

1

2 (1.52 pm)

3 THE CHAIRMAN: Miss Galbraith, you first.

4 MISS GALBRAITH: Thank you, sir. I do have a number of
5 various things I would like to ask this witness about.

6 Broadly initially I would just like to ask his views
7 and opinion on blind testing as a procedure and I have
8 one matter in relation to the use of the comparator.

9 Then I would like to ask him about the actual blind
10 testing of Y7, the circumstances of the testing and what
11 knowledge he may have as to the identity of others
12 involved in the test.

13 I would then like to ask him about some
14 inconsistencies between his oral evidence and his
15 written statement to the Inquiry.

16 I then have a couple of questions regarding the
17 standard elimination that he has given some evidence
18 about, the 16-point standard, and I'd also like to ask
19 him very briefly about the form 13B which the Inquiry
20 has already heard evidence about.

21 THE CHAIRMAN: Yes, all right. I am sure you won't cover
22 ground that has been covered already.

23 MISS GALBRAITH: I shall endeavour not to, sir.

24 **Cross-examined by MISS GALBRAITH**

25 Q. Mr Padden, can I firstly ask you some questions about

1 the procedure of blind testing. From what we
2 understand, both from your own evidence and from other
3 evidence the Inquiry has heard, this was an **ad hoc**,
4 unusual procedure that had not been used either before
5 or after; is that correct?

6 A. That's correct, yes.

7 Q. In terms of the use of a comparator, you say in
8 paragraph 5 of your statement that a comparator is never
9 the starting point for examination of a mark.

10 A. That's correct, yes.

11 Q. Do you have a copy of your statement?

12 A. Yes, I do.

13 Q. You go on to explain at paragraph 8 that the comparator
14 is an aid, not a means of identification. I wonder if
15 you could just explain to us please what you mean by
16 this.

17 A. Well, what you want to do when you're making a
18 comparison is to examine the print itself first of all.
19 In an ideal set of circumstances what you would be doing
20 is looking at the print and you'd be looking for very,
21 importantly, perhaps, digit determination. You are
22 looking to see where the print is laid down in relation
23 to what has gone on around that print. It could be that
24 you have got a couple of smudges to the left and right
25 of it. There may be very little ridge detail in those

1 smudges but they may lead you to understand based on
2 your experience it is, perhaps a right middle
3 fingerprint and the two around it would be the right
4 fore and the right ring. So you get to know the print
5 before you go to making a comparison and that's what I
6 was trying to get across in my statement.

7 Q. The feeling I get from your statement is there's a wider
8 range of information that you would like to have ideally
9 before starting a comparison exercise?

10 A. That's right. Perhaps on the lifted impression you
11 would have information as to what the impression had
12 been lifted from which just for an example, again, it
13 may be a curved surface and that may perhaps influence
14 you as to how that print has been laid down. If you
15 knew it was taken from a curved surface it might affect
16 the way the ridges are appearing but if you don't know
17 that information going into a comparison then it's a
18 piece of information you haven't got before you make
19 your comparison.

20 Q. In relation to the blind testing exercise that you were
21 involved in, from the terms of your statement would we
22 be correct in having the impression you were not
23 comfortable with this exercise?

24 A. I don't consider it the correct way to carry out the
25 examination.

1 Q. Why is that?

2 A. Well, as I explained, it takes away the first couple of
3 steps that you would normally have as an examiner, which
4 is a familiarisation with the print, where it's from,
5 where it is in situ in relation to the rest of that
6 impression you're having those steps removed and you've
7 just gone straight to the comparison.

8 As I explained earlier on as well when you're
9 looking at something on a comparator it's only a
10 specific area that's enlarged. So, again, it's stopping
11 you -- allowing you to see everything in relation to
12 even that impression itself because we're talking about
13 say a thumb, for example, thumbs are often very high and
14 very wide but it could be the way it's captured it's
15 only capturing a certain area so you wouldn't have that
16 pre-knowledge that perhaps you might be looking at a
17 thumb, for example.

18 Q. You indicate that on that evening you looked at the mark
19 on the comparator machine that you were due to finish
20 your shift at 8.00 at night.

21 A. That's right.

22 Q. And that the request came to you from Mr Dunbar about
23 7.30?

24 A. It was late on; it was late on. I've said 7.30 but I
25 don't think I can be that specific but it was certainly

1 late on in the day.

2 Q. And you understood a response was required there and
3 then?

4 A. Yes, that's tight.

5 Q. Did you also understand that you were not going to be
6 given any opportunity to look at the mark again?

7 A. Well, I wasn't sure what was going to happen. I said to
8 Mr Dunbar that I'd prefer to look at it the next day
9 using my glasses and Mr Dunbar said well he'd really
10 rather have an answer there and then if possible and I
11 said I wasn't in a position to do so, so that was that.

12 Q. In circumstances such as this, to be told by a senior
13 officer with half-an-hour to go before the end of your
14 shift that an answer was required, the feeling may be
15 that you were put under a degree of pressure to give an
16 answer.

17 A. No, because when I made my comment about preferring to
18 look at it the next day there was no follow-up question
19 telling me an answer had to be given there and then. It
20 was agreed that was -- I wasn't able to give an opinion
21 so that was the end of the matter as far as it was
22 concerned.

23 Q. Do you recall giving a precognition, Mr Padden, to a
24 lady called Jillian Nelson in September 2003?

25 A. I'm aware I've given precognitions previously.

1 Q. I think this particular document was shown to you when
2 you gave your statement to the Inquiry.

3 A. Yes.

4 Q. If I could ask you to have a look at it please it's
5 document reference SG0198. If we could go to the second
6 page, please.

7 If we look at the second paragraph, you say
8 there -- I think you have made some marks further down
9 the page which you explain in your Inquiry statement.

10 Can we take it from that that you have been given an
11 opportunity to look at this precognition and comment on
12 it?

13 A. I have been but I wasn't happy with what was written
14 down at the time. You've seen my --

15 Q. We see that note, that's right?

16 A. Yes, but generally that isn't -- I know what you're
17 going to ask next, which is that I felt under pressure.
18 Certainly that's not the line -- the next line was
19 relevant one, I felt as if -- I wasn't happy about the
20 whole circumstances of giving the opinion. It wasn't
21 under pressure to give an answer.

22 Q. So your reference under pressure referred to the whole
23 situation and --

24 A. The whole set of circumstances, I just felt it was not
25 conducive to carrying out an examination in the way that

1 I normally would.

2 Q. I have finished with that document now, thank you.

3 Can you recall what you were told about the
4 exercise?

5 A. I wasn't told anything. I was told it was a quality
6 assurance exercise, I was going to look at it on the
7 comparator and to see what I thought, what my opinion
8 was of it.

9 Q. A quality assurance exercise?

10 A. A quality assurance exercise.

11 Q. Now, we understand that there were others involved in
12 this procedure that evening.

13 Are you aware of anybody else that was involved?

14 A. I'm only aware of Mr Foley because, as I say, when I
15 mentioned it I'd noticed characteristics being what I
16 thought were perhaps w wee bit off. I've mentioned
17 perhaps the comparator being bumped. I mentioned to
18 Alan and Alan had said, "That shouldn't there. I think
19 that was Terry. Just rub that off and start again". So
20 that would be the only way I knew that Terry had been in
21 previous to me.

22 Q. You say in your statement that there was a degree of
23 secrecy about this test.

24 A. Yes.

25 Q. Could that be a reason as to why at that time you

1 weren't aware of anybody else being involved in it?

2 A. Possibly, possibly. My recollection is that people have
3 been asked to go into Mr Ferry's room. I didn't know
4 why and I didn't know what they were doing. That was my
5 recollection.

6 Q. The reason I ask, Mr Padden, is that there would appear
7 to be a number of officers who remain unidentified that
8 may have considered mark Y7 that evening.

9 Can you recall, even broadly, how many officers you
10 would have been working with?

11 A. No.

12 Q. Can you give us a ballpark?

13 A. It's very difficult to try and think of personnel
14 numbers at that time.

15 Q. Certainly for myself are we talking say 10 or 50 or can
16 you ...?

17 A. It's difficult to say. I couldn't say with any kind of
18 degree of certainty.

19 Q. Can you say with a lesser degree certainty just to give
20 us --

21 A. No.

22 Q. Not at all?

23 A. Not at all. I genuinely cannot remember.

24 Q. Did you work in teams at that time?

25 A. Yes, we did.

1 Q. Did teams cover different police divisions and areas?

2 A. Different geographical areas, that's correct.

3 Q. Are you able to remember how many people would have been
4 in your team?

5 A. Specifically, no, but I would assume it would be round
6 about five or six because that was the normal sort of
7 numbers we had. The normal kind of numbers is about
8 five or six, I would imagine, at that time.

9 Q. How many teams were there?

10 A. Again, I couldn't break it down specifically. No, I
11 wouldn't be able to break it down, sorry.

12 Q. I suppose if we were to consider how many police
13 divisions there were at the time, you may be able to
14 carry out that exercise --

15 A. No, because several police divisions were amalgamated
16 into different teams, so one team would cover several
17 so ...

18 Q. If I can just take you back to a comment you just made,
19 please, Mr Padden, you mentioned the bump which you have
20 told us about in oral evidence.

21 Can I ask you please to look at your Inquiry
22 statement you have there. It's paragraph 10. If this
23 could be put on the screen, please. Your statement is
24 FI0008. This is page 6, paragraph 10. What you say
25 there is that:

1 "For the blind test in Ferry's room the comparator
2 screen was already marked, from memory in blue ink, with
3 the previous officer's markings. I don't think that was
4 done deliberately, it was just a bit sloppy. I had a
5 quick look at the markings on the screen, and said to
6 Alan Dunbar that I didn't think all the characteristics
7 that had been marked were correct."

8 Is it correct you don't mention anything there about
9 this bump?

10 A. Yes, correct.

11 Q. Is it possible that the marks had been put there by
12 whoever looked at the mark before you and you quite
13 simply didn't agree with the marks that had been made?
14 That's another explanation, isn't it?

15 A. No, as I've said further down it's was before I got -- I
16 think it says here -- before I got to any considered
17 opinion, unless it was just me, as a starting point
18 looking at the screen very, very quick look and not
19 using all the information that was there to come to a
20 conclusion. I certainly wasn't intending it to come
21 across as if I was talking about anybody else's
22 characteristics.

23 Q. I'm not trying to suggest that you made an absolute
24 disagreement with a previous officer but in terms of the
25 initial looking at the mark, a bump is one explanation

1 you have given us today but another explanation is that
2 you may not simply agree with the points marked by an
3 earlier officer. Is that correct?

4 A. Possibly, it's obviously extremely complex marks, the
5 idea I would sit down and see them all falling into
6 place is very unlikely. My recollection was that they
7 didn't seem to be sitting quite right on the -- the
8 points didn't seem to sitting quite right on the
9 characteristics they were referring to and that's what
10 I'm meaning by saying it looked immediately as if they
11 perhaps were -- I said off wrong ... so I, as I say,
12 made the point and started from scratch then.

13 Q. Thank you, I have no further questions on that.

14 In terms of the working practices in 1997, you
15 mentioned that in your statement and I think you
16 clarified with Counsel to the Inquiry this morning that
17 you didn't agree with what had been written in your
18 statement.

19 A. Yes, that's correct.

20 Q. Specifically, it was noted there that there tended not
21 to be a running note of characteristics.

22 A. Yes.

23 Q. Your evidence is today is that you don't agree that
24 that's what you said.

25 A. Yes.

1 Q. It was a running note of --

2 A. The officers involved in the identification.

3 Q. The officers involved. Obviously, that's not something
4 you picked up prior to signing the statement.

5 A. That's correct, yes.

6 Q. But would I be right in my understanding of the evidence
7 that you then went on to agree with Counsel to the
8 Inquiry that, in fact, there was no running note of
9 characteristics kept in 1997 so that's --

10 A. Of ... sorry.

11 Q. So what is written here is actually accurate?

12 A. What it is accurate but there's no running note
13 characteristics today either. It's not something that
14 happens. That's why it doesn't really make any sense.

15 Q. We can take it that what has been written here is
16 accurate and what you seem to have been explaining to
17 the Inquiry statement taker is something really quite
18 different?

19 A. I was trying to emphasise the point that where an
20 examiner carries out a comparison now they immediately
21 record their findings and that's done as it passes on
22 between each examiner.

23 Q. I think that they are obviously quite different?

24 A. They are. Characteristics you wouldn't keep a running
25 note. I don't even know what that means. You may

1 reference one or two characteristics, as I explained
2 earlier on, that had presented some sort of difficulty
3 and areas that caused difficulty but not a running note
4 of characteristics.

5 Q. Can I go on to ask you about another -- I was unclear
6 about your evidence as it matched with your Inquiry
7 statement. In paragraph 12 of your statement -- could
8 we have that on screen please, page 7 of the document --
9 I know that Counsel for the Inquiry did go over this
10 with you but I have to say I still remain a little
11 unclear.

12 If I can just take you to paragraph 12, please, what
13 you say is:

14 "So far as pressure within the office was concerned
15 at that time, in general, in a system where people
16 passed identifications for others for confirmation it
17 was not good practice in my view for very experienced
18 fingerprint officers to pass an identification to a very
19 junior and recently authorised fingerprint officer to
20 confirm it."

21 In fact, I think earlier in your statement you
22 explained that this did happen.

23 A. Mm-hm.

24 Q. Are you saying that you are changing your view on that?

25 A. Sorry, can you --

1 Q. Is this accurate? You're talking about pressure within
2 the office and go on to say that it was not good
3 practice for very experienced fingerprint officers to
4 pass identifications to more junior fingerprint officers
5 and that could create an atmosphere of pressure.

6 A. As I said earlier on, I don't think it's best practice
7 to have that path, if you like.

8 Q. I think you clarify that by saying a junior officer
9 would be not inclined to doubt a more experienced
10 officer's work, quite naturally.

11 A. Well, it presents a situation for yourself to think, as
12 I've mentioned further down, you know that you're
13 dealing with very experienced officers and maybe you
14 just realise you don't have the same level of knowledge
15 and experience. That's what that's referring to.

16 Q. You go on to say that one other officer shared that view
17 and there was a general feeling that one or two people
18 were not happy if their identifications were not
19 confirmed by others.

20 Can I ask who you were meaning by that?

21 A. No, it was just a general feeling. I wouldn't want to
22 specify individuals because I can't remember specific
23 incidents.

24 Q. You can't remember a specific incident yourself where
25 that happened?

1 A. No, I can't.

2 Q. You gave quite a full explanation of your approach to
3 the standard of elimination, I think, elimination being
4 at that time you would use 12 points and then go on to
5 16 points for court purposes.

6 A. That's correct, yes.

7 Q. On Friday afternoon you gave evidence that in this case,
8 in this murder inquiry, the eliminations were being
9 checked by four fingerprint officers. Do you recall?

10 A. Yes, that's correct, yes.

11 Q. And certainly there is evidence to indicate that these
12 checks were being done, all of them were being done, to
13 the 16-point standard. Is that something you were aware
14 of?

15 A. I've heard it in evidence around this case but not
16 specifically as being a member of staff, if you like.

17 Q. Office chat; is that --

18 A. To be honest I think it's information I might have
19 gathered from the Internet or whatever in relation to
20 the case. I'm not aware of it being specifically
21 office-based chatter where it came from.

22 Q. We understand that there was a very high volume of
23 fingerprints in this case.

24 A. Yes, there was.

25 Q. For all of the fingerprints to be eliminated to a

1 16-point standard and checked with four officers, was
2 that the normal procedure, as you understood it?

3 A. I'm not sure. Looking back it seems to me to be quite a
4 high standard, as if it's been really -- I think the
5 expression earlier on was used is belt and whatever it
6 is --

7 Q. Belt and braces?

8 A. -- and it's absolutely covering it from every single
9 angle. It's probably consistent with the people
10 involved wanting to make sure it was done to the nth
11 degree.

12 Q. Are you in a position to say whether this process using
13 four officers to confirm to a 16-point standard, whether
14 that had been done in other investigations?

15 A. I don't know.

16 Q. Can we also take it that you're not in a position to say
17 who would have instructed the examination to that
18 standard and for what reason?

19 A. No, I couldn't do that.

20 Q. Going back to your statement to the Inquiry, you explain
21 in paragraph 14 a little about the feeling within the
22 office of SCRO and you say that there seemed to be a
23 general feeling that the case would be upheld or the
24 identifications of the SCRO personnel would be upheld.

25 If I can ask this to be put on the screen please,

1 this is at page 9, the top paragraph. You say halfway
2 down there that:

3 "Our belief came from the fact that we had been told
4 by others in the past that we were the best fingerprint
5 bureau in the world ..."

6 Can I just ask you, please, Mr Padden, where you
7 understood that comment to have come from?

8 A. The chiefs at the time, the police officers who were in
9 charge of the office at the time.

10 Q. So it was within the SCRO office?

11 A. Yes.

12 Q. How long had you been qualified in 1997?

13 A. Two, perhaps, two, two and a half years.

14 Q. You go on to mention that you had heard about the
15 training of the American expert involved in the case. I
16 assume you are referring there to a gentleman, Pat
17 Wertheim?

18 A. Yes.

19 Q. At that time did you know anything about Mr Wertheim's
20 knowledge, experience or training?

21 A. No.

22 Q. This was something you had been told from within SCRO?

23 A. It was -- well, certainly not in any official capacity
24 but it was again what you would call workplace chatter
25 that Mr Wertheim had had a two-week training course. I

1 believe that was the information.

2 Q. The Inquiry may hear from other witnesses a little bit
3 more about Mr Wertheim.

4 A. Absolutely.

5 Q. I can just lastly ask you briefly -- and it's not a
6 matter that has been raised with you up until now -- the
7 Inquiry has heard evidence about a form 13B which, if we
8 can have it on screen, please, the reference number is
9 DB0251. Is that a form that you would recognise?

10 A. Yes.

11 Q. You will see there's an annotation written about halfway
12 down the form in between asterisks. It says "ident
13 required for deceased".

14 A. Yes, I see that.

15 Q. In terms of the word "ident", obviously
16 identification --

17 A. Yes.

18 Q. -- what would you understand that instruction to mean to
19 you as a fingerprint expert?

20 A. To be honest, I'm not sure. It's not something that I
21 would expect to see.

22 Q. Is that an instruction or a comment that you have seen
23 written before, on a form before?

24 A. I've not aware of seeing that before, no.

25 Q. You're not aware of seeing that before.

1 A. No.

2 Q. Have you seen this particular form?

3 A. I haven't seen this particular form but I've read the
4 evidence from previously, the Scene of Crime Officer I
5 believe put it there. For me, it's not something I
6 would expect to see.

7 Q. Can you assist us at all with what your interpretation
8 would be if you were to receive a form like that?

9 A. I'm not sure what the person's trying to get across. In
10 any case like this, the deceased would be the first elim
11 that would be checked. It's that person's house so that
12 person would be checked against all marks. So I'm not
13 really sure why that would be there.

14 THE CHAIRMAN: If the item was found in somebody else's
15 house ...

16 A. Again, that's the information we receive. You can see
17 there's not a lot on it. For me, personally, it's just
18 not something I'm familiar with.

19 MISS GALBRAITH: Thank you very much.

20 THE CHAIRMAN: Miss Grahame, do you have any questions of
21 the witness?

22 MISS GRAHAME: No, thank you, sir.

23 THE CHAIRMAN: Mr Macpherson.

24 MR MACPHERSON: No, thank you, sir.

25 THE CHAIRMAN: Mr Holmes?

1 MR HOLMES: Thank you, sir, there are four areas I would
2 like to cover with the witness. The first relates to
3 the training of the SCRO officers; the second relates to
4 practice in 1997 by comparison with practice today; the
5 third relates to his involvement with mark XF; and the
6 fourth relates to his involvement in what has become
7 known as the blind test.

8 THE CHAIRMAN: Yes, very good.

9 **Cross-examined by MR HOLMES**

10 Q. Mr Padden, if I can cover with you first the training
11 that you went through in order to become an officer at
12 the SCRO, you say in your statement that you undertook a
13 period of five years' of training. Is that correct?

14 A. That's correct, yes.

15 Q. What did that involve?

16 A. It involved mostly on the job training. You worked
17 quite closely with a senior more experienced officer who
18 would check your work. You sat examinations. Me,
19 myself, I went to Durham National Training Centre as
20 well and you ultimately then sit a final test, a final
21 examination, covering various aspects of what it means
22 to be a fingerprint examiner in which you would be
23 tested on comparison and you would be tested on your
24 courtroom skills.

25 Q. So it's a significant undertaking. It's a long time and

1 it's a lot of exams that you have to sit?

2 A. Yes, it is. Previous to myself it was actually seven
3 years and when I was training it was five years.

4 Q. When that period of training ends, that's not it, is it?

5 A. No.

6 Q. There's continuing assessment after that.

7 A. Absolutely. If you imagine a situation where you're
8 identifying a case, you're passing it on to other
9 individuals to check and those individuals are checking
10 your work so you're being tested all the time. Other
11 people are looking at your work all the time.

12 Q. So on a daily basis your work's peer reviewed because,
13 as you say, all the identifications that you make are
14 checked by other fingerprint officers.

15 Is there other training in addition to that?

16 A. Well, the likes of me, myself, I went to Durham again
17 for a course in third level detail training. We had
18 days here and there. Mr Mackenzie ran a course in
19 relation to palm -- identifying palm impressions. So
20 there was various inputs we have throughout our career
21 to keep yourself up to speed and refreshed.

22 Q. Can I firstly check with you: Durham, is that the
23 national training centre?

24 A. Yes, it is.

25 Q. Secondly, the Mr Mackenzie that you referred to there;

1 is that Roberts Mackenzie?

2 A. Yes, it is.

3 Q. And Mr Mackenzie was responsible for what within the
4 bureau?

5 A. Well, he was the deputy head; he was the boss basically.

6 Q. So are we to understand it was Mr Mackenzie who was
7 responsible for the training that was put in place for
8 fingerprint officers?

9 A. To be honest, I'm not a hundred per cent sure how it was
10 decided, as a trainee or whatever you would just know
11 you're being put forward for particular courses, or
12 days, or inputs or what have you.

13 Q. Were the tests that were set within the Glasgow Bureau?

14 A. In relation to ...?

15 Q. Assessments.

16 A. We currently sit an independent assessment every year.
17 The first one, however, that we ever sat was designed by
18 Mr Mackenzie and it's then been taken over by an
19 independent organisation.

20 Q. Do you know if the tests themselves were ever reviewed
21 by outside organisations?

22 A. I believe that the first test that Mr Mackenzie put
23 together was reviewed by the FBI.

24 Q. Do you know what their view of that test was?

25 A. I would defer to Mr Mackenzie but I believe that the

1 opinion was it was too hard, if you like. It was too
2 high a standard.

3 Q. It was too hard?

4 A. It was too hard.

5 Q. Coming from the FBI that's quite an accolade.

6 A. Yes, it is.

7 Q. Did the officers within the Glasgow Bureau regard the
8 training is fairly stringent as well?

9 A. Yes, it is.

10 Q. So it's not done from within the SCRO but from outside
11 agencies that the training has been approved?

12 A. Yes. If I can make one point on that subject: the
13 nature of the area that we cover is Glasgow and the
14 surrounding areas and by definition we have to deal with
15 a huge amount of very serious crime. We deal with a
16 huge amount of murders, attempted murders. That's not
17 unusual for us; that's our daily workload, so I would
18 just like to make the point that the people involved who
19 have worked in this area and currently work in the SPSA
20 are dealing with high level, very serious cases on a
21 daily basis.

22 Q. So is there a need then for them to be amongst the best
23 trained fingerprints experts available?

24 A. Yes, absolutely. I don't know if I can mention this,
25 Mr Chairman, but I did take a snapshot this morning of

1 the current workload our special case section deals
2 with, as the name suggests the more special cases, and
3 just as an example of what we've got today, the team
4 leader from that section gave me that, we're currently
5 working on 9 murders, 12 attempt murders, 14 serious
6 assaults, amongst many other cases. That's just a
7 normal day that we have at one section.

8 So I think it's important to -- I feel as if I
9 wanted to get across to the Inquiry the level of
10 knowledge and experience that the people involved in
11 this case have.

12 Q. There's clearly quite a level of skill involved in
13 fingerprint comparison work; is that fair to say?

14 A. Yes, it is.

15 Q. Because it's a lengthy training period and it's
16 something that takes a long time to learn to do?

17 A. Yes, it is.

18 Q. Are there individuals that you would regard within the
19 bureau as having been particularly skilled?

20 A. I think there's, like any walk of life, you've got
21 individuals that excel, that are more of a natural. You
22 can look at sport; you can look at anything. I think
23 it's fair to say that within the department there have
24 always been a couple of individuals who have been held
25 in very high regard based on their work and based on

1 experience.

2 Q. I think you mentioned this morning that one of those
3 individuals was Mr Macpherson?

4 A. I think Mr Macpherson was generally regarded as the top
5 person in the bureau?

6 Q. Is there anyone else who was particularly highly
7 regarded around that time?

8 A. I would suggest all of the staff that were involved in
9 this Inquiry, Mr Mackenzie, Mr Dunbar. They're all very
10 experienced and knowledgeable officers.

11 Q. Is it fair to say that the test of those skills comes
12 not in the routine identification work but perhaps when
13 the conditions for comparison are not as favourable as
14 you will like?

15 A. Could you expand on that please?

16 Q. You will get occasionally marks which are very easy to
17 identify; is that correct?

18 A. Yes. But the situation is that it's not unusual to have
19 a scene of crime mark that's actually better quality
20 than the ten-print form that you're looking at. On
21 occasions that happens and it's great. It's not the
22 standard though. What normally happens is you're
23 looking at impressions that are subject to all sorts
24 of -- sorry, a number of factors that enable you to look
25 at that clearly being reduced and that would be where

1 it's been taken off the donating article, if its dirty,
2 if it's sweaty, if it's moved, if the person has double
3 touched the impression as they're laying it down.
4 There's any number of factors that have been taken into
5 account when you are looking at a scene of crime
6 impression, the important point being that it was not
7 intentionally. It was left accidentally. The person
8 didn't mean to do it. It wasn't taken under
9 ideal circumstances, so the skill as a fingerprint
10 examiner is to look at this information and to try to
11 come to a conclusion as to what happened? Is this the
12 same person? But it's a difficult job. When you're
13 talking about specifically poor quality marks, it's a
14 difficult job.

15 Q. So as in any walk of life the skills that you have taken
16 the time and trouble to develop come into play when
17 faced with those difficult marks?

18 A. Absolutely. That's when your training kicks in.

19 Q. If I can move on from the training to the practice that
20 was in place in 1997, we've heard a lot about standards
21 for court and what was recorded after the examination
22 took place. I wonder if you could say a bit about what
23 the actual physical process of conducting a comparison
24 involves.

25 A. In any circumstance?

1 Q. In any circumstance.

2 A. Well, what you would do is you -- to take it back a bit
3 further, we receive work from the Scene of Crime Unit,
4 Scene Examination Unit I should say. They deliver
5 batches of work. That work is logged in our reception.
6 We've now got an office management system that also logs
7 all the details in relation to the specific case. A
8 case envelope is allocated. Diary pages are allocated.
9 The case is then passed to the team that deals with that
10 relevant area. Individuals, on the instructions of the
11 team leader, will then take whatever category of work
12 they decide is most relevant. You've got a number of
13 categories of work, you've got eliminations to complete,
14 you've got suspects to compare, you've got marks. Cases
15 come in where there's no elims and no suspects and
16 therefore they have to be assessed and by "assess" I
17 mean trying to determine what digit created them and the
18 are launched on our ID 1 system, which is a computerised
19 searching system.

20 But if we take the example of a suspect case, you
21 would take the case and you would have your fingerprint
22 form, you would have your photographed impressions.
23 First of all, you would look at the photographed
24 -- sorry, first of all, you would make sure you had
25 everything that you should have, which is all the

1 necessary information. We've got what is called a Log
2 Card Sheet which is generated from the Scene Examination
3 Unit and that's got all the relevant details in relation
4 to that crime, where it happened, how many marks should
5 be received, et cetera.

6 You check your information's all correct, you check
7 you have got everything you should have. That's already
8 been done at reception but you double check it again.

9 You then take the impressions and you start an
10 examination of those impressions before you look at any
11 known impression. You look at those impressions and
12 decide first and foremost if there's sufficient detail
13 to enable you to go ahead and make any kind of
14 comparison or assess it for the ident 1 system.

15 If you are happy that there's enough friction ridge
16 detail present that will allow you to ultimately make an
17 identification on that you would then go ahead and if
18 you had, for example, a suspect you would then look at
19 the suspect.

20 What you would do initially is look at the
21 fingerprint impression from the scene of crime and you
22 would look at the fingerprint detail that's present
23 there. You would have in your head -- you be doing
24 this, what I mentioned earlier on, which is digit
25 identification, so you would be trying to have --

1 THE CHAIRMAN: I think if you could go a little more slowly.

2 You are going very quickly at the moment.

3 A. Sorry.

4 What you would do -- sorry.

5 THE CHAIRMAN: Sorry, to interrupt you. You said you would

6 have a digit determination --

7 A. A digit determination is where you are trying to narrow
8 down to what finger donated that impression. That would
9 be the first step so if you're looking at an impression
10 and you're thinking, going by all the evidence there,
11 "That looks to me like a right thumb", you've got your
12 suspect and the first place you're going to look at is
13 his right thumb.

14 If you don't identify it's his right thumb go on and
15 look at everything else anyway but what you're trying to
16 do is narrow down your search, you're trying to home in
17 on where you believe that impression came from.

18 The actual act of making a comparison, you would
19 have your two magnifying glasses, you have what we call
20 pointers, some people call picks, and you're picking out
21 information that you have already identified on the
22 unknown and you're looking for that information on the
23 known. So where perhaps you find a characteristic, what
24 we call a bifurcation (which is a ridge deviates) where
25 you find that in a particular geographical area on that

1 impression perhaps to the left of what we call the delta
2 (which is a corner point) you would look for that
3 equivalent area on the known, you look for that
4 characteristic to see if it exists in that area. If it
5 exists it you would then move on to the next
6 characteristic you can see on the unknown and you would
7 see if it's there and shown and replicated on the known.
8 After that, it's a matter of looking and following the
9 characteristics to see if they are all there. If they
10 are all in sequence and agreement and, most importantly,
11 that there's nothing in disagreement.

12 Once you've got to that entire volume of information
13 on that impression, everything is in agreement,
14 everything's consistent with the relevant area on the
15 known, then you're happy to say that those two
16 impressions were made by the same person, this is
17 identical.

18 MR HOLMES: Thank you, sir.

19 It's the actual physical process of comparison that
20 I'm interested in. You have said that you will look for
21 detail within the mark that you've been given and then
22 you will proceed to compare it with the known mark.

23 Is there anything that differs in that process
24 between what happened in 1997 and what happens today?

25 A. No.

1 Q. We've heard a lot of mention of how many points of
2 comparison are required for an identification or for an
3 elimination, but when you are examining a mark is what
4 you are fundamentally trying to do to attribute
5 ownership of that mark?

6 A. That's it.

7 Q. Once you have done so, do you then go on to tally up the
8 number of points that you can see in sequence and
9 agreement?

10 A. I'll speak personally. I'm moving further and further
11 away from that. It was my training to look, to count.
12 That's not relevant any more. It's all about enough
13 evidence. So I'm actually, in my own mind, I don't have
14 that running tally any more. It's something you would
15 perhaps bear in mind but it's not the driving force the
16 way it used to be.

17 Q. So the process is not a simple case of point 2, 3, 4 to
18 16 identification?

19 A. No, certainly not.

20 Q. It's you looking at the mark and, in your expert
21 opinion, deciding whether that is a match to the known
22 mark?

23 A. Yes, absolutely. I think it's important to mention as
24 well that I mentioned the course I attended which was a
25 third level detail course. Third level detail is beyond

1 characteristics. Its a finer detail again. It refers
2 to the ridges themselves are made up of individual
3 blocks that form the ridge. The way that those ridge
4 blocks are put together is unique as well. If the
5 print's clear enough you can use detail on the ridges
6 themselves to help you to come to that conclusion. That
7 was never put forward as part of your identification
8 because all it was was thinking about numbers. But
9 that's an example where you use all the
10 information present to reach your conclusion. It's
11 nothing to do with counting numbers; it's to do with
12 unique characteristics within that print.

13 Q. Is that to do with the shape of the individual ridges if
14 you were to see them magnified to a huge degree --

15 A. If they are very clear you can use that information as
16 well. But it's a bit like a line of bricks. It looks
17 at first appearance to be running nice and smooth but
18 actually if you look at it in detail the bricks
19 themselves don't form equally, they come up and down,
20 they go in certain paths and that information itself,
21 again it's just something else you would use when you're
22 coming to your conclusions. It's certainly not just
23 about trying to get this magic figure.

24 Q. And would the officers in 1997 have been doing the same
25 thing?

1 A. They would have been doing the same thing but it wasn't
2 articulated the same way. We didn't think of it in
3 those terms. Third level detail is something that's
4 come up more recently, not that recently now but
5 certainly 1997 everybody would have been doing it but
6 there perhaps wasn't the terminology there that we are
7 talking about today.

8 Q. So is it fair to say the process of examining a
9 fingerprint and identifying it as that of a known donor
10 is exactly the same, it's just the way that that is
11 explained to juries that differs from those days?

12 A. Yes, I think that's a big factor, the way it's
13 explained, the paperwork's quite different now.

14 Q. If I can move on then, there is a difference between
15 1997 and now, you mentioned earlier on, as to anonymity,
16 when the mark was forwarded to you by another officer.

17 There is not, as I understand your evidence,
18 completely anonymity nowadays; is that the case?

19 A. That's correct, yes.

20 Q. When was anonymity brought in?

21 A. I would struggle to give a date on that one.

22 Q. Do you know whose instruction it was that anonymity was
23 brought in in the first place?

24 A. It would certainly be a decision from the top but
25 specifically who it was I'd struggle to ... I think it

1 was in relation to one of the many inquiries we had, it
2 was felt this was the ideal way to go. So, I think, if
3 I remember correct, we tried to make it work as best we
4 could and what we ended up with was an approximation of
5 anonymity.

6 Q. When it was first brought in was there an attempt
7 to achieve complete anonymity between officers?

8 A. Yes, there was.

9 Q. How long did that go on for?

10 A. As I mentioned earlier on, and Mr Chairman mentioned it,
11 it's something that was tried but it just wasn't
12 successful. It requires an enormous amount of manpower
13 to make it work successfully.

14 Q. As a result of the enormous amount of manpower that was
15 required you have reverted to a system whereby you can,
16 if you wish, identify the officers that have gone before
17 you in examining marks that you are now looking at?

18 A. Not at the point that you take the case, which I think
19 is quite relevant. It's in a tray. It's got a covering
20 sheet on it. It doesn't indicate who that officer was.
21 You take that case and you go back down and sit at your
22 desk. You can then go into it and then find out who
23 that first officer was, certainly.

24 Q. I think what you said is that although you used to have
25 a way of knowing what officers had gone before you, even

1 if those officers were very experienced officers you
2 have, on occasion, gone back to them and intimated that
3 you could not find 16 points?

4 A. Yes, absolutely.

5 Q. So in reality, even under a system where there was no
6 anonymity whatsoever, it made no difference who had gone
7 before you were still giving your expert opinion?

8 A. As I say, I think I've covered that. Genuinely, there
9 was people -- there was questions of senior examiners
10 and what I was trying to get across is it maybe didn't
11 feel very comfortable to me to do that but I would do it
12 and so would other people.

13 Q. If I can move from practice in general to your
14 involvement with this particular case, you have been
15 shown a set of initials on a photograph, which I think
16 relates to mark XF, and I think you said that those may
17 be your initials but you're not 100 per cent sure.

18 A. Well, I think I mentioned this morning I can't really
19 see any other conclusion to come to apart from it's
20 mine.

21 Q. There's nobody else whose initials would be P, is there?

22 A. No, that's -- that's not mine.

23 Q. I think you were asked in relation to a document CO1444
24 at page 5, the third column in that relates to the marks
25 XD to XY and it appears simply to have been scored out.

1 You were asked whether there was any explanation for
2 those boxes being crossed rather than being signed off.
3 That's the columns next to the mark.

4 You said at the time and for those using LiveNote
5 it's at page 51, line 9, the question begins, you said
6 it was difficult to say but one explanation could be
7 that the boxes had been crossed through because all the
8 marks in that one had been dealt with. Is that correct?

9 A. It was a possible explanation, yes.

10 Q. I wonder if you could have a look at CO0209, please,
11 page 14. First of all, can you tell me what that
12 document is?

13 A. Again, that's the major incident worksheet that details
14 the impressions received and where they were recovered
15 from and the right-hand side shows the disposition in
16 relation to what happened with those impressions.

17 Q. The marks are identified in the fourth column on that
18 page; is that correct?

19 A. Yes, that's correct.

20 Q. Marks XD to XT are shown on that page.

21 A. To XU.

22 Q. To XU, sorry. Those would be the same marks or some of
23 the same marks that were covered in the column of the
24 previous document?

25 A. Yes, that's correct, sir.

1 Q. Is it apparent from that document that all these marks
2 have either been identified, eliminated or determined to
3 be fragmentary and insufficient?

4 A. There's no outstanding marks there.

5 Q. So does that offer an explanation as to why that has
6 been crossed out?

7 A. Yes, it does.

8 Q. Thanks.

9 In relation to your involvement with the blind test,
10 as it has now become known, you said on Friday you were
11 given no reference whatsoever as to what you were to do
12 during that test; is that fair?

13 A. That's my recollection, yes.

14 Q. In fairness to you your statement says that you were
15 asked to look at a scene of crime impression against a
16 known impression and to give an opinion as to whether
17 they were identical.

18 A. Yes.

19 Q. So no guidance was given to you apart from being told
20 what the objective of the exercise was?

21 A. Sorry, that doesn't make a lot of sense. There was
22 guidance that would go in and carry out an examination
23 but, as to anything around that, no, I was given no
24 information.

25 Q. You have said that you had had a conversation with

1 Mr Dunbar at the start of that exercise and you had seen
2 some markings on the comparator machine when you had
3 gone in. Is that right?

4 A. That's correct, yes.

5 Q. The conversation you had with him went along the lines
6 of Terry must have left those on.

7 A. Mmm.

8 Q. You took that to mean Mr Foley; is that correct?

9 A. Yes, I did.

10 Q. If evidence is heard that perhaps it wasn't Mr Foley who
11 looked at the comparator machine directly before you,
12 could that be incorrect?

13 A. It's my recollection that that was the conversation. If
14 somebody tells me that maybe wasn't the conversation I
15 would take that on board but I'm pretty sure that that's
16 what it was.

17 Q. If you were looking at marks on the comparator machine
18 was it uncommon to find the markings made by the person
19 who had been before you?

20 A. It happened occasionally.

21 Q. When it happened occasionally, I think you explained
22 this morning you simply removed those marks from the
23 screen image?

24 A. Yes.

25 Q. I take it you made no conclusions of your own based on

1 the marks that were already there?

2 A. No, definitely not.

3 Q. Because, as you have already explained, if you are going

4 to sign off an identification, then it's got to be you

5 that explains the 16 points that you yourself have

6 discovered?

7 A. Yes, I did mention that before as well about having to

8 defend your identification in a court of law down the

9 line. You have to be absolutely familiar or happy that

10 what you've said is, indeed, the points that are there.

11 Q. So any suggestion that you would have been influenced by

12 anyone who had gone before is incorrect because it would

13 be hazardous for you to do so?

14 A. Correct.

15 Q. Could I just have a moment. **(Pause)**

16 I have one more question. It is slightly out of

17 order in relation to XF. You were asked this morning

18 how you knew that you were looking for 16 points in

19 relation to XF.

20 In 1997, if you were the fourth checker on any

21 comparison, how many points would you have been looking

22 for?

23 A. If this is in relation to a suspect or elimination case

24 is that?

25 Q. Yes.

1 A. Well, you wouldn't normally be asked to look at an
2 elimination form on a comparator. If you were, it's my
3 understanding -- my recollection, sorry, is that a
4 suspect is 16 and an elim is 12.

5 Q. What I'm asking is if you were the fourth checker on any
6 comparison would you be looking for 16?

7 A. Yes.

8 Q. Why is that?

9 A. Because that was the court standard.

10 Q. Eliminations were checked by how many people?

11 A. At that time, if it was a special case, it would have
12 been normal to be two people.

13 Q. So if you are the fourth checker you're not looking at
14 elimination, you're looking at suspects?

15 A. Yes, that would be correct.

16 MR HOLMES: Thank you. That is all the questions I have.

17 THE CHAIRMAN: Do you have any questions?

18 **Re-examined by MR MOYNIHAN**

19 Q. Yes, sir.

20 Just to tidy one point up in connection with the
21 print XF and other comparisons -- I may have been
22 looking at the wrong sheet -- if we could bring up
23 CO1444.3, you have been asked, Mr Padden, about
24 comparison with the batch or you call it range that
25 included XF, which is the column XD to XY.

1 A. Yes.

2 Q. I have, in fact, brought up now page 3 on the PDF, which
3 gives us, as the first elimination, Marion Ross, who was
4 the deceased. Do you have that?

5 A. Yes.

6 Q. In fact, on this particular page do we see a number of
7 entries completed for the batch XD to XY?

8 A. I see that, yes.

9 Q. So far as what is written in manuscript above the word
10 "name" at top, order in which to proceed with numbers
11 down, for example, Marion Ross is, if I understand it
12 correctly, number 1?

13 A. Yes.

14 Q. So would that be that looking at any batch Marion Ross
15 would be the number 1, the first person to be compared
16 for elimination purposes?

17 A. As it's her house the most likely explanation for the
18 impressions you'd find would be the householder.

19 Q. So, in fact, by looking at a later page which I will
20 come to just in a moment I may have given a misleading
21 impression about the lack of reference for XF being
22 checked but do we see on this page that XF in that
23 batch, if it's assumed to be in that batch, has been
24 checked against a number of individuals?

25 A. Yes, that's correct.

1 Q. Perhaps, if we look at the next page, which is page 4,
2 do we see, in a sense, the interest has petered out in
3 the batch because they may all have been dealt with
4 before?

5 A. They have been accounted for.

6 Q. For some reason Mr Asbury appears on the PDF page number
7 4. Do you see that?

8 A. I see that, yes.

9 Q. With no comparison again against the batch XD to XY?

10 A. Yes, I see that.

11 Q. Again, the page I looked at before was, in fact, page 5,
12 where for some reason Mr Asbury appears for a second
13 time. Is that correct?

14 A. Yes.

15 Q. What I'm interested in, he appears to be numbered 56 or
16 57 in this.

17 A. Yes.

18 Q. Just in fairness now you can see some comparisons can
19 you explain to me why there's not something more
20 comprehensive in respect of XF if Mr Asbury's down at 56
21 or 57 on this list?

22 A. I can't, no.

23 MR MOYNIHAN: It was my mistake not to have shown you the
24 earlier pages, I do apologise.

25 THE CHAIRMAN: There is just one matter I want to ask you

1 about. You joined the force, according to your
2 statement, in 1988 and then you qualified about 1993.

3 A. Round about, yes.

4 THE CHAIRMAN: As a fingerprint officer?

5 A. Uh-huh.

6 THE CHAIRMAN: Then you could carry out investigations, sign
7 reports and so on. So you would have been, I think as
8 you said, about three or and a half years --

9 A. I said two and a half but it would have been about three
10 and a half.

11 THE CHAIRMAN: Nearer three and a half, I think.

12 A. Yes.

13 THE CHAIRMAN: Then you go on, you say upon qualifying you
14 were around various areas of fingerprint or special
15 cases, fraud, drugs and volume crime.

16 A. Yes.

17 THE CHAIRMAN: This would be a special case?

18 A. This would be a special case.

19 THE CHAIRMAN: So there was no reason why you wouldn't be
20 dealing with it like any other officer?

21 A. No. No, sorry, can you --

22 THE CHAIRMAN: All I was trying to see was whether -- there
23 was no bar to you being engaged at this particular
24 crime.

25 A. No, it's just coincidence where you're sitting.

1 THE CHAIRMAN: It was just the fact that you had only been,
2 as it were, the fourth person, XF, it made me wonder
3 whether you were not engaged in that type of work fully
4 at that time but you would have been.

5 A. Yes.

6 THE CHAIRMAN: There's no reason why not?

7 A. No.

8 THE CHAIRMAN: Thank you very much and thank you for
9 accommodating the other witnesses who were saved waiting
10 around.

11 A. No problem.

12 THE CHAIRMAN: Now the timing is just right, 3.00.

13 **(2.50 pm)**

14 **(A short break)**

15 **(3.02 pm)**

16 MR MOYNIHAN: Thank you, sir. Maybe it will assist, sir, if
17 I repeat for the others what I have just indicated to
18 you. I have reviewed the order of witnesses in the list
19 that we have and we had spoken last week amongst
20 ourselves about perhaps cancelling next week, which
21 seemed too much of a luxury and too much of a risk.

22 Having reviewed my list of witnesses, the decision
23 has been taken to cancel Tuesday of next week but the
24 remaining days are still allocated for sittings.

25 Mr Foley is the next witness.

1 **TERENCE FOLEY (sworn)**

2 THE CHAIRMAN: Your full names please?

3 A. My name is Terence Foley.

4 THE CHAIRMAN: Thank you very much. Take a seat, Mr Foley.

5 **Examined by MR MOYNIHAN**

6 Q. Good afternoon, Mr Foley.

7 A. Good afternoon.

8 Q. I owe you an apology. I think you were here on Friday
9 as well so you have been a long time waiting.

10 If I begin to ask something, just to understand the
11 way in which a fingerprint officer would express the
12 experience he has had, your career started in 1983 as a
13 trainee fingerprint officer?

14 A. That's correct, yes.

15 Q. I picked up on some occasions the possibility that if
16 you are asked to quote a number of years' experience you
17 would begin from the day on which you started training
18 as opposed to the day on which you qualified. Which
19 would you tend to do yourself?

20 A. Experience, I would quote the day I actually started my
21 service, basically the day I started training.

22 Q. So if I look at you started training in 1983 and,
23 therefore, by the events I'm primarily concerned with in
24 your case, 1997, you would be somewhere between 13 and
25 14 years experienced?

1 A. That's correct.

2 Q. However, you qualified in 1989.

3 A. Yes, that would be correct because as well as the five
4 years' service at that point there was a minimum age of
5 25 years of age as well.

6 Q. So by 1997 you were qualified but for eight years?

7 A. Yes, that would be correct, yes.

8 Q. But you would say your experience, counting your
9 trainee-ship, was something of a minimum of 13?

10 A. Yes.

11 Q. By the time of your involvement in the events we are
12 concerned with, you were a senior fingerprint officer?

13 A. That's correct, yes.

14 Q. And, as such, the head of a team of other officers?

15 A. That's correct, yes.

16 Q. How many people would have been in your team?

17 A. I believe it would probably be approximately five or six
18 in my team, including myself.

19 Q. As a senior fingerprint officer, what would your duties
20 entail?

21 A. My duties would entail the delegation of work,
22 availability for the team, sick leave, annual leave, the
23 processing of the case load and supervisors' meetings.

24 Q. Supervising what, sorry?

25 A. Supervisors' meetings -- sorry -- attending team

1 leaders' meetings and anything else, basically, that
2 fell into the remit of a team leader.

3 Q. Was there a rank above senior fingerprint officer at
4 that stage?

5 A. At that stage there was Assistant Principal Fingerprint
6 Officers, at that time.

7 Q. Among the individuals we have involved in this case do
8 we have some Assistant Principal Fingerprint Officers?

9 A. Involved in this case you would have Mr Hugh Macpherson,
10 Mr Charles Stuart. I believe that's the two.

11 Q. If I take them as examples, would they have teams of
12 their own or would they tend to be supervising a number
13 of teams?

14 A. If I recall correctly at that time there was, I believe,
15 maybe five teams, five geographical teams, each
16 Assistant Principal Fingerprint Officer was responsible
17 for up to two teams. They were the likes of my line
18 manager above me, they were overseers for both teams.

19 Q. In addition to management responsibility you were still
20 doing, on a day-to-day basis, fingerprint comparison
21 work?

22 A. Yes, that's correct.

23 Q. And still appearing in court on a regular basis at that
24 stage?

25 A. At that stage, yes.

1 Q. If I move to a different topic, do you have your witness
2 statement?

3 A. Yes, I do.

4 Q. Is this the statement you have had a chance to read
5 yourself?

6 A. Yes, I have, yes.

7 Q. And you signed it?

8 A. Yes, I have.

9 Q. Are you content that it's an accurate record of the
10 evidence?

11 A. Yes.

12 Q. If we will go through it and if there are matters that
13 are not correct or not properly expressed, then please
14 indicate because I am more interested in your correct
15 evidence than holding you to a prior statement.

16 A. Okay.

17 Q. If I could ask you please to look at paragraph 6 and
18 what I'm interested in is the appropriate order in which
19 you would carry out your work.

20 Now, we start with the simplest, if a mark, a crime
21 scene mark, contained insufficient detail for comparison
22 purposes you would eliminate that, exclude it?

23 A. Exclude it, yes.

24 Q. Sorry, eliminate is the worst of all words to have used.
25 You would exclude it as being insufficient for

1 comparison?

2 A. Yes, that's correct.

3 Q. Let's leave those excluded and let's look at a mark that

4 you have determined has sufficient minutiae or

5 characteristics -- which word d you prefer, minutiae or

6 characteristics?

7 A. Well, probably characteristics but overall it's the

8 level of detail, you know, available in the mark.

9 Q. I'm happy to use any of these three words: minutiae,

10 characteristics or detail.

11 A. "Detail", I would prefer to use "detail".

12 Q. That's fine. A fingerprint that's got enough detail for

13 comparison purposes, dealing with that now. You explain

14 in your statement at paragraph 6, the last four lines,

15 an order of proceeding, beginning halfway into that

16 line:

17 "The procedure was then to assess ..."

18 Do you have that? It's page 3.

19 A. Page 3, sorry, yes.

20 Q. The last four lines, halfway into the fourth last line:

21 "The procedure was then to assess ..."

22 A. Yes, I see that, yes.

23 Q. "The procedure was then to assess the mark for quality",

24 and that's what we've covered.

25 A. Yes.

1 Q. It may have insufficient detail for comparison.

2 You then say:

3 "Elimination comparison, suspect comparison, AFR
4 search and if it still outstanding after that process
5 consider the mark for manual search of the fingerprint
6 collections of regional offenders."

7 Is that the order in which you would proceed or
8 would you proceed in a different order?

9 A. No, that would generally be the order that you would
10 proceed with the case.

11 Q. What I'm interested in is that when you say generally
12 the order in which you proceed, might there be a
13 different order in which you would proceed?

14 A. It possibly could be if a case was an urgent nature,
15 required an urgent comparison against a suspect, you
16 would go to the suspect. Then obviously that would
17 probably be the priority based on the request from the
18 SIO involved in the case. If there was no suspects or
19 elims (eliminations) with the case they may look for an
20 urgent result on a particular mark then that step would
21 be to go down to EFR search. It's just a case of doing
22 it to the request of the SIO, but with a normal
23 procedure that would be the framework of the workload.

24 Q. Leave aside for the moment the question of an urgent
25 request. In an ordinary case, let's assume for the sake

1 of argument in a case such as this that a murder is
2 committed in a house, there are a number of persons
3 requiring possible elimination.

4 A. Yes.

5 Q. If I may use a pejorative term, innocent third parties
6 requiring elimination. You also have a list of
7 potential suspects.

8 Are you indicating that with a mark you would
9 generally proceed through all the eliminations, that's
10 the thought to be innocent third parties, before you
11 would compare against any of the suspects?

12 A. Generally with a, what we call, special case is what we
13 are referring to here, a murder or an attempt murder,
14 there is communication with the investigation team, with
15 the SIO. So the work we carry out is primarily based on
16 what they prioritise as objects recovered or marks
17 recovered from a certain area and who may be relevant or
18 who they want to eliminate, who they want to have
19 compared against that particular mark, then that
20 basically we would base our process, our work process,
21 the order of work, basically, through their instruction.

22 If there was no instruction form from them, then the
23 first step would obviously be eliminations because they
24 would have the more likelihood -- the mark would be more
25 likely to be theirs than anyone else's.

1 Q. You used the term special and Mr Padden before you did
2 and I overlooked asking him what he meant by special.
3 Special plainly includes, as you have said, more serious
4 crimes, murder, attempted murder.

5 Is special broader than simply cases that would go
6 to the High Court?

7 A. Special would more likely be cases that would go to
8 either a Sheriff and jury or to the High Court, yes.

9 Q. Is the other category volume crime or are there other
10 categories apart from special and volume?

11 A. There are other categories. There's volume crime, which
12 is car theft, theft of motor vehicle, low key crime,
13 plus possibly a slightly an in between, between volume
14 crime and special, which could be maybe armed robbery
15 but not to such a level that it was deemed that serious.

16 Q. Not a solemn case?

17 A. Yes. Well, possibly it could, based on how the Fiscal
18 would wish to proceed. It could possibly be solemn as
19 well.

20 Q. Let us then come back because we are dealing here with a
21 special case, in a sense an ultra special case; we're
22 dealing with a murder. If I put a word in your mouth
23 that you may have been reaching for earlier, the Senior
24 Investigating Officer may prioritise your work; he may
25 tell you he wishes you to proceed in a particular order

1 when considering a particular mark?

2 A. I would say that would be true, yes, because, as I say,
3 he wouldn't want us wasting our resources on comparing
4 marks that weren't particularly relevant to his inquiry
5 or her inquiry, whatever it may be.

6 Q. In paragraph 6 you happen to mention the form 13B.

7 If I could ask please if that be brought up on
8 screen, DB0251.

9 This is, we see in the bottom left-hand corner,
10 a form 13B?

11 A. Yes, that's correct.

12 Q. Just take the time to familiarise yourself. You may
13 have seen this particular one when you were being asked
14 to give your statement. Do you recognise it?

15 A. I do recognise it obviously from being here as well,
16 obviously, I recognise it.

17 Q. My recollection of the whole series of form 13Bs that
18 would accompany the various batches of prints is that
19 this one is, in fact, unique in that it contains what at
20 face value is either an instruction or at least a
21 guidance to fingerprint officers and it's in the words
22 "ident required for deceased".

23 First of all, is such a phrase an unusual thing to
24 find on a 13B?

25 A. For this particular one I would probably say that the

1 choice of words could have been -- sorry, the choice of
2 words could have been better but I believe this form 13B
3 relates to Q12 which, I think, possibly, if I'm right in
4 saying, relates to the biscuit tin. Is that correct?

5 Q. That is correct.

6 A. I believe what the SOCO or the Scene of Crime Officer is
7 trying to portray here is that if a mark was identified
8 or eliminated against the deceased then it would have
9 particular relevance to the inquiry because it was
10 recovered from where it was recovered.

11 Q. First of all, if I just confirm your understanding:
12 because this relates to a series of marks, QB2 to QL2,
13 we're looking at some marks that were discovered on the
14 biscuit tin, the Marks & Spencer's biscuit tin, in
15 Mr Asbury's house?

16 A. Yes.

17 Q. Is that consistent with your understanding?

18 A. Yes, I'm just looking at the references on the form 13.
19 That's consistent, yes.

20 Q. Without wondering just now whether the form of words
21 could have been better chosen, is it unusual to find on
22 a form 13B any language that would indicate to you as a
23 fingerprint officer or one of your colleagues a
24 particularly narrow focus for the investigation of the
25 fingerprints?

1 A. Over my years of experience, I would probably say, as I
2 say, the choice of wording I would correct on it. I
3 don't think that's appropriate. I would say, yes, we
4 have received form 13s with maybe matters of relevance
5 that the SOCOs have added on the instruction of the SIO.

6 Q. Again, without worrying about the precise interpretation
7 of "ident required" for the moment, what broad focus
8 would you take from such a form having been received in
9 respect of the tin?

10 A. All I would take from that is the first point of
11 comparison. That is all I would take from that.
12 Basically, the first person to be compared against those
13 marks would be the deceased. It would have no bearing
14 on me or no -- no bearing on me what conclusion I would
15 come to, basically. It was just maybe a starting point
16 on the comparison.

17 Q. If we look at a form please which is CO1444, and look
18 please at page number 2, here is an elimination page.
19 I've not brought up the one that relates to Q12 but just
20 for sake of argument here, we see on this particular
21 form it's marked, literally marked in handwriting, order
22 in which to proceed, Marion Ross, the deceased, is
23 number one, a natural enough approach to take in a case,
24 correct?

25 A. Correct.

1 Q. With then other individuals listed and this is the sheet
2 of eliminations.

3 A. Yes.

4 Q. Now look at the form 13B, what is the focus on Marion
5 Ross as the number one person to be eliminated actually
6 adding to what would have been on a normal elimination
7 sheet?

8 A. As I say, the only reason I can think for that would be
9 because of where the item was recovered from. It wasn't
10 recovered from the actual **locus**. It was recovered
11 outwith the **locus**. As I say, if anything was identified
12 or eliminated to the deceased, then it would have quite
13 a bit of relevance -- well, that's up to the SIO to
14 decide, obviously, but it would have some relevance to
15 the inquiry possibly.

16 Q. The point I am trying to make to you is, as I'm looking
17 at this list just now, you have already been told that
18 Marion Ross is the number one person to be eliminated in
19 eliminations. So what's this form actually adding to
20 what would have been the norm?

21 A. Other than what I've just actually said there just now,
22 it doesn't really add anything. I noticed in the form
23 13 David Asbury name's on it as well, so possibly if
24 that form 13 had come in without any indication to the
25 deceased, then the first -- I would say the first point

1 of comparison would be against David Asbury. I don't
2 know if that was what was done in the case. I'm not
3 aware.

4 But if there was no reference to the deceased, then
5 it perhaps would not have been the number one priority
6 against these marks.

7 Q. If we bring up DB0251 again, so far as this is
8 concerned, we have marked that David Asbury is a suspect
9 in the case?

10 A. According to that form 13 at that point, yes.

11 Q. If I understand the normal process, barring any other
12 instruction from the Senior Investigating Officer, you
13 would expect the office procedure to be to work through
14 all the eliminations before turning to the suspects.

15 A. Again, unless there was instruction from the SIO and I
16 can only -- as I say, I didn't work on the case but I
17 would assume that there would have been instruction from
18 the SIO to compare the deceased first. But, as I say,
19 on this one that would have come -- that form 13 would
20 have arrived into the office along with the relevant
21 marks that are listed and along with an MI sheet (a
22 major incident sheet) listing where the marks were
23 recovered from and possibly that's why this has been
24 added because the biscuit tin was not recovered from the
25 actual **locus**.

1 Q. Perhaps if I can be quite clear in what I understand --
2 this is why I am interested in what the normal procedure
3 would be -- I am not aware of any documentation to show
4 that the mark QI2, which you've correctly inferred this
5 relates to or includes the mark QI2 was compared against
6 anyone other than two individuals, that's Marion Ross,
7 the deceased, and David Asbury, the suspect.

8 A. Sorry, I can't comment on that. I didn't work on the
9 case. I'm sorry, I don't know.

10 THE CHAIRMAN: Could I just ask one thing whilst we're on
11 this point. Earlier in your answers you said that you
12 would be told who they want compared against
13 a particular mark.

14 A. Sorry?

15 THE CHAIRMAN: That was an answer you gave earlier on the
16 instructions.

17 A. From the SIO?

18 THE CHAIRMAN: Yes. They would tell you who they want
19 compared against a particular mark.

20 A. Yes, possibly they would prioritise who they want
21 compared first.

22 THE CHAIRMAN: So it wouldn't be unusual, maybe not written
23 in this form, for your attention to be drawn to the
24 person they want compared. That's consistent with what
25 you said earlier?

1 A. Yes. I would say so, yes, sir.

2 THE CHAIRMAN: Thank you.

3 MR MOYNIHAN: While we still have that phraseology in mind,

4 "ident required for deceased", I want to focus on

5 "ident".

6 Even in some of what you have said already is

7 there's a distinction between an ident (an

8 identification) and an elim (or elimination)?

9 A. Basically, my own -- to eliminate a mark from an inquiry

10 you were still assigning ownership of that mark. You

11 have found who that mark was made by. So basically an

12 elimination is an identification of a mark. It's just

13 the terminology, a different terminology that's used,

14 the main difference being that for presentation at court

15 for an identification the ideal requirement was 16

16 characteristics in sequence and agreement.

17 Q. We'll try and be short but please don't necessarily

18 agree unless you are absolutely confident about this

19 yourself. If I use a collective term a "match",

20 matching two individuals, a match could either be an

21 elimination or it could be an identification?

22 A. Yes.

23 Q. An identification as a match is a term you would use for

24 a match that corresponds to the full court standard then

25 of 16 points in agreement and no unexplained

1 differences?

2 A. An identification is -- I would actually -- if I'm
3 comparing a mark, I would reach the conclusion of
4 identification before I got to 16. So I have to
5 emphasise that identification is not a point counting
6 exercise; it's a comparison of the detail compared from
7 one against the other.

8 Q. I appreciate that and perhaps if I roll it on you will
9 see why I am drawing a distinction.

10 There will be a minimum number of details that must
11 be in agreement between the mark and the known print
12 before you would take any view on a match; would that be
13 fair?

14 A. A minimum ... it's a difficult one to answer that
15 actually because each mark is unique in its own detail
16 contained in it. You could find a small area of a mark
17 on an article or an area which contains maybe unique
18 characteristics and a convergence together which is
19 unusual, but whereas you could get a large area for a
20 mark which doesn't contain which has maybe more common
21 characteristics or detail contained in it.

22 So for me to put an actual figure on it I would
23 probably say ... I don't like to commit myself to
24 a figure but if I could find possibly around 8, 9, 10
25 characteristics in sequence and agreement with no

1 unexplainable disagreements, then I would possibly be
2 happy -- I would be happy to assign that as an ident
3 based on uniqueness of the individual mark I'm
4 comparing, obviously.

5 Q. You have mentioned the possibility, the lower end of
6 a range of 8 to 10. If I can show you something that's
7 attributed to you -- I don't know whether it necessarily
8 is your view -- if you can have before you please
9 CO1145, page 3.

10 Go back to page 1, I will show you what it actually
11 is. This is a statement -- you may not have seen this
12 before -- taken from you by Mr Mackay's team in 2000.

13 Have you seen this before?

14 A. Yes. Yes, I have.

15 Q. If you could turn please to page 3 now, it's the second
16 full paragraph on that page. It says:

17 "For the purposes of elimination in 1997 I would
18 normally look for at least 10 points of comparison,
19 although it depends on the quality of the mark. Since
20 then and in light of what has happened I would say I now
21 have a tendency to satisfy myself up to a higher degree,
22 usually full identification of 16 points."

23 Do you see that?

24 A. Yes.

25 Q. Do you have any comment on that as being a

1 representation of your own view in 1997 that you would
2 be looking for something in the order of ten points as a
3 minimum?

4 A. Obviously, I've said there depending on the actual
5 quality and the content of the mark. That would, I
6 would say, was obviously in relation to what was going
7 on within the department at the time.

8 Q. Again, forgive me, it's a bit like your colleague,
9 Mr Padden, I'll concentrate most of my questions on a
10 historical position just understanding what practice was
11 in 1997. I will give you an opportunity later to tell
12 us if there have been significant changes in practice.

13 Just looking at matters in 1997, is it fairer to
14 understand, as you have said to me a few moments ago,
15 that an elimination might be at 8 to 10 points or is it
16 fairer to say that 10 would tend to be the minimum
17 number of details in common you would require?

18 A. As I said earlier on, if I was asked to put a figure on
19 it I would possibly go for the 10 points. As I say,
20 every time I do a comparison, each mark is unique on its
21 own so I could ...

22 Q. In fairness to you, I understand the position is this:
23 if you have found that number that satisfies you, at
24 that point you are 100 per cent certain of a unique
25 identification of a mark?

1 A. Once you reach that point that is when you are happy to
2 sign it off as ownership, as identification.

3 Q. By ownership you mean that you are 100 per cent
4 satisfied that the mark can be uniquely attributed to
5 the known individual?

6 A. Yes.

7 Q. That might, based on your experience and practice back
8 in 1997, be at a point when there are 10 points in
9 common?

10 A. Yes.

11 Q. However, for court purposes, the lawyers would require a
12 higher threshold, that is they would require a minimum
13 of 16 points in agreement and no points of disagreement?

14 A. For the normal case, yes, that would be the case. I
15 think my colleague, Mr Padden, touched on there were
16 other processes and scenarios that were in operation at
17 the time as well.

18 Q. There might be a dire and crucial situation?

19 A. There was dire and crucial, there was strong suspicions,
20 there was ten and ten. I could explain each of them if
21 you wish me to.

22 Q. It's okay. Again, my reason for looking at terminology
23 is that same paragraph we highlighted on the screen. It
24 tends to be, perhaps to avoid confusion, though you
25 yourself are 100 per cent certain of a unique

1 identification at 10 points or so, you're conscious of
2 the fact that the court normally requires 16. So the
3 way the terminology seems to run is that something less
4 than 16 is described as an elimination; whereas
5 something that attains the court standard of 16 is
6 described as an identification.

7 Am I reading too much into this?

8 A. I'm really unsure. As I say, from my own point of view
9 an elimination is an identification but I realise you're
10 talking for court purposes. Is that what the question
11 is?

12 Q. Perhaps if I am even more specific, look at DB0251.
13 What I was speculating is whether, if you take the
14 deceased, normally with the deceased you would be
15 eliminating the deceased. That would be the normal
16 process, to eliminate?

17 A. Yes.

18 Q. However, because of the suspicious location in which the
19 tin was found, it might be that what someone was saying
20 to you is, "We don't want you simply to eliminate the
21 deceased. We want you, in fact, to see if you can
22 attain the court standard of identification in relation
23 to this particular mark".

24 Is that possible?

25 A. Yes.

1 Q. If I move to another chapter now and it's a question of
2 the use of the comparator screen, which is still here to
3 remind us what we are all talking about. But if I just
4 come straight to the point in relation to this, you have
5 in a number of paragraphs in your statement referred to
6 the possibility that the second, third and fourth person
7 involved with the mark -- I think you called them the
8 second, third and fourth checker -- might begin work on
9 the comparator screen. Is that fair?

10 A. That's possible, yes.

11 Q. I am left just a little bit of doubt from reading in
12 particular it is paragraph 18 of your statement -- if
13 you have a look please at paragraph 18 -- you say:

14 "I believe that this practice [we will come back to
15 that later] was shared by mt colleagues and it was the
16 way in which we were trained. Any other way of checking
17 would be, in my view, unprofessional."

18 Then you say if you had done a third or fourth check
19 from the comparator you would look at that mark again
20 when the case paperwork came around after the photograph
21 had been initialled to confirm that it was the mark you
22 had seen on the comparator and to satisfy yourself that
23 you can eliminate or identify the mark from what you see
24 under the glass.

25 The impression I got from that is that you were

1 indicating that a third or fourth checker might, in
2 fact, reach an opinion only by working on the comparator
3 screen. Is that possible?

4 A. No, I don't think that was what I was trying to put
5 across there, actually. What I was trying to put across
6 there is there could be various cases that you've looked
7 at under the comparator and your initial could have been
8 assigned to numerous photographs. So when you get the
9 paperwork back round to finalise the case, to check the
10 case on hard copy, you would obviously check, first of
11 all, to make sure that it was one that you saw earlier
12 and to satisfy yourself that it was the mark that you
13 saw on screen and identified.

14 Q. You see, I think if we go back then, please. What I am
15 interested in, quite simply, would it be the case that
16 sometimes a second, third or fourth checker might
17 examine the mark only on the comparator screen?

18 A. It could be possible, yes.

19 Q. I'll just tease that out because that's what I inferred
20 from some of the other points you said.

21 If you look at paragraph 11 of your statement, this is
22 at the foot of page 4, you're talking about the
23 comparator screen. The second sentence you would tend
24 to put the mark in question to one side following your
25 binocular comparison before putting it on the

1 comparator. "I would not use it before binocular
2 comparison."

3 So if you are the first person checking a mark you
4 would look at it under class first before the comparator
5 screen?

6 A. Yes.

7 Q. However, what you then say is but there were times, if
8 you were the second, third or a fourth checker of a mark
9 where the first time you would see it could be on the
10 comparator and you're happy enough with that?

11 A. Yes.

12 Q. It was then the next paragraph that led me to infer what
13 we've now agreed because what you say in the next
14 paragraph is where you were the second, third or fourth
15 checker you might have been asked to have a look at a
16 mark on a comparator by a colleague as your first sight
17 of that mark. You would then wipe it clean to start
18 afresh, mark your own findings and satisfy yourself that
19 you could find 16 characteristics in sequence and
20 agreement.

21 A. Yes.

22 Q. That therefore inferred to me that a second, third and
23 fourth checker might have only examined it on the
24 comparator screen?

25 A. Yes, that's correct, yes.

1 Q. The other point I wanted to elaborate from that is you
2 have said that you might be invited to look at it by a
3 colleague. Your first sight of it would be on the
4 comparator screen. You would then wipe the screen and
5 start afresh.

6 Does that then leave the possibility that -- let's
7 say you were the second checker -- that you would
8 arrive, the first person who has carried out the first
9 comparison is saying to you, in effect, "I have compared
10 this, would you please give me your opinion".

11 Is that the case?

12 A. Yes. As I say, you would go to the screen, take off
13 what's -- if they've left it on the comparator, if they
14 left their markings on it, you would take theirs off and
15 start afresh and mark up your own.

16 Q. I think there's a point intermediate in relation to
17 that. Let's say I'm the first comparison person. I
18 would say to you, "Mr Foley, would you please give me
19 your opinion on this mark". I might say to you, "I've
20 identified this mark. Could you give me your opinion".

21 Would that happen in practice?

22 A. It could happen, yes. It's a form of consultation
23 basically between the two experts.

24 Q. Secondly, I might even say, "I have marked my 16 points.
25 Look at them on the screen".

1 A. Mm-hm.

2 Q. Yes?

3 A. Yes.

4 Q. You would be able to see the 16 points that I had marked
5 on the screen, yes?

6 A. Yes.

7 Q. Then you would wipe the screen and you would start
8 again?

9 A. Correct.

10 Q. You used in paragraph 13 a phrase that I'm interested in
11 understanding. It begins normally you could find your
12 colleagues' findings marked on the screen in red pen to
13 see what they could see but then you wipe clean to start
14 afresh and satisfy yourself that you could find 16
15 characteristics. It's this sentence that I'm interested
16 in:

17 "It was a form of discussion between the experts."

18 What do you mean by that?

19 A. It's basically a demonstration, really, on the
20 comparator. If someone has signed or marked up a mark
21 on the comparator, they have obviously signed for their
22 conclusions so they're asking you to go over and have a
23 look and then to see if you agree and then basically
24 what you must do, obviously, is wipe it clean and start
25 afresh to make sure and satisfy yourself that what they

1 have marked on the screen ... or you could mark up
2 different characteristics. It isn't necessarily that
3 you reach the same 16 in sequence and agreement. There
4 could be others; there could be less.

5 Q. Do you indicate by this phrase that either literally or
6 in some figurative sense there is a discussion between
7 the experts about the presence of 16 points in agreement
8 in relation to the mark on the comparator screen?

9 A. It could be verbal discussion or it could be
10 illustrative, basically.

11 Q. Why I'm asking about is, as I understand the theory back
12 then and the practice, it was built on the view that an
13 identification would go to court only if four officers
14 independently arrived at the same conclusion it was a
15 minimum of 16 points in agreement and no points in
16 disagreement.

17 Would that be the way that it was being understood
18 at the time, that is the way it should have been
19 happened --

20 A. That was a normal case, I would say, taking aside the
21 other scenarios that we discussed --

22 Q. The diary and whatever.

23 A. -- that were put in earlier.

24 Q. So you are wanting a number of officers -- we understand
25 at the time the practice was four?

1 A. Four at the time, yes.

2 Q. -- independently arriving at the same conclusion?

3 A. Mm-hm.

4 Q. And yet what you are presenting is that there could be a
5 discussion between at least two and maybe more of the
6 officers in relation to their opinion on the mark?

7 A. There could be a discussion, yes. It's quite easy there
8 could be but, at the end of the day, if, obviously,
9 being an expert, you would reach the conclusion based on
10 what -- you would take into account what other the
11 expert is possibly saying to you but that would not have
12 an effect on your final conclusion. You would look at
13 the mark independently, on the quality that's contained
14 in the mark, the level of detail contained in the mark,
15 and satisfy yourself. You would never put your name to
16 an identification until you were 100 per cent satisfied
17 that that mark belonged to that fingerprint.

18 Q. If I move to a different topic, the question of signing
19 of photographs, paragraph 14 of your statement, page 5,
20 was there at that time in 1997 a practice of recording
21 the officers involved in an identification on the
22 photograph itself?

23 A. I believe there was, yes.

24 Q. Did you regard that as a common practice at that time?

25 A. I recall that as being a common practice, yes.

1 Q. Sorry?

2 A. I recall that as being a common practice, yes.

3 Q. Again, correct me if I am wrong: my understanding is

4 that if four officers have viewed a matter on a

5 comparator screen they would mark their initials. I

6 think you were present when your colleague Mr Padden

7 told us about that.

8 Do you agree with what he said about the marking of

9 initials on the screen?

10 A. You would put your initial on the top right-hand corner

11 or left-hand, wherever you could fit it, you would put

12 it on the screen as you agreeing to that identification.

13 Q. Then would it be the case that at some point after four

14 people have agreed that someone would then transpose

15 what was on the screen on to the photograph to you

16 record that?

17 A. That's correct.

18 Q. Equally, the other possibility is that people would

19 initial it as their agreeing the identification. Was it

20 not done that way, no?

21 A. If the mark was left on the screen it would normally be

22 a case that the process at the time would probably be a

23 case of just initialling the screen and then at the end

24 of it whoever was last to take off the screen or they

25 would tell whoever was the first officer to look at it,

1 that that's that one finished with. They would then go
2 and mark, transfer the details on to the back of the
3 photograph.

4 Q. As you say, by signing either the screen or the
5 photograph or the associated paperwork the officer is,
6 as you say, signing up to or contracting to the
7 identification?

8 A. Well, the actual -- basically, yes, but the actual -- I
9 think what I've said in my statement, the actual signing
10 up or contracting to the identification is when you sign
11 the envelope, the case envelope, at the end. The reason
12 for putting the initials, the person's initials, "I've
13 seen it on the screen", on the back of the photograph
14 was normally so that that identification would then go
15 back for the paper-trail, for the signing off, would
16 then go back to the four individuals who saw it on the
17 screen.

18 Q. Again, if I be relatively short with you and we can take
19 it in more detail if it assists, we understand that XF,
20 the one we have been talking about today, is marked up
21 by four officers on 21st January.

22 A. Yes.

23 Q. Actually phoned out of the office that day to the police
24 and the following day an individual is detained and
25 arrested and subsequently appears in court, on 21st

1 January he appears in court. The case envelope doesn't
2 have actually come to be signed apparently until the
3 middle of March.

4 Would that again accord with a timescale?

5 A. That would be fine, considering the volume in that case,
6 the envelope is normally signed off at the end.

7 Paperwork was completed at the end of the process of
8 comparisons.

9 Q. I think you may have heard your colleague, Mr Padden, is
10 one of four whose initials are on XF but he is never
11 asked to sign and does not sign the case envelope. So
12 those who have actually been responsible for initialling
13 identifications on which someone may have been detained
14 may, in fact, not be those who ultimately, to use your
15 phrase, contract up to the identification. Is that
16 correct?

17 A. On the paperwork, yes, that's correct. The idea, like
18 the one that Mr Padden was involved in, could have been
19 that he was the one available or one of experts
20 available in the office at the time and the SIO required
21 an urgent reply or result on the comparison of that
22 person against that mark.

23 Q. Do you agree with Mr Padden that at that time there was
24 no practice of documenting the number of details an
25 individual has observed in the mark?

1 A. What, do you mean as in the pointing?

2 Q. Yes.

3 A. I would agree with that, yes.

4 Q. So there was no practice then of recording it?

5 A. There was no practice of putting down how many
6 characteristics you had found in sequence and agreement,
7 no.

8 Q. What I want to do is turn to the question of the blind
9 test or blind comparison that was carried out in
10 relation to Y7.

11 You yourself had involvement in it at the time?

12 A. That's correct.

13 Q. It has come to be called by those who have been involved
14 in this matter a blind test or a blind comparison. At
15 the time when you were first involved, what was the
16 character of this exercise, as you understood it?

17 A. To tell you the truth, I just recall being approached by
18 Mr Dunbar to have a look at a mark on a comparator and
19 basically that's what I did. I didn't know it was part
20 of a -- in fact, I don't even think the term "blind
21 test" was used there. I think that was assigned at some
22 inquiry down the line, I believe, but I was just asked
23 to have a look at the mark on a comparator and asked if
24 I could eliminate one against the other.

25 Q. I'm grateful to you because the first thing I did want

1 to the establish is that the word "blind test" or "blind
2 comparison" is something that had come to be attached to
3 it later.

4 A. Yes.

5 Q. It was given no particular title when you were asked to
6 participate?

7 A. None whatsoever, no, that I know of.

8 Q. However, again, if I may -- and forgive me for being
9 pedantic -- the word you used is Mr Dunbar asked you if
10 you could eliminate?

11 A. Yes.

12 Q. Did that signify to you that you might be able to give
13 him an opinion to a standard less than 16 points, 16
14 details?

15 A. Basically, that's what I took from it. He wasn't
16 looking for a full 16 on it. He just wanted me to see
17 if I was happy that one was made by the other.

18 Q. You have indicated in paragraph 27 that you believe that
19 you found 10 characteristics in sequence and agreement?

20 A. I believe so, yes.

21 Q. And that's your best recollection of it now?

22 A. Yes.

23 Q. It's something that you have said on a number of other
24 occasions. Indeed, the statement I showed you to
25 Mr Mackay says exactly the same; you found 10. That's

1 why I was asking you earlier on about your own --

2 A. If I could just possibly said on that point: I think

3 Mr Mackay's reference to it also says that I failed to

4 identify the mark.

5 Q. Well, if we bring up then just in case CO1145 and go to

6 page 2?

7 A. Sorry, I think I've got a cross-reference here. I

8 thought you were actually referring to the Mackay

9 Report.

10 Q. I apologise. Just for the avoidance of any doubt, where

11 I picked it up from is the last paragraph on the page

12 I've just brought up for you. Let's just make sure

13 whether there is any difficulty about the accuracy of

14 what is here. A number other witnesses are not content

15 their statement is accurate so let's just look at it

16 very carefully.

17 You say you looked at the mark for about five

18 minutes?

19 A. I think that's, first of all, that's the first --

20 Q. Sorry?

21 A. That's -- I would say that's not correct either.

22 Q. You have said to us 20 minutes.

23 A. Yes, that would be more accurate.

24 Q. "I marked up somewhere around 10 points of comparison."

25 You are content with that?

1 A. Yes.

2 Q. "I thought the mark showed a sign of movement or

3 distortion but I concluded that I felt there was

4 sufficient to eliminate it against the impression."

5 A. Correct.

6 Q. Again, this is the reason for my pedantry: at that level

7 of 10 points and an elimination, you yourself

8 professionally are 100 per cent certain that this is a

9 unique identification?

10 A. At that point of comparing that mark that was where I

11 stopped. I didn't take it any further because I was

12 happy it was made by that person.

13 Q. But if you had been asked subsequently to take that to

14 court you would have required to go further. You would

15 have required to go back and to see whether or not you

16 could achieve the 16 points. Is that correct?

17 A. If I was asked to take it to court -- well, as I say

18 when I did that, when I did the so-called blind

19 comparison, I obviously didn't know what case or what

20 mark it referred to. If you're talking in a general

21 sense here, if I was asked by Mr Dunbar to look at that

22 and say, "Would you be happy to find 16 on that", then I

23 would probably have to have asked, I'll spend more time

24 on it to look for 16 but I was happy with identification

25 on 10.

1 Q. If I may -- again I'm using this to avoid confusion --
2 you were happy to eliminate, as Mr Dunbar had asked you
3 to eliminate based on ten?

4 A. Yes.

5 Q. But if for one reason or another you had been asked or
6 you had been required to go to court and give evidence,
7 you would have had to restudy that mark to determine
8 whether or not you could find 16 points?

9 A. I would have tried to get 16 on it, obviously, for the
10 standard required to take it to court, but I would also
11 have been happy to take it to court with the 10 because
12 I was satisfied that that was made by that thumb print.
13 I would have been happy to take it to court at that
14 stage as well.

15 MR MOYNIHAN: Sir, I've not got much longer to go but this
16 is perhaps as --

17 THE CHAIRMAN: Yes.

18 MR MOYNIHAN: I can continue or stop as you --

19 THE CHAIRMAN: Continue for a moment or two.

20 MR MOYNIHAN: I am obliged, sir.

21 What I am interested in is you did, at a later
22 stage, come to do a charting for civil court purposes;
23 is that correct?

24 A. That's correct.

25 Q. If we look at SG0716, just bring up that first page.

1 First of all, is that your signature on the
2 document, Y7?

3 A. It is, yes.

4 Q. We have a date, 2nd February 2006.

5 A. That's my writing as well, yes.

6 Q. If we look at the second page ... maybe it is the third
7 in that case, and the fourth. Maybe we could try the
8 third and fourth together.

9 Is that a comparison that you actually ultimately
10 carried out and you did find 16 points in agreement?

11 A. That's correct.

12 Q. What I am interested in is that is dated
13 2nd February 2006.

14 Was that something that you did just shortly before
15 the date of 2nd February 2006?

16 A. It was, yes. That was the day I did it, actually.

17 Q. Between the date of the blind test which is
18 February 1997 and this now nine years later,
19 February 2006, had you looked at Y7?

20 A. No, I hadn't, no.

21 Q. So if you had been asked by someone looking at it quite
22 carefully at some point, for example in 2005, you would
23 have required to say that you have seen enough to
24 eliminate the mark with 10 points but you could not have
25 satisfied the court standard of 16 points without

1 looking at the mark again?

2 A. Sorry, could you repeat that, please?

3 Q. I'll try, even though it's on LiveNote which I haven't
4 brought up.

5 If you have been asked in 2005 about Y7, a
6 technically correct position would have been that you
7 had identified 10 points which were sufficient to
8 eliminate the mark but you could not, on that basis,
9 have satisfied the court standard of 16 points?

10 A. I don't know because I never looked at it in 2005,
11 obviously.

12 Q. The reason for asking about 2005 is if you could have a
13 look, please, at a letter which is SG0557. This is a
14 letter written to the Lord President and Lord Justice
15 General, Lord Cullen. It is dated 14th December 2005.

16 Do you have recollection of this letter?

17 A. Yes, I do yes.

18 Q. If we go to the PDF page 5 do we see that your signature
19 appears on the page?

20 A. Yes.

21 Q. You say:

22 "We [that is you, Mr Bruce and Mr Geddes] being
23 fingerprint experts from the Scottish Criminal Record
24 Office can also confirm that during the time that the
25 above cases were being worked on within the Fingerprint

1 Bureau we also carried out a comparison in relation to
2 mark Y7 and independently reached the conclusion that
3 the mark Y7 and the left thumb print of the donor
4 fingerprint form (Shirley McKie) were made by one and
5 the same person."

6 A. Correct.

7 Q. And that's correct. My reason for 2005 is simply the
8 date of that letter to the Lord President.

9 Your position would be as at November 2005 that you
10 would have been able to eliminate Y7 on your opinion as
11 Shirley McKie, simply to exclude her as a suspect in a
12 case, but you would not have been able to give evidence
13 at her perjury trial that that was indeed her mark to
14 the court standard?

15 A. Well, that would be down -- if I was called to give
16 evidence at it. If I was asked to look at that mark
17 prior to the perjury trial knowing that it was Y7
18 against the left thumb print of Shirley McKie and I came
19 to the same conclusion as I did during the blind
20 comparison, ie I found 10 points in sequence and
21 agreement, I was happy to assign ownership of that mark,
22 then I would have been happy to speak to that in cour.
23 It would have been down to the Fiscal whether he was
24 willing to call me or not that's obviously -- but I
25 would have been happy to say that that mark was made by

1 that individual.

2 Q. But surely you know that, bar some exception being made
3 by the Fiscal, that would need to be reasoned out and
4 justified to the Fiscal, you could not have testified at
5 the perjury trial to the court standard based on your
6 identification in 1997?

7 A. If I was asked in 1997 to find 16 points in sequence and
8 agreement ... is that what you're asking me, sorry?

9 Q. If I had asked you -- the McKie trial is in May 1999 --
10 at the time of the Asbury case, Ms McKie is an
11 individual police officer who, if she had been in the
12 house, would have been regarded as an innocent person
13 who had a legitimate reason to be there as a police
14 officer, she's, therefore, being eliminated and Y7 has
15 been eliminated as not that of a suspect, it's a police
16 officer -- understand? Is that correct?

17 A. Yes.

18 Q. And you could do that to a standard of 10, correct?

19 A. Correct.

20 Q. However, by May 1999 at the perjury trial it's no longer
21 a question of eliminating her an innocent person with
22 legitimate reason to be in the house, fingerprint
23 officers are now being asked to identify her print to
24 the court standard of 16 points because the prosecution
25 is trying to prove that she was in that house without

1 legitimate reason to be there.

2 Do you understand the distinction?

3 A. I believe I understand what you're saying, yes, but what
4 I'm trying to answer is that, first of all, it was two
5 years later. That was the first thing. As I said at
6 the beginning when I was first in the chair I said to
7 eliminate you must identify because you're assigning
8 ownership of the mark. If I eliminated that to 10 I
9 wouldn't have said it was that person without me being
10 satisfied that it was that person. So if I had to, I
11 would have submitted a report to the Fiscal on that
12 basis. So then, as I say, if I eliminate or identify,
13 regarding how many points in sequence and agreement that
14 I find, if I am satisfied an unknown mark is identified
15 as a known person, then I will not assign my name to
16 that until I'm happy to speak to it in court.

17 Q. We may be just a crossed purposes. Let's be very clear:
18 as I understand it, the prosecution when it proceeded in
19 the perjury case proceeded on the basis that fingerprint
20 officers would testify that there were 16 points in
21 sequence and agreement between Y7 and Ms McKie.

22 I would understand your position to be quite simply
23 this: if I had asked you to step in, you would have had
24 to say to me, "I can't step in based on what I did in
25 the blind test in 1997 when I only saw 10 points. I

1 would need to look at it again and determine whether or
2 not I could see 16 points".

3 A. Correct.

4 THE CHAIRMAN: I wonder --

5 MR MOYNIHAN: That is as good a point as any, sir. I don't
6 have very much longer to go.

7 THE CHAIRMAN: If you would not mind returning again
8 tomorrow at 10.15.

9 A. Yes.

10 THE CHAIRMAN: Thank you.

11 **(4.10 pm)**

12 **(Adjourned until 10.15 am the following morning)**

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