



# **PUBLIC REPORT**

of

**A JOINT REVIEW BY THE POLICE  
AND  
THE POLICE COMPLAINTS AUTHORITY  
OF ASPECTS OF  
THE POLICE INVESTIGATION  
SURROUNDING  
THE ARREST AND PROSECUTION  
OF  
DAVID CULLEN BAIN  
ON FIVE COUNTS OF MURDER**

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# BAIN REVIEW REPORT

## PART ONE PRELIMINARY

### Introduction

1. Sometime during the night and early morning of 19/20 June 1994, five members of the Bain family died at their residence in Every Street, Andersons Bay, Dunedin. In each case the cause of death was a bullet wound to the head. An investigation resulted in the early arrest and prosecution of the sole surviving member of the family, David Cullen Bain, then aged 22 years. He subsequently stood trial and after an 18 day hearing in the Dunedin High Court in May 1995 was convicted on five counts of murder and sentenced to life imprisonment on each charge. Appeals on his behalf to the Court of Appeal and the Privy Council left the verdicts and sentences unaltered. He is currently detained in Christchurch Prison.
2. A number of persons, but most notably Mr JF Karam, an Auckland businessman and former prominent sportsman, and Mr C Withnall, QC, of Dunedin, have argued that David Bain is innocent of the crimes. In April 1997 Mr Karam published a book entitled *David and Goliath* in which he contends the conviction was a grave miscarriage of justice and alleges or infers that Police misconduct/impropriety/ineptitude contributed to that situation. Although Mr Karam maintained he did not wish to lodge any formal complaint about officers involved in the case, the book is a virtual catalogue of allegations - express or implied - of professional mispractice which must in itself be regarded as a substantial complaint against the Police.
3. In May 1997, the Commissioner of Police consulted with the Police Complaints Authority, then Sir John Jeffries, on an appropriate format for examining the allegations and it was agreed that a joint investigation should proceed. Assistant Commissioner BP Duncan was appointed to lead the Police side and Detective Chief Inspector IE Lines of Wellington, Detective Senior Sergeant PJ Mitford-Burgess of Otahuhu and [later] Detective L Grace, Auckland, were assigned to assist.
4. On 12 May 1997 Mr Duncan and Detective Senior Sergeant Mitford-Burgess

met with Sir John Jeffries and Mr Barry Boon to determine an inquiry strategy and thereafter regular contact was maintained with Sir John until his retirement in June. Subsequently, the Police have frequently discussed progress with the new Police Complaints Authority, Judge Jaine, and have kept him fully apprised of progress and on one occasion in late July he was present when the Police team met with Messrs Karam and Withnall in Auckland. Judge Jaine later made other visits to Auckland and also visited Dunedin in the course of the inquiry.

5. Shortly before his arrest, David Bain engaged the services of Dunedin barrister and solicitor, Michael Guest, a former District Court Judge back in private practice. Mr Guest represented David throughout the trial and appeal proceedings. In his book, Mr Karam expresses critical comment at the way Mr Guest handled aspects of the role of defence counsel but we have not deemed it within the scope of this inquiry to make any assessment of those comments. Neither have we regarded criticisms of the prosecutor or any judge or the judicial process to be matters for our attention.
6. It is important that we make clear that the focus of this inquiry has been on the conduct of the Police in the investigation of these crimes and the subsequent presentation of evidence to the Court. It does not and cannot focus on the conduct of others who participated in the investigation and subsequent trial process. More importantly, it has to be understood that this inquiry and this report do not purport to reach a conclusion on whether David Bain was correctly convicted of the murders. That is a wider issue which is being pursued by Mr Karam and others on behalf of David Bain and we anticipate that they will continue to do so after the release of this report. It is however inevitable that in the investigation of Police conduct many issues raised by Mr Karam and others which are advanced in support of the view that David Bain was wrongly convicted, need to be addressed in this report.

## **Methodology**

7. The general strategy for the joint Police/PCA investigation involved the following basic steps:
  - Copies of Mr Karam's book were procured and perceived complaints against the Police were identified and categorised.
  - The Police team visited Dunedin and reconnoitred the Anderson Bay area. [They were unable to inspect the Bain house because it was no longer standing.]
  - The original investigation file and other related papers [including statements, job sheets, inventories, notes, ESR reports, briefs of evidence and depositions] were secured and taken to Auckland.
  - All remaining exhibits were secured and delivered to Auckland.
  - All remaining Police photographs, negatives and video tapes of the scene

and mortuary were secured and delivered to Auckland.

- Permission was obtained through the Solicitor General's office to use the transcript of evidence [Justice Williamson's notes] recorded at the trial.
- Some members involved in the original case had already begun to make their own written response to Mr Karam's claims and they were directed to submit their work to the Police team.
- Decisions were made on persons to be seen and who was to see them.
- Key exhibits were submitted to the Auckland ESR for re-examination.
- Contact was made with Mr Withnall and Mr Karam and meetings were organised.
- At their request, some exhibits were delivered to Australia for private analysis and/or testing.
- Members of the Police and other persons connected with the case were interviewed and sometimes re-interviewed.
- Counsel at the trial were questioned.
- Medical practitioners and other experts were interviewed/consulted.
- Copies of TV programmes/radio interviews/press clippings featuring aspects of Mr Karam's complaints were obtained and examined.
- As much as possible, documentation was entered into an electronic data processing system.
- Gathered material was subjected to study, research and discussion.
- Analysis was undertaken of key matters and charts were prepared to depict timings, movement and other salient points.
- Conclusions were reached and a report prepared.

### **Investigation of Homicide Cases**

8. In New Zealand, the Police investigation of homicide follows a prescribed pattern which has been developed over many years. It is practice throughout the country to treat every case [other than those where responsibility is immediately obvious] as a major investigation and it is fairly true to say that no effort is spared to bring an offender to justice. Permanent homicide squads do not exist in our structures and when a suspicious death is reported an ad hoc Homicide Team is created by drawing investigators and support staff from other activities. The basic investigative procedure is laid out in the Detective Manual and is



invariably closely followed in every instance. Of course, an investigation does not move into full swing immediately a crime is reported and there generally is a build-up phase as staff become available and facts are progressively gathered and interpreted. A senior member, takes [or is given] overall charge of the case and he/she decides the organisation structure to be created, charts the general path of the investigation, makes major decisions and handles such things as resources, media interviews and contacts with superior officers. He/she generally appoints an experienced member as Second in Charge and that officer directs inquiries along the charted path, receives documents generated by investigators, and coordinates the various aspects of the case. When an arrest is made, he supervises the preparation of evidence for court and sees the case through to completion. Notwithstanding the higher position of the O/C Investigation, it is the 2i/c who is often identified as the most actively involved, the best informed and, arguably, the busiest officer on the case.

9. Besides the two top members of the team, there are others who play key parts. The Officer in Charge of the Scene has an important responsibility to ensure the place of the crime is carefully examined for every possible clue to what happened there. The Officer in Charge of the Body also has an important function to see that all procedures in respect of body identification, security, removal, and notifications are discharged, and that a properly authorised post-mortem examination of the deceased is performed by a competent forensic pathologist. The Officer in Charge of Suspects has the duty to supervise the hunt for the offender by assigning staff to follow up information that emerges as the case progresses. Where there is more than one crime scene in any case, such as where the deceased is killed at one location and the body dumped at another, an OC Scene is usually appointed for each place. Where there is more than one corpse, an OC Body is appointed for each one. The specific duties of those people are prescribed in the Detective Manual and in CIB training notes.
10. The successful investigation of homicide requires an orderly and often meticulous progression along specific avenues of inquiry that are developed from the known and unfolding circumstances of the case. Attention to detail is the catch-phrase for investigators and they must be constantly mindful of the fact things may not always be as they seem. An open mind must be maintained, facts should be verified and statements corroborated as far as possible before conclusions are drawn. Expert opinion and/or past experience should be sought and where a hypothesis is developed or a theory advanced it should be tested by reconstruction and measured against contrary views, theories or explanations.
11. Generally, it is said crimes are solved by propounding from the known circumstances of the case a number of questions which require answers to complete a full picture of the crime. The questions are usually of the *what, where, when, why, how, who*, variety and answers are sought by processes of deduction, inspection, scientific examination, research, inquiry, questioning and other appropriate means. It might not be possible in every case to achieve answers to all questions and some investigations may be completed with gaps unfilled. There is no need to wait until the full picture is visible and all

documents are received before moving to make an arrest and invariably the more quickly the alleged culprit is interviewed, fingerprinted, searched and taken into custody the greater is the chance more evidence against him/her will be uncovered and the less likelihood outstanding evidence will be lost or destroyed. Another factor which can influence making an early arrest is the possibility the suspect could re-offend or flee while at large. Proper care and caution, though, must always be exercised in deciding to arrest a suspect and the Officer in Charge of an investigation must be satisfied he is on firm ground before directing that an arrest be made. Often, he will consult the Crown Solicitor in deciding if there is sufficient evidence to justify an arrest.

12. A feature of a major homicide investigation is the amount of paperwork generated and processed. It is a strict requirement staff involved in any aspect of the case promptly and independently document their actions and/or observations. This requirement does not always make for identical reporting as not everyone sees the same things from the same perspective or places the same importance on what has been seen. Likewise, where times are recorded there will often be discrepancies because watches are seldom synchronised, events may begin and end at different times to different people, and memory is not always precise when details are recalled subsequently - as may happen when the time an action was taken or an observation made is not precisely noted. It is also not uncommon for conflicting information to be sourced to the same person in different documents [message forms, job sheets and statements, etc,] as it sometimes takes two or three interviews to get details straightened out and accurately recorded.
13. Another feature of New Zealand homicide investigations is the regular meeting of all team members to discuss developments, general strategies and proposed courses of action. At these conferences [held at least daily in the initial stages] it is open to any member of the team to identify points of significance, to advance their own ideas on how the case will best be solved and to express reservations they might have on any aspect of the investigation or the direction it is taking.

## **PART TWO THE BAIN INVESTIGATION**

### **Bain Family Background**

14. Before reviewing the investigation, it is appropriate here to briefly describe the composition of the Bain family and to recount something of its background. The parents, Robin and Margaret, were wed in 1969 and began married life in Dunedin. David, the eldest child, was born there in 1972. Two years later, Robin, Margaret and David moved to Papua New Guinea where Robin and Margaret were engaged in missionary work. The three other children were all born in Papua New Guinea - Arawa in June 1974, Laniet in March 1976 and Stephen in January 1980.
15. The family moved back to Dunedin in December 1988 and took up residence in the house at Every Street. In June 1994, Robin, then 58 years, was a school teacher at Taieri Mouth School [40 km from their home]; Margaret, 50, was a full time housewife and mother; David, then 22, was a student at Otago University; Arawa, 20, was in her second year at Teachers Training College; Laniet, 18, was in receipt of the unemployment benefit, worked occasionally at the Museum Cafe and [apparently unbeknown to her parents] was a part-time prostitute and seldom stayed at home and Stephen, 14, was a secondary school student.
16. The house at 65 Every Street was a somewhat dilapidated old wooden building constructed on two levels. The front door opened onto the top floor and there was an internal stairway to a lower [basement] area. The top level comprised four bedrooms [Margaret and David each had their own full room while Stephen occupied a half room off Margaret's and Laniet, when at home, used a spare room] and two lounges; downstairs was a kitchen, bathroom/toilet/laundry and one bedroom [Arawa's].
17. The relationship between Robin and Margaret had become fairly strained over the years and Robin no longer slept in the house but had a bed in an old caravan positioned adjacent to the building. He usually spent only Friday, Saturday, Sunday and Monday nights at Every Street and otherwise stayed at the Taieri School House where he was a teacher.

### **Police Involvement in Events**

18. The first word Police received of the terrible events at Every Street on Monday 20 June 1994 was hot line advice from the local ambulance base at 0712 hours. Ambulance staff reported receipt of a 111 emergency call from a male person requesting assistance at the address. Police officers were immediately dispatched to the scene and soon reported back that of the six people in the house, five were dead. Senior officers were duly alerted, personnel were called to the station and initial steps were taken to mount a full scale homicide investigation.

### Key Positions in the Bain Homicide Investigation

19. The Officer in Charge of the Bain case was [now retired] Detective Chief Inspector Peter Robinson, then head of the Dunedin CIB, a man with 29 years Police service, mostly in the Criminal Investigation Branch. The 2i/c was Detective Senior Sergeant JG Doyle, another highly regarded officer and seasoned investigator. Detective [now Detective Sergeant] K Anderson, the first CIB member to arrive at Every Street, temporarily controlled the scene until Detective Sergeant M Weir was appointed OC Scene by Detective Chief Inspector Robinson.
20. Robinson and Doyle became embroiled in their tasks almost as soon as they arrived at the office and Detective Sergeant Weir went to the address later in the morning, after being formally tasked at the station. On arrival at Every Street, he immediately set about discharging the functions of his position. Other staff assigned to the case progressively began taking up their tasks and, where necessary, took over from members sent to the scene before the homicide investigation commenced. Those assigned other main tasks were:
- OC Victims - Detective Sergeant McGregor
  - OC Margaret's body - Detective Fitchett
  - OC Laniet's body - Constable Stewart
  - OC Stephen's body - Detective Bracegirdle
  - OC Arawa's body - Detective Constable Briggs
  - OC Robin's body - Detective Lodge
  - OC Exhibits - Senior Constable Barbara
  - OC Exhibits [Scene] - Detective Constable Thomson
  - OC Suspects - Detective Sergeant Dunne
  - OC General Enquiries - Sergeant Binney
21. Other staff were engaged in searching parts of the premises in a systematic and progressive manner. The members principally assigned searching duties were: Detective Anderson [after Detective Sergeant Weir took over as OC Scene], Detective Fitzgerald, Detective Constable Briggs, Detective Constable Le Gros, Constable Murray, Constable McIntyre, Senior Sergeant McDouall and Sergeant Benn.

### Early Assessment of the Situation

22. Within the first few days, investigating officers felt they could confidently draw the following conclusions from the information gathered:-
- In each case, death was inflicted by a .22 calibre semi-automatic rifle which was still in the house.
  - At some stage of events, the offender had been wearing a pair of white opera gloves.

- The first to be shot were Laniet and her mother as they slept in their respective beds [the precise order in which they were killed was not determined].
- Laniet sustained three bullet wounds to the head [one fired downwards through the top] and her mother a single shot.
- A live round found in Laniet's room suggested the rifle may have jammed here and the round had been freed manually.
- The offender then moved to Stephen's room and fired at him as he lay in bed but the bullet creased along the top of his head [after passing through his raised hand] causing a non-fatal injury and the weapon then jammed again.
- Stephen became aware that his life was in peril and he fought to preserve himself.
- He was bleeding from the wounds and there was a lot of blood.
- In the physical struggle between Stephen and his assailant, a good deal of Stephen's blood would have transferred to the culprit during the ordeal.
- The culprit succeeded in overpowering Stephen [by partly strangling him] and rendered him incapable of further resistance.
- At some stage the culprit removed the gloves [heavily blood stained] to better free the obstruction in the rifle and at some point they were thrown or kicked under Stephen's bed.
- The culprit then shot Stephen dead with a bullet through the top of the head.
- The commotion attracted Arawa and she was coming to investigate when the culprit saw her and fired at her. He missed and she retreated into her room where she was shot in the head at close range while in a kneeling position.
- Another live round in Arawa's room suggested that the rifle jammed once more there.
- Garments bloodied during the crime were later laundered in the family washing machine.
- Robin died some time later in the lounge from a single bullet to the head.
- A note discovered on the home computer screen had apparently been typed by the culprit. It read,

*sorry,  
you are the only one who deserved to stay*

23. As the details emerged, it became evident to the investigation team that the culprit was either Robin or David Bain, rather than some unknown intruder.

#### **Interview and Arrest of David Bain on 24 June 1994**

24. From the outset, Detective Chief Inspector Robinson says he resolved to keep an open mind on what had happened. He was aware murder/suicide by Robin seemed a possibility and he also knew some staff had reservations about David. As information began to flow in, though, Detective Chief Inspector Robinson became increasingly more convinced that David was responsible and on the evening of the third day of the investigation it was felt there was sufficient evidence to arrest him, even though at that stage a great deal of work still had to be done, but it was decided to withhold that action until more facts emerged.
25. On the fifth day, after preparing a number of points to be taken up with David, it was arranged that he be interviewed by [then] Detective Sergeant Croudin and Detective Lowden.<sup>1</sup> That morning, Bob Clarke, David's uncle, was requested to bring David to the [then] CIB Office at around 1030 hours. A recent development which partly precipitated the interview was contact the previous day with Val Boyd, an aunt with whom David was living since the events. She told an officer of a long talk with David in which he spoke of internal relationships and had said he "could have" killed his family.<sup>2</sup>
26. David was cautioned at the commencement of the interview, informed of his rights to consult a lawyer and after brief discussion was invited to either make a statement which would be taken down in handwriting or to participate in a video interview. He agreed to make a written statement.<sup>3</sup> It was begun at 1043 hours and is re-printed here:-

24.06.94  
10:43

#### **DAVID CULLEN BAIN STATES**

My full name is David Cullen BAIN. I am 22 years of age being born on 27 March 1972. I lived at 65 Every Street, Dunedin and I am a student at Otago University.

I am speaking to Detective Sergeant CROUDIN and Detective LOWDEN regarding events at my address on Monday 20.6.94. I have been told that I'm not obliged to say anything and that anything I do say may be given in evidence. I have also been told that I'm entitled to consult and instruct a lawyer without delay.

<sup>1</sup> Croudin Doc.10244 & Lowden Doc.10245. [Name refers to name of person sourced. Doc. is original file reference]

<sup>2</sup> Boyd Doc.10256

<sup>3</sup> Exhibit 586, David Bain Stmt Doc.10237. [Exhibit number is court exhibit reference]

Q Do you understand.  
A Yes.

Q Your fingerprints have been found in blood on your firearm, why are they there.  
A I don't know.

Q When you say I don't know do you mean that you didn't touch the firearm, you didn't have blood on your hands or the forensic evidence is false.  
A I didn't touch the firearm to my knowledge. I didn't have blood on my hands as I'd washed them.

Q Do you accept the forensic evidence I've outlined.  
A Yes.

Q When we discussed that question earlier you stated you could not account for between 15-20 minutes. Is that an explanation for what happened to your family that morning.  
A No.

Q What is it.  
A It's a question of what happened to me. After I saw my father I remember seeing um my family being pulled away from me by black hands.

Q There is a blood stained fingerprint on the washing machine. How did that get there.  
A I don't know.

Q Are you saying you didn't make it.  
A I can't say that because if it is my fingerprint then it is my hand that has put it there.

Q There are indications of blood from clothing that appears to have been pushed into the washing machine. Can you tell me why blood stained clothing had been washed.  
A No.

Q Do you accept that you washed clothes on Monday morning.  
A Yes.

Q And in those clothes was at least one pair of socks belonging to you.  
A Yes.

Q A sweatshirt belonging to you.  
A Yes.

Q A dark jersey belonging to Arawa.  
A Yes.

Q When the police located you at the house, you were wearing a white T-shirt with a Queens Baton Relay emblem.  
A Yes.

Q On the back of that shirt we have observed blood, how did that get there.  
A I don't know.

- Q If your previous statements to Detective Sergeant DUNNE are truthful, then there should be no reason for that blood to be on your shirt.  
A No.
- Q When you were located by the police you were wearing white socks. We have located blood on the sole of the sock. How did that get there.  
A I don't know.
- Q Again, if your statement to D/S DUNNE is truthful there is no reason for you to have blood stained clothing.  
A Unless I stood in some blood.
- Q Where might you have stood in blood.  
A I don't know.
- Q We have located a spot of blood on your black rugby shorts you were wearing. Explain to me how that got there.  
A I can't.
- Q There is blood on the porcelain handbasin in the bathroom, how did that get there.  
A I don't know.
- Q Did you put it there.  
A No.
- Q There's blood on a large towel hanging in the bathroom, a considerable amount of blood. How did that get there David.  
A I don't know.
- Q We found blood on the door surround in Stephen's room. It was a small amount compared with the amount of blood found inside Stephen's room. There had been a violent struggle in Stephen's room. Stephen had fought for his life. Can you tell me how that blood got there.  
A No.
- Q David do you own any gloves.  
A Purple woollen gloves, fingerless green gloves and I've recently bought new white dress gloves for a ball at Larnach Castle.
- Q Is that all.  
A Yes.
- Q Where are those gloves.  
A The purple ones should be in the top drawer of the wardrobe in my room, the green gloves are on the chair in my room. The white gloves are with my dress scarf in the same drawer as the purple drawers.
- Q Do you keep your dress clothes separate.  
A Not all of it.
- Q The white gloves, do they have a button or gap.  
A No they're plain.
- Q What are they made of.  
A Elasticated some sort, I don't know.
- Q Did anyone else in the house have dress gloves.



A My father.

Q Where would those be.

A In the caravan, I don't know where.

Q You're certain he keeps his formal gear in the caravan.

A Yes.

Q In Steven's room a pair of white formal type gloves were located. These were heavily blood stained. Do you know anything about these.

A No.

Q (David) Can I have a solicitor present?

A Who do you want.

Q I don't know.

We will provide you with a list.

DOYLE and Bob CLARK enters. Michael GUEST to be contacted.

STATEMENT READ TO DAVID AND ASKED IF IT IS ACCURATE AND STATES:

A It is a fair record of the conversation but some questions had more of a preamble. But the answers are fairly recorded.

I HAVE READ THIS STATEMENT, AND IT IS A TRUE AND CORRECT STATEMENT.

'D BAIN'

Statement taken and witnessed by:

'N A LOWDEN'

Det 8396

1:06

24.06.94

Witnessed and taken by:

'K D CROUDIS

D/S 7838

24.06.94

27. It was 1120 hours when David asked for a solicitor and following arrangements through his uncle, Mr Guest was contacted and came to the office at 1145 hours. Mr Guest spoke privately to David, read the statement as written to that point, and then, at 1235 hours, advised the officers that no more questions should be put to David. Detective Sergeant Croudin said that there were some points still to be covered and Mr Guest asked to see them in writing. A list of five questions was given and Mr Guest spoke privately with David about them and, at 1247 hours, advised that David would not answer them.<sup>4</sup> It was agreed,

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<sup>4</sup> Croudin Doc.10244, Lowden Doc.10245

however, that David would sign the written statement completed to the point at which Mr Guest arrived, and at 1306 hours he did so.

28. The questions on the list the officers wanted to put to David, were:

- a) Inviting an explanation for a lens from glasses "you have been wearing" being found in Stephen's room.
- b) Asking him to confirm he had told Val Boyd, "It could have been me. I don't know if it was me or Dad."
- c) Asking him if he could explain how a piece [of skin] missing from his knee was found in Stephen's room.
- d) Asking if he had typed the message on the computer.
- e) Asking if he had shot and killed the members of his immediate family.<sup>5</sup>

29. Detective Sergeant Croudin put the questions to David and asked if he was prepared to answer any of them and David replied, "No." The officer then asked David to read the questions and indicate if they accurately recorded what he had been asked and he read the document and replied, "Yes". He was asked to sign the page to that effect but Mr Guest intervened and David declined to sign.

30. Mr Guest again spoke with David in private and when he later emerged from the interview room, Detective Sergeant Croudin asked if David would agree to a medical examination. In the presence of the Police, Mr Guest advised him not to do so and [at around 1335 hours] David declined to be examined. At 1340 hours, Detective Sergeant Croudin arrested David and took him to the Charge Room where he was formally charged with murder. When asked if he had anything to say in answer to the charge, he replied, "No, I'm not guilty."

### Key Points of Evidence Implicating David

31. It was the Police assessment of the situation that David shot his mother, brother and two sisters in quick succession early in the morning. Afterwards, he placed most of his bloodied clothing into the washing machine to be laundered while he was absent on the paper-round. He commenced the paper deliveries somewhat earlier than usual to be home in time to wait for Robin to follow his usual routine of coming into the house [from the caravan in which he slept] and going into the lounge. David shot his father from behind curtains which closed off the alcove where the computer was set up. Either before or after that act, he typed the note on the computer [intending to suggest that Robin was the killer] and laid the rifle and magazine on the floor near his father's body to give the appearance of suicide. At some point he put damaged spectacles he had been wearing [minus the left lens] along side a spectacle case on the chair in his room, washed his hands and other exposed parts [may have even showered] to remove any blood [and firearm discharge residue], and then telephoned 111.

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<sup>5</sup> Croudin Doc.10238

32. It is not intended here to traverse all the evidence gathered in the investigation and adduced at the trial. For the purposes of this report it is sufficient to highlight the points which mainly supported the Police contention that David Bain rather than his father was the killer [and which Mr Karam largely disputes]. They may be summarised as follows:-

- The murder weapon was David's rifle [with a tubular silencer attached to the muzzle] and his ammunition was used.
- The weapon had been taken from David's room and a trigger lock had been undone with a key hidden in his room. There was nothing to indicate a search had been made to find the key, suggesting that whoever used it knew where it was kept.
- The gloves worn by the offender were David's and had been taken from a drawer in his room.
- David's fingerprints [impressed while wet with blood] were found on the rifle, so were Stephen's where he apparently tried to fend off the weapon.
- Significantly, his father's fingerprints were not on the weapon nor was there any other indication that Robin had handled it to kill the others or shoot himself.
- David had a blood stain on his shorts [which was either Stephen's, Arawa's or Laniet's], and two droplets of blood on his sox [from either Stephen or Laniet]. There were also several blood streaks on the back of his white sweatshirt [tested as human but unable to be grouped at the time but now established as Stephen's.]
- A lens from the damaged spectacles located in David's room was found in Stephen's room. [Because David has very limited vision without glasses and his own were away being repaired, it was presumed he was wearing an old pair kept in the house and that in the course of the struggle with Stephen they were dislodged and the left lens was sprung out of the frame on to the floor.]
- David bore recent signs of injury as might be expected from the struggle that the assailant had with Stephen before killing him. A small piece of skin which could have come from a recent knee injury was found in Stephen's room. There were recent bruises on his face and an abrasion above his right eye which the Police felt could have been caused during the struggle, probably when the spectacles were damaged.
- Significantly, his father did not show similar signs of recent involvement in a struggle. [Minor, semi-healed nicks on his fingers were considered unrelated.]
- The position of the cartridge case in the computer alcove [from the bullet

which killed Robin] was consistent with the barrel of the rifle being poked through the gap in the curtains from inside the alcove when it was fired. This together with the position of the wound, rifle, body and blood on the curtains was considered inconsistent with any theory Robin had shot himself.

- When David spoke to the 111 operator and the ambulance call-taker he said "They are all dead". The Police compared this remark with a statement he later made to an officer when he said he saw only his mother and father lying dead. It was part of the Police case that the only way he knew his sisters and brother were also dead was because he killed them.
- David's bloodied palmprint was found on the washing machine in which blood stained garments apparently had been washed.
- David could not adequately account for his actions in the period of around 25 minutes between his return home after the paper round and dialling 111, after allegedly finding his father and mother lying dead.
- A target in David's room comprised five circles which could represent five heads. Five family members were shot that morning. All had head wounds.
- The presence of blood spots in the porcelain basin in the laundry were not consistent with David's account of having washed his hands there to remove printers ink on his return from the paper run. If the blood had been put there by Robin after killing his family the later use of the basin by David would have either removed or diluted the blood [especially the spot at the lowest level].

*Further points emerged later which Police contended added to the evidence against him:*

- It was the Crown contention the words on the computer screen were David's. "Deserved to stay" rather than "deserved to live" has special relevance when considered with comments he made earlier [and subsequently] about "black hands" coming to take him/them away. Also, use of the past tense "deserved" indicated to the Crown that this was David tripping himself up by composing a note purportedly written to him by his dead father. If Robin had written it while alive, they believed, he would have used the present tense ["deserves"].
- In his evidence at trial, David said he could now recall things he could not at the time he was interviewed by the Police. When initially questioned he said he did not go into the bedrooms of his sisters and brother, yet at the trial he said he went into all the rooms where there were bodies and actually touched Stephen. He testified to seeing Margaret's open eyes when he stood beside her body but the pathologist contends her eyes would have closed quickly after death by the build up of blood behind the

face. So, David must have been close to her when she died.

- David said he remembered going into Laniet's room when he returned from the paper round. He said he saw her lying dead and heard gurgling noises emitting from her. On this point, the pathologist Dr Dempster said Laniet's main airways contained a large amount of heavily blood stained mucoid and frothy liquid. The airways and air spaces in the lungs were also distended with similar material which was largely the result of the lungs developing pulmonary oedema or becoming water logged. It was also due in part to some blood from the injuries to the base of the skull finding its way into the airways. He believed Laniet survived sometime after the first of the injuries, which was probably the wound on the left cheek. He thought either of the other two shots could have caused immediate death. In effect, he said, there would have been no noise after those two shots.<sup>6</sup> So it was the Crown case, to have heard the gurgling sound, David must have been close to Laniet at least at the time of the second and third shots.

We asked Dr Thomson for an independent assessment and he confirmed Dr Dempster's opinion.<sup>7</sup> He believes there would have been considerable blood and mucus in her airway from the facial wound and this would have caused noisy breathing [while breathing continued] due to the flow of this material into the airway. He does not agree with the proposition put forward by Mr Karam in his book where he says the gurgling was caused by the elevated position of Laniet in her bed and the noise was of expended air being replaced by blood and mucus forming in the lungs and air passages.<sup>8</sup> Dr Thomson says he has never seen a case where the airways beyond the larynx have filled with blood after death. Blood on that location has almost always been actively inhaled and is also present in the parenchyma and the lungs. He considers it extremely unlikely that displacement of air by blood trickling down the airway would cause any noise at all let alone significant gurgling. In his view, significant gurgling must denote some respiratory effort. It is Dr Thomson's opinion the shot through the top of the head into the pons [mid brain] and the other passing through the left temporal lobe, corpus callosum and the adjacent basal ganglia were both likely to be immediately fatal with almost immediate cessation of respiration. He said all forensic pathologists are aware of rare cases where a bullet penetrates vital structures in the brain and death does not immediately ensue. Such cases are very rare but occur in almost everybody's practice from time to time. For prolonged survival to occur where there are two fatal wounds as in this case is stretching the bounds of credibility. In recent correspondence, Mr Withnall believes Dr Dempster's original notes provide "a clear and obvious explanation" for the gurgling sounds,<sup>9</sup> but on the basis of Dr

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<sup>6</sup> Dempster Trial p291 L35. [Trial refers to trial evidence]

<sup>7</sup> Thomson Report Review Ref.24001d p4. [Review refers to documents resulting from this review]

<sup>8</sup> David & Goliath 1997, Joe Karam p162. Further references in the book will be by page number only.

<sup>9</sup> Withnall letter 3.10.97. [Letter from Mr Withnall QC assisting Mr Karam]

Thomson's submissions, we do not agree.

33. It is important to note that the foregoing points do not constitute the total evidence implicating David Bain in the murders. The above details are simply those felt necessary to mention here to respond to the present allegations. The full evidence gathered in the original investigation remains on the file.

#### **Points of Evidence Inconsistent with David as the Killer**

34. It is Mr Karam's view [as expressed in the book and/or at interview with the review team] that Police either misrepresented, carelessly misinterpreted or deliberately manipulated the facts outlined above and this led to the jury being presented with a biased and distorted case against David. As a result, he maintains, an entirely wrong verdict was returned. He contends the killer was Robin Bain and if the Police had taken an honest, objective and dispassionate view of the evidence they would have clearly seen that it pointed to him.
35. Mr Karam claims the Police case is flawed by major improbabilities and inconsistencies and he asserts a more compelling case can be made against Robin as the killer. His main points in exonerating David may be summarised as follows:-
- No motive was disclosed for David to have killed his family.
  - The fact David was able to competently complete the paper round that morning is not consistent with his earlier involvement in such horrendous acts of slaughter.
  - The evidence presented against David was in fact evidence of the 'finder' as opposed to the 'perpetrator'.
  - He did not attempt to implicate his father when opportunity existed.
  - There was no blood in his shoes he said he wore on the paper round.
  - He could not have been at home at the time the computer was turned on.
  - His denial of involvement has remained steadfast and unshaken.
  - It defies belief that in calculated and premeditated murders where David intended to lay suspicion upon his father, he would do such things as use his own rifle, unlock it with his hidden key, wear his own gloves, and put the damaged spectacles with one lens missing back into his bedroom. [Mr Karam asks why he would even bother to wear gloves at all when it could be expected his fingerprints would already be on the weapon].
  - Another point raised later by Mr Karam directly with the review team is that the diameter of one of the entry wounds in Laniet's head was larger than .22 calibre and he asserts he has expert opinion the bullet could not have

been fired from David's rifle. [This point is examined in a subsequent paragraph].

### **Points of Evidence Indicating Robin Bain as the Killer**

36. Furthermore, Mr Karam makes a number of claims which he says should have been recognised by the original investigation as strongly pointing to Robin Bain as the killer. The main points can be summarised as follows:-

- Robin had opportunity to commit the crimes.
- He was suffering from a form of mental deterioration which could have sparked a killing spree.
- He knew where David's rifle was kept and presumably knew where the key to the trigger lock was kept.
- He had a special motive to kill Laniet [there was mention Laniet had told other people her father was having sex with her and she intended to tell the family] and the three shots into her head were indicative of particular loathing.
- He had a motive to kill Margaret for casting him out of the home and family.
- There were recent injuries to his hands which could have been sustained during the struggle with Stephen.
- There was blood on his clothing and hands from the victims, and blood stained garments in the laundry could have been put there by him.<sup>10</sup> The clothes he was wearing were not what he would have worn to work that day.
- The damaged spectacles in David's room could have been part of a false trail he contrived to implicate David.<sup>11</sup>
- The note on the computer can be seen as his farewell message to David.
- The wound in his head and the position of his body, rifle, spent shell, and blood on the curtains were not inconsistent with suicide.

### **Evidence Adduced at Trial**

37. At David's trial, the Crown Solicitor, Mr Wright, called evidence supporting the Police findings and Mr Guest, for David, submitted that the Police had it wrong and Robin was the culprit. The jury had the benefit of seeing witnesses [including David] give evidence and face up to cross-examination and they heard persuasive argument for both sides. In summing up, Justice Williamson

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<sup>10</sup> p215

<sup>11</sup> p215

instructed the jury that it was for them to decide the issue on the evidence before them. By returning guilty verdicts, the jury obviously rejected the defence case that the Police had wrongly implicated David and had failed to recognise that it was Robin who had annihilated his family.

38. In *David and Goliath*, Mr Karam re-visits many of the submissions put to the jury by Mr Guest. The book does not purport to be a balanced review of the evidence but rather has the single objective of casting doubt on the reliability of the Crown case against David Bain.



## **PART THREE COMPLAINTS**

### **Identification of Specific Points of Complaint**

39. We approached the review by first identifying individual points of criticism and then proceeding to determine the merits of each one. Even though condemnation of the investigation is broad-based, scattered, and repetitious in the book, it is possible to distinguish and isolate comments which can be regarded as specific complaints against the Police. They are described and examined in the following paragraphs.
40. Because the Officer in Charge of the case is vicariously responsible for all aspects of the investigation, any well-founded criticism at the end of the day must rest on ex-Detective Chief Inspector Robinson. Subordinate officers, though, also had a duty to properly perform functions he assigned them and to see to it that all tasks were capably and conscientiously discharged in terms of legal requirements and Police training. Where it could be determined any member was guilty of misconduct, had neglected his/her duty or whose performance had otherwise been below standard, we were resolved to bring it to notice.

### **Failure to Adequately Control the Scene**

41. One of Mr Karam's major criticisms of the Police was an alleged failure to maintain proper control of the crime scene that existed at 65 Every Street.
42. The scene of any crime invariably contains clues from which valuable information can be extracted, including information as to the identity of the offender. These clues range from fingerprints and footprints, to materials dropped or left by the culprit, to stains and minute fibres which can yield up important details under microscopic examination. The exact position of the clues is often critical to the inferences which can be drawn from them so it is standard practice in a homicide case to preserve the scene until every shred of evidence is gathered up and its location documented. It is important in any crime scene examination - but especially in cases of homicide - that only persons having tasks to examine or collect the evidence are allowed into the scene and even they should take care not to unnecessarily disturb anything until it has been properly recorded. A necessary exception must be made for anyone involved in ascertaining if life might still be present in persons appearing to be dead and for those who must enter to ensure the premises are safe for others to follow. Also, as in this instance, where there is someone alive in the premises, steps must be taken to protect them from any continuing dangers which might exist.
43. In the present case, it is alleged control of the scene was virtually non-existent and it is inferred vital evidence was either disturbed to give a false impression or was lost altogether. Mr Karam employs extravagant language to illustrate

perceived Police failures at the scene. He says, for instance, *"by 9.45am at least eleven Police staff and four ambulance officers had to varying degrees walked, poked and prodded their way around the house."*<sup>12</sup> Our inquiry has failed to substantiate this claim in any form whatsoever. The words do not constitute fair and valid criticism.

44. Mr Karam claims that *"vital evidence was dissipating, disappearing and possibly being contaminated by over exposure to foot traffic"*.<sup>13</sup> Again, this is not supported by any facts. He is possibly referring to firearm discharge residue but it was the Police case there was none on Robin and David had washed before the Police arrived. He contends *"people went through the house without supervision, control or protective wear"* and that *"seventeen people, a cat and a dog paraded uncontrolled throughout the house"*.<sup>14</sup> In a recent radio interview, Mr Karam goes even further and said, *"but the fact is there was a dog and a cat, and ambulance officers and bloody Policemen running around this bloody house all over the show"*.<sup>15</sup> While Mr Karam might be expressing himself in those terms simply to make a point, he cannot expect such words to go unchallenged. We have found the claims to be inaccurate and unfounded.
45. He alleges that in the first three and a half hours *"not one useful thing was done"* in an attempt to preserve evidence or investigate the scene.<sup>16</sup> This is not true. In those 3.5 hours the scene was secured. Cordons were put in place to keep the area secure. Deceased were confirmed dead. Details were noted. Information was relayed back. The surviving member of the family was cared for. Plans were made of the path the inquiry would take. Event logs were commenced. Experts were summoned. Videoing was commenced. A major inquiry was mounted and resourced. Staff were briefed and assigned to tasks. An area canvass was begun, and the first Police into the house documented their actions. An investigation was effectively set in motion from the very beginning.
46. Mr Karam suggests the investigation was *"seriously deficient"* at the scene and that there was contamination in the total darkness that existed.<sup>17</sup> Again such comments are incorrect. Everyone was at pains to avoid contamination. There was not total darkness - the officers used torches for illumination and some lights were on inside the house. He suggests that the cat or the dog may have been responsible for the transfer of blood on to David's shorts.<sup>18</sup> A cat and a dog were noted by the Police but luminol tests of the floors failed to detect any paw marks where they might have walked through or transferred blood. Nor did either animal sit or climb on David during the time Police were in the house and the dog was taken outside early on.

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<sup>12</sup> p30

<sup>13</sup> p192

<sup>14</sup> p33

<sup>15</sup> Hamilton Radio Station (27.06.97)

<sup>16</sup> p33

<sup>17</sup> p33

<sup>18</sup> p34, Meeting of Review Team & Police Complaints Authority with Mr Karam & Mr Withnall 25.07.97.  
[Further references will be 'Mtg 25.07.07']

47. He goes on to say that the attending officers were in a state of shock "*evidenced by the fact that they required trauma counselling in the following days*"<sup>19</sup> and quotes that subsequently they could not remember which lights were on and one could not remember if he had gone into the laundry.<sup>20</sup> The members were not in a state of shock or in any way so bewildered by events that they lost sight of their duty. Trauma counselling is a mandatory requirement for all staff involved in violent or gruesome deaths.

#### Scene Preservation and Photography

48. It is acknowledged that even with the best will in the world, it is not always possible to prevent interference with a homicide scene. Ambulance officers and medical practitioners have been known to move things when examining bodies. Such actions as raising blinds to get better light, opening clenched hands, shifting limbs and disarranging clothing to find signs of life, are things that have been done unthinkingly by persons concerned more with performing their own specific tasks rather than preserving a scene totally intact. Likewise, Police officers have been known to step on one object while carefully trying to avoid another, turning on lights, and using a telephone from inside the crime scene. Detective training requires officers who realise they have disturbed a scene to note down details of the movement and not try to restore moved objects to their original position.
49. At the Bain house, some disturbance of the scene can be seen when comparing video footage and still photographs taken at different times. In particular:-
- a) Margaret's Room
- the lamp above the bed is shown in different positions. The video shows it in an upturned position during the first morning,<sup>21</sup> however early in the afternoon while the pathologist is examining the body, it is shown turned downwards.<sup>22</sup> [We believe Dr Dempster was responsible.]
- b) Lounge
- the curtain separating the alcove is in a vertical position during the first morning.<sup>23</sup> Early that afternoon it is shown draped across a chair.<sup>24</sup> [We believe it was moved at the time the message on the computer was noticed and, again, we think Dr Dempster was responsible.]
- c) Stephen's Room
- shoes and other items in the vicinity of the ice skate can be seen to have

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<sup>19</sup> p33

<sup>20</sup> p161, Mtg 25.07.97

<sup>21</sup> Scene Video 0419-0441 (counter)

<sup>22</sup> Scene Video 0720 (counter)

<sup>23</sup> Scene Video 0056 (counter)

<sup>24</sup> Scene Video 0661 (counter)

been substantially shifted.<sup>25</sup> The movement of items on the floor occurred when Stephen was removed during the afternoon of the first day. This involved the deliberate and controlled shunt backward of items in order to clear access behind his body.<sup>26</sup>

d) David's Room

- Laser shoes are shown in three different positions over a period of three days.<sup>27</sup> It appears they were accidentally knocked during the taking of photographs or moved during the searching of the room.
- an odd pair of shoes, a cardboard ammunition box, a plastic ammunition container, bullets and the trigger lock keys just inside the door which were grouped together on the Monday morning<sup>28</sup> have been moved slightly before the initial examination of that room was completed.<sup>29</sup> This examination commenced on 22 June. It is not known how movement occurred however it may have been associated with luminol testing conducted in the doorway during darkness on the first night.<sup>30</sup>
- items on a chair, including the spectacle frame and lens were deliberately moved on the 22 June during the searching of that room.<sup>31</sup>

The items mentioned are all shown in different positions in various photographs and video footage.

50. Mr Karam attaches considerable significance to the movement of these items and implies some sinister connotation.<sup>32</sup> But items will inevitably be moved, and some ultimately removed altogether, in the course of the scene examination. The salient photographs are those which were taken first as they depict the scene as the Police found it. Subsequent photographs will focus on items of special interest to the case and are taken for the purpose of furthering the investigation.
51. In the present case, we are satisfied there was nothing negligent, irregular, sinister or suspicious in the way items were moved and then photographed or video-recorded in a somewhat different position, but we believe accurate recording of a crime scene is a matter which requires careful attention and consideration. We think it is timely for the Commissioner of Police to remind staff deployed to crime scenes that complications can arise where items are

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<sup>25</sup> Exhibit 600 Scene Photographs 60 & 69 & Scene Video 2343 & 2367 (counter)

<sup>26</sup> Bracegirdle Review Stmt Ref.22005a

<sup>27</sup> Scene Video 1675, Photograph proof Review 116, T4 & T17

<sup>28</sup> Scene Video 0363, Photograph Proof Review T11 & T5

<sup>29</sup> Scene Video 1650, Photograph Proof Review 1121 & 1124

<sup>30</sup> Weir js Doc.10350

<sup>31</sup> Fitzgerald js Doc.10272 pg1

<sup>32</sup> Mtg 25/07/97 pg1

moved before their original positions have been recorded for evidential purposes. Likewise, where photographs/video recordings are put in evidence in criminal proceedings to depict a crime scene in the state in which it was found, care must be taken to ensure that the first taken photographs, etc, are the ones produced as exhibits. Where subsequent photographs give a better picture, or have some other advantage, explanations should be given on why they are used and where movement might have occurred.

#### First Officers Entering the House

52. To fully examine the allegation of ineffective controls at the scene, it is necessary to recount the sequence of events there and to determine precisely who went into the house and their reason for doing so. To that end we have established that between 0727 hours and 1140 hours [when plastic sheeting went down] on 20 June 1994 a total of 18 people entered the residence to some degree and for various official purposes.
53. The first Police party arrived at the house at 0720 hours<sup>33</sup> in response to David's 111 call. That group comprised Sergeant Stapp, Constable Andrew, Constable Stephenson and Constable Wyllie and they had to force an entry [at 0727 hours]<sup>34</sup> through the front door because David would not admit them. By torchlight through a lounge window they could see a rifle and part of someone lying on the floor. Prior to entry into the house, because it was considered they could encounter a situation requiring decisive action, Sergeant Stapp sent to a nearby car for further firearms before he and Constable Wyllie very cautiously conducted room clearing drills. While that was in progress, Constable Stephenson stood guard near the front door and Constable Andrew watched over David.
54. At about 0730 hours,<sup>35</sup> David went into "shock" and was placed in the recovery position by Constable Andrew. Ambulance staff waiting in Every Street were immediately summoned into the house. Mr Wombwell initially attended to David and then Mr Anderson and Mr McNamara were assigned to David. Constable Stephenson then escorted Mr Wombwell to check for signs of life of those with gun shot wounds. The constable specifically instructed Mr Wombwell to tread carefully and not to touch anything unnecessarily.<sup>36</sup> Shortly afterwards, Constable Wyllie took over the task of escorting the ambulance officer because he was now familiar with the layout while Constable Stephenson went back to the front door, from where he could continue to watch events in David's room. At 0731 hours<sup>37</sup> it was reported to Police Control that a total of five dead had been found in the house.

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<sup>33</sup> Police Operations Log (20.6.94) Doc.10024 [Further refs will be 'Oplog']

<sup>34</sup> Oplog

<sup>35</sup> Andrew notebook Doc.10621

<sup>36</sup> Stephenson Review Stmt Ref.21003

<sup>37</sup> Oplog

### Other Arrivals at the Scene

55. The following persons next entered the scene. This information has been confirmed by the Log kept by the scene guard (located at the front gate) who recorded all persons entering and leaving the exterior property. Entry into the actual house has been sourced from other documentation.
- a) 0735 hours<sup>38</sup> - Constable Newbury. He was called inside to take the family dog out of the house. [Newbury records his time of entry as 0738 hours].<sup>39</sup>
  - b) 0750 hours<sup>40</sup> - Ambulance Officers Scott and Dick. They were called to relieve their night shift colleagues already in attendance. Sergeant Stapp decided to allow them into the house after carefully weighing the necessity for more emergency service personnel.
  - c) 0807 hours<sup>41</sup> - Constable Van Turnhout. He took over the task of watching over David from Constable Andrew. [Van Turnhout records his time of entry as 0810 hours].<sup>42</sup>
  - d) 0815 hours<sup>43</sup> - Detective Anderson. He was the first CIB member at the address and he assumed the temporary role of OC Scene. [Anderson records his arrival at the address at 0811 and time of entry on to the property as 0816 hours<sup>44</sup> but he did not enter the house until 0848 hours<sup>45</sup> (accompanied by the senior staff named below) after a briefing by Sergeant Stapp.]
  - e) 0846 hours<sup>46</sup> - Superintendent Hill, Detective Chief Inspector Robinson and Detective Senior Sergeant Doyle. They visited to observe at first hand the extent of the carnage, to satisfy themselves that appropriate action was being taken and to determine what further resources would be needed. However, the only room they actually entered where bodies lay was Margaret's [as they passed through to view Stephen's] otherwise, they simply looked inside from doorways.
  - f) 0950 hours<sup>47</sup> - Detective Sergeant Weir. He took over from Detective Anderson as OC Scene, after formal tasking and briefing at the 0915 meeting.

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<sup>38</sup> Oplog

<sup>39</sup> Newbury notebook

<sup>40</sup> Scene guard log at the gate of 65 Every Street. [Further References will be SGLog]

<sup>41</sup> SGLog

<sup>42</sup> Van Turnhout notebook

<sup>43</sup> SGLog

<sup>44</sup> Anderson notebook

<sup>45</sup> Anderson js Doc.10348

<sup>46</sup> SGLog

<sup>47</sup> SGLog

- g) 1029 hours<sup>48</sup> - Senior Constable Gardener. He was the Police Photographer and set about his work [largely] under the direction of Detective Sergeant Weir.
  - h) 1034 hours<sup>49</sup> - Dr Pryde. He was the Police Surgeon and was called to the premises to formally pronounce life extinct. He subsequently went to the Police Station to examine and tend to David. [Detective Sergeant Weir records the doctor's time of entering the house as 1035 hours].<sup>50</sup>
56. Mr Karam suggests other Police and ambulance staff went into the house and states that there were people repeatedly coming and going without purpose. This is incorrect and a proper study of the logs and other documentation shows this.
57. Mr Karam claims that Inspector Soper also made an early entry into the house<sup>51</sup> but this, too, is untrue. That officer went through the gate on to the property to ensure that proper action was in hand but he did not enter the house. He then set up the Command Vehicle as a forward base in the street. The presence of a guard/log keeper at the gate and the restrictions on entry into the building are not consistent with the claim people were entering the house in an uncontrolled way.

#### Criticism of Detective Sergeant Weir

58. Mr Karam criticises Detective Sergeant Weir for taking the dominant role in the search of Stephen's room and claims that he should have had only a supervisory function.<sup>52</sup> He suggests that Weir re-did work already assigned to others and implies that there is something suspicious in the energy and zeal demonstrated by that officer.<sup>53</sup> He says he believes it was impossible for Weir to find the lens as he claims.<sup>54</sup> In effect, he accuses the officer of criminal conduct.
59. It is incorrect to assert Detective Sergeant Weir should have confined his activities to supervising the work of subordinates. He did not have the luxury of being simply an overseer but had to be actively involved in the searching process. The searching of the Bain house was a major undertaking and was conducted in phases. Priority was given to rooms in which bodies had been found. First, there was video filming of the room with everything *in situ*. Then there was a visual inspection and the immediate identification of things in view which seemed of special significance to the case. [There was some identification of key exhibits at this stage]. Next, there was the removal of bodies to the mortuary for post mortem examination. Then there was placement of arrows to indicate blood spots/splatters, followed by the careful inch-by-inch

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<sup>48</sup> SGLog

<sup>49</sup> SGLog

<sup>50</sup> Weir notebook

<sup>51</sup> p31

<sup>52</sup> p40, 41, 106, 107

<sup>53</sup> p152

<sup>54</sup> p108, 40, 102, 105, 107, 42, 211, Withnall letter (01.08.97)

searching process and labelling of items located. It was for Detective Sergeant Weir to plan, organise and coordinate those tasks with the staff assigned to him.

60. The detailed search of Scene 'F', Stephen's room, began on Wednesday 22 June [it was not at 3pm on the first day as claimed by Mr Karam].<sup>55</sup> Detective Constable Le Gros conducted a preliminary examination of the room at 1524 hours on Monday 20 June.<sup>56</sup> This was in order to note and record details of the scene prior to the body being removed. Detective Bracegirdle (O/C Body) was also present. On Wednesday 22 June, Detective Sergeant Weir (assisted by Le Gros) commenced the scene examination proper of Scene 'F'.<sup>57</sup>
61. Mr Karam's concern with Detective Sergeant Weir continues through the book. It features remarks about the officer's integrity, including: *"interestingly he was the only person in the house",*<sup>58</sup> *"Weir alone has access to the house",*<sup>59</sup> *"the indefatigable Detective Sergeant discovered the lens from the glasses in Stephen's room".*<sup>60</sup> He also states he became suspicious when he realised *"it was Weir himself who found the lens at 8.46pm in the evening on the fourth day."*<sup>61</sup> He wrongly attributes the discovery of the computer to Detective Sergeant Weir [discussed in a later paragraph]. At a meeting on the 27 August 1997,<sup>62</sup> Mr Karam also expressed concern Detective Sergeant Weir was the person who found the second key to the firearm trigger lock in the Commer van. The fact Mr Weir was active in evidence gathering should not be seen as suspicious. He was the O/C Scene and the finding of clues and exhibits at the Bain house was an essential part of his task. Our investigation does not disclose any justifiable concerns about the integrity of Detective Sergeant Weir or the circumstances surrounding the finding of the lens or the key. These issues are also addressed in later paragraphs.

#### Use of Plastic Sheeting for Floor Protection

62. In the book, Mr Karam criticises delays taken to procure plastic sheeting to cover the part of the floor walked on by officers to access various parts of the house.<sup>63</sup> The fact is, there was none at the Police Station and it was necessary to send out to buy it from a retail store. Since this case, a new product has become available for this purpose. It consists of light metal plates which can be used as stepping stones. They are superior to plastic sheeting as each plate has small rubber feet which keep the plate clear of the floor and thus minimizes the amount of contact with the area being protected. They should be carried in Crime Cars for use at scenes such as this one. We recommend to the Commissioner of Police that they become standard issue.

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<sup>55</sup> p106

<sup>56</sup> Legros js Doc.10349

<sup>57</sup> Weir js Doc.10158

<sup>58</sup> p32

<sup>59</sup> p38

<sup>60</sup> p152

<sup>61</sup> p108

<sup>62</sup> Meeting of Review team with Mr Karam

<sup>63</sup> p32



### Timing Conspiracy Claim

63. At the meeting on 25 July 1997, Messrs Karam and Withnall contended there are clear indications that timings were manipulated to better fit the Police case against David Bain. They referred to an instance where a constable had altered a hand written job sheet changing his arrival time at the scene from 0728 to 0718 hours.<sup>64</sup> We have examined that matter. The constable who prepared the job sheet recorded some precisely noted times and some estimated times. He mentally noted the time he was directed to go to Every Street as 0715 hours<sup>65</sup> and he accurately recorded the time David "went into shock" at 0730 hours.<sup>66</sup> However, all times between those two [including his initial arrival time of 0728] were estimated by reflecting backwards while preparing his job sheet at the station later that morning. He subsequently realised it would not have taken 13 minutes to drive to the scene and he changed the time on the job sheet from 0728 to 0718 hours.<sup>67</sup>
64. Differences between logged arrival times and those recorded by individuals [and other minor time inconsistencies] are invariably due to officers estimating time after responding to a particular situation. Obviously they were not in a position to assiduously consult their watch for every move they made, particularly in a tense or tight encounter and we see no fault in this. The most accurate records of time recorded by Police officers that morning were those from the official Police operations log. This was completed as events occurred including situation reports by radio from the scene. The key times from the Dunedin Control Room Operations log are: [a] 0727 entry to house, one body found; [b] 0727 confirming three bodies so far; [c] 0731 five now located. The time David "went into shock" was noted as 0730 hours by the constable attending to him. It is consistent with the log time. The accuracy of the constable's watch is not known however we are satisfied with the correctness of the Operations Room clock. We are also satisfied these times are consistent with the 111 telephone call timings.<sup>68</sup> The telephone was not 'hung up' by the operator for several minutes after the "convulsions" commenced.<sup>69</sup> We have carefully examined the relevant timings, and interviewed those involved.
65. We are satisfied there has been no collusion to distort the truth and believe these discrepancies are nothing more than the kind of inconsistency which can be found when times of events are recorded individually, without collaboration and where the transmission of radio messages reporting events are delayed for one reason or another. For misconduct to have occurred in time adjustments it would have required an agreement to falsify times almost from the outset, even before the facts had become known. This cannot be accepted as a possibility.

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<sup>64</sup> Mtg 25.07.97

<sup>65</sup> Oplog

<sup>66</sup> Andrew notebook Doc.10621

<sup>67</sup> Andrew Review Stmt Ref.21005c

<sup>68</sup> Malicious Call Centre computer print out 20.6.94 & Telecommunications, Christchurch, computer printout

<sup>69</sup> Edwards Stmt Doc.10269

### Police Disturbance of Exhibits

66. Mr Karam suggests that it would have been a simple matter for someone to have kicked [perhaps unknowingly] the spent case of the bullet which killed Robin from the lounge into the position in which it was found in the computer alcove.<sup>70</sup> Such a concession, he believes, would be an indication of true integrity and fair-mindedness but our examination does not reveal it to be at all likely. The first officer to approach the computer alcove was Constable Stephenson.<sup>71</sup> He did this to ensure no offender was hiding behind the curtain. He says he advanced with his torch and stepped carefully so as not to destroy or disturb evidence.<sup>72</sup> He was conscious that it could be a crime scene and that a detailed examination would follow. He is adamant he did not see or kick a cartridge case, or any other object, in the process of going forward. No other person approached the alcove until after 1204 hours.<sup>73</sup> Video footage shot in the lounge between 1029 hours and 1050 hours does not show any spent shell on the lounge side of the curtain.

### General Control of the Scene

67. The investigation found nothing to support the claim that the scene lacked effective control and containment measures, or that delays/inaction at the scene led to evidence being lost, disturbed or misinterpreted. On the contrary, given the situation of multiple deaths in a single house, the initial uncertainty of what had happened and who was involved, it seems to us the premises were remarkably well protected and managed as a crime scene. Indeed, it was the accurate log of comings and goings and other records maintained by investigators which enabled Mr Karam to identify the Police and ambulance officers he refers to.
68. The matter of alleged inadequate scene control was argued before the jury by Mr Guest but there were no revelations of any Police failures which could be truly said to have unfairly impacted on David Bain. Likewise we are unable to find anything in Police handling of the scene that could be said to have constituted negligence, professional impropriety or any other breach of Police duty.

### Police Reconstructions

69. During the initial investigation, officers attempted re-enactments of the individual killings and documented their thoughts as the case progressed. As much as possible these "reconstructions" were based on information then available but they were not placed before the jury and it was generally believed they would not form part of the evidence adduced in court. It was simply the officers trying to picture the sequence of events within the house and the movements/actions of persons involved. Where there was a requirement for reconstruction to prove

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<sup>70</sup> Mtg 25.07.97

<sup>71</sup> Stephenson Trial p26 L6-13

<sup>72</sup> Stephenson Trial p26 L6-13, Stephenson Review Stmt Ref.21003 & 21003a

<sup>73</sup> Dempster Trial p272 L32

a person's position when shot, this was ultimately a matter for the pathologist [and forensic experts] to calculate on the line and path of the bullet through the body, the presence or absence of gunshot residue burns and other scientific details.

70. In our review of death reconstruction and other pathological aspects of the case, we consulted independently with Dr K J Thomson of Wellington, a very experienced forensic pathologist who is highly regarded in his field. We have no difficulty in accepting recognised expert opinion as being the most reliable.
71. When they met with the review team on 25 July 1997, Messrs Karam and Withnall were highly critical of the reconstructions detailed in Police documents. They claimed that the reconstruction of Margaret's death did not take into account the trajectory of the bullet through the head. They disputed the Police reconstruction which had the killer firing at her from the side of the bed nearest the door with the stock of the rifle held in the arm pit. They said that a shot fired from that position could not have caused the injury inflicted unless Margaret had been partially sitting up, or the offender had leant over with the rifle held at a steeper angle. This is contrary to Dr Dempster's view who states that the bullet track extended directly backwards, slightly upwards [of the horizontal plane] and slightly to the right of the midline and that she was shot in the position in which he later saw her in the bed.<sup>74</sup> We are satisfied having interviewed the police officers involved in the reconstruction they also considered the option of the firearm being held at a more acute angle above Margaret when she was shot. We believe Detective Bracegirdle's job sheet [referred to by Mr Karam] shows the officer properly took into account the trajectory of the bullet.<sup>75</sup>
72. Messrs Karam and Withnall were also critical of the reconstruction of Laniet's death. In their view it was not possible in the amount of space available for the killer to have shot her in the top of the head with a rifle while her head was turned towards the wall. They believed her head would have had to be in that position for the blood to splatter on to the wall and the window surround. They maintained the reconstruction wrongly concluded she was shot with a rifle from her left side. They said it would not have been possible for anyone to have been able to get the rifle into the position by which the bullet entered her head. Based on that proposition and the size of the entry wound at the top of the skull, they contend a .45 pistol was used to inflict that wound. They also contend the report from such a weapon could have been the sound heard by Jamie Dalziel that morning.<sup>76</sup> The theory of a .45 calibre weapon involvement has been considered by pathology and ESR experts we consulted and was rejected as unsound. Firstly, the bullet fragments recovered from Laniet's head were all of .22 calibre, the path of the bullet as shown in the x-rays is consistent with a .22 and there is no other evidence of a larger calibre projectile being involved. The larger entry wound to the top of the skull is attributed to the fact that it was a hard contact wound. Dr Thomson believes the entry wound is related to the

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<sup>74</sup> Dempster Trial p280 L36 & Case Notes

<sup>75</sup> Bracegirdle js Doc.10503, Doyle Review Stmt Ref.5001c p11, Weir Review Stmt Ref.22001c p13

<sup>76</sup> Mtg 25.07.97

size of the muzzle of the rifle [fitted with a silencer], firm downward contact on the head and is consistent with the type of ammunition used.<sup>77</sup> Secondly, it was the Crown's contention the rifle was held directly above Laniet's head when she was shot and her head was not necessarily in the position it was found. [The matter of this wound is further discussed in a later paragraph.]

73. The bang heard by the paper boy Jamie Dalziell at 6.10 am<sup>78</sup> was never established to be a gunshot and we are satisfied this issue now raised by Mr Karam has no relevance. The weapon used in all the killings was fitted with a silencer and we believe no other weapon was involved.
74. The Police reconstruction of Arawa's death is also criticised. Mr Karam contends that the kneeling scenario pictured by the investigators could not have resulted in blood splattering on to the post, her coat, the floor, her bed and the other positions in which it was found. It was Mr Karam's contention blood radiates out to the front (not to the side and rear) and therefore the reconstruction is wrong. He also makes a criticism that the blood in the room was not tested.<sup>79</sup>
75. From our examination of the evidence and discussions with experts we are satisfied that the investigators have reconstructed this death as accurately as they could. We believe that Arawa was shot while kneeling near the post and the blood at what would have been her head level sprayed forward, to her right, and to the rear. A rupture behind the entry wound was responsible for some blood spurting backwards. The offender was reasonably close when he fired.
76. Messrs Karam and Withnall also see fault in the fact that Dr Dempster had not been present during the re-enactments to be able to comment on the process.<sup>80</sup> In this case he could not be there as he was overseas at the time. However, the question of whether or not a pathologist should be present at a Police reconstruction has been previously debated in other cases and there is a view that it is better for the pathologist not to participate so as to be able to give an independent assessment of the conclusions.
77. Discussion on the Police reconstruction of Robin's death is dealt with later.

#### **Other Points Raised by Mr Karam Connected with the Scene**

78. Several other points raised by Mr Karam which concern aspects of Police attention to the scene examined in the review may be summarised as follows:-

- a) Style of Entry into House

***Mr Karam claims the Police "Miami Vice" style entry in the house was unnecessary and damage could have been avoided by calling***

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<sup>77</sup> Thomson Report Review Ref.24001d

<sup>78</sup> Dalziell Stmt Doc.10322

<sup>79</sup> Mtg 25.07.97

<sup>80</sup> Mtg 25.07.97

***David on the phone.<sup>81</sup>***

As the first Police to arrive approached the house they could hear David tapping on the window, and they could see him in his bedroom through the window. It was seen as an urgent situation and a decision was made to make an immediate entry to prevent possible harm to David. It was not known what dangers still existed inside the house but the safety of occupants was the first consideration. Entry was effected with minimal damage and the house was cleared cautiously and without incident. Although the Armed Offenders Squad had been alerted it would have taken them some time to get to the scene. Any telephone call to David would have been difficult because he was still on the phone to the Telecom operator in Christchurch. Valuable time would have been taken up establishing who he was talking to and then arranging for the Christchurch operator to clear the line for Police contact. He was not receptive to Police directions given through the window to move from his room and open the door. It was considered that an immediate response was required by officers at the address and attempting telephone contact would have been a delaying factor. We believe the form of entry appropriate to the circumstances.

b) Inexperienced Police Staff Involved

***Mr Karam has suggested totally inexperienced staff handled the initial call out [ex Ministry of Transport].<sup>82</sup>***

In fact there were a mix of seasoned, mid-service and less senior members. All performed their duties capably and conscientiously.

c) Police Lacking Control

***He claims literally dozens of officers [including the pathologist and photographer] were out on the road seemingly without control and lacking positive direction.<sup>83</sup>***

There were not "literally dozens" of Police staff in Every Street without direction. Inspector Soper had set up his forward base on the roadside and was coordinating local cordons and general staff deployment from the Command Vehicle there. The news media were in attendance nearby. The Red Cross caravan arrived before midday to feed staff, including those on cordons, various area canvasses and at the scene. The street outside the address was used in the initial hours as a staging area for support staff working in the area away from the main Police station. The criticism is unjustified.

d) Pronouncements of Death

***Mr Karam has criticised the need for Dr Pryde to enter the scene to***

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<sup>81</sup> Mtg 25.07.97

<sup>82</sup> Mtg 25.07.97

<sup>83</sup> p32

***pronounce life extinct. He says the deceased had not moved a muscle for three hours and had been 'visited' by ambulance staff and a whole array of Police officers.<sup>84</sup>***

While it is true Chief Ambulance Officer Wombwell had found no signs of life, and that while it appeared to Police officers present that the victims were in fact dead, it was necessary to formally establish that fact and a registered medical practitioner was summoned for this purpose. This is standard Police practice undertaken at every death. In addition it was policy in Dunedin to use a doctor other than the pathologist for this purpose.

e) Time Base

***Mr Karam criticised the Police inquiry for not establishing a time base.<sup>85</sup> He claims a calibrated accurate clock should have been used for all timings. He also claims that allegedly bungled efforts which resulted from so-called inaccurate times means that vital reliable information would never be available to him.***

An accurate clock is [and was] maintained in the Dunedin Police Station.<sup>86</sup> The immediate scene party responding to the original incident had their times logged by the Police Operations Centre as they telephoned or radioed in movements and developments. This constitutes an accurate time base because calls were logged at times shown on the wall clock. That clock is regularly checked against the Wanganui Computer time base for accuracy. This has been done by the same Senior Constable for the past 10 years and during that time he has never found the clock to be "out" by as much as a minute. The Operations Centre clock is generally accepted as an official time base. Having a reliable time base, however, does not go far enough. In activities such as the Bain inquiry, where precise timing might be required by staff who do not have direct contact with the Operations Centre, it would be wise practice for them to synchronise their individual watches with the time base. If such a measure had been implemented in the present case, we believe there would not have been scope for some of the dispute over timing which has developed. We recommend to the Commissioner of Police that the synchronising of watches become a standard Police procedure in such operational matters. The significance Mr Karam now attaches to time was not anticipated during the original investigation. It did arise to some extent during the trial and at the Court of Appeal hearing, but no criticism was directed at the Police.

f) Police Charging into Computer Room

***At the meeting on the 25 July 1997, he complained about Police***

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<sup>84</sup> p31

<sup>85</sup> p136

<sup>86</sup> Burns Review Stmt Ref.5007

***"charging" into the computer room.***

Again, this is an extravagant statement and conveys a misleading impression. As explained earlier, Constable Stephenson moved carefully to the curtain<sup>87</sup> when he peered through at about 0730 hours on the morning of the crimes. Later in the day the computer message on the screen was examined in more detail by other staff. There was no "charging" into the computer room.

g) David's Removal From Scene

***He criticises the delay taken to remove David from the scene.***<sup>88</sup>

David's removal to the Police Station was accomplished at a time appropriate to the circumstances. Nothing was lost by keeping him at the scene. At that stage he was being treated as a victim and was receiving support and care from the ambulance staff. We see no fault in this.

h) Early Police Knowledge of Details

***He has claimed that by the time of the 0815 meeting the Police were fully aware of the scene situation also the names of 6 family members.***<sup>89</sup>

This meeting was brief and staff were put on standby while Detective Chief Inspector Robinson and others went to the scene to be more fully briefed by Sergeant Stapp who made the initial Police entry to the house. Detective Chief Inspector Robinson made an assessment at the scene to enable him to further plan the operation. Information was becoming available as to who was involved, but full details were not known.<sup>90</sup>

i) Stephen's Blood Stain on David's Shorts

***He contends that the stain of Stephen's blood found on David's shorts amounted to no more than a "smidgen".***<sup>91</sup> ***He maintains there is nothing to suggest it got there during the struggle and says it is ridiculous to suggest such a small amount of blood would get on the shorts if they had been worn during the struggle.***<sup>92</sup> ***He says it was transferred as the result of touching Stephen when he found him.***

There was more than a smidgen of blood on the shorts. According to Dr Cropp [ESR], the blood stain [a smear rather than a drop] was on the

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<sup>87</sup> Stephenson Trial p26 L6-13

<sup>88</sup> p31, p144, p190

<sup>89</sup> p28

<sup>90</sup> Stapp js Doc.10032, Parker js Doc.10192 and Doyle Review Response Ref.5001A p6

<sup>91</sup> p34, p152

<sup>92</sup> Mtg 25.07.97

outer surface of the crotch running around the seam.<sup>93</sup> There was sufficient blood to determine it was from Stephen, Laniet, or Arawa. He now describes it as being about the size of a twenty or fifty cent piece and says it could have seeped through outer clothing.<sup>94</sup> The Police supposed that when he attacked Stephen, David had been wearing outer clothing which was later laundered in the washing machine.<sup>95</sup> It is possible the shorts were worn under outer clothing and blood seeped through during the struggle. They thought he might not have been aware of the blood in the crotch when he put other bloodied clothes through the wash. A further ESR examination as part of the review has confirmed from DNA the blood from the crotch area of the black shorts could have come from Stephen Bain, and not any other member of the Bain family.<sup>96</sup> This confirmed the original result, that the blood was likely to be Stephen's. Mr Karam appears to concede the blood was Stephen's.<sup>97</sup> No results were obtained from the analysis of a very small smear of possible bloodstaining on the cycle shorts he was wearing when the Police arrived.

j) David's Blood Soaked Gloves

***He claims nothing links David to the blood stained gloves found in Stephen's room, except they were his.<sup>98</sup> He asks why he would leave them in Stephen's room if he was supposed to be the killer. He questions why there was no blood found in David's fingernail scrapings, when the gloves were soaked in blood. He says it is clear from the photographs of David's hands on the 20 June that he had not cleaned his nails.***

The gloves certainly belonged to David and were kept in his room. It was the Crown's contention they were worn by him for [at least] the early crimes and were taken off when the rifle jammed in Stephen's room.<sup>99</sup> It is believed they ended up under Stephen's bed during the struggle. It was thought likely by investigators they were left there simply because David could not find them in the terrible mess within the room and with Stephen's body hindering a proper search. Perhaps the poor light in the room contributed and it might have been difficult for him to remain in the room with his dead brother there. It should also be remembered that Arawa could have put in an appearance at this time. The fact the gloves were in a position under the bed could have presented difficulty, too. Indeed, one was not located by the Police scene examiners until the bed and other items were moved. Investigators thought David would not have anticipated the struggle put up by Stephen. David did

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<sup>93</sup> Cropp Trial p257 L25

<sup>94</sup> Cropp Review Stmt Ref.18039

<sup>95</sup> Williamson J - Summing-up

<sup>96</sup> ESR Report p8, Harbison, Review Ref.18038a

<sup>97</sup> Mtg 25.07.97, Written Submission (25.07.97) p9

<sup>98</sup> p89, p153

<sup>99</sup> Wright – Crown Summing-up



wash his hands and could have easily washed away whatever blood was under his fingernails. The issue of David's fingernails was examined before the jury<sup>100</sup>. At the meeting held on 25 July 1997, Mr Karam<sup>101</sup> questioned how a glove was found in a brown paper bag [referring to a job sheet of Detective Sergeant Weir.]. The glove was not found in that bag. It was unwrapped slightly on a Police exhibit paper bag when secured and examined.<sup>102</sup>

The ESR re-examination of exhibits included the gloves. Debris was collected from them and in the opinion of the scientist there was present an incompletely burnt powder particle. This would support the suggestion the gloves have been worn whilst handling or firing a firearm. The sample was forwarded to the State Forensic Science Laboratory in Adelaide for further analysis where it was confirmed firearm discharge residues were detected on the gloves. This residue needs to be considered along with the trace elements found on David's hands which in the opinion of Mr Walsh is evidence David had used/handled [or fired] a firearm which had fired 'Whisper' ammunition.<sup>103</sup>

k) Bruising on David

***At the meeting on 25 July 1997, Mr Karam raised the issue of Dr Pryde giving evidence about bruising visible on David. He suggested there was something improper about this because the doctor spoke of the age of the bruises which, Karam said, had not been mentioned earlier.*** When Dr Pryde examined David at the Police Station he noted recent bruising on the right temple, above the right eye and on the right cheek below the right eye. The details were included in his report to the Police.<sup>104</sup> At the trial, when he testified about those observations, he expressed an opinion that the contacts causing the bruises would have occurred approximately 10 hours earlier. [He gave his opinion that the parameters in time were three hours forward to three to four hours backward.<sup>105</sup> The result being the injuries would have occurred some time between 10.20pm the previous evening and 4.20am that morning which was consistent with being caused during the struggle with Stephen]. Under cross examination from Mr Guest he said he had made up his mind about the age of the bruises at the time he originally examined David.<sup>106</sup> Dr Pryde is a respected practitioner and there can be no suggestion that he had been influenced in any way to colour his evidence to disadvantage David Bain. He was open to further cross-examination on the issue if Mr Guest had seen merit in pursuing it. In his book, Mr Karam plays down the bruises to David's face and head

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<sup>100</sup> Pryde Trial p69 L10

<sup>101</sup> Mtg 25.07.97

<sup>102</sup> Weir js Doc.10158 p5

<sup>103</sup> ESR Report, Walsh, Review Ref.18041 & Ref.18041a

<sup>104</sup> Pryde Report Doc.10613

<sup>105</sup> Pryde Trial p70 L31 & Court of Appeal - Crown Summary p7

<sup>106</sup> Pryde Trial p69 L38

[and abrasion to his knee]<sup>107</sup> however they must be seen together with his complaint of a sore head as another key factor in the case.<sup>108</sup>

l) Skin Fragments Found at Scene

***In a recent letter to the Police Complaints Authority<sup>109</sup> Mr Withnall writes there is a continued assertion that the piece of skin found in Stephen's room came from David's knee despite the fact DNA testing did not link it to David.*** On 23 June 1994, an officer searching Stephen's room found two small pieces of skin among clothing and other items cluttering the floor. Investigators knew that David had a slight injury to his knee from which a small amount of skin was missing. The recovered pieces were sent for ESR examination and it was Mr Hentschel's opinion that one of the pieces could be from David's knee. At the trial he said, "I compared these pieces of skin with a photograph showing skin damage to the knee of the accused...it suggested to me that the piece of skin could have come from that knee area."<sup>110</sup> However he did not discount the possibility that the piece of skin could have come from one of Stephen's wounds.<sup>111</sup> Dr Dempster said in evidence, "My opinion is that the skin...appears to be thicker than the piece of superficial epidermis of skin which appears to be scraped off David Bain's knee. My preference is that it has originated from the back of Stephen Bain's hand although I cannot be dogmatic on that point, I concede it is possible it came from David Bain's knee."<sup>112</sup> The DNA analysis at the Victoria Forensic Science Centre, Melbourne, established the two pieces of skin found in Stephen's room could not have originated from Robin or Margaret Bain, however could have come from one of the children which included David.<sup>113</sup>

m) Blood Splatters on Curtains

***At the meeting with Mr Karam on the 25 July 1997 he suggested that the Police had discounted Robin Bain's death as suicide largely because they believed blood splatters on the curtain near his body did not support that theory. He said the position of the curtain at the time of the shooting, though, was not positively established and pointed out that it would not have been partly hanging over a chair as shown in the video reconstructions. Furthermore, he said it was known Constable Stephenson went through the curtains and came out again and because "it was dark and everything was out of control" he could have moved the chair***

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<sup>107</sup> p153

<sup>108</sup> Wombwell Trial p43 L20, Scott Trial p52 L25, Dick Trial p41 L4

<sup>109</sup> Withnall letter (3.10.97) p4

<sup>110</sup> Hentschel Trial p230 L28

<sup>111</sup> Hentschel Trial p246 L3

<sup>112</sup> Dempster Trial, p286 L13

<sup>113</sup> Victoria Forensic Science Centre Report Doc.10693

***from its original position.***

It is believed the curtain was moved across the chair by Dr Dempster when he saw the computer early in the afternoon.<sup>114</sup> This was not known at the time of the reconstructions on the 29 June 1994 because Detective Sergeant Weir had not had the benefit of viewing all the initial scene photographs and video footage. In the video footage taken during the morning the curtains are not shown across the chair. Some photographs taken later the same day show it hanging prior to movement<sup>115</sup> and others show it across the chair.<sup>116</sup> Constable Stephenson did not go through the curtains and then come out again as Mr Karam alleges. As described elsewhere in this report, he put his head through the curtains to ensure there was nobody there.<sup>117</sup> He said he moved carefully to the curtains and did not move any furniture. We are satisfied the position of the chair and curtains as shown in the morning video footage correctly depicts their position at the time of Police entry into the house. The result of the ESR Review examination of the curtains is discussed later in this report.<sup>118</sup>

n) 50 Year Old Man in Every Street

***Mr Karam raises the issue that no attempt was made to locate and interview a 50 year old man seen at the bottom of Every Street by Tania Clark.***<sup>119</sup>

An extensive area canvass was carried out in the Every Street area to find people who may have sighted David on the paper round and to ascertain who else was on the street that morning. The man described by Tania Clark was not identified and never came forward. At the trial it was agreed by both the Crown and defence that the person was not Robin Bain.<sup>120</sup>

o) Delays in ESR Examinations

***At the July meeting Mr Karam criticised the delay in exhibits being examined by the ESR. These included firearm discharge residue [FDR], Robin's clothes and shoes, David's clothes and samples from his hands and the various items for blood testing***

The FDR samples from David and Robin were forwarded to the ESR on 25.06.94<sup>121</sup> and examined on 12.10.94. Robin's clothing and shoes were forwarded on 25.06.94<sup>122</sup> and 21.09.94<sup>123</sup> and examined between

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<sup>114</sup> Dempster Trial p272 L33

<sup>115</sup> Photograph 31

<sup>116</sup> Photograph 35

<sup>117</sup> Stephenson Review Stmt Ref.21003 & Ref.21003a

<sup>118</sup> Refer: 'Failure to Adequately Establish That Robin Did Not Shoot Himself' – p91

<sup>119</sup> p125

<sup>120</sup> Trial p334 L5

<sup>121</sup> Pol 143 Doc.10453

<sup>122</sup> ibid

<sup>123</sup> Pol 143 Doc.10608

26.09.94 and 19.10.94. David's clothing was forwarded on 25.06.94<sup>124</sup> and examined between 4.08.94 and 19.10.94. There were continuing communications between the Police and the ESR from the time exhibits were submitted and final production at trial. This is normal practice in cases where large numbers of exhibits are involved and often priorities have to be set. Any delay in receiving results back from the ESR can present serious problems for the prosecution so prompt attention is requested and the earliest possible advice required. In the present case, ESR officers attended the scene within the first few hours and worked closely with investigators.

p) Delay in Sending Exhibits to Melbourne

***Mr Karam has also criticised the delay in taking exhibits to Melbourne.***<sup>125</sup>

A decision was made to send some items to the Victoria Forensic Science Centre because at that time it had greater expertise in blood grouping. [Among the items for examination was the piece of skin found in Stephen's room which was thought to have come from David.] Mr Hentschel, ESR Christchurch, recommended this course of action on 3 February, 1995.<sup>126</sup> Detective Sergeant Weir made the same recommendation to Detective Chief Inspector Robinson on 14 February.<sup>127</sup> Approval was duly given and the exhibits were delivered to Melbourne on the 10 March 1995, two months before the trial. Some of the exhibits which went to Australia had been previously produced at depositions and the Crown Prosecutor sought and was granted their release from the court. The Melbourne laboratory was able to advance the previous analysis on some exhibits and the Police were advised the result on the 23 March 1995,<sup>128</sup> again well before the trial. We are satisfied the examination in Melbourne was justified, appropriate and as prompt as circumstances allowed.

q) Irregular Photograph

***In his book***<sup>129</sup> ***Mr Karam infers there is something sinister in the fact Photograph No 62 [which is a blow up of Photograph No 61] is a digital enlargement. Photo 62 purports to show the lens in position at the toe of the ice skate on the Monday morning. As he correctly points out, Photo 62 contains detail which is not shown in Photo 61 and which appears to be cropped.***

The situation is both Photograph Nos 61 and 62 originate from the same parent negative. Photograph 61 was prepared for depositions and is

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<sup>124</sup> Pol 143 Doc.10453

<sup>125</sup> Mtg 25.07.97

<sup>126</sup> Hentschel Review Stmt Ref.18040A & Ref.18040

<sup>127</sup> Admin File

<sup>128</sup> Admin File

<sup>129</sup> p110

5R size which normally shows about 85% of the negative. The suitcase area is missing from the photograph. Photograph 61 was placed in the court book of photographs. It can be confirmed this is an original photograph from the depositions because of the holes punched in the left border. Sometime later, the exact date cannot now be established, Detective Sergeant Weir identified what he believed to be the lens in another proof of Photograph 61. This proof was 3R size and normally they cover 98% of the negative. The suitcase area and what was thought to be the lens is shown. He requested an enlargement showing the lens in position. The Police Photographer,<sup>130</sup> as he recalls it, did not have sufficient time because the trial was imminent to send the negative to the Photographic Laboratory, Wellington which at that time handled processing for the Police. A number of other prints had also been requested so the Photographer went to the University printer and got digital enlargements of them all, including proof 61. Further books of photographs were prepared for the jury and it was intended the digital enlargements be placed in those books. When Mr Karam and Mr Withnall visited the Dunedin Police Station and went through the negatives with Senior Constable Bachelor he explained to them both why there was more shown in Photograph No 62 than in Photograph No 61. This involved the compatibility of the sizes 3R and 5R and between the negative and the print produced.

r) Sequence of Photographs

On the matter of photographs, it should be recorded that considerable difficulty was encountered during this investigation identifying the precise order photographs were taken at the scene. Negatives were not maintained in order which made it difficult to establish the time and date sequence. This was compounded by the fact ex-Senior Constable Gardener did not maintain a written record of times and dates photographs were taken.<sup>131</sup> He relied on scene examiners to do this. We do not believe other people within the scene can always be relied on to record a Photographer's every movement or photograph taken. They have other responsibilities. We believe cameras with the capability of electronically recording time and date photographs were taken would be of value in crime investigation and we recommend to the Commissioner that such items be procured. It is important in any case, but especially in homicides, that it should be possible to easily determine the time/date details. In the present case the video camera had facility for recording time and date but during the filming this was not activated.

s) Arawa's Clothing

***Mr Karam has wrongly described Arawa being dressed in track***

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<sup>130</sup> Batchelor Review Stmt Ref.25004a

<sup>131</sup> Gardener Review Stmt Ref.25005a

***pants when killed.***<sup>132</sup>

Arawa was in fact wearing a dark green jersey and pink pyjama bottoms.

t) Spent .22 Shells

***In written submissions considered on 25 July 1997, Mr Karam maintains no tests were done to establish that all wounds were caused by bullets fired from David's rifle. He points out that five shells were found in Stephen's room but only two bullets were located, and that only two shells were initially found in Laniet's room yet there were three wounds in her body.***

The investigators were aware more .22 shells were found in Stephen's room than had been fired that night. A full forensic examination was completed of the spent shells found in the room and the bullet fragments found in Stephen's head and in the room. All five .22 shells and one bullet were found to have been fired from David's rifle. The second bullet removed from Stephen's head was consistent with having been fired from David's rifle. The width of the land and groove impressions were the same as those in the test fired bullets from David's rifle.<sup>133</sup> It could not be established which bullets belonged to which shells. At the meeting on 25 July Mr Karam said Nicholas Greet told him [by letter dated 26/6/96] he went to the Bain address prior to the murders and he and Stephen got access to David's rifle and fired it out Stephen's bedroom window. He suggests some of the extra shells found in the room may have been the result of that escapade but the scene examination established the window in Stephen's room, because of its rotten condition, could not be opened and there were full panes of glass in it.<sup>134</sup> Mr Greet has been interviewed and denies there is any truth to the shooting incident. He says he cannot recall sending such a letter to Mr Karam but admits to inventing some events and describing them to other people.<sup>135</sup> He is dealt with in more detail in a later paragraph. The subsequent finding of a third shell in Laniet's room is covered elsewhere.

u) Destruction of House

***In his book***<sup>136</sup> ***Mr Karam says no stronger signal of the Police and Bain family view of David's guilt could have been conveyed to the community than when the house was deliberately burned down.***

Once the scene examination was completed the Police had no further requirement or responsibility for the house. What happened to the premises was then an issue for the Executors administering the estate. They apparently believed that elimination of the house would help to

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<sup>132</sup> p12

<sup>133</sup> ESR Report, Hentschel (05.12.94)

<sup>134</sup> Fitzgerald js Doc.10530 p4, Weir Review Stmt Ref.22001d & Legros Review Stmt Ref.22004a

<sup>135</sup> Greet Review Stmt Ref.7006 & Ref.7006D

<sup>136</sup> p186

erase the horrid memories associated with it and would effectively end morbid and ghoulish interest shown in it. It was their decision to burn it down and not a Police initiative.

79. A feature of the Bain case is that apart from David there was nobody available to give information about home routine and the habits of the deceased. Consequently, information about events prior to the murders could not be verified to any extent and details of house layout and home routine could not be accurately ascertained.
80. Given the circumstances which confronted the Police at 65 Every Street, we believe the respective actions to secure, protect and examine the premises as a crime scene were as capable and professional as circumstances allowed. We do not accept Mr Karam's claims that officers mishandled this part of the inquiry and we reject his descriptions that their work was "sloppy", "bungled" or "incompetent".

#### **Delay in Allowing Pathologist Access**

81. This matter features prominently in Mr Karam's book. He expresses the view that if the pathologist had earlier access to the bodies he would have been able to make pertinent observations about the time and sequence of death. By delaying the pathologist's entrance in the house, he claims, the Police allowed the situation to turn to the disadvantage of David Bain.
82. In homicide investigations the pathologist is called upon to do much more than determine the cause of death at an autopsy performed in the mortuary. When available, it is usual practice, to call him/her to the crime scene so that he/she may view the body *in situ* and make pertinent observations before it is disturbed. A skilled pathologist can give valuable advice on where, when and by whom the crime was committed as well as establishing precisely how death occurred, so generally one would expect that investigators would want to facilitate the earliest possible start by such a practitioner.
83. Dr AG Dempster was the pathologist in the Bain case. He is a respected and highly competent practitioner with particular experience in gun shot wounds. He was called in early on the case but Mr Karam alleges he was kept sitting in the street for hours "twiddling his thumbs"<sup>137</sup> before being admitted into the house to commence examination of the bodies. It is suggested that during that time important tests which would have cleared David from suspicion were not conducted and the opportunity to gain vital information was lost.<sup>138</sup> In written submissions considered at the meeting on 25 July 1997, Mr Karam suggested the bodies [other than Robin's] would not have been warm at 7.45am if they were killed at 4-5am as the Crown suggested. He said this would be especially so in respect of Stephen's almost naked body.

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<sup>137</sup> p31

<sup>138</sup> Karam written submission (25.07.97)

84. Our investigation does not support these contentions. Dr Dempster arrived at the scene at 10.04am,<sup>139</sup> after a briefing at the Police Station, and was admitted into the house at 12.04pm.<sup>140</sup> [During the interval he returned home to get warm clothing.] As said earlier, it was important that everything should be put in place to ensure the pathologist could do his work without further risk of damaging key evidence whether on the carpet or elsewhere. Bearing in mind the importance of blood spots on garments, [Arawa is a case in point where blood spots ran across the thigh and lower leg it would have been regrettable if the pathologist had smudged or transferred blood while disarranging clothes to take rectal body temperatures]. As Detective Sergeant Weir saw it, the need to preserve the scene and bodies undisturbed at that point outweighed the advantages of taking body temperatures.<sup>141</sup> Detective Senior Sergeant Doyle concurred.<sup>142</sup> In his experience core body tests are only a broad indication of the time of death and taking them can cause considerable disarrangement of clothing and the risk of cross contamination. Preservation of the position of bodies and other objects within the scene were more important to him at that time than gaining an advance indication of the time of death.
85. Dr Thomson confirms core body temperatures are not accurate, however, he believes they can be valuable in indicating an approximate range of times within which death is likely to have occurred. In his view there would have been some value in taking body temperatures when Dr Dempster gained entry at 1204 hours but the equipment available [rectal thermometer] would have meant substantial movement. He agrees the possible consequences of this could well have outweighed the temperature recordings at that time. While he believes that a temperature recording taken after 1200 hours may have been useful, in retrospect, Dr Thomson has no doubt that earlier access to the scene and an earlier set of temperature recording would have provided more useful information on the timing of death.<sup>143</sup> Dr Dempster has said determining time of death by body temperatures has a range of error which is quite significant and would not permit precise pinpointing of the time of death. He says the literature suggests that with a single temperature and good knowledge of the environment [such as the air temperature being reasonably constant] it is possible to establish time of death to an accuracy rate of plus or minus 2.8 hours for about 12-14 hours after death. He believed there was little point in taking temperatures at the Bain house because the bodies had already cooled significantly.<sup>144</sup>
86. Taking everything into account, we are not disposed to criticise the judgements made and we accept that it is perfectly in order to keep a crime scene closed until the Officer in Charge is ready to allow people inside to begin examination work. The type of problems which can occur have been discussed to some

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<sup>139</sup> Ellis js Doc.10051

<sup>140</sup> SGLog

<sup>141</sup> Weir Review Stmt Ref.22001b, Ref.22001c, Ref.22001d

<sup>142</sup> Doyle Review Stmt Ref.5001b, Ref.5001c, Ref.5001d

<sup>143</sup> Thomson Report Review Ref.24001d p2

<sup>144</sup> Dempster Review Stmt Ref.24002



extent in paragraphs 48 to 50. Moreover, we acknowledge that body temperatures are only a broad based indication of the time of death. (Since this time there have been considerable advances in this field, and muscle probes now available in Dunedin are a less intrusive way of recording temperature). Dr Dempster has no serious concerns about the delay and recognises that it was a decision which rested on the Police commander at the scene.<sup>145</sup> Dr Thomson accepts that the O/C Scene has an overriding responsibility to preserve the evidence for later assessment and collection. In exercising this responsibility however, the O/C Scene should not overlook the importance of the bodies as items of evidence, and the need for an appropriately skilled person to have access to them at the earliest possible opportunity. He described the delay in establishing a plastic protected access way to the bodies as unfortunate.<sup>146</sup>

87. In considering specifically the time of Stephen's death, Dr Thomson advises that the assessment of body temperature by palpation [touch] is notoriously difficult. He agrees with Mr Karam that given the climate in Dunedin and Stephen's lack of clothing, he would be expected to lose more heat than the other members of the family. Against this, he says, would be the period of undoubted exertion prior to death during which the body temperature may have been elevated. It was Mr Wombwell's evidence that he noted a difference in body temperature between Robin Bain and all the other deceased.<sup>147</sup> Dr Thomson believes this is significant but he doubts the minor variations in temperature between Stephen and other family members who were presumably killed at about the same time would have been detectable by palpation.<sup>148</sup>
88. This was another matter argued before the jury during the trial and given all the circumstances of this particular case, we do not believe that the delay in admitting the pathologist into the crime scene was in any way unreasonable or improper or that it operated to the disadvantage of David Bain.

#### **Delay in Allowing Photographer Access**

89. Mr Karam contends there was an unacceptable delay in allowing the photographer to begin his tasks and that consequently the scene of the crime was not photographically preserved intact before investigators moved in. He suggests this was another Police decision which impacted against David Bain.<sup>149</sup>
90. As with the pathologist, it is desirable to have a photographer early at the scene so that he/she may photograph the situation as closely as possible to the state in which it was discovered. It is now common practice to video tape the scene as well as to take numerous still photographs for evidence and reconstruction purposes. [Although in 1994, having a video camera at a crime scene was a fairly novel experience in Dunedin.]

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<sup>145</sup> Dempster Review Stmt Ref.24002

<sup>146</sup> Thomson Report Review Ref.24001d p2

<sup>147</sup> Wombwell Trial p41 L29 & p42 L9, L15, L22

<sup>148</sup> Thomson Report Review Ref.24001d p10

<sup>149</sup> p30, p31, p32

91. We have carefully examined this aspect and have spoken with the photographer and those who supervised and instructed him on work required at the scene. The officer, Senior Constable Gardener, has now left the service but still has good recall of events. Records show that he was telephoned at home at 0729 hours<sup>150</sup> and at 0748 hours<sup>151</sup> he reported he was at the Police Station where he assembled and readied his equipment. At 0947 hours<sup>152</sup> he is logged as having arrived at the Command Vehicle in Every Street to await entry to the scene. At 1029 hours<sup>153</sup> he accompanied Detective Sergeant Weir into the scene to begin video filming. He exited the scene at 1051 hours<sup>154</sup> to take outside shots and went back inside at 1204/1205 hours<sup>155</sup> with Dr Dempster. Contrary to remarks attributed to him by Mr Karam<sup>156</sup> he does not believe he was unduly held outside and says he usually expected to wait outside a crime scene before being called in.<sup>157</sup>
92. When testifying at the trial, Detective Sergeant Weir said, "[At] 12.05pm I went into the house with Dr Dempster, his assistant and another officer. Some video footage was taken inside the house".<sup>158</sup> From that remark, Mr Karam claims that Weir misled the court as he knew video-taping had been done as early as 1045 hours. He asks in the book *"Why is it that the jury were told that filming did not start until after 12.05pm when the tape itself shows this to be untrue?"*<sup>159</sup> Detective Sergeant Weir did not say that there had been no earlier taping. This is clear from the video tape itself where time is shown on a grandfather clock in the house and it is documented on the scene log ("Weir and video in"). Mr Karam suggests he "established" that Senior Constable Gardener was filming/taking photographs at that earlier hour. We do not accept the allegation Detective Sergeant Weir was in any way seeking to conceal the fact. He was simply observing that the photographer video taped examinations conducted by the pathologist preparatory to the tape being screened for the jury.
93. Mr Karam also suggests in his book that the Police had improperly edited out portions of a video tape supplied to the defence team.<sup>160</sup> This assertion is incorrect and will be covered in later paragraphs.
94. We do not believe there was any unreasonable delay in letting the photographer into the scene, any impropriety over his work or any failure to disclose information. We particularly find it was a judgment call for the OC Scene as to when to admit the photographer and we accept the decision to have the member wait until ready to receive him. After all, it was for only 42 minutes after his

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<sup>150</sup> OpLog

<sup>151</sup> OpLog

<sup>152</sup> Ellis js Doc.10051

<sup>153</sup> SGLog

<sup>154</sup> Anderson js Doc.10348 (Anderson relieving Scene Guard for break – 7 mins)

<sup>155</sup> SGLog, Anderson js Doc.10348, Weir js Doc.10350

<sup>156</sup> p37

<sup>157</sup> Gardener Review Stmt Ref.25005

<sup>158</sup> Weir Trial, p76 L16

<sup>159</sup> p189

<sup>160</sup> p189

arrival at the scene which is not at all out of the ordinary when securing and planning the examination of serious crime scenes, especially where there are multiple deaths and a survivor still to deal with. The photographer was not required at the scene prior to his admission and there can be no criticism of the time spent at the station where he readied and assembled his equipment.

### **Failure to Fix Time of 111 Emergency Call**

95. As mentioned earlier, one of the points made by the Police against David was a 25 minute period between his return home from the paper round and when he made the 111 emergency call where he did not adequately account for his actions. Mr Karam suggests this is another instance of Police ineptitude or impropriety which impacted against David Bain.
96. In his book, he contends the Police did not accurately fix the time of the 111 call.<sup>161</sup> This claim is related to a comment made by Ms Bampton, Telecom supervisor, where she said she believed the call first started earlier than the telecom printout indicated.<sup>162</sup> Mr Karam claimed Ms Bampton confirmed this when she said in her statement she believed the call started at about 6.45 or 6.50am. [This was because her assistant who starts at 7.00am was not there.]<sup>163</sup> Ms Edwards, the operator who took the actual phone call, also said in an initial Police job sheet that she thought the call came in just after 6.30am.<sup>164</sup> In fact, this comment was made during her initial contact by telephone with a Dunedin officer who telephoned her at home. At that stage she did not have the benefit of being able to refer to Telecom computer records and simply gave the wrong time when recounting details of the call from David.
97. We have confirmed the 111 call from David was recorded at the Malicious Call Centre, Hamilton at 0709 hours<sup>165</sup> and was referred to the Christchurch emergency calls operator at precisely 0710 hours.<sup>166</sup> There is no doubt these times are accurate. The computer printouts show it clearly. The operator, Ms Edwards, unequivocally accepts 0710 hours was the time she first had contact with David.<sup>167</sup> This should have been clear to Mr Karam from the information provided to him - which included a detailed statement from the operator, when she said the call came in at 0710 hours and various logs from the emergency services.
98. The sequence of events was: The call was initially logged at the Malicious Call Centre Hamilton at 0709 hours and at Telecom, Christchurch, at 0710 hours. It was passed to Dunedin Ambulance at 0711 hours<sup>168</sup> who notified Dunedin

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<sup>161</sup> p208

<sup>162</sup> Bampton Stmt Doc.10275

<sup>163</sup> p188

<sup>164</sup> Binney js Doc.10545

<sup>165</sup> Malicious call centre computer printout, court exhibit 569

<sup>166</sup> Telecommunications Centre, Christchurch, computer printout

<sup>167</sup> Edwards Review Stmt Ref.7004 p1

<sup>168</sup> Dunedin Ambulance audio tape transcript, Doc.10036

Police at 0712 hours.<sup>169</sup> Police were enroute to the scene at 0715 hours.<sup>170</sup> The operator stayed on the line with David and heard the Police arrive at the house. Contrary to what Mr Karam and Mr Withnall<sup>171</sup> have claimed the operator did overhear events after the police gained entry and this included David convulsing<sup>172</sup> before she spoke to her supervisor and hung up at 0735 hours. The call was logged on the computer as terminating after 26 minutes and 19 seconds, at 0735 hours.<sup>173</sup>

99. Mr Karam claims David screamed and bumbled uncontrollably into the telephone but this is not what is recorded on the message taped in the ambulance office.<sup>174</sup> Although there is emotion in his voice, he can be heard clearly to give address details and telephone number and to lucidly respond to questions. He was also able to abuse the Telecom operator when she asked him to calm down [not recorded]. The tape recording of his actual conversation with the ambulance officer was played during the trial so jurors could gauge for themselves the state of his agitation.
100. In the book, Mr Karam asks why Ms Bampton did not testify at the trial. He suggests it was because her evidence of the alleged early receipt of the call was suppressed as it was not helpful to the Crown case. In fact both defence counsel and the Crown Prosecutor agreed she was not required. Mr Guest accepted her statement where she referred to the call coming in earlier was obviously wrong because of the Malicious Call Centre and Telecom computer times. He agreed the 111 call operator, Mrs Edwards, was the only person required to give evidence.
101. We find the time of the call was correctly and accurately determined and that evidence given in that regard cannot be justifiably criticised or called into question. We believe the officers involved in this aspect of the matter performed their duties properly and professionally.

### **Failure to Fix Time Newspaper Round Was Completed**

102. In this matter Mr Karam claims Police wrongly directed attention at David as the offender and were selective in the gathering and use of information which supported their case. He suggests officers intentionally put before the jury evidence which was slanted against David.
103. An important aspect of the original investigation was to establish as accurately as possible the time David returned to the house after completing his paper round. To do this, officers spoke next day [and later] with people in the locality who had witnessed him making deliveries. Sightings were recorded and an analysis made of his movements.

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<sup>169</sup> OpLog

<sup>170</sup> OpLog

<sup>171</sup> Withnall letter (3.10.97)

<sup>172</sup> Edwards Trial p8 L38

<sup>173</sup> Malicious call centre computer printout, court exhibit 569

<sup>174</sup> Dunedin Ambulance audio tape court exhibit 1

104. In the book, Mr Karam implies that the time David returned home was not with any degree of precision and that the Police carelessly or unfairly handled this aspect of the investigation. At the July meeting, he was critical that the times submitted by Constables Purdon, Peeters and Thomson regarding times taken to cover the paper round were widely disparate and he claims evidence given at the trial was that which was least advantageous to David. He asserts the Police were less than honest in that regard and he raises further suggestions of a Police conspiracy to deliberately "tweak back" timings. In addition to the evidence at the immediate scene [discussed earlier], this now largely includes member evidence involved in aspects of the paper run. It is alleged that the times were adjusted to fit the case against David and this both revolves around the time he arrived home from the paper run and when the family computer was switched on.<sup>175</sup> The related question of how far the washing machine was into its operating cycle when the Police arrived, will be discussed later.
105. The allegation of impropriety over the paper round timings has been carefully examined. Timings provided by Clark (David sighting 0645)<sup>176</sup> back to 0640 and McConnell (papers not picked up 0545)<sup>178</sup> back to 0540<sup>179</sup> are what might be expected when conducting initial interviews of witnesses. It is considered that the McConnell time is not relevant because it has no bearing on the time Clark would have completed his run. There appears to be no dispute he started the paper run at 0550.
106. Karam says important information of tests which favoured David was withheld. He claims details of time tests conducted on 22 June 1994 by Constable Purdon<sup>180</sup> and Constable Peeters<sup>181</sup> were not called by the Crown because they did not 'fit' the Police scenario. Instead, evidence was adduced of tests completed by Detective Thomson,<sup>182</sup> on 28 March 1995, and Constable Peeters under the supervision of Thomson, on 10th and 11th April 1995.<sup>183</sup>
107. We have examined this allegation and have ascertained that the June 1994 tests were conducted over the complete paper round without using any confirmed time references. The later tests of the whole circuit were conducted so as to place David at the various points on the run where witnesses say they saw him and to fit with times other people said their paper arrived that morning. On the basis of that information, the investigators believed David began the run earlier than usual. His own accounts of times are as follows:
- a) When first interviewed at 1038 hours on 20 June 1994 he said according

<sup>175</sup> Mtg 25.07.97

<sup>176</sup> Clark js Doc.10095

<sup>177</sup> Clark js Doc.10164, (21.6.94) and Clark Stmt Doc.10239 (22.6.94)

<sup>178</sup> McConnell js Doc.10002 (20.6.94)

<sup>179</sup> McConnell Stmt Doc.10241 (20.6.94)

<sup>180</sup> Purdon Doc.10498 js (22.6.94)

<sup>181</sup> Peeters Doc.10497 js (22.6.94)

<sup>182</sup> Thomson Trial p390 L28

<sup>183</sup> Thomson Trial p390 L8 and Peeters Dep Doc.PETERSD p336, Trial p389 L5

to Constable Van Turnhout<sup>184</sup> *"I left the house at 5.45 for my paper run ... (and) ... arrived back at 6.40..."* According to Detective Sergeant Dunne,<sup>185</sup> who was also present, David said he *"arrived back about 20 to 7"*.

- b) The same day at 1100 hours when asked where he does his paper run he replied *"Start at the corner of Albion and Aytoun Street...this morning it only took me three quarters of an hour"*.<sup>186</sup>
- c) In a full written statement taken from him at midday the same day, he said *"...lay there waking up until 20 to 6...I left the house at quarter to exactly...I left the top, where I pick up the first bundle at about 10 to 6...and at 20 minutes to 7 exactly, I was just past Heath Street on the way up to my place. It takes about two or three minutes to walk up to my house...I wear a watch and wanted to see how long the run had taken. I reckon about 45 minutes"*.<sup>187</sup>
- d) In a written statement recorded on Tuesday, 21 June, at 1435 hours David was asked the question *"Can you run through in detail what you saw and did from the time you finished your run at 6.40"* Answer *"I walked in the front door and closed it, I noticed that mum's light was on..."*<sup>188</sup>
- e) At the trial David testified *"The time I got back to the house I can't recall the exact the time but I know that I was at Heath Street at 6.40 exactly. I told an officer it takes two or three minutes to get home, that is an approximation I can't tell you exactly how long it takes."*<sup>189</sup>

108. By his own estimates David could have returned home after completing the round that morning by around 0640 hours. The paper round tests (Heath Street to 65 Every Street) were aimed at establishing time taken to cover the distance at various paces, including slow to moderate walks. Of course, if the distance was run, it would obviously reduce the time taken. There were no witnesses to how David covered the last part of the circuit from Heath Street. He might have walked casually with a slow dog as portrayed by Mr Karam or, being anxious to hurry home, could have moved much quicker. The earlier tests in June 1994 [covering the complete paper run] did not specifically focus on the stretch from Heath Street to 65 Every Street. Moreover, the June 1994 measurements recorded times between 26 Every Street, where the last paper was delivered, to 65 Every Street. Number 26 Every Street is below Heath Street. Mr Karam's allegation also included a claim that Detective Thomson was told to go out and do the run faster because the earlier tests did not 'fit'.

109. Time analysis charts of the various tests done in 1995 were prepared for

<sup>184</sup> Van Turnhout js Doc.10022 and notebook

<sup>185</sup> Dunne Trial p394 L21

<sup>186</sup> Van Turnhout js Doc.10022

<sup>187</sup> David Stmt Doc.10023

<sup>188</sup> David Stmt Doc.10155

<sup>189</sup> David Trial p412 L30

production in court but attempts to have defence counsel agree to their admission in evidence was declined unless considerable changes were made. The Crown Prosecutor finally decided not to use the charts. Evidence of the 1995 tests were given at the trial by Detective Constable Thomson, including his supervision of the Peeters tests. The defence did not require Constable Peeters to testify and his evidence was read to the jury. Evidence was not given of the tests completed in June 1994 of the full paper round, because the later tests were considered the more relevant and also because the Crown accepted that David [on his own admission and on the sightings of witnesses] could be placed in the vicinity of Heath Street, heading home, if not already at home, at about 0640 hours and his movements from that point were thought most crucial to the case. However, full disclosure of the earlier tests was made to defence counsel in documents supplied so that it cannot be said that evidence was improperly withheld. Detective Constable Thomson emphatically denies he was told to complete the test unfairly in order to improve the case against David and there is no evidence he was.

110. Mr Karam has other criticisms of the tests. [a] They were not done at the time the paper round is normally done in the early morning, and [b] Constable Peeters did not carry actual papers with him but simply pretended to place them in the boxes, etc. If these are valid points they could have been developed further at the trial.
111. At the time of the initial investigation, the Police spoke with Denise Laney, a local resident who had seen a person (later described as the paper boy) going past the partially opened gate at 65 Every Street. She said the time on her car clock was then 0650 but the clock was about five minutes fast.<sup>190</sup> Because of uncertainty over the accuracy of the watch of the Police officer who checked the car clock, it was not possible to precisely determine the exact time of the sighting. Like all other sightings and time estimations, it could at best be said the time was around 0645 hours. Mr Karam, however, wishes it to be accepted that this was a positively established, unequivocal and precise time.<sup>191</sup> On that basis he argues David could not have been the one who typed the message on the computer and suggests that should have been an end to the accusation against him. This, of course is very much an over-simplification. Times must be weighed and balanced against other information before firm conclusions are reached. At the trial, Mr Guest put to the jury a similar proposition as Mr Karam now advances in the book. It seems implicit in the verdict that the jury did not accept that proposition.
112. We find the time was determined as accurately as possible and that nothing was done to improperly or unfairly impact upon David Bain. We do not accept there was any attempt to falsify or distort timings.

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<sup>190</sup> Laney Stmt Doc.10666

<sup>191</sup> p137

### Failure to Disclose Error In Time Computer Switched On

113. Another of Mr Karam's key issues centres on the Bain home computer and he alleges that Police attention to this matter was handled in a way which disadvantaged David Bain and he accuses officers of serious misconduct and perjury.
114. It became known at a fairly early stage that a message obviously from the killer had been entered into the computer in the Bain house. The Police engaged an expert, Martin James Cox, to help determine precisely when it was typed. The examination was carried out on the afternoon of 21 June and entailed working out the length of time the machine had been running since last switched on. Detective Sergeant Anderson's watch was used to fix the time of the test and he recorded that Mr Cox commenced his examination at 1416 hours.<sup>192</sup> Mr Cox performed several steps before saving the message and then attempted to find the 'temporary file' created by the computer, which would provide him with a time to calculate from. This was unsuccessful and so another method was tried which entailed turning off the computer. This was done at 1422 hours.<sup>193</sup> [Cox and Anderson noted the 'turn off' time].<sup>194</sup> When Mr Cox reactivated the computer he realised that the computer's internal clock was faulty and was defaulting to 01.01.80 (date) 00:00:00 (time).<sup>195</sup> The time required to make the calculations now had to be the time the message was saved. As a result, Mr Cox was able to establish the computer had been operating continuously for 31 hours and 32 minutes from the time the message was saved.<sup>196</sup> Calculating backwards from 1416 hours, it was determined the computer had been switched on at 0644 hours on the day of the murders. A written statement was duly recorded from Mr Cox on 22 June by Detective Robinson [not present for the test]. Mr Cox did not quote the save time in his statement and said the constable at the house [Detective Sergeant Anderson] recorded the times the message was saved and the computer turned off.<sup>197</sup> This was incorrect as the 'save time' was never recorded by Detective Sergeant Anderson, only the commencement of the examination [1416 hours] and the time the computer was turned off [1422 hours].
115. Detective Robinson submitted a job sheet on 25 June 1994 noting he had taken the statement from Mr Cox. In conclusion he recorded "*Message saved by Martin Cox at 1416 hours. This time recorded by Detective Anderson*".<sup>198</sup> This, too, was incorrect and he should have shown that the examination began at that hour. He cannot now recall how he confused the two, but because he had played no part in the events at the house it is likely he believed the words used sufficiently described the situation. He gathered from those present that 1416 hours was a key time but he did not appreciate its exact significance.

<sup>192</sup> Anderson js Doc.10348 and Trial p95 L36-37

<sup>193</sup> Anderson js Doc.10348

<sup>194</sup> Cox Review Stmt Ref.17003

<sup>195</sup> Kleintjes Report, Review Ref.17001A

<sup>196</sup> Cox Message Doc.10359

<sup>197</sup> Cox Stmt Doc.10224

<sup>198</sup> Robinson js Doc.10259



116. Detective Sergeant Anderson submitted his own job sheet with brief details. recorded the time he and Mr Cox entered the house [1410 hours] and the living room [1411 hours]. He then recorded Mr Cox's comments about the type of computer they were looking at and how he proposed to carry out his task. Detective Sergeant Anderson then recorded step by step Mr Cox's narration of what he was doing. This commenced with an entry of "1416 Push Esc" which was the first keystroke made by Mr Cox.<sup>199</sup> Detective Sergeant Anderson continued to list Mr Cox's actions and comments. When Cox went to turn the computer off, Anderson took care to record the exact time [1422 hours]<sup>200</sup> as requested by Cox.<sup>201</sup> The earlier "save" time was not specifically noted because Anderson was unaware this activity would become the key time in the process.
117. With the benefit of hindsight, Mr Cox now believes he should have specifically noted the "save" time.<sup>202</sup> Detective Sergeant Anderson thinks he may have used the 1416 time base in his own calculations to also conclude the message was typed at 0644 hours but he did not see it as his task to reach any conclusion. His function was to simply facilitate Mr Cox's use of the computer.<sup>203</sup>
118. When Mr Cox subsequently requested Detective Sergeant Anderson's watch be checked for accuracy,<sup>204</sup> the task was assigned to Detective Robinson, the same officer who recorded Mr Cox's statement. Seven days later, after collecting the watch from Anderson, Robinson contacted Telecom and established it was [up to] two minutes fast. He submitted a job sheet<sup>205</sup> to that effect into the inquiry "system" and appears he had no further dealing with that aspect of the case. Mr Karam has criticised the delay taken for the check but it was not judged a priority in the many tasks being performed within the investigation at that stage.
119. It cannot be determined if Detective Sergeant Anderson made any time adjustment to his watch in the 7 days before it was taken for the accuracy test. We have located a job sheet where Detectives Anderson and Fitzgerald synchronised their watches on 24 June<sup>206</sup> [3 days after the computer check] during an examination of Laniet's room. It seems that one of them altered their watch to conform with the time of the other but it is impossible to ascertain which watch was changed or how many minutes were involved. Detective Fitzgerald thinks she may have adjusted her watch but cannot be sure.<sup>207</sup>
120. When Detective Sergeant Anderson testified at the trial he gave no description of the process used to calculate the time the message was saved and simply said, "At approximately 2.16pm Mr Cox carried out a number of functions and

<sup>199</sup> Cox Review Stmt Ref.17003

<sup>200</sup> Anderson js Doc.10348

<sup>201</sup> Anderson Review Stmt Ref.22002A

<sup>202</sup> Cox Review Stmt Ref.17003

<sup>203</sup> Anderson Review Stmt Ref.22002A

<sup>204</sup> Cox Telephone Message Doc.10359

<sup>205</sup> Robinson js Doc.10360

<sup>206</sup> Fitzgerald js Doc.10304

<sup>207</sup> Fitzgerald Review Stmt Ref.22008a and Fitzgerald js Doc.10304

he will tell you about that".<sup>208</sup> This was a perfectly proper and accurate statement but in his book, Karam suggests the officer committed perjury and that his use of the word "approximately" was a deliberate fudging of the truth, and that his evidence was palpably false and misleading.<sup>209</sup> Mr Karam presents no supporting data for his assertion. He is incorrect where he says Detective Sergeant Anderson recorded that the computer was turned off at 2.16pm<sup>210</sup> and where he claims the officer recorded the time the message was saved.<sup>211</sup> When interviewed recently, Detective Sergeant Anderson said he recalled being told his watch was fast when it was returned to him but he attached no significance to that point.<sup>212</sup> He does not believe it was his responsibility to give evidence of the two minute time difference [if there was the need], because he did not do the time check on his own watch. Detective Sergeant Anderson denies he committed perjury, that his evidence was "fudged", "palpably false" or "misleading". When interviewed he said he invariably uses the word "approximately" when testifying as to time because it is seldom possible to be precise.<sup>213</sup> His depositions [prepared by himself] include the word "approximately" on the majority of occasions when referring to time. When pointed out this did not appear to be the case in his trial evidence, he said the transcripts were misleading because the Crown Prosecutor led a good deal of the evidence and times were recorded by the stenographer as the prosecutor put questions to him. Detective Sergeant Anderson said the evidence he gave about the computer was what he recorded [by his watch time] and what he did in relation to it.

121. Another point to mention is the fact Detective Sergeant Anderson's watch does not mark individual minutes so any time between five minute points cannot be determined with complete precision. It should be further noted that seconds were not included in the time given out by Telecom and this could reduce the difference.<sup>214</sup>

122. Mr Cox testified *"the message was saved at 16 minutes past two"*.<sup>215</sup> This time was first discussed with him when he went to the police station to prepare his deposition statement. Detective Senior Sergeant Doyle, Detective Sergeant Weir and others were about but he cannot now recall who specifically dealt with him. The "saved" time was included in his deposition statement as was his calculation that the computer was turned on at 0644 hours.<sup>216</sup> There was no discussion about Detective Sergeant Anderson's watch being fast. Mr Cox has been interviewed and confirms he performed a number of functions before he saved the message and he now calculates the message was saved two minutes

<sup>208</sup> Anderson Trial p95 L36

<sup>209</sup> p137

<sup>210</sup> p134

<sup>211</sup> p132

<sup>212</sup> Anderson Review Stmt Ref.22002A

<sup>213</sup> ibid

<sup>214</sup> Robinson js Doc.10360

<sup>215</sup> Cox Trial p102 L25

<sup>216</sup> Cox Dep Doc.COXXD

into his transactions.<sup>217</sup> Detective Sergeant Anderson estimates the message was saved 2-3 minutes into the transactions.<sup>218</sup> The reality, then, accepting the detective sergeant's watch was up to two minutes fast, is that Mr Cox would have saved the message at about 1416 hours in real time. This was the evidence he gave. Prior to trial, Detective Sergeant Anderson can recall having a discussion with Detective Senior Sergeant Doyle, and he believes the Crown Prosecutor was present, about the time the message on the computer was saved. Detective Sergeant Anderson said he could not give the exact time the message was saved because he had not recorded it. If this point had been pursued at trial, he said, he would have said the message was saved 2-3 minutes into the transactions.<sup>219</sup>

123. It appears the "save" time in the deposition statement for Mr Cox was prepared from the job sheet submitted by Detective Robinson. As mentioned earlier this incorrectly recorded the message was saved by Mr Cox at 1416 hours and the error was innocently continued into the deposition and eventually to the trial.
124. It is not possible to determine precisely who actually "briefed" Mr Cox but it was either Detective Senior Sergeant Doyle or Detective Senior Sergeant Croudis, as between them they prepared the file for prosecution. Neither recalls "briefing" that particular witness, however, Detective Senior Sergeant Doyle, as 2 i/c and the officer charged with file preparation, accepts responsibility for any oversight which may have occurred. Detective Sergeant Weir had no role in briefing this witness.
125. The time of computer switch-on is raised as an important issue in Mr Karam's book and he seeks to establish that David had not yet returned home when the killer set about typing the message. He contends the two minutes were critical to the defence case and that David could not have been in the house at the time the computer was switched on.<sup>220</sup> He claims the failure by Detective Sergeant Anderson to disclose the two minute time difference operated very much to the disadvantage of David Bain.<sup>221</sup> However, it should be mentioned that a copy of Detective Robinson's job sheet clearly noting the time error was forwarded to Mr Guest [with other papers] well in advance of the hearings.
126. In his book, Mr Karam maintains that Colin Withnall was able to calculate that the computer was switched on between 06:40:07 and 06:42:05.<sup>222</sup> That took into account a number of variables, including Anderson's watch. On the other hand, a documented analysis [copy attached] carried out for us by the Police Electronic Crime Laboratory, Police National Headquarters, determined the computer was turned on between 06:42:47 and 06:48:49 hours. [The most likely time being calculated as 06:44:30]. The word processor was initiated between 06:43:45 and 06:49:47 hours. [The most likely time being 06:45:14].

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<sup>217</sup> Cox Review Stmt Ref.17003

<sup>218</sup> Anderson Review Stmt Ref.22002A

<sup>219</sup> *ibid*

<sup>220</sup> p134

<sup>221</sup> p137

<sup>222</sup> p138

This analysis included:

- the delay between turning on the computer and the system clock beginning to operate;
- the delay between starting up of the system clock and creation of the word processing temporary file;
- the deviation of the system clock over a 31 hour period;
- the delay between noting the time on Anderson's watch and "saving" the message reading of Anderson's watch;
- the deviation and the establishment of the deviation of Anderson's watch.

These recently revised calculations confirm David could have been in the house at the time the computer was activated. Because of the importance of this issue a copy of the Electronic Crime Laboratory Report is attached to this report.

127. Those involved have been interviewed and we are confident there was no ulterior motive in the minds of Detective Senior Sergeant Doyle [or Detective Senior Sergeant Croudís], Detective Sergeant Anderson or Mr Cox, and that there was no intention to mislead the court or unfairly treat David Bain. We reject the accusation that Detective Sergeant Anderson gave perjured evidence.
128. Having said that however, if this crucial issue had been more carefully pursued when the tests were done and when it was ascertained that Detective Sergeant Anderson's watch was two minutes fast the evidence would, or should, have been presented to the jury in a different way. It would have disclosed that the examination was commenced at 2.16pm according to Anderson's watch, that the message would have been saved at least two minutes into the transactions performed by Cox, that Anderson's watch was later found to be two minutes fast and that the message was therefore saved at 2.16pm real time. The evidence that the computer had been turned on at 6.44am would still have been presented to the jury but the full background as to how that calculation was made would have also been presented. The computer timing was of considerable significance. The manner in which the tests were supervised and recorded, the calculations carried out and the way in which the evidence was presented to the jury were in our opinion not totally satisfactory.
129. We cannot speculate what impact evidence produced in a more precise way would have had on the jury. If all available information had been presented, the jury would probably have heard the same calculation as to the time the computer was switched on as was actually put before them. The tests performed by the Police Electronic Crime Laboratory, and the way results were presented, would no doubt have been a marked improvement on the unsystematic tests conducted at the time, but the end result would have been the computer could have been switched on between 06:42:27 and 06:48:49 hours, the most likely

time was at about 0644 hours.

130. We find there was no intent to avoid proper disclosure to defence counsel or to mislead the court. Disclosure was made to the defence by providing a copy of the job sheet showing the time difference.
131. A further issue on this topic is that Mr Karam claims it is vaguely hinted in Police documents that Detective Sergeant Weir was the first to notice the computer. This is not the case. Constable Stephenson was the first to do so at about 0730 hours on the day of the crimes.<sup>223</sup> Later the same day it was noticed by Dr Dempster when he was in the lounge with Robin's body.<sup>224</sup> Detective Sergeant Weir was clearly not the first to come across it.
132. We conclude this section by commenting that the timing of the paper round, the time the computer was turned on, and the duration of the washing machine cycle were all very important aspects of the case. We emphasise the necessity for accurate time measurements to be kept and made in criminal investigations. In the present case the failure to locate Detective Anderson's original job sheet may have contributed to the confusion but we are bound to say this may have been avoided if more attention had been paid to this aspect when the file was being prepared for prosecution. Data must be processed in a way which ensures corrected information speedily reaches officers dealing with those details. We ask that the Commissioner take particular note of this point.

#### **Failure to Take Firearm Residue Tests**

133. This is a matter where Mr Karam sees failings which he believes worked against David Bain. He contends that if action had been taken speedily and efficiently it would have been established David had not fired the murder weapon.
134. Tests can be made to determine if a person has recently fired a firearm. It mainly involves checking suspects for discharge residue blown back on to [mainly] the hand[s] which held the weapon. It is to be expected in ideal conditions that minute particles could still be found on a live and active person up to two/three hours after shooting occurred - provided the firer has not washed since. On a dead body, the dust could remain much longer because it is only lost through movement.
135. Swabs taken from David at 11.30am on 20 June resulted in no firearm discharge residue being detected,<sup>225</sup> but he had washed before the test was administered. [There was no blood on his hands yet he had left bloody fingerprints on the rifle and palmprint on the washing machine so it can be presumed he had washed or wiped his hands to some extent before the Police arrived. Further, David says he washed his hands shortly after he returned from the paper round to remove printer's ink.]<sup>226</sup> Dr Pryde and Police staff who dealt with David recall his hands

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<sup>223</sup> Stephenson Trial p26 L11, Stephenson Review Stmt Ref.21003a

<sup>224</sup> Dempster Trial p232 L30, Weir Trial p76 L20

<sup>225</sup> Hentschel Case Notes p54, Hentschel Trial p223 p32

<sup>226</sup> Van Turnhout js Doc.10022, Dunne js Doc.10109, David Stmt Doc.10023, David Stmt Doc.10155 and 10237

were clean and this can be seen in photographs taken that morning.<sup>227</sup>

136. Dr Dempster took skin samples from Robin's hands in the mortuary that night.<sup>228</sup> These were later tape lifted and analysed. No residue was detected on them.<sup>229</sup> Trace elements were found on both David's and Robin's hands but this was not given in evidence.

137. Mr Karam's criticism suggests that if the Police had administered the tests earlier,<sup>230</sup> they would have not only confirmed that David did not fire the murder weapon, they would have established that Robin had.<sup>231</sup>

138. While it is true samples could have been taken earlier from Robin, we do not believe the delay necessarily meant evidence associating him with the rifle was lost. It is to be expected residue should still have been adhering to his hands when skin was lifted in the mortuary that evening. The suggestion by Mr Karam the samples should have been taken at the scene by 8-9am would have run the high risk of contaminating other evidence at the scene such as fibres or blood on the hands. It could also have meant introducing other people into the scene, and one of the criticisms from Mr Karam has been the number who entered the house. In relation to David the priority at 0800 hours was to treat him as a victim, and provide him with medical support. The samples were taken from him at the appropriate time when he was removed from the scene. We do not believe anything significant was lost by retaining him at the scene because as now known he had already washed his hands.

139. Positive FDR on either Robin or David, would not have solved the crime "beyond doubt" as claimed by Mr Karam.<sup>232</sup> At best it could have indicated contact with the rifle but not necessarily responsibility for firing it. David could claim he touched the rifle as he has done to explain his fingerprints on it. FDR on Robin's hands would not exclude the possibility it was transferred from David if he moved his hands to make it look like suicide. It is known Robin had blood smudges on his left hand and on the left leg of his track pants. Within the Bain family, this blood could only have been Robin's. It's presence may be consistent with the body being moved to give the appearance of suicide.<sup>233</sup>

140. At 1146 hours the Police sought advice from the ESR on the question of FDR recovery.<sup>234</sup> Notwithstanding they were told the maximum period for recovering gunpowder residue was 3 hours, samples were nevertheless taken for testing. Even though it could have been anticipated tests would have proved negative by time delay and because David had washed his hands, it was still considered

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<sup>227</sup> Proof Photograph

<sup>228</sup> Bracegirdle js Doc.10673

<sup>229</sup> Hentschel Trial p221 L10

<sup>230</sup> p35, p174

<sup>231</sup> p210

<sup>232</sup> ibid

<sup>233</sup> Doyle js Doc.10215

<sup>234</sup> Bracegirdle js Doc.10012

worth trying. Delay in taking FDR samples from Robin Bain was canvassed during the cross examination of Mr Hentschel.<sup>235</sup>

141. The blood stained gloves and the lens found in Stephen's room were examined for FDR and none was found.<sup>236</sup> Discussions took place with Mr Hentschel [ESR] about the likelihood of finding firearm discharge residue on clothing taken from David and from the washing machine [green woollen jersey] and generally.<sup>237</sup> It was Mr Hentschel's opinion it would be unlikely to find residue on washed hands or the clothing. A request was made for clothing for both Robin and David to be checked.<sup>238</sup> The request was considered, however the decision was made that the difficulty in finding FDR far outweighed the likelihood of locating any. Robin and David's clothes were examined as part of our review, even though there has been considerable handling of the items since the crimes.<sup>239</sup> No FDR was found on David's clothing but a particle was located on the top left shoulder of Robin's blue sweatshirt. This particle contained lead and barium. Although there may be some environmental source for this particle, it is also possible that it is of firearms origin. The particle was relatively near the entry wound in the head of Robin Bain. If it was of firearms origin, it was the opinion of ESR experts that its location on the top of the shoulder is more likely to have been deposited as a result of the shot to the head than as a result of Robin Bain having fired the weapon. Detective training requires the hands of deceased persons [especially in shooting cases] be enclosed in plastic or paper bags but we have been unable to establish if this was done for all the deceased. Certainly all bodies were carefully placed in body bags to preserve evidence and prevent contamination.
142. Again, with the benefit of hindsight, we find that earlier consideration should have been given to preserving Robin's hands and clothing for firearm residue testing. At the very least his hands and lower arms should have been enclosed in plastic/paper bags at the earliest opportunity. Those containers should have been subsequently examined for residue as should the upper outer clothing of David and Robin. It was, however, believed the outer clothing [jersey] worn at the time of the earlier murders was put through the washing machine. As far as David is concerned, we believe his consent could have been requested at the house to likewise enclose his hands but we can accept this would have been an extremely sensitive issue with a man who [as believed at that stage] might have innocently just come upon the horrific slaughter of his entire family. As it transpired, David's hands were later tested at the Police Station but the absence of conclusive FDR was of no significance as he says he washed his hands on return from the paper round and conceivably could have washed more extensively before or after. We do not believe the failure to promptly test for firearm discharge residue impacted unfairly against David Bain or constituted any serious shortcoming in the case against him.

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<sup>235</sup> Hentschel Trial p243 L34

<sup>236</sup> Hentschel Trial p226 L8, Case Notes p122, p123 (gloves) & Case Notes p128 (Lens)

<sup>237</sup> Ross js Doc.10234

<sup>238</sup> Pol.143 doc.10453

<sup>239</sup> ESR Report p36, Walsh, Review Ref.18041

143. Mr Karam has made a general complaint regarding the non disclosure of the ESR case notes of Dr Cropp and Mr Hentschel.<sup>240</sup> These were never in the possession of the Police and if defence counsel had wanted them he could have written direct to the ESR and requested a copy. One criticism is the non disclosure of the finding of trace elements found on the hands of both David and Robin which Mr Karam and Mr Withnall say could have been of immense significance.
144. As part of the review Mr Walsh read the notes from the original investigation of Mr Hentschel relating to his examination of an FDR kit from David Bain and his examination of skin from the hands of Robin Bain.<sup>241</sup> Mr Hentschel's examination of samples from Robin Bain's hands resulted in the finding of particles with nickel, titanium, lead and copper with zinc and nickel. None of these are firearms specific particles and he has noted that no FDR [or 'GSR' - gunshot residues] particles were found. The presence of one lead-containing particle would not be considered significant as these are relatively common environmental particles.
145. Mr Hentschel's examination of samples from David's hands resulted in the finding of various particles in which were detected gold, copper, silver or iron, or iron with nickel and chromium. Of possible significance were some lead containing particles, barium-containing particles and particles containing lead and barium. None of these are firearms-specific particles but the latter set of particles could be indicative of firearms origin. FDR particles containing these elements would be expected from 'Whisper' ammunition. Mr Hentschel noted that no FDR particles were found. This is correct in that no particles were detected which could be conclusively determined to have resulted from a firearm. However it is possible that many of the particles found on David's hands were of firearm origin.
146. In Mr Walsh's opinion, Mr Hentschel's examination showed there is more evidence supporting the suggestion that David Bain handled [or fired] a firearm that had fired 'Whisper' brand ammunition, than there is evidence which supports the suggestion that Robin Bain had handled such a firearm.<sup>242</sup>

### **Alleged Planting of Spectacle Lens**

147. This is another instance where Mr Karam alleges serious misconduct, if not criminal behaviour, in the course of the initial investigation by an officer or officers who he contends were intent on improperly implicating David Bain in the crimes.
148. Part of the case against David was the fact that a lens from a spectacle frame in his room was found in Stephen's room. Mr Karam sees sinister implications in the discovery of this item of evidence and suggests it may have been "planted"

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<sup>240</sup> Withnall letter (3.10.97)

<sup>241</sup> ESR Report p34, Walsh, Review Ref.18041

<sup>242</sup> *ibid* p35



to fabricate evidence against David.<sup>243</sup> He notes Detective Sergeant Weir testified to finding the lens at a particular spot in the room and contends it could not have been there.<sup>244</sup> Mr Karam points out it is not shown in that position in photographs taken before the officer alleges he discovered it. Mr Karam also draws attention to the fact Detective Sergeant Weir was alone in the house for a period during the morning and there is no record of what he was doing in that time.<sup>245</sup>

149. The matter is confounded by Detective Sergeant Weir's evidence at the trial where he said the lens can be seen in Photograph No 62. The position indicated very closely corresponds to his written/spoken description of where the lens was found and is only a few centimetres away from the position in which it is clearly shown in Photograph No 99. Mr Karam, however, obtained an opinion that what the officer pointed out was simply a reflection caused by plastic and paper lying in that area. The Senior Police Photographer in Auckland thought it might be an object but an ESR examination at our request has concluded it is not a lens. The apparent line thought to be the curve of the lens is caused by the shadow cast by a curved piece of paper and the reflectivity is caused by an overlying plastic bag.<sup>246</sup>
150. According to Gordon Sanderson, Forensic Optometrist, David Bain is short-sighted and generally does not have clear focus beyond a third of a metre.<sup>247</sup> It was established his regular spectacles had been broken a few days prior to the crimes and were being repaired. It was a key element of the prosecution case that [at least] at the time of Stephen's murder he had been temporarily wearing the pair found in his room and they had been damaged while struggling with Stephen.
151. Stephen's room was a small cubicle [approximately 3.5metres by 3.6metres]<sup>248</sup> which was cluttered with shoes, clothing, miscellaneous items and sports gear lying on the floor and heaped on bunks, and on shelves and walls. From the amount and spread of blood, it is presumed Stephen fought with his killer before being overpowered and it is possible at some stage both assailant and victim could have even been rolling on the floor amidst the clothing, etc, lying there. Blood from Stephen's head and hand injury sprayed around the room during the struggle from head height and across furniture, various items and the floor. At one stage it appears he has been pushed up against the mattress on the top bunk shown by a large area of blood at head height<sup>249</sup> and there was considerable blood on the bed where a good part of the struggle has occurred.<sup>250</sup> This extended to blood down between the mattress and the wall thought to have been caused by his hand which had slipped down there or his

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<sup>243</sup> Mtg 25.07.97 & Withnall letter (01.08.97)

<sup>244</sup> p116, p211, Mtg 25.07.97

<sup>245</sup> p32, p33, p38, p108

<sup>246</sup> ESR Report p14, Walsh, Review Ref.18041

<sup>247</sup> Sanderson Trial p321 L31 to p322 L8

<sup>248</sup> Weir js Doc.10158 p1

<sup>249</sup> Exh 600 scene photograph 98, Weir Review Stmt Ref.22001d p2

<sup>250</sup> Exh 600 scene photograph 66

head when it had been pushed down on to the mattress in that area.<sup>251</sup> Stephen ended up on the floor in the immediate vicinity of the ice skate boot where the lens was later found.<sup>252</sup> It was here he was finally subdued and shot falling away towards a dresser. There were, however, areas in Stephen's room where there was no blood and items were not seized because there was no blood on them. It was believed by the Police items had fallen from the bunks and/or shelves during this struggle. A chair was over turned and bed clothing was on the floor.<sup>253</sup> There was clear evidence of a struggle and it was the Police contention the spectacles were damaged during the struggle and that the left lens had fallen to the floor. [David's unexplained recent injuries<sup>254</sup> and complaint of a sore head<sup>255</sup> together with traces of Stephen's blood on David's garments were seen as evidence he was the assailant]. During the removal of Stephen's body there was a controlled movement of items away from the body to make room for those required to lift him.<sup>256</sup> This prevented any further photographs or video of the area in front of the skate because it was covered with a poster and other items. Shoes and other things cluttering the floor were pushed backward to make the necessary space. Movement was mainly toward the bunks and in the photographs the ice skate boot can be seen lying on the floor in front of them. Photographs taken after removal of the body show a paper poster pushed up against the toe of the skate boot and this effectively conceals from view anything which might be lying partly below it. Shoes and other items are compacted into that area.

152. In discussion with Messrs Karam and Withnall on 25 July 1997, it was their view that if the lens had been truly found in Stephen's room as claimed [and had fallen out of its frame during the fight] it would be expected to be at least a little blood-stained or give other indications of the violence in the room. This also applied to the frame and lens in David's room. There was Mr Karam said, no forensic link to David and the struggle in Stephen's room. At the July meeting it was Mr Karam's opinion the lens could not have got beneath the skate boot during the struggle.<sup>257</sup> He was adamant it had to be planted there. He pointed out the various items shown in photographs around the skate, including the jacket, which he considered would have prevented the lens falling or being reasonably kicked into the position in which it was found. Mr Withnall said he was prepared to give Detective Sergeant Weir the benefit of the doubt but this was followed by a letter on 1 August 1997 in which Mr Withnall said he had changed his mind about Detective Sergeant Weir's involvement with the lens.<sup>258</sup> It could not, in his view, have got under the skate boot where it was found and could not in his opinion have been accidentally pushed under the various items. He said Detective Sergeant Weir accepted in cross examination at the trial the ice skate boot could not have been pushed into this position during the struggle.

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<sup>251</sup> Exh 600 scene photographs 75, 77

<sup>252</sup> Exh 600 scene photograph 60

<sup>253</sup> Exh 600 scene photograph 66

<sup>254</sup> David Stmt Doc.10023, David Trial p436 L31

<sup>255</sup> Wombwell Trial p43 L20, Scott Trial p52 L25, Dick Trial p41 L4

<sup>256</sup> Bracegirdle Review Stmt Ref.22005a

<sup>257</sup> Mtg 25.07.97

<sup>258</sup> Withnall letter (01.08.97)

It was now impossible, Mr Withnall said, to accept Weir was simply mistaken and he was no longer prepared to give him the benefit of the doubt.

153. Detective Sergeant Weir has been interviewed over his dealings with the lens and he denies any impropriety.<sup>259</sup> He maintains he found it beneath the toe of the ice skate boot after he lifted it. He says he did not actually see it in position before lifting the skate but, some months later, when he saw the photograph with what we now accept as a reflection, he convinced himself that here was the lens as it was before he lifted the skate. Remember too, that Photograph No 62 was taken before the paraphernalia on the floor was shunted toward the bunks and this could have influenced his judgment. Even so, the lens was substantially in the position where his job sheet dated June 1994 says he found it. His reference in his notebook to finding the lens beneath clothing etc,<sup>260</sup> relates to the jacket and other items, including the ice skate boot.<sup>261</sup> We believe he correctly records it was underneath the skate.<sup>262</sup> His job sheet reads "Underneath the ice skating boot is a lens from a pair of optical glasses. Appears to be left lens and could possibly correspond with a missing lens from a set of glasses recovered in Scene B, also referred to as David's room. Seized and secured as exhibit..."

154. Detective Sergeant Weir was not alone when he claims he found the lens. Detective Constable Le Gros [now on assignment with the United Nations in Africa] was present and Detective Constable Thomson, O/C Scene Exhibits was nearby. Detective Constable Le Gros was interviewed when he temporarily returned to New Zealand recently and he clearly recalls Weir finding the lens in the room. He says the lens was found under the serrated brake end of the ice skate boot and was not totally concealed by the boot. He further says the lens was found in the position as indicated in Photograph No. 62<sup>263</sup> but we believe that he too is probably mistaken in that point and that he has also been misled by the reflection that is in the photograph. He does not accept Mr Karam's claim that the lens was planted. Detective Constable Thomson has also been questioned. As items were being recovered from the room it was his task to inventorise them and he remembers the lens being located in the search.<sup>264</sup> He says he was present that evening during the search of Stephen's room and items were handed to him for recording. He entered the lens as being found under some clothing/shoes by the bunks.<sup>265</sup> He believes the clothing refers to the jacket and the shoes were those uplifted prior to the lens being revealed as shown in Photograph No 99. He, too, rejects any suggestion that the lens was planted. He clearly recalls Weir finding the lens in the room. He did not document his observations but he is unequivocal that the lens was found as Weir claims.

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<sup>259</sup> Weir Review Stmt Ref.22001b p8

<sup>260</sup> Weir notebook

<sup>261</sup> Weir Review Stmt Ref.22001c p7

<sup>262</sup> Weir js Doc.10288, Weir Trial p131 L37 & p132 L21

<sup>263</sup> LeGros Review Stmt Ref.22004A

<sup>264</sup> Thomson Review Stmt Ref.22006B

<sup>265</sup> Thomson Exhibit Schedule (23.6.94 - 2049hrs)

155. We do not believe Detective Sergeant Weir knowingly gave false evidence or otherwise acted improperly in court. The outline in the photograph certainly looks like a lens and we can accept that when the officer was sorting photographs for presentation at trial he convinced himself that here was the lens, although he had not actually seen it there at any stage. It first became visible to him when he lifted the ice skate. From our examination of the situation we are satisfied there are two possibilities by which the position of the lens can be explained:

- a) It ended up under the ice skate during the struggle. As already mentioned, Stephen's bedroom was a small, confined space and various items were windmilled around the room in the melee. With the disorder created in the room there is no reason why the lens could not have ended up beneath the skate. Indeed, David's blood stained gloves were found under the bed and could not have fallen there. The area of the struggle clearly included the place where the lens was found. As shown in photo 99 after the jacket and suitcase have been uplifted and seized during the scene examination, items were found which appeared to have blood on them.<sup>266</sup> These were a small plastic bag with a red self-sealing strip [not Police exhibit bag] which is shown in the photograph with a police arrow sticker used by the scene examiners to indicate blood,<sup>267</sup> white plastic bottle exhibit SF583 recorded as having what appeared to be blood on the base and also a drop on the top; and a clear plastic bag exhibit SF584 which had four small droplets of blood on the top of it. These exhibits were not analysed by the ESR during the original investigation to confirm it was blood, because at the time it was not considered relevant to the court proceedings, and the exhibits were finally disposed of in 1996. There were literally hundreds of blood spots in this scene and the police and experts concentrated on patterns and those spots considered relevant to the case.<sup>268</sup> The finding of these items with what appears to be blood on them under the suitcase and jacket tends to confirm the original investigation's view the lens got under the ice skate during the struggle and the suitcase and jacket slipped down over them. This could also account for the lack of blood on the lens, when found, because from the time it was under the ice skate boot it was protected. The blood on the suitcase and jacket [not analysed] could have got on them when they ended up in their final position, despite Mr Karam having said this is not possible.<sup>268</sup>
- b) Less likely, but still a possibility, is that the lens was pushed under the ice skate boot [or further under] during the time of movement of items in the room to facilitate the removal of Stephen's body. It is possible that up until then it had lain among items on the floor but was out of the view of officers inspecting the room and is not shown in photographs or video tape.

<sup>266</sup> Weir js Doc.10303 p3, Legros js Doc.10439 p2

<sup>267</sup> ESR Report p14, Walsh, Review Ref.18041

<sup>268</sup> Mtg 25.07.97

156. Whatever the situation, as far as the discovery of the lens is concerned we find nothing criminal, sinister or intentionally deceptive in the officer's actions.
157. We are satisfied there has been no impropriety over the finding of that item in Stephen's room. Detective Constable Le Gros and Detective Constable Thomson largely corroborate Mr Weir's account. We believe the lens got into Stephen's bedroom during the assailant's struggle with Stephen and was found there during the Police search of the room on the Thursday evening. This is consistent with the documentation on the file and the planned systematic search of the room when it finally commenced - which was not on Day One as claimed by Mr Karam.
158. David claimed that the glasses in question did not belong to him and maintained at his trial that they were his mother's old pair.<sup>269</sup> He said he had previously worn them while watching TV and attending lectures.<sup>270</sup> He said they were usually kept in his mother's room and he could not account for their presence in his room.<sup>271</sup> When found the spectacles were in a poor condition. The frames were twisted and lopsided consistent with having been involved in the struggle and there was considerable green verdigris in the lens retaining grooves and possibly on the edges of the lenses. The Police were unable to establish the origin of the spectacles. Mr Sanderson advised they had a man's frame but an early photograph was found which shows Margaret wearing them. Mr Sanderson said the lenses could have been originally prescribed for David [he sent details of the prescription to the USA for an opinion] although they did not cater precisely for his sight defects.<sup>272</sup>
159. At the meeting on 25 July 1997, Messrs Karam and Withnall expressed concerns that at trial it was improperly put to David in cross-examination that the spectacles were his. We do not consider that there was anything improper about this aspect of the case.
160. In his book, Mr Karam seems to advance two theories about the glasses. One is a clear accusation that Detective Sergeant Weir planted the left lens in Stephen's room,<sup>273</sup> and the other is a suggestion that, before shooting himself, Robin tampered with the right lens and frames in David's room.<sup>274</sup>
161. Another point arising from Mr Sanderson's view of David's visual limitations, is that he could not have seen without glasses - from the distances claimed - such things as his mother's open eyes, the colour of Stephen's face and the trigger lock on the floor of his room.<sup>275</sup> The darkness would have also affected his vision. During the trial, David testified that his vision was adequate for moving

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<sup>269</sup> David Trial p410 L11

<sup>270</sup> David Trial p410 L17

<sup>271</sup> David Trial p410 L23

<sup>272</sup> Sanderson Review Stmt Ref.23001A

<sup>273</sup> p32, p33, p38, p108

<sup>274</sup> p215

<sup>275</sup> Sanderson Review Stmt Ref.23001a

around but that things were "blurry" beyond 30 cms.<sup>276</sup>

162. The finding of the lens in Stephen's room was an especially damaging item of evidence against David and the reason for his wanting to distance himself from the spectacles is obvious.
163. Mr Karam has attributed to Detective Sergeant Weir a remark made by Justice Williamson which seems intended to improperly suggest that the officer was confused and uncertain over the position of the lens. In his book, Mr Karam quotes Detective Sergeant Weir as saying in evidence "Right here your Honour. I actually spoke to the Police photographer this morning. We believe one of the photo books may have a better quality photo of the remainder. It is there. *I was looking in the wrong place?*"<sup>277</sup> The words in italics were actually spoken by Justice Williamson and not by Detective Sergeant Weir.<sup>278</sup> This has been confirmed by the Crown Prosecutor, Mr Wright.<sup>279</sup>

#### **Comment to Optometrist to Ignore Dust on Spectacle Lens**

164. Although not included in the book, there is another aspect concerning the spectacles which has recently come to attention which should be raised here. It concerns the left lens mentioned above, that is the one found in Stephen's room. It is Mr Karam's contention that Detective Sergeant Weir's inconsistent comments about the state of the lens are highly suspicious and can be seen as tampering with evidence.
165. The lens was delivered to Mr Sanderson for examination by Detective Sergeant Weir in September 1994. On a subsequent visit by Weir, Mr Sanderson recalls the officer saying that at the time the lens was discovered in Stephen's room it was "covered in dust" [or words to that effect]. He then remarked "...we'll just ignore that..." [or words to that effect]. Mr Sanderson recalls that the lens was handed to him in perfectly clean condition. Mr Sanderson casually mentioned the remark at a dinner party in April 1997 and the next day he was contacted on behalf of Mr Karam and requested to swear an affidavit about the matter.<sup>280</sup>
166. Detective Sergeant Weir has been interviewed and cannot recall making any comment to Mr Sanderson in the manner alleged. He is certain that there was no significant dust on the lens when he found it and he cannot imagine how the comment might have been made.<sup>281</sup> The house was very dusty and staff wore face masks, particularly in Stephen's room, to combat this.<sup>282</sup> It has been noted the second lens found in David's room had dust on it.<sup>283</sup> It is not known whether this has any relevance to the comment made.

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<sup>276</sup> David Trial p435 L24-26

<sup>277</sup> p110

<sup>278</sup> Weir Trial p132 L34 and Weir Review Stmt Ref.22001a p57-59

<sup>279</sup> Grills js Review Ref.7007a

<sup>280</sup> Copy of Affidavit Review Ref.23001b & Sanderson Review Stmt Ref.23001A

<sup>281</sup> Weir Review Stmt Ref.22001B

<sup>282</sup> Scene video 2442 (counter)

<sup>283</sup> Fitzgerald js Doc.10272

167. Detective Constable Thomson (the Scene Exhibit Officer) has been seen and cannot recall if the lens had dust on it. Detective Constable Le Gros, who was present when the lens was found has been interviewed and clearly remembers there was no significant dust on the lens when it was found.<sup>284</sup> There is no written record that it did. Also, before the lens was given to Sanderson, it had been to ESR for examination. Mr Hentschel cannot remember whether or not the lens had dust on it. He has not recorded it did.
168. While we find the remarks attributed to Detective Sergeant Weir cannot be satisfactorily explained, our investigation was unable to reach any conclusion on whether or not there was dust on the lens when it was delivered to Mr Sanderson. It would be surprising that Detective Sergeant Weir had made such a comment if, as had been alleged, he improperly planted the lens in Stephen's room.

### **Failure to Connect David with Blood On and Near Washing Machine**

169. In his book, Mr Karam takes issue with Police and Crown claims that David's bloodied palmprint was located on the washing machine at 65 Every Street. He maintains that statements made in court to that effect were untrue.
170. The bathroom/laundry area of the Bain home features prominently in the case because undoubtedly blood stained garments were laundered before the Police were called to the house. Investigators found blood stains on the washing machine and in the wash basin and took the view that clothes had been washed to get rid of any evidence on the garments. Someone had also washed himself extensively to remove blood as evidenced by stains, including those on towels.
171. David said that when he returned home from the paper round he collected items for washing from a clothes basket and placed them into the machine<sup>285</sup> before he was aware that anything was amiss and could have unwittingly put blood stained garments into the wash.
172. Mr Karam seems to contend that the Police were incorrect to allege that David's palmprint on the washing machine was made with a bloodied hand<sup>286</sup> or to imply that David had knowingly put bloody garments through the wash.<sup>287</sup> Mr Withnall has complained about a failure to properly record and photograph the items in the washing machine and the surrounding laundry area before items were moved and rearranged.<sup>288</sup> The clothing from the washing machine was hung out on the clothes line to dry on the second day.<sup>289</sup> This was within a secure area secured by scene guards. The clothes were videoed on the line<sup>290</sup> and when

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<sup>284</sup> Legros Review Stmt Ref.22004a

<sup>285</sup> David Stmts Doc.10022, Doc.10109, Doc.10023, Doc.10155 and David Trial p413 L34

<sup>286</sup> p89, p152, p206

<sup>287</sup> p206

<sup>288</sup> Withnall letter (03.10.97)

<sup>289</sup> Weir Trial p82 L25

<sup>290</sup> Scene video 1267 (counter)

taken in later that day itemised and exhibited by the Scene Exhibits Officer.<sup>291</sup>

173. The matter of the palmprint being in blood was covered at the trial. Besides the chemical testing, which Mr Guest questioned, at least one witness, Detective Lodge, could visually see blood and testified that it was a bloodied handprint.<sup>292</sup> Furthermore, the presence of blood was detected by the polilight.<sup>293</sup> A sangur test of a portion of the palmprint also proved positive for blood.<sup>294</sup> Since the trial, Mr Jones, the fingerprint officer who used the polilight, has established that it does not react to bleach or soap powder of the brand found at the scene.<sup>295</sup> Contrary claims by Mr Karam are apparently based on Mr Jones' evidence at the trial where he agreed with Mr Guest in cross examination that a reaction might have been possible from those agents.<sup>296</sup>

174. We believe that bloodied clothes were laundered in the washing machine and that David's bloodied palmprint was located on that appliance and that those facts were properly included in the evidence.

#### **Failure to Properly Calculate Washing Machine Cycle Timing**

175. Another matter connected to the washing machine is the fact that when Police officers entered the house at 0727 hours [entry]-0729 hours [downstairs] they heard no noise from household appliances. This was seen as significant by the original investigators in that David says when he returned home at or after 0640 hours that morning he put on the load of washing.<sup>297</sup> He said that he set the machine to the start of the 'red' cycle.<sup>298</sup> This cycle is of approximately one hour duration.<sup>299</sup> On that basis, it was the Police contention that the washing machine should still have been in operation when the officers entered the premises.

176. Mr Karam suggests if the Police had properly checked out the workings of the machine, and conducted tests on a weekday morning [rather than a weekend Saturday afternoon and Sunday morning] they would have found that it is quite conceivable that the cycle would have been completed by 0729 hours (the time Arawa's body was located).<sup>300</sup> He also makes the point that the officers' failure to hear the washing machine in operation does not mean it was not functioning.<sup>301</sup> After all, he points out, they didn't hear the hum of the home computer, an appliance which was switched on. There is a considerable difference in noise levels between the "low level sound of a non-impulse,

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<sup>291</sup> Thomson js Doc.10336

<sup>292</sup> Lodge Trial p105 L15

<sup>293</sup> Jones Trial p206 L3 and Trial p210 L20

<sup>294</sup> Weir Trial p123 L8

<sup>295</sup> Jones Review Stmt Ref.26001

<sup>296</sup> Jones Trial p211 L15

<sup>297</sup> David Stmt Doc.10022, Doc.10023, Doc.10155

<sup>298</sup> David Stmt Doc.10155, Trial p421 L13

<sup>299</sup> Lodge js Doc.10343

<sup>300</sup> p191

<sup>301</sup> Mtg 25.07.97



constant nature" of a computer<sup>302</sup> and the vibrating sounds of a washing machine in operation. Mr Karam also said Sergeant Stapp was trying too hard when he said he could detect no smell normally associated with recently laundered clothes.<sup>303</sup> Sergeant Stapp has been interviewed about the remark and stands by his comment.<sup>304</sup> A check of Sergeant Stapp's evidence has shown that this was not before the jury.

177. The matter of the washing machine was well canvassed before the jury. When cross-examining Sergeant Stapp at the trial, Mr Guest said, "*The defence accepts that you didn't hear the washing machine when you went into the bathroom*".<sup>305</sup> When David was interviewed he said he had turned the knob to the beginning of the red cycle and it takes "3/4 hour to an hour" to complete.<sup>306</sup> At the trial under cross examination he said the setting was "placed after the very very start of the super wash cycle", and confirmed that it was a full cycle for the wash, and that it took 3/4 to an hour to complete.<sup>307</sup> In his book Mr Karam claimed David flicked the dial around to about 2 or 3 o'clock.<sup>308</sup> We have been unable to locate any reference to this anywhere. Mr Karam also claimed the "shorter" cycle was not timed by the Police.<sup>309</sup> In fact, time tests were carried out by the Police and a washing machine expert and evidence of this was given at the trial by Detective Lodge.<sup>310</sup> The expert also gave evidence.<sup>311</sup> They checked both the normal and special cycles. Both took about an hour. To be precise, the normal cycle times which involved two tests were [a] 61 minutes, 11 seconds and [b] 59 minutes, 54 seconds. The special cycle took just over an hour (between 61 minutes and 62 minutes).<sup>312</sup> The switch on the washing machine indicated the last completed wash had been for cold water on the normal cycle.<sup>313</sup> So, if David had got down to the laundry, loaded the machine and commenced washing at about 0643 hours [the very earliest time on his own estimations] the washing machine should still have been going when the Police arrived. Officers were down in the laundry area when they discovered Arawa at about 0729 hours.<sup>314</sup>

178. Mr Karam is critical of the washing machine timing tests and conclusions reached by the Police. He believes the tests were conducted when water pressure was low<sup>315</sup> and this would have slowed time taken to fill the machine. He maintains a different result would have been achieved if the testing had been done at an earlier hour when water pressure was at its greatest. It is not

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<sup>302</sup> Police Electronic Crime Laboratory Report, Klientjies M, Review Ref.17001a

<sup>303</sup> Stapp Stmt Doc.10280

<sup>304</sup> Stapp Review Stmt Ref.21002B

<sup>305</sup> Stapp Trial p20 L12

<sup>306</sup> David Stmt Doc.10155

<sup>307</sup> David Trial p421 L13

<sup>308</sup> p191

<sup>309</sup> p191

<sup>310</sup> Lodge Trial p163 L11

<sup>311</sup> Preston Trial p170 L23

<sup>312</sup> Lodge js Doc.10343 and Lodge Trial p163 L30

<sup>313</sup> Lodge Trial p166 L30

<sup>314</sup> OpLog

<sup>315</sup> p191

possible to re-do the tests because the washing machine was not retained [it was old and not in good condition] but we have spoken to the serviceman who did the tests and the officer who supervised him, Detective Lodge. Mr Preston, the serviceman, who has been re-interviewed, said the Bain machine took 14-15 minutes to fill whereas he would expect a machine to usually fill in 5-7 minutes.<sup>316</sup> He suspected the longer time was due to corrosion in the pipes between the washing machine and the street connection. He said the highest water pressure would generally be at times when people were not using showers, doing washing, etc, but reiterated that in the Bain case the filling time may have been dictated by the state of the pipes rather than the pressure of the water. He did not think there would be significant variation in filling at different times on different days.

179. We find that the evidence given in that connection was factual, fair and properly collected and adduced in evidence.

### **Failure to Blood Test Robin's Clothing**

180. According to Mr Karam, a major fault in the initial Police investigation was a failure to identify the source of blood splatters on Robin Bain's clothing. In his book, he writes: *"Perhaps the most damning evidence against the proposition that Robin had no involvement in the other murders and did not commit suicide are the two 'smears' of blood on his left hand and the heavy staining of his sweat shirt."*<sup>317</sup> He criticises the Police for not having the blood analysed and tested for blood grouping.<sup>318</sup> He views this alleged failure as further evidence of sloppy work and declares it was another blunder that led Police to the wrong conclusion in the case. In the epilogue in the book, he writes: *"The police went to incredible lengths to put together their case against David, yet they did not even analyse the blood, the heavy blood staining, that was all over Robin."*<sup>319</sup>
181. When Robin's dead body was examined it was noted that there were numerous blood splatters on his track pants and sweat shirt. Mr Karam contends that those stains could not have been Robin's own blood and asserts if they had been tested they would have been shown to have come from other family members when he shot them before taking his own life. In his book Mr Karam writes: *"I have no doubt that if the blood staining on Robin's clothing had been analysed for blood grouping, it would have been found to be the blood of deceased members of his family. The nature of these bloody stains on Robin's attire and body is such that they could not have got there as a result of finding the dead bodies. It could not have got there from his own wound in the process of him being murdered"*.<sup>320</sup>
182. Elsewhere in the book he goes further and says *"The incredible fact is that none of the blood itemised by Lodge on Robin Bain's hands or clothing was tested by*

<sup>316</sup> Preston Trial p174 L16 and Preston Review Stmt Ref.22012

<sup>317</sup> p180

<sup>318</sup> p169, p181, p192, p203, p208, p210, Mtg 25.07.97

<sup>319</sup> p221

<sup>320</sup> p203

*the police for blood grouping.<sup>321</sup> He also makes the point that "If any of the blood spots, smears or 'heavy staining' referred to by Mark Lodge [ie found on Robin] had been analysed and found to have belonged to any other deceased members of the family, then again, the case against David would have collapsed."<sup>322</sup> Later he writes, "So, not only was the blood on Robin not tested to ascertain its origin, but also no account was taken of the fact that much of it could not have got there as a result of his own wound, and therefore it must have got there as a result of some other action."<sup>323</sup>*

183. In fact, blood stains on Robin's trackpants were tested and identified during the original investigation but it was done by way of representative sampling rather than checking each individual blood mark. The tests conclusively established that the samples were Robin's blood, of those amongst the Bain family.<sup>324</sup> The blood on his upper garments was not specifically tested because in the opinion of the ESR staff and also Dr Dempster it was obviously Robin's blood from the head wound.<sup>325</sup>
184. We re-submitted the garments in question for re-testing and DNA analysis [there have been significant advances in this field since the original investigation] and have been advised that those further tests established all identifiable blood on the garments could have come from Robin and none of it was Stephen's.<sup>326</sup> This is referred to in more detail in the following paragraph. When told the preliminary result on 25th July<sup>327</sup> Mr Withnall sought to pursue the issue by saying we had not explained how the blood got on the garments.
185. The result of the ESR examinations of Robin's clothing conducted at our request were as follows:<sup>328</sup>
  - On the trackpants nine areas of bloodstaining were sampled. Some of these areas contained multiple spots or stains of blood. Of the spots and stains analysed, twenty three could have come from Robin Bain alone; two stains produced partial STR profiles that could have come from Robin or David Bain, however, other blood stains in the pattern could have come from Robin Bain only; one stain produced a partial STR profile that could have come from Laniet, Robin or David Bain, however, other samples from this pattern could only have come from Robin Bain and one could have come from Robin or David Bain; the presence of human DNA only was confirmed in one further sample and no results were obtained from one sample.
  - On the T shirt a small blood stain could have come from Robin Bain.

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<sup>321</sup> p169

<sup>322</sup> p169

<sup>323</sup> p181

<sup>324</sup> Cropp Trial p259 L30

<sup>325</sup> Hentschel Review Stmt Ref.18040 & Dempster Trial p270 L3

<sup>326</sup> ESR Report p3, Harbison, Review Ref.18038a, & ESR Report Elliot, Review Ref.18037a

<sup>327</sup> Mtg 25.07.97

<sup>328</sup> ESR Report Harbison, Review Ref.18038a – Items 56-59, 61 & 63

- On the edge of the green woollen hat was blood which could have come from Robin Bain. Other samples on the hat could have come from Robin or David Bain.
  - On the dark blue sweatshirt, from which seven samples of bloodstaining were analysed, six of these could only have come from Robin Bain amongst the Bain family. No results were obtained from the other sample.
  - On the brown jersey, human DNA was confirmed in a sample from the front hem.
  - Blood analysed from the short sleeved shirt could have come from Robin Bain.
186. At the request of Messrs Karam and Withnall, Robin's garments [together with other items] were delivered to the Victoria Forensic Science Centre, Melbourne, Victoria on 6 August 1997 for private and independent examination at their expense.<sup>329</sup> We are unaware of the results of those tests.
187. The adequacy of testing only representative samples in the first place has been examined. It was the view of the experts performing tests of representative samples that it was obvious all blood had come from the same source.<sup>330</sup> They deduced this from the shape, location and pattern of the spots and they were satisfied none of the blood could have come from another person. We find no fault with the initial decision to test only representative samples.
188. Another matter concerning Mr Karam's claims about Robin's clothing came to light in the course of the review. In TV interviews on 23 June 1997, Mr Karam declared there was blood on Robin's shoes and produced what appeared to be an ESR document which purported to confirm that point. In fact, the report stated that when examined using a 1000w lamp, no blood was seen on the uppers or the soles of Robin's shoes. When the shoes were then treated with luminol [which can show a reaction to various other agents] there was no reaction on the soles but a very faint reaction was detected on the uppers by the eyelets.<sup>331</sup> Mr Hentschel stated that the reaction was so faint that he would not be prepared to say it was blood, because it is also possible for material from the eyelets to have migrated to that area and produce that reaction.<sup>332</sup>
189. We find the procedures observed in submitting garments for testing and analysis to have been proper and professional and we have no difficulty in accepting the expert opinion set out in the above paragraph, and that none of the blood was Stephen's.
190. Before leaving this aspect of the matter there is a further point that should be

<sup>329</sup> Meetings & letters

<sup>330</sup> Hentschel Review Stmt Ref.18040

<sup>331</sup> Hentschel Case Notes p46

<sup>332</sup> Hentschel Review Stmt Ref.18040

made. In his book, Mr Karam comments on the summing up of Justice Williamson where His Honour, talking about Robin as the possible killer, says "If he had been the wearer of blood stained clothing and was intent on suicide, why would he have bothered to change his clothes and be in completely blood-free clothes when he shot himself?"<sup>333</sup> Mr Karam says this is "*down right untrue*" and suggests to readers they look at the photographs of the clothes Robin was found in.<sup>334</sup> Those photographs, however, depict Robin after he was shot and the blood, according to the evidence given at the trial and subsequently confirmed by this inquiry, is from his own wounds. Justice Williamson, therefore, was not wrong when he said Robin would have been completely in blood-free clothing at the time he was shot.

191. Besides the blood on Robin being from his own wound, it is also significant that it was David, not Robin, who had blood on him from Stephen. It was known at the trial blood in the crotch of his shorts was Stephen's, but now it seems most likely that blood smears on the T-shirt worn by David when the Police arrived, also came from Stephen.<sup>335</sup> Of the five samples of bloodstaining tested, ESR advise three could have come from Stephen Bain, and not from other members of his family. These samples were from the front left side, the mid point of the back near the hem and the upper left back. It could not be established from whom the remaining samples from the bottom of the front of the sweatshirt and the lower part of the back came from.<sup>336</sup> Blood from this shirt could not be grouped back in 1994.<sup>337</sup>

### **Failure to Identify Blood on Robin's Hands**

192. In addition to blood on Robin's clothing, there was a blood spot on the nail of his left index finger. It was not preserved but is visible in photographs.<sup>338</sup> Mr Karam contends that this was not Robin's blood, but Dr Dempster has no doubt it would have splattered from Robin's head wound when he was shot and he is supported in this by Dr Thomson [independently consulted].<sup>339</sup> The point was thoroughly canvassed during the trial.
193. Mr Karam further claims two smears of blood on Robin's left hand, one at the base of the thumb and the other on his left little finger, as well as the heavy staining on his sweatshirt [now identified as Robin's] represented a fatal flaw in the Police proposition that Robin had not committed the murders and then shot himself. He was emphatic that the blood was from the victims and the Police would have discovered that fact if the case had been investigated properly<sup>340</sup>. Officers who viewed blood at the base of Robin's thumb and little finger have been interviewed and describe the amount of blood as being " a very thin

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<sup>333</sup> p163 [12e])

<sup>334</sup> p170

<sup>335</sup> ESR Report p8, Harbison, Review Ref.18038a

<sup>336</sup> *ibid*

<sup>337</sup> Cropp Trial p257 L4

<sup>338</sup> Exhibit 601 photo no. 6

<sup>339</sup> Dempster Trial p271 L33 & p278 L22 & p296 L2 and Thomson Report Review Ref.24001d p6

<sup>340</sup> p180 & p169, p181 & Mtg 25.07.97

smear,<sup>341</sup> "particularly insignificant, very small and minute."<sup>342</sup> Swabs were taken from the outside edge of Robin's left little finger and from the base of his thumb<sup>343</sup> but they were not examined in detail by the ESR as there was an insufficient amount for grouping.<sup>344</sup> [This would confirm there was not a lot of blood]. Mr Karam infers the blood was not tested through some failure by the Police,<sup>345</sup> but the fact is there was insufficient blood for that purpose - not that testing was overlooked or neglected. The minute blood on the left index finger nail was not swabbed. It is thought to be from Robin's wound. [There is no photographic record of the blood on the thumb or little finger.]<sup>346</sup>

194. There being such little blood on Robin's hands seriously detracts from the theory he committed suicide after killing his wife and children. If he had gripped the rifle to shoot himself, it is to be expected that blood would have splattered on at least one of his hands. The hand that gripped the rifle [silencer] would also have more blood on it, not a small amount as described. It is also to be expected that blood from the other victims would have splattered on and about his hands if he had killed them. The Officer in Charge of Victims reported that Robin's hands were dirty around his fingernails and the creases of his hands and did not give the appearance of having been recently washed.<sup>347</sup> The slide taken from Robin's hands and examined by the ESR gave a result of 'mainly dirt'.<sup>348</sup> These points are inconsistent with Mr Karam's theory that Robin Bain washed his hands after killing his family, before killing himself.<sup>349</sup>
195. As with blood on his clothing, Mr Karam also maintains that blood on Robin's hand would not have been his. In his book he writes: *"So not only was the blood on Robin not tested to ascertain its origin, but also no account was taken of the fact that much of it could not have got there as a result of his own wound, and therefore it must have got there as a result of some other action."*<sup>350</sup>
196. We find that action taken and conclusions reached were adequate, proper and professional.
197. Further on this point, Mr Withnall contends inadequate attention was given to blood found in scrapings taken from beneath Robin's fingernails.<sup>351</sup> ESR case notes reveal fingernail scrapings from Robin were examined by Mr Hentschel. He found *"apart from dirt and possible traces of blood nothing was located in the fingernail scrapings. If blood present not there in large quantity for grouping."*<sup>352</sup> As mentioned elsewhere, Police did not have possession of ESR case notes.

<sup>341</sup> Lodge Review Stmt Ref.22011a

<sup>342</sup> McGregor Review Stmt Ref.22010

<sup>343</sup> Lodge js Doc.10180 and Review Stmt Ref.22011a

<sup>344</sup> Hentschel Case Notes p45

<sup>345</sup> p169, p208, Mtg 25.07.97

<sup>346</sup> Mtg 25.07.97

<sup>347</sup> McGregor Review Stmt Ref.22010

<sup>348</sup> Hentschel Case Notes p45

<sup>349</sup> p215

<sup>350</sup> p181

<sup>351</sup> Withnall letter (03.10.97)

<sup>352</sup> Hentschel Case Notes p34

As it transpires, it was not confirmed that there was blood under Robin's fingernails.

#### **Failure to Recognise that Robin's Head Had Been Moved**

198. Mr Karam sees some importance in the position of Robin's head as he lay dead on the floor and he is critical of the Police for not establishing the head had been moved after death. In his book he writes: *"They [the jury] heard nothing about the obvious fact that Robin Bain's head had been moved after his death, providing the strongest possible corroboration of David's account that he found his father dead, and so throwing grave doubt on the Crown 'no suicide' theory as it relates to the position of the rifle and the body."*<sup>353</sup>
199. Mr Karam suggests that the blood on the forehead could not have got there if he had fallen into that position. He suggests someone moved Robin's head after he was shot and before photographs were taken. To this end, he points to blood tracks on Robin's head, blood which he claims seems to have run uphill and the other which seems to have no point of origin.
200. Photograph No 23 showing the so-called "up hill" track, is misleading because of the angle the photograph is taken.<sup>354</sup> When all other photographs are viewed together with the video tape it is clear Robin is inclined against the bean bag with his head angled slightly to the right.<sup>355</sup> This provides a natural course for the blood to flow across his forehead onto the floor. The track which appears to have no origin is explained both by Dr Dempster and independently by Dr Thomson as being blood which had entered the left eye socket from the first splatters and which has been propelled out in a short stream when he hit the floor. That small stream of blood then landed on Robin's forehead where it remained with no discernible beginning or ending. In support of this there were faint traces of blood passing over the left upper eyelid leading towards the original injury.<sup>356</sup> It is Dr Thomson's experience that the presence of eye secretions pooling in the eye sockets may reduce the adhesion of blood in this location. It is also his opinion that subsequent rotation of the head may have drained out the blood.
201. We have been unable to determine with certainty whether or not Robin's head was moved after he was shot. There is certainly no "obvious fact" it was. It could have been but equally he may have remained where he fell. There is nothing to indicate his body was moved which would affect the no suicide theory. The two spots of blood on the floor [referred to as on the left by Mr Karam]<sup>357</sup> to the right side of his head could have resulted from the fall and bleeding where he initially lay. If he fell partly on the bean bag, it may have depressed under his weight causing him to slide off into the position in which he was found.<sup>358</sup>

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<sup>353</sup> p192

<sup>354</sup> p192 and Exhibit 600 scene photograph 36

<sup>355</sup> Lodge js Doc.10178 p2

<sup>356</sup> Dempster Review Stmt Ref.24002 p29 and Thomson Report p7, Review Ref.24001d

<sup>357</sup> p192

<sup>358</sup> Thomson Report p6, Review Ref.24001d

One option considered by the Police during the original investigation was that Robin's body may have been moved to make it look like suicide.<sup>359</sup> If so, this could account for the smudge of blood on his left tracksuit leg [which could be Robin's blood and could not have come from any other member of the family]<sup>360</sup> and smudges on his left hand. While it is not possible to positively conclude whether Robin's head was moved or not, Dr Dempster and Dr Thomson believe that the blood on the floor is consistent with the head having fallen into that position or arriving there shortly after.

202. Mr Karam has also raised the issue of a smudge of blood on the right side of Robin's forehead as shown in the mortuary photographs.<sup>361</sup> This is not shown in the photographs or video taken at the scene and appears to have occurred when the body was moved to the mortuary in a plastic body bag. It can be discounted as blood from any of the other deceased persons.
203. We find there is no evidence that Robin's head was moved after death. It is possible David could have shifted his father at some point but he alone would know the extent and the reason for doing so. He did not tell the Police he had moved the body and neither did he say so in his evidence at the trial.

#### **Failure to Fingerprint the Computer Keyboard**

204. This is another matter where Mr Karam believes Police were guilty of negligence or ineptitude which impacted to the disadvantage of David Bain. He is critical of the Police for not earlier fingerprinting the actual keys struck by the offender when typing the message or switching on the machine and implies that an incompetent officer was engaged in this aspect of the case.<sup>362</sup> He has also said the Police should not have allowed Mr Cox to use the keys before they had been checked for fingerprints.
205. Consideration was given to specifically fingerprinting the keys prior to Mr Cox working on the machine but it was felt that preserving the message on the computer screen was a more immediate priority and it was recognised that any pressure on the keys might lose it.<sup>363</sup> Also, the state of the keys did not appear particularly conducive to holding impressions. The keyboard was later examined for fingerprints by Senior Fingerprint Technician Jones. He first made an unsuccessful examination for blood prints and then made a visual search for fingerprints in the dirt build up on the keyboard. No impressions were detected.<sup>364</sup> [The Chief Fingerprint Officer at Police National Headquarters confirms that computer keys are notoriously difficult to develop prints on].<sup>365</sup> As it was, both Detective Sergeant Anderson and Mr Cox wore rubber gloves while working with the computer to limit any contamination of the keys or other parts,

<sup>359</sup> Doyle js Doc.10215, McGregor js Doc.10325, Weir Review Stmt Ref.22001D

<sup>360</sup> ESR Report p3, Harbison, Review Ref.18038a and Meeting ESR 14.10.97 and Diagram

<sup>361</sup> Exhibit 601, photograph 1

<sup>362</sup> p120-121

<sup>363</sup> Weir Review Stmt Ref.22001B, Anderson Review Stmt Ref.22002A, Jones Review Stmt Ref.26001

<sup>364</sup> Jones Review Stmt Ref.26001

<sup>365</sup> Burt Report p2, Review Ref.26003A



and Mr Cox was the only person to actually touch the keys.<sup>366</sup> For fear that an electricity overload could cause loss of the message on the screen, instructions were given by Detective Sergeant Weir that the house supply was not to be used by other staff while Mr Cox worked on retaining the message and determining when it had been typed. A generator was brought in to provide power needed for lighting purposes.<sup>367</sup> Finally, as regards this aspect, it should not be overlooked that both David and Robin used the computer so it would have been open to argument that any fingerprints found on it would not necessarily have been associated with typing the note.

206. Connected with the computer is the matter of an unidentified fingerprint located near the switch. Mr Karam suggests that this was an important clue that was left unresolved by the Police and implies that officers were inept in not identifying the person who made the impression and either implicating them in the crimes or clearing them from suspicion.<sup>368</sup> While that may be a worthy objective, the fact remains that the fingerprint, like many others in criminal investigations throughout the world, has not been identified despite all efforts. Needless to say, it is not that of a member of the Bain family or of anyone recorded in the national criminal index. Nor is it that of Nicholas Greet.<sup>369</sup>
207. As regards the competence of Mr Jones, it is noted he is highly regarded as a fingerprint expert. He has a scientific background with a New Zealand Certificate in science and has had previous laboratory experience.<sup>370</sup> He is very experienced in crime scene searching, has considerable expertise in fingerprint identification and is proficient with use of the polilight and other modern techniques. He works out of the Christchurch Crime Print Section which is considered one of the most advanced in the country.
208. We find that proper and appropriate endeavour was given to that aspect of the investigation. The related claim of ineptitude by failing to identify a fingerprint located near the switch is rejected.

#### **Failure to Establish Motive for David**

209. A major theme in Mr Karam's book is the fact that the prosecution established no motive for David to have killed members of his family.<sup>371</sup> He contends that the Police acted prematurely in arresting David and became subjective in the way they dealt with evidence.<sup>372</sup> In effect he declares as unbelievable that a young man should have callously murdered his parents and his brother and sisters without any apparent reason. He implies that if the Police wished to bring a case against David it was up to them to put forward a motive which could have been examined and debated.

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<sup>366</sup> Anderson Review Stmt Ref.22002A & Cox Review Stmt Ref.17003

<sup>367</sup> Weir Review Stmt Ref.22001B, Legros js Doc.10439

<sup>368</sup> p121

<sup>369</sup> Greet Investigation File

<sup>370</sup> Burt Report p3, Review Ref.26003A

<sup>371</sup> p63

<sup>372</sup> p64

210. The question of motive was well canvassed before the jury and it was explained that the prosecution has a duty to prove intent in a criminal case, but not motive. Mr Karam still thinks there was an obligation on the prosecution to show a convincing reason for the killings before David should have been charged or convicted. In his closing address to the jury, Mr Wright, the Crown Solicitor, said "...you've heard evidence from the Crown indicating that the accused is a disturbed young man. In the weeks prior to 20<sup>th</sup> of June his behaviour was bizarre. It is not my job to speculate on this. The accused's reasons, his motivation, are irrelevant."<sup>373</sup> In his summing up, Justice Williamson said that the Crown had told the jury *"...that these events were so bizarre and abnormal that it was impossible for the human mind to conceive of any logical or reasonable explanation"*.<sup>374</sup>

211. We have examined the evidence looking for any indication of Police impropriety or unfairness which may have emerged from this stand but none was found. It may never be known with complete certainty why the deceased were killed. Blaming Robin might be seen by some as a convenient way of resolving the unknown and unexplainable but we cannot ignore evidence which points to David simply to avoid issues which are difficult to fathom or accept.

212. We agree with Mr Wright in that it was a bizarre act of horrendous slaughter for which a "conventional" motive could not be found. The arrest and prosecution were perfectly justified even though there was no clear motive for the killings and that much inquiry work still had to be done at the time David was taken into custody.

#### Related Comment

213. In his book, Mr Karam<sup>375</sup> criticises a New Zealand Police publication issued in December 1994 in which are listed 35 murder cases and David Bain is cited as an offender. Given the fact that he had not been convicted at that stage, Karam contends it was an unfair disclosure. The publication is an internal Police document not for public dissemination. However, its contents were published in the Sunday News shortly after the trial. In view of the fact general publication did not occur until after David was convicted, there was no prospect of interference with a fair trial and the matter need be taken no further.

214. Mr Karam alludes in his book to a visit to New Zealand by the ex FBI criminal profile expert, John Douglas, in July 1996.<sup>376</sup> Karam made contact with him at that time and part of an interview was recorded by the 60 Minutes TV programme. According to Mr Karam, that programme assisted to bring the issues of the Bain case even further under public scrutiny.<sup>377</sup> Mr Douglas said in the interview that in his experience it was usually the father of the family that was responsible for this type of crime. Mr Karam also states in his book that

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<sup>373</sup> Wright – Closing Address

<sup>374</sup> Williamson J – Summing-up

<sup>375</sup> p185

<sup>376</sup> p98

<sup>377</sup> p98

Douglas, while looking at photographs of the killings, reputedly said to him when talking about Laniet "Whoever had the most reason to hate this girl is your likely killer."<sup>378</sup> Mr Douglas later spoke to various Police meetings around New Zealand. Officers at these meetings recall that Mr Douglas explained that he was approached on his arrival at the airport, made his comments and responded to questions based on information given to him and without having further information about the case or a detailed understanding of the investigation. Comments which qualified his answers [explaining how he was speaking generally as he had not read the file] were not published.

### **Failure to Give Weight to Ambulance Officer's View**

215. Mr Karam contends that one of the ambulance officers reported David had been unconscious for about three minutes<sup>379</sup> [which could account for memory loss] and he is critical this point was not checked out by the Police during the original investigation. The failure to properly explore this issue, he claims, operated to the disadvantage of David Bain and again demonstrates the disinclination of the Police to pursue matters which did not support their theory.
216. In fact, the reference to three minutes unconsciousness was made in a report<sup>380</sup> created by Ambulance Officer Jan Scott who arrived at the scene at 0750 hours to take over from the night shift ambulance officers caring for David. In subsequently reporting her involvement in the case she filled out a pro forma report which invited information about the patient being unconscious. Because she believed a Police officer at the scene had told her David was unconscious for about three minutes she noted this detail in the space provided on the form.<sup>381</sup>
217. Constable Andrew, the officer with David at the relevant time has been interviewed. He is adamant David was not unconscious at any stage. Ambulance Officer Anderson believed that at one stage David feigned he was having a fit and Chief Ambulance Officer Wombwell described him as being "light" at some point.<sup>382</sup> This is international medical emergency terminology referring to a person who is virtually awake and who responds to voice but who has his eyes closed. The question of whether David was conscious or unconscious while being attended by the police and ambulance officers before removal from the house was thoroughly examined by defence counsel at the trial. Ambulance Officer Anderson tested David's consciousness by touching his eyelashes, which caused David to move his eyes - this reaction only happens with a conscious patient and is quite involuntary.<sup>383</sup> In Anderson's statement to the review team he said, "...That is standard practice we use for checking those patients who are foxing us or just choosing not to speak to us or

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<sup>378</sup> p215

<sup>379</sup> p208

<sup>380</sup> Ambulance Report Form Doc.10045

<sup>381</sup> Scott Review Stmt Ref.21008

<sup>382</sup> Wombwell Review Stmt Ref.21004WOM p8

<sup>383</sup> Anderson Trial p48 L38

react to us".<sup>384</sup> Mr Anderson also noted that David responded to the dog when it barked.

218. In short, no one saw David unconscious. The only suggestion of it comes from a report where details have been recorded by one person on the basis of what she thought she was told by another.
219. Mr Withnall criticises the Police for calling evidence that David was feigning shock when they had expert medical evidence to the contrary.<sup>385</sup> During the original investigation the Police consulted Dr Ramsay, Director of the Intensive Care Unit, Dunedin, about David's condition as observed in the house by the attending Police Officers and Ambulance staff. His written statement was provided to the defence and was used to cross examine Crown witnesses.<sup>386</sup> It is therefore not correct to imply the Police had this evidence and suppressed it.
220. As a matter of interest, it has been determined that David was sent for a medical examination [by the defence] while awaiting trial and tests did not disclose any evidence of epilepsy or like disorder.
221. Mr Karam has placed considerable emphasis on the claim David suffered memory loss because of the shock of finding his family dead. This extended to his belief David's severely distorted memory should not be relied on or carry weight when it came to whether his mother's eyes were open or not, and whether he heard Laniet gurgling or not.<sup>387</sup> Mr Karam also alludes to this memory loss to explain David's failure to recall going into Stephen's, Laniet's and Arawa's rooms when interviewed<sup>388</sup> [and thereby getting blood on himself]; failure to recall how he got his injuries [which he said he did not have on the paper run or on entering the house],<sup>389</sup> or touching the rifle [resulting in his fingerprints getting on them].<sup>390</sup> Mr Karam states in his book that David has "...perfect recollection up to finding and realising his mother was dead. He virtually has no recall of the rest of that morning."<sup>391</sup> The Crown case was he could remember these things and chose not to. This issue of memory loss was canvassed at trial and defence witness Professor Mullens in cross examination agreed recovered memory may be genuine or self serving.<sup>392</sup>

### **Failure to Follow up Cottle's Assertions**

222. This is another matter where Mr Karam says there was a lack of Police interest in issues which did not support their view that David shot and killed the other members of his family.

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<sup>384</sup> Anderson Review Stmt Ref.21001

<sup>385</sup> Withnall letter 3.10.97

<sup>386</sup> Andrew Trial p38 L12 and Wombwell Trial p46 L17

<sup>387</sup> p158, p159, p161

<sup>388</sup> David Stmt Doc.10155 p12

<sup>389</sup> David Trial p436 L32

<sup>390</sup> p149, p150

<sup>391</sup> p86

<sup>392</sup> Mullens Trial p447 L6

223. Three days after the killings, a Dunedin resident, Dean Cottle, volunteered information to the Police to the effect that Laniet confided in him she and her father were having an incestuous relationship and she intended to tell her family everything and make a clean start.<sup>393</sup> It is the general thrust of Mr Karam's complaint that the Police did not give proper credence to Cottle because his information did not fit with their view of events. By not following up on the allegations, Mr Karam contends, an opportunity was lost to discover Robin was the killer.<sup>394</sup>
224. Mr Karam writes that Cottle said Laniet told him that she *"had been having sex, incest, with her father and that this had been going on for years."*<sup>395</sup> He expands on this by asserting Robin was having sex with his daughter *"since she was a child"*<sup>396</sup> Mr Karam also quotes information from *"a long time acquaintance of the Bains"* (whose identity is unknown to us) that while the family was living in PNG Laniet was raped at 11 years of age and had a baby from *"the incestuous relationship her father forced on her"*.<sup>397</sup> Inquiries by the Police in PNG could find no record of Laniet giving birth or being raped.<sup>398</sup> It was established that a child in a photograph she told friends was hers [resulting from the alleged rape] appears to be a child of different ethnic origin born to a neighbour in PNG. The autopsy performed by Dr Dempster did not reveal anything to suggest Laniet had previously given birth.<sup>399</sup> We have been unable to substantiate that an incestuous relationship ever existed, that Laniet had a child, was raped, or had been otherwise abused while in PNG. Family members disbelieve those claims.
225. Mr Karam said Laniet rarely spent any time at or even visited the family residence in Every Street.<sup>400</sup> He says the June visit was the first time in almost a year Laniet had stayed overnight at the home.<sup>401</sup> The original investigation established Laniet had been flatting with friends in Russell Street before moving in with her father, and later Kyle Cunningham, at Taieri about a month before the murders.<sup>402</sup> This was her idea and was done partly in an attempt to break away from some of her bad habits and clear her head.<sup>403</sup> However she still occasionally spent time in Every Street and according to David stayed there two weeks earlier.<sup>404</sup> David also said Laniet was staying at Every Street that weekend because she was working on Sunday and Monday mornings and her mother offered her a bed and a ride.<sup>405</sup> A number of her friends, including Kyle

<sup>393</sup> Cottle Stmt Doc.10320

<sup>394</sup> p194 & Mtg 25.07.97

<sup>395</sup> p43

<sup>396</sup> p68

<sup>397</sup> p201

<sup>398</sup> Interpol Doc.10643

<sup>399</sup> Dempster js Review Ref.24002B

<sup>400</sup> p67

<sup>401</sup> p9

<sup>402</sup> Hunter Stmt Doc.10211, McGregor Stmt Doc.10188

<sup>403</sup> Hunter Stmt Doc.10211, McGregor Stmt Doc.10188, Wicken Stmt Doc.10177, Witness C Review Stmt Ref.33005 and Witness A Review Stmt Ref.33006.D, Witness B Review Stmt Ref.33007

<sup>404</sup> David Stmt Doc.10155, p13

<sup>405</sup> David Stmt Doc.10155, p13

Cunningham knew she was going to Every Street that weekend.<sup>406</sup>

226. It is not known what happened at the Bain home that evening because all those present, except David, are dead. There is no way of corroborating Laniet's comments to Cottle about incestuous behaviour but it seems curious she did not confide the information to trusted friends. Those who knew her well believe she would have been more likely to divulge details of sexual abuse to them than to persons of less intimate acquaintance.<sup>407</sup> Our inquiries suggest that at the time Laniet disliked Cottle and felt pressured by him.<sup>408</sup>

227. Mr Karam contends that knowledge of Cottle's information did not become available to the defence until close to the trial.<sup>409</sup> In reality, Cottle's statement was part of the first disclosure documents provided by the Police to Mr Guest prior to the preliminary hearing, about seven or eight months before trial. Mr Karam says it was included among piles of discovery documents. In fact it was with paper contained in a relatively small box. His claim that the information came "*out of the blue*" and was "*an ace*" could also be misleading.<sup>410</sup> Mr Guest desired to have Cottle testify as to Laniet's disclosures but he could not be located when the trial was in progress and Mr Karam suggests that the Police made no serious effort to locate him.<sup>411</sup> Mr Karam infers investigating officers were anxious that he not be available to give evidence.<sup>412</sup> When Cottle eventually did appear evidence had been concluded and the Crown Prosecutor had completed his final address. Cottle was called before the trial Judge who questioned him in the absence of the jury to form an opinion on whether to allow him to give evidence. Cottle said that he would not have made an untrue statement to the Police but that he could not then remember the details of what Laniet Bain had said to him – a lack of memory that the Judge conceded may have been due to confusion over his then position. However the Judge decided that Cottle's evidence would not be reasonably safe or reliable and concluded that the dangers guarded against by the hearsay rule could not be put to one side. He directed that Cottle not give evidence, a decision subsequently upheld on appeal.<sup>413</sup>

228. Another point to note in respect of this matter is the fact that in 1995 Mr Cottle complained to the Police Complaints Authority about treatment allegedly received from the Dunedin Police over his involvement in the Bain case.<sup>414</sup> The PCA eventually determined the allegations were not upheld and duly advised Mr Cottle. In his book, Mr Karam is critical of that finding. He says it demonstrates the PCA is ineffective in holding police officers accountable. He contends Dean Cottle had been subjected to harassment, had been unceremoniously arrested,

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<sup>406</sup> Cunningham Stmt Doc.10200

<sup>407</sup> Witness A Review Stmt Ref.33006.D, Witness B Review Stmt Ref.33007,

<sup>408</sup> Witness A Review Stmt Ref.33006.D, Witness B Review Stmt Ref.33007, Witness C Review Stmt Ref.33005

<sup>409</sup> p69

<sup>410</sup> ibid

<sup>411</sup> p73-74

<sup>412</sup> p71

<sup>413</sup> Grills Review Stmt Ref.7007

<sup>414</sup> Cottle [Original Complaint File]

arms severely damaged when he was, according to him, quite brutally arrested, had his house broken into, had his telephone tapped, was followed around and was continually in trouble with the law. He alleged Police had attempted to discredit, frighten and intimidate him in order to dissuade him from cooperating in David Bain's defence. He further alleged Mr Cottle's allegations were assigned for investigation to one of the very officers complained about.<sup>415</sup>

229. We have revisited the 1995/96 PCA investigation of the Cottle allegations and we are satisfied the case received capable attention. Mr Karam is mistaken when he says the investigation was handled by one of the officers who allegedly assaulted Cottle. In fact, the case was handled by an officer who had absolutely no prior dealing with the complainant and who was totally independent of the Bain investigation. The officer's report was considered by the Deputy Police Complaints Authority who gave the matters all proper consideration and we concur with the conclusions he reached. Especially we find:-

- Police were not uninterested in trying to locate Cottle. He knew he was wanted as a witness and he deliberately took steps to avoid being found.
- Police did not put pressure on him to influence his evidence. In fact, it was in the interests of the Police to have him testify for the defence so he could be cross-examined. [There was a suggestion that if he could not be found his statement might be simply put before the jury without his appearance.]
- An injury to his arm was not due to any excessive use of force when he was arrested in a matter unrelated to the Bain case.

230. Mr Karam is also critical of a comment made by a detective in a draft brief of evidence provided to the Crown Prosecutor [not an affidavit as alleged] where he said Dean Cottle may be in need of psychiatric assistance.<sup>416</sup> This document was prepared by the detective in anticipation that Cottle would testify and was for the purpose of providing the prosecutor with background information for use in cross examination. The officer's assessment was based on the fact that he has a manic depressive brother whose symptoms he believed were similar to those exhibited by Cottle. As a matter of courtesy the Crown Prosecutor supplied a copy of the brief to Mr Guest but because Cottle did not give evidence there was no opportunity for cross examination and consequently the information was not used by the prosecution either at the trial or otherwise. The document was apparently passed on to Cottle by Mr Guest.

231. On 7 November 1995 the Otago Daily Times published a report of the Court of Appeal hearing and referred to Cottle's psychiatric history. This was not with reference to the Detective's brief of evidence but rather to a psychiatric report on Cottle prepared in September 1994, the psychiatrist having first seen Cottle on 9

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<sup>415</sup> p77-78

<sup>416</sup> p75

June 1994.<sup>417</sup>

232. We are satisfied the detective's comments were proper and pertinent to the Crown case and we find no justification in the suggestion that they were somehow intended to mislead the court. Mr Cottle was regarded by Police as an unreliable person almost from the outset and we believe the Police acted properly in their dealings with and about him. We consider the decision of the Crown not to use him as a witness was appropriate to the circumstances. Any evidence he could give was at best hearsay and he was considered of more value to the defence than the prosecution. He had little credibility and there was no practical avenue for corroborating his assertions. The true nature of his relationship with Laniet was quickly established and her move from Russell Street to live with her father at Taieri seemed inconsistent with the [forced] incest claims. Accordingly, a copy of his statement was given early to defence counsel and [contrary to other assertions] Police assisted in getting him to the court. The Court of Appeal upheld the decision of Justice Williamson in excluding him as a witness.
233. It was open to the defence to make more of Cottle but he refused to [or could not] come up to expectations.
234. We find the time and effort devoted to this man and the information he supplied was proper, adequate and appropriate to the circumstances.

#### **Failure to Explore Laniet's Background**

235. This is yet another matter where Mr Karam alleges there was a failure by the Police to properly explore an issue which could have produced results favourable to David Bain.
236. Connected with Cottle's assertions, Mr Karam claims that there was scope to find clues to the deaths in Laniet's background and suggests that the Police were remiss in not actively pursuing enquiries in that direction. He lists several points about Laniet which he feels justified specific attention. They are examined below:

##### **a) Alleged Child In PNG**

*[This matter is also discussed in paragraph 224 referring to Dean Cottle.] Laniet told several of her flatmates at Russell Street that when she was living in PNG and at about the age of 11 she was raped by a native person and as a result gave birth to a baby named Tailei.<sup>418</sup> [In Mr Karam's book the baby was said to be fathered by Robin.] She said the baby was later adopted out. Laniet kept a photograph of this baby clipped to the mirror in the*

<sup>417</sup> 1995/1996 PCA Complaint File re. Cottle

<sup>418</sup> McGregor Stmt Doc.10566, Hunter Stmt Doc.10211, Williams Stmt Doc.10499, Stewart Stmt Doc.10567, Witness C Review Stmt Ref.33005



*bedroom of the flat at Russell Street.*<sup>419</sup>

In Mr Karam's book he says "I also have mind-blowing information from an old friend of Robin's whose family is well acquainted with the members of Robin's family". He goes on to say this informant said "that this baby was a result of 'the incestuous relationship that her father forced on her' and that this information was provided to our informant by a member of the Bain family." - something Mr Karam says he "strongly suspected for a long time".<sup>420</sup>

At the request of the Bain homicide team inquiries were made in Papua New Guinea by the Royal PNG Constabulary and they could find no record in the Police information system of the report of a rape by a Laniet Margaret Bain.<sup>421</sup> Nor was there any record of Laniet Margaret Bain giving birth in Papua New Guinea.<sup>422</sup>

b) General Mode Of Life

The homicide investigation established that in February 1994, Laniet was living in a flat at 56 Russell Street, Dunedin, with a number of other persons. At the time she was working as a prostitute and that fact was no secret to those living with her although her family might not have known. She advertised in the *Otago Daily Times* using the name 'Page'. Her clients contacted her on a cellphone lent to her by Dean Cottle.<sup>423</sup> The reasons she gave for resorting to prostitution were that she could not get employment and was too young to receive the dole.<sup>424</sup> At about the time of her 18th birthday [19 March 1994] she ceased this type of work and applied for and subsequently received the unemployment benefit.<sup>425</sup> At the time of the murders Laniet no longer had the cellphone.<sup>426</sup> It was disconnected by Telecom on 7 March 1994.<sup>427</sup>

Mr Karam has criticised the original investigation for not pursuing this line of inquiry to establish Laniet's use of the cellphone up until the time of the murders.<sup>428</sup> It was not pursued because Telecom had no record of the phone being used in recent months and Laniet was not using it up until the murders.

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<sup>419</sup> js Doc.10291

<sup>420</sup> p200-201

<sup>421</sup> Interpol Request Doc.10560

<sup>422</sup> Interpol Response Doc.10643

<sup>423</sup> p65, Witness A Review Stmt. Ref.33006, Witness B Review Stmt Ref.33007. Witness C Review Stmt. Ref.33005, Williams Stmt Doc.10499

<sup>424</sup> Witness B Review Stmt Ref.33007

<sup>425</sup> Ross js Doc.10140

<sup>426</sup> Wicken Stmt Doc.10177, Witness B Review Stmt Ref.33007

<sup>427</sup> Telecom Document Review Ref.33008

<sup>428</sup> P67

Mr Karam has also said Dean Cottle telephoned 65 Every Street on the Friday before the murders looking for Laniet and his cellphone.<sup>429</sup> Dean Cottle did not talk to her. In his statement to the Police on 23 June 1994 Cottle states he decided to "...give her [Laniet] a ring and see what she was up to." He did not mention his cellphone in the entire statement.<sup>430</sup> It appears to us it would be unusual to be looking for the cellphone if it had not been used by Laniet since March and was no longer in her possession.

Mr Karam has also said his information is the phone bill was \$400-\$500 per month being used right up until the time of the murders by Laniet.<sup>431</sup> This cannot be the case if it was disconnected.

Mr Karam has inferred that the Police seized the cellphone during their search of 65 Every Street which then led to Mr Cottle being interviewed.<sup>432</sup> This is incorrect.

Documents on the original investigation file reveal information was supplied to the Police giving telephone numbers used by Laniet as a prostitute.<sup>433</sup> A search warrant was executed on the Telecom Malicious Call Centre on 21 June. It was established the cellphone number provided belonged to Dean Cottle, which led to him being interviewed two days later.<sup>434</sup> During the interview, he assisted to identify a previous address of Laniet's and he gave information about her personal diary and a list of clients.<sup>435</sup>

Up until her death Laniet worked on occasions at the Museum Cafe and the Rigoletto Cafe. She was also a regular user of cannabis, spending much of her income on the drug.<sup>436</sup> She did not appear to have a steady boyfriend but had several short relationships. Sometime in May 1994, she left the flat at Russell Street and went to live with her father at Taieri Beach.<sup>437</sup> This move appears to have been entirely her own initiative and she exhibited no sign of concern about staying with her father.<sup>438</sup> Her receipt of the unemployment benefit appears to have had some bearing on her giving up prostitution and moving in with her father.<sup>439</sup> Even after she moved out to Taieri Beach Laniet often returned to the flat at

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<sup>429</sup> Meeting 16.07.97

<sup>430</sup> Cottle Stmt Doc.10320

<sup>431</sup> p67

<sup>432</sup> p65, Mtg 27.08.97

<sup>433</sup> Telephone Message Doc.10034

<sup>434</sup> Cottle Stmt Doc.10320

<sup>435</sup> Inglis js Doc.101319

<sup>436</sup> Inglis js Doc.10064, Wicken Stmt Doc.10177, js Doc.10190, Witness C Review Stmt Ref.33005

<sup>437</sup> McGregor Stmt Doc.10188

<sup>438</sup> Witness B Review Stmt Ref.33007, Witness C Review Stmt Ref.33005.D, Witness A Review Stmt Ref.33006, Miller Stmt Doc.10521

<sup>439</sup> js Doc.10190

Russell Street to stay on the weekends and sometimes even one or two nights during the week as well.<sup>440</sup>

c) Comments to Dairy Owners

*Following a decision of the Court of Appeal to allow publication of Cottle's assertions, Mr Karam had contact with two men who jointly own a dairy in Russell Street, near the address where Laniet formerly flatbed. They were John Dunnett and Lance David Kedzlie. In his book, Mr Karam attributes to them statements to the effect that Laniet was a regular customer and on one visit to the shop told them she was having an affair with her father.<sup>441</sup>*

In fact Laniet had only made the comment to Kedzlie.<sup>442</sup> It was on an occasion when she went to their dairy in a crying and distressed state. She spoke of various concerns about her flatting arrangements, her unemployed status, her family and in that same context said she had had sex with her father. Kedzlie did not consider Laniet a personal friend, just a customer, and he was not interested in advancing the conversation so there the matter ended. The comments were never revealed to the homicide investigation team. Kedzlie and Dunnett were not aware the matter of incest was an issue until Dean Cottle's comments were made public.

d) Comments to PhD Student

Mr Karam refers to a similar disclosure made by Laniet to a PhD student.<sup>443</sup> She allegedly said to the student. "I want to shift back home but I don't know if Mum will let me because I've fallen out with her. But I can't stand what Dad's doing to me any longer". This was in turn passed onto Mr Karam by the student.

The PhD student, who attended Otago University at the time, has been interviewed.<sup>444</sup> He knew David Bain well, Laniet and Arawa fairly well, and had briefly met the other members of the Bain family. He met David during an opera company performance in 1992 and afterwards they performed in a number of shows together. He considered David a good friend.

On 27 May 1994, the student met Laniet at the University cafe. She appeared agitated and wanted to contact David. He recalls she said "she couldn't live with him anymore," and "wanted to move back home". Laniet indicated to him she did not want to talk

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<sup>440</sup> Witness A Review Stmt Ref.33006, Witness B Review Stmt Ref.33007

<sup>441</sup> p200

<sup>442</sup> Kedzlie Review Stmt Ref.33002

<sup>443</sup> p202

<sup>444</sup> PhD Student Review Stmt Ref.33004

about the matter and he did not know who she was referring to but he inferred it to be her father. The student is certain she did not actually mention her father and did not indicate the remark was about her father. She did not mention to him any sexual relationship that may have been occurring between herself and her father.

He is adamant the comment in Karam's book "but I can't stand what Dad's doing to me any longer" is not correct. He says this was not the comment made to him by Laniet.

Even so, after the conversation, the student made a note on his lab sheet which reads "Must talk to DCB. What is going on between Laniet and her Dad?".

The student had no immediate opportunity to pass the message on to David and two days later left New Zealand for an overseas holiday. He did not return until well after the Bain homicides. It cannot now be determined what had agitated Laniet or who she was talking about but it is significant that the student took it to be her father.

It is known Robin was unhappy Laniet was not contributing towards the rent and household costs at Taieri,<sup>445</sup> although she was receiving dole payments. It is thought her cannabis habit was costing much of her benefit money. It could have been these factors she was referring to in her discussions with the student.

Again, this is a matter not known to the homicide investigation team.

e) Stephen's Comment

*In the book Mr Karam refers to a comment made by 'a friend of Stephen' who attributes to Stephen the following words "There's something funny about Laniet and Dad; they carry on like Mum and Dad should."*<sup>446</sup>

We have established that this information came from Rebecca Greet, the sister of Nicholas Greet, when she was recounting a conversation with Stephen Bain several months before his death.<sup>447</sup> They were discussing Rebecca's own problems at home and the fact she was considering running away. Stephen cautioned her against it and brought up Laniet's situation where she had dropped out of school, had no job and started staying away at friends.

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<sup>445</sup> Witness A Review Stmt Ref.33006

<sup>446</sup> p201

<sup>447</sup> Greet Investigation File

Rebecca cannot recall Stephen's exact words but she remembers asking him if he meant Robin and Laniet were having a relationship. He would not be drawn on the issue.

f) Missing Diary

*Mr Karam refers to Cottle saying he thought Laniet had a list of all her clients in her personal diary and adds "this diary along with many other items appears to have disappeared."<sup>448</sup>*

On 24 June 1994, during the course of the search of the bedroom in which Laniet Bain was found, Police located a battery operated calculator in the pocket of a leather jacket.<sup>449</sup> Its mechanism included a clock and a telephone memo. Stored in the memo were a series of names and telephone numbers. These were all checked.<sup>450</sup> Some of the telephone numbers showed no subscriber details. It appears that this is the electronic diary referred to by Karam, which "appears to have disappeared". It was held by the Police until it was returned to the Trustees on 19 January 1996. There is no record of other items missing as alleged.

g) Supposed Telephone List of Clients/Acquaintances

*Apparently this is one of the other items Mr Karam believes may have "disappeared".*

In June 1994, Michael Bain located at the house at Taieri beach a book allegedly belonging to Laniet with a series of names and phone numbers in it. This was given to the Police during the investigation and the telephone numbers checked.<sup>451</sup> It was finally returned to the Trustees on 19 January 1996.

237. The original inquiry did not neglect to follow up information about Laniet but there was very little to work on. She appeared as a rather confused individual who may have suffered from some form of delusion. Some utterances attributed to her were clearly incorrect, if not sheer fantasy. Other information lacked sufficient detail for accurate checking. Her comments to the dairy owners and the PhD student did not emerge until after the trial and are not matters which could have been reasonably encountered by inquiry at the time.

238. We find the time and effort put into investigating her background was appropriate to the circumstances.

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<sup>448</sup> p66

<sup>449</sup> Fitzgerald js Doc.10304 p5

<sup>450</sup> Robinson js Doc.10421 and Doc.10422

<sup>451</sup> Inglis js Doc.10423

### Failure to Explore Motives Fitting Robin as the Killer

239. Mr Karam contends the Police very quickly settled upon David as the culprit and thereafter were blind to any other possibility.<sup>452</sup> He suggests that if proper attention had been paid to Robin, it would have emerged that he had the necessary motive and opportunity to commit the crimes and he could have had access to the weapon. He asserts the Police first regarded the killings as "an open and shut case of murder/suicide" and he condemns the subsequent decision to move the investigation away from the theory that Robin had shot the others and then himself.<sup>453</sup>
240. The principal motive advanced against Robin in the book, is that he killed the four members of his family because Laniet had either exposed their incestuous relationship or had threatened to do so. In support of this theory it is noted David testified at the trial that while he was asleep in bed the night before the crimes were discovered "...I remember waking and hearing raised voices coming from the living room."<sup>454</sup> In cross examination he claimed that he did not tell the Police about this because he did not remember it until two or three months after the killings.<sup>455</sup> In referring to these 'raised voices' in his book, Mr Karam quotes David as saying "*it was pretty heated because Dad never raised his voice, but he did that night.*"<sup>456</sup> Mr Karam suggests Robin was being confronted with sexual molestation and that the threat of exposure resulted in a deranged state of mind causing him to "totally flip out."<sup>457</sup>
241. The only evidence that the family were arguing comes from the statement of David himself and that statement does not identify who was arguing or the nature of the alleged argument.<sup>458</sup> The suggestion that the argument evolved from Laniet disclosing an incestuous relationship with her father is speculation.
242. Mr Karam claims there were other points where inquiry could have shown Robin's motive and/or frame of mind, including:
- a) *Visited by Education Officers.*  
There is no adverse report held by the Ministry of Education, Dunedin. A suggestion that he was the subject of some concern with the Psychological Services unit has no foundation.<sup>459</sup>
  - b) *Significance of the Agatha Christie Novel*  
We do not believe the Agatha Christie book in the caravan to be significant. It contains five stories and as shown in Police photographs appears to be open at the first or second. The story 'Death Comes at the

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<sup>452</sup> p209, p180

<sup>453</sup> p176

<sup>454</sup> David Trial p412 L1

<sup>455</sup> David Trial p441 L18

<sup>456</sup> p85

<sup>457</sup> p68

<sup>458</sup> David Stmt Doc.10023

<sup>459</sup> Ministry of Education js Review Ref.35005 & Ref.35006

End' mentioned by Mr Karam is the last in the book, and therefore does not appear to be the story he was reading. It is about a son who kills his family one by one in order to gain inheritance for himself.

c) *Previous Use of Rifle Without David's Knowledge*

Mr Karam alleges failure by the Police to check out the possibility of Robin having previously used the rifle without David knowing. He addresses this issue in his book stating: "...he [Robin] had used David's rifle with David and almost certainly had used it unbeknown to David."<sup>460</sup> He also refers to the twenty spent cartridge shells in Robin's caravan, stating that this was a strong indication that Robin had access to the rifle.<sup>461</sup> In fact, this was an issue explored by the Police. It was discussed with David when he was interviewed.<sup>462</sup> He said his father handled the rifle when he helped him sight it in after purchase [6.2.93]. He also said he believed his father did not know where the spare key to the firearms lock was kept hidden. To his knowledge, he said, his father and other members of the family had not been handling the rifle. Kyle Cunningham, who lived at the Taieri School house with Robin and Laniet, was also spoken to about Robin's possible use of firearms.<sup>463</sup> He was able to give information about a discussion he had with Robin relating to obtaining a firearms licence for shooting opossums and rabbits and he gave that evidence at the trial.<sup>464</sup>

d) *General Family Environment and Relationships*

Mr Karam says it was remarkable the Police did not pursue inquiry into Robin's mental state and had arrested David on the basis of some circumstantial forensic evidence.<sup>465</sup> In his book he describes Robin as a man living a degraded and debased life,<sup>466</sup> and portrays him as suffering from depression and likely to commit these crimes.<sup>467</sup> The Police did construct a picture of Robin from information received as the result of interviews of people who knew him, including next of kin and acquaintances of the family. That picture was generally of a caring, wise and pleasant person. Reputedly, he and Laniet got on very well. His behaviour during the days leading up to the murders, as far the Police could determine, was normal.

243. A major point argued at the trial against the theory that Robin was the killer, is the fact that he had a full bladder at the time of his death.<sup>468</sup> Mr Karam seeks to dismiss this as a trivial matter and suggests that he could have drunk tea or some other beverage earlier in the morning.<sup>469</sup> Dr Dempster discounts this by

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<sup>460</sup> p153

<sup>461</sup> p202

<sup>462</sup> David Stmt Doc.10155

<sup>463</sup> Cunningham Stmt Doc.10200

<sup>464</sup> Cunningham Trial p447 L36-37

<sup>465</sup> p68

<sup>466</sup> p214

<sup>467</sup> p198

<sup>468</sup> Dempster Trial p279 L25

<sup>469</sup> 1ZB Radio Interview (23.06.97) & TV3 News Interview

the concentrated nature of the urine. He believes it to be the overnight collection which an individual would need to pass soon after getting up.<sup>470</sup> Dr Thomson confirms the description of about 400ml of dark urine is consistent with a normal overnight collection. The concentration of urine overnight is controlled by body hormones, and had Robin Bain been up for a significant period during the early hours of the morning, as suggested by Mr Karam, his total urine volume would have been increased and the urine would have been dilute. Had his sleep pattern been disrupted during the preceding night, he is unlikely to have had this quantity of concentrated urine in his bladder at dawn.<sup>471</sup>

244. It should also be noted, as mentioned earlier, that Robin did not show any signs consistent with being involved in the kind of struggle which obviously had taken place in Stephen's room.

245. We find that the time and effort put into this aspect of the case was appropriate to the circumstances.

#### **Failure to Adequately Establish that Robin Did Not Shoot Himself**

246. Mr Karam contends the Police failed to adequately establish Robin did not shoot himself. He attaches weight to the fact that Dr Dempster agreed in cross examination it was "a possibility" but suggests the Police were not interested in hearing any theory other than that David was the offender. Once more he says this demonstrates a disinclination by the Police to pursue matters which did not support their theories.

247. We have examined documents and interviewed key personnel to assess the merits of that contention and to determine if anything was done which improperly or unfairly disadvantaged David Bain.

248. At the trial, Dr Dempster conceded it was physically possible for Robin to have shot himself in the left temple but said "*...it is not particularly easy, there are easier, much easier ways...*"<sup>472</sup> and went on to elaborate on the difficulty involved. Dr Dempster also said "*I considered it unlikely that this death was self-inflicted.*"<sup>473</sup> *I cannot completely rule out suicide.*"<sup>474</sup> Mr Karam now challenges this evidence and refers to the original notes of Dr Dempster dictated while at the scene on the first day.<sup>475</sup> Dr Dempster describes the length of the rifle from the trigger to the end of the silencer and comments that it is perfectly feasible with someone of my [Dempster's] build to point the rifle, place the muzzle against the temple and reach the trigger with the arm.<sup>476</sup> It should be remembered these dictated comments were before the post-mortem examination was carried out, before the trajectory of the bullet through the head

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<sup>470</sup> Dempster Trial p279 L25 & p312 L32 & Review Stmt Ref.24002

<sup>471</sup> Thomson Report Review Ref.24001d

<sup>472</sup> Dempster Trial p278 L6

<sup>473</sup> Dempster Trial p278 L12

<sup>474</sup> Dempster Trial p292 L30

<sup>475</sup> Withnall letter (03.10.97)

<sup>476</sup> Dempster Case Notes



was determined and before Dr Dempster completed any experiments based on the information gained from the autopsy. It was a preliminary observation of how he saw things at that time.

249. The fact the cartridge case was not found in a position where it would more likely have been expected to fall if Robin had shot himself largely discounted that possibility and supported the prosecution contention that the fatal shot was fired by another person from behind the curtains in the computer alcove. The position of the cartridge case has been challenged by Mr Karam<sup>477</sup> [but not by defence at the trial] as to whether it had been kicked there by Police attending the scene. We have commented on that point earlier. In concluding Robin did not shoot himself, the Police considered many factors including the final position of the body, the spent shell, the rifle and magazine, the position of blood on the floor and curtains, and the absence of blood on the chair next to the curtains. The scenario which fitted that evidence was that Robin was shot by someone standing behind the curtains. Expert opinion on the position of blood splatters on the drapes could have added to the Police case, but evidence was not called on that point. It is the opinion of Dr Cropp the blood on the curtains came from an area in space less than one metre above the floor.<sup>478</sup> Each blood stain has fallen on to the curtain at a relatively acute angle, and a conservative estimate would indicate that the source of the blood was less than 120 millimetres horizontally out from the curtain. Referring to photograph 43 he concluded the source of the blood spots was above the front corner of the chair closest to the curtain.<sup>479</sup> A longitudinal projection from the bloodstains indicates the source was approximately one metre above the floor in a small area just above the upper edge of the photograph. Dr Thomson has a similar opinion.<sup>480</sup> He believes Robin's head must have been relatively close to the curtains at the time the firearm discharged. The entry wound would need to be not much more than a metre above floor level, a position suggesting that Robin was kneeling by the chair. It is his opinion had Robin been at his full height, then he would have expected some blood staining significantly higher up the curtains. Similarly had he been leaning over the rifle with its butt on the seat of the chair, he would have expected bloodstaining higher up the curtains and on the seat of the chair and for the ejected shell to have landed within the main part of the room. This confirms the conclusions of the original investigators. If Robin's head was in such a position close to the curtain then the offender would have been required to have been standing in the computer alcove with the rifle pointing through the gap in the curtain. Comment about the position of the curtains when the Police entered the house is contained in an earlier paragraph. We believe it was a carefully calculated and proper reconstruction and not a fanciful summation to fit a preconceived opinion.

250. We are advised that the pathologist consulted by the defence expressed the view that Robin's was not a contact wound. Dr Dempster in evidence described

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<sup>477</sup> Mtg 25.07.97

<sup>478</sup> Cropp, Forensic Science Consultant Report, Review Ref.18039F

<sup>479</sup> Exhibit 600, scene photographs

<sup>480</sup> Thomson Report p5, Review Ref.24001d

the bullet entry as a contact or loose contact wound. He believes the muzzle was no more than 1cm from Robin at the time it was fired. His uncertainty is because of the effect the silencer would have had.<sup>481</sup> Dr Thomson does not believe it was a contact wound and is of the opinion it comes within the category of 'near contact' wound. His reasons are that the nature of the ammunition used in these offences was such there was extensive fracturing associated with every bullet wound to the skull. The two scalp wounds to Laniet, with their significant soft tissue disruption and larger entry hole, indicated the effect of a hard contact wound. He would have expected such skin disruption and increased skull damage to have occurred in Robin's left temple had the rifle been applied directly and firmly to it. It is Dr Thomson's opinion that from the pathology evidence alone, it is impossible to conclude suicide or homicide. This, he believes, has to be considered with the other forensic evidence.<sup>482</sup>

251. Kevan Walsh, scientist at the Auckland ESR, was consulted as part of the review. He reports having completed numerous experiments with the rifle. In his opinion the shot to Robin's head was either fired with the end of the silencer pressed against the skin or the shot has been fired from a distance beyond about 200mm. His reasons for this are: a) the blackening on the edge of the wound appears like the effect that results from abrasion and bullet wipe from a distant shot rather than sooting. b) the small wound approximately 5mm from the perimeter of the bullet entry hole is unexplained and there are some apparent red spots in the near vicinity of the bullet entry hole. These give the appearance of stippling marks typical of an intermediate range shot. c) there was no tearing of the bullet entry wound which typically occurs with a contact shot, but its absence is not proof that it was not a contact shot. In the test firings he conducted with the silencer pressed up against pork skin, there was a very visible ring of soot of a similar maximum diameter to that observed by Dr Dempster, however Mr Walsh has some doubt that this wound is a contact wound from his experiments and study of the photographs alone. He is cognisant of the fact Dr Dempster observed the actual wound which places him in a far stronger position.<sup>483</sup>

252. We find the investigators gave proper consideration to determining who had caused Robin's death.

### **Failure to Recognise the Significance in What Robin Was Wearing**

253. In support of the proposition that Robin was the killer, Mr Karam points to the clothing he was wearing when found dead.<sup>484</sup> Track pants and a sweat shirt were not, he suggests, garments a school teacher would wear at work and contends this indicates he had other plans that morning. Again, he contends, Police did not adequately explore the situation.

254. The Police, on the other hand, accepted Robin had not readied himself to go to

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<sup>481</sup> Dempster Trial P274 L18 and Dempster Review Stmt Ref.24002

<sup>482</sup> Thomson Report p5, Review Ref.24001d

<sup>483</sup> ESR Report p20, Walsh, Review Ref.18041

<sup>484</sup> p203

work. He seemingly had not yet washed or showered, shaved or been to the toilet [as mentioned previously]. There was only one pair of short pyjamas in his caravan<sup>485</sup> and it was a reasonable assumption he slept in the cold caravan on that mid-winter night in the clothes he was wearing including the woollen hat.

255. We have examined documents and interviewed key players to assess the merits of this claim and to determine if anything was done or omitted which improperly or unfairly disadvantaged David Bain.

256. We do not believe that any weight can be attached to the claim Police investigators failed to recognise the significance of the clothes worn by Robin. Kyle Cunningham<sup>486</sup> (who lived with Robin) and other associates were interviewed during the original investigation about Robin's usual attire. They have described his mode of dress as "dirty and scruffy",<sup>487</sup> "non-descript, ... grey trousers, green jersey and hat",<sup>488</sup> "not a large wardrobe and mainly wore an old woolly hat, grey tartan/green pants and a green/grey jersey and shirt",<sup>489</sup> "casual trousers, business type shirt, no tie woollen jersey".<sup>490</sup>

257. David was also questioned on this point. He said when Robin came into the house from the caravan he was usually dressed in the clothes he intended to wear to work that day. He then took those clothes off to bathe or shower before putting them back on to go to work. He added that if Robin came in from the caravan in the middle of the night he would probably wear the 'tracksuit stuff'.<sup>491</sup> (Robin was wearing a tracksuit top and trousers when shot.) At the trial, David said the clothing Robin wore to school was very business-like, neat, and tidy and that he usually came in from the caravan (other than in the middle of the night) in clothes that he would wear to school.<sup>492</sup> David did say "usually" but one could think it unusual to remove clothes to bathe or shower and then change back into those clothes to go to work. David's description of Robin's working attire as business-like, neat and tidy is at variance with the other observations made by Robin's colleagues.

258. On the morning of the crimes, we think it can be reasonably supposed Robin had not yet dressed for school when he came into the house. He had not showered or shaved or been to the toilet. Furthermore, his hands were somewhat dirty and gave no appearance of being recently washed.<sup>493</sup>

259. If Robin was the killer, he would have had to change out of his sleeping attire, put on the garments later found in the washing machine, kill his family members, remove blood stained clothes, put them into the washing basket, wash or

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<sup>485</sup> Legros js Doc.10294

<sup>486</sup> Inglis js Doc.10601, Cunningham Trial p448 L14

<sup>487</sup> Cameron js Doc.10456

<sup>488</sup> Thomson js Doc.10660

<sup>489</sup> Thomson js Doc.10662

<sup>490</sup> Thomson js Doc.10670

<sup>491</sup> David Stmt Doc.10023

<sup>492</sup> David Trial p415 L21

<sup>493</sup> McGregor Review Stmt Ref.22010, Hentschel Case Notes p45

shower, change back into his original attire and then shoot himself. There is no evidence of him having done this. David, on the other hand, had blood stains on clothes worn when the Police arrived. Officers deduced these were caused when blood from Stephen seeped through or was smeared from outer garments, which were subsequently removed and laundered.

260. We find the garments worn were either those in which he had slept or had put on when he rose that morning - or a combination of both. It should also be noted that the significance of Robin's clothing was argued before the jury.

### **Error over Length of Rifle**

261. Mr Karam criticises the fact that the Police armourer gave inaccurate evidence about the length of the rifle [he over-measured it by about 20 cms].<sup>494</sup> This point was clarified in cross-examination but was significant because it gave support to a defence contention that it was possible for Robin to have shot himself. In this connection, it should also be mentioned that Mr Karam criticizes a failure by the pathologist to measure the length of Robin's arms.<sup>495</sup>

262. The armourer's error [and the matter of unsatisfactory evidence over shell ejections] was dealt with by Justice Williamson and he warned the jury to be cautious in accepting the opinions of that officer.<sup>496</sup>

263. While the error was corrected during the trial and adequately disposed of by Justice Williamson, it remains a matter of concern that a Police witness should have made such a serious mistake in his evidence.

264. The failure to measure Robin's arm-length together with other evidence relating to the possibility of suicide by Robin, was placed before the jury and it was open to Mr Guest to develop that theme as far as he wished. It seems to us, in any case where suicide is a possibility, there would be wisdom in recording arm measurements.

265. The Police armourer concedes he made an error in testifying the rifle was longer than it actually was. He attributes this to the fact that he noted down the wrong figures after making the measurement.<sup>497</sup> The error was exposed during the trial and was disposed of by Justice Williamson and nothing turned on the matter to the disadvantage of David Bain. The armourer regrets his mistake and realises that he damaged his professional reputation through carelessness. The question of when firearms used in homicide cases should be examined by ESR experts in preference to the Police armourer is one the Commissioner of Police might wish to consider.

266. Mr Guest knew in advance of the trial that the armourer had made a mistake with the measurement and chose to bring it out in a courtroom demonstration in

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<sup>494</sup> p191

<sup>495</sup> p176

<sup>496</sup> Williamson J - Summing up to jury

<sup>497</sup> Ngamoki Review Stmt Ref.20001

front of the jury.

267. At the meeting on 25 July 1997, Mr Karam produced materials he had received from the ESR and alleged a diagram of the rifle had wrong measurements attached to it. He said this was a sign of carelessness by the scientists and that it represented sub-standard work. In actual fact it transpires the measurements were totally correct, but because the rifle had not been drawn to scale, it gave a false impression in the diagram.

268. We find the armourer made an unacceptable mistake which caused embarrassment to himself and to the Police service. However, given the fact that the error was recognised during the trial and did not impact unfairly upon the accused and that he learned an unforgettable lesson from the experience, we see no need for any further action. His superiors are aware of the shortcoming exposed here.

#### **Failure to Test the Rifle for FDR Emission and Shell Ejection**

269. In this matter Mr Karam criticises Police failure to submit the murder weapon for testing to determine the amount of firearm residue discharged when fired with identical ammunition to that used in the Bain killings.<sup>498</sup> He is also critical of the unscientific nature of tests used to determine the ejection arc of spent shells from the weapon and the fact that some tests were not conducted with the actual weapon.<sup>499</sup>

270. The murder weapon was test fired for firearm residue discharge from the muzzle.<sup>500</sup> There was no request to the Armourer or the ESR<sup>501</sup> for residue from the breech to be tested, therefore this was not done. This was an issue before the jury and Mr Guest succeeded in turning Police failures to good advantage. Detective Senior Sergeant Doyle accepts it would have been desirable to test fire the murder weapon to establish residue discharge from both the muzzle and breech, however he believes it would not have advanced the inquiry.<sup>502</sup>

271. As part of our review the ESR, Auckland, have test fired the murder weapon using 'Whisper' brand ammunition, from that recovered from the Bain house, to determine the direction and distance fired cartridge cases are ejected from the rifle. Similar conditions were replicated. Mr Walsh concluded that if Robin had shot himself with the rifle on his side of the curtain, then it would be expected the cartridge case would more likely have struck the curtain and fallen to the floor in front of the curtain. However from his test firing experiments, he believed it was possible for either the case to be ejected through a small gap between the curtains, or for it to be ejected under the curtains. It was his opinion the position of the cartridge case in the alcove was consistent with a shot having been fired through the gap in the curtains with the case ejecting to the right and slightly

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<sup>498</sup> p174

<sup>499</sup> p191

<sup>500</sup> Ngamoki trial p191 L15

<sup>501</sup> Anderson js Doc.10055 and Pol 143 Doc.10452

<sup>502</sup> Doyle Review Stmt 22001b p19

rearwards. However he says he could not exclude the possibility that the case could have ejected to a position on the other side of the curtain.<sup>503</sup>

272. Tests have also been carried out to determine the amount of FDR emitted from the breech of the firearm when it is fired and also to determine the amount and pattern of FDR deposited on the hands of the shooter. The test firing experiments occurred in New Zealand where the hands of the shooter were sampled for FDR after one, three, five and ten shots.<sup>504</sup> These samples were forwarded to the State Forensic Science Laboratory in Adelaide. Analysis was carried out for the test firing experiments where the hands of the shooter were sampled for FDR particles after one and three shots. For the sample taken after one shot, over 1110 particles of interest were detected. Of these 876 (75%) contained lead alone, lead with calcium, lead with barium, or lead with barium and antimony. For the sample taken after three shots, over 600 particles of interest were detected. Of these 498 (77%) contained lead, lead with calcium, lead with barium, or lead with barium and antimony. The observation that there were half as many particles found after three shots, as there were after just one shot, demonstrates the variability of this sampling. These samples were taken immediately after firing. It is expected that these particles would quickly be lost from the hands. Typically, no FDR particles are found after about three hours.<sup>505</sup>

273. We believe that this was an aspect of the case which could have been better handled and we think it was asking too much of the Police armourer to expect him to conduct and report upon the necessary tests. It is another matter in which the Commissioner of Police might wish to consider whether such tests in future cases could be best conducted by the ESR.

### **Failure to find Robin's Fingerprints on the Rifle**

274. In this matter Mr Karam seems to be contending that this is another aspect of the case not handled properly by the Police. In his book, he refers to Justice Williamson's summing up where His Honour said, when commenting about Robin: *"c) His fingerprints were not on the rifle, although if he had shot himself he would have been the last person to have gripped it firmly."*<sup>506</sup> Mr Karam takes issue with this point and says *"The matter of the fingerprints on the rifle, item (c), is again an example of the presumptuous nature of the Crown case."*<sup>507</sup>

275. If Robin Bain had shot himself it would be expected to find his fingerprints on the weapon. The manner in which he would have had to grip [especially] the long cylindrical silencer would have been conducive to leaving good impressions or, at the very least, finger definition and smudges where he gripped its surface. But his prints or smudges in blood were not found. In fact, the only impressions on the rifle were those of David [in blood in a forward position on the wooden

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<sup>503</sup> ESR Report p16, Walsh, Review Ref.18041

<sup>504</sup> ESR Report, Walsh, Review Ref.18041

<sup>505</sup> ESR Report p4, Walsh, Review Ref.18041a

<sup>506</sup> p163

<sup>507</sup> p170

stock] and Stephen's at the stock end and underneath side of the silencer.<sup>508</sup> There was no blood on Robin's hands consistent with him having handled the bloodied rifle when he committed suicide (discussed earlier).<sup>509</sup> It was the Police case David's fingerprints were left on the weapon during the killing of his family. It is supposed he removed his gloves to clear the jammed rifle in Stephen's room and he placed his bloodied fingerprint onto the rifle sometime after that. It is believed Stephen's fingerprints were applied when he was trying to fend off his assailant.

276. On a recent radio interview, Mr Karam expressed the view David's prints were not left on the weapon at the time of the crimes but were in "old blood" or in "animal blood" from an earlier hunting trip.<sup>510</sup> Mr Hentschel gave evidence at the trial of obtaining five samples of blood from the rifle to pass on to Dr Cropp for analysis. He stated that *"...blood was taken from the silencer, from the front of the telescopic sight, from the barrel, from the stock near the trigger and also from the fore arm from where those fingerprints were found."*<sup>511</sup> Dr Cropp, ESR, then gave evidence at the trial *"that the five samples were all identified as human blood."* The blood on the rifle [silencer, barrel, and wood near the trigger] was able to be grouped to Stephen's, Laniet's or David's.<sup>512</sup> The blood from the fingerprints was unable to be grouped. Dr Cropp has been reinterviewed on the recent announcement by Mr Karam and he still believes it was human blood on the weapon and does not accept the recent proposition by Mr Karam and Mr Withnall that the original test reaction to human blood could be attributable to human secretions which flawed the result, saying it would be most unlikely. Dr Cropp says he made no statement to them agreeing with this proposition as alleged by Mr Karam and Mr Withnall.<sup>513</sup> Dr Cropp states there was no omission of the blood testing results relating to the rifle.<sup>514</sup> In a letter, Mr Withnall criticises the *"...omission of results of blood testing of the blood from David's fingerprints as part of the trial evidence."*<sup>515</sup> As discussed above, the jury heard from Mr Hentschel and Dr Cropp on this matter.

277. As part of the Review, Dr Harbison examined the case notes of Mr Hentschel and Dr Cropp and conducted a series of tests. Mr Hentschel conducted a chemical test (Sangur) on areas of probable blood staining on the rifle the results of which were positive (ie. indicates the presence of blood.)<sup>516</sup> Those samples were further analysed by Dr Cropp who conducted an ouchterlony test, which is a test that detects the presence of a human protein. These tests on the samples, and in particular, the area around the fingerprint, were also positive.<sup>517</sup> Dr Harbison's opinion was that the original two tests conducted by Mr Hentschel

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<sup>508</sup> p170

<sup>509</sup> paragraph 195

<sup>510</sup> Hamilton Radio Interview (27.06.97)

<sup>511</sup> Hentschel Trial p233 L33

<sup>512</sup> Cropp Trial p255 L15

<sup>513</sup> Mtg 25.07.97

<sup>514</sup> Cropp js Review Ref.18039B & Ref.18039H

<sup>515</sup> Withnall letter (3.10.97)

<sup>516</sup> Hentschel Case Notes p22

<sup>517</sup> Cropp Case Notes p70-76

and Dr Cropp together confirmed the presence of human blood. The tests conducted by Dr Harbison demonstrated that the ouchterlony test is not sensitive enough to detect human protein on the skin or surfaces touched or handled. Therefore Dr Cropp's result could only have arisen from human blood found on the gun and not from secretions from the fingers. Dr Harbison also conducted tests to determine whether or not the ouchterlony result obtained by Dr Cropp could have been from the presence of rabbit blood. Rabbit blood at varying dilutions did not give a human result.<sup>518</sup> These test results further support the original conclusion by Mr Hentschel and Dr Cropp that human blood was present on the rifle.

278. In addition, the rifle has been further examined by the ESR, Auckland.<sup>519</sup> [This was on the understanding it is now over 3 years since the murders and the rifle was originally the subject of an extensive fingerprint examination including the application of chemicals and super glue, forensic and ballistic examination, and considerable handling in court. Since the court hearings it has also been handled in the normal course of exhibit processing and storage.] As a result of the examination a number of samples of probable blood staining were taken from a number of locations on the rifle for DNA profiling. Samples taken from the following areas could only have come from Stephen Bain, amongst members of the Bain family: the end of the scope, the silencer, under a sellotape label on the forend, a stain taken from the belt attachment near the sellotape label on the forend. Human DNA was also detected in probable blood staining on other areas of the rifle. The detection of DNA may be related to the handling of the weapon since the deaths occurred or the probable blood found on it. No results were obtained from the other samples taken. Given the small amount of sample visible and the fingerprinting treatment, this is not unexpected.

279. There was an extensive struggle in Stephen's room with copious amounts of blood sprayed around the room. The assailant got blood on himself. From this and the original grouping of the blood it is highly likely the blood on the rifle was from Stephen. This is now confirmed with the latest ESR result. These results also need to be considered together with the blood found on the edge of the curtain in the computer alcove and next to the chair where it was believed Robin was kneeling when shot.<sup>520</sup> This blood was approximately 90cms above the floor at a similar height Robin's head was when shot. As referred to earlier, this blood, of those amongst the Bain family, could only have come from Stephen. It could have come from the rifle or clothing of the assailant as he passed through the gap in the curtains. The white T shirt worn by David was found to have blood in three positions which could have come from Stephen. This included the mid point of the back near the hem as shown in photographs 233 and 234.<sup>521</sup>

280. In relation to the blood on the rifle, the four fingerprints identified as David Bain's were located in a clear area on the rifle which appeared to have been shielded

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<sup>518</sup> ESR Report p5, Harbison, Review Ref.18038a

<sup>519</sup> ESR Report p6, Harbison, Review Ref.18038a

<sup>520</sup> Refer Paragraph 249

<sup>521</sup> exhibit 600



from blood being wiped across its surface.<sup>522</sup> Mr Hentschel gave evidence at the trial that "...smears of blood were found over most parts of the rifle"... and "blood being wiped across the surface."<sup>523</sup> Senior Fingerprint Officer Jones said in his statement to the review team that "...it was almost like it [rifle] had been wiped down with something soaked in blood..." but he also agreed that it could be just covered in blood because someone in the course of a fight has been covered in blood and contaminated the gun.<sup>524</sup>

281. Senior Fingerprint Officer Jones' expertise has been discussed earlier.<sup>525</sup> He used the polilight to search for fingerprints and is confident that he would have found any impressions made in or on blood. The examination of the rifle for fingerprints involved, visual inspection, white light, polilight at various wave lengths and chemical treatments (super glue and panacryl) with further polilight examination.<sup>526</sup> No fingerprints in whatever form were missed. Mr Karam describes a fingerprint noted by the trigger guard and questions whether it was identified.<sup>527</sup> In his book, he presumes it was not identifiable but claims "with a file so riddled with anomalies it is hard to be sure." We made further inquiries and confirmed there were no further identifiable prints on the rifle.<sup>528</sup> There were some fingerprint ridges on the stock in the vicinity of the trigger-guard but with no detail which would result in an identification.

282. The reason why Robin's prints were not found on the weapon may be simply explained by the fact that he did not handle it at any stage.

283. We find the weapon was properly and professionally examined for fingerprints but Robin Bain's were not found on it.

#### **Failure to Recognise that Laniet Had Been Shot With Two Weapons**

284. This matter arose during the interview with Messrs Karam and Withnall on 25 July 1997. It was not raised at the trial and is not mentioned in Mr Karam's book.

285. Messrs Karam and Withnall observed in the pathologist's notes that one of the bullet holes in Laniet's head was considerably bigger than the other two.<sup>529</sup> It was their opinion the wound was too big to have been caused by a .22 bullet. This, they said, was reinforced by the lack of space between the wall and the top of Laniet's head to enable the assailant to fire a shot with the rifle.<sup>530</sup> They said they have received expert advice indicating it was caused by a .45 calibre hand gun or similar weapon. Mr Karam's concern is exacerbated by his contention Dr

<sup>522</sup> Hentschel Trial p250 L38

<sup>523</sup> Hentschel Trial p219 L9 and Hentschel Trial p251 L1

<sup>524</sup> Jones Review Stmt Ref.26001

<sup>525</sup> Refer Paragraph 207

<sup>526</sup> Jones Original Memo to Dunedin & Burt Report Review Ref.26003A

<sup>527</sup> p170

<sup>528</sup> Jones Trial p213 L16

<sup>529</sup> Dempster Case Notes

<sup>530</sup> Refer Paragraph 72 [Reconstruction Laniet's Room]

Dempster does not refer to the hole in his notes. It is, he contends, the only hole that he does not refer to either by description or with an expression of opinion as to the bullet that would have caused the wound and it is the only wound in respect of which the bullet was not found.<sup>531</sup>

286. They also maintained the third .22 shell found in Laniet's room several days after the first two may have been "planted" otherwise, they felt, it would have been found earlier. Mr Karam said he was worried the murderer could be still walking the streets of Dunedin. He said he did not set out in his book to prove Robin Bain was the killer. His intention, he said, was to show the Police investigation never excluded him from the crime.

287. The size of the entry wound was taken up with Dr Dempster, Dr Thompson and ESR experts.<sup>532</sup> They all agree that the nature of the wound, the x-ray of the bullet's path and the amount and type of lead found inside the head are all entirely consistent with damage inflicted by a .22 calibre weapon. It is their view the size of the bullet hole can invariably be larger than the bullet where it is a hard contact wound. The ESR examination of the Karam/Withnall propositions [and most other firearm aspects] was conducted for us by Mr KAJ Walsh, whose work on "Firearms Evidence" is quoted in Mr Karam's book.<sup>533</sup> Mr Walsh concluded that Laniet had "not been shot with a .45 calibre bullet."<sup>534</sup> Dr Dempster repeatedly refers in his notes to the hole in the top of Laniet's head, with accompanying measurements.<sup>535</sup> He describes the shot to the left cheek as a 'small calibre gunshot entry'. The fragments of bullets from Laniet's head and those seen on the X-ray are typical of .22 calibre lead bullets.<sup>536</sup> Dr Dempster's subsequent report [deposition] to the Police included a description of the three entry wounds including the one to the top of the head and concludes "death was due to the effects of small calibre gunshot wounds to the head." He included measurements of both the scalp and skull entry wound to the top of the head. We believe this report concurs with his original notes, with some professional refinement.

288. Mr Karam was asked for details of his information and the names of the experts who supplied it, but we received no reply on this point. The proposition that two weapons were involved, and possibly there were two offenders, has not withstood close scrutiny. As a complaint against the Police, it is rejected as unfounded.

289. We are satisfied the third .22 spent shell was not planted. It was not found until the day the main scene examination commenced in Laniet's room because it did not become visible until clothing on the floor next to the bed was lifted.<sup>537</sup> The

<sup>531</sup> Karam Ref PCA 96-1809/ncj

<sup>532</sup> Dempster Review Stmt Ref.24002A & Thomson Report p8, Review Ref.24001d & ESR Report p27, Walsh, Review Ref.18041

<sup>533</sup> p172

<sup>534</sup> ESR Report p27, Walsh, Review Ref.18041

<sup>535</sup> Dempster Case Notes p9 & 10 & handwritten notes p6, and Dempster Review Stmt Ref.24002A p3

<sup>536</sup> ESR Report p27, Walsh, Review Ref.18041

<sup>537</sup> Anderson js Doc.10380 & Review Stmt Ref.22002D & Fitzgerald js Doc.10304 & Review Stmt Ref.22008a

shell was found where it would reasonably be expected to be ejected and fall.<sup>538</sup> Another spent shell and a live bullet were found on the same clothing.<sup>539</sup> The contention the third shell was planted to provide each of the three bullets in Laniet with a spent case is rejected. We are satisfied the shell was not handled improperly and was found in the proper course of a detailed and systematic crime scene examination. The room was searched by two experienced detectives, Anderson and Fitzgerald, after they had completed searches in Robin and David's rooms earlier in the week.

290. We find no evidence that Laniet was shot with two weapons and neither do we find any evidence that Police accounts of locating the questioned .22 shell in her room were other than factual and correct.

#### **Absence of Blood on David's Shoes**

291. The crux of this complaint is that Mr Karam does not accept the Crown case that David committed four of the murders before making the newspaper deliveries and points out that the running shoes, which David said were worn on the paper round, showed no trace of blood.<sup>540</sup> He also disputes the evidence that droplets of blood could have been found on David's socks.<sup>541</sup> [These were grouped to Stephen or Laniet].<sup>542</sup> Again, he points to these issues as being inconsistencies in the Police case.

292. David told Police he wore a pair of Laser shoes on the paper run. They were located in his room and were inspected by investigators but through oversight were not sent for full ESR examination. The only forensic attention they received was a visual check during the trial. No blood was detected. The absence of blood in the Lasers was argued before the jury but the Police were not convinced they were the ones worn on the paper round. There was suspicion he might have worn a bloodstained odd pair found in his room. They are discussed below.<sup>543</sup> It has been confirmed in the course of our investigation the Laser shoes had no blood on them.<sup>544</sup>

293. Blood was found on David's socks. Two droplets could be seen on the edge of one, not fully on the sole as Mr Karam says,<sup>545</sup> and there was considerable blood staining on both soles but it could not be determined whose blood it was or where it came from.<sup>546</sup> The blood on the soles were as if David had walked in blood, most probably in Stephen's room where the bloody struggle took place. The absence of blood on the uppers of the socks, as expressed by Mr Karam, may be explained by the original socks having been washed and fresh ones

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<sup>538</sup> ESR Report p29, Walsh, Review Ref.18041 and exhibit 600 photo 119

<sup>539</sup> Exhibit 600 photograph 114

<sup>540</sup> p156, p170, p208

<sup>541</sup> p155

<sup>542</sup> Cropp Trial p256 L17

<sup>543</sup> Refer Paragraph 293

<sup>544</sup> ESR Report, Harbison, Review Ref.18038a

<sup>545</sup> p155

<sup>546</sup> Cropp Trial p255 L22 & Hentschel Trial p222 L6 and Exhibit 600 - Photograph 238, 239

worn on the paper round. When interviewed before his arrest, David agreed he had put a pair of his socks into the wash.<sup>547</sup> On his return home from the paper run, Police thought he would have checked the rooms to ensure the victims were dead and looked for evidence lost during the struggle (gloves, lens) before telephoning 111. In the process, they believed, he would have walked through blood on the floor. The droplets on the socks could have come from Stephen during the struggle, or if Stephen's head was moved. David said in evidence he had touched Stephen. During the original trial these droplets on the socks were grouped to Stephen or Laniet.<sup>548</sup>

### Related Comment

294. There are two other matters to be considered in the context of David's footwear. They are examined below:

#### a) Attempted Introduction of Odd Pair of Shoes

*At the meeting on 25 July Mr Karam criticised the Police for trying, shortly before the trial, to introduce as evidence the odd pair of shoes from David's room. He pointed to Dr Cropp's notes [ESR scientist] where he says the blood 'could only have come from the injury to the big toe.' Mr Withnall also complains about the non disclosure of Dr Cropp's case notes where it is recorded the blood in the toe of the shoe was not connected to the murders and was irrelevant.*<sup>549</sup>

It was understood by the investigators David may have cut his foot at some stage while wearing those shoes.<sup>550</sup> When interviewed, David said he wore his new Laser running shoes on the paper run.<sup>551</sup> It was not until April 1995 that Police in their final preparations for trial, decided further shoes should be examined.<sup>552</sup> It was now considered David might not have worn the Lasers on the paper run. On 13 April 1995, less than a month before the trial a number of shoes including the "odd pair" were delivered to the ESR for examination.<sup>553</sup> The odd shoes had assumed significance not only because of the blood on them but also because they had been in a position just inside the door where David could have reasonably taken off his footwear when he returned from the paper run. His newspaper bag was behind the door next to them. [At the original interview when asked where he took his shoes off he replied "*Usually by the door in front of the cupboard. I think I did...*"<sup>554</sup> It is significant that the odd pair of shoes were the ones just inside the door whereas the Lasers

<sup>547</sup> David Stmt Doc.10237

<sup>548</sup> Cropp Trial p256 L17

<sup>549</sup> Withnall letter (3.10.97)

<sup>550</sup> Anerich js Doc.10166, Bracegirdle js Doc.10037, Henderson Stmt Doc.10293, Doyle Review Stmt Ref.5001b p39

<sup>551</sup> David Stmt Doc.10023 p4

<sup>552</sup> Weir Review Stmt Ref.22001b p15

<sup>553</sup> ESR Request (13.4.95)

<sup>554</sup> David Stmt Doc.10023 p5

were found next to the bed, some distance from the door]. Forensic examinations conducted between 26 and 28 April 1995 identified blood on the laces of the left shoe and on the right shoe heavy blood staining was visible on the inner edge corresponding to the big toe area, possibly consistent with the wearer bleeding from the foot/big toe. Light blood staining on the edge was visible back to the area beneath the end of the lace holes. However, there was insufficient blood for grouping purposes.<sup>555</sup> At this stage an approach was made to defence counsel to allow this evidence to be presented at the trial [it had not, of course, been part of the depositions] but Mr Guest refused on the basis he did not have time to prepare for it. He also said the Crown Prosecutor should not include reference to those shoes in his opening address. The Crown decided not to call evidence on that point. Because they were not part of the Crown case, the shoes were subsequently destroyed and are no longer available for re-examination with today's advanced techniques. The case notes do not make any reference to the blood not being connected to the murders or being irrelevant. Because the identity of the blood was not known and blood was on the outer surfaces it was considered relevant.<sup>556</sup> If they were involved in an earlier incident where David injured himself it does not eliminate the possibility they were worn on the day of the murders. We are satisfied there was no disadvantage to David Bain in this matter. It was for the Police and Crown Solicitor to decide what was relevant. Defence counsel objected because of the late application and it was not pursued.

b) Foot Measurements

*At the meeting on 25 July 1997, Mr Karam said the right footprints [28cms] found in blood in the hallway and leading into Laniet's room were not David's. He said Robin could have made them and then put his blood stained socks in the washing machine where David later unknowingly washed them. During recent television broadcasts he said he has now measured David's feet and they are 30cms long.<sup>557</sup> David, he says, could not have made footprints 28cms long. Also at the meeting on 25 July 1997 he said the suspect footprints were attributed wrongly to David by measuring socks only, not the feet of Robin and David. He said Mr Hentschel described the impressions in his evidence at the trial as perfect footprints, complete from top of toes to heel, and that the entire sole of David's socks fluoresced. He questions why the measurements by Detective Lodge of Robin's feet of 27cms was not before the jury.*

At the trial, Mr Hentschel referred to one of the 280mm prints encompassing the heel and toes as a complete print.<sup>558</sup> In response to a question from the court he described both prints as showing the toes and

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<sup>555</sup> Cropp Case Notes p82 & 83

<sup>556</sup> Cropp Case Notes p82 & 83

<sup>557</sup> TV3 News

<sup>558</sup> Hentschel Trial p234 L3

heels from the top of the toes to heel.<sup>559</sup> Mr Hentschel has been interviewed as part of this Review. He expressed the opinion the best footprint he saw would almost be a total length print but you might not see the extremities of the toes and heel.<sup>560</sup> He agrees in hindsight he should have perhaps qualified his evidence by saying he may not have been able to see the extremities of the heel and toes.<sup>561</sup>

Detective Sergeant Weir who also observed the footprints said in evidence the definition of the toes were not present – as defined as you would see in wet sand. He also believed the edge of the heel was not clearly defined.<sup>562</sup>

As mentioned earlier, it was intended prior to David's arrest, to ask him a series of questions and to request him to undergo a medical examination.<sup>563</sup> Mr Guest was with him at the time and advised David against answering questions or agreeing to a physical examination. As far as his feet were concerned, the investigators then adopted the next best course - they measured his shoes and socks and worked from those. This issue of the bloody footprints in the house was thoroughly canvassed at the trial. There was considerable cross examination of witnesses but the length of Robin's feet did not arise. However details of measurements taken by Detective Lodge had been disclosed to the defence prior to trial and he was available to be questioned on that matter.

A number of tests have been undertaken by the ESR, Auckland regarding the length of the bloodied sock prints.<sup>564</sup> There were a number of difficulties associated with this determination which included: (1) There is an unknown measurement error associated with the measurement of a luminol print. This type of print is visualised as a glow in the dark. A direct measurement will have some inaccuracy. Mr Walsh estimates that the measurement could be 5mm greater or lesser than the actual print. (2) The print size will depend on the extent of staining on the sole.

The results from the test prints show that a shorter print is made when standing than when walking. The length of the prints made with a walking motion were never measured to be less than 280mm and were mostly between 290mm and 300mm. From these experiments it could be concluded that a walking person with a 300mm foot, making sock prints with the sock completely bloodied, would be expected to make a print greater than 280mm. However it is Mr Walsh's opinion that a print of

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<sup>559</sup> Trial p251 L24

<sup>560</sup> Hentschel Review Stmt Ref.18040a p2

<sup>561</sup> Hentschel js Review Ref.18040e

<sup>562</sup> Weir Trial p84 L5

<sup>563</sup> Lowden js Doc.10245 p4

<sup>564</sup> ESR Report p1, Walsh, Review Ref.18041a

about 280mm could be made.

An examination was also completed of the socks of David Bain.<sup>565</sup> This testing showed that the maximum length of the bloodstaining that would be printed by a person wearing the sock, and who had a 300mm foot, would be about 288mm. Depending on the position of the sock, the length of bloodstaining could be as short as about 271mm.

We have concluded David could have been responsible for these footprints.

295. We find no impropriety or misconduct over the handling of David's shoes or socks but we believe officers were remiss in not sending the Lasers to the ESR for full forensic examination. Relying on a visual inspection during the trial lacked professionalism.

#### **Failure to Eliminate Greet from Suspicion**

296. The individual to whom this matter refers is featured briefly in Mr Karam's book as *"a local Dunedin person who also knew the family well"*<sup>566</sup> but he has been discussed at greater length during our meetings with Mr Karam. Mr Karam is not satisfied the man has been adequately eliminated from implication in the crimes.<sup>567</sup>
297. While David Bain was awaiting trial, Mr Guest received an anonymous letter from an individual who suggested that Nicholas Greet, a local resident, appeared to know a lot about the murders. Later, the same Nicholas Greet contacted Mr Guest by telephone and they discussed aspects of the case. Mr Guest duly referred the matter to the Police and Greet was interviewed by a member of the investigation team.<sup>568</sup> He denied any involvement in the murders but spoke of earlier contact with the Bain family. It was decided his information did not materially assist the inquiry and it was not pursued at any length. [It subsequently transpired Greet had, himself, written the anonymous letter to Guest and it was established he was motivated by a misguided desire to help David Bain by trying to inject into the events a mysterious new suspect].<sup>569</sup>
298. In his book, Mr Karam makes a plea for Mr Guest's anonymous correspondent to come forward<sup>570</sup> [apparently unaware it was Greet] and Greet duly contacted him. A secretly videotaped interview was arranged by Messrs Karam and Withnall where Greet was challenged about electronic mail he was thought to have sent.<sup>571</sup> Mr Karam now suggests the Police too casually dismissed this man from involvement in the crimes.

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<sup>565</sup> ESR Report, Walsh, Review Ref.18041a

<sup>566</sup> p187

<sup>567</sup> Mtg 25.07.97

<sup>568</sup> Ross Stmt Doc.10611

<sup>569</sup> References from Greet Investigation File & Greet Review Stmt Ref.7006 & Ref.7006D

<sup>570</sup> p187

<sup>571</sup> Greet Investigation File by D/S Hoyle – May 1997

299. The extent to which Greet was involved in the case has been separately examined by Detective Sergeant Hoyle, Oamaru Police, and we have examined his file and viewed a videotaped interview with Mr Greet.<sup>572</sup> We have also spoken at length to Greet and made our own assessments of him.<sup>573</sup> We do not believe he was in any way implicated in the deaths at 65 Every Street.

300. We find the time and effort devoted to Mr Greet was appropriate to the circumstances and it was properly determined that no justifiable suspicion attaches to him in the Bain killings.

### **Failure to Supply the Defence with Full Police Video Footage**

301. In this matter Mr Karam contends Police denied to the jury [and subsequently himself] information which could have assisted David Bain. He refers to Police video recordings at the crime scene on 20 June 1994, and alleges there was sinister editing from original footage. In his book, he writes: *"It is my belief, however, that the entire footage of that film taken prior to 12.05 would provide a number of answers to unexplainable matters..."*<sup>574</sup>

302. As mentioned earlier, the use of a video camera to record the interior of the Bain house was a fairly new innovation in scene preservation/examination in Dunedin in June 1994. Neither the cameraman nor the OC Scene were particularly practised in crime scene filming and to some extent they were both finding their way with the new facility. This is evidenced by a tendency to jump from one room to another and, of course, as with much amateur filming, there was some extraneous and irrelevant footage. Attempts to capture Police reconstructions of some of the killings did not produce a particularly professional or useful end product. To some extent this might be due to the fact that it was not initially thought it would become a court exhibit but could have a limited use as a training aid.<sup>575</sup> However, it was subsequently decided there could be benefit in putting before the jury some of the footage recorded at the house and, with the agreement of Mr Guest, a 26 minute silent segment [not 12 minutes as alleged by Mr Karam]<sup>576</sup> depicting the crime scene and some reconstructions was prepared.

303. A copy of that segment was supplied to the defence, and at the trial it was screened as part of Detective Sergeant Weir's evidence. He "talked it through" for the jury and there was no dissent or objection from counsel or Justice Williamson to his presentation.<sup>577</sup>

304. When Mr Karam became involved in the case after the trial, he requested a copy of the full tape and was supplied with the full footage from the master tape, minus the sound track. In his book, he contends the full filming would have

<sup>572</sup> Greet Investigation File by D/S Hoyle – May 1997

<sup>573</sup> Greet Review Stmt Ref.7006 & Ref.7006D

<sup>574</sup> p189

<sup>575</sup> Gardener Review Stmt Ref.25005A, Doyle Review Stmt Ref.5001C

<sup>576</sup> p107

<sup>577</sup> Weir Trial p78 L6



been of three to four hours duration but he was supplied with considerably less than that and implies that the Police improperly withheld from him important footage.<sup>578</sup>

305. Mr Karam also criticises Detective Sergeant Weir's evidence at the trial where he alleges the officer falsely testified that video filming at the house did not begin until after 12.05pm.<sup>579</sup> This matter has been discussed in paragraphs dealing with the Police photographer at the scene.

306. We have viewed the master tape and are satisfied that it consists of 1 hour 20 minutes recorded footage. We are also satisfied the copy received by Mr Karam was the full footage but, like the segment shown to the jury, was without the sound track. The decision to withhold the sound track was made by Detective Senior Sergeant Doyle but as a result of representations from Mr Karam we rescinded that decision and delivered him another full copy with the sound track included.

307. We find there was no Police misconduct or impropriety over actions in respect of the video footage shown to the jury or supplied to Mr Karam.

#### **Attempt to Connect David with the Green Jersey**

308. In this matter Mr Karam contends the Crown case contained improper or inadequate evidence. In his book, he writes: *"The fibres under Stephen's fingernails were not proved to have come from the green jersey in the wash... The ESR evidence said the fibres were consistent with having come from the green jersey. The evidence went no further than that."*<sup>580</sup>

309. One of the garments found in the washing machine was a green woollen jersey. The Police believed it had been put through the wash to remove blood. Fibres of similar wool were found under Stephen's fingernails and the Police reconstruction was the fibres got there while Stephen was fighting for his life.

310. It is Mr Karam's contention the Police failed to identify the fibres or connect David with the jersey. He points out that at the trial David clearly demonstrated the garment was too small for him.<sup>581</sup> The implication that officers improperly endeavoured to connect David with the jersey has been explored.

311. The jersey was a significant part of the evidence. There was good reason to believe it was worn by the killer and that it had been severely blood stained in the struggle with Stephen. Fibres indistinguishable from the garment were found under Stephen's fingernails and smudges of blood [in a pattern consistent with the loose woollen weave of the garment]<sup>582</sup> were found at about shoulder level in parts of the house where the killer had moved after leaving Stephen's

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<sup>578</sup> p107 & p189

<sup>579</sup> p189

<sup>580</sup> p155

<sup>581</sup> David Trial p433 L33

<sup>582</sup> Hentschel Trial p226 L10-37 & p217 L13

room.<sup>583</sup>

312. The jersey was found by Police in the home washing machine and, because David's bloodied palmprint was found on the appliance, they believed he placed the jersey in the machine while his hands were still wet with blood. They did not believe he got blood on his hands by innocently lifting the jersey from the wash basket into the tub after the paper run.<sup>584</sup> There were other garments in the washing machine which Police believed David could have worn as over clothing during the murders and which may have also provided some protection from further injury during the struggle.<sup>585</sup>

313. The jersey was not the only factor which the Crown said connected David to the struggle with Stephen. Other factors were:-

- a) The spectacle lens and David's blood stained gloves in Stephen's room.
- b) David's unexplained recent injuries.
- c) The luminol developed sockprints leading from Stephen's bedroom of a size consistent with David's feet.
- d) Bloodied impressions with the loose weave patterns of the jersey being found on door jambs [presumably made by the person wearing the jersey as he moved about the house].
- e) Diluted blood stains on David's "Gondoliers" sweat shirt found unwashed in the washing basket in the laundry.<sup>586</sup>
- f) Evidence in the laundry of someone having washed and laundered blood stained garments there.
- g) David's bloodied palmprint on the washing machine.

314. The matter of the jersey and its linkage to David was extensively canvassed before the jury.

315. We believe the jersey and the fibres were properly put in evidence and that there was no Police misconduct or impropriety in respect of those items.

### **Failure to Explore Margaret's Diaries for Clues**

316. It is Mr Karam's contention that a careful study of Margaret Bain's diaries would have turned up important information that ought to have come to light and he implies the Police overlooked a key aspect of the case. He points out Margaret referred to Robin as the Devil in her diary entries and contends the Police should

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<sup>583</sup> Weir Trial p79 L24, Legros Trial p113 L7, Hentschel Trial p217 L29 & p218 L1-12

<sup>584</sup> David Stmt Doc.10023 & Doc.10155

<sup>585</sup> Thomson js Doc.10336

<sup>586</sup> Cropp Trial p261 L3 to p262 L13

have more deeply delved into her reasons for doing so.<sup>587</sup>

317. It transpires that Detective Senior Sergeant Doyle examined the diaries during the initial investigation and found entries ceased in 1993. He found there was nothing in the writings which might have been useful in explaining the events of 19/20 June 1994.<sup>588</sup> [The diaries covered the period 1990/93.]<sup>589</sup> They were handed over to the family and could have been available for David's defence if requested.

318. We find the time and effort devoted to this aspect of the case was appropriate to the circumstances.

### **Implication that Crown Witnesses Were Untruthful**

319. In several places in his book, Mr Karam reflects upon the integrity of Police officers involved in the homicide inquiry. At one point he writes: *"The sad fact is that justice is a game, to be won or lost. And for those involved in the case against David, they would stop at nothing to win."*<sup>590</sup> At another point he says *"I believed then, as I still do, that of all the people who gave evidence in the trial that led to his conviction he [David] is one who 'told the whole truth and nothing but the truth'."*<sup>591</sup> Elsewhere he writes: *"After all, we as citizens expect the criminals in our society to prevaricate, even on the stand. That is the nature of their occupations, so to speak. We do not expect it of anyone in our police, under any circumstances."*<sup>592</sup>

320. Mr Karam implies there was a conspiracy among Crown witnesses to ensure David was convicted. He suggests evidence favourable to David was suppressed and the jury did not hear the whole truth. He suggests some Police in Dunedin were unhappy with the course taken by the investigators and that some members were anxious to suppress evidence to prevent the truth emerging.<sup>593</sup>

321. We interviewed Counsel and others involved in the trial. We were not given any opinion that would suggest that any Crown witness gave evidence dishonestly or was deliberately obstructive to the defence case.

322. In his book, Mr Karam claims the Dunedin Police were polarised by the arrest of David Bain. He attributes this information to Inspector Soper, the acting District Commander, whom he spoke with while gathering information.<sup>594</sup> Inspector Soper, however, denies he made such a remark and says there was positively no expression of disagreement among Dunedin Police staff that David had been

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<sup>587</sup> p50-51

<sup>588</sup> Doyle Review Stmt Ref.5001B

<sup>589</sup> p51

<sup>590</sup> p16

<sup>591</sup> p93

<sup>592</sup> p184

<sup>593</sup> p95, p61, p182, p188, p193, p210, p211

<sup>594</sup> p95

wrongly arrested and charged.<sup>595</sup>

323. This complaint is largely an expression of opinion by Mr Karam and we found no basis to suggest any prosecution witness, Police or otherwise, wilfully misled the court on any issue.

#### **Work Done by Peter Durrant**

324. In the course of the review we consulted Mr Peter Durrant, a Christchurch Scientist and forensic photographer. He was referred to us by an officer at Police National Headquarters as a person with expertise in photography analysis and equidensitometry - a process by which it is reputedly possible to capture from floor coverings the footwear impressions of persons who have walked on it. It was said that he could even make such identification from photographic negatives.

325. We duly referred to him

- a) *Photographs and video footage of the supposed spectacle lens found by Detective Sergeant Weir in Stephen's room.* He was asked for an opinion on whether or not it was a lens. Like Mr Karam's advisers, he concluded the dark edge of what was believed to be the lens is folded material, may be a folded sheet, which is being looked at through plastic on the floor. The ESR came to the same conclusion.
- b) *Photographs of rooms in the Bain house and of Robin's and David's footwear.* He produced for us a booklet which purported to indicate he had located partial impressions from Robin's shoes on the carpet in David's room and on the carpet in the computer room. We were unable to see the impressions as Mr Durrant apparently could and we sent the material to the ESR for independent evaluation.

326. The ESR scientist Mr Walsh has reported that he believes Mr Durrant's conclusions are wrong. He does not believe the impressions are present. He considers his approach is neither supported by modern published literature nor by world authorities on the subject.<sup>596</sup>

327. In the circumstances, we are not persuaded by Mr Durrant's advice as it relates to shoe impressions.

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<sup>595</sup> Soper Review Stmt Ref.22003

<sup>596</sup> ESR Report, Walsh, Review Ref.18041

## **PART FOUR CONCLUSIONS**

328. We reiterate that it is not our function to judge the guilt or otherwise of David Bain. That was the task of the jury empanelled in the Dunedin High Court in May 1995. We have confined our endeavours to assessing the merits of the claims made of Police misconduct, neglect of duty and incompetence during the original investigation and subsequent presentation of evidence to the Court.
329. The broad contention that the investigation was a bungled effort which led to a wrong conclusion being drawn and that officers then selected evidence to support that conclusion is rejected. We believe the original investigation was mounted and pursued with proper regard to standards, policy and procedures and that those involved acquitted themselves with integrity. We found no evidence of criminal behaviour or misconduct by any Police officer.
330. It could be expected that, in any major criminal investigation conducted in an environment of considerable pressure, it would be possible at a later date following critical analysis and with the benefit of hindsight, to highlight some aspects of the investigation that could have been pursued differently or more appropriately. While this may be demonstrated by some matters referred to in this report we are of the view that the wide-ranging attack on both the integrity and competence of the criminal investigation team is unjustified.
331. This investigation has undoubtedly been complex and time consuming. The Police officers named in paragraph 3 have worked full-time under our oversight and direction for a period of six months and we are grateful to them for their dedication to the task.
332. We record that we received the utmost courtesy and cooperation from all persons with whom we made contact and we thank them for their tolerance and consideration.



Judge N C JAINE  
Police Complaints Authority



B P DUNCAN OBE, QPM  
Assistant Commissioner of Police [Retired]

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# Electronic crime laboratory

## Bain Homicide Computer Examination

*A technical investigation as part of the  
Homicide Investigation Review*



*Maarten J. Kleintjes / Chief Technical Investigator*

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## Computer data preservation

### Description of the Exhibit Computer

Brand	Philips
Model	P3105
Serial Number	XO052426
Internal hard disc Drive	MiniScribe Corporation
	Serial Number CAF 85513
	Model 8425XT
	Capacity 21.4 MB
	CHS 615/4/17

Exhibit number L97749

### Cloning of Exhibit Computer Data

In order to preserve the data contained in the exhibit computer, a clone was made of the internal hard disc drive. The clone has been preserved on a CD-ROM and all analysis carried out during this technical investigation has been performed on a clone directly derived from this CD into a new hard disc drive and transplanted into a host computer. The clone contains all information on the Exhibit hard disc Drive covering all 615 Cylinders, 4 Heads and 17 Sectors.

#### ***Forensic Computer Cloning***

Forensic computer cloning techniques available today have been developed to enable investigators to examine computer data in great detail and at the same time guarantee 100% data integrity and preservation of the original exhibit. A clone made of a specific computer is not a copy of the computer's files, but also contains any hidden or previous deleted not yet over written data. A cloned computer differs from a copied computer in that it also behaves analogously to the exhibit computer.

Forensic computer cloning techniques have only been developed in the last two years and were not available at the time of the homicide and at the time Cox did his examination.

If a similar event happened today, cloning techniques are used in the examination of any computer devices.

A second CD-ROM has been made containing the cloned data together with a search engine, which will enable the user to search automatically through the cloned data for specific strings of text, numbers and phrases. A copy of this CD-ROM has been attached to this report.

## Clock mechanism and Timeline reconstruction

The exhibit computer, like most other computers, contains a hardware clock which is located on the motherboard. This clock is similar to a watch in that it has an internal time base system and a battery that keeps it going after the computer has been turned off.



The battery, a 3-Volt Lithium battery, is physically located on the motherboard and keeps the clock going for approximately 5 years from the date of installation. This five-year period is nowhere near exact or guaranteed and the lifetime depends on many factors. When the battery eventually goes flat the clock stops.

The hardware clock inside a computer differs from a watch in that it has no direct display that shows the time and the date. The clock continuously increments its own time and date registers and makes the information available when asked for under program control. This small computer program enables the user to set and read the time and date, just like a watch. The clock can also be set and read under automatic program control, of which the automatic reading is used during start-up of the computer. The date information held by the clock is usually linked to a calendar that is calculated by the computer. Again under program control, when the current date is read from the clock, the program refers the date to the calendar, which provides additional information like day of the week.

During start-up of the computer, the hardware clock status is read and the time and date information are transferred to an other clock run by the operating system, the so called system-clock. The operating system maintains this clock during the time that the computer is running however once turned off the system-clock information is lost. At the next start-up the current time and date information are transferred from the hardware clock into the system-clock and so on. The two clocks have a separate time base and in practice show a difference in time after a certain period of operation. On the exhibit the system clock was found to run approximately 2 seconds slow per day.

On the exhibit computer, the operating system, IBM PC DOS's version 3.3, provides five different commands that give the user control over the hardware and system clocks. They are:

- **Clock** This command reads the time and date information from the hardware clock and displays it on the screen of the computer.
- **Clock/s** This command sets the hardware clock. The time and date are read from the system-clock and written into the registers of the hardware clock.
- **Clock/r** This command reads the time and date information from the hardware clock and writes it to the system-clock. It also displays it on the screen of the computer.
- **Time** This command reads the current time from the system-clock and displays it on the screen of the computer. The user is also given the opportunity to enter a new time through the keyboard, which if entered will only overwrite the system-clock and will leave the setting of the hardware clock unchanged.
- **Date** This command reads the current date from the system-clock and displays it on the screen of the computer. The user is also given the opportunity to enter a new date through the keyboard, which if entered will only overwrite the system-clock and will leave the setting of the hardware clock unchanged.

So, to set the clocks on the exhibit computer the user must, after the computer is turned on and at the DOS prompt, go through the following steps:

- Enter the time of the system-clock by using the **time** command.
- Enter the date of the system-clock by using the **date** command.
- Set the time and date of the hardware clock by copying the system-clock

parameters to hardware clock using the clock/s command.

Once the computer has started up and the system-clock settings have been loaded from the hardware clock, the system uses the system time information to update the directory whenever a file is created or modified. This applies to files created and modified by both the user and the various application programs run by the user. The user has very little or no control over these files created by application programs.

Upon examination of the exhibit computer it was found that the internal battery that keeps the hardware clock functioning was completely exhausted, 0.003 Volts instead of the required 3V, and therefore no longer capable of providing the hardware clock mechanism with sufficient energy to run. Issuing a Clock/r command to read the hardware clock while the clock is not functioning will result in an error and the system clock will default to 12:00:00a on 01-01-1980. In 24-hour clock this is 00:00:00 on 01-01-1980. In the laboratory the clock battery was replaced by a new full capacity battery and the hardware clock mechanism tested and found to operate properly.

The word processor used on the exhibit computer creates during startup a temporary file in which the program keeps all kinds of information that it needs from time to time to operate successfully. Like every other file, the operating system writes the time the file was created in its directory like a timestamp. In this case, for "the message" to be entered into the computer the word processing program had to be running and the timestamp attached to the temporary files would have given a accurate indication when the word processing program was started up. The word processor program however, deletes the temporary file or files it has created during startup, upon normal exiting of the program. This is standard good housekeeping and it has to do this as otherwise the computer's storage system, in this case the hard disc would suffocate in no time from all sorts of temporary files which have been left lying around and are no longer required. If, on the other hand, a program is not properly exited, which is simply done by turning the computer off, the temporary files are not deleted and remain on the hard disc until deleted manually or over written. This is also known as crashing the computer.

Cox knew this and tried to use this knowledge to determine the time the word processor had been turned on. Had the hardware clock worked properly on the exhibit computer then Cox's theory would have worked, it would have been possible to determine the time the temporary files were created with great accuracy, and it would have been possible to determine the exactness and deviation of the hardware clock.

What Cox did not know, and it would be fair to say that he had no way of establishing this, was that the hardware clock had failed, and examination of some of the files still remaining on the hard disc suggest that the hardware clock failed a long time before Cox did his on site examination that day. It is also fair to say that Cox had no other options available to him at the time. Cox could not use any of the above listed commands to find out whether or not the hardware clock was working properly and what its settings were. He could not do this because it would require him to exit the word processing program in the normal way and this would have deleted the temporary file or files he wanted to examine and with that any evidence.

If the battery had not been flat and the hardware clock had been working properly, the exactness of the various clocks and creation of files could have been established days or weeks after the on site examination with great precision as long as the hardware clock kept running.

***The appropriate way of determining the deviation of the setting of a computer system clock from absolute time:***

*At the DOS prompt, the examiner enters the characters time, without pushing the enter or return key. Using a stopwatch with a x-tal timebase the examiner pushes simultaneously the enter key on the computer keyboard and the start button on the stopwatch.*

*The computer screen will now display the system clock time  $\tau_1$ , i.e. 09:59:24.00.*

*The examiner now contacts a telephone time service, and waits for a synchronization tone. Upon hearing the tone the stopwatch is stopped and a note is taken of both the absolute time given by the time service  $\tau_2$ , i.e. 10:05:00.00, and the relative time accumulated by the stopwatch  $\tau_R$ , i.e. 00:04:45.00.*

*The deviation  $\delta\tau$  can now be calculated as:*

$$\delta\tau = \tau_2 - (\tau_1 + \tau_R)$$

*In this example the system clock is 51 seconds fast.*

After Cox saved "the message" and crashed and restarted the computer it became apparent that the hardware clock had been dysfunctional and that the default time was loaded into the system clock during startup. Cox had only one alternative now to find out what time the computer was turned on and that was to establish what timestamp was given to the file in which he saved "the message" and then to subtract that time from the real time he saved it. However Cox failed, in my view, to take a note of the real time at the time he saved the file, but instead concentrated on the accurate time they turned the computer off. This to me is really a surprise, as the computer once its power is lost can do no more. Cox should have used a variation of the procedure: "The appropriate way of determining the deviation of the setting of a computer system clock from absolute time" as described earlier when saving "the message". Analysis of the timestamp associated with the saved message shows the date 02 January 1980 and a time of 07:32:54. This is 54 seconds later than the time reported by Cox.

Cox identified file MW002993.TMP, as the temporary file created by the word processor, at the time the program was started. Examination of this file shows the file creation time as 12:00:30, which is 30 seconds after the system clock starts running and it confirms that the word processing program was directly started up after power-up of the computer.

Cox's theory of subtracting the timestamp given to the saved file from the real time he saved the message was a very simplistic one, but has now become rather complex as various factors are influencing the accuracy. Each factor is described below and an estimate of its tolerance is given.

- The delay between turning on the computer and the system clock beginning to operate.
- The delay between starting up of the system clock and creation of the word processing temporary file.
- The deviation of the system clock over a 31-hour period.
- The delay between noting the time on Anderson's watch and saving "the message".
- Reading of Anderson's watch.
- The deviation and the establishment of the deviation of Anderson's watch.

**The delay between turning on the computer and the system clock beginning to operate.**

As described earlier, when the exhibit computer is turned on, a command in the startup program will copy, or in this case attempt to copy, the information from the hardware clock to the system clock. The startup program contains various commands of which one is the clock/r command that will accomplish this. Each command takes a certain time to execute as will the hard disc to go through its startup procedure.

Test on the exhibit computer have shown that the time delay from the moment of power up to the moment the system clock begins to run is 13 seconds with a tolerance of +/- 1 second.

**The delay between starting up of the system clock and creation of the word processing temporary file.**

The temporary file examined by Cox, MW002993.TMP, shows it was created at 12:00:30. The creation of the temporary file does not influence the system clock or the time stamp given to the file containing "the message" saved by Cox.

Laboratory test have shown that from the time the computer power is turned on, that it takes 44 seconds, +/- 1 second, for the word processor to be initialized. This in turn equates to 30 seconds from the time the system clock starts running. A message can not be typed in prior to this process being completed.

**The deviation of the system clock over a 31-hour period.**

Laboratory tests have shown that the system clock deviates -16 seconds over a 168 hour period. This equates to -3 seconds over 31.5 hours. This in turn results in the time stamp given to the file, in which Cox saved "the message" is 31 hours, 32 minutes and 57 seconds and not 31 hours, 32 minutes and 54 seconds.

**The delay between noting the time on Anderson's watch and saving "the message".**

According to Anderson's notebook, Cox started examining the computer at 14:16 and the computer was turned off at 14:22. They have both indicated that it would be reasonable to say that "the message" was saved after 2 minutes, this being 14:18 on Anderson's watch. In theory however, it could have been any time between 14:16 and 14:22, giving a variation of +4/-2 minutes from 14:18. This is in the calculation table referred to as "Variation A"

**Reading of Anderson's watch.**

The photocopy of Anderson's watch given to me does not appear to have a dedicated hand to indicate seconds. It is also noted that there are no indications between the five minutes marks, making it difficult to precisely read the time. Tests on the watch have shown that is a quartz watch in which a little stepping motor, that drives the hands, makes defined 10 second jumps and a reading of for example 18:15 could have been 18:15:00 or 15:15:09. This introduces a variation of +10/-0 seconds. It would be fair to say and reasonable to expect that Anderson being the owner of the watch would be used to reading it and comfortable interpreting the positions of the hands. Misreading due to parallax errors would increase the variation by +/-0:30 minute to +0:40/-0:30 minutes. This is in the calculation table referred to as "Variation B".

#### The deviation and the establishment of the deviation of Anderson's watch.

The time check comparison of Anderson's watch against Telecom 111 call center time resulted in a 2-minute deviation, meaning Anderson's watch being fast. The call was logged by Telecom at 10:25, and no seconds are recorded. This in turn implies that the call was received at either 10:25:00 or 10:25:59 introducing a tolerance of  $\pm 1$ -0 minutes. In addition, in reading the time during this check, the watch indicated 10:27, which in turn could have been 10:27:00 or 10:27:09, introducing an extra variation of  $\pm 10$ -0 second. Also, misreading due to parallax errors would increase the variation by  $\pm 0.5$  minute. The total variance now comes to, an absolute deviation of -2 minutes with a tolerance of  $\pm 1:40$ -0:30 minutes. This is in the calculation table referred to as "Variation C".

The table: *Variations for: Message saved* shows an overview of the different variations that apply to the calculation of the event Message saved.

	Variation +	Variation -	Absolute
Variation A	0:04:00	0:02:00	0:00:00
Variation B	0:00:40	0:00:30	0:00:00
Variation C	0:01:40	0:00:30	-0:02:00
Sums	0:06:20	0:03:00	-0:02:00

Table. *Variations for: Message saved*

#### Timeline reconstruction.

Using all of the above data and information it is now possible to compute a timeline that includes all compounding variations in both negative time, resulting in the events occurring earlier, and in positive time resulting in the events occurring later.

The table: *Constructed timeline* shows an overview of the computed results.

The column **Power ON** represents the event where mains power is applied to the exhibit computer when the ON switch is pushed in.

The column **Start Sys clock** represents the event after **Power ON** where the operating system has transferred, in this case unsuccessfully, the time and the date from the hardware clock into the system clock, and the system clock begins incrementing.

The column **Word initialized** describes the event where the word processing program WORD has been started up and initialized after which it is possible to enter in typed text through the keyboard. It is not possible for a user to enter any text into the word processor prior to this event, however it is possible that text is entered after the event much later. This event plays an insignificant role in the calculation of the time the computer was turned on, however it is significant here, as the computer word processor was not usable prior to this event.

The column **Message saved** represents the event "the message" was saved by Cox, and at which point in time the file containing "the message" was given a time stamp.

Applying the compounding variations to the Real timeline figures results in two additional timelines. The first timeline shows the Earliest possible time the events described could have taken place, and the second timeline shows the Latest possible time the listed events could have happened. This with exception of the latest possible time Word was initialized as this could have happened much later, but taken all the maximum compounding variations into account, text could not have been entered before that time.

Also shown is the Most likely timeline listing the events as they happened in my opinion. The most likely time is computed by taking into account firstly all the absolute deviations, which are, the fact that Anderson's watch was two minutes fast, the fact that the time stamp on the saved message is 31 hours, 32 minutes and 54 seconds and the fact that the system clock runs 3 seconds slow over a 31 hour period. Secondly taken into account is the mean of all the variable tolerances. It would be unreasonable to expect that all variations would compound in only one direction, either all adding in positive time resulting in the events being later, or all adding in negative time resulting in the events being earlier. In this timeline the Most likely time the computer was turned on was at 06:44:30 and the message could not have been typed into the word processor until 06:45:14.

	Power ON	Start Sys clock	Word initialized	Message saved
Sum of variation +		0:00:01	0:00:01	0:04:20
Sum of variation -		0:00:01	0:00:01	0:05:00
Relative real time	0:00:00	0:00:13	0:00:44	31:33:10
System clock		0:00:00	0:00:00	31:32:57
Real time	6:44:50	6:45:03	6:45:34	14:18:00
Latest possible	6:49:11	6:49:23	6:50:08	14:22:20
Earliest possible	6:39:49	6:40:03	6:40:46	14:13:00
Most likely	6:44:30	6:44:43	6:45:14	14:17:40

Table. Constructed timeline.

## Data search

The data obtained from the cloned hard drive has been searched for any fragments of correspondence, communications, transactions and documents containing any possible new data and evidence that would bear on the investigation. The cloned data gives access not only to the files and programs on the hard disc but also to information in, the so called, slack spaces that might contain any previous deleted but not yet overwritten data.

A number of quotations were found on the clone, which, in my view, are mainly associated with results displayed on the screen during the playing of computer games. There are a great number of games on the exhibit computer and once played the user can die, gets shot or killed and loses the game. The computer also contains a small electronic dictionary and a collection of phrases. Non of these phrases belong in my view to a poem or any message relevant to the review.

No significant information was found or recovered from the clone. A CD-ROM containing the cloned data complete with search engine is attached to this report.

## Floppy disc analysis

In total 20 5.25 inch floppy discs have been examined and their content has been searched for any

fragments of correspondence, communications, transactions and documents containing any possible new data and evidence that would bear on the investigation. This includes any previous deleted but not overwritten data still available on the discs. The content of the discs plus any recovered data has been recorded onto a separate CD-ROM. The discs have been numbered from 971679 through to 971699 and the names of the folders on the CD-ROM correspond with the numbers of the floppy discs. The folder number followed by the word *recov* contains the recovered data if any. Disc 971692 was found to be unformatted and not to contain any data, therefore there is no folder on the CD-ROM related to that disc.

The data on the floppy discs is mainly related to school activities of the family members, like essays, reports and some private correspondence. No significant information was found or recovered from the floppy discs that in my view would contribute to the review. The CD-ROM containing the floppy disc data has been attached to this report for further viewing or examination if required.

### **Password: file number 15**

On startup the operating system enters a menu system which allows the user to choose from a number of options, for example entering the word processing program or starting up a game. The menu system it self can be customized by the user or owner of the system. If, for example a new spreadsheet program was purchased and loaded into the computer system, the user could edit this menu system by adding the spreadsheet program into the menu. In order to access the editing mode of the menu system a password may be required. This is the case with option 15 on the menu, which in reality is a blank option in the menu system that can be customized by the user/ owner of the computer, by anyone who knows the password or by anyone who knows how to bypass the password.

No significance is attributed to this element.

### **Sound emission and acoustic considerations**

Most computers require internal forced ventilation in order to expel heat created by the electrical and electronic components inside the computer housing. In some modern computer equipment the ventilation system is activated only when the temperature reaches a specific value, but in most computers the fan or fans that provide the forced airflow run continuously when the computer is turned on. The fans used in computers are usually small inline brush less motors producing a low whizzing sound. The fan attached to the power supply is usually directly attached to the back of the computer, while other computers have this fan fitted further inside the computer power supply generally producing a lower sound level. The exhibit computer is one of the latter types.

In addition to this, there are usually one or two hard disc drives also containing a small electric motor which produces a low-level whizzing sound. A hard disc is fitted inside the computer framework and its sound is shielded by the computer's enclosure. Ventilation grills and slots fitted on some computers do provide less sound protective covering from the disc drive noise compared to fully enclosed casings. The exhibit computer is fitted with a small ventilation grills at the front.

The overall sound produced by a number of computers have been measured, and as the sound is of a continuous nature the results have been expressed in dB(A). The table below gives the values for the various computers measured at a one and two meter distance from the device. The table shows that the exhibit computer is not specifically louder or quieter than the other devices tested. All measurements have been carried out against a background noise of approximately 25dB(A).

	Computer 1	Computer 2	Computer 3	Exhibit Computer
1 meter	37	40	41	39

The background noise at the Bain residence would have been of equivalent level. By comparison, a quiet bedroom at night reads around 30 dB(A) and the still and quite countryside approximately 20dB(A).

The exhibit computer was situated in the alcove next to Room A (as per floor plan provided). The sound level of the computer would have therefore been noticeable lower in Room A. I would estimate this to be about 4 to 6 dB, as the two rooms are separated by a curtain, and although there appears to be a gap of about 200mm, the alcove acts as a large acoustic sound absorber. This reduces the sound level of the computer to 29 to 30 dB(A), which is perceptible in relation to the background noise. From the floor plan is estimated that Mr. Robin Bain was an additional 2-meters away from the opening of the curtain, this again further reduces the sound level by approximately 3 dB, bringing the overall level to 26 to 27 dB(A).

As to whether the sound of the computer would have been noticed by anybody in Room A at the time depends on two factors, first, is the difference in loudness of the sound in relation to the background high enough for it to be perceptible, and secondly, is the sound unusual in character and unusual to the observer enough under the circumstances.

On the first issue it is my opinion that the sound would have been observable against the expected background noise level at the time, although there could have been other sound sources contributing to the increase in general background noise like household appliances (fridge, freezer, washing machine etc).

On the second issue, the sound of the computer has a constant non-impulse character and is generally a sound that people are accustomed to and nobody would find it unusual and unreasonable to hear a sound like that in their environment. Especially if that person lives at the address knows that the computer is in that location, is familiar with the sound character and has used the equipment personally on many occasions.

In my view the sound made by the exhibit computer would most likely not have been noticed and would not have attracted the attention of Mr. Robin Bain.

## Conclusion

After having examined the exhibit computer and its data, after having conducted numerous laboratory experiments and tests on the computer clocks. After having read and studied all the relevant job sheets, interviews and other documents related to this case, it is my professional opinion that the evidence given during the trial, concerning the time the computer was turned on, was both relatively precise and reasonable. It was relatively precise because the most likely computed time the computer was turned on 06:44:30 is 30 seconds later from the time given to the jury. It was reasonable because the time given in evidence 06:44 is well within the computed extremes and it is earlier than the most likely time of 06:44:30. This would have been to the advantage of the accused.

It is also my opinion that Mr. Robin Bain would not necessarily have noticed the sound made by the computer as the sound produced is low level sound of a non-impulse, constant nature to which he was well used.

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