

1

Thursday, 1st October 2009

2 (Afternoon session)

3 (2.00 pm)

4 ROBERT HARVEY MACKENZIE (continued)

5 Further examined by MR MOYNIHAN

6 THE CHAIRMAN: I am sorry, I gave a confused message about

7 the time we would sit again but everyone is here so I

8 think we can commence.

9 MR MOYNIHAN: Mr Mackenzie, before the adjournment I had

10 been asking you about the historical position back in

11 1997 and we were talking about eliminations,

12 identifications and the 16-point standard.

13 If I could have brought up, please, on the screen

14 part of your statement and your statement is FI0046 and

15 if I can go within that, please, to pages 37 and 38 --

16 THE CHAIRMAN: Do you have the paragraph number?

17 MR MOYNIHAN: Yes, sir. It begins at 136. Page 37 will be

18 136. It is FI0046.

19 I am going to be asking you in a moment about the

20 blind test that was carried out. What I want to do is

21 to begin with a slightly different point. It is

22 paragraph 138. I will just highlight that for you just

23 now. I will give you a chance to read it and everyone

24 else. **(Pause)**

25 Mr Mackenzie, what this says -- and I appreciate

1 that this is a statement that was taken from you by the
2 Inquiry team but nonetheless it speaks of the blind test
3 being an elimination comparison and the officers who
4 participated being asked whether they would eliminate
5 the mark.

6 Before lunch what I was asking you were a number of
7 questions suggesting a distinction between an
8 elimination on the one hand and an identification on the
9 other.

10 I understood you to say there was no such
11 distinction; whereas this paragraph suggests that there
12 is a distinction and it was understood to be a
13 distinction by fingerprint practitioners in the Scottish
14 Criminal Record Office in Glasgow in 1997.

15 Would you care to comment, please?

16 A. In general or on this particular --

17 Q. In general, first of all. Was there to fingerprint
18 practitioners a distinction between an elimination on
19 the one hand and an identification to meet the 16-point
20 standard for court purposes on the other?

21 A. An elimination would basically be to whatever number of
22 characteristics the officer was satisfied with to
23 exclude that person from further comparison.

24 As far as a mark for court was concerned, that could
25 vary between, if it was a sequence of fingers, 10 and 10

1 would be acceptable. If it was one finger, then another
2 proposition put forward in the standard is that they
3 wouldn't obviously go more than 16, it would be; unusual
4 to actually produce anything at court normally with more
5 than 16, but as far as a differentiation between the
6 comparison and actually identifying the individual there
7 would be no difference.

8 Q. No difference?

9 A. No.

10 Q. Why then was it that those who participated in the
11 so-called blind test on the night of 17th February were
12 instructed to carry out an elimination comparison? Why
13 were they not simply asked to carry out a comparison?

14 A. Going back to that time, basically I think that was just
15 the minimal information that was to say to be imparted.

16 I don't think there was any motive in it if that's

17 what's --

18 Q. I'm not suggesting a motive, Mr Mackenzie. I'm not
19 suggesting a motive at all. It's simply the task that
20 they were asked to carry out. What is suggested here is
21 that the task you were asked to carry out was an
22 elimination comparison?

23 A. Basically, it was obviously, I say, the suggestion was
24 to do a comparison and come back with the results but, I
25 say, whether it be an elimination or otherwise, going

1 back in time I can't remember why.

2 I think because of probably what was said there is
3 it had been anonymous and with any test material we
4 anonymise it to, like, a mark and to an individual, if
5 it's from real material. So obviously, this being a
6 blind test, or said to be a blind test, was that the
7 material would be contained on this comparator machine
8 with no other information and the other information at
9 the side at that time was basically to say, if you like,
10 at the end of the day would you identify that or
11 eliminate this and the term was put, "Would you
12 eliminate this?" As to restricting any information in
13 what they had to do, that's what was decided on the
14 night.

15 Q. Mr Mackenzie, are you suggesting that it's a distinction
16 without a difference, whether one calls it an
17 elimination or an identification?

18 A. Obviously this, I say, was a complex mark and had been
19 recognised as such. Again, that would be a reason for
20 actually choosing it as potential for a test, as test
21 material, and a really good test which it's actually,
22 it's obviously turned out to, like, after all these
23 years it's been proven to be a test of experts' skills
24 and it's basically not to put any restrictions, I would
25 presume, on the officers who, in other words, basically

1 tell us, you know, one against the other what your
2 opinion would be without any restrictions saying you
3 have to find 16 or whatever.

4 I'm trying to think back how that would have
5 happened but that would be my current thinking on it.

6 Q. Before I get myself into trouble with the Inquiry team,
7 I should, about this statement, just ask you this: you
8 did give us a lengthy statement for which I am grateful.
9 Are you still now satisfied that what is in your
10 statement to the Inquiry is, as far as you understand
11 it, the true position?

12 A. In its entirety?

13 Q. Yes.

14 A. There was a point I think I mentioned to Mr Holmes that
15 I briefly went through a few pages a few nights ago and
16 there was one point where I had been referring back to
17 joint reports and I think I said from 1967 onwards and I
18 think joint reports came out about 1980. So it's a wee
19 technical point. We moved from statements to joint
20 reports in 1980 and I think it was in the context of
21 talking about how do they now do it for non-numeric. So
22 that jumped out at me and I thought that's not right.
23 That's the only thing I can think of.

24 Q. What I want to do then is to ask you a little bit to
25 follow on from what you said about the purpose of the

1 blind test.

2 So far as the purpose of the blind test, what you
3 have said in paragraph 136 -- I will now take away the
4 highlight, I don't think we need to record the
5 highlighting, the highlighting on the whole of
6 paragraph 138 -- you indicate in paragraph 136 that on
7 the night of 17th February after you carried out your
8 own examination of Y7 information was communicated to
9 Chief Inspector O'Neill and you say it was a complex
10 mark and then you say in paragraph 137, in effect, a
11 decision was taken to use this as a test example
12 effectively put to staff that evening.

13 A. That's correct.

14 Q. Your colleague, Mr Dunbar, if I take down your statement
15 and show you Mr Dunbar -- FI0053.26 -- in paragraphs --

16 A. What am I looking at?

17 Q. If you begin under the heading "Blind test", read
18 paragraphs 123 down to 127. **(Pause)**

19 A. It's not how I recall. First of all, if I could start
20 with paragraph 123, that unless, outwith the actual
21 Bureau when I was in it at that time, I wasn't aware
22 Chief Superintendent Ferry was actually present that
23 day. The first I was aware of any discussion on the
24 subject with Mr Ferry was on the Tuesday, the 18th. So,
25 unless there was some other discussion that I wasn't

1 aware of, I'm nearly certain that Mr Ferry wasn't
2 present on the Monday.

3 I'm not aware of Mr Dunbar having opposition to the
4 exercise. I'm not aware of actually Chief Inspector
5 O'Neill having suggested we should have a blind test
6 either. I certainly, from my own personal perspective,
7 remember noting and probably I would have, in my results
8 given to Chief Inspector O'Neill, I would have highlit
9 that it was a highly complex mark because that was how I
10 saw it on that first occasion, which -- if that's
11 recorded anywhere, but certainly that was my take on it.
12 In line with, as I think I've said, we actually
13 encouraged officers within the department, if they came
14 across marks which were complex in nature, they may be
15 give them forward for training purposes and that's how
16 we actually built up a database or collection of marks
17 for tests.

18 How exactly it came about, certainly that's not my
19 recollection, certainly I don't think Hugh Ferry was
20 there. Chief Inspector O'Neill was there. I do know
21 that after I gave my -- my understanding is that after I
22 gave my result of the comparison to Chief Inspector
23 O'Neill and after Alan Dunbar at whatever juncture, he
24 gave his result to Chief Inspector O'Neill, that that
25 part of the proceedings, that was it. The

1 identification was confirmed to Kilmarnock Police Office
2 at that point.

3 As to the exercise, what I mean by that solely as an
4 opportunity to basically get other experts involved in
5 looking purely as a test scenario, nothing to do with
6 the result that had already been relayed. Certainly, my
7 recollection is different from what Mr Dunbar's saying
8 here.

9 Q. Could you explain to me what the purpose was that night
10 of getting whoever was on duty, however many, six or so
11 perhaps -- I do not know how many -- to actually subject
12 themselves to a test? What was the purpose of doing it
13 there, an impromptu test with no notice?

14 A. I say, really from my recollection of events how SCRO
15 had actually been at the forefront of introducing
16 competency tests since 1995, ahead of anywhere in the
17 UK. I had also introduced dip sampling and the third
18 element was blind testing and up to that point we
19 probably hadn't -- well, we hadn't introduced any blind
20 testing because I know that some of the laboratories and
21 things like that, their idea of a blind test is that you
22 make up a case and you put it anonymously into a system.
23 We never entertained going down that line. But as far
24 as actually a comparison without any knowledge of the
25 whereabouts of a mark and the donor of a print, then

1 this particular instance, for whatever -- a decision,
2 I'd be party to that decision because there only was
3 myself from memory, Alan Dunbar and Chief Inspector
4 O'Neill in the Bureau that would be party to starting
5 that. Chief Inspector O'Neill went home up at the back
6 of 6.00 and in that time-frame, it wasn't a big
7 time-frame between 6.00 and 8.00 at night. Officers
8 from the availability on that shift were taken randomly,
9 as far as I understand. There would have been a staff
10 shift list for that night and it was decided to, rather
11 than have it in the main body of the hall -- and this is
12 why I'm thinking about Superintendent Ferry -- certainly
13 at that time, at 6.00 at night, there was a spare room
14 and it was the Chief Superintendent's room and it was a
15 quiet area, take the comparator machine in there and to
16 keep it anonymous put it on the comparator machine. And
17 that was the rough structure that was set out.

18 I say, I don't recall Mr Ferry being there and for
19 whatever reason but nothing to do with in any way the
20 earlier information that had been imparted back to
21 Kilmarnock Police Office. As far as I'm concerned, it
22 was a line in the sand that I personally have thought
23 about this because I've heard -- I can read the
24 inferences that have been made in certain quarters and
25 that's actually turned into information that's been put

1 to, say, the Court of Session in papers along with other
2 inferences, that I put myself in a hypothetical position
3 of saying why would I agree to setting up a test if I
4 had any doubts whatsoever about this identification that
5 I'd already imparted to the Chief Inspector? Why would
6 I, you know, then ask other officers to basically -- or
7 the potential of -- come up with other findings? That's
8 the hypothetical position because the thought process is
9 years later, I'm going I wouldn't have put myself in
10 that position. It may well be me, because I've been
11 instrumental in bringing in competency tests and
12 bringing in the audit thing and certainly I knew from
13 the first minute, the first assessment of that mark, how
14 complex it was. Yes, I would have had an input in
15 saying, as I say, this is a good opportunity but
16 completely divorced from the information stage that had
17 gone to Kilmarnock Police Office.

18 If I had had any doubts in my mind, I wouldn't have
19 been setting myself up for a different decision. That's
20 just my thought processes in the years after. So the
21 event happened and, as I say, I think it's been proven
22 that if any mark was suitable for a test, then this
23 mark, in the history of fingerprints, is obviously
24 because basically a lot of experts have actually failed
25 to properly analyse this mark. So I don't think, at the

1 end of the day, the decision to use it in a test
2 scenario was wrong. It's obviously proven to be
3 material that's an extremely good test and, other than
4 what happened that night, that's my recollection of it.
5 I certainly have no recollection at all of Hugh Ferry
6 being there.

7 Q. I will move on to the next day, the 18th. You have
8 covered that in your statement and you have covered it
9 to some extent in your evidence already. Having
10 re-examined the material that became available on 18th,
11 your view was there were 12 or 13 points in agreement in
12 Y7. Let us take the upper number for the sake of
13 convenience, 13.

14 What I want to do is carry that forward. Would that
15 be the largest number of points in sequence and
16 agreement that you had found prior to the exercise we
17 spent so much time this morning talked about in August
18 or so 2000 for the presentation you have shown us?

19 A. At that moment in time, using actual size print and a
20 comparator, no photographic enlargements being obtained,
21 et cetera, which obviously has allowed further more
22 in-depth study, then at that moment in time I again
23 satisfied myself and, I say, from memory and, I say I
24 think my memory is actually quite good because that is
25 what I've stated before the Court of Session, that my

1 memory at that moment in time was it was about two
2 characteristics more than what I'd seen the day before.
3 So that's why I said it was 10 or 11 or 12 or 13. So
4 there was potentially two more. There was something
5 clearer in it but I couldn't hand on heart say that was
6 the two points or whatever.

7 Q. What I want to do is move on with the implications of
8 that. 13 points in sequence and agreement, assuming no
9 unexplained difference, would be enough to eliminate
10 someone, whether a suspect or a bystander. It would be
11 enough to eliminate them, yes?

12 A. Yes.

13 Q. At that time, barring some exception being made, it
14 would not be enough to use as the basis of
15 identification in a prosecution?

16 A. I think that would be down to the Fiscal, at the end of
17 the day.

18 Q. That's what brings us to that. It would be down to the
19 Fiscal. So you would require to report to the Fiscal
20 that not more than 13 points had been found and the
21 Fiscal would require to consider whether there would be
22 a prosecution, despite the fact that the national
23 standard of 16 had not been met.

24 A. Based on the material I saw on that day and when you go
25 down the scenario of -- because obviously there was

1 arrest prints, et cetera, in a case in general, then for
2 preparation for court then you would be using whatever,
3 again, materials at that moment in time you had.

4 If it had been myself that was involved with that
5 and the material that I had disclosed more -- for
6 example, the Internet image showed me that cluster of
7 five which eventually showed the ridgeology detail -- if
8 I had a form that showed that amount of detail, then
9 that would have provided -- that alone would have
10 provided me with more characteristics, if it had been
11 me.

12 I don't know what material the officers or I don't
13 know what material -- sorry, I don't know what
14 characteristics the other officers in this case found
15 and I'm also not aware of any problems having been
16 highlighted for what they were asked to prepare for the
17 Fiscal. So I don't know what discussions went on with
18 the Fiscal; I don't know what number of characteristics
19 they found, but as I said before, if I had whatever
20 number I had, and you mentioned about this being a
21 criminal case, then I personally would have been telling
22 the Fiscal, "From this material available I have now I
23 can't reach 16 but I can tell you that I have X number
24 of characteristics".

25 Do I read into it there's some inference being made

1 here that --

2 Q. Don't worry about reading things in. Just answer the
3 questions and I will come to the point shortly.

4 You were, at that time, the Assistant Chief
5 Fingerprint Officer in the Glasgow Bureau?

6 A. Correct.

7 Q. In fact, that is a bit of a misnomer because the Chief
8 Fingerprint Officer was a police officer?

9 A. It was a chief Inspector who was the head of the Bureau
10 but I think, looking ahead, they may have expected in
11 future years to have a chief fingerprint officer.

12 Q. So, in other words, the police officer was the titular
13 head, you as the Assistant Chief Fingerprint Officer,
14 you were in reality the Chief Fingerprint Officer in the
15 Department?

16 A. The most Senior Fingerprint Officer in the Department,
17 yes.

18 Q. You looked at it and in February 1997 what you had seen
19 was more than ample to justify that Ms McKie should be
20 eliminated as the source of Y7 in the run-up to the
21 Asbury murder trial?

22 A. Absolutely.

23 Q. Could we then look at the period, let us say, one year
24 later, March 1998. The Crown Office is now preparing
25 for phase 2, preparing to prosecute Ms McKie for perjury

1 based on that fingerprint.

2 Did you, as the Assistant Chief Fingerprint Officer,
3 give consideration to whether what you had observed in
4 February 1997 as 13 points was a sufficient basis upon
5 which she should be prosecuted for perjury?

6 A. I don't think -- it certainly wasn't my decision to --
7 and again not having any involvement with the Asbury
8 case and I think one followed on from the other, I
9 wasn't aware of any difficulty with Shirley McKie's mark
10 being highlit in the first case.

11 Q. Why was there not disclosure made to the Procurator
12 Fiscal that the senior management (that is yourself and
13 Mr Dunbar) had been unable to find 16 points but had
14 found a lower number consistent with an elimination?

15 A. It's something I personally never have considered, that
16 as far as the ... as far as the identity was concerned
17 of the individual, as far as I'm concerned that was it
18 and not making a differentiation between a number of
19 characteristics.

20 As far as the identity of the donor was concerned, I
21 had no doubt so I had no reason to question or think
22 that I should then interfere with a process that was
23 ongoing with officers and the preparation of court
24 cases.

25 Q. But you do accept that your department would have a

1 duty, a responsibility, to report fully to the
2 prosecution authorities what the findings had been of
3 the fingerprint comparison?

4 A. We did. We did inform the result of the comparisons
5 that the mark was found to be Shirley McKie's.

6 Q. But what they reported was that four officers had found
7 16 points in sequence and agreement. What the
8 prosecution authorities were not told was that a number
9 of other officers who had looked at the mark, while they
10 may have been prepared to agree with the result, were
11 unable to find the 16, had in fact on your case found
12 only 13 and in the case of Mr Geddes had found only 10
13 and Mr Geddes went further. Having been demonstrated
14 the extra six or so by Mr Macpherson was in a position
15 to say he, as an expert, could not see those extra
16 points.

17 Why was that not reported to the prosecution
18 authorities?

19 A. I wasn't aware of what you're saying about Mr Geddes and
20 Mr Macpherson. I was not appraised of that whatsoever.
21 It's only in later inquiries, et cetera, I've learned of
22 that. I wasn't aware of that.

23 Q. By the time of the prosecution of Ms McKie in May 1999,
24 you and Mr Dunbar had, in fact, been witnesses in the
25 English Court of Appeal in the case of **MacNamee**?

1 A. Correct.

2 Q. In **MacNamee**, as in Ms McKie's case, a substantial number
3 of experts gave evidence to court?

4 A. That's correct.

5 Q. There was a difference of opinion, even among those who
6 agreed the identification, as to the number of points in
7 agreement?

8 A. Correct.

9 Q. There were some experts, including Mr Swann, who
10 disputed the identification?

11 A. Yes. If you allow me at the at the end of your question
12 I will clarify a lot of issues round there but, yes --

13 Q. If I finish then. In December 1998 the Court of Appeal
14 acquitted Mr MacNamee because the Court could not reach
15 a conclusion given the disparate views of the
16 Fingerprint Officers.

17 A. Correct.

18 Q. That was known by December 1998?

19 A. Yes.

20 Q. Now, what I am going to suggest -- and it may be the
21 basis for you to intervene -- so if I add in the next
22 part, that in the run-up, in the few days before
23 Ms McKie's trial began, it became known to Mr Macpherson
24 and Mr Stewart perhaps or others, maybe Ms McBride or
25 Mr McKenna -- I don't know precisely which one -- it

1 became known to them that American experts were going to
2 be called to give evidence. It became known to them
3 that the American experts were going to dispute the
4 identification.

5 Did anyone come to you as the Assistant Chief
6 Fingerprint Officer and say to you, "Mr Mackenzie,
7 there's now going to be a contested identification in
8 the Ms McKie case"?

9 A. At no time. Sorry, could I qualify that answer as well.
10 The only indication I got from my understanding of
11 events -- and I say I think my memory's quite good --
12 that I think there was an adjournment of possibly a
13 week, five days or whatever, from when I think
14 Mr Wertheim was meant to appear and the first I learned
15 was I'm sure there was actually publicity in the paper
16 of this and I'm sure actually Mr Findlay, it was
17 actually in the paper inferring there was going to be
18 some challenge but nobody came to me or there was no
19 suggestions of the Fiscals or consulting with the Head
20 of the Bureau or whatever and it was virtually at the
21 last minute, as far as I knew the trial was starting,
22 there was an adjournment and that's the only indication
23 I remember of -- the first indication there was going to
24 be some kind of challenge.

25 Q. Is there not a sense of **deja vu** that here was a

1 challenge so shortly after the **MacNamee** case?

2 A. I didn't link -- I mean, I would like to come back to
3 the **MacNamee** case in a minute. Don't let me forget
4 that.

5 But, no, I certainly never made any link to the
6 **MacNamee** case but in my wider answer I'll go on to
7 actually talk about more detail of **MacNamee**. But, no, I
8 didn't make any connection and, again, I don't know
9 where this line of questioning is coming from but the
10 answer straight answer is, no, I didn't make
11 any connection with **MacNamee** case.

12 Q. Because you heard much of the evidence in the Inquiry,
13 haven't you? You have heard much of the evidence --

14 A. Yes.

15 Q. You have heard the two Procurator Fiscals, Ms Climie and
16 Mrs Greaves, give evidence. They had at some stage
17 enquired to the prosecution of Ms McKie contemplated
18 bringing in an English expert to reconsider the prints.
19 For reasons that are perhaps lost now, it was decided
20 not to bring in an English expert.

21 If I understand their evidence correctly, they did
22 not know of the range of view within the Scottish
23 Criminal Record Office about the number of points that
24 could be observed in Y7 and they did not know that some
25 Fingerprint Officers were unable to satisfy the 16-point

1 standard.

2 If I get the drift of what they were saying, they
3 would have been very interested to have known that some
4 officers in the Scottish Criminal Record Office could
5 not agree that 16 points were present.

6 That is the import of this, nothing improper. I am
7 just suggesting to you that it would have been
8 beneficial had the range of opinion on the number of
9 characteristics been, in fact, communicated to the
10 prosecution authorities.

11 Do you want to comment on that proposition?

12 A. As you say, I've heard that earlier evidence and
13 basically because I knew personally of the
14 identification, be it 13, whatever number of points,
15 then I never considered it. It's only from allegations
16 and things that have been in the media, et cetera, and
17 then now coming from procurator fiscals, et cetera,
18 there was no, to my knowledge and certainly personally,
19 there was no communication with me about possibly
20 bringing in other experts or who could we bring in or --
21 obviously, the Procurator Fiscal prepares their case and
22 certainly I'm not aware of being asked to take part in
23 any discussions.

24 I think there was some evidence of some meetings
25 with Mr Macpherson or Mr Stewart or whatever but from a

1 personal point of view as the Senior Fingerprint Officer
2 in the Bureau I was not made aware of any problems,
3 pitfalls, discussions about, you know, could we get
4 other opinions, et cetera, and it never crossed my mind
5 to -- I wouldn't have been interfering in the process
6 that was going on.

7 There were officers dealing with it, they were
8 obviously satisfied with the identification, what they
9 saw initially when they saw it and what they produced in
10 court they will obviously give their evidence. All I
11 can say is that I satisfied myself, be it at that stage
12 on 13 characteristics. Obviously, given the opportunity
13 to look at other materials down the line it still
14 confirms to me that my decision-making was correct, but,
15 again, I get back to reading into there's obviously some
16 kind of inferences being made against me and I'm not
17 comfortable with that.

18 THE CHAIRMAN: I think we are just trying to establish the
19 fact. But the point was that you were satisfied you had
20 made the identification. Whether it was to 16 points or
21 not, as a fingerprint expert it was an identification so
22 that if your colleagues were giving evidence of an
23 identification, perhaps to 16 points, what they were
24 doing was really the same as you in the sense that --

25 A. Can we -- the conclusion they came to --

1 THE CHAIRMAN: -- it was an identification and it would have
2 been a totally different matter if you had failed to
3 make an identification and they were making one.

4 A. Absolutely differently and, again, if I can touch on the
5 blind test before we come back to **MacNamee** if you don't
6 mind, that a lot has been put into the media, a lot of
7 information and I would say spurious false allegations
8 made in submissions to the Court of Session inferring
9 that officers did not agree or the inference was that
10 people were saying it wasn't a identification. At no
11 time and 'I've said that in my statement, at no time in
12 1997 or to this present day am I aware of any
13 Fingerprint Officer coming to me and saying, "I don't
14 think that's Shirley McKie's", but obviously there's a
15 very limited number of people have actually looked at
16 the original material. But I take exception to the
17 false allegations and actually been putting forward in
18 averments to the court inferring that we had knowledge,
19 that's to say Alan Dunbar and myself, that officers
20 didn't think this was Shirley McKie's mark. At no time
21 was that the case and I need to clarify that. It's in
22 my statement.

23 My memory of all these events and I say it's going
24 back that time, now I'm actually annoyed with myself,
25 particularly, obviously, just round about that period.

1 I reckon I can remember if we're talking about
2 percentages, I reckon I can remember about 98 percent of
3 all these events. Now, it surprised me within this
4 Inquiry people in high position, police officers, legal
5 people, and this is not -- don't take this as a
6 derogatory but there seems to be an element of amnesia.
7 Maybe I'm just so close to it that I've been living this
8 for 10/12 years the same as others have but my
9 recollection is that there were two people who were
10 satisfied with it on the blind test, one ran out of time
11 and the other had actually asked for enlargements.

12 As far as the total number of people concerned by
13 the Tuesday was concerned, I reckon there were in
14 total -- and I say that's on the Tuesday and I don't
15 know if that's all the individuals that we know about at
16 the moment, but I reckon there was about 11 individuals
17 were involved in confirming, be it on whatever number of
18 characteristics, that this was Shirley McKie's print.

19 What is annoying me is -- and you may have been
20 coming to a question on it -- is that on the second day
21 when the exercise was done the rephotographing and the
22 re-fingerprinting I was instructed to carry out the
23 examination again. Alan Dunbar did another check on the
24 new material, David Halliday was a sergeant and a
25 fingerprint expert did the third check and it's bugging

1 me that I can't -- there was a fourth person and that's
2 my frustration. As I say, I can remember in very good
3 detail but it's round about these two days there's
4 something -- and this is getting this straight from the
5 horse's mouth -- it's frustrating me that I know that
6 there's at least another person somewhere out there and
7 I know you have made attempts, et cetera, but that's the
8 findings that at no time did anyone -- and this is where
9 the inferences are coming in -- that people had
10 suggested that this was not Shirley McKie's print. It's
11 different from -- and we'll come back to **MacNamee**
12 because there's a wee parallels in there -- that at no
13 time had anyone said that this is not Shirley McKie's
14 print.

15 If I could very quickly give you a wee summary? Is
16 it appropriate at this moment do you want to ask me
17 more?

18 MR MOYNIHAN: Can I just put your mind at ease. First of
19 all, if I were making an allegation I wouldn't do it by
20 inference, I would put it straight?

21 A. I'm not suggesting you're making the inference but from
22 other quarters--

23 Q. No, it's okay. I will be quite clear where I am coming
24 from. I am not suggesting to you at all that one of
25 your officers came to you or came to any of your

1 colleagues and said, "I positively disagree". What my
2 questions have been directed to is a completely
3 different perspective.

4 If there is a national standard which is 16 points,
5 it's either attained or not. All my questions were
6 aimed at is whether you, as an individual, knowing only
7 13 points had been found, whether you had pause to
8 think, "How can my colleagues be giving evidence to the
9 national standard when I have only been able to find
10 13 points". That is all I was asking?

11 A. All I'm saying is that if there had been a problem I
12 think I would have found out about that if they hadn't
13 reached the standard or if the Fiscal had a problem with
14 it. So I had to assume that they were dealing with the
15 Fiscal, they had meetings with the Fiscal, they were
16 putting forward their evidence, that it must have been
17 satisfactory to the Fiscal what was being presented.
18 And there was never any indication given to me that
19 there was a problem.

20 But I say, I do -- and I know it's not you
21 personally -- but the inference has been made, not just
22 an inference but allegations have been made in
23 proceedings that are completely false and this is the
24 first time I've had the chance to clarify that.

25 It could even be a play of words but it's very clear

1 and it actually ends up in the newspapers suggesting
2 that, you know, this information wasn't imparted, that
3 people disagreed it Shirley McKie. That's the way it
4 has come across in the media and I feel very strongly
5 about that, that certain parties have put forward false
6 information to the highest of places, the court.

7 Q. I was about to say that's me finished this chapter. If
8 you want to go back --

9 THE CHAIRMAN: To say something about **McNamee**.

10 A. I want to clarify **MacNamee** because there are parallels.

11 MR MOYNIHAN: Please, just say what you want to say about
12 **MacNamee**.

13 A. It might take five minutes just to quickly --

14 THE CHAIRMAN: That is all right.

15 A. Again, I've got a very clear memory of **MacNamee** and I
16 didn't make the connection. So I've clarified that.

17 Let me get this right now. About January 1998, I
18 received a phone call from I think it was a detective
19 inspector (I can't remember the name) from the
20 Metropolitan Police asking or saying that my name had
21 been suggested by someone, presumably someone in the UK,
22 as someone who they might want to assist them in an
23 inquiry that they were looking into. I didn't know what
24 it was and I didn't ask, but it basically involved doing
25 a fingerprint comparison and they said would I be

1 prepared to meet with them and see what they had to say
2 and what they would like me to do. I said, "By all
3 means but, if you don't mind, I'll just check with my
4 Chief Superintendent and basically appraise him that
5 I've had this inquiry, I personally don't have a problem
6 with it and I don't imagine that Chief Superintendent
7 Ferry would have a problem". So there wasn't any
8 problem.

9 They duly arrived in the office possibly a week
10 later -- an appointment anyway -- and two officers, the
11 detective inspector and a female detective sergeant
12 accompanying him, came and said they were currently
13 carrying out an internal investigation -- it was like an
14 internal team from the Metropolitan Police had been set
15 up for whatever. At this stage, I didn't know about
16 what it was. In fact, I didn't know until about two
17 weeks before the appeal case what the case was when I
18 read in the paper. That's how divorced I was from
19 actually who was MacNamee.

20 They came with two brown envelopes and they said,
21 "We've got certain materials here" and this is where the
22 parallels come in to what other evidence we've heard.
23 They said, "In one envelope here we've got, like,
24 photographs of a mark, we've got various photographs,
25 various photographic enlargements in this envelope and

1 in this envelope here we have similar material but
2 marked-up material." So right away, and I think I've
3 said in some of the evidence, there was a clue someone
4 else had looked at this fingerprint material. I say, I
5 was curious as to why somebody had suggested me and I
6 sort of posed the question at some quarters further down
7 the line and I said, "I don't really want to know for
8 whatever reason somebody suggested I might be a person
9 who could assist." So that was it.

10 Immediately what I said was -- now the reason I'm
11 saying this is because I mentioned yesterday that I had
12 to look through volumes of paper (it was like multiple
13 phone book piles of paper) for the Court of Session
14 hearing by the Scottish Executive solicitors asking us
15 to comment on various people's statements and,
16 throughout that, there was a thread of people that have
17 been involved in this outwith SCRO in their approach to
18 how they looked at material.

19 The parallel I'm drawing is I said to these Inquiry
20 officers, "Okay, I hear what you are saying. Can you
21 leave me this envelope? The one with the photographs or
22 whatever it is and the enlargements and various
23 contrasts, et cetera", they basically had given me a
24 variety of, and I said, "That envelope there. Can you,
25 please, take that away. I don't want to know anything

1 about it", and they said, "Well, would it be all right
2 if we come back at some point with that after you've
3 actually looked at this", and I said, "Yes, by all
4 means".

5 So that was how I approached it and then I virtually
6 locked myself away because in subsequent days to -- it
7 actually went on at nights when the Bureau was quite. I
8 locked myself into a room to go through this because it
9 was obviously very confidential, no-one was to know
10 about it, the only thing I said was that, "Well, in
11 Scotland we have corroboration and I'm quite happy to
12 look at this but could you possibly get duplicates made
13 of this", and it was basically suggested, the next
14 senior to me was Alan Dunbar and I said, "At some point
15 maybe you could come back and see him but I will
16 independently look at this material for you".

17 The only clue that I had in this -- well, it was a
18 photograph with a reference number on it. It didn't
19 tell me what it was. Obviously, the name MacNamee was
20 on it but it didn't mean anything to me. Basically they
21 asked me, "Do you anything know about, obviously, this
22 name", or whatever. You know, I said, "Well, I don't
23 know". There's no connection no-one, has asked me to
24 look at -- I think they said, "Have you seen this mark
25 before or these fingerprints before", and I said, "No".

1 So it was on that -- but that was how anonymous it was,
2 if you like. I knew nothing about it and that's
3 probably why they came to me because I imagine it must
4 have been discussed elsewhere in other quarters before
5 they even aware to me. So I had never seen this before.

6 So over a period of maybe a week or so I found time
7 to lock myself away and look at this. The actual
8 parallels with this particular mark, and I think I
9 referred to it earlier in my evidence, there's been two
10 occasions in my career that I've actually looked at very
11 complex marks. Now, the MacNamee print was very similar
12 in nature to the McKie print. It was full of movement,
13 distortion, et cetera, and I think if we were to bring
14 them out and put them side-by-side you could see all the
15 distortions. So basically I worked at that and for the
16 first time ever -- I came to my conclusion at the end of
17 the day it was MacNamee's print but to 11
18 characteristics.

19 Now I wasn't asked do this to an elim standard, do
20 it to the 16-point standard, "Please, look at this and
21 give us your opinion".

22 So I then imparted my opinion. No enlargements, as
23 far as I can remember, at that stage, other than -- or
24 final enlargements, if you like, but basically based on
25 the material that they had because it was at a later

1 stage that I actually formalised it because what I
2 actually used for the first time ever -- and it's again
3 there are parallels with the McKie case -- I don't
4 remember any expert in SCRO in my time ever actually
5 producing an enlargement of the mark, an enlargement
6 from their own impression and an enlargement from the
7 plain impression because, again, with plain and rolled
8 not every bit of detail and actually there was an
9 overlap. So I'd actually to mark up characteristics on
10 the plain impression, for example, and then where it
11 went off the edge a bit, like what we've now got with
12 the Internet, I was then, on the rolled impression, able
13 to get other continuity but that was to bring it up to
14 11 characteristics in total. And I personally was
15 satisfied in this area of the print because there was
16 other areas of distortion.

17 Now, it's my understanding from memory that Alan
18 Dunbar later didn't know my results. All I'd said was,
19 "At some point, if you would agree, there's a team from
20 the Metropolitan -- detective officers, would like to
21 speak to you about a comparison and would you be
22 prepared to take part in that". So I basically relayed
23 that back to the team and they came -- sorry, they came
24 one day, got my results from me and then I was off.
25 They actually then, I don't know if it was the next day

1 or not, but they came on a day that I wasn't there and
2 spoke to Alan Dunbar and he was given similar blank
3 material. It was only after Alan Dunbar had imparted
4 his results back to them that they came back on a third
5 occasion that I remember and actually came with the
6 marked-up enlargements and said, "Now that you have" --
7 I think by this stage I had done mark-ups, "can you then
8 have a look at what you have done or what your findings
9 are against what other officers have done here in the
10 past", and that is the proper sequence of events. You
11 should look at the blank canvas, as I have described it,
12 always and that's a premise that I've always stuck to.

13 Now, what has jumped out at me, and I'm quite sure
14 you'll be reading the various statements that various
15 officers have made over the years and many of the
16 witnesses that have already spoken and others that maybe
17 haven't been here yet, "We have looked at the SCRO
18 mark-ups", quite clearly in their statements and then
19 they go on to saying that they looked at the blank
20 canvas, completely the reverse of what you should do.

21 So that's where I thought it was important -- you
22 know, I've now brought out and that's the only way to do
23 it and it is so distinct in my mind. "Please take that
24 away."

25 It was two weeks before the scheduled -- I think it

1 was November 1998 eventually I was called down
2 supposedly for a day's evidence and ended up being there
3 for a week and I was a day and a half in the box
4 describing my identification on a thumbprint, complexity
5 equally as complex as Y7 is.

6 The final point is you mentioned about 14 people
7 giving their opinions, again, in the **MacNamee** case I'm
8 not aware -- and I didn't hear every expert -- but I'm
9 not aware of any expert in the MacNamee case saying it
10 wasn't MacNamee's case (**sic**). Now this is a bit -- I'm
11 not aware of any expert saying it was not -- there were
12 experts saying it was from various findings, there were
13 other experts saying it was insufficient. You've got to
14 draw the difference there between insufficient. They
15 weren't saying it wasn't; they were saying it was
16 insufficient for them to compare. That's a very
17 relevant point from inferences that can be drawn and
18 somebody saying, "I haven't come to a conclusion yet",
19 or whatever, from saying, "It's not".

20 In the **MacNamee** case I have no knowledge of any
21 expert actually saying -- I may be corrected -- but from
22 my knowledge no-one actually came out and said, "It's
23 not MacNamee's". It was either insufficient or there
24 were a range of experts saying it was.

25 Now interesting again -- and obviously their

1 Lordships made up their mind because of the balance of
2 different experts was that it turns out, obviously, it
3 was the Metropolitan Police or police staff that did the
4 original case and did mark-ups, but when I was actually
5 then shown the mark-ups I could not, significantly, I
6 could not agree with the 16 mark-up that they had made.

7 So there you have it, again from the horse's mouth,
8 that **MacNamee**, I was satisfied but I didn't agree with
9 how the stuff had been marked up and, obviously, that
10 was a basis of challenge that ended up in the Appeal
11 Court. So that's my involvement with **MacNamee** and, I
12 say, I think the parallels were useful to bring out for
13 this Inquiry.

14 MR MOYNIHAN: Sir, that would be an appropriate point?

15 THE CHAIRMAN: Yes, we will sit again at 3.08.

16 **(2.58 pm)**

17 **(A short break)**

18 **(3.10 pm)**

19 THE WITNESS: Mr Moynihan, could I just add one further
20 comment on **MacNamee** that came back to me that thought I
21 it was important to bring out to the Inquiry. It was
22 that the same female Detective Sergeant in that inquiry
23 team who had visited earlier with the materials and who
24 had basically been present during the trial, early in
25 19 ... I'll get this correct now. The appeal case was

1 November 1998 -- early in '99 when the judges came to
2 their assessment of the whole appeal, I had received a
3 phone call from the female Detective Sergeant saying, "I
4 thought you would like to know that their Lordships now
5 having come to a decision actually singled out the
6 evidence of the Scottish Criminal Record Office experts
7 and used four words to describe the officers', basically
8 ability, application, skill and honesty".

9 So this Detective Sergeant actually thought it was
10 relevant to actually contact me to let me know how our
11 evidence was viewed by the judges.

12 MR MOYNIHAN: In fact, what I want to do is just go back to
13 complete Y7 and then we will move on to Q12.

14 In completing Y7, what I am going to ask you to do
15 is to comment on some features which I do not believe
16 are common to you and to the SCRO chartings. I will
17 explain that in a minute.

18 If I ask you, please, to look at SCRO Y7 charting
19 which is FI0167A. I have looked, Mr Mackenzie, with
20 your assistance at a meeting. I have looked at the
21 presentation that you have given us yesterday and
22 separately I have also looked at your civil charting and
23 I understand that, with the exceptions I am going to
24 mention, you have yourself in your past presentations
25 pointed to the same features as your colleagues in SCRO

1 in this charting.

2 The exceptions so far as I am aware are above the
3 core the features 10 to 14 inclusive and also there is a
4 point in the same area which is feature number 17.

5 There may be the photographic originals to your left
6 on the easel beside you if you want to have a look at
7 that. So what I want to do very briefly is to look at
8 10 to 14 as a batch and then number 17.

9 I can be relatively brief. 10 and 11 are the lake
10 above the core in Ms McKie's left thumb. 12 and 13 I
11 think other individuals have referred to as an incipient
12 ridge. Do you accept that description?

13 A. Yes.

14 Q. Number 14: I don't know how you yourself would describe
15 number 14, looking at Ms McKie's left thumb?

16 A. I think from memory, in the exercise I considered it to
17 be a ridge ending.

18 Q. So a ridge ending or it could possibly be a bifurcation.
19 It does not matter.

20 So far as I understand what you have said about
21 this -- and I will take it relatively shortly -- at the
22 time of February 1997 which, as you explained, is what
23 is reflected in your civil charting of the 13 points,
24 you had in mind a fault line and you were therefore
25 reluctant to go above that fault line.

1 A. Correct.

2 Q. That would explain why in your earlier chartings you did
3 not point to the features 10 to 14. Is that fair?

4 A. The proximity of 10 to 14, in my opinion, was too close
5 to the fault line to basically include in my original
6 deliberations.

7 Q. But now, having seen or being required by us to comment
8 on the SCRO charting which we see on the screen, what is
9 your opinion?

10 A. I have confirmed that I can see these characteristics,
11 albeit they are close, as I have recorded, to the fault
12 line and because of the close proximity and that's where
13 the area of movement starts. That's why I didn't
14 include them in my initial February '97 and then
15 thereafter.

16 But I need to add that -- and, again, in the
17 interests of transparency and to give you the events and
18 it's along the lines of the **MacNamee** situation, when the
19 productions came back from court, then all I was wanting
20 to look at was the photograph of the mark and the forms
21 that I had used in '97, the books with the enlargements
22 came back. Again, they were basically filed wherever
23 they were filed when they come back from court and I did
24 not look at them until I had finished my deliberations.

25 But I thought it incumbent on me then, a bit like

1 **MacNamee**, to say, "Well, here's my conclusions on all
2 the material I've got here. Let me now look at what the
3 mark-ups were et cetera". That's where I then
4 discovered that that cluster of characteristics had been
5 used in either or both trials.

6 So again as a matter of transparency I thought it
7 relevant to add it and it's page 22 in my folder, I'm
8 actually highlighting these. But that's the sequence of
9 events.

10 Q. So page 22 of your production CO0059 (digitally page 23)
11 what we have brought up is a page from your book and
12 what you are indicating is that you have marked in green
13 in your presentation the additional features that I am
14 asking you about, 10 to 14, plus perhaps one other, that
15 you understand your colleagues to be referring to but
16 you had not yourself referred to, you refer to them in
17 the productions?

18 A. Yes.

19 Q. This is very helpful because in addition to 10 and 11
20 (the lake), 12 and 13 (the incipient ridge) and 14 (the
21 ridge ending or bifurcation; it matters not), we also
22 come, if I understand it correctly, to the final one
23 which I will highlight on the screen with a circle as
24 point number 17.

25 A. Yes.

1 Q. Point number 17 is simply the number it happens to have
2 in our current exercise.

3 If I could save that image for today, please.

4 MISS BAHRAMI: That's saved as FI0110.12.

5 MR MOYNIHAN: What I will do is go back to the SCRO charting
6 FI0167A.

7 What I want to do on this occasion, Mr Mackenzie, is
8 to highlight the Y7 charting done by your colleagues.

9 We are now looking at point number 17. I can bring up a
10 clearer image, if that would assist you or just work
11 with --

12 A. Could you take the wee cursor away?

13 Q. Yes. Would you wish me to bring up a clear image?

14 A. No, I can actually see it on here.

15 Q. This is what I was going to ask you about. What others
16 have said is that we are, at point 17, on the edge of
17 the mark --

18 A. I would say that's actually fractionally in from the
19 edge. It's not right on the edge of the mark.

20 Q. Others have said it's on the edge of the mark. You
21 yourself have said its in the area you have described as
22 the fault line?

23 A. The fault line, yes, just above that but it's close to
24 the axis where the disturbance started and that was my
25 thought process that because it was close to the axis

1 that I did not use that in my initial comparison.

2 Q. What, as I understand it, the others who dispute the
3 identification would suggest -- and this is what I put
4 to you for comment by you -- that point number 17 is
5 unreliable because it is so close to the edge that there
6 is no dependable feature there at all.

7 If I can put that to the side, just so that we can
8 assist, I have an unmarked copy of the comparative
9 exercise image. It is EA0035. **(Pause)**

10 It is not in the system. We will just leave it.

11 Can you assist us then by telling us that despite --
12 it's the line 11 that is troubling me and I was trying
13 to clear away line 11.

14 A. Sorry, the suggestion it is right on the edge is, from
15 what I am looking at here, it's just not the case. It's
16 in from the edge. I can see the two ridges coming above
17 what I would describe as the incipient ridge also coming
18 into the point to make the bifurcation before the edge
19 and I can see it on this size on the screen.

20 Q. Give me just a second. What I will to is bring up
21 Mr Grigg's charting because he does not have any line
22 that would complicate this particular area. Mr Grigg's
23 Y7 charting is FI0168A. What I will do is enlarge it.

24 Is that correct, Mr Mackenzie? We have now up an
25 image of --

1 A. That's Mr Grigg's.

2 Q. We have now up an image that is uncomplicated by the
3 line. There is the image enlarged.

4 Can you assist me, please, in telling me, first of
5 all, what you say about point number 17 not being on the
6 edge?

7 A. Again, when I was conducting this comparative exercise I
8 had great difficulty with the clarity of this being put
9 on to a screen but where I see this coming in is where
10 I'm putting the cursor just now, just about there
11 **(indicated)**. The edge, as far as I'm concerned, is down
12 here so just in from the edge here **(indicated)** is where
13 the bifurcation is and there's a leg going along there
14 and a leg going along there and then it's tapering into
15 the one ridge. It's actually just a about here
16 **(indicated)**.

17 Do you want me to put an arrow on it?

18 Q. What we can try to do is, first of all, just by a circle
19 can you indicate for me roughly the area that you are
20 saying is the edge of the print? Can you put a circle
21 round the edge?

22 A. Are you going to capture that then because that may --

23 Q. Sorry, what I will do is, instead of a circle, ask you
24 to put a line down what you say is the edge.

25 A. The edge, okay. **(Pause)**

1 Something like that (**indicated**).

2 THE CHAIRMAN: That is the green line marks the edge?

3 A. Yes.

4 MR MOYNIHAN: What I will do is make sure we have changed

5 the colour to red.

6 Where do you see the bifurcation that is feature

7 number 17?

8 A. Is this an arrow?

9 Q. No, it is a line.

10 A. Could we make it an arrow? I think I've put a red dot

11 on it, actually. That will do.

12 Q. Other than the fact we may not see it. You're

13 indicating that the red dot --

14 A. Yes.

15 Q. Let me just do that. I want to stay well clear of it.

16 So where I put the arrow pointing at the very faint red

17 dot is point number 17?

18 A. From what I can see on here, the quality of this image,

19 yes.

20 Q. What, as I understand it, you indicated was that you can

21 see in that area a bifurcation and what I've done is

22 given you the ability to draw a line, I think, in blue

23 or purple.

24 Can you indicate for me, please, where the

25 bifurcation is running from and to?

1 A. Is this a free line drawing now, is it?

2 Q. Yes.

3 A. It's actually coming to a point, obviously, there.

4 Can I continue to draw another line out to the left?

5 That's basically -- that's basically where I see it. It

6 looks a bit ... it's actually the two ridges coming

7 together and then to the left of that is it's going into

8 the one ridge so it is the bifurcation.

9 THE CHAIRMAN: It's a bifurcation pointing to the right?

10 A. Yes, the tail of it would be --

11 THE CHAIRMAN: And sloping downwards?

12 A. Yes, it's just the way I've ... yes.

13 MR MOYNIHAN: In that case, what I will do is save the image

14 we have displayed.

15 THE CHAIRMAN: Can we put 17 on that, please?

16 MR MOYNIHAN: Yes. Again, I will put the box in here and

17 put number 17.

18 MISS BAHRAMI: That's FI0110.13.

19 MR MOYNIHAN: Mr Mackenzie, what I want to do is to turn to

20 Q12.

21 Sir, in relation to this matter I have been having

22 some discussions with Mr Mackenzie and with Mr Holmes.

23 As you indicated the preferred approach where one expert

24 has given contrary evidence is that those who are

25 contradicted should have an opportunity to put a

1 positive case rather than there be cross-examination of
2 the contradictor.

3 I have come to appreciate that while I was intending
4 to carry out that exercise with Mr Mackenzie to ask him
5 to give a positive response to Mr Wertheim and Mr Grigg
6 that there has probably been insufficient time to enable
7 him reliably and comfortably to undertake that task.

8 Accordingly, sir, what I am going to do is cover Q12 to
9 a certain extent but not expect Mr Mackenzie to make a
10 positive rebuttal of Mr Wertheim and Mr Grigg.

11 That may mean that we have to recall Mr Mackenzie at
12 some suitable point slightly later, I hope not for too
13 long, but I think it will actually assist you to have a
14 more concrete chapter of evidence from Mr Mackenzie.

15 THE CHAIRMAN: I would certainly like him to have time to
16 consider it.

17 A. It wouldn't be a problem, provided my availability on a
18 particular day -- otherwise I will accommodate whatever
19 is required.

20 THE CHAIRMAN: We will work out what suits you and what
21 suits the programme.

22 MR MOYNIHAN: What I am going to do -- and, Mr Mackenzie, if
23 I reach a point in any of this questioning where I am
24 going beyond the preparatory work you have done, please,
25 just indicate because it is not my intention to take you

1 beyond what you prepared for.

2 What I have in relation to Q12 is the fact that for
3 the purposes of Mr Gilchrist's investigation you did a
4 charting of Q12.

5 A. Could I just go into the history for five minutes before
6 we actually start?

7 Q. It is okay, I think we have had a history from
8 Mr Gilchrist?

9 A. The history is in my statement, basically, anyway.

10 Q. It's okay because what I wanted to do was just to get to
11 your chartings. Now we have two chartings and we do
12 have the photographic originals of your charting and I
13 also have the transparencies which are associated with
14 the original form in addition to some digital ones I am
15 going to put up.

16 First of all, if I put up your charting, that is
17 CO2005H. I have brought up page 1. We will progress
18 through this. On page 1 we see that this is a charting
19 that you did on 27th July 2001?

20 A. That's correct.

21 Q. If we proceed through page 2, just some narrative that
22 is in the document.

23 If I proceed to page 3, you set out -- and there is
24 a photograph of the mark Q12.

25 Page 4 is the charting that you did of Q12 and if I

1 put that to one side and then bring up separately,
2 therefore, as a double image, page 5 of the document we
3 have a corresponding marked fingerprint of Miss Ross?

4 A. Correct.

5 Q. Because there's a question about the clarity of the
6 images, are you working yourself to an original copy?

7 A. I have, I've got an identical copy to what you have in a
8 glossy photograph.

9 Q. We have the photograph here for anyone else to follow --

10 A. Sorry, could I add my glossy has got the points, the
11 dots on the photograph, but the copy with the numbers on
12 it is actually a photocopy of my book here so I've got a
13 combination of the glossy without the lines and the
14 numbers but the points are there to help me basically
15 work my way through this.

16 Q. Mr Mackenzie, I can stop you. I can give you the one
17 with the numbers, the original with the numbers, so that
18 you can be comfortable with that. **(Handed)**

19 In relation to Q12, what you have marked in this
20 charting is a total of 29 characteristics that you would
21 say match between Q12 and Miss Ross's fingerprint?

22 A. That's correct.

23 Q. Before we get into any of the detail of this, what I had
24 as my initial thought was whether you had, in fact,
25 observed any differences between Q12 and Marion Ross's

1 fingerprint?

2 A. Not in the location of these characteristics in sequence
3 and agreement to each other, no.

4 Q. So you have not noted any differences at all?

5 A. Not -- the points I've marked are all in sequence and
6 agreement so that there's nothing in the wrong place, if
7 you like. But I need to clarify that Marion Ross's
8 fingers are -- the amount of actual ridge information
9 within, obviously, the ridges on Marion Ross's
10 forefinger there are a consider amount of incipient
11 ridges, some of the second level detail -- sorry, the
12 first level detail, the ridge flow, the full-blown
13 ridges, actually taper off into very fine ends which can
14 be or could be construed as incipient ridges as well.

15 So the amount of time taken to actually work at this
16 print, starting obviously with actual size but then
17 having been accommodated with enlargements I actually
18 spent two days on the analysis of this, hence the volume
19 of information that I've been able to display. It
20 wasn't a few minutes to come to that level of
21 information, but it is in a similar manner, it's a
22 complex mark, but it's not subject to the distortion
23 anything like X7 -- sorry, Y7, but I also have noted in
24 my covering letter to Mr Gilchrist and you have actually
25 passed by it. The page before that I actually showed

1 the actual ... in fact, it's in here. The actual
2 photograph here and I made a vinyl overlay to explain
3 the presence of other fingers around this mark,
4 particularly in the bottom left-hand corner, and there
5 is some over in the right-hand and I think on here I've
6 indicated something up in the top left-hand corner as
7 well.

8 THE CHAIRMAN: When you say "other fingers", other people's
9 fingers?

10 A. All I knew was there was other ridge detail there and
11 when I examined that I came to the conclusion they
12 weren't Marion Ross's because all I had to compare was
13 Marion Ross fingerprints and in the second last comment
14 in my letter to Mr Gilchrist said:

15 "Having had no previous involvement in the
16 comparison of the aforementioned photograph, I would be
17 interested if you could advise me as to whether other
18 fingers disclosed in the photograph [and the reference
19 number Q12] have been eliminated or identified."

20 Well, I had no further communication with
21 Mr Gilchrist but at that point and within my report I've
22 indicated the presence of -- and, again, from the
23 analysis stage, the very first looking at the mark cold,
24 it's very important you took cognisance of the other
25 fingers present in this area and superimposition in

1 certain areas of the photograph.

2 MR MOYNIHAN: What I am going to do, because the pair that
3 we have up just now are useful and we will come back to
4 them from time to time, is if we could save this image
5 and then we will see whether the digital image of the
6 preceding page that you mentioned is useful to us.

7 MISS BAHRAMI: That's image FI0110.14.

8 MR MOYNIHAN: If you could with that, please, bring up as a
9 single image CO2005H.003.

10 What I am going to do for everyone's benefit, if I
11 can find where the mouse has gone ...

12 A. I did this, obviously, to assist Mr Gilchrist in
13 pointing out --

14 Q. Give me just a second. What I was going to do was
15 simply to enlarge it.

16 You have now given an explanation of something that
17 is to be seen on the screen and you can now help us, if
18 we progress in any way that is logical for you to
19 explain what you have marked on the charting?

20 A. If we could start at the top left-hand corner the
21 outline with the black marker pen suggesting that over
22 out to about -- if you look at the centre of the whorl
23 pattern, which is Q12 of Marion Ross, if you look out in
24 the direction of about 10.00 on the clockface, I've
25 outlined an area where there seems to be the presence of

1 other ridge detail, a separate finger.

2 Further out to the extreme edge there there's a
3 smearing right off at the edge of the photograph. This
4 is on the left-hand side.

5 Q. Sorry, Mr Mackenzie, what I am trying to do is have a
6 mouse that will work ...

7 A. Do you want me to just progress it?

8 Q. I think what would help is when you're saying that
9 there's something off to the left, if you just highlight
10 the area you are talking about, please.

11 A. Do I have control of the mouse?

12 Q. Yes.

13 A. It's not moving. It's frozen.

14 THE CHAIRMAN: Would it do to put a letter in the general
15 area?

16 MR MOYNIHAN: Unfortunately, we can't move any of the mice.

17 THE CHAIRMAN: No, but once we get that sorted, just put a
18 letter in it rather than have draw an outline which
19 seems difficult. **(Pause)**

20 MR MOYNIHAN: If I just take over and see if I can make it
21 work again.

22 As his Lordship said if we just mark the areas.
23 First of all, as I understand it, the first area you
24 were saying that has some other fingerprints in it, can
25 you just very roughly put your cursor in that area? Put

1 an arrow.

2 A. I'll put a coloured circle or ... a circle, yes.

3 **(Indicated)** That area contained within the black

4 outline and that's out to about 10.00 on the clockface

5 from the whorl.

6 Q. So the area where you put the yellow circle is an area
7 of other markings?

8 A. With other ridge detail in it, that's alien to the whorl
9 pattern I'm focussing on.

10 THE CHAIRMAN: Alien to, did you say? Did you say alien to?

11 A. Yes, because it doesn't bear any relation to -- and the
12 distance away from it -- but on that area of the
13 photograph there's presence of other ridge detail.

14 This is not the whole area but contained within the
15 black outline in that area and going up into the bottom
16 left-hand corner below the whorl, is all subject to a
17 digit that looks as though it's running at right angles
18 to it and the impression I get from the pattern flow or
19 the ridge flow is that it's a loop running to the right.

20 MR MOYNIHAN: So that's the green oval that you've added?

21 A. So to get the orientation of that particular print you
22 need to turn the photograph round 90 degrees. So
23 basically this finger is running at 90 degrees, roughly,
24 to the bottom of the Q12, Marion Ross, mark.

25 Again, this vicinity **(indicated)** more ridge detail,

1 less --

2 Q. Just for our notes, that's the second oval now to the
3 right, immediately above the digits 197?

4 A. I actually meant to change the colour, can I just ...

5 Q. That's okay. I'll go down and change the colour now.

6 A. We'll start again.

7 That approximate area. So, again, down to the
8 right-hand bottom edge away from the whorl pattern. So
9 in this areas there's evidence of ridge detail that's
10 running in the opposite direction and this is in line
11 with comments that I heard on the Frontline Scotland
12 programme, 16th May 2000, in which Pat Wertheim and
13 Allan Bayle appeared and they were referring to marks,
14 presumably, which looked like the SCRO productions and
15 they were saying this feature here is vertical and this
16 feature here on the other side is horizontal and that's
17 something I recall from that TV programme.

18 Of course, that was 16th May 2000. I didn't have
19 the opportunity until July, 14 months later until
20 July 2001, to actually see what that reference was to
21 and hence if you take page 2 as my notes on my
22 assessment for Mr Gilchrist, for his benefit, to
23 explain -- which is also in the narrative -- that there
24 were other fingers in the area subjecting this to
25 superimposition.

1 I have coloured probably a red felt pen I had
2 used -- you can actually see enclosing the whorl-type
3 pattern which is the -- do you want me to try to put
4 another colour over the top of it or just put an arrow
5 to where the colour is?

6 Q. In fact, what I was going to ask you to do, having drawn
7 the circles of exclusion, so to speak, if you could give
8 me roughly the area that would circumscribe Q12 Marion
9 Ross.

10 A. So I can change the colour of it ... again this might be
11 an approximation. That is an approximation. It's
12 obviously not going as low as that. Do you want me to
13 try and do it again more accurately?

14 THE CHAIRMAN: Maybe you should.

15 A. I'll see if I can master this. I think that's better.

16 THE CHAIRMAN: So the pale blue one is the Marion Ross area?

17 A. Yes.

18 MR MOYNIHAN: I think we had better save that before we lose
19 it.

20 MISS BAHRAMI: That's FI0110.15.

21 MR MOYNIHAN: Mr Mackenzie, I take it that as soon as we go
22 outwith the light blue oval that one is in an area of
23 unreliability because of the problems of
24 superimposition?

25 A. Well, there's actually some still within that area but

1 that's an approximation, yes.

2 Q. With that in mind, perhaps if I put that to one side as
3 an image and I return to your own charting CO2005H -- I
4 think it will be page 4 -- what I was in fact going to
5 begin to ask you about was the group of points, one
6 might go as far as number 7 even. If I put a line ...
7 it is done as a blue line. I was going to ask you about
8 the points really to the left of that line, not so much
9 those close to it but certainly as one progresses
10 further out to ask you how you would explain those
11 features being dependable features that you could then
12 correlate to features within Marion Ross's print.

13 Perhaps if we begin really with the most difficult
14 one of them, I would suggest, the one that is in the
15 most extreme left, point number 1?

16 A. Again, I think with this technology I've experimented
17 with it for the first time at lunch time. When I
18 actually tried to blow up some of this, it's actually
19 pixillating it a bit. So I'll attempt to on this size
20 again similar as we did maybe in groups with a few
21 arrows, if that helps.

22 I need to let you know that in my comparison -- when
23 I got this material to start with I got actual size but
24 I also got -- in fact, I was given access to the
25 deceased's prints which were taken with black powder on

1 white tape and mounted on to a vinyl sheet and I got, I
2 think, one photograph of Q12 when Mr Gilchrist came
3 initially and he said, "Whatever you need, tell me and
4 I'll make arrangements", and it was Strathclyde Police
5 Photographic Department, Identification Bureau, and
6 having initially looked at it under a glass the day that
7 Mr Gilchrist came, because he said he would like -- what
8 he said, first of all, was, "Am I right in saying you
9 have not seen Q12 before", and I said, "Yes", a bit like
10 the Metropolitan Police coming and I said, "Yes". He
11 said, "Well, would you consider doing a comparison of
12 it", and I said, "Yes".

13 He said, "Well, what would you need?" I said,
14 "Well" -- again, I did an initial magnifying glass on it
15 and I actually asked to have a comparator in the room as
16 well and I got a start on that but, again, because of
17 the complexities I was already formulating of other
18 fingers round about it I said, "What I need to do is get
19 a range of photographs, different contrasts", and also I
20 didn't know at that time, obviously, this had been done
21 with superglue, you can get with some of these
22 impressions the ridges in the reverse colour so I said,
23 "If you can make arrangements with the Identification
24 Bureau I'll ask for appropriate materials". So I got a
25 range of photographs showing the ridges in black,

1 showing in white and enlargements from Marion Ross's
2 mortuary prints.

3 I remember being shown, when I was asked for my
4 statement, various articles and I'm nearly certain --
5 you may have the originals of Marion Ross's but I'm
6 nearly certain that I was conscious that when we asked
7 for enlargements to be made we would put, like, four
8 little squares to outline the area we want enlarged and
9 I'm nearly certain that I made a photocopy of the
10 photograph. It's on page 2 -- sorry, a photograph -- I
11 made a photocopy of the deceased's prints. I didn't
12 want to actually mark them in any way in case at some
13 further stage -- so I'm nearly sure I made a copy of it
14 and put my boxes on that. So what I was shown by the
15 person taking the statement, I think, was a photocopy.
16 I may be proven wrong, but I was conscious at that time
17 I didn't want to be interfering with original evidence.

18 So I'm trying to remember the officer's name -- Eric
19 Dunsmore from the Photographic Department came with or
20 came to see me and I gave him the areas that I wanted
21 him to take away and enlarge, et cetera, and that's what
22 he did.

23 Now, again, somebody might say, possibly some other
24 contradicters might say, "Why did you actually have one
25 photograph running landscape and one running portrait

1 direction?" This was actually just the way that
2 Mr Dunsmore produced the photographs. I may have gone
3 back to him and said, "Can you make them the same?" So
4 that's how they actually appear there. It was actually
5 he chose to print them that way and nothing else, in
6 case there's any allegations made about the area shown,
7 et cetera.

8 Sorry, I've lost track of what you asked me.

9 Q. That is okay because what I was asking -- and I see what
10 the time is; there comes a point perhaps where it is not
11 fruitful to carry on -- because my own questions had not
12 been prepared on the basis of understanding the ovals
13 that you have indicated on the left-hand side of the
14 screen but, nonetheless, even without the benefit of
15 that insight of the ovals, I have been prepared to ask
16 you to explain to us please the reasons that you can see
17 the sort of features out as far as 1 on the print and
18 reliably tie those into corresponding features in the
19 fingerprint of Marion Ross?

20 A. No, but I can track this where I went off track there to
21 explain that, that basically when I got the material and
22 the enlargements, you'd have seen me sitting with a
23 magnifying glass like this. Certainly some form of
24 magnification helped me fully analyse the whole of this
25 mark and then the mark of Marion Ross or, sorry, the

1 digit of Marion Ross, but the area here and the various
2 complexities of it I was actually working with a
3 magnifying glass not only on the actual size but also on
4 a blank enlargement and still to this day that assists
5 me. So that's how the technology is a wee bit different
6 from obviously how I did this.

7 But I'm quite happy that I can articulate all these
8 points that are marked on here. Unfortunately, it
9 doesn't look as though we're going to be able to enlarge
10 segments up, but I'm quite happy that I will take it
11 point-by-point and illustrate what I marked on here.

12 But, I say, that was just to explain how I did this
13 because it's very such fine detail, particularly with
14 incipient ridges. As I explained before, in some of the
15 ridges the ridges actually taper off and give the
16 impression of being incipient ridges and they also,
17 because they are incipient ridges in the furrow, can be
18 very close to the ridges. Also, some of the full ridges
19 actually run very close to each other such is the nature
20 of Marion Ross's ridge detail.

21 So it is complex in that manner and it takes a lot
22 of time which I suspect and I'm actually mesmerised how
23 I think it was Durham -- correct me if I'm wrong -- said
24 they could see one characteristic in this. So I think
25 we've got two ends of the spectrum and I'm more than

1 happy to take my time and work my way through this.

2 (FI0110.16)

3 MR MOYNIHAN: What I suspect is that it is better tomorrow
4 morning.

5 THE CHAIRMAN: I think if we start them at the beginning and
6 work our way through. The programme for
7 tomorrow morning is?

8 MR MOYNIHAN: The programme for tomorrow would be to finish
9 Mr Mackenzie. Then, after cross-examination of
10 Mr Mackenzie, I have Mr Dunbar. It is my intention to
11 be very much briefer with Mr Dunbar and in fact just to
12 go into some of the matters concerning February 1997,
13 not really the identification of the fingerprints. He
14 has no working experience of QI2, in any event. Beyond
15 that, the only other witness that was scheduled for
16 tomorrow is Mr Swann and he has been deferred until
17 Tuesday. So we will finish Mr Mackenzie and I strongly
18 believe we will finish Mr Dunbar as well tomorrow.

19 THE CHAIRMAN: Of course, when we say finish Mr Mackenzie,
20 that means this part of his evidence?

21 MR MOYNIHAN: Yes.

22 THE CHAIRMAN: 10.00 tomorrow, please.

23 **(4.05 pm)**

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

25