

Friday, 10th July 2009

1

2 (10.00 am)

3 **EDWARD BRUCE (continued)**

4 THE CHAIRMAN: Mr Smith?

5 MR SMITH: Thank you, sir, I do have an application to make
6 in respect of three matters. I would like to ask this
7 witness, first of all, some questions regarding his
8 involvement, if any, regarding the identification of Q12
9 and questions relating to the chart that was looked at
10 yesterday and prepared in 2006 by this witness.

11 The second matter is relating to Y7, whether this
12 witness has ever held any view that the identification
13 of Y7 was correct, some matters I wish to put to him.

14 The third relates to whether any pressure was ever
15 put on individuals within the office to come up with
16 identifications and look for points. These are the
17 three matters.

18 THE CHAIRMAN: I think he does deal with that in his
19 statement, does he not?

20 MR SMITH: He does but there is a particular matter raised
21 on the documents --

22 THE CHAIRMAN: If there is some particular matter. Very
23 good then, yes.

24 MR SMITH: Thank you, sir.

25 **Cross-examined by MR SMITH**

1 Q. Mr Bruce, I would like to ask you, first of all, about
2 Q12. Can I just be clear about this: according to you,
3 at no stage I think have you been able to find 16 points
4 in sequence and of relevance relating to Q12 and the
5 mark of the deceased, Marion Ross; is that right?

6 A. Not in my recollection, no.

7 Q. Can I ask you to look, please, if you can at the chart
8 that we saw yesterday, SG0751. If you go to the actual
9 chart, a page into it. Can I have that side-by-side
10 with the next page, please. I think what we can see is
11 this particular chart we understand was prepared for the
12 purposes of the civil case some time in 2006. I think
13 that is right. Is that correct?

14 A. Yes.

15 Q. And it was prepared by yourself?

16 A. Yes.

17 Q. Do you have any understanding as to why you were asked
18 to prepare that document for the purposes of the civil
19 case?

20 A. I was asked by whoever was dealing with the civil case
21 to mark what I thought I possibly could have seen in
22 1997. As I said, I didn't recall that far back to doing
23 that mark but they said because my name appeared I was
24 to mark what I possibly could have seen on the screen
25 back then, which would have been over nine years

1 previous.

2 Q. So do we understand that what you were really doing was
3 not -- and I don't criticise you for this -- you were
4 asked to do something but you couldn't do it from
5 memory, you had to do it as a fresh charting, if I put
6 it that way. Is that a fair way of looking at it?

7 A. It could have been. It's hard to say. That was three
8 years ago as well.

9 Q. What I'm really suggesting to you is you couldn't
10 possibly have remembered some nine years later, "I
11 remember seeing point number 11", or whatever?

12 A. No.

13 Q. You were just looking for any points that you think
14 could be identified as features of relevance. Is that
15 correct?

16 A. I was told that I had marked -- that, sort of, I had
17 looked at that so I was looking to see what I could have
18 seen back then.

19 Q. Could I ask you a couple of points of detail about this
20 chart for the moment. I wonder if you can confirm from
21 the right-hand chart, the inked mark, if we concentrate
22 on that. First of all, as far as the presentation of
23 this is concerned, this is clearly full size photographs
24 and not using a charting machine, charting enlargement;
25 that's right?

1 A. Yes.

2 Q. Similar, incidentally, to yesterday, if you need a break
3 please just say so and I'm sure we can organise that.

4 Why was it the charting enlargement machine wasn't
5 used in respect of Q12 for this purpose? Had it been
6 abandoned by then?

7 A. I believe so but that would have been a management
8 decision to use the charting PC and a management
9 decision whether to abandon it for other means.

10 Q. Can I ask you who was it in particular asked you to
11 prepare this? Was it someone within SCRO said, "I've
12 been asked to get you do this", or was it a solicitor
13 who visited you or what?

14 A. I can't recall.

15 Q. As far as the right-hand representation is concerned of
16 the inked mark of Miss Ross, do you see points 12, 11,
17 10 and 6 converge into an area at the end of the red
18 lines is very, very close together. Do you see that?
19 All of these, 12, 11, 10, 6?

20 A. Do you actually have the charting -- the enlargement
21 here rather than trying to look at it on the screen?

22 Q. You have the original there in front of you?

23 A. No.

24 Q. You would rather have it, would you?

25 A. Is that available just now?

1 Q. I'm sure that can be arranged that --

2 MR MOYNIHAN: If you give us a couple of minutes it is
3 probably up the stairs in the office.

4 MR SMITH: Surely. I wonder if that could be obtained.

5 In the meantime, could I ask that, if possible, that
6 area in the centre where the line 10, et cetera, goes in
7 can be enlarged.

8 I'm particularly interested, I think we can see that
9 the three end dots, if I put it that way, towards the
10 left, there's one directly above the other. So one, if
11 you like, at the 12.00 position, one at 6.00 and one
12 about the maybe 2.00 or 2.30 position. Do you see the
13 dots I'm referring to?

14 A. The three closest to the middle?

15 Q. Yes, the three close together. There's then one
16 slightly off of the right. The one to the right I think
17 appears to be a bifurcation of some kind. Do you see
18 that?

19 A. Yes.

20 Q. But to the left -- we will get the original for you in a
21 few moments -- but are you able to help us with what the
22 other three towards the left are pointing to? Is it a
23 ridge ending, a bifurcation, is it two ends of a short
24 ridge or what is it?

25 A. Could I see an enlargement of the other mark

1 side-by-side, please?

2 THE CHAIRMAN: It's just coming.

3 A. No, I was talking about the screen.

4 THE CHAIRMAN: Oh, I see.

5 MR SMITH: Do you want to see an enlargement of the same
6 area?

7 A. On the other mark, the crime mark.

8 Q. The crime mark?

9 A. Yes, please.

10 Q. It's not a very good copy, of course, it's a digital
11 copy, but can I ask why are you doing it that way? Why
12 are you looking from the inked mark to the latent mark?

13 A. Because you asked me to and you brought up the inked
14 mark enlarged first.

15 Q. No, with respect what I was asking was from the inked
16 mark, what is being pointed to with these particular
17 items?

18 A. I'm sorry, you brought the enlargement of the
19 fingerprint form was brought up first so that was the
20 one I looked at first.

21 Q. I'm sorry, if I've confused you at all. I'd be quite
22 happy to take away the latent from the screen. Can you
23 just go back and enlarge only the inked mark, the one to
24 the right. All I'm asking is what is it that the lines
25 in that are pointing to on the inked mark, these three

1 dots towards the left of the cluster of four?

2 A. It looks like three ridge endings.

3 Q. Three ridge endings?

4 A. Yes.

5 Q. Do you see down on that enlarged image down towards the
6 bottom right of the page, of the section that's
7 enlarged, we can see again a cluster of three.

8 Do you see these?

9 A. Yes.

10 Q. I think the top of the cluster of three is possibly
11 pointing to almost a bifurcation -- is that right -- a
12 bifurcation going down the way, or is it?

13 A. I would have to see the other mark side-by-side. I'd
14 like to see both marks side-by-side.

15 Q. I'm interested in why you say you'd need to see the
16 other mark, the latent mark. Why is it you need to see
17 the latent mark.

18 A. Because we work from the latent mark to the fingerprint
19 form. We don't work the other way round.

20 Q. Mr Bruce, all I'm asking is, on an inked print, which
21 undoubtedly must be better quality than any latent
22 mark -- we're agreed about that, are we?

23 A. Yes.

24 Q. I'm asking what it is the line is up at? On your
25 representation of the inked mark, what is it that in

1 that little cluster of three down towards the bottom
2 right, what is it that each of them points to? I think
3 you've got the original now. If you can tell us from
4 the original.

5 A. Ridge ending.

6 Q. We have three of them.

7 A. Yes, three ridge end.

8 Q. Let's take the top-most. You are saying that's a ridge
9 ending, is it?

10 A. Yes.

11 Q. We then have two below that. So if we take the
12 right-hand one of the two below. What's that?

13 A. That looks like a ridge ending also.

14 Q. And, finally, the one to the left?

15 A. Yes, ridge ending.

16 Q. I think we've broadly finished with the images I have
17 here but you have the original so feel free to look at
18 it if you wish.

19 In the course of this Inquiry we heard some
20 evidence, in particular from Sheriff Crowe, who was
21 employed within Crown Office at the material time, who
22 gave evidence to the effect that some Danish experts
23 came across to look the mark, the original of the mark,
24 that became known as Q12.

25 Were you aware that this was looked at by Danish

1 experts?

2 A. I've heard something like that, yes.

3 Q. You've heard something about that.

4 A. Yes.

5 Q. Do you know what the opinion was about whether or not
6 QI2 was a mark which was correctly identified as that of
7 the late Marion Ross?

8 A. I can't recall. There was so many different people
9 looked at it.

10 Q. I think what Sheriff Crowe said was that they were
11 looking at it -- and this in the evidence is on page 10,
12 about line 13 or so -- what he said was, in his written
13 statement:

14 "They [that is the Danes] kept saying how they could
15 not believe how anybody could make an identification on
16 the prints."

17 He was asked:

18 "I take it there was an element of disbelief by them
19 as to how it came about?"

20 He said:

21 "Yes."

22 He was asked:

23 "This wasn't after consideration -- well, you may
24 not think -- so this was, 'We can't believe'?"

25 He said:

1 "I would describe their reaction as incredulity."

2 So what he is representing is the Danes were
3 incredulous. They couldn't believe that anyone would
4 come up with an identification of the mark.

5 Do you have any comment on your position? Are you
6 saying that you think it might be Marion Ross'?

7 A. I marked it -- I was asked to mark what I remembered
8 back in 1997 and that's what I did with this enlargement
9 and that was -- that was marked for, it wasn't an
10 Inquiry. What was the hearing called?

11 Q. I am sorry, you were doing it for the purposes of the
12 civil case?

13 A. That's right, the civil case, sorry, yes.

14 Q. But you found 12 points --

15 A. I was asked to find what I could have seen back nine
16 years ago and that's what I did.

17 Q. You found 12 points according to you; is that right?

18 A. That's what I marked, yes.

19 Q. And I take it from that what you are saying is that in
20 your opinion that is Marion Ross' print; is that right?

21 A. I said that could have been an elimination but I did
22 say, if you see my statement from the civil case and
23 from this -- my statement from this, sorry, is that I
24 didn't think there was enough for court purposes.

25 Q. Yes. What we've heard from a number of witnesses is

1 that the identification or elimination, however one
2 looks at it, may be insufficient to reach for court
3 purpose 16-point standard but these people, some people,
4 say nonetheless, "I will remain satisfied if I get to a
5 particular level that a print is a correct
6 identification".

7 You are familiar with that concept, I take it?

8 A. I am, yes.

9 Q. I'm asking what your opinion is, even though it was
10 insufficient for court purposes --

11 A. I'm --

12 Q. -- wait until I finish the question -- even though it
13 was insufficient for court purposes to 16 points, what
14 is your view about whether or not that is Marion Ross'
15 fingerprint?

16 A. I only saw it as far as I was told on the screen in 1997
17 and from the screen I marked 12 points and said it was
18 possibly -- well, probably an elimination print. I
19 didn't identify it for court purposes and that's all I
20 can say about it. I didn't identify it for court
21 purposes; so I couldn't get to 16 and confirm there was
22 an ident for court purposes.

23 Q. So you are simply doing it on a mechanical basis saying,
24 "That's the result. It's 12. I'm not expressing a view
25 as to what" --

1 A. I wasn't involved in the case any further after that, as
2 far as I remember I wasn't involved in the court -- I
3 wasn't involved, I know I wasn't involved in the court
4 case or any other part of the case after that apart from
5 the occasional elimination.

6 Q. I think we also heard from Mr Sheppard who is now
7 retired but formerly was responsible for training of
8 Fingerprint Officers. Is that man known to you?

9 A. I've no idea who Mr Sheppard is.

10 Q. Just in fairness I think he also indicated that he found
11 it impossible to understand how anyone made an
12 identification at all -- an identification at all -- in
13 respect of Q12 and I think his position was that -- I
14 stand to be corrected on this -- but I think he saw only
15 one or maybe two points somewhere way down at that level
16 that could possibly be drawn between the inked mark and
17 the latent print and you seem to have found 12 of them.

18 Do you have any comment on that? Are you saying
19 that you are just --

20 A. Nothing.

21 Q. -- able to see things he can't see or he must be wrong?

22 A. That's his opinion. His opinion is he could only find
23 three or four, then that's his opinion. I can't change
24 his opinion.

25 Q. But will you change your opinion if someone who trains

1 at Durham says, "Look, you just can't get that number of
2 points"?

3 A. Well, I didn't see the difference it makes if he trains
4 at Durham. That's his opinion. Everybody is entitled
5 to their opinion. If his opinion is that then that's
6 fine. It's his opinion.

7 Q. Did you look for any differences between the inked mark
8 and the latent print?

9 A. The inked mark is very -- does look as though it has
10 movement in it, so there's differences in movement but
11 it is quite a dirty mark and, in my opinion, possibly
12 more than one touch.

13 Q. You think more than one touch --

14 A. Yes, there's touches coming in on the right-hand and the
15 left-hand side, in my opinion.

16 Q. So you can see differences between the inked mark and
17 the latent print but you are prepared to -- or are you
18 saying that they must be --

19 A. Prepared to mark 12, it's differences as in differences
20 in the makeup of the mark.

21 THE CHAIRMAN: Mr Bruce, it's very natural to turn to the
22 person who is asking you the questions but I think it
23 makes it more difficult, certainly for me. I realise
24 it's the obvious thing to do is to turn to the person
25 who is speaking to you but if you could manage, it would

1 be very helpful, please.

2 MR SMITH: Thank you. I am trying to find a document just
3 now to put to you but I think Mr Sheppard's view was
4 there were a number of very significant differences
5 between the inked mark and the latent. For example, I
6 seem to recall from memory -- and we will come back to
7 it when I get the information -- but there was a
8 difference right at the core. On one there was a lake,
9 on the other there wasn't. Something like that, as
10 fundamental as that.

11 Are you able to see anything that could be a
12 difference in that regard?

13 A. Without you pointing out where he said there was a lake
14 then I would have to see where he said there was a lake
15 to say whether I think he's correct or incorrect.

16 Q. I've just found the evidence that he gave but I think
17 the thrust of his evidence was to the effect that there
18 were significant differences that could not be explained
19 away between the two and, therefore, is something that
20 would have drawn any person looking at it to the
21 inevitable conclusion that the two were not the same.

22 Do you have any comment on that?

23 A. That's his opinion. He's entitled to his opinion. If
24 that's his opinion then ...

25 Q. I will just put to you his opinion and see if you are

1 sticking with your opinion on this. What I think he
2 indicated was that when you examine the photograph, he
3 says:

4 "Your eye is immediately drawn to the centre. You
5 can see the core with a lake and a bifurcation
6 immediately to the right of the core."

7 Can you see that?

8 A. I see the core but I don't see a lake. It looks like
9 three bifurcations. The print is very dirty in the
10 centre but that's three -- in my opinion, that's a
11 bifurcation, a bifurcation below and a bifurcation to
12 the right, not a lake.

13 Q. In any event, you say it must be a difference of
14 professional opinion if Mr Sheppard says you simply
15 can't explain these differences away?

16 A. It's his opinion.

17 Q. I am sorry to press you on this though, Mr Bruce. Are
18 you here today saying, "Well, I found 12 points but I'm
19 expressing no view other than it was a simple
20 elimination? It was enough to eliminate?"

21 A. That's my opinion, yes.

22 Q. I am told LiveNote has given up on us again?

23 THE CHAIRMAN: Mine is fine.

24 MR MOYNIHAN: I think there's a problem with the Wi-fi
25 connection in here. Those of us -- I have two: one has

1 stopped, one has not, and so it's simply the Wi-fi
2 connection. In other words, the system is recording
3 properly it's just not coming across on some of the
4 computers here.

5 MR SMITH: I am certainly happy to carry on, we can no doubt
6 catch up.

7 THE CHAIRMAN: I suppose the way we had to before there was
8 LiveNote and we are all fairly used to it. **(Pause)**

9 MR SMITH: Mr Bruce, I'd just like to ask you, if I can,
10 about the difference between elimination and
11 identification.

12 Now I take it you understand that in this case,
13 while it might be described as Marion Ross' fingerprint
14 was being eliminated that would have a pretty dramatic
15 effect on the case against David Asbury because it was
16 suggesting an item found in his house had been touched
17 by the deceased.

18 Do you understand that?

19 A. I do but at the time I saw the mark I was just asked to
20 look at a mark on a comparator. I don't know any
21 background behind the mark. I wasn't working on that
22 team at the time. I was just asked to look at the mark
23 on a comparator, so you look at the mark.

24 Q. So I take it from that that leaving aside the
25 circumstances under which you looked at Q12, when you

1 were asked to look at a mark, you would be told whether
2 it was for elimination purposes or whether it was for
3 identification purposes. Is that right?

4 A. It's on the screen and you see there is an elimination
5 form there, you see its an elimination form, and a mark
6 then it's obviously an elimination because its an
7 elimination form and not a charge form.

8 Q. Just to get straight into this you apply a lower
9 threshold for elimination than you do for
10 identification. Is that right?

11 A. Back in 1997 eliminations were treated differently in a
12 case than an identification, as far as I recall.

13 Q. Has that changed now?

14 A. It depends on the case but --

15 Q. It depends on what about the case?

16 A. Well, there is still eliminations that you can -- it's a
17 non-numeric standard now so with the non-numeric
18 standard then it has changed, yes.

19 Q. So with the non-numeric standard now, are you saying
20 that the same test is applied whether it's elimination
21 or identification?

22 A. It's very much up to the fingerprint expert whether he
23 assesses the print and he decides whether there's enough
24 to identify, eliminate, whatever.

25 Q. So there is a different standard now, is there?

1 A. I don't know if you'd call it a different standard but I
2 think -- an elimination is an elimination, as opposed to
3 an identification. So it is different.

4 Q. You see, one of the things Mr Sheppard said to us, the
5 gentleman who was formerly in charge of training at
6 Durham, was that you should not apply a different
7 standard because today's eliminated person may be
8 tomorrow's accused person. Do you understand that --

9 A. Yes.

10 Q. And then I think he put it that if you applied a
11 different standard you have -- he didn't use this
12 phrase -- but a lot of humble pie to eat as a
13 consequence if you go back and say, "I know I eliminated
14 it as his but actually now I'm looking at it again I
15 don't have enough to say positively that is his
16 fingerprint". That would be a ridiculous position,
17 wouldn't it, for a fingerprint officer to be in?

18 A. I don't really know. I don't get what your point,
19 sorry.

20 Q. What I'm suggesting to you is that if you apply
21 different standards to elimination to identification
22 then it doesn't look particularly clever, as far as the
23 fingerprint examiner is concerned, if he is effectively
24 changing his position. Is that not fair?

25 A. I don't know if he'd change his position, but maybe look

1 at it differently, but this was back in 1997 where the
2 procedures were totally different to they are now.
3 Things have changed in the last 12 years.

4 Q. I am trying to work out what changes they are and I
5 think what you are saying is it's now a non-numeric
6 standard. I've got that bit right, have I?

7 A. Yes.

8 Q. And a fingerprint expert examining a fingerprint comes
9 to a conclusion but he may be able to drop his standard
10 a little bit if he knows it's an elimination rather than
11 it was identification. Am I right about that?

12 A. I don't think you'd drop the standard, no.

13 Q. So it is the same test now whether it's elimination or
14 identification on a non-numeric basis; is that right?

15 A. Now there's a non-numeric basis it would be different,
16 yes.

17 Q. It would be different to what it was before but it would
18 not be different between elimination and identification?

19 A. Previously elimination you didn't have to get
20 16 points --

21 Q. I follow. I'm asking about the position now?

22 A. -- and you could get an elimination with less than 16.
23 Nowadays you can get identification with less than 16.

24 Q. Yes.

25 A. And that's the major difference of the two. So back

1 then it would have been treated differently but nowadays
2 it's in the hands of the fingerprint officer to decide
3 whether he has sufficient to say it's that person or
4 not.

5 Q. I am sorry to press you on this because I am still
6 unclear as to what the position is now. I understand
7 what you say about what it used to be, but the position
8 now. As I understand it, we have the non-numeric
9 standard, the fingerprint examiner looks at the
10 fingerprint. Is it any part of his conclusion whether
11 this an elimination print or an identification print or
12 is it irrelevant? Does he come to his conclusion and
13 say, "This is Mr X's fingerprint", or does he say, "This
14 is enough for elimination purposes but I wouldn't be
15 prepared to" --

16 A. Are you talking about now or then?

17 Q. I'm talking about now, yes.

18 A. That would be the case, yes.

19 Q. So he could still effectively apply a different --

20 A. No, the same standard now because --

21 Q. The same standard?

22 A. -- you were bound by a 16-point standard previously; now
23 you're not.

24 Q. But it's the same standard now whether or not it's
25 elimination or identification? That's what I'm asking

1 you.

2 A. Yes, I would say so.

3 Q. You say you would say so?

4 A. Yes.

5 Q. Is there any protocol? Is there any indication you have

6 been given as to what you should do to get some

7 consistency amongst fingerprint examiners?

8 A. It's the fingerprint examiner will see -- he will take

9 into consideration the quality of the mark, how many

10 characteristics he can get and he will decide whether he

11 thinks it's identical or not.

12 Q. I am interested in what the protocol is within the

13 offices. Are you told that the same standard should

14 apply to elimination as to an identification. Is that

15 what you are told?

16 A. As far as I believe, that's the case.

17 Q. Mr Bruce, you are doing a very important, responsible

18 job. One would think if there was such a protocol you

19 would be aware of it in your office. Are you saying you

20 don't know if there's a protocol?

21 A. Well, it's the same -- an elimination is the same now.

22 We don't have to use the 16-point standard. Before we

23 could eliminate -- 16-point standard was for

24 identification -- you could eliminate on less than that.

25 Now you can identify on less than the 16-point standard

1 depending on the quality of the mark. The protocol
2 would be the same.

3 Q. Is there a written protocol about this matter?

4 A. I believe there would be but without going in to
5 checking protocol then I'm a fingerprint officer; I'm
6 not management. So I would have to check what protocol
7 there is written down. But we treat it the same now.

8 You can -- an elimination and -- you can identify an
9 elimination and a crime mark or an accused on less than
10 16 points now; whereas before you couldn't.

11 THE CHAIRMAN: Is the position then that you've got to make
12 an identification, whether it's an elimination or for
13 court?

14 A. Yes.

15 THE CHAIRMAN: And, therefore, it is the same? In other
16 words, you must make an identification?

17 A. Now, yes, whereas previously --

18 THE CHAIRMAN: You had to go on to 16 points beyond the
19 identification.

20 A. Yes, that's what I was trying to say.

21 MR SMITH: Thank you, sir.

22 Can I go back then to the first time you were asked
23 to look at Q12, not for purposes of the civil case but
24 before then, as you have explained.

25 Did you have any idea whatsoever what the importance

1 was of Q12 when you looked at it?

2 A. Not in my recollection, no.

3 Q. Do you recall if you managed to achieve as many as
4 12 points?

5 A. I don't know, but I would have thought I'd got at least
6 ten if my name was put on the back of the photograph,
7 yes. If I'd eliminated it and my name was on the back
8 of the photograph, I would assume at least ten.

9 Q. I would like to move on, if I can, to the question of Y7
10 now. As I understand your position, you only got to
11 about eight points; is that right?

12 A. That's my recollection yes.

13 Q. I think in your written statement to the Inquiry you say
14 that subsequent to the Shirley McKie case out of
15 curiosity you looked at the image again. Is that right?

16 A. I saw it an Internet image, yes.

17 Q. It was the Internet image. Can I just be clear about
18 this, first of all: was the Internet image that was
19 available to you, was it something that you could
20 recognise as being Y7 from what you had seen before?

21 A. It was very poor quality. I didn't remember the mark
22 from the blind test because I only saw it for about 10
23 or 15 minutes. I was only going by that's what it said
24 on the Internet, that that's what it was.

25 Q. I can understand why you wouldn't recollect having seen

1 this before because you would have been looking at
2 hundreds, maybe thousands of other fingerprints in the
3 intervening period. Is that fair?

4 A. Yes.

5 Q. But as far as the Internet image is concerned, were you
6 able to, from that Internet image, able to make any
7 comparison between that and the Internet version of
8 Shirley McKie's inked mark?

9 A. I was not. It was very poor and I didn't make a
10 comparison on the Internet.

11 Q. So I take it that your position is that at no stage were
12 you able to get the mark up to the then required
13 16-point standard, you had never been able to do that
14 even in your private time, if I can put it that way?

15 A. That's correct.

16 Q. Indeed, as far as the eight points are concerned I
17 notice you have been very clear and careful not to say
18 you were satisfied it was Shirley McKie's print. Have I
19 got that right?

20 A. Yes.

21 Q. I just want to be, before I go to a document, absolutely
22 certain that at no stage have you ever been of the view
23 that Y7 was correctly identified as Shirley McKie's.
24 That's someone else's opinion?

25 A. Not through -- I've never got 16 so I've never

1 identified it, no.

2 Q. So I think the answer to my question, a couple of
3 questions ago, was that you have been careful not to say
4 that you were satisfied it is Shirley McKie's print. Is
5 that right?

6 A. Not in my personal -- I got eight points so I couldn't
7 identify it, no.

8 Q. I would like you to look please at the document SG0557,
9 please.

10 I think this is a letter which is sent to
11 Lord Cullen dated 14th November of, I think, 2005,
12 Lord Cullen being the Lord President and Lord Justice
13 General, the most senior Scottish judge at that time.
14 If we can perhaps go on to page 4, please, of the
15 letter -- I am sorry, it is the next page, page 5 -- and
16 we see right in the middle of the page, we see a name
17 bearing to be your name and your signature. Was that
18 your signature?

19 A. It is, yes. Sorry, it is.

20 Q. You recall signing this letter, do you?

21 A. I do.

22 Q. What was the purpose of this letter being sent to
23 Lord Cullen?

24 A. I can't recall. It was just people in the office saying
25 how they felt it would be detrimental to the office, the

1 Inquiry would be detrimental to the office ... I can't
2 recall. It was that long.

3 Q. Can you just read out the paragraph immediately above
4 your signature, can you read it out, please.

5 A. "We, Terry Foley, Edward Bruce, Alister Geddes, being
6 fingerprint experts from the Scottish Criminal Record
7 Office can confirm that during the above that we worked
8 on the" --

9 Q. Do you want it expanded a little?

10 A. Yes, please.

11 "We carried out a comparison in relation to mark Y7
12 and independently reached the conclusion that mark Y7
13 and the left thumb print on the donor fingerprint form
14 were made by one and the same person."

15 Q. You will have to help me with this. That appears to be
16 different to what you've told me a few minutes ago.

17 A. What I mean by that was that I believed in the officers
18 that had done the comparison and took it to court, that
19 they were correct in their assessment of the print, that
20 it was identical.

21 Q. Can I read this short with you. It says that, if we
22 change the word "we" to "I":

23 "[I] Edward Bruce being a Fingerprint Expert from
24 SCRO can also confirm that at the time the above cases
25 were being worked on within the Fingerprint Bureau [I]

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

5 Now I understand that to be conveying -- and I don't
6 think I am straining the meaning of it -- that you
7 personally came to the conclusion that Y7 was deposited
8 by Shirley McKie. That's a fair reading of that, isn't
9 it?

10 A. That was based on me seeing the eight points that I was
11 told back in the blind trial and the fact that other
12 experts had identified it and I believed in them and I
13 believed that they were correct, not that I ever got 16
14 on the mark ever. I'm sorry for the wording but that's
15 what I meant by that.

16 Q. That's not what it says, is it?

17 A. I can see what you're getting at with that but that
18 is -- I apologise, if that paragraph reads that way but
19 it was that I'd seen the eight points and with other
20 people having looked at it and that I did agree with the
21 fellow experts because I believed their integrity and
22 their reading of the print.

23 Q. You see what this letter was designed to do, Mr Bruce,
24 was clearly to represent to Lord Cullen that a number of
25 different people had independently examined this and

1 independently concluded without any doubt that Shirley
2 McKie was the author of Y7. That's what the letter was
3 for, wasn't it?

4 A. I don't recall that now.

5 Q. Well, I take it you read it before you signed it, did
6 you?

7 A. I probably did but I don't recall that, I don't recall
8 what it was for. I just recall that I'd seen 8 points
9 and I trusted the other Fingerprint Officers and I
10 believed that they were correct but I never at any point
11 got 16 points, enough to say that I'd reached -- my
12 conclusion was that it was because I got 8 points and
13 the other experts had got 16 and taken it to court and I
14 believed them to be correct.

15 Q. How was it it came about that this letter was presented
16 to you for signature?

17 A. I can't recall.

18 Q. Do you remember who gave it to you for signature?

19 A. I can't.

20 Q. Were you given a copy of it to keep?

21 A. No. I don't think I've seen it since that day.

22 Q. You knew of course that in the course of Shirley McKie's
23 trial the fingerprint identification Y7 was going to be
24 challenged. It was a talking point within the office,
25 wasn't it?

1 A. I'd heard, yes.

2 Q. You knew that you had been unable to reach the court
3 required standard of 16 points. You knew that?

4 A. Yes.

5 Q. And you knew that some other officers within your office
6 were going to go and give evidence and say, "I have no
7 doubt that this is Shirley McKie's fingerprint"?

8 A. Yes.

9 Q. How did you feel about that, Mr Bruce, when you knew,
10 sitting in your office, that you could not support that
11 position? How did you feel about knowing there were
12 Fingerprint Officers giving evidence which could have
13 convicted Shirley McKie but you were unable, with all
14 your experience, to support that position?

15 A. That sometimes happens within a bureau, some people can
16 identify certain prints and other people can't. The
17 four officers that signed for the court case obviously
18 were comfortable in themselves that they could get
19 16 points and they could identify the print. The fact
20 that I couldn't, I'm sure if you ask other people they
21 possibly couldn't either, there was other people done
22 the blind test and couldn't. The four people who had
23 signed the identification, they were happy that it was
24 an identification.

25 Q. So can we take it that it was a matter that occurred on

1 a number of occasions where people within SCRO offices
2 were unable to get the court standard but others did and
3 then were prepared to sign documents and give evidence
4 to say, yes, there's no doubt, when in fact the position
5 was within the office there were some who were unable to
6 confirm that identification. Is that right?

7 A. That's possible back in 1997, yes.

8 Q. Was that something that commonly happened?

9 A. I can't recall how often, no.

10 Q. It was more than just this case, was it?

11 A. I would say it probably would be, yes.

12 Q. You see I am sure you understand, Mr Bruce, that if the
13 defence of McKie, those who were acting for her in her
14 trial, were aware that you as an expert, trained,
15 qualified, had access to the equipment within the
16 office, were unable to draw an identification of the
17 mark Y7 to Shirley McKie, they may have wished you to
18 give evidence for the defence. Now you understand that,
19 don't you?

20 A. That's a possibility. I was never, ever asked to give
21 evidence anyway either for her or against.

22 Q. Can you tell me how on earth the defence and, indeed,
23 the Crown would have known that you had doubts about the
24 match between Y7 and Shirley McKie's print? How would
25 they ever have found that out?

1 A. How would they have found out I only got 8 points?

2 Q. Yes.

3 A. I don't know.

4 Q. Well, they couldn't because you didn't document it
5 anywhere, did you?

6 A. I done a blind test. At the time I done the blind test
7 I had no idea who I was looking at. I done a blind test
8 and the nature of the word "blind test", I was told no
9 information on the mark or the form that was on the
10 comparator screen. So I had no idea at that time what I
11 was looking at.

12 Q. You knew before the trial, didn't you, that it was Y7
13 you'd looked at and were unable to get --

14 A. We had been told that we had looked at that, yes.
15 Several people had looked at that and were told that the
16 blind test was that mark.

17 Q. You see, Mr Bruce, I am sure you understand that you
18 would have been called by the defence if they knew about
19 your view or lack or view, I suppose, and called you as
20 a witness and said, "You are employed by SCRO. You have
21 been trained by SCRO. You are experienced. You have
22 been certified by the appropriate department as an
23 expert witness and you cannot find 16 points. You are
24 significantly short of it, in fact". That may of course
25 have led to a reasonable doubt of itself. You

1 understand that, don't you?

2 A. I understand what you're saying but I was never, ever
3 asked to convey another opinion from the day of the
4 blind trial until after that.

5 Q. But just finally on this point, you are comfortable, are
6 you, that you knew that evidence was being presented to
7 the High Court of Justiciary in the trial of Shirley
8 McKie that could have sent her to gaol, when you had
9 frankly a disagreement about the position with regards
10 to your colleagues? You were comfortable about that,
11 were you?

12 A. I'm sorry, I don't understand what the question is
13 getting at here, sir.

14 THE CHAIRMAN: Well, it's just how did you feel your duty
15 was or did you feel you had any duty to disclose that
16 you had taken a different view?

17 A. I got eight points. I couldn't confirm or deny so I
18 couldn't confirm or deny. So I couldn't go and say that
19 wasn't and I couldn't go and say it was. I believed the
20 officers who were going because I knew the officers I
21 believed that they believed they were correct and most
22 of the office believed in them, that they were correct.
23 I couldn't have went and said -- I don't know -- I don't
24 even know if I knew when the trial was. I couldn't even
25 you tell you the date of when the trial was.

1 MR SMITH: Are you saying you had no idea when the trial was
2 going on?

3 A. I don't recall. Probably at the time, but I don't
4 recall now.

5 Q. I am asking about at the time. That's what I'm asking.

6 A. Well, when was the trial? Can you tell me the date?
7 What year?

8 Q. The trial was in 1997. Why is it you need to know the
9 precise date?

10 A. Sorry, I thought you were talking about the second
11 trial.

12 Q. No. I'm talking -- I am sorry, we are confused between
13 the two trials. It was April 1999 that was the trial of
14 Shirley McKie.

15 Let me ask you this: when that trial was ongoing,
16 one of the most important cases for the fingerprint
17 world, are you saying you think it wasn't even being
18 discussed in SCRO's offices?

19 A. It probably was but I can't recall that far back what
20 was said, anything. It's 11 years. I can't recall
21 11 years ago what was said or how much it was discussed
22 or whether it was -- I'm assuming it would be but I
23 can't recall 11 years ago what was said.

24 Q. Mr Bruce, the identification of fingerprints within an
25 office is not a committee decision, is it? It's not to

1 be hawked about and discussed generally and if you get
2 two or three people saying, "Yes, I'm in favour of it",
3 then you use them. That's not the way it should be
4 worked, is it?

5 A. No, that's not the way it's worked now, no.

6 Q. It was worked like then, wasn't it?

7 A. That appears to be the case.

8 Q. Because I am going to suggest to you that rather than
9 evidence being presented on the basis of the strongest
10 link, in fairness, it should be presented on the basis
11 of the weakest link, in fairness to an accused person.
12 Do you understand that?

13 A. I understand what you're saying, yes. If I was asked to
14 give evidence I would have given it but I was never
15 asked to give evidence at any trial. So I don't know.
16 If someone had asked me to go to court then I would have
17 went to court and said that I got eight points on a
18 blind trial, as the other two, other two or three people
19 who couldn't get an identification in the blind trial
20 would have went to court as well and said what they seen
21 but no-one ever asked for me to go so I've no idea why.
22 It wasn't for me. I don't know why I was asked/not
23 asked. I think there's other trials where people
24 probably didn't get the standard but they're not asked
25 to go to court and say they didn't get the standard.

1 Q. Mr Bruce, you know the reason for that is that the
2 defence were unaware of those who were doubting the
3 identification. You know that, don't you?

4 A. I've no idea what the defence -- what the defence, if
5 they knew, if there was anybody else that looked at it
6 or not. That would have been management that would have
7 to have said to them. I don't know if the defence knew
8 who looked at it and who didn't look at it, the blind
9 test.

10 Q. While you were within SCRO, at any time were you or to
11 your knowledge were other people placed under pressure
12 to come up with points by more senior individuals?

13 A. Not to my recollection, no. I can't speak for other
14 people but I wasn't told I had to go and look at it and
15 get more points, no.

16 Q. You would remember it if that happened, would you?

17 A. I hope so. I was told -- it's a long time ago. I don't
18 recall but -- I don't recall ever being told I had to go
19 and get more points than eight points on the mark, no.
20 As I say, I hadn't seen it since 1997.

21 Q. I would like to look at a document, please, can you look
22 at DB0554, please.

23 You may or may not have seen this document before.

24 I wonder if we could have it expanded a little bit.

25 Thank you.

1 What this appears to be is a handwritten memo. The
2 date at the top left is 24/3/95 and it's got the heading
3 "Q circle", at the top. Have you ever heard of a Q
4 circle?

5 A. From recollection I think the Q might be quality.

6 Q. My question was really just more limited than that.

7 Have you ever heard of a Q circle or quality circle

8 meeting; have you heard of that?

9 A. Yes, they did go. They did take place, yes.

10 Q. Were these meetings that took place on a regular basis

11 or just when required?

12 A. I can't recall how often they took place.

13 Q. Did you ever attend a Q circle?

14 A. It's a possibility.

15 Q. Are you saying if you did you can't remember it?

16 A. It's a possibility. Lots of people attended them.

17 Q. I think what we can see is that there is a list of who

18 we presume are attendees at the meeting at the top,

19 including F McBride, which I take to be Fiona McBride.

20 Was there another F McBride employed in about 1995 in

21 SCRO or is it just Fiona McBride?

22 A. Yes.

23 Q. Just Fiona McBride?

24 A. Yes.

25 Q. I am interested in the second section of that. It's

1 under the heading of "Not signing full ident". What is
2 said here is:

3 "Concern was shown by the group over the question of
4 persons' names being taken over not signing an
5 identification, ie not seeing 16 characteristics when
6 supervisors do. A Dunbar informed the group that this
7 would only happen if the same individual continually
8 refused to sign impressions when others would. This
9 would then be highlighted to R Mackenzie. A Dunbar to
10 confirm this with Chief Inspector Law."

11 It's not, I think, very easy to decipher the precise
12 detail but the thrust of this appears to be that where a
13 senior individual, supervisors, are seeing 16
14 characteristics, the more junior ones are not signing up
15 to that, then if there's a continual refusal to sign
16 impressions this would be highlighted to R Mackenzie. R
17 Mackenzie is Robert Mackenzie, a senior individual
18 within SCRO. I am right about Mr Mackenzie's position,
19 aren't I?

20 A. Yes.

21 Q. You will agree with me that the suggestion appears to be
22 here that it is becoming close to if not actually a
23 matter of discipline if there is a continual refusal to
24 come up to 16 characteristics when a supervisor sees 16.
25 You see that?

1 A. I can't comment whether it would be a disciplinary or it
2 would be a retraining aspect. You would have to ask the
3 people like Mr Mackenzie and Mr Dunbar who would deal
4 with that. But it could be retraining if someone's
5 standard wasn't coming up to scratch. I can't comment.
6 I didn't write that.

7 Q. I am reading I suppose carefully the words "continually
8 refused to", which suggests a degree of direction and
9 control; do you follow what I mean?

10 A. I follow what you mean. You would have to ask the
11 author, Mr Orr, what he meant by writing that down.

12 Q. Well, you can take it as read that others will be asked
13 about this memo. I am asking for your comment about the
14 thrust of this. Now whether it was a retraining matter
15 or it was a disciplinary matter, can I ask you whether
16 you were ever aware personally or the experience of
17 others that you were aware of that there was some degree
18 of -- how can I put this neutrally -- some degree of
19 concern by superiors if junior officers were failing to
20 come up to the 16-point standard. Were you aware of
21 that?

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

23 Q. I take it from that you were never, ever caused to be
24 retrained or spoken to by Mr Mackenzie in the same
25 disciplinary way for failing to come up to 16 when a

1 supervisor found 16?

2 A. Not that I can recall, no.

3 Q. There's just one final matter I would like to ask you
4 about, backtracking a little bit. Can we have FI0039
5 up, please, which is the Inquiry statement of Fiona
6 McBride in paragraph 97. This is page 22.

7 We see that this is under the heading of "The blind
8 test", 97 says this:

9 "Eddie Bruce has since told me that he had an
10 interview with Tayside Police team who asked him what he
11 would say if he had to stake his mortgage on the fact
12 that the mark was Shirley McKie's and he confirmed it
13 was an identification."

14 Now you are welcome to read the context of that, if
15 you wish, but --

16 A. I certainly would.

17 Q. You want to read the context of it?

18 A. I want to what?

19 Q. Do you wish to read the context of that paragraph 97?

20 A. No, I can read it.

21 Q. What I would like to ask you is whether you have ever
22 said to Fiona McBride that you said such a thing to the
23 Tayside Police team?

24 A. I can't recall but what I said to the Tayside Police
25 wasn't that. I've never seen the Tayside Police

1 inquiries comments. They never ever gave me them back,
2 what I said to Tayside Police. They pressed me on
3 saying, "If you had to stake your mortgage on it, if you
4 had to stake your mortgage on it", I said that I
5 believed the officers were correct, I believed the
6 officers not that I had identified it. I believed the
7 officers, not confirmed.

8 MR SMITH: Thank you. I have no further questions.

9 THE CHAIRMAN: Mr Holmes, have you any application?

10 MR HOLMES: Yes, sir, there are two matters linked to
11 Mr Bruce's involvement with the fingerprint Y7 and
12 Mr Bruce's involvement with the fingerprint QI2.

13 THE CHAIRMAN: Yes.

14 **Cross-examined by MR HOLMES**

15 Q. Mr Bruce, you still work for the organisation that was
16 formerly SCRO, don't you?

17 A. Yes.

18 Q. You still do the same job?

19 A. Yes.

20 Q. Although now you do it under what we've heard is the
21 non-numeric system. Is that right?

22 A. Yes.

23 Q. With the actual process of examining a fingerprint under
24 the non-numeric system, is it right that you would look
25 at the crime scene mark first?

1 A. Yes.

2 Q. You would assess the crime scene mark and then compare
3 it against the known mark and you would attribute
4 ownership of that mark. Is that correct?

5 A. Or not, yes.

6 Q. Or not. The number of points in sequence and agreement
7 that you find within that mark is entirely irrelevant so
8 long as it's a sufficient volume for you to attribute
9 ownership; is that correct?

10 A. I would take into consideration the clarity and the
11 standard of the mark.

12 Q. Is that process exactly the same as someone in 1997
13 examining and comparing a crime scene mark against a
14 known mark?

15 A. You would to -- it's not exactly the same, no, because
16 you were working to a 16-point standard back then.

17 Q. I understand that but we've heard evidence that the
18 process of examining a mark and assigning ownership
19 based on, as you said, the quality of points in sequence
20 and agreement and the volume of points in sequence and
21 agreement is something that took place before somebody
22 started counting points up.

23 A. Yes.

24 Q. Is that correct?

25 A. Yes.

1 Q. So the process, so far as that is concerned, is entirely
2 the same?

3 A. Yes.

4 Q. It's just a case that if you go to court in 1997 you
5 would be expected to speak to 16 points in sequence and
6 agreement, whereas if you go to court in 2009 you would
7 be expected only to speak to your own satisfaction that
8 the donor of the mark is the donor of the known mark as
9 well. Is that correct?

10 A. That's correct.

11 Q. You examined Y7 during what has become known as the
12 blind test. Is that right?

13 A. Yes.

14 Q. And you did so on the comparator?

15 A. Yes.

16 Q. You have expressed a view that you found eight points in
17 sequence and agreement. Is that right?

18 A. That was my recollection at the time and that is what I
19 believe I said at the time but on my statement I spent
20 10 to 15 minutes looking at this on a comparator. It
21 was a blind test with no idea what it was. I didn't get
22 the chance to take the mark off, look at the standard of
23 the mark. It was all on a comparator.

24 Q. Regardless of what the court standard was at the time,
25 regardless of whether there were 16 points or whether

1 there were sufficient points for you to go to court and
2 speak to an identification, did you attribute ownership
3 of the mark Y7 during that examination?

4 A. No.

5 Q. I wonder if you could have a look, please, at your
6 statement to the Mackay investigation on Y7 which is
7 CO1093. Page 2 of that statement if we could have a
8 look at that.

9 A. Can I just say I've never seen this statement.

10 Q. I acknowledge the fact that you've not seen it before
11 but these are the documents that have been lodged and I
12 would like to put it to you for comment, what the
13 officers have noted down when they spoke to you.

14 There is a paragraph three from the bottom of that
15 page beginning "Some time during the murder inquiry".

16 It says:

17 "Some time during the murder inquiry I was asked to
18 have a look at a latent mark against an impression. I
19 can't remember when I was asked to do this and who asked
20 me to do it. The mark and the impression were on a
21 comparator which was in the main office, and I think
22 there was other people going about. I was not given any
23 details of the mark or the impression but I took it that
24 it was an elimination examination."

25 Do you recall saying that to the Tayside

1 investigation?

2 A. No.

3 Q. Is that the correct position as far as your examination
4 of Y7 is concerned?

5 A. I don't know why -- the only thing I could think of why
6 I thought it was elimination is because I would see the
7 back of the form that was on the comparator and it was
8 an elimination form.

9 Q. So is it correct that you assumed that what you were
10 looking at was a comparison for elimination purposes?

11 A. No, it was a comparison I was asked to look at. The
12 only thing I could think of with elimination was I seen
13 there was an elimination form. I was never told this
14 was an elimination comparison. I was told it was a
15 blind test, quality assurance exercise and would I have
16 a look at what was on the screen.

17 Q. So, as far as this statement is concerned, the
18 Tayside officers have got that part of it wrong?

19 A. If I would have seen that I would have clarified the
20 fact that I possibly saw it was an elimination -- you're
21 talking back here in, when was it, 1999.

22 Q. Sure.

23 A. I'd never seen this statement since the day that I was
24 in the room with the officers so I had no chance to read
25 it, tell them what was correct, what wasn't correct. So

1 I've never saw it.

2 Q. If we can move on to the next paragraph I will ask about
3 that and what your position is on that. It says:

4 "I examined the mark and found that it was very
5 distorted around the top, which appeared to me as being
6 caused by movement."

7 Is that part of that paragraph correct?

8 A. Could you read that again, please?

9 Q. The first sentence in that paragraph which is up on the
10 screen which says that you examined the mark and found
11 that it was very distorted around the top, which
12 appeared to you as being caused by movement. Is that
13 correct?

14 A. To my recollection, back in 1997, yes.

15 Q. It then goes on to say that you looked at the clear part
16 of the mark and, as far as you can remember, you were
17 able to get about eight points of comparison against the
18 elimination.

19 Now, firstly, is that correct?

20 A. I don't believe I ever said "clear". I never, ever
21 said there was -- I never remember saying anything about
22 a clear part. There was a clearer part but that was
23 still pretty -- there was still a lot of dirt in that
24 part as well. So I don't know.

25 Yet again, I can't comment on something I've never,

1 ever saw. I was never given the chance to correct any
2 of the Tayside officers of any of this. I've never saw
3 it since the day they took it. So I don't know how I
4 can comment on words that I have been attributed to but
5 I've never, ever had a chance to say that's not exactly
6 what I was saying.

7 Q. You have got the opportunity now and I appreciate you've
8 not seen this before. I don't think any of the
9 witnesses who have given statements to the Tayside
10 Inquiry have seen their statements before. What I am
11 asking is, is that sentence that says you looked at the
12 clear part of the mark and you were able to find eight
13 points in comparison in it correct?

14 A. I found eight points of comparison. I can't say whether
15 it was clear points. I can't remember that far back.

16 Q. It then goes on to say that your feeling at the time was
17 that the mark was the same as the elimination, although
18 it wasn't sufficient for an identification for court
19 purposes. Is that part correct?

20 A. To my recollection I looked at it, got eight points,
21 thought it could be the same but because of the standard
22 of the mark, in fact it was only on the screen. I was
23 asked how many points I got. I said, "I think I can get
24 around eight", and that's it. Not that I thought it
25 would be identified, no.

1 Q. So that part of your statement is incorrect?

2 A. Yet again I haven't had a chance to read it. If I'd had
3 a chance to read this and talk to the officers when
4 they'd taken it I would have said -- I don't get the my
5 feeling at the time was that the mark was the same as
6 the elimination. They obviously said it was an
7 elimination print because I don't get -- I've never seen
8 the statement. It's hard to comment on something I've
9 never seen.

10 Q. The import of that sentence is you felt at the time that
11 the known mark was the same as the crime scene mark?

12 A. No, I felt, bearing the eight points, it was a
13 possibility but I wasn't prepared to go any further than
14 that.

15 Q. You found eight points, so far as you recall; is that
16 correct?

17 A. So far as I recall.

18 Q. Under the non-numeric system is eight points a
19 sufficient volume to make an identification?

20 A. It depends on the clarity of the mark and how good the
21 mark was, yes.

22 Q. You've disagreed with your statement to the extent that
23 you have said that you don't feel that you would have
24 said to the Tayside officers that you felt that the
25 marks were the same.

1 A. Not the eight points, no.

2 Q. You were not willing at that stage to attribute
3 ownership?

4 A. No.

5 Q. Did you ever indicate to anyone that you felt that the
6 mark that you were looking at was insufficient to do so?

7 A. I think I probably did, yes, but I can't recall. I've
8 no idea. I can't remember that far back.

9 Q. Let's have a look at the letter that was put to you
10 earlier, I think it's SG0557, and it's at page 5. The
11 paragraph you looked at earlier is in the middle of that
12 page, just above your signature. It says:

13 "We, Terry Foley, Edward Bruce and Alister Geddes
14 being Fingerprint Experts from the Scottish Criminal
15 Record Office can also confirm that during the time that
16 the above cases were being worked on within the
17 Fingerprint Bureau we also carried out a comparison in
18 relation to mark Y7 and independently reached the
19 conclusion that mark Y7 and the left thumb print on the
20 donor fingerprint form (Shirley McKie) were made by one
21 and the same person."

22 Is that your position today?

23 A. I don't remember -- I don't remember signing that. I
24 remember the letter. I remember -- that is my
25 signature. I don't remember very much about it at all.

1 My position is that I believe the officers that took
2 the -- I never, ever remember -- my independent -- was
3 independently speaking to the officers and them telling
4 me, not that I got more than eight points.

5 Q. Mr Bruce, that's not what that paragraph says. What it
6 says is that you carried out a comparison in relation to
7 Y7 and independently reached a conclusion. There's
8 nothing in there that indicates --

9 A. I agree with that. I'm sorry for the wording but I
10 don't recall that at all. I don't even recall -- I can
11 recall something about the letter getting sent but I
12 don't even recall when or when I signed it or anything.
13 But I didn't make -- I know what you mean. I'm sorry
14 for that, but I agree with the officers that I believe
15 them but I've never, ever concluded myself that it was
16 an ident, no.

17 Q. If you were not of that view at the time, why would you
18 have signed that letter underneath that paragraph?

19 A. I don't know. I've possibly not read the paragraph. I
20 was signing for saying that I believed the officers were
21 correct and that everybody else signed it -- I honestly
22 don't recall. I've maybe misread it.

23 Q. Could we have a look at the paragraph underneath that,
24 please. That paragraph is rather different. It says:

25 "The following signatories who work within SCRO have

1 read the content of this letter. Whilst not having had
2 any access to the original productions in the McKie case
3 by signing this letter we would like to intimate in the
4 strongest possible terms our concerns that any
5 settlement with the McKies ..." et cetera, et cetera.

6 These are officers who have not examined the
7 material but who nonetheless felt the need to support
8 the officers who had and who had signed the letter. Is
9 that correct?

10 A. Yes.

11 Q. So clearly there are different levels of involvement
12 reflected within this letter. Is that not right?

13 A. That's a possibility, yes. My opinion is because I had
14 been told I'd seen Y7 in a blind test, that is why I
15 signed the middle part of it because I was told I saw
16 eight points and I really don't recall the letter and I
17 don't recall -- it is my signature. I don't recall
18 anything I've just maybe misread it before I've signed
19 it and I apologise for that.

20 Q. Despite what that paragraph says, and despite what the
21 statement that was noted by the officers during the
22 Mackay investigation says, your position today is that
23 you never attributed ownership of the mark?

24 A. I couldn't identify the mark, no. I got eight points, I
25 believed the officers who went to court but I couldn't

1 get the standard required to say that it was that print.

2 Q. You could not identify to the 16-point standard. I

3 think we understand that, but what I am asking is upon

4 examination of that mark could you attribute ownership

5 of it? Ignore what the court standard was. Could you

6 attribute ownership --

7 A. I don't believe I did, no.

8 Q. That letter and the Mackay statement obviously seemed to

9 indicate that at the stage the letter was authored and

10 at the stage that you spoke to the Mackay officers that

11 you might have been of a different view.

12 Do you accept that?

13 A. No. Well, what I can say the letter, yes, it could be

14 construed that way but, as I said, I believed the

15 officers. I don't know -- I've not ever seen the

16 production since the day of the blind test, which I

17 never knew what it was and I having seen like Internet

18 things like that I don't think I could get

19 identification to attribute that mark, no.

20 Q. Is it not the case, at least as far as this letter is

21 concerned, that you have previously indicated that your

22 view is that Y7 and the left thumb print of Shirley

23 McKie and one and the same?

24 A. I believed the officers, yes, so I thought it would be

25 hers, yes.

1 Q. That's not what I'm asking, Mr Bruce. I'm asking if
2 your opinion has ever been as indicated by this letter
3 at the very least that Y7 and Shirley McKie's left thumb
4 print are one and the same?

5 A. Not through the blind test, no. Just my hearing of it
6 and what I'd heard about the mark then I believed the
7 officers.

8 Q. You have examined -- well, I won't say examined. You
9 have looked at the mark on the Internet, according to
10 your evidence earlier. Is that correct?

11 A. I've a recollection, yes, of looking at the Internet
12 marks, yes.

13 Q. Have you looked at any of the other material on the
14 Internet in connection with this case?

15 A. I can't recall how much I've looked at. I've seen some
16 things but I don't recall what, no.

17 Q. What have you seen?

18 A. I think in the office one day the marks were brought up
19 on the Internet in the office and I've seen that and
20 I've seen -- I've got a recollection I might have saw
21 something that one of the persons down south done a
22 chart. It was at the -- sorry, the -- not the inquiry,
23 the previous, when John Berry and the others come up to
24 Edinburgh, there was charts on that. I think I've saw
25 these like during the case -- during that inquiry.

1 Q. Have you seen any of the commentary about this case on
2 the Internet?

3 A. I tend not to go on to the Internet or chat rooms or
4 anything like that to read it, no.

5 Q. You tend not to.

6 A. No, I don't.

7 Q. Have you in the past ever seen any of the commentary on
8 the Internet about this case?

9 A. Not that I can recall.

10 Q. Is there perhaps material kept in the office that's been
11 downloaded from the Internet commentary on this case?

12 A. It's possible if stuff was put around the office. I
13 can't recall.

14 Q. What I am going to suggest to you is that perhaps your
15 reticence today to attribute ownership of mark Y7 to
16 Shirley McKie, as you appear at least to have done in
17 the past, is due to the way in which others who have
18 done so have been treated. Is that possible?

19 A. No.

20 Q. No?

21 A. No, I never got 16 so I can't attribute if I didn't get
22 16. What I believe and what I could prove is different.

23 Q. I'm not talking about what you could prove in 1997.
24 What I'm asking is -- and I will ask it again -- was
25 there sufficient ridge detail for you to attribute

1 ownership of the mark?

2 A. Not in my opinion, no.

3 Q. What I am asking then is -- well, are you aware of the
4 other experts who have examined the mark Y7 for the
5 purposes of this case?

6 A. The experts that went to court or other experts within
7 the office?

8 Q. Well, are you aware of Mr Graham who gave evidence
9 before you, immediately before you?

10 A. I'm aware of him but I only saw the tail-end of his
11 evidence yesterday.

12 Q. Did you see his evidence that certain threats were made
13 towards him as a result of his identification of the
14 mark Y7?

15 A. No.

16 Q. You weren't here for that?

17 A. No.

18 Q. Are you aware of Mr Swann's examination of Y7? First of
19 all, do you know who Mr Swann is?

20 A. Yes.

21 Q. Are you aware that he examined Y7?

22 A. Yes.

23 Q. Are you aware he attributed ownership of Y7 to Shirley
24 McKie?

25 A. Yes.

1 Q. Are you aware that Mr Swann, as a result of that, has
2 had a number of difficulties with disciplinary
3 procedures or proceedings being taken against him?

4 A. No.

5 Q. You will be aware of course of the treatment of the four
6 officers who identified mark Y7 for the original court
7 case?

8 A. Yes.

9 Q. Those officers were suspended, weren't they?

10 A. Yes.

11 Q. And those officers, ultimately their employment came to
12 an end as a result of this case?

13 A. Yes.

14 Q. You will be aware of the treatment of the two senior
15 officers who reviewed mark Y7; that is to say,
16 Mr Mackenzie and Mr Dunbar?

17 A. Yes.

18 Q. They themselves were suspended -- well, they weren't
19 suspended from their employment, they were suspended
20 from operational duties; is that correct?

21 A. That's as far as I believe.

22 Q. And ultimately their employment came to an end; is that
23 correct?

24 A. Yes.

25 Q. Having seen the treatment that has been meted out to

1 those that you are aware of at least, does that in any
2 way explain your reluctance to attribute ownership of
3 mark Y7 as you appear to have done in the past?

4 A. No, the reason I can't attribute ownership is because I
5 couldn't get the required points to attribute ownership
6 to it.

7 Q. You say you don't look at it yourself, but are you aware
8 of any internet commentary about the involvement of
9 Mr Geddes, Mr Foley and yourself in this case?

10 A. No, I don't go on the internet apart from the one time
11 I've seen the two prints side-by-side.

12 Q. So your position is that your reluctance to attribute
13 ownership of the mark is not due to any outside pressure
14 that you might be feeling at the moment?

15 A. I couldn't attribute to something that I didn't get 16.

16 Q. I will move on to Q12. Your initial examination of Q12
17 was done on the comparator; is that correct?

18 A. I don't recall it but that's what I was told, yes.

19 Q. Well, you recall seeing your initials on the back of the
20 photograph?

21 A. My initials were written on the back, yes.

22 Q. And I think your evidence was that effectively the
23 reason that your initials would appear on the back of
24 the photograph is that you would have signed the
25 comparator screen and they would have later been

1 transferred to the photograph?

2 A. That would be the case I would assume back then.

3 Q. Does the order in which the initials appear on the back

4 of a photograph reflect the order in which the screen

5 has been signed? Do you recollect?

6 A. I would think that would probably be the case, but I

7 don't know. I can't say who would write it down and who

8 would put the ...

9 Q. If we assume that is the case here, in relation to your

10 check on the part of Q12 that has been attributed to the

11 late Marion Ross, your initials appear third. So can

12 you assume from that that you were the third person to

13 check the fingerprint against that of the late Marion

14 Ross?

15 A. That's a probability, yes.

16 Q. Can we assume also then that your initials, when they

17 appear fourth on the photograph that was checked against

18 Q12 for the comparison as against the fingerprint of

19 David Asbury, you would have been the fourth person to

20 check that on the comparator?

21 A. That would be the most likely scenario, yes.

22 Q. In 1997 how many people checked an elimination?

23 A. I can't recall. I can't honestly recall.

24 Q. Well, if you were appearing in court when you have four

25 people for an elimination, there was.

1 A. That was if I took an elimination print to court? You
2 would have to get four people to sign it if it was going
3 to court.

4 Q. If you were to take an identification to court, I
5 understand you would have to have four experts signing
6 the joint report?

7 A. Yes.

8 Q. If you were to take an elimination print to court, are
9 you certain that you would have to have four experts
10 sign the joint report for that?

11 A. I know you would now but I can't recall back then. I
12 would think you would have to have the same amount, yes.

13 Q. Do you recall how many people ordinarily checked
14 eliminations?

15 A. In 1997? No.

16 Q. If you are the third or the fourth person to have
17 checked a fingerprint at that stage, is it not apparent
18 to you that what you are checking is an identification?

19 A. No. I can't recall that.

20 Q. If we hear evidence that normal practice was for two
21 people to check eliminations, would you accept that?

22 A. I can't recall if that's what we were told back then. I
23 can't recall every working practice back then.

24 Q. You can't recall now but if we hear evidence that the
25 practice at the time was for two people to check

1 eliminations and for four people to check
2 identifications, would you accept that as being correct?
3 A. I think I know the point you're trying to get at here.
4 Right, when I checked it I don't look to see who has
5 already signed it because then you're seeing that
6 somebody's already signed the identification. I would
7 have checked it and then put my initials to the side. I
8 wouldn't check who had signed it. So I wouldn't look
9 and see how many people had checked before me when I
10 done my examination. And if you're getting to the fact
11 this was an elimination form, I would see an elimination
12 form and see a mark and that's where I would take it
13 that there was an elimination, not who had signed it or
14 how many people had signed it. It would be on the form
15 that was on the comparator that it was an elimination
16 form, if that's what you're trying to get to.
17 Q. Had you looked at the fingerprint on the comparator and
18 you had been able to identify, let us just say for the
19 sake of example, 12 points and you had thought to
20 yourself, "Fine, that's sufficient for an elimination",
21 you had then gone to sign the comparator screen and seen
22 that you were the third or the fourth individual who had
23 checked it, would you not have thought to yourself,
24 "Well, I have sufficient points in front of me to
25 attribute ownership of this mark. However, it appears

1 to me that what we are looking at here is an
2 identification. I'd better have another look and see if
3 I can see 16"?

4 A. I can't say what I thought back in 1997 but the practice
5 is that screens are signed nowadays doesn't happen. So
6 I don't really know what I would have thought back then.
7 I can't go to 11 years back and tell you what I was
8 thinking when I was looking at the screen. I don't
9 think so, no.

10 Q. If it had become known to you that the mark that you
11 were comparing and which you were happy to attribute
12 ownership of but on which you had been able to see fewer
13 than 16 characteristics was intended for use in court as
14 an identification, would it not have caused you some
15 concern? Would you not have indicated to someone that
16 you had only found 12 or would you not have realised
17 that --

18 A. I can't recall back then whether I was asked or not
19 whether it was an elimination, whether it was an
20 identification. I can't recall.

21 Q. I am not asking whether you were asked, I'm asking
22 whether if you had found out that the mark that you were
23 comparing was to be used for identification purposes in
24 court but you yourself had not seen 16, would you not be
25 inclined at that stage to either check and see if you

1 could find 16 or to indicate to someone that you could
2 not?

3 A. If I was asked that, that could be the case, yes.

4 Q. There should be a certain amount of initiative here
5 involved that I'm suggesting, Mr Bruce. If you knew
6 that a mark was to be used for identification in court,
7 then you must have known that the required standard at
8 the time would have been 16 points.

9 A. But I don't recall ever being told it was going to be
10 used for court if that's what you're asking.

11 Q. What I asked earlier is that if you looked at a
12 comparator screen that you were signing, before or after
13 looking at the mark yourself, and you noticed that there
14 were three other experts in front of you, would it not
15 have been apparent to you at that stage that the mark
16 was intended for use in court for identification
17 purposes?

18 A. No.

19 Q. Why not?

20 A. I don't really think I would look to see how many there
21 would be. You don't look to see who's compared it
22 before you.

23 Q. You might not be looking to see, Mr Bruce, but would it
24 not be fairly obvious that you were signing it after
25 three other sets of initials were put on it?

1 A. I can't recall. I just put my signature up. I can't
2 tell you definitely that I would be the third person.
3 You're saying that they would have been taken down in
4 order. I don't know that. You can't say that's
5 definitely the case that they were taken in exact order.
6 I could be the second -- well, the first of the four.

7 I couldn't -- I don't recall seeing the screen. I
8 remember -- I only remember that because I was taken in
9 three and a half years later and said that I must have
10 seen it because someone had put my initials on the back
11 of the photograph. I don't recall -- we sign things day
12 in, day out, we see thousands upon thousands of
13 fingerprints on probably a weekly or a monthly basis. I
14 don't recall everything I've seen. If I'm told three
15 and a half years later and then eleven years later, "Do
16 you recall this? Do you recall that then?" then, no, I
17 don't.

18 Q. So you don't recall at the time how many points you
19 would have managed to identify when you looked at Q12,
20 do you?

21 A. I'm assuming if it was an elimination form that was
22 there and I was checking the elimination form, I would
23 have tried to get enough to eliminate it which would
24 have been a minimum of 10 at that time.

25 Q. The comparator machine will show you side-by-side one

1 known mark and one crime scene mark; is that correct?

2 A. Yes.

3 Q. And you will see enlarged pictures of the single digit?

4 A. That's correct.

5 Q. And they are placed on the photograph and the form are
6 placed on top of the machine facing down so that that
7 can be achieved; is that correct?

8 A. Yes.

9 Q. So if you are brought to a comparator machine which
10 already has on it a form and a photograph. How do you
11 know it's an elimination form you're looking at and not
12 an arrest form?

13 A. The elimination form is a totally different form. The
14 elimination form is a black form and it was set up
15 differently from a fingerprint form and you could see
16 that from the screen, the different format of an
17 elimination form to a charge form.

18 Q. You recalled in 2000 that you had looked at Q12 and
19 again you gave a statement to the Mackay officers or the
20 officers who were engaged in the Mackay investigation.
21 I take it you have not seen that statement either?

22 A. I've never seen it, no.

23 Q. Can I ask you before I get you to look at it are you
24 content to attribute ownership of the mark Q12?

25 A. I would eliminate it, yes, as an elimination.

1 Q. Is there any difference nowadays between an elimination
2 and an identification?

3 A. Yes, the fact that I couldn't get 16 points on it so I
4 wouldn't have been able to take it to court.

5 Q. No, you don't require 16 points now to take it to court,
6 Mr Bruce. Is there any difference nowadays between an
7 elimination and an identification?

8 A. Not nowadays, no.

9 Q. So I'm asking would you attribute ownership of the mark
10 QI2?

11 A. Looking at the standard of the mark, I would have to do
12 further examination on it but I don't think that would
13 be good enough to take to court, no. I've marked on it
14 what, in my opinion -- because of the fragmented mark, I
15 mark points where I was asked to mark what I could have
16 seen in 1997 and I did that.

17 Q. Well, if I can show you the portion of your Mackay
18 statement I am looking at, it is CO1094 and it is on
19 page 3 of that document. We have spoken to you about
20 mark QI2 and your position seems to be summed up in the
21 second paragraph down on that page which says that:

22 "In any case the fact that my initials appear on the
23 rear of the photograph indicates that in my professional
24 judgment or opinion the mark QI2 which I examined was
25 identical to that of the fingerprint form I was

1 comparing, in this case the deceased's."

2 A. Yes.

3 Q. Is that a statement with which you would agree now?

4 A. Is that the Tayside that I've never seen or signed?

5 Q. Yes, it is.

6 A. I wouldn't have used that exact wording. What I would

7 have said was that I had got the 12 points on it and

8 that I could eliminate it. Back then an elimination was

9 totally different from now. Back then an elimination,

10 you eliminated it and that was it. It was eliminated,

11 you know. Unless you were told, as you're talking about

12 told it was for court ... yet again I was asked this by

13 Tayside and never, ever given the mark to look at at

14 that point. I said that if I'd signed the mark, then I

15 must have agreed that that was the mark but I signed it

16 on the screen. I've never seen this statement.

17 Q. Whether you are eliminating a mark, whether you are

18 identifying a mark nowadays or whether you are

19 eliminating or identifying a mark in 1997, you would be

20 required to attribute ownership of that mark, would you

21 not?

22 A. Yes.

23 Q. What I am asking is is your position in relation to Q12

24 that there is sufficient detail there for you to

25 attribute ownership of that part of the mark to the late

1 Marion Ross?

2 A. I don't have enough to take it to court.

3 Q. That's not the question. The question is: is there
4 sufficient detail there for you to be satisfied that
5 that was the fingerprint of the late Marion Ross?

6 A. Did I believe it as?

7 Q. Yes.

8 A. With what I've marked up, I believe and I believe the
9 other officers that went to court but I wouldn't take
10 that to court because of the quality of the mark. But
11 that's other officers may feel different than that.

12 THE CHAIRMAN: When you say you wouldn't take it to court,
13 does that mean today you wouldn't take it to court?

14 A. Yes. Well, today ... I was asked to mark this up what I
15 could have seen, right. I wasn't given any original
16 material. I was asked to mark up two enlargements what
17 I could have seen nine years previous. That's all I
18 did. I wasn't asked to examine the latent with the
19 fragmented mark. I marked the 12 points. I was told
20 mark up what you could have seen in 1997 and that's all
21 I did. I marked up what I could have seen. I can't say
22 what I've seen back in 1997 and I've marked 12 points,
23 the standard of the mark is very poor.

24 MR HOLMES: You answered some moments ago that whether you
25 were eliminating a mark or whether you were identifying

1 a mark and whether that is now or whether that was in
2 1997 that you would be required to attribute ownership
3 of that mark. Is that correct?

4 A. If you were eliminating it?

5 Q. You answered a moment ago whether you're eliminating a
6 mark, whether you're identifying a mark or whether
7 you're eliminating or identifying a mark back in 1997,
8 you would be required to attribute ownership of that
9 mark I asked and you said, yes, you would.

10 A. Or not, yes.

11 Q. In relation to Q12 then, you have already said that you
12 were content that it was the mark of the late Marion
13 Ross?

14 A. Where have I said that?

15 Q. You said it some moments ago that you were content at
16 the time to attribute ownership --

17 A. I said I got 12 points on it and that I was never asked
18 whether I found enough to take it to court. I was never
19 asked -- after doing the initial examination on the
20 screen, I never saw the mark again. It was obviously
21 taken to other people after that who have signed the
22 ident envelope to get -- to take it to court and that's
23 all I can recall about it.

24 Q. Again, I will ask is your position in relation to Q12
25 today in any way influenced by fear of sharing the fate

1 of those who have been confident enough to identify Q12?

2 A. No.

3 MR HOLMES: Thank you.

4 THE CHAIRMAN: Miss Grahame?

5 MISS GRAHAME: No thank you, sir.

6 THE CHAIRMAN: Mr Macpherson?

7 MR MACPHERSON: No thank you, sir.

8 MR MOYNIHAN: There might be a couple of points I would wish
9 to ask for clarity. I recognise the time.

10 THE CHAIRMAN: I just thought since it didn't look as if we
11 would be going on until lunchtime that maybe ... I will
12 just ask. **(Pause)** We will continue.

13 **Re-examined by MR MOYNIHAN**

14 Q. Mr Bruce, I want to just ask you some of the same
15 questions you have been answering before but to put them
16 to you again just for clarity.

17 What I am going to ask you about is the distinction
18 between elimination and identification and I am going to
19 make that distinction at two different points in time:
20 1997 and today. I will try to keep the two distinct and
21 I will start by giving you a definition.

22 If I begin in 1997, I am going to ask you these
23 questions in the context of Y7 and the eight points that
24 you observed. I will try as best I can to indicate to
25 you what I understand to be the distinction between an

1 elimination and an identification in 1997.

2 First of all, an elimination in 1997. An officer,
3 an examiner, fingerprint examiner, observes a sufficient
4 quantity of characteristics in sequence and agreement to
5 justify the conclusion that a latent print and a known
6 print match to such an extent that there is a unique
7 identity between the two, but that sufficient quantity
8 is less than 16 characteristics.

9 A. In 1997?

10 Q. 1997. So there is observed a sufficient quantity of
11 characteristics in sequence and agreement to such an
12 extent an examiner will form the conclusion that there
13 is a unique identity between the latent and the known
14 print, but he has not found 16.

15 A. Yes.

16 Q. I understand that that examiner could say he has made a
17 match to the standard of an elimination. Am I correct?

18 A. That sounds -- if that's what the procedure says, yes.

19 Q. On the other hand, if the officer has observed the same
20 sufficient characteristics in sequence and agreement to
21 form a conclusion there's a unique identity between the
22 latent and the known print but on this occasion he does
23 find 16 characteristics, he would then call it not an
24 elimination but an identification. Is that correct?

25 A. Are you reading from the procedures?

1 Q. No, no. I am reading from something I had written; so
2 it's not from procedures.

3 A. I don't think necessarily if you have so many points you
4 would definitely say it was that person, even with less
5 than 16.

6 Q. I appreciate that. This is why I am trying to get clear
7 what you understand by an "elimination".

8 It might be we have had other witnesses who say that
9 you might have in effect three situations: they might
10 have a suspicion that there's a possible match, but
11 they've not formed a conclusion of unique identity.

12 A. Yes.

13 Q. If I call that suspicion --

14 A. Yes.

15 Q. -- the second one up from that, they formed an opinion
16 of unique identity, they formed an opinion of unique
17 identity. There's two possibilities. They've either
18 found 16 points or they have not.

19 A. Yes.

20 Q. If they have found 16 points, and are of the opinion
21 that there is unique identity, that is called an
22 identification?

23 A. Yes.

24 Q. The middle situation is they have formed the opinion
25 there was a unique identity but they've not found

1 16 points. They couldn't take that to court but the
2 officer could say, "I have made an elimination"?

3 A. Yes.

4 Q. You are comfortable with those three positions?

5 A. Yes.

6 Q. Suspicion, elimination, identification?

7 A. Yes.

8 Q. Are you happy to accept those?

9 A. I think that sounds okay.

10 Q. I also understand that there will be a range of
11 characteristics in 1997 something lower than 16, a range
12 of numbers where an officer could reach a conclusion of
13 elimination. Do you recollect what that range of number
14 would be for you? What would, in other words,
15 the lowest number be of points in sequence and agreement
16 that would be consistent with an elimination, in your
17 opinion?

18 A. It wasn't a hard and set amount. It would depend on the
19 officer, but I think around double figures was something
20 that was bandied about a lot of time, that if you can
21 get double figures then it should be good enough --
22 should be good enough -- to elim. But that was the
23 different back then. Back in 1997 you're told double
24 figures was good enough to elim. Nowadays it would all
25 go on the quality as well, whereas before --

1 Q. If you stop because we will come to today separately. I
2 want to be quite structured about this.

3 So in 1997 you would require double digits: so a
4 minimum of 10 points?

5 A. Well, I don't think it was -- I can't remember whether
6 that was an official bit or whether it was just a number
7 that was said that double figures for elimination. I
8 don't know if it was an official --

9 Q. I am not worried about protocols or official positions.
10 You personally in the way you practised in 1997, would
11 you have regarded yourself as having a minimum threshold
12 of 10 characteristics in sequence and agreement before
13 you would have made an elimination?

14 A. I wouldn't go any lower than that, no.

15 Q. You would not?

16 A. I don't think so unless it was really ultra clear. But
17 trying to remember back to procedures, I can't remember
18 whether we were actually told that we shouldn't
19 eliminate on under 10 or not.

20 Q. That is why I want to be just very, very clear about Y7.
21 You were asked by Mr Holmes whether you had attributed
22 ownership and you said you could not do it because you
23 did not find 16?

24 A. Yes, that would come under your "suspicion" under your
25 three terminologies.

1 Q. You have answered my question. So if I have the three
2 grades (suspicion, elimination and identification), it
3 was not an identification because you could not find 16
4 and, as between suspicion and elimination with the eight
5 points that you observed, you would have put it into the
6 category of suspicion?

7 A. Yes.

8 Q. Are you in any doubt that that was the way that you
9 regarded it in 1997?

10 A. It's how I regard it now. Back in 1997 I only saw it on
11 a screen and I would say looking at what I saw -- you
12 know, I'm trying to recall back to 1997 but if I got
13 eight points then, then I wouldn't have -- if that's
14 what I said I got to when I was doing the blind test,
15 then that's what I got.

16 Q. You see, what was being suggested by Mr Holmes was that
17 if one looked at the statement that the Tayside Police
18 took from you -- I appreciate you did not see it -- but
19 if we take the statement you gave to the Tayside Police
20 as at least the understanding the police officers had at
21 the end of their meeting with you -- so this is what
22 they understood your position to be --

23 A. I was never given a chance to correct that --

24 Q. I appreciate that --

25 A. -- and my recollection is they asked that question on

1 more than one occasion. It was "Would you" and then it
2 was "What do you think, what do you think, what do you
3 think" and eventually they said, "Well, if you had to
4 put your mortgage on it". So it was more of an
5 interrogation than just an interview, I would say.

6 Q. That's fine. Even with all of that, even with it as an
7 interrogation, and with the police officers saying if
8 you had to put your house on it, is there any chance
9 that what you said to the police officers was, "If I had
10 to put my house on it, I would say of these three
11 (suspicion, elimination and identification) it is an
12 elimination"?

13 A. I can't recall. Is that what it says on the statement?

14 Q. We will bring up the statement in a second. Let me ask
15 you then today, because this is important: knowing that
16 you found eight points in Y7, can I ask you today is it
17 a suspicion, an elimination or an identification? Which
18 of the three would you say the eight points would be
19 consistent with?

20 A. Suspicion.

21 Q. If we look then at the statement that was taken from you
22 be Tayside Police, CO1093 and the next page and it is
23 the second last paragraph. Perhaps if I could begin
24 with the preceding paragraph. I will give you a chance
25 just to get the context of this to read the two

1 paragraphs, please. When you have read them, if you
2 just say you have and I will ask you the questions.

3 **(Pause)**

4 A. Yes.

5 Q. Again, I appreciate you haven't seen this before,
6 therefore there will be a question about the accuracy of
7 this as accurately recording what you said, but I take
8 it at the lowest level that this is what police officers
9 took away as their impression of what you had been
10 saying.

11 So what the police officers understood was -- this
12 is the end of the first paragraph -- that when you were
13 looking at Y7 you understood it to be an elimination
14 examination. So we're in that lower position that you
15 don't necessarily have to find 16.

16 A. No, I don't know if that was the case at the time
17 because it was on the screen. But obviously, after that
18 and before the Tayside Inquiry, I was told that it
19 wasn't just a blind test to do with quality assurance
20 and the screens, it was an elimination print of
21 Ms McKie. But that was laterally(sic).

22 Q. So by the time you had been speaking to the Tayside
23 Police, you have an understanding that the exercise that
24 you had participated in was by reference to an
25 elimination?

1 A. Yes.

2 Q. So therefore that makes sense of the next paragraph
3 because what the police understood you to be saying was
4 this: you examined the mark and found it to be very
5 distorted around the top which appeared to be caused by
6 movement. Are you happy with that?

7 A. Yes.

8 Q. "I looked at the clear part of the mark, and as far as I
9 can remember I was able to get eight points of
10 comparison against the elimination."

11 Again, are you happy with that?

12 A. Yes.

13 Q. Then this is the critical next two sentences:

14 "My feeling at the time was that the mark was the
15 same as the elimination, although it wasn't sufficient
16 for an identification for court purposes."

17 Then it says:

18 "I would have eliminated it because of the eight
19 plus points of comparison. That's what I have always
20 been taught that although there is no hard or fast
21 ruling concerning elimination, if I had a minimum of
22 eight points of comparison I could eliminate a mark,
23 although in some circumstances I would look for more, as
24 each mark is based on its own merits."

25 So, if I understand it correctly, what the police

1 officers understood you to be saying on that occasion
2 was as between the choice between suspicion, elimination
3 and identification, you exclude identification because
4 you did not have 16 points. However, at the lower end,
5 as between suspicion and elimination, you would have
6 given an opinion of elimination. That's what they
7 understood you to be saying.

8 A. I don't understand them thinking that because I'd never
9 seen the mark after that. A lower threshold was usually
10 10 not 8. So I can only assume that if I got this back,
11 I would have corrected them on this.

12 Q. Mr Bruce, I will leave it there. Your position today
13 would be, as between the three choices, this is one of
14 suspicion?

15 A. Yes.

16 Q. What I want to do then is leave 1997, leave Y7 and Q12
17 out, and I want to have a discussion with you about the
18 way the practice works today --

19 A. Yes.

20 Q. -- with the non-numeric system. Do I understand there
21 now to be no distinction today -- sorry, you don't need
22 to look at Q12. You don't need any print at all. This
23 is just purely a way of understanding how you work
24 today.

25 Do I understand that now today under the non-numeric

1 system to be no distinction between an elimination on
2 the one hand and an identification on the other?

3 A. Yes.

4 Q. That's correct: there is no distinction?

5 A. Yes.

6 Q. So in 1997 there were the three grades: there was
7 suspicion, elimination and identification.

8 A. Well, that's three scenarios you've put. It was never
9 written down this was three different grades.

10 Q. But today, if I'm trying to understand how things work,
11 today you would see elimination and identification as
12 being one and the same thing, would you?

13 A. It would be an elimination print would be identified,
14 yes.

15 Q. And anything less than a sufficient volume in sequence
16 and agreement might give rise to suspicion on your part,
17 but you would not express a conclusion of identity
18 unless you saw sufficient to persuade you of a unique
19 identity between the latent and the known print?

20 A. You're talking about today?

21 Q. Yes.

22 A. Today, yes, because the practices are different where
23 you're actually -- well, you're looking at the mark
24 differently, in a way, because of the non-numeric
25 system. Back when there was the numeric system, more

1 things were made insufficient because of the numeric
2 system, I believe.

3 Q. What I want to do -- and it is today and only today, not
4 1997 -- I want just to look at this example and I want
5 you to take me as the villain of the piece here. My
6 fingerprints are brought in as a known source. It could
7 either be on a list of people for elimination (that's
8 friends, relatives, neighbours) or it could be on a list
9 of suspects. You still have two sets of lists of people
10 for comparison purposes?

11 A. Yes.

12 Q. Are those two separate groups still called eliminations
13 and suspects?

14 A. Yes.

15 Q. Really, the example I want to explore is whether it
16 makes any difference at all to the way that you approach
17 this exercise whether my name is on the elimination list
18 or on the suspect list. That's the topic I want to
19 explore with you, whether it makes any difference to the
20 way you carry out the comparison whether my name is on
21 one list or the other?

22 A. No, the only difference would be that the elimination
23 would generally be for the purposes of what it said: to
24 eliminate prints from the scene, and that would leave
25 only the prints that were not eliminated to check --

1 Q. Check against the suspect?

2 A. Yes.

3 Q. I will be quite clear with you what I want to actually
4 explore with you: one of the points we've been asking
5 some of your colleagues is what under the non-numeric
6 system a sufficient volume is of points in agreement for
7 a conclusion of identity. Is that terminology that you
8 would use, that you require for a conclusion of identity
9 a sufficient volume of points in sequence and agreement?

10 A. In conjunction with standard of the crime mark, yes, and
11 the fingerprint form.

12 Q. Let us just assume the very easiest example: I am the
13 victim of the crime -- let us say I am assaulted in my
14 house -- and you have 100 fingerprints. Obviously there
15 is a fair chance that my fingerprints will be fairly
16 liberally spread throughout that sample of 100 because
17 it's my house.

18 My prints are the known prints that you are using in
19 this comparison. If you are looking at a latent and
20 you've got to the point where you have a suspicion that
21 the latent matches my print, but you've got a low number
22 of points in sequence and agreement, could you more
23 readily conclude with a low number that that print is
24 indeed mine because of the obvious background
25 information that it's my house and therefore more likely

1 to be my print?

2 A. No.

3 Q. No?

4 A. No, it would go on the basis of the fingerprint.

5 Q. Sorry?

6 A. It would go on the basis of the information on the
7 fingerprint and the mark, not whose it was or what
8 house. You would expect, as you said, that if it's your
9 house that prints could be yours but that wouldn't make
10 any difference to an examination, no.

11 Q. So, therefore, just for completeness, if I put the
12 alternative scenario, I assaulted somebody else in that
13 victim's house so you wouldn't expect, other than if I
14 was the attacker, to find my prints in the victim's
15 house, it makes no difference to the way that you
16 approach the matter?

17 A. No.

18 MR MOYNIHAN: I have no further questions.

19 THE CHAIRMAN: Thank you very much. Just so that I could
20 get it clear in my own mind, have you ever examined Y7
21 other than on a comparator?

22 A. No.

23 THE CHAIRMAN: Have you ever examined Q12 other than on a
24 comparator?

25 A. I've examined these. I don't recall if I was ever given

1 the print of Q12 when I did these charts. I don't

2 recall --

3 THE CHAIRMAN: When you were doing that, I was wondering for

4 the civil case --

5 A. It's possible but I don't recall.

6 THE CHAIRMAN: Yes, but going back to Y7 for a moment,

7 really your opinion is based on what you saw on the

8 comparator?

9 A. Yes.

10 THE CHAIRMAN: Others may be expressing their opinion on

11 what they saw having looked through a glass and had a

12 better opportunity than you had to see it?

13 A. Yes.

14 THE CHAIRMAN: On a different point, the practice about

15 going to court if you had 16 points and you were going

16 to court, did you always have to four people because if

17 two were off duty or on leave there would always be

18 another two who could go to court --

19 A. Yes, that's my recollection.

20 THE CHAIRMAN: -- to give evidence? Was that the reason why

21 four people examined in Scotland because of the need for

22 corroboration. You had to have two --

23 A. You had to have two to actually attend the court but

24 there had to be four signing it and I believe that was

25 the case, that it was to cover for absence.

1 THE CHAIRMAN: So if you have four people then if they are
2 looking for four people, if I can put it that way, who
3 see 16 points that means it's for the purpose of going
4 to court?

5 A. Yes.

6 THE CHAIRMAN: The other point I just want to ask you was
7 there are times when you can't get 16 points but you
8 would still be satisfied that the identification is
9 correct.

10 A. Nowadays?

11 THE CHAIRMAN: Nowadays.

12 A. Yes.

13 THE CHAIRMAN: But even in the past it may be you couldn't
14 have gone to court but your personal opinion might have
15 been "I have got an identification but I can't get
16 16 points".

17 A. That could be true.

18 THE CHAIRMAN: So when you were being asked about the value
19 of disclosing to the defence that you couldn't get
20 16 points, there may well have been occasions when the
21 person who couldn't get 16 points would still have said,
22 "That is an ident, I have an identification"?

23 A. I don't know if they'd say it was an identification.
24 They might say that they believed it could be that
25 person's, but I don't know if they would say --

1 THE CHAIRMAN: You don't think they would have said there
2 was an identification?

3 A. I don't think so, no. I can't speak for everybody.

4 THE CHAIRMAN: But I was wondering if you could say it was
5 an identification but not to court standards.

6 A. Yes.

7 THE CHAIRMAN: But they might have done that.

8 A. Sorry, I didn't catch that.

9 THE CHAIRMAN: They might have said or could they have said,
10 "I can't get it to 16 points but I can say I'm confident
11 that that is the person".

12 A. I couldn't speak for anyone else, but ...

13 THE CHAIRMAN: Well, thank you very much, Mr Bruce. I
14 realise we have brought you when you are off on a period
15 of sickness and thank you very much for tolerating being
16 here. Thank you.

17 **(The witness withdrew)**

18 THE CHAIRMAN: I think you have some remaining matters.

19 MR MOYNIHAN: That concludes the witnesses we were proposing
20 to examine at this particular session. I have,
21 therefore, some housekeeping matters just to draw this
22 particular session to a close. I have a list of
23 individuals from whom I have obtained statements signed
24 on the same basis as others but I was not proposing to
25 lead to give oral evidence. The list has been

1 circulated. I'm not aware of anyone wishing these
2 individuals to give oral evidence and if I can give the
3 list, the list is: Stewart Carle; Professor Colin Espie;
4 then four police officers (Thomas Fraser, Norman Gibb,
5 John Mitchell and Ruaridh Nicolson); Sir William Rae and
6 finally Laurence Wilson. So those are the individuals
7 who I would propose, sir, that you receive their
8 evidence based on their written statements without the
9 need for them to be examined.

10 In addition to that, the Core Participants in the
11 hall are aware of this fact, Gary Gray's fingerprints
12 were taken again both by live scan and by inked
13 impressions and were sent to fingerprint examiners in
14 the Metropolitan Police, New Scotland Yard, for
15 examination. We have received a report from the
16 Metropolitan Police that Gary Gray's prints do not match
17 Y7.

18 The reports from the Fingerprint Officers which are
19 simply certificates of that opinion have been put on the
20 website and they have a reference MP0002. The prints
21 that were used and the images that were used by the
22 Metropolitan Police have also been put on the website so
23 that they are available for others should they wish to
24 examine this matter.

25 Sorry, sir, I think they have been put so far on the

1 Core Participants database. The references are, for the
2 photograph used, I understand, MP0001 and the live scan
3 prints and the rolled inked impressions, the rolled ink
4 impressions, I understand, are FI0088 and I will need to
5 just double check and I will put on the website the
6 correct reference for the live scan prints. I will put
7 on the Core Participants database the correct reference
8 for that. So that concludes that particular matter.

9 One another point that I would mention is that there
10 has been mention of the possibility, so far as the blind
11 test is concerned, that four other individuals might
12 have been involved in the blind test. Plainly, I've led
13 a number of witnesses, the last of whom was Mr Bruce.

14 The four other individuals who were mentioned by
15 Ms McBride, three of them we have spoken to and we
16 understand that they do not have any recollection of
17 involvement and we are going to provide certificates to
18 that effect that can no doubt be studied. The three in
19 question are Anne Noble, Lorna McQueen and Raymond
20 Brown. The fourth possibility Sandy Macleod remains to
21 be traced by us but we are making enquiries through the
22 police to trace Sergeant Sandy McLeod.

23 Sorry, sir, if I backtrack, the live scan prints in
24 the Core Participant database, the reference is FI0087.

25 So far as the blind testers are concerned, it's not

1 my current intention to lead any of the evidence from
2 the three individuals I have named (Anne Noble, Lorna
3 McQueen and Raymond Brown) but I continue to make
4 enquiries about Sandy Macleod.

5 Sir, those would cover the housekeeping points and
6 plainly these matters are not close. They are matters
7 that others can make submissions to you but that is my
8 current position.

9 THE CHAIRMAN: I think the only remaining matter is that in
10 the opening statement Mr Moynihan outlined the issues as
11 he saw them at that time. If there are emerging issues
12 that any of the Core Participants, or indeed anyone
13 else, feels that we should be exploring I would be
14 grateful if you could make that known to counsel because
15 it's important that we should look at those, and I think
16 the sooner the better before people go and have a break
17 between now and the next phase of the Inquiry which is
18 18th August that we resume here at I think we had better
19 stick to 10.00. It seems to work at 10.00 unless there
20 is strong feeling to the contrary.

21 So meanwhile thank you all very much for your
22 assistance to date and I hope we can continue as
23 efficiently as I feel we have to date. Thank you.

24 **(12.10 pm)**

25 **(Adjourned until Tuesday, 18th August at 10.00 am)**