

Tuesday, 2nd June 2009

1

2 (10.30 am)

3 THE CHAIRMAN: Shortly after the Inquiry was announced work
4 began on the recovery of documents and the
5 identification of potential witnesses and the recording
6 of various statements. As the events leading up to this
7 Inquiry go back to January 1997, as you will appreciate,
8 much material has accumulated in the interim and so it
9 has taken a considerable amount of time to gather and to
10 analyse it.

11 The stage is now reached where the public hearings
12 can begin and this gives me an opportunity just to
13 outline what the sitting plans are so that if members of
14 the public who are interested want to know when events
15 will be continuing here at Maryhill, they will be able
16 to know when that will be. But I would urge them to
17 keep in touch with the website if possible because if
18 there are any variations they will be able to see that
19 then.

20 Now, first of all, the hearings of the evidence are
21 going to be here at the Maryhill Central Community
22 Centre, Central Hall, and the present plan -- and I'm
23 going to keep this under review and I'm open to
24 suggestions from Core Participants and others where
25 perhaps the ideas I have about when we should sit prove

1 in some way inconvenient, I'm quite open to looking at
2 it again. But the present plan is to sit from Tuesday
3 to Friday, not on Mondays, and that we do that until
4 Friday 10th July. Of course the first exception to that
5 will be this week when I do not intend to go beyond
6 Thursday which I hope will give sufficient time for all
7 the business that we need to conduct this week.

8 Normally we will sit at 10.15 and continue to 1.00
9 and then from 1.50 in the afternoon to 4.00 pm. I
10 intend to have two short breaks during the day, one in
11 the morning as near as possible to 11.30 for 15 minutes
12 and then in the afternoon from 2.50 to 3.00 pm. The
13 other change that I think we might make is that on
14 Fridays we may stop at 3.00 rather than continue to 4.00
15 so people who have to travel can get to their various
16 destinations.

17 Then if we have a sufficient number of witnesses
18 available I would like to resume again on 18th August
19 and sit until 28th August and then there will be a break
20 to 22nd September. Then, subject to one further break
21 to allow for the preparation of material about
22 recommendations, my idea is that we should continue
23 until all the oral evidence is completed.

24 I know everyone will want to know as soon as
25 possible whether the August sittings are going to take

1 place and we will make arrangements for that as soon as
2 possible as soon as we know whether the witnesses are
3 available.

4 Now, today the hearings will commence with a
5 presentation by Mr Moynihan QC who is on my left, senior
6 Counsel to the Inquiry, and he will make a presentation
7 but I want to make it clear that this is his
8 presentation, counsel's presentation, and it does not
9 represent any views that I have formed on any issue of
10 controversy because I can only form my views when I have
11 heard the evidence and when I have considered everyone's
12 submissions about it.

13 Then at the end of Mr Moynihan's presentation, which
14 the estimate will be some time tomorrow possibly, then
15 the legal representatives of Core Participants will have
16 an opportunity, if they wish to take it, to make an
17 opening statement and that is entirely a matter for
18 them. But it would help with the planning if they could
19 give Counsel to the Inquiry some indication of their
20 intentions about that.

21 The last thing I want to say is that it is a public
22 Inquiry and members of the public who wish to attend are
23 of course not only free to do so but encouraged to do so
24 and if anyone wants to follow the evidence but cannot be
25 here of course they will be able to do it by, each day,

1 at the end of the day they will find a transcript of the
2 day's proceedings on the Inquiry website. That is not
3 difficult to find because it's Fingerprint Inquiry
4 Scotland.

5 That's all I want to say at this stage and I now
6 propose to invite Mr Moynihan to begin his presentation
7 in a few minutes. I am going to rise for a couple of
8 minutes so that those who want to leave can do so
9 particularly I am sure the media want to leave and we
10 will resume as soon as that's happened.

11 **(10.35 am)**

12 **(A short break)**

13 **(10.41 am)**

14 **Opening statement by MR MOYNIHAN**

15 MR MOYNIHAN: I begin with an introduction and the essential
16 facts. Marion Ross was found murdered in her own home
17 in Kilmarnock on 8th January 1997.

18 Scenes of Crime examinations carried out in the
19 course of the investigation yielded 428 fingerprints.

20 Of those, this Inquiry is primarily interested in
21 four: Y7, a fingerprint identified as the left thumb of
22 Ms McKie found on a doorframe surrounding the door to
23 the bathroom where Miss Ross' body lay; Q12 a cluster of
24 prints on a biscuit tin containing money found in
25 Mr Asbury's house, including a print identified as the

1 right forefinger of Miss Ross and another print
2 identified as the right middle finger of Mr Asbury's;
3 QD2, identified as the right little finger of Mr Asbury
4 and found on a bank note in that biscuit tin; and XF
5 identified as the right forefinger of Mr Asbury and
6 found on a Christmas gift tag in the living room of
7 Miss Ross' house.

8 A fifth print, Z7, a partial palm print found at the
9 same time as Y7 and in close proximity to it may be of
10 potential relevance to Y7.

11 Y7 was discovered by the Scenes of Crime officers on
12 14th January 1997 and on 10th and 11th February 1997 it
13 was identified by fingerprint officers at the Scottish
14 Criminal Record Office as the left thumb print of
15 Ms McKie. Ms McKie then known as DC Cardwell had
16 briefly been part of the police team investigating the
17 murder. From the outset she denied having gone beyond
18 the porch at the entrance to the deceased's house and
19 therefore disputed that she had placed her fingerprint
20 on the bathroom doorframe.

21 In 1997 Mr David Asbury was prosecuted for the
22 murder of Ms Ross and convicted, with the fingerprint
23 evidence being a central part of the prosecution case.
24 During that trial, no-one challenged the identification
25 of the fingerprints. However, during the trial Ms McKie

1 gave evidence denying that she had been anywhere near
2 the bathroom.

3 After the murder trial the prosecution authorities
4 decided to prosecute Ms McKie for perjury. In short the
5 prosecution case was that because Y7 had been identified
6 as the fingerprint of Ms McKie she must have lied when
7 she said that she had not been beyond the porch. At her
8 trial American fingerprint experts, Mr Wertheim and
9 Mr Grieve, disputed the identification of Y7 and gave
10 evidence that it could not be her print because of
11 certain points of difference between her print and the
12 mark. She was acquitted.

13 Subsequently, inquiries were carried out by the
14 police and other public authorities employing a number
15 of experts from the United Kingdom, Holland, Norway and
16 Denmark. These investigations cast doubt on the
17 identification of not only Y7 but also Q12 and QD2 and
18 two other prints which I, as senior counsel to this
19 Inquiry, have not yet been persuaded that it is
20 necessary to consider.

21 The identification of XF has not to date been
22 challenged.

23 After the full extent of the disputes regarding the
24 fingerprint evidence became known, Mr Asbury was
25 acquitted of the murder by the Appeal Court and a claim

1 by Ms McKie for damages was compromised.

2 Those are the essential facts, as will be well known
3 to those who have followed the various past
4 investigations into this matter, including some that
5 have been published (for example, by Her Majesty's Chief
6 Inspector of Constabulary and the Scottish Parliament)
7 and some that to date have been private: a Strathclyde
8 police disciplinary Inquiry in relation to Ms McKie led
9 by Chief Inspector Wilson and two reports into
10 allegations of criminal conduct by the fingerprint
11 officers principally involved in the identification of
12 Y7 by Detective Chief Constable Mackay and then
13 Mr Bill Gilchrist.

14 However, the greatest weakness of those past
15 investigations is that they have not resulted in any
16 judicial determination and, hence, debates persist.
17 Most fundamentally, the Scottish Criminal Record Office
18 fingerprint officers continue to maintain that they
19 correctly identified Y7 as the mark of Ms McKie and in
20 that they are supported by a number of independent,
21 external experts including Mr Swan and Mr Leadbetter,
22 while a number of equally eminent fingerprint officers
23 at home and abroad say that they are wrong.

24 This is the opportunity, through an independent
25 judicial Inquiry, to investigate fully and publicly the

1 controversy surrounding these fingerprints and to reach
2 conclusions in relation to the fingerprint examinations
3 that were carried out in order to learn lessons for the
4 future and to ensure that the public can have confidence
5 in the reliance placed on fingerprint evidence in
6 criminal trials in Scotland.

7 The Inquiry is being held under the Inquiries Act
8 2005 and has begun with an impartial investigation as
9 directed by the Chairman but conducted by the Inquiry
10 team.

11 The Inquiry team made request for access to
12 witnesses and to records that it considered may be
13 relevant to a proper investigation. The team has
14 received substantial co-operation from those to whom
15 requests were submitted. The team has accordingly
16 secured access to past reports (both public and private)
17 and to contemporaneous documents held by, among others,
18 the Scottish Government, the Crown Office, the Scottish
19 Criminal Records Office and Scottish Police Services
20 Authority, Strathclyde Police and Mr McKie. This has
21 included extensive material that would not otherwise be
22 made public. In particular, the team has had the
23 opportunity to study and, where of assistance, to use
24 the material gathered by Detective Chief Constable
25 Mackay as part of his police investigation and his

1 eventual report and ministerial correspondence related
2 to it.

3 The Inquiry team has also been interviewing the
4 principal participants in the events and has been taking
5 detailed statements from them. Conscious that the
6 events took place more than 12 years ago, and that
7 memories are bound to be faded to some extent, the
8 Inquiry team has been particularly careful to tie in
9 witnesses' present recollections with the
10 contemporaneous documents and the witness statements
11 contain meticulous cross-references to those documents
12 so that any reader of the statement will be able to
13 check the consistency of the witnesses' evidence.

14 The process of interviewing witnesses continues but
15 the investigation has been marshaled to enable this
16 Inquiry to open and to deal with matters that have been
17 fully investigated and the Inquiry hearings will
18 progress as the investigation proceeds.

19 Dealing with this hearing, the legislation lays down
20 two guiding principles in relation to the conduct of the
21 Inquiry. The first is that the Chairman must act with
22 fairness and also that he must have regard to the need
23 to avoid any unnecessary cost, whether to public funds
24 or to witnesses or to others.

25 In order to avoid unnecessary cost, it is not

1 intended to call as witnesses to the public hearing
2 every individual who has provided a statement. The
3 selection has been informed in part by the possibility
4 that the particular individual's evidence on a point of
5 significance to the Inquiry may in some respect be open
6 to question (for example, because it is contradicted by
7 another witness or inconsistent with a significant
8 document) and by consideration of the interest of the
9 public in seeing an open examination of the essential
10 issues.

11 Statements provided by witnesses who are not
12 required to give evidence at the public hearings will
13 still be published on the Inquiry website and may still
14 be relied upon by the Chairman in reaching his
15 conclusion. In the interests of accuracy, each witness
16 has been given advance notice of the points to be
17 covered in the interview and has been afforded an
18 opportunity to revise the draft statement that has been
19 prepared by the Inquiry team. When the statement has
20 been finalised to the satisfaction of the witness, each
21 witness has been required to sign the revised statement
22 testifying to the truth of its contents.

23 Witnesses called to give evidence at the public
24 hearing will do so under oath. These witnesses too will
25 have provided signed statements in advance in exactly

1 the same way as already described and those statements
2 will be put on the website. The contents of those
3 statements will be taken as read when the witness is
4 called to the public hearing. It is not the intention
5 of Counsel to the Inquiry to rehearse the whole of the
6 witnesses' evidence. Instead, the examination in public
7 will be restricted to certain specific points but the
8 whole contents of the statement will be available to the
9 Chairman, whether or not the witness is asked about any
10 particular point at the hearing.

11 An analysis of the material gathered by the Inquiry
12 team (that is witness statements and documentary) has
13 been prepared by Counsel to the Inquiry and shared with
14 such of the Core Participants who were willing to give a
15 confidentiality undertaking. The objective has been to
16 ensure, so far as possible, that the Inquiry team is
17 fully investigating the points relevant to the Terms of
18 Reference and is making an appropriate selection of
19 witnesses to call to give evidence at the public
20 hearing.

21 This process of consultation will be ongoing as the
22 investigation progresses but ultimately decisions on the
23 issues to be pursued and witnesses to be heard are
24 matters for the Chairman.

25 The Inquiry team intends to lead evidence relating

1 to the disputed fingerprint identifications of Y7 and
2 QI2 and, if there is any basis for dispute, QD2 and XF.
3 Investigations have yet to take place in that regard.

4 Among the complications is that in relation to mark
5 Y7 there are multiple images of the mark and also
6 multiple sets of fingerprints of Ms McKie.

7 Y7 has been photographed on at least seven
8 occasions: three times by Scenes of Crime officers as
9 part of the murder investigation on 14th January, 12th
10 and 18th February 1997; by a Home Office expert Mr Terry
11 Kent in March 1997; by Mr Wertheim in 1999; by the
12 National Training Centre at Durham, and by Dr Bleay of
13 the Home Office in 2009 for the purposes of this
14 Inquiry.

15 Ms McKie's prints have been taken on at least five
16 occasions, at least three times by the police on 6th
17 February 1997, 18th February and 6th March 1998; by
18 Mr Wertheim in March 1999; and, by a fingerprint
19 practitioner, Mr Cook, in October 1999 presumably for
20 the purposes of a BBC documentary.

21 A substantial number of fingerprint experts have
22 entered the debate in relation to the identification of
23 Y7 but they have used a variety of combinations of these
24 source materials, with some of them using copies and not
25 principals. The end result is that the views expressed

1 by them are not directly comparable because of the
2 potential distortion due to the variation in source
3 material. The Inquiry team has been exploring the
4 possibility of securing contributions from the experts
5 by reference to a common set of source materials.

6 Progress is being made but until that exercise has
7 been carried out, Counsel to the Inquiry cannot make any
8 pronouncement on the evidence bearing on this key issue.
9 This opening statement is accordingly confined to
10 material so far obtained in relation to the factual
11 background.

12 Also missing from this presentation but to be
13 covered by the Inquiry is a review of the progress made
14 by the Scottish Criminal Record Office and now the
15 Scottish Police Services Authority in implementing the
16 recommendations of past reports into the handling of
17 these fingerprints.

18 It would be possible to begin this Inquiry with a
19 short statement as to the issues raised by the materials
20 that the Inquiry has received and to proceed forthwith
21 to hear evidence. However, in common with the precedent
22 set in at least one other prominent public Inquiry I
23 propose to take a radically different course and to
24 review and in part analyse the evidence that the Inquiry
25 has so far received.

1 I adopt this course primarily because I am aware
2 that the Inquiry has secured a substantial volume of
3 material and it is not the intention to rehearse all the
4 evidence at the public hearings, let alone to read out
5 the contents of all the relevant documents. The
6 evidence that will be heard at the public hearing will
7 focus on discrete parts of the controversy and without
8 an overall analysis it would be difficult for those not
9 directly involved in the hearings to follow the evidence
10 and to understand where it falls into the overall
11 picture. Accordingly, this statement seeks to paint the
12 general picture and places the contribution of
13 individual witnesses or documents in context.

14 This opening statement is modelled on the analysis
15 document sharing with Core Participants as I have
16 described. The full text, which will be place on the
17 website in due course, is complemented by footnotes
18 specifying the precise source for any particular
19 proposition and textual references to the electronic
20 codes for the documents in the Inquiry hearing database
21 to which the public will have access via the web.

22 It's not the intention to labour this presentation
23 by reading the footnotes but the references will be in
24 the text placed on the Inquiry website for anyone
25 wishing to pursue any point in detail.

1 Where the text is summarising the evidence of a
2 particular witness, the name of the witness is
3 highlighted by underlining and there will be a table on
4 pages 9 to 10 of the text placed on the website to give
5 the Inquiry hearing database references for the witness
6 statements.

7 It has to be stressed that this opening statement
8 reflects the analysis carried out by me and not by the
9 Chairman. What is more, even as far as I am concerned,
10 it is no more than an analysis of the evidence and it
11 does not seek to reach conclusions in relation to the
12 various points of controversy. That is a matter for the
13 Chairman after hearing all the evidence and considering
14 all submissions received.

15 While care has been taken in preparing this summary
16 to give a fair account of what the witnesses are
17 understood to be saying, inevitably there is always the
18 risk that any summary can misrepresent the witness.
19 Notwithstanding the detailed nature of the opening
20 statement it is no substitute for witness statements and
21 documents and those who are participating in the hearing
22 and are concerned to follow the proceedings are invited
23 to follow the cross-references and to study the source
24 material for themselves.

25 So far as this opening statement is concerned, there

1 will be an opening chapter dealing with the law and
2 practice in relation to fingerprint evidence in general
3 and then a chronological narration of the sequence of
4 events highlighting en route the specific issues that
5 require to be resolved by the Chairman and the evidence
6 available on the point.

7 I now turn to chapter one dealing with fingerprint
8 law and practice and I begin. The skin on the tips of
9 the fingers, palms of the hands and soles of the feet
10 contain patterned ridges to increase grip. The pattern
11 is on the outer layer of the skin (the epidermis) and is
12 shaped by the contours of the underlying inner layer
13 (the dermis) and the distribution of pores all formed in
14 the womb. Because the pattern in the epidermis reflects
15 the structure of the dermis it is constant throughout
16 life barring damage to the dermis itself.

17 These patterns are unique, not only comparing one
18 individual with another but also comparing one finger
19 with another. The attributes of uniqueness and
20 constancy result in fingerprints and other friction skin
21 patterns being a means of identification of individuals,
22 particularly (but not exclusively) in criminal justice
23 systems worldwide.

24 On contact with a surface an impression can be left
25 of the pattern of the skin. The quality of that

1 impression will vary depending on the nature of the
2 surface and the nature of the contact.

3 Scenes of Crime and objects relevant to the crime
4 will be examined by specialists to reveal any
5 impressions that may be present and this can be done by
6 using various types of dust and chemicals suited to the
7 kind of surface. Any impression found is then preserved
8 either by being lifted using tape or by being
9 photographed. The lift or photograph is then passed to
10 a fingerprint practitioner, a person who by training and
11 experience is skilled in the identification of marks.

12 The fingerprint practitioner will also be provided
13 with fingerprint forms containing the impressions of
14 known individuals who may be of interest to the police.
15 In modern practice computer databases of fingerprints
16 can be used to search for any individual whose prints
17 may be a close match to the crime scene mark but
18 computers do not make identifications. Identification
19 is ultimately a matter for the fingerprint practitioners
20 who compare the crime scene mark with the fingerprint
21 forms of known individuals.

22 Identification is a process that consists of a
23 visual comparison examination by fingerprint
24 practitioners of the crime scene mark and known
25 fingerprint forms to determine whether there are

1 sufficient characteristics in common between the mark
2 and a fingerprint from a known individual, and no
3 unexplained points of difference, to warrant the
4 conclusion that the two match to such an extent that the
5 mark can be individualised and attributed exclusively to
6 the known individual.

7 That process is more or less difficult depending on
8 the quality of the crime scene mark and the prints of
9 the individual. Not every comparison results in an
10 identification. The all important question is, of
11 course, how to judge the sufficiency of the
12 characteristics common to the mark and the print. How
13 is it determined that a particular combination of common
14 characteristics is sufficiently peculiar to be unique to
15 one individual?

16 I turn then to the history of the 16-point standard.
17 At the time of the Asbury and McKie prosecutions the
18 Scottish criminal justice system was working to the
19 16-point standard. A crime scene mark could be
20 identified as that of a known individual only if there
21 was a minimum of 16 characteristics in common and no
22 unexplained differences.

23 An account of the genesis of that standard was given
24 in an article by Evett and Williams, "A Review of the
25 Sixteen Points Fingerprint Standard in England and

1 Wales". Though written from the vantage point of
2 England and Wales, it would appear from the overlap with
3 the corresponding narrative in Her Majesty's
4 Inspectorate of Constabulary Scotland report that the
5 historical outline is the same in Scotland.

6 The first fingerprint bureau in the UK was
7 established at New Scotland Yard in 1901. Initially, a
8 12-point standard was used in Great Britain until 1924
9 when the 16-point standard came to be recommended by New
10 Scotland Yard following review of an illustration in a
11 publication by Bertillon which had been sent to New
12 Scotland Yard by New Zealand police. The illustration
13 showed prints from two different individuals masked in
14 such a way as to obscure differences but with 16 points
15 of similarity marked on the revealed areas of the
16 prints, New Scotland Yard doubted six of the points of
17 similarity but accepted that 10 were present. Given
18 that the illustration therefore showed two different
19 individuals could share 10 common points, it was decided
20 that the 12-point standard was not high enough and it
21 was raised to 16.

22 There is evidence that, despite the adoption of this
23 standard, practice varied and some fingerprint experts
24 were prepared to give identifications on less than
25 16 points. In 1953, an expert gave evidence at trial

1 identifying two prints, one having 12 points of
2 similarity and the other 15. The defendant was
3 convicted but the Home Secretary was concerned that if
4 evidence was given of identification on less than
5 16 points the defence might successfully challenge the
6 evidence, thereby tending to discredit fingerprint
7 evidence as a whole. A meeting was held at which it was
8 decided that a common standard would be observed,
9 "... in order that there should be little risk of such
10 evidence being challenged."

11 Evett and Williams cite two exceptions to the
12 standard subsequently recognised by the National
13 Conference of Fingerprint Experts. The first exception
14 dates from 1978. The practice evolved of fingerprint
15 officers giving "non-provable" identifications based on
16 the finding of 8 to 15 points, the object being to give
17 the police a lead in the investigation while recognising
18 that, save in cases falling within the second exception,
19 the officer could not take that evidence to court. As
20 to the origins of 8 points as the lower end of this
21 range Evett and Williams quote the 1978 National
22 Conference of Fingerprint Experts who said:

23 "There was general agreement amongst fingerprint
24 officers that if there were 8 points of resemblance
25 present, that was sufficient to establish identity

1 beyond all reasonable doubt."

2 The second exception dates from 1984 when it was
3 agreed that evidence might be given of an identification
4 on less than 16 points in a case of particular
5 importance, though the evidence would have to come from
6 an expert of long experience and high standing and it
7 might be necessary for the expert to say that though he
8 was personally satisfied as to the identification, it
9 did not meet the national standard.

10 Evetts and Williams had been commissioned by the Home
11 Office in 1988 and reported in 1989. As part of their
12 study, they located a copy of the original Bertillon
13 publication. By scrutinising better quality copies of
14 the prints than had been available to New Scotland Yard,
15 they found that the prints had been touched up.
16 Professor Margot of Lausanne University confirmed that
17 of the ten points originally accepted by New Scotland
18 Yard, 5 had in fact been altered by the addition of ink
19 lines. This finding coincided with an article published
20 in 1914 by Locard who said "... certain of the points
21 are patently fabricated."

22 Consequently Evetts and Williams concluded this:

23 "The original decision to adopt a standard of
24 16 points at New Scotland Yard was clearly based on
25 incomplete and misleading information."

1 If I stop and move through the text that others may
2 have and come back in a minute.

3 This may be a suitable point to say something about
4 terminology. Not every impression or mark is
5 identifiable. Where there is too little detail of
6 comparison the mark will be set aside as fragmentary and
7 inconclusive.

8 The 16 point standard was relevant only to marks
9 that were otherwise of sufficient quality to admit of
10 comparison.

11 Where the mark and the fingerprint of a known
12 individual matched with at least 16 characteristics in
13 common and no unexplained differences, the legal test to
14 the 16 point standard were satisfied and practitioners
15 would refer to such a mark as an identification.

16 As noted, at latest from 1978, fingerprint
17 practitioners might be certain of the match with 8 to 15
18 characteristics in common and no unexplained differences
19 but evidence of such a match was not generally
20 admissible in court. Fingerprints matched to that lower
21 standard were referred to as eliminations, particularly
22 when speaking of prints of individuals who are not
23 suspects in the crime: an example being prints of
24 Miss Ross found in her own home.

25 It is crucial to observe, under reference to Evett &

1 Williams at page 26, that the distinction between an
2 identification and an elimination is a consequence of
3 legal practice and not necessarily a substantive
4 difference for a fingerprint practitioner. A
5 fingerprint practitioner may be equally certain in
6 relation to an elimination as he or she would be in
7 relation to an identification. The difference between
8 the two is that, save in exceptional circumstances,
9 legal practice in 1997 to 1999 had reservations about
10 the match to the lower standard.

11 However, it has to be said that there were
12 variations in terminology and, more particularly,
13 practice.

14 (This is me back on to the text 1.2.3.) The HMICS
15 report records a lack of consistency worldwide on the
16 description of characteristics that could affect the
17 application of this standard. Thus, some practitioners
18 might characterise the same feature as either a short
19 ridge (counting as 2 points) or an island (one point).
20 If.

21 I turn to Scottish case law. **Hamilton v HMA**
22 reported in 1934 is authority for the proposition that
23 in Scotland an accused may be convicted on fingerprint
24 evidence alone. That remains good law and was
25 relevantly recently applied in a murder, **Lanagan**, case

1 in 1989. However, the fingerprint must be found in
2 incriminating circumstances. For example, just because
3 an accused's print is on a false number plate used in a
4 getaway car does not justify a conviction in the absence
5 of any other incriminating evidence because a print
6 could have been put on the plate at any time and not
7 just during preparation for the crime, **Reilly** 1986.

8 **Hamilton** was a case of theft committed by breaking
9 into a shop. The accused's print was found on a bottle
10 in the shop, the bottle having been wrapped before the
11 crime and being found unwrapped and with a fingerprint
12 on it after the crime. Evidence was led from
13 Fingerprint experts from Scotland Yard. Lord Justice
14 General Clyde summarised the evidence and comments on
15 the approach to its sufficiency:

16 "Evidence was given by two Scotland Yard experts who
17 deponed that, in the first 16 of the recognised points
18 of comparison, there was complete identity between the
19 fingerprint mark on the bottle and the print of one of
20 the appellant's fingers. The experts further deponed
21 that identity to the extent of the first 16 points was,
22 in their opinion, more than sufficient to warrant the
23 inference of identity between the finger which made the
24 mark on the bottle and the finger from which the print
25 was taken. Lastly, they deponed that this method of

1 identification has been widely followed not only in this
2 country but elsewhere for many years; and that -- so
3 far, at any rate -- no case of identity in the ridges of
4 the skin of the fingers of two different persons has
5 been discovered. They went as far as to claim for the
6 fingerprint method of identification the quality of
7 infallibility. This may well be thought (in words at
8 least) to put the case too high, but the substance of
9 their evidence was that, over an area of experience of
10 great extent, and over a tract of time of highly
11 significant duration, the fingerprint method of
12 identification has never once proved to be unreliable.
13 There was no counterevidence.

14 "In these circumstances the Sheriff-substitute
15 [that's the judge] left it to the jury to decide whether
16 they believed the fingerprint evidence, and -- if they
17 did -- whether they were convinced by it of the
18 appellant's guilt. That is challenged; and the
19 questions according are whether -- there being nothing
20 before the jury except the fact of the appellant's
21 residence near the scene of the crime and the
22 fingerprint evidence -- the Sheriff-substitute [the
23 judge] was right in leaving the question of guilt to the
24 jury as he did, and whether the jury acted unreasonably
25 in convicting the appellant.

1 "Fingerprint evidence is undoubtedly competent; that
2 is settled. If it is believed, it constitutes real
3 evidence of the presence of the accused at the scene of
4 the crime, in something the same way as a fragment of
5 clothing (left behind by the criminal) or his boot-mark
6 might be. There was nothing in the present case to
7 support, or indeed to suggest, any possibility of the
8 finger-mark having been made on the surface of the
9 bottle by the appellant, or by anyone else, at any time
10 other than that at which the crime was committed. The
11 materials for a chain of circumstances evidence are thus
12 provided. But then no chain is stronger than its
13 weakest link. The value of fingerprint evidence depends
14 on the reliance which can be placed on the result of
15 expert investigation and experience -- in an immense
16 number of cases, examined over an extended period of
17 years -- to the effect that identity is never found to
18 be exist between the skin ridges on two different
19 persons' fingers. This is what leads the experts to
20 claim infallibility in the finger mark method. I
21 deprecate the use of the word 'infallibility' in this
22 connection at all. What the experts obviously mean is,
23 not absolute, but practical infallibility -- that is to
24 say, a presumption of truth, the reliability of which
25 may be accepted, not because it is irrebuttable in its

1 own nature, but because long and extensive experience is
2 shown to provide no instance in which it has ever been
3 successfully rebutted. All proof depends at bottom on
4 presumption; even the evidence of two credible and
5 uncontradicted witnesses who speak to the same
6 occurrence is **probatio probata** not because it is
7 impossible that they should both be mistaken, but
8 because of the high presumption that what two credible
9 witnesses say happened in their presence did actually
10 happen. Accordingly, the strength of the link provided
11 by the fingerprint depends on the degree of reliability
12 which -- on the evidence presented to them -- the
13 jury thought should be attributed to the fingerprint
14 method as applied by the police and the experts in the
15 present case. They evidently thought the presumptions
16 in favour of its reliability so high as to warrant the
17 circumstantial inference that the appellant was the
18 criminal, or one of the criminals, who broke into the
19 shop."

20 It is open to question whether there is any
21 substantive difference between absolute and practical
22 infallibility. The more telling point is that the
23 Lord Justice General cautioned the need to assess the
24 reliability of the evidence. That is clearer from the
25 concurring opinion of Lord Sands, who said:

1 "It is well settled in our criminal law and practice
2 that, if an accused person has left anything by which
3 his presence on the scene at the time of the offence can
4 be proved and he can give no reasonable account of his
5 presence there, the jury may convict him of such an
6 offence as housebreaking or theft. Now, what was left,
7 or used to be left, occasionally in the past was
8 generally garments or such instruments as tools. But I
9 do not see any reason why it should be held on the one
10 hand that to leave a chattel behind which clearly shows
11 the owner's presence warrants a conviction if the jury
12 so judge, while on the other hand, if a man leaves
13 something behind which just as clearly shows his
14 presence in the shape of a finger-mark, it should be
15 unreasonable for the jury to convict. No doubt, in the
16 case of garments or tools, it must be clearly proved
17 that the garment or the tool, the presence of which is
18 founded upon, was really the property or in the
19 possession of the accused. Similarly, as regards
20 finger-marks, if they are to be relied upon and treated
21 as conclusive, it must be clearly proved that they are
22 the finger-marks of the accused person. That is done by
23 calling in persons expert in regard to finger-marks.
24 Now, two witnesses who are expert in the study of
25 finger-marks came and they said, 'We have examined the

1 bottle and we have examined the print of the accused's
2 fingers, and the mark on the bottle is the mark of the
3 accused's finger.' The day may come when that will be
4 enough, but that day has not yet quite come. This is a
5 somewhat novel mode of criminal investigation. It will
6 not do for the Crown simply to lead evidence of two
7 experts who say these were the man's finger-marks. As I
8 say, the day may come when that may be enough, and then
9 it will be for the accused to endeavour to challenge or
10 shake that evidence. But as matters stand, the Crown
11 must proceed to justify the opinion of the experts by
12 eliciting from them upon what their opinion is based.
13 That was done in the present case in the manner which
14 your Lordship in the chair has indicated, and the jury
15 were satisfied with the explanation. Now, it might very
16 well be that such evidence might not satisfy every man,
17 that one might find persons who would say, 'It may be
18 that that evidence is true as regards past experience,
19 but we will not take it that there cannot be two people
20 with identical finger-marks, or that this is such an
21 improbability as to amounts practically to an
22 impossibility.' A or B might say that; but it is a
23 question for the jury. It is for them to judge of the
24 evidence, and, if on the evidence they are satisfied
25 with the explanations of the experts and the reasons

1 they give, I do not think we can interfere. In the
2 present case the jury were satisfied. I do not for a
3 moment say that a jury are bound to accept fingerprint
4 evidence and expert evidence connected with it, in every
5 case as conclusive. It is a question for the jury in
6 the particular case, and, in order to disturb their
7 verdict, it would be necessary to conclude that it was
8 not a view which a jury might reasonably have taken. I
9 am unable to reach that conclusion here."

10 The next case of relevance is **Rolley v HMA** in 1945
11 in which Lord Justice Clerk Cooper directed a jury that
12 it could convict on palm-print evidence:

13 "Members of the jury, you are the masters of the
14 facts; but there is one fact upon which I think you will
15 have very little difficulty in making up your minds,
16 namely, that what I shall call for short a burglary was
17 committed during the week 11th to 18th September at 9
18 Campbell Road, Edinburgh, and that the unknown burglar
19 appropriated by theft the numerous articles to which
20 Mrs Lindsey and her little boy spoke. The real issue in
21 this case -- and probably you will think the single
22 issue in fact -- is, who was the person who committed
23 that act of housebreaking? Now, as Mr Cunningham quite
24 properly reminded you, it is, of course, for the Crown
25 to satisfy you that the accused was the person who was

1 there and who committed that crime. It is not for the
2 accused to satisfy you of his innocence. This means
3 that, if in the end of the day you should remain in real
4 and genuine doubt -- and it must be real and genuine
5 doubt -- as to where the truth of this matter lies, then
6 you would be bound to give the accused the benefit of
7 that doubt. On the other hand, if you were satisfied on
8 what you have heard that the Crown has succeeded in
9 fastening guilt on the accused -- if you think that it
10 is the just and reasonable inference from the evidence
11 led before you this morning -- equally it is your plain
12 duty to convict.

13 "Now, Mr Cunningham for the defence has accepted the
14 position and I so direct you, that the evidence on which
15 the Crown rely to link the accused with this offence,
16 namely, the palm print, is competent, admissible and
17 sufficient evidence of identification provided you
18 accept it. The value of the evidence is a matter for
19 you. I would like to explain that very briefly on the
20 lines referred to by the Solicitor-General, by pointing
21 out that in all cases of this kind, unless you have an
22 actual eye-witness, or the housebreaker is caught in the
23 act or in recent possession of the stolen goods, the
24 most common method upon which the prosecution rely for
25 bringing home guilt to the accused is to found upon

1 something that the delinquent has left behind, and then
2 by suitable evidence to show that that something is
3 unquestionably associated and identified with the
4 accused. It may be a footprint, it maybe a garment, or
5 a distinctive tool, or something of that kind. In this
6 case it is a palm-print; and it seems to me to make no
7 difference what it is, provided that the evidence in its
8 quality and substance is of a character to carry
9 conviction to the jury, whose duty it is to determine
10 upon its value. Something was said in the course of
11 evidence and in the speeches of learned counsel on the
12 word 'infallibility' and on that topic I want to read to
13 you a sentence or two from a case which dealt not with
14 palm prints but with fingerprints, and in it the late
15 Lord Clyde as Lord Justice General said this: 'The value
16 of fingerprint evidence depends on the reliance which
17 can be placed on result of expert investigation and
18 experience -- in an immense number of cases, examined
19 over a very extended period of years -- to the effect
20 that identity is never found to exist between the skin
21 ridges of two different persons' fingers. This is what
22 leads the experts to claim infallibility for the
23 fingerprint method. I deprecate the use of the word
24 "infallibility" in this connection at all. What the
25 experts obviously means is, not absolute, but practical

1 infallibility -- that is to say, a presumption of truth,
2 the reliability of which should be accepted, not because
3 it is irrebuttable in its own nature, but because long
4 and extensive experience is shown to provide no instance
5 in which it has ever been successfully rebutted. All
6 proof depends at bottom on presumption; even the
7 evidence of two credible and uncontradicted witnesses
8 who speak to the same occurrence is **probatio probata** not
9 because it is impossible that they should both be
10 mistaken, but because of the high presumption that what
11 two credible witnesses say happened in their presence
12 did actually happen.' Now, that is very like what the
13 Solicitor-General said, and, to apply it to this case,
14 you might figure the situation which would arise if
15 Mrs Lindsey and her little boy had come and said they
16 saw the thief and recognised him. That would not be
17 infallible in any sense. They might be wrong. You are
18 presented not with that type of evidence but with a
19 different type of evidence, and it is for you to
20 consider, and for me in a very few words to assist you
21 in considering, the evidence which has been led on the
22 topic of the palm print and its sufficiency for
23 justifying the conclusion spoken to by the expert
24 witnesses that the palm print impression left on the
25 sideboard of the morning room of 9 Campbell Road was

1 made by the left hand of the accused, and by no-one
2 else. You have had the evidence of four witnesses, and
3 I feel bound to point out to you that they are men of
4 wide and prolonged experience in the matter, and that
5 the witnesses adduced from Scotland Yard are probably as
6 rich in experience in this subject as anybody alive. On
7 the basis of that long experience and study of the
8 subject, including contributions to its study in the
9 shape of the book to which Superintendent Cherrill
10 referred, all four of them, as you will remember, said
11 that as a result of a comparison of the original
12 prints -- I mean by that the small prints -- and of the
13 enlargements which were subsequently made, they had --
14 and I think they all used the same words or almost the
15 same words -- no doubt whatsoever. In order to make the
16 ground of their conviction more clear to you, they have
17 prepared two sets of photographs, and, in accordance
18 with Mr Cunningham's suggestion, I am willing that you
19 should take them with you when you retire in a few
20 moments -- No 5 the small pair of photographs made in
21 Edinburgh, and No 7 the big pair of enlarged photographs
22 made in London. The photographs made in Edinburgh
23 indicate sixteen points of alleged identity, and the
24 photographs made in London indicate twenty-five points
25 of alleged identity. Please remember what the witnesses

1 said -- that identity on which they rely is the identity
2 of the ridge characteristics, and in particular the
3 sequence of the ridge characteristics, and that they
4 discount and allow for any differences between the
5 impressions which are due to the degree of pressure with
6 which the palm may have been pressed on the surface when
7 the impressions were taken, or any difference in the
8 character of the surfaces on which the palm may have
9 placed. So that in asking you in looking at the
10 photographs I would ask you not to look at them with an
11 uninstructed eye, but with the eye of a person who has
12 heard the explanations of those expert witnesses.

13 "The criticism that was directed by Mr Cunningham
14 against those powerfully-expressed views was, I think,
15 two-fold. He said the area was too small to enable a
16 proper conclusion to be drawn, and you heard the
17 justification which the four witnesses gave -- I think
18 all four were questioned on these lines -- for rejecting
19 that suggestion and showing they had enough to warrant
20 the conviction which they felt and expressed. He said,
21 in the second place, that, as the experts had not
22 examined the palms of everybody in the world or in Great
23 Britain, they could not be certain that the identity of
24 ridge characteristics and of sequence of ridge
25 characteristics was as complete as they asserted. I

1 think the point to keep in view when considering that
2 criticism, as you must, is the very point in the passage
3 from the late Lord Clyde which I read a moment ago, that
4 in this imperfect world absolute certainty is
5 unobtainable by any method known to law or to science,
6 and that what we are looking for is practical
7 infallibility. The real question for you will be
8 whether you are satisfied, from the explanations given
9 by these four gentlemen, that their experience has been
10 gathered over a sufficiently long number of years -- I
11 think twenty-six years in one case -- and has extended
12 over a sufficiently large number of cases to justify the
13 confidence with which their conclusion was expressed.
14 On the other side you will keep in view that the
15 accused, in addition to tendering a plea of not guilty,
16 to which he has adhered -- and that is why we are here
17 today -- has gone into the witness box and has in effect
18 repeated that plea of not guilty under oath, and this
19 also is an element that you will take into account. But
20 the main point for your consideration will be whether,
21 on a consideration of the police and expert evidence,
22 you are satisfied beyond reasonable doubt that the just
23 and proper inference is that the accused was the person
24 who broke into that house, or whether you are not so
25 satisfied."

1 **Walkers on Evidence** was written in 1964 and
2 discusses fingerprint evidence at paragraph 12 on
3 page 12 and 13. That textbook picks up the observation
4 that fingerprint evidence is not regarded as infallible
5 "but as providing evidence of a degree of probability
6 which is ample for judicial proof". The text goes on to
7 note that in Britain experts would not be prepared to
8 commit themselves to the view that two marks were made
9 by the same person unless there were at least 16
10 identical characteristics, adding that there is no
11 reason why evidence of a lower number of characteristics
12 in common should not be admissible, though perhaps not
13 sufficient in itself to justify conviction.

14 That concluding comment was part of the submission
15 made by the Solicitor-General (Rodger) in the first
16 Scottish case concerning DNA evidence, **Welsh v HMA** 1992,
17 where parallels were drawn with fingerprint evidence.

18 The Solicitor-General's submission and the conclusion of
19 the court are in the following passages from the opinion
20 of Lord Justice Clerk Ross, who said this:

21 "The Solicitor-General explained that this was the
22 first occasion upon which the appeal court had had to
23 consider evidence of DNA profiling. He maintained,
24 however, that that did not create any difficulty in the
25 present case. The trial judge had corrected reminded

1 the jury that they did not require to be satisfied to
2 the extent of mathematical certainty. Although in
3 practice in fingerprint cases one looked for sixteen
4 points of similarity, there was no reason why evidence
5 should not be given that a smaller number of
6 similarities would suffice. He submitted that it was
7 open to the jury to accept the evidence of the experts
8 to the effect that the blood sample from the appellant
9 was the same blood as had come from the deceased's
10 trousers and the blood spots on the stairs of the close.
11 He submitted that the jury were entitled to be satisfied
12 with the expert evidence to the effect that their method
13 achieved a chance of one in 99 million. That was not to
14 say that in another case it might not be necessary for
15 the court to direct the jury that they could not proceed
16 upon evidence which showed a different figure. He also
17 stressed that the fact that the blood on the stairs
18 was wet was a significant factor as indicating that the
19 appellant must have been there shortly before the
20 arrival of the police. He accordingly submitted that
21 there was sufficient evidence to entitle the jury to
22 conclude not only that the appellant had been present at
23 the **locus**, but that he had participated in the attack.
24 The Crown case depended upon concert and in his
25 supplementary report the trial judge had correctly

1 summarised the evidence upon which the jury were
2 entitled to rely in reaching the conclusion that there
3 had been a concerted attack by three men upon the
4 deceased.

5 "We are quite satisfied that in this case there was
6 sufficient evidence to entitle the jury to conclude that
7 there was a concerted attack by three men, and that the
8 appellant had participated in that assault and was not
9 merely an onlooker. The fact that the blood spots on
10 the stairs were wet and the fact that the appellant had
11 a fairly severe wound in his arm which he had sustained
12 at about the same time as the deceased met his death are
13 significant pieces evidence. So also is the evidence
14 that the appellant's blood was on the deceased's
15 closing. There is no question of the court laying down
16 as a matter of law that some particular statistical
17 possibility has to be achieved before a jury can proceed
18 upon DNA profiling. DNA profiling, like fingerprint
19 evidence, depends to some extent on theory and
20 statistics, and it is for the jury to assess the
21 evidence and determine whether they accept it as
22 sufficient to warrant conviction.

23 "In the circumstances we are satisfied that there
24 was sufficient evidence to allow the jury to draw the
25 inference not only that the appellant was present at the

1 assault but that he was a participant in the assault.
2 It follows that the appeal against conviction must be
3 refused."

4 Coming now to relaxations of the 16 point standard
5 in Scottish practice, Evett & Williams mentioned two
6 exceptions to the 16 point standard.

7 This is covered from a Scottish perspective in the
8 witness statements of the Scottish Criminal Record
9 Office witnesses.

10 Mr Macpherson gives some insight into the use made
11 in 1997 of fingerprint comparisons with fewer than
12 16 points in sequence and agreement. The Scottish
13 Criminal Record Office could send out a strong suspicion
14 letter to the police if they were able to identify 10 to
15 15 points on a mark. There was also the "ten and ten"
16 rule, whereby the identification of 10 points on each of
17 two digits was sufficient for identification. There was
18 also a "dire and crucial" rule, "where there was no set
19 number of points of comparison because of the serious
20 nature of the crime. Such identifications had to be
21 made by a person of experience." Mr Foley places the
22 decision whether or not such evidence was to be used
23 with the Procurator Fiscal.

24 Mr Mackenzie says that the rule of thumb in the
25 Glasgow Bureau was that if there were less than ten

1 characteristics present in a mark then it would be
2 deemed insufficient for comparison. By contrast,
3 Mr Dunbar, while saying that from a quality assurance
4 perspective there was no strict numeric standard, says
5 that for an elimination, "the number of characteristics
6 in sequence and agreement was probably viewed as
7 somewhere around eight." Miss McBride quotes the same
8 number of characteristics for an elimination.

9 Evett & Williams point to a logical inconsistency in
10 legal practice. They begin from the premise that, "It
11 is important to understand that a fingerprint expert
12 regards any identification as a certainty", and this is
13 whether he has reached that conclusion on 16 points or
14 less. However, with legal practice having set a minimum
15 standard of 16 points, that opinion would not be
16 regarded as "provable" in court, save in a case of
17 particular importance. The logical inconsistency is
18 that the legal system would admit of the application of
19 a lower standard in a more important case.

20 Turning to differences of opinion, in the present
21 case Scottish Criminal Records Office witnesses,
22 addressing practice down to 1997, draw a distinction
23 between a dispute between a fingerprint officers where
24 one says that a mark has not been correctly identified
25 and a case where there is a difference of opinion as to

1 the number of characteristics in sequence or agreement.

2 An example is Mr Macpherson: (a) In a case where an

3 officer thought there had been a mis-identification the

4 matter would have to be reported to the chief inspector

5 in charge of the bureau but (b) where two differed as to

6 the number of points they could discuss the matter or

7 the comparison could be taken to someone else to

8 analyse.

9 Turning to scientific evidence, going back to **Welsh**,

10 it is worth stressing this, Lord Justice Clerk said:

11 "DNA profiling, like fingerprint evidence, depends

12 to some extent on theory and statistics, and it for the

13 jury to assess the evidence and determine whether they

14 accept it as sufficient to warrant conviction."

15 There are two aspects to this: firstly, what theory

16 and statistics underpin fingerprint evidence; secondly,

17 what is the function of a fingerprint expert as a

18 witness in a case and how does that impact on the proper

19 presentation of fingerprint evidence for assessment by

20 the jury?

21 In 1933 Lord Sands said:

22 "Now, two witnesses who are expert in the study of

23 finger-marks came and they said, 'We have examined the

24 bottle and we have examined the print of the accused's

25 fingers, and the mark on the bottle is the mark of the

1 accused's finger.' The day may come when that will be
2 enough, but that day has not yet come."

3 There is room to argue that in many contexts in
4 Scottish criminal practice that that day had come long
5 before the Asbury and McKie trials.

6 Fingerprint evidence is within the category of
7 "routine evidence" covered initially by section 26 of
8 the Criminal Justice (Scotland) Act 1980. Westlaw
9 indicates that that section was repealed with effect
10 from 1st April 1996 but was then replaced by a
11 corresponding provision in section 280 of the Criminal
12 Procedure (Scotland) Act 1995.

13 The current statutory background may be taken from
14 subsection 4 of section 280 of the 1995 Act and I quote:

15 "For the purposes of any criminal proceedings, a
16 report purporting to be signed by two authorised
17 forensic scientists shall, subject to subsection (5)
18 below, be sufficient evidence of any fact or conclusion
19 as to fact contained in the report and of the authority
20 of the signatories."

21 The qualification in subsection (5) relates to the
22 requirement that "forensic scientists" must be
23 "authorised" for this purpose by Scottish Ministers.

24 Reading subsections (4) with subsection (6), the
25 section provides that, in the absence of a defence

1 challenge, a report by a duly authorised fingerprint
2 scientist is "sufficient evidence of any fact or
3 conclusion as to fact contained in the report and of the
4 authority of the signatories."

5 Fingerprint practitioners come within the range of
6 "forensic scientists" for this purpose. Accordingly, in
7 the absence of defence challenge the evidence contained
8 in their reports is sufficient evidence of the facts and
9 conclusions of fact contained in it. In other words,
10 the bald statement by a fingerprint practitioner that a
11 crime scene mark and the fingerprint of a particular
12 individual are identical can be enough to prove that
13 fact, without need even for explanation or
14 demonstration.

15 The critical qualification is that that applies only
16 in the absence of challenge by the defence. In
17 assessing the practical significance of that
18 qualification, one has to ask how often fingerprint
19 identifications were challenged in court. The answer to
20 that question, and its practical implications, are to be
21 found in a book by Canadian expert, Mr Ashbaugh, and I
22 refer to page 4 of his introduction to his book
23 "Quantitative-Qualitative Friction Ridge Analysis" where
24 he comments:

25 "A fundamental circumstance that helped the new

1 identification process gain acceptance was the fact that
2 few identification specialists were challenged in court.
3 Legal counsel shied away from dwelling on a science that
4 was considered exact and infallible, a belief that was
5 difficult to dispel without adequate and structured
6 literature being available. Most challenges were
7 haphazard at best, usually ill-prepared and often
8 confusing. The majority were doomed to fail. Each
9 failure further entrenched the infallibility of the
10 science."

11 THE CHAIRMAN: Now if it would be convenient, Mr Moynihan, I
12 think, if we stop for 15 minutes. I imagine it is I
13 fairly difficult for the stenographer with the speed
14 with which we are going. So a short rest then for 15
15 minutes and we will sit again at noon.

16 **(11.45 am)**

17 **(A short break)**

18 **(12.00 pm)**

19 MR MOYNIHAN: Dealing with the law of evidence, fingerprint
20 evidence has to be set in the context of Scots Law in
21 relation to proof generally in criminal cases and expert
22 evidence specifically. Three rules require
23 consideration: best evidence; corroboration, and proof
24 beyond reasonable doubt.

25 As far as the best evidence rule is concerned, in

1 addition to producing the report under section 280 of
2 the Criminal Procedure (Scotland) Act 1995, the
3 prosecution would lodge as productions at the criminal
4 trial the two pieces of evidence critical to the
5 identification: the first is a crime scene mark and
6 fingerprint form relating to the individual whose mark
7 it has been identified as. This was supplemented by a
8 Scottish Criminal Record Office booklet containing
9 enlarged copies of the mark and the fingerprint
10 side-by-side with lines pointing to the 16
11 characteristics in each of the two images.

12 Gilchrist states in terms:

13 "The Scottish Criminal Record Office has always
14 stressed that the charting enlargements are used for
15 illustrative purposes only."

16 The rationale for the Scottish Criminal Record
17 Office witnesses describing each case specific
18 enlargements as only "illustrative" may lie in the best
19 evidence rule. That is the rule that prohibits parties
20 from leading evidence by reference to copies of critical
21 documents or exhibits. So in a case where an individual
22 has been stabbed to death by a knife and there is
23 something about the knife that is incriminating the
24 prosecution must lodge the knife and not simply a
25 photograph of it and if a witness were to be asked to

1 comment on the photograph, the defence could
2 successfully object to the witness answering the
3 question.

4 That the best evidence rule may be relevant here is
5 consistent the understanding in the HMICS "Primary
6 Inspection Report" section 3.11. The "best evidence"
7 rule required by law is the crime scene lift or
8 photograph of the mark and the print form. That is
9 consistent with the decision in **HMA v Dennison** in 1978.
10 An enlargement is merely a visual aid used to explain
11 evidence in court.

12 In one of the oral sessions before the Justice 1
13 Committee Mr Macpherson gave evidence that since 1983,
14 Scottish Criminal Record Office Fingerprint Bureau was
15 the only one in Britain that prepared case-specific
16 enlargements for trial. Other bureaus used generic
17 enlargements.

18 Again, the rationale may be found in the HMICS
19 report. Fingerprint evidence tended to be presented in
20 terms of a brief report amounting to little more than
21 certification of the identification to the 16 point
22 standard. Experts working to the 16 point standard in
23 Scotland did not regularly and fully document their
24 findings, including the nature and location of the
25 identical characteristics found. This was only done

1 when photographic enlargements were requested for court
2 purposes. As noted, these enlargements were visual aids
3 and in some instances they were generic but more often
4 case-specific. The complication for the Scottish
5 Criminal Record Office was that the computer that they
6 latterly used to produce enlargements for court (known
7 as the charting PC) produced poor images that tended to
8 open Scottish Criminal Records Office witnesses to
9 challenge.

10 Turning to corroboration and proof beyond reasonable
11 doubt, Scots law requires corroborated proof of the
12 identification of the accused as the perpetrator of the
13 crime alleged and requires proof beyond reasonable
14 doubt.

15 There are subtleties to each of these two
16 propositions dealing, firstly, with corroboration.

17 The essence of the rule of corroboration is that an
18 individual may not be convicted of a crime in Scotland
19 on the evidence of single witness, no matter how
20 convincing the evidence of that witness may be. There
21 must be at least two witnesses pointing to the guilt of
22 the accused before there can be a conviction.

23 Though it is said that corroboration must come from
24 two independent sources, corroborated proof can come
25 from essentially one piece of evidence, such as a single

1 fingerprint. Provided at least two witnesses speak to
2 each step in the sequence of evidence (that is the
3 finding of the mark at the scene, that the photograph or
4 lift in court relates to that mark, that the fingerprint
5 form relates to the accused and that there is a match
6 between an accused's print and the mark), a single
7 fingerprint can provide corroborated proof, examples
8 being **Hamilton** and **Lanagan**.

9 Furthermore, corroboration does not require evidence
10 exclusively indicative of guilt. If there is clear
11 evidence from one witness, corroboration can come from
12 evidence from a second witness consistent with guilt,
13 even if that second source of evidence could be capable
14 of innocent explanation. That is the case of **Fox** in
15 1998. It is not necessary the second source be more
16 consistent with guilt than innocence; it suffices that
17 it is capable of being consistent with guilt.

18 In particular, corroboration of a positive
19 identification (for example, by a witness well
20 acquainted with the accused) can come from evidence
21 short of positive identification, such as resemblance,
22 even if the second witness is uncertain and cannot point
23 to any peculiar physical characteristic to inform the
24 degree of resemblance. That is the case of **Adams** in
25 1999. Indeed in one case (**Kelly**) a conviction was

1 upheld where the corroboration came from a witness who
2 picked out the accused at an identification parade as
3 one of two men on the parade whose build and hairstyle
4 resembled that of one of the individuals who had broken
5 into his house; and that despite the fact that the
6 second person similarly picked out at the parade was a
7 stand-in, and, therefore, known not to have been
8 implicated.

9 Turning now to proof beyond reasonable doubt. Proof
10 beyond reasonable doubt does not require proof to the
11 level of mathematical certainty. In **Nolan v McLeod** in
12 1987 a man was convicted based on two identifications.
13 One came from the complainer (ie the victim), who knew
14 the accused and said that he was 80 per cent certain of
15 his identification, corroboration coming from a stranger
16 who said he was 75 per cent sure.

17 Whether or not there is proof beyond reasonable
18 doubt is a matter for the jury (or judge in a summary
19 trial). It is not permissible to ask a witness whether
20 he is sure beyond reasonable doubt, though he can be
21 questioned relative to the nature and extent of any
22 doubt that he may have. That the case of **Nolan v**
23 **McLeod**.

24 In the commentary to **Ralston** there is a summary of
25 the rules I have just been describing which I will pass

1 over and move to 1.8.13.

2 Fingerprint evidence has not traditionally been
3 prepared or presented to the lower standard of
4 "resemblance", as opposed to unique identification. Sir
5 William Rae's reason for the setting up of the ACPOS
6 Presidential Review Group is instructive:

7 "... there was only one acceptable standard of
8 accuracy in relation to fingerprint identification,
9 which was 100 per cent and anything less than
10 100 per cent was unacceptable."

11 Nonetheless, in considering fingerprint evidence it
12 may be necessary to recall that Scots Law does recognise
13 a distinction between "scientific proof", that is the
14 degree of proof that might establish a proposition to
15 the satisfaction of a scientist, and the level of proof
16 required by the court. The difference between
17 "scientific proof" and the civil standard of proof on
18 the balance of probabilities was discussed in the House
19 of Lords case **Dingley v Chief Constable** in 2000. Even
20 the higher criminal standard of proof beyond reasonable
21 doubt does not require mathematical certainty: in that
22 regard I refer, again to the case of **Nolan v McLeod**.

23 There are two distinct propositions which may be
24 involved in fingerprint evidence. The first is no two
25 individuals have been known to share the same

1 fingerprint, hence fingerprints can provide a reliable
2 basis for identifying an individual. Second is that the
3 evidence by a particular fingerprint practitioner
4 relating to the presence of a certain number of common
5 characteristics is sufficient to prove that a particular
6 individual is the donor of the particular crime scene
7 mark.

8 The first proposition seems to be commonly accepted,
9 to such an extent that the English Law Commission (in
10 its Consultation Paper "the Admissibility of Expert
11 Evidence in Criminal Proceedings in England and Wales")
12 has recently cited it as an example of a proposition of
13 which "judicial notice" may be taken. That means that
14 the reliability of the proposition is regarded as being
15 so well founded that any challenge to it in court would
16 be regarded as manifestly unfounded.

17 However, it has been argued by Cole in an article
18 "Is Fingerprint Identification Valid? Rhetorics of
19 Reliability in Fingerprint Proponents' Discourse" that
20 the second proposition does not necessarily flow from
21 the first.

22 Compounding variables include (1) the quality of the
23 crime scene mark and fingerprint of the known
24 individual, (2) the skill training and aptitude of the
25 particular fingerprint practitioner and (3) the criteria

1 by which identification of fingerprints is judged.

2 Linked to (3) is the issue of the statistical incidence

3 of specific combinations of ridge characteristics

4 occurring in the population.

5 There is a range of views here. In the background

6 to the present case there have been differences in

7 detail among even those experts who have agreed that Y7

8 can be attributed to Ms McKie. Each may agree that Y7

9 is the print of Ms McKie, but there is a wide variation

10 in the number of characteristics found by the experts,

11 with some reaching this conclusion with fewer than

12 16 points.

13 Take the Scottish Criminal Record Office witnesses.

14 The four witnesses who signed the court reports (that's

15 Macpherson, Stewart, McKenna and McBride) say that in

16 relation to Y7 they always worked to the 16 point

17 standard, even when that evidence was initially directed

18 only to an elimination exercise at the time of the

19 **Asbury** trial. Mr Mackenzie observed 10 to 11 points on

20 17th February, 12 or 13 on 18th February and 21 by the

21 time of Tulliallan, on each occasion using different

22 material. Mr Dunbar saw at least 10 but less than 16

23 on 17th February. Mr Bruce found 8 during the blind

24 test and Mr Foley found 10 during the blind test.

25 Evett & Williams report that in 1978 the National

1 Conference of Fingerprint Experts reached general
2 agreement that if there were 8 points of resemblance
3 present, that was sufficient to establish identity
4 beyond all reasonable doubt.

5 However, as a matter of Scots law, the question is
6 not whether any witness personally entertains no
7 reasonable doubt in relation to the proposition to which
8 he speaks. The issue is one for the jury (or judge in a
9 summary case): is the jury satisfied beyond reasonable
10 doubt by the evidence led.

11 This is linked to the second, more specific, issue
12 relating to the proper function of an expert witness in
13 a court case, be it civil or criminal. This is topical
14 because of the recent publication of the English Law
15 Commission consultation paper on the Admissibility of
16 Expert Evidence in Criminal Proceedings in England and
17 Wales.

18 There is, however, the recent survey of the law by
19 Lord Nimmo Smith in **McTear v Imperial Tobacco** reaching
20 back to a classic statement by Lord President Cooper in
21 **Davie** in 1953 that said:

22 "Expert witnesses, however skilled or eminent, can
23 give no more than evidence. They cannot usurp the
24 functions of the jury or judge sitting as a jury, any
25 more than a technical assessor can substitute his advice

1 for the judgment of the court ... their duty is to
2 furnish the judge or jury with the necessary scientific
3 criteria for testing the accuracy of their conclusions,
4 so as to enable the judge or jury to form their own
5 independent judgment by the application of these
6 criteria to the facts proved in evidence. The
7 scientific opinion evidence, if intelligible, convincing
8 and tested, becomes a factor (and often an important
9 factor) for consideration along with the whole other
10 evidence in the case, but the decision is for the judge
11 or jury. In particular the bare **ipse dixit** of a
12 scientist, however eminent, upon the issue in
13 controversy, will normally carry little weight, for it
14 cannot be tested by cross-examination nor independently
15 appraised, and the parties have invoked the decision of
16 a judicial tribunal and not an oracular pronouncement by
17 an expert."

18 Lord Nimmo Smith was also referred to a
19 modern textbook **Wilkinson**, the Scottish
20 Law of Evidence, which reinforces the
21 guidance in **Davie**, and there is a quote
22 there that people can just in due course.

23 Section 280 of the Criminal Procedure
24 (Scotland) Act 1995 is a misleading guide
25 here. It applies where fingerprint

1 evidence is truly routine, that is to say
2 where it is unchallenged. If the defence
3 challenges the evidence, then the
4 fingerprint expert comes within the reach
5 of the rules of law pertaining to any
6 expert. His function is not confined to
7 a mere bald assertion of a conclusion on
8 identification. Whilst it is the
9 function of the expert to express an
10 opinion and doubtless to do so in a
11 manner apt to persuade the jury,
12 nonetheless the expert must inform and
13 educate the jury, enabling the jury
14 properly to assess his evidence and to
15 reach its own conclusion.

16 Turning to non-numeric and current
17 reporting, current practice has moved to
18 the non-numeric approach. Mr Mackenzie
19 says that the move to non-numeric
20 occurred in Scotland in 2006.

21 Equally, witnesses indicate that the
22 style of report writing has changed. An
23 example is Mr Mackenzie at paragraph 64.
24 He says that in 2006 the Bureau was
25 instructed to cease producing

1 photographic enlargements.

2 Mr Dunbar says that he was present at
3 discussions in relation to the use of
4 non-case specific photographic
5 enlargements with senior figures such as
6 Cathy Jamieson and Mr Gilchrist. He says
7 that those figures were initially opposed
8 but "we felt it was better as it removed
9 the possibility of a jury thinking the
10 enlargement was actual evidence in the
11 case."

12 The now Sheriff Gilchrist has no
13 recollection of this meeting.

14 The numeric and non-numeric approaches
15 have one point in common: in each case
16 the existence of even one unexplained
17 difference between the mark and the
18 fingerprint is fatal to an
19 identification. The difference lies in
20 the approach to an identification in the
21 absence of an unexplained difference.

22 Under the numeric approach, there was a
23 minimum threshold requirement of
24 16 points in common.

25 With the non-numeric there is no

1 minimum threshold. Instead, the emphasis
2 is on the quality, not the quantity, of
3 the similarities between the mark and a
4 fingerprint. So now a fingerprint
5 practitioner can testify to an
6 identification based on common
7 characteristics, provided that a study of
8 the mark and prints as a whole supports
9 the view that the common features are of
10 sufficient quality to be consistent with
11 a unique identification.

12 There is, however, no objective
13 standard of quality.

14 That concludes chapter 1 and the issues
15 that are considered to arise from this
16 are: firstly, the contents of this
17 chapter will primarily be a matter for
18 legal submission in due course.

19 That said, there is an issue whether
20 this chapter contains an accurate account
21 of the 16 point standard, and the
22 exceptions to it, as it was understood in
23 practice in 1997 to 1999.

24 What was the purpose of producing
25 charted enlargements in criminal trials?

1 Was that properly appreciated in 1997 to
2 1999 and were the enlargements produced
3 in the Asbury and McKie cases fit for
4 purpose?

5 An issue for the Inquiry, particularly
6 looking to potential recommendations, is
7 whether the approach to these
8 prosecutions would have been materially
9 different had the non-numeric approach
10 been applied.

11 Some of these questions are a matter
12 for legal analysis, rather than evidence.
13 However, insofar as questions of practice
14 are concerned, the potential witnesses
15 are: Mr Macpherson, Mr Stewart,
16 Ms McBride, Mr McKenna, Mr Foley,
17 Mr Geddes, Mr Dunbar and Mr Mackenzie.

18 To the extent that these witnesses
19 coincide in their views it may not be
20 necessary to ask them all to address
21 these specific points in oral evidence.

22 I now turn, sir, to the chronological
23 sequence and this is chapter 2 of my
24 presentation. We begin with Wednesday
25 8th January 1997.

1 As I have said, on Wednesday
2 8th January Marion Margaret Campbell Ross
3 was found dead in her home at 43 Irvine
4 Road, Kilmarnock. She was 51 years old
5 when she died.

6 She had not been seen since 4.00 pm on
7 Monday, 6th January. About 6.00 pm on
8 8th January her body was found in the
9 bathroom of the house. A relative had
10 become concerned when she had failed to
11 answer her telephone. A neighbour, Alan
12 Kinnaird, who kept a set of keys, and
13 James Campbell, a cousin, gained access,
14 and found Miss Ross. The emergency
15 services were summoned.

16 Miss Ross had formerly worked as a
17 clerk with the Royal Bank of Scotland in
18 Kilmarnock.

19 43 Irvine Road, Kilmarnock, had
20 originally been her parents' house. It
21 was a semi-detached bungalow. It had
22 been extended on two occasions. The more
23 recent of these was in 1995, when an en
24 suite shower room had been added to a
25 rear bedroom, living accommodation had

1 been formed in the roof space, and a
2 porch had been built at the front door.
3 The en suite facilities and the
4 accommodation in the roof space had been
5 virtually unused since their
6 installation. By contrast, the ground
7 floor rooms were in an unkempt condition.

8 To gain access to the front of the
9 house, it was necessary to pass through
10 the porch and a total of three doors.

11 There was no sign of forced entry. The
12 back door was locked with the keys in
13 place. The inner most of the three doors
14 giving access at the front of the house
15 had been found locked with no keys in any
16 of those doors.

17 The first police officers on the scene
18 were PC Hope and PC Stirling. They
19 arrived at about 18.17. They found
20 Mr Kinnaird and Mr Campbell outside the
21 house and ambulance personnel in
22 attendance. A supervisory officer and
23 CID were summoned and a number of police
24 officers arrived.

25 A police surgeon, Dr Lennox, was called

1 and pronounced Miss Ross dead at about
2 18.56.

3 At 18.43 PC William Jamison arrived and
4 started the log. Before the log was
5 started, all of the relevant details were
6 noted in PC Hope's notebook.

7 Detective Chief Inspector Stephen Heath
8 was called at home. He went to
9 Kilmarnock Police Station, where he was
10 met by a pathologist, Dr Cassidy, and
11 Detective Superintendent Malcolm. He was
12 briefed by DC Gray.

13 Detective Chief Inspector Heath says
14 that he arrived at the scene at 20.30,
15 along with the pathologist, Dr Marie
16 Cassidy and Detective Superintendent
17 Malcolm. The log records him as having
18 arrived with Dr Cassidy and Martin
19 Fairley of the forensics laboratory, with
20 Detective Superintendent Malcolm arriving
21 shortly thereafter. He was made aware
22 that there had been a suggestion that
23 there was a possibility of suicide but
24 was of the view that murder was a strong
25 possibility. He says that he treated it

1 as a murder investigation from the
2 outset. He gave instructions that night
3 including that the house be secured and
4 kept under guard, the body be
5 photographed, the **locus** videoed, and the
6 body moved to the mortuary and
7 house-to-house inquiries commenced.

8 Inspector McAllister also said there
9 was no practical difference in the
10 treatment of the **locus** as between a
11 suspicious death and a confirmed murder.

12 Dealing with the possibility that Y7
13 was the print of an officer, Detective
14 Constable Gray deposited on 8th January,
15 Scenes of Crime Officer Michael Moffat
16 attended. He arrived at 20.10. He was
17 instructed to take a video and
18 photographs of the scene and did so. His
19 still photographs were production 13 at
20 the Asbury trial. His video was
21 production 106. Mr Moffat placed metal
22 treads on the front porch floor. His
23 evidence gives rise to the first factual
24 contradiction in the evidence and it
25 relates to the suggestion that Y7 may

1 have been the mark of another police
2 officer, Detective Constable Gray, who
3 was working with him on 8th January 1997.

4 Mr Moffat was present on
5 14th January 1997 when Y7 was discovered
6 on the bathroom doorframe. He says that
7 his suspicion at the time was that the
8 mark was that of DC Gray. Mr Moffat
9 recalls seeing DC Gray resting his left
10 hand on the right-hand doorframe of the
11 bathroom about 4 to 5 feet above the
12 ground just before the two of them lifted
13 the deceased's body on 8th January.

14 After they had moved the body Mr Moffat
15 notice that thumb of one of Mr Gray's
16 gloves were burst and Mr Moffat spoke to
17 him about this at the time, advising that
18 he should report to his boss that one of
19 his prints might show up at the scene.

20 He says that on some date that he
21 cannot now recall he phoned Kilmarnock
22 Police Station and left a message for
23 Gray telling him to lodge his elimination
24 prints to pre-empt any disciplinary
25 action.

1 He says he mentioned this suspicion to
2 DI McAllister on 23rd January 1997.

3 He also says that when he was cited as
4 a witness for the McKie case he became
5 aware that the defence case was going to
6 be mis-identification and that he
7 immediately thought of Gray again. He
8 phoned Chief Inspector Hogg and suggested
9 to him that he had Gray's prints
10 compared. Hogg told him not to start
11 going down that road at this stage but he
12 agreed to have Gray's print checked
13 against Y7. The next day Hogg told him
14 that "Charlie" had checked Gray's print
15 and it was not his.

16 Referred to his Operation Alba
17 statement (ie, the statement taken by the
18 team of officers led by Detective Chief
19 Constable Mackay that investigated an
20 allegation of criminal conduct by certain
21 SCRO fingerprint officers in 2000)
22 Mr Moffat says that he recalls Inspector
23 Baillie telling him not to get involved
24 as it was going to get messy.

25 He feels that his career has been

1 blighted as a result of his involvement
2 in the McKie case.

3 A statement has been provided by DC
4 Gray. He says that he was wearing latex
5 gloves and that he does not recall them
6 being damaged at any time.

7 James Kerr was present when Y7 was
8 found on 14th January and he does not
9 recall hearing any speculation as to who
10 might have left the mark, nor did he hear
11 any mention of Gary Gray.

12 Mr Wilson can only speak to office
13 rumour.

14 Mr Thurley has no recollection of
15 conversations about burst gloves.

16 Mr McAllister denies that anything was
17 said to him by Moffat on 23rd January
18 about Gray or a burst glove.

19 However, Mr Hogg confirms that
20 Mr Moffat did raise with him the
21 possibility of Y7 having been left by
22 some other person. He spoke to him about
23 this on several occasions and has a note
24 of having done so on 17th August 2000.
25 The point had arisen before and he had

1 mentioned it to Mr Heath. Mr Hogg cannot
2 now recall the name of the other person
3 mentioned by Mr Moffat but he says that
4 this person's elimination prints would
5 have been checked.

6 A Scottish Criminal Record Office
7 worksheet recording the checking of
8 elimination prints shows the batch of
9 marks Y7 to V9 compared against PC Gary
10 Gray on 20th and 21st February 1997. One
11 of the examiners would appear to be
12 Mr Geddes. The second set of initials is
13 unknown. The Inquiry understands that as
14 marks are identified or eliminated they
15 are removed from the batch and subsequent
16 comparisons are confined only to the
17 remainder. It cannot be determined from
18 this list whether Y7 was checked against
19 Gary Gray or only the other marks that
20 remained in the batch as at that date.
21 Mr Geddes has no recollection of him.

22 Operational Alba (that's Detective
23 Chief Constable Mackay and his team)
24 investigated this matter. Elimination
25 prints, including those of Mr Gray, were

1 sent to the National Training Centre,
2 Durham, to be checked against Y7. The
3 Mackay report concludes that Y7 is not
4 the mark of Detective Constable Gray.
5 The Inquiry has not found a report from
6 the NTC, Durham, relating to the
7 comparison of Gray's print but further
8 inquiries are being made.

9 Turning to Thursday 9th January, a
10 post-mortem examination was instructed.

11 The post-mortem examination was carried
12 out by Professor Vanezis and Dr Cassidy
13 on 9th January 1997. The cause of death
14 was certified as multiple stab wounds to
15 the head and neck. Detective Chief
16 Inspector Heath learned of the results of
17 the post-mortem examination at about
18 2.00 pm on 9th January. It was clearly a
19 murder Inquiry.

20 Strathclyde Police initiated a Major
21 Enquiry. The Senior Investigating
22 Officer was DCI Heath. His deputy was
23 Detective Inspector Alexander McAllister.
24 Inspector James Thomson was appointed
25 office manager. Mr Heath requested that

1 the HOLMES computer system be installed.
2 Officers were drafted in from other parts
3 of Strathclyde Police, including the
4 Centralised Serious Crime Squad.

5 Mr McAllister was also assigned the
6 liaison role linking to the forensic
7 science lab, Identification Bureau and
8 SCRO fingerprints section. In this
9 capacity he spoke throughout the ensuing
10 investigation to Mr Hogg at the
11 identification bureau and his principal
12 contact at SCRO was the team leader,
13 Mr Macpherson. He says that he would
14 have communicated regularly with
15 Mr Macpherson, exchanging information and
16 giving updates on investigative
17 priorities.

18 A briefing was held at 16.10 during
19 which the video of the **locus** was shown.
20 DC James Kerr and PC McIntyre were
21 appointed to control the **locus** and assist
22 Identification Bureau and forensic staff.
23 DC Kirkland and PC Stevens were the
24 production officers. The instruction was
25 that with the exception of those officers

1 and the Scenes of Crime
2 Officers/Identification Bureau staff,
3 police officers were not to enter the
4 house.

5 Mr Heath says that there was no need
6 for other officers to enter the house
7 because a video was available. In due
8 course he authorised Michael Orr to visit
9 the **locus** and he later learned that
10 Mr McAllister had allowed other officers
11 to visit. However, he subsequently
12 became aware that the logging at the
13 **locus** was not carried out properly and
14 that had to be investigated by Detective
15 Superintendent Malcolm.

16 As for the Scenes of Crime examination,
17 there are some incidental factual issues
18 regarding the proficiency of the Scenes
19 of Crime examination of the house.

20 Chief Inspector Hogg was head of the
21 Identification Bureau. He was informed
22 of the death of 9th January 1997. He was
23 told at the outset that it could be a
24 murder or possibly a suicide. He says
25 that the scene was treated in the same

1 manner as if a murder had been confirmed
2 from the outset. He arrived at the scene
3 at about 10.00 am with Mr Thurley, having
4 also instructed Mr Ferguson to attend.
5 He attended in order to assess the scene
6 and ascertain what resources were
7 required. He believes that a forensic
8 examination had been completed overnight.
9 He entered the house and ascertained that
10 a full examination would take some time.
11 When he left there was an agreed
12 strategy.

13 Mr McAllister says that he was present
14 with Mr Hogg that morning, the purpose
15 being to agree the strategy for the
16 examination of the **locus**. He says that
17 there were three stages to the
18 examination of the **locus**: (a)
19 photography/videoing of the **locus**; (b)
20 forensic examination for blood and other
21 biological material; and (c) examination
22 to develop latent fingerprints. He
23 believes that the forensic examination
24 may have started on 8th January 1997.
25 The scene of crime examination began on

1 the morning of 9th January. Initially
2 Scene of Crime Officers (Thurley,
3 Ferguson, Wilson and Hunter) attended,
4 but Wilson and Hunter were sent away from
5 the scene. Mr Hogg instructed that
6 Thurley and Ferguson do the hall first.
7 Mr Thurley was the team leader. Thurley
8 and Ferguson examined various parts of
9 the **locus**, including the doorframe of the
10 bathroom, with an aluminium powder. At
11 about 4.00 pm Mr Thurley received a call
12 from the forensic laboratory and removed
13 certain items including the bathroom door
14 itself.

15 Chief Inspector Hogg says that he
16 instructed Thurley to stop what he was
17 doing because forensic scientists wanted
18 to access the house. His recollection is
19 that the forensic scientists were
20 interested in the possibility of
21 obtaining footwear impressions and he was
22 given word that they would rather look at
23 the house again themselves. Hogg says
24 that he did not instruct Thurley to
25 remove the bathroom door.

1 David Ferguson is one of the Scene of
2 Crime Officers who first attended the
3 **locus** on 9th January 1997. In
4 January 2000 he e-mailed Mr McKie with
5 criticisms of the conduct of the forensic
6 examination, including the suggestion
7 that forensic examination had been
8 delayed pending the post-mortem because
9 of the suggestion that Miss Ross may
10 have committed suicide.

11 In his statement to the Inquiry,
12 Mr Ferguson confirms that the instruction
13 he received at the scene was to treat the
14 incident as murder. He says that with
15 suicides Scene of Crime Officers would
16 not normally carry out an examination,
17 and in particular there would not
18 normally be an examination for
19 fingerprints. In this case, of the four
20 Scene of Crime Officers present, two were
21 sent away as not being required on
22 9th January, leaving him and Thurley to
23 carry out a limited examination. He
24 began an examination for prints around
25 the porch area and Thurley carried out an

1 examination for prints around the
2 bathroom area including the doorframe.
3 Though fingerprints were found that day
4 they were not recorded on Marks Worksheet
5 31 until 10th January. He says that at
6 about 4.00, pm after the death was
7 confirmed as a murder, he and Thurley
8 were instructed to stop what they were
9 doing and seize the bannister, a section
10 of carpet and the bathroom door. He
11 believes the reason for this was that
12 forensics had not carried out any
13 examination.

14 The forensic protocol requires the
15 forensic examination to take place before
16 a fingerprint examination and it seemed
17 to him that "things were working
18 backwards". The correct procedures were
19 not being followed.

20 He said this would not have affected
21 the fingerprinting but may have had a
22 consequence for the forensic examination.

23 He expresses himself surprised that
24 Thurley had decided to use aluminium
25 powder for the fingerprinting. He says

1 that he did not express concern at the
2 time because he was a junior examiner.
3 In his e-mail he wrote that he had
4 disagreed with the use of aluminium
5 powder at the time and that had black
6 powder been used from the outset "the
7 whole sorry affair" would never have
8 happened.

9 Turning to Mr Thurley's evidence, he
10 attended the house on 9th January and it
11 was decided he would remain at the house
12 with Mr Ferguson. Initially the death
13 was being treated as suspicious but the
14 scene would have been protected in the
15 same way as a murder. He found out later
16 that day it was a confirmed murder. At
17 about 4.00 pm he was contacted by the lab
18 and asked to stop his examination and to
19 take possession of the bannister. He
20 also seized the bathroom door and a
21 section of carpet nearby. It was not
22 until 6th March 1997 that he removed the
23 doorframe to preserve Y7. He did not
24 begin his fingerprinting until the
25 forensic scientists told him that they

1 had completed their examination. The
2 Inquiry has his contemporaneous
3 manuscript narrative of the progress of
4 the scenes of crime examination of the
5 house, which records that Y7 was not
6 found until 14th January when Mr Thurley
7 was not in attendance. He refers to Home
8 Office guidance related in the sequence
9 of powders to be used in fingerprinting
10 and defends the decision to begin with
11 aluminium powder as the powder most
12 commonly used first and in any event
13 yielding fingerprints in this case.

14 He was not present on 14th January when
15 black powder was used, but says that it
16 was not uncommon to re-examine surfaces
17 with black powder. He says that the
18 doorframe would have been covered in
19 aluminium powder. He saw Y7 at some
20 stage and says that it would have been
21 difficult to tell if the aluminium powder
22 had been disturbed.

23 Mr Moffat confirms that Mr Thurley told
24 Scene of Crime Officers that he wanted
25 them to use aluminium powder, though he

1 did use black powder on some surfaces.

2 Detective Constable James Kerr says
3 that he had some training on obtaining
4 fingerprint evidence but was not an
5 expert. He would have expected black
6 (not aluminium) powder to have been used.
7 He reports heated debate instigated by
8 Moffat about this.

9 Chief Inspector Hogg says there was no
10 formal protocol regulating the use of
11 aluminium powder, as opposed to black
12 powder. He presents it as essentially a
13 judgment for individual officers. He
14 thinks the decision to start with
15 aluminium powder was reasonable. He says
16 that he was aware of black powder
17 improving the quality of a mark partially
18 revealed by aluminium powder but before
19 the Marion Ross case he had not been
20 aware of a case in which a fingerprint
21 was detected using black powder where
22 aluminium had totally missed it. His
23 initial thought was that the print had
24 been left after the aluminium powder had
25 been applied but he refers to fingerprint

1 marks of the deceased also being found
2 which suggests that there were
3 fingerprint marks on the doorframe which
4 had not been fully revealed using
5 aluminium powder. Some experiments were
6 carried out at the Strathclyde Police
7 Forensic Laboratory to see whether Y7 had
8 been left after the aluminium powder had
9 been applied. They found that the
10 particles of the two powders simply
11 merged and did not sit one on top of the
12 other.

13 The significance of the detail
14 concerning the SOCOs examination of the
15 house for fingerprints lies in the fact
16 that the mark Y7 was found on the second
17 examination of the doorframe when black
18 powder was used on 14th January 1997 and
19 was not discovered during the first
20 examination with aluminium powder on
21 9th January 1997. That bare detail,
22 stripped of any other complication, might
23 suggest that the mark was deposited
24 between the two dates. Given that the
25 house was under police guard, again this

1 bare fact would point to Y7 being the
2 mark of someone involved in the
3 investigation. There are, however, a
4 number of significant complications
5 relating to this theory, not least being
6 that fingerprints of Miss Ross were also
7 discovered on 14th January. The Inquiry
8 will look at the manner in which the
9 crime scene examination was carried out
10 and some of the SOCOs will be called to
11 give evidence at the start of the public
12 hearing.

13 As for Ms McKie, she was then known as
14 Detective Constable Cardwell, had been
15 seconded to a new staff appraisal system
16 but was not required for that work over
17 the festive period. She was temporarily
18 assigned to the Ross Murder Inquiry and
19 paired up with Detective Sergeant
20 Shields. She remained part of the
21 Inquiry team until 14th January 1997.

22 Mr McAllister took the decision to
23 return Ms McKie to divisional duties and
24 the decision was taken for operational
25 and not personal reasons.

1 On 9th January an action was raised
2 instructing Detective Constable Cardwell
3 and Detective Sergeant William Shields to
4 go to the house with Mr Kinnaird in order
5 to check which door had been locked when
6 he went to the house and discovered the
7 body. The HOLMES record records that the
8 keys were uplifted at 17.40 but returned
9 at 17.50.

10 Mr McAllister confirms that he gave
11 this instruction and that it was
12 countermanded by Mr Heath.

13 Mr Heath says that Detective Sergeant
14 Shields asked if they could go into the
15 house or take Mr Kinnaird in. Detective
16 Chief Inspector Heath did not want
17 Mr Kinnaird to be taken back to the scene
18 because of the risk of contamination.
19 Detective Chief Inspector Heath said no
20 to the request.

21 There are what bear to be three
22 contemporaneous police statements for
23 Ms McKie: one on 17th January, one on
24 21st January and one on 14th February,
25 all 1997. Two of those statements

1 (17th January and 14th February) deal
2 with the visit to the house on
3 9th January. They record that Ms McKie
4 and Detective Sergeant Shields
5 interviewed Mr Kinnaird at his own home.
6 After the interview they attended at the
7 house at 19.45. In the statement of
8 17th January it is said that Ms McKie
9 entered the porch area "in order to
10 clearly establish the doors referred to
11 by the witness." She touched no surfaces
12 within the house.

13 In her statement of 14th February she
14 says that she stood on the metal plates,
15 with Detective Sergeant Shields standing
16 on one in front of her. Ms McKie,
17 however, says that she did not write the
18 statement of 17th January and that it is
19 in the handwriting of Detective Sergeant
20 Shields. She had not seen the document
21 before.

22 Ms McKie has provided a statement to
23 the Inquiry. She generally adopts a
24 previous statement 28th July 2000. She
25 accepts that it was made clear at

1 briefings that attendance at the locus
2 was by specific instruction only. She
3 cannot now remember much about the
4 cancelled instruction to check the doors
5 and keys with Mr Kinnaird. However, she
6 gives her recollection of attending the
7 house on 9th January with Detective
8 Sergeant Shields to gain a better
9 understanding of Mr Kinnaird's
10 explanation as to which doors he found
11 locked and which he found unlocked. They
12 only went as far as the porch and stood
13 on the metal foot plates.

14 The log records them as having entered
15 the porch only, and as leaving at
16 19.47 hours. PC Stirling, who was
17 keeping the log at the, time erroneously
18 made an entry for "Cadwell" rather than
19 "Cardwell".

20 The HOLMES record recovered in
21 Operation Alba does not disclose the
22 allocation or cancellation of the
23 particular action relating to
24 reconstruction of unlocking the doors
25 with Mr Kinnaird. It may be, however,

1 that the computerised HOLMES system was
2 not fully in operation at this point on
3 9th January. The Inquiry has one
4 document which seems to relate to this
5 action and it refers to a "manual system
6 action queue" on 10th January, which may
7 mean that the action was originally one
8 recorded on the manual system.

9 Mr Heath recalls (but cannot be sure)
10 that on another occasion over the next
11 few days Detective Sergeant Shields made
12 a request to visit the **locus** again. If
13 made, it would have been met with a
14 negative response. In his Crown
15 precognition, Detective Chief Inspector
16 Heath seems to indicate that this would
17 have occurred after the request to
18 Detective Constable Kerr (which seems to
19 have been on 11th January, the Saturday).
20 It is not clear why he thinks events took
21 place in that order. Detective Chief
22 Inspector Heath's account at precognition
23 was that he simply said "no". In his
24 statement to Operation Alba, DCI Heath
25 states that he cannot recall the full

1 terms of the conversation, but that he
2 told Detective Sergeant Shields that the
3 Identification Bureau Officers had not
4 completed their examination, and that
5 no-one should go in.

6 Ms McKie also recollects that at some
7 stage Detective Sergeant Shields asked
8 Mr Heath for permission to visit the
9 **locus** which was refused. She was not
10 present when the request was made.

11 Unless the mark Y7 had been transferred
12 by some means, the proposition that Y7 is
13 the fingerprint of Ms McKie necessarily
14 implies that she entered the house at
15 least as far as the bathroom. She has
16 always denied this and the possibility
17 that she could have gained access to the
18 bathroom has been the subject of close
19 scrutiny and a number of previous
20 investigations with negative results.
21 These investigations have covered her
22 possession of the keys to the house for
23 brief periods. Miss Ross' house was not
24 far from the police station, and could
25 have been reached by car within a very

1 short time. However, the relevance of
2 the keys is not obvious, on the basis
3 that the door was always unlocked but a
4 log keeper on duty.

5 Ms McKie was questioned about access to
6 the keys in her statement to Detective
7 Superintendent Malcolm dated 31st
8 March 1997. PC Allan Stevens was one of
9 the production officers. He is the
10 person Ms McKie asked to give her the
11 keys to the house on 9th January. Though
12 Mr Stevens may have some recollection
13 today of what Ms McKie said to him, that
14 is inconsistent with his previous
15 statements and in the result he cannot
16 remember what was said to him.

17 A statement is to be taken from
18 Detective Sergeant Shields.

19 Turning to 10th January, the Friday.
20 On Friday, 10th January, Mr Thurley and
21 Mr Ferguson continued to examine the
22 scene. They were joined by Moffat,
23 Wilson and Hunter. The examination of
24 the scene carried on during 11th, 12th
25 and 13th.

1 Also on Friday, 10th January, PC Lupton
2 and DC Glass took post-mortem
3 fingerprints from Marion Ross at Glasgow
4 City Mortuary. Lupton delivered a
5 laminated form at the Scottish Criminal
6 Records Office.

7 On 11th January Mr Heath has produced
8 event files showing the key
9 developments down to 11th January.

10 The events of this day have been the
11 subject of close scrutiny on a number of
12 occasions because the log may be
13 incomplete and there had been a
14 persisting rumour that PC Mark Lees may
15 have permitted Ms McKie access to the
16 house.

17 Inspector Thomson provided a statement
18 for Operation Alba in which he states on
19 11th January at about 5.00 pm he issued
20 an instruction to Detective Sergeant
21 Shields (who was working with Ms McKie)
22 to uplift the log so that it could be
23 photocopied and the entries include on
24 HOLMES and then return the log.

25 Ms McKie deals with this in her

1 statement of 14th February 1997. On her
2 own account she went to the house at
3 17.45 with DS Shields. Shields remained
4 in the car. She got the log from PC Mark
5 Lees who was within the porch. She was
6 in the house only a matter of seconds and
7 only entered the porch. She took the log
8 back to the police station, photocopied
9 it and returned to the house with DS
10 Shields. She gave the log back to PC
11 Lees and again was only in the porch and
12 that for a matter of seconds.

13 PC Lees carried out log keeping duties
14 on 10th, 11th and 18th January. On
15 11th January he is noted in the log as
16 having been on duty from 13.55 to 23.00.

17 Ms McKie and PC Lees are in agreement
18 that Ms McKie did uplift and return the
19 log that day but her attendance at the
20 **locus** is not recorded in the log book.
21 That is not the only suggested error in
22 the log for that day. The log records DC
23 James Kerr as having left at 13.15 and
24 there is no record of him returning that
25 day. However, he says that he worked

1 there that afternoon. On reflection he
2 thinks that he may have used the rear
3 French doors for easier access to the
4 equipment room.

5 In addition to providing a statement to
6 the Inquiry, PC Lees has provided the
7 following statements: on
8 14th February 1997, 11th March 1997, and
9 a statement to Operation Alba on 31st
10 July 2000. In his Inquiry statement PC
11 Lees says that he is aware of the rumours
12 concerning him and they are untrue. He
13 did not let Ms McKie into the house.
14 Ms McKie did collect and return the log
15 on 11th January. On neither occasion did
16 she enter the porch. His interpretation
17 of entry "into the **locus**" is passing
18 beyond the threshold at the outer door at
19 the front of the porch. When she arrived
20 to collect the log, he asked her if she
21 was coming into the porch but she said
22 words to the effect that could not
23 because of the risk of
24 cross-contamination. He did not log this
25 attendance because she had not crossed

1 the threshold in to the porch and the
2 same applies to her attendance when
3 returning the log.

4 He cannot remember the time of this
5 event and is not aided by prior
6 statements. Asked about DC Kerr, PC Lees
7 notes that there is no entry in the log
8 recording his presence at the **locus** when
9 Lees was on duty and he says that he did
10 not see Kerr while he (Lees) was at the
11 **locus**.

12 DC Kerr has similarly provided a number
13 of prior statements: an account of his
14 evidence during HMM against McKie is
15 given in Mr Carle's summary of that
16 trial. Other than some variation as to
17 whether the events in question occurred
18 on 10th or 11th January, the content of
19 his evidence in his Inquiry statement is
20 consistent with these prior statements.

21 DC Kerr's statement to the Inquiry says
22 that on the morning of 11th January
23 Ms McKie asked him if she could look
24 around the house. He says that he told
25 her Mr Heath's instruction that no-one

1 was to go into the house and suggested
2 she speak to DCI Heath if she felt
3 strongly about the matter. In his prior
4 statements, there has been some
5 uncertainty whether this occurred on 10th
6 or 11th January. In his Inquiry
7 statement he expresses himself certain
8 that the conversation took place on 11th
9 January.

10 He saw her later that afternoon at the
11 house, standing in the porch (ie, the
12 entry vestibule) with the log keeper but
13 he did not see her enter the house. He
14 says that the radio was on but the
15 football had not yet begun. He is not
16 now clear about the time. He believes he
17 left around 6.00 pm. He believes that he
18 saw her between 2.30 and 3.00. He thinks
19 that it was closer to 3.00 but it would
20 have been nearer 5.30. He later learned
21 that she had been delegated the task of
22 copying the log. DC Kerr says that he
23 and PC McIntyre had agreed to take
24 alternate weekend days off and that he
25 (Kerr) was on duty on Saturday and

1 McIntyre on Sunday. Kerr says that he
2 went to the high street to get shoe boxes
3 which he used to store door handles taken
4 from the **locus**.

5 PC McIntyre says that he was at the
6 locus on 11th January and says that he is
7 100 per cent sure that shoe boxes were
8 not used to store productions. He did
9 not see Ms McKie at the house at any time
10 from 9th to 14th January 1997.

11 Ms McKie's evidence is that she has no
12 recollection of asking DC Kerr for
13 permission to enter the house. It was
14 not his decision to take. She attended
15 the house on 11th January at 5.45 pm to
16 collect the log and returned it. The log
17 keeper was Mark Lees. Detective Sergeant
18 Shields remained in the car. Ms McKie
19 stepped in to the porch on both occasions
20 but did not go further than the porch.

21 Turning to 12th January, that is the
22 Sunday, on Sunday 12th January Ms McKie
23 again uplifted the keys from the
24 production officer but returned them
25 shortly afterwards. Her explanation for

1 this is, again, that her instructions
2 were cancelled. The Inquiry has the
3 HOLMES printout confirming movements of
4 the keys and records that the keys were
5 taken out 10.45 am and returned at 11.00
6 am.

7 The Inquiry also has the HOLMES record
8 for this action. It appears to have been
9 allocated to DC Swann at 6.31 pm on 11th.
10 It is not clear why Ms McKie ended up
11 uplifting the keys. Was she working with
12 DC Swann at the time? HOLMES records the
13 action as having been changed to "for
14 referral" on instructions of the Senior
15 Investigating Officer that is DCI Heath
16 at 11.02 on 12th January, which is
17 consistent with the timing of the return
18 of the keys.

19 PC Stevens confirms that the keys were
20 given to Ms McKie and returned by her
21 shortly afterwards, consistent with her
22 instruction having been cancelled.

23 Ms McKie now has no recollection of
24 this episode.

25 On 13th January, Mr Heath attended a

1 meeting with IB, SCRO and lab staff.
2 Mr Macpherson has manuscript notes that
3 may relate to this meeting.

4 Mr McAllister is able to specify who
5 attended this meeting under reference to
6 CO1403. It was a liaison meeting to
7 check progress.

8 Dealing specifically with Ms McKie's
9 rumoured access to the **locus**, Les Brown
10 e-mailed the Inquiry team with an
11 accusation directed against PC Lees. He
12 has provided a statement and named a
13 number of sources of information supplied
14 to him. The Inquiry team has pursued
15 some of these lines of inquiry and where
16 the individuals in question have been
17 interviewed by the Inquiry team they will
18 be named in this analysis. There are
19 other individuals named by Mr Brown whose
20 information appears to the Inquiry team
21 not to merit further investigation and
22 they have, accordingly, not been
23 interviewed. In fairness to these
24 individuals, because they have not had an
25 opportunity to comment, this analysis

1 omits reference to them by name.

2 This is a summary of what Mr Brown has
3 said to the Inquiry.

4 He is a retired Detective Chief
5 Inspector with Strathclyde Police. He
6 says in March 2006 he was contacted by a
7 reporter (who he names but from whom the
8 Inquiry has not taken a statement) And
9 asked if he would be prepared to help
10 some people from SCRO. He met Fiona
11 McBride and Mr Geddes.

12 He says he agreed to help on the basis
13 that he would investigate the murder of
14 Miss Ross. He has received information
15 anonymously from police officers. At the
16 first meeting he says that the reporter
17 told him that it was well known in the
18 media that Ms McKie had had a romantic
19 liaison at the house. He has spoken to
20 Mr Swann about his involvement. He has
21 also unsuccessfully sought to speak to
22 Mr Herbert Kerrigan, QC (who at one point
23 was instructed on behalf of Ms McKie in
24 relation to the perjury case). He spoke
25 to Mr Kinnaird and learned that there was

1 a 15-hour delay before the police
2 declared a murder inquiry. He is
3 surprised by this. He has unsuccessfully
4 tried to speak to Mr Heath.

5 He has interviewed Detective Sergeant
6 Shields and accepts that there was no
7 romantic link with him.

8 He says that he understands that three
9 weeks after Ms McKie and Shields were
10 split up as a team, DI McAllister phoned
11 SCRO and asked that Ms McKie's prints be
12 compared against all outstanding
13 fingerprints. He also says that another
14 named individual (from whom the Inquiry
15 has not taken a statement) has told him
16 that DI McAllister knew that Ms McKie had
17 been in the house. He has unsuccessfully
18 applied to speak to Mr McAllister. He
19 has made inquiries specific to PC Lees.
20 He has unsuccessfully tried to interview
21 PC Lees. He says that a SOCO officer,
22 Kerr, has told him that he heard Lees and
23 McKie having a heated discussion in the
24 porch during the course of which Ms McKie
25 used the word "contamination". The SOCO

1 was dismantling door handles and the date
2 was around 13th January 1997. He also
3 spoke to PC Kerr Reid who told him of a
4 conversation with a Kilmarnock police
5 officer who said that he had let Ms McKie
6 into the house because he fancied her and
7 who told Reid:

8 "That bitch will get us done. It was
9 me that let her into the house."

10 Despite checking, Brown has been unable
11 to ascertain who was on duty with Reid.
12 He has been told that during the perjury
13 trial Lees and McKie were seeing arguing
14 ferociously in the car park and he says
15 that this may have been about the
16 contradiction in their evidence regarding
17 the presence of Ms McKie in the porch.
18 He was told by SCRO fingerprint officers
19 about a conversation between Colette
20 McKay and PC Morgan. He interviewed
21 Morgan who told him that he had been
22 trying to impress McKay and was making
23 out that he knew more than he did. The
24 person he had in mind was Lees but that
25 was based on rumour. He has spoken to

1 Mr Carle about his conversation with PC
2 Lees. After he was unsuccessful in his
3 attempt to interview PC Lees, he
4 complained to the Assistant Chief
5 Constable of Strathclyde Police and this
6 led to an investigation by Nicolson and
7 Mitchell. He says that he was told
8 anonymously that a person named by him
9 (again from whom the Inquiry has not
10 taken a statement) had been saying that a
11 Kilmarnock police officer had all the
12 answers. He makes an allegation that Ms
13 McKie committed perjury at the perjury
14 trial. (It must be stressed that this is
15 an allegation made by Mr Brown and that
16 Counsel to the Inquiry has reached no
17 conclusion in relation to that.)

18 Ms McKie says that the rumours that PC Lees allowed
19 her access to the house beyond the porch are untrue.
20 She also says that she had no contact with PC Lees
21 during her trial. She has provided a written statement
22 appended to her Inquiry statement responding to the
23 allegation that she gave perjured evidence at the
24 perjury trial regarding knowledge of other experts
25 having advised in relation to Y7.

1 Kerr Reid has provided a statement. He has
2 confirmed that while on duty at the High Court in
3 Paisley he was party to a conversation with a second
4 (unnamed) officer from U Division who said that "his
5 neighbour" (a third officer also unnamed) had let
6 Ms McKie into the house and the officer may also have
7 said that the neighbour had a wee thing for Ms McKie.
8 He denies that the officer made the specific statement
9 recounted by Brown. Colette McKay says that in 2004 or
10 2005 a probationary officer, Officer Morgan, told her
11 that she worked with a guy in Stewarton who had let
12 Ms McKie into the house and who now feels bad for what
13 happened to the four experts. She told McKenna or
14 Macpherson about this conversation.

15 PC Alistair Morgan has provided a statement. He did
16 attend SCRO as a probationer officer and did speak to a
17 female member of staff. However, he says that he did
18 not discuss the McKie case. He also says that he has no
19 knowledge of any officer allowing Ms McKie entry to the
20 house.

21 Statements have also been taken from Detective Chief
22 Superintendent Nicolson and Detective Superintendent
23 Mitchell. They confirm that they did investigate
24 Mr Brown's allegations in February/March 2007. They
25 spoke to Kerr Reid at the time. He confirmed that he

1 had had a conversation with a young police officer in
2 Paisley High Court, the conversation being of a general
3 nature. Mr Mitchell tried to identify the young officer
4 through police records but the relevant records had been
5 destroyed by the time of his Inquiry. Mr Mitchell also
6 interviewed Colette McKay of SCRO who reported that PC
7 Morgan had told her that she worked with someone at
8 Stewarton who had allegedly allowed Ms McKie into the
9 house. Mr Mitchell interviewed Mr Morgan but he denied
10 the conversation.

11 Mr Mitchell refers to PC Lees having been
12 interviewed in the past but nothing that Mr Mitchell
13 discovered in his inquiry would have allowed him to go
14 back and question him. He also mentioned that PC Morgan
15 was interviewed by the complaints and disciplinary team
16 on 8th December 2006.

17 A statement has also been taken from Chief Inspector
18 Carle. He became an inspector in November 1998 based at
19 Kilmarnock. He acted as a police observer both at the
20 Asbury and McKie trials. Before the McKie trial PC Lees
21 approached him for advice. PC Lees told him the trial
22 was approaching and that there was gossip that he had
23 let Ms McKie into the house. PC Lees said that he had
24 not let her into the house and there was no hint of
25 uncertainty. Mr Carle reminded him that he would be

1 giving evidence under oath and that he had to be
2 truthful and forthright. Mr Carle's notes of the trial
3 are available to the Inquiry. At paragraph 33.12 he
4 notes that PC Lees appeared uncomfortable while giving
5 evidence-in-chief.

6 The issues that emerged from that analysis of
7 chapter 2 are whether Mr Moffat gave accounts to DI
8 McAllister that he thought that Y7 was the mark of Gary
9 Gray; whether J7 is the mark of Gary Gray; whether the
10 fingerprint investigation was in any way impeded by the
11 fact that designation as a murder inquiry only took
12 place after the post-mortem examination; whether any
13 significance can properly be attached to the fact that
14 Y7 was disclosed by black powder but not by aluminium
15 powder; and whether there was any substance to the
16 rumours concerning the alleged access of Ms McKie to 43
17 Irvine Road, Kilmarnock, beyond the porch.

18 I have then given a list of witnesses who will be
19 called in that regard. I will not take up time reading
20 out that.

21 THE CHAIRMAN: We will stop now until 1.50.

22 **(1.00 pm)**

23 **(Luncheon Adjournment)**

24

25