

Friday, June 12th 2009

1

2 (10.15 am)

3

ROBERT MACNEIL (continued)

4

Examination by Miss Carmichael (continued)

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Q. Mr MacNeil was in the course of giving his evidence when we closed yesterday.

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Mr MacNeil, I am showing you a document DB0251 at

8

page 33. Can you tell us, please, what the document is?

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A. Yes, certainly. The document is known within the

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department as a 13B form. It generally comes in with

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any item to our examination room that requires to be

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examined for marks, finger-marks.

13

That form is in triplicate form: so you have the main

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sheet, you then have, what you see there is an underside

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sheet, and that should then follow the fingerprints, if

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any, that have been recovered from an item after

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treatment and submitted then to the Scottish Criminal

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Record Office.

19

Q. So the top sheet perhaps comes to you with the --

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A. Sorry, the whole triplicate form comes to us.

21

Q. And then you fill in, what, the top part?

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A. We fill in the top part which would go through to the

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other two sheets, but on the front sheet there's a

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backing to that sheet which we would write on the back

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of it any marks that we found. That won't be then

1 reflected on the other two sheets.

2 Q. You keep the top sheet then?

3 A. No, we would keep, at that point, we would keep the last
4 sheet.

5 Q. The third sheet?

6 A. The third sheet and two sheets, I think, then were
7 submitted to the Criminal Records Office who would then
8 operate from that sheet and then I think they would
9 return the front sheet back to my department.

10 Q. So we're looking at the middle of the three sheets here?

11 A. We are, yes.

12 Q. And this is one of the sheets then that goes on to the
13 Scottish Criminal Record Office?

14 A. It is, yes.

15 Q. I think you started to tell us that you had filled in
16 part of this form that we are looking at here.

17 A. That's correct.

18 Q. Can you tell us which part is in your writing?

19 A. Yes, I filled in the part after where we have the bars
20 assault and robbery, motor vehicle then we move down to
21 time received, examination date, from thereon in I have
22 filled in the rest of the details.

23 Q. So where we see impressions photographed and where found
24 that's in your writing, "QB2 - QL2"?

25 A. That's all my writing and just above it the two or three

1 lines above that as well.

2 Q. What do we see written just to the right of QB2 - QL2?

3 A. We see "see MI sheet".

4 Q. And that would be a reference to --

5 A. That's a reference to major incident sheet. Because
6 these 13B forms there's only limited information you can
7 put on the back of it, we tend to fill in a major
8 incident sheet to explain all the impressions that we
9 found on that item and that would be attached to the 13B
10 form when it was submitted through to the Scottish
11 Criminal Record Office.

12 Q. Underneath the lines we have just been looking at can
13 you tell us what is written there?

14 A. We have on 27th January 1997 --

15 Q. Just "QB2 - QL2 see MI sheet" and then we have like an
16 asterisk, please tell us --

17 A. We do have. I have written, "ident required for
18 deceased."

19 Q. Why did you write that, Mr MacNeil?

20 A. I wrote that because at the time I was made aware that
21 the item that we examined, which was a tin, had come
22 from a suspect's house, namely a David Asbury, who I've
23 also mentioned on that form which there's a place for
24 suspects. So it was to highlight to the Scottish
25 Criminal Records Office that -- sorry, I was aware that

1 the tin had come from David Asbury's house but I was
2 also aware that there was a possibility that this tin
3 had been taken from the deceased's house, Marion Ross.

4 So, therefore, so that there was no -- knowing how the
5 whole thing works, I would want to make the Scottish
6 Criminal Records Office aware to do a comparison for
7 David Asbury which we have the prints for and a
8 comparison for the deceased, who was Marion Ross.

9 Q. You referred there to knowing how the whole thing works.
10 What do you mean by that?

11 A. Well, because these forms are -- they are designed
12 simply for suspects and accused, they are not designed
13 to be matched up for deceased's prints and things like
14 that so you've got to put in just whatever you feel for
15 comparison to be made.

16 I have mentioned "ident required". Mainly in those
17 days, and probably even still now, we refer to
18 comparisons as "idents" more than as, as they are,
19 comparisons. We just work on the word "ident" all the
20 time. So I was wanting SCRO to be aware to check
21 against Marion Ross and that's all it was.

22 Q. Because it might be suggested to you that you could have
23 simply said if you wanted to convey that, "Please
24 compare with deceased"?

25 A. Yes and probably in hindsight maybe that is a better way

1 to phrase things but in those days that's how we phrased
2 things. We always -- we discussed within the department
3 or my department or SCRO on idents rather than
4 comparisons. So when we got a comparison compared
5 against someone we wouldn't regard it as a comparison,
6 we would regard it as an ident.

7 Q. I appreciate that I may be asking you something that is
8 outwith your own personal expertise but are you aware
9 that there is a difference potentially between the
10 process for eliminating someone when you compare
11 fingerprints and for making a positive identification to
12 a court standard at the time?

13 A. I am, but within my department and how we operated,
14 going back then, we used to -- as far as how many idents
15 you got for, you know, a particular section when they
16 were coming through into the department.

17 A deceased's comparison was regarded as another ident
18 as far as the statistics goes. So therefore that's -- I
19 mean, there's nothing untowards about what I've said on
20 that form.

21 Q. If I can just explore a little more with you what you
22 have just said, what statistics are you referring to?

23 A. It was just sort of informal statistics that would come
24 from SCRO regarding all the comparisons for the crimes
25 for a particular month or a particular year, nothing to

1 do with any particular crime but just about the
2 performance of the department at the time and the
3 performance of individuals within the department at that
4 time.

5 Q. Sorry, how was performance measured in these statistics?

6 A. It wasn't really measured to a great degree, it was just
7 measured as to individuals and how many idents,
8 comparisons, call it what you like, that one achieved.

9 Q. I wonder if we can, just in the context of the
10 statistics that you are mentioning, call it what you
11 like, because one might say just, for example, that an
12 examiner had carried out 100 comparisons but in those
13 100 comparisons that examiner might -- I'm plucking
14 figures out of the air here -- might have made a court
15 standard identification in 3 and might have made 10
16 eliminations. Would you accept that?

17 A. Yes, but when I'm not talking about examiners I'm
18 talking about scene examiners, not fingerprint
19 examiners. I'm talking about my department.

20 Q. I am sorry, I must have misunderstood you then.

21 So in terms of measurement for people in your own
22 department --

23 A. Yes.

24 Q. -- how was that done by reference to anything coming
25 back from SCRO?

1 A. Well, it was done by the amount of items that we looked
2 at within any department or how many scenes that were
3 attended and at that point we had a league-type table,
4 nothing too heavy, nothing too pressurised on any
5 individual, but there was a sort of league table in
6 which how many comparisons or idents came back from the
7 Scottish Criminal Records Office depending where
8 individuals were within that league table as such --
9 pretty informal.

10 Q. I would just like to try to understand this a little
11 better, please, Mr MacNeil.

12 If we took an example where you have discovered let's
13 just take this example: you have discovered some marks,
14 let us say, on a tin.

15 A. Yes.

16 Q. Now, if those marks go to SCRO and they say those marks
17 are fragmentary and insufficient for comparison, how
18 does that come back as a statistic for you?

19 A. It would be recorded -- it was only idents and
20 comparisons were recorded.

21 Q. Let us take that stage by stage, please. Supposing
22 those marks go off to SCRO and they say, "We compared
23 the marks on just", for example, "the tin with 100 sets
24 of elimination prints that we had in the murder
25 investigation but we weren't able to identify anyone

1 from that".

2 How does that come back as a statistic from your point
3 of view?

4 A. That would still be a negative.

5 Q. So that wouldn't come back as a number at all?

6 A. No, it would only be ones where fingerprints were
7 identified to individuals, be it suspects or
8 eliminations. Quite often if we had, say, an
9 unidentified body where a comparison was required to
10 identify the victim of that unidentified body, then that
11 would -- excuse me, it's an elimination but it would
12 come back as another ident into my department. So
13 that's where this ident word -- it's not as in we're
14 looking at idents; it's just a word that we always use.

15 Q. So if I understand this rightly, if the marks go to SCRO
16 and they manage to eliminate somebody on the basis of
17 the mark you have sent them or they manage to make a
18 court standard identification, either of those would
19 come back as a positive statistic for you?

20 A. Generally, yes.

21 Q. I wonder if I could explore this a little bit further
22 with you, Mr MacNeil, because sitting where I am sitting
23 it is not immediately obvious, given your job is simply
24 to find the marks and get them photographed, how it
25 reflects on you as a statistic why SCRO should or should

1 not be able to find someone who matches it?

2 A. I understand that and that whole system has now stopped
3 within my department. But, going back then, it was like
4 an informal performance indicator on an individual's
5 performance and our team's performance within the
6 examination room, which is where I worked at that
7 particular point, it was looked on as far as the
8 examination room, not for me particularly but more on
9 the team that I worked with.

10 Q. But it is hardly your fault or that of any of your
11 colleagues, surely, if for whatever reason the SCRO
12 fingerprint officers can't find someone who matches?

13 A. I would agree entirely. It was probably a poor
14 performance measure and hence the reason it's been
15 dropped now. But through that whole period, that's why
16 I mentioned the word "ident" is that we looked at all
17 these things as idents, although "comparison" is
18 something I would take on board now and use.

19 Q. So does this form, the way you filled it in, reflect
20 some pressure on you to have identifications achieved at
21 SCRO to reflect any statistics that apply to you?

22 A. Not at all, no. There wasn't any pressure anyway, but
23 why I filled that in the way I did, as I explained
24 earlier, "ident" -- "comparison" would probably be a
25 better term that I would use now but probably in that

1 year I would still have used that word "ident". There
2 was no pressure. There's no place on that for me to put
3 Marion Ross on it, Complainer the Crown ... so,
4 therefore, I am aware SCRO would have other
5 documentation regarding this particular case because
6 that's probably not the first impression that's been
7 sent through to them so hence the reason I'm saying an
8 ident required for -- I can understand your concerns but
9 I would like to alleviate it by saying that is just a
10 term I used and there was no other hidden agenda behind
11 it.

12 Q. Just staying on the subject of your departmental
13 statistics for a little longer, Mr MacNeil, what effect
14 did it have for you if your statistics were better or
15 worse in a particular period?

16 A. For me personally it had no real effect. For certain
17 individuals within my department it was an ego boost
18 that they were maybe top of the table. But for me
19 personally, no effect whatsoever.

20 THE CHAIRMAN: Was it thought to reflect on the quality of
21 the prints that you were sending --

22 A. Sorry sir?

23 THE CHAIRMAN: Was it thought to reflect on the quality of
24 the prints that you were sending to the Scottish
25 Criminal Records Office? In other words, if they were

1 able to make an identification or if they were able to
2 eliminate a print, then that would show that it was a
3 good quality print that you had sent to them?
4 A. Not so much on the quality, it was more so probably on
5 the success of the department. If we had -- I mean,
6 every department's got to justify their existence. Our
7 department was no exception in the fact that they had to
8 show that there was certain successes from the amount of
9 items that were submitted. In my team at that
10 particular point we could show 30 per cent, 40 per cent,
11 whatever, success as far as results from
12 identifications. It's just about justifying people's
13 existence.

14 MISS CARMICHAEL: I have perhaps two questions for you
15 following on from that. Again, it may be an ignorant
16 view -- and please put me right if it is -- but one
17 might have thought that success for somebody such as
18 yourself is producing a good quality image of a mark
19 that you have detected.

20 A. Yes, but personal success would be to know that that
21 good quality mark has been through into the system, has
22 been resulted, it's been into court and beyond
23 reasonable doubt somebody's been found guilty on that
24 mark. So personally you would get some personal
25 achievement from that.

1 Q. One can perhaps understand how that might be rewarding
2 for you, but simply in terms of the job that you do and
3 your place in the chain, would you agree that success
4 for you really is about producing a good quality mark so
5 that it's passed on to those who can look at it and deal
6 with it --

7 A. Yes, but I would still say that it wasn't just -- I
8 mean, yes, I worked on a sort of production line, right.
9 Images -- items came in and we were unaware on most
10 occasions which crime scene they came from. So it was
11 basically a production line. We worked on marks. But
12 if we had an awareness and certainly with major
13 incidents we would have more of awareness, if items came
14 in then you would take a wee bit more personal interest
15 into the case and if results came back from SCRO, yes,
16 we would all feel quite good about it.

17 Q. And that's, I suppose, a feeling of personal
18 satisfaction in being involved in -- well, solving a
19 horrible crime?

20 A. Very much so.

21 Q. Still on the question of the statistics, Mr MacNeil, how
22 were the statistics viewed from the management point of
23 view, leaving aside how perhaps they made you and your
24 colleagues feel in terms of your personal achievement?

25 A. Well, at that point I wasn't a manager and probably

1 you'd need to ask the managers of that period but they
2 weren't taken too seriously but they had to justify the
3 department's existence. You couldn't just have things
4 coming and going and not be able to say to more senior
5 management within Strathclyde Police at that particular
6 time that, "Yes, we've got success". Everybody wants to
7 be able to measure some sort of success, no matter what
8 line of industry we're working in and my department was
9 no different.

10 Q. I appreciate that you are not a manager and I don't want
11 to ask you about something that you cannot tell us
12 about, Mr MacNeil, but generally when management take a
13 view of a particular statistic the people who are doing
14 the work on the ground tend to find out about it because
15 there will be some consequence of some sort; would you
16 agree?

17 A. I understand and then, to go back to your question,
18 there was no great consequence. I think it was probably
19 used more to justify it to further senior management on
20 the success of the items being submitted or the scenes
21 attended and how the department were doing.

22 As far as the individual staff goes, there was no --
23 my recollection at that point was there was no great
24 pressure on any member of staff to boost any issue of
25 performance. There was a slight encouragement to say to

1 staff to go out there and to try and get as much
2 evidence as you possibly can to submit to the SCRO.

3 Q. You say no great consequence. Was there any
4 consequence?

5 A. I can't recall, to be honest. The problem -- the more
6 consequence would be through other peers by maybe one
7 saying to another, "I'm the top of the table", or that
8 type of thing. So that would be more consequence rather
9 than coming from the senior management.

10 Q. I appreciate we have departed a little bit from the form
11 itself, Mr MacNeil, but I wonder if I could just take
12 you back to that.

13 You explained to us why you used the word "ident"
14 there and I wonder -- I appreciate we have perhaps taken
15 this apart word by word in a way that you may not have
16 expected when you wrote the form, but if I can just look
17 at the word "required" there, Mr MacNeil, even allowing
18 for the use of ident that you have told us about you
19 might say, I suppose, "ident please against deceased".
20 It looks like a very positive instruction.

21 A. It does and it was a positive instruction how I took it
22 at the time. It was a positive instruction to the
23 Scottish Criminal Records Office so that there would be
24 no doubt in the chain of examinations that the prints
25 that I was submitting to them would be checked against

1 Marion Ross and that's all that is.

2 Q. I do want to put this to you, Mr MacNeil: had anybody
3 else asked you to write the instruction in this form?

4 A. Probably not, to be honest. It was just due to -- I
5 mean, I can't tell. I can't remember that far back but,
6 to be honest, in my recollection of working in that
7 section, if I learned information that this tin had come
8 from the deceased's house or any other particular crime
9 I would have written the exact same thing.

10 Q. How often do you write an instruction in this sort of
11 form?

12 A. Very rare. I don't know -- probably maybe I have
13 written that two or three times in my career because
14 there was very little -- possibly I've done it for
15 deceased's fingerprints at the city mortuary. I would
16 maybe write "ident required for deceased" or something
17 like that for comparison when they don't know who the
18 person is that was lying within the mortuary.

19 As far as crime scenes goes, it was very rare. It was
20 very rare to go and get evidence from one place, from a
21 suspect's place where I've been told it's came or I've
22 had knowledge that it's came from a suspect's house and
23 the suspect is now deceased.

24 Q. I am slightly confused by the last thing you said there
25 about the suspect being deceased.

1 A. Sorry, no, I got that wrong -- apologies. When it's
2 came from the suspect's house but there's an allegation
3 that it's came from the crime scene house.

4 Q. Because you will appreciate obviously that we are asking
5 you this because one of the marks in the series that
6 this form deals with did become controversial?

7 A. I understand.

8 Q. And you are telling us that this is something you would
9 not in fact have written very frequently.

10 A. No, because there would be no requirement. This case is
11 an individual case, as is every case generally that you
12 attend, especially MI. They are all quite different.
13 This case was -- you know, I think, for some time it was
14 an unsolved case. I don't know how many weeks but when
15 this information came in to me, when I examined this
16 thing, I had knowledge of -- to be honest, I don't
17 understand. I'm looking at this. I can understand your
18 concerns, but when this form was written there was no
19 pressure on any -- certainly not on me, certainly not on
20 SCRO.

21 I can understand how you are looking through
22 word-by-word and analysing it. However, I think we're
23 looking into it too deeply. When I wrote that I wrote
24 it basically for comparison against the deceased and
25 really that's all there is to that.

1 Q. I take it from what you said about this being relatively
2 unusual that you wouldn't be surprised if I told you
3 that in this document we have a series of maybe 20-odd
4 forms like this and not one of them has a similar
5 instruction on it.

6 A. Well, I wouldn't be surprised because all those other
7 documents -- this is only referring to one item that's
8 came in to me to be examined that I'm aware of that's
9 come from the suspect's house but there's a possibility
10 it's came from the deceased's house. So my knowledge at
11 the time and my knowledge within the job stated to me
12 that I need to advise SCRO that they should be doing a
13 comparison -- I'm saying comparison now because that's
14 what we're talking; at the time I would have said ident.

15 Q. I would like to ask you about something just slightly
16 different, Mr MacNeil.

17 I think you have told us that what you wrote there
18 derived from the knowledge that you had about where the
19 tin had come from?

20 A. That's correct.

21 Q. I think you told us yesterday that you now can't
22 remember where your knowledge about the items in the
23 case had come directly from?

24 A. That's correct.

25 Q. But what I would like to explore with you a little bit

1 is whether you really needed the information about where
2 the tin had come from in order to do your job properly.

3 A. Well, if I thought the tin had come from a house
4 break-in, possibly the sequential examination that would
5 have been carried out at that time would be less of a
6 degree than knowing it came from a murder and knowing
7 the significance of that particular tin. So, no, I
8 think it's important that scene examiners are told the
9 significance of certain items prior to being examined.

10 Q. I can readily see that a murder is a much more serious
11 crime than a house break-in and are you saying that
12 perhaps more resources and more tests would be done on
13 an item that came from a very serious crime than from a
14 relatively minor one?

15 A. Yes. Not only that, but some items that come from
16 murders can have less significance to the case than
17 other items from the same murder. So things that are
18 found or discovered around the body and all that sort of
19 stuff we give greater significance and greater attention
20 during the examination sequential process than things
21 that were found outside that may have some significance,
22 that may not have some significance. So yes.

23 Q. Just so that we understand properly, Mr MacNeil, when
24 you talk about within the sequential process, are you
25 simply talking about prioritisation there or are you

1 talking about something else?

2 A. No, I'm talking about the sequential process of the
3 examination of a particular item that comes in for
4 examination.

5 Q. And just to be clear, can you explain to us exactly what
6 you mean by that.

7 A. Yes, it's been explained in the last few days as well.
8 At a crime scene whether you would use powders, whether
9 you would use different -- going for aluminium, going
10 for black, going for chemical treatments. The same
11 thing happened within my section of the examination room
12 except we had more items at our disposal for part of
13 that sequential process.

14 This tin, yes, it could have been looked at with
15 powders, success could have been very limited but,
16 because of the significance of this tin, I gave it the
17 full process. We talked yesterday or the day before
18 about the Home Office Guidelines, which is something we
19 worked quite strongly to within the examination room,
20 and that went through virtually the whole process.

21 Q. Again, please don't take this part of what I am asking
22 you as any sort of criticism. It really is to try to
23 understand --

24 A. I understand.

25 Q. -- how things worked, Mr MacNeil.

1 I suppose what you might have been told about a tin
2 like this is this relates to a murder, to a serious
3 crime. This is something -- this is an item that we
4 think is important, please treat it with everything
5 you've got. You know, give it the A-starred treatment.

6 That perhaps could have been conveyed to you in just
7 that way without you necessarily having to know it came
8 from Mr Asbury's house, we think it might have come from
9 Miss Ross' house?

10 A. Yes, I understand that but can I tell you for the volume
11 of work that we do within the examination room, if that
12 was the instruction out of Strathclyde Police at the
13 time, then every murder and every item that came into my
14 section that would be the instruction and they would
15 want everything examined fully and there would be
16 backlogs galore. We'd never get through it all. So we
17 do need a wee bit more knowledge on certain items to
18 carry out certain procedures.

19 MISS CARMICHAEL: Thank you, Mr MacNeil. I have no more
20 questions for you.

21 THE CHAIRMAN: Is there any area that counsel to the Inquiry
22 has not covered that you wish to? I think Mr Smith
23 should be first.

24 MR SMITH: Thank you, sir. There are some areas. The areas
25 are a few more questions regarding the question of

1 statistics and success. I would like to ask what the
2 attitude of management was. Secondly, some questions
3 that some evidence was touched on about the order in
4 which various powders should be used and, in particular,
5 with reference to what we understand the Home Office
6 Guidance actually was.

7 The third area is whether this particular tin had,
8 in fact, been subjected to dusting at any stage to the
9 knowledge of this witness and, finally, the question of
10 his appreciation of whether the examination was a
11 suspicious death or a suicide that we have touched on.

12 THE CHAIRMAN: Very well.

13 **Cross-examined by MR SMITH**

14 Q. Mr MacNeil, if I can ask you, first of all, on the
15 question of the status of this investigation at the time
16 you first became involved in it.

17 We have heard some evidence that obviously some cases
18 are known to be murder cases, very obviously, some are
19 heavily suspected or known to be suicide and in between
20 we get suspicious death.

21 Can you let me know, please, what your understanding
22 was of the attitude of the police as far as you can
23 understand it, what was conveyed to you about the status
24 of this investigation at the early stage you became
25 involved?

1 A. At my stage of involvement, it was a murder. It was a
2 murder inquiry.

3 Q. And you are saying when it was first logged, your view
4 was it was a murder inquiry; is that right?

5 A. When stuff first started to come into my section, it was
6 a murder inquiry, yes.

7 Q. I wonder if I can ask you to confirm that in your
8 Inquiry statement, reading from numbered paragraph 7 and
9 going through an extract at the moment what appears to
10 be recorded is this:

11 "Looking back, my recollection is that it was first
12 logged as a suspicious death and there was a feeling
13 within the force first that it was a suicide."

14 A. Yes.

15 Q. Can you help me to try and reconcile the position here
16 with what appears to be in that statement?

17 A. I can, yes. When you asked me earlier there for my
18 first involvement within the case, which was stuff
19 coming into my section, at that point we were dealing
20 with a murder inquiry. At this point in my statement I
21 am referring to the general talk prior to me becoming
22 involved in this particular case.

23 Q. It may be my fault but I just want to be clear about it.
24 The general talk as you describe --

25 A. Well --

1 Q. Can you let me finish the question, please -- the
2 general talk was it may be suicide; is that your
3 position?

4 A. No, the general talk -- I said, I think in my statement
5 somewhere, we would read -- come in in the morning, we
6 would read the incidents of note, which was just a list
7 of all the serious incidents that occurred in the last
8 12 hours or so. On that there would have been the
9 suspicious death and then we would have possibly spoke
10 to the Scenes of Crime Officer that attended that night
11 when they arrive in the morning to get a wee update as
12 to what occurred for that particular call-out. It's
13 from that knowledge that we would have ascertained that
14 possibly we had a possible suicide. It was only through
15 the post-mortem it was actually confirmed that we were
16 dealing with a murder inquiry at that particular point.

17 Q. I am interested in your use of the words, "a general
18 talk". Are you saying it would just be from the Scenes
19 of Crime Officer that had been there or are you saying
20 there was some kind of general chit-chat going on about
21 the status of the investigation?

22 A. No. To be honest, again, it's so long ago and maybe I'm
23 getting confused with all the talk from all the years,
24 but at the time, if my recollection serves me well, we
25 had a suspicious death, it was a possibility of maybe a

1 suicide but it was clarified at the post-mortem.

2 Q. Mr MacNeil, I am sorry, I am just reading what is said
3 in your written statement which you agreed at the
4 outset effectively was accurate and what we see in
5 paragraph 7, amongst other things, is:

6 "There was a feeling within the force at first that it
7 was a suicide."

8 Now are you sticking with that or are you departing
9 from it?

10 A. Well, there was a feeling within the force ... possibly.
11 It's probably wrong, to be honest, and I would say maybe
12 most of my feeling within this -- I had discussion
13 within my section.

14 Q. Who in the section had obtained that view?

15 A. Well, it would be from the information revealed to us at
16 the time.

17 Q. From whom?

18 A. Within the first 24 hours. Well, I can't tell you
19 because I don't know but it would be possibly from the
20 scene examiner at the time, possibly from -- I don't
21 know to be honest. I don't know where I got that
22 information from.

23 Q. I am still confused, Mr MacNeil -- I am sure it is my
24 fault -- as to whether you are departing from or
25 sticking with the statement in your signed statement to

1 the Inquiry, that no doubt you revised, that there was a
2 feeling within the force at first that it was a suicide?

3 A. Well, I won't take that away. It may be a suicide,
4 because there was no clear indication from those, that
5 I'm aware anyway and from the information I had -- which
6 was very limited, can I tell you -- that we were dealing
7 with a murder right away.

8 Q. Just following through from that point, you worked at
9 Pitt Street at that time, didn't you?

10 A. I did, yes.

11 Q. And police headquarters for the Strathclyde Police:
12 that's what Pitt Street is amongst other things?

13 A. That's correct.

14 Q. And at some stage I understand SCRO worked from Pitt
15 Street?

16 A. That's correct.

17 Q. When was it they moved out of Pitt Street?

18 A. Oh, I don't know. I'm sorry.

19 Q. Were they there in 1997?

20 A. I think they possibly were.

21 Q. Did you share a canteen with SCRO?

22 A. We shared a canteen with everybody in the whole
23 building, yes.

24 Q. I am interested in SCRO as you understand. Did you ever
25 at any stage discuss any case you were involved in that

1 the SCRO would have been involved in? I am talking
2 about over coffee, over lunch.

3 A. No, because I never mingled with SCRO within the
4 canteen. I would say hello and I'd say hi but not
5 talk ... to be honest, I very rarely used the canteen
6 anyway.

7 Q. So we can take it then that even though you were sending
8 a note off to someone at SCRO that day, when you saw
9 them in the canteen you wouldn't say, "Listen, I'm
10 sending something urgent over" --

11 A. No, I probably would have. I would have probably said,
12 "I sent that over. Did you get it", or something like
13 that possibly.

14 Q. So the answer to the question did you ever discuss
15 matters in the canteen, the answer is yes --

16 A. No. No, I would probably have met them in the corridor
17 on the way to the office for whatever reason I was
18 going.

19 Q. What I am getting at, as I am sure you understand,
20 Mr MacNeil, is there would be on occasions informal
21 discussion about cases you were involved in, your team
22 was involved in and SCRO were involved in and that's
23 fair, isn't it?

24 A. No, not really -- not informal discussions. It would be
25 more so stuff that I probably sent over where there's

1 something I want looked at would create a priority to
2 something else.

3 Q. Let us say that the way you work is to have informal
4 communication with them.

5 A. There is an informal communication in every aspect of my
6 work, yes.

7 Q. Now I would like to ask you if I can about the evidence
8 you gave regarding statistics.

9 Do you remember being asked a number of questions by
10 Miss Carmichael about that matter and the tenor of the
11 evidence I think was to the effect there was some almost
12 like a league table, some kind of observation that was
13 taking place on success, if I can use that phrase. I
14 think success was your word. Is that right?

15 A. Yes.

16 Q. Was this an informal or formal league table, if I put it
17 that way?

18 A. It was formal.

19 Q. Formal?

20 A. Yes.

21 Q. Can you help me --

22 A. I think.

23 Q. You think. You don't know?

24 A. It was recorded by the head of my department at that
25 time.

1 Q. What was your understanding of the types of success?

2 A. Well, my understanding and everybody else's
3 understanding may be different but my understanding was
4 I didn't regard it as a particular success. As I
5 mentioned to Miss Carmichael, I didn't regard it as any
6 real indication on performance and hence the reason it
7 has been dropped now.

8 From your question to look at what other people may
9 find from it was that, yes, if they were high up in the
10 table then they would have regarded it as quite good
11 performance. But it was no great indicator, to be
12 honest.

13 Q. I am just trying to imagine this, as I put it, this
14 league table that applies a standard. There was
15 largely -- the standard was largely unknown, certainly
16 to you, but you are trying to do your job and the
17 department has to be justified.

18 Now can you help me with how such a system is supposed
19 to work when someone is trying to perhaps achieve
20 success but they don't know what the test of success
21 is --

22 A. Again, you would need to talk to the senior management
23 about dealing with that particular model at the time
24 which, in my view, was not the greatest to show
25 performance anyway and hence the reason it has been

1 dropped.

2 Q. But I think you explained in your statement in those
3 days you were very active in the union.

4 Is it not something that in that capacity you would
5 raise with management and say, "How are we supposed to
6 work with this" --

7 A. I probably did and hence the reason it's been dropped.

8 Q. Well, did you?

9 A. I can't remember but I would imagine I would have
10 because I was very active.

11 Q. I am going to ask you, if I can, sticking with the
12 success, I am trying to imagine the scene: you get an
13 item to examine, you get an item, not necessarily this
14 tin. You examine it and there is not a single
15 fingerprint to be found on it. Are you with me?

16 A. Yes.

17 Q. You have done your job properly but there is no
18 fingerprint. Is that not successful, because you have
19 done your job properly?

20 A. It wasn't measured at the time regarding a success or a
21 non-success. It just wasn't referred to.

22 Q. Let us suppose you get a very good fingerprint from it
23 and it goes to SCRO and it turns out to be an innocently
24 left fingerprint?

25 A. A what, sorry?

1 Q. An innocently left -- it's the owner of the tin rather
2 than the alleged thief. In your understanding would
3 that be a success?

4 A. It would be, yes.

5 Q. So it is lifting a good print that SCRO can examine and
6 come up with a result, either yes or no; that is the
7 measure of a success?

8 A. That was, yes.

9 Q. I would like to ask you then about some methods of
10 examining fingerprints for ID. We have heard some
11 evidence already that there are various powders that can
12 be used, aluminium powder and various kinds of black
13 powder and so on?

14 A. That's correct.

15 Q. Apart from powder and at this particular time there is
16 another method that is used commonly described as
17 supergluing; is that right?

18 A. It is, yes.

19 Q. Can you describe for us, just in simple terms, what is
20 done to carry out a superglue analysis of the pieces of
21 potential items.

22 A. It is basically a sealed chamber which we had at the
23 time -- there's different techniques on the market
24 now -- a sealed chamber which we put in the item or the
25 items into this chamber. We would enter some I can't

1 remember the actual product name but it was basically
2 superglue in which we put a small amount of within this
3 chamber along with some moisture. It would be turned on
4 for 20 minutes or so and the whole coating would then
5 adhere to any contaminants left on the item which was
6 being submitted within that chamber.

7 Q. So let us suppose you do the supergluing as your first
8 line, for good reason, and then you decide, "Well, I
9 wonder if I missed anything". Is there any point
10 whatsoever in going over it with either aluminium or
11 black powder?

12 A. After the supergluing, if we are talking about the tin
13 in question here, are we?

14 Q. Yes.

15 A. For this particular product, not with aluminium and
16 certainly not with black because of the actual product
17 itself. There would be a possibility of going over it
18 with white powder after the superglue. The superglue
19 goes a sort of whitey crystallised form but this
20 particular tin, if I remember correctly, was various
21 colours and had quite a rough texture to it. So if we
22 were going to do anything it would be white powder.

23 Q. So it would not be dusted with powder before the
24 supergluing?

25 A. Not this particular product.

1 Q. So dealing with this tin if we can, this particular
2 item, this tin was not dusted before it was superglued;
3 is that right?

4 A. I have no recollection of that but my recollection at
5 this particular time it was just too rough to be dusted
6 with fine powders.

7 Q. I am sorry, I wasn't listening. You have no
8 recollection of --

9 A. Of this being dusted with powders. The tin itself was
10 too rough to be dusted with fine powders.

11 Q. Was that the position after the superglue as well?

12 A. After the superglue -- to be honest, I can't remember.
13 I may have put white powder on it after that to see if
14 anything was enhanced but doubt it because of the actual
15 texture of the surface that that particular tin was. It
16 was just too rough.

17 Q. I would like you if you can to look at something with
18 me, please. It is document SG0368 which should be a
19 report by Mr Malcolm Graham and within that document can
20 we please go to page 3. It will be shown to you.

21 On that page you will see at the bottom in the last
22 paragraph of that page, which will be expanded
23 hopefully, this is Mr Graham's report which says this:

24 "I was asked to pay particular attention to
25 fingerprints marked QI2 which had been found on the

1 Marks & Spencers tin box. I removed the tin box from
2 the sealed security bag and examined the surfaces of the
3 tin. The box had been very well handled and
4 fingerprints had been developed with fingerprint powder
5 on the bottom, the sides and the lid."

6 Just pausing if I can at that point, do you have any
7 recollection of you carrying out any dusting as is
8 described in that report?

9 A. I have no recollection of that, no. When was that
10 report written?

11 Q. I will tell you when the examination was carried out. I
12 think it is on the first page. 7th May 1997 is the date
13 of the examination carried out.

14 A. And my date of the examination was ... just so that's
15 clear in my mind.

16 Q. I am sorry, I will just try to find out for you.

17 THE CHAIRMAN: You received the tin on 24th January. That
18 is paragraph 23 of your statement.

19 A. Yes. No, I have no recollection of that. My
20 recollection of that particular tin was that -- and I
21 could be mistaken but I don't think so -- was that we
22 examined it using superglue. We then carried out -- we
23 would have done a fluorescence exam first prior to the
24 superglue to see if anything was visible on the tin
25 prior to carrying out the examination. Then it would be

1 Quasered -- sorry, superglued, then dipped in,
2 basically, L40 which is a dye to adhere to any
3 contaminants left by the superglue which is attached to
4 the sweat and fingerprint marks that had been left on
5 it, and then we would have photographed any prints that
6 were flourescent through the Quaser.

7 I do remember that to try and do anything else with
8 that particular tin, because of the colours and the
9 texture, Quaser was really the only best means of
10 recording evidence on that particular tin. So I've no
11 recollection of that, no.

12 Q. Yes, I think you used the word "we" there, "what we
13 would have done".

14 A. Yes.

15 Q. This is you and your team?

16 A. Well, it was just me and on this occasion it was Les
17 Gibbens and he was my senior at the time.

18 Q. And, apart from you and Les Gibbens, would you expect,
19 in the ordinary course of things, it would be you
20 examined it and it would be examined by Malcolm Graham,
21 anyone else who, as it were, had a go?

22 A. To be honest, with this particular inquiry nothing would
23 surprise me because -- I mean, I look at other things
24 within the inquiry and there's been so many different
25 examinations carried out, so many different things over

1 the many years that that wouldn't surprise me. But as
2 far as my team goes and the initial examination of that
3 particular product, that's how it was carried out.

4 Q. I take it obviously there would be some kind of audit
5 trail if anyone else in your office, or indeed anybody
6 outside your office, examined it and dusted it. We
7 should be able to track down --

8 A. I would hope so. I don't know about -- certainly we
9 would have an audit trail of what had come into my
10 office and then once it's left my office. At that point
11 we would then finish with it. We would then send it to
12 Strathclyde Police Productions. Where it went, who
13 looked at it, whether they would record that or not, I
14 wouldn't know. And at that point, as long as
15 Strathclyde Police were satisfied that we carried out
16 the best examinations possible to that particular
17 product, I'm sure they'd be happy and let everyone else
18 do what they wanted.

19 Q. The final thing I want to ask you about is the practice
20 of the order of using, generally speaking, various
21 powders. We have heard evidence about aluminium powder,
22 about various black powders that could be used and so on
23 and so forth.

24 A. Yes.

25 Q. I take it you are familiar with the fact that the Home

1 Office issues guidance as to the order in which certain
2 powders should be used under certain circumstances.

3 A. I am.

4 Q. Can you tell us, please, what you are understanding
5 is -- well, let us deal with the present time at the
6 moment -- as to whether aluminium should be used before
7 black powder or always or sometimes or whether black
8 should be used first. Just give us your evidence of
9 what your understanding of the present day guidance is
10 from the Home Office?

11 A. Again, it's a personal judgment of the scene examiners
12 that attend looking at items for examination. Generally
13 you're talking about non-destructive methods of
14 examination is powder examinations and it depends on the
15 item. But generally you would be talking about an
16 aluminium examination first, which is non-destructive.
17 It could then easily be followed by a black powder
18 examination or a black magna powder examination. But
19 every case and every scene is quite different. It's
20 down to probably the most experienced person to make the
21 decision on the best course of action for that
22 examination.

23 I would see no reason to -- sorry, if I was carrying
24 out generally I would go for aluminium in the first
25 instance. It's most effective generally but not for all

1 surfaces and it gives quick and easy results. With
2 aluminium once you've discovered a fingerprint you can
3 then lift that fingerprint and you've got it instantly.

4 Q. Are you able to help us with the Home Office Guidance on
5 that question of aluminium first or when has changed
6 materially over the past few years?

7 A. I've not looked at it for a few years. I would need
8 to -- it's easy to obtain a copy of that Home Office
9 Guidance.

10 Q. It's available on the Internet, isn't it?

11 A. It should be available on the Internet. I should have a
12 copy of it, I guess.

13 Q. What I would like to do is read to you from a document.
14 It is August 2004 which appears to be Home Office
15 Guidance in 2004 and ask for your comment. Under a
16 section which is "Brushes used with aluminium powder", I
17 will just read exactly:

18 "Within the UK, aluminium powder has become one of the
19 most popular powders used by scene examiners. However,
20 surveys, focus groups and conversations with users have
21 led us to believe that there is a wide variation in the
22 way it is used. For example, some use aluminium powder
23 in preference to alternative powders on all surfaces
24 whilst others will use alternative powders for all
25 surfaces and never use aluminium powder. As far as we

1 know, the majority of practitioners use aluminium powder
2 on smooth/clean surfaces and would consider one of the
3 many alternative powders when presented with surfaces
4 with texture/contamination."

5 Do you agree with that as a point?

6 A. I would think most of -- what I would say is nowadays
7 there are more powders on the market, probably within my
8 own department the most commonly used powder is we call
9 it silver magna powder -- sorry, magneta flake powder
10 which is just another aluminium-based powder but it
11 tends to adhere to surfaces a lot better. The actual
12 procedure is the exact same as aluminium except we're
13 putting it on with a magna brush. It's a far superior
14 powder but there are implications. Going back
15 10/12 years ago we didn't have a lot of these powders so
16 aluminium, which is a fine brush to be used, so
17 ultimately if you are examining a scene using this fine
18 brush there's less of a chance that you're going to
19 disturb anything. If you go straight on to a black
20 brush, a more robust brush, there's a good chance you
21 can wipe prints away. Yes, you get an instant clear
22 result, the contrast is good, but there's a chance you
23 could be wiping away prints so, therefore, I would
24 always recommend as a first process aluminium where
25 there's unlikely chance you're going to be rubbing

1 anything away.

2 Q. I am really just interested in the position of the Home
3 Office Guidance is not prescriptive in using aluminium
4 powder first and always first?

5 A. To be honest, you know, that's in 1994, did you say?

6 Q. No, I said it's 2004.

7 A. 2004. So it's been updated now. You need to go back to
8 what the Home Office Guidance was in those days.

9 Q. I am actually interested in more or less the current
10 period of time.

11 A. Right.

12 Q. Before I ask you to look at another document, can I just
13 understand this correctly: there is Home Office Guidance
14 that you have actually -- and I don't criticise you for
15 not following this because no doubt there are many
16 documents that you have to look at -- but you personally
17 are not au fait with that, if I can put it that way?

18 A. There's lots of things we're aware of but we don't look
19 at every day of the week. We're too busy for that. My
20 expertise, my experience in attending scenes -- I've
21 been in the job now for 26 years. I really don't need
22 to go to, I wouldn't think anyway, a Home Office
23 guideline when I know at most scenes at the most what is
24 going to be attracted to one surface than another
25 surface except with the new techniques I need to keep

1 up-to-date with.

2 Q. I am just reminded of your evidence this morning at

3 page 19 about --

4 A. Sorry, about what?

5 Q. It's really for other people I am giving reference to

6 the page, page 19, line 11, and thereabouts you

7 indicated that:

8 "This tin it could have been looked at with powders,
9 success would have been very limited but because of the
10 significance of this tin I gave it the full process. We
11 talked yesterday or the day before about Home Office
12 Guidelines which is something we worked quite strongly
13 to within the examination room and that went through
14 virtually the whole process."

15 A. Yes, that was 12 years ago when I worked in the
16 examination room.

17 Q. So 12 years ago you worked to the Home Office
18 guidelines?

19 A. We did.

20 Q. And you knew then --

21 A. I would have known a lot more then about the actual
22 guidance, yes, than I do now.

23 Q. What do you consider the current status of the Home
24 Office Guidelines --

25 A. Sorry?

1 Q. On a day-to-day basis now, do you consider the Home
2 Office Guidelines? Do you ignore them or do you apply
3 them?

4 A. I generally apply them.

5 Q. Well, you seem, with respect, to be a little doubtful as
6 to what they actually are at the present?

7 A. Yes, but I'm aware of sequential processes.

8 Q. Maybe you can help me with this: I have a copy of a flow
9 chart from the document that was referred to by
10 Mr Thurley I think or perhaps by Mr Moffat. I don't
11 know what the problem is. There is a problem with
12 getting photocopies prepared.

13 THE CHAIRMAN: The problem is that we are trying, with great
14 difficulty, so that those who are not present can follow
15 what is happening on the website and our problem is that
16 when we have productions, getting those on the website
17 is proving difficult but it is a problem being
18 surmounted so we have been trying to refer this morning
19 reading the Home Office Guidelines so that people could
20 follow the flow of the evidence.

21 Perhaps if we just ask Miss Carmichael. She is more
22 familiar with ...

23 MISS CARMICHAEL: There are some issues here, sir. The
24 guidance that Mr Smith is, I think, referring to is not
25 something that is on the database. It is something that

1 he is seeking to introduce today. It is something
2 certainly that I am aware of and that I have looked at
3 myself. I am not sure we can say with certainty whether
4 this particular flow chart was something that other
5 witnesses were referring to or not and I am a little
6 concerned that both he and, potentially, I if I get into
7 this exercise as well am in danger of referring loosely
8 to Home Office Guidance when there are a number of Home
9 Office -- there is a Home Office manual, there is a
10 short document, there is a flow chart, there are at
11 least three research papers on the website there which
12 refer to different aspects of powders and how they are
13 used.

14 I am slightly uneasy about the introduction of this
15 document at this stage in isolation. But it is very
16 much a matter for yourself, Mr Chairman, and for
17 Mr Smith as to what can use can be made of this at this
18 stage.

19 I should say that Mr Smith raised this issue or a
20 related one with me this morning and my suggestion is
21 that we maybe go to get, as it were, a rather more
22 omnibus and authoritative picture from a witness who
23 will be called later as to just what the position was
24 regarding Home Office Guidance as at 1997 and as at the
25 present date.

1 I am slightly concerned that my own picture at the
2 moment is a partial one and so might be that of the
3 others.

4 THE CHAIRMAN: So, rather than introduce it piecemeal, we
5 should put it all together?

6 MISS CARMICHAEL: Yes. Mr Smith has, in fairness, said that
7 may not be fair to witnesses who have already given
8 evidence on the matter and you have heard a variety of
9 views expressed and also I think probably a variety of
10 representations of what may be in the Home Office
11 Guidance whether that is one document or many and I just
12 wondered if there may be a slightly more efficient way
13 of dealing with this and if it comes to be that you take
14 the view that, in fairness, others should be required to
15 comment on what we ultimately hear from this witness,
16 steps could perhaps be taken to do that in due course
17 when we have a clear picture.

18 THE CHAIRMAN: Would it be convenient if we tried to connect
19 it all?

20 MR SMITH: It certainly would be but I may say, sir, that
21 it's a somewhat cumbersome procedure to think about the
22 possibility of recalling witnesses.

23 THE CHAIRMAN: You are quite right. I am anxious not to
24 have to bring people back. It is very inconvenient to
25 them but if this is an important issue, then we cannot

1 avoid that.

2 MR SMITH: Very well, sir. All I was proposing that the
3 flow chart be put on the overhead camera and I can maybe
4 ask the witness one or two short questions about it.
5 That's all I was proposing at this stage but I am in
6 your hands, sir.

7 MISS CARMICHAEL: Sir, I raise it not as an objection
8 because clearly if it is something that may be of value
9 at this stage I don't want to prevent that happening but
10 I simply wanted to make you aware of discussions that
11 had been ongoing in the background.

12 THE CHAIRMAN: If it is just two or three short questions on
13 the flow chart we can put it on the overhead then we
14 will do that rather than bring the witness back.

15 Could you just identify for the purpose of the
16 record, Mr Smith, exactly where this comes from so that
17 we can put it eventually on.

18 MR SMITH: I think, sir, this is from a document issued by
19 the Home Office Police Scientific Development Branch.
20 It is dated August of 2004 and the publication number is
21 54/04. It is apparently available on the Internet and I
22 can provide the Internet address in due course if
23 required.

24 THE CHAIRMAN: That is fine. So long as we have the
25 reference.

1 MR SMITH: Thank you, sir.

2 Mr MacNeil, I just wanted to ask if you have seen
3 anything like this flow chart before?

4 A. Yes, I've seen it before.

5 Q. Is this something replicated in a number of different
6 issues being referred to as being the source of this?

7 A. It is, yes.

8 Q. I think we can see that there are some circumstances, if
9 you follow the flow chart down and across where the
10 first line would be, for example, black magnetic powder;
11 do you see that?

12 A. Yes, and the UPVC.

13 Q. Of course and also down to the right if it's a textured
14 surface and then you might go for black magnetic or
15 white magnetic; do you see that?

16 A. I've got this guidance -- it's not always applied by
17 individual scene examiners. This is guidance that's
18 been under research by academics. Generally we would go
19 by most of this but you would have gut feelings,
20 individual scene examiners maybe carry out their own
21 preference of examination.

22 Q. Just finally I would like to ask you this: we heard some
23 evidence from Mr Thurley earlier and he said -- and this
24 is page 19 to 20 and particularly page 20 -- he said
25 but:

1 "As I've said before sometimes you'll find that you'll
2 get younger inexperienced people possibly will go
3 straight to black powder because it's simpler to use and
4 it's easier to see. There is less work involved because
5 with aluminium powder you have to work at it to get the
6 print. That is the logic for using aluminium powder
7 before anything else."

8 That was Mr Thurley's evidence. Can I ask you whether
9 you would agree with the suggestion looking at this flow
10 chart that even a younger inexperienced person may
11 justifiably go straight to black magnetic? That's fair,
12 isn't it?

13 A. I can understand that. However, I don't think I would
14 have done anything different, as Mr Thurley stated,
15 especially if you are dealing with uncertainties at the
16 time of any particular examination then I would be
17 carrying out the least destructive method of examination
18 first, which would be aluminium powder.

19 Q. So if you were dealing with a textured surface that was
20 the same colour as aluminium powder you would do
21 something different to what was in the flow chart, which
22 appears to be go for black magnetic?

23 A. Nowadays we have magneta flake which is something I
24 would probably have gone in for first, which is
25 aluminium -- almost sort of a solid-based aluminium.

1 Q. If I am correct and it may be I am being unfair to
2 Mr Thurley when he was making a general comment that the
3 default position would be aluminium and only
4 inexperienced people would not go for aluminium first.
5 If he is making a general statement that we should
6 always go for aluminium first, are you saying you agree
7 with that or do you say there are some circumstances
8 where you are justified in not going to aluminium?

9 A. Yes, there are some circumstances where you would be
10 justified but you need to speak to him on the surfaces
11 that he was dealing with at that particular time. I
12 would need to be in the same scenario to be telling you
13 and saying what I would do.

14 MR SMITH: Thank you.

15 THE CHAIRMAN: Now, Mr Holmes?

16 MR HOLMES: I have no questions for Mr MacNeil.

17 THE CHAIRMAN: Any other application?

18 MISS GRAHAME: No, thank you.

19 THE CHAIRMAN: I just want to ask you one matter.

20 Can we have again DB0251. Thank you.

21 You see there's a passage there for eliminations --

22 A. Yes.

23 Q. -- on the form. Now if this tin had been found in
24 Miss Ross' own home, then may I take it that you might
25 have put in her name there?

1 A. I would have done, yes. As well as that, if I took
2 elimination prints from individuals at a scene and I was
3 attaching them to that particular form, their names
4 would go in there but I didn't have any eliminations
5 submitted with it.

6 THE CHAIRMAN: But I just want to get it clear in my own
7 mind. If it is found in the victim's own house, then
8 you would expect the victim's prints to be on the
9 object.

10 A. Yes. Well, possibly.

11 THE CHAIRMAN: But where, as here, it is found in the
12 suspect's house --

13 A. That's correct.

14 THE CHAIRMAN: -- then you, as I understand your evidence,
15 you feel you need to draw it to the attention of the
16 examiners that it could be --

17 A. Very much so -- the chances of SCRO knowing the
18 information which I know at that particular point would
19 be, I would think, very doubtful. By the time the
20 prints came through to them, they would not have known
21 that this tin had come or they may have known the tin
22 through the paperwork that's been attached has come from
23 the suspect's house, but they would have no indication
24 that there would be an attachment possibly with this tin
25 to the deceased's house.

1 So I was just making it pretty clear on the paperwork
2 to let them know that they've got to check that. I'm
3 not telling them anything about that information, I'm
4 just saying we need to look at the deceased's prints on
5 this tin as well.

6 THE CHAIRMAN: What I understood from your evidence is that
7 you would not do this very often --

8 A. No.

9 THE CHAIRMAN: -- this would be rare, and I am sure you
10 cannot remember, but if you can please say so: would you
11 use the expression "ident required for" whoever it is on
12 those other occasions?

13 A. Every time I would have used "ident required for"
14 whoever. It was a term I used and probably a lot of my
15 colleagues used, whether they were referring to another
16 relation or a suspect to be identified. It was just a
17 term we used.

18 THE CHAIRMAN: So when you say it would have been better to
19 have used the word "comparison" --

20 A. Only as a result of this Inquiry.

21 THE CHAIRMAN: But that does not mean that this was a
22 one-off as far as you were concerned; you had done it
23 before and you say your colleagues have done.

24 A. Yes.

25 THE CHAIRMAN: The last thing I want to ask you is on this

1 point: there must be many serious crimes in which at the
2 home of the suspect something is found that could be
3 connect to the victim, including all sorts of occasions
4 I do not need to recite -- I sure you can think of them
5 more easily than I can -- and so that is why I am a
6 little surprised that there have been very few occasions
7 that you would do that. I would have expected it to be
8 fairly common that you would be warning them to look for
9 the victim's fingerprint on the item found.

10 A. Yes. It depends on the paperwork that's come into my
11 section. If the information in the paperwork is quite
12 clear and that paperwork was then going to the Scottish
13 Criminal Records Office, then there would be no
14 requirement for me to write that information on it.
15 It's only because -- the paperwork in this was very
16 limited.

17 I was aware that I'm thinking more how I became aware
18 and it could well have been it's a possibility that it
19 was a scene examiner, Scenes of Crime Officer who maybe
20 went and photographed this tin when it was recovered
21 from the suspect's house. It's another possibility in
22 how I learned that information because when they come
23 back we talk about incidents together, as teams, as
24 colleagues, and it's possible I got that information
25 from him. It's just another possibility.

1 But, no, there's nothing sinister about what I've
2 written on that particular form.

3 THE CHAIRMAN: Maybe that leads me to the last question: you
4 cannot remember if anybody did say to you that you
5 should put that on --

6 A. I can tell you now nobody did say that to me. Nobody
7 said that to me. That was me that put that on, for the
8 reasons I have explained.

9 THE CHAIRMAN: So it was entirely on your own initiative --

10 A. Very much so.

11 THE CHAIRMAN: Thank you very much.

12 A. Could I just make one point of observation. Yesterday
13 the Inquiry team took some criticism from the former
14 Fiscal Depute over productions. I would just like to
15 say that there's been a lot of discussions and talk over
16 the years over missing productions that have come from
17 my section in my department and the Inquiry team have
18 disproved all those. They found all the productions and
19 I think they've to have been commended on it.

20 THE CHAIRMAN: Thank you very much. Thank you, again, for
21 your assistance.

22 We will rise now until 11.50. Sorry, you would like
23 to ask some ...

24 MISS CARMICHAEL: If it is more convenient to do it after a
25 break, then I am happy to do that. It should be two

1 quite swift questions.

2 **Re-examined by MISS CARMICHAEL**

3 Q. Mr MacNeil, first to clarify something that you said
4 when Mr Smith was asking you questions about the
5 statistics in your department and I think he said to you
6 that if SCRO could say yes or no, then that was a
7 success and I think you agreed with him. I just want it
8 to be quite clear about what your evidence was on that
9 because I wasn't sure that what you were saying there
10 was just exactly what you said when I was asking you
11 questions. Perhaps I can tell you what I had understood
12 from what you told me and you can tell me if I am wrong
13 and, if so, why.

14 I had understood that if SCRO received the mark that
15 you had found and they weren't able to identify or
16 eliminate anyone, that would not be a success.

17 A. Yes, it just didn't get recorded. We're maybe using
18 "success" a wee bit too much but --

19 Q. What would be recorded is if they get the mark and are
20 able to say "Yes, that mark belongs to someone on the
21 list that we have in this particular investigation".

22 A. Generally if a fingerprint is put through and we had a
23 suspect on our eliminations, it would come back --
24 whether it was the person who committed the crime or
25 not, if it came back to my department that we had got a

1 match, then that would be regarded, for want of a better
2 term, as a success.

3 Q. Thank you. That is what I had understood you to say.

4 The other matter that I would like to ask you about is
5 just, if you will forgive me, a little bit more about
6 what you were saying about the order of powders and so
7 on because I think it was being suggested to you that
8 Mr Thurley had told us that no matter what you were
9 doing, you would always use aluminium powders and I
10 would like just to put a passage oft of his evidence to
11 you and see if you agree with his position in this
12 passage.

13 A. Certainly.

14 Q. This is at day 5, page 24, line 24 where it starts.

15 Mr Thurley was asked the question:

16 "Aluminium powder isn't suitable for all surfaces as a
17 first port of call, is it?"

18 And he said:

19 "No, if you go down the lines of paper or, you know,
20 stone or emulsion paint or things like that then I would
21 say most definitely not."

22 Would that reflect your own understanding?

23 A. 100 per cent, yes.

24 Q. Is it the case, however, that if one was thinking of
25 using aluminium powder, you would have to use that

1 before other treatments?

2 A. Generally, yes.

3 MISS CARMICHAEL: Thank you.

4 THE CHAIRMAN: Thank you. Thank you for your assistance and

5 we will try to sit as near to 11.55, I think, just so we

6 don't lose any time.

7 **(11.35 am)**

8 **(A short break)**

9 **(11.56 am)**

10 THE CHAIRMAN: The next witness?

11 MISS CARMICHAEL: The next witness is Leslie Gibbens.

12 **LESLIE ALFRED LORDON GIBBENS (sworn)**

13 THE CHAIRMAN: Perhaps you could give us your full name.

14 A. Leslie Alfred Lordon Gibbens.

15 **Examined by MISS CARMICHAEL**

16 Q. Mr Gibbens, we have found it sometimes help with people

17 being able to hear if you sit quite close to the

18 microphones. I think they are only sensitive if you sit

19 close. Thank you very much.

20 Mr Gibbens, I think you have given a signed witness

21 statement to the Inquiry already?

22 A. I have.

23 Q. Are you content that that records your position about

24 matters you were asked about?

25 A. Yes.

1 Q. I think you, back in 1997, were working alongside
2 Mr MacNeil who has just given evidence to the Inquiry.

3 Were you senior to Mr MacNeil?

4 A. I was.

5 Q. And was that reflected in any title or rank, if I can
6 put it that way, rather than just being your years' of
7 experience?

8 A. My full title was Senior Scenes of Crime Officer as
9 opposed to a Scenes of Crime Officer.

10 Q. I am afraid I'm not hearing you very well.

11 A. My full title was a Senior Scenes of Crime Officer as
12 opposed to a Scenes of Crime Officer.

13 Q. And Mr MacNeil at the time had been a Scenes of Crime
14 Officer?

15 A. He was.

16 Q. And you worked together on a number of items in the
17 investigation into the murder of Marion Ross?

18 A. We did.

19 Q. Now you were asked when you gave your statement about
20 the information that you had about certain productions
21 and I would like to refer you to paragraph 15 of your
22 statement if you have that to hand, Mr Gibbens.

23 A. Yes.

24 Q. You say that ordinarily you wouldn't expect to be made
25 aware by the police that any particular items were of

1 potential significance to an inquiry.

2 A. No.

3 Q. We have heard in this case from Mr MacNeil that he

4 certainly seemed to have some understanding that the tin

5 that you both examined was of some significance.

6 Just giving the matter your best thought and best

7 recollection, do you agree or disagree with Mr MacNeil

8 about that?

9 A. I don't remember. I don't remember anything at all

10 about that.

11 Q. You will be aware that this is a case where there has

12 come to be a good deal of controversy about some of the

13 finger-marks involved in the case.

14 A. Yes.

15 Q. And some of that controversy arose in the relatively

16 early days of the case, even as early as the trial of

17 Mr Asbury. That was in the public domain in, what,

18 May 1997?

19 A. Yes.

20 Q. I am just slightly curious that you remember nothing at

21 all about a case in which you were involved which became

22 controversial so quickly.

23 Can you tell us why that would be?

24 A. That I don't remember anything about it?

25 Q. Well, yes.

1 A. I remember maybe examining articles but I don't remember
2 any individual items that I may have examined, no.

3 Q. I will ask you to try to help with one matter and it may
4 be from what you are saying that you are not going to be
5 able to help with any of the matters that I would like
6 to ask you about, but I wonder if you would look,
7 please, for me at a document that we have looked at
8 already today, SG0368.003. This is a report, I should
9 say, by a gentleman who examined the tin for the defence
10 in about May 1997, just to give you the context of that
11 and he records in the final paragraph on the page that
12 we are looking at here that he was asked to pay
13 particular attention to fingerprints marked Q12 on the
14 Marks & Spencers tin box and he records that
15 fingerprints had been developed with fingerprint powder
16 on the bottom, the sides and the lid.

17 I wonder if you can help us at all with whether you
18 recall examining that item with powder?

19 A. I don't remember.

20 Q. Would there be any reason to examine a tin of the sort
21 we are talking here about, a Marks & Spencers sweetie
22 tin, would there be any reason to examine it with a
23 powder after you had examined it with superglue?

24 A. I would have thought not.

25 Q. What sort of appearance is left on a tin once you've

1 examined it with superglue in the way that, as I think

2 we heard from Mr MacNeil, this tin was examined?

3 A. A white deposit would be left on the tin.

4 Q. Is there any possibility that somebody looking at

5 fingerprint productions could have mistaken the white

6 residue that they might see on something that had been

7 developed with superglue for examination with powder?

8 A. I would have thought that's a possibility, yes.

9 Q. I would like to ask you, please, to have a look at the

10 document DB0251 at page 33. This is a document which I

11 think you may have filled in the top half of it but the

12 top part perhaps down to where we see the fourth line

13 **locus**; would that be correct?

14 A. I am sorry?

15 Q. I am asking you if you perhaps filled in the top part of

16 the form about the date and crime and the **locus**?

17 A. No, I didn't.

18 Q. We have heard from Mr MacNeil that certainly the portion

19 below that he did fill in and he put in an entry for a

20 certain series of marks "ident required for deceased".

21 Is this a form of words that you would be familiar

22 with in filling in a form of this type, Mr Gibbens?

23 A. No.

24 Q. Would you ever have used it?

25 A. The type of form?

1 Q. No, I am sorry; it is my fault. Would you ever have
2 used an expression along the lines of "ident required
3 for deceased" when filling in a form of this sort?

4 A. No.

5 Q. Why not?

6 A. Because there's space there for elimination purposes of
7 suspect persons.

8 Q. Perhaps if I put to you that immediately underneath
9 where we see "Ident required for deceased" you see a
10 little box "eliminations"?

11 A. Yes.

12 Q. That has just been highlighted for you on the screen if
13 you look at that. Where in relation to that little
14 highlight is it that you would fill in that you wanted
15 eliminations?

16 A. Under eliminations you could put a name there for
17 elimination.

18 Q. So another way of doing this might have been to put the
19 name Marion Ross under -- I think we have put a name
20 there on the form?

21 A. That's correct.

22 Q. Is that what you would have done?

23 A. More than likely, yes.

24 Q. Do you have any comment as to whether it's appropriate
25 to put in an entry like "Ident required for deceased" on

1 a form like this?

2 A. I can't see any reason for it.

3 Q. Mr MacNeil has told us that the use of the word "ident"

4 in your department commonly was used where perhaps other

5 people would have used the word "comparison". Is that

6 something that you can remember happening?

7 A. No.

8 Q. May it have happened and you do not remember it or are

9 you saying that it did not happen?

10 A. I don't remember it.

11 Q. Mr MacNeil also told us a little bit about the practices

12 with statistics within your office and what he told us

13 was -- and I hope I am representing him correctly -- is

14 that there would be positive statistics for an

15 individual examiner in the department if ultimately SCRO

16 fingerprint bureau were able to make an elimination or a

17 identification against the mark the examiner had found.

18 Does that represent correctly what went on within your

19 department as well as you can remember?

20 A. No.

21 Q. How did it work?

22 A. A form 13B which we are looking at now would be

23 forwarded to SCRO with the photographs of the

24 impressions. If an identification was made, the top

25 part of that form would be returned to our department

1 and would be recorded in the log.

2 On the back of that, the name of the identification
3 would be on. If identification hadn't been made, that
4 form would still come back and still be recorded in the
5 same way.

6 Q. Mr MacNeil told us that there was something almost along
7 the lines of a league table for the examiners in the
8 department and that the entries on that depended on
9 whether or not the fingerprint examiners at SCRO had
10 been able to match a mark that you had sent them with
11 somebody in whatever investigation they had carried out.

12 Is that correct?

13 A. I would never refer to it as a "league table".

14 Q. What would you refer to it as?

15 A. The identifications made within the whole of the
16 department we would record it for statistical purposes
17 because jobs may be visited.

18 Q. I didn't catch the last two or three words you said
19 there, Mr Gibbens. It may be my fault.

20 A. Identifications that have been made within the
21 department would be counted but compared against a
22 number of incidents that we had attended and maybe we
23 would have got an idea of the percentage or successful
24 percentage that we got against the jobs that we have
25 attended.

1 Q. I put this to Mr MacNeil and I will put it to you as
2 well, Mr Gibbens: from, I suppose, the outside or lay
3 perspective I would have thought that success for
4 somebody like yourself would be in discovering the mark
5 and developing and photographing it clearly so it could
6 be sent on to the next stage of the progress.

7 Would that be correct?

8 A. And recorded things on the items that were sent for
9 examination, if we got a positive result and when I say
10 "positive", I mean if we found any impressions. That
11 was my job, to record that photographically and to
12 forward it to the SCRO.

13 Q. So what I am curious about is why then success for you
14 might be measured in relation to what the SCRO might
15 thereafter have been able to do with the material.

16 A. I suppose it could be described as a success if we had
17 an identification made.

18 Q. If you have developed and recorded a mark professionally
19 and clearly, it is hardly your fault if ultimately it
20 does not match with something on the list that the
21 people at SCRO have.

22 A. That is correct.

23 Q. So from the outside it does not seem like a very fair
24 measure of your success.

25 A. No.

1 Q. Were you happy with it as a measure of your success at
2 the time?

3 A. I was doing my job and that was it. If I didn't have a
4 success, then that was not my fault.

5 Q. I am sorry, you said it was not your fault?

6 A. It was not my fault, no.

7 Q. I think Mr MacNeil told us that the practice of
8 recording success in the way that we have been talking
9 about was discontinued.

10 Are you aware of that?

11 A. No.

12 Q. Can you recall any incidents you were involved in, in
13 helping investigate, where the police did give you
14 contextual information about perhaps where they had
15 found an item or the particular significance that they
16 put on it in there own inquiry?

17 A. When an article came in from an incident, it always had
18 a production label with it. On that production label it
19 would be stated where that item was found and what **locus**
20 it was from.

21 Q. Aside from what you had seen on the label that came with
22 it, can you recall occasions when you were perhaps told
23 more about it or perhaps why police were particularly
24 interested in it on an investigation?

25 A. No.

1 Q. May that have happened and you do not remember it or are
2 you saying it never happened?

3 A. I don't remember.

4 MISS CARMICHAEL: Thank you, Mr Gibbens. I don't have any
5 further questions for you.

6 THE CHAIRMAN: Are there any applications?

7 MR HOLMES: No questions, sir.

8 MR SMITH: I have no questions.

9 THE CHAIRMAN: If you have nothing further.

10 MISS CARMICHAEL: I do not think it is appropriate for me to
11 seek to re-examine where nobody has asked any questions.

12 THE CHAIRMAN: I just wanted to be sure.

13 The one matter I wanted to ask you is this: on this
14 form which we have on the screen, you have a place for
15 suspects and a place for eliminations?

16 A. Yes, sir.

17 THE CHAIRMAN: In this particular case, with the benefit of
18 the information we have, this tin had come from the
19 victim's house and was found in the house of a suspect.

20 A. Yes, sir.

21 THE CHAIRMAN: Would you regard the victim's fingerprint on
22 that tin as being an elimination? Certainly she was not
23 a suspect because she was the victim, but would it be an
24 elimination or is it something different where it is not
25 found in her own house.

1 A. An elimination purpose.

2 THE CHAIRMAN: You would call it an elimination.

3 A. I would, sir, yes.

4 THE CHAIRMAN: Thank you very much. Thank you for your
5 help.

6 **(The witness withdrew)**

7 MISS CARMICHAEL: Sir, the next witness is Gary Gray.

8 **GARY GRAY (sworn)**

9 THE CHAIRMAN: Your full name, please?

10 A. Gary Gray.

11 **Examined by MISS CARMICHAEL**

12 Q. Mr Gray, we sometimes find it a little bit difficult to
13 hear people in this hall if we don't sit reasonably
14 closely to the microphone so it may help if you sit
15 forward a bit and speak directly into the microphone.

16 Mr Gray, I think you are currently a police constable
17 with Strathclyde Police?

18 A. I'm a police sergeant.

19 Q. You are a police sergeant. I am sorry, I think that may
20 be an aspect of your statement that is not accurate. I
21 think you gave your statement on 22nd May 2009?

22 A. That's correct.

23 Q. Have you been promoted since then or is it just
24 something wrong in the first paragraph?

25 A. I was promoted since then.

1 Q. I suppose congratulations are in order then Sergeant
2 Gray.

3 But prior to that I think you were a police constable
4 with Strathclyde Police and you were serving in 1997?

5 A. At that time I was a Detective Constable in '97.

6 Q. You became involved in an inquiry into a murder in
7 Kilmarnock?

8 A. That's correct.

9 Q. Where the victim was Miss Marion Ross?

10 A. Yes.

11 Q. I wonder if you could sit forward a little bit. We tend
12 to find that unless we can hear your voice echoing
13 around you, you are probably not speaking closely enough
14 into the microphones.

15 THE CHAIRMAN: Bend the microphone up a little bit because
16 you are quite tall. Thank you.

17 MISS CARMICHAEL: I think you were on duty and attended at
18 43 Irvine Road, Kilmarnock, in the evening of
19 8th January 1997 when the death of Miss Ross had been
20 discovered?

21 A. That's correct.

22 Q. There is an issue in particular I would like to ask you
23 about first and it is about the arrangements that were
24 made for the officers who came to keep watch at that
25 scene during the course of that evening. The Inquiry

1 has heard some evidence, Mr Gray, that a series of
2 officers were stationed to keep watch in the living room
3 rather than the porch of the property there.

4 Can you remember that?

5 A. I don't.

6 Q. We have heard evidence that the delegation of the
7 organisation of the people to keep watch may have been
8 made either to DI McAllister or to yourself.

9 Can you recall if organising that was delegated to
10 you?

11 A. No, it certainly wasn't, no.

12 Q. There is another particular matter that I would like to
13 ask you about, Sergeant Gray, and that is this:
14 Mr Moffat has given evidence to the Inquiry and I wonder
15 if you can recall, in the first instance, being at the
16 crime scene along with Mr Moffat.

17 A. I remember there was other Scenes of Crime Officers
18 there but I couldn't recall the actual names of the
19 persons that were there.

20 Q. Would we be correct to understand that you and others
21 were present at the scene together late into the evening
22 until you left with undertakers to accompany them and
23 Miss Ross' body to Glasgow City Mortuary?

24 A. Yes, that's correct.

25 Q. And that is something that you remember?

1 A. Yes.

2 Q. Mr Moffat has told the Inquiry about an incident which
3 he says occurred when you and he together were removing
4 Miss Ross' body from the bathroom of the property.

5 In the first place, do you recall removing her body
6 from the bathroom along with Mr Moffat?

7 A. Yes.

8 Q. Now, I would like you to tell the Chairman in your own
9 words just exactly what you and Mr Moffat were doing
10 together in carrying out that task.

11 A. Prior to the body's being removed to the mortuary we had
12 to obviously get the body out of the bathroom and myself
13 and one other person had to place the body into a body
14 bag to allow the undertakers to then take the body away.

15 Q. Who was the other person?

16 A. That would have been a Scenes of Crime Officer but I
17 don't remember his name.

18 Q. I am sorry, it was yourself and one other person. So it
19 may be that that other person is Mr Moffat who has given
20 evidence to the Inquiry.

21 A. Yes.

22 Q. Can you recall who was positioned where within or
23 outwith the bathroom as between yourself and this other
24 individual?

25 A. I don't remember where we were actually positioned in

1 the room, no.

2 Q. The Inquiry has heard some evidence that Miss Ross' body
3 was positioned within the bathroom with her feet towards
4 the door and her head in the interior of the bathroom
5 possibly near to where the WC itself was located.

6 Does that accord with your recollection of the scene?

7 A. It does, yes.

8 Q. Bearing that in mind, would you be able to say whether
9 you were lifting Miss Ross' body from the feet or from
10 the head?

11 A. I'm sorry, I don't remember where I was positioned at
12 the body.

13 Q. Can you recall whether there were any undertakers within
14 the house at the time?

15 A. I can't, no.

16 Q. Is it possible there may have been?

17 A. I think it's likely they were in the house.

18 Q. We have heard some evidence to say that it would not be
19 normal for undertakers to be allowed in there because it
20 might give them, as it were, special knowledge of the
21 crime scene which they would then be in a position to
22 relay outwith the crime scene and that might not be
23 helpful to the police inquiry?

24 A. I understand that and that's the reason why myself and
25 the Scenes of Crime Officer placed the body into the

1 body bag to prevent that specialist knowledge being put
2 out there.

3 THE CHAIRMAN: I suppose it would be inappropriate to put
4 the body in the body bag outside the house. You would
5 do it in the house.

6 A. Yes.

7 THE CHAIRMAN: And then the undertakers would take it from
8 that point.

9 A. That's correct.

10 MISS CARMICHAEL: Mr Moffat has told the Inquiry about his
11 having noticed, after you and he had lifted Miss Ross'
12 body, he drew to your attention that your glove had
13 burst.

14 Is that something that you recall?

15 A. I don't, no.

16 Q. He has also said that while you were in the process of
17 lifting Miss Ross' body you were more or less in the
18 doorway near to where her feet were and that at some
19 point your left hand came into contact with the
20 doorframe of the bathroom.

21 Is that something you recall?

22 A. No.

23 Q. He has told us that he gave you a warning at that point
24 not to touch the surface. Again, is that something that
25 you remember at all?

1 A. No.

2 Q. Is it possible that either of these things may have
3 happened but you do not remember them, Sergeant Gray?

4 A. Yes, that's possible.

5 Q. I take it that, like other people, you became aware,
6 probably at some point in 1997, that there was a
7 controversy about a fingerprint found at the scene in
8 this case?

9 A. Yes, I was.

10 Q. You may have been aware that it was a controversy about
11 a mark that was found on the very doorframe of the
12 bathroom that we have been talking about?

13 A. Yes.

14 Q. At that time did it ever cross your mind that yourself,
15 having been involved in moving the body, you may have
16 deposited the mark there?

17 A. No.

18 Q. So we can take it then that your position is that
19 Mr Moffat may not be correct in what he is telling us
20 about what happened at the scene?

21 A. It's a possibility. I certainly don't recall my glove
22 being burst. I certainly don't recall him saying to me
23 that my glove was burst and I don't recall being
24 positioned in that doorway and touching that doorframe.

25 Q. But you are not saying he's wrong?

1 A. No.

2 Q. I would like to direct your attention to paragraph 16 of
3 the signed statement that you gave to the Inquiry. Do
4 you have that in front of you?

5 A. I do, yes.

6 Q. You say:

7 "I do not recall being involved in moving the body
8 from the bathroom."

9 That does not seem to be exactly what you are telling
10 us today, Sergeant Gray.

11 A. That's correct.

12 Q. Can you explain the difference?

13 A. Just since providing a statement obviously I've had time
14 to think about it and I did remember being involved in
15 moving the body.

16 Q. I would like to give you an opportunity to read through
17 your statement carefully at this point and tell us if
18 there is anything else in it that you say now is not
19 your current recollection?

20 THE CHAIRMAN: Take a moment now. Take your own time to do
21 that.

22 A. Yes, my Lord. **(Pause)**

23 MISS CARMICHAEL: Is there anything else there that's wrong?

24 A. No.

25 Q. I think, like other witnesses in this Inquiry, somebody

1 came along to interview you to take this statement from
2 you, correct?

3 A. That's correct, yes.

4 Q. You were then given a copy of your statement to revise
5 as you saw fit?

6 A. That's correct.

7 Q. And you signed the statement in the form that we see it
8 today?

9 A. That's correct.

10 Q. And the first time that you have mentioned to anybody
11 involved in this Inquiry that it is not correct is in
12 the witness box in answer to questions from me today?

13 A. That's correct.

14 Q. Can you recall how long you had this statement with you
15 to revise it before you returned it signed?

16 A. I don't know.

17 THE CHAIRMAN: Can you give any indication? Did you have it
18 for days or weeks or months?

19 A. Maybe days, maybe a week, something like that. It's not
20 a long time.

21 MISS CARMICHAEL: I may have some dates to put to you. I've
22 been struggling with the computer here.

23 The record that I have indicates that you were
24 interviewed for the Inquiry at some point before
25 9th February 2009.

1 Would you agree with that?

2 A. Yes.

3 Q. And that the draft was sent back out to you on
4 19th February this year.

5 Do you receiving it around that time?

6 A. I don't recall the exact dates but I certainly wouldn't
7 disagree with that.

8 Q. I think you sent in your amendments to your statement
9 round about 23rd March this year.

10 Again, would you agree with that?

11 A. Yes.

12 Q. The record here is that the final form was sent to you
13 for signature on 1st ... in fact, it may be that in fact
14 you contacted the Inquiry at some point to say you
15 hadn't received something that had been sent to you.

16 Is that something that you recall?

17 A. Yes.

18 Q. That may have been at some point between 24th March and
19 1st May of this year.

20 A. I don't recall the exact dates but I'll agree with that.

21 Q. It may be that there was contact between you and the
22 Inquiry in which you indicated that you had not received
23 the statement that had been sent out to you for
24 signature?

25 A. Yes.

1 Q. But a further copy was sent to you on 1st May 2009.

2 Did you receive it round about then?

3 A. Again I don't recall the date but I'll agree with that.

4 Q. Certainly your statement appears to have been signed on

5 2nd May and it was received on -- I think the Inquiry

6 received it on 26th May.

7 Please tell the Chairman what contact the Inquiry made

8 with you before 26th May to try to achieve receiving

9 your statement?

10 A. Yes, there was quite a bit of contact. Unfortunately,

11 there was at least two occasions I was absent from my

12 work and they didn't get statements in time. They were

13 posted to my place of work and I wasn't there for quite

14 some time. So the time it took for amendments it was

15 back and forth between myself and the Inquiry so I -- I

16 remember there was a bit of pressure from the Inquiry to

17 get the statement back to them. So it did take me a bit

18 of time.

19 Q. Would I be right in saying that in fact a formal notice

20 was served on you to achieve getting your statement into

21 the Inquiry?

22 A. That's correct and, as I said, I was off my work for

23 some time so I actually didn't have possession of that

24 statement at the time.

25 Q. But you had a long time even in the time since you have

1 been interviewed from the Inquiry to think about whether
2 you were in the bathroom lifting Miss Ross' body,
3 Sergeant Gray, hadn't you?

4 A. Yes.

5 Q. And I think the Inquiry is entitled to some explanation
6 as to why it is only today that we have heard that what
7 is in your statement is not what you have to say is
8 correct.

9 A. I don't have an explanation for that. I was just
10 thinking about it over the last few days and it just
11 came back to me as I was thinking about the time I spent
12 there.

13 Q. Because, Mr Gray, would I be right in thinking that when
14 the Inquiry team asked you about this matter it was not
15 the first time you had been asked about it?

16 A. I don't follow.

17 Q. Well, am I correct in saying to you that you were
18 perhaps interviewed by officers from Tayside Police in
19 about August 2000?

20 A. When I was interviewed for this Inquiry recently that
21 was put to me and I don't recollect that interview
22 taking place.

23 Q. You don't recollect -- yes, I think you refer to that at
24 paragraph 12 of your statement.

25 A. Yes.

1 Q. And you simply have no recollection of giving -- we
2 perhaps should bring up the statement for you, CO1090.
3 This appears to have been a statement given by you. We
4 see S90 in the top corner and perhaps you will take it
5 from me it does derive from papers that the Inquiry has
6 from Operation Alba, the Mackay Inquiry.

7 It starts:

8 "I joined Strathclyde Police in 21st July, 1987 and am
9 presently a uniformed officer stationed at Blackstoun
10 Road Police Station, Paisley."

11 I take it that is something you may well have said in
12 giving that statement at that time?

13 A. No.

14 Q. No?

15 A. I worked at that time -- in 2000 I was stationed at
16 Ferguslie Park Police Office but I would never refer to
17 it as Blackstoun Road Police Station. No-one refers to
18 that Police Office as Blackstoun Road Police Station.
19 The Police Station is situated in Blackstoun Road but I
20 also referred to it, and everyone refers to it as,
21 Ferguslie Park Police Office.

22 THE CHAIRMAN: Can the witness see the end of the statement
23 to see if you recognise the document at all.

24 MISS CARMICHAEL: Can you go to the last page?

25 THE CHAIRMAN: Does it come back to you at all this

1 document?

2 A. No.

3 THE CHAIRMAN: Do you recall it?

4 A. Not at all.

5 MISS CARMICHAEL: It does record your annual leave dates.

6 Is there any way the person taking the statement could

7 have got those other than from yourself?

8 A. Well, they are well documented in the force. It's

9 common knowledge if you speak to HR or lay managers.

10 Q. Could you go back a page, please. I am sorry could you

11 go back one further page.

12 You will see if we look at the second paragraph on

13 this page that what was recorded here -- I'm sorry, can

14 you keep the whole page up:

15 "Some time later two undertakers arrived at the **locus**,

16 properly protected and placed the body of the deceased

17 into a shell and removed it from the **locus**. These

18 undertakers had occasion, therefore, to be within the

19 bathroom in question. The standard procedure is to

20 place the body of the deceased into a protective bag but

21 I cannot recall that taking place in this instance."

22 First of all, do you recall giving a statement to that

23 effect?

24 A. No.

25 Q. If you did, it differs in some respects from what you

1 have told the Inquiry today in that I think you were
2 saying that the moving of the body was a matter for you
3 and a Scenes of Crime Officer.

4 That is your position today?

5 A. Yes.

6 Q. You were also asked:

7 "The area where the deceased had been found was quite
8 narrow and restrictive and the deceased was quite a
9 large woman and it was an awkward process to remove the
10 body. I cannot recall directly being involved in
11 removing the body but, given the circumstances, I may
12 have."

13 Again, that does not accord with what you have told
14 the Inquiry today, no?

15 A. No.

16 Q. In the following paragraph it is recorded:

17 "As far as I can recall, no person removed their
18 gloves during their time in the house, nor do I recall
19 anyone having damaged gloves. I personally wore only
20 one pair of examination gloves which were intact during
21 the entire time. They were not damaged as far as I can
22 remember and I had no reason to change them."

23 Now, would you accept that that certainly implies that
24 you were being asked questions by the interviewing
25 officers about the question of your involvement, about

1 your moving the body and whether you had damaged gloves?

2 A. Yes.

3 Q. So assuming that this is your statement, Sergeant Gray,

4 you were asked about precisely these matters as early as

5 2000. That is nearly nine years ago. Is that not

6 correct?

7 A. That appears to be the case, yes.

8 Q. And I am just wondering if you can give the Inquiry any

9 idea at all as to why it would be that you, despite

10 having been asked about this three years after the event

11 you were not able to assist the officers with any

12 recollection at all about being involved in moving

13 Miss Ross' body but today for the very first time you

14 are?

15 A. I can't give an explanation. It's just something I

16 remember about being at the **locus**.

17 Q. Because if you weren't clear before, you must have been

18 pretty clear by the time the Tayside officers came to

19 speak to you that there was a matter of some controversy

20 that was of great importance to Ms McKie and it was of

21 great importance to the SCRO examiners who had become

22 involved in her case?

23 A. I would say I don't recall giving that statement at that

24 time in 2000.

25 Q. Well, are you alleging that officers of Tayside Police

1 have made up this statement?

2 A. No, not at all.

3 Q. So if you accept that you may have given this statement,

4 albeit that you don't remember it, it would be right,

5 wouldn't it, that people were asking you about this in

6 2000?

7 A. Sorry, could you repeat that?

8 Q. Do you accept that you may have given this statement,

9 albeit that you don't remember it?

10 A. Yes.

11 Q. So if we accept that, it follows that you were being

12 asked questions of this type in 2000, does it not?

13 A. Yes, it does.

14 Q. And you knew in 2000 that there was a serious matter

15 involved for Ms McKie and, particularly at that time,

16 for the SCRO examiners who had been involved in her

17 case.

18 A. Yes.

19 Q. And you can give no explanation whatsoever as to why in

20 that serious context you were unable to remember

21 something that you have been able to remember today?

22 A. No.

23 MISS CARMICHAEL: Thank you, Sergeant Gray.

24 THE CHAIRMAN: Are there any applications?

25 MR SMITH: Certainly I have one matter. I would like to put

1 a suggestion to the witness as to why his evidence might
2 have changed in this and if I may do so I would be
3 obliged if I could.

4 THE CHAIRMAN: If you wish to do so.

5 MR SMITH: Thank you, sir. There is also another matter
6 relating to part of the statement to the Robertson
7 Inquiry I would like to ask the witness. It relates to
8 the integrity of the **locus** and I would like to find out
9 what his recollection is today about the position in
10 relation to these two matters.

11 THE CHAIRMAN: This is about other police officers being in
12 the lounge?

13 MR SMITH: It is actually about whether everyone who was
14 there was in the appropriate clothing in the
15 circumstances.

16 THE CHAIRMAN: Yes.

17 **Cross-examined by MR SMITH**

18 MR SMITH: Can I ask you, please, Sergeant Gray, to look at
19 the statement that appears to have been produced, at
20 least by the Mackay Robertson Inquiry, CO1090 which will
21 be shown to you.

22 Can you go to page 3, please.

23 On page 3, towards the top if you read from line 4
24 we see a sentence beginning, "Detective Superintendent
25 Malcolm ..."

1 Do you see that?

2 A. I do, yes.

3 Q. "... arrived within the house during that time and I
4 recall that he was not properly dressed in that he
5 either did not wear gloves or did not wear a paper suit.

6 I also noted that Detective Superintendent Malcolm
7 placed his overcoat upon a table situated within the
8 front porch of the house. I cannot recall any other
9 persons present in the house at that time. It was
10 unclear at the time whether the deceased had taken her
11 own life or had been murdered."

12 I think I should have asked for permission to ask that
13 last part of the sentence, whether it was unclear
14 whether the deceased had taken her own life or been
15 murdered. I take it that was something that you are
16 sticking with today, whether you gave a statement to
17 that effect.

18 Is that your position here today: when you first
19 arrived, it was unclear what had happened to Miss Ross?

20 A. That's correct.

21 Q. Can I ask you about the information that appears to be
22 recorded here about Detective Superintendent Malcolm (a)
23 not apparently being properly dressed and (b) putting
24 his overcoat on the table. Are either or both of these
25 your recollection today?

1 A. The only part of that I do remember is the fact that I
2 recollect him placing his overcoat on the table in the
3 porch but, as far as not being properly dressed, I don't
4 remember that at all.

5 Q. Might it have been correct?

6 A. He wasn't properly dressed?

7 Q. That he was improperly dressed, might it be so?

8 A. I've no recollection of that. My recollection was that
9 the people in the house at the time were properly
10 dressed; they were wearing protective clothing. My
11 recollection as far as his coat's concerned was he left
12 his coat on the table in the porch.

13 Q. You see, Sergeant Gray, as the Chairman pointed out, at
14 the very last page -- perhaps if we could just have
15 that -- there's an indication in the statement that it
16 was noted by Detective Sergeant Dunn between 12.50 and
17 1400 hours -- so I reasonable amount of time taken -- on
18 16th August 2000 at the Police Station and corroborated
19 by another police officer Detective Constable Grieg
20 Steele.

21 I must confess I am a little unclear as to whether you
22 just simply have no recollection at all of giving any
23 statement to anybody regarding the Mackay Robertson
24 Inquiry or you remember giving a statement but you don't
25 remember what you said?

1 A. I've got no recollection of giving that statement at
2 that time.

3 Q. But I take it that, assuming that these police officers,
4 Detective Sergeant Dunn and Detective Constable Steele,
5 were doing their job properly you would accept they at
6 least took a statement, unless --

7 A. No, I absolutely accept that they took a statement. I
8 just don't remember giving a statement.

9 Q. They seem to have noted down a lot of things attributed
10 to what you have said?

11 A. Yes.

12 Q. Again, unless they both have made some terrible error or
13 made it up, then are you not prepared to accept that
14 it's probably a reasonably accurate representation of
15 what you said?

16 A. There is a possibility of that but, as I said, I don't
17 remember saying that at the time.

18 Q. Very well.

19 So can you help us with this: when, can you tell us,
20 you were first aware that there was some suggestion that
21 you may have deposited a fingerprint through a burst
22 glove at the **locus**? When were you first aware of that
23 suggestion?

24 A. The first time I became aware of that suggestion was
25 when I precognosed for this Inquiry and I was surprised

1 that suggestion was put to me.

2 Q. Of course this follows your involvement with looking at
3 the body and (inaudible) your precognition today where
4 you have accepted there may be something different
5 happened.

6 A. Yes.

7 Q. Were you asked to provide fingerprints to this Inquiry
8 within the past few days and weeks?

9 A. I was, yes.

10 Q. What was your response to that?

11 A. Initially, I said I would like to consult with my force
12 solicitor before. It was an unusual suggestion. I
13 wasn't aware of a reason behind it. I spoke to the
14 force, he had no objection with it and I agreed for my
15 fingerprints.

16 Q. Just as easy as that, can you understand that it was
17 entirely something (inaudible); is that right?

18 A. Yes.

19 Q. You saw fit to consult the force solicitor, is that what
20 you said?

21 A. That's correct.

22 Q. Why did you think you needed legal advice about a
23 request from a public inquiry, that has you under a
24 citation, to attend to provide fingerprints?

25 A. Well, this is the first public Inquiry I've been

1 involved in. I didn't know what the protocol was. I
2 don't know if the force had any objection, I didn't know
3 if there was any reasons, I didn't know what the
4 protocol was and I wanted to take advice before I did
5 that.

6 Q. At any stage did the Inquiry have to say they would
7 obtain an order to get your fingerprints they required?

8 A. No.

9 Q. When finally did you give your fingerprints?

10 A. That was yesterday.

11 Q. I think you are aware that they are going to be examined
12 to see if they coincide with the mark Y7. You know
13 that, don't you?

14 A. Yes.

15 Q. And of course if they do coincide with mark Y7 if your
16 position was you weren't moving the body and you didn't
17 have a burst glove at all, then you have a little
18 explaining to do, wouldn't you?

19 A. I would do yes.

20 Q. Whereas if there was -- if it wasn't your fingerprint,
21 Y7, you would be entirely comfortable with your position
22 as in your statement, wouldn't you?

23 A. Yes.

24 Q. I am going to suggest to you the doubts that you now
25 have with it being examined is perhaps your motivation

1 for recognising that your statement as is really showed
2 to be false; is that not right?

3 A. I don't quite understand that.

4 Q. I am suggesting to you that in your statement, you give
5 a version in your written statement, you give a written
6 statement, that is inconsistent with your print being
7 Y7.

8 A. As far as today is concerned the only inconsistency I'm
9 aware of is in relation to my handling of the body.

10 Q. Yes, the body was positioned right at the doorframe,
11 wasn't it?

12 A. Yes.

13 Q. So if Y7 is your fingerprint, then you must have been
14 approximate to the body, correct?

15 A. I'd accept that, yes.

16 Q. What I am suggesting to you is that it would certainly
17 require an explanation as to what you were doing near
18 the body if you weren't moving it, if it turns out your
19 fingerprint is Y7.

20 Do you understand what I am putting to you?

21 A. Yes.

22 Q. I am suggesting to you that your knowledge of some doubt
23 of it, the authorship of Y7 in particular might be
24 yours, then it is clear that your statement requires to
25 be reviewed?

1 A. Yes.

2 Q. Sergeant Gray, have you been entirely truthful with this
3 Inquiry about your recollection of events?

4 A. Yes, I have.

5 MR SMITH: Thank you.

6 THE CHAIRMAN: Any other applications.

7 MR HOLMES: I have no questions for Sergeant Gray, sir.

8 MISS GRAHAME: No questions, thank you.

9 **Cross-examined by MR MACPHERSON**

10 Q. I do have one or two matters of clarification, issues I
11 would just like to address. I don't think it will take
12 particularly long.

13 Sergeant Gray, Mr Smith, my learned friend there,
14 suggested to you that your statement might partially
15 need to be reviewed in certain circumstances but am I
16 right in understanding that in fact you accept that
17 there is a change required to your witness statement to
18 the Inquiry in relation to whether you were involved in
19 moving the body?

20 A. Yes.

21 Q. So you accepted that to that extent the statement
22 requires to be reviewed?

23 A. Yes.

24 Q. I wonder if I may just ask you about another paragraph
25 in your statement just to complete the picture, please,

1 if you have your statement there and if the Inquiry
2 wishes to put it up on the screen the statement is
3 reference FI0069 and at paragraph 6 on page 2 of the
4 statement; do you have that, Sergeant?

5 I think at paragraph 6 your witness statement says:

6 "I recall being in the house with DCI but I can't
7 recall what I was doing. The only other involvement I
8 remember was to accompany the body to the mortuary in
9 Glasgow."

10 Would I be right from what you have now told us that
11 that also requires to be reviewed in that you did not
12 have another involvement that you now recall?

13 A. That's correct.

14 Q. And your evidence to the Inquiry is that you do recall
15 having an involvement in moving the body?

16 A. That's correct.

17 Q. Can I take it, Sergeant, that you have, and indeed at
18 that time, been to many other similar crime scenes?

19 A. Yes.

20 Q. Including scenes where there was a death or a murder?

21 A. Yes.

22 Q. And you had to move the body, been involved in the
23 removal of the body?

24 A. Yes.

25 Q. Was there any reason, at the time you were there at the

1 **locus** in this case, for that particular incident to
2 stick in your mind?

3 A. It's -- the main reason is that in order for the body to
4 be taken out the bathroom, in order to keep the
5 information in relation to how the deceased was killed,
6 then that's specialist knowledge and we wouldn't want
7 that to go out into the public domain. So the reason
8 would be that myself and another would then place the
9 body into the body bag to prevent undertakers viewing
10 the deceased in that position.

11 Q. In relation to the question of the gloves, you have been
12 asked about, and in your statement to the Inquiry you
13 said, that you don't recall your glove being damaged --

14 A. That's correct.

15 Q. -- when you gave a statement to the Inquiry, was it
16 suggested to you that a witness had said your glove was
17 damaged?

18 A. That's correct, sir, yes.

19 Q. Is having a damaged or torn glove something that you
20 might recall? Is it something out of the ordinary?

21 A. I would have recalled it, yes, and the fact that I don't
22 makes me think that my glove wasn't torn.

23 Q. Were you told by the person taking the statement for the
24 Inquiry who the witness was who said that your glove was
25 torn?

1 A. No.

2 Q. I think Miss Carmichael asked you whether you could
3 remember the names of the Scenes of Crime Officers there
4 and you said you could not.

5 A. That's correct.

6 Q. There was reference in your evidence earlier to
7 Mr Moffat.

8 A. That's correct.

9 Q. Do you know Mr Moffat, who is or was a Scenes of Crimes
10 Officer?

11 A. The name's certainly familiar to me.

12 Q. Do you know who he is? Can you picture him, for
13 example?

14 A. If he walked past me I probably couldn't, no.

15 Q. Then the finally one last thing, Sergeant: you have been
16 shown the statement that it is said you gave to the
17 Mackay Inquiry in 2000. I understand your evidence to
18 this Inquiry is you don't recall giving that statement.

19 A. That's correct.

20 Q. But you don't dispute that it may have been given?

21 A. Yes.

22 Q. As you said to Mr Smith, if evidence is led that you did
23 give such a statement, you will not disagree with that?

24 A. No.

25 Q. Can I just confirm, even if it is true that you did give

1 a statement, did you or do you recall -- perhaps I can
2 put that another way.

3 Even if you gave a statement, you do not recall
4 receiving a copy of that statement at any stage?

5 A. That's correct.

6 Q. Or being asked to look over it or to revise it?

7 A. That's correct.

8 MR MACPHERSON: I have no further questions, sir.

9 MISS CARMICHAEL: No thank you, sir.

10 THE CHAIRMAN: Could I just you just to direct your mind to
11 this proposition: I have been told in the course of this
12 Inquiry that police officers naturally from time to time
13 accidentally leave a fingerprint on a scene, that that
14 is just human nature and these things can happen.

15 A. Yes.

16 THE CHAIRMAN: Of course, if that happens, then one would
17 want to draw that to the attention of your authorities
18 as soon as possible so that they would understand that
19 this unfortunate thing had happened.

20 A. That's correct.

21 THE CHAIRMAN: If -- and I appreciate that you have no
22 recollection of this -- but if it had been drawn to your
23 attention that you might have left a mark accidentally
24 at the scene, what would have been your approach to
25 that?

1 A. I would have drawn it to the attention of one of my
2 supervisors to make them aware that that had actually
3 happened.

4 THE CHAIRMAN: Would there be any reason for you not to do
5 that?

6 A. The only reason I can think of is the glove wasn't burst
7 and there was no reason to put that forward.

8 THE CHAIRMAN: So if your glove had burst and if it was
9 possible that you might have left a mark, then you say
10 you would have drawn that to the attention of --

11 A. Yes, absolutely.

12 THE CHAIRMAN: If it was brought to your attention, you
13 would have told your supervisor.

14 A. Yes.

15 THE CHAIRMAN: Thank you very much. Thank you for your
16 assistance.

17 Now, it is 1.00. We will rise until 1.50 and I
18 think, as I indicated, on Fridays I intend to rise at
19 3.00.

20 **(1.00 pm)**

21 **(Luncheon Adjournment)**

22

23

24

25