

1 (1.50 pm)

2 MR SMITH: Thank you, sir.

3 Mr Graham, I wonder if I can ask you some questions  
4 about the number of points that you feel are sufficient  
5 to draw an identification. I understand your evidence  
6 that that's really the last step in the process. What  
7 you do is you come to a conclusion and then you go and  
8 count points.

9 Can I understand this though: there must be a  
10 difference, is there, when you are comparing two  
11 possible persons against an unknown print and the  
12 position where you are comparing just one person against  
13 the unknown print. Do you follow?

14 A. It really wouldn't matter. Once you've identified it  
15 you're excluding everyone not just one of the two. It's  
16 a complete exclusion.

17 Q. Perhaps I can try and put it this way with the  
18 information you provided us with regarding the Lockerbie  
19 case, the air disaster?

20 A. Yes.

21 Q. I think there were 270 individuals that were on the  
22 plane.

23 A. Yes.

24 Q. Just to pick up a point the point Mr Moynihan was  
25 making, there were on that plane a large number of

1 people in respect of which there was no necessity for  
2 fingerprint identification, people who, for example,  
3 were still wearing clothing with identification on them  
4 who were carrying some means of identification that  
5 could be analysed without the necessity of fingerprints.

6 That's right, isn't it?

7 A. There were very few like that. Every recovered body had  
8 to be fingerprinted. Most of them, their clothing was  
9 off their bodies when they arrived down on the ground,  
10 they were mutilated, there was very little opportunity  
11 to identify bodies, either by fingerprinting or dental  
12 work.

13 Q. But nonetheless what you are doing is you have a pool of  
14 a number of people from the passenger manifest?

15 A. Yes.

16 Q. And from that, you would be able to identify, for  
17 example, that so many were either male or female. You  
18 would be able to identify that in almost every case?

19 A. Yes.

20 Q. You would be able to identify the approximate height of  
21 the individual?

22 A. That didn't come into the fingerprint aspect of it. We  
23 don't know the description of the people. We had a  
24 fingerprint database of the people that we knew were on  
25 the plane, all the nationals, we got fingerprints from

1 all the countries coming in to give us the fingerprints  
2 of everyone they thought was on the plane. We then  
3 fingerprinted all the bodies and from that we compared  
4 the fingerprint -- well, we didn't fingerprint all the  
5 bodies, the ones that could be fingerprinted, and from  
6 that we carried out an examination but we were not aware  
7 the ages, the heights or anything at all about the  
8 individuals.

9 Q. The point I'm simply trying to get to is that even a  
10 pool of 270 would be significantly restricted because --

11 A. That's right.

12 Q. -- there may only be only two females of about 50 years  
13 old or of a particular height that they didn't know  
14 which was which. What you are doing is really  
15 analysing, on that basis, it's a 50/50. It's one of the  
16 two of them you are trying to identify. That's fair,  
17 isn't it?

18 A. Yes, but the fingerprint people weren't aware of these  
19 things.

20 Q. Of course.

21 A. We had no knowledge of that at all.

22 Q. I follow.

23 I'd like to ask you a little bit about the various  
24 reports. Mr Moynihan covered this in a bit of detail.

25 As I understand it, what your evidence is is that you

1 prepared what was essentially I think you said a rushed  
2 report that was produced.

3 A. Well, when I look at the date on it it was the day after  
4 I had gone out to Kilmarnock so it was quite a quick  
5 report that I produced.

6 Q. You accept though it doesn't anywhere suggest it's a  
7 draft report or anything of that kind?

8 A. A draft meaning a draft before the final report?

9 Q. Correct.

10 A. I don't know. I've not signed it, which is unusual, but  
11 I can't explain why there are two reports circulating.  
12 I can only assume that either the Asbury team got in  
13 touch and pointed out the error and I gave them a  
14 corrected report or I noticed myself and I rushed off a  
15 second report. I don't know.

16 Q. The point I am simply trying to make is that there's no  
17 suggestion on the report, the first one, that this was  
18 somehow rushed out just as a draft to let the Asbury  
19 defence team get working on something, there's not any  
20 suggestion?

21 A. Other than the errors in it, it seemed to be pretty  
22 rushed, isn't it. I throw my hands up. The first  
23 edition was appalling. The second one was fine.

24 Q. You see I am wondering, Mr Graham, I think you have  
25 explained that maybe someone pointed out the errors to

1           you but what it was that caused you to go back and  
2           revisit it because you didn't take any materials away  
3           with you. It wasn't as though you decided, "I am going  
4           to go back and think about this", and then after you  
5           thought about it you then thought, "Oh dear, I made a  
6           bit of a mistake with this". That didn't happen, did  
7           it?

8        A.    No, I took a lot of notes, I would be taking a lot of  
9           notes at the time. There's no way I could remember the  
10          alphabetical characters of the fingerprints without  
11          writing them down.

12       Q.    Of course.

13                I would like you to look, if you can, please, at the  
14                front page of two of the reports. They are DB0201 and  
15                DB0202. If we can perhaps have these side-by-side.

16                It has been pointed out that the dates at the  
17                bottom, the one on the left it's not very clear but I  
18                think --

19        A.    It's 08/05/07.

20        Q.    Yes. That's obviously the first one and then the one to  
21                the right is the second.

22        A.    Yes.

23        Q.    You can see the date is different.

24        A.    Yes.

25        Q.    In addition to the date being different, I take it you

1 agree with me the format of the date is different in the  
2 sense that the one on the right has a dot between the  
3 digits and the one on the left has a slash between the  
4 digits. Do you see that?

5 A. Yes, I see that.

6 Q. Are you able to offer any explanation as to why not only  
7 has the date changed but the format has changed?

8 A. No idea.

9 Q. You can't?

10 A. No idea, no.

11 Q. In fact, if you take it from me that the one on the  
12 right is the only one that has dots between the digits,  
13 is there any possibility, Mr Graham, that it was when  
14 the Parliamentary Inquiry was considering it you not  
15 only printed the one on the right off but you manually  
16 inserted the date and in the sense of typing it in or  
17 altering it in your computer and you happened to put it  
18 in in a different format?

19 A. I can assure you that could not have happened.

20 Q. Why not?

21 A. Why not? Because I know that I didn't do it. I mean,  
22 I've no recollection that the dates at the bottom of the  
23 report but to produce it just for the -- for the  
24 Parliamentary Inquiry?

25 Q. Yes.

1 A. The problem was already drawn to my attention by the  
2 Tayside officers in the year 2000.

3 Q. You will understand the difficulty that certainly on  
4 this side we have that there appears to be no record, as  
5 far as can be discovered in David Asbury's file at the  
6 solicitors of the amended 17th report coming in. You  
7 will understand that it's a bit of a mystery at least on  
8 this side --

9 A. You'll know I sent you a letter in 2006 pointing out  
10 that I really can't be responsible for the filing system  
11 of a solicitor. I can't explain why a solicitor doesn't  
12 have what I think I sent them. I've no way of knowing  
13 that.

14 Will I read the letter I sent you in 2006?

15 Q. No, I understand your position and I am sure if anybody  
16 else wants you to read it out they will ask you to do  
17 so.

18 But can I ask you this, going back to the  
19 examination you carried out within the Procurator  
20 Fiscal's office, because I think we can see you examined  
21 13 prints, of which one was Q12 which I think was partly  
22 said to be of Marion Ross and a part of that mark was  
23 said to be David Asbury's?

24 A. Yes.

25 Q. As far as that examination is concerned, can you recall

1 that you got 16 points relating to each part of Q12?

2 Did you agree with SCRO on these?

3 A. My examination was never -- I never went to 16 points.

4 All my examinations are to my satisfaction. Whether or

5 not there's 16 characters there, as I pointed out I've

6 not got the facility to put them either on a comparator

7 and I can't go making small dots for each

8 characteristic. So, no, I don't know if they were

9 16-standard. I was asked are they identifications and

10 they were all identifications. I don't take it to the

11 16 on every occasion because I don't have the facilities

12 to do that when I go to these things.

13 Q. At some stage of course you when you did have cause to

14 count Y7 you were not able to get up to 16. You

15 explained that very clearly. You might have got more

16 than 8 at some stage but you never got to 16. That's

17 right, isn't it?

18 A. Yes.

19 Q. I take it that whether you agree with the 16-point

20 standard or not, by the time of not only David Asbury's

21 trial but Shirley McKie's trial, 16-point standard was

22 held to be the threshold below which there would be no

23 acceptance of variance. You understand that, don't you?

24 A. Yes, I do.

25 Q. Therefore, when David Asbury's defence team asked you to

1 examine the various fingerprints, as I understand it,  
2 your evidence actually was, well, certainly with regards  
3 to Y7, you were unable to give evidence to support SCRO  
4 to the required standard. That's right, isn't it?

5 A. Yes.

6 Q. Can I ask why is that not in your report? Why have you  
7 not said, "I've examined it. I'm satisfied but I can't  
8 get to 16 points"?

9 A. Because I didn't have the facilities, the laboratory  
10 facilities. I was in private practice when I retired in  
11 1991. I've examined almost every case that -- almost  
12 every disputed one in -- well, every one that a lawyer  
13 was disputing in Scotland and at no time have I taken  
14 them all to the 16-point standard because of the nature  
15 of the job I was given. I was there to have a look at  
16 the evidence of the police. Did I agree with the  
17 identifications? Yes, I did.

18 When I had a doubt about anything, I would notify  
19 the lawyer who gave me the job either I didn't think it  
20 reached the standard or that the enlargement showed  
21 points that weren't there and the lawyers were not  
22 interested. They came back to me, "Is it an  
23 identification or not", and the answer was, "Yes, it's  
24 an identification".

25 Q. You see, Mr Graham, I am sure you understand that there

1            may be some of us in our capacity as lawyers  
2            representing individuals and if you were in a  
3            fingerprint case it might be something that we would  
4            like to know from the expert to say, "I can't get  
5            16 points in this. I've looked at it. I've examined  
6            it. I can't get 16 points", because then what will  
7            happen is you can be led as a defence witness and you  
8            say, "There's a 16-point standard. I can't get 16".

9                       Do you understand the importance of it?

10        A.    Yes. I reported to several solicitors that I could not  
11            get to the 16-point standard.

12        Q.    Did you do so in this case?

13        A.    In this case?

14        Q.    David Asbury --

15        A.    I got to every -- I got to the -- well, no, I didn't  
16            have to do that because I thought probably the 16 would  
17            be there. When I was pretty sure I didn't think they  
18            would be there, I would report it if I had some doubt  
19            about the quality of the SCRO work. I had no doubt  
20            whatsoever about the quality of the work of identifying  
21            all the fingerprints. So the 16-point standard, so far  
22            as I was concerned, didn't matter.

23                       It was to my satisfaction and the solicitors were  
24            happy with -- they engaged me based on my knowledge and  
25            experience and they were happy to accept what I told

1           them.

2       Q.    But I think we are agreed, Mr Graham, that what you did  
3           not say was, "I can't get 16 points on this and that is  
4           the legally required standard. I don't agree with it  
5           but that's the standard". We agree that you didn't tell  
6           them that; is that fair?

7       A.    I didn't tell them that I couldn't get to the -- I  
8           probably could have got in every other fingerprint. The  
9           problem was the Y7 one, not the others. Y7 was the only  
10          problem one.

11      Q.    Can I ask you just to lean forward to the microphone a  
12          little bit.

13      A.    Yes, Y7 was the difficult one.

14      Q.    Let us just deal with Y7, if we may. In the course of  
15          your evidence in the David Asbury case you were asked  
16          about Y7.

17                Do you remember being asked about Y7?

18      A.    Yes, I was. I've not got the transcript of the trial so  
19          I can't exactly know what was asked and what I said but  
20          having a look at the transcript of this Inquiry here it  
21          would seem it says that I gave evidence for the defence.  
22          I think I was actually called by the prosecution in the  
23          case.

24      Q.    Yes, I think you may be right about that. We do have  
25          access to a note by a police officer who was present

1 during the Asbury trial. Perhaps if we just give you  
2 that to look at. It's CO0214 and if you take it from me  
3 because there was a police officer who would give  
4 evidence, ie Shirley McKie, a senior officer was asked  
5 to come along and observe the proceedings.

6 Can you go to page 101 and we can go right through.  
7 I am not sure why it begins with the trial of Shirley  
8 McKie but we can certainly see on -- I am sorry, can you  
9 go back just a few pages. There's a difference in the  
10 PDF. It is page 93 at the top.

11 MR MOYNIHAN: If you looking for the Asbury trial my note  
12 says 0215 not 4 -- 0215.

13 MR SMITH: Thank you, yes. If we can call that one up.  
14 Paragraph number 125, I think, is what we should be  
15 looking for.

16 You will see at the bottom of page 125 it has  
17 Tuesday 3rd June 1997 and it has your name there and it  
18 does say and a defence called witness Malcolm Graham.  
19 Do you see that? I presume -- I realise it's a long  
20 time ago, Mr Graham, and I certainly couldn't be  
21 critical if you don't remember who called you but ... I  
22 think we can see, in fact, in paragraph 124 the defence  
23 addressed the court informing them they had one further  
24 witness to call but he was unavailable that afternoon.  
25 So it does appear that the defence probably called you.

1 A. It was the defence, I thought it was the prosecution.

2 Q. It's a long time ago. I am sure we can all understand  
3 that.

4 Can you go on to the next page, please. It explains  
5 what the evidence was and if we can go on to the next  
6 page, 126.7 at the top of the page, I think we can see  
7 it's not a very good copy but just reading out what I  
8 think is salient:

9 "The Advocate Depute then asked the witness if he  
10 had been asked to examine a further print mark Y7, the  
11 print of DC Cardwell. The Advocate Depute wondered if  
12 it had been the defence solicitor who had suggested that  
13 the print may or may not have been put there properly to  
14 which the witness replied:

15 "It appeared to me to be a very natural print, it  
16 did not appear to have been taken from elsewhere.'

17 "The AD then asked if it was theoretically possible  
18 to plant a print and was told that there were a lot of  
19 technical difficulties in planting a print and so on.

20 He was asked to explain the definition of a latent print  
21 to the court and concluded from the witness the  
22 explanation that you can't transfer a developed print.

23 The witness agreed that this was so and that in this  
24 particular instance there was no sign of disturbance  
25 around the print. The AD concluded his examination

1 by asking if the print Y7 was entirely natural looking  
2 to which the witness replied yes. He wondered if there  
3 could be any doubt that it was DC Cardwell's to witness  
4 the witness replied, 'No doubt'."

5 I realise we are looking at someone else's  
6 impression but there does not appear to be any  
7 suggestion there there was any difficulty in you  
8 reaching the 16-point standard? You agree with that  
9 much I take it?

10 A. That doesn't come into it, any difficulty in reaching  
11 the 16-point standard. I certainly didn't mention  
12 it -- I certainly mentioned that it was without doubt an  
13 identification. This is not a transcript of the actual  
14 trial. This is somebody's perception of what was going  
15 on, I take it.

16 Q. Of course but it broadly fits in with your recollection  
17 of the evidence, does it?

18 A. The definition of a latent print to the court and  
19 concluded from the witness explanation that you can't  
20 transfer a developed print, it's -- probably I said that  
21 somewhere in the context of something but it certainly  
22 wouldn't be in that. He's interpreted what my  
23 definition of a latent print was and then came up with  
24 this part, I maybe said you can't transfer a developed  
25 print, which I agree, you can't do that.

1 Q. Of course, at that stage in David Asbury's trial the  
2 feeling was or the suggestion was being made that  
3 perhaps the fingerprint had been transmitted or forged  
4 or something --

5 A. Yes, that's right.

6 Q. -- which again would explain why that evidence was being  
7 discussed with you about whether it looked to be  
8 natural, whether it looked to be --

9 A. Yes.

10 Q. That all fits in, doesn't it?

11 A. Yes.

12 Q. Can I come forward then to Shirley McKie's trial. You  
13 didn't actually see the trial, did you?

14 A. No, I didn't.

15 Q. As far as that trial was concerned, even by that stage  
16 you were unable to reach 16 points with regards to Y7.  
17 You never had been able to get it up to 16?

18 A. I'd never seen the material again up to and beyond the  
19 McKie trial. I only saw the information on the one  
20 occasion and that was at Kilmarnock.

21 Q. If you had been called by either the prosecution or the  
22 defence in the Shirley McKie trial, if you had been  
23 called and asked the question, "Are you able to reach  
24 the 16-point standard", you answer would have been no.

25 A. That's an entirely different situation. If I had been

1 called, if I'd been notified that I was going to be a  
2 witness in a perjury trial I would have re-examined all  
3 the productions, including material that I had never  
4 seen, and then I would have decided whether I could find  
5 16 or not. I was never given the opportunity to be a  
6 prosecution witness in the perjury trial. I wish I had  
7 been.

8 Q. Why?

9 A. Because perjury was committed and I felt that SCRO  
10 needed all the support they could get and I feel that  
11 they were let down quite badly in that trial.

12 Q. Do you recall putting a posting on an Internet site  
13 ONIN?

14 A. Yes, I do.

15 Q. I would like you to look please at a document CO1783,  
16 please -- the second page.

17 I think this is a print-off from the website. We  
18 see at the top of the page it says posted by Malcolm  
19 Graham on February 23, 2000.

20 A. Yes.

21 Q. Then you say:

22 "I recently posted comments regarding the  
23 fingerprint identification concerning Ms McKie. I  
24 realise I have caused great distress to Mr McKie by my  
25 comments and wish to withdraw them unreservedly. I

1 sincerely apologise."

2 A. Yes.

3 Q. The comments that you left on the site were to the  
4 effect, wasn't it, that you were satisfied that the mark  
5 was Shirley McKie's, words to that effect?

6 A. Yes.

7 Q. I would like you to look at another document please,  
8 CO0877. This bears to be a letter from yourself in  
9 July 2000?

10 A. Yes.

11 Q. I take it that is your handwriting and your signature at  
12 the bottom?

13 A. That is, yes.

14 Q. I think what you say is:

15 "Dear Mr McKie, probably the last thing you want  
16 from me is a belated letter of apology for the distress  
17 and anguish I and others have caused to you, your  
18 daughter and family."

19 I will read the entire text and then we'll come back  
20 to it:

21 "When the First Minister in Parliament stated that  
22 the fingerprint in question did not belong to Ms McKie  
23 it clearly indicated that I had made a terrible mistake.  
24 Until that time I truly believed that I was correct.  
25 There is nothing I can say or do that can undo the wrong

1 that you, your daughter and family have suffered other  
2 than offer my heartfelt sympathy and sincere regret."

3 Now I understand that you, as it were, moved away  
4 from that retraction, that apology. Your position today  
5 is that you are sure about the identification. Is that  
6 right?

7 A. I moved away from the apology quite quickly when I  
8 realised that the evidence founded on by the Scottish  
9 Executive was on the basis of two experts who they  
10 preferred against the experts that they didn't prefer  
11 which, was myself and others. It was purely a balance  
12 between myself and other experts and I certainly would  
13 not have produced an apology of that nature if I had  
14 known that. I thought there had to be some substantial  
15 evidence to support a statement that -- a Government  
16 minister making a statement of that nature.

17 Q. And you don't think that the evidence of two experts of  
18 international repute is sufficient evidence for the  
19 Government to rely on; is that your position?

20 A. Certainly, that's my opinion.

21 Q. So how many experts of international repute would you  
22 feel that the Government would be entitled to rely upon?

23 A. I don't think it's a matter of counting experts against  
24 experts. I think what we've got to look on is all  
25 experts aren't equal. You have got capable experts or

1 people who are more expert than others. You've got good  
2 lawyers, poor lawyers. You have got good experts, poor  
3 experts. You've got a whole range of people in between,  
4 some that do a competent job, some that aren't quite as  
5 competent. As the head of a big fingerprint department,  
6 I know full well there are experts that you can rely on  
7 more and experts that you can't and there are some  
8 experts that are prepared to say anything if it helps  
9 a case.

10 Q. Did you know who the experts were that the Government  
11 was relying on in the issue of --

12 A. I must have just read it in the press, it was Wertheim  
13 and Zeelenberg or Zeelenberg -- two people, an American  
14 who gave evidence in the perjury trial and another  
15 expert who came from Holland I think it was.

16 Q. I think it, in fact, was Mr Zeelenberg and Mr Rudrud, a  
17 Norwegian gentleman who had been giving advice to the  
18 Government.

19 A. I took it to be Wertheim. I may be wrong.

20 Q. Mr Graham, did you know anything about Mr Zeelenberg's  
21 qualifications and experience?

22 A. I know -- well, I'll have read about them, yes. I know  
23 that he was given a test to do by the English Forensic  
24 Science Society and managed to identify one out of ten  
25 prints and all the fingerprint bureaux had that test and

1 the man came out the worst in it. He was unable  
2 to identify pretty basic fingerprints but a nice  
3 performer. He performs very well. I saw his  
4 performance in the Scottish Parliament and it was  
5 fluff -- nothing more than fluff -- appalling.

6 Q. Can I ask you who told you that Mr Zeelenberg himself  
7 had sat the test and had only got one?

8 A. I'm a member of the Forensic Science Society and the  
9 whole list was given in the publication. In fact, I was  
10 a serving officer and we'd get our own returns from  
11 these tests.

12 Q. So just so we understand it, you think that  
13 Mr Zeelenberg's performance was fluff?

14 A. His presentation was, yes, but highly acclaimed by the  
15 MPs, the MEPs(**sic**) that were there and one or two  
16 others.

17 Q. You know of course that he has a very close association  
18 on giving advice to Interpol; did you know that?

19 A. Very good for him. I know absolutely nothing about the  
20 man other than his ability to identify fingerprints and  
21 it's pretty poor.

22 Q. Dealing with your views about other individuals, do you  
23 remember in the course of your evidence before the  
24 Justice 1 Inquiry saying something to this effect: what  
25 is remarkable -- and this is about Mr Wertheim -- what

1 is remarkable is Wertheim's influence in the whole  
2 affair. I seriously doubt Wertheim's qualifications and  
3 experience. I think that he lacks even the most basic  
4 knowledge of fingerprint work and I am sure that when he  
5 was engaged by McKie he had no knowledge of fingerprints  
6 whatever. I do not believe him. I think that the man  
7 tells lies and is an absolute charlatan."

8 Do you remember saying that?

9 A. Oh, I certainly said that, yes.

10 Q. Do you stick by that, do you?

11 A. Yes, I do.

12 Q. What investigations did you cause to be carried out into  
13 Mr Wertheim's qualifications and experience  
14 before making that public statement?

15 A. I think that is the problem. I don't think there was  
16 any proper investigation carried out by anyone into  
17 Mr Wertheim.

18 Q. I am sorry, my question was slightly different. What  
19 investigations did you carry out before you made that  
20 very critical public statement?

21 A. I didn't, but I based it on Mr Wertheim's response to  
22 questions by the MSPs in the Justice Committee and I  
23 think that's in the text that you've got there, surely.

24 Q. You said:

25 "I think that the man tells lies and is an absolute

1 charlatan."

2 A. If you go -- yes, if you go to the previous part of the  
3 one that I give reasons why the man showed an abysmal  
4 lack of knowledge of fingerprints.

5 Q. Can you tell us what lies he told, please?

6 A. Yes. Well, to me it was quite ridiculous. The man says  
7 he took 100 copies of Shirley McKie's left thumb, 100  
8 copies. He felt that it was a simple fingerprint to  
9 identify and yet needed 100 copies of her finger to show  
10 it. Every one of the 100 was a plain impression. A  
11 person who's been in fingerprint work for a week knows  
12 that you take rolled impressions on every occasion.

13 Q. I think -- I'm sorry, that's the lie that he told, is  
14 it? Or was there more?

15 A. No, there was more. One of the MSPs asked, "What did  
16 you do with the 100?"

17 "Oh, I sent them off to people."

18 "What people?", didn't know.

19 Q. Right. So it was really your judgment of his  
20 performance before the Parliamentary Inquiry that caused  
21 you to call him a liar and a charlatan; is that right?

22 A. Yes.

23 Q. Were you aware that evidence was also given in court by  
24 Mr David Grieve on Shirley McKie's behalf?

25 A. I didn't hear his evidence at all. He wasn't at the

1 Justice 1 Committee meeting.

2 Q. Are you aware that David Grieve has a career going back  
3 to 1965 in Illinois State Police Department?

4 A. No, I wasn't aware of that but I know that Mr Wertheim  
5 got support there but I also know that he got support  
6 from Allan Bayle and a Ron Cook for his presentations on  
7 the BBC programmes and neither of these individuals were  
8 much ... that they're not, they're pretty poor  
9 Fingerprint Officers, Bayle and Cook.

10 Q. You see, of course, to the extent that some people say  
11 it is Shirley McKie's print and others say it is not,  
12 someone is wrong, obviously.

13 A. Evidently.

14 Q. Are you prepared to acknowledge, Mr Graham, that there's  
15 a possibility that you might be wrong?

16 A. Well, I did acknowledge that possibility when I sent him  
17 a letter. I've since changed my mind but mistakes are  
18 made in fingerprint examinations. Everybody knows that  
19 that happens. The Americans recently identified a print  
20 in Madrid that didn't belong to the bomber. There's  
21 been several mistakes in the UK, two of them of which I  
22 am aware of, and there was one I was involved in in my  
23 own department. It never got outwith the department and  
24 the subjective nature of fingerprint work means that  
25 mistakes are almost bound to happen at certain times.

1 It's the quality of checking to ensure that mistakes are  
2 picked up that is very important. But mistakes do  
3 happen.

4 Q. I take it you would be prepared to acknowledge that you  
5 yourself have made a mistake in the past. It may have  
6 been caught but you yourself have made a mistake in the  
7 past.

8 A. I don't think I've ever mis-identified a fingerprint  
9 unless you have knowledge of one that I have been  
10 involved in other than this -- you obviously have the  
11 view that I've mis-identified this.

12 Q. I am not trying to catch you out --

13 A. I'm sure you're not.

14 Q. -- I'm just wanting to understand whether you are  
15 prepared to acknowledge that you may be wrong on this  
16 and I think, in fairness to you, though you are fairly  
17 sure about your identification you are not ruling out  
18 the possibility you might be wrong. Is that fair?

19 A. I take care in all my examinations but there's one point  
20 I would make: when I was in the Police Service, in a  
21 Fingerprint Bureau, every fingerprint had to be checked  
22 by a colleague. The fingerprint that I looked at here  
23 was not checked by anyone that I knew so, obviously,  
24 without corroboration, you're on your own and because of  
25 that I think you're even more careful that you're not

1 making a mistake because I've not got a fall-back to  
2 have another look at it.

3 Q. There is one last matter I want to ask you about and  
4 that is this: do you remember it was actually 28th  
5 May 1999, two weeks after the acquittal of Shirley  
6 McKie, writing a letter to the Herald newspaper. Do you  
7 remember writing to the Herald?

8 A. I must have wrote a dozen letters to the Herald and to  
9 the Scotsman and very, very difficult getting them  
10 published. If you would give me the idea or the content  
11 of one of them ...

12 Q. Yes. Well, in one of them you said something to the  
13 effect of to roll out four fingerprint experts from the  
14 SCRO all based at Strathclyde Police Headquarters to  
15 speak to the identification smacks of desperation and  
16 ineptitude.

17 Do you remember writing something like that?

18 A. I did write that, yes.

19 Q. Can I ask what is it --

20 A. Ineptitude of the prosecution, not of the SCRO  
21 witnesses.

22 Q. Oh I see. So this is a criticism, is it, really  
23 directed against the prosecution system rather than the  
24 individuals --

25 A. I always had the view that there should never have been

1 a prosecution for perjury in that case. That was always  
2 my view. The girl should have had her hand rapped. It  
3 was purely a disciplinary thing and would have been in  
4 my own force at that time. We never would have gone to  
5 that extent of charging a young woman with perjury for  
6 that, a person of impeccable conduct.

7 Q. Can I ask what your concern was in that letter by  
8 referring to the SCRO all based at Strathclyde Police  
9 Headquarters. That seems to be something that you were  
10 pointing out. What was your concern?

11 A. Nothing special in that. I have never known a  
12 fingerprint case, it maybe happens in the West of  
13 Scotland, where you needed more than two fingerprint  
14 experts to prove a fingerprint. But to produce four  
15 fingerprint experts in a High Court trial showed that  
16 the prosecution knew they were in a bit of difficulty.  
17 You would never use four fingerprint experts for a case  
18 like that.

19 MR SMITH: Thank you very much, Mr Graham. I've no further  
20 questions.

21 THE CHAIRMAN: Mr Holmes?

22 MR HOLMES: Thank you, sir. There are three matters that I  
23 would like to ask Mr Graham about: the first is his own  
24 examination of the fingerprint Y7; the second is just  
25 briefly on his examination of the other fingerprints

1 relating to this case; and the third is to do with  
2 opinions that he has expressed since.

3 THE CHAIRMAN: Yes. Very good.

4 **Cross-examined by MR HOLMES**

5 Q. Mr Graham, if I can ask you first in relation to Y7, you  
6 mentioned in your statement that there was obviously  
7 some distortion in the mark. Can you give us an idea of  
8 what the cause of that distortion might be?

9 A. Not really, just slight movement of the finger when the  
10 mark was deposited probably. Are you talking about the  
11 top of the print which was a second touch?

12 Q. Well --

13 A. I mean, all fingerprints are distorted to some extent  
14 with the nature of the ball of the finger, but this one  
15 in particular was very noticeable at the top of the mark  
16 where it had been probably a repositioned finger, a  
17 second touch.

18 Q. So your view is that because of the distortion in  
19 particular at the top part of the mark that it was a  
20 double touch?

21 A. Yes.

22 Q. It's been suggested in evidence by other witnesses that  
23 the distortion in this mark can be explained by a  
24 difference in pressure alone. What is your view of  
25 that?

1 A. Based on different pressure?

2 Q. Yes.

3 A. No not alone. There would be a different pressure  
4 possibly in the second touch but the distortion that was  
5 there wasn't just pressure.

6 Q. Why is it that you say that?

7 A. Because the ... a left-handed thumb at the very top of  
8 the edge tends to have ridges that run to the left. A  
9 right-handed thumb at the very top near the nail has  
10 ridges that tend to run to the right. This fingerprint  
11 had ridges at the very top part that tended to run to  
12 the right.

13 Q. So from that it's your conclusion that pressure alone  
14 could not possibly have caused the distortion; there  
15 must have been some movement of --

16 A. Some movement of the finger.

17 Q. You have said as well that in relation to fingerprints  
18 in general, not specifically Y7, that five or six points  
19 could give you a strong probability of a match. Am I  
20 understanding you correctly there?

21 A. Yes.

22 Q. The degree of that probability, does that to some extent  
23 depend on where within the fingerprint those points are  
24 to be found?

25 A. Not really. Deltas of fingerprints sometimes tend to

1            have -- I mean, they all come into a single point from  
2            three different directions and you might get more  
3            characteristics in that area. But ... I've lost the  
4            thread. Give me the question again.

5        Q.    Well, you were --

6        A.    No, the place where the characteristics were found  
7            really doesn't matter.

8        Q.    You mentioned there a delta. Is it possible that more  
9            characteristics are found nearer a delta in any given  
10           fingerprint?

11      A.    You tend to get more characteristics because of the  
12           three different rows of ridges all coming together in a  
13           delta. You sometimes get more characteristics in that  
14           area.

15      Q.    Do you get more distinctive characteristics in that  
16           area or is it just a greater number?

17      A.    Not distinctive, all characteristics are distinctive.  
18           Can I mention a thing that I read in the transcript  
19           about lakes and islands? It was suggested in the  
20           transcript by people in the Crown Office that Scotland  
21           tend to mark a lake or an island as a single  
22           characteristic whereas in England -- no, in Scotland  
23           they regard a lake and an island as two each  
24           characteristics. In England they would regard the lake  
25           as one characteristic. I don't think I've heard so much

1 nonsense for a long time.

2 A lake is purely a ridge that splits into two and  
3 then rejoins. It can be either a tiny circle or it can  
4 be almost the whole length of the finger, a big  
5 sausage-shaped lake. Whether it's regarded as two  
6 characteristics or one is entirely up to the person  
7 making the identification. An Island is the same. An  
8 Island can be either the length of a single pore, which  
9 is a tiny dot, or it can be almost the whole length of  
10 the fingerprint carrying on in a U-shape and, obviously,  
11 they are two separate characters when you get to either  
12 end. It's a matter of judgment by the fingerprint  
13 officer. But the crux of the thing is a lake or an  
14 island is at least twice and maybe three times scarcer  
15 in a fingerprint than a bifurcation or a ridge ending.  
16 So it really -- a lake is at least two characteristics  
17 and an island is two characteristics, if they are  
18 a decent length.

19 So while maybe in England or some people in England  
20 regard them as one characteristic it depends on the  
21 length of them and just where they are about.

22 Q. I understand.

23 If I can move on to the other fingerprints apart  
24 from Y7 in this case, you provided a report. It is  
25 DB0202 and if I can just get you to look at page 2 of

1 that, please.

2 You have already confirmed that the identification  
3 of Y7 you agreed with the SCRO's findings; is that  
4 correct?

5 A. Yes, it is.

6 Q. I think you said when answering the questions from my  
7 learned friend, Mr Smith, that you agreed with their  
8 findings in relation to QI2 as well?

9 A. Yes.

10 Q. Just looking at that report as well, it appears that you  
11 also agreed with the SCRO's finding in relation to  
12 another two marks which are of interest in this case,  
13 those are XF and QD2?

14 A. All the SCRO findings in the report.

15 Q. Thank you.

16 One final thing and it's an Internet posting  
17 authored by you that you have been asked about. I  
18 wonder if we could look at the posting that gave rise to  
19 that which is also lodged. It is CO1782.

20 A. Yes.

21 Q. Just looking at it, it says:

22 "I examined the original photograph of the  
23 fingerprint on the doorframe and have no doubt that the  
24 SCRO identification was correct."

25 Is it Y7 you are speaking about when you posted

1 that?

2 A. Yes.

3 Q. "The identification enabled an outstanding fingerprint  
4 from a murder inquiry to be eliminated. I have no doubt  
5 that the fingerprint was made by Ms McKie and to have  
6 left that fingerprint outstanding and give a possible  
7 line of defence to the person charged with murder would  
8 have been misleading. Mr McKie was fortunate" --

9 A. That should be Mrs McKie or Ms -- M-S, sorry.

10 Q. So if we read that as:

11 " ... Ms McKie was fortunate to have been acquitted  
12 but it is doubtful if any jury would have convicted a  
13 police officer with an impeccable character of the  
14 serious charge of perjury when a prison sentence was  
15 likely. In my opinion, the two American experts who are  
16 no doubt sincere in their belief were pushing at an open  
17 door and gave the jury a way out."

18 Is that a posting that you made on the website that  
19 you have already referred to?

20 A. I posted that and then I withdrew it later on the same  
21 day.

22 Q. Why is it you withdrew it later on the same day?

23 A. I got a phone call from Mr McKie after 10.00 at night, a  
24 kind of threatening phone call. My wife was very upset  
25 so I went up and immediately withdrew it.

1 Q. What was said?

2 A. It was said that I had been duped by SCRO, that I was  
3 conspiring with them and that he would make sure I would  
4 never work again.

5 Q. Is it as a result of that telephone call that you later  
6 posted the item that you have already been referred to?

7 A. The man was very, very upset. I certainly didn't want  
8 to cause him any more problems than he already had. But  
9 I should make the point the work-rate increased  
10 substantially after this case.

11 Q. Mr Graham, if I can ask you one final thing: when was  
12 your first contact with the present Inquiry?

13 A. Sorry, could you repeat that?

14 Q. When was your first contact with this Inquiry?

15 A. With this Inquiry?

16 Q. Yes.

17 A. When they decided to set it up, I think.

18 Q. Was it some time before you gave your Inquiry statement?

19 A. Oh, yes, yes.

20 Q. Why was it that early on?

21 A. Why was that?

22 Q. Why was it that early on that you had contact with this  
23 Inquiry?

24 A. I don't quite understand your question, sorry.

25 Q. Did you originally apply to be a Core Participant in



1 (A short break)

2 (2.50 pm)

3 (The witness returned)

4 THE CHAIRMAN: Are you ready to continue?

5 A. My Lord, I apologise --

6 THE CHAIRMAN: That's all right.

7 A. To answer the question, it's entirely a private family  
8 matter.

9 THE CHAIRMAN: It's a family matter.

10 A. Yes.

11 THE CHAIRMAN: Well, I am sure it will not be pursued.

12 MR HOLMES: Mr Graham, I am grateful to you. I have no  
13 further questions.

14 THE CHAIRMAN: Mr Macpherson, do you have any application?

15 MR MACPHERSON: No, sir, I have none.

16 THE CHAIRMAN: Miss Grahame?

17 MISS GRAHAME: I have one issue in relation to the  
18 difference between identification and elimination, if I  
19 may. It shouldn't take long.

20 THE CHAIRMAN: Yes.

21 **Cross-examined by MISS GRAHAME**

22 Q. Mr Graham, you gave evidence earlier about the  
23 difference between eliminating a print and providing an  
24 identification and am I correct in understanding that an  
25 identification is to a 16-point standard but elimination

1 can be to a lower standard?

2 A. Not really -- the 16-point standard is purely a court  
3 thing. You must have the 16 characteristics to take it  
4 to a criminal trial. The standard for elimination is  
5 exactly the same, that the fingerprint officer must be  
6 certain that it's an identification.

7 Q. In your evidence earlier you were asked about the  
8 difference and you seemed to accept there was a  
9 difference between the two.

10 Could you perhaps explain to me then what the  
11 difference is, if I have misunderstood?

12 A. The only difference between an elimination and a case  
13 for trial is that a case for trial requires 16  
14 characteristics. An elimination requires a fingerprint  
15 expert to be convinced and satisfied that it's an  
16 identification. That's all that's required for an  
17 elimination fingerprint.

18 Q. What is it that would make that person satisfied that  
19 it's an identification?

20 A. That the sequence of ridge characteristics, that it may  
21 be that you've only got a fragment, a smaller area that  
22 does not have 16 characteristics on it, it might just be  
23 a tiny part of a finger.

24 Q. I would like to ask you just one thing about your  
25 report. It is on the same point.

1 A. Yes.

2 Q. First of all, you understood that the SCRO officers made  
3 an identification of Y7 as Ms McKie's and that was to  
4 a 16-point standard.

5 A. Yes.

6 Q. We have looked at various versions of your report. Can  
7 I ask you to look at DB0202 and page 3 of the PDF,  
8 please, which is also page 3 of the report.

9 We have looked at versions that have been corrected  
10 and uncorrected. This is actually the corrected version  
11 but for my purposes the phrase is exactly the same in  
12 both.

13 Do you see at the second paragraph there which is  
14 headed "Bookmarked L"?

15 A. Yes.

16 Q. And that relates to Y7?

17 A. Yes.

18 Q. Do you see on lines four and five that what you have  
19 said there is:

20 "I compared it with the fingerprints of DC Cardwell  
21 and agree with the identification."

22 Your report doesn't say, "I agree with an  
23 elimination of Y7 as Ms McKie's", and you have already  
24 explained to us in evidence you don't mention anything  
25 about only finding seven points in sequence and

1 agreement?

2 A. Yes.

3 Q. Is it possible that given the wording that you have used  
4 there, "identification" rather than "elimination",  
5 together with the fact that you didn't raise the issue  
6 with the defence about only finding seven points and the  
7 fact that this doesn't appear to have been raised in  
8 your evidence, is it possible that someone could have  
9 perhaps misunderstood what your actual position was in  
10 relation to Y7?

11 A. It may be somebody misunderstood what my position was.  
12 Who are we talking about there?

13 Q. I just wanted to confirm with you that it was possible  
14 that in the light of that there could have been a  
15 misunderstanding and that people weren't aware that  
16 you'd only identified 7 characteristics rather than 16?

17 A. The seven characteristics came in at the Gilchrist  
18 report part. I don't think I mention seven anywhere  
19 else.

20 Q. No, you didn't mention it anywhere else in your report.

21 A. If I can just clarify this: I agree with the  
22 identification. I agreed that the fingerprint at the  
23 scene of the crime and the one on the form was made by  
24 the same person. That's identification. The fact that  
25 it was an elimination really just means the same thing.

1 MISS GRAHAME: Thank you very much.

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

3 THE CHAIRMAN: There are just one or two matters I would  
4 like to clear up with you.

5 In the course of your evidence, you were asked about  
6 if you see a number of points that are consistent, if I  
7 can put it that way, and no unexplained differences and  
8 your answer was that if you got 16 points you really  
9 don't need to worry about the unexplained differences,  
10 as I understood your evidence.

11 A. You're correct, my Lord. If there are 16  
12 characteristics in sequence there can't be any  
13 differences.

14 THE CHAIRMAN: Maybe it is not a question you can answer but  
15 as you work your way down from 16, for example, at 15 or  
16 14, do you still worry about unexplained differences or  
17 is it a gradual process or what?

18 A. After 10 characteristics I don't think you would find  
19 any unexplained differences.

20 THE CHAIRMAN: Because if there had been unexplained  
21 differences you won't have got to 10?

22 A. You wouldn't have got to 10. You've got your 10  
23 characteristics in sequence, my Lord, and unless the  
24 differences are somewhere in there then they wouldn't be  
25 in sequence but it's the sequential characteristics that

1           you've got. When you go up to 16 there's no point in  
2           going any further. You're not going to find any  
3           differences and if you do have a single difference  
4           somewhere before you get to 10 or that, if it's a  
5           different fingerprint you'll find dozens of differences.  
6           You will not just find one. There'll be many, many  
7           differences. It would be so obvious that you just  
8           reject the fingerprint when you're searching it.

9       THE CHAIRMAN:   You never get to 10 or whatever. As you say,  
10       you have rejected it by then.

11      A.   Yes, my Lord.

12      THE CHAIRMAN:   That was the first question I wanted to ask  
13       you.

14                The second was that in your statement to the Inquiry  
15       where you said -- and this was at paragraph 44 -- about  
16       Y7:

17                "The quality of the mark was poor and, in my  
18       opinion, didn't have the necessary 16 points needed for  
19       a criminal prosecution."

20      A.   Yes.

21      THE CHAIRMAN:   I may have misunderstood this but I  
22       understood that you never really had an opportunity to  
23       consider this print under laboratory circumstances.

24      A.   That's right, my Lord. I couldn't take it to the  
25       ultimate. Once I got -- once I became absolutely

1 satisfied with it, I would take it as far as I could and  
2 that would be the end of my examination.

3 THE CHAIRMAN: So insofar as you would appear to be being  
4 critical of the SCRO experts who did examine it  
5 apparently under laboratory circumstances, they may well  
6 have been able to get to 16 points but you did not have  
7 the opportunity that they had.

8 A. That's correct, my Lord, and maybe it would have been  
9 better if they'd prepared their enlargements in a manner  
10 that I could see there were 16 characteristics there  
11 because they would have helped me as well.

12 THE CHAIRMAN: Yes. So really your criticism, if one could  
13 call it that, has got to be read in that context?

14 A. Yes, my Lord.

15 THE CHAIRMAN: That you did not have the opportunity to see  
16 that.

17 There is one last thing, if I could just ask you  
18 about: one witness has explained that a double touch can  
19 mean either the same digit touching twice or that digit  
20 and another digit being involved in the same mark.

21 A. That's correct.

22 THE CHAIRMAN: I just want to clarify, when you say this is  
23 a double touch, which of these is it or are you able to  
24 say?

25 A. You can't say, my Lord, because there would be something

1 underneath it that you don't see. There would be  
2 probably a part of the original touch below it then the  
3 second touch would just be on top of that.

4 THE CHAIRMAN: So it could be another digit superimposed on  
5 what was there before?

6 A. It could well be, my Lord. It's very difficult when  
7 you've got a situation like that. You can't be  
8 absolutely sure of anything.

9 THE CHAIRMAN: Thank you very much, Mr Graham, and thank you  
10 for coming along and assisting us.

11 **(The witness withdrew)**

12 THE CHAIRMAN: I understand you wouldn't be in a position,  
13 if we get that far, to cross-examine this witness today.

14 MR SMITH: That's correct, sir.

15 THE CHAIRMAN: We will see how it goes because we may have  
16 to finish at the end of your examination.

17 MR MOYNIHAN: Yes, sir. I think, in fact, that seems to be  
18 the mood of those who might follow me.

19 THE CHAIRMAN: If that is the mood, that is what we will do  
20 then.

21 **DAVID BRUCE (affirmed)**

22 THE CHAIRMAN: Your full names, Mr Bruce?

23 A. David Bruce.

24 THE CHAIRMAN: Take a seat please.

25 A. I'll try my best but I've been suffering all week with a

1           severe throat infection.

2           MR MOYNIHAN: I was going to say, first of all, there should

3           be glasses there if you want to take some water. Just

4           help yourself, please.

5           Secondly, what you will find is that you will need

6           to move the microphone probably more centrally and

7           reasonably close. I think you are fairly softly spoken

8           anyway with or without a throat infection. You will

9           find if the microphone is working you can actually hear

10          your voice through the speakers behind you.

11          If you feel uncomfortable and want to take a break

12          just let me know.

13          Mr Bruce, you have been provided with a copy of your

14          statement. Do you have that in front of you?

15    A.    Yes, I do.

16    Q.    Is that a statement you provided some time ago to the

17          Inquiry?

18    A.    Yes.

19    Q.    And you signed it as a statement you were content with

20          at the time you signed it?

21    A.    Yes.

22    Q.    As we proceed, if there are any matters that you are no

23          longer comfortable with in the statement, then please

24          feel free just to indicate and to change.

25          I, in fact, want to ask you about four particular

1 matters picking up from your statement. First of all, I  
2 want to ask you some fairly general questions about  
3 working practices within SCRO in 1997. Secondly, I am  
4 going to ask you about what we have come to call the  
5 blind test in relation to Y7. Thirdly, I want to ask  
6 you about your involvement with the fingerprint Q12 and,  
7 finally, I will ask you about signing of case envelopes.

8 So if I begin in relation to general working  
9 practices, if you look within paragraph 7 of your  
10 statement -- paragraph 7 is on page 4 -- I will give you  
11 just a chance to read paragraph 7 so you are familiar  
12 with it. Then what I am going to ask you about in  
13 particular is working practices in relation to the use  
14 of the comparator machine. **(Pause)**

15 I understand that the ordinary way of working in  
16 relation to a fingerprint comparison would be that a  
17 fingerprint examiner would start by looking at the crime  
18 scene mark in isolation and try to identify what  
19 significant characteristics were observable in the crime  
20 scene mark. Is that correct?

21 A. That would be the practices nowadays, yes.

22 Q. You may want to lift up the head of the microphone.

23 That would be the practice today?

24 A. Today, yes.

25 Q. Then having examined the crime scene mark for any

1 significant characteristics, the examiner would then  
2 bring in the known print that was to be compared?

3 A. Yes.

4 Q. He would look at that to see what the significant  
5 characteristics there were in that?

6 A. Correct.

7 Q. And then using linen glasses, magnifying glasses, the  
8 examiner would compare the two side-by-side?

9 A. Yes.

10 Q. To see whether an opinion could be formed as to the  
11 match or identity between the two?

12 A. That's correct.

13 Q. And then if the examiner wished to look at matters in  
14 any more detail, in particular if he wished to count  
15 points, he might take the mark and the print off to a  
16 comparator machine for closer examination?

17 A. Yes.

18 Q. And that's all the procedure today?

19 A. That is what we do today, yes.

20 Q. Looking back to 1997, I have asked you to read  
21 paragraph 7 because you do specifically say in the  
22 middle of paragraph 7, perhaps towards the foot, you  
23 have a sentence that begins:

24 "At the time in 1997 in certain cases experts would  
25 put marks up on a screen and ask colleagues to look at

1           them to see if they would eliminate, identify or not."

2                   Do I take it from that that in 1997 there would be  
3           occasions in which a fingerprint examiner would be asked  
4           by a colleague to look at a mark, a print, and would see  
5           it for the first time mounted on a comparator screen?

6    A.   To my recollection that could have happened back then,  
7           yes.

8    Q.   Also could it happen that the second examiner might  
9           express an opinion to his first colleague based solely  
10          on an examination of the mark and the print on the  
11          comparator screen?

12   A.   12 years ago, possibly.

13   Q.   When you say "possibly", that did happen in practice  
14          12 years ago?

15   A.   In my recollection, yes.

16   Q.   I think you may need to move the microphone closer to  
17          you.

18                 So that did happen from time to time?

19   A.   Yes.

20   Q.   Do you say that that no longer happens? Does that no  
21          longer happen in practice today?

22   A.   Not that I can recall happening just now, no.

23   Q.   In relation to the blind test, the so-called blind test,  
24          if I ask you to look at paragraph 5 of your statement  
25          you will see that we have headed it up "Blind test".

1                    In fact, would it be fairer to say that what you  
2                    understood at the time, a phrase you've used in the  
3                    statement, is you understood at the time it was some  
4                    form of quality assurance exercise?

5     A.     That was one of the things that was said at the time, as  
6                    far as I recall, yes.

7     Q.     By whom was that said?

8     A.     12 years ago I would assume it would be either  
9                    Mr Mackenzie or Mr Dunbar that said that ... but it's  
10                    12 years ago.

11    Q.     That's okay. I will make allowances for the fact it was  
12                    12 years ago. So as best you can recollect either  
13                    Mr Mackenzie or Mr Dunbar mentioned it was a quality  
14                    assurance exercise?

15    A.     Yes, could have been.

16    Q.     Was that when they were asking you to participate,  
17                    before you participated or was that at some point  
18                    afterwards?

19    A.     I can't honestly recall.

20    Q.     Is it fair to say from what you said in your statement  
21                    at the time you did not know what the subject was of the  
22                    quality assurance, whether it was checking the  
23                    comparator machine or the printer or what else?

24    A.     No, I did not.

25    Q.     But you do now appreciate that what you were, in fact,

1 being asked to do was to look at the print that we have  
2 come to call Y7?

3 A. I know that now but not at the time.

4 Q. In fact, what you were being presented with was that  
5 print mounted on a comparator machine beside a  
6 fingerprint of the lady Ms McKie?

7 A. Subsequently that's what I believe but at the time we  
8 just had a screen, there was a print showing and there  
9 was a print from a fingerprint form showing and that was  
10 all we saw.

11 Q. That's fine.

12 In fact, as the examination proceeded, the only  
13 opportunity you had was to view it on the comparator  
14 screen. You were given no opportunity to view it under  
15 linen glasses?

16 A. That's correct.

17 Q. What you say in paragraph 8 of your statement is that,  
18 from memory, you got eight points of comparison.

19 A. That was from my memory but whether that was in the one  
20 piece, in total, on different pieces, I don't recall.

21 Q. So whether it was in one section of the mark or the  
22 whole mark you don't recall?

23 A. No.

24 Q. When you say you found eight points of comparison, do  
25 you mean by that that you found eight points of

1 potential similarity or do you mean you found eight  
2 points that were truly in sequence and agreement?

3 A. I don't really recall because, as I said in my  
4 statement, I wasn't even sure if it was an exercise to  
5 do with the prints or the comparator, we just thought it  
6 was some sort of quality assurance exercise. So I can't  
7 recall.

8 Q. Had you by the point when you reported to either  
9 Mr Dunbar or Mr Mackenzie at the conclusion of the  
10 exercise, had you carried out as thorough an examination  
11 as you could in these circumstances? Had you exhausted  
12 your examination of the print and the mark?

13 A. That's a hard question. I don't really recall whether I  
14 spent ten minutes on it and then looked at it and seen  
15 the quality and thought I don't think I'm going to get  
16 any further here, if that answers your question.

17 Q. What I am interested in is to go to the next sentence in  
18 your statement. You say:

19 "With eight points one would never identify for  
20 court."

21 Can you explain that?

22 A. At that time you needed 16 characteristics in sequence  
23 and agreement to take to a court trial.

24 Q. So with 8 you had obviously not achieved the 16-point  
25 standard?

1 A. No.

2 Q. The reason why I was asking you whether you had  
3 exhausted your examination is -- perhaps maybe if I  
4 stand back.

5 If you had been specifically asked simply to  
6 eliminate a mark as opposed to identify it as that of a  
7 suspect, might that instruction mean a different degree  
8 of examination by you in ordinary circumstances back  
9 then?

10 A. It wouldn't have made a difference in the degree of  
11 examination but it could have made a difference in what  
12 conclusion you came to, whether it was only an  
13 elimination that wouldn't be required for court or, you  
14 know, you were looking for a full ident to take  
15 something to court.

16 Q. So the difference between an elimination and an  
17 identification would not alter the way that you would  
18 look at the mark but it would alter the way in which  
19 you'd either be able to go to court or not?

20 A. It could do, yes.

21 Q. This is why I was asking you whether you would have  
22 exhausted your examination; in other words, if you  
23 concluded by saying there are 8 characteristics, whether  
24 you had looked to see if you could find 16 but had  
25 concluded you could not, the most you could find were 8,

1 or if you just don't recollect at what point you  
2 stopped?

3 A. I think I must have exhausted the fact that I couldn't  
4 get any more than eight and that was at the very most,  
5 eight, and, as I said, it might not have been all in the  
6 one piece it could have been four here, two there. I  
7 really can't recall.

8 Q. That's fine.

9 I think one of the reasons why -- and this is  
10 absolutely no criticism of you -- that you can't recall  
11 is the working practices back then do not require you to  
12 take notes of any examination to record for posterity  
13 the particular characteristics that were observed?

14 A. No.

15 Q. What is left uncertain to me in the reading paragraph 8  
16 is, having found eight points, what conclusion you would  
17 have drawn. You could not go to court with eight  
18 points. Did you reach any conclusion as to the  
19 relationship between the mark that we now know to have  
20 been Y7 and the fingerprint we now know to have been  
21 Ms McKie's? Did you reach a conclusion or were you not  
22 thinking in terms --

23 A. I wasn't thinking at the time about a conclusion. I was  
24 only asked how many points I could get on it. I didn't  
25 know it was a conclusion question or it was just to do

1 with the comparator.

2 Q. So, in other words, that's why you say in the second  
3 sentence here with eight you could not have identified  
4 for court and when you reported back all that you  
5 reported back was you had found eight? You didn't --

6 A. I found the mark to be particularly -- what word can I  
7 use -- fragmented.

8 Q. Sorry?

9 A. Fragmented.

10 Q. So was there any question of you having said to the  
11 person to whom you reported back it was an  
12 identification, an elimination?

13 A. No.

14 Q. No, it was simply eight points?

15 A. Yes.

16 Q. As best you can recollect today -- and, please, I do  
17 acknowledge it is 12 years ago and you may have no  
18 recollection, do you have any recollection today with  
19 the combination of eight points whether you would have  
20 been able to say it was an elimination, an  
21 identification or would you have been uncertain?

22 A. Uncertain.

23 Q. Why would you have been uncertain with the eight points?

24 A. Because of the standard of the mark. The mark was a  
25 particularly bad mark. There was movement, fragmented.

1           Whereas if you had a perfect mark then eight points on a  
2           perfect mark is a different consideration.

3       Q.    If I move from Y7 to take you on to the mark QI2 and  
4           this begins in paragraph 10 of your statement. I  
5           understand from what you say in paragraph 10 that if I  
6           tell you that the murder investigation was in  
7           January/February 1997, you are indicating that you, in  
8           fact, had no recollection of involvement with QI2 until  
9           Chief Inspector Griffiths spoke to you, you believe,  
10          some time in 1999?

11     A.    That's correct.

12     Q.    Chief Inspector Griffiths led you to understand that  
13          your initials were on an image of QI2?

14     A.    Yes.

15     Q.    And beyond the fact that your initials were on QI2 you  
16          then had no recollection of involvement with QI2?

17     A.    No.

18     Q.    Beyond the fact that your initials are on an image --  
19          and we will look at that in a moment -- do you today  
20          have any recollection of involvement with QI2 at the  
21          time of the original investigation in  
22          January/February 1997?

23     A.    As far as I can recall, Chief Inspector Griffiths said  
24          to me that he had been told that I had seen it on the  
25          comparator and that's all that I knew, that I was told

1 by Chief Inspector Griffiths that it had been said to  
2 him that I had seen it on the comparator but I do not  
3 have any recollection of seeing it -- we looked at so  
4 many different things on the comparator back then that  
5 to remember every single one, I think, would be  
6 impossible.

7 Q. That is fine. That's what I was going to ask. So, even  
8 prompted by Chief Inspector Griffiths in 1999 you  
9 yourself then, and indeed today, have no personal  
10 recollection of involvement with Q12?

11 A. No. If somebody had come two weeks later and said, "Do  
12 you remember seeing that mark two weeks ago", then  
13 there's a much greater possibility but three years later  
14 and now I don't have any recollection at all of it that  
15 I've seen it at all.

16 Q. If I can bring up for you then for you to view the  
17 photograph DB0001, page 5. In fact, if we go to page 4  
18 we will show people what we are looking at. Page 4 we  
19 have simply reproduced digitally the photographs of the  
20 marks. So page 4 is a photograph of the mark itself  
21 with some writing and page 5 is the reverse of the  
22 image.

23 It has written on it:

24 "Deceased's on screen 31/01/97", a series of  
25 initials and then below that:

1 "Accused's on screen 31/01/97" and, again, a series  
2 of initials. Do you see that?

3 A. Yes.

4 Q. Do you remember being shown the image at any stage with  
5 your initials on it?

6 A. I think I was shown that probably by Chief Inspector  
7 Griffiths in 2000. But can I just clarify that it's not  
8 my initials that are on it -- it's not my signature;  
9 it's just my initials.

10 Q. I was going to cover that. If we look at the initials,  
11 you would be EB?

12 A. Yes.

13 Q. Is there any possible of another EB, another examiner  
14 with the same initials as yourself?

15 A. Not that I recollect, no.

16 Q. So if it's EB then you are the most, in fact, the only  
17 likely candidate?

18 A. With the initials, yes.

19 Q. But the EB in neither case is written in your  
20 handwriting?

21 A. Sorry?

22 Q. In neither case is the initial EB -- it has not been  
23 written by you?

24 A. No, in neither case.

25 Q. We have covered the fact that, in practice, there would

1 be instances where an individual would first see and  
2 indeed only see a mark on a comparator machine. We have  
3 been told by others -- if I can short circuit this --  
4 that when an examiner has examined a mark on the  
5 comparator, when he's finished and he's in agreement  
6 with the identification, he will initial the comparator  
7 screen. Do you agree with that so far?

8 A. That's what used to happen, yes.

9 Q. Then at the point where four examiners have signed,  
10 someone could then take the image off the comparator  
11 machine, could write, as we see here, transposing from  
12 the comparator screen on to the photograph to retain a  
13 permanent record of those who examined this particular  
14 mark?

15 A. That is the way we were ordered to do it back then, yes.

16 Q. Therefore, that would explain how your initials would  
17 come to be on this photograph that we assume that  
18 someone has understood that you are one of those whose  
19 initials were on the comparator screen?

20 A. Somebody looked at initials on the screen and deemed  
21 that one of them was mine, yes.

22 Q. So looking at it, indeed here what is recorded is  
23 "deceased's on screen, accused's on screen". So that  
24 would be consistent with someone -- I think, in fact, it  
25 may be Mr Macpherson's handwriting here -- someone

1 recording this particular mark had been examined on  
2 screen, ie on the comparator screen?

3 A. Yes.

4 Q. And it would be possible, therefore, that you have  
5 examined the mark but only on the comparator screen?

6 A. That would be correct, yes.

7 Q. The next point in relation to this is if I take you to  
8 another document that you have been shown relatively  
9 recently about which you may have more recollection  
10 SG0751.

11 MR SMITH: I am sorry to interrupt, sir, but we have a  
12 problem with LiveNote here.

13 **(3.28 pm)**

14 **(A short break)**

15 **(3.43 pm)**

16 MR MOYNIHAN: Mr Bruce, what I was going to ask you to do  
17 was to be shown on the computer, please, a document  
18 SG0751.

19 This is simply, again, a digital copy. Is this a  
20 document that contains your signature in the bottom  
21 right-hand corner?

22 A. Yes.

23 Q. If I go to the next page and open it up, first of all, I  
24 will give you a chance to look at that. This is an  
25 enlargement of Q12.

1 Do you recognise that?

2 A. Yes.

3 Q. If I put that to one side and then bring up the next  
4 page, an enlargement of the fingerprint of Marion Ross.

5 A. Yes.

6 Q. Do you recognise that?

7 A. From 2004, yes -- sorry, 2006.

8 Q. My understanding is that this is a charting that you  
9 were asked to do in the run-up to an action in the Court  
10 of Session, a civil action?

11 A. Yes.

12 Q. What you explain in your statement is that you have  
13 tried in this production to recreate what you would have  
14 seen in Q12 had you had a recollection of examining it  
15 back in 1997?

16 A. That's what I could have seen back then, yes.

17 Q. In fact, what you have marked up on the productions is a  
18 total of 12 points.

19 A. Yes.

20 Q. Do I take it from that that given the opportunity to  
21 study these enlargements of Q12 and the mark of  
22 Miss Ross that you are unable to complete a full  
23 16-point comparison?

24 A. Yes.

25 Q. So the maximum number of points in sequential agreement

1 that you observed on these productions was 12?

2 A. That was all I was asked by the team at the time, they  
3 said, "Try and get as many as you possibly could", and  
4 what you can recall from, it would have been nine years  
5 ago at that time in 1996, but until I saw that -- I had  
6 no recollection of the mark until I saw that.

7 Q. So because you had no recollection of the mark, it is a  
8 somewhat artificial thing to say to you recreate what  
9 you remember if you don't remember?

10 A. That's correct.

11 Q. So really what you were being asked to do when this  
12 document was produced is, as best you can, to mark up  
13 the points that you regarded as being in sequential  
14 agreement?

15 A. Yes.

16 Q. And the maximum you could observe was 12?

17 A. Yes.

18 Q. Based on 12, if we make the assumption that this is what  
19 you would have been able to see back in 1997, if you  
20 just make that assumption -- and I appreciate you have  
21 no recollection -- if we make that assumption, would you  
22 have been able, again, assuming you were working on the  
23 comparator screen and you had counted 12, observed 12,  
24 would you have been able to sign up to a match on the  
25 comparator screen?

1 A. As far as back that I would have thought a match for an  
2 elimination but I don't see if I didn't get 16 would I  
3 sign up for a match for a full identification.

4 Q. I am grateful to you. I have used the generic "match"  
5 to cover the two possibilities, an elimination and an  
6 identification --

7 A. Well --

8 Q. Sorry.

9 A. Now eliminations and identifications are held more  
10 similar. Back then an elimination, there were some  
11 cases where you would eliminate a case, a person, and it  
12 was thrown aside. It was an elimination. It wasn't --  
13 sorry, an identification was held much more back then  
14 than an elimination was.

15 Q. An elimination just to discard something and put it to  
16 aside --

17 A. It was eliminated from the case.

18 Q. So if, for example, one had a fingerprint in a house  
19 identified as a very close friend of the deceased, not a  
20 suspect in the case at all, a very close friend, you  
21 would eliminate that print from any further  
22 consideration as a person beyond suspicion but it was a  
23 mark that could be eliminated and put out?

24 A. That's generally the case.

25 Q. You might make a match to the elimination standard on

1 fewer than the 16 points?

2 A. Back then that was probably the case, yes.

3 Q. So this would have been enough back then for you to have  
4 made an elimination?

5 A. If that's what I saw back then, yes.

6 Q. But you would not have been able to match it to the  
7 court standard for identification, the 16 --

8 A. I'm assuming not and that's probably why I wasn't  
9 signed -- I didn't sign it anywhere for -- I didn't sign  
10 any envelopes or anything else. That's my recollection.

11 Q. When you say not signing anything it could be that if  
12 you have matched it to an elimination standard, in other  
13 words, sufficient to conclude that this was the mark of  
14 Miss Ross, that you could have signed the comparator  
15 screen even though you have only counted to 12 points?

16 A. That's possible but, as I say, I have no recollection of  
17 doing that back then.

18 Q. It's okay. If I stand back because I am not wanting to  
19 go beyond, as you say, your recollection, you have no  
20 recollection then, so let's just look at it in a purely  
21 hypothetical way.

22 You are looking in 1997, could it happen that you  
23 would sign this screen as being satisfied that there was  
24 a match even when you had failed to count 16 points?

25 A. If it was an elimination, that's possible, yes.

1 Q. That's fine.

2 Now the final point I was wanting to ask you about  
3 was indeed what you have just mentioned, about the case  
4 envelope. If I could bring up please one final document  
5 DB0529.

6 Do you recognise this as a style of case envelope  
7 from that period?

8 A. Yes.

9 Q. I don't understand your signature to be there but  
10 there's at least one witness has thought it might be so  
11 if I could ask you to look, as best you can, to see  
12 whether your signature is actually anywhere on the  
13 envelope?

14 A. No, not that I can see.

15 Q. So your signature's not anywhere on the envelope?

16 A. I can't see it.

17 Q. One possibility would be even though you have had  
18 involvement with Q12 which you may -- if you look at the  
19 marks identified, you will see that Q12 features in the  
20 two lists, both for David Asbury and Marion Ross. In  
21 David Asbury's in the third line, "Q12 part of", and in  
22 the third digit and then for Marion Ross it's "Q12 part  
23 of", the second digit.

24 Do you see that?

25 A. Yes.

1 Q. So even though you are one of the individuals who, if  
2 the initials on the back of the photograph are correct,  
3 studied QI2, one explanation why your initials don't  
4 appear on this envelope is that you were unable to find  
5 the full 16 points required for court identification in  
6 QI2?

7 A. That would be my understanding, yes.

8 MR MOYNIHAN: Thank you, Mr Bruce. That is the end of my  
9 questions of you.

10 Sir, I have discussed the matter with my learned  
11 friends and, indeed, despite the inconvenience it puts  
12 Mr Bruce to who has come to us out of his sick bed, the  
13 preference would be, I think, the balance would be to  
14 adjourn at this point and resume tomorrow morning with  
15 apologies to Mr Bruce.

16 THE CHAIRMAN: Is that convenient?

17 A. If it has to be, I'll come back tomorrow morning, yes.

18 THE CHAIRMAN: The only question -- we have been sitting at  
19 10.00. We possibly should continue at 10.00 unless that  
20 causes any great inconvenience.

21 MR MOYNIHAN: It might be, since we are inconveniencing  
22 Mr Bruce, I haven't asked him if any particular point in  
23 time is easier than another.

24 THE CHAIRMAN: Is 10.00 convenient for you?

25 A. That would be fine, yes.

1 THE CHAIRMAN: All right we will make it 10.00 then tomorrow  
2 morning.

3 **(3.55 pm)**

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

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