

Wednesday, 1st July 2009

DENISE MCLENNAN GREAVES (continued)

1 (1.50 pm)

2 MR MOYNIHAN: Mrs Greaves, in relation to the fall-back
3 position, just on a point of detail, the defence expert,
4 as I said, if I use the names I'm aware of: Malcolm
5 Graham I understand had been the David Asbury defence
6 expert, Mr Swan is the individual with Levy & McRae and
7 therefore for Ms McKie.

8 Is it possible that when you spoke to Angela
9 McCracken that there was no mention there of the opinion
10 that Mr Swann had expressed, simply that Mr Swann had
11 been instructed or did you understand from Angela
12 McCracken that Mr Swann had, indeed, agreed the
13 identification?

14 A. I thought the latter. I may be mistaken now after the
15 passage of time but my own recollection is that it was
16 the latter.

17 Q. What I will do is leave this particular point to be
18 tidied up by my learned friend, Mr Smith --

19 THE CHAIRMAN: Is your microphone on?

20 MR SMITH: I was just saying I couldn't hear properly with
21 the microphone.

22 MR MOYNIHAN: Sorry. If you could move the microphone
23 closer to you. It's actually not a very efficient
24 microphone.

25 So you have a recollection about being told

1 something about Mr Swann?

2 A. Yes.

3 Q. It's when in the point of time. You indicate in your
4 statement that it would be about the time when Ms McKie
5 was placed on petition, which we know was March 1998.

6 A. No, it definitely wasn't then. It would be much later
7 than that. It would be just I think before the trial,
8 that sort of period.

9 Q. So if we know that, in fact, Mr Swann examined exhibits
10 in March 1999 -- that's between the abortive first trial
11 diet and the trial that actually proceeded -- is it
12 possible you got this information from Levy & McRae in
13 1999?

14 A. Yes, I think it was around in the lead-up to the trial.

15 Q. That's fine.

16 While we are also just on the question of experts,
17 there was another gentleman who became involved, a
18 Mr Wertheim, an American expert.

19 A. Yes.

20 Q. You have already told us you yourself were not involved
21 in the trial itself?

22 A. No, not at all.

23 Q. We have had some evidence that some enquiries were being
24 made about Mr Wertheim and his background and Chief
25 Inspector Hogg, who was one of the individuals you had

1 taken statements from, said he had been making some
2 enquiries in relation to Mr Wertheim.

3 Did you have any involvement in any enquiries in
4 relation to Mr Wertheim's background?

5 A. No, not at all.

6 Q. Were you involved in any active preparation in the
7 immediate run-up to the trial that proceeded in
8 April/May?

9 A. No.

10 Q. There are two other points I wanted to ask you about
11 that are related. In the evidence, the statement you
12 have given, you have been asked to comment on
13 enlargements. If I can again bring up just as an
14 example for you DB0011. This happens to be production
15 180. If I move to the last page, these are, as the
16 legend describes them, enlargements.

17 Are you familiar with these particular documents?

18 A. Yes.

19 Q. Do you recognise these as items that at that time in
20 1997 were routinely prepared in fingerprint cases or do
21 you not know?

22 A. My recollection was that I think as I said in my
23 statement that -- could I just ask, before I say this,
24 some of the productions that were used in the trial of
25 Shirley McKie were actually taken directly from

1 instructions in the case of David Asbury and I'm not
2 sure now whether this was one of those productions from
3 the David Asbury case that was renumbered for the
4 Shirley McKie case or whether this is a new production.
5 I don't have a recollection of that now.

6 But the fingerprint evidence in the David Asbury
7 case and, consequently, in the Shirley McKie case was
8 very much more detailed than anything that I'd ever seen
9 prepared for court before by SCRO.

10 Q. Just in case it makes any difference to you, if I
11 explain, production 180, as far as I'm aware, was not a
12 production in the David Asbury case and one of my
13 reasons for asking about it earlier is there is a degree
14 of uncertainty when it first came into existence and for
15 what purpose but it was certainly a production in the
16 McKie perjury trial, if that assists.

17 A. Right.

18 Q. As you say, the information was more detailed than might
19 have been the case in other trials but at least as a
20 style of production to illustrate a fingerprint
21 officer's evidence, were you familiar with it?

22 A. I think this was the same sort of style that was used in
23 the David Asbury case, yes.

24 Q. In fact, if you give me just a second ... **(Pause)**

25 THE CHAIRMAN: Was it a fairly standard form of production?

1 A. Not really, no. They were much more detailed in this
2 case or in the David Asbury case than in any case I'd
3 previously been involved in. The productions were
4 prepared but they weren't -- you know, there was a lot
5 more detail, I think, produced in the ones for the David
6 Asbury case and much more detail of the mark, you know,
7 the markings on them.

8 THE CHAIRMAN: Than you have seen before?

9 A. Yes.

10 MR MOYNIHAN: If I give you another document, one that I can
11 be quite clear about the dates, if we look at DB0012,
12 this is production 189 and is one of the productions in
13 Ms McKie's case. If we go through to the third page, we
14 see production 189 in the McKie case. If we carry on
15 again to a booklet with photographs, in fact, of Y7 and
16 in the final sheet, again, a similar charting. Now, as
17 far as I am --

18 A. That's more normal, the photograph of where the
19 impression's been found and then a fingerprint
20 impression with certain marks on it but not nearly as
21 many as that.

22 Q. If I put at the top perhaps the current page and then
23 put beneath it page 5 of this document, the way I think
24 it will be displayed would be these two side-by-side
25 with the images, as you have said, of Y7 in its location

1 and then these enlargements produced to illustrate the
2 concurrence of 16 points. It's something of that sort
3 you've seen before?

4 A. Yes.

5 Q. What I want to ask you about just to be really clear, in
6 the meetings that you had with Mr Stewart and
7 Mr Macpherson, was there any suggestion made by either
8 of them that the 16 points illustrated on page 6 (that's
9 the top of this screen) would not be accurately to be
10 found by looking to the ends of the lines?

11 A. The lines onto the fingerprint?

12 Q. Perhaps, if we just enlarge page 6 and we take the
13 right-hand image, for example, and just enlarge it, you
14 will see, for example, if I take point number 10 a red
15 line coming from outwith the photograph going into the
16 photograph and ending at a particular point and the same
17 for number 11 --

18 A. Yes.

19 Q. -- did any of the witnesses suggest to you or tell you
20 that, because of the technology involved, there might be
21 what we have come to call "slippage"; that is, that the
22 computer might not accurately plot a particular feature
23 that the fingerprint officer wanted to highlight?

24 A. I don't recall that, no.

25 Q. While we also have that up on the screen, you spoke to

1 Mr Stewart and Mr Macpherson. If I bring up
2 Mr Macpherson's precognition, perhaps if we could put
3 page 6 just to the right, just now, and then bring up on
4 screen CO2624. I am interested in the third paragraph
5 where it says:

6 "I was allocated this case involving the death of
7 Marion Ross by Chief Inspector O'Neill and I worked with
8 Fingerprint Officer Alister Geddes. Charles Stewart was
9 also involved."

10 Now, you did precognosce Charles Stewart.

11 Was there any indication given to you that would
12 give rise to a need to precognosce Mr Geddes?

13 A. Not at that particular time. Obviously, I didn't -- I
14 don't think I did precognosce him.

15 Q. You don't think you did?

16 A. No.

17 Q. You plainly understood the Fingerprint Officers to be
18 working to a standard of 16 points in sequence and
19 agreement as is shown in the image.

20 A. Yes.

21 Q. Did they tell you that any of the other Scottish
22 Criminal Record Office staff had been unable to agree
23 the presence of the 16 points?

24 A. No.

25 Q. So they didn't tell you Mr Geddes saw only 10?

1 A. No.

2 Q. Mr Mackenzie saw between 10 and 13?

3 A. No.

4 Q. Mr Dunbar saw perhaps more than 10 but less than 16?

5 A. No.

6 Q. That Mr Bruce saw 8?

7 A. No.

8 Q. And Mr Foley saw 10?

9 A. No.

10 Q. If that information had been given to you -- and let me
11 make it quite clear, what could have been explained to
12 you is all of the officers I have mentioned are in
13 agreement that Y7 is Shirley McKie's fingerprint but no
14 one of those officers, at least at the point when they
15 are making the identification, were able to satisfy the
16 16-point standard, they were able to see a lower number,
17 between 8 and 13 -- would you have been interested in
18 knowing that?

19 A. Yes, I would.

20 Q. What would you have done had you been told that?

21 A. I would have mentioned it in the precognition,
22 obviously. So obviously it would be a matter for Crown
23 Counsel to consider the veracity of the fingerprint
24 evidence and it perhaps might have had a different
25 emphasis or laid a different emphasis on the obtaining

1 of an additional independent report.

2 Q. The precognition, if I assist, does disclose that there
3 had been re-photographing of Y7 at various stages. Did
4 you hear of something called a blind test or a blind
5 comparison having been carried out?

6 A. I don't have any recollection of that.

7 Q. If you had been told that some officers had been asked
8 to test the identification of Y7 and had undertaken a
9 specific exercise, if that had been told to you, is that
10 something of such importance that we would find it
11 referred to in your precognition?

12 A. Yes, I would have put that in the precognition.

13 Q. Again, I think --

14 A. Depending on -- obviously, depending on -- if there had
15 been some blind testing and, you know, that the results
16 had not been favourable, I would have probably put it in
17 anyway, but if the results had not been favourable then
18 it would have been particularly relevant.

19 Q. The final piece that I wanted to just ask you about is I
20 have given you the name of Mr Graham as the individual
21 involved in the Asbury case where there was the
22 fall-back position.

23 Did you yourself give consideration to precognoscing
24 that expert?

25 A. I didn't precognosce him myself and one of the things

1 that I was, you know, I was expecting after I sent the
2 report, Terry Kent's report, I was expecting I would be
3 asked to do further work in relation to his report, to
4 precognosce him, perhaps matters to be raised and
5 perhaps further investigations to be carried out, for
6 instance, speaking to an independent expert or asking
7 somebody else to do that and none of that ever happened.

8 Q. If I can just play this on, first of all, just for
9 completeness, Mr Asbury's appeal was still pending at
10 this stage.

11 A. Yes.

12 Q. So whether you would have got permission to precognosce
13 Mr Graham is perhaps a moot question.

14 Would that be fair?

15 A. Well, I mean, I would have expected an instruction in
16 relation to that, yes.

17 Q. But whether the defence would give you permission to
18 precognosce Mr Graham would perhaps be a moot question?

19 A. Yes.

20 Q. If I take you, please, to a document CO0003 and I think
21 for me it is PDF page 18, if I give you just a chance I
22 won't read it out but the middle paragraph:

23 "Malcolm Graham maintains ..."

24 I will give you a chance to read that. **(Pause)**

25 A. Okay.

1 Q. Again, I appreciate you didn't get instructions to
2 precognosce Mr Graham and you didn't precognosce
3 Mr Graham. If what is recorded in this paragraph had
4 been drawn to your attention at the time, would that
5 have been significant to you?

6 A. Well, I think certainly the last line would have raised
7 some concerns for me.

8 Q. The last line being this that SCRO might have gone wrong
9 in some respect?

10 A. Yes.

11 Q. If I put this in a positive way, would that have
12 reinforced in your mind the need for an independent
13 check of Y7?

14 A. I always thought we should have an independent check
15 anyway.

16 MR MOYNIHAN: I have no further questions. Thank you.

17 THE CHAIRMAN: Mr Holmes, have you any application for this
18 witness?

19 MR HOLMES: There are a couple of matters I would like to
20 ask the witness. The first relates to the time of the
21 discovery of Mr Swann's involvement and the remainder
22 are matters that I would like to expand on from
23 questions that have been asked this morning.

24 THE CHAIRMAN: This is really expansion of what has been
25 covered.

1 **Cross-examined by MR HOLMES**

2 Q. Can I ask, you say in your statement that you were aware
3 of Peter Swann's involvement from the petition stage of
4 Ms McKie's case. It is paragraph 19, if you have a copy
5 in front of you.

6 A. I think they probably had said to me that they were
7 instructing him as an expert at that stage.

8 Q. When is it that you became aware that he confirmed
9 SCRO's finding with regard to Y7?

10 A. That was much later.

11 Q. Do you recall when?

12 A. As I said, it may be in the lead-up to the trials at
13 that time.

14 Q. But it's prior to the trial?

15 A. Just prior to the trial, yes.

16 Q. Did you inform the Trial Depute that a defence expert
17 had confirmed SCRO's findings?

18 A. No, I wasn't in contact with the Crown Counsel in the
19 case at that stage.

20 Q. The Trial Depute has given evidence here to the effect
21 that he was not aware that Mr Swann had been involved
22 until such time as Ms McKie herself was giving evidence.

23 Should he not have been informed by someone that a
24 defence expert had confirmed SCRO's findings?

25 A. Well, perhaps in hindsight, yes, that would have been

1 appropriate but the conversation I think that I had with
2 the person from Levy & McRae at the time was dealing
3 with a number of matters in the lead-up to the trial and
4 it wasn't really -- it was perhaps a remark that was
5 made in passing as opposed to anything other than that.
6 We didn't -- as far as I'm aware, there was no copy
7 report or anything submitted to us.

8 Q. But does the fact the defence expert has confirmed the
9 findings of the Crown's experts not substantially
10 strengthen the Crown's case at that stage?

11 A. Well, I suppose it would have but, to be honest with
12 you, I don't have a good recollection of what happened
13 in the days -- at the time. It is a long time ago.
14 It's not the only case I was dealing with, obviously.

15 Q. So as far as you recall nobody advised the Trial Depute
16 that Mr Swann had confirmed SCRO's findings?

17 A. I didn't.

18 Q. The second matter I would like to ask you about is a
19 question you were asked earlier on today. For those
20 using LiveNote it is at page 68, line 12. You were
21 asked whether it was rare for Fingerprint Officers to
22 attend as witnesses and I think the reason for that is
23 their evidence was routinely agreed.

24 It's still rare to Fingerprint Officers to attend as
25 witnesses, isn't it?

1 A. Yes.

2 Q. The second question that you were asked that I would
3 like to expand upon is for those using LiveNote page 74
4 of today's transcript in line 17.

5 You were asked about the difference between the
6 standards in Scotland and in England and you say during
7 your answer:

8 "I think that it was accepted that there was
9 differences in the methods of comparison."

10 Can you tell me why? Who was it who accepted that
11 there were differences?

12 A. I'm sorry, I can't hear you.

13 Q. Who accepted that there were differences between the
14 methods of comparison in Scotland and England?

15 A. Mmm.

16 Q. You say in your answer this morning that it was accepted
17 that there were such differences but do you know who it
18 was who accepted there were such differences?

19 A. I think the police mentioned it to me. I think, was
20 it ... it was Chief Inspector Iain Hogg, I think, it was
21 that I spoke to. Possibly him, because he was the
22 person that was dealing with it in relation to the
23 fingerprint information.

24 Q. It's quite a lengthy question and quite a lengthy
25 answer. When you refer to differences in methods of

1 comparison are you referring to differences between what
2 one fingerprint officer would regard as a characteristic
3 and another fingerprint officer would regard as a
4 characteristic?

5 A. Yes, I think that's probably fair.

6 Q. So it's not necessarily that there are differences in
7 the method of comparison. That could be entirely the
8 same between Fingerprint Officers in Scotland and in
9 England and, indeed, between Fingerprint Officers in
10 1997 and now?

11 A. I'm sorry I can't actually see what you're saying.

12 Q. What Fingerprint Officers actually do in order to
13 compare a fingerprint could be entirely the same, it's
14 just that you understood the differences to exist
15 between what they would recognise as a characteristic?

16 A. Yes.

17 Q. Again, for those using LiveNote at page 77 of today's
18 transcript, in line 12 you say that your view was that
19 you ought to be getting -- you were cut off there but
20 you are referring to a further expert report. You say
21 that you had obviously discussions with Gillian Climie,
22 phone calls, et cetera.

23 Is there any note of any phone call between yourself
24 and Ms Climie regarding the possibility of getting a
25 further report after Mr Kent's report came back?

1 A. No, there's nothing there. Nothing in the
2 correspondence that's there.

3 Q. I ask because Ms Climie's recollection is somewhat
4 different. Her statement is FI0075. It is at page 7,
5 paragraph 14. Ms Climie says:

6 "I have no recollection of any discussions with
7 Denise Greaves about the fact that Terry Kent had
8 indicated that he was not able to give a view on the
9 identification of Y7 and I do have to doubt that such
10 discussions took place."

11 A. I think perhaps Gillian Climie has a different
12 recollection from me obviously and that's, you know, it
13 has been a long period of time since -- the passage of
14 time. But the report clearly didn't have a reference to
15 a comparison of Y7 from Terry Kent and that was one of
16 the things that Crown Counsel had initially instructed
17 had to be done. So I mean, my recollection is that we
18 did discuss things informally as well as putting them
19 down in letters.

20 Q. It's not something that there was no other independent
21 verification of Y7, was there?

22 A. Apart from the expert from the David Asbury case.

23 Q. The final thing I'd like to ask you about was that you
24 were asked fairly recently about the number of points
25 that the various SCRO experts were able to find within

1 the mark and you were surprised that you had not been
2 told that the number of points might have varied, even
3 though all these experts were happy to identify Y7 as
4 that of Shirley McKie.

5 Have you ever been told the number of points that an
6 expert has found within a fingerprint?

7 A. I understand it was 16.

8 Q. But have you ever had a discussion with an expert as to
9 the number of points they were able to find within the
10 mark?

11 A. I haven't precognitions of Charles Stewart or
12 Mr Macpherson in front of me now but I may have
13 mentioned those, I would have expected to have discussed
14 that with them in their precognitions.

15 Q. I am sorry, I mean in any other case have you ever
16 discussed the number of --

17 A. No.

18 MR HOLMES: Thank you.

19 THE CHAIRMAN: Mr Smith, do you have any questions?

20 MR SMITH: Sir, I do. The areas that I'd like to ask about
21 which can be dealt with fairly quickly relate to timing
22 regarding Mr Swann's involvement and I want to look at a
23 couple of documents and some questions about disclosure
24 then and now.

25 THE CHAIRMAN: Yes.

1 MR SMITH: The generality of the evidence, I am not going to
2 go into detail of the evidence against Shirley McKie and
3 the importance of, in particular, getting an independent
4 report and, finally, the matter of presentations to
5 juries then as compared to now --

6 THE CHAIRMAN: That's the presentation at the trial.

7 MR SMITH: At the trial and the way it's done.

8 THE CHAIRMAN: Well, it will assist me, the latter one,
9 because I would like to know who actually has
10 responsibility for deciding how the evidence should be
11 presented, the formal presentation --

12 MR SMITH: I shall try and cover that, sir.

13 THE CHAIRMAN: Thank you.

14 **Cross-examined by MR SMITH**

15 Q. Mrs Greaves, as far as Mr Swann's involvement is
16 concerned, can I just understand without necessarily
17 going to documents, your evidence was to the effect that
18 you thought you heard about Mr Swann some time towards
19 the end of 1998 but that was in conversation with, I
20 think you say in your statement, with Angela McCracken,
21 a solicitor who was representing Ms McKie. Is that
22 right?

23 A. Yes. At that time Levy & McRae wanted the fingerprint
24 Y7, which was on a piece of wood, to be examined by
25 their expert and I think in the conversations that we

1 had I was aware that the name they were talking about as
2 the expert was Mr Swann.

3 Q. And I take it the fact they had not obtained the piece
4 of wood at that stage would tend to support that you
5 were not told what his opinion was at that time; is that
6 right?

7 A. Yes.

8 Q. But we know that he didn't actually produce his report
9 until March of the following year in the run-up to when
10 the trial took place.

11 Does that fit more correctly with your recollection,
12 you didn't really know what his opinion was at various
13 stages as you sit here today? Is that right?

14 A. Yes.

15 Q. I am assuming that the question was raised over
16 instructing an independent report, someone from England,
17 that was a completely separate question of Mr Swann's
18 involvement whatever that may have been?

19 A. Yes, that was Terry Kent that was to be the English
20 expert, initially.

21 Q. I would like to move on and ask you about issues of
22 disclosure and Mr Moynihan put to you a number of
23 individuals who were apparently, at least at one stage,
24 unable to reach a 16-point standard. You remember him
25 mentioning that?

1 A. Yes.

2 Q. Before today, were you aware of that?

3 A. No.

4 Q. I think we have heard some evidence about this already.

5 Whatever the views of these individuals was overall

6 about the identification of the print, at that time did

7 you understand the standard to be a 16-point standard?

8 A. Yes.

9 Q. Suppose you were presented in a case hypothetically with

10 one expert who said, "I found 16", and another expert

11 saying, "I can only get 10 points", would you be

12 prepared to read in both witnesses or have them read as

13 witnesses to say, "I can only get 10 but I'm sure about

14 the position"?

15 A. If that would have included the statements in

16 precognition then obviously it would have been up to

17 Crown Counsel to decide if they wanted to lead the

18 witness but I think it would have been relevant to have

19 those statements as part of the precognition.

20 Q. But the simple point is, of course, that there was an

21 expected 16-point standard at that stage. That's right,

22 isn't it?

23 A. Yes.

24 Q. And the fact that someone couldn't get up to 16 points

25 would, at least from your experience as a member of the

1 Crown Office and Procurator Fiscal Service, would be
2 something that you would have a concern over?

3 A. Yes.

4 Q. Anything you would have had a concern over is something
5 you would have expected to have been told, wouldn't you?

6 A. Well, I would have expected an explanation, obviously,
7 if they still maintained that they could identify the
8 print from their examination of it but they weren't
9 getting up to the 16-point, I would expect to be advised
10 why they were convinced of the identification.

11 Q. Can I ask you have you personally ever prosecuted in the
12 Sheriff court a case involving fingerprints?

13 A. Yes.

14 Q. And was it required that you actually led the
15 fingerprint expert or experts?

16 A. No.

17 Q. Was it a matter agreed by the defence as to the
18 identification or not as the case may be the fingerprint
19 evidence?

20 A. As far as I can recall, yes. It was a matter of
21 agreement. I don't remember having to call for
22 Fingerprint Officers.

23 Q. I take it you would agree with me that whenever
24 fingerprint evidence is challenged, it may depend on a
25 number of possible factors: one, of course, that the

1 accused denies he was in the **locus**, that is an obvious
2 example, but even if he disputes it, I take it you would
3 agree with me that it would depend whether the accused
4 was given Legal Aid in order to instruct an expert to
5 challenge the evidence, wouldn't it?

6 A. I presume so.

7 Q. Just lest we think there's no challenge it's always
8 accepted, I take it you will agree with me it may be the
9 defence are not granted Legal Aid to get an expert to
10 look at the analysis that's fair, isn't it?

11 A. To be honest with you, I'm not a defence counsel, I
12 couldn't ...

13 Q. I would like to ask you about methods of presentations
14 of fingerprint evidence to juries. I take it you would
15 agree with me -- and we heard a very detailed exposition
16 of what the law appears to be from Mr Moynihan in his
17 opening -- that the I think it was put the bare **ipse**
18 **dixit**, the bare word of the expert is not enough; it has
19 to be based on reason and analysis. You are aware of
20 that, aren't you?

21 A. Yes.

22 Q. I am sorry can you keep your voice up. Obviously, this
23 has to be recorded. So, therefore, I take it we can
24 agree I think with what was being presented by
25 Mr Moynihan that what an expert is doing must be more

1 than saying, "I'm an expert, I can see it, it's there,
2 it's a match". There must be more than that. Is that
3 not right?

4 A. Well, yes, I would agree but in this particular case
5 there were productions produced which supported the
6 expert evidence and opinion that was provided.

7 Q. Yes. So the productions were prepared and presented to
8 the court in an effort to demonstrate what the expert
9 was actually saying. You understand?

10 A. Yes.

11 Q. Now I would like you to look, if you can, please, at one
12 of these documents. I think it is SG0125. I think we
13 have seen this one or one similar to it and can I ask
14 you to go on to the next page, please.

15 What we see in this document is there are
16 photographs obviously of Y7 in situ on the piece of wood
17 and then on to the next page please where we see that
18 representation which I understand shows an enlargement
19 on the left-hand side of Y7 and a part of Y7 and on the
20 right an enlargement of part of the inked fingerprint of
21 Shirley Cardwell as she then was, Shirley McKie; do you
22 see that?

23 A. Yes.

24 Q. Can you help us who was it that was responsible for the
25 method of this presentation at the time? Who decided

1 this was the way to present it to the jury if necessary?

2 A. I think the SCRO had produced similar documents for the
3 David Asbury case and so they produced -- they went on
4 to produce a similar type of document for the case
5 against Shirley McKie.

6 Q. Apart from these two cases, the Asbury case and the
7 McKie case, had you ever seen a presentation like this
8 before in any case involving fingerprints?

9 A. Yes, but not in as much detail, not with so much detail
10 in the points of comparison, with certain ones marked.
11 I don't remember there being as much detail as there was
12 in this case.

13 Q. You see of course the both the left-hand and left-hand
14 images we can see 16 numbers numbered 1 to 16 with lines
15 going from the number to something within the
16 photographic image. Do you see that?

17 A. Yes.

18 Q. Are you saying you've seen less than 16 points or are
19 you saying you have seen them without the lines or what?
20 How should one understand "less detail than other
21 cases"?

22 A. My recollection is that they had sort of like little
23 circles in parts of these bits, not the 16 lines with
24 the numbers going out from the edges but, you know,
25 little circles on this bit.

1 Q. I take it backed with a written report saying there are
2 16 points between these two images in a --

3 A. There was a standard wording. I don't know exactly what
4 it said but it was a standard wording that was accepted.

5 Q. Surely, but the magic word is 16, I suppose is what I am
6 saying. They have to say 16?

7 A. Well, I can't say whether it said 16 or not but there
8 was a standard wording at the time that they said they
9 had compared the fingerprints and the lift and, you
10 know, they were satisfied. I can't remember the exact
11 wording but there was a standard wording that was used
12 for court reports.

13 Q. I take it before today you have seen this document in
14 connection with the McKie case or something similar?

15 A. Yes, I must have done.

16 Q. Can you say was that before Shirley McKie's trial you
17 saw this or something similar?

18 A. I presume it must have been before Shirley McKie's
19 trial. If it was a production in the case I would have
20 expected to have seen it.

21 Q. I think, in fact, there were three similar versions of
22 this that were lodged in the course of her trial. But
23 against the background to pick up a question a few
24 moments ago I put to you about the expert having to
25 demonstrate why he's reached his opinion, not just that

1 it is his opinion, I think you were referring to this
2 kind of document as the way that it's been communicating
3 to the jury, "Why I am right about this, I can show you
4 how I've reached my conclusion".

5 Do you understand what I'm saying?

6 A. That was the purpose of this.

7 Q. Were you able to find 16 points from the left-hand
8 image. Could you look at them and say, "Yes, I see all
9 of these points"?

10 A. I'm not an expert so I have no training so I wouldn't
11 have attempted to do that.

12 Q. You have the opportunity to sit there with the experts
13 from SCRO and say, "Listen, I'm really struggling with
14 number 14 on the left. Can you help me with that". You
15 had that opportunity, didn't you?

16 A. Probably I did, yes.

17 Q. You say you think you might have done?

18 A. Well, yes, I was sitting at the precognition with them.
19 I could have -- yes, I accept that I could have asked
20 them about that but I didn't because that's not part of,
21 you know, my function. I don't have expert training. I
22 don't have -- presumably they have specialist equipment
23 when they are carrying out their examinations which I
24 wouldn't have had in my office.

25 Q. You see, what I am struggling with here -- and we all

1 have hindsight in this matter of course -- but what I am
2 struggling with is this: in Shirley McKie's case there
3 were really two important pieces of evidence: one was
4 the identification of Y7 as being hers and the other was
5 the question of whether she had the opportunity to leave
6 it at the **locus**. These are the two big bits; that's
7 right, isn't it?

8 A. I think there were are two aspects, yes, to the case,
9 yes.

10 Q. Can I just be clear about this: the question of the log
11 itself, if there was a gap in it, would have only
12 afforded her the opportunity of going into the **locus**,
13 wouldn't it?

14 A. I think that from my statement and from the precognition
15 it's quite clear that there were gaps in the log and
16 that there were omissions in the log as well. So it was
17 quite clear that as a result of this particular -- the
18 log in this particular case, that standards had to be
19 improved and I understand that they were after this,
20 that they were much, you know, tightened up far more.
21 But that there were omissions. People who had been in
22 the premises were not recorded as having gone in and
23 there were other gaps where clearly officers who were on
24 duty had to use the garage down the road, as I
25 understand it, for toilet breaks.

1 Q. I understand that. All I am interested in is that the
2 log did not provide any evidence that Shirley McKie had
3 been in the house, did it?

4 A. No, it didn't.

5 Q. All it did was it showed that if there were gaps it's
6 possible that she could have been in one of the gaps and
7 that's as far as it got --

8 A. Or that it hadn't been recorded.

9 Q. Yes, of course. That's what I mean. So what we're
10 looking at is a log really as being something that's not
11 positive evidence of her being in, it's just not
12 negative if you follow. Is that right?

13 A. Yes.

14 Q. So all of this is gravitating to the identification of
15 Y7 as being hers. That is the key evidence in this case
16 of course, isn't it?

17 A. Yes.

18 Q. Can I put it this way: I suppose you would say that even
19 without the evidence of the log or whatever, if you
20 forgot about all of that evidence, you would no doubt
21 say there would still in your view have been enough
22 evidence on the fingerprint identification for obvious
23 reasons to place her in the **locus**. That's right, isn't
24 it?

25 A. Well, I think what I said was that there was evidence

1 that the fingerprint was hers and had been identified as
2 her print but, obviously, the report that we got from
3 Terry Kent didn't cover all the issues that I felt
4 should have been covered and the matter of the
5 independent examination of the fingerprint wasn't
6 covered either.

7 Q. You see, I am sure you understand that when we look at
8 this case and we see how vital it was that Y7 was
9 correctly identified, I'm wondering if against that
10 background it would be something you would be thinking
11 when you are precognosing the Fingerprint Officers,
12 "You need to talk me through this. I need to understand
13 it because the jury need to understand it". You told us
14 you didn't do that but don't you think it would have
15 been a prudent thing to do?

16 A. I think they talked me through how they did the
17 comparisons and what they looked for but, as I said, we
18 were in my office for the precognitions. I wasn't at
19 their office so I wasn't in a position to look at prints
20 in the way that they would have done under specialist
21 conditions.

22 Q. You are anticipating that when the jury were being asked
23 this they would have been privileged enough to have the
24 special conditions?

25 A. No they wouldn't, obviously, but I think when they came

1 and the fingerprint officer came to my office he didn't
2 have this with him. This was prepared probably after
3 that, I presume after the discussions that we had.

4 Q. But once you saw it did you not sit there and think,
5 "Goodness me, I find this really difficult to
6 understand. How is a jury going to understand it". Did
7 that not cross your mind?

8 A. Not really because the whole point of the detail was --
9 in the David Asbury case, was to try and demonstrate to
10 the jury how the officers reached their conclusions and
11 they also had other documents that were lodged as
12 productions to enable the jury to understand what the
13 process was.

14 Q. But do you not see the gap that's developing here where
15 there's no specialist equipment available to the jury
16 and what the expert is really saying is, well, some of
17 these experts, "I'm telling you I've drawn the
18 analysis". Do you not understand that that was
19 gravitating to the words of the bare **ipse dixit** of an
20 expert witness telling you there's a match there?

21 A. Yes, they were the expert witnesses so they would come
22 along, giving an opinion, they were demonstrating, I
23 presume, going to demonstrate why they thought that that
24 was their opinion but at the end of the day the jury
25 would be entitled to either believe the experts'

1 evidence or choose to disregard it.

2 Q. But you agree with me though the jury is supposed to
3 come to their conclusion and not be directed to their
4 conclusion on the basis of the evidence that they are
5 satisfied with, not just because an expert says, "I have
6 seen the evidence and I am telling you it matches". You
7 agree --

8 A. Yes, it's up to the jury to decide if they accept the
9 evidence of the expert and if they don't understand the
10 production, then they may choose not to.

11 Q. So I take it from all you have said so far the position
12 is the Crown was content and would be content at that
13 time simply to accept an expert coming without the Crown
14 necessarily understanding the detail of how that opinion
15 was reached. Have I got that right?

16 A. No, I don't think that's correct. They had explained
17 what the process was, they explained how they did their
18 comparisons, they had the productions there to
19 demonstrate how. It wasn't just -- they had information
20 there to back up what their expert view was.

21 Q. You have heard today there are some experts within
22 SCRO -- in fact, a number of them -- who were unable to
23 achieve 16 points. You have heard that.

24 A. Yes.

25 Q. If you look at the left-hand image of what it is that

1 appears to identify 16. I think we have heard accepted
2 by the previous witness that it places the jury at a
3 particular disadvantage if an expert of some years'
4 experience can't find 16 yet a jury is being asked to
5 find 16.

6 Would you agree that there is a bit of a problem
7 there?

8 A. Yes.

9 Q. Were you concerned at all about the fact there was only
10 parts of the print that were on that demonstration
11 folder, you don't see all of it. On these images you
12 don't see all of the close-up of Y7 on the left-hand
13 side and all the inked print on the right-hand side.
14 Did that cause you any concern?

15 A. Not really. I think that's quite typical of the marks
16 that we've seen in productions.

17 Q. Was it ever explained to you why the parts of these
18 prints were reproduced?

19 A. No.

20 Q. Did you not consider it might be helpful to ask why the
21 whole lot wasn't produced?

22 A. I don't recall whether I asked that or not.

23 Q. You will accept of course that on one view the best
24 evidence would be the entire print, wouldn't it?

25 A. Yes.

1 Q. Can I ask you to look at another document please which
2 is SGO709. Take it from me this appears to be a
3 document prepared by Hugh Macpherson within SCRO.

4 A. Yes.

5 Q. Can we turn on to the next page please and, again, we
6 see a similar thing to what we have seen before. If we
7 flick to the next page, please, I think I am right in
8 saying by the timing of this document -- I will come on
9 to that in a moment or two -- this is a case prepared by
10 Mr Macpherson for the purposes of the disciplinary
11 hearing against Shirley McKie. I think the date we will
12 see is in February 1996. This obviously predates the
13 presentation we were looking at a few moments ago, but
14 what we can see here of course is it bears to represent
15 a number of marks -- I think the photocopy is not
16 particularly good -- but we have 1, 2, 3, 4, 5, 6 and
17 then 11, 12, 13 and so on. We can see lines coming in
18 from the left. So 16 points on the mark Y7; do you see
19 that?

20 A. Yes.

21 Q. Can you look at the next page, please, in this document.
22 Again, you can see what is a larger area of
23 fingerprint rather than anything else so the whole
24 fingerprint. Again, the same idea, identify 16 points
25 in the document.

1 Could we have the next page, please, and we can see
2 an indication, first of all, we can see at the bottom of
3 the page -- I think we see in 2/2/06. There's an
4 understanding that this was prepared, as it were,
5 predated for the purposes of the civil proof that took
6 place in 2006 but it was prepared, the document must
7 have been prepared for the purposes of the disciplinary
8 hearing which is 1997 or 1998.

9 A. I don't know when the disciplinary hearing was. My
10 understanding was that wasn't done until after the court
11 case but I could be completely wrong. My understanding
12 was from the correspondence which I have on file from
13 the police that they were delaying the disciplinary
14 hearing until the outcome of the trial.

15 Q. Very well. I am more interested in the presentation but
16 no doubt Mr Macpherson can tell us.

17 As far as that presentation is concerned I take it
18 you would agree with me there's literally a much fuller
19 picture of the Y7 mark and of the known impression of
20 Shirley McKie; you agree with that?

21 A. Yes.

22 Q. Also we can see the list 1 to 16 that's got the
23 description number 1, for example, bifurcation with one
24 intervening ridge. I think that's 2 and then number 2
25 and then so. You see that. So we know what is referred

1 to with each of these marks; do you agree with that?

2 A. Yes.

3 Q. Did you see anything similar to that page on screen now

4 of the 1 to 16 with the actual description, did you see

5 anything similar to that for the preparations you had

6 for the purposes of the trial?

7 A. To be honest, I don't recall but I would have expected

8 to have had it produced or certainly it would be

9 included in the precognition.

10 Q. I would like to ask a few more questions on the issue of

11 disclosure. You explained that those who failed to

12 reach the 16-point standard you were unaware of, that

13 you would have liked to know about that and do you feel

14 you should have been told about that?

15 A. I think it would have been important for Crown Counsel

16 to have had that information.

17 Q. Only to Crown Counsel to have that information?

18 A. Well, I mean, for Crown Counsel to have the information

19 in the precognition.

20 Q. And important for the defence to have that information

21 as well, wouldn't it?

22 A. Well, yes, but, as you know, at that time there wasn't

23 disclosure in the way that there is now.

24 Q. There wasn't?

25 A. I'm talking about we didn't -- I mean, I didn't have

1 reports from these people so I didn't have a report to
2 disclose to the defence.

3 Q. Can I ask you this: if you had known it, would you have
4 disclosed it to the defence?

5 A. I would have sought instructions because that's what we
6 had to do then.

7 Q. Would you personally have felt it should have been
8 disclosed to the defence?

9 MISS GRAHAME: Excuse me, Mr Chairman, I wonder if this is
10 going beyond the realms of what was applied for.

11 THE CHAIRMAN: The Inquiry is about -- well, I think we can
12 deal with what happened and, in fact, the witness wasn't
13 aware and, therefore, it wasn't disclosed. That is
14 perhaps the position.

15 MR SMITH: Very well, sir.

16 I wonder if I can bring you up-to-date in some
17 respects. I hope I am not straying too far but you
18 explained very fairly you simply did not know about it.
19 You told us that.

20 Can you help us with this: as far as disclosure is
21 concerned now in something like this, is there some kind
22 of system in place in order that if the Crown is aware
23 if there is, for example, a fingerprint analysis who is
24 not sure about an analysis, is there some means of the
25 Crown knowing that, as far as you're aware?

1 A. I am not working in the operational office as such. I
2 work at the High Court now but I'm not involved in
3 preparation of cases so I'm not involved with the
4 disclosure issues unless they arise at the court. So I
5 don't know whether or what they are to be honest. I
6 don't know what the arrangement is with SCRO.

7 Q. So I suppose there is someone within Crown Office that
8 can perhaps assist in due course as to what liaison
9 systems or points of contact and communication are set
10 up to ensure that any doubts, if I can put it like that,
11 are communicated; is that fair?

12 A. My understanding is that there are systems in place
13 which are outwith the police and outside offices,
14 outside agencies but whether or not -- I mean, I don't
15 know I hope presumably there would be someone in Crown
16 Office but I don't know what the situation is in SCRO
17 now.

18 Q. A final question I have for you is this: I think we can
19 see that, for whatever reason, no independent assessment
20 of the analysis of Y7 was ultimately obtained from south
21 of the border as was anticipated.

22 Are you able to help us with this: are you able to
23 explain who would have -- and I don't mean this in a
24 pejorative sense -- but the responsibility, ultimately,
25 for the conclusion, "Well, maybe I should have followed

1 it up ..." can you understand how this fell between the
2 gap?

3 A. I've said already the report was with Crown Counsel. I
4 was expecting to get instruction back about further work
5 that Crown Counsel wanted covered. I had no detailed
6 instruction about issues to be raised with Terry Kent or
7 with other persons. That's what I would normally have
8 expected to receive and I didn't. So at that stage I
9 presumed that Crown Counsel were satisfied with the
10 information that they had.

11 Q. I take it you would agree with the suggestion that,
12 certainly with the benefit of hindsight, it should have
13 been carried out?

14 A. It's not just benefit of hindsight. At the time I
15 suggested that we should obtain independent examination.

16 MR SMITH: Thank you very much.

17 THE CHAIRMAN: Mr Macpherson, have you any application?

18 MR MACPHERSON: No, I have none.

19 THE CHAIRMAN: Miss Grahame?

20 MISS GRAHAME: Two matters please. The first arising out of
21 the cross-examination by my learned friend Mr Smith
22 regarding -- I would like to put Mr Murphy's approach to
23 the evidence to the witness and, secondly, in relation
24 to the source of the instructions that --

25 THE CHAIRMAN: Yes.

1 **Cross-examined by MISS GRAHAME**

2 Q. Mrs Greaves, may I ask you a question, first of all, in
3 relation to the approach to the evidence. My learned
4 friend Mr Smith has suggested to you that the
5 identification of Y7 is the key evidence in this case,
6 of course, and for those of us with the benefit of
7 LiveNote that's at page 125, lines 19 to 21.

8 Could I put to you, please, a statement which
9 Sheriff Murphy QC has given to the Inquiry which is
10 CO2592 at pages 8 and 9 ... I've maybe got the wrong
11 number, sorry. Can you take that off the screen. I've
12 got the wrong number here.

13 FI0070 at pages 8 and 9.

14 I wonder, Mrs Greaves, if you would take a moment to
15 read paragraphs 12 and then just to yourself. **(Pause)**

16 A. Yes, I've read that, thank you.

17 Q. Looking at paragraph 12, lines 5 to 8 Sheriff Murphy
18 says:

19 "This concern was abated by the fact that prior to
20 the trial it appeared that the Crown case did not rely
21 solely on fingerprint evidence because I thought I had
22 an eye witness, production officer James Kerr, who paced
23 Ms McKie at the scene."

24 Do you see that that's what is said there?

25 A. Yes.

1 Q. So it would appear that Sheriff Murphy was approaching
2 the case on the basis that he had eye witness evidence?

3 A. Yes.

4 Q. Would you agree, Mrs Greaves, that eye witness evidence
5 is significant evidence?

6 A. Yes.

7 Q. And that's nothing to do with fingerprint analysis?

8 A. No.

9 Q. Then would you turn please -- if we could have
10 paragraph 16, which is on page 10, and I wonder if you
11 could read for me please paragraph 16 again just to
12 yourself. **(Pause)**

13 THE CHAIRMAN: Maybe if it is going to take a moment for the
14 witness to read the passage we should have the break now
15 and give her time to read it not under pressure and sit
16 again at just before 3.05.

17 **(2.54 pm)**

18 **(A short break)**

19 THE CHAIRMAN: Yes, Miss Grahame, if you would like to
20 continue.

21 MISS GRAHAME: Mrs Greaves, I had asked you to read through
22 paragraph 16.

23 Have you had an opportunity to do that?

24 A. Yes.

25 Q. Do you see just more than halfway down there's 26 lines

1 on this page and if you look at line 18 it starts:

2 "Something of a surprise ..."

3 A. Yes, I see that.

4 Q. Do you see just as a background this relates to

5 Mr Kerr's evidence at the trial.

6 A. Yes.

7 Q. And Sean Murphy said in his statement:

8 "This was particularly disappointing as I regarded

9 it as a key piece of evidence that supported the Crown

10 case. Once this identification evidence was flawed

11 [that is Mr Kerr's] I began to become concerned as I was

12 now relying solely on the fingerprint evidence to place

13 Ms McKie inside the house and the case was, from that

14 point, a battle between the two sets of experts."

15 A. Yes, I see.

16 Q. So it would appear that Sheriff Murphy was relying on

17 primarily eye witness evidence and once Mr Kerr's

18 evidence changed, then he relied solely on the

19 fingerprint evidence?

20 A. Yes, that's correct.

21 Q. Can I ask you to look at another document please. You

22 have already been referred to this, CO3460. It is a

23 letter dated 17th August 1998 although it has your

24 handwritten -- sorry, it relates a telephone call and is

25 a handwritten note from 17th August 1998?

1 A. Yes.

2 Q. It indicates that you spoke to Gillian Climie on that
3 date and it says:

4 "She will re-read report and advise if any further
5 matters require clarification."

6 You have already given evidence about this.

7 A. Yes.

8 Q. Could you also look for me, please, at CO3458 which is a
9 letter dated 21st August 1998.

10 A. Yes.

11 Q. That is a letter by you to Messrs Levy & McRae who were
12 representing Ms McKie?

13 A. Yes.

14 Q. Does it say at the end of the first line of your letter:

15 "Last week I was in contact with the Depute at Crown
16 Office regarding this case."

17 Would that be a reference to Gillian Climie?

18 A. Yes.

19 Q. She was the indicter?

20 A. Yes.

21 Q. "She assures me I should have Crown Counsel's
22 instructions within the next two weeks."

23 Was that an indication of what Mrs Clamie had said
24 to you?

25 A. Yes, she indicated that she thought we would be able to

1 get instructions within two weeks.

2 Q. It was instruction from Crown Counsel?

3 A. Yes.

4 Q. And it says:

5 "Thereafter I will either request further
6 examination of the productions which are at PSDB or I
7 will arrange for their return to Glasgow."

8 So it appeared to you at that time that those were
9 the two options?

10 A. Yes.

11 Q. And whatever the outcome, it would depend on Crown
12 Counsel's instructions?

13 A. Yes.

14 Q. Not any instruction from Gillian Climie?

15 A. No.

16 Q. Could I ask you now please to look at CO3451 which is a
17 letter dated 9th November 1998. Again, a letter from
18 you to Levy & McRae where you say:

19 "I refer to your letter of 23rd October and confirm
20 that I have now received instructions to request return
21 of the productions from PSDB."

22 A. Yes.

23 Q. Would you have written, "I have now received
24 instructions", without actually having received any
25 instructions?

1 A. No.

2 Q. So can we assume from that that you did receive
3 instructions?

4 A. Yes.

5 Q. Who would you have received instructions from?

6 A. It would have been the indicter.

7 Q. And what would the source of her instruction have been?

8 A. From Crown Counsel.

9 Q. As well as you know, was it the practice of indicters to
10 bypass Crown Counsel and issue their own instructions?

11 A. Not as far as I was aware. I didn't ever work in Crown
12 Office as an indicter; so my understanding was that the
13 instructions always came from Crown Counsel and that's
14 what I would have expected.

15 MISS GRAHAME: Thank you very much. I have no further
16 questions.

17 THE CHAIRMAN: Thank you.

18 MR MOYNIHAN: No further questions, sir, thank you.

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

20 When you heard that Mr Swann was taking the same
21 view as the Scottish Criminal Record Office, that was no
22 cause for alarm on your part; he was confirming what
23 they had found?

24 A. Yes.

25 THE CHAIRMAN: Had it been the other way around and it had

1 Ms Climie, I think you prepared yourself and signed
2 a statement for the Inquiry?

3 A. I did.

4 Q. You're happy that that records your position accurately?

5 A. As far as I'm able to give it, yes.

6 Q. I would like to take you back, Ms Climie, to a time in
7 1998 when you first became involved with the case
8 against Ms Shirley McKie.

9 You told us in your statement that at that time you
10 had been working as an indicter in the High Court Unit
11 for some time.

12 A. That's correct.

13 Q. I wonder if you could tell us, please, a little bit
14 about the work of an indicter, what that would involve?

15 A. Basically, preparing the indictment in High Court cases.

16 Q. Now, we've heard some evidence that a perjury case such
17 as the one that you came to deal with in connection with
18 Ms McKie was prepared in something of a different order
19 from the normal case that would come to you in the
20 course of your work. Is that correct?

21 A. It very much depended on how things came to fruition. I
22 mean, every perjury case -- I was only ever involved in
23 one perjury case in my time in the High Court Unit,
24 which was this one, and I think it's quite clear from my
25 statement how I got involved in that.

1 Q. Just so that perhaps members of the public who don't
2 understand how Crown Office worked at the time can
3 perhaps understand it a little bit about what your role
4 was. If we can leave aside the McKie case for the
5 moment and just talk about what an indicter such as
6 yourself would do and the sort of material that she
7 would be presented with to help her do her job of
8 preparing the indictment, that's the formal charge for a
9 High Court trial.

10 A. Well, basically you got a precognition from the Fiscal.
11 Normally, what would happen in a normal case -- will I
12 take you through a normal case?

13 Q. I think that might be helpful so everyone --

14 A. Okay, tell me if I'm going on too long about this.

15 In a normal case, a person would be arrested by the
16 police for a serious crime. They would be locked up by
17 the police and the following day they would be presented
18 as a custody to the Procurator Fiscal in whose
19 jurisdiction the crime had allegedly been committed.

20 The Procurator Fiscal, if satisfied that there was
21 one source of evidence at least against that person
22 would put that person before the Sheriff in private on
23 what's called a petition, which is a preliminary charge.

24 If we take a murder case an accused would be arrested, I
25 think if I take you through Mr Asbury's case?

1 Q. I think it's probably better if we keep it in general
2 terms but you described the --

3 A. Okay, somebody might be arrested on 22nd January and
4 would appear at the Sheriff court the following day,
5 which 23rd January, assuming that was not a Saturday or
6 Sunday or a court holiday. He would be, if there was
7 one source of evidence at least, he would be committed
8 for further examination -- that would be the Fiscal's
9 motion.

10 At the time that we're talking about here, 1997,
11 there would be no right to apply to the Sheriff for bail
12 if the charge was one of murder and that position was
13 altered by statute in the year 2000.

14 The only way of obtaining bail in 1997 was for the
15 accused to make an application to the **nobile officium** of
16 the High Court.

17 Q. I will stop you there because I think Mr McMenemy has
18 given evidence and told us about the system for bailing
19 murders at the time.

20 A. So at CFE there would be no question of bail in a murder
21 case. The accused would be committed for an examination
22 and remanded on the committal warrant from the Sheriff.

23 The maximum length committal for examination would
24 be eight days. During that eight day period the
25 process, as you probably heard, would in a murder case,

1 not in any other form of case, report the circumstances
2 by preliminary report known as the three-day report to
3 Crown Office. This would summarise the evidence and
4 have a recommendation to Crown Office to Crown Counsel
5 as to whether there was sufficient evidence to fully
6 commit the accused on the eighth day or the seventh day,
7 as it sometimes was.

8 There might also be a recommendation that the charge
9 should be, at that stage, reduced to culpable homicide,
10 although that wasn't particularly common but
11 occasionally did happen.

12 Crown Counsel would consider or I should say a legal
13 person in the High Court Unit at Crown Office, normally
14 when I was there it would be the assistant solicitor,
15 the head of the High Court Unit, in this case I
16 understand it was Mr Gallacher, Billy Gallacher (now
17 Sheriff), he would consider the report and write a
18 recommendation to Crown Office as to whether the person
19 should or should not be fully committed.

20 If the instruction was to fully commit, that
21 instruction would be conveyed by letter, usually faxed,
22 to the Fiscal's Office so that they knew what to do with
23 accused at the full committal hearing which was, as I
24 say, about a week after the first appearance.

25 Q. If I can stop you there and I can put a couple of

1 propositions to you and you can tell me if I am wrong or
2 if I am wrong.

3 In the sort of case that you are describing where
4 somebody perhaps appears again on the eighth day and
5 then is kept in custody for a period, that at that time
6 would have set a time of 110 days running before that
7 person can be brought to trial.

8 A. Yes. At the time we're talking about -- things are
9 obviously different now -- at the time we're talking
10 about from the date of full committal, if the person was
11 remanded in custody at that stage and a murder accused
12 would be remanded in custody in those days -- there's no
13 question of bail -- the time limits were 80 days within
14 which to serve an indictment, if an indictment had not
15 been served within 80 days the accused was entitled to
16 his liberation, although the failure to serve indictment
17 within 80 days did not mean he was free from being later
18 indicted.

19 The other time limit that applied was a 110-day
20 limit which was very strict. Within 110 days of his
21 full committal his trial had to commence and a trial
22 commenced by the balloting and swearing in of a jury.

23 If the person was not brought to trial, in that
24 sense, within 110 days, then he was free from all for
25 all time from being indicted or prosecuted for the crime

1 for which he had been fully committed. So these were
2 the time limits that applied normally in a murder case.

3 Q. If I can again just stop --

4 THE CHAIRMAN: Just give a moment, I think we will adjust
5 the microphone.

6 MISS CARMICHAEL: It may be my fault for encouraging you to
7 sit too close. I apologise.

8 THE CHAIRMAN: Too good an instruction.

9 MISS CARMICHAEL: Now one might have a situation where, as
10 you said, somebody is in custody awaiting trial or you
11 might have the position we've heard where there's a
12 longer time bar, a 12 month time bar, where somebody has
13 been given their liberty and I suppose what I am
14 interested in is, in general terms, the sort of work
15 that you would be doing to prepare for the trial,
16 whether it was after 12 months or had to be within the
17 110 days and how that sort of material would come to you
18 and what you would do with it as an indicter.

19 A. The 12-month time bar is still in force, unchanged. The
20 12-month time bar, if a person is liberated, not kept in
21 custody, then his trial must begin within 12 months of
22 his first appearance in custody, ie his committal for
23 further examination appearance.

24 During the period in time when between petition
25 appearance and the indictment, if you like, the Fiscal

1 would be precognosing the case. I take it you've
2 discussed precognition?

3 Q. The Inquiry has heard the precognition, in a sense, you
4 mean is putting together essentially what would become a
5 bundle for Crown Counsel to look at --

6 A. That's what it is said today. It's putting together but
7 in fact the Procurator Fiscal is supposed to investigate
8 the case but with modern conditions and work loads and
9 time limits and everything, it's an arguable point how
10 much actual investigation the Procurator Fiscal can
11 really realistically do. But in theory, and from
12 historical perspective, the Procurator Fiscal is
13 supposed to be investigating the case, not putting it
14 together or making up a package for Crown Counsel.
15 Unfortunately, that is sometimes interpreted as what the
16 precognition process is but I'm afraid it's not. It's
17 supposed to be an investigation, an independent
18 investigation, independent from the police by the
19 Procurator Fiscal of the evidence available against the
20 accused and taking into account also exculpatory
21 evidence.

22 Q. That would involve, for example, the Procurator Fiscal
23 or one of the precognition officers taking statements of
24 new, over and above police statements in some
25 circumstances?

1 A. Well, how much actual statement-taking goes on nowadays
2 is a moot point. But in theory, yes, the Procurator
3 Fiscal is supposed to see all essential, particularly
4 eye witnesses, but also witnesses to scientific matters,
5 fingerprints, forensics, some police officers are
6 precognosced. It's a matter within the discretion of
7 the Procurator Fiscal and if it's a case being
8 precognosced by a precognition officer who's not of
9 course legally qualified, he or she works under the
10 direction of the Procurator Fiscal in deciding what
11 witnesses it's appropriate to see.

12 The precognoscer, whether a precognition officer or
13 whether a Fiscal, should also be looking at things,
14 looking at the productions, examining the documentary
15 productions, examining the labelled productions,
16 ensuring that the labelled productions are properly
17 labelled, properly identified. There's a million tasks
18 to be done in the precognition process. It's a very
19 important part of the solemn prosecution system in this
20 country.

21 Q. When all of that work has been done, the case has been
22 investigated, the material has been collated, the
23 analysis has been done, what happens to that
24 precognition? Where does it go?

25 A. Well, the material's put together in written form. The

1 precognition contains a narrative of the facts and
2 supposedly an analysis of the evidence which can be of
3 varying quality and also a recommendation by the Fiscal.

4 Now all this is written by the precognoscer, whether
5 a precognition officer or a Depute, and requires to be
6 countersigned by a -- now I think probably in 1997 a
7 Principal Depute, certainly nowadays by a Principal
8 Depute.

9 The important bits are probably the analysis where
10 you should be analysing what are the appropriate crimes
11 committed here, how do we prove that that crime was
12 committed by corroborated evidence, by anybody, and how
13 do we prove by corroborated evidence that that crime was
14 committed by the accused or that that accused was
15 involved on an art and part basis in the commission of
16 that crime. That's the thing that should be contained
17 in the analysis.

18 As I've indicated many analyses in my experience
19 were not well-written and sometimes it required the
20 indicter at Crown Office to go further into the
21 precognition himself or herself to be satisfied on a
22 sufficiency angle but that was -- the theory is the
23 analysis should analyse the evidence, not rehearse the
24 evidence but analyse the evidence. The
25 recommendation -- well, in a murder case if there was

1 sufficient evidence the recommendation would be obvious,
2 a recommend High Court proceedings. If it was say an
3 assault there may be a decision to be made as to whether
4 it's High Court or Sheriff and jury, which very much
5 depended on the seriousness of it. Certain sexual
6 crimes, for example, rape, obviously would be High
7 Court. Some other sexual crimes there may again be a
8 gray area. In drug offences again a gray area, some
9 drug offences would be obviously High Court depending on
10 quantity, variety of drugs, record of the accused, some
11 might be Sheriff and jury.

12 So the recommendation would recommend is there
13 sufficient evidence? Should we be prosecuting and what
14 is the appropriate forum to prosecute this case in?

15 Q. Thank you for that explanation, Ms Climie. Should I
16 take it from what you have said about the indicter
17 sometimes having to look at matters further that it is
18 to the indicter in the High Court Unit in Edinburgh,
19 ultimately, that this bundle of documents called the
20 precognition comes?

21 A. Now, I'm speaking about the position in 1997. I don't
22 know what the position is now.

23 Q. You are quite correct --

24 A. The position in 1997 is every day precognition would
25 arrive from all parts of the country, Shetland to

1 Dumfries. They would arrive into a department called
2 Crown Office Registry. They would be logged in there in
3 some way and they would then find their way without
4 going through any legal person's eye to the Advocate
5 Deputes.

6 Now, at the time I'm talking about, which is 1997,
7 the Advocate Deputes were arranged slightly differently
8 from what they are now. If I could explain the position
9 now and compare it with then, would that help?

10 Q. We will see if it does perhaps. I don't want to detain
11 you too long on the generalities of it because I am
12 quite keen to get, essentially, to what your role was at
13 the time.

14 A. In those days -- and I think this might be relevant
15 later to the McKie case -- in those days, any Advocate
16 Depute -- there was the Home Advocate Depute who was the
17 senior, if you like, the most senior and mainly based in
18 Edinburgh around Crown Office and I think did the Appeal
19 Court and there were the rest of the Advocate Deputes.
20 When they weren't out prosecuting trials the Advocate
21 Deputes would be at Crown Office in Edinburgh marking
22 cases or perhaps preparing appeals or doing appeals.

23 So you could have quite inexperienced Advocate
24 Deputes marking cases in 1997. Today, Advocate Deputes
25 are split into, well, three groups: Senior Advocate

1 Deputes who mark the cases and work in Edinburgh and do
2 the Appeal Court; Trial Advocate Deputes who are out on
3 circuit and deal with trials, wherever, Glasgow or
4 wherever; and I think there is also **ad hoc** Advocate
5 Deputes who do not full-time Advocate Deputes but do
6 trial sittings.

7 So marking of cases by Advocate Deputes has now been
8 much better arranged in that it's now done by
9 experienced Advocate Deputes and by experienced I mean
10 experienced in the prosecution process. I'm not
11 suggesting in 1997 any Advocate Deputes were
12 inexperienced as advocates but they may have been
13 inexperienced in the prosecution or the marking of cases
14 or in Crown Office policy or practice and yet they would
15 still be finding themselves marking cases.

16 Q. How did their job interact with what you did as an
17 indicter?

18 A. Well, the Advocate Depute would mark the case. The case
19 might be no proceedings. If that were the case, then
20 the case would be returned to the Procurator Fiscal
21 indicating Crown Counsel were of the view that no
22 proceedings should be taken. There might be some
23 further instructions about doing further work or
24 whatever, in which case the indicter wouldn't see that
25 case. The instructions might be proceed Sheriff and

1 jury -- sorry, I missed out there could be instructions
2 proceed Sheriff summary, in which case that would be
3 returned to Procurator Fiscal to launch a summary
4 prosecution. It could be proceed Sheriff and jury. If
5 it's proceed Sheriff and jury, the papers would also be
6 returned to the Procurator Fiscal to prepare a Sheriff
7 and jury indictment and to indict the accused in a
8 Sheriff court.

9 The instructions might be -- and in a murder almost
10 certainly -- well, would without question be proceed
11 High Court and at that stage the papers would then come
12 to a High Court indicter.

13 Q. And that is someone like you?

14 A. Somebody like me. I did not take the decision to indict
15 cases. I ought to make that absolutely clear because
16 when I was spoken to by the Fingerprint Inquiry person
17 he suggested to me that I had somehow been involved in
18 the decision to indict Shirley McKie, which was not the
19 case. But I want to make that absolutely clear.

20 Decisions to indict are decisions of Crown Counsel.

21 They might be implemented in Sheriff and jury cases by
22 the Procurator Fiscal but the decision -- no,
23 indictment -- no, case is indicted without the
24 instructions of Crown Counsel. The indictment runs in
25 the name of the Lord Advocate.

1 Q. Very well. So we understand that the indicter has no
2 part in deciding whether somebody should be indicted,
3 but what I'm interested to find out is just what the
4 indicter did from day-to-day with the information in the
5 precognition in order to put together the indictment and
6 her role in the preparation of the case.

7 A. Well, that's a good question. I sometimes wondered
8 myself what I'm supposed to be doing because nobody told
9 me what I was supposed to be doing. But I interpreted
10 the job as ensuring -- well, firstly, preparing a good
11 charge, drafting a good charge or, in many cases, series
12 of charges. To take an example, if you had a historical
13 sexual abuse, child sexual abuse case with, say, three
14 or four or five complainers, then depending on all the
15 allegations and times when it all occurred you might
16 have common law lewd and lib, you might have statute
17 lewd and lib, different statutes applying at different
18 times, you might have attempted rape, you might have
19 rape, you might have in those days shameless indecency.
20 You would have all sorts of considerations.

21 I indicted, for example, a case which concerned
22 historical child sexual abuse in the 1960s and 70s in
23 children's homes in Edinburgh where there were, I think,
24 something like upwards of 20 complainers all speaking
25 about abuse at different times in different forms, girls

1 and boys and I think the indictment in that case
2 extended to something in the region of 60-odd charges.

3 Some cases of course resulted only in one charge,
4 for example, the Asbury case or indeed the McKie case.

5 Q. So it would come to this: you would have to use your
6 legal analytical skills to make sure you included in the
7 charges sufficient to allow all the necessary evidence
8 to be led and to make relevant charges?

9 A. Scottish charges are narrative, in narrative format
10 which I understand is different from England, where I
11 think the indictment simply says, "You assaulted AB", or
12 whoever. In Scotland you have to narrate how the
13 assault was committed also what the result of the
14 assault was, if any, for example, to injury, to severe
15 injury, to severe injury permanent disfigurement, to
16 severe injury and permanent impairment, et cetera, to
17 endangerment of life. These are all aggravations, and
18 you have to give the accused fair notice in the charge
19 what exactly it is alleged that he has done.

20 Sometimes in High Court drafting the charges became
21 extremely involved and from my perspective that was one
22 of the most satisfying parts of the job, was preparing a
23 charge that covered everything but no more than was
24 required, was in narrative format, in clear format and
25 gave the accused fair notice of what the crime was

1 alleging he or she had done.

2 Q. Apart from formulating the charge properly to go on the
3 indictment, what was your role as an indicter in the
4 preparation of the case?

5 A. Attached to the indictment is a list of the witnesses,
6 the Crown witnesses, which are the witnesses the Crown
7 may lead, may not necessarily lead them all but may lead
8 at the trial and a list of the productions which the
9 Crown would produce at the trial, what are sometimes
10 referred to by police officers as "the evidence".

11 The productions could be documentary productions
12 which were listed as production 1, production 2,
13 production 3. That's pieces of paper where the
14 evidential value is in the words or there could be
15 labelled productions like things like a knife, like a
16 cache of drugs, whatever. They are listed separately as
17 labels 1, labels 2, label 3, et cetera. In a murder
18 case or an involved case your production list could go
19 up to over 100, quite easily.

20 You also have to prepare the list of witnesses. Now
21 that involved you going through the precognition
22 volumes, considering each witness and deciding whether
23 or not that witness should or should not be included in
24 the indictment.

25 Sometimes witnesses were considered irrelevant and

1 were taken out. When I say taken out, I don't mean --
2 I'm not getting into issues of disclosure, which of
3 course, the landscape has completely changed since 1997,
4 but not all witnesses that are known to the Crown of
5 course go into the indictment, even today that's the
6 case, although if they've given a statement that
7 evidence should be disclosed.

8 Often in a big case your precognition would include
9 a volume of statements, police statements and/or
10 precognition statements where the precognoscer was of
11 the view that these were witnesses who were not
12 essential in the case, did not add to the case. You
13 would have to consider that volume and decide has the
14 precognoscer got it right. There may be something in
15 those witness statements that you felt would be helpful
16 to lead or to have available at the trial.

17 A lot of judgment was involved, obviously, and a lot
18 of discretion insofar as the nuts and bolts of the thing
19 was given over to the indicter. In a sense, we were
20 preparing an indictment in Crown Counsel's name which an
21 Advocate Depute would eventually sign, if you like, on
22 their behalf but without them, if you like, checking
23 everything that you were doing. Obviously, they did not
24 check all your indictment decisions. That was delegated
25 to you to do.

1 Q. So it was your job to make sure that the witnesses that
2 were needed for the trial were listed and that
3 documentary and real productions were listed properly,
4 all the ones that would be needed for the trial?

5 A. And properly spoken to in the evidence as well. It was
6 not unusual for a production to find its way on to the
7 list and there was absolutely no reference to that
8 production in any statement. It suddenly appeared,
9 obviously a police officer had recovered it from
10 somewhere, but there was no evidence, no statement in
11 the precognition from a police officer saying, "I found
12 that knife under that hedge". That was something you
13 would have to raise with the precognoscer in your, what
14 was in those days called a shopping list letter. I
15 don't know if you have heard that phrase.

16 Q. I think we can readily take from the term exactly what
17 it was.

18 A. I understand the term's not used any more. It was,
19 shall we say, somewhat informal language but it found
20 it's way into the Crown Office vocabulary.

21 Q. So when you are indicting a case you might pick up
22 things that have perhaps been missed at an earlier stage
23 then you have to have draw that to somebody else's
24 attention and make sure the necessary preparation was
25 done and the necessary witness comes to be called to

1 court?

2 A. The product of the indictment process, the product, was
3 a draft indictment which you prepared at Crown Office.
4 It was produced at Crown Office containing the charge,
5 or charges, the list of productions, documentary and
6 labels, and the list of witnesses and the second
7 product, apart from that, was a shopping list letter,
8 matters that you felt the Procurator Fiscal, the
9 precognoscer should be addressing before the trial.

10 Of course, as you know, probably, productions and
11 witnesses could be added later. For example, one might
12 be under great constraints of time in preparing the
13 indictment, particularly in custody cases, bearing in
14 mind we had to start the trial within 110 days of full
15 committal. The indictment has to be served 29 clear
16 days, or did in those days, 29 clear days before that
17 trial diet. So quite often you were getting a
18 precognition say in at Crown Office on a Thursday, let's
19 say, you might have Crown Counsel's instructions by the
20 Friday and you might have to serve an indictment to meet
21 the time by the following Thursday. That's prepare a
22 draft, revise that draft with the Fiscal, engross it at
23 Crown Office, have it signed by an Advocate Depute and
24 send it out to the Fiscal to arrange service on the
25 accused at his place of custody if he was on custody or

1 at his domicile of citation if he was on bail.

2 So of course custody cases were the ones normally
3 time barred, with the accused being in custody.
4 Pressures were quite great in those days. I don't know
5 what the situation is like now but I can assure you that
6 when I was there we were working under considerable
7 pressure of time. So you were trying to do the best job
8 that you could reasonably do in the available time and
9 you were very much dependent on other people.

10 When the precognitions come in it wasn't unusual to
11 get precognitions on the Friday or the Thursday and then
12 you would have to work on them over the weekend to get a
13 draft indictment out on the Monday to be served, to be
14 revised and then served on the Thursday. Sometimes
15 precognitions didn't arrive until the Monday for service
16 on the Thursday and I can assure you I had many nights
17 of no bed at all as I tried to go through all these
18 cases as conscientiously as I could in the time
19 available.

20 You were also dependent on the quality of the
21 precognition, the quality of the product that was
22 presented to you and I can say that quality
23 varied considerably. Some jobs were excellent, some
24 were passable, average, satisfactory and some were,
25 frankly, not really presented to you in an indictable

1 form but we had to indict them.

2 Q. If we can, perhaps, just for the moment at least, move
3 away from the generalities because I think you have very
4 helpfully for the Inquiry how things would work in, I
5 suppose, the normal sort of case that would come to you
6 and the sort of work that you would have to do.

7 I would like to ask you more specifically at this
8 stage about the McKie case and how you first came to be
9 involved in that.

10 The Inquiry has already heard that, unlike the order
11 of events that you have been telling us about, in the
12 case against Ms McKie, which was a perjury case, a
13 precognition was prepared before Ms McKie had even
14 appeared on a petition and to help you and to give some
15 context here I would like to show you a series of
16 documents starting at CO3936.

17 I think this is something you have seen probably
18 quite recently in preparing your statement, Ms Climie,
19 but I think this is an internal note to you that comes
20 from the High Court file that was originally the file
21 for the case against Mr Asbury.

22 A. That's correct.

23 Q. I wonder if we could just have all the pages of this
24 side-by-side like we have with some of the other
25 documents. Is it possible to make it a little bit

1 larger while doing that?

2 So we see a note addressed to you, Ms Climie, and

3 that's dated 2nd January 1998. Is that from a

4 Mr Gallacher to you?

5 A. No, that's actually a note by the then Deputy Crown

6 Agent, Mr Norman McFadyen. I recognise his writing

7 because it was almost illegible and I frequently had

8 problems reading his writing.

9 Q. I think we perhaps have that from time to time in the

10 Inquiry, Ms Climie, but if you look at this note what he

11 is saying to you is, "It would helpful if CC ..." and

12 should we take that as Crown Counsel?

13 A. Do you want me to read it out for you?

14 Q. That would be very helpful.

15 A. "Ms Climie, it would be helpful if Crown Counsel can

16 have your comments before instructing here. My own view

17 is that there is no reason not to prosecute and no

18 reason to delay pending appeal. Application can be made

19 for release of productions ..."

20 Q. Now I think --

21 A. I'm sorry, the next word is --

22 Q. I think its open brackets, "Which" --

23 A. "... (which can obviously be made available for purposes

24 of appeal). It is incomprehensible that fingerprints

25 would have been planted in this case but given the

1 observations on Cardwell's ..."

2 And may I say the reference to Cardwell in that
3 format does sound discourteous but was regularly used in
4 internal notes. Nobody considered that 12 years down
5 the line we would be examining these in an open forum.

6 "... but given the observations on Cardwell's
7 plausibility, it may indeed make sense to involve an
8 independent expert both on the question of
9 transfer/planting and [underlined] on the general basis
10 for concluding that fingerprint identification is
11 100 per cent reliable -- please pass directly to AD with
12 this note", and the initials at the bottom are
13 Mr McFadyen's and he has dated it 2nd January 1998.

14 Q. Before we move to your response to that and we do have
15 that, I would like to look, please, at document
16 CO2561.4.

17 Ms Climie, the Inquiry has heard that this is part
18 of the analysis of the evidence from the precognition in
19 the case against Ms Cardwell or McKie -- and I wonder if
20 we could focus in on the second paragraph there. What
21 we see is that the precognoscer, Mrs Greaves, is
22 suggesting that:

23 "While SCRO (fingerprints) are independent from
24 Strathclyde Police and have compared the fingerprint
25 forms provided and the impression Y7 found in the house

1 of Marion Ross, Crown Counsel may wish to consider
2 whether or not an expert previously unconnected with the
3 case should make a further comparison. In relation to
4 the articles which Chief Inspector Hogg has provided
5 relating to transplanted and faked fingerprints, Crown
6 Counsel are asked whether an expert in this field should
7 be instructed. Chief Inspector Hogg does not consider
8 himself an expert in transplanted and faked
9 fingerprints. The name Dr Terry Kent of the home office
10 at Sandwich has been mentioned as a possible expert."

11 Ms Climie, we have seen in a previous document the
12 reference to the possibility of having a further view of
13 the matter.

14 So far as you understood, did the reference in
15 Mr McFadyen's note arise from what we see here in the
16 precognition --

17 A. Can I see Mr McFadyen's note again?

18 Q. Yes, of course you can. **(Pause)**

19 A. Well, Mr McFadyen's note as I interpret it and obviously
20 you will have to ask him what he was meaning -- he makes
21 reference to observations in the precognition on
22 Ms Cardwell's plausibility, whatever that means, and
23 he's of the view that we should -- it may make sense to
24 instruct an independent expert on two questions: the
25 question of transfer or planting.

1 Now can I just say that that's what we believed she
2 was suggesting had happened here. She was saying, "This
3 fingerprint's not mine, it's been planted there for some
4 reason and", underlined, "on the general basis for
5 concluding that fingerprint identifications are 100
6 plausible". Mr McFadyen has not suggested in that note,
7 as far as I can see it, that we should have Y7
8 independently looked at outwith SCRO, which I think was
9 the suggestion in the precognition because SCRO are
10 not -- well, they are independent of the police but they
11 are part of the police structure, as I understand it.

12 Q. Well, I wonder if we could just go back to 2561.4. We
13 had looked at the second paragraph there. If we could
14 focus in perhaps on the second and third paragraphs
15 together please, if we look at the paragraph beginning,
16 "The precognoscer", Ms Climie, you see that what is
17 written there in the analysis is:

18 "The precognoscer is aware that the police are
19 extremely concerned that should the case against Shirley
20 Cardwell proceed to a trial that a jury may not fully
21 understand the complexities of the case and the
22 infallible nature of fingerprint evidence. They are
23 concerned that Shirley Cardwell will present well in
24 court and the jury will feel sympathetic towards her.
25 Fiona Davies, Crown junior, stated that when Shirley

1 Cardwell gave her evidence in court, 'It was the best
2 lying I have ever seen'."

3 A. Can I just stop you there. That's making an assumption
4 that she was lying.

5 Q. Indeed so. It might be I think what I have in mind in
6 drawing this to your attention is when Mr McFadyen is
7 referring to observations about Ms Cardwell's
8 plausibility he might be referring to what the
9 precognoscer was writing here?

10 A. Possibly, yes.

11 Q. It appears also that there is a concern on the part of
12 the police that what is described at least as the
13 infallible nature of fingerprint evidence might not be
14 fully understood by the jury.

15 A. Mm-hm.

16 Q. Would it be fair to say that that is perhaps part of the
17 context for the suggestion that a further expert should
18 look at the matter?

19 A. I mean, obviously, Mr McFadyen would have to speak to
20 his own note, okay. But if you could put Mr McFadyen's
21 note up again, I took it to be that he was talking about
22 two things: the question of transfer or planting, which
23 was uppermost in our minds, and his other concern was
24 that the jury -- if it was a case before a judge alone,
25 it's within judicial knowledge and certainly I

1 understand that to be the position in England, it's
2 within judicial knowledge that no two people have the
3 same fingerprints and, in fact, no two people have the
4 same print on the same digits. We would have to get --
5 if Ms Cardwell was continuing to deny this was her print
6 and the Crown was being put to the proof of the matter,
7 we would have to satisfy a jury beyond reasonable doubt
8 that this science or whatever you call it -- I know
9 there's an argument about whether it's a science or
10 whatever it is -- is reliable in the sense that no two
11 people have the same prints and if a fingerprint expert,
12 comparison expert, looks at a lifted mark and an inked
13 print and can identify, as it was in those days, 16
14 identical -- I can't remember the words that they
15 used -- 16 characteristics in sequence and agreement
16 that that was proof. You wouldn't get 16
17 characteristics in sequence and agreement and of course
18 no differences if it wasn't the same print.

19 It was the general science behind fingerprinting
20 that Mr McFadyen was, I think, trying to address here
21 and which is what I comprehended his note to be about
22 and that's how I took it forward from there.

23 Can I just say, it might be helpful and I've thought
24 about this since I wrote my statement, if I were to give
25 you an analogy from another area that I have been

1 involved in. Would that be helpful?

2 Q. We can perhaps see if it is, Ms Climie. I don't want to
3 discourage you from saying anything that helps the
4 Inquiry.

5 A. What I said there is about science, it's about people
6 and I believe there's a whole science of fingerprinting
7 stretching back to the 19th century, a man Galton, his
8 name is, I've heard of and other people. It's been
9 established beyond, I would suggest, all doubt that no
10 two people have the same fingerprints, but we were going
11 to have to convey this to the jury, standing
12 Ms Cardwell's complete and utter denial that she had
13 been in this house and bearing in mind her plausibility
14 which has been referred to. That's only a subjective
15 judgment of someone who was at the murder trial.

16 The analogy -- what I see is two things, is the
17 science of prints -- I'm maybe not explaining this very
18 well but there's the science of prints which the
19 scientists speak to and there's then fingerprint
20 practitioners or experts, whatever you want to say, who
21 are trained and competent in the art, if that's the
22 right word, of comparing prints, lifted prints, lifted
23 marks, with inked prints and saying, "I'm satisfied that
24 these are from the same person".

25 One's a science and the other is, if you like, a

1 practice, a skill, a practice: it's not a science.

2 The example that I think I was -- the analogy that I
3 was trying to draw (and it may not be a very good one
4 but it's the best I can find) is when we are involved in
5 prosecutions arising out of fatal road accidents,
6 normally prosecutions now are taken in the High Court
7 under section 1 of the Road Traffic Act 1988, causing
8 death by dangerous driving. Inevitably, there will be
9 evidence from a police crash investigator. Now, the
10 police crash investigator will have surveyed the scene
11 of the accident, will have taken measurements, looked at
12 all the physical evidence left after the crash and
13 sometimes (not in all cases, sometimes) he has the
14 training to take these various factors together and
15 apply certain laws of physics (I understand the basic
16 laws of motion as developed from Newton onwards; I'm not
17 an expert in this matter) and can sometimes draw
18 inferences from that applying laws of physics to
19 conclude that the offending driver, the alleged
20 offending driver, was driving at a speed of at least,
21 say, 50 miles per hour.

22 Now, I have been involved in cases where I've
23 thought to myself about presentation to the jury. These
24 road traffic investigators are very, very good at their
25 job. They are trained to survey an accident scene, get

1 the necessary data if they can (and it's not always
2 there) and then to apply the necessary formula. It's
3 quite complex; they've got to find the coefficient of
4 friction of the road surface and apply it to reach this
5 evidence that the minimum speed the accused was going
6 with his wheels locked was such and such.

7 However, these officers are not scientists. They
8 are no use -- and it's my experience because I've done
9 it -- at explaining the physical laws, the laws of
10 physics, the laws of motion which they are applying. I
11 have on at least one case that I was involved in, a very
12 anxious High Court prosecution of a driver who had run
13 over a 13-year old girl, I have on that occasion gone
14 and contacted the professor at Aberdeen University.
15 Aberdeen University -- I don't know whether this is
16 still the case, but Aberdeen University developed the
17 course in Scotland where road traffic investigators were
18 trained. I have gone to that professor and I have
19 obtained from him a statement in which he explains about
20 these laws of motion. These are universally accepted in
21 the world of science and have been for hundreds of years
22 now. These are universally applied laws and just
23 explaining the scientific background.

24 Now, I took Mr McFadyen's note and how I interpreted
25 it in my instructions to the Fiscal to be of a similar

1 nature. We were looking for scientific evidence from an
2 expert -- and I don't know who that expert would have
3 been; that was for the Fiscal to find -- who could give
4 to the jury evidence, expert evidence, explaining the
5 general basis for concluding that fingerprint
6 identification is 100 per cent reliable. That's not
7 perhaps the best way of explaining it.

8 100 per cent reliable in the sense that no two
9 people have the same fingerprints; that's 100 per cent
10 established. How it's applied -- you know, there can be
11 mistakes made by fingerprint comparison experts, you
12 know. That's not what he meant by 100 per cent
13 reliable. He wasn't referring to -- obviously the
14 evidence is not always reliable dependent on the
15 mistakes can be made by the fingerprint experts, but
16 100 per cent reliable on its scientific basis. That's
17 what I took it he was looking for.

18 MISS CARMICHAEL: Thank you very much for that analogy,
19 Ms Climie. It may be that that is a convenient point on
20 which to break. I am sorry, you will have to come back
21 tomorrow.

22 THE CHAIRMAN: We will have to ask you to come back
23 tomorrow. We are sitting at 10.00. Very good. So we
24 will meet at 10.00 tomorrow morning.

25 **(4.00 pm)**

1 (Adjourned until 10.00 am the following morning)

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25