

1 (1.50 pm)

2 THE CHAIRMAN: Mr Holmes, you have an application.

3 MR HOLMES: Thank you, sir. There are four matters that I

4 would like to cover. The first is the availability of

5 an independent report; that is to say, independent of

6 SCRO and not a further report from SCRO.

7 The second is the procedure at the start of

8 Ms McKie's trial.

9 The third is Ms Climie's knowledge of the case since

10 1999.

11 The fourth is the training matter which we got on to

12 towards the end of the evidence.

13 THE CHAIRMAN: Yes. When you say the procedure at the

14 trial, is this about whether it should have been

15 adjourned or an application should have been made?

16 MR HOLMES: Indeed, sir.

17 THE CHAIRMAN: Very good.

18 **Cross-examined by MR HOLMES**

19 Q. Ms Climie, before I start you will understand that I

20 appear on behalf of the former SCRO experts so the

21 position I will be taking throughout this Inquiry is the

22 identification of Y7 was correct.

23 A. I understand.

24 Q. With that in mind, the first thing I would like to ask

25 you about is the availability of an independent report.

1 There has been much discussion during your evidence of
2 whether outside report ought to have been sought.

3 Were you aware prior to the trial beginning that, in
4 fact, an independent report had been instructed by the
5 defence?

6 A. Are you referring to the Peter Swann report?

7 Q. Yes.

8 A. I had no knowledge of Peter Swann. When I received my
9 letter indicating that the Inquiry person wanted to
10 speak to me, I was given a list of matters which they
11 wanted to discuss and one of them was my knowledge of
12 Peter Swann and the name at that time meant absolutely
13 nothing to me.

14 Obviously, I have read considerably since March and
15 I'm aware that Peter Swann was instructed by Shirley
16 McKie's solicitors was it Levy & McRae in advance of her
17 trial to look at Y7 and I'm aware now that his view was
18 that it did indeed -- it was, indeed -- it's origin was
19 indeed Shirley McKie's, was it left thumb?

20 Q. Having learned that, would Peter Swann's report being
21 available, in your view, satisfy the need for some kind
22 of independent check?

23 A. Well, it's difficult to answer that because I'm talking
24 about an independent check before we indicted Shirley
25 McKie and, of course, Peter Swann wasn't in until, you

1 know, after she had been indicted in the run-up to the
2 trial. So would it have reassured me knowing he had
3 said that? Yes, it probably would have reassured me if
4 I had known about it.

5 Q. I don't know if you aware that during her evidence
6 yesterday Mr Greaves confirmed that she was aware
7 of Peter Swann's involvement and his conclusions prior
8 to the beginning of Ms McKie's trial; did you know that?

9 A. I didn't know that but the Fiscal is more on the ground
10 than the indicter at Crown Office is. So she may well
11 have done, possibly through Levy & McRae, discussions
12 with was it Ms McCracken that was acting at the time? I
13 don't know. I certainly wasn't aware of the gentleman's
14 involvement at all or his conclusions.

15 Q. If that was something that had been unknown to the
16 Fiscal prior to the trial, would you have expected that
17 to be communicated to the Trial Depute?

18 A. You mean by the Fiscal?

19 Q. Yes.

20 A. Well ... you've got to understand how it works. Denise
21 at the time -- well, she precognosced that case when she
22 was in the Complaints Against the Police Unit, as I
23 understand, and then she moved out of that into leading
24 a Solemn Unit at Crown Office, which is very
25 office-based. So she wouldn't necessarily have been in

1 touch with the Trial Advocate Depute.

2 Are you suggesting that she, Denise, should have
3 communicated that to the Trial Advocate Depute?

4 Q. I'm suggesting that perhaps someone should have
5 communicated to the Trial Advocate Depute that a
6 positive defence report had been sought and was
7 available.

8 A. Yes, bearing in mind when -- I don't know when Denise
9 heard about Peter Swann's involvement and conclusions
10 but of course at the point when she heard about it she
11 would not necessarily have known that -- I don't mean
12 this pejoratively -- two Americans had come out of the
13 woodwork challenging it.

14 If Denise had learned that two Americans had come
15 out of the woodwork challenging the print, yes, I would
16 have thought that she would have thought, "Oh, now I
17 know that the defence had an English expert in Peter
18 Swann and I was told by Levy & McRae that he had
19 confirmed the identification. Maybe I'd better let the
20 Advocate Depute know about this".

21 As I understand the position, only from my
22 information from Sheriff Murphy's evidence, the reports
23 were only produced the Friday before the Wednesday when
24 it started, something of that nature.

25 Q. Mr Wertheim's report, yes?

1 A. Sorry?

2 Q. Mr Wertheim's report, yes, the American expert.

3 A. So Denise may not have known about that.

4 Q. Mrs Greaves has confirmed to yesterday she knew prior to
5 the trial of Peter Swann's involvement but unfortunately
6 we do not have a statement from Mr Swann so we don't
7 have any position from him as to whether the report was
8 available but it's understood from Mrs Greaves' evidence
9 that the report was known to her prior to the beginning
10 of the trial.

11 A. I certainly didn't know about it. If you're asking me
12 to comment on Denise's state of knowledge, I mean, it's
13 very, very difficult for me to do that. I'm offering an
14 explanation as to why she might not have conveyed that
15 information to either the Sitting Manager at Glasgow,
16 that being Iain Bradley, to pass on to the AD. I'm
17 simply suggesting she may have learned of Peter Swann,
18 Peter Swann had confirmed the identification for the
19 defence and lo and behold two Americans appear
20 challenging it.

21 If she had known these Americans had appeared with
22 their report challenging the SCRO conclusions then, you
23 know, she might -- she would -- one would have hoped.
24 She may have been on holiday; she may have been engaged
25 on something else.

1 THE CHAIRMAN: I think it is very difficult for this witness
2 to comment on the state of mind of --

3 MR HOLMES: I think the appropriate question is, under
4 ordinary circumstances, if the Procurator Fiscal becomes
5 aware of a defence report that confirms the findings of
6 the Crown expert, ought in the ordinary course of things
7 that Procurator Fiscal to communicate that to the Trial
8 Depute?

9 A. I see your question, not without the later knowledge
10 of ... I wouldn't condemn anybody for not passing that
11 information on. I suppose in absolute best practice,
12 yes, but the way our system is organised in High Court
13 prosecutions there's so many different wings involved.
14 There's the Fiscal, there's the Crown Office indictment
15 end, there's the Advocate Depute.

16 Nowadays, it's a wee bit more joined-up in the sense
17 that the Advocate and the indicter are more working in a
18 team than they used to be. But there's still that, if
19 you like, difference between the precognoscer or the
20 Fiscal, if you like, on the ground and it used to be the
21 case many, many, many years ago, even when I started in
22 the '80s, that if you worked in a small office -- I
23 started work from Dumbarton where I actually am now --
24 and if you precognosced a High Court case, because High
25 Court cases were few on the ground, you were up to that

1 case, you were up and you sat in with the Advocate
2 Depute, which was wonderful training in advocacy and
3 also very helpful for the exchange of information. But
4 that system long disappeared in the machinations of
5 increased work loads and whatever.

6 So, I mean, I suppose the system -- information can
7 come to the knowledge of the precognoscer in so many
8 different ways and I wouldn't condemn anybody who didn't
9 pass on information to the Advocate Depute which, in
10 retrospect, might have been useful. I couldn't possibly
11 condemn anybody. I don't know the circumstances in
12 which she came into the information.

13 Q. You acknowledge it might have been useful information --

14 A. Yes, of course it would have been useful for the
15 Advocate Depute to know in his cross-examination of
16 Ms McKie that a Peter Swann had been involved and had
17 confirmed the identification. Of course it would have
18 been useful.

19 All I'm saying is the system that we have dictates
20 against that open and free exchange of information.
21 Everything that goes wrong in the Fiscal Service is a
22 matter, in my humble opinion, of communication. The
23 channels aren't there, they are not kept open, they get
24 befuddled along the way and that's just another example.

25 Q. You have made reference to Mr Swann as an English

1 expert. Were you aware at the time that Mr Swann was
2 from England --

3 A. I didn't know about Mr Swann until March 2009. I think
4 I've gleaned that information. Was he ex-Metropolitan
5 Police or something?

6 Q. We may hear evidence about that.

7 A. I don't know. I think I've gleaned it as English and I
8 think he's ex-police. I'm not sure.

9 Q. So presumably he would be operating under the English
10 system or standard or however it's been --

11 A. Well, I would expect that to be the case, yes.

12 Q. Why was it viewed as important in a Scottish trial to
13 have the opinion of an English expert?

14 A. Well, I don't think it was important what nationality he
15 was, it was just following through how it came. We were
16 told that -- I believe that Terry Kent was going to be
17 doing this thing and he came from Sandwich, is it, some
18 research place there or something. So I had envisaged
19 him doing the scientific bit that I talked about, the
20 explanation, the presentation to the jury explaining the
21 scientific theory or principles behind fingerprint
22 evidence and, as I explained this morning, I thought
23 that he'd be doing that and that I'd heard not confirmed
24 but I believed that the English way of counting might be
25 more strict, more stringent and if that was the case,

1 then just to add, if you like, to the evidence just as
2 an extra, that he'd be asked to look at it from the
3 English perspective.

4 I mean, there was never any suggestion that Terry
5 Kent was the only person that could do this work. He
6 could have been a Scandinavian or French, I don't know.
7 I imagined that we would be using Terry Kent and being
8 from an English based criminal justice background I took
9 it ... I'm not suggesting that our Scottish experts are
10 not up to it, just that English -- I believed the
11 English practice, the English way of doing things in
12 identifying ridge characteristics was more stringent,
13 although I didn't know for sure.

14 Can I just say as a comment that may or may not be
15 helpful -- probably not -- I mean, throughout all the
16 machinations that have happened we keep bringing in
17 people from Holland, I don't know, all over the place
18 and there's almost a kind of idea about our home grown
19 experts aren't good enough, in the Danish say something
20 they must be right. I don't hold to that view at all.
21 I don't care where they come from. I'm only interested
22 in their expertise.

23 Q. Indeed, it would be difficult to hold to that view in
24 the present case because the Danish experts had
25 already --

1 THE CHAIRMAN: Sorry, we can't hear you. For a moment we
2 couldn't hear you there.

3 MR HOLMES: Sorry. I won't ask that particular question in
4 any event.

5 What you are saying is that whilst the English
6 standard may have been in your opinion at the time
7 different, you didn't see it as necessarily relevant to
8 whether or not Scottish trials should proceed?

9 A. Well, I was seeing it in the background of an English
10 person, Mr Kent, giving the jury this scientific
11 background to help them, you know, in their
12 deliberations and, on that basis, I felt that if an
13 English person was going to do this bit of the work and
14 if the English standard was more stringent, then that
15 would probably come out in his evidence and that we
16 should, therefore, have Y7 looked at on the English
17 standard.

18 It might not have come up to the English standard
19 but that wouldn't necessarily have meant we would have
20 jettisoned the prosecution if it didn't come up to the
21 English standard.

22 As I understand it, both jurisdictions were working
23 to a 16-point standard which was way, way beyond what
24 you might actually need, that being decided in 1953, I
25 believe. But the only point I thought was that there

1 was this what is counted as a characteristic. As I
2 said, this morning, I think I was probably just being
3 too clever there and not working with -- not knowing
4 enough about the subject really.

5 Q. So what you're saying about the seeking of an opinion
6 from an English expert, if I'm understanding you
7 correctly, is that it was something extra, something in
8 addition to the checks that had already been carried
9 out?

10 A. It wasn't a cross-check. I said that this morning. It
11 wasn't a cross-check because it was depending on the
12 proviso the English standard was higher. If the English
13 standard was not higher, there was no instruction to do
14 that. It was if the English standard was higher. If it
15 was a cross-check I would have been asking for it
16 whatever the position was, I would be asking for an
17 English expert or an independent expert to have looked
18 at Y7.

19 Q. If I can move on to the procedure at the beginning of
20 the trial, you say in paragraph 12 of your statement
21 that you can't believe that any reasonable trial judge
22 would have refused the Crown motion to delay the trial.

23 Does that imply that you feel there ought to have
24 been a motion to adjourn the trial?

25 A. Now, it's not for me to say but if you want my

1 opinion -- do you want my opinion?

2 Q. Yes, please.

3 A. I cannot believe this trial continued in the face of
4 that American evidence without a further look by the
5 Crown and if I can say this, I think that the criminal
6 justice system was owed that and I think SCRO was owed
7 that and I think possibly even Ms McKie was owed that as
8 well.

9 We were in a situation which was totally unexpected,
10 we were in a situation where two Americans had, if you
11 like, parachuted in contradicting the evidence of SCRO
12 witnesses. I've got to say, I would have taken cold
13 feet if I'd been Advocate Depute and said, "Oh, hold on
14 a minute".

15 I mean, there's lots of things. I mean, what was
16 the background of these people? Now I'm not suggesting
17 that their background wasn't kosher. I'm not suggesting
18 that. I don't think I'm suggesting that these were
19 charlatans or anything. I'm just saying at the time of
20 the trial how could anyone have known who these people
21 actually were.

22 Q. Perhaps there ought to have been some investigation into
23 whether these people were appropriately qualified and
24 whether their conclusions were correct before the trial
25 began.

1 A. I think also that your clients, the SCRO people, should
2 have had a proper opportunity to consider the
3 American -- I think it was one report; is that right?
4 One report -- and the materials produced in support of
5 that report and I also think that perhaps -- perhaps --
6 the Crown might have considered at that stage -- at that
7 stage -- instructing a third or another -- instructing
8 somebody else.

9 THE CHAIRMAN: Could you just keep me right on this. If
10 there was to be an application, not only would the judge
11 have to grant an adjournment for the reason that you
12 mentioned but would he also have to extend the time bar?

13 A. He would have. This trial was originally destined, I
14 think, for early March.

15 THE CHAIRMAN: Yes.

16 A. There was a defence motion to adjourn because they were
17 waiting for American reports, I understand -- I think.
18 I think I'm right in that. The 12-month time bar must
19 have been extended at that stage. I think Shirley McKie
20 appeared on petition on 8th March 1998.

21 THE CHAIRMAN: There seems to have been one adjournment
22 already.

23 A. Yes. The 12-month time bar would have been extended.
24 Of course Shirley McKie's advocate could have -- was it
25 Mr Findlay -- could have objected to the adjournment but

1 I really don't think he would have been successful
2 there --

3 THE CHAIRMAN: I just wanted to get it clear in my own mind
4 you would have to extend the time bar as well.

5 A. Normally if an adjournment is granted that's a formality
6 because the judge has granted the adjournment;
7 therefore, the 12-month time bar.

8 I mean, the position the Crown was in was the
9 defence already had an adjournment. I mean, it's not a
10 question of counting but that's the fact, they had had
11 an adjournment. The Crown had been presented with
12 foreign evidence four or five days from the trial, well
13 outwith the period that evidence should have been
14 lodged. It was controversial evidence in that it
15 challenged the very foundation of the Crown case and
16 challenged fingerprint identification.

17 Now, I cannot think that any reasonable trial judge
18 faced with a Crown motion to adjourn would have refused
19 it. I know Mr Murphy talked in his evidence about
20 pressure from Crown Office. I can't think what that
21 pressure would have been. Certainly there was a general
22 desire that cases were dealt with, heard and dealt with
23 in their sittings to avoid what's called churn of cases
24 from sitting to sitting which was a problem before the
25 Bonhomy reforms, which I think were 2005. The Bonhomy

1 reforms were supposed to deal with that. So that could
2 be the only pressure. I have to say I can't think that
3 pressure would have outweighed -- I mean, I'm not an
4 advocate, I'm not an Advocate Depute but, you know, I'd
5 have so many questions. I might want to have these
6 defence experts precognosced in detail, ie come in to
7 see a Fiscal and go through their materials with me.
8 I'd certainly want to have a session and I don't mean a
9 lunchtime talk, I mean a proper session, discussion,
10 proper talk, with the SCRO people and I'd probably want
11 to have discussed it with a Law Officer if I had been
12 Advocate Depute and said, "Look, here's what I've got.
13 I've got SCRO swearing four witnesses this is her print,
14 I've now got two Americans swearing the opposite. Where
15 do I go with this, Lord Advocate?" That's what I -- I
16 mean, but I'm not speaking as an Advocate Depute. I
17 just know I'd have taken cold feet but then I'm a
18 coward.

19 THE CHAIRMAN: We dealt with your question.

20 MR HOLMES: Was it common for Trial Deputes to consult with
21 a Law Officer?

22 A. In trials?

23 Q. Yes.

24 A. Yes. Well, I say yes. I don't -- it was always open to
25 an Advocate Depute to discuss any issue that had arisen

1 with a Law Officer. There were some times when they had
2 to discuss things. Like they couldn't accept a plea to
3 culpable homicide before the start of a trial. I think
4 they could after a trial had started but they couldn't
5 before a trial started without speaking to a Law Officer
6 and I think there were certain rules about rape,
7 et cetera.

8 But it was always open to an Advocate Depute.
9 Bearing in mind the word Advocate Depute means you're
10 the depute of the Lord Advocate. That's the meaning of
11 the word. You're standing in the shoes of the
12 Lord Advocate when you're prosecuting in the High Court.
13 So, yes, the answer is they can always speak -- whether
14 it was common, I mean, there would always be a Law
15 Officer available for consultation whether by phone or
16 whatever.

17 Q. Did the law officers ever do trials themselves?

18 THE CHAIRMAN: What has that to do with this particular
19 issue, Mr Holmes? You really have to be careful now and
20 confine your questions to the issues that you've asked
21 to deal with.

22 MR HOLMES: I have suggested to a previous witness, sir,
23 that perhaps given the importance of this case and the
24 impact assessed that a Law Officer ought to
25 have conducted the trial.

1 THE CHAIRMAN: That the Law Officer should have conducted
2 this trial?

3 MR HOLMES: Yes.

4 THE CHAIRMAN: What is your answer. Have you a view on that
5 or are you in a position to express a view?

6 A. Sometimes the Lord Advocate then and, indeed, now
7 conducts important trials. I think the most recent one
8 was the murder in Queens Park last summer which was
9 prosecuted by the Lord Advocate earlier this year, the
10 Moira Jones murder. So the Lord Advocate then and now
11 has always -- the Lord Advocate always is going to court
12 to prosecute. I mean, in reality probably their other
13 obligations probably -- and the time constraints --
14 probably militate against it but, yes, a Law Officer
15 could have prosecuted this case.

16 MR HOLMES: Just moving on to your knowledge of the case
17 since the trial has been conducted, you said in your
18 statement and indeed your evidence earlier today that
19 you have felt yourself somewhat guilty as a result of
20 the way in which matters unfolded.

21 That's based on the assumption that Y7 was
22 incorrectly identified. Based on the assumption that Y7
23 was correctly identified which is the position of course
24 of my clients how would you feel about the case then?

25 A. Well, if Y7 was correctly identified ... if Y7 was

1 correctly identified, then I suppose we've got an
2 unjustified acquittal but unjustified acquittals happen
3 regularly, probably.

4 As I understand it, so far as the position of your
5 clients are concerned, everything was premised on the
6 basis that there may have been dishonesty or conspiracy
7 or some form of wrongdoing behind their identification
8 as opposed to simply being wrong.

9 Obviously, if Y7 was correctly identified as
10 Ms McKie's print, then your clients have had a
11 nightmare. But that nightmare was, I suppose, not
12 simply they wrongly identified but they wrongly
13 identified with criminality behind it -- if you
14 understand.

15 MR HOLMES: I think I do.

16 The final matter I would like to ask you about is
17 training. You mentioned towards the end of your
18 evidence or suggested towards the end of your evidence
19 that it would perhaps be a good idea if SCRO and SPSA
20 and Crown Office and the Fiscal Service undertook more
21 in the way of joint training, as I understand you. Is
22 that correct?

23 A. Yes.

24 Q. Would it surprise you to learn as early as the mid-1990s
25 with the introduction of AFI, the automatic fingerprint

1 recognition system, that training was offered by the
2 Glasgow Bureau to the Fiscal Service and was declined?

3 A. I've no knowledge of that. That would be a matter that
4 would be dealt with, I imagine -- did you say offered to
5 the Glasgow Fiscals' Office?

6 Q. Yes.

7 A. Well, the difficulty with that is, you know, SCRO
8 services are used by Fiscals offices not just in
9 Glasgow. It needs to be a joined-up effort, not some
10 half-hearted local -- I'm not suggesting it would be
11 half-hearted, it needed to be a proper -- fingerprints I
12 think are very important evidence and they're not the
13 easiest form of evidence. They are a very, very helpful
14 form of evidence, obviously. I think perhaps maybe put
15 in the shade in recent years with development of DNA
16 evidence but nevertheless they're still an important
17 form of evidence and I think it's a difficult or I
18 think -- well, I've never done it but I imagine it would
19 be quite difficult as a Fiscal, as I think I said
20 earlier, to lead that evidence.

21 I think possibly very few Fiscals have got much
22 experience of it. I certainly don't and I'm 24 years,
23 so ... and also I think from SCRO personnel's point of
24 view some of them maybe court inexperienced. I don't
25 know how many trials they give evidence in. I wouldn't

1 imagine it's very many. You know, particularly in a
2 jury trial when you've got to get this over to a jury.
3 Its an exceptionally difficult -- of course, if it's not
4 well-handled from the Crown point of view and if it's
5 not well put over by the SCRO point of view you've got a
6 situation where you've got very compelling evidence of
7 somebody's guilt which you're not able to get over to
8 the jury. It's a very difficult problem. It's not just
9 a problem for fingerprints, it's a problem for all sorts
10 of technical areas of evidence, as any Fiscal will tell
11 you.

12 MR HOLMES: Thank you very much.

13 THE CHAIRMAN: Thank you, Mr Holmes.

14 Mr Macpherson, do you have any application?

15 MR MACPHERSON: No, thank you, sir.

16 MISS GRAHAME: Yes, I would wish to ask some questions in
17 relation to two matters: first, comments made by
18 Ms Climie in relation to the decision to prosecute and,
19 secondly --

20 THE CHAIRMAN: I think so far as that's concerned I have
21 taken the view that that's not within my remit, the
22 actual decision which was made in the name of the
23 Lord Advocate. I'm quite satisfied that's not within my
24 remit.

25 MISS GRAHAME: I'm content not to ask those questions if

1 that's to be disregarded.

2 The second relates, again, to a similar matter which
3 was raised by Mr Holmes in relation to the trial
4 Advocate Depute's decisions and decisions that were made
5 at the trial.

6 THE CHAIRMAN: Yes, I give you leave about that.

7 **Cross-examined by MISS GRAHAME**

8 Q. Ms Climie, you've already said in evidence you were not
9 the Advocate Depute prosecuting the Shirley McKie case.

10 A. I totally accept that but I was asked for an opinion and
11 I gave my honest opinion.

12 Q. But you were not the Advocate Depute --

13 A. No, I wasn't, of course not.

14 Q. And decisions about the case at the trial were for the
15 Advocate Depute, Mr Murphy.

16 A. I totally accept that the Advocate Depute did what he
17 saw as the correct thing to do, but I was asked for my
18 opinion of how I judged his actions, based on what he
19 had at the time and --

20 Q. I appreciate you were asked a question, Ms Climie, and I
21 am going to ask you some more.

22 You were not in possession of any defence reports at
23 the time of the McKie trial?

24 A. No, I wasn't.

25 Q. We've heard evidence from Mr Murphy about investigations

1 that were carried out into the background of the
2 American experts but, again, you don't know anything
3 about those investigations?

4 A. Well, I've read about how he used his junior to
5 telephone the San Diego's District Attorney's office or
6 something and it was all done kind of on the hoof. I
7 would have done it -- I would have expected it to be
8 done properly by contacting the American authorities in
9 an open way, not some telephone call from your American
10 junior.

11 Q. Ms Climie, I wonder if you could answer the question
12 which I asked you.

13 You don't know the extent of what the investigations
14 were?

15 A. I only know from what I've read in his evidence, which I
16 understand involved his junior phoning the San Diego
17 DA's office.

18 Q. So the limit of your knowledge relates to reading
19 something from Sean Murphy's evidence; that is the limit
20 of your knowledge?

21 A. Yes. But can I say that --

22 Q. Well, you've answered my question, Ms Climie, thank you.

23 We have also heard evidence from Mr Murphy that
24 there were two consultations which he conducted with
25 SCRO officers, the second of which went over the issue

1 of the defence report.

2 Again you, from your own personal knowledge, know
3 nothing of the extent of those consultations?

4 A. I understand it was over a lunch hour.

5 Q. Do you understand the question, Ms Climie? From your
6 personal knowledge --

7 A. Not from my own personal knowledge.

8 Q. -- you have no knowledge of what --

9 A. No, I wasn't personally present when he had these
10 discussions, no.

11 Q. So any comments that you have made in response to the
12 questions asked by Mr Holmes in relation to adjournments
13 or decisions made at the trial were wholly within the
14 remit of Mr Murphy, the Trial Advocate Depute?

15 A. I totally accept that and I've said that in my statement
16 and I prefaced my responses to the gentleman sitting
17 over here that it was the Advocate Depute's decision but
18 he asked me for my opinion and I gave him my opinion.

19 Q. And that's your personal opinion --

20 A. It's my personal opinion and its not --

21 Q. May I finish in question, please.

22 A. Sorry.

23 Q. That is your personal opinion and not the opinion of
24 either Mr Murphy or the Crown Office?

25 A. Well, it can't be opinion of Mr Murphy and it's not the

1 opinion of Crown Office, as far as I'm aware.

2 MISS GRAHAME: Thank you. I have no further questions.

3 THE CHAIRMAN: Now, is there anything you wish to ask?

4 MISS CARMICHAEL: No thank you, sir.

5 THE CHAIRMAN: Thank you very much. We have taken up a lot

6 of your time and you have given us a lot of very

7 interesting answers. Thank you very much indeed,

8 Ms Climie.

9 **(The witness withdrew)**

10 MR MOYNIHAN: The next witness is Sheriff Crowe.

11 **SHERIFF FRANK RICHARD CROWE (sworn)**

12 THE CHAIRMAN: Sheriff, if you will take a seat, please, and

13 I am sorry, you have been kept waiting. Thank you for

14 taking the time to come.

15 **Examined by MR MOYNIHAN**

16 Q. There are two things: the first is since the weather is
17 most un-Glasgow-like, feel free to take your jacket off
18 like the rest of us, if you wish.

19 A. I'm fine just now. We'll see how we go.

20 Q. The second thing is you will note the microphone, in
21 fact, is not very sensitive so you will need to be
22 relatively close to it. I find myself if I can hear my
23 voice reverberate behind me then it's being picked up.

24 Do you have with you a copy of your statement?

25 A. I do, yes.

1 Q. Could you just have it available to you.

2 What I want to look at to begin with is paragraph 16
3 on page 12. You make a reference to a visit you had to
4 the Kilmarnock Office in July 2000 with the Danish
5 experts and, in particular, a conversation you had with
6 Mr McMenemy.

7 A. Yes.

8 Q. It's in the last half dozen lines of the paragraph. You
9 say:

10 "Mr McMenemy's recollection is that the very last
11 minute the police were able to produce the Marion Ross
12 fingerprint on the biscuit tin found at David Asbury's
13 home and he had been slightly suspicious about that at
14 the time. He was aware that it was an evidentially thin
15 case from the outset and the police had been especially
16 thorough in their search for evidence."

17 A. Yes.

18 Q. Firstly, if I tell you that the Marion Ross print, at
19 least I understand to be Q12?

20 A. Yes.

21 Q. Sometimes it's referred to as Q12?

22 A. Yes.

23 Q. Is that the print you were referring to?

24 A. That's what I thought, yes.

25 Q. Mr McMenemy has been asked about this particular matter

1 and if I can just give you a rough outline of what he
2 said, he agrees he met you and you were with the two
3 Danish officers, he went out for lunch with the Danish
4 officers and, if I understand it correctly, it was more
5 of a social conversation over lunch?

6 A. Yes.

7 Q. His understanding of the case before the emergence of
8 QI2 was that the case was circumstantial --

9 A. Yes.

10 Q. -- but still one that he regarded as being of substance.

11 A. Yes. That wasn't my recollection. Obviously, I've
12 never seen the David Asbury police report but my
13 understanding of events was that the print on the
14 present, the David Asbury print on the present, I think
15 has never been disputed, was perhaps the one that was
16 found first and that may well have been something that
17 caught the eye of the Scenes of Crime Officers and it
18 was very clear and would probably have been enough to
19 place Mr Asbury on petition for that alone. But
20 there's, obviously, a difference between placing someone
21 on petition where you really only need one source of
22 evidence and fully committing someone for trial where
23 you need a **prima facie** case.

24 I think my understanding also was that David Asbury
25 was not fully committed a week after first appearance,

1 which is the norm, it was eight days, which sometimes
2 happens when it's a bigger case and there are
3 difficulties or whatever. I mean, it's not unknown but
4 it may be symptomatic of a difficult Inquiry and police
5 scurrying about at the last minute to gather all the
6 evidence that they have and put it in a written form for
7 the Fiscal.

8 So I think I was aware that there was something like
9 an eight-day full committal and that other evidence
10 which my understanding may be of a standard to fully
11 commit someone for trial and these were the days of
12 course when bail was not an option. So you were really
13 imprisoning someone for the equivalent of seven months
14 and you had to have a proper standard. This was
15 standard that was not checked by the courts so it was a
16 standard I think we held very high and very dearly as
17 Fiscals to achieve that.

18 Q. We have heard some evidence already, as you say, in
19 particular in a murder case, a standard kept very high
20 and very much respected by Fiscals to the extent that a
21 three-day report was required to be submitted by the
22 Local Fiscal to the Crown Office so that the application
23 for full committal could only be made with the authority
24 of Crown Counsel?

25 A. That's right. So that you would base that on what you

1 had in the police report and send a copy of the summary
2 but then that might well be fleshed out in your
3 Culren(?) report with other information that had been
4 given verbally that was in the pipeline and it might
5 well be that on the strength of the initial report there
6 was not enough to fully commit. That sometimes
7 happened. I'm not sure if it happened in this
8 particular case at all because, as you appreciate, I
9 came into things much later and was not involved at that
10 time.

11 Q. I will come back to that conversation in a second. If I
12 move on and tell you what Mr McMenemy asked directly
13 about this particular passage has said. The initial
14 position was a little surprised that it should be
15 thought he had any suspicion but he said, no, he didn't
16 have any suspicion. Q12, yes, was important and
17 provided a motive but even without Q12 he thought there
18 was, though circumstantial, he thought there was a case
19 of substance.

20 Is there room for the possibility in the midst of,
21 in effect, a social conversation with him over lunch
22 that you perhaps just misunderstood what he was saying?

23 A. Possibly. My recollection is that it didn't happen over
24 lunch, that Mr McMenemy assisted us in securing the
25 productions from Sheriff Clarke's safe or wherever they

1 were being held and, you know, we talked about it, about
2 the case very briefly, as the officers were getting
3 ready to examine the prints and I do recollect the
4 conversation occurring in the Kilmarnock Fiscals' Office
5 and, you know, he gave a sort of laugh and said, "Well",
6 and raised his eyebrows and maybe I was thinking back
7 with the benefit of hindsight he was remarking that, you
8 know, he had thought it strange at the time that they
9 just managed to get this evidence in on time and that
10 was really the nature of the conversation.

11 Q. If I wind it back now to the start of your recollection
12 and, indeed, it may even be a suggestion that his
13 recollection was wrong but the examination of the Crown
14 Office files which we have seen it would appear, on the
15 face of the records, that the three-day report was
16 submitted as you have said with the Christmas gift tag,
17 print XF, as the principal matter?

18 A. Yes.

19 Q. QI2 not discovered until a few days later. The papers
20 went to the Duty Advocate Depute and were reviewed
21 without QI2.

22 A. Yes.

23 Q. And the Advocate Depute, without QI2, authorised full
24 committal and it so happens that on the day, the eighth
25 day, when Mr Asbury was appearing in court, QI2 was

1 identified.

2 A. Yes.

3 Q. But we understand that things were already locked in
4 place, in a sense, by then because Crown Counsel had
5 authorised the application for full committal?

6 A. Yes.

7 Q. If that is the sequence of events that are apparent from
8 the file, do you think it would have been surprising for
9 someone like Mr McMenemy that such a fingerprint was
10 found, Q12?

11 A. I think he remarked on the coincidence, that it was
12 right up to the wire and it was at that late point that
13 this other evidence emerged. So, I mean, the police
14 wouldn't necessarily know all the mechanics of the Crown
15 Office side but they would be aware that they had,
16 basically, a week to bring a better case back to meet
17 the standard of committing somebody for trial and if
18 they didn't do that within a week, they had one more day
19 and then that was it. Somebody might well be released.

20 Q. I will leave that particular point at that stage.

21 There are two other points I want to just take out
22 of that same particular paragraph and that's reference
23 to the meeting -- two quite unrelated points.

24 If I can ask you, please, if we could bring up on
25 screen a precognition CO0022 and perhaps if we could

1 bring up the second page of it, this is the
2 precognition -- in fact, there is a third page as
3 well -- you may actually have the original in paper.

4 A. I think I probably do, yes.

5 Q. From what we saw originally do you recognise this as the
6 statement you took from Mr Rasmusson? Perhaps if I
7 bring up page 1, again.

8 A. That looks like it. I would probably have put -- well,
9 it's got Kilmarnock, 31st July. I would probably have
10 put "FRC truth" or something at the bottom. Maybe that
11 wasn't on this one. That would be my normal practice in
12 a Fiscals' Office but I think perhaps my secretary had
13 never worked in a Fiscals' Office so that wasn't there.
14 But that looks very much like the statement that I
15 prepared after interviewing Detective Superintendent
16 Rasmusson.

17 Q. The minor detail that I want to look at is the third
18 page of the document, if you could bring that up.

19 You have mentioned in paragraph 14 of your
20 statement -- you may want to have a look at
21 paragraph 14 -- and it is at the foot of page 10, the
22 reference, you mentioned the circumstances in which you
23 yourself from Crown Office instructed a report from a
24 Malcolm Graham.

25 A. Yes.

1 Q. And you say that you recollect it was dated
2 23rd June 2000 and you will see that, in fact, in the
3 precognition there is a record here towards the foot of
4 the page to Mr Rasmusson being shown a report by Malcolm
5 Graham dated 23rd June 2000.

6 A. Yes.

7 Q. So that gives confirmation.

8 Now, you may not be able to help me. I will show
9 you now -- and we will come back to the document we have
10 just been looking at -- CO2755. This is a report on
11 fingerprints by Malcolm Graham which happens to have a
12 footer date, 23/06/00. So 23rd June 2000.

13 Have you seen this report, Mr Graham's report,
14 really any time recently?

15 A. No.

16 Q. But if we're looking at a copy of a report by Mr Graham
17 with a footer dated 23rd June 2000, that would tie in
18 with your recollection of the date of the report?

19 A. Yes.

20 Q. That is fine, thank you.

21 Then going back to your conversation with the Danish
22 experts, if we go back please to CO0022, taking matters
23 relatively shortly, do I understand that when you were
24 preparing this particular statement, unusually for you,
25 you were doing in the Kilmarnock Office, as you said,

1 you were trying to capture your thinking at that time on
2 one particular point.

3 A. Yes.

4 Q. What was that one particular point that you were trying
5 to capture your thinking on at that time?

6 A. It was in relation to Q12, whether that could be --
7 whether the identification of Marion Ross' print could
8 be confirmed as being her print. That was the main
9 thing I was interested in because, as you will see from
10 my statement, I had met the SCRO officers so I wasn't
11 involved in the inquiry into concerns about their
12 evidence, if I can put it that way, but when the second
13 Frontline Scotland programme questioned a second
14 fingerprint in the case, my principal involvement was to
15 get that checked out by the Danish officers. I think it
16 had already been examined under the auspices of HMCIC,
17 in his report, and so that was my principal involvement.

18 With my hat on as being in overall charge of the
19 appeals section and the David Asbury murder conviction
20 was at the appeal stage, as much as the aftermath of the
21 Shirley McKie trial.

22 Q. Again, there are a number of points that spin off from
23 that. If I just follow this through on a point of
24 detail. You mentioned in your statement that the Danish
25 officers, Mr Rasmusson, and Mr Rokkjaer, gave you a

1 formal report later in August.

2 A. Yes.

3 Q. If I can bring up CO0030, they begin, as we see on the
4 first page there, with QI2.

5 A. Yes.

6 Q. That is the matter that impacted on you most of the
7 time?

8 A. That's right.

9 Q. If I take you on then, please, to the second page, do we
10 see on the second page for completeness that the
11 officers went through a number of other prints?

12 A. Yes.

13 Q. Including XF, that's the Christmas gift tag, if I can
14 tell you that?

15 A. Yes, that's right.

16 Q. And some others, particularly the one that interest me I
17 want to ask you about is QD2. Do you see QD2 --

18 A. Yes.

19 Q. -- on the list?

20 A. Yes.

21 Q. Now, were you at the time thinking of any other disputed
22 prints or was your focus really on QI2?

23 A. My focus was on QI2 and, as I say, when I saw what was
24 it what they said about QF, the gift tag.

25 Q. XF, I'm sorry.

1 A. Sorry, XF -- I mean, that looked as clear as day to me
2 and even I could see that it looked to compare to David
3 Asbury's fingerprint. But the others were smudged or on
4 bad surfaces or whatever and certainly I couldn't see
5 from a visual examination enough to be satisfied from my
6 own position. I had to rely on their expertise.

7 But they did look at these other prints that arose
8 from the David Asbury case because we were really, I
9 suppose, looking at his conviction.

10 Q. If you will bear with me, this is just a point of detail
11 that I wanted to just clarify with you in relation to
12 QD2.

13 A. Yes.

14 Q. If we could go back, please, to the full page, we see
15 that the officers, Mr Rasmusson and Mr Rokkjaer, mention
16 about a third of the way down that they were shown a
17 file of photographs, production 98, including a number
18 of prints including the second one on the list as QD2.

19 A. Yes.

20 Q. As you recollect, did you make arrangements to get the
21 originals of the Crown productions for the officer to
22 study?

23 A. That was my understanding, yes. I mean, I knew enough
24 about fingerprints and so on for them to need the
25 original documents to make a proper examination.

1 Q. If you will just bear with me, I will pass across to you
2 the original and bring it up on screen. It is just that
3 QD2 has subsequently been disputed and there's some
4 question mark over it; so I just want to be entirely
5 clear as to what the officers were shown.

6 If I can bring up on screen, please, SG0010. You
7 will have to assist us by looking at the original and
8 also looking on the screen. First of all, what I passed
9 to you does it have a cover sheet marking it as
10 production 98 in the Asbury case among other things?

11 A. Yes, it says "pro no 98 against David Asbury".

12 Q. If you can lift up the cover sheet and if we move
13 perhaps to page 2, does the original look as it is on
14 the screen just now with four signatures and a book A.

15 A. Yes, that's fine. "Scottish Criminal Record Office",
16 it's got an A on it and various signatures and I
17 recognise some of the names.

18 Q. What I want you to look at is a page that in manuscript
19 is numbered 1. With any luck, it might be page 3 on the
20 computer. Yes. Page number 1 and now added to the
21 document you have -- well, first of all, do you see the
22 photograph QD2 on that page?

23 A. Yes, it's got the number 11 at the top right.

24 Q. Added now to documents not on the screen is a blue
25 circle with a number 11.

1 A. Yes.

2 Q. Just to explain the mystery perhaps.

3 A. Top right and you can see the £10 on it.

4 Q. So other than the fact that the blue circle with the
5 number 11 has been added, what you have in front of you
6 corresponds to what's on the screen?

7 A. Yes.

8 Q. So that everyone understands at least I can give
9 evidence the blue circle with the number 11 corresponds
10 to the negative of the particular photograph.

11 If I go on, what you have in front of you is that a
12 booklet that contains an original photograph or what
13 would appear to be an original photograph?

14 A. It does appear to, yes. It's a booklet that appears to
15 contain an original photograph in that it's sellotaped
16 into the book.

17 Q. Based on what you have said earlier, is that something
18 you were aware fingerprints experts such as Mr Rasmusson
19 and Mr Rokkjaer would require for them to carry out the
20 examination that you wished them to carry out?

21 A. Yes.

22 Q. And for good measure do we see on the same page that
23 there is a photographic original for the print XF?

24 A. XF, yes. It's top left, the first photograph that we
25 come to.

1 Q. The next piece -- again, if you keep the original -- if
2 I bring up production AZ0039, this is a statement by
3 another of the experts, Mr Zeelenberg, to the Scottish
4 Parliament and if I go within that to page 6, we will
5 see that he is mentioning giving a description of the
6 position in relation to QD2 and if I ask you to look at
7 the fourth paragraph, he says:

8 "He did send me [and he is Mr Rokkjaer] the copies
9 of the material shown to them during their
10 investigation, see annex F, production number 98,
11 page 1. This is a copy of the same production showed to
12 us by QC A Smith. The Danish experts stated to me that
13 to them is not shown any other material relevant to mark
14 QD2 than this production."

15 So that's their position. They were shown something
16 that Mr Zeelenberg has reproduced in annex F and I go to
17 PDF page 26, do we see in the top left-hand corner now
18 it's been properly orientated annex F on the screen.

19 It's written in the top left-hand corner of the
20 photograph, XF, on the screen just in orange going from
21 top to bottom. Just on the screen.

22 A. Oh, yes.

23 Q. So annex F is what Mr Zeelenberg understands
24 Mr Rasmusson and Mr Rokkjaer have seen and all I was
25 wanting to do was to ask you to compare what's on the

1 screen with the original booklet you have before you.

2 A. I may say that "production number 98" looks like my
3 writing.

4 Q. So, indeed, it does seem to be a copy that you gave to
5 them.

6 A. Well, it looks similar. Maybe you can give me a
7 clue what --

8 Q. I'm just asking the question. They look similar?

9 A. Yes. I don't know what the point is here, but my
10 distinct recollection is that the Danish officers looked
11 at the original items. I do remember them looking at
12 the tin with a magnifying glasses and I'm pretty sure
13 that they got the bank notes out and they looked at the
14 actual things and they would use this book as a
15 reference to get these identification numbers and then
16 they looked at the exact things and, obviously, they
17 couldn't make a comparison from looking at these
18 photographs.

19 Q. So you recollect them as having looked at the bank
20 notes?

21 A. They looked at the actual production. They had to.

22 Q. Did they also make any comparison using the photographs
23 that are before us now? Do you recollect?

24 A. Well, there's also another book made up for court
25 purposes with the 16 points or whatever and they looked

1 at that. But my interest was getting permission for
2 them to see exact productions and look at the source
3 material and that's what they did and I was in the room
4 most of the time when they did that and I can remember
5 them using something like this or the document but
6 perhaps this book as a reference to find the areas where
7 the prints were said to be what they were and then they
8 looked at the actual articles and then gave their
9 opinion.

10 Q. You say permission had been to be obtained. Was that
11 because Mr Asbury's appeal was still pending and the
12 documents were under the control of the court?

13 A. That's correct, yes.

14 Q. The reason I explained, there has since been or possibly
15 has been a retraction of the dispute in connection with
16 the identification of QD2. I was just wanting to
17 understand, to cover the angle, what the officers had
18 studied at the time.

19 A. Yes.

20 Q. Hence looking at the various sources.

21 A. Well, it is in my statement that, you know, while we
22 were able to produce an angle poise and it was a fairly
23 well-lit room, they were obviously not in laboratory
24 conditions that they would have been at home. So to
25 that extent that may have tripped them up in relation to

1 developed with a substance ninhydrin which evaporates
2 with time and does not leave any traces.

3 A. Yes.

4 Q. So it may be when the officers looked at the £10 note
5 there was nothing to be seen by them?

6 A. Yes.

7 Q. And, therefore, the examination such as they were able
8 to make it would depend on their examination of the
9 photograph in the circumstances you described?

10 A. That's right. I mean, that confirms my recollection
11 that they looked at the exact productions, first of all,
12 and then might have looked at the photographs. I think,
13 I've just refreshed my memory having looked at their
14 report during the break, and there are a number of
15 occasions when they say due to poor light or lack of
16 facilities or something they weren't able to express or
17 effect an opinion. But I think that was a bank note
18 that was in the tin in Mr Asbury's house and his
19 position was that it was his money. So whether or not
20 his print was on it I don't think really advanced
21 matters terribly much further. So, you know, it was a
22 lesser print of interest. There were a number of prints
23 that had been developed. I think ultimately the case
24 seemed to fall down on about two or three and obviously
25 the Shirley McKie print, if I can call it that, was to

1 some extent a red herring but, you know, it was
2 obviously part of the equation by that stage.

3 Q. Again, for that reason, if we are looking at any of the
4 Q prints the one you were primarily interested in was
5 Q12?

6 A. That's correct.

7 Q. If I look at the significance of Q12 from a slightly
8 different perspective, you mention in paragraphs 3 to 5
9 of your statement that you, along with Mr Murphy, then,
10 now Sheriff Murphy, had a meeting with SCRO people on
11 20th May 1999 to discuss, in a sense, the fall-out from
12 the McKie case.

13 A. Yes.

14 Q. We have the document and we can read the document and we
15 can also read your statement but perhaps if we stand
16 back from it just now, as of 20th May 1999 did you have
17 any impression of any cause for concern of the wider
18 implications of the McKie case, as it then stood, for
19 fingerprint evidence in court?

20 A. Oh absolutely, yes. I mean, as soon as the matter was
21 raised with me by Sean Murphy I had concerns for the
22 wider picture and that was really, I suppose, part of my
23 job as Head of Casework, certainly for High Court
24 casework, to some extent throughout the service, that
25 more difficult cases would be referred to the Crown

1 Office and this was perhaps a procedural problem that
2 one had to be concerned about.

3 As I indicated, I hadn't been aware of the
4 prosecution until that time, but the newspaper headlines
5 and all the talk among practitioners in the immediate
6 aftermath of the case was that SCRO fingerprint evidence
7 had been met head on and then somebody had been found to
8 be wanting and there had been a unanimous acquittal and
9 many things were written about the state of fingerprint
10 evidence thereafter. So of course it was a cause for
11 concern because fingerprint evidence was a staple diet
12 of some of our more difficult cases and seemed thus far
13 to be a very good, quick and effective way of
14 eliminating people from enquiries as well as focussing
15 on suspects.

16 Q. As the meeting progressed and by the conclusion of the
17 meeting on 20th May 1999, did you then have a concern
18 about major implications for other cases arising out of
19 the McKie case at that time?

20 A. Not particularly, no, because I think the SCRO officers
21 reassured me to some extent with their professionalism,
22 they put their hands up to the fact that the court
23 productions highlighting the points of comparison had
24 perhaps not been of the best quality, particularly the
25 copies that had been made available for the jury, so

1 that what would happen is they would take the relevant
2 prints, blow them up and show the 16 points of
3 comparison against a blown-up copy of the fingerprint
4 from Ms McKie and that side of things seemed to have
5 gone a bit pear-shaped, that criticisms could be made
6 that certain of the lines pointing to points of
7 similarity just did not fall in the right place and also
8 Mr Murphy made it clear that he was not satisfied that
9 he had proved the integrity of the murder **locus** and
10 there may have been other reasons why the jury
11 acquitted.

12 But, in any event, after that meeting I was
13 reassured that the SCRO officers were of good standard,
14 they were able coherently to explain why fingerprint
15 evidence might not have been preferred and I think
16 various disparaging things were made about the American
17 witnesses that I'd never heard of and thought, to some
18 extent, may have been a bit of an ambush in court.

19 So I think after that meeting I was fairly reassured
20 and felt there was a basis to move on and, obviously, I
21 think we had to be cautious now about fingerprint
22 evidence but it was out to the profession at large that
23 fingerprint evidence could perhaps be challenged but I
24 felt there was a fairly good story in how we could
25 respond to that in any future cases in the immediate

1 aftermath of the acquittal of Shirley McKie.

2 Q. Did things change a year later when you were speaking to
3 the Danish experts with their reaction to Q12?

4 A. Absolutely, yes. In the interim, I'd seen Pat Wertheim
5 speaking on the BBC programme once, maybe two occasions,
6 I think about two programmes, and you know contrary to
7 the impressions that I had previously I thought he was
8 very articulate, he explained his position quite
9 reasonably, I could see how he would come over well in
10 court and there did seem to be some substance in what he
11 was saying.

12 But personally, I suppose my Road to Damascus moment
13 came when I was in that room in Kilmarnock with the
14 Danish experts who seemed to me very experienced people
15 and I was there at first-hand to witness their surprise
16 when they looked at Q12 and felt that there were points
17 in the mark that rendered it such that they could not
18 make a comparison with Marion Ross' prints.

19 Q. Just for the avoidance of any doubt, Q12 was one of the
20 marks that you yourself could not have expressed any
21 view on.

22 A. No, absolutely not.

23 Q. So you were entirely dependent on the feedback you got
24 from the Danish experts?

25 A. Yes.

1 Q. You described this as your Road to Damascus moment.

2 A. Yes.

3 Q. My reason for doing it in that way is if one looks at
4 documents emanating from Crown Office before that
5 turning point, might one get a completely different
6 picture of how the problem with the McKie case was being
7 perceived than one would get after the Danes had been
8 involved?

9 A. That might well be so, yes. Well, I think we had set in
10 motion or at least the Lord Advocate, the
11 Justice Minister had set in motion the various inquiries
12 by that time and by that stage Bill Gilchrist was in
13 charge from the Fiscal's side of things in the case
14 against the SCRO officers, whereas I was very much
15 involved with Harry Bell in trying to restore the
16 reputation of SCRO and getting fingerprint evidence back
17 on track.

18 But, you know, in the interim there had been two
19 Frontline Scotland programmes and certainly by the time
20 of the second one the HMCIC Inquiry and its conclusions
21 that publicly there was an awful lot of disquiet and,
22 you know, things had to be put in motion in the sense of
23 going over past SCRO cases to check if there had been
24 any mis-identifications and then looking at outstanding
25 cases at trial to check them before we mounted any

1 prosecution in the court.

2 Q. If my memory serves me correctly, the second of the BBC

3 Scotland programmes, Frontline Scotland, was in

4 February 2000.

5 A. Yes.

6 Q. What I want to look at are two letters, one of which

7 I've asked you to read during the adjournment. For

8 others, it's DB0576.

9 I'm sorry, sir, this one has just not found its way

10 on to the system if I can pass you a copy of it.

11 **(Handed)**

12 If I can just orientate myself in time, this is

13 really what I was trying to do, to sketch the change in

14 position over time.

15 Your meeting was on 20th May 1999.

16 A. Yes.

17 Q. This is a letter written by Mr McKie to the then

18 Lord Advocate, Lord Hardie, on 9th June 1999. So

19 reasonably contemporaneous with your meeting and you

20 have had a chance to read this document?

21 A. Yes, I have.

22 Q. Others may have had as well. Among the points that

23 Mr McKie was making, if I take you to page 2, halfway

24 down there's a bold paragraph. He says:

25 "There was an apparent failure by the Scottish

1 Criminal Record Office to accept that their experts had
2 made a mis-identification and to put effective
3 procedures in place to independently double-check their
4 work. As a result of this failure, the Crown relied on
5 flawed evidence that led to an innocent person being
6 arrested and tried and to the Crown fingerprint experts
7 presenting erroneous evidence in the High Court."

8 If I ask you to turn the page to page 3, it is the
9 first and last paragraphs I am interested in on page 3.
10 Mr McKie asks two things of the Lord Advocate.

11 Firstly, in the first paragraph he asks:

12 "Could you please confirm if the SCRO experts who
13 wrongly identified my daughter's print are still acting
14 as Crown experts."

15 Then at the end the last paragraph he asks, in
16 effect, for enquiries to be made.

17 A. Yes.

18 Q. Just freezing it now, knowing this is June 1999 and the
19 experts were not suspended until August 2000, before we
20 look at what the Lord Advocate said, could you explain
21 from your involvement at the time why in 1999 no
22 decision had been made to suspend the officers yet in
23 2000, a year later, they were suspended?

24 A. I've had a look at this letter. I don't particularly
25 remember seeing this at the time. I'm trying to

1 remember what the sequence of events was but after Sean
2 Murphy and I met the SCRO officers, I'm pretty sure I
3 put some sort of report through to the Crown Agent or a
4 Law Officer and I don't really remember an awful lot
5 happening in the immediate aftermath of the case
6 because, as I said, I was personally satisfied after the
7 SCRO meeting that it was a one-off. They had been
8 ambushed, the court productions were not of good quality
9 and there were other aspects of the case that might have
10 led to the jury's acquittal.

11 So I was fairly sanguine about that and also,
12 despite all the gossip and bravado from the defence
13 side, there were no other cases coming out of the
14 woodwork. Maybe it's something that they are all
15 looking for but no other case like this came along in
16 the weeks afterwards. So I think really by this time,
17 in a sense, there was a bit of a lull. Yes, there was a
18 lot of publicity going on but I think, having made
19 initial inquiries into matters, I was reasonably
20 satisfied there were reasons why the jury had acquitted
21 Ms McKie.

22 Q. Again, you used the phrase the Damascus moment. It
23 would be after you saw the reaction of the Danish
24 experts that for you the case came out of that lull?

25 A. Yes, because I think at that stage we had two disputed

1 identifications in the one case. I'd never had a case
2 where one print was disputed but to have two marks
3 disputed I was really very concerned.

4 Q. If I then put to you just for your comment and it is a
5 letter that comes from the Lord Advocate's Private
6 Office in that period of lull. It's a response to
7 Mr McKie's letter of 9th June.

8 This one is on the system, DB0582 and there will be
9 two pages to this.

10 Just take your time to read that particular letter.
11 It is, in fact, the underlined paragraphs on the second
12 page I'm primarily interested in. **(Pause)**

13 A. Yes, thank you.

14 Q. Do you have any recollection yourself of being involved
15 with this particular letter?

16 A. No. That's written by Andy Miller who was in the Policy
17 Group and it may well have been that Mr McKie's letter
18 and this response was entirely dealt with in and around
19 the Lord Advocate's Private Office based on perhaps the
20 report I had submitted to them and it was dealt with in
21 that way rather than a situation where the Private
22 Office might have received a letter like this and sent
23 it to me to provide the first draft.

24 But it rather looks as though it had been dealt with
25 by the Lord Advocate's Private Office and Policy Group,

1 the Crown Office legal officials who supported that
2 section of the office.

3 Q. In light of your own involvement in the May meeting and
4 the lull you have described, does it come as any
5 surprise to you in July 1999 the Lord Advocate was
6 writing, in effect, there's nothing he proposes to do in
7 relation to the Fingerprint Officers?

8 A. No. No, that didn't surprise me. That doesn't surprise
9 me, no.

10 Q. However, things did, as we say, change one year later.

11 A. Yes. I think it was at a much later stage in and around
12 the statement to Parliament that I then saw Mr McKie's
13 letter and, I mean, I recognise the style about him
14 underlining and highlighting points and so I do remember
15 seeing letters like that, but I don't remember seeing
16 this particular one at the time. I was quite intrigued
17 at a later stage to read them all. So there had been a
18 time perhaps he was also writing to the
19 Justice Minister, so I wouldn't have seen these letters
20 anyway but I had a feeling that around about the time of
21 the statement to Parliament I then saw a number of
22 letters and they obviously confirmed and went into more
23 detail indeed about the points that Mr McKie had made
24 publicly.

25 Q. What I want to do is then -- and I will be relatively

1 brief because it is adequately covered in your statement
2 but I just want you to explain in public one particular
3 part of this.

4 Plainly, we have seen in August 2000 a decision is
5 taken to suspend four officers, the four officers who
6 signed the reports.

7 A. Yes.

8 Q. You have explained that by then you understood two of
9 the prints now to be disputed.

10 A. Yes.

11 Q. Can you just again repeat for us, please, your
12 understanding -- not that I'm suggesting you were
13 personally involved in their suspension, but your
14 understanding of the ability of these four officers to
15 have given evidence in court, from your perspective, in
16 light of the controversy as it then stood by
17 August 2000?

18 A. Well, I think that was very difficult by that stage,
19 that the second Frontline Scotland programme had
20 highlighted doubts about another print in the case and
21 then after several months, perhaps as long as about six,
22 the Crown Office actually had in its possession a
23 contrary report from another expert and I think up until
24 that stage the Crown had been supportive of SCRO because
25 during that period in the run-up to August I think

1 Mr Wertheim and co had put certainly the other print,
2 the Y7, that had been put on the Internet and there was
3 an invitation for every expert under the sun to, sort
4 of, log in and see whether it was an identification or
5 not. Many people said that it was a mis-identification
6 but of course they were looking not at original
7 productions.

8 So I think we had good reason or coherent reasons
9 for really fobbing off some of that or being satisfied
10 that our work could carry on and, indeed, no other case
11 emerged at that time which caused any doubt. So I
12 suppose we were looking at, at that stage, one print and
13 one case and maybe it was a ponderable, difficult to
14 understand, but you know, as I explained, there seemed
15 to be good reasons why the jury had acquitted Shirley
16 McKie's and no good reasons to turn everything upside
17 down.

18 So to that extent things carried on, although there
19 was a very effective campaign and various other steps
20 were taken. But by the time I reported about the second
21 print, and that seemed to undermine David Asbury's
22 conviction with the result that he was granted bail
23 shortly afterwards, that had reached a stage that it
24 would be very difficult, I think, for the Crown to
25 proffer those SCRO officers in a case, particularly

1 where it would be a case that turned on fingerprint
2 evidence alone.

3 Q. I appreciate that you left Crown Office shortly after
4 the August 2000 suspensions to take up your current
5 position as Sheriff.

6 A. Yes.

7 Q. Therefore, a lot of time passed thereafter. In the
8 period while you were Deputy Crown Agent, your personal
9 view about the ability of the Crown to have used these
10 four officers again as witnesses, what view did you
11 have?

12 A. I think as events progressed and, you know, my last act
13 really as Deputy Crown Agent was to receive Bill
14 Gilchrist's report and pass that to the Lord Advocate
15 and, you know, I had always been fairly doubtful about a
16 basis for prosecuting the SCRO officers, but my view was
17 that while it was not appropriate to prosecute them I
18 felt that the whole circumstances had become so
19 notorious that we couldn't jeopardise any future cases,
20 which might well be High Court ones, by calling them as
21 witnesses because they would inevitably have raised in
22 the cross-examination that they had been involved in a
23 case where an identification had been challenged and I
24 think, inevitably, the court would allow some
25 questioning along that line and it would make a very

1 unfortunate sideshow in a prosecution.

2 It may not seem very fair to the SCRO officers, but
3 in a criminal trial it's about being fair to the accused
4 and fair to the public and, as a prosecutor, I would
5 always try to nail down as many of the things that could
6 be nailed down so that you took the case to trial and
7 fight on the issues that were in dispute and you didn't
8 want to have anything that weakened or perilled your
9 case if you could avoid that and I think that would
10 be -- obviously, you had to be fair. If you had
11 evidence that didn't particularly suit the prosecution
12 line, that had to be disclosed and maybe weaknesses you
13 would have to tackle but you wouldn't personally want to
14 weaken your case by doing something tactically that you
15 didn't have to do.

16 Q. In a sense, if I can put it this way, you acknowledge
17 that this may have been unfair to the officers in
18 question but there is -- if I can put for comment -- a
19 conflict between what you thought appropriate as a
20 prosecution authority to present the best case and being
21 fair to these four, there was a conflict between those,
22 was there?

23 A. Yes, yes.

24 So, I mean, it's no surprise to me that employment
25 lawyers took a view and industrial tribunal took a view

1 but, as a prosecutor, your criteria are totally
2 different. It may be very unfair to the individuals but
3 I'd also had personal experience where we had proffered,
4 in a completely different context, a Crown witness who
5 had been the subject of dispute in a public inquiry and
6 that was cast up to this lady, I think the public
7 inquiry had never questioned her honesty but the
8 conclusions had been that, as an expert witness, she
9 held a view that was not scientifically possible or
10 proper to hold and, you know, when we used this witness
11 subsequently the defence crossed her on this line and
12 the accused was acquitted. So I had previous experience
13 of matters in this context.

14 Q. So if I put it again in the terms I have of the
15 conflict, you are indicating that an employment tribunal
16 or employment lawyer might try to balance these two
17 conflicting considerations, strike a balance; you as a
18 prosecutor weren't balancing, you were giving precedence
19 to your responsibilities as a prosecutor?

20 A. Yes, and I did have a conversation at some point with
21 Harry Bell at SCRO where I said, "Well, you know, you've
22 got your advice, you'll have to do what you have to do",
23 but my position would have to be that I couldn't see any
24 of them giving evidence for the Crown again. They might
25 have to be deployed in some other capacity but not as

1 front line witnesses signing reports and thereby being
2 open to being called either by the prosecution or
3 defence to give evidence in a criminal trial.

4 Q. If I can move on just continuing this conversation but
5 from a different angle, moving on to the question of
6 statutory authorisation under the Criminal Procedure
7 (Scotland) Act.

8 First of all, we have found on a recurring basis, in
9 fact, on contemporaneous documents and, indeed, in
10 witness statements that people who should know better
11 nonetheless speak of the "Crown Office list of expert
12 witnesses". It seems that the authorisation process
13 under the 1995 Act as the responsibility of the then
14 Scottish Executive, now the Scottish Government, was
15 poorly understood.

16 Would that be a fair comment?

17 A. That would be right, yes. Really the Crown had
18 arrangements in place for forensic pathologists but in
19 other contexts for forensic scientists there was a
20 procedure which I didn't fully understand but
21 application or letters were sent in to the
22 Justice Department or Scottish Office, whatever it was,
23 and then they certified that somebody was an authorised
24 analyst or authorised forensic scientist and that was
25 it.

1 Once we had these names -- and we regularly got
2 official letters to say that so and so was now an
3 authorised analyst or authorised forensic scientist --
4 that was fine for us. We could then, where there was a
5 report involving two or more persons, say that only one
6 would be called unless the defence required
7 corroboration or, in summary trials, the report could be
8 introduced into evidence and would be sufficient
9 evidence of the matters to which it related unless the
10 defence particularly challenged and wished one or both
11 of these witnesses to give evidence.

12 So people were, and still are, in a very privileged
13 position in the criminal justice system in Scotland
14 under the Criminal Procedure legislation and there
15 didn't seem to be any great checking of abilities
16 underlying that, but really all that was left, I
17 suppose, was the accusatorial nature of proceedings so
18 if someone -- and I can't remember that -- if somebody
19 was totally not up to the job and were exposed in court,
20 then I suppose in that way they might be weeded out but
21 I don't believe I recollect that happening.

22 Q. You used the term -- and I will give you a chance to
23 expand on it if you wish -- if I were approaching the
24 procedure under the 1995 Act, authorisation by Scottish
25 Ministers --

1 A. Yes.

2 Q. -- as an independent verification of the qualities and
3 competence of these forensic scientists who were to be
4 witnesses you use the rather strong term it wasn't worth
5 the paper it was written on?

6 A. In a sense I felt I didn't know the intricacies of the
7 procedure but I remember speaking to someone in the
8 Department about it, someone in Saint Andrew's House and
9 I think at various stages maybe a lab would write in and
10 say that somebody had been there for two or three years
11 and could he now be authorised and that was it and I
12 don't -- there certainly wasn't any MOT or subsequent
13 checks as to their expertise. Once they were in, that
14 was it until they left their job or unless something
15 went wrong at work.

16 Q. Following on from that, for a period of time -- and your
17 statement was written just about the time of the
18 demise -- there was an independent Institution of
19 Council of Registered Forensic Practitioners?

20 A. Yes.

21 Q. Was that for a period of time looked upon by public
22 authorities in Scotland as the means of injecting an
23 independent verification element into this process?

24 A. Yes, yes. For a while I was Director of Judicial
25 Studies so that in the period after the formation of the

1 Register for Forensic Scientists I invited the Secretary
2 to come up and speak about this to my colleagues because
3 I felt it was an important development and would give my
4 colleagues and the court some confidence in the vires of
5 those who were appearing in the court as expert
6 witnesses. Our law as developed is that in England and,
7 yes, I'd also found that in Scottish criminal trials it
8 was perhaps very rare for the defence to attack the
9 credibility of one of these expert witnesses; whereas I
10 think in civil procedure, perhaps with greater resources
11 and more time, that's something that might more
12 regularly be done.

13 Q. You have been clear in relation to the meeting of
14 20th May the officers who were present were able to
15 explain themselves to your satisfaction at that time.

16 A. Yes.

17 Q. You have nonetheless spoken of your many years' of
18 experience and your feeling that some officers,
19 Fingerprint Officers, were not up to the mark, if I can
20 use that pun. Now that we all know the Council has
21 bitten the dust for a variety of reasons, based on your
22 long experience of Fingerprint Officers, is there, do
23 you feel, a need now to consider proper independent
24 verification of their qualifications, experience and,
25 indeed, their contribution in court?

1 A. I think that there still is a need for that. I mean, as
2 I worked with Harry Bell, I was always satisfied that
3 office conditions had improved and also procedures were
4 improved in the light of events and that there was more
5 blind testing, training and other systems in place so as
6 to check.

7 I mean, in a way another parallel would be
8 histologists looking at breast cancer scans that, you
9 know, I am sure if you look at these day after day it's
10 very hard on the eyes, very exhausting and tiring but if
11 a mistake is made it can have terrific repercussions
12 and, you know, human beings do make mistakes from time
13 to time and so I think it would be important when
14 somebody's working at a high level to have systems in
15 place to regularly check the suitability of witnesses.

16 Certainly, I've noticed in other contexts that
17 pathologists, for example, people who have been giving
18 evidence at a high level for many years eventually for
19 most of them there comes a time when they seem to shade
20 off in their capabilities. So I think for these reasons
21 there has to be something in place, more than simply
22 in-house checking, to satisfy the wider public and the
23 profession that standards are being maintained and then
24 the individual officers themselves can speak to their
25 qualifications and the procedures they go through to

1 ensure that their evidence is of the standard required
2 and that one can perhaps depend upon.

3 MR MOYNIHAN: I have no further questions, thank you.

4 THE CHAIRMAN: I will ask Mr Smith first.

5 MR SMITH: Yes, Sir, there are some questions I would like
6 to put to Sheriff Crowe and these relate to the
7 following matters: the first is some further questions
8 regarding the aftermath to the acquittal of Shirley
9 McKie; the second is the overall impression that Sheriff
10 Crowe had regarding the competency of SCRO at various
11 times with various matters arising; the third relates to
12 the working relationship between Sheriff Crowe and
13 Mr Harry Bell and what discussions took place with him
14 regarding matters that we've heard about; the fourth is
15 questions relating Mr Malcolm Graham's reports or report
16 that was referred to by Mr Moynihan.

17 THE CHAIRMAN: Yes.

18 MR SMITH: And I think that is all of the areas I would like
19 to ask about.

20 THE CHAIRMAN: Yes.

21 **Cross-examined by MR SMITH**

22 Q. Sheriff Crowe, I wonder if I can ask a few additional
23 questions relating to the reaction, if I put it this
24 way, not just your reaction but generally the reaction
25 of the Crown Office following the acquittal of Shirley

1 McKie.

2 You explained very clearly that obviously there was
3 some concern as to the result, if I can put it that way.

4 A. Yes.

5 Q. Can I say this: you have made reference already to an
6 understanding of something, if I can put it this way, of
7 an ambush regarding some testimony from the American
8 individuals.

9 A. Yes.

10 Q. And you have been a Sheriff for quite some time now, I
11 think.

12 I'd like to ask you this: suppose that someone was
13 to turn up in your court on a solemn matter, the
14 Procurator Fiscal was to say, "I have been presented
15 with a report that goes to the heart of this case, a
16 defence report that I haven't seen yet. I don't have
17 time to consider it. I would like the trial to go off
18 in order I can fully investigate it", I take it you
19 would agree you would be pretty hard pushed to refuse
20 that request?

21 A. Absolutely.

22 Q. Sorry?

23 A. Absolutely not, no. That would seem to be a reasonable
24 request to make and, as you know, there are time limits
25 about the production of evidence. There's often late

1 evidence lodged by the Crown and there are titles about
2 that and similarly defence evidence ought to be lodged
3 in documentary form, if it's that type of evidence, at
4 some time in advance of the trial.

5 So if the Fiscal stood up and said that morning
6 there were productions and the defence were moving those
7 and the Crown felt they need more time, then obviously
8 in the interests of justice I would grant such time as
9 was required.

10 Q. I'm just thinking of if the position is -- and we have
11 heard some evidence about this -- that the defence
12 report was only made available or reports perhaps were
13 made available to the Crown just a very few days before
14 the trial was due to start in Shirley McKie's case I
15 take it it would be a matter for decision by the
16 Advocate Depute, no doubt --

17 A. Yes.

18 Q. -- but it's something that would be open to him to
19 move --

20 A. It would be. I can't speak authoritatively as to what
21 time these documents were lodged but it was one of the
22 matters that came up in the meeting that we had that the
23 SCRO officers had very little inkling of what was to
24 face them and that may well have been so and I think one
25 of their criticisms, which didn't seem unrealistic, was

1 that had they had a bit more time, had they understood
2 what was coming, then they might have been better
3 equipped to answer the questions.

4 Q. I think, in fact, we heard some evidence there's some
5 evidence available that they had an afternoon available
6 to sit down with, I think, the Advocate Depute, if I
7 remember correctly to go through the defence production
8 and discuss it with him to see what they could come up
9 with and give some guidance as appropriate.

10 I take it that would certainly be a first step and
11 would allow the Depute and the SCRO witnesses say,
12 "Listen, this is not good enough. We can't do this in a
13 couple of hours or whatever", there would be an
14 opportunity if anybody felt disadvantaged at that stage
15 to say, "Cut our losses and move for an adjournment, we
16 can't deal with this", would you agree with that?

17 A. Yes, in a situation like that, if it were presented to
18 me as Sheriff I would give some time, perhaps a day or
19 so. Obviously, it's more difficult once the trial's
20 ongoing because, as you know, you're really meant to
21 adjourn from day-to-day if you possibly can and the only
22 other alternative would be to desert **pro loco et**
23 **tempore**, which would not be something you would
24 regularly want to do unless there was a good reason.

25 Q. I think also Sheriff Murphy in his statement -- give me

1 just one moment -- to the Mackay Robertson Inquiry gave
2 some indication, in fact, if we call that up it's CO2036
3 please. And page 2 of this statement and down towards
4 the bottom of the page, just the last, the third last
5 paragraph, we can see:

6 "They [which is the SCRO officers] also told me that
7 they would go away and examine the defence productions
8 more closely and report back with anything further of
9 relevance. I can't recall exactly but arrangements were
10 made for them to have access to the defence
11 productions."

12 Now, I take it you agree with me that there appears
13 to be some opportunity being given for SCRO officers to
14 look at that. Were you aware at all that there was
15 something like that rather than an absolute ambush --

16 A. No, I wasn't. I mean, inevitably these things happen in
17 a very short space of time and it may well have been
18 that given that the witnesses were coming from abroad
19 the timescale was truncated. But I do remember that as
20 a criticism that was raised at the meeting that -- maybe
21 they had never been challenged so systematically before
22 and so vigorously and, you know, certainly my impression
23 from the meeting was that they didn't regard the
24 American experts as being altogether straight.

25 So maybe when they saw this stuff coming in they

1 maybe thought they could deal with it but I think as
2 they found out they were challenged very vigorously and
3 obviously the performance put on by the defence experts
4 was, I think, impressive, must have impressed the jury
5 to some extent.

6 Q. You were clearly under the impression it was being
7 conveyed to you after the trial of Shirley McKie that
8 that was an ambush that happened?

9 A. That was an ambush of it, yes.

10 Q. Your impression from whoever used that phrase, your
11 impression from the meeting was the defence productions
12 and defence witnesses almost came from nowhere without
13 any chance to marshal an opposition, an explanation of
14 some kind; is that fair?

15 A. I think limited time. I don't remember the details of
16 it but the criticism, it was from one of the senior male
17 officers, he said that they really had very little time
18 to meet the challenges that were made and he argued for
19 more time and better preparation in the future.

20 Q. Now, the question of the American witnesses, I think you
21 indicated a few moments ago something to the effect they
22 felt they weren't being straight, the American experts.

23 Can I take it that was communicated to you as an
24 impression post trial of Shirley McKie?

25 A. Yes.

1 Q. What was it about their evidence or their productions or
2 both that you understood the SCRO maintained wasn't
3 being straight by the American experts?

4 A. Too much about their -- well, I think they did say that
5 their productions were very glossy and it was rather
6 like the British stuff was black and white and the
7 American stuff was technicolour.

8 There were also different methodologies deployed and
9 I could well understand where the jury are presented
10 with different conclusions based on different
11 methodologies that it would be very difficult to choose
12 one beyond reasonable doubt, ie the SCRO one.

13 I think also there were some aspersions cast about
14 their experience. I mean America has something like
15 2,500 police forces and contrary to what we see on the
16 television it's a much more fragmented criminal justice
17 system than you imagine. Obviously, there's the FBI but
18 I think it was also suggested that the American experts
19 were more academics, they'd written books about it
20 rather than got their hands dirty doing thousands of
21 identifications.

22 Q. I am interested in the phrase about not being straight.
23 I think you've indicated their presentational methods
24 were much more glossy and --

25 A. Yes and there was just a suggestion that they were a bit

1 smarmy. I can't remember if "snake oil salesmen" was
2 used but that was the short of impression that I got,
3 they were a bit smooth and slick and the SCRO officers
4 had been kind of caught on the hop and there was a
5 problem with the productions and that was how the jury
6 did not accept their evidence.

7 Q. I take it there was no suggestion being made of absolute
8 dishonesty by the Americans?

9 A. No.

10 Q. It was just a difference in culture, perhaps, that was
11 being pointed to in a somewhat disparaging sense; is
12 that fair --

13 A. That's right. I mean, remember this was a private
14 meeting and I suppose we all felt we were all on the
15 same side at that meeting and I think we were looking
16 for ways forward and trying to understand what had gone
17 wrong and I think me, personally, was trying to make
18 sure we didn't have what seemed to be a highly public
19 reversal like this again in the future.

20 Q. I take it that the question of the actual experience and
21 qualifications of the Americans that had been raised
22 would be something that you would like to be
23 investigated; is that fair?

24 A. Yes.

25 Q. Because if the Americans that had come across actually

1 were not properly experts, then that actually would have
2 been quite an easy response to make publicly, wouldn't
3 it?

4 A. Yes.

5 Q. Was any step taken to establish officially or as much
6 officially as possible what their qualifications were of
7 Mr Wertheim and Mr Grieve?

8 A. I think there were some enquires done in that context --
9 not by mine me personally but I think perhaps by SCRO.

10 Q. Was there any communication back to you as to what the
11 results of these enquiries were?

12 A. I think -- I'm sure I did see something. I think they
13 looked up journals. You know, there are things like
14 registers of expert witnesses. I think they looked at
15 something like that.

16 Q. But there wasn't any, as it were, official approach made
17 by Crown Office really to the American agencies to find
18 out what the position was?

19 A. No, not to my knowledge. I certainly didn't do that.

20 Q. I think you indicated that in the immediate aftermath
21 where obviously you would be trying to think through as
22 best you could what the basis for the jury's decision of
23 a unanimous acquittal actually was.

24 A. Yes.

25 Q. There would be one, I suppose, obvious point which was

1 that they did not accept the SCRO evidence at all that
2 it was Shirley McKie's fingerprint. That's the obvious
3 result, but I think you also mentioned something to the
4 effect there was some problem with the officers
5 regarding the log and the access to the **locus** that
6 didn't come out as really was presented or
7 expected by --

8 A. I can't remember the details but the point Sean Murphy
9 made was that he did not feel he had been able
10 necessarily to satisfy the jury about the integrity of
11 the **locus**. So he felt that perhaps in some way maybe
12 the jury had come to the conclusion of, well, maybe
13 somehow or another Ms McKie got into the premises and
14 left her print and that's a reasonable explanation. I
15 don't know. We don't know how the jury worked, but Sean
16 Murphy said that there were other evidential
17 difficulties, including fingerprints, and the only one I
18 can recollect him mentioning was the integrity of the
19 **locus**, or lack of, at the scene.

20 Q. And no doubt in the aftermath of the acquittal you would
21 be thinking about these other potential murky areas, if
22 I put it that way, things the jury might have been
23 concerned about in the overall presentation of the case;
24 is that right?

25 A. No, I was concerned about -- in my position I was

1 concerned about the future of fingerprint evidence,
2 that, you know, there had been a trial, Ms McKie had
3 been acquitted and, you know, that was it as far as I
4 was concerned and I was interested in moving on and
5 trying to be sure that we still had the weapon of
6 fingerprint evidence in our armoury to bring cases to
7 justice.

8 Q. There were a few items in your written statement to the
9 Inquiry I would like to ask you about. We have covered
10 a number of the areas that I was going to ask about.
11 Perhaps we can maybe have these up on the screens and
12 the statement is FI 0048. I am looking for numbered
13 paragraph 6, please.

14 A. Yes.

15 Q. I will just find the passage if you give me one moment.
16 Can I ask you to go to the next page, please, and just
17 flick through this.

18 Now, the first passage I would like to ask you
19 about, just reading from the top of the page, and I
20 think I don't need to go back to it but you can perhaps
21 confirm this is under the heading of "The facts of the
22 case against Ms McKie". That's the heading you get to.
23 Can you just confirm that?

24 A. Yes, that's right.

25 Q. We get to the top of page 5 and just go from there:

1 "The suggestion was if DC McKie had admitted to
2 having left the mark Y7 she would have been reduced back
3 to uniform ranks and would have been caught between a
4 rock and a hard place, the prospect of her career going
5 backwards and the prospect of disappointing her father,
6 who had been a distinguished police officer himself."

7 Can I ask as far as that part of between a rock and
8 a hard place and disappointing various people, where was
9 it that that matter of fact was gleaned from? Where did
10 you obtain that information?

11 A. I think that was gleaned through police sources and I
12 think it was perhaps their way of trying to articulate
13 this imponderable, that they felt that Ms McKie's mark
14 had been identified within the **locus**, she vehemently
15 denied that and there seemed to be no particular reason
16 for doing that other than I think there was some
17 suggestion that maybe she'd done something like that
18 before.

19 My recollection was that she was an Acting Detective
20 Constable at the time -- I may be wrong in that -- but
21 she certainly had been fairly new in the ranks and I
22 think, you know, subsequently as matters went on -- I
23 mean, I was around for a while but I don't remember
24 coming across Mr McKie myself in my work as a Fiscal. I
25 was in Glasgow in the '70s, but I recognised him from

1 the way he presented himself as being a thoroughly
2 competent officer and, you know, I also got the
3 impression that there were some other officers of that
4 vintage that perhaps didn't get along with him.

5 Also I think in my experience it's very difficult to
6 follow in your father's line of work.

7 Q. Can I ask --

8 A. I think people -- in my experience, people judge the
9 children who go into the same line of work very harshly.
10 My grandfather and father were police officers and my
11 grandfather was in Lanarkshire Constabulary and he said
12 to my father, "Well, if you want to be a policeman, then
13 for goodness sake go to another force at the other side
14 of the country" and that's what he did.

15 But I think, notwithstanding that, there were always
16 people who said to my father, you know, "We remember
17 your Dad" and it also happened to me although I didn't
18 ever want to become a police officer, people remember my
19 father and would often say to me, you know, "You're not
20 a patch on your father". It was a joke but, you know,
21 you always feel that. So I rather got -- that was the
22 sort of impression I had.

23 I was trying to rationalise in my mind various ways
24 how we had come to this impasse.

25 Q. So I take it that it was really just your impression --

1 A. Yes --

2 Q. -- rather than actually any information that had been
3 provided to you; is that right?

4 I am sorry, if I can go back a little, there is a
5 passage that has been drawn to my attention I would like
6 to ask you about on the previous page. You see down
7 towards the bottom, the fifth last line. The line
8 begins "at that time" and then it goes on:

9 "It has been suggested at the Asbury trial that she
10 had required to visit the toilet when working in the
11 Irvine Road area at a time when the murder locus was
12 being guarded and forensically examined and had left a
13 fingerprint on a door surround Y7 at bathroom door in
14 Miss Ross' house."

15 Again, whether that was said in the Asbury trial or
16 not, did you have any access to the Asbury
17 trial papers --

18 A. No, I had no access to the Asbury trial, but I do
19 recollect that as being advanced for a reason around
20 this time that -- well, what I did know was that Shirley
21 McKie had been called by the defence at David Asbury's
22 trial. At no stage did I ever or have I ever seen a
23 transcript for that trial, but I was aware of the
24 position of the mark in the house and once again it was
25 perhaps a reasonable explanation for how it might have

1 got there if it were indeed her print.

2 MR SMITH: Sir, I see the time. I am happy to carry on.

3 THE CHAIRMAN: I am anxious about bringing the Sheriff back

4 again. I don't know how you are fixed tomorrow.

5 A. I have a court commitment which I can easily change.

6 THE CHAIRMAN: Perhaps if I could get some indication.

7 Could I ask now how many Core Participants will want to

8 question this witness or to get leave to? What about

9 you, Mr Holmes.

10 MR HOLMES: I intend to make an application.

11 THE CHAIRMAN: You will have an application?

12 MR HOLMES: Yes.

13 MR MACPHERSON: I don't anticipate making one.

14 MISS GRAHAME: I don't anticipate to make an application at

15 this stage.

16 THE CHAIRMAN: Can you give an indication of how long, if

17 you were granted leave, you might be?

18 MR HOLMES: As things presently stand I estimate no more

19 than about 15 minutes, sir.

20 THE CHAIRMAN: And how much longer do you think you have,

21 Mr Smith?

22 MR SMITH: I would think it would be at least 15/20 minutes.

23 THE CHAIRMAN: I think we have had a fairly long day. Would

24 it be convenient or not too inconvenient --

25 A. Yes, I can easily make arrangements, you know, some time

1 in the next half-hour or whatever about tomorrow and
2 then I can be here for as long as you wish tomorrow.

3 THE CHAIRMAN: I reckon if we start at 10.00 and we continue
4 immediately and they are not going to be allowed to keep
5 you more than three-quarters of an hour; so by 11.00 you
6 will be free. Thank you very much.

7 So 10.00 tomorrow.

8 **(4.10 pm)**

9 **(Adjourned until 10.00 am the following morning)**

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