

Friday 3rd, July 2009
HENRY WOODS BELL (continued)

1 (1.50 pm)

2 MISS CARMICHAEL: Thank you, sir.

3 Now Mr Bell, I do have a few more questions for you.

4 We were looking at correspondence about the use of SCRO
5 experts as expert witnesses in court by the Crown?

6 A. Yes.

7 Q. I think you started to tell us you had, in fact, gone
8 back to the Crown after the officers had completed their
9 return to work programme?

10 A. Yes.

11 Q. And I would like you to look at a document CO4086,
12 please.

13 What we see there is a letter from you dated
14 12th February 2004 to Mr Gilchrist?

15 A. Yes.

16 Q. You refer to a meeting on 16th July 2002 which in the
17 second paragraph we see followed on a letter of response
18 to Mr McKie?

19 A. That's correct, yes.

20 Q. Looking at the second last paragraph there you write:

21 "You are clearly aware, of the situation now
22 relevant to Asbury and the ongoing civil case concerning
23 McKie. It is however now appropriate that I advise you,
24 that since our meeting, the four officers in question
25 have been involved in a detailed return to work strategy

1 over a protracted period. The Head of the Scottish
2 Fingerprint Service, Mr Ewan Innes, has reported that
3 the officers have successfully completed the return to
4 work strategy and it is now considered that they are all
5 capable of performing their full duties and as such
6 should now be included on the Crown Office List of
7 expert witnesses."

8 A. That's correct.

9 Q. You go on to write:

10 "I should also advise that it is apparent that the
11 officers and their staff association have a high degree
12 of expectation with regard to their inclusion on the
13 expert list and while I would ask for a formal
14 documented response from the Crown in regard to this
15 matter, I would in addition and at your convenience
16 welcome a meeting with you to further discuss matters."

17 A. Yes.

18 Q. I think it has been touched on already we have heard
19 there is no thing as a Crown Office List but your
20 concern was whether the Crown would use the officers in
21 the future?

22 A. That's correct.

23 Q. What did you mean about the officers having a high
24 degree of expectation?

25 A. It's just the officers and their union, UNISON I think

1 it was, fully expected that having completed the return
2 to work strategy that would then place them in a
3 position to be returned to full duties.

4 Q. What was your expectation, if any?

5 A. My expectation was that that was a decision the Crown
6 would make and that they hadn't made it and they would
7 possibly not make it until after the civil litigation.

8 Q. Could you look next please at CO4087. That is a
9 letter back to you from Mr Gilchrist dated
10 23rd February 2004.

11 A. That's correct.

12 Q. In summary Mr Gilchrist is concerned that there's still
13 an unresolved civil action and a report awaited on that
14 and he suggests a meeting?

15 A. Yes.

16 Q. Do you have any recollection of a meeting following from
17 that?

18 A. I don't recall the detail of the meeting. Potentially
19 there obviously was one but I don't recall one now.

20 Q. I may be able to assist you a little with a letter
21 CO4091. That we see is a letter 12th March 2004, again
22 to you from Mr Gilchrist.

23 A. Yes.

24 Q. That refers to a recent meeting between you.

25 A. Obviously a meeting's taken place, yes.

1 Q. What's recorded in the second paragraph there is:

2 "As you know, the Crown has some concerns about
3 these experts being questioned about the McKie and
4 Asbury cases, should they be required to give evidence
5 in any subsequent criminal proceedings. The fact that
6 civil proceedings are still pending is a further
7 complicating factor."

8 Insofar as you can recollect, does that reflect the
9 discussions you were having with the Crown at the time?

10 A. Yes.

11 Q. The letter goes on:

12 "I am not in a position at this stage to say whether
13 the Crown would wish to use any of the four experts to
14 give evidence in criminal proceedings. I would hope to
15 be in a position to do so fairly soon, however, as a
16 result of developments in the McKie civil action, in
17 particular, as you know, the Justice Department has
18 commissioned an independent expert to examine the
19 fingerprint evidence in the McKie case. We would wish
20 to have sight of his report before making any decision
21 in relation to this matter."

22 A. That's correct.

23 Q. Again, does that reflect the discussions that you were
24 having with the Crown at the time?

25 A. It does.

1 Q. Do you have any recollection of further involvement in
2 this line of discussion before you retired?

3 A. Not at this moment in time, no.

4 Q. So as far as you were concerned, that was where it was
5 left, decision was deferred until the independent expert
6 report --

7 A. Yes and that didn't happen until, I think, after I
8 retired.

9 Q. I have a few other questions on different topics,
10 Mr Bell, some of which have been raised with me by
11 others over the lunch hour.

12 The first of these is do you recall being asked by
13 others to release original material in connection with
14 the McKie case so that other people could look at it?

15 A. I recall that shortly after the meeting on 20th May with
16 the Crown and the advocate that I held a meeting with
17 the Fingerprint Bureau staff and that one member of
18 staff asked for access to the material, the McKie
19 material.

20 Q. Were you willing to release that?

21 A. No. I saw no benefit in it. If another expert from
22 SCRO says it was Shirley McKie, then what value would
23 that add to it? It was a matter that was under debate,
24 public debate, and it was a matter to ensure that no
25 other expert was, if I can use the words, contaminated

1 with the sequence of events that were ongoing
2 surrounding this identification. So it was safer not to
3 involve any other witness -- any other fingerprint
4 expert in this.

5 Q. When you say contaminated, what do you mean?

6 A. I don't mean -- just the fact that they were being named
7 publicly and to go to court, there would be a challenge
8 at court potentially and for another fingerprint expert
9 to become involved in that and then go to court, it was
10 simpler if they could turn round and say, "I wasn't
11 involved in the McKie case. I had no information on
12 it", and move on.

13 Q. Do you recall being asked if you would allow the scene
14 of crime print to be examined by an outside expert at a
15 meeting of the eight-force fingerprint standard working
16 group on 23rd December 1999?

17 A. I don't recall that particularly but I don't doubt that
18 that actually happened, yes.

19 Q. Can we take it that your negative response would have
20 followed for the same reasons that you have just told us
21 about?

22 A. Yes.

23 Q. I would like to ask you whether, when you were dealing
24 with Mr Dunbar and Mr Mackenzie at any stage, they
25 mentioned to you an Appeal Court case from England

1 called **MacNamee** in which they had given evidence?

2 A. I think I recall some reference to that case. I don't
3 have any particular detail on it but I think -- I don't
4 know whether Robert Mackenzie was involved in it or ...

5 Q. I think I can tell you that it is a matter of public
6 record that both Mr Dunbar and Mr Mackenzie have given
7 evidence. They were amongst, I think, 14 fingerprint
8 experts whom the Court of Appeal in England heard about
9 that disputed finger-marks and the decision of the Court
10 came out in December 1998 which I think would be just
11 after you had taken up your position at SCRO.

12 A. Fine.

13 Q. In the context of the McKie case, either before or after
14 Ms McKie's trial, did either of them ever mention that
15 case to you?

16 A. It would be difficult for me to pin that down. I do
17 recall there was reference to the case. I think there
18 may well have been reference to the fact that Peter
19 Swann might have been involved in that too, but I'm
20 struggling to turn round and make any real comment on
21 it.

22 Q. A final question arising from something that we were
23 discussing earlier: you had said that you recollected
24 the gentleman referred to in Mr Shepherd's statement and
25 that you might be able to remember the name if it was

1 put to you.

2 A. Yes.

3 Q. If I put the name Mr Luckcraft to you --

4 A. Yes, that's the gentleman.

5 Q. That's the gentleman?

6 A. Yes.

7 MISS CARMICHAEL: Thank you. I don't have any further

8 questions for you just now, Mr Bell.

9 THE CHAIRMAN: I think I begin, Mr Smith, what are the

10 subjects you would ask for leave to cross-examine about?

11 MR SMITH: Thank you, sir. The areas I would ask for leave

12 to cross-examine on are: first of all, the response by

13 Mr Bell and SCRO at various stages to developments we've

14 heard about. I will try not to cover anything that has

15 been covered already. The second is the culture within

16 SCRO which may be linked with the first to some extent

17 and the final is a very particular question relating to

18 the charting machines and I think that can be dealt with

19 in a fairly short compass.

20 THE CHAIRMAN: Yes. On the culture point --

21 MR SMITH: I intend to refer to matters in a bit more

22 detail; for example, the question of Mr Luckcraft and

23 the idea of some peer pressure being exerted on

24 individuals and whether or not that was taking place.

25 THE CHAIRMAN: Yes. I give you leave then.

1 MR SMITH: Thank you, sir.

2 **Cross-examined by MR SMITH**

3 Q. Mr Bell, can I just be clear about this much: you have
4 on a number of occasions made reference to Mr McKie, if
5 you like, getting the media machine going, making a
6 number of public statements on a relentless basis
7 following the acquittal of his daughter.

8 Would I be right in saying you feel somewhat
9 aggrieved that he was doing that?

10 A. No, you would have to look at specific areas of that
11 that made me aggrieved. I could understand he was a
12 gentleman that was defending and looking after his
13 daughter's interest and I fully accepted in some areas
14 on which he was stating he was making personal attacks
15 on me as an individual in relation to another case. He
16 made reference to me being retained in a civilian
17 capacity within SCRO and I found that annoying, yes.

18 Q. But can we agree that as far as maintaining the issue of
19 the mis-identification, as he saw of it, Y7 that's
20 something that he was well entitled to do and to press
21 publicly, if necessary, for an explanation about it?

22 A. I don't dispute that. I would turn round and say there
23 were areas of his approach, his language, which would be
24 questionable.

25 Q. The idea of keeping this in the public mind and asking

1 for explanations about systems within SCRO, about who
2 was still giving evidence, about what investigations
3 were carried out, I take it you would agree that was a
4 perfectly proper way for him to behave?

5 A. You put it in a manner that it comes across in a
6 rational way. Mr McKie was not putting them over in the
7 same manner. I fully accept what you say. Mr McKie was
8 quite vocal, quite aggressive. The media were following
9 him and hanging on every word that he was saying, yes.

10 Q. Following the acquittal of Shirley McKie, I think we
11 have seen from various documents we have looked at you
12 had to consider how your organisation you were
13 responsible for ought to be able to respond to the
14 public concern. Is that right?

15 A. Yes.

16 Q. I take it you would agree that in her trial, one of the
17 things that the jury may have indeed concluded was they
18 did not accept the evidence of SCRO. That's right,
19 isn't it?

20 A. I accepted that the fingerprint evidence was an integral
21 part of the case but the issue being put forward was the
22 jury had found her not guilty on that basis and there
23 were other areas and no-one knows what the jury
24 concludes.

25 Q. Of course but we can certainly agree about this that

1 this was the first case in living memory where there was
2 a positive challenge to evidence by SCRO of that nature.

3 That's right, isn't it?

4 A. I would imagine that would be the case, yes.

5 Q. And you would realise of course that whilst juries may
6 make their minds up for all kinds of reasons, a
7 possibility was that they just simply didn't -- not
8 necessarily accepted the evidence of the American
9 witnesses but they just rejected the evidence of SCRO.

10 That's right, isn't it?

11 A. No. I wasn't at the case and I was taking the guidance
12 from Mr Murphy, who was the prosecuting advocate, and he
13 made reference to the fact that the jury could have come
14 to a conclusion potentially earlier than the fingerprint
15 presentation.

16 Q. My question was you must have realised it was at least
17 possible that the jury had rejected the evidence of
18 SCRO. Did you think that was an impossibility?

19 A. No, I have never suggested that at all. I accepted
20 fully that the fingerprint evidence was integral to the
21 case and the evidence.

22 Q. What do you say Sheriff Murphy's position was about his
23 perception of the quality of presentation by SCRO? What
24 did you understand it to be?

25 A. Well, I believe he was satisfied with the

1 identification. I believe he challenged or he was
2 concerned about the presentation of that and the manner
3 in which the SCRO experts had presented their evidence
4 -- which was probably the standard presentation in
5 Scotland -- as opposed to a presentation from American
6 experts which I don't want to use the word more
7 articulate or more flamboyant, more in touch with
8 relationships with the jury and I believe they were out
9 of the box and walking up and down and interacting with
10 the jury and that's not what we're familiar with that.

11 Q. Can I ask you when you first became aware that there was
12 either going to be a challenge to the evidence of SCRO
13 people or there had been a challenge to the SCRO people?

14 A. I think it was at the conclusion or just as the trial
15 concluded that there was talk in the office about not
16 being given sufficient time to look at productions
17 produced by the defence and potentially around about
18 that time.

19 Q. So if I get this right, your position was what? The
20 manager, effectively, to put it in lay terms, you were
21 manager and at some stage prior to the trial, just a few
22 days but prior to the trial of Shirley McKie officers
23 within SCRO knew there was going to be a challenge by
24 witnesses from overseas, but can we take it they never
25 told you about that before the trial?

1 A. I have to say that that's not my understanding. I'm
2 trying to get my recollection correct here and it's my
3 understanding there may have been some talk about an
4 approach to get the officers to examine evidence in the
5 court and that they had declined that. That was all.

6 I'm not sitting here being able to say to you I was
7 aware or SCRO were aware that there was going to be a
8 challenge to the fingerprint evidence to that extent. I
9 had no real knowledge of the case until after it
10 concluded and the media attention focused on it. That's
11 when I really became involved.

12 If you recall, I did say that SCRO serviced other
13 areas in the police and justice system so there was
14 other areas of responsibility that I had to manage too.
15 I wasn't manager of the SCRO Fingerprint Bureau; I was
16 Head, the Director of the Scottish Criminal Record
17 Office.

18 Q. Some evidence was led from Sheriff Murphy to the effect
19 that prior to the trial commencing he sat down with two
20 individuals from SCRO to go over the defence exhibits,
21 the defence productions, and they then took these
22 productions away, copies of them, to their office to
23 look at them. Were you unaware of that?

24 A. Yes. I have no recollection of that, no.

25 Q. I take it you would agree with me that if that is the

1 position, if Sheriff Murphy correct in his recollection
2 about that, then the ability of individuals within SCRO
3 to go back to their offices, to look at the productions,
4 is something that would appear to be entirely proper and
5 you would be comfortable with that, wouldn't you?

6 A. Yes, but as I understand it -- and I wasn't present --
7 Mr Findlay put some production to one of the fingerprint
8 experts in the box and asked him to give an opinion on
9 it and the response, as I recall, was they couldn't do
10 that without the proper situation and environment.

11 Q. I understand what you're saying. That may have been
12 Ms McBride; is that right?

13 A. That may well be. I recall that someone told me that,
14 yes.

15 Q. If the scenario put to you, if Sheriff Murphy is correct
16 that he sat down some time before the trial, the
17 productions were taken away to be reviewed within the
18 SCRO offices and no doubt the opportunity of them
19 saying, "I'm sorry, I can't do this overnight, I'm not
20 prepared to do it", to speak to the Advocate Depute and
21 say, "We need an adjournment", is there anything
22 fundamentally wrong with that approach?

23 A. I just don't recall being aware of that but if that's
24 what the Sheriff Murphy says that's what happened that's
25 what happened but I don't personally recall being made

1 aware of that or having an understanding of that.

2 Q. I take it you would expect officers, SCRO officers, to
3 be confident enough to say to the Advocate Depute,
4 'We're not ready for this. This has been sprung on and
5 you need to ask for an adjournment", or, "We need to
6 discuss how to deal with this". They would have that
7 confidence, wouldn't they?

8 A. I would expect them to have that confidence, yes.

9 Q. So immediately following the acquittal of Shirley McKie,
10 there was clearly a potential problem that was there for
11 the public image of SCRO. That's right, isn't it?

12 A. Yes.

13 Q. And you were having to manage that?

14 A. Yes.

15 Q. It was very much in the forefront of the media?

16 A. Yes.

17 Q. It was on Newsnight Scotland almost every night for a
18 while, wasn't it?

19 A. It was, yes.

20 Q. And you must have considered at the earlier stage that a
21 way of stopping the bad mouthing, if you want to look at
22 it that way, of SCRO was to get an outside agency to
23 confirm that Y7 was correctly identified as the mark of
24 Shirley McKie. That must have crossed you mind, didn't
25 it?

1 A. No, my conclusions were that we had the view of the
2 prosecuting Advocate in the case, that he was satisfied
3 with the evidence of the SCRO experts, that there was
4 potentially two outside experts agreed with that, that
5 there was circumstances surrounding the **locus** or **loci**
6 that wasn't correct for access and control and there may
7 have been other circumstances that I just can't recall
8 at this particular moment.

9 It was a matter of turning round and saying it moved
10 very quickly from or to an SCRO executive decision to
11 involve the HMCIC and then the events rolled out as they
12 did.

13 Q. But if I can come back to the immediate aftermath, you
14 say that the Advocate Depute indicated that he was
15 satisfied with the evidence but I think you acknowledged
16 that was an indication by him that the presentation of
17 evidence was not up to scratch; that's right, isn't it?

18 A. You're using words like "not up to scratch". It was the
19 standard presentation at that time and clearly he would
20 have liked to have seen it improved and we looked at the
21 circumstances and problems surrounding the PC charting
22 which didn't exactly point to the areas questioned, as I
23 understand it, then clearly these were the aspects we'd
24 have to look at, yes.

25 Q. Can I ask you to look at a document CO2036 at page 2,

1 please. I am sorry, it may not be that document. I am
2 looking for the precognition, the statement to the
3 Inquiry of Sheriff Murphy. Give me just one moment.
4 FI0070, please. I will get the page number. It is
5 dealing with the question of presentation.

6 Perhaps while we are finding the relevant passage,
7 what I am going to suggest to you is that the Advocate
8 Depute indicated that he was less than satisfied not
9 just with the fact that a PC charting machine was used,
10 an enlargement machine was used, but actually the way
11 the evidence was presented by the witnesses in court.

12 Do you recall anything being said about that?

13 A. I can only recall what's in the memo about the meeting
14 and a copy of that memo was circulated to everyone
15 present, including Sheriff Murphy, and I don't recall
16 anything being put back to clarify or emphasise or
17 highlighted particular aspects of any of the issues
18 discussed.

19 Q. Can I ask if we go to paragraph 24. It may be on
20 page 14 of the PDF, paragraph 24, going on to the next
21 page.

22 I am not sure if you have seen the statement of
23 Sheriff Murphy before, have you?

24 A. No.

25 Q. I will just read out what he says in paragraph 24. He

1 says this:

2 "The only other significant difficulty with the SCRO
3 evidence, aside from the clarity of the enlarged images,
4 was that the SCRO witnesses, in contrast to the defence
5 experts, were not able to articulate their justification
6 for the opinion they had on particular aspects of the
7 mark. For example, I remember one of the points being
8 argued between the experts was whether or not one
9 particular characteristic [I think that should be
10 particular characteristic] within Y7 showed a
11 bifurcation or a compression of two ridges together by
12 the application of a pressure to the thumb. I remember
13 certainly Fiona McBride and either Hugh Macpherson or
14 Charles Stewart responding to that challenged by saying
15 simply, 'To my mind that's a bifurcation' whereas the
16 defence experts were much more articulate in explaining
17 their position. I suspect that this difference in
18 articulation arose from the American experts being more
19 experienced in having fingerprints challenged but the
20 effect of this apparent difference between the two sets
21 of experts was that SCRO looked to be more provincial in
22 approach simply saying it is because it is as opposed to
23 outlining why they thought what they did. Those two
24 difficulties, being the quality of the produced images
25 and the articulacy of the experts in evidence, are the

1 ones that stick in my mind as being significant during
2 the trial."

3 I take it that you will agree with me that it's not
4 exactly a glowing report by the Advocate Depute, his
5 thoughts prepared in the statement for this Inquiry, is
6 it?

7 A. It's a statement that is much more detailed than he made
8 when we had the meeting. Again, I come back to the
9 minutes of that meeting and if you want to look at them,
10 you'll see what comment was made. I think it may even
11 be contained within one paragraph, in one line four
12 areas we'd look at, ie the PC charting and the
13 presentations in court and we didn't address that. But
14 that's not the detail that he referred to and discussed
15 at the actual meeting, as I recall it.

16 Q. But I take it you agree with me though that that
17 particular statement I've just read out in that
18 paragraph gives a relatively critical comment about the
19 way the entire way that the evidence was presented,
20 doesn't it?

21 A. Yes, but I did allude to the fact that the American
22 experts were potentially more articulate in presenting
23 their evidence and more used to interacting with a jury,
24 whereas the Scottish system lends itself to you stay
25 where you are and you present evidence. But I'm not

1 taking away the fact that that's what Sheriff Murphy
2 says, yes.

3 Q. So after the trial I think you indicated that because
4 he, the Advocate Depute, declared himself satisfied as
5 you understood it that was one of the factors that led
6 you to adopt the approach that you didn't feel you had
7 to go to an outside agency to have Y7 checked. Is that
8 right?

9 A. It was one of the factors, along with the factor that
10 Sheriff Crowe, who was also present, agreed with that
11 and, at the end of the day, if I presume Sheriff Murphy
12 monitored the subsequent developments and he could have
13 at any time made contact with me to turn round and voice
14 a stronger view on that.

15 Q. The fact is that what the media was doing, they were
16 making very clear suggestion that there had been a
17 mis-identification of Y7. That's right, isn't it?

18 A. Mr McKie was making a strong statement via the media to
19 that effect, yes.

20 Q. You would take it, of course, that members of the public
21 would be seeing that and wondering how on earth SCRO
22 could have made what they were led to believe was a
23 mistake?

24 A. Yes.

25 Q. And what I am suggesting to you, Mr Bell, is that an

1 obvious solution to that is in a very controlled, a very
2 official and a very public way the response would be,
3 "Let's just get rid of this issue once and for all.
4 Let's go to someone entirely independent who we're all
5 confident is experienced enough to give a view as to
6 whether or not SCRO were right or were wrong". Is that
7 not an obvious thing to have done?

8 A. If I had gone to an independent and he had come back and
9 said it was Shirley McKie's fingerprint, I can sit with
10 confidence and say I don't think Mr McKie would have
11 accepted that. Again, to turn round and say we had a
12 jury that concluded things. We had circumstances. All
13 of these must be considered.

14 I understand what you're saying in hindsight, if you
15 turn round and say, oh, just go to an expert and he'll
16 tell you whether that's right. That simply didn't
17 happen.

18 Q. Mr Bell, there's another possibility that, isn't there,
19 you go to an outside expert who says it's wrong. Then
20 what would you have done?

21 A. Well, that situation didn't occur because we were
22 turning round and saying, in my mind, this would go to
23 an inquiry and that was the best place for it.
24 No-one -- for Mr McKie or a defence to engage other
25 experts to say this fingerprint is wrong and for SCRO to

1 then go onto the bandwagon and say this fingerprint is
2 right, here's individuals beyond Peter Swann and your
3 Malcolm Graham who will corroborate this, that wasn't
4 going to help resolve the situation.

5 It was a matter to turn round and say the next
6 logical step is the decision taken by the SCRO Executive
7 to engage with the HMCIC.

8 Q. How quickly after the acquittal of Shirley McKie did you
9 get on the phone and say, "We need to have an inquiry
10 into this by HMCIC"? How quickly did you respond to
11 that?

12 A. You're suggesting that I did. I didn't. The matter was
13 developing in stages. It's not developing in at the
14 fast rate of speed you might want to put over. It's
15 developing in controlled stages and the next stage was
16 there was going to be a meeting with SCRO Executive
17 Committee at Stirling, the Chief Constables, there would
18 be an agenda, there would be a presentation on the case
19 and there would be a decision made and they did make a
20 decision.

21 Q. Can you remind me how long after the acquittal of
22 Shirley McKie that took place?

23 A. 7th February sticks in my mind for some reason but what
24 year? You would have to remind me of it. It's
25 mentioned there in the sequence of events.

1 Q. In the meantime of course the media view or Mr McKie's
2 view portrayed through the media there had been a
3 mistake was gathering speed, wasn't it?

4 A. Yes.

5 Q. In fact, it was becoming even more intense as time went
6 on.

7 A. Yes.

8 Q. But you still felt you should let things take their
9 course and come down to an inquiry by the Chief
10 Constables or HMCIC or something of that kind; is that
11 correct?

12 A. Yes. I had taken some legal advice on the basis of how
13 I should respond publicly to the challenges that were
14 made and the advice was that don't get into debate,
15 there may well be an appeal with Asbury, there may well
16 be civil litigation, there's the position of the jury
17 findings and all of that was a consideration that I put
18 in the report.

19 Q. So things, of course, did move on and I will come back
20 to the HMCIC report in due course but at some stage, of
21 course, you became aware it was being represented that
22 there was a mis-identification with regard to another
23 print, Q12.

24 A. Yes, that was well down the line, yes.

25 Q. But at the stage that that happened, you must have

1 realised then it was a real issue over the public
2 confidence in SCRO?

3 A. Yes.

4 Q. And, again, at that stage I take it you would be most
5 anxious that you managed that in some way, it was being
6 managed, so that there should be some kind of check
7 carried out with regards to that print?

8 A. I would turn round and suggest to you that by that time
9 HMCIC was active, potentially Mackay was involved with
10 it. I just don't know the exact date you are referring
11 to as to when that actually developed.

12 Q. I am not sure --

13 A. It certainly was after the findings on the direction of
14 the Chief Constables' meeting in Stirling, as far as I
15 recall.

16 Q. Can I be clear about this too: following the acquittal
17 of Shirley McKie, you were communicating with other
18 bureaux throughout the UK and I think you said abroad as
19 well. Is that right?

20 A. Yes, bureaux wrote to me invariably asking for some
21 clarification of what had actually happened.

22 Q. Because they were concerned that the entire evidential
23 value of fingerprints could be undermined by what
24 was taking place in Scotland.

25 A. Yes.

1 Q. We have seen a letter or two, I think, if I come on to
2 them in a moment, of response. I think we looked
3 earlier at a document not on the database, it's a letter
4 of 28th October 1999 to -- it's that date but it's to JS
5 Evans the Chief Constable of the Devon & Cornwall
6 Constabulary, if we can have that, please. I would like
7 to just ask you one thing, a point of detail.

8 If we can scroll down the page please to the last
9 full paragraph on that page do you see in the third line
10 towards the end of the line the word "The" and you see:

11 "The Scottish Criminal Record Office is bound by the
12 rule that witnesses for the Crown are not permitted
13 outwith proceedings to discuss evidence in support of
14 their views."

15 Do you see that?

16 A. Yes.

17 Q. That is something, I take it, that subsists for any
18 persons employed, certainly while still engaged with
19 SCRO or its successor; is that right?

20 A. Yes.

21 Q. We heard some evidence from Mr Geddes, whom I am sure
22 the name is known to you, that he had a meeting, as did
23 Fiona McBride, with Mr Les Brown?

24 A. Yes.

25 Q. The purpose for the meeting was to put his side of the

1 story over.

2 Would you like to confirm to us that the rule that
3 you are referring to at the bottom of that page is
4 something that would on the face of it be a breach of if
5 Mr Geddes and Ms McBride did so?

6 A. I take it that meeting happened after I left SCRO. I
7 actively discouraged any of the staff discussing the
8 matter outwith the office on the basis of conjecture and
9 people putting their own interpretation on what was
10 being said. We refer to a rule -- I'd need to look to
11 see how the rule would be, if it was within the
12 discipline code of the organisation or not to work with.
13 But bear in mind they were actively consulting with a
14 UNISON representative on the detail and that
15 representative was present at a lot of meetings that I'd
16 had.

17 Q. I would like you to look at a couple of other documents,
18 please, and some reference in passing to the content.
19 These are documents that were passed to the Inquiry team
20 today.

21 Can I ask you to look please at a document that
22 bears to be from Grampian Police subject report
23 23rd November 1999.

24 MISS CARMICHAEL: Sir, I think I have the only copy of this.
25 It was passed to me at lunchtime.

1 THE CHAIRMAN: Does it require any redaction?

2 MISS CARMICHAEL: I have to confess that is not a matter to
3 which I have had time to give any consideration. I
4 considered the content briefly and asked questions
5 briefly about it.

6 THE CHAIRMAN: It can be redacted before it goes in the more
7 public form, if it has to be.

8 MR SMITH: I must say, Chairman, I'm not sure there is
9 anything apart from the -- I don't think there is
10 anything that requires redaction on it.

11 THE CHAIRMAN: It's just if there's anybody's personal
12 details or telephone numbers on it.

13 MR SMITH: No, there doesn't appear to be anything other
14 than the name of the author but --

15 THE CHAIRMAN: I don't think there can be any objection to
16 that.

17 MR SMITH: Mr Bell, I am sure you haven't seen this before
18 but what it bears to be and it's a report from a
19 Detective Inspector Andrew Rolph forwarded to the Chief
20 Constable of Grampian Police. I will read it out
21 because it is something you wouldn't have seen before.
22 It refers to the background we are all familiar with and
23 in the second paragraph is recorded:

24 "The case hinged on a fingerprint which had been
25 found within the premises ..."

1 So that is clearly the impression that this
2 individual had:

3 "Immediately following the evidence given by the
4 SCRO fingerprint experts, the defence called an American
5 expert who told the court that this fingerprint and
6 those recorded from Ms McKie were not identical and she
7 was found not guilty. Detective Chief Superintendent
8 wrote to all forces regarding this case where he says
9 the Crown have made it clear that they are satisfied
10 with the SCRO experts and their presentation."

11 Again, I think just pausing there, you identified
12 certainly what appears to be Sheriff Murphy's opinion,
13 at least for the purposes of this Inquiry, that as far
14 as the presentation is concerned it did not appear to be
15 certainly as slick, if I can put it that way, as the
16 Americans?

17 A. I do take it back to the actual meeting of the 20th
18 where that doesn't get expanded on to the detail you're
19 giving now.

20 Q. I understand your position on that but reading on:

21 "Following SCRO fingerprint liaison officers'
22 meetings, I suggested to Chief Inspector Griffiths of
23 SCRO that these fingerprints should be made available to
24 all Fingerprint Officers in Scotland. However, Chief
25 Inspector Griffiths told me this was not possible as

1 SCRO were concerned regarding possible litigation as the
2 case had produced a not guilty result."

3 Can I ask you, did you ever have the view that that
4 was the reason why fingerprints were being restricted?

5 A. I've never seen this before.

6 Q. Yes.

7 A. I had no knowledge of it prior to appearing here today.
8 I would not have condoned putting out the fingerprint of
9 Shirley McKie or the mark that was in question for
10 others to look at for the very reason I didn't do it
11 within SCRO Bureau on the basis that other officers
12 could then, if they agreed or disagreed but mostly if
13 they agreed with the SCRO, their standing would be
14 challenged then. So I would not have encouraged that.

15 Q. So just to understand it's better they don't look so
16 that they are neither in a position where they say, "I
17 don't think it's a match", or they say, "I think it's a
18 match", and then of course the cross-examiner will be
19 able to make some capital out of that either way, I
20 suppose. Is that right?

21 A. Yes.

22 Q. Reading on what the author of this note says:

23 "The fingerprints then became widely available
24 throughout fingerprint bureaux in England and the
25 general opinion was that the marks were not identical."

1 Were you aware of that?

2 A. I was aware that fingerprint marks were being circulated
3 from the Internet in particular, throughout UK.

4 Q. I think the next sentence makes clear, as far as we can
5 understand it, what's been distributed is different to
6 the Internet because it goes on to say:

7 "The case has also now appeared on the Internet
8 which provides a summary of the case and copies of the
9 fingerprints. There is also a bulletin board for
10 experts to add their thoughts on the case. A number of
11 experts from around the world have put on their results
12 and feelings and all are of the opinion that this
13 fingerprint is not identical."

14 Then it says:

15 "Our experts at Grampian have also examined the
16 fingerprints in this case and are also of the opinion
17 that they are not identical."

18 Were you aware of that, that the Grampian experts
19 had come to a conclusion there was no identical analysis
20 between Y7 and Shirley McKie's print.

21 A. I was aware that some people in other bureaux had a view
22 that this was not an identification, yes. Again, I'm
23 turning round and saying it would be my opinion that
24 they were viewing that from the Internet images which
25 I'd been told and understand not to be best evidence.

1 Q. You were told that by SCRO; is that correct?

2 A. Well, as a police officer you need best evidence and
3 that's the original documentation so I didn't need that
4 to be told to me by SCRO but, yes, SCRO did confirm to
5 me that the images on the Internet, one of them had a
6 brush stroke on it that could not be referred to the
7 original photographs that the Scottish Identification
8 Bureau had taken and that was suggested was only put on
9 after Mr Wertheim had looked at it.

10 So, you know, if this caused some damage it would be
11 difficult for people to form a view from that type of
12 print.

13 Q. So the position of people within SCRO was that only they
14 had the information that enabled them to come to a
15 conclusion. No-one else subsequently would be able to
16 use it. Is that your position?

17 A. No. I confined it to SCRO for good reason: to ensure
18 that the justice system could operate efficiently and
19 effectively and the defence lawyers could not get their
20 opportunity to try and make capital out of an ongoing
21 issue. I was satisfied -- I don't know what date is on
22 this memo but I was satisfied matters were progressing
23 and I was trying to manage and operate SCRO as best I
24 could during this particular period of time.

25 Q. Let's just go on to the second page. The date

1 incidentally on the first page is 23rd November 1999.

2 On the second page you can see that Detective
3 Inspector Rolph says this:

4 "In my view, there are two possible scenarios. 1.
5 The defence scene of crime fingerprint is fundamentally
6 different from that used by SCRO."

7 So there's an acknowledgement of the point I think
8 you are making. He says this:

9 "If that was the case, I fail to understand why
10 Mr Bell has failed to make the SCRO scene of crime print
11 available to other experts in Scotland. There would be
12 no chance of litigation as Shirley McKie's prints would
13 not be required in any case they can be found on the
14 Internet. I am also surprised that SCRO would not take
15 the chance of replying at the end of the television
16 programme to make it clear that the print was in fact
17 different."

18 Leaving aside the TV programme stuff, you can see
19 that this individual is saying, "Well, let's see the
20 original stuff. Let's see what we're looking at".

21 Do you understand that's what he's suggesting?

22 A. Yes, and I've already said to you that the reason I was
23 not circulating it was, in my opinion, good grounds.

24 Q. The second numbered paragraph is the other option, that
25 SCRO experts have made a wrong identification.

1 He says:

2 "I feel that the only way this issue will be laid to
3 rest is by a full enquiry being held by another
4 force into both the fingerprint identification and
5 procedural and management issues surrounding it. Until
6 this happens, a large question mark will hang over SCRO
7 and, indeed, the Fingerprint Service the Scotland."

8 Do you understand what his concerns were and what he
9 was trying to do to cut to the chase and get this sorted
10 out?

11 A. Yes, but I must admit I've never seen this memo from --
12 I've never seen anything documented. I met with
13 Mr Rolph on a number of occasions. I had a clear
14 understanding that there was a view that not everyone
15 agreed with SCRO fingerprint identification and it was
16 my impression that that was based on Internet
17 examinations. So Mr Rolph is documenting that but I
18 never ever saw this.

19 Q. I'm not really asking about whether you saw it and
20 whether you reacted to it, I'm asking you about whether
21 you agree that his concerns and his suggestions appear
22 to be reasonable in the circumstances, do you?

23 A. I can understand his concerns but matters were being
24 dealt with. That's coming across as if matters were not
25 being progressed, that there was no intention -- I was

1 in debate with the Chief Constables and the Crown on
2 this matter to try and get some pathway ahead that we
3 could resolve it.

4 Q. Was one of the suggestions you were making trying to get
5 a pathway ahead an independent examination of the mark?

6 A. No, that was going to be a decision for the Executive
7 Committee, of which I was part of.

8 Q. You were the manager of SCRO. Was it not important for
9 you to try and see how this could be advanced as quickly
10 as possible?

11 A. It was important to me to turn round and put the
12 circumstances to the Executive Committee in order they
13 could make a controlled judgment. The matter was also
14 referred to the Justice -- Scottish Justice Department
15 lawyers. They were involved in it. By that time I was
16 taking advice from employment specialists, lawyers in
17 Strathclyde, lawyers from the Scottish Executive and
18 this was -- you know, it's not a matter that this
19 suddenly developed and we should turn round and say,
20 right, let's have an inquiry. Who's got the right --
21 I've got no right to turn round and make that under the
22 circumstances I had at the time, ie that there was four
23 identifications, that there was outside identifications
24 which, unfortunately, were not brought to the attention
25 of the court. There was outside defence identifications

1 not brought to the court. There was access to the **locus**
2 which should not have been permitted. The **locus** was not
3 secure. There was these areas of it that I had to
4 consider the bigger picture.

5 Q. Just while we're dealing with the question of defence
6 experts, as you say, you're clearly of the view the only
7 difference between experts is something that really
8 ought to be detailed before the court; is that right?

9 A. Yes.

10 Q. Can you explain this then: if it is the case that within
11 SCRO there were a number, at least five individuals, who
12 were unable to meet the 16-point standard with regard to
13 identification, do you agree with me that that is
14 something that ought to be presented fully and fairly to
15 the court?

16 A. That's an approach that's never, as I understand it,
17 that was never ever made. My understanding of
18 fingerprint identification is that an officer comes to a
19 conclusion, it's an individual at the earlier stage.
20 The requirement was that 16 points had to be put down,
21 apart from serious or crucial cases, apart from
22 elimination purposes. That was my understanding.

23 Q. So the answer to the question is that if within SCRO
24 there were at least five individuals who were unable
25 to meet the court standard at that time --

1 A. There were five --

2 Q. Let me finish please -- then you consider it

3 was perfectly legitimate that that was not disclosed

4 either to the Crown or the defence; is that your

5 position?

6 A. Can I say to you to make it very clear: that was not

7 hidden. You put it to me as if it was an approach that

8 we deliberately concealed that. That was not the

9 approach. It was just not the process. It was not the

10 way, as I understand it, of doing it. It was a matter,

11 the five individuals referred to, from recollection, all

12 agreed that the fingerprint was right.

13 Q. Can you tell me where it was disclosed please?

14 A. Sorry.

15 Q. Where was it disclosed? You say it wasn't hidden.

16 Where was it disclosed?

17 A. I'm not following, I'm sorry, I've lost the ...

18 Q. The five individuals, five plus individuals, who were

19 unable to reach the court standard, when and where and

20 how was that disclosed to the prosecution, to the Crown?

21 We will begin with that.

22 A. I have idea if it was disclosed to the Crown. At the

23 time of the case, the trial?

24 Q. At any time?

25 A. I have no idea. I've no knowledge of that at all other

1 than perhaps during the Mackay Inquiry which I've never
2 seen.

3 Q. Mr Bell, you say it wasn't hidden. I'm trying to work
4 out how we're supposed to know about it if nobody tells
5 us about it and that happens within SCRO offices.

6 A. Because I presumed that's the approach, the fingerprint
7 experts would turn round and say to you, "I'm satisfied
8 with the identification. I didn't get 16 points. I got
9 a lower number of points but I don't need to get to 16
10 to make an -- I've satisfied myself well below that",
11 and it's my understanding that these officers all
12 satisfied themselves before that, albeit the court
13 requires 16 points.

14 Q. Albeit the court required 16 points and I take it,
15 Mr Bell, you agree with me that if the defence counsel
16 of Shirley McKie was aware of that, was aware of the
17 fact that they had been unable to achieve the court
18 standard that would have been powerful cross-examination
19 material of those who said that they could find 16?

20 A. I can't disagree with you that it's an area that, no
21 doubt, the defence would explore.

22 Q. And, therefore, they'd want to be (a) recorded and (b)
23 disclosed to the Crown; that's right, isn't it?

24 A. But at that particular time neither the prosecution --
25 the Crown or the prosecution led on that basis, as I

1 understand it.

2 Q. Might that be because they didn't know about it, they
3 didn't know about those who were unable to achieve the
4 standard?

5 A. You would have to ask them.

6 Q. That's why I am asking if it was disclosed to the Crown?

7 A. I don't know if it was disclosed to the Crown. I think
8 I've made that clear to you. I don't know whether it
9 was disclosed to the Crown. You are talking about a
10 situation prior to my involvement in this case.

11 Q. Well, after you became involved as manager of SCRO would
12 you expect something like that to be disclosed to the
13 Crown?

14 A. While working through the situation I turned round and
15 brought in a proposal, a process, that if fingerprint
16 identifications were made and they went out and then it
17 was required for court evidence that that requirement
18 came back to the officers who made the original
19 identification.

20 If there was situations where there was a dispute or
21 a failure to fully identify a fingerprint, which had
22 gone out, then that would be brought to the attention of
23 the Procurator Fiscal so it would be made known. Again,
24 it was a matter of sometimes, presumably it would be a
25 matter of saying -- I'll perhaps clarify it by saying in

1 crucial and series crime it was my understanding that
2 SCRO could report to the Crown that they had identified
3 an individual for a serious crime but it was less than
4 the 16-point standard.

5 So from that I would turn round and suggest to you
6 that the Crown had awareness that identifications could
7 be made with less than 16 points and the Crown being
8 Crown as they are would have that understanding and
9 could explore it at any time, in any case, in any
10 identification, and say, "Tell me, how many points are
11 involved in this?" So I put it back round to the Crown
12 to turn round and pursue that.

13 Q. Could we have a look at another document. This is
14 available for display. It is a similar looking letter,
15 dated 31st January 2000, again from Detective Inspector
16 Rolph.

17 I would like to go through it and ask for your
18 comments to see if some of the facts of this are
19 correct. I will read it reasonably slowly with you. It
20 refers to the previous briefing note of November 1999
21 but it is the one we were looking at earlier and a
22 subsequent letter from Mr Robertson, Chief Constable of
23 Northern Constabulary:

24 "On 23rd December 1999, I attended a meeting of the
25 Eight-Force Fingerprint Standard Working Group at

1 Glenrothes, which was chaired by Detective Chief
2 Superintendent Harry Bell, the head of SCRO.

3 "At that meeting, Mr Bell was asked if he would
4 allow the scene of crime print from this case to be
5 examined by an expert from outwith the SCRO, this he
6 repeatedly refused to do."

7 Again, albeit we have heard your reasons for it,
8 would you agree they were asking you and you repeatedly
9 refused at that meeting?

10 A. I would accept that I was asked to do this and I put
11 forward that I would give the same explanation as to why
12 I didn't want to do this.

13 Q. I understand your explanation and I think you are
14 acknowledging that you did refuse to do so at that
15 meeting. But going on:

16 "Mr Bell quoted briefly from a letter which he said
17 he was going to send to all Chief Constables explaining
18 the SCRO stance on this issue but to date the letter
19 does not appear to have arrived at either the Grampian,
20 Tayside or Lothian & Borders, the three main fingerprint
21 bureaux outwith SCRO. In Mr Bell's letter to the deputy
22 Crown Agent dated 20th January 2000, he refers to the
23 scene of crime mark posted on the Internet having less
24 detail than the SCRO fingerprint and thus not revealing
25 16 characteristics in agreement. This is not the case.

1 The Internet mark does indeed show sufficient points for
2 a positive finding, however when making an
3 identification an expert must not only consider the
4 characteristics in agreement but also those which
5 disagree. The scene of crime mark found on the Internet
6 displays a number of clear characteristics which cannot
7 be found on McKie's prints.

8 "Due to the Internet site, this case has become well
9 known in fingerprint circles throughout the world,
10 however, following the Frontline Scotland television
11 programme it has become very topical throughout Scotland
12 and I believe is doing enormous harm to the science of
13 fingerprints throughout the country."

14 Reading on:

15 "I have been informed that a documentary television
16 programme has been put together on this case and there
17 is a strong likelihood that it will be discussed at
18 ACPOS level. I felt that you should be briefed on the
19 current situation.

20 "At the first meeting of the Eight-Force Fingerprint
21 Standard Working Group, Mr Hamilton, Chief Constable of
22 Fife, put forward SCRO as a centre of excellence who
23 would administer quality assurance throughout Scotland.
24 I feel that the outcome of this case questions that
25 assumption."

1 Again, this seems to be from Andrew Rolph.

2 Can I ask you, was it conveyed to you at any stage
3 that other fingerprint bureaux were becoming extremely
4 concerned at what they were viewing as complete and
5 utter intransigence on the part of SCRO to try and get
6 this analysed outwith SCRO?

7 A. Yes, I had an understanding there were individuals
8 within other bureaux who had this. The detail that
9 Mr Rolph alludes to there was not detail that he gave me
10 that I can recall. He attended the meetings as he said.
11 I don't recall that level of detailed discussion at any
12 of these meetings. I recall that the matter was raised
13 and I recall that I turned round and says that the
14 matter should not go outwith the bureau just now because
15 I firmly felt there would be an inquiry. This was not
16 going to go away, it was quite clear, and it was a
17 matter that would be best served by an inquiry. If that
18 was civil litigation or whatever, at least the two sides
19 would get an opportunity to explain their views.

20 Q. I would like to ask you, if I can, about the culture
21 within SCRO. I don't intend to revisit but as far as
22 the Mackay Robertson report is concerned I take it you
23 are aware a copy of that was made available to you
24 fairly soon after it was prepared?

25 A. Sorry, what report?

1 Q. Mackay Robertson report.

2 A. No, I had never seen that report.

3 Q. You've never seen the report? Well, can I ask you to
4 look please at a production with the Inquiry number
5 CO0005 and it is page 365 I would like us to go to, in
6 particular paragraph 15.7.6. We can see under the
7 heading of "Hierarchy" what is said here is that:

8 "Rank in the scientific decision-making process is
9 inappropriate. The junior tunes his/her opinion to that
10 of the senior. Culture of the longer serving expert
11 'sees more'. Pressure on the junior to please the
12 senior."

13 Does any of this sound like an organisation at any
14 time that you were the manager of?

15 A. No.

16 Q. The next paragraph after the bullet points:

17 "When analysing the issues associated with the
18 environment and hierarchy in relation to the
19 arrangements at SCRO, a number of links can be
20 established."

21 I don't intend to read them all but the second
22 bullet point:

23 "The Marion Ross murder was a high profile case and
24 in respect of QI2 the need for a result was
25 significant."

1 And then second:

2 "Rank within SCRO is a recognised factor."

3 Again, is all this entirely news to you?

4 A. I still come back to the statement that I don't believe
5 a fingerprint expert at SCRO Fingerprint Bureau would
6 make an identification unless they were personally
7 satisfied with what they were seeing on the mark.

8 Q. I would like you to look at a document -- hopefully,
9 with the personal details redacted -- another one that
10 was passed to the Inquiry. This is apparently a copy of
11 a letter sent to Jim Wallace who we think was the
12 Justice Minister at the relevant time on 7th August 2001
13 and you can see that this is apparently from
14 Mr Luckcraft and I think you acknowledge that he was
15 probably the individual that was being referred to in
16 another document we looked at.

17 I would like to go through this and ask you for your
18 comments as it is possible he may be invited to give
19 evidence. 7th August 2001, what he says is to
20 Mr Wallace:

21 "As a fingerprint expert with a high level of
22 professional integrity I consider it my duty to formally
23 report the following issues. However, the views are my
24 own and there is no intention to suggest that these
25 views reflect those of any other individual or

1 organisation.

2 "I was employed by the SCRO Fingerprint Bureau
3 between January 2000 and March 2001. I was the first
4 fingerprint expert to join the SCRO Bureau from an
5 external fingerprint bureau. Whilst I undertook my
6 training through Greater Manchester Police, qualifying
7 at New Scotland Yard, I also brought my experience of
8 working in the Devon & Cornwall Constabulary and
9 Grampian Police fingerprint bureaux. All other
10 fingerprint experts within the SCRO Bureau were trained
11 internally.

12 "After commencing duty at the SCRO Bureau, I was
13 shocked and appalled at the level of malpractice. It
14 became evident that the bureau was not following the
15 National Fingerprint Standard. Upon raising my concerns
16 regarding the incorrect procedures, a senior police
17 officer suggested that I would be in breach of the
18 Official Secrets Act if I communicated my concerns to
19 external fingerprint bureaux.

20 "A few days prior to commencing work at the SCRO
21 Bureau, I was contacted by the then Head of Bureau, in
22 relation to the highly publicised Shirley McKie case."

23 I am assuming that would be you?

24 A. Sorry?

25 Q. That would be you, the --

1 A. I don't know if you could assume that at all. Head of
2 Bureau would be the Chief Inspector.

3 Q. Well, we will not assume that. Let me read on:

4 "The Head of the Bureau indicated that the SCRO
5 Bureau faced significant problems as a result of the
6 Frontline Scotland television documentary reporting the
7 McKie case. I was informed that the SCRO would maintain
8 their stance that the identification was correct and
9 that the independent experts involved in the case had
10 examined a different fingerprint.

11 "The McKie case is globally significant within the
12 fingerprint community and of great professional
13 interest. Two senior SCRO experts delivered a
14 presentation of the McKie identification to ACPOS. A
15 number of fingerprint experts, myself included,
16 requested to view this presentation out of professional
17 interest. SCRO management refused this request without
18 providing sound reasoning. I was naturally disappointed
19 at the lack of transparency and reluctance to face
20 scrutiny."

21 I will read the letter and come back to pick up a
22 couple of points:

23 "In April 2000 I had reason to challenge an
24 identification decision made by another SCRO expert. At
25 that time there was no arbitration procedure in

1 operation within SCRO Bureau. In this instance, there
2 was an attempt to exclude my findings from the process.
3 Clearly to circumvent or suppress the opposing opinion
4 of an experienced fingerprint expert in such a manner
5 must be deemed unethical and viewed with scepticism.

6 "Concerned with the manner in which this case was
7 processed, I submitted a report to the Director of
8 SCRO. I received no formal response and was advised that
9 the case had been dealt with. The case docket vanished
10 and was not refiled.

11 "During my period of employment at the SCRO Bureau,
12 I consistently challenged mismanagement and malpractice.
13 Although remedial action was taken to achieve best
14 practice in some areas, other issues of concern were not
15 addressed. Whilst my observations forced some
16 improvements within the SCRO Bureau they were met with
17 hostility by management. I soon became the victim of
18 bullying, intimidation, harassment and victimisation. I
19 was verbally abused by a senior police officer and was
20 publicly humiliated at a social function.

21 "The McKie case has illustrated a culture of
22 institutionalised arrogance and mismanagement within the
23 SCRO which has brought the whole Fingerprint Service
24 into disrepute and has done a great injustice to the
25 many experts of high professional integrity within the

1 Police Service. I understand that a review of practice
2 and procedure within the SCRO is underway, however I am
3 compelling to report my experiences in the hope that
4 these issues will be satisfactorily addressed.

5 "I am greatly concerned for the welfare of the many
6 fingerprint officers who are professional and honourable
7 in their duty to the UK fingerprint service."

8 You have not seen this before, of course, but as far
9 as Mr Luckcraft is concerned, if he was the individual
10 that you had cause to discuss matters with, I think you
11 referred to earlier who was named, does this broadly fit
12 in with in your assessment of his views expressed at any
13 stage to you or other management to your knowledge?

14 A. Again, not to the detail he's giving there. If he had
15 turned round and come in to me -- he's referring to a
16 report. I would need to see that report to make comment
17 on it. He's referring to a report that he'd submitted
18 to me. I'd need -- I mean, I remember speaking
19 to Mr Luckcraft. I remember an issue regarding a
20 fingerprint identification and the process involving
21 that and I was clear that he was not getting on with
22 individuals within the organisation but not to the
23 degree there. If I saw the report that he says he
24 submitted to me, then I might be able to inform you
25 better.

1 Q. Can I ask you to look at the Inquiry statement by Peter
2 Ablett, FI0083, please. Is the name Peter Ablett known
3 to you?

4 A. I think just from recollection, could he be involved
5 with the Durham Training Centre?

6 Q. I think he may at one stage but can I ask you to go to
7 paragraph number 24. We can see just reading there what
8 is said in paragraph 24, he said, under the heading:

9 "Contact with SCRO before July 2000.

10 "I had contact with the SCRO in around 1990. I went
11 up to the SCRO offices in Glasgow on a number of
12 occasions, in particular to look at their Automatic
13 Fingerprint Recognition system. SCRO was one of the
14 first bureaux to get AFR. I got a sense of an authority
15 driven culture which was not open to challenge. At the
16 same time it was apparent that SCRO staff had a very
17 high opinion of the SCRO organisation. There was a
18 sense of an organisational arrogance."

19 Now I realise he's talking about in/around 1990 but
20 I take it you can see something of a theme developing
21 here between a number of individuals, particularly
22 Mr Ablett and Mr Luckcraft, an impression that there was
23 some degree of authority being placed, very much
24 hierarchical, which seems to be acknowledged in the
25 Mackay Robertson report.

1 Do you agree that that appears to be what is being
2 suggested?

3 A. I agree that that is what is being suggested by these
4 individuals. I would come back to turn round and say
5 that I didn't see that when I was Director of SCRO and,
6 again, I would turn round and say that's 1990 this
7 individual is speaking about. It's well back. I don't
8 know how things were then.

9 Q. Just a couple more questions if I may about the issue of
10 the advising other fingerprint bureaux of the position
11 being adopted by SCRO. I think what we have seen is an
12 indication, I think there are indications that not only
13 Grampian but Lothian & Borders carried out analysis and
14 their view was that there was no match between Y7;
15 that's right, isn't it, we have seen that. You are
16 aware of that aren't you?

17 A. I'm aware they wrote a letter to the Chief Constables,
18 to the SCRO Executive Committee based on that, yes.

19 Q. Of course we saw the letter earlier from Devon
20 & Cornwall Police to yourself indicating that their view
21 was that there was no match between Y7 and Shirley
22 McKie's fingerprint.

23 A. Yes. Can I refer back to the letter from Lothian
24 & Borders. To my understanding it is put out that it
25 was signed by 14 experts from that bureau and, if I

1 recall corrected, we subsequently engaged one of these
2 experts at SCRO and it was only then when we learned
3 that individual had never, ever agreed to sign that
4 letter, as I recall.

5 Q. So you are saying that maybe there was this one person
6 trying to stir it up; is that what you're suggesting?

7 A. No, I'm not suggesting that at all. I'm agreeing with
8 you that there was a letter. I'm just saying it
9 wasn't -- it was purported to be signed by 14 experts
10 and my understanding was it wasn't signed by at least
11 one of them. That's my understanding. I'm not taking
12 away the importance of experts sending a letter to the
13 Chief Constables.

14 Q. Can I ask how many letters did you sent out to other
15 bureaux. How many throughout the UK?

16 A. I have no idea what number.

17 Q. Did you receive a single letter from any bureau that
18 said, "We actually agree with you, Y7 is Shirley McKie's
19 fingerprint"?

20 A. No, I didn't but I received verbal statements from
21 individuals who said that they agreed with the
22 identification.

23 Q. Can you tell me who these people are please?

24 A. Peter Swann and Martin Leadbetter.

25 Q. Right, we know about Peter Swann and Mr Leadbetter

1 already but is there anyone who was working at a bureau,
2 any of those who you wrote to, that said, "We agree with
3 SCRO's identification"?

4 A. No, none that I recall. I would suggest to you that it
5 was ... I'm not trying to make statements here to
6 explain away what you're saying but I recall Malcolm
7 Graham in particular made identification regarding one
8 aspect of a fingerprint and Mr McKie attacked him
9 publicly on it to the extent that Malcolm Graham
10 retracted that, to the extent that subsequently later he
11 put it out again that he did agree that his
12 identification was correct.

13 That itself, in my mind, would have had some
14 influence on individuals taking any part in saying this
15 is an identification. I'm not saying there were others
16 but I'm just saying that might have been an influence on
17 others.

18 Q. So your position is that bureaux were holding back
19 because they were scared of Iain McKie? Is that what
20 you are saying?

21 A. No, I didn't say that. I said some individuals might
22 not -- I'm not suggesting to you that some bureaux or
23 individuals within bureaux didn't hold another view or a
24 personal view. I'm suggesting to you that there may
25 well have been some who just didn't want to become

1 involved and I could understand that because of the
2 treatment that I saw being given to Malcolm Graham in
3 particular.

4 Q. There is one other particular matter I would like to ask
5 you about that relates to the verification of the work
6 of the SCRO individuals.

7 Can you tell me how many fingerprints of the
8 individuals concerned were checked. Did you say earlier
9 it was thousands?

10 A. It runs into thousands, yes. The Lord Advocate put out
11 a direction that all fingerprint impressions and
12 identifications coming out of SCRO should be examined by
13 an independent organisation prior to going to court and
14 that lasted for 13 months and that runs to -- as I
15 recall, it runs to thousands of fingerprint
16 identifications.

17 I personally caused that process to be applied to
18 all identifications made by the four officers for a year
19 either side of the McKie date and all of these were gain
20 confirmed as identifications from officers outwith SCRO.
21 So we had a process where the organisation had been
22 closely examined and all identifications had been
23 closely examined and there was no other errors alleged.

24 Q. Let's think about something a little hypothetically.
25 Imagine an agency examining fingerprints is audited and

1 over thousands of fingerprints they come out correct.
2 So we've got apparently competent, capable, worthy
3 individuals who are doing their job properly but in the
4 course of a single case, let's think hypothetically,
5 there were two errors -- two errors.

6 Now do you have any comment on how such a thing
7 could happen?

8 A. You're saying there were two errors as a statement of
9 fact?

10 Q. Yes.

11 A. Again, I would come back to say that the four SCRO
12 experts, the Deputy Head, the Quality Assurance Officer,
13 the two independent experts, as I understand it,
14 retained their view that they did not make a mistake.

15 THE CHAIRMAN: But I think you are being asked to assume for
16 a moment that there were two errors. If there were two
17 errors it would be remarkable in --

18 A. Yes, I understand the question. I understand the
19 question. Yes, okay.

20 MR SMITH: You would agree with me there's a very real
21 question mark over either something terrible has gone
22 wrong with the system, if there was two errors amongst
23 otherwise entirely competent and capable people or
24 something else had --

25 A. If there was something wrong with the system I would

1 have expected these errors to appear elsewhere and
2 obviously they didn't with the tests that had been
3 carried out. So it comes back to turning round to your
4 point to say on this one occasion there was two alleged
5 errors put forward through SCRO.

6 Q. I would like to ask you, again, a particular matter
7 about the charting enlargement machine and I think we
8 have seen some indication -- I don't need to go to the
9 documents -- about how a presentation would take place
10 in regard to the charting enlargement machine.

11 Can you help us with this: when was that machine
12 introduced to SCRO as a tool for presentation?

13 A. I can't give you -- it was before my time. I never
14 actually ever saw the charting PC working and in
15 operation.

16 Q. But were you aware of concerns being expressed by those
17 within SCRO about the quality of the material that it
18 was producing?

19 A. The only time I became aware of issues surrounding the
20 charting PC was when this case happened and the
21 discussions with -- the meeting of the 20th, if I recall
22 right.

23 Q. At that meeting what was being said and by whom
24 regarding the charting machine?

25 A. I'd need to go back to the memo. My recollection is

1 that there was statements being made about the charting
2 PC which indicated an area where there was a particular
3 point of identification that it tended not to land in
4 that specific area and this was an issue the American
5 experts had raised to turn round and attack the SCRO
6 evidence. As I understand it, the PC, the charting PC,
7 was just a generic -- was an attempt to assist the jury
8 in how the experts looked at fingerprints but I have
9 personally never seen it working.

10 Q. So to the extent that if there was any concern prior to
11 Shirley McKie case by SCRO officers that was never
12 communicated to you as manager; is that the position?

13 A. My recollection is, no, I didn't have an awareness of
14 that.

15 Q. Again, if the charting PC had been in use for some time
16 prior to your arrival at SCRO, I take it you would
17 expect that if there were concerns about it what they
18 should have done is said, "Listen, this is useless. We
19 need to get our act together with it". Is that not
20 fair?

21 A. Well, I mean, this is before I came. My response is --
22 that's what they had available. I don't know how they
23 did it before but that was, I presume, brought in as an
24 improvement to what they did before and, ultimately, it
25 appear that it wasn't that accurate or beneficial. But,

1 as I understand it, that wasn't the hard evidence. The
2 hard evidence was from the experts. That was only to
3 give an indication to the jury of how an expert
4 approaches their examination, how they approach it and
5 what areas they're talking about.

6 Q. So when the images presented to the jury showing lines
7 going on to a particular latent fingerprint, they are
8 not matching up correctly and that is somehow designed
9 to show the jury how it is done, when it is patently
10 inaccurate; is that right?

11 A. I can't say to you having never seen it that it doesn't
12 match up sometimes. I accept from the circumstances we
13 have here that it certainly didn't appear to match up
14 totally in the McKie trial, I accept that, but I don't
15 know that it doesn't actually land on relevant points at
16 some stage in the process. But clearly we discontinued
17 it because it wasn't the best method of presenting.

18 Q. So what was put in its place after it was discontinued?

19 A. I think we spoke about PowerPoint, overhead PowerPoints,
20 and I think we reverted back to getting Identification
21 Bureau to produce enlargements, photographic
22 enlargements of the fingerprint, so it could be
23 more accurately identified, the area the experts were
24 talking about.

25 Q. Did you understand after the McKie case when you became

1 aware that this charting machine was not doing its job
2 properly all of the time, did you understand that the
3 SCRO officers were aware before the McKie trial that
4 this charting machine wasn't doing its job properly all
5 of the time?

6 A. I have no recollection of that, to be honest.

7 Q. Did it appear when you were told about it that they had
8 suddenly discovered this because it was pointed out by
9 the Americans or were they unsurprised they were being
10 criticised or that the machine was being criticised?

11 A. No, I think they accepted when it was raised that that's
12 what they had to use and if there was something else
13 they would prefer, ie the photographic enlargements.

14 Okay, I accept there probably, there was an awareness
15 that this wasn't the best method but as I understand the
16 way they presenting their evidence was to give an
17 indication to the jury, "That's the area we're looking
18 at".

19 It's coming back to the question of how far do you
20 go as an expert witness, a fingerprint expert? Do you
21 try and engage with the jury to convince them that you
22 are an expert, do you put over your expertise and get
23 them to make the decision? It's difficult.

24 Q. Is it not quite easy that it's up to the jury to make a
25 decision on the facts as guided by an expert rather than

1 the expert just saying, "I am an expert. I'm telling
2 you it's a match". Do you not see the difference?

3 A. I acknowledge your word "guidance" and that's what I
4 understand the PC charting process to be. It's a matter
5 of guiding the jury to that area. You know, I'm not
6 trying to pick words here. I've never seen it working
7 and I'm simply trying to give you an explanation in
8 response to your question.

9 Q. I take it that, as far as your position is concerned,
10 that as far as you are concerned, there would be no
11 reason why, in addition to the charting PC
12 documentation, the actual enlarged photographs couldn't
13 have been presented to the court at the same time, would
14 there?

15 A. No, I would accept it, if that had been pushed on. I
16 don't know what the practice was on the basis of we've
17 got the PC charting, we don't need the photographs. I
18 don't know what the position would be.

19 Q. Finally, I want to ask you some questions about the HMIC
20 reports that were prepared. The purpose of HMIC was to
21 carry out a full review, wasn't it, of the structures
22 within the organisation.

23 A. Yes.

24 Q. As far as the various dates are concerned, a couple of
25 documents that might help just to pin dates and

1 hopefully we can get these put up. These are from
2 websites and --

3 THE CHAIRMAN: Is this actually the report, Mr Smith?

4 MR SMITH: It's not the report, sir. No, it's not. It is
5 an extract that might help with regards to the question
6 of the reaction to the HMIC report and it's the report
7 of the Parliamentary Inquiry.

8 Can I ask for the first of these to be put up. It
9 begins with 2.1. I will explain what this is in a
10 moment.

11 THE CHAIRMAN: It would be helpful if you could give these
12 documents in advance when you give notice of the
13 questions you want to ask.

14 MR SMITH: Of course.

15 The first document is an extract from the Scottish
16 Fingerprint Service Action Plan for Excellence
17 commissioned by the then Justice Minister, Cathy
18 Jamieson, about the success of HMIC in the wake of SCRO
19 and their difficulties. Just reading from what is said
20 here at 2 1:

21 "HMIC completed a primary inspection of SCRO's
22 Fingerprint Bureau in 2000 and made 25 recommendations
23 and 20 suggestions for change."

24 I take it you were aware of the recommendations and
25 suggestions for change?

1 A. Yes.

2 Q. "In October 2000 the Association of Chief Police
3 Officers in Scotland established a Presidential Review
4 Group to co-ordinate the response of the Scottish Police
5 Service to the HMIC, finding that the SCRO Fingerprint
6 Bureau was not efficient and effective. To take the
7 work of the Presidential Review Group forward, ACPOS
8 created a change management review team to undertake a
9 90 day scrutiny of the SCRO Fingerprint Bureau.

10 "Between then and the HMIC Primary Inspection of
11 2000 and ACPOS Presidential Review Group and the Change
12 Management Review Team made over 130 recommendations,
13 suggestions and findings. By May 2001 the Project
14 Management Team established by ACPOS to pursue the
15 issues raised by the various reports was able to hand
16 over responsibility to SCRO management for final
17 implementation of the 20 issues, the others having been
18 discharged."

19 Again, does that ring a bell that they were handing
20 over some still to be implemented?

21 A. Yes.

22 Q. "In the next primary inspection of SCRO in 2004, HMIC
23 discharged the remaining eight recommendations and five
24 suggestions that were outstanding from their review of
25 the SCRO Fingerprint Bureau in the previous year."

1 Do you recall in what was described as an Action
2 Plan for Excellence, an HMIC England and Wales
3 individual, Sir David O'Dowd? Was that an assessment of
4 the success or otherwise of the implementation of the
5 2000 recommendations and suggestions? Do you recall
6 that?

7 A. I think what you're talking about here is documentation
8 that appeared after I retired.

9 Q. The documentation may be after but can I ask to look at
10 the other item that was handed up, which is an extract
11 from the Justice 1 Inquiry findings. I'm interested in
12 particular in 702. What they said was:

13 "The Committee also concludes [that's the Justice
14 Committee] that a number of failings identified by HMIC
15 in 2000 have simply not been properly addressed by SCRO
16 management. These failings include but are not limited
17 to: structural and leadership issues; staff sickness
18 absence; identification procedures and quality
19 assurance. The Committee recognises that the Action
20 Plan for Excellence is the latest attempt to tackle
21 these failings."

22 Now, can I ask whether you have any comment on that?
23 Whether you agree with any suggestion there was a
24 failure to implement fully and fairly and
25 enthusiastically the recommendations made by HMIC?

1 A. No, I think you will find there's documentation to say
2 that everything was completed. It's my understanding
3 that when I retired in April 2005 that everything that
4 HMCIC, recommendations and suggestions had all been
5 completed and properly discharged and that was
6 acknowledged. That's my recollection so I find it
7 strange to see this now.

8 Q. Just one last matter I would like to ask you about and,
9 again, it is a point of detail about immediately
10 following upon the acquittal of Shirley McKie. I think
11 you explained to us earlier that Mr Mackenzie and
12 Mr Dunbar were asked, I think possibly by you, to
13 examine the disputed fingerprint; is that right?

14 A. That's correct, yes.

15 Q. Was that before the May 1999 meeting?

16 A. That was before 20th May meeting, yes -- before the
17 meeting with Sean Murphy?

18 Q. Yes.

19 A. Yes.

20 Q. Can I ask you to look at a document CO1230, please,
21 which should be, I think, the statement taken from
22 Mr Mackenzie to the Mackay investigation. Again, I'm
23 just trying to find the paragraph. I am sorry, it is a
24 paragraph beginning "My next involvement with the case".
25 I am trying to track down.

1 Yes, if you stop there please on that page. We can
2 see:

3 "My next involvement in the case with regards to
4 comparison work did not take place for a further two and
5 a half years August 1999 when I viewed for the first
6 time enlargements which had been returned to the bureau
7 from the office of the Procurator Fiscal, Glasgow after
8 completion of the perjury trial of Shirley Cardwell
9 (McKie)."

10 I take it you agree with me that appears -- if that
11 statement is correct, Mr Mackenzie's recollection must
12 be wrong if you think you are right?

13 A. Yes. You're going back a number of years and it's my
14 recollection that I went to the meeting with Sean Murphy
15 having had the fingerprints re-examined. That's my
16 recollection.

17 Q. Are you able to accept from me you are wrong about it?

18 A. No.

19 Q. You are absolutely sure that he was there?

20 A. I'm not prepared to accept I'm wrong about it. I'm just
21 saying that's my recollection. I'll stand to be
22 corrected if it can be shown that that was not the time
23 but it's my real recollection. It's only a
24 recollection. I think I would get it done before we had
25 the meeting so I'd go into the meeting to turn round and

1 say to Sean Murphy -- in fact, is it not referred to in
2 the minutes of that meeting?

3 Q. I can't remember myself --

4 A. I would like it to be looked at then because --

5 Q. We will try and get it ... I think it is CO0034.

6 A. Yes, it is.

7 Q. Now, I don't know whether you want to just flick through
8 as you read various bits and see if you can identify the
9 page.

10 A. Can you go to the next page, please. **(Pause)**

11 I don't actually see it referred to there but it's
12 generally was my recollection that I had this done
13 before I would have the meeting with the Crown. I think
14 it would be sensible to do it that way. So that's my
15 recollection.

16 Q. I don't think anyone criticises you for --

17 A. I accept that.

18 Q. You accept it may not have been examined before --

19 A. No, I would reiterate I'm more inclined to believe that
20 I caused the examination to be made ahead of that
21 meeting in preparation for the meeting.

22 Q. I take it that would be documented somewhere. There
23 must have been a mini report of some kind by --

24 A. It was a verbal -- my recollection is it's a verbal
25 request to the officers and it's a verbal response they

1 gave. There was a time factor. If you go from the
2 trial concluded, I think, potentially 14th May. So six
3 days later I'm in a meeting with -- I arrange a meeting
4 with the Crown and the prosecuting advocates. So there
5 was a very short window of opportunity there. So I
6 would imagine that I did it in that period. That's my
7 recollection in all this.

8 MR SMITH: No further questions.

9 THE CHAIRMAN: Mr Holmes, would you prefer to wait until
10 Tuesday?

11 MR HOLMES: I can, sir, yes. I do have an application to
12 make.

13 THE CHAIRMAN: Well, we have ten minutes but I don't want
14 you to feel under pressure. Let me know what the points
15 are you want to raise.

16 MR HOLMES: Certainly, sir. The first matter I would like
17 to raise is the nature of the criticism that was being
18 made of the SCRO experts.

19 The second matter I would like to raise is the work
20 done by the American experts or rather his understanding
21 of what the work done by the American experts was.

22 The third relates to the implementation of the
23 recommendations in the Black Report.

24 The fourth relates to a passage from Mr Shepherd's
25 Inquiry statement that has been put to Mr Bell.

1 The fifth relates to the letter that has been put to
2 him that's not yet been lodged but has been apparently
3 authored by Mr Luckcraft.

4 THE CHAIRMAN: I think you aren't going to cover that in
5 five minutes so perhaps we should wait until Tuesday.
6 Are you available on Tuesday morning?

7 A. I will re-arrange things and now make myself available.

8 THE CHAIRMAN: We will get some indication. Are there going
9 to be any other applications with regard to this
10 witness?

11 MISS GRAHAME: I have no application to make at this stage.

12 MR MACPHERSON: I don't have any.

13 THE CHAIRMAN: I will not hold you to it; it just to give me
14 an indication. How long --

15 MR HOLMES: I should say, sir, that there are perhaps one or
16 two questions on each of these matters that I've
17 mentioned; so it should not be terribly long.

18 THE CHAIRMAN: Is that all right if I ask you to come at
19 10.00 on Tuesday?

20 A. Tuesday, yes.

21 THE CHAIRMAN: And from the sound of it it shouldn't take
22 much more than half-an-hour.

23 A. I'll make arrangements to accommodate that.

24 THE CHAIRMAN: Thank you very much. Tuesday then at 10.00.

25 **(3.25 pm)**

1 (Adjourned until 10.00 am on Tuesday, 7th July 2009)

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