
1117/92 C-Hall
HMP Glenochil
Tullibody
Clackmannanshire
FK10 3AY
25th November 92

Dear Sir,

I feel that I owe sincere apology to both you and your family. Over a period of time various rumours have developed, which I have played party too. These rumours had no foundation, and no ill-will was intended, since then these rumours have escalated out of all proportion, and I cannot begin too imagine the amount of stress and discomfort this has caused you and your family.

I am totally ashamed of my Association in this unsavoury scenario, No words can sustain my utter regret, Everyday in your court Sir, you have people that come before you, people that are Unfortunate, to have no parents or support, no money, need I go on as you are familiar with what I am attempting to portray, My parents have been mentally scarred with the actions I played party too, yet they remain completely supportive, I often wonder why? My parents brought me up on strong morals—and my upbringing was a fortunate one, My parents However, never brought me up to resort to the actions, I have been involved in. I could go into reasoning, but I feel this is irrelevant, the principal is that I played a role in something which my parents belief was completely out of character, and thus be the reasoning behind their fortunate, continual support. The last 3 years of my life, Sir, have been a mess, and I want so much to improve and become a better person, who can hopefully be trusted to rejoin Society, and perhaps repay my parents, and become someone that they are proud off.

Sir, I beg for no forgiveness as I accept that the damage which I have associated myself in—is irreparable, I can only offer my sincere apologies once again to you personally and of course your family, In my wildest dreams, I could never begin to imagine the amount of innocent people that I would hurt as a consequence of my actions.

Written with Sincere Regret.

Most Respectfully,
Stephen M. Conroy
1117/92”

10.32 We have of course discussed all these matters with Douglas Allan. He assured us that he has never been in “The Laughing Duck” or “The Blue Oyster”, does not know Conroy, and knows nothing of compromising photographs. He has not worn clothing as described by Crawford. He generally spends Friday evenings at home with his wife. He is very circumspect in his social life and careful about the kind of place in which he might be seen. Above all he is aware of having done nothing which could have compromised him in the performance of his duties

as a Regional Procurator Fiscal (or for that matter a Sheriff) and nothing which would be inconsistent with the proper investigation and prosecution of crime and the proper administration of justice.

10.33 We entirely accept what Sheriff Allan said to us. Quite apart from the fact that Conroy's original allegations against him were incapable of substantiation, Conroy has now expressly withdrawn those allegations in their entirety. They both agree that they have never been in each other's company. Crawford's evidence remains something of an anomaly, but his powers of description and identification are such that we cannot treat him as a reliable witness to Douglas Allan's alleged presence in "The Blue Oyster". No other witness claimed to have seen him in such a place apart from Walter Easton Smith and Dean Barnes, whose evidence we discuss below. It is impossible to understand fully why Conroy should have chosen to make such damaging allegations against Douglas Allan. He had started to make them before he was interviewed by the police. Thereafter he may have perceived some advantage to himself, as is reflected in the eagerness with which Souter and Brown pursued the allegations. In the end the only answer may be that prominent persons are exposed to the occupational hazard of featuring in the fantasies of disturbed people such as Conroy.

11. OTHER ALLEGATIONS AGAINST SHERIFF DOUGLAS ALLAN

11.1 We have had to investigate other allegations against Douglas Allan and other stories about photographs. Souter told us that when he was investigating Conroy's fraudulent activities he had occasion to visit the premises of John Hudson & Company Limited at Dalkeith. Conroy had been employed there for a time in 1988 as a sales representative. According to Souter he was told that when one of the staff cleaned out the glove compartment of a car which Conroy had used they found black and white photographs of naked men, which photographs were subsequently destroyed. It was clear from the way in which Souter told us about this that he thought that the photographs might be compromising photographs of Douglas Allan. He told us, to our surprise, that he made no further inquiry about what was shown in the photographs with a view to possible identification of the men. In the course of our Inquiry we asked Assistant Chief Constable Power to arrange for steps to be taken for possible witnesses to the finding of these photographs to be traced. This was done by Chief Inspector Harvey, who reported in writing with statements of the witnesses whom he had traced. He reported, under reference to persons who had been employed respectively as a sales manager and a traffic controller by the Company:

"There are differing opinions between Thomson and Scott as to the description of the photographs. Thomson recalls a black and white photograph of a male clad in denim jeans while Scott thought the male was wearing only pants and the photograph to be colour. As to the destruction of the photograph Thomson is under the impression Scott tore it up while Scott assumes Thomson disposed of it. From the statements it is reasonable to assume that there was only one photograph in existence; it was recovered from the Vauxhall Astra motor car, most probably by Thomson; the photograph depicted a male model clad in either jeans or underpants; the photograph was endorsed in handwriting on the front with words similar 'to Stephen with love from' (male's name); the photograph was destroyed or is now missing."

11.2 Harvey's thorough investigation has thus served to demonstrate that Souter was entirely incorrect in his account to us of what he had been told about the photograph. Instead of showing naked men, it showed one partly clad young man. By no stretch of the imagination could it be described as a compromising photograph of a Regional Procurator Fiscal.

11.3 There is another story about a photograph which we have had to investigate. Michael Glen is a man with an extensive record of crimes of dishonesty. We have been supplied with a copy of his criminal record, in which he is correctly described as an habitual fraudster. For a time prior to Conroy's appearance in court Glen and Conroy shared a cell in Saughton Prison. No doubt Conroy spoke to Glen of photographs. Conroy's current partner is Andrew McLaughlin, who stays during the week at his brother Michael's house in Livingston and is employed in Livingston. Andrew McLaughlin has regularly visited Conroy in prison. Glen learned about him at that time. Glen was released from prison before Conroy's appearance in court on 20 July 1992. When we interviewed David Johnston for the purposes of part 12 of this Report he told us that immediately after Conroy's appearance in court he had been in a public house called "Snatchers" in the High Street in Edinburgh and, because of his connection with "The Sun" newspaper had become involved to a limited extent in an attempt which Glen was making by telephone to sell what he claimed to be a photograph showing Douglas Allan to that newspaper. We accordingly invited Glen to attend for interview.

11.4 During the course of the interview Glen told us that there was a photograph, which he had seen, showing Douglas Allan and Stephen Conroy sitting on a settee with a coffee table in front of them. Mark Fitzpatrick was also in the photograph. He did not suggest that the photograph did other than show Douglas Allan and Conroy in a context of some familiarity with each other. He insisted that the person shown in the photograph was Douglas Allan, whom he claimed to have seen in person. Glen said that the photograph belonged to Conroy but was currently in the possession of Andrew McLaughlin, who was “playing silly buggers” because he thought it might have some value and was reluctant to return it to Glen. We asked Glen to attempt to arrange the return of the photograph by Andrew McLaughlin.

11.5 We made contact with Glen some days later to ask him what progress he had made. He told us that he had arranged to go to Livingston at 6pm the following day when he expected Andrew McLaughlin to let him have the photograph without more ado. We arranged to call at noon the day after that at a shop which Glen was having fitted out in Cockburn Street, Edinburgh, so that he could hand the photograph to us. When we went there, he was there, but said that he did not have the photograph because he had gone to the house in Livingston as arranged but found no one there despite having waited for two hours. He said that he had tried telephoning without success. He said that he would continue to make efforts to contact Andrew McLaughlin with a view to recovering the photograph from him. After we had left Glen we telephoned the house and spoke to Michael McLaughlin. He told us that Andrew McLaughlin had gone to Edinburgh for the weekend. We went back and told Glen this, and he said that he would look in various public houses where Andrew McLaughlin might be found. He telephoned one of us the following day to say that he had tried that without success.

11.6 We left the matter for a few days before going to speak to Glen again in Cockburn Street. He had done nothing more, and seemed content that we should pursue the matter ourselves. We did so. We attempted to telephone Andrew McLaughlin at his employers' premises but were told that he could not be found. Then we went to Livingston and found Michael McLaughlin at his house. He was fully co-operative. He said that there had been no contact with Michael Glen of which he was aware apart from a message on his telephone answering machine mentioning the Lord Advocate's Inquiry. He was sure that his brother Andrew would not wish to speak to Michael Glen. He gave us directions to his brother Andrew's place of employment. Just as we were leaving Andrew McLaughlin came to the house in a hurry, having been told that someone from Crown Office had been trying to contact him. This was a reference to our earlier telephone call to his employers. He intended to telephone Crown Office to find out what was wanted. He was fully co-operative with us and readily agreed to be interviewed. He made it clear to us that he knew nothing of any photograph and could not understand why Glen was claiming that he had possession of one. The only photograph he had was one of Conroy alone, which he showed to us.

11.7 We went back to Edinburgh, found Glen, and arranged for him to attend for a further interview the following day. On that day he caused a friend to telephone us to say that he was otherwise engaged, but would telephone to arrange a fresh appointment. When he did not do so we telephoned him a few days later and arranged to see him the following morning in Cockburn Street. When we saw him we pressed him for further information about the photograph. He said that it had come into his possession in a flat in Thistle Street along with other belongings of Conroy and Andrew McLaughlin. He claimed to have shown the photograph to “a chap from ‘The Daily Record’ who verified it was Douglas Allan.” He declined to name this person to us. He said he had not sold the photograph to “The Daily Record” because “it wouldn't come up with the right figure.” He was unable to give an intelligible account of how the photograph had left his possession and had got into Andrew McLaughlin's possession. He insisted that he had made contact with Andrew McLaughlin. We told him we had seen Andrew McLaughlin ourselves and that, since there was nothing to support Glen's

account, Glen appeared to be a liar. He then invited us to leave the premises, and so we left. We have heard nothing more from Glen.

11.8 At one point Glen told us that he believed that Karen Brown, the licensee of “The Tree” public house in Gorgie Road, Edinburgh, had had possession of some of Conroy’s photographs, which might be interesting, but they had been stolen from her car. We have spoken to Karen Brown. She told us that for a time in early 1992 she looked after two bags of clothes, and perhaps other possessions belonging to Andrew McLaughlin, all of which she returned to him by arrangement in about June 1992 in the car-park at Saughton Prison, after he had visited Conroy there. Nothing of his has ever been stolen from her car, though her car was stolen, with its contents which were her property, some months ago. She knew nothing about the existence of allegedly compromising photographs. She resented the way in which Glen had involved her in our Inquiry.

11.9 We have referred to our dealings with Michael Glen at some length because, although he is not the kind of man in whose evidence we would readily have suspended disbelief, he has helped to keep alive the story of the existence of allegedly compromising photographs of Douglas Allan. A recent press report of the supposed existence of such a photograph is, we believe, attributable to Glen’s activities. Our Inquiry failed to bring any such photograph to light. We have no reason to believe that it has ever existed. We are sure that if such a photograph ever had existed it would have been sold to a newspaper long ago.

11.10 Walter Easton Smith (commonly known as Terry Smith) was convicted of an indecent assault on 3 July 1992 and was sentenced to four years’ imprisonment. At an early stage in our Inquiry he was granted interim liberation pending an appeal against his conviction. We propose to say nothing about the circumstances of his conviction or his grounds of appeal. We became aware, however, that he had made public statements both in and out of court which suggested that he might be in possession of information which would be relevant to our Inquiry. We accordingly invited him to attend for interview. There was some delay because the solicitors he had instructed to act for him in connection with his appeal were concerned that it might not be in his best interests for him to be interviewed by us until after his appeal had been disposed of. Eventually, after some discussion, he did attend for interview at a late stage in our Inquiry and before his appeal had been disposed of.

11.11 At interview Smith made a number of claims, principally relating to Douglas Allan. He claimed that he knew Colin Tucker and that he had knowledge of Tucker’s “list”. He said to us that Tucker had told him that the “list” included three presently serving Judges, and gave their names. When we asked him when Tucker had told him about this “list”, he gave contradictory evidence of the date, describing first an occasion when the affairs of Burnett Walker WS were first being investigated in 1988 and second an occasion after Tucker’s trial and the resignation of Lord Dervaird in 1989, by which time of course there were a number of rumours current about Judges, including the Judges in question. For the reasons we have already discussed in part 6 of this Report we are satisfied that Tucker said no such thing to Smith and that Smith was accordingly lying to us. For what it is worth, Smith did not claim more than hearsay knowledge of the homosexuality of any Court of Session Judge.

11.12 As we have said, Smith’s principal claims related to Douglas Allan. He made it clear that he had a grudge against Douglas Allan. Smith told us that after leaving the Army some years ago he took an interest in the welfare of homosexual soldiers and became involved in an organisation called “Rank Outsiders Scotland”. He took to making complaints about the alleged ill-treatment of homosexual soldiers by the Military Police. This was at a time when Douglas Allan was Regional Procurator Fiscal in Edinburgh. According to Smith, Douglas Allan was involved in the devising of a scheme to stop him from lodging complaints. He spoke of having had a heated telephone conversation with Douglas Allan about one particular complaint. According to him, the upshot was that a letter was sent to him from Lothian and Borders Police with the permission of Douglas Allan stating that they would not investigate any further complaints that he made about the police, and accordingly “disqualified him of his legal rights”. We have not

seen this letter. According to Smith, this was humbug on Douglas Allan's part because, at the same time as obstructing attempts to further the interests of homosexuals he himself frequented "The Laughing Duck" and knew Stephen Conroy.

11.13 It is of obvious relevance to mention that while Smith was in Saughton Prison in early 1992 he knew both Stephen Conroy and Michael Glen. He told us that he spoke to Glen quite a lot and occasionally had cups of tea with Conroy, who claimed that he had had a relationship with Douglas Allan, that there was a compromising photograph of Douglas Allan, and that Douglas Allan had done favours for him. Although his current claims about Douglas Allan relate to the period before Douglas Allan became a Sheriff in 1988, we have no evidence that Smith first made these claims until after meeting Conroy in 1992. His claims therefore show every sign of being based on what Conroy told him. When we suggested to him that not only Douglas Allan but also Conroy might now deny that there had ever been a relationship between them, he became disconcerted. He nevertheless persisted in making his claims to us.

11.14 Smith said that he had seen Douglas Allan in "The Laughing Duck" twice in 1988 "with various gay people". Both occasions were in the early evening when the premises were fairly quiet. Smith said that he himself was with a very close friend called Dean Barnes on both occasions. Since Smith obviously knew Douglas Allan by sight for other reasons, there was no point in our showing him photographs.

11.15 A few days after interviewing Smith we interviewed Dean Barnes. Barnes said that Smith had spoken to him in the meantime but had not discussed what he had told us. We did not believe this, as Smith makes a habit of speaking at length to anybody who is prepared to listen to him about his claims relating to Douglas Allan. According to Barnes, he was with Smith in "The Laughing Duck" about four years ago when Smith pointed out a man standing on his own at the bar, speaking only to the barman, and said that he was Douglas Allan. On the second occasion, a few months later, the same man was in the bar by himself sitting at a table. Barnes said that although the premises were more crowded on that occasion he recognised the man when he passed him. Both occasions were late in the evening. Barnes was unable to give any clear description of the man, and when shown the faces of all the men in the photographs in our possession he failed to identify Douglas Allan.

11.16 We continue to be satisfied that Douglas Allan has never been in "The Laughing Duck". Smith was accordingly lying when he told us that he had seen Douglas Allan there. Barnes was also lying when he said that Smith had pointed out a man and said that he was Douglas Allan. The obvious discrepancies in their stories support this view. For what it is worth, however, we should add that Smith expressly stated that all he could say of Douglas Allan's alleged presence in "The Laughing Duck" was: "So what?"

11.17 Smith further claimed that there was a relationship between Douglas Allan and Conroy and was satisfied that there was a photograph of them both in a social setting. He did not claim to have seen it himself, but said that Martin Frutin, a friend of his, told him that Conroy had shown him the photograph. He also told us that Martin Frutin had told him that he had seen Douglas Allan and Conroy together socially in "The Blue Oyster".

11.18 Smith was aware, when he made the claim, that Martin Frutin, the alleged source of the information, was then in Thailand. That did not deter us from taking steps to trace and contact Martin Frutin, and we made a telephone call to him in Bangkok. He was very co-operative. He said that he does not know Douglas Allan. He does know Conroy through having employed him in a shop for about three weeks in 1986. He said that Conroy told him stories about prominent people which were no more than fantasies. He said that it was a lie that he had told Smith that Conroy had shown him a photograph of himself and Douglas Allan. He had never seen such a photograph. He took the opportunity to express indignation about two passages of the Orr Report in which he is mentioned. He described them both as absolute nonsense and was annoyed that nothing had been done to check the truth of these allegations about him before they were included in a police

report. We are satisfied that Smith lied to us in what he said Martin Frutin had told him about Conroy and Douglas Allan.

11.19 We have no doubt that Smith's untruthful claims about Douglas Allan were motivated by malice. We would conclude our discussion of our interview with Smith by mentioning that his solicitor, James Muir of Sneddons, Shotts, came to the interview with Smith and waited outside the room in case Smith wanted to consult him. He also wanted to give us the opportunity to interview him because he had some information which he thought might be relevant to our Inquiry, though we found that it was not. He told us, and said that we could record it as his view, that "what Smith has to say is bullshit". We need say no more.

12. THE ORR REPORT

12.1 In considering the origins of the Orr Report the earliest point to which we have been able to take our investigations is a letter to Tam Dalyell MP by David Johnston dated 26 November 1991. David Johnston is Editor of News and Current Affairs with Radio Forth and has a close working relationship with "The Sun" newspaper. It appears that Johnston chose to write to Tam Dalyell because he knew that he had been critical of the Crown's handling of possible charges against Libyans for the bombing of a Pan Am aircraft over Lockerbie. Johnston had previously received information from a source, whom he has declined to identify, but whom we assume to have been a police officer, who had views to express about Crown decisions taken in a number of cases, particularly fraud cases, and most recently the decision announced in October 1991 that there would be no proceedings against Robert Henderson QC. Johnston thinks that what prompted him to write to Tam Dalyell was his learning of the latter decision. He resists any suggestion that his role in the matter might be described as "sinister". In a letter to us Johnston stated:

"My sole motive in writing was that the stories and rumours contained in my letter had been in wide circulation in various forms for a number of years. Whilst at no time have I ever considered myself to be on a crusade of any kind, through largely coincidence I have been closely involved in most of the stories which, when added together result in the conspiracy theory. I thought it was worth one last attempt to actually try and establish if there was any truth in the claims which were in wide circulation."

12.2 In his letter to Tam Dalyell, Johnston stated that the letter concerned "what I think is a major scandal in Scots life". He then referred to the investigation into the financial affairs of Burnett Walker WS, Colin Tucker's trial on embezzlement charges and subsequent acquittal, the outcome of the prosecution of May and Tucker, the decision not to prosecute Henderson, Conroy's allegations against Douglas Allan, and the outcome of the case against Duncan and others; as we have mentioned, these cases had also been linked in Souter's memorandum of 21 February 1991. After these matters he wrote:

"Now, without even mentioning until now Lord Dervaird and the allegations outlined by Lord Hope in his Editor's briefing, you have all the ingredients of a conspiracy. Or is it just coincidence?"

He concluded with a passage relating to the Lockerbie investigation, which he had mentioned in passing at the beginning of his letter.

12.3 We understand from Johnston that he had lunch with Tam Dalyell after writing his letter. Tam Dalyell told us by telephone that he had received information from sources other than Johnston, but since he has told us nothing about that information or those sources we have to proceed on the basis of what we have been told by Johnston as his only identified source. With Johnston's help Tam Dalyell wrote to Sir William Sutherland, Chief Constable of Lothian and Borders, by letter dated 28 November 1991. In that letter he referred to what he believed to be genuine public concerns, and wrote:

"The basic trouble revolves around a series of Crown Office decisions, on cases investigated by Lothian and Borders Police. The cases to which I refer are those involving Mr Colin Tucker, and what became colloquially known as the "West End Rent Boys Case", the investigation into the financial affairs of Mr Robert Henderson QC, and the allegations made about Sherriff Douglas Allen (*sic*), during the investigation into the business dealings of Mr Stephen Conroy. As you and your senior colleagues know, all these cases have attracted deep disquiet among serious people."

He then elaborated on these various matters, in terms which, to our reading, were derived from, or in any event contained nothing additional to, the terms of Johnston's letter to him. In concluding, he wrote:

"... I do not want the morale of our Scottish Police to be dented by Crown Office decisions, which on the face of it, and on the information available, are hard to understand. I appreciate that this may be a delicately difficult letter to which to reply."

12.4 On receipt of Tam Dalyell's letter Sir William Sutherland wrote, by letter dated 29 November 1991, acknowledging receipt and stating:

"Clearly this is a most delicate area in which to delve and I have asked for a full report on the issues which you discuss. It will, therefore, be about two weeks before I am able to respond more fully and trust that you will be happy with this arrangement."

12.5 This reply did not reveal the steps which it was proposed to take. On receipt of Tam Dalyell's letter the Chief Constable discussed it with Hector Clark, the Deputy Chief Constable. The Chief Constable regarded what Tam Dalyell was saying as very serious and he did not want to deal with it in the normal way. Clark regarded the matter as quite delicate. He said to us that the Chief Constable and he decided to keep it as close to themselves as possible, but in order to make a meaningful judgment and a more meaningful reply they decided to call for a report from a senior officer, prepared in secret. It was not intended that the report should serve any other purpose. The Chief Constable telephoned the Crown Agent, Duncan Lowe, on receipt of Tam Dalyell's letter, outlined its terms and told him what he intended to do.

12.6 Clark spoke to Detective Chief Superintendent William Hiddleston, who was Head of the CID from a few days after the death of Ritchie in August 1991 until his retirement in October 1992. It was decided that the report should be a reference report which would enable the Chief Constable, the Deputy Chief Constable and the three Assistant Chief Constables to reply, whether to Tam Dalyell or anyone else, without going back to the operational officers who were the sources of the information. It was decided that the report would cover the five cases mentioned in Tam Dalyell's letter. According to Hiddleston: "The report itself obviously was to be kept very very tight. We appreciated that talking to operational officers would make them show interest and fuel speculation."

12.7 Hiddleston then decided that Detective Inspector (later Detective Chief Inspector and now Chief Inspector) Roger Orr, stationed at Portobello, was the officer best suited to take on such a task. Hiddleston told Clark when he had made this decision. Hiddleston called Orr to Police Headquarters and briefed him. He told him about the sensitivity of the matter and that "the whole thing had to be kept very tight". He was to be given a room to work from alone. His typing was to be done by a Special Branch typist and thereafter the tape was to be destroyed. The report was to be a unique document and Orr was not to keep a copy. No one else should have sight of it. Interviews were to be carried out on a one-to-one basis. Hiddleston expected Orr to interview each Reporting Officer, but otherwise he left it to Orr to decide whom to interview. He expected all interviews to take place at Police Headquarters. Orr could, of course, telephone those whom he wished to attend for interview. He did not instruct Orr to confine his interviews to police officers but expected him to ingather all necessary information from any suitable source. Orr could, for example, have approached the Justiciary Office if he thought it appropriate. While Hiddleston is not certain that he gave Orr a 14-day deadline, Orr says that he did, and having regard to the Chief Constable's initial reply to Tam Dalyell we take that to be the case.

12.8 According to Orr, he decided that it was a good opportunity to put together in one document rumours that had been circulating for years. As he put it in his report:

"It should be stressed at the outset that the allegations contained in the letter have been the subject of persistent rumour within the Force and the media for some considerable time and against that background the opportunity has been taken not only to supply information suitable to facilitate a reply

to Mr. Dalyell, but also to condense all the known facts and circumstances currently in possession of the police to allow an accurate assessment of the position should any further action be deemed necessary.”

As will be seen, he achieved nothing of the sort.

12.9 According to Orr: “My remit did not allow me to take the matter outside the police so I could only go to the case officers.” Even if that was so, he did not in fact do that in every case. In the case of the “Operation Planet” investigation which resulted in the prosecution of Duncan and others he did indeed speak to the Reporting Officer, Detective Inspector Peter Robertson, then based at West End Police Station, now retired. He also spoke to another officer who had been engaged on the case, Detective Sergeant (now Sergeant) Charles Orr, who is his brother and with whom he has a close relationship. We shall discuss this case fully in part 16 of this Report. The other cases, ie those relating to the prosecution of Tucker in December 1989, May and Tucker in May 1991, the possible prosecution of Robert Henderson QC, and the allegations by Stephen Conroy against Sheriff Douglas Allan, were all cases which had been dealt with by the Fraud Squad. In the case against Tucker the principal Reporting Officer was Detective Inspector Robert Leitch, who retired on 31 December 1988. Leitch completed the investigation before being replaced as Reporting Officer by Detective Sergeant (now Sergeant) Peter Brown. In the case against May and Tucker the Reporting Officer was Detective Inspector (now Superintendent) Peter Wilson. In the proposed case against Henderson the principal Reporting Officer was Detective Inspector (now Detective Chief Inspector) William Crookston. Other reports in that case were made by Detective Sergeant (now Inspector) Donald Stewart and by Detective Inspector (now Inspector) Michael Souter, who also dealt with the Conroy allegations. Of all these officers Orr spoke only to Souter and Brown. Orr informed us that he simply recorded as fact what he was told by these officers and did not subject it to any critical scrutiny.

12.10 The Fraud Squad of Lothian and Borders Police is a small unit to which, until recently, some officers were posted for extensive periods. All the Fraud Squad officers worked in one relatively small room and seem to have taken a close interest in each other's work. There are obvious advantages to this method of working, but one main disadvantage is that an officer who was not in fact engaged on a case could gain a false impression of the circumstances of that case by the acquisition of random pieces of information from the officers engaged on it. Moreover, perhaps because of the nature of their work, some Fraud Squad officers appear to have been prepared to give as much credence to rumour as to actual evidence and to believe in conspiracy theories whether or not supported by evidence. Souter and Brown had a close working relationship and, though we did not find their habits of mind to be identical, they both appeared to us to be officers who would seize on any rumour which would tend to support a conspiracy theory. We also formed a distinct impression, both from speaking to him and from what we were told by others, that Brown has a particular animosity against suspects who are professionally qualified (he described Tucker as “a bogus workman in a suit”), and also an animosity against homosexuals. Professionally qualified homosexuals are thus persons about whom, as it appears to us, Brown would be prepared to entertain grave suspicions, with little prompting. Souter's thinking was similar to Brown's to the extent that he gave credence to the existence of a “list” made by Tucker, and to Conroy's allegations against Douglas Allan.

12.11 Throughout the fortnight during which Orr was working on his report, Souter was confined to his house through ill health. At an early stage Orr went with Brown to Souter's house where they spent about an hour together. It was contrary to Hiddleston's instructions that Orr should have been seeing Souter with Brown present. This was the only contact between Orr and Souter until after Orr had completed his report.

12.12 According to Orr he obtained information from Souter which is reflected in his report. He also of course obtained information from Brown, to whom he frequently spoke during the fortnight. Brown provided him with the Fraud Squad case reports. He was also provided with the memoranda by Few and Souter relating to the Conroy allegations, and with the transcripts of and report on the

interviews of Crawford and Conroy by Irving and Corbett. For some reason Brown denied to us that he gave Orr these latter documents, but we accept Orr's evidence that he did. Orr was also provided with Souter's copy of the Tucker Statement. It is a curiosity that Orr is convinced that the version he saw was in manuscript, although that cannot have been the case. Brown has insisted to us that it was not he who gave Orr the Statement but in Souter's absence no one else but Brown was in a position to give it to Orr. However that may be, Orr unquestionably received and read the Statement.

12.13 While we shall discuss various sections of the Orr Report in appropriate parts of this Report, a number of points can be made now. At no part of the report is there any identification of the persons who gave Orr the information upon which he based his report. Those for whose use the report was intended could not thus appreciate that Orr had received information from such a relatively small number of people. If future reference required to be made to the report, there would be no means of assessing the reliability of the information without going back to the case officers, which was a course which the writing of the report was specifically intended to make unnecessary.

12.14 If there is a unifying theme in the report, it is the suggestion that Robert Henderson QC, by reason of his possession of Tucker's "list", was in effect able to blackmail the Crown and secure that there were either no prosecutions, or no successful prosecutions, of himself and others whom he sought to favour. Yet no disclosure is made in the report of the fact that police officers were in possession of copies of Tucker's Statement, being the only known document which could be identified as the so-called "list". Instead there is a passage in the report in which Orr engages in disingenuous speculation:

"The reporting officer [ie Orr] now believes that the so called 'list' may indeed take the form of a precognition taken from TUCKER for the defence prior to his trial. Other information indicates however, that it is simply a list of names."

Orr has agreed with us that he deliberately suppressed the knowledge that he and other police officers had of Tucker's Statement. According to him, he did so at the request of Souter and Brown. He was not, as we understand it, given any information about the circumstances in which it had come into the possession of the police, and the only explanation which he could give us for not referring to it in the report was that the nature of the document itself suggested that it was something which should not be in the possession of the police. We find this remarkable, because for all that Orr had been told there might be a straightforward explanation which would not reflect discredit on any police officer. In any event the report he was writing was intended only for use by the Chief Constable. Though Orr would deny any intention to mislead the Chief Constable, the Chief Constable was in fact misled as to the extent of the information available to the police until he was told about the Tucker Statement after the beginning of our Inquiry. The Chief Constable promptly disclosed that information to us.

12.15 It will be seen from our discussion of the sections of the Orr Report which relate to the five cases that there are a significant number of factual errors and omissions. More importantly, the assertions that the Crown was sinisterly motivated in the taking of the relevant decisions are not only unsupported by any evidence but are not attributed by Orr to identifiable informants. When we interviewed the officers who had given information to Orr, none of them except Charles Orr would go so far as to advance assertions in the form in which they appear in the Orr Report. We are prepared to assume that Orr compiled the report in good faith from information which was given to him, but the manner of its compilation, without attribution to identifiable informants, made it possible for his informants to feed rumours to him without having to take the responsibility of justifying any belief in them. When we told Orr that we were unable to obtain anything that amounted to full confirmation of the assertions repeated in his report he made it clear to us that he was unhappy at being left thus exposed. His brother also expressed concern about the position in which Orr was left. While we have some sympathy with Orr, because the task he was given was an unenviable one, we also regard him as being a victim of his own working methods. If he had sought

information from more sources than the four officers to whom, in his interviews with us, he has attributed the information contained in his report, and if he had been more rigorous and less uncritical in the testing of rumours against available evidence, he would not have found himself in his present position.

12.16 In any event, Orr must take responsibility for the "conclusion" to his report, the terms of which we have quoted early in this Report. In that conclusion one sentence reads:

"The inference is one of the existence of a well established circle of homosexual persons in Edinburgh with influence in the judiciary who may or may not have exercised that influence but who have formed associations which in themselves lay them open to threats or blackmail."

Any "inference" which is properly so called is drawn from evidence of facts and circumstances. Yet there is no evidence in the Orr Report which would support an inference that there exists a "circle" of homosexual persons in Edinburgh, rather than a number of persons who happen to be homosexuals. Nor is there any evidence which would support an inference that such persons, whether or not a "circle", have "influence in the judiciary". Orr was unable to give us any satisfactory account of the thought-processes which led to his writing this sentence. He told us: "People in these positions lay themselves open to blackmail. It is well documented that homosexuals in positions of influence are open to that." But he had no evidence which would justify him in saying that there were homosexuals in relevant positions of influence. When we pressed him, the furthest he was prepared to go in the identification of any such person was to refer to Conroy's allegations against Sheriff Douglas Allan. These were allegations which, as he must have known, had not been substantiated.

12.17 In the last sentence of the report Orr wrote that the circumstances set out in the report indicated "that homosexuality may well have been used as a means to seriously interfere (*sic*) with the administration of justice". When we pressed him on the use of the words "may well have been used", he denied any intention to express the matter in terms of probability or likelihood. He said:

"My impression was that it may well have been used. I am still justified in saying that the evidence as I had it justified me in saying that homosexuality has been used, subject to further inquiry. I was in possession of evidence that if looked at would support the inference."

He also said, at a later interview:

"I don't think I intended to convey the impression that Judges were being protected by the Crown. The impression I intended to convey was that the Crown's ability to deal with certain matters may have been influenced by allegations of homosexuality."

He repeatedly said to us that in his view further inquiry was required before a conclusion could be reached, as indeed he wrote in the "conclusion" to his Report.

12.18 We have referred to Orr's evidence to us at some length because of the mutually contradictory aspects of it. He seemed to us to be saying at one and the same time that there was evidence to support a conclusion, and that evidence required to be obtained before a conclusion could be reached. He also stated to us that if he had known in detail the various steps taken in each of the cases he would have been inclined to reach a different conclusion. In the result we are quite unable to say by what intelligible process he, an experienced police officer, came to express himself in such a way as to yield the grave allegation which we have to investigate.

12.19 Orr conferred from time to time with Hiddleston while he was working on his report, but not, as we understand it, on any substantive matter. He then produced a draft report for Hiddleston's consideration. As drafted, it contained a recommendation that several people should be interviewed, but since that was not the purpose of the report Hiddleston instructed Orr to remove that passage. That was the only change made to the draft before the final version was prepared. Unknown to Hiddleston, and contrary to his instructions to Orr, Orr showed the draft to Brown, Robertson and his own brother. He also, contrary to Hiddleston's instructions, made two copies of the final version, in addition to the principal,

one of which he kept himself and the other of which he passed to Souter on the latter's return from sick leave in January 1992.

12.20 When the final version had been prepared Hiddleston signed it. It appears to be normal practice in Lothian and Borders Police for officers who are not the authors of reports to sign them and thereby take responsibility for their contents. As Hiddleston put it to us: "I would have to agree that it means taking responsibility without being able to check the contents." Immediately after signing the report Hiddleston personally handed it to the Deputy Chief Constable. Clark read it and handed it to the Chief Constable.

12.21 Clark told us that on his reading of the report there was no evidence to support the so-called "inferences" any more than there was to support what had been written in the letter by Tam Dalyell to the Chief Constable. He said to us:

"'Suggestion, rumour and innuendo' seem to me to be appropriate to fit both documents."

He also said:

"I had a feeling that perhaps there may have been too many coincidences for my liking, but my feelings were not strong enough to enable me to advise the Chief Constable that the matter should be taken further, ie by investigation in the Police Force or by formal referral to the Crown. I have complete and utter faith in the integrity of the Crown and everything I do or say is intended to preserve that integrity."

Clark elaborated on his "feeling" by saying:

"I have a feeling there is a 'list'. I do feel there is something to this talk about lawyers and rent boys."

He said this although he had recently been informed of the existence of the Tucker Statement and was aware of its contents, and otherwise had nothing to go on except Conroy's allegations about Sheriff Douglas Allan.

12.22 Sir William told us that on reading the report he concluded that he was not going to reply to Tam Dalyell with reference to facts because they were not substantiated. There were "rumour, speculation and innuendo, but no hard evidence." The Chief Constable and Deputy Chief Constable were both involved in the drafting of a reply to Tam Dalyell. This letter, dated 13 December 1991, we quote in full:

"I refer to my previous letter dated 29th November in response to your correspondence of 28th November 1991.

The contents of your lengthy letter have been given considerable thought and I have personally and carefully examined the various issues you raised. Indeed, I called for a detailed comprehensive report before deciding on how to respond.

The area you probe is clearly a delicate one. Being aware of your knowledge of how the Scottish Criminal Justice system works, perhaps I do not need to remind you (but I will) that the police have a duty to investigate all criminal matters that come to their notice, either as a result of a direct report or allegation, or as a product of information received.

Such information would include rumour and speculation, some of which is sometimes true but so often false, and facts reported to us by known informants. It is not our practice to ignore reports falling within these categories, but our duty is purely to fully investigate all criminal matters arising from these reports and submit all the evidence gathered to the Crown, through the Regional Procurator Fiscal.

Thereafter, the Crown decide on whether or not to prosecute and the nature and detail of the charges to be preferred. Occasionally, additional enquiries are ordered by them and undertaken by the police. In addition, the Crown may arrange to precognosce the witnesses contained in the police report and, indeed, other persons, and we are not always aware of that process or what extra evidence is gained during it.

In short, we are often unaware of the total case the whole process produces and therefore unable to comment on the final decisions made, even if we

desired to. It is true that sometimes the decision to prosecute or otherwise surprises my officers but traditionally it is accepted and not publicly commented on by us.

You will see, therefore, that the matters you now advance fall into the foregoing framework and it is not possible for me to comment. It is impossible even for me to say publicly that I share your concerns, although I have to admit that I can see the reasons behind your letter.

You will know that I am never reluctant to supply information and explanations to responsible members of the public or elected representatives but I regret that, beyond saying that the cases you mention have all been investigated as far as it is possible for the police to involve themselves, I can assist you no further on this occasion.

I trust you will understand my position."

We do not understand that the Chief Constable would any longer describe the Orr Report as a "detailed comprehensive report". Sir William explained to us that the words "I share your concerns" were intended to mean that he shared a concern that there were rumours, not that he believed there was any substance to them.

12.23 The Chief Constable telephoned the Crown Agent and read over to him the terms of his reply to Tam Dalyell. Duncan Lowe understood that this was for his information rather than his approval.

12.24 We have already discussed the Deputy Chief Constable's "feeling". While he was not of the view that further investigation was called for at that time, he thought that the Orr Report should be kept because if something fresh cropped up in the future which was more substantial than the cases mentioned in the report the report would have afforded a starting point for any subsequent investigation. The Chief Constable told us:

"I don't believe there is any evidence to show there is a high powered conspiracy."

He also said:

"Nothing has been brought to my notice to make me believe I am going to discover evidence about the allegations in the Orr Report."

12.25 After the Chief Constable had written to Tam Dalyell, the Chief Constable, the Deputy Chief Constable and Assistant Chief Constable Richard Prentice agreed that the Orr Report would be kept in a secure cabinet in Prentice's office. He kept it there in a sealed envelope. In August 1992, after there had been a break-in at Police Headquarters, the Chief Constable instructed Prentice to shred the report. The Deputy Chief Constable took a different view, for the reason given above, but Prentice acted on the Chief Constable's instruction and shredded it himself.

12.26 The Chief Constable's instructions to Prentice about the safekeeping and subsequent destruction of the Orr Report were of course given in ignorance of the existence of copies of it. In the meantime at least one person with access to a copy leaked it to the outside world. It is clear that this had been done by the time that Tam Dalyell wrote a letter to the Lord President on 19 August 1992, because that letter is evidently derived, in both language and substance, from the terms of the Orr Report. We have copies of this letter and the Lord President's reply because Tam Dalyell gave copies to the police, and copies of these and the letters between Tam Dalyell and the Chief Constable were sent to the Crown Agent by the Chief Constable on 25 August 1992. It is not our function to discover who was responsible for the leaking, or to whom a copy or copies of the report were leaked, or by what route Tam Dalyell received a copy. These are matters which have been the responsibility of Chief Superintendent Harry Gilmour to investigate in the course of his inquiry.

12.27 The Chief Constable and Deputy Chief Constable both made their positions about the Orr Report clear to us as quoted above. For good measure we should add that Assistant Chief Constable Prentice said:

"I am aware of no evidence that directly or by inference would support the allegation of a conspiracy to pervert the course of justice."

Whoever leaked the report must presumably have been someone who disagreed with the views of these senior officers. His leaking of the report was not only an act of deliberate disloyalty which was calculated to undermine the authority of his superior officers, it must also intentionally have been done with a view to undermining public confidence in the integrity of the Scottish legal system by allowing credence to be given to rumours and allegations which had the apparent stamp of authority by being set out in a report signed by a senior police officer. The Chief Constable himself has publicly described the leaking of the report as “an act of wickedness”.

12.28 While it was appropriate for the Chief Constable to obtain information to enable him to reply to Tam Dalyell, it seems to have occurred to no one who was involved in the preparation of the Orr Report that the rumours which reached Tam Dalyell came from the very persons who gave information to Orr. The result was that all the report achieved was to re-cycle those self-same rumours. The combination of this muddled thinking and the leaking of the report has made it possible for it to be claimed that there must be something in the rumours if there is a police report on them. The Chief Constable’s instruction to shred the Orr Report serves as an eloquent demonstration of its true value.

13. ROBERT HENDERSON QC

13.1 Robert Henderson is, and has at all material times been, a practising Advocate with the rank of Queen's Counsel. This part of our Report is concerned not with his professional conduct but with a decision by the Crown not to prosecute him in respect of certain business transactions not directly connected with his professional practice. Beyond identifying the subject matter of the investigation which preceded this decision as being these business transactions, we intend to give no further information about them except such as may necessarily be inferred from the narrative which follows. This approach is consistent with the terms of our remit and with our previously stated policy of not reporting on prosecution decisions in such a way as would facilitate public debate about their correctness.

13.2 On 5 December 1985 Kenneth Pritchard, the Secretary of the Law Society of Scotland, wrote to the then Lord Advocate, Lord Cameron of Lochbroom QC, reporting on a number of matters which had come to his notice, including certain business transactions in which Robert Henderson had been involved. On 9 December 1985 the Lord Advocate instructed an urgent investigation into these matters and on the same date Duncan Lowe, who was then Deputy Crown Agent, wrote to Douglas Allan, the Regional Procurator Fiscal in Edinburgh, enclosing a copy of Kenneth Pritchard's report. He instructed that the police, who were currently investigating associated matters, be made aware of the allegations contained in the report and asked for a preliminary report which would enable him to reply to Kenneth Pritchard.

13.3 On 28 January 1986 Douglas Allan replied, enclosing an interim report by Detective Inspector (now Detective Chief Inspector) William Crookston. This report, taken with Kenneth Pritchard's report, led the Deputy Crown Agent to write, in a note dated 29 January 1986, to the Lord Advocate:

"The police report when read in conjunction with the earlier material sent by the Law Society makes dismal reading from Mr Henderson's point of view. I would recommend that no attempt should be made to treat him as a case apart, and that the investigation should proceed along normal lines."

13.4 On 3 February 1986 the Lord Advocate gave an instruction that the inquiry should not proceed separately from the remaining inquiries. The investigation of Robert Henderson's business transactions was accordingly conducted as part of a wider investigation affecting other persons as well. We do not propose to discuss further the overall investigation so far as it related to other persons, some of whom were prosecuted and some not. At this stage the investigation of Robert Henderson's business transactions was left in the hands of the police.

13.5 The investigation was continued by Crookston, who conferred from time to time with the Crown Office Fraud Unit. His work was well advanced by the time that he interviewed Robert Henderson at Police Headquarters on 20 February 1987. Crookston was to be transferred to Livingston the next day, and the interview was attended by his successor in the investigation, Detective Sergeant (now Inspector) Donald Stewart. Despite his transfer Crookston went daily to Police Headquarters to help with the work of the Fraud Squad. Stewart was only posted to the Fraud Squad from about September 1986 to about May 1987. While he carried on the investigation himself from February to May 1987, he did so to a large extent on the basis of information he received from Crookston. In May 1987 he submitted to Crown Office a report relating to Robert Henderson and containing three charges.

13.6 On receipt of this report in Crown Office it was decided to allocate the case for further investigation to the Crown Office Fraud Unit, to be investigated along

with other, possibly related, cases. The pressure of work on these cases was such that no material progress was made on the case against Robert Henderson for some time thereafter. On 22 September 1988 the case was allocated for initial precognition by Mrs A Fisher of the Fraud Unit, and on that date Norman McFadyen, Senior Procurator Fiscal Depute in the Fraud Unit, wrote a note of suggested lines of inquiry. In January 1989 the case was reallocated to Mrs A Norton of the Fraud Unit in the absence of Mrs Fisher on maternity leave. On 20 January 1989 the then Reporting Officer, Detective Inspector Michael Souter, submitted a further report with two further charges against Robert Henderson for consideration.

13.7 On 23 February 1989 Norman McFadyen and Mrs Norton made a detailed preliminary report to Crown Counsel reporting on the inquiries to date and recommending that in order to advance the investigation a direction be made under section 51 of the Criminal Justice (Scotland) Act 1987 nominating Norman McFadyen and an officer of Inland Revenue jointly to exercise special powers. On 1 March 1989 the Home Advocate Depute, George Penrose QC (now Lord Penrose), instructed that a direction be sought and that the Law Officers be made aware of the background. On 3 March 1988 Norman McFadyen reported to the Law Officers as instructed. On 8 March 1989 the then Solicitor General, Alan Rodger, gave an instruction narrating the agreement in principle of the then Lord Advocate, Lord Fraser, with what was proposed and that there should be a further report after discussion with the Inland Revenue. On 20 March 1989 Norman McFadyen reported to the Lord Advocate submitting a nomination order for approval. On 21 March 1989 the Lord Advocate gave a direction nominating Norman McFadyen and an officer of Inland Revenue to investigate the affairs of Robert Henderson and another under section 51 of the 1987 Act.

13.8 In the period following the giving of that direction extensive interviews, searches and examinations were carried out. The investigation produced voluminous documentation, which we have seen. Norman McFadyen told us that the quality of the evidence of certain witnesses to essential matters of fact appeared to him to deteriorate during the course of precognition. He discussed the case with Crown Counsel from time to time.

13.9 Meantime there was ill-informed discontent within the police about the attitude of the Crown to this and other cases. On 29 May 1990 Detective Chief Superintendent Charles Boulton wrote a memorandum to Assistant Chief Constable Richard Prentice drawing his attention to certain matters. The memorandum contained the following passage:

“Outstanding Cases at the Crown Office

As will be seen from the Appendix attached to this report, there is a list of outstanding cases which have been submitted by officers of the Fraud Squad over recent years. It will be noted that the worst of these crimes is some two years old, and at best and if normal procedures had followed, even if a warrant was issued tomorrow it would take several more months before a trial commenced. Further, it is well to remember that in most, if not all cases, some of the witnesses concerned would have been interviewed by police officers weeks if not months prior to the submission of the police report. As a consequence of the above it seems that witnesses may well be facing a gap of some 3 years or more before they are called to Court to give evidence. These prevailing circumstances are surely unsatisfactory to all concerned.

I wonder at the apparent necessity for a complete re-investigation of these types of cases by Crown Office on receipt of a police report. It would appear that in not a few cases, the Crown Office will instruct the precognition of most, if not all witnesses before a decision is made on what charges to prosecute, although there may be a number of good reasons why the Crown should feel it necessary to re-examine in depth some aspects of the case, I wonder whether there is an implication that the police are not capable of properly investigating the matter in the first place. It would seem to be a gross waste of time for professional police officers to undertake extensive enquiry merely to find that the witnesses whom they have interviewed are

merely re-interviewed. There must also be a question as to why when the reporting police officer has reached a conclusion on which charges may be preferred, the Crown Office can and not infrequently do reach an entirely different conclusion.

The delay in commencement of proceedings following receipt of a police report can do nothing for the recollection of the witnesses and also makes one wonder whether police should put in the efforts that they do to have a case reported at the earliest opportunity."

The list included the case of Robert Henderson. The passage we have quoted showed no awareness of the part played by Crown Office in criminal investigations, or the work which had been done on this case: see paragraphs 2.6, 2.7 and 2.13 of this Report.

13.10 On 3 June 1990 an article was published in "Scotland on Sunday" which started:

"The Crown Office has spent two years considering what to do with a Fraud Squad report alleging that a member of Scotland's elite Faculty of Advocates has been involved in the commission of an alleged crime. No action has been taken but the case has not been dropped."

The article went on to quote various comments about the supposed delay. We think it reasonable to assume that the writing of the article was prompted by the receipt of information from a police source.

13.11 On 4 June 1990 Norman McFadyen wrote a detailed report to the Lord Advocate setting out the history of the investigation. He stated that as a result of precognition inquiry had been extended into four of Robert Henderson's business transactions which were not part of the police investigation. He explained what steps had been taken in respect of all the business transactions which were under investigation, including the use of the section 51 direction. He stated:

"I would hope that we can re-submit the papers, with the updating summary, statements and recommendations, within the next six weeks."

In his conclusion he referred to the "Scotland on Sunday" article and said:

"It is not, of course, appreciated by the writer that the matter has been the subject of investigation (rather than mere consideration) by Crown Office and that investigation has ranged into a number of areas which simply did not form part of the police investigation."

13.12 Prentice wrote to the Regional Procurator Fiscal, Duncan Lowe, on 12 June 1990, enclosing a copy of Boulton's memorandum. Thereafter there was a telephone conversation between them, in the course of which Duncan Lowe said that there were evidential difficulties, but, if the evidence justified it, Robert Henderson would be prosecuted.

13.13 On 29 June 1990 Duncan Lowe wrote a letter to Prentice, which included the following passage:

"Mr Boulton refers to a number of cases of fraud which are being dealt with either by my own office or by the Fraud Unit at Crown Office and makes a number of observations as to the "delay" in dealing with these cases. In particular, Mr Boulton wonders at "the apparent necessity for a complete re-investigation" of these cases. He also goes on to wonder whether "there is an implication that the police are not capable of properly investigating the matter in the first place". I am surprised at the naivety implicit in these remarks. There is a clear separation of functions in relation to initial investigation and subsequent preparation for court. In addition, however, as I am sure Mr Boulton knows, the Procurator Fiscal has an investigating role—and with the new powers now available that role is an extensive one in fraud cases."

After mentioning the cases in the list in respect of each of which he stated that he had made enquiries, he wrote:

"I fully accept that we do not always carry out perfect and fast work in fraud cases. Equally, police work in this area is occasionally to be found wanting. They are difficult cases which, most of the time, between us we do quite

well—and certainly better than is done in many other countries. I regret being presented with a list in the manner in which it was prepared. In my view, these are matters best dealt with between the individual member of my staff dealing with the case and the individual officer reporting it. That is more constructive in relation to the case itself and for the future.”

Prentice fully accepts what Duncan Lowe said and wrote to him.

13.14 In July 1990 Norman McFadyen made a final report to Crown Counsel, together with the full papers, as he had indicated he would in the report dated 4 June 1990. After extensive reference to and discussion of the witness statements and the productions he concluded with a recommendation that there should be no proceedings against Robert Henderson.

13.15 Crown Counsel who considered the July 1990 report was the Home Advocate Depute, George Penrose, who qualified as a Chartered Accountant before becoming an Advocate. He fully considered the papers and wrote a note to the Lord Advocate dated 21 July 1990 in which he set out his views on the matter at some length. He particularly referred to the quality as well as to the sufficiency of the available evidence. Towards the end of the note he wrote:

“The most one can do is form the rather negative view that there is not evidence of such cogency and reliability as would justify the very serious allegations that would be involved in the case. N.McF. has set out some alternative views on the course which might now be taken. It is AD’s recommendation that the files should be closed on this matter now.”

13.16 George Penrose’s note was seen in the first place by the Solicitor General. He wrote a short note, dated 24 July 1990, to the Lord Advocate, stating in particular:

“I have seen some of the papers over a long period and have discussed the matter on several occasions with N.McF. ... For the reasons set out by the Home AD everything runs into the sand. I entirely agree with his assessment, and indeed the fact that the Home AD of all people has reached that view confirms me in my own conclusion that no more can be done.”

13.17 By note dated 25 July 1990 the Lord Advocate instructed that no further investigation was to be carried out and that Norman McFadyen’s section 51 nomination was withdrawn. He also instructed that there was no need to intimate the decision to anyone. He did not go so far as to instruct that there were to be no proceedings against Robert Henderson. This instruction left open the possibility that further evidence might, in theory at least, emerge which would enable the decision not to prosecute Robert Henderson to be reconsidered. Intimation of a decision not to prosecute him would have barred the Crown from future proceedings in respect of the same business transactions, regardless of any change of circumstances.

13.18 There was renewed press interest in the investigation in May 1991. Because of the passage of time and this press interest it became necessary to consider what further steps were required. The Deputy Crown Agent, Alfred Vannet, wrote a note to the Law Officers, dated 10 May 1991, summarising the position and setting out the options, including the option that a decision now be taken that there would be no proceedings against Robert Henderson. The Solicitor General read the note and on 13 May 1991 wrote a note of his own to the Lord Advocate stating that there seemed to him to be two issues. The first was whether the case should be marked “no pro”, in respect of which he said that the answer should be “yes”. The second related to the handling of any press inquiries, which he thought more complicated. Duncan Lowe, the Crown Agent, also wrote a note to the Lord Advocate, dated 15 May 1991, about the handling of press inquiries. Thereafter a draft press line was worked up, and a decision was taken, particularly following advice by Norman McFadyen to the Lord Advocate in a note dated 3 October 1991, to write to the Chief Constable.

13.19 Norman McFadyen accordingly wrote to the Chief Constable by letter dated 23 October 1991 advising him that Crown Counsel had instructed no criminal proceedings in respect of the matter. He referred specifically to reports by Souter in respect of the matter, “which was thereafter the subject of

investigation by this Unit (ie the Fraud Unit) under nomination granted by the Lord Advocate in terms of the Criminal Justice (Scotland) Act 1987.” The letter continued:

“Although Crown Counsel concluded some time ago that the evidence did not justify criminal proceedings and the then Head of the Fraud Squad was advised informally of this, Crown Counsel were unwilling to give a formal and final instruction in case any relevant further matter (which might strengthen the case) should come to light. Nothing further has been revealed and in view of time that has now passed Crown Counsel have decided that it is necessary to draw a line under this investigation and have given a final instruction.”

The letter went on to refer to press interest and the Lord Advocate's view that:

“where a criminal investigation is carried out into a particular person and the existence of that investigation is not publicly known it would be wholly improper for the Crown to disclose that a decision had been taken, after investigation, not to prosecute that person.”

There was in fact publicity about the decision reflected in the letter after it was sent, although no public announcement of the decision was made by Crown Office. We think it reasonable to assume that a police officer was responsible for the publicity.

13.20 The Orr Report refers to Norman McFadyen's letter, but makes no reference to the fact that in addition to the police investigation there had, as stated in the letter, been investigation by the Crown Office, using section 51 powers, before the decision was taken not to prosecute Robert Henderson. After referring to the letter, the Orr Report states:

“It is an understatement to say that this instruction was met with dismay by those Police Officers involved in the enquiry, and, having read the relevant reports it is the enquiry officers opinion that they represent a strong case against HENDERSON.”

Orr did not speak to Crookston or Stewart. Had he done so, he would have discovered that, as they each told us, neither of these officers would suggest that there was any improper motivation in the decision not to prosecute Robert Henderson. Crookston would go no further than to express the kind of reservation about lawyers investigating an allegation against a lawyer that might be expressed about the police investigating an allegation against a police officer. Stewart said that he had no reaction whatsoever to the decision.

13.21 So far as we can make out, what is written in this part of the Orr Report is principally derived from information given to Orr by Souter and Brown. Of these two, only Souter has been prepared to repeat to us the views which were apparently expressed to Orr. The report states:

“It is difficult to pinpoint any definite reason for the non prosecution of HENDERSON other than the official Crown Office reason. The rumour in circulation however, is that HENDERSON is in possession of the 'list', or a copy of same originally referred to in the TUCKER embezzlement inquiries of 1989 ... and as such is in a position to threaten to expose prominent figures and by such means influence the course of justice.”

Souter said to us that he speculated to Orr that Robert Henderson “may have been party to information which may have been embarrassing to people”. He described the conversation, which it will be recalled took place at his house with Brown present, as “cops talking together, speculating, saying ‘what if’, ‘maybe’, ‘perhaps’, ‘could this have happened?’”. He said: “It may have been that Henderson got information from defending Tucker which would have been detrimental to the Crown Office if it got out.” Souter was very insistent to us that this was no more than speculation. He had, of course, read and kept in his possession a copy of the Tucker Statement, which he agreed could not be “detrimental to the Crown Office” for reasons which we have already discussed, but he expressed to us a belief in the possibility that there was in addition a further “list”. He is the only operational police officer who has expressed such a belief to us. He was unable to give us any reason for it.

13.22 Not only was Robert Henderson not in a position effectively to blackmail the Crown, he had no influence whatever on the investigation into his business transactions. A thorough investigation was carried out by the Crown Office Fraud Unit, in accordance with the instructions of Crown Counsel, well after Robert Henderson was supposedly in possession of a "list". Souter seems to have been unaware of any investigation after his own, which is perhaps one reason why no mention is made of the Crown Office investigation in the Orr Report. Any improperly motivated conspiracy not to prosecute Robert Henderson would have had to extend at least to the Lord Advocate, the Solicitor General, the Home Advocate Depute and Norman MacFadyen, and probably also the Crown Agent and the Deputy Crown Agent. We have discovered no evidence whatever which would support an allegation that there was such a conspiracy. On the contrary, we have discovered ample evidence that the decision not to prosecute Robert Henderson was taken after an exceptionally thorough investigation and after anxious consideration, by all the most senior people in the prosecution system, of the evidence produced by that investigation.

14. *HMA v ARTHUR COLIN TUCKER*

14.1 Arthur Colin Tucker (usually called Colin Tucker) was a solicitor and was for some time a partner in the firm of Burnett Walker WS. Ian Walker, who had a long-standing connection with the firm, was latterly its senior partner. He committed suicide on 4 June 1988. Colin Tucker stood trial in the High Court in Edinburgh in December 1989 on an indictment containing two charges of embezzlement of sums amounting respectively to £19,364.90 and £28,012.89 from clients of the firm. His trial started on 11 December 1989 and on 19 December 1989 he was acquitted by the jury. On 3 October 1990 the Scottish Solicitors Discipline Tribunal found Colin Tucker guilty of professional misconduct in that he engaged upon a course of conduct calculated to bring the profession of solicitors into disrepute and in particular that being the Attorney of a client, he was in gross breach of and grossly abused his position of trust by appropriating to the use of another, funds belonging to that client and caused another client to sign a receipt purporting to acknowledge that she had received from his firm the sum of £5,000, the truth being as he well knew that the said client had received no such sum and that the sum had been appropriated to the use of another, and further in respect of his breach of Rule 6 and Rule 8(1) of the Solicitors (Scotland) Accounts Rules 1981 and 1986; and ordered that his name be struck off the Roll of Solicitors in Scotland. Since there were other partners in the firm of Burnett Walker WS, we should make it clear that there is no suggestion that any of them had any involvement in the matters which led to Ian Walker's suicide or the prosecution of or disciplinary proceedings against Colin Tucker.

14.2 Leslie Cumming, the Chief Accountant of the Law Society of Scotland, has the responsibility for ensuring that the books of solicitors' firms are inspected at regular intervals. On 27 April 1988, following authorisation by the Law Society's Guarantee Fund Committee, two of his staff began an inspection of the books of Burnett Walker. The inspection included the scrutiny of clients' ledger cards and the listing of balances. On 28 April 1988 Leslie Cumming received information from his staff about their initial findings and attended the firm's office himself. He interviewed Tucker about certain entries in ledger cards which did not appear to make sense. Tucker said that Walker had been involved in most of the work although he himself had been involved in specific transactions. The inspection continued on 29 April 1988. On 2 May 1988 Leslie Cumming wrote a letter to Burnett Walker detailing all the discrepancies which had been found and seeking explanations for them. On 6 May 1988 Tucker gave information to Leslie Cumming's staff which led to a decision that all Powers of Attorney handled by Burnett Walker should be examined. A Power of Attorney enables the Attorney, normally a solicitor, to transfer a client's funds without reference to the client. They made further visits to the firm's office on 9, 11 and 12 May 1988. On the basis of the information thus made available to him Leslie Cumming attended Burnett Walker's office together with one of his staff on 17 May 1988 and carried out a further inspection of further client ledger accounts. Tucker was interviewed and stated that certain sums of money belonging to an executry operated under a Power of Attorney by him had been transferred on his instructions either to accounts in the name of Ian Walker, or paid in cash to Walker, or transferred by Walker to his own account. Walker was interviewed and denied any knowledge or involvement, referring to Tucker as being the partner responsible for the administration of the account.

14.3 Leslie Cumming reported these matters to the Committee at a meeting held on 20 May 1988, when it was agreed that the police should be notified and that arrangements should be made to have a Judicial Factor appointed to oversee the

business of Burnett Walker. Thereafter the police were duly notified. So far as we can establish, the police were not notified directly, but through the then Regional Procurator Fiscal, Douglas Allan. Detective Chief Inspector Thomas Hepburn, now retired, the then head of the Fraud Squad, told us that that would have been the usual course. Leslie Cumming told us that the Law Society practice is to report to Crown Office, to the Procurator Fiscal or to the police, depending on the circumstances, if an inspection discloses evidence of criminality. It would seem to be consistent with normal practice that Douglas Allan should have been informed of the matter, even though the police had been asked to investigate, and thereafter should have taken a general interest in the investigation. It is thus clear that Douglas Allan was aware from an early stage that the police were investigating the matter.

14.4 When the matter was notified to the police Hepburn instructed Detective Inspector Michael Souter to make an enquiry into an allegation of the embezzlement of clients' funds which had occurred at the premises of Burnett Walker. Souter and Detective Constable (now Sergeant) Brian Reynolds had a preliminary meeting with Leslie Cumming at his office. According to Souter he was surprised to learn that no documents had yet been taken from Burnett Walker's office. That evening he and Reynolds went to Tucker's home address to obtain his assistance but did not find him there. The next day, which we believe to have been 26 May 1988, Souter reported on his enquiries to Hepburn, who decided to give a different job to Souter and Reynolds and to put Detective Inspector Robert Leitch in charge of the investigation. Souter was busy on another inquiry, Leitch was due to retire on 31 December 1988, and it seems to have been thought that the likely time-scale of the investigation would allow it to be completed during his remaining months of service. Leitch told us that Hepburn told him to keep the inquiry tight (ie restricted to the central issues), and Hepburn confirmed to us that that would be consistent with his general policy. On 26 May 1988 Leitch had a preliminary meeting with Leslie Cumming. They had a general discussion and it was agreed that several other meetings would be necessary. In the days which followed that preliminary meeting Leitch undertook some inquiries but left it to Leslie Cumming to carry on the main investigation at Burnett Walker's office.

14.5 Leslie Cumming made a further visit to Burnett Walker's office on 27 May 1988 and reviewed a number of outstanding matters. He spoke to both Walker and Tucker. Later that day Tucker and his solicitor, David Blair-Wilson called at Leslie Cumming's office and told him that Tucker would not be helping any more with the investigation as there was a possibility of criminal proceedings. Leslie Cumming told us that Walker had indicated to him that he would be able to clear any shortfall in his clients' funds from his own resources. He also understood that Walker and Tucker were proposing to sell Burnett Walker's office and business. The Law Society would have been happy for another firm to take over. In the meantime no immediate steps were taken to have a Judicial Factor appointed. On 3 June 1988 Leslie Cumming attempted to see Walker at Burnett Walker's office to discuss the position, but despite two visits did not find him there. He left word with Tucker that he needed to see Walker urgently. He took the view that at that point he had sufficient information to entitle him to demand that funds be introduced to make good the losses of clients' funds.

14.6 On 4 June 1988 Ian Walker committed suicide. There had been some publicity immediately before his death about the police investigation into the affairs of Burnett Walker. The view has been expressed to us that that publicity led to his suicide, but we think it more likely that it was because he had realised that the Law Society inspection of his firm's books had by then disclosed irrefutable evidence of his dishonesty. On 6 June 1988 Leslie Cumming and one of his staff attended Burnett Walker's office and searched the room and desk previously used by Walker. From an examination of various documents a statement of funds withdrawn from client bank accounts and investment funds and applied to Walker's bank accounts was prepared. A calculation was made of the total sum not accounted for to clients or applied to personal bank or expense accounts.

14.7 We have narrated the Law Society inspection at some length in order to show that prior to 10 June 1988 Burnett Walker's books had already been extensively

examined, substantial progress had been made in establishing the extent of Walker's dishonesty, and Tucker had co-operated by admitting the part he had played in certain transactions. We would also emphasise that Leitch was content to leave the investigation in the hands of Leslie Cumming and his staff, who had far more experience than he did in the inspection of solicitors' books.

14.8 As we have already indicated, we believe that Douglas Allan must have been aware of the investigation from about the time when the police first became involved. He no longer has a clear recollection of his subsequent involvement, although he can say that it was only incidental. He remembers that Fraud Squad officers would drop in from time to time to see him. Leitch told us that very early in his investigation he found a note on his desk saying that Douglas Allan had asked to see him, so he went to see him and Douglas Allan asked him to keep him up to date as the investigation progressed. He thought it unusual for the Regional Procurator Fiscal himself to be in touch, but had no difficulty in accepting that interest of this kind would be appropriate when evidence was emerging of the dishonesty of a prominent lawyer such as Ian Walker. Such interest would be particularly understandable if, as may have been the case, Leitch went to see Douglas Allan in the period after Walker's death. In fact, we can say from our own direct experience that such interest by a Regional Procurator Fiscal would be quite usual.

14.9 On 10 June 1988 anonymous information reached Leitch to the effect that documents relevant to his investigation could be found in the boot of Tucker's motor car. Leitch took steps to discover where the car was. Detective Sergeant Isabel Nicol obtained a search warrant from a Justice of the Peace. The search warrant was technically inept because it was granted on the basis that the documents in the car had been stolen from Burnett Walker's office, and Tucker could hardly steal documents from his own office. Be that as it may, Leitch and Isabel Nicol went with the warrant to Burnett Walker's office, saw Tucker and told him that the warrant had been granted. He made a telephone call to his solicitor, David Blair-Wilson, and then went with the police officers to his car and handed over to them a quantity of documents which were in its boot. The police officers took the documents to Police Headquarters. Shortly afterwards David Blair-Wilson telephoned Leitch and said, as noted by Leitch:

"Tucker says that the documents found in his car now means that the police have everything that can be related to him in the inquiry."

The documents were indeed used as productions in the subsequent prosecution of Tucker.

14.10 It is not possible to establish with confidence what contact there was between Leitch and Douglas Allan on 10 June 1988, because neither of them appears to have attached any particular significance to such contact on that date. It seems likely, however, that Leitch did telephone Douglas Allan to tell him about the granting of the search warrant and the recovery of documents from Tucker's car, as Douglas Allan does have a recollection of a discussion about documents which had been removed from Burnett Walker's office and about a search warrant. We also think it likely that there was discussion between them as to whether steps should be taken to search Burnett Walker's office, and that Douglas Allan said that he did not require such a search to be carried out. This would make sense when related to the facts that, as both Leitch and Douglas Allan were aware, the Law Society inspection of Burnett Walker's books was already well advanced, Walker, whose dishonesty was principally responsible for the losses of clients' funds, was dead, and there was no reason to suppose that after the recovery of documents from Tucker's car there was anything more to discover about Tucker's part in the movement of funds. Both Leitch and Isabel Nicol have made it clear to us that they did not regard Douglas Allan as being obstructive in any way when the question of a search of Burnett Walker's office was under consideration, and that they have no reason to believe that a search of Burnett Walker's office would have yielded documents which were relevant to their investigation or of importance to the subsequent prosecution of Tucker.

14.11 Although the officers who were engaged in the investigation were satisfied with the day's events, other members of the Fraud Squad took a somewhat

different view. It will be recalled that Souter and Reynolds were the police officers first involved in the inquiry, though by 10 June 1988 they had not been involved for some time and were not abreast of the work which had been done, particularly the results of the Law Society's inspection. Nevertheless when Leitch and Isabel Nicol returned to the Fraud Squad's Office at Police Headquarters with the documents recovered from Tucker's car Souter and Reynolds took an interest in what had happened and jumped to certain conclusions. Of the two, we mention Reynolds first. Reynolds insisted to us at two interviews that on 10 June 1988 he understood that Tucker was under arrest and that he was released after a telephone call had been made by Leitch and Souter to Douglas Allan. He felt critical of the decision to release Tucker because "he was obviously trying to dispose of evidence". We reject Reynolds's evidence because there is no question of Tucker's having been under arrest on that date, nor was his arrest even considered until a petition warrant was issued by the Procurator Fiscal on 12 December 1988.

14.12 Souter's evidence is of more importance because of the view which he subsequently took of the day's events. He told us that he thought that Leitch's inactivity in the period prior to 10 June 1988 was strange, and related it to an instruction Leitch had received from the Procurator Fiscal. He was aware that the Law Society inspection was still under way and was not able to give us any reason why that should not have been regarded as a satisfactory means of examining Burnett Walker's books for evidence of dishonesty. He told us that when Leitch and Isabel Nicol came back to the office with the documents he asked Leitch whether Tucker had been arrested and when Leitch said that he had not he suggested that he should have been. He told us that he felt that it was wrong that Tucker should still have access to his office. He said that he asked Leitch whether the office had been searched and Leitch said that he had been in touch with the Procurator Fiscal and was told that he should proceed as he had done. According to Souter he felt that the police were in an exposed position and that he told Leitch that he should get corroboration that that was what he had been told to do. Accordingly he telephoned the Procurator Fiscal's Office, asked for Douglas Allan, and gave the telephone to Leitch. Leitch then spoke to Douglas Allan who reiterated what he had said to Leitch about not searching Burnett Walker's office. This incident does not seem to have stuck in Leitch's memory as it has in Souter's, nor does Hepburn have any recollection of it, even though he shared an office with Leitch at the time.

14.13 Souter told us that he felt that by instructing Leitch to leave the inquiry to the Law Society and not to search the office himself Douglas Allan was somehow keeping control of the inquiry, and that there was something not quite right about it, "not that it was wrong, but that it wasn't right". We pressed him about this and he repeatedly said that he just had a feeling that there was something wrong, a feeling of disquiet, a doubt, but no reason to think anything was drastically wrong. He was able to give us no rational explanation for this feeling. Since Souter's thoughts and behaviour on that day were irrational, and since he was not himself engaged on the inquiry which culminated in Tucker's prosecution, it would be easy to dismiss Souter's "feeling" as of no consequence were it not for the link which he subsequently made between that day's events and Conroy's allegations against Douglas Allan, which we have already discussed. Since those allegations were untruthful, and have been expressly withdrawn by Conroy, we are left with Souter's "feeling" as the only basis for his making a link between various cases in the way which came to be reflected in the Orr Report.

14.14 For what the matter is worth, Detective Sergeant (now Sergeant) Peter Brown did not tell us that he thought that anything untoward had happened after 10 June 1988, although he became the Reporting Officer in the case after Leitch's retirement. He told us that he had no evidence of documents being destroyed. "Others were closer to the inquiry at the time". We understand him to have referred to the officers who were engaged on the inquiry rather than to Souter.

14.15 We can give a briefer summary of events up to the time of the trial in December 1989. On 15 June 1988 Leslie Cumming was appointed interim Judicial Factor upon the estates of the firm of Burnett Walker and the partners in the firm. The effect of this appointment was to put all the firm's property and assets under

his safekeeping for the time being. There continued to be liaison between him and Leitch and he continued to help Leitch with the police investigation. Leitch completed his investigation and made a report to the Procurator Fiscal at Edinburgh. On 12 December 1988 a petition warrant was obtained and issued by the Procurator Fiscal for Tucker's arrest. The warrant was executed on 20 December 1988, when Tucker appeared at Edinburgh Sheriff Court, was committed for further examination, and was granted bail. Douglas Allan had become Sheriff at Lanark on 1 August 1988, so that by December 1988 the Regional Procurator Fiscal was Duncan Lowe. He instructed that bail should not be opposed. Brown told us that he disagreed with that instruction because he regarded Tucker as "a bogus workman in a suit", but he did not suggest to us that there was anything sinister in the instruction.

14.16 Thereafter the case was allocated to Isabel Clark, Procurator Fiscal Depute at Edinburgh, for precognition. Brown became the Reporting Officer after Leitch's retirement on 31 December 1988 and attended to a number of minor inquiries instructed by her. On 4 April 1989 the precognition was reported to Crown Office. Crown Counsel referred the case to Norman McFadyen, Assistant Solicitor in the Fraud Unit, requesting his views as to sufficiency of evidence, forum of proceedings, and draft charges. Norman McFadyen returned the case on 15 June 1989 with advice on these matters. On 23 June 1989 Crown Counsel referred the case to the then Solicitor General, Alan Rodger, for a decision on whether or not proceedings were to be taken against Tucker and if proceedings were to be taken, the forum thereof. Norman McFadyen met the Solicitor General over the period from 26 June to 6 July 1989, and on the latter date referred the case to the Crown Office High Court Unit, confirming that the Solicitor General had instructed High Court proceedings. A draft indictment was prepared in the High Court Unit and on 1 November 1989 it was sent to the Procurator Fiscal for revision with instructions as to further precognition work which was required. On 3 November 1989, after a discussion by telephone about the terms of the draft indictment, the indictment was printed. On 6 November 1989 the signed indictment was sent to the Procurator Fiscal, Edinburgh, for service. Tucker was then indicted for a sitting of the High Court at Edinburgh on 11 December 1989.

14.17 In the meantime preparations were being made for Tucker's defence. We have already given an account of these preparations in the course of our discussion of Tucker's Statement in part 6 of this Report. On 4 December 1989 there were received at Crown Office a notice by Tucker that he intended to incriminate Ian Walker (deceased), and a list of defence witnesses. In the period immediately prior to the trial a Joint Minute of Admissions was entered into which was in extensive terms and made it unnecessary for substantial parts of the Crown evidence to be led. It appears that Brown, the Reporting Officer, was not aware of this Joint Minute or of its consequences in terms of reducing the evidence which the Crown would require to lead.

14.18 The trial began on 11 December 1989 before Lord McCluskey and a jury. The Advocate Depute was David Burns (now QC). Tucker's counsel were Robert Henderson QC and John Watt (now QC), and his solicitor was David Blair-Wilson. Isabel Clark was not in attendance on the Advocate Depute because she was absent from work through ill-health. Nothing of particular note happened during the leading of evidence for the Crown. Lord McCluskey indicated to us that in his view there was a degree of confusion because the two charges were in the wrong chronological order and by leading evidence in the chronological order in which the charges appeared in the indictment the evidence was not as clear to the jury as it might have been. Indeed he made that point in his charge to the jury. Brown told us that he was surprised that he was the only police officer who was called to give evidence, although several had been cited to attend as potential witnesses, and that all he was asked to speak to was a suicide note left by Walker, part of which he was asked to read out to the jury. Brown seems to have concluded from this that the presentation of the Crown's case was defective, but this view was reached in ignorance of the terms of the Joint Minute of Admissions and of the matters which were being challenged by the defence as the evidence progressed. Brown was in fact called at the request of the defence because

they wanted part of the suicide note to be read out and Brown was a convenient witness for that purpose. Unknown to Brown, in addition to having entered into the Joint Minute of Admissions, the defence did not seek to dispute evidence that Tucker had played a part in the movement of clients' funds.

14.19 On any view of the matter by the close of the Crown case the Crown had either secured admissions or had led evidence sufficient to entitle the jury to find Tucker guilty of the two charges of embezzlement, apart from two minor matters in respect of which the Advocate Depute moved to amend the indictment at the close of the Crown case. There was a defence submission to the court that the accused had no case to answer, but this submission was resisted by the Crown and was repelled by Lord McCluskey. Thereafter defence evidence was led. It had not been apparent to either the Judge or the Advocate Depute up to that point what defence to the charges Tucker might have. His defence, such as it was, emerged slowly in the course of his evidence. He did not dispute that clients' money had been taken, but said that it had gone to Walker, and that he had only participated because Walker had some hold over him. He said in cross-examination that he did not tell anyone because he was frightened. When asked what made him frightened he said: "Mr Walker had some hold over me." When questioned by Lord McCluskey at the end of his cross-examination he said that he did what he did partly because Walker had some hold over him. It was only at the end of a brief re-examination that he said that the hold over him was that Walker had personal information about him, that he was homosexual.

14.20 In the course of his address to the jury the Advocate Depute argued that what Tucker had said was a "hold" over him did not amount to a "hold" at all. This was not disputed by Robert Henderson, who concentrated, in his address to the jury, on the major part which Walker had played in the embezzlement of clients' funds. In his charge to the jury Lord McCluskey gave a direction that Tucker's evidence did not amount to a defence of coercion, but since Tucker had asserted that he had no intention to make off with the money and was getting nothing out of it for himself, it was for the jury to decide whether he had the guilty intent necessary for the crime of embezzlement. After retiring to consider their verdict the jury returned majority verdicts of not guilty on both charges. Following the acquittal Tucker was discharged. John Watt and David Blair-Wilson both told us that just as Tucker was leaving court two middle-aged female jurors came up to him. One of them touched Tucker on the arm and said: "You'll be all right now", or "It's all right, son, you're all right now".

14.21 No one who was present in court when Tucker was acquitted by verdict of the jury on 19 December 1989 is of the view that that acquittal was achieved otherwise than by the votes of members of the jury who had heard the evidence and the addresses of counsel and had been charged by the Judge as to the applicable law. It is not for us to express any view as to whether the verdict was perverse. We are quite satisfied that it was not achieved by any improper means. Even though talk was current by then of Tucker's so-called "list", we find it impossible to see how that could have influenced the jury. The Crown had done all that was required in the way of leading evidence and it had resisted a submission that there was no case to answer. For that matter the Judge had repelled that submission. No one has suggested to us that either Lord McCluskey or David Burns had any motive other than a desire to play the usual parts of Judge and Advocate Depute respectively in a trial conducted in open court.

14.22 We have already commented on Orr's failure to speak to Leitch while working on his report. In his report he wrote that the decision not to search Burnett Walker's office "effectively allowed TUCKER to continue working and to attempt to defeat the ends of justice by removing evidence beyond the reach of the investigators". There is no evidence whatever to support this statement and indeed Leitch and Isabel Nicol have both said the opposite. For that matter, Brown, who became the Reporting Officer at a later stage, has not spoken to us in terms which would suggest that that is his view. Orr would of course insist that the information which was reflected in this part of his report was derived from both Souter and Brown, but we have only Souter's evidence about his "feeling" to assist us, and we have already discussed that. The Orr Report states that "it was alleged

at the time that TUCKER'S acquittal had been facilitated by his possession of the 'list' and the potentially compromising nature of its content which would be exposed should he be found guilty". Any such allegation must have been made without any reference to the actual events of the trial and to the jury's verdict. We have said all that we need to say in part 6 of this Report about Tucker's so-called "list" and about Tucker's own attitude to the use of information in his possession. Neither Souter nor Brown has professed any belief in the possibility that Tucker was acquitted for any improper reason, with the result that Orr appears to have repeated an allegation which was unattributable as well as incapable of substantiation. Orr's report has also repeated a number of criticisms of the conduct of the prosecution by the Crown, but since not one single person has suggested that the Advocate Depute was improperly motivated we need say no more about these criticisms.

15. *HMA v GORDON MICHAEL MAY AND ARTHUR COLIN TUCKER*

15.1 On 8 May 1991 the trial of May and Tucker began at the High Court in Dunfermline on an indictment containing two charges. The first charge libelled that between 1 January and 31 December 1987 May, while employed as a director of a company known as Teague Homes (Scotland) Limited and Tucker, while employed as a partner in the firm of Burnett Walker, WS, and while acting as solicitor for that Company, having formed a criminal purpose to obtain money due to the Company in respect of the sale of properties in a building development by the Company, in pursuance of said criminal purpose did certain acts and did thus embezzle £213,679. The second charge libelled that between 1 June and 31 July 1987 May, while employed as a director of the company, did certain acts and thus obtained £6,753.38 by fraud. On 15 May 1991 the trial came to an end when the Crown withdrew the libel against both accused, thus dropping the charges against them, and the jury, on the direction of the Judge, returned unanimous verdicts of not guilty.

15.2 May was a director of Teague Homes (Scotland) Limited for a time until he resigned with effect from 27 January 1988. The other directors were four brothers called Teague. Tucker, as a partner in Burnett Walker, WS, acted as solicitor to the Company and as its secretary for a period until about February 1988. The report and consolidated financial statements of the Company and a subsidiary for the period from 1 January 1987 to 30 June 1988 were prepared by P Spyrou & Co, Certified Accountants, London, as the Company's auditors. The Directors' Report, dated 8 November 1988, was signed by James Francis Teague, one of the directors, as secretary of the Company. The consolidated profit and loss account and consolidated balance sheet, both dated 8 November 1988, were signed by Patrick Joseph Teague and Daniel Martin Teague, two of the directors. The notes to the financial statements for the period from 1 January 1987 to 30 June 1988 included the following note:

“During the period the directors discovered that Mr G. May misappropriated £245,439 from the company's funds in collusion with one of the company's legal advisers and in contravention of the Companies Act 1985 provisions. After taking legal advice on the matter it was resolved by the directors that they should purchase outright the shareholding of Mr May at £40,000, which was considered to be a fair valuation of the shareholding. The balance of the funds misappropriated is written off as an extraordinary charge.”

Under the heading “Extraordinary Charge” there appeared “Defalcation by Director—£205,439”. The Report and Consolidated Financial Statements were registered on 28 November 1988 at the office for the registration of companies in England and Wales.

15.3 The alleged defalcation was not reported by Teague Homes (Scotland) Limited to the police. The principal directors of the Company were the brothers James and Patrick Teague, and it appears that they took the view that the loss should be borne by the Company in the manner indicated in the note quoted above. In January 1990 there were reports in the press of the alleged defalcation derived from the note quoted above. At that time May was abroad. On 19 April 1990 the Crown received information about another matter relating to May and it was decided to investigate the allegation that he had misappropriated money from the Company. Norman McFadyen, Assistant Solicitor in the Crown Office Fraud Unit, asked Detective Chief Inspector (now Superintendent) Peter Wilson of the Fraud Squad to attend a meeting at Crown Office. The Home Advocate Depute, George Penrose QC (now Lord Penrose), was also, we believe, present

at the meeting. Wilson was instructed at that stage to make a limited enquiry into the allegation, but not to make a direct approach to the Company.

15.4 The information available to the Crown was sufficient for a petition warrant for May's arrest to be obtained by the Procurator Fiscal at Edinburgh on 4 May 1990. On 8 May 1990 Wilson arrested May at Gatwick Airport on his return to Britain and took him to Edinburgh. On 9 May 1990 May appeared on petition at Edinburgh Sheriff Court on a charge of embezzlement of £210,000. He was committed for further examination and remanded in custody. On 16 May 1990 he was fully committed and bail was allowed subject to certain conditions. Subsequent procedure relating to the allowance of bail is not relevant for present purposes.

15.5 In the period after May's committal there was a full investigation of the case. Wilson was the Reporting Officer in respect of the police side of the investigation while the precognition was carried out by Isabel Clark, Procurator Fiscal Depute, Edinburgh. There was frequent consultation between them as the investigation progressed. In the course of the investigation on 3 October 1990 Tucker was interviewed by police officers and was cautioned and charged with the embezzlement of £210,000. On 4 March 1991 the precognition, prepared by Isabel Clark, was reported to Crown Office. Her summary of the case referred to the Teague brothers' lack of enthusiasm for the involvement of the police and their concern about their position should the case proceed to trial. It contained a recommendation that there was sufficient evidence to raise High Court proceedings against May and Tucker. In her covering letter to the Crown Agent Isabel Clark wrote that the defence for both accused appeared to be documents which authorised the payment to Gordon May. She also wrote:

"To date, the accused Arthur Colin Tucker has not appeared on a Petition before the court. Tucker's solicitor, Mr David Blair Wilson, is anxious that the Crown will let him know as soon as possible if he is to be an accused or a witness. I would recommend that Arthur Colin Tucker remain an accused in view of his actings in the embezzlement. Crown Counsel's instructions are requested in relation to Tucker appearing on Petition before the court."

15.6 On receipt of the precognition at Crown Office it was considered by Douglas Brown, Assistant Solicitor in the High Court Unit, who referred it to Crown Counsel for instructions with a note stating:

"There appears to be sufficient evidence against both and as the amount involved is £213,000 I would recommend an instruction to indict High Court."

As it happened, the Advocate Depute who considered the precognition was David Burns, who had been the prosecutor at Tucker's previous trial the previous December. He gave an instruction on 8 March 1991 that there should be High Court proceedings against both May and Tucker. As a result of this instruction Tucker appeared on Petition at Edinburgh Sheriff Court on 18 March 1991 when he was committed for further examination and granted bail. Douglas Brown prepared a draft indictment which he sent to the Procurator Fiscal on 27 March 1991 with a letter confirming Crown Counsel's instructions.

15.7 There is continual communication between the Crown Office High Court Unit and the Justiciary Office with a view to arranging sittings of the High Court at which trials can proceed. The letter to the Procurator Fiscal dated 27 March 1991 stated:

"Please note that this trial will now take place at Dunfermline and not Edinburgh as originally intended."

Hugh Foley, the Principal Clerk of Session and Justiciary, informed us that it was found to be impossible to accommodate all the forthcoming Edinburgh cases at a sitting of the High Court in Edinburgh and accordingly a sitting of the High Court at Dunfermline was arranged to accommodate the overspill from Edinburgh. In the event four Edinburgh cases were listed for trial at that sitting. He would emphasise that the caseload for sittings is so heavy that such an arrangement is not unusual. Accordingly a letter was sent from the Crown Office to the Procurator

Fiscal dated 28 March 1991 instructing him to attend to service of the indictment against May and Tucker for trial at the sitting of the High Court at Dunfermline on 7 May 1991.

15.8 Because the number and length of cases are unpredictable it is frequently necessary for changes to be made in the provisional arrangements for the allocation of Judges to sittings of the High Court. Hugh Foley told us:

“We have to change Judges round regularly. It is standard practice in order to achieve administrative efficiency in supporting the Lord Justice General or Lord President to keep the wheels of justice turning.”

15.9 The original plan was that Lord Osborne would be the Judge at the sitting in question, but a civil proof that he had been hearing lasted longer than had been predicted and, since counsel for the parties in that proof continued to be available, it seemed appropriate for the proof to be concluded in the period of the sitting and for another Judge to be substituted in his place. Arrangements were accordingly made for Lord McCluskey to be the Judge for the sitting. It appears that this arrangement was made shortly before 3 May 1991, which is the date of a note by Douglas Brown recording that the change had taken place.

15.10 Lord McCluskey told us, and it is confirmed by Douglas Brown’s note, that on learning that one of the cases for trial at the sitting was that against May and Tucker he thought that the defence should have a say in whether he should take the trial, in view of what he had learned about Tucker’s background during the trial the previous December. It is clear to us that Lord McCluskey’s concern was not that he could not preside impartially at the forthcoming trial but that the defence should not be in a position to complain of a potential lack of impartiality on the part of the Judge. David Blair-Wilson was the solicitor for both accused and when Justiciary Office conveyed Lord McCluskey’s view to him he said that he would object to Lord McCluskey as the trial Judge. This gave rise to a difficulty because, as matters stood on 3 May, no other Judge was available and it was therefore anticipated that the case against May and Tucker would require to be adjourned to the next sitting of the High Court at Dunfermline on 21 May 1991. It was, however, discovered at a late stage that Lord Milligan could be made available to take the sitting after the first day, ie from 8 May 1991 onwards, and it was accordingly arranged that Lord McCluskey would sit for the first day and Lord Milligan thereafter.

15.11 The other business of the sitting was dealt with by Lord McCluskey on 7 May 1991. Lord Milligan sat on subsequent days. The trial of May and Tucker began on 8 May 1991. The Advocate Depute for the sitting was Alastair Campbell, May’s counsel were Robert Henderson QC and John Watt, and Tucker’s counsel was Maria Maguire. Isabel Clark attended the Advocate Depute in court. Detective Chief Inspector Wilson as Reporting Officer went to the court building on a number of occasions during the trial. Several journalists were present in court on the first day of the trial, but following remarks by Lord Milligan on the morning of the second day in response to a motion by Maria Maguire, who complained about inaccurate reporting of the first day’s proceedings in two newspapers, the press were less well represented for the remainder of the trial.

15.12 The first witness called by the Crown was James Teague. His evidence lasted for the first day and most of the second day of the trial. He was followed by Patrick Teague, whose evidence lasted for a similar period, and by Gerald and Daniel Teague. The last Crown witness was Polycarpos Spyrou, the Company’s accountant. At the start of the trial Robert Henderson was allowed to lodge a late documentary production, of which he made use during the course of the evidence. At the end of the first day Alastair Campbell discussed the case at length with Isabel Clark because he was concerned about the quality of the evidence given by James Teague. He eventually took the view that he should reconsider the evidence once all the Teague brothers and Spyrou had given their evidence.

15.13 All those whom we have mentioned who were present in court are in agreement that the Teague brothers were very reluctant witnesses and that their evidence was of such a quality that the jury were most unlikely to accept it. Indeed, it appears that at times the jury openly laughed at some of the evidence. Alastair Campbell told us that on one of the last days on which evidence was led, 14 May

1991, the last straw for him came when Daniel Teague conceded in evidence that May was entitled to a sum of the order of the sum which had allegedly been embezzled from the Company. This evidence is recorded in his assistant's notebook. In Alastair Campbell's view the evidence of Spyrou did nothing to improve the Crown's position. He accordingly came to the view, on the evidence that had been led up to that point, and taking account of the relatively minor contribution that would be made by the evidence that had not yet been led by the Crown, that it would not be in the public interest for the trial to continue.

15.14 Meanwhile, as Lord Milligan explained to us, he was becoming irritated because it seemed to him that "the Crown wasn't getting anywhere." He remembers that he made a remark to that effect to his clerk, and that it was conveyed to the Advocate Depute. There were two Depute Clerks of Justiciary at the sitting, Robert Sinclair, who was there from the beginning until Monday 13 May 1991, and Gordon Ellis, who was there for the last two days. Both of them remember Lord Milligan's remark, and that they passed it on to the Advocate Depute. Alastair Campbell is adamant that this did no more than reinforce the view which he had already reached. We should make it clear that we understand that Lord Milligan was motivated solely by a desire not to take up more of the court's time, and particularly the jury's time, than was necessary. Lord Milligan stated to us:

"Any suggestion that there was any shortcoming on the prosecution side is as far as I am concerned complete and utter and total rubbish."

The problem, as all are agreed, lay in the quality of the evidence.

15.15 On 15 May 1991 Spyrou's evidence continued. When he had the opportunity, the Advocate Depute telephoned the Lord Advocate, Lord Fraser, who was in London. Although it would have been open to him to withdraw the libel without reference to the Lord Advocate he was aware of the rumours which had followed Tucker's previous acquittal and he was concerned about the risk that a decision not to proceed further against May and Tucker might be misinterpreted. He explained to the Lord Advocate his view of the evidence and referred also to what he had heard from the Judge's clerk. He and the Lord Advocate agreed that the only reason for continuing with the trial would have been to avoid possible criticism and that was not a proper reason. The Lord Advocate accordingly agreed with the Advocate Depute's decision on the basis of the evidence that it would not be in the public interest to continue with the prosecution. When counsel returned to court for the resumption of the trial after lunch that day the Advocate Depute told defence Counsel of his decision. They had no prior knowledge of it and were accordingly somewhat surprised. When the court sat the Advocate Depute withdrew the libel and Lord Milligan instructed the jury to return a formal verdict of not guilty. In discharging the jury Lord Milligan said that the decision taken by the Advocate Depute was "entirely proper and certainly on the evidence was fair; it seemed a very proper decision; the Advocate Depute acted impeccably".

15.16 While Isabel Clark shared the view of other persons we have mentioned who were present in court about the quality of the evidence which had been led, she disagreed with the Advocate Depute's decision to withdraw the libel. She wrote a note to the Procurator Fiscal dated 24 May 1991 in which she stated that she was very disappointed about what had happened and was extremely upset about it. She stated in the note, and repeated to us, that there had been direct communication between Alastair Campbell and Lord Milligan as well as direct communication with the Lord Advocate and that Alastair Campbell withdrew the libel because of what had been said to him by the Judge and by the Lord Advocate. She persisted in that belief notwithstanding what we were able to say to her about the evidence we had received not only from Alastair Campbell but also from Lord Milligan and Lord Fraser.

15.17 Having regard to the evidence of these persons we are convinced that her disappointment at the Advocate Depute's decision has affected Mrs Clark's perception of the events. We accept what Alastair Campbell has written to us in a note responding to Isabel Clark's note:

"What Mrs Clark has failed to appreciate is that I decided on the basis of the evidence that it would not be in the public interest to continue and that I would have made that decision in the absence of any indication of the

Judge's views: further that I would have made the decision without reference to the Lord Advocate had it not been for the background of press speculation. It is quite, quite wrong to conclude as Mrs Clark does that I had to consult the Lord Advocate because of the Judge's views. The Judge's views did no more than reinforce the conclusion at which I had already arrived on considering the evidence."

15.18 We should make it clear that we do not understand that Isabel Clark was suggesting, either in the note that she wrote or in her evidence to us, that there was any improper motivation for what took place. Her view, quite simply, was that no decision should have been taken until the Crown had led all the available evidence and that, as she saw it, the Advocate Depute was induced to take a premature decision. Her evidence is therefore not of direct relevance, but we have thought it appropriate to mention it to show how even a Procurator Fiscal Depute can not only disagree with an Advocate Depute's decision but can misperceive the basis upon which it is made.

15.19 As we have already said, Detective Chief Inspector Wilson went to the court building at Dunfermline on a number of occasions and in particular was there on 15 May 1991 at a time which enabled the Advocate Depute to tell him of his decision to withdraw the libel. Wilson told us that he was disappointed by the outcome because his investigation had produced sufficient evidence to justify a prosecution. He accepted, however, that the Advocate Depute had based his decision on the quality of the evidence of the principal witnesses, and made it clear to us that he felt there was nothing sinister about the outcome.

15.20 In preparing that part of his report which related to the case against May and Tucker, Detective Chief Inspector Orr did not discuss the case with Detective Chief Inspector Wilson. Instead he based that part of his report on information obtained from Detective Inspector Souter and Detective Sergeant Brown, neither of whom had any substantial involvement in the case. Souter had accompanied Wilson when two search warrants were executed on 17 May 1990 and when Tucker was detained and thereafter cautioned and charged on 3 October 1990. He was not otherwise involved in the investigation. Brown had no involvement in the investigation. Orr made some elementary mistakes. He named Tucker rather than May as the first accused and he wrote that Robert Henderson was Tucker's counsel, while he was in fact May's counsel. These mistakes may have some significance in view of Souter's belief in the existence of Tucker's so-called "list" and the opportunity that Robert Henderson would have had to obtain a copy of it at the time of Tucker's previous trial. The part of Orr's report which relates to the case against May and Tucker refers to Tucker's homosexuality, states that May is a practising homosexual, and alleges that May was involved in the running of an hotel and nightclub in Thailand. According to the report this place

"is openly engaged in providing services for homosexuals particularly in the procurement of young male prostitutes or rent boys for the sexual gratification of visitors. The complex is thought to have been frequented by several persons popular on the Edinburgh gay scene, including the gay element of the legal fraternity."

We are in possession of no evidence which would support this latter allegation.

15.21 It is apparent from a later passage in his report that Orr made a connection between Robert Henderson, Tucker, May, the premises in Thailand, and Tucker's so-called "list". The inference which he apparently intended to be drawn from his presentation of the subject matter was that the outcome of the case against May and Tucker had somehow been procured by a combination of these features, and in particular that Robert Henderson had been in a position to put improper pressure on the Crown. When we pressed him about this part of his report Orr said that he assumed that the Reporting Officer was of the same view as Souter and Brown were and that they were telling him the totality of the Fraud Squad view. He said that in hindsight he accepted that in that case he should have gone to the Reporting Officer. If he had done so Wilson would presumably have told him the same as he told us, which was that the outcome of the case was the consequence of evidence given in court by the Teague brothers and had nothing to do with any "list" or any premises in Thailand.

15.22 In his report Orr even apparently treated as sinister the fact that the case was tried in Dunfermline rather than in Edinburgh. His report states:

“One obvious effect of moving the trial out of Edinburgh would be to reduce press coverage of the issue.”

The press are of course free to attend any trial anywhere in Scotland and, as we have already said, journalists were present in court during the trial of May and Tucker, particularly during its first day.

15.23 We should add that, whatever they may have said to Orr, when we interviewed Souter and Brown neither of them was prepared to state that they regarded the outcome of this case as having been improperly procured or that the Advocate Depute's decision was improperly motivated. Souter said to us that he did not feel that anything had been wrong, he felt no unease. Nevertheless the kind of speculation which is reflected in the Orr Report, without any reference to the actual facts of the case, appears to us to be the kind of speculation in which Souter would readily engage and with which Brown would readily associate himself.

15.24 Our conclusion must be that there is no evidence whatever to support any allegation that any decision taken by the Crown in the case against May and Tucker was improperly motivated. Indeed the investigation was instigated by the Crown and the decision to make Tucker one of the accused was taken by the Crown. But for the poor quality of the evidence there is nothing to suggest that the Crown would not have proceeded further with the trial and, subject to direction by the Judge, would not have left it to the jury to decide on the guilt of the accused.

16. *HMA v NEIL BRUCE DUNCAN AND OTHERS*

16.1 The investigation which led to the prosecution of Neil Bruce Duncan and nine other accused began on 24 January 1990 when police officers found a 16½ year old boy, who was named in the indictment but whom we shall call M, in a room occupied by Duncan at 37 Palmerston Place, Edinburgh. The police gave the investigation the code-name "Operation Planet". On 14 January 1990 M had been on weekend leave from a children's home and was returning there by bus when Duncan struck up a conversation with him and persuaded him to go with him to Edinburgh. Between then and 24 January Duncan systematically debauched M. He also made it possible for other men to participate in the debauchery by taking him to various houses in Edinburgh. The offences thus committed are best explained by reference to the charges in the indictment to which Duncan and his co-accused Laurie Kenyon Valdemar Pringle, John Stevenson, and Ian Alexander James Ewing pled guilty.

16.2 Charge 40 libelled that on 14 January 1990 Duncan approached M on the bus and induced him to travel with him to Edinburgh with the intention that he take part in homosexual acts, within the meaning of the Criminal Justice (Scotland) Act 1980, with other male persons and did thus attempt to procure the commission of homosexual acts between M and other male persons, contrary to section 80(9) of the Act. Charge 41 libelled that on the same date in a cemetery in Edinburgh Duncan conducted himself in a shamelessly indecent manner towards M and sodomised him. Charge 42 libelled that between 21 and 24 January 1990 Duncan knowingly harboured and concealed M, who was required by a supervision requirement to reside in the children's home and had failed to return there at the end of a period of leave, contrary to the Social Work (Scotland) Act 1968, section 71. Charge 44 libelled that on various occasions between 14 and 24 January 1990 in the house at 37 Palmerston Place, Duncan conducted himself in a shamelessly indecent manner towards M and sodomised him. Charge 47 libelled that on various occasions between 14 and 24 January 1990 Duncan supplied cannabis resin to M contrary to the Misuse of Drugs Act 1971, section 4(3)(a). Charge 50 libelled that on various occasions between 14 and 24 January 1990 in a house in Edinburgh Duncan and Ewing conducted themselves in a shamelessly indecent manner towards M. Charge 51 libelled that on an occasion between 14 and 24 January 1990 in another house in Edinburgh Duncan and another conducted themselves in a shamelessly indecent manner towards M and sodomised him. While Duncan pled guilty to this charge, the other person named in it, John Keir, pled not guilty and after a trial the jury found the charge not proven against him. Charge 52 libelled that on 23 January 1990 in yet another house in Edinburgh Duncan and Pringle conducted themselves in a shamelessly indecent manner towards M. Charge 53 libelled that on an occasion between 14 and 24 January 1990 Duncan and Stevenson conducted themselves in a shamelessly indecent manner towards M. Charge 54 libelled that on 25 January 1990 Duncan had in his possession cannabis and cannabis resin, contrary to the Misuse of Drugs Act 1971, section 5(2).

16.3 The above summary takes account of various deletions which were made from the charges when the pleas of guilty were accepted by the Crown. We have omitted the specification of the sexual acts which was set out in the charges. The Crown accepted pleas of not guilty to all the other charges in the indictment. In the result therefore a number of the accused were acquitted, while pleas of not guilty to various charges were accepted from all the accused who pled guilty to the charges referred to above. In the discussion which follows we think it

appropriate, therefore, to refer only in the most general terms to the evidence which led to the inclusion of these charges in the indictment in the first place.

16.4 The officers originally involved in the investigation following the discovery of M at 37 Palmerston Place were Detective Sergeant (now Sergeant) Charles Orr and Detective Constable (now Constable) Thomas Bell, both stationed at West End Police Station, Edinburgh. After about a week, when it was clear that the scope of the investigation was expanding, Detective Inspector Peter Robertson, also then stationed at West End Police Station but now retired, was put in operational charge of it and was in due course the Reporting Officer. Detective Superintendent George Ritchie had oversight of the whole inquiry. George Ritchie was latterly a Detective Chief Superintendent but unfortunately died on 6 August 1991, so his evidence is not available to us.

16.5 There was no pre-determined limit to the scope of the inquiry. As a result of information given by M and derived from a "Filofax" address book kept by Duncan in his room it was possible to identify men who had participated in the debauchery of M. It was also possible to identify young men under the age of 21, but older than M, who had been involved in sexual acts with older men in what might be termed a "network" of relationships. There was no suggestion that the behaviour of such persons was other than consensual, though it might nevertheless have been criminal. These young men, by contrast with M, would properly be described as rent boys. Since this latter part of the investigation resulted in charges in respect of which the Crown accepted pleas of not guilty we propose to say no more about it.

16.6 Given, however, that the police were investigating a "network" the natural and logical conclusion to the investigation would be the point at which the limits of the "network" had been established. It will be recalled that during the earlier part of the period during which the investigation was taking place there were widespread, though unfounded, rumours following Tucker's acquittal and Lord Dervaird's resignation. Ritchie had in mind the possibility that the investigation might yield evidence that persons occupying positions within the legal system formed part of the "network". He gave instructions that any information relating in any way to lawyers was to be reported to him for his decision as to the appropriate course of action. In the event the accused Keir, who was a solicitor, was the only lawyer affected by the investigation. As we have said, the Crown went to trial against Keir on the charge referred to above and Keir was acquitted.

16.7 Both Robertson and Charles Orr have emphasised to us that the investigation yielded no other information whatever about people, whether prominent or not, in legal circles. This was confirmed by William McDougall, Higher Precognition Officer in the Procurator Fiscal's office at Edinburgh, who carried out the precognition after the case had been reported to the Procurator Fiscal. According to Robertson, the press mistakenly thought they were investigating the legal profession, perhaps because of the rumours which were then current. Charles Orr told us that he thought that at a later stage there was so much press speculation that Ritchie spoke to journalists and told them that there was no substance to any rumour relating the investigation to any member of the legal establishment. Since no one was better placed than he was to make such a statement, it is a pity that it was not heeded by the press and that no account was taken of it in the Orr Report.

16.8 It would be convenient at this point to mention an event which was not part of the police investigation but which serves to demonstrate Charles Orr's unreliability as a witness. In about March 1990 Robertson received information that unauthorised use had been made of part of the Advocates' Library for sexual purposes. At that time there were no separate security arrangements for the Advocates' Library, so that it was possible for persons who had entered Parliament House, by having given some pretext to the security guards at the entrance, to make their way into the Advocates' Library. The information was that two such persons, both adult males, might thus have been able to make use of one of the rooms in the Advocates' Library for furtive sexual activity. Robertson made it quite clear to us that the information he received did not relate to any member of the Faculty of Advocates or any person under the age of 21.

16.9 On receipt of this information Robertson reported it to Ritchie, who took the view that, although there was no suggestion of criminality, office-bearers of the Faculty of Advocates should be warned of the possible unauthorised use of the Faculty's premises by intruders. Robertson accordingly made contact with Brian Gill QC, the Keeper of the Advocates' Library, who went to see him at West End Police Station on 31 March 1990. They discussed the information that Robertson had received and it was arranged that police officers would visit the Advocates' Library the next week to be shown the relevant part of the premises and to meet the Dean of Faculty, Alan Johnston QC. The visit duly took place. Two police officers went to the Library, met Brian Gill, were taken by him to meet Alan Johnston, and were shown round the premises. The only action which it was thought necessary to take thereafter was to improve the security arrangements at the Advocates' Library.

16.10 One police officer who went to the Advocates' Library was Charles Orr. We have had difficulty in establishing who the other one was. Charles Orr told us that he is sure that Robertson went with him, but Robertson told us that he did not and that Bell did, while Bell is quite certain that he has never been to the Advocates' Library. Possibly it was Ritchie who went with Orr. In any event Charles Orr told us that it was he, not Robertson, who had received the information, and the information was that the Advocates' Library was being used at night time by Advocates to take young boys there for sexual purposes. This was of course quite different from what Robertson told us, and had much more serious implications because it raised the possibility of criminal conduct by members of the Faculty of Advocates. Charles Orr spoke to us about this in quite a casual way without seeming to understand the gravity of what he was saying. He took some time to appreciate that he was in effect alleging that there was information that members of the Faculty of Advocates had engaged in criminal conduct, that that information had been conveyed to office-bearers of the Faculty of Advocates, that no action had been taken by them and that no investigation had been carried out by the police. Brian Gill did not support Charles Orr's version; his recollection is consistent with Robertson's version, though he also related it to other concerns he had about the security of the Advocates' Library. Alan Johnston said to us in graphic terms that if he had received information of the kind Charles Orr had conveyed to us "the roof would have left the building". We are quite certain that nothing of the kind was said to him.

16.11 Our conclusion about Charles Orr's evidence on this matter is that we are entitled to regard him as an unreliable witness, liable to give an exaggerated account of events and to sensationalise them without appreciating the full implications of what he says.

16.12 Reports were made by Robertson to the Procurator Fiscal at Edinburgh as the police investigation progressed and as a result six of the accused appeared on petition in Edinburgh Sheriff Court on 26 February 1990 and the remaining four accused on 19 March 1990. All of the accused were committed for further examination and were allowed bail. Thereafter precognition was carried out by William McDougall, Higher Precognition Officer at the Procurator Fiscal's office, in parallel with the remainder of the police investigation. On 12 November 1990 the case was reported by the Procurator Fiscal to Crown Office. In the period prior to that date nothing of note occurred apart from the events which we have already mentioned.

16.13 The Advocate Depute who marked the papers was Hugh Matthews. On 14 November 1990 he instructed High Court proceedings against all the accused. In his instruction he wrote:

"The link with Duncan demands that all be indicted together rather than in piecemeal fashion. Had it not been for this then some of them could have been dealt with in the Sheriff Court."

On 21 November 1990 Frank Crowe, Assistant Solicitor in the Crown Office High Court Unit, wrote to the Deputy Principal Clerk of Justiciary stating that it was his intention to indict the case into the Edinburgh sitting of 14 January 1991. He stated that the case was likely to be a lengthy one, perhaps lasting two to three weeks. In the circumstances he asked for the allocation of a second court to deal

with the case, as he envisaged having the usual run of High Court work indicted for the sitting in addition to the case. On 26 November 1990 an Assistant Clerk of Justiciary replied confirming that a second court had been arranged for the sitting and that it would be presided over by Lord Sutherland.

16.14 Frank Crowe prepared a draft indictment which he sent on 6 December 1990 to the Procurator Fiscal at Edinburgh for revision. The indictment contained all the charges which had been reported to Crown Office, together with two charges included by Frank Crowe for evidential reasons. It should be explained that such a charge is added to an indictment because a witness may give evidence about the matters set out in the charge in the course of giving evidence relevant to other charges. The Crown may not expect to be in a position to lead corroborative evidence to prove the charge, but the charge is included in the indictment in order to give fair notice to the accused and is withdrawn at the close of the Crown case. After revision the indictment was sent on 12 December 1990 to the Procurator Fiscal for service and was thereafter served on the accused.

16.15 At some point during the next few days the Justiciary Office was informed by Crown Office that the original estimate of two to three weeks for the duration of the trial had been reconsidered and the new estimate was six weeks. We are not aware of any written record of the communication of this increased estimate, but Hugh Foley, the Principal Clerk of Session and Justiciary, informed us that on receipt of the information at Justiciary Office it became necessary to reconsider the allocation of the sitting to Lord Sutherland. The provisional timetable, based on the original estimate of two to three weeks, had provided for other business to be allocated to Lord Sutherland immediately after the end of that period. If the trial lasted for as long as six weeks that business would have to be reallocated to other Judges, and consequently the timetables of three or four Judges might be affected. It was found that it would be less disruptive to the business of the court if Lord Sutherland took over a two week sitting of the High Court in Kilmarnock from Lord Clyde and Lord Clyde, whose timetable made it possible for him to take a six week trial, was allocated the Edinburgh sitting. The necessary administrative arrangements were accordingly made. Hugh Foley insisted to us that the decision to substitute Lord Clyde for Lord Sutherland was taken in the Justiciary Office alone and would have been taken regardless of the rumour which we now proceed to discuss.

16.16 We have already mentioned in part 8 of this Report the story about "Jason" the rent boy which was published in the "Evening News" on 13 February 1991. Although "Jason" had not spoken to the police it is clear that a version of the story had become current as a rumour some weeks before its publication. Ian Burrell and David Forsyth of the "Evening News" made it clear to us that the story as given to them by "Jason" did not contain the positive assertion that the "punter" was a Judge, and certainly did not serve to identify any individual as the "punter". As we have already said, both Robertson and Charles Orr emphasised to us that their investigation yielded no information whatever, apart from that relating to the accused Keir, about people, whether prominent or not, in legal circles. More specifically, neither of them had discovered any evidence whatever implicating a Judge in their investigation. They are equally confident that "Jason" was not one of the persons from whom they had taken statements and was accordingly not included in the Crown List of Witnesses for the trial. Nevertheless, such is the nature of rumours, the rumour which became current was that one of the Crown witnesses was a rent boy who was in a position to point to the trial Judge and identify him as a person who had made use of his services. Robertson, who was the police officer best placed to express such a view, described the rumour to us as "complete rubbish".

16.17 Anyone familiar with the conduct of criminal trials is aware that a witness is required to give evidence, in answer to questions, which is relevant to a charge in the indictment. It is therefore difficult to see how, short of an uncontrolled outburst by a witness, a situation could arise such as that postulated by the rumour which was current. Moreover, since Lord Sutherland did not feature by name in the rumour, in theory the alleged rent boy witness could have directed his remarks against any Judge. Accordingly, although the rumour reached Justiciary Office,

the only degree of concern which it caused was in relation to the potentially disruptive effect on the trial if such an event happened, rather than concern for Lord Sutherland as an individual. Hugh Foley is certain that the rumour, as he heard it, would not have justified a change of Judge.

16.18 There is, however, another version of the rumour which we have had to consider. Robert Henderson QC, who was instructed as counsel for one of the accused at the forthcoming trial, and who was friendly with Detective Inspector Peter Robertson (it will be remembered that he had given Robertson his copy of Tucker's Statement), told us that about three weeks before the trial was due to take place, he happened to meet Robertson in Parliament Hall. According to Robert Henderson, Robertson said that he was very concerned about the case "because these dreadful rent boys have all been seen by the press and we're pretty sure one of them will name homosexual Judges just for the sake of doing it". According to Robert Henderson, Robertson went on to say that he personally was worried about giving evidence because Lord Sutherland's name was in his notebook; he had received an anonymous telephone call which said that he should be investigating Lord Sutherland, which was why Lord Sutherland's name was in his notebook; he was worried in case counsel asked to see his notebook while he was giving evidence. At a later interview Robert Henderson told us that he had a strong impression that Robertson took out his notebook and showed him the entry. He accepted that if Robertson's notebook showed nothing of the sort, then he was wrong. At interview, Robertson denied having said any such thing to Robert Henderson.

16.19 We are not disposed to accept that Robertson said anything to Robert Henderson about having Lord Sutherland's name in his notebook. Police officers' notebooks are all numbered and are retained for future reference. All Robertson's notebooks have been accounted for. Chief Superintendent Gilmour has examined the notebooks covering the period from January 1990 to January 1991 inclusive and has found no reference to Lord Sutherland. Likewise all Charles Orr's notebooks have been accounted for, have been examined and contain no such reference. All the information acquired during the "Operation Planet" investigation was stored on a HOLMES computer database at Police Headquarters. A computer check of the database has disclosed no reference to Lord Sutherland. Likewise William McDougall, the Higher Precognition Officer who carried out the precognition, can confirm that Lord Sutherland's name did not come to his notice in any way during the course of precognition. It would thus not have been intelligible for Robertson to say that he had Lord Sutherland's name in his notebook.

16.20 While we accept, therefore, that Robertson did not say to Robert Henderson that he had Lord Sutherland's name in his notebook, we have more difficulty in establishing what, if anything, Robertson did in fact say to Robert Henderson. The reason for this is that Robertson denies having spoken to Robert Henderson at all in Parliament House about the forthcoming trial. Given the lack of candour in his evidence to us about the events surrounding his receipt of Robert Henderson's copy of Tucker's Statement, he is a witness whose evidence we are bound to treat with some caution. Robert Henderson told us that as soon as Robertson had spoken to him he went to see the Dean of Faculty, Alan Johnston QC, in his room in the Advocates' Library, which is only a few yards from Parliament Hall. Alan Johnston remembers that Robert Henderson "came rushing in in a high state of agitation having just seen a police officer". According to him, Robert Henderson said that the policeman had told him that one of the accused was going to point at the Bench and say "that's him". We think that Alan Johnston's memory is slightly at fault, because all other versions of the current rumour related to a witness rather than one of the accused. In any event Alan Johnston was sufficiently concerned to make an appointment to see Lord Hope so that he could warn him of the risk of embarrassment to Lord Sutherland. By that time, however, the administrative decision had already been taken to substitute Lord Clyde for Lord Sutherland. It thus became unnecessary for Lord Hope to take any separate action. Lord Hope does, however, remember having been told that there was information from the police that something might be said in court about the trial

Judge. The Dean of Faculty does not remember anything being said to him by Robert Henderson about Lord Sutherland's name being in a police notebook and Lord Hope is confident that nothing was said to him about a notebook.

16.21 From the evidence discussed in the preceding paragraph we feel entitled to conclude that Robertson did in fact speak to Robert Henderson and said something to him which led Robert Henderson to speak to the Dean of Faculty, but what he told him related to the then current rumour derived from the "Jason" story, without in any way saying that Lord Sutherland's name was in his notebook, or anything else to the effect that a Judge's name had come to his notice in the course of the police investigation. Given that his speaking to the Dean of Faculty was well-intentioned, we are prepared to assume that in the heat of the moment Robert Henderson did not fully grasp what Robertson had said to him.

16.22 We are however driven to the conclusion that subsequent talk of Lord Sutherland's name being in a police notebook originated from Robert Henderson. Several of the defence counsel heard talk that Lord Sutherland's name was in a police notebook. Lawrence Nisbet and Neil Murray, two of the counsel for the accused, both heard that there was a policeman's notebook which had been lodged as a production and which contained a description of a Judge's house to which a rent boy had allegedly been taken. They each made separate inquiries and found that no such notebook had been lodged as a production in the case. There was of course no such notebook in existence, because no version of the "Jason" story took the form of a statement given to the police. We understand that there was subsequently a rumour that a notebook containing such a statement had been lodged as a production but had thereafter disappeared. We have not been able to discover how much currency that rumour had, but it had come to the notice of at least one journalist. The obvious explanation of its origin is as a rationalisation of the fact that no such notebook had ever been lodged as a production, although there was a rumour to the effect that it had.

16.23 While the decision to substitute Lord Clyde for Lord Sutherland was taken for administrative reasons, they were both aware to some extent that there was a rumour that one of the witnesses might in some way attempt to embarrass the trial Judge. Lord Clyde's former clerk, William Gillon, was also aware of such a rumour. We wish to state emphatically that the only possible concern for Lord Sutherland would have been in respect of the embarrassment that would have been occasioned to him as the innocent victim of whatever ill-founded allegation might be blurted out in court. More serious than this personal concern would have been the concern for the potentially disruptive effect of such an event on the progress of the trial. We have discussed with Lord Sutherland the way in which his name came to be mentioned in the course of the events which we have described. He regards it as incomprehensible that he should be the subject of any rumour of the kind which Robert Henderson reported to us.

16.24 Because no regular Advocate Depute was available to prosecute at the sitting which had been arranged for the trial the Lord Advocate, Lord Fraser, gave a commission to Thomas Dawson QC, a former Advocate Depute, and now Solicitor General, as an *ad hoc* Advocate Depute for the sitting. Frank Crowe, who had drafted the indictment, was due to be replaced as Assistant Solicitor in the High Court Unit by Douglas Brown on 7 January 1991. They worked together on 3 and 4 January 1991. Frank Crowe told Douglas Brown that he agreed with what Hugh Matthews had written when he instructed the indictment, and that the emphasis was on the charges relating to M, these being the charges which necessitated proceedings in the High Court. They had a discussion with Thomas Dawson who shared that view.

16.25 Thomas Dawson told us that the only contact he had with Crown Office about the case prior to its final disposal was this discussion with Frank Crowe and Douglas Brown. He said that they certainly did not ask him to consider dropping any charges. He himself was "beginning to take a pretty robust view" of the case and was concerned to see whether the papers had ever been seen by a Law Officer. He was told that they had not. He happened to meet the Solicitor General, Alan Rodger, in the Advocates' Gown Room in Parliament House, on 9 January 1991, and asked him whether the papers had been seen by him or the

Lord Advocate. Alan Rodger confirmed that they had not. Thomas Dawson said to Alan Rodger that he would take a certain view, but would not consult him as he had not been consulted in the past. He would take an independent view. Alan Rodger told him that that was what was expected of him: "That's what we're paying you for". Alan Rodger confirmed this account to us. He was in Parliament House that day to appear for the Crown in criminal appeals. Thomas Dawson also had a chance meeting with the Lord Advocate, perhaps a day later, when similar remarks were made.

16.26 Meanwhile steps had been taken with a view to procedure in court during the week before the trial was due to start on 14 January 1991. On 27 December 1990 intimation was given of a Minute of Notice for the accused Allan Robert McDonald claiming that what was libelled in certain charges against him were not crimes. On 28 December 1990 intimation was given of a similar Minute of Notice for the accused John Keir claiming that the latitude taken in two charges against him was excessive and that part of another charge against him was irrelevant due to lack of specification. These Minutes of Notice necessitated the fixing of a preliminary diet for Wednesday 9 January 1991 in the High Court at Edinburgh. This diet was fixed on 3 January 1991. On 7 January 1991 intimation was given of a Minute of Notice for the accused Neil Bruce Duncan claiming that the libelling of certain charges was oppressive and that these charges were irrelevant, that another charge was irrelevant due to an excessive latitude of time, that another charge was irrelevant due to lack of specification, and that other charges libelled a common intent which was not supported by any evidence. On 8 January 1991 intimation was given of a Minute of Notice for the accused Andrew Hood claiming that what was libelled in certain charges were not crimes. While these Minutes of Notice thus raised a number of subsidiary points, the main point which it was proposed to argue at the preliminary diet related to the question whether, apart from sodomy, homosexual acts between consenting males over the age of 16 constituted a crime according to the law of Scotland after the passing of section 80 of the Criminal Justice (Scotland) Act 1980.

16.27 Counsel for the accused who appeared before Lord Clyde at the preliminary diet on 9 January 1991 were: Kevin Drummond QC, who appeared for Neil Bruce Duncan; John Watt, Advocate (now QC), who appeared for Laurie Kenyon Valdemar Pringle in place of Robert Henderson QC, who was not available for the preliminary diet; James Reilly, Advocate, who appeared for John Stevenson; Neil Murray, Advocate (now QC), who appeared for John Keir; John Watt, who appeared for Ian Alexander James Ewing, the accused for whom he was principally instructed; John Mitchell QC, who appeared for Allan Robert McDonald Murray; Thomas Welsh, Advocate, who appeared for Andrew Hood; Lawrence Nisbet, Advocate, who appeared for Gerard Clarke; Paul McBride, Advocate, who appeared for Graeme Kerr Young; and Derek Ogg, Advocate, who appeared for John McCulloch Fisher. Some of the accused were represented by two counsel, but we have mentioned only the senior of the two. We have interviewed all the counsel named in this paragraph.

16.28 On the basis of our interviews with Thomas Dawson and the defence counsel we are satisfied that a correct outline of the day's events would start with a conversation between Thomas Dawson and Kevin Drummond in Parliament House before the diet was called in court at 10 am. By that time Thomas Dawson had come to the view that the interests of the public would best be served if he could obtain pleas of guilty to the charges relating to the debauchery of M. He did not consider that the public interest would be served by leading distasteful evidence during a long trial about consensual homosexual acts not involving M. He took account of the fact that the young men named in the charges were older than M and could, in the information before him, properly be described as rent boys. The accused from whom it was most important to obtain a plea of guilty was Kevin Drummond's client, Duncan. When it became apparent from their conversation that there was the possibility of such a plea of guilty Thomas Dawson decided to seek an adjournment when the diet was called. This he duly did, explaining to the Judge that he wanted the opportunity to continue a discussion which had started.

16.29 Thereafter there were discussions which took up much of the morning. We have not been able to reconstruct the exact history of events because different groups of counsel spoke to each other at different times and there was probably only one occasion when they all spoke together. It is, however, clear that after Thomas Dawson had initiated discussions with some of the other defence counsel he realised that it would be worthwhile to have a meeting with all the defence counsel to state the position which he proposed to adopt on behalf of the Crown and to establish their positions on behalf of their clients. Such a meeting was arranged and took place in the room used by the Advocates Depute in Parliament House. Douglas Brown was there, but otherwise only Thomas Dawson and the defence counsel were present. Thomas Dawson explained the view he had come to and invited the defence counsel to take instructions as to the pleas which their clients were prepared to tender. Thereafter defence counsel went to obtain such instructions. Various groups of defence counsel had discussions together and a number of them had individual discussions with Thomas Dawson. In due course it was ascertained that pleas would be forthcoming as summarised in the first two paragraphs of this part of our Report. It should be particularly noted that the accused John Keir was not prepared to plead guilty to the charge against him alleging an offence involving M. Given, however, that Duncan in particular was prepared to plead guilty to those charges which Thomas Dawson regarded as of particular importance, he decided to accept the pleas which were forthcoming and to proceed to trial against Keir.

16.30 All of the persons who attended the meeting at which Thomas Dawson took this decision are entirely satisfied that he did so in the exercise of his own unfettered discretion and for no improper motive. It is clear from what we were told that Thomas Dawson was widely regarded by defence counsel as an Advocate Depute who was jealous of his own independence and who would not shrink from taking a robust view of the suitable disposal of a case in the public interest. One or two expressed surprise about the acceptance of so many pleas of not guilty at that stage in the proceedings, but did not seek to suggest that the decision could be criticised. There was some criticism of the original decision to include in the indictment charges in respect of which Thomas Dawson accepted not guilty pleas. For that reason we spoke to Hugh Matthews, who told us that, having regard to the terms of his original instruction (see para 16.13), the decision taken by Thomas Dawson was one which he could well have taken himself in the circumstances.

16.31 It is convenient at this point to refer to certain statements in the Orr Report relating to the events of 9 January 1991. The report states:

“Immediately prior to the trial getting underway and to the surprise and annoyance of both the reporting officer and the then Regional Procurator Fiscal, Duncan LOWE, Crown Counsel arranged a meeting with the various defence agents involved and announced to their surprise that it was no longer policy to prosecute consensual homosexual conduct with persons under 18 years. The result of this was that 47 of the 57 original charges were dropped and pleas were arranged on the remaining ten. This allowed five potential accused to walk free.”

A further passage states:

“It was the opinion of the reporting officer in the rent boy case that the Advocate Depute allocated the case was also extremely surprised at being directed not to pursue the majority of the charges. Attempts were made at the time to discuss the reasons for this strategy but Crown Counsel were apparently instructed to make no comment whatever.”

A further passage states:

“It is of interest that at the time of the enquiry it appears that Crown Office and the Lord Advocate were beginning to consider a change in the prosecution policy concerning consensual homosexual offences and were beginning to take a more lenient view of such offending. The proposals to change the prosecution policy have, however, recently been terminated.”

16.32 As we have already discussed in part 3 of this Report, the review of the Crown's policy in respect of the prosecution of consensual homosexual offences did not start until after this case had been disposed of and was prompted in part by this case. Thomas Dawson was accordingly not in a position to say, and did not in fact say, anything about a change in Crown policy. All those who were present are agreed on that. There is no question of his having been given any directions as to the disposal of the case, or of his having said anything which indicated that he had been given such directions. Again, all who were present are agreed on that. Charles Orr told us that he had been told that "Dawson walked into the room and said 'we're not here to mess about with people sticking their cocks up young boys' arses, what we're going to do is this', ie a deal, and I'm told defence counsel were absolutely stunned." All the defence counsel are agreed that no such thing was said and that they were not "stunned". We are accordingly unable to account for the version of the meeting which Charles Orr heard or the version which is set out in the Orr Report.

16.33 When the diet was again called on 10 January 1991 the pleas which had been agreed were tendered and recorded. The accused Murray, Hood, Clarke, Young and Fisher were discharged. Sentence was deferred in respect of the accused Duncan, Pringle, Stevenson and Ewing to 31 January 1991. The diet against Keir was continued to 11 January 1991. Keir adhered to his Minute of Notice. On 11 January 1991 Thomas Dawson intimated to the court that the Crown would proceed against Keir on one charge only. The Minute of Notice for Keir was then withdrawn, and not guilty pleas were intimated and accepted in respect of the remaining charges against him.

16.34 We have a substantial body of evidence that on one of the days when there was procedure in court during that week, probably 10 January 1991, police officers were present in court. These officers clearly showed anger at the decision taken by Thomas Dawson. When counsel left court at the end of the day's proceedings these police officers accosted several of them, using swear words and demanding to know the name of the Advocate Depute. Brian Douglas, Advocate, overheard this. All the witnesses to this behaviour on the part of police officers regarded it as inappropriate. We have been unable to discover who the police officers were. None of the officers engaged on the investigation was cited to attend court that week, because the trial diet was set down for the following week. Robertson, the Reporting Officer, was seconded to a murder enquiry in Musselburgh. None of the police officers whom we interviewed would admit to having been at court on that occasion. Thomas Dawson was not aware of any attempt by police officers to speak to him. We are, accordingly, unable to substantiate that part of the Orr Report which relates to such an attempt.

16.35 Charles Orr described himself as having felt angry and upset at the outcome of the case. He referred to the amount of work which he had put into the investigation and said:

"I thought there must have been something happen that morning or very shortly before the trial to make that happen."

Robertson told us that when news of what had happened reached him at Musselburgh Police Station he was surprised: "It was a complete shock." When he attended court as a witness the next week he asked the Procurator Fiscal's representative if it would be possible for him to have a word with Thomas Dawson, but was told that since he was a witness he could not discuss the case with the Advocate Depute. He did not subsequently pursue the matter. He told us that he was only ever annoyed at not having been given any explanation for Thomas Dawson's decision.

16.36 Nobody from the Procurator Fiscal's office was involved in the events of 9, 10 and 11 January 1991. Linda Ruxton was the Senior Procurator Fiscal Depute in Edinburgh in charge of High Court cases from January to April 1991. She was due to be in attendance at the trial starting on 14 January, but was not involved in the discussions about pleas. She said to us that, while she had no great knowledge of what had taken place, she had spoken afterwards to Thomas Dawson and shared his views. She was concerned, however, at the somewhat casual manner in which news of the decision reached the Procurator Fiscal's office after it had been taken.

This was particularly because of the hard work which William McDougall had done on the precognition, and she thought it discourteous to him. He told us that he was angry because of the time he had spent on the precognition. He thought that if charges were not to be proceeded with, that was a decision which should have been taken at the time when the indictment was instructed. With hindsight, it might have been better for a clearer explanation to have been given to the Procurator Fiscal's office about the reasons for Thomas Dawson's decision and the circumstances in which it had been taken. The same might be said about giving an explanation to the police.

16.37 Linda Ruxton and William McDougall both made it clear to us that there was no suggestion that Thomas Dawson had taken his decision otherwise than in the exercise of his own unfettered discretion or was in any way improperly motivated. No one in the Procurator Fiscal's office of whom we are aware would say otherwise. We mention this because according to Charles Orr someone, probably Robertson, told him that Duncan Lowe, the Regional Procurator Fiscal, was extremely upset. According to this account, Robertson and Ritchie had gone to see Duncan Lowe and had told him what had happened. He had no knowledge of it and tried to obtain further information, saying something to the effect that "that bastard Rodger will have had a hand in this". We have spoken about this to both Duncan Lowe and Robertson and are satisfied that nothing of the kind was said. Nor did Alan Rodger "have a hand in" Thomas Dawson's decision. Duncan Lowe was neither surprised nor annoyed at the outcome of a case of which he had little knowledge, though he anticipated that there would be considerable public comment.

16.38 The trial of Keir on the remaining charge against him was due to start on 14 January 1991, but there was a failure of the power supply to Parliament House and accordingly the proceedings required to be adjourned until the next day. Lord Kirkwood attended to this formality. On 15 January 1991 the trial took place before Lord Clyde and a jury. The witnesses for the Crown included M and Duncan, the first accused. The case continued on 16 January 1991, when the jury found the charge not proven. The Orr Report makes no mention of the fact that the Crown went to trial against Keir and called as a witness Duncan, who of all the persons involved in the investigation had the most information at his disposal about the homosexual activities of others. If the Crown had any reason to be concerned about the risk of disclosures being made in the course of evidence, that risk could have been avoided by the acceptance of a plea of not guilty to the charge on which the Crown in fact went to trial against Keir.

16.39 On 12 February 1991 the accused in respect of whom sentence had been deferred appeared before Lord Clyde, when Duncan was sentenced to four years' imprisonment on the principal charges against him. Sentence was further deferred on Pringle, Stevenson and Ewing until 8 October 1991, when they appeared before the Lord Justice Clerk and were admonished.

16.40 On 12 February 1991 Alistair Darling MP wrote to the Lord Advocate expressing concern that the Crown decided to drop so many charges very shortly before the trial in a case that had been investigated for some considerable time, and asking why, after so much time and expense, the matter was dealt with in the way in which it was. The Lord Advocate replied by letter dated 8 March 1991 in which he stated:

"I am satisfied that not only the sufficiency of the evidence available in this case but also the quality of that evidence was carefully assessed by the Advocate Depute who prosecuted and that the decisions taken represent a proper exercise of the Crown's discretion."

That remains Lord Fraser's view of the matter and it is one which, on the information available to us, he was fully justified in expressing.

16.41 The Orr Report refers to the correspondence between Alistair Darling and the Lord Advocate. It continues:

"Others feel however, that the decisions made concerning the disposal of the case were not in accordance with justice but were a deliberate means

of preventing possible compromise of prominent public figures by stopping the rent boy witnesses from giving evidence and identifying other homosexual partners.”

Another passage states:

“Persons engaged on the enquiry however, feel that the decision to drop charges and prosecutions was a tactical one taken at the highest levels in Crown Office to prevent the possibility of evidence being presented which could potentially compromise senior figures in the judiciary.”

16.42 Orr told us that these passages were a reflection of what Robertson and his brother Charles Orr had said to him. Robertson denied having spoken to Orr in those terms. He said to us:

“I don’t feel the Crown Office got the Advocate Depute to do what he did to stop a rent boy pointing the finger at a Judge. The Advocate Depute was not improperly motivated because there was nothing to cover up.”

He was only ever concerned about the Advocate Depute’s decision in case it had been taken because the police had done something wrong, which was why he was annoyed at not having been told the reason for it. He said that he saw the Orr Report in draft, and he told Orr that he did not agree with the passages we have quoted above. Orr however insists that Robertson did agree with them. We cannot resolve this conflict of evidence. Charles Orr, on the other hand, did give evidence to us in support of what his brother wrote in his report. He said to us:

“I did express myself to my brother in basically these terms. They were my feelings at the time. My feelings are still that these are decisions not taken lightly. An improper motive could well have been a possibility and I saw it as such.”

He said in terms that he subscribed to the passages which we have quoted above.

16.43 These passages contain a grave allegation for which there is not a shred of evidence. We find it incomprehensible that Charles Orr should have spoken to his brother as he did, or that Orr should have accepted what he was told at its face value. As we have said, all the evidence points to an exercise by Thomas Dawson of his own unfettered discretion, and if the alleged motive existed then the obvious course would have been not to proceed to trial against Keir. Charles Orr himself was called as one of the Crown witnesses at that trial, so he knew perfectly well that it had taken place. Yet there is no mention of that trial in the Orr Report and we have to conclude that he gave his brother a distorted and incomplete account of the whole proceedings. We feel fully justified in describing the whole treatment of this case in the Orr Report as disgraceful.

17. *HMA v STEPHEN MARK CONROY*

17.1 On 20 July 1992 Stephen Conroy pled guilty to six out of seven charges of fraud and attempted fraud libelled in an indictment against him and was sentenced to six years' imprisonment. The sums in question came to a total of £280,153 in the charges of completed fraud and £270,000 in the charges of attempted fraud.

17.2 Although the case against Conroy does not feature in the Orr Report, for the obvious reason that it was disposed of after that report was written, we think it appropriate to discuss some aspects of it, partly because of an event which happened during the course of precognition and partly because of the terms of a letter which Tam Dalyell MP wrote to Lord Hope on 19 August 1992. To put these matters in context we propose to give a brief outline of the case.

17.3 The charges to which Conroy pled guilty were not in fact the first such charges against him which had come to the notice of the Crown. As a result of the investigation into Conroy's activities by Detective Inspector (now Inspector) Michael Souter and Detective Sergeant (now Sergeant) Peter Brown, which we have previously mentioned in passing, Souter, as the Reporting Officer, made two reports to the Procurator Fiscal at Edinburgh. The first report related to three charges of completed fraud, the total of the sums in question being £123,325, and one charge of attempted fraud, the amount in question being £22,750. Conroy appeared on petition in respect of these charges at Edinburgh Sheriff Court on 29 October 1991 and was granted bail. After precognition the case was reported to Crown Office on 8 May 1992. Crown Counsel instructed High Court proceedings and the case was allocated to the sitting of the High Court in Edinburgh which was due to take place on 5 October 1992.

17.4 Conroy persisted in his fraudulent activities while he was on bail, and committed the crimes which were libelled in charges 6 and 7 of the indictment referred to above. This led, incidentally, to the eighth charge in the indictment, to which he also pled guilty, being a charge of contravention of the Bail etc (Scotland) Act 1980. When these further crimes were reported to the Procurator Fiscal at Edinburgh it was decided that the public interest would best be served if he remained in custody pending trial. Accordingly when he appeared on a second petition at Edinburgh Sheriff Court on 16 April 1992 he was fully committed in custody. He appealed to the High Court against the refusal to grant him bail. The hearing of the appeal was continued on a number of occasions to allow investigation of assertions made on his behalf that he had been providing information which was helpful to the police, but eventually on 19 May 1992 the bail appeal was refused. At that time the Judge, Lord Murray, made it clear that the Crown should not expect an extension to the 110 day period.

17.5 As a result, time for precognition was very short. On 25 May 1992 the case was allocated to Iain McSparran, Procurator Fiscal Depute in the Edinburgh office, for precognition. On 27 May 1992 there was a telephone discussion between him and Douglas Brown, of the Crown Office High Court Unit, when it was decided that, as the case had to be allocated to the sitting of the High Court at Edinburgh which was due to take place on 20 July 1992 if the time limit was to be complied with, the time available for precognition meant that only the most substantial charges could be the subject of precognition and indictment. This was confirmed by Douglas Brown to Iain McSparran in writing on 1 June 1992. On 10 June 1992 the case was reported to Crown Office, Crown Counsel instructed High Court proceedings, and the case was allocated to the sitting of 20 July 1992. Douglas Brown prepared a draft indictment incorporating all of the charges which had been reported on 10 June and on 15 June 1992 he sent the draft indictment

to Iain McSporrán for revisal. On 17 June 1992 the indictment was sent to the Procurator Fiscal at Edinburgh for service.

17.6 By letter dated 7 July 1992 Conroy's solicitor, David Blair-Wilson, offered a plea of guilty to the charges in the indictment relating to the completed frauds, provided that the Crown accepted a plea of not guilty to the charges relating to the attempted frauds, did not proceed further with the charges in the first petition, and undertook not to prosecute Conroy in respect of other matters which might be revealed by further police enquiries. On 8 July 1992 Iain McSporrán wrote to Crown Office recommending that the Crown should hold out for a plea of guilty to all the charges in the indictment, but that it might be appropriate to indicate that if the plea resulted in a substantial sentence it might not be necessary in the public interest to proceed with the charges in the first petition. On receipt of this letter Douglas Brown prepared a note to the duty Advocate Depute, Alastair Campbell, recommending that the proposed plea should not be accepted, but that Crown Counsel should indicate their willingness to consider both cases together for the purposes of a plea and that if there was a substantial improvement in the plea to the present indictment they might be persuaded not to proceed with the first case. On 9 July 1992 Alastair Campbell accepted this recommendation and a letter was sent by Douglas Brown to Iain McSporrán intimating this instruction. There was of course no possibility that the Crown would undertake not to prosecute Conroy in respect of matters which had not yet come to its notice.

17.7 The Lord Advocate, Lord Rodger, gave a commission to Edward Bowen QC, a former Advocate Depute, and also at one time a Sheriff, as an *ad hoc* Advocate Depute for the sitting of 20 July 1992. The papers were passed to him about a week before the sitting was due to start, and he was made aware of the possibility that a plea of guilty might be forthcoming. On considering the papers he took the view that the evidence against Conroy amounted to "a pretty overwhelming case". When he had not heard by Friday, 17 July that a plea of guilty was forthcoming, he spoke by telephone with Iain McSporrán, who confirmed that negotiations were proceeding with David Blair-Wilson, but that there appeared to be a problem about Conroy's representation in court.

17.8 Robert Henderson QC was originally instructed as Conroy's counsel and appeared for him at the hearing of the bail appeal. David Blair-Wilson, however, decided to instruct another counsel for the trial. He instructed Peter Vandore QC during the week before the trial, but Conroy preferred that a different counsel should be instructed and accordingly the instructions were passed to John Simpson, Advocate. John Simpson was not in fact handed the papers prepared by David Blair-Wilson until Saturday, 18 July, and accordingly was not in a position to give advice to Conroy until a consultation was held in Saughton Prison on Sunday, 19 July. The papers included papers prepared by Crown Office which had formed part of the precognition reported to Crown Office. John Simpson told us that it was the best prepared set of Crown Office papers which he had ever seen. He told us also that his preliminary view was that Conroy's position was absolutely hopeless and that he should be advised to plead guilty. At the consultation, which was attended by David Blair-Wilson, there was discussion about the possibility of a plea of guilty to the charges in the indictment if the Crown was prepared not to proceed with the other outstanding charges. John Simpson told us that he thought that that was unusual because there had not been a further indictment, but he appears not to have been made aware of the fact that the outstanding charges had been included in an earlier petition in respect of which bail had been granted, and that because Conroy was in custody following the second petition, the charges in that petition had to be brought to trial sooner than the charges in the first petition. Compliance with the statutory time limits made it impossible to deal with all the charges in one indictment.

17.9 Acting on instructions given to him by Conroy at that consultation, John Simpson spoke to Edward Bowen before the trial was due to start on Monday, 20 July. He offered a plea of guilty to the charges in the indictment, except for charge 5, which libelled an attempted fraud, the sum in question being £95,000. He also attempted to secure an agreement that the Crown would not proceed further on the outstanding charges. Edward Bowen, like John Simpson, had little

information about these outstanding charges beyond the fact that there were charges outstanding, and accordingly he did not feel able to bind the Crown not to proceed further. He did, however, indicate that he was prepared to accept the plea which had been offered and that it was unlikely that the Crown would proceed further in respect of the outstanding charges. This position was acceptable to Conroy and his representatives.

17.10 When the plea of guilty had been agreed the diet was called before Sheriff John Horsburgh QC, sitting as a temporary Judge of the High Court. The plea was formally tendered and accepted. The Advocate Depute moved for sentence, and John Simpson addressed the Judge in mitigation. The main thrust of the plea was that Conroy was a young man who had allegedly been made use of by a bank manager, and otherwise could not have succeeded in his fraudulent activities. John Simpson told us: "I put in an extremely good plea in mitigation." Notwithstanding this plea, the Judge sentenced Conroy to six years' imprisonment for the crimes of dishonesty and one month's consecutive imprisonment for the contravention of the Bail Act. In due course the question of the outstanding charges was taken up by Iain McSparran with Crown Office. After it had been confirmed with Edward Bowen on what basis he had accepted the pleas of guilty, Crown Counsel on 31 August 1992 instructed that there should be no further proceedings in respect of the charges.

17.11 Edward Bowen, Douglas Brown and Iain McSparran all regarded the overall disposal of the case against Conroy to be wholly satisfactory from the Crown's point of view. For what their opinions are worth, Souter and Brown had no criticism to make of the way in which the case had been disposed of, and Brown indeed expressed satisfaction with it.

17.12 Later on 20 July 1992 John Simpson went to "Snatchers", a public house in the High Street in Edinburgh. As we have already mentioned in paragraph 11.3 of this Report, David Johnston and Michael Glen were there. They told us that John Simpson spoke to both of them. David Johnston reported to Tam Dalyell what he thought John Simpson had said. Tam Dalyell wrote in his letter dated 19 August 1992 to the Lord President:

"I hear that after the case, his [Conroy's] counsel, John Simpson, who is a serious lawyer, with a lot of experience, albeit not a silk, said to a number of people quite openly that the original charges, those due for October, had been struck out altogether as part of the plea bargain, and that the case was quite simply the strangest he had come across in his career. I gather that John Simpson let it be known that he did not believe the proverbial 'single-word' in the mitigation."

17.13 We are convinced that David Johnston misheard what John Simpson said. John Simpson thinks, consistently with the view that he expressed to us and to Conroy, that he must have used the word "strongest" rather than "strangest". We are not sure whether he said anything in the public house about the outstanding charges, but if he did his remarks must have been based on his relative ignorance of the procedure which had already taken place in relation to them. John Simpson told us that he thought the passage in Tam Dalyell's letter about his plea in mitigation to be "very unfair". He did not accept that he said anything of that kind in the public house.

17.14 To return to the precognition which was undertaken by Iain McSparran, we think we should mention an event which took place in his office on 24 June 1992. On that date Souter and Brown attended together to be precognosed about documents relative to the case which were in Iain McSparran's office. He told us that Brown was not very interested in being precognosed. He said that he had a very vivid recollection that Brown continually interjected, speculating about the so-called "list" of gay lawyers or establishment people or persons high up in the legal system. According to McSparran, Brown said at one stage: "The list Mr McSparran, very interesting this list, you would be very surprised about some of the names", and then went on to name two persons whom he said were named in it. One of these was the present Lord Advocate. Iain McSparran said to us that there is no possible doubt in his mind that Brown said that. According to him, he told Brown that he was not interested in the contents of any list and that by

all means Brown could tell him about it after this investigation, but for the time being he was simply dealing with a fraud investigation. He told us that Souter, meanwhile, looked embarrassed and irritated and tried to get back to the matter in hand. He did not, however, contradict what Brown was saying. Iain McSporrان was under the impression that Brown was telling him that he had the "list", and was taking pleasure in speaking as he did.

17.15 When we interviewed Souter for the third time, we pressed him again and again about what Iain McSporrان had told us, but he repeatedly stated that he could not remember any such event. He was not prepared to say that Iain McSporrان was lying to us, or to give us any explanation as to why he should be in a position to give us such an account. When we interviewed Brown, also for the third time, and pressed him very hard about Iain McSporrان's account, he described Iain McSporrان as "an excellent Fiscal", and agreed that he was reliable, not given to inventing things, and not someone who had a grudge against Brown. All he could say about Iain McSporrان's account was that he could not recall any talk about the "list".

17.16 We believe Iain McSporrان's account of what Brown said to him about the "list". Brown had read Souter's copy of Tucker's Statement and was accordingly aware of the names in it, which had "popped out" at him. We believe that he set great store by it. As we have already made clear in part 6 of this Report, Alan Rodger's name certainly does not appear in Tucker's Statement. It is incomprehensible, and deplorable, that a police officer should see fit to speak to a Procurator Fiscal Depute in such terms about a matter which was of no relevance to the case under discussion and which, above all, could only have been intended to undermine confidence in the senior Law Officer.

18. CONCLUSIONS

18.1 We are satisfied that we have seen all relevant papers and have interviewed all relevant witnesses. On the basis of this evidence we feel entitled to reach the following conclusions.

18.2 No prominent member of the Scottish legal establishment, apart from Lord Dervaird, is or has at any material time been compromised by reason of homosexuality or homosexual behaviour.

18.3 Prompt action was taken when Lord Dervaird was found to be compromised, and he resigned. If any other person in a similar position were found to be so compromised, nothing would be done to protect him from the consequences.

18.4 Colin Tucker's so-called "list" is a Statement which we have in our possession and which does not name or otherwise identify any prominent member of the Scottish legal establishment, apart from Lord Dervaird, as a person who has allegedly engaged in homosexual behaviour.

18.5 No other allegation of homosexual behaviour by a serving Judge which has come to our notice is true.

18.6 Sheriff Douglas Allan, formerly Regional Procurator Fiscal at Edinburgh, is not and never has been compromised by reason of homosexual behaviour. Allegations against him by Stephen Conroy were untrue and have been expressly withdrawn. No compromising photograph of him has ever existed. All other allegations against him are derived from Stephen Conroy's untrue allegations and are equally untrue.

18.7 No person engaged at any point in the investigation and prosecution of the case against Colin Tucker was improperly motivated. He was acquitted by verdict of the jury.

18.8 No person engaged at any point in the investigation and prosecution of the case against Gordon May and Colin Tucker was improperly motivated. The Advocate Depute withdrew the charges during the course of the trial because of the quality of the evidence.

18.9 Robert Henderson QC had a copy of Colin Tucker's Statement which he handed to a police officer without Colin Tucker's authority. He has never been in possession of other evidence which would be capable of compromising any prominent member of the Scottish legal establishment by reason of homosexuality or homosexual behaviour.

18.10 Robert Henderson's business transactions were subjected to a thorough investigation by the Crown with a view to possible prosecution. The investigation was additional to and far more extensive than the police investigation. The decision not to prosecute him was taken at the highest level on evidential grounds and was not improperly motivated. Robert Henderson in no way influenced the decision.

18.11 No person engaged at any point in the investigation and prosecution of the case against Neil Duncan and others was improperly motivated. The decision to accept pleas and withdraw charges was taken by the Advocate Depute in the exercise of his own unfettered discretion. The alleged motive for his decision has no evidential basis.

18.12 There is no link between any of the above events apart from the coincidental involvement of legal representatives, none of whom was in a position to use, and none of whom did use, improper means to influence their outcome.

18.13 There is accordingly no evidence:

- (a) that there has been a conspiracy to pervert the course of justice in Scotland;
 - (b) that the course of justice has been perverted in any of the above cases;
- or

(c) that the alleged motive for such a conspiracy has ever existed.

18.14 The only matter on which our remit requires us to make a recommendation is whether any part of this Report should remain confidential. We alone have decided on the terms of this Report. We can see no reason why any part of it should remain confidential.

REPORTED BY:

W A NIMMO SMITH QC
J D FRIEL

Edinburgh, 15 December 1992

Published by HMSO and available from:

HMSO Publications Centre

(Mail, fax and telephone orders only)
PO Box 276, London, SW8 5DT
Telephone orders 0171-873 9090
General enquiries 0171-873 0011
(queuing system in operation for both numbers)
Fax orders 0171-873 8200

HMSO Bookshops

49 High Holborn, London, WC1V 6HB
(counter service only)
0171-873 0011 Fax 0171-831 1326
68-69 Bull Street, Birmingham B4 6AD
0121-236 9696 Fax 0121-236 9699
33 Wine Street, Bristol, BS1 2BQ
0117 9264306 Fax 0117 9294515
9-21 Princess Street, Manchester, M60 8AS
0161-834 7201 Fax 0161-833 0634
16 Arthur Street, Belfast, BT1 4GD
01232 238451 Fax 01232 235401
71 Lothian Road, Edinburgh, EH3 9AZ
0131-228 4181 Fax 0131-229 2734
The HMSO Oriel Bookshop
The Friary, Cardiff CF1 4AA
01222 395548 Fax 01222 384347

The Parliamentary Bookshop

12 Bridge Street, Parliament Square,
London SW1A 2JX
Telephone orders 0171-219 3890
General enquiries 0171-219 3890
Fax orders 0171-219 3866

HMSO's Accredited Agents

(see Yellow Pages)

and through good booksellers