

Tuesday, 6th October 2009

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2 (10.00 am)

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**ROBERT HARVEY MACKENZIE (continued)**

4

**Further cross-examined by MR SMITH**

5

THE CHAIRMAN: Good morning, Mr Mackenzie. I hope it will

6

not be long before you can be freed from your term

7

sitting in that spot.

8

Mr Smith, I think you has last been referring to Mr

9

Ashbaugh.

10

MR SMITH: I did indeed. I am moving on from that, sir.

11

THE CHAIRMAN: My note is one topic, that is Q12, you want

12

to ask some questions.

13

MR SMITH: There were still a couple of points remaining on

14

Y7 but I hope I can get through them fairly quickly.

15

THE CHAIRMAN: Yes, if they have not been touched on by

16

Counsel to the Inquiry.

17

MR SMITH: Mr Mackenzie, can you hear me all right this

18

morning?

19

A. Yes, thanks.

20

Q. I wonder if you can move a little bit closer to the

21

microphone or move it towards you.

22

Mr Mackenzie, the first thing I would like to ask

23

you about is the question of the blind testing that took

24

place, I don't mean to take you to too much detail on

25

this but, as I understand it, your position is that this

1 was nothing really to do with the murder investigation  
2 that was taking place. This was, as it were,  
3 coincidental that there was some interesting prints that  
4 you wished to present as a blind test. Is that right?

5 A. I saw it as an opportunity for a blind test completely  
6 separate from, as you suggested, the inquiry.

7 Q. I take it you were aware that others who have given  
8 evidence and will be giving evidence who were there at  
9 the time clearly understood this to be relative to the  
10 murder investigation, in particularly Shirley McKie's  
11 denial that Y7 was hers. Are you aware of that?

12 A. No, I'm not aware of that because on that evening the  
13 test was set up in such a way it was to be anonymised  
14 and there was no discussion that I'm aware of that this  
15 was anything to do with any case in particular.

16 Q. Did everyone who was employed by SCRO as a fingerprint  
17 expert at that time, undertake that test involving Y7  
18 compared with the Shirley McKie's mark?

19 A. I'm sorry, right at the beginning of your question what  
20 was the start of your question?

21 Q. The start of it was did everyone who was employed by  
22 SCRO at that time who was a fingerprint expert take part  
23 in the test?

24 A. Did everyone? No.

25 Q. Why not?

1 A. What period of time are you talking about? Are you  
2 talking about that evening or are you talking about  
3 thereafter?

4 Q. The reason I'm asking this, Mr Mackenzie, is if it was a  
5 blind test and was being carried out for some quality  
6 control reason then is it not logical that everyone who  
7 is employed by SCRO should undertake that test?

8 A. That test was just carried out on that evening just as a  
9 one-off opportunity for tests. There was never any  
10 thoughts in my mind that the whole of the Bureau would  
11 be shown that.

12 Q. We are to understand, are we, Mr Mackenzie, it was  
13 purely coincidental carried out by those present on that  
14 night while there happened to be a serious investigation  
15 into Shirley McKie's mark and Y7, it was just  
16 coincidence and nothing to do with the investigation?  
17 That's your evidence, is it?

18 A. I wasn't aware there was a serious investigation into  
19 Shirley McKie on that day.

20 Q. You are saying you did not understand there to be a  
21 major issue at that time -- is that right -- when the  
22 blind test was carried out?

23 A. The day that test was carried there was a query from  
24 Kilmarnock Police Office and asked for another  
25 comparison and that comparison was done by myself and

1 Alan Dunbar and that result was then imparted to  
2 Kilmarnock Police Office.

3 Q. I would like to ask you if I can now about the question  
4 of multiple taps, just a few more questions on that.

5 As I understand it, you are acknowledging that for  
6 your theory to be correct there must have been at least  
7 three touches in respect of the upper portion of Y7. Is  
8 that right?

9 A. No, I said there was more than one touch in the whole  
10 mark and then I said on the top I had clarified two  
11 areas that were separate. So the area below the fault  
12 line was one area and established two areas in the area  
13 above the fault line. So there was at least two touches  
14 on the top. That's what I said.

15 Q. So overall at least three. I just want to be sure I am  
16 understanding that. Is that right?

17 A. I've established there's at least three touches, yes.

18 Q. As far as that is concerned, let's deal with the top  
19 portion. The top portion of the mark Y7, can you give  
20 an indication as to how you would describe the entire  
21 area of that top portion? Let us think about the size  
22 of a 5 pence piece. Is it about that size, smaller than  
23 that size or bigger than that size?

24 A. Again, I would need to look at the actual size mark and  
25 then see the size of that against a 5 pence piece. I

1           can't just off the top of my head say it's the size of a  
2           5 pence piece.

3       Q.    Would you agree with it's approximate that size? Is  
4           that a fair assessment?

5       A.    Without actually doing it, if you want to try and put a  
6           5 pence piece on it, I'll tell you.

7       Q.    Do you have any recollection, Mr Mackenzie, as to how  
8           big the actual mark is?

9       A.    Sorry, how ...?

10      Q.    Do you have any recollection -- forget about 5 pence  
11           pieces. Do you have any recollection as to how big the  
12           entire mark of Y7 is?

13      A.    How big? It's sufficient enough to suggest to me it was  
14           a thumbprint as opposed to the extreme, say, being a  
15           little finger.

16      Q.    Let us try and approach it this way: as far as these  
17           clusters are concerned -- do you understand what I mean  
18           by the clusters I refer to?

19      A.    Yes.

20      Q.    -- are you able to give any indication as to what size  
21           any of these clusters would be from one point within a  
22           cluster to the furthest way cluster?

23      A.    I've never measured them, if that's what your  
24           suggesting, in the same way I wasn't into geometry the  
25           other day either because I haven't measured the areas of

1 the distortion.

2 Q. Would you agree with the suggestion that even that the

3 largest cluster is so small that it is effectively on a

4 flat part, for all intents and purposes, of any digit

5 that has left the mark Y7?

6 A. Sorry, just say the black part?

7 Q. Flat -- F-L-A-T flat.

8 A. Sorry, give me the question again?

9 Q. The question is that the area is so small there is

10 effectively -- a thumb is rounded -- but you are dealing

11 with such a small area that is effectively a flat area

12 within the cluster. Do you understand what I'm saying?

13 A. No, not quite, no.

14 Q. I am going to suggest to you, Mr Mackenzie, that dealing

15 with the size of these clusters, they are so small that

16 it would be impossible to individually place down any

17 such cluster. You disagree with that, don't you?

18 A. Yes.

19 Q. If we hear evidence subsequently that it would be

20 utterly impossible to place down any cluster -- any

21 cluster -- on its own you say that you know better than

22 that. Is that the position?

23 A. No, it's not a matter of I know better and others will

24 say other things. From my comparison of the mark Y7 and

25 the specific areas that you're talking about and

1 comparison against the control print, I am satisfied  
2 that I've established that these areas were touched  
3 twice. That's my opinion. So to say that -- it's  
4 whatever your words were, basically -- as far as I'm  
5 concerned my findings and I say my opinion is based on  
6 me identifying these individual clusters. So it's not a  
7 matter of it's impossible or whatever. That's in tune  
8 with my findings. So I can't change my findings and, as  
9 a result of what I've found then, as far as I'm  
10 concerned, that establishes at least two touches in that  
11 top area.

12 Q. Mr Mackenzie, you are obviously aware that a good number  
13 of other individuals and indeed organisations  
14 disagree with your views about the identity of Y7 being  
15 Shirley McKie's. You are aware of that clearly. I  
16 would like to ask you this: as far as Mr Wertheim is  
17 concerned, I take it you are aware that at the time he  
18 gave evidence in Shirley McKie's trial he had at least  
19 200 hours of training by the FBI specifically relating  
20 to latent prints. Were you aware of that?

21 A. No, I wasn't.

22 Q. I take it that on the basis that you were saying that  
23 one of the gifts you had was some engagement with the  
24 FBI, you consider the FBI to be an organisation that  
25 commands some considerable respect?

1 A. Sorry, could you repeat the first part of the question?

2 Did you say gift?

3 Q. Yes, I think the word you used was "gifts". You had a

4 number of gifts, I think that is how it is recorded in

5 the notes?

6 A. In relation to the FBI?

7 Q. Yes. My recollection -- I stand to be corrected if I am

8 in error about this -- is that you had a conversation

9 with the FBI and some degree of training and guidance

10 from the FBI. Have I got that wrong?

11 A. I certainly never -- I've never mentioned gifts in

12 relation to the FBI.

13 THE CHAIRMAN: I think it was, if I recollect correctly, it

14 was about Mr Meager and going to see him --

15 A. I'm quite clear about that but I've never mentioned that

16 was a gift.

17 THE CHAIRMAN: Whether one calls it a gift or not, what

18 Mr Meager --

19 A. Part of my knowledge-gathering, if you like, or an

20 advance on my training because it was another issue that

21 opened my eye, then yes, I went to see Mr Meager.

22 MR SMITH: I take it from what you said is that you hold the

23 FBI in general and certainly in particular Mr Meagre in

24 high regard. Is that right?

25 A. I think what I've said in my evidence already is I hold

1 up many, many practitioners throughout the world in high  
2 regard and Mr Meager is obviously a very knowledgeable  
3 person. I didn't single him out as being one I held in  
4 high regard. I acknowledge there's a lot of people I  
5 hold in high regard.

6 Q. Mr Mackenzie, I am not trying to be obtuse about this.  
7 I am not suggesting there's only one person you hold in  
8 high regard. I am simply asking whether it is your  
9 position that Mr Meager is held in high regard.

10 Is the answer to that yes?

11 A. Mr Meager is held in high regard and he has, basically  
12 like Mr Ashbaugh, has opened the world's eyes of experts  
13 through his presentations basically what we've been  
14 actually looking at for years but basically showing us  
15 how we can articulate it and that's through his works in  
16 the Daubert hearing.

17 Q. Is the answer to that yes, that you do regard him --

18 A. Yes, he's one of the persons, because he's obviously  
19 very knowledgeable so if I have learned from Mr Meager  
20 then I've got regard for him, high regard for him.

21 Q. I am not sure the two necessarily follow, which is why I  
22 want to be clear about it but can I ask you this:  
23 generally speaking, is the FBI an organisation who, in  
24 respect of fingerprint analysis, that you hold in high  
25 regard?

1 A. Along with many other organisations, yes.

2 Q. Thank you.

3 As far as training is concerned, as I mentioned to  
4 you, I think we will no doubt hear and we can see from  
5 Mr Wertheim's CV, as I mentioned to you he had at least  
6 200 FBI hours in addition to other training but  
7 specifically related to latent prints as at the time of  
8 Shirley McKie's trial.

9 Against that background, would you agree that he is  
10 someone who ought to be qualified and experienced and  
11 trained to be able to speak on latent fingerprint  
12 identification?

13 A. He has obviously had input from other FBI as many other,  
14 presumably American, Fingerprint Officers have; so what  
15 the input from that is that I would take is it's  
16 obviously been of value to Mr Wertheim and I know that I  
17 actually had a look at the training. That was one of  
18 the aspects I was asked to look at when I was over at  
19 the FBI. So, yes, they do virtually the same training  
20 as we do but they do it in a slightly different format  
21 in it's condensed; whereas my training was over a seven  
22 year period before I was authorised as a fingerprint  
23 expert.

24 In 1999 when I was at the FBI, first of all, what I  
25 noted was they were taking on science graduates as their

1 trainees, if you like, and it was an intensive two year  
2 training programme they had at that point. I don't know  
3 what Mr Wertheim's programme was but the actual FBI  
4 fingerprint experts were trained over a two-year period,  
5 much of which was classroom-based, which was different  
6 from the environment I had worked in where it was  
7 work-based and classroom-based.

8 Q. I am sure you are aware that Mr Wertheim's experience  
9 and training wasn't limited to the 200 FBI hours. I am  
10 just wondering why you are so reluctant to accept that  
11 200 hours with the FBI is better than no hours with the  
12 FBI. Is that not a fair comment to say?

13 A. I haven't said it's better than -- no hours with the  
14 FBI. If Mr Wertheim has taken a note that he spent  
15 200 hours with the FBI then I've got to accept that,  
16 just like anybody else, if they were actually noting  
17 down how many hours training they had in their career  
18 could probably, you know, articulate that but it's not  
19 something I would do, note down I've got 200 hours.

20 THE CHAIRMAN: I'm not sure if this is very profitable. In  
21 the end it will be for me to decide what weight to give  
22 to Mr Wertheim and Mr Mackenzie's views, however  
23 welcome, they are not really essential to this.

24 MR SMITH: Very well, sir.

25 When you spoke to Mr Meager, this was after the

1 Shirley McKie trial; that is right, isn't it?

2 A. That's correct.

3 Q. I take it you discussed the outcome with the trial with  
4 him, did you?

5 A. I was in Washington for a week round about the beginning  
6 of August 1999 and the remit I had been given by the  
7 then Chief Constable of Strathclyde, John Orr -- I don't  
8 know if he was Sir John Orr at that point -- was to look  
9 at the training methods of the FBI and court  
10 presentation. On that basis, I spent a week at the FBI  
11 and there was no discussion whatsoever or mention of the  
12 Shirley McKie case or the name Shirley McKie was never  
13 raised.

14 Q. I would like to ask you if I can about Q12. If I have  
15 understood your position as far as Q12 is concerned, you  
16 obviously weren't involved in that at the outset.

17 I'm right about that much, aren't I?

18 A. That's correct.

19 Q. Can I ask for one of the images of this to be put up,  
20 CO2005H.004.

21 I would like to ask you, if I can, about one  
22 particular point in this.

23 Can I have the central area subject to highlight. I  
24 don't particularly want to do it myself because I might  
25 not manage to do it, but if you can take in a particular

1 part of the print itself. That area is fine, thank you.

2 I would like to ask you, if I can, about this area

3 here (**indicated**) of the print and I will just mark it

4 for the purposes of the record.

5 A. Can I interrupt there and ask for the original one I've  
6 marked up, please?

7 Q. I have identified the bit I would like you look at and  
8 then we will get the original to you.

9 THE CHAIRMAN: We will see if we can get you the original.

10 (**Handed**).

11 MR SMITH: Can you identify that area, Mr Mackenzie, in your  
12 own document in front of you?

13 A. Yes.

14 Q. Can I just be clear about this: did you see anything of  
15 importance within that area that might assist in  
16 identification or exclusion of that as compared with any  
17 inked mark?

18 A. All of the detail in the area is of importance and I've  
19 taken cognisance of all of it.

20 Q. Do you see the line at the top of the oval that's been  
21 drawn that comes down? I am trying to trace it; do you  
22 see that?

23 A. Okay.

24 Q. The line below it -- I'm again tracing that, as I am --

25 A. Okay.

1 Q. -- do you agree that appears to be two legs of a  
2 bifurcation or parting?

3 A. Two legs of a bifurcation?

4 Q. Yes.

5 A. No.

6 Q. I have tried to draw these in, not very well but --

7 A. I know what you're suggesting. You're talking about the  
8 green lines on the left coming to a point. Is that what  
9 you are suggesting?

10 Q. Yes, the green lines are generally from left to right.  
11 They are moving apart, splaying.

12 A. There's no suggestion of a bifurcation.

13 Q. I will draw a line in then if I can in there, in blue.

14 Are you able to see something that looks like that  
15 **(indicated)** with the blue line coming to a stop?

16 A. I think basically what you're showing is although the  
17 right-hand side is not very accurate, it's an incipient  
18 ridge.

19 Q. If it was an incipient ridge the two legs of what I  
20 suggest is looking like a bifurcation would not move  
21 apart, would they?

22 A. On this chance impression that's the position, that that  
23 incipient ridge is in relation to these ridges on the  
24 other side. I've got no control over how that looks.

25 That's how that was placed on as a chance impression so

1           there's no hard and fast -- I've heard other witnesses  
2           say it but it's quite clear in here that the incipient  
3           ridge runs between the two ridges, the two ridges that  
4           you've marked in green.

5       Q.    Are we agreed that the two green lines are correctly  
6           placed, approximately, in respect of what appears at the  
7           end of them. Are we agreed about that?

8       A.   No, the upper one is actually coming down on the  
9           left-hand corner a bit too low. It goes a bit higher  
10          above that.

11      Q.    Even if it was slightly higher above it, Mr Mackenzie,  
12          are we agreed broadly they appear to move apart?

13      A.    But broadly you have made the suggestion that they are  
14          coming together there and they are not coming together  
15          on the left. The importance is that this incipient  
16          ridge runs through between there and it's not as you  
17          have drawn it with the green coming together.

18      THE CHAIRMAN: Do you say they are two ridges, the green  
19          lines?

20      A.    The green are two ridges, yes.

21      THE CHAIRMAN: But you would not draw the left-hand side of  
22          the upper one as low as this?

23      A.    As lower, no. It suggests as though it's coming towards  
24          the lower one but it's actually a fraction higher than  
25          that.

1 MR SMITH: If what we have is the two green lines -- and I  
2 am prepared to accept the left-hand edge of the  
3 upper-most green line is maybe sloping down too much --  
4 but if we have a situation where the right ends of the  
5 green lines are moving apart with a ridge of some kind  
6 in between, are we agreed that there is nothing of that  
7 nature in the fingerprint of the late Marion Ross? Are  
8 we agreed if that was right it would be a difference?

9 A. Sorry, nothing of that nature? How do you mean, the  
10 spacing? Is that what you are saying?

11 Q. First of all, is there an incipient ridge in that place  
12 in Marion Ross's fingerprint?

13 A. Yes, it is.

14 Q. Are you agreeable to the suggestion that an incipient  
15 ridge is something that obviously has to be between two  
16 other ridges? We are agreed with that much, aren't we?

17 A. It's a statement of fact. There are incipient ridges  
18 appear in the furrows and they can, obviously, depending  
19 on the growth, be at different heights, but they appear  
20 between the normal ridges.

21 Q. Your position in evidence is that you can have incipient  
22 ridges that cause the adjacent two ridges to part. Is  
23 that right?

24 A. It's not a matter of causing them to part; that's the  
25 way they appear. They can appear that way on a chance

1 impression. Sometimes they will actually appear,  
2 sometimes they won't, but it's all down to the  
3 deposition of the finger on the surface. So, as far as  
4 their appearance and the ridges on either side, it's  
5 down to how the print's deposited. You will never get a  
6 chance impression identical to a controlled impression  
7 unless, as what I suggested at the beginning was you  
8 were actually to get virtually a copper plate image left  
9 at the scene and a copper plate print taken of the  
10 control print. So you will never, ever in a finger -- a  
11 finger will never record the same twice be it a chance  
12 impression at a scene or even in a recorded print and  
13 that goes for rolled and plain impressions. There will  
14 always be differences.

15 Q. Mr Mackenzie, can I ask you this: if there will always  
16 be differences what value is fingerprint technology in  
17 comparing a latent against an inked print, if you can  
18 always say any difference is due to a change in movement  
19 or a squeeze or a pinch or a roll?

20 A. I'm sorry, that's where the training comes in over many  
21 years of observing how these differences appear and  
22 certainly I know that, as I say, from my training, two  
23 years for starters was getting your eye attuned to ridge  
24 detail and comparing that with basically a person who  
25 has possibly re-offended several times and it's -- every

1 image will be different. So that's down to experience.

2 You take that into account but you also take it into  
3 account in relation to all the other information in the  
4 print.

5 Q. I wonder if we could have that image saved, please.

6 A. Could I add something before that's taken from the  
7 screen? Just a comment.

8 THE CHAIRMAN: Just let us get this saved for the moment.

9 MISS BAHRAMI: That image is saved as FI0610.01.

10 MR SMITH: Thank you.

11 THE CHAIRMAN: You wanted to add something.

12 A. My observation before it goes off the screen is the blue  
13 line you have drawn, again I'm presuming you just mean  
14 that roughly, that ridge, because the end of  
15 that incipient ridge I have got marked just in from the  
16 end of your upper green marking coming in from the left  
17 in the blue markers there. So where you've actually  
18 marked is not actually the accurate ending of that  
19 incipient ridge. I think it's relevant that I point  
20 that out when I can see it.

21 THE CHAIRMAN: Does it end sooner or later?

22 A. Sorry?

23 THE CHAIRMAN: Does it end sooner or later?

24 A. The blue line drawn by Mr Smith stops sooner. The  
25 dot -- have I control of the mouse?

1 THE CHAIRMAN: Well, maybe if you want to draw it further.

2 A. The cursor there (**indicated**) is my blue dot and the  
3 ridge, the incipient ridge, continues to that point  
4 (**indicated**).

5 THE CHAIRMAN: So it moves to the left, almost to -- it  
6 almost touches the upper green line.

7 A. Yes. I think that's significant. The reason I've  
8 raised it is I know this has been mentioned in the  
9 comparative exercise and from the clear copy that I have  
10 that's the position of the end of that incipient ridge.

11 THE CHAIRMAN: It gets a little more complicated because the  
12 left-hand end of the green line is lower than you would  
13 have drawn it yourself.

14 A. Yes.

15 THE CHAIRMAN: So when I say it comes to the green line as  
16 drawn --

17 A. As drawn, correct. Thank you.

18 MR SMITH: Finally, Mr Mackenzie, I don't think I am the  
19 only person who noticed that when I commenced my  
20 cross-examination you turned your back on me.

21 Can I be clear about this: have I done or said  
22 something that has offended you in the course of this  
23 matter?

24 A. Mr Smith, this is actually part of my training. I've  
25 always been trained to address the judge, the sheriff or

1 the jury and that's basically how I've positioned  
2 myself. It would be the same for anybody else asking  
3 questions.

4 Q. I just want to be clear about it: there is not going to  
5 be any suggestion that I have been unfair in my  
6 questioning and the manner I have been presenting it?

7 A. Absolutely not and I'm making my position clear that's  
8 down to training. So I can actually -- I know where I  
9 got the training as well if somebody wanted to ask me.

10 THE CHAIRMAN: I must say I prefer the witness to be facing  
11 my direction than the questioner.

12 A. That's specifically in our court training.

13 THE CHAIRMAN: Does that complete the cross-examination?  
14 Thank you very much.

15 Miss Grahame do you have anything you wish to apply  
16 to ask?

17 MISS GRAHAME: No, thank you.

18 THE CHAIRMAN: Mr Holmes?

19 MR HOLMES: Yes, there are four issues that I would like to  
20 cover with Mr Mackenzie: the first relates to the  
21 techniques used to demonstrate fingerprint comparison;  
22 the second relates to the areas of Mr Mackenzie's own  
23 examination which I would like to clarify with him; the  
24 third relates to the blind test, I have only one  
25 question on that; the fourth relates to Mr Mackenzie's

1 own presentation.

2 I should add, sir, that there are two individual  
3 points within Y7 that I would intend to cover with  
4 Mr Mackenzie that have already been covered by Inquiry  
5 counsel. The reason that I intend to do this in  
6 relation to the first is to deal with something  
7 specifically that was said by a previous witness when  
8 looking at the particular point and in relation to the  
9 second, it is to deal with something that it is  
10 anticipated that another one of the expert witnesses  
11 will say in their evidence. It should be in relatively  
12 short compass.

13 THE CHAIRMAN: I think that gives me good reason to allow  
14 you to cover something that has already been covered on  
15 the point.

16 MR HOLMES: I don't propose to cover anything to do with  
17 Q12, sir, as Inquiry counsel has already stated that  
18 Mr Mackenzie will give evidence in future about Q12.

19 THE CHAIRMAN: Yes.

20 **Cross-examined by MR HOLMES**

21 Q. Mr Mackenzie, if I can ask you in the first place some  
22 questions about the techniques that you are aware of for  
23 the demonstration of fingerprint comparison, firstly,  
24 some witnesses have mentioned the use of acetate  
25 overlays for demonstrating similarities or in fact

1 differences between fingerprints.

2 Do we understand from this that you take a  
3 transparent sheet, place it over the crime scene mark,  
4 plot points or ridges on that sheet and then lay it over  
5 the known mark to demonstrate that they match or, in the  
6 case of differences, that they do not match?

7 A. You're talking about is that an established technique?

8 Q. Yes. Is that something that can legitimately be used to  
9 demonstrate a fingerprint comparison?

10 A. Certainly in relation to this case I have used an  
11 acetate sheet both on Y7 for the Third Level Detail,  
12 that scale, and Q12 I've also used it but it's a smaller  
13 scale. But the emphasis is there as what I said about  
14 Q12 was there was specific ridge shapes that I was  
15 examining this actual size under a magnifying glass that  
16 actually stood out to me and hence the reason from the  
17 enlargements that were produced for Mr Gilchrist I made  
18 the transparencies.

19 So from that point of view -- and, again, that's  
20 only a small area, it's not the whole area of the mark,  
21 and it's not the whole area of a control print. So in  
22 this instance, I have chosen to use that, as I said, to  
23 augment the initial comparison and results from that  
24 comparison.

25 As far as -- I've actually been asked this question

1 in court before, if I was to actually take a  
2 transparency over a mark and put it over a digit then I  
3 could see exactly the same and the answer to that is no.  
4 As I've already explained in one of the last questions  
5 to Mr Smith that the chances of a chance impression and  
6 a control print being copper plate identical with each  
7 other in every respect, there's no chance of that.  
8 Every mark and every control print when the  
9 print -- sorry, when the digit is touched on the article  
10 or taken on ink on to paper, on every occasion that will  
11 be different. So -- but I have seen this in basically  
12 television programmes where they actually you see it's  
13 meant to be a Fingerprint Bureau, they're looking at an  
14 expert and sometimes they have transparencies and they  
15 go like this (**indicated**) but really that's the world of  
16 fiction and that's what I'm talking about, a whole mark  
17 and a whole finger, and it's not anything that we would  
18 teach experts to do. It's done on actual size, we use  
19 the tools of the comparator and the final decision is  
20 normally done under a magnifying glass, but having used  
21 the tools to enhance, et cetera. So transparencies is  
22 not used as part of a training method.

23 In a similar manner, I've already mentioned about  
24 Mr Zeelenberg and the grid. I've never, ever seen  
25 anything like that and that's the same proposal,

1 basically, that a grid with numbered and lettered  
2 squares would show the same characteristics in the  
3 corresponding grid. A chance impression is never --  
4 particularly a distorted one such as this -- is never  
5 going to have the same features in the same area of the  
6 grid or, I say, one transparency done from one laid  
7 over. I hope that answers the question.

8 Q. I think so. For reasons that you have given it is  
9 something that you would be content to use with a  
10 smaller area but not with a mark in its entirety; is  
11 that correct?

12 A. Just for an appropriate area, I say, in support of other  
13 identification that's been done.

14 Q. In relation to the production of charted enlargements  
15 for the demonstration of a comparison, you have seen the  
16 enlargements that Mr Wertheim produced for the purposes  
17 of this Inquiry which have on them areas marked by  
18 different coloured circles.

19 Again, is that something that you regard as a  
20 helpful approach?

21 A. A helpful approach? No, actually I found it confusing.  
22 I've never, ever seen anything like that done, certainly  
23 in any training forum I've been in, but that's the way  
24 Mr Wertheim has chosen to do it for the comparative  
25 exercise. My understanding was that those taking part

1 in it were actually marking characteristics or features  
2 that they could see.

3 Q. Thank you.

4 Also in relation to charted enlargements I asked  
5 Mr Grigg about the enlargements prepared by Mr McLeod  
6 and, in particular, whether he would have used thick  
7 black lines and large dots to mark an enlargement. You  
8 will recall that he said he wouldn't because it obscures  
9 detail.

10 Would you agree with that?

11 A. Well, obviously using black that's why we've always been  
12 taught to use red marker pens, very fine pointed special  
13 marker pens for marking up photographic enlargements for  
14 illustration purposes. The use of a black pen is  
15 obviously going to clash with the black ridges. For  
16 that reason I would never, ever have suggested using it  
17 and I've never seen it used before and also if you make  
18 big black heavy dots then you're going to obscure  
19 potentially detail underneath that.

20 Could I add on the point of enlargements and it's  
21 getting back to the FBI, because I said I did look at  
22 the training, and one thing I did notice about their  
23 illustrations for court, they were of the same manner as  
24 were last produced by SCRO, in that I mean that one page  
25 was dedicated to the mark and the other page beside it

1           was dedicated to the control digit.

2                   Prior to going to America, the SCRO photographed  
3           mounted -- I'm not even talking the charting PC but the  
4           photograph mounted prints were cut and marked up on a  
5           pre-printed A4 sheet. By pre-printed I mean because of  
6           the 16-point standard, then there were 16 numbers marked  
7           on one side of that A4 sheet and it was virtually -- it  
8           was landscape you were looking at like that **(indicated)**  
9           and there were 16 numbers pre-printed on a card and 16  
10          numbers here and this was to assist the expert in rather  
11          than in the past we used to use a stencil and to  
12          actually make the presentation look better, then the  
13          experts, where possible, used the pre-printed numbers  
14          and then drew the lines out to the various  
15          characteristics they were trying to illustrate.

16                   There were exceptions to that, of course, possibly  
17          if it was say a big area, a palm, or it was difficult to  
18          get the lines to draw out from these specific numbers  
19          then they would do it with the stencils.

20                   After I come back from the FBI I decided that the  
21          enlargements should be approximately twice the size they  
22          were before. So it was one-on-one page and one on the  
23          other.

24                   Also the FBI ones were probably -- on square  
25          inches -- probably about nearly twice the size of an A4

1 and they were on a heavy cardboard backing and the one  
2 difference was, what I can recall them doing was that  
3 depending on whether the expert was left-handed or  
4 right-handed then if they were right-handed and wanted  
5 to point to the illustration, they had this book, and  
6 you can imagine it was very difficult if it's twice this  
7 size of a page and the same again, trying to hold this  
8 card up. If they were right-handed the mark would be on  
9 this side on the left-hand side (**indicated**) but if they  
10 actually happened to be a left-handed officer they  
11 actually put the mark nearest to them on the right-hand  
12 side. So that was the only differences and we didn't go  
13 to the extent of that size of enlargement because I  
14 thought it was actually cumbersome to try and operate  
15 that.

16 So we did learn something in that perhaps we should  
17 have a bigger size enlargement.

18 Q. Thank you, Mr Mackenzie. I will not spend any great  
19 deal of time on your trip to Washington because you have  
20 been asked about it by Inquiry Counsel and by my learned  
21 friend, Mr Smith, but did you mention that that was --  
22 when was it, 1999?

23 A. It was approximately the first week in August 1999 and  
24 the reason I can remember that specifically is that when  
25 I spoke about material coming back from the court after

1 Shirley McKie's trial, I understand that it was  
2 Mr Stewart who was tasked by Mr Bell to contact the  
3 Fiscals' Office and retrieve it and I understand that  
4 that took place during the time I was in Washington and  
5 it was thereafter when I arrived back in the office the  
6 material was there.

7 Q. You have mentioned the purpose of this was to give you a  
8 view of the way in which evidence was being presented by  
9 the FBI; is that correct?

10 A. That's correct.

11 Q. You have been asked by my learned friend, Mr Smith, if  
12 this is an organisation that was held by you in high  
13 regard.

14 A. It is.

15 Q. Did you find any differences between the way the FBI  
16 were being trained to present evidence at that time and  
17 the way that the SCRO, post McKie, were being trained to  
18 do so?

19 A. No, the only thing that I had picked up on is obviously  
20 the use of new technology and I had suggested that back  
21 at SCRO and in various forum thereafter in the run-up to  
22 the changes to non-numeric because I was aware and been  
23 made aware, obviously, that the courts in Scotland,  
24 particularly the high courts, had technology which would  
25 allow PowerPoint, et cetera, and what I was basically

1 suggesting was we should maybe be looking at that as a  
2 medium for bringing forward our presentations, again  
3 just as a tool, not necessarily replace what we had but  
4 possibly that might be the future. But my understanding  
5 was that obviously all courts at that stage, back in  
6 1999 and thereafter, actually weren't actually kitted  
7 out but it might be the case now that all courts are  
8 kitted out.

9 Basically, because SCRO's very progressive in its  
10 thinking in that we would always look at the methods  
11 that we did, both within the Bureau and for court  
12 purposes, and this was an area of basically looking at  
13 the technology, SCRO had brought in all the various  
14 technologies for comparing prints, et cetera, and  
15 searching and I saw this as a next avenue that we could  
16 go down looking at the technology.

17 Obviously, it would probably involve the officers  
18 having a laptop or taking the information forward that  
19 they could actually work with, for example, on a desk  
20 like this (**indicated**). So, I say, it was looking to the  
21 future.

22 The FBI, I say, had obviously shown me  
23 illustrations, et cetera, and I was aware that this was  
24 a possibility that we could go down that road.

25 Q. If I can move on to asking about the demonstration of

1 what has been referred to as Third Level Detail, you  
2 have said in your evidence on Friday of last week that  
3 you had always taken notice of what is now referred to  
4 as Third Level Detail, though you have perhaps not used  
5 it in an illustrative manner.

6 Is it fair to say from your answer there that any  
7 novelty in the approach taken by Mr Ashbaugh and others  
8 lies in articulating Third Level Detail rather than  
9 taking it into account anyway when you're doing your  
10 examination?

11 A. That's exactly it. I think you have encompassed that  
12 quite well, in that I think I've given the illustration  
13 of the lake in particular in Q12 that I pointed to  
14 actually stood out to me but it was actually the shape  
15 of it, the actual shape of the ridge units, and that was  
16 without major enlargement.

17 So it's at the assessment stage you take into  
18 account all the detail you can see in a print and, as  
19 has been pointed out, in Ashbaugh's training and in what  
20 Mr Meager has said is that our eye unconsciously,  
21 whether we've known about it in the past, but we've  
22 actually been taking in all that detail and that's  
23 actually how you come to, basically, focus in on a  
24 target area or whatever. It's not just what we were  
25 trained to look for, Second Level Detail. Actually our

1 brain is taking that information in. I think  
2 Mr Ashbaugh in his e-mail was asked to look at basically  
3 on Friday has actually laid that down quite clearly.  
4 It's basically the brain taking in all the information.  
5 So the answer is, yes, I've always done it.

6 Q. So can we take it from that that any suggestion that  
7 might be made that you had limited experience of  
8 examining Third Level Detail is not something that you  
9 would agree with?

10 A. Third Level Detail, just like Second and First Level  
11 Detail, is where all my experience is and to suggest  
12 that in 39 and a half years in the Fingerprint Bureau I  
13 don't have much knowledge or training is an affront, I  
14 would say.

15 Q. Finally on the demonstration of comparisons, can I ask  
16 about the orientation of a mark.

17 When preparing an enlargement why is the orientation  
18 of a mark important?

19 A. In preparing an enlargement? Yes, absolutely. And  
20 that's why you probably see within my presentation book  
21 I've actually, parts of the photograph are trimmed, so  
22 the photograph has actually been turning round, it's not  
23 actually sitting, the actual frame of the photograph,  
24 it's not sitting parallel to the book. So basically  
25 it's very important you get as close as possible to the

1 orientation so that when you are drawing out these lines  
2 and, as I've already said previously, when it was a two  
3 to the one page, we had a pre-numbered page, and to draw  
4 the lines out to this specific points, it was very  
5 important you got the orientation right so that the  
6 lines would actually run in the correct direction.

7 Q. If I can move on to areas of your own examination that I  
8 would like to clarify, the first thing I want to ask is  
9 that you were asked by Inquiry Counsel whether the  
10 maximum number of points in Y7 that you found in 1997  
11 was 13.

12 What were you trying to do when you examined Y7?

13 A. Obviously, I'd been asked to have a look at this mark  
14 against elimination fingerprints of Shirley Cardwell, as  
15 she was known then. And my comparison was based on  
16 assessing what I could see in the mark and then doing a  
17 comparison against that control print to see whether I  
18 could establish whether that mark was made by the person  
19 making the control print.

20 Based on what I could see from my assessment, I was  
21 satisfied that there was sufficient detail within the  
22 area that I was looking at, which was the area I have  
23 described as below the fault line, and on the control  
24 print of Shirley McKie. So I was satisfying myself as  
25 to the identity of the donor of that print and that's

1 the result I came to, that Shirley McKie was the donor  
2 of that mark.

3 Q. If you are merely looking to satisfy yourself as to the  
4 identity of a donor of a mark, is it necessary for you  
5 to seek out 16 points?

6 A. No, absolutely not. Any expert, and I think there have  
7 been other experts that have actually given evidence  
8 here will tell you that it's not just magically -- a  
9 bell doesn't just ring in your head when you come to 16.  
10 It can happen way before if you're actually counting  
11 characteristic with characteristic and just because  
12 there was a line in the sand at 16 doesn't mean and  
13 would never mean to an expert that that was when they  
14 came to their conclusion that that person was  
15 identified.

16 It's much like I was saying about your brain taking  
17 in the information. You know as you are gradually  
18 working your way through the characteristics, you know  
19 in your head when you have an identification. So 16 is  
20 irrelevant as far as that's concerned. The information  
21 on identity will, in many, many occasions, come well  
22 before 16.

23 Q. Y7 was discovered in the course of an investigation  
24 involving a large number of marks; is that correct?

25 A. My understanding was it was in the hundreds, yes.

1 Q. So the most serious consequences that you would have in  
2 mind at the time when you were examining Y7, without the  
3 benefit of hindsight, would be that a police officer's  
4 fingerprint had been left at a crime scene. Is that  
5 correct?

6 A. Correct.

7 Q. We have heard evidence that it is not the first time  
8 something like that had happened. In fact, from Scene  
9 of Crime Officers who had left fingerprints at scenes  
10 themselves we have heard evidence to the effect that  
11 whilst it could be embarrassing it wasn't necessarily a  
12 problem of any great significance for them.

13 Is that something with which you would agree?

14 A. It's a regular occurrence, I wouldn't pin it down to the  
15 number of days, but it's a regular occurrence that we  
16 would find Scene of Crime Officers' prints or in fact  
17 police officers' prints and the one that specifically  
18 stands out to me and it was a major murder inquiry that  
19 went on for weeks and it was actually one of the two  
20 heads of CID in Strathclyde and I can actually remember  
21 the officer's name, he's a Chief Superintendent, John  
22 Fleming. It turned out to be his print which was deemed  
23 to be a significant mark and had been getting searched  
24 through the national collection for weeks and my  
25 understanding was that eventually, for whatever reason,

1 I'm presuming that his name obviously hadn't been put  
2 forward or checked but it came to light that it was  
3 actually the head of the CID's print. So that's the one  
4 that actually stands out to me.

5 So, again, it's accepted that police officers will,  
6 you know, and do accidentally leave their prints at  
7 scenes. I think some people have actually suggested  
8 they should be trained to keep their hands in their  
9 pockets. This is obviously before, you now see them all  
10 gloved, et cetera, and the television makes a great play  
11 of it when you actually see a news item. But it has  
12 happened and no doubt it will still happen with somebody  
13 without gloves.

14 Q. Have you ever had to speak in court to the  
15 identification of a householder or the relative of a  
16 victim, someone with legitimate reason for their  
17 fingerprints to have been recovered at a crime scene?

18 A. From recollection within specific reports, if required,  
19 I will have done.

20 Q. If you have had to speak in court to an identification  
21 of that nature, would you have done so to 16 points?

22 A. Not necessarily, no.

23 Q. You were never involved in the prosecution of Shirley  
24 McKie and did not at any time have to mark up 16 for  
25 court purposes, did you?

1 A. No, I wasn't and, no, I didn't.

2 Q. The last thing on Y7, Mr Mackenzie, is that you have  
3 highlighted five different areas of comparison in your  
4 own presentation but you were at some pains to make it  
5 clear that five areas of comparison does not necessarily  
6 indicate five different touches. Is that correct?

7 A. I didn't -- as you say, five areas of comparison. I  
8 said there was five areas of interest I think I possibly  
9 described it as. I say, my presentation was my notes,  
10 if you like. It started off with the core area of the  
11 print was where I focused on when I first looked at the  
12 mark in assessing it and I then moved out to the area to  
13 the right of that, which I think I called the lower  
14 segment and then further out I had taken cognisance of  
15 the area which ended up with the Third Level Detail in  
16 it.

17 So the thought process was three different areas I  
18 was looking at but not saying that they were alien from  
19 each other but that was three areas of interest. And  
20 then within the top area I knew there was movement of at  
21 least more than one touch and I've gone on to basically  
22 identify areas in that area. So that's, if you like,  
23 five areas of interest.

24 The bottom area, obviously, I have proven from the  
25 core area right across and into the Third Level Detail

1 area and I've illustrated it's in sequence and  
2 agreement. So that's actually one area but with the  
3 swivelling of the thumb.

4 Q. So if I can ask when you say that there are five areas  
5 of interest or that there are five areas in which you  
6 have carried out a comparison, that does not necessarily  
7 indicate five different touches; is that right?

8 A. Certainly not five different touches because I've now  
9 proven that the area below the fault line is actually --  
10 the three areas of interest are actually one piece.

11 Q. Would you expect any expert to realise that?

12 A. Any expert that had taken the time and properly taken  
13 cognisance of, as I said at the beginning: the red flag,  
14 the fault line, the disturbance in the top of the mark,  
15 then if they had carried out their initial assessment  
16 correctly and then gone into a comparison, and if they  
17 had come to the same conclusions that I have, then  
18 obviously they would have been taking it into  
19 consideration.

20 Q. If I can ask you one question about the blind test, you  
21 were asked why the word "elimination" was used in  
22 relation to what has now become known as the blind test.

23 Would the officers who were asked whether they would  
24 eliminate the mark understand that they were being asked  
25 to satisfy themselves as to the identity of the donor of

1 that mark?

2 A. That would be my understanding.

3 Q. I will move on, finally, to your own presentation. The

4 first point I would like to clear up relates to points

5 34 and 35 that you have marked in your own presentation.

6 Do you have the book available to you?

7 A. Yes.

8 Q. Can you see points 34 and 35 where you have marked them?

9 A. Yes.

10 Q. Mr Mackenzie, is it page 28 that you have marked 34 and

11 35 on?

12 A. Yes.

13 Q. There appears on page 28 to be a gap between these

14 points; is that correct?

15 A. That's correct.

16 Q. If it is suggested that this gap came about as a result

17 of the damage to the mark in the area of the fault line,

18 what would your comment be on that?

19 A. Within the mark Y7, there's a clear break, as I've

20 illustrated also on the enlargement on page 27, which is

21 an enlargement taken out of the previous page that you

22 mentioned, on page 11. It is a photographic enlargement

23 by the Photographic Department in Strathclyde took an

24 enlargement out of that area from the enlargement shown

25 on page 11. It's quite clearly the break there on the

1 original Y7.

2 Q. I wonder if you could have a look at an image for me,  
3 please, TS0006. It is page 2 of that document. Can you  
4 rotate that anticlockwise, please.

5 Mr Mackenzie, if you would like to enlarge any area  
6 of the mark here so that you can see points 34 and 35.

7 A. Okay. Do you want me to put a marker on them?

8 Q. Yes, if you are able to mark points 34 and 35 within  
9 that image, that would be helpful.

10 A. Okay.

11 Q. Are you content with that image?

12 A. Sorry?

13 Q. Are you happy with that image?

14 A. I'm happy with that image, yes.

15 Q. The top most of the two, is that point 34?

16 A. That's point 34, yes.

17 Q. Making the bottom one 35. Can you see a clear gap  
18 between the two?

19 A. I can.

20 THE CHAIRMAN: Can we just have the numbers marked on them  
21 so that it is quite clear, in fact, what we are talking  
22 about.

23 MR HOLMES: Certainly, sir.

24 THE CHAIRMAN: It is just being done now.

25 A. 35 is the lower one; 34 is the upper one.

1 THE CHAIRMAN: If we come back to it, sometimes it is  
2 difficult just to follow.

3 MR HOLMES: The gap between the two points that you can  
4 quite clearly see on that image; is that correct,  
5 Mr Mackenzie?

6 A. That's correct.

7 Q. This image is an image that was taken by Mr Kent and was  
8 taken prior to any damage occurring to the mark. So my  
9 question is: is the explanation that the gap between 34  
10 and 35 was caused by damage in the area of the fault  
11 line, that can't be correct, can it?

12 A. That's incorrect.

13 MR HOLMES: Can you record that image, please?

14 MISS BAHRAMI: That's FI0610.02.

15 MR HOLMES: Thank you.

16 The second individual point that I would like to  
17 speak to you about, Mr Mackenzie, is what has become  
18 known as the Rosetta characteristic. It has been  
19 suggested that some individuals regard the presence of  
20 the Rosetta characteristic as a difference, some regard  
21 it as a similarity, depending upon its position. You  
22 were asked by Mr Moynihan about the placement of the  
23 Rosetta characteristic.

24 Mr Wertheim, on day 23 of the Inquiry, was asked  
25 about the same thing. Mr Wertheim took two of

1 Mr Swann's images and marked from the core to the  
2 Rosetta characteristic and, if you recall, he counted  
3 from the core to the Rosetta on each one. On the basis  
4 of the difference between the counts he claimed that  
5 Mr Swann was mistaken and that he obviously did not  
6 review his own work. Mr Wertheim was quite animated at  
7 this point.

8 Do you recall that point in the evidence?

9 A. I do, yes.

10 Q. Can I show you image FI2309.14, please?

11 MR MOYNIHAN: Sir, I can speed matters up. I know even  
12 Mr Wertheim will readily accept that the two charts he  
13 looked at are two different matters therefore that  
14 evidence from him is wrong.

15 THE CHAIRMAN: Yes. That seemed to be my recollection now I  
16 am reminded of it, that he accepted --

17 MR HOLMES: Not during the evidence.

18 MR MOYNIHAN: No. He has not during evidence but in fact he  
19 had intimated to me lines of cross-examination for  
20 himself and because time was short I didn't put the  
21 matter to him: the point that he accepted was that chart  
22 N for Nicholas is the one that relates to the Rosetta,  
23 chart M, I think he simply bit confused, in the brief  
24 period he looked at it in the witness box, he simply  
25 confused a point that was there in chart M for Michael.

1           Accordingly, if the point you are seeking to make is  
2           that Mr Wertheim looked at the wrong charts and drew the  
3           wrong conclusions, that's a matter he will readily  
4           accept.

5   THE CHAIRMAN:   As long as we have it recorded.

6   MR SMITH:   It should be recalled, of course, I represent  
7           Mr Wertheim as well.

8           My recollection of the evidence was that he asked  
9           Mr Moynihan to confirm on the two charts they both  
10          represented the Rosetta point and that was affirmative  
11          and so I think lest there be any criticism of him making  
12          the assumption, I think it is fair to record that he  
13          asked, "Do these both represent the Rosetta point" and  
14          the answer, I think, from Mr Moynihan was, "Yes, I think  
15          they do", and on that basis he gave his evidence that  
16          the ridge count was different. We can no doubt check  
17          the transcript but I think in fairness to Mr Wertheim it  
18          should be clear.

19   THE CHAIRMAN:   Is that sufficient for your purposes or do  
20          you want to --

21   MR HOLMES:   In the light of what has been said, sir, if  
22          Mr Wertheim is now accepting that in the second charting  
23          he failed to mark the Rosetta characteristic perhaps  
24          it's more properly a matter for submission than to be  
25          taken up with another witness.

1 THE CHAIRMAN: I don't think Mr Mackenzie needs to deal with  
2 it, if that is the position.

3 MR HOLMES: I am obliged, sir. In the light of that I have  
4 no further questions for Mr Mackenzie.

5 THE CHAIRMAN: Thank you.  
6 Have you anything?

7 MR MOYNIHAN: I have no further questions, sir.

8 THE CHAIRMAN: I just want to ask you while you are here to  
9 clarify one matter for me, first of all, and that is  
10 when I was reading the transcript I wasn't absolutely  
11 clear of your description of point 14 on Y7 and just for  
12 my own assistance could you just -- you remember that  
13 you went through all the various points saying what they  
14 were and it may be my fault but I couldn't quite follow  
15 what point 14 was.

16 A. Point 14 is a bifurcation downward.

17 THE CHAIRMAN: That clarifies that. Thank you very much.

18 The other matter I wanted to ask you about is I  
19 understand from your evidence that the first thing that  
20 happens is the lower part of the thumb makes contact.  
21 Then you say the upper part is lifted slightly and put  
22 down again and then lifted slightly again and put down.

23 I just want to know why do you say "slightly"?

24 A. It's obviously because of the position of the clusters  
25 that I have. It's obviously lifted slightly and the

1 fault line is the key to the separation, if you like, of  
2 the lower and the upper half. The first deposition that  
3 I have identified is the numbers that were marked in red  
4 and then the next deposition is the numbers I've marked  
5 in magenta so the finger has obviously had to lift  
6 fractionally another time to move in that position. So  
7 that's what I mean by slightly or marginally.

8 THE CHAIRMAN: Fractionally or whatever?

9 A. Whatever term.

10 THE CHAIRMAN: But it is not --

11 A. It's not massive. It's just -- well, obviously I wasn't  
12 there but it's minuscule movement.

13 THE CHAIRMAN: It ceases to be in direct contact, comes back  
14 into contact again.

15 A. Yes.

16 THE CHAIRMAN: So that would not happen or would it -- or  
17 maybe you are not able to answer this -- if somebody  
18 was, as it were, swivelling on that finger, if you  
19 understand what I mean.

20 A. If that had swivelled then these two groups of  
21 characteristics wouldn't have been in position.

22 THE CHAIRMAN: Wouldn't be in the same position so there has  
23 to be, obviously, a clear lift.

24 A. Sir, it's my finding's based on characteristics I've  
25 found that brings me to the conclusion that that's what

1 the deposition was.

2 THE CHAIRMAN: On a different topic, I appreciate that for  
3 this Inquiry you were looking at different versions (in  
4 other words, the Internet and so on). Normally -- and I  
5 am talking now about in the lab and carrying out an  
6 investigation or an examination, would you look at just  
7 one? Would you choose, say, the plain print to compare  
8 with or would you choose to look both at the plain print  
9 and the rolled print? How would an examiner normally do  
10 it? Would you normally do it against one or against  
11 more than one?

12 A. Being the benefit of being a fingerprint bureau and  
13 depending on the nature of the person with the control  
14 print, on this occasion we are looking at an elimination  
15 and normally a police officer would be one card; whereas  
16 if it's an offender or somebody held on file, they may  
17 have one form with a rolled impression and a plain  
18 impression and if that was the case then you would  
19 utilise both. And I think I mentioned in the **McNamee**  
20 case I actually used both. It was unique to me. I  
21 haven't seen any other expert actually illustrate using  
22 both. So you use what is available to you.

23 But within the Fingerprint Bureau it is not uncommon  
24 for people to re-offend and have 20/30-odd forms. So in  
25 a comparison situation if a person has been suggested by

1 a detective officer as a possible suspect, not arrested  
2 at that stage, then the availability to the  
3 fingerprint officer is a collection of fingerprint  
4 forms, potentially. So the answer to that is it could  
5 be 20 forms times two digits, rolled and plain. So you  
6 could have 40 impressions to look at.

7 THE CHAIRMAN: So you would use whatever is available to  
8 you?

9 A. Absolutely because it's sometimes -- sometimes it's not  
10 the mark that's lacking; it's the control print. That's  
11 why it's important, when there are arrest prints taken  
12 as well, that they are taken well because it's the  
13 arrest print that normally ends up in court in the final  
14 comparison, although initially if it had been a suspect  
15 that had been compared or if the AFR (the Automatic  
16 Fingerprint Recognition System) had suggested a  
17 candidate and a form had been pulled out the collection  
18 then that wouldn't necessarily be the form that ended up  
19 in court unless that person, at the same time as  
20 the marks were coming in, their arrest form come in at  
21 the same time. So we would also check, if that was the  
22 case, we would check from -- the crime reference numbers  
23 would be recorded on the fingerprint form and if there  
24 was one for the specific crime and it had never been  
25 compared and it was only coming from the Identification

1 Bureau, the marks, then we would pick the arrest form  
2 obviously, but even at that -- if the arrest form didn't  
3 have sufficient detail to complete the comparison  
4 sufficiently, then we could make reference to the others  
5 and you could also get warrants to re-fingerprint  
6 people. So it was all the material we had available to  
7 us.

8 THE CHAIRMAN: The reason I was asking was because of your  
9 explanation that sometimes a feature can look like a  
10 bifurcation on one print and can look like a ridge  
11 ending on another and I was interested to know how, if  
12 you are only given one print to compare with, how you  
13 can be sure when you are doing it.

14 A. That's it, you've got the decision to make and that is  
15 all you have and, for example, the roll was smudged and  
16 you only had the plain, you basically can only work with  
17 what you've got. So there is a decision making and  
18 somebody may have been excluded in a particular part of  
19 a mark not being present on the form. So it's a  
20 decision that an expert's got to make on the material  
21 they have got in front of them.

22 THE CHAIRMAN: The last thing I wanted to ask you about was:  
23 I understand from your evidence that the first thing you  
24 do is you look at the mark and evaluate it and then you  
25 look at it through glass --

1 A. Magnifying glasses.

2 THE CHAIRMAN: -- then later you might go to the comparator.

3 In the blind test, they were being asked to go  
4 straight to the comparator, in other words to stage 3.

5 So in some ways it wasn't a satisfactory way, in  
6 accordance with your way of doing things.

7 A. Yes, I understand that but --

8 THE CHAIRMAN: It wasn't a good way to begin with the  
9 comparator.

10 A. It was a different scenario altogether and probably a  
11 way of keeping it -- I mean, it was a way of keeping it  
12 anonymised but it was not as you would normally do but  
13 it wasn't a normal like-for-like comparison as you would  
14 do, and I have heard other witnesses and it was  
15 different, but that's the way it was and part of the  
16 reason for that was to keep the thing anonymised and for  
17 there to have been a suggestion that people knew in the  
18 office that's what that was about, not to my knowledge.  
19 So that was the whole idea of that scenario of keeping  
20 it blind so that they didn't know where the mark was  
21 from and they didn't know the ...

22 THE CHAIRMAN: I fully understand that you say this was an  
23 exercise and it wasn't to do with the identification,  
24 but had it been to do with confirming the identification  
25 it would have been an unsatisfactory way to do it

1 because it wasn't following the procedure that you would  
2 recommend.

3 A. It would have been the same manner as I got it, you  
4 would have had the mark and the form if you wanted to  
5 widen it out but it was a separate scenario altogether  
6 so, I say, that's the way it should be viewed. I can  
7 understand how it's grown arms and legs in people's  
8 opinions but that's how it was done in that event and  
9 I've heard other witnesses speak to they would rather  
10 looked at it on the desk but because of keeping the  
11 anonymity to it then that was how it was organised.

12 THE CHAIRMAN: Thank you very much. I am afraid you have  
13 had a very long spell but I am grateful to you for the  
14 help you've given me.

15 A. I am just glad to have been given the opportunity after  
16 all this time.

17 THE CHAIRMAN: I was very anxious, I should say, that  
18 you should have a full opportunity. I hope you feel you  
19 have had one. I could not ask you to stay much longer  
20 but there we are.

21 A. I will stay as long as you wish.

22 **(The witness withdrew)**

23 THE CHAIRMAN: I think we still have a little bit to go  
24 before the usual morning break unless you wish to take  
25 it earlier.

1 MR MOYNIHAN: The next witness would be Mr Dunbar.

2 THE CHAIRMAN: Mr Dunbar, I think, is here so perhaps we can  
3 make a start.

4 **ALAN SCOTT DUNBAR (sworn)**

5 THE CHAIRMAN: Your full name?

6 A. Alan Scott Dunbar.

7 **Examined by MR MOYNIHAN**

8 Q. Mr Dunbar, do you have a copy of your Inquiry statement  
9 with you?

10 A. I do, Mr Moynihan.

11 Q. Your Inquiry statement the code for us is FI0053. I  
12 understand that you have two corrections to make to it.  
13 First of all, in paragraph 7 there is a correction of  
14 the ISO number. In the second last line, as I  
15 understand, you wish instead of ISO 9000 it should read  
16 ISO 9001?

17 A. That's correct. This last sentence actually should  
18 read:

19 "This became the ISO 9002: 1994 accreditation ..."

20 And then it goes on to say -- sorry, I beg your pardon.

21 If we could go to the previous sentence where it  
22 mentions ISO 9002, after that it should have a colon and  
23 "1994" after it. The next sentence should be:

24 This became the ISO 9001: 2000 accreditation."

25 Whilst it may not seem very important, they

1           certainly were two different accreditations.

2       Q.    The second correction is paragraph 119?

3       A.    That's correct. The last sentence does not seem to make

4           any real sense, reading it retrospectively. It should

5           finish:

6                 "... and was not rolled enough or tipped enough to

7           the right of the left thumb."

8       Q.    If I bring it up, page 24 is one reference I have that

9           may be close to this. In fact, if I go on to the next

10          page, you say in the last sentence it says:

11                 "The form could have been clearer as it was and was

12          not rolled enough or tipped enough to the right of the

13          left of the thumb."

14       A.    Yes, and it should be "to the right of the left thumb."

15       Q.    The second and third last words "of the" are simply

16          deleted?

17       A.    Yes, that's correct. Thank you.

18       Q.    Subject to those corrections, are you content that the

19          statement you have given to the Inquiry is the truth as

20          far as you can recollect it?

21       A.    Indeed, yes.

22       Q.    Having made those corrections, what I want to do is to

23          concentrate to begin with in relation to the blind test

24          and that period in February 1997 but, before I do, I

25          just want to be clear about terminology. If I begin in

1 relation to terminology by taking us to pages 15 and 16  
2 of your text, paragraphs 69 and 70. You explain a  
3 distinction in paragraph 69 with:

4 "An identification for court purposes in 1997 was  
5 understood to require 16 points in sequence and  
6 agreement."

7 In paragraph 70 you say that:

8 "A Fingerprint Officer could make an elimination on  
9 a lower number."

10 A. If I could just clarify, in paragraph 69 that would  
11 certainly be the normal for a volume crime case, for an  
12 everyday case, but when it came to illustrations for  
13 elimination, proof of ownership or indeed a mark that  
14 was deemed to be dire and crucial to the investigation  
15 or indeed to the prosecution, then 16 didn't come into  
16 it.

17 Q. So ordinarily 16 points would be the standard --  
18 ordinarily for court?

19 A. On a day-to-day basis with volume crime, yes.

20 Q. Let us take the point you mentioned in relation to dire  
21 and crucial. We are here dealing with, in our case, a  
22 murder, the murder of Marion Ross. Ordinarily would you  
23 understand the Fingerprint Officers to be working, if it  
24 were an identification for court purposes, to the  
25 standard of 16?

1 A. In an investigation this size, impressions would be  
2 viewed -- sorry, would be compared with a view to either  
3 excluding, eliminating or identifying within that series  
4 of marks. Now, as you'll appreciate, in this you have  
5 already mentioned this morning that there was a vast  
6 number of marks involved. So the Fingerprint Officers  
7 themselves, what they are trying to do is keep narrowing  
8 it down and accounting for the number of marks that are  
9 still left and available for comparison.

10 Now, at this particular time, I don't think that 16  
11 or anything would bear any relevance at that point in  
12 the comparison.

13 Q. At the point, as you say, of accounting for prints they  
14 might be excluded as, for example, the fingerprint of a  
15 relative or they might be carried forward for further  
16 consideration as a possible suspect. Is that the way it  
17 works?

18 A. Yes, but to clarify, when you have that many marks it's  
19 very, very easy to say we discard everything that  
20 doesn't come up to what we deem sufficient for  
21 comparison. That assessment adjusts as the examination  
22 continues, especially with a huge volume of marks like  
23 this. So discussions would be ongoing on certain  
24 impressions whereby when we start a comparison and  
25 realise after maybe four or five elimination comparisons

1 or four or five suspect comparisons that indeed it was  
2 insufficient and you could not individualise that mark  
3 to a person. It would be then discarded.

4 To suggest that we take out the insufficient marks  
5 first is not quite the true sense, in practical terms,  
6 in an investigation this size.

7 Q. I understand that then. So a mark you may, as an  
8 examiner back then, have started to work with but then  
9 appreciate, after a number of comparisons, that there is  
10 indeed too little detail in it to individualise --

11 A. Absolutely.

12 Q. -- and therefore you would exclude that mark from  
13 further consideration?

14 A. Yes, but again to clarify, it wouldn't be discarded in  
15 the sense of permanence. It would always be there for  
16 investigation once again.

17 Q. But we don't understand if there are successive officers  
18 that the next person gets the whole bundle of 340 or so  
19 fingerprints.

20 A. Correct, yes.

21 Q. He will look at what remains to be worked with, some  
22 having been discarded?

23 A. Yes. They are stored in a completely separate place and  
24 identified on the work sheets as eliminated or  
25 insufficient.

1 Q. Again, to use your generic term "accounted for", let us  
2 say the officer is proceeding and we know -- we have the  
3 work sheets where the officer is looking at a number of  
4 individuals -- some work sheets relate to lay people who  
5 are neighbours, relatives and the like, people who are  
6 thought to have an innocent explanation for being there;  
7 there will be separate work sheets for possible  
8 suspects --

9 A. Yes.

10 Q. Let us say the Fingerprint Officer is simply working  
11 through relatives and neighbours, those with an innocent  
12 explanation, and he is accounting for the mark. The  
13 officer may determine that the mark is to be attributed  
14 to a neighbour or relative on fewer than 16 points.

15 A. Indeed.

16 Q. If the officer makes that attribution on fewer than  
17 16 points, you would accept that, for the sake of  
18 clarity, as being described as an elimination?

19 A. Yes, that's what it is, yes.

20 Q. In this particular instance, are you aware that Mr David  
21 Asbury began in the investigation as someone who was  
22 within that list, an individual who had an innocent  
23 reason for having been in the house? That is because he  
24 was one of a member of a building team who was  
25 responsible for some renovation works.

1 A. I only discovered that at a later date, yes.

2 Q. That is why I am trying to clarify this distinction. If

3 Mr Asbury was viewed as simply a builder working in the

4 house some years before, his fingerprint might be

5 attributed or Y7 or -- sorry, let me start again -- a

6 mark which is his (for example, XF) might be attributed

7 to him originally as an elimination that is with an

8 officer not concerning himself as to whether or not he

9 could find 16 points.

10 A. The one proviso with that is any officer who declares an

11 elimination can still expect to present and prepare to

12 present that in court. So it's an irrelevance

13 whether it's 8, 10 or 16. If you have declared it as an

14 elimination, you are saying it belongs to that

15 individual and, quite point in fact, more than regularly

16 in a serious crime you would be asked to prove that.

17 Q. The proof of the pudding is in the eating in this case.

18 Mr Asbury was one day simply one of a collection of

19 builders and the next day became a police suspect.

20 A. Yes, if that's what you're telling me, yes.

21 Q. So that someone who is a Fingerprint Officer who is

22 accounting for a mark and attributing ownership of it

23 will be aware that today's builder could be tomorrow's

24 suspect?

25 A. Indeed, indeed.

1 Q. However -- and this is why I wanted to draw the  
2 distinction between an elimination and an identification  
3 for court purposes -- you might, as a Fingerprint  
4 Officer, attribute ownership of a mark (for example, to  
5 a builder) on as few as eight points in sequence and  
6 agreement?

7 A. Well, again, I've heard these numbers from people from  
8 the training centre and all the rest of it but I think  
9 that would be the low end of the recognition at that  
10 time.

11 Q. Because the phrase "around eight" is, in fact, in your  
12 paragraph 70.

13 A. Yes, because that was the general belief at that time,  
14 yes.

15 Q. So you could, therefore, attribute ownership of a mark  
16 to someone like a builder with as few as eight points in  
17 sequence and agreement?

18 A. Yes, that's correct.

19 Q. Let us assume, for the sake of argument, that a  
20 Fingerprint Examiner has made that attribution. He has  
21 attributed the mark to Mr Asbury, an innocent builder,  
22 on eight points. Then the police come back and say, "In  
23 fact, Mr Asbury is now a suspect". Would you expect the  
24 Fingerprint Officer to revisit his comparison to see  
25 whether or not he could obtain the standard of 16?

1 A. As I've just explained, by declaring that person an  
2 elimination then you are fully adhering an  
3 identification to that individual. So if it has eight  
4 characteristics and the prosecutor wants to go ahead  
5 with that and it only has eight characteristics,  
6 irrespective of whether it is reviewed again or not,  
7 then I would anticipate that going to court.

8 THE CHAIRMAN: But would he be asked to look at it again and  
9 see if he could get the 16 for court purposes?

10 A. In the preparation and presentation, he certainly would,  
11 he or she would look at that.

12 THE CHAIRMAN: So, in effect, he or she would look at it  
13 again.

14 A. Always, yes.

15 MR MOYNIHAN: We will just continue with this particular  
16 point. I am just having difficulty understanding. You  
17 say very clearly in paragraph 69:

18 "In relation to identifications in 1997 we operated  
19 to a 16-point standard which was inherited. For the  
20 purposes of taking evidence of an identification to  
21 court, it was deemed that 16 characteristics in sequence  
22 and agreement were necessary."

23 So what I have been putting to you is an officer who  
24 had, as you say, eliminated Mr Asbury as simply an  
25 innocent builder, when it comes back to him from the

1 prosecutor he would have to go back and look and see  
2 whether he could satisfy the 16-point standard?

3 A. He would do that anyway. He or she would do that anyway  
4 but it wouldn't negate the fact that that mark or marks  
5 could be presented in evidence, even if it didn't reach  
6 16 characteristics.

7 Q. Let us take that stage on. Let us say the individual  
8 examiner remains at eight points.

9 A. Yes.

10 Q. As you say, there might be, we understand, in practice  
11 an exception made for a dire and crucial mark.

12 A. Indeed.

13 Q. Who determines whether the mark is dire and crucial?

14 A. It would be a culmination of decisions. Latterly, in  
15 SCRO -- I can only speak within that organisation -- it  
16 was put in front of the Director, whom I believe you had  
17 evidence from prior, Mr Harry Bell, and all the  
18 information would be gathered, put in front of him and  
19 he would make the initial decision of dire and crucial.  
20 But that's internal to the Bureau.

21 It would then go to the Police Service who were the  
22 ones who had give us the investigation to look at and,  
23 ultimately, if he or she decided, the senior  
24 investigation officer, that it should go to the court  
25 and obviously the prosecutors would make that decision,

1 if it was dire and crucial.

2 Q. This is the question that, in fact, I am coming to ask  
3 you. You as a Fingerprint Officer know only about the  
4 fingerprint evidence in a case?

5 A. Yes, that's correct.

6 Q. Who is it then who determines that a fingerprint in any  
7 particular case is dire and crucial?

8 A. That's what I'm saying. We take guidance from the  
9 submission -- the Senior Investigating Officer and any  
10 feedback from the Fiscals' Department, the Jury Service,  
11 but it's certainly not SCRO who would make that decision  
12 to present that evidence. We would take guidance on  
13 that fact.

14 Q. Because it would have to be the prosecutor --

15 A. Indeed.

16 Q. -- who would require to know whether this fingerprint  
17 made all the difference to his prospects of prosecution  
18 or was simply one of as a thousand adminicles of  
19 evidence against an accused?

20 A. Yes, I accept that, yes.

21 Q. How then does the prosecutor learn that there is the  
22 possibility of a mark being attributed to, let's say,  
23 Mr Asbury but the Fingerprint Examiner has only found  
24 eight points in sequence and agreement and has not  
25 satisfied the 16-point standard? How is that advised to

1 the prosecutor?

2 A. That information would go to Senior Investigating  
3 Officer. In fact, latterly what we did, we appended a  
4 copy of the National Standard that came from the  
5 recommendations of '53 and '83 and it covered the fact  
6 of dire and crucial. So it was intimating to the  
7 Prosecution Service that they had this decision to make:  
8 we have something with less than 16 characteristics in  
9 sequence and agreement, however, we have this certain  
10 amount, whatever that may be, 8 or 11 I have no idea.  
11 The phraseology was it fell below the current national  
12 standard.

13 Q. So that the Fingerprint Bureau would accordingly report  
14 ultimately to the Procurator Fiscal that there was a  
15 range of findings, some of which attained the National  
16 Standard, some of which did not?

17 A. If you're talking about single marks from one person  
18 then that would be the case. You have heard previous  
19 witnesses discussing the fact that when an individual  
20 was identified to the 16-point standard and there was  
21 other supplementary marks that did not attain that,  
22 these would be inserted but it would be claimed in  
23 evidence that they didn't reach that.

24 Q. Did you yourself have experience of cases in which a  
25 mark with fewer than 16 points was taken to court by

1 prosecutors based on the dire and crucial exception?

2 A. Prior to this time, I was certainly involved in the  
3 preparation of information going to the Prosecution  
4 Service. Until 1999 I would suggest that they chose not  
5 to take it, in my memory. I can't give you a specific  
6 of an instance when the prosecutors actually went ahead  
7 with this information.

8 MR MOYNIHAN: That might be a convenient point.

9 THE CHAIRMAN: If that is a convenient moment we will sit  
10 again at 12.00.

11 **(11.40 am)**

12 **(A short break)**

13 **(12.00 pm)**

14 MR MOYNIHAN: Mr Dunbar, what I am going to do is continue  
15 on the same theme of elimination, identification and the  
16 16-point standard. What I want to do is, in fact, to  
17 take it in its natural setting. I want to look at the  
18 events in February 1997 and see the decisions that were  
19 being taken within the Bureau.

20 First of all, from your own statement, I understand  
21 you were involved yourself in comparisons, firstly, on  
22 17th February?

23 A. That's correct, yes.

24 Q. And then again on the 18th?

25 A. A re-examination, yes.

1 Q. So far as the 17th is concerned, this was Y7?

2 A. Indeed.

3 Q. Then thought to be the fingerprint of a police officer,  
4 a lady, Constable Cardwell, now referred to as Ms McKie?

5 A. Correct.

6 Q. If I understand it correctly, you say that your memory  
7 is that you were, first of all, happy to attribute  
8 ownership of that mark Y7 to Ms McKie?

9 A. I was satisfied, yes, after comparison.

10 Q. As best you can recollect, you saw at least ten  
11 characteristics in sequence and agreement?

12 A. If I could just clarify that, I've actually no  
13 recollection of the exact number but this was in  
14 response to questions that were put to me at the time of  
15 offering this statement and it was just a bottom figure.  
16 So I genuinely have no way of knowing how many there  
17 were but certainly less than 16.

18 Q. I am grateful to you, Mr Dunbar. So it was certainly  
19 less than 16 and it may have been 10 or more but you  
20 just don't know.

21 A. I don't know, yes.

22 Q. At that stage if I ask you, please, to look at page 24  
23 of your statement -- paragraph 114, sir, page 24 -- I  
24 will give you a chance just to read the whole of  
25 paragraph 114. What I want to, in fact, ask you about

1 are the differences that you observed, Mr Dunbar.

2 Perhaps I should read that in the context. I

3 apologise to you, paragraph 113, just immediately above.

4 If you read 113 and 114. **(Pause)**

5 A. Yes.

6 Q. If I understand it correctly, the identification that

7 you made the 1997 was one that concentrated on the lower

8 part of the mark?

9 A. Indeed, yes.

10 Q. So far as the upper part of the mark is concerned, you

11 say in paragraph 114 that there were certain

12 characteristics that you couldn't account for.

13 A. When I analysed the mark, bearing in mind I think

14 Mr Mackenzie had already described that we were both

15 aware that a result had gone out in connection with this

16 comparison.

17 I was asked as the Quality Assurance Officer to do

18 an analysis of this mark and to ensure that, in fact,

19 that was the correct information that had gone out of

20 the office. So it wasn't -- trying to negate of that

21 confirmation bias that comes with knowing a result, I

22 did analyse the mark at full arm's length and one of the

23 areas that's already been described very adequately,

24 across the centre and up round the right-hand side in a

25 small circle I considered to be a fault line and

1 definitely a red flag. So it was with that in mind that  
2 I began the comparison.

3 On continuing I never expected to associate the  
4 characteristics below the fault line directly with the  
5 one or two characteristics I could see in the centre of  
6 the print, which has now become referred to here as the  
7 Rosetta characteristic in particular.

8 Q. Let us deal with the Rosetta just as you mention it. At  
9 page 24, paragraph 115 you mention in the fourth line,  
10 if I highlight it, a "hawk-eye". What is that?

11 A. That was something that I referred to it personally. It  
12 wasn't something that I bandied around, it was just  
13 something that gave me a memory of what I was actually  
14 seeing. I have heard you yourself, Mr Moynihan,  
15 describe it as a crescent moon and, in fact, Mr Berry  
16 coined the phrase "Rosetta characteristic". So it was  
17 something I had in mind when the two ridges came along,  
18 the upper most one dipped sharply, very sharply, towards  
19 the lower ridge and it had something of a kind of bird's  
20 eye from the side and just in front of that was either  
21 an incipient ridge or the break-off of that ridge that  
22 was bending down. So it was quite an unusual feature to  
23 say the least as it was portrayed in that chance  
24 impression.

25 I have now seen it displayed to me by various

1 participants now and on each occasion you see it, it  
2 does take on a slightly different visual appearance.  
3 The event is still there but, as was described to you,  
4 even a bifurcation can look like a ridge ending  
5 depending on how it's captured.

6 Q. What I was, in fact, going to take, by saying it's a  
7 hawk-eye you've in mind the American football team the  
8 Seattle Sea Hawks and their motif?

9 A. Yes, along that lines. I mean, that's very extreme in  
10 its comparison but I was asked to explain what I meant  
11 as a hawk-eye and that was the closest I could verbally  
12 pass on my thoughts.

13 Q. But my only reason for asking about it and you have  
14 confirmed this is the feature that you envisaged in  
15 paragraph 115 has rather monotonously now in the Inquiry  
16 become the Rosetta characteristic?

17 A. Correct, yes.

18 Q. What I wanted to do, looking at 113 and 114, was to put  
19 it this way in slightly different terms: are you  
20 indicating that in February 1997 when you looked at Y7  
21 that you were conscious of certain differences between  
22 Y7 on the one hand and Ms McKie's print on the other?

23 A. Several characteristics, including that one but that one  
24 in particular, did not appear in the same geographical  
25 area but with the fault line running across the centre

1 of the print I was happy that it wouldn't appear in the  
2 geographical area.

3 There were one or two tell-tale factors. I have  
4 heard it described already by witnesses that the skin  
5 when you take this curved surface and put it against a  
6 flat it's going to have a difference of appearance and I  
7 accept that.

8 In this particular print of Y7 the ridges become  
9 very, very close together and including and despite  
10 distortion they should still have a curvature to them  
11 that they don't have and this includes the area of the  
12 Rosetta characteristic. So for me to find it in a  
13 geographical position I would have been extremely  
14 surprised.

15 Fingerprint Experts do talk in terms of generalities  
16 and we at SCRO try to train our students that you can  
17 only talk in generalities because the next one that  
18 comes up to contradict your theory has just proven you  
19 wrong. So whilst there are guidelines and factors that  
20 you have to take into consideration, you always have to  
21 expect the unexpected and this particular mark would  
22 fall into that category because the cross-hatching, as  
23 you described before, is not as readily available and  
24 just because it doesn't jump out at you doesn't mean to  
25 say it's not there.

1 Q. If I take this in stages and forgive me for coming back  
2 over your answer in stages, first of all, my reading of  
3 paragraph 115 -- and I will give you an opportunity to  
4 correct this if I have read it incorrectly -- was my  
5 reading of paragraph 115 had suggested that the feature  
6 you refer to as the hawk-eye, that I refer to as the  
7 Rosetta characteristic, is one that you had not, in  
8 fact, observed in February 1997, you did not observe it  
9 until later in January 2006?

10 A. Yes, I certainly didn't observe it at that particular  
11 time. With the explanation I've given in both my  
12 statements to this Inquiry and to previous  
13 investigations, it was enough for me to account for this  
14 movement above the line. I never anticipated seeing  
15 that characteristic at 12.00 from a core. For me it  
16 just wasn't going to be there and the fact I couldn't  
17 identify it was of no relevance.

18 Q. I am sorry, this is where I am being pedantic about  
19 this. The hawk-eye, the Rosetta characteristic, do you  
20 have a recollection of seeing anything when you examined  
21 Y7 but -- do you recollect seeing in February 1997?

22 A. In Y7, yes.

23 Q. So you saw it and then I will come back to one of the  
24 other parts of your answer. When you say people were  
25 trained to speak in generalities, are you meaning by

1 that that you would simply have covered the whole top  
2 area of Y7 by the generality: it is to be attributed to  
3 movement and distortion?

4 A. Again, that is general in my meaning but I felt there  
5 was sufficient movement and the fact that I didn't see  
6 the ridges as having a curvature, I actually anticipated  
7 the ridges being far round to the right, although I  
8 personally did not identify that particular  
9 characteristic.

10 The forms I compared on the 17th to the 18th I  
11 believe did not disclose it. I would suggest now having  
12 seen what I've seen on the big screen it would be in the  
13 very extremity and perhaps on one of the impressions,  
14 whether it was a rolled or plain, it just appeared and  
15 it could be argued it was the edge of what was taken as  
16 opposed to a characteristic.

17 Q. I have highlighted a particular part of paragraph 114.  
18 It is the middle two lines. What I am trying to  
19 understand is your reasoning.

20 If there are differences between the latent print  
21 and the known individual's fingerprint, unless those  
22 differences receive a satisfactory explanation I would  
23 understand the existence of even one difference to be  
24 inconsistent with the identification of the latent to  
25 the known mark. Is that correct?

1 A. Yes, that's correct, yes.

2 Q. We have heard some witnesses who have said that if there  
3 are as many as 16 points -- I appreciate not your  
4 position on Y7 but let us look at this in generality --  
5 if there are as many as 16 points in sequence and  
6 agreement in one section of a mark there must be a  
7 unique identity between the latent and the known and,  
8 therefore, if there are observed differences, even  
9 though those no specific explanation can be advanced for  
10 them, if there are observed differences, they must be  
11 capable of some unascertained explanation because you  
12 cannot have 16 points in sequence and agreement and  
13 there not be a unique identity?

14 A. It's certainly never been known, no.

15 Q. That would then mean that if officers found as many as  
16 16 points, they would put out of account a difference,  
17 even if they did not have a specific explanation for  
18 that difference?

19 A. Again, if I could just go into that question just ever  
20 so slightly in so much that there is an explanation for  
21 that and I believe most of the officers have given it,  
22 that they saw this area of movement and whilst he or she  
23 wasn't there when that impression was put down so you  
24 can't say with 100 per cent certainty that that was one  
25 touch, two touch, movement, what part was put on, yes,

1           you can have theories about it but none of us were there  
2           when that impression was laid.

3                        So in the lack of an explanation, you have to  
4           recognise these red flags, these obvious things to you,  
5           and that was my explanation, the fact that it had been  
6           severely moved or double touch. We could argue the bit  
7           about movement and double touch but clearly that  
8           characteristic was not going to be in the same  
9           relationship to the core as it was on Ms McKie's print.

10    Q.    I put to you for comment this suggestion: that what one  
11           may take from your answer is the top half was discounted  
12           based on a generalised explanation that its features  
13           were unreliable due to movement and distortion without  
14           you knowing what specific type of movement or specific  
15           combination of touches may account for those  
16           differences?

17    A.    Well, I certainly couldn't comment on that because I  
18           didn't identify this area but I did recognise that it  
19           was not going to be in the same geographical  
20           relationship.

21                        If I could just clarify in day-to-day business in  
22           SCRO and indeed bureaux throughout the world, we have  
23           fingerprint experts discussing with other fingerprint  
24           experts why there are differences, indeed, in  
25           fingerprint forms taken under controlled conditions.

1 Now, around this time, we introduced the LiveScan  
2 service in Scotland and it's the capture of  
3 electronic -- and submission of electronic fingerprints.  
4 And regularly how I could liken the taking of  
5 thumbprints, fingerprints, palm prints, it's almost like  
6 a controlled scene of crime print where there's a glass  
7 plate and the officer places the person's fingers and  
8 thumbs on the glass plate and captures the whole area.

9 Now in certain instances whole characteristics  
10 disappear or have the appearance of not occurring, is  
11 probably a better terminology, and you cannot,  
12 literally, cannot see the join. We have trainees and  
13 experts bringing this forward into the forum  
14 consistently and it's only when you try to replicate you  
15 realise how difficult it is to do that twice. So to try  
16 and discuss what has gone on here is extremely difficult  
17 when you have no knowledge how it was placed. But it's  
18 a common thing that characteristics do not appear in one  
19 capture, even under controlled conditions.

20 Q. Mr Dunbar, if I then make it very specific to Y7 and  
21 Ms McKie, we have in the Rosetta characteristic -- I  
22 will revert to my standard terminology -- one prominent  
23 observable difference between Y7 and the corresponding  
24 geographical position in Ms McKie's fingerprint?

25 A. I would suggest that the characteristic does not appear

1 in that geographical position. That's correct. That  
2 part of it is correct, yes.

3 Q. So unless there is a specific verifiable explanation for  
4 that difference, the Rosetta characteristic is itself  
5 incompatible with Y7 being Ms McKie's fingerprint?

6 A. Again, at the risk of repetition, only in that area. I  
7 would like to point out that I have mentioned it and  
8 every time I've been interviewed, I've given evidence in  
9 one or two inquiries now, and on each occasion it's been  
10 recognised there was movement, irrespective of how many  
11 touches, that it has to be recognised there's movement  
12 and there are one or two tell-tale signs at the top of  
13 this print that it isn't across the top, that it's  
14 either a line somewhere else -- in fact, at the time I  
15 compared it, I couldn't even guarantee it was the same  
16 person. I'm not suggesting that there are two different  
17 thumbs there but I didn't know.

18 Q. This is why I am asking you about whether the  
19 explanation is one that has to be verifiable. You are  
20 going to give evidence, as I understand it, assuming the  
21 16-point standard is satisfied, perhaps not you, a  
22 Fingerprint Officer is going to testify to 100 per cent  
23 certainty?

24 A. Yes.

25 Q. No doubt?

1 A. No, doubt.

2 Q. Yet you appear to be saying that you did not have in  
3 February 1997 a verifiable specific explanation of why  
4 the Rosetta characteristic is not to be found in the  
5 corresponding position in Ms McKie's fingerprint?

6 A. In my analysis and comparison and evaluation it was  
7 verifiable. I can see that. It is not connected to the  
8 top part. One of your previous witnesses, Mr Wertheim,  
9 said it would indeed be dishonest to interpret something  
10 that is not there but I would suggest it's actually  
11 unprofessional not to interpret something that clearly  
12 is there.

13 Q. If I leave that then and we will perhaps come back to it  
14 in a slightly different context later.

15 So far as the second examination -- I am skipping  
16 the blind test. I will come back to that in a second --  
17 that you yourself carried out on the 18th, if I go to  
18 page 29 and I do not think we need to keep the highlight  
19 on the text, if you go to page 29, paragraph 139, it is  
20 the last few sentences that I am interested in. I have  
21 just highlighted roughly the area.

22 If I understand it correctly, you saw different  
23 material on the 18th but, as I have indicated, you do  
24 not in fact recollect the new material really advanced  
25 matters one way or the other for you?

1 A. No, it didn't. I just went through the same process  
2 again and repeated what I carried out on the 17th. I  
3 believe it was a retaken form from Ms Cardwell/McKie and  
4 a re-photograph of Y7. So it was completely new  
5 material in so much it had been redone.

6 I examined it again to see if I could provide a more  
7 positive explanation for this area or red flag of  
8 concern but I was unable to do so from the material I  
9 had.

10 Q. If I then retreat back to the blind test that was  
11 carried out on the night of 17th February, you deal with  
12 this in paragraphs 124 to 127, pages 26 and 27.

13 A. Yes, maybe I could just clarify something in 123 --

14 Q. We will bring it up. Pages 26 and 27. In fact, you  
15 begin at paragraph 123. I do not want to take up an  
16 undue amount of time on this particular matter. You  
17 have, in fact, been present in the hall waiting to give  
18 evidence for the entirety of last week?

19 A. Yes, that's correct.

20 Q. So you have heard Mr Mackenzie's evidence?

21 A. Yes, indeed.

22 Q. If I understand it correctly, there is a difference  
23 between you and Mr Mackenzie in relation to the  
24 background to the blind test?

25 A. It would appear so.

1 Q. Mr Mackenzie's recollection, as you hear, is that he  
2 took the opportunity to carry out some form of testing  
3 of the personnel who happened to be in the office that  
4 night; whereas you recollect it as a specific  
5 instruction from senior officers that you, in fact,  
6 yourself argued against but you were nonetheless  
7 instructed and the impression you got was that senior  
8 officers were hoping, in a sense, to dig themselves out  
9 of a hole by finding someone who would disagree with the  
10 attribution of Y7 to Ms McKie?

11 A. Can I just deal with that in two or three phases. First  
12 of all, I'm not sure the phrase digging anyone out of a  
13 hole comes into it and I certainly haven't used it in my  
14 statement. I would just like to point out, first of  
15 all, that in 123 I'm not suggesting with this paragraph  
16 that Mr Ferry or anyone else was actually there. I know  
17 Mr O'Neill was there because I had conversations with  
18 him on the 17th but I'm actually not -- I believe  
19 Mr Mackenzie took it that he felt that Mr Ferry was  
20 actually present within the Department. I'm not  
21 actually trying to claim that. I'm just saying I  
22 believe that instruction came from there.

23 Mr Mackenzie has never made any doubts about that's  
24 how he viewed it. He's very, very positive in his  
25 belief. He always has been and I've been present when

1 I've heard him say it before, and he's extremely focused  
2 on that. He always has been and it's to be commended.  
3 But I was present when that decision was made or, sorry,  
4 that instruction came to me and, no, I didn't agree with  
5 it. I saw no -- well, I saw no relevance to this  
6 particular case.

7 There were four Fingerprint Officers who had signed  
8 the back of this photograph. At that time I didn't know  
9 anything about Mr Geddes being another signature. There  
10 were four Fingerprint Experts who had agreed to the  
11 identity of this mark.

12 The number of characteristics identified wasn't in  
13 the equation at this particular time. I was never asked  
14 about number of characteristics; I was never given  
15 instructions about number of characteristics.

16 The information that left the Department on the  
17 17th -- well, sorry, prior to the 17th, I believe, was  
18 that this mark had been made by this individual and it  
19 was an elimination. That's where we took it from. The  
20 instruction to carry out what has become -- and I've  
21 used quotes here -- the "blind trial", is a very much,  
22 how shall I put it ...? It's only loosely describing  
23 what we did. I've never been involved in an exercise  
24 like this prior in my career and I've never been  
25 involved since.

1                   We had six experts after Mr Mackenzie and I both  
2                   independently agreed as to the identity of the mark, so  
3                   you had six people confirming this identification and  
4                   then we were asked to go and put it in front of others.  
5                   I still fail to grasp the true meaning behind it. So it  
6                   left me only to believe that it was only because this  
7                   individual was a police officer.

8                   I certainly did make comment that I wasn't happy  
9                   about it for the reasons I've just given but it became  
10                  very clear that we were going to go ahead with it come  
11                  hell or high water.

12                  A blind test to me is very -- or should be -- very,  
13                  very similar to a competency test. A blind test should  
14                  be that you get a package of marks, maybe, one, two,  
15                  three, four forms for a comparison. You are given all  
16                  the data about the mark, whether it was a lift from a  
17                  point of entry, a photograph of a mark on a door,  
18                  whatever, and you will be allowed to make your analysis  
19                  and comparison the same way as you always would be. So  
20                  for it to become a blind test by using the method that  
21                  we used I don't know where that came from, I really  
22                  don't.

23                  It was an exercise and to try to keep the anonymity  
24                  of what the decision was, what it was about and who was  
25                  involved, it was decided that we would use a comparator

1 with the mark clamped down on one side, you've already  
2 had a comparator in the inquiry room and you saw the  
3 form clamped down on the other.

4 Now, the individuals may or may not have been able  
5 to see that it was an elim form but they wouldn't know  
6 who it belonged to. There was certainly no discussion  
7 that I'm aware of from anyone that took part in this  
8 that they knew what it was about. So we tried to be as  
9 anonymous as we possibly could and the question that  
10 they were given was, "Can you eliminate this mark", was  
11 for the simple fact that is the information that had  
12 gone out of the Bureau. This mark has been eliminated  
13 Y7 as Shirley McKie or Shirley Cardwell, sorry.

14 So that's the background to it. Yes, I did voice  
15 my -- it still concerns me because I'm now here 12 and a  
16 half years later talking something that is really a bit  
17 of an irrelevance. Much has been made of this.

18 Q. The impression was or I thought your own interpretation  
19 of this was that the senior officers were rather hoping  
20 that somebody would dispute the elimination of this?

21 A. Well, again, that's what your word, Mr Moynihan,  
22 regarding hoping. But what I was suggesting in my  
23 statement in response to questions that were placed to  
24 me that that was one of the only things that I could  
25 think of that would prompt this exercise and whilst I

1 accept the positive attitude that Mr Mackenzie took,  
2 which he is to be commended for, I'm afraid I didn't  
3 share that. I just saw no value in it whatsoever. So  
4 that had to be one of the explanations that if police  
5 officers gave this instruction, then there had to be  
6 a -- again, to coin your phrase -- a hope that that was  
7 the case, that someone disagreed.

8 Q. When the officers came back and reported to you, did you  
9 simply take from them that they had been satisfied that  
10 they would eliminate this as Ms McKie's print?

11 A. Absolutely. That was the question that, again, to  
12 repeat myself, that was the question that was put to  
13 them: would you eliminate this mark, yes or no? That  
14 was the reason not to give any more information, so  
15 there would be no confirmation bias. It's: would you  
16 eliminate yes or no.

17 These officers, each one of them, returned to me and  
18 gave that confirmation and only then were their initials  
19 recorded by me.

20 Q. Did you discuss with them at that stage how many points  
21 they could see?

22 A. No.

23 Q. I will come back and tell you what the individuals have  
24 said to us in a slightly different context.

25 You have mentioned Mr Geddes. Mr Geddes, in fact,

1 in his Inquiry statement has a recollection of a  
2 telephone call with you or telling you -- perhaps I  
3 should bring it up so I actually have his own words,  
4 FI0031, pages 26 and 27.

5 It is paragraph 108, if I give you a chance just to  
6 read that. **(Pause)**

7 A. Yes.

8 Q. I cannot give you a date for this. Mr Geddes is  
9 recollecting obviously some form of conversation with  
10 you but he told you he had eliminated the print but  
11 could not get 16 points.

12 Do you share that same recollection or --

13 A. Yes, and if I could just clarify on it, when I  
14 discovered that Mr Geddes had actually been party to the  
15 elimination I phoned to clarify what his position.

16 Mr Geddes wasn't involved in the so-called blind trial.

17 It was at a later time that I'd actually discovered  
18 this. So then I had to find out what he said and he was  
19 happy to confirm to me that he had eliminated the mark  
20 but he hadn't found 16 but that wasn't the question I  
21 had asked. I just wanted to know what his position was.

22 So he was phoned at the house, as was indeed

23 Mr Macpherson. When the blind trial was carried out in  
24 response to that, went back at a later date, I phoned

25 Mr Macpherson, as a professional courtesy, to let him

1 know what had been going on. So it was part of review.

2 Mr Geddes was not involved in the blind trial.

3 Q. So far as the conversation that you had with

4 Mr Geddes -- and there is no suggestion by me he was

5 involved in the blind trial -- was that a conversation

6 that had taken place before either of the two

7 prosecutions (either the prosecution of Mr Asbury or the

8 prosecution of Ms McKie) or did it come later?

9 A. Yes. After the so-called blind trials and perhaps a day

10 or say later, whether it was 18th, 19th, 20th I really

11 don't know but it was certainly after this exercise took

12 place on the evening of Monday the 17th but prior to the

13 two trials to be more specific to your question.

14 Q. If I can move then into the way that I am rolling up

15 that earlier conversation about

16 elimination/identification with the blind test, within

17 your own witness statement, which is FI0053, if I take

18 you to paragraph 171 on page 36, you tell us that your

19 involvement with Y7 was, in effect, after you read an

20 article in the Daily Record relating to Mr Wertheim's

21 evidence at the perjury trial. You say the staff were

22 surprised at the article and you were not aware of the

23 contradictory expert view in advance. Then you say

24 this:

25 "I would have expected to be informed of this as the

1           Quality Assurance Officer or at least made aware of any  
2           issues about dubiety by the prosecutor."

3    A.    Yes.

4    Q.    This is what I want to concentrate on: you are assuming  
5           that when Mr Wertheim's contradiction became known to  
6           the prosecutor that the prosecutor would have informed  
7           you as the Quality Assurance Officer in SCRO?

8    A.    No, maybe that's a bridge that I haven't made very, very  
9           clear there. I would certainly have anticipated if  
10          there had been any issues that it would have been  
11          brought forward to me, either from the Fiscals'  
12          Department or indeed our experts but it says there: "my  
13          next involvement". It's an involvement in so much that  
14          it's loose. I saw an article in the Daily Record and  
15          naturally I made, not an investigation but a request to  
16          speak to the experts about what's going on, can I assist  
17          you with anything, but there were no issues. That's my  
18          understanding of it. There was no pre-advanced that was  
19          brought to me. The actual trial had started and it had  
20          appeared in the newspapers.

21   Q.    If I understand it correctly, the point you have just  
22          been making is that at the time of the blind test you  
23          had asked your colleagues to study this as an  
24          elimination, the blind test. Those who participated  
25          studied it --

1 A. That evening, yes.

2 Q. So, therefore, when one comes to the perjury trial, it  
3 is no longer merely an elimination. The question is  
4 whether Ms Cardwell's print can be identified uniquely  
5 to Y7 to a standard that the prosecution authorities are  
6 prepared to proceed with?

7 A. Sorry, I didn't realise that was a question. I beg your  
8 pardon.

9 Q. Yes, it is a statement but would you accept that?

10 A. Yes, with a couple of clarifications.

11 Q. What are the clarifications?

12 A. Well, for reasons I've already discussed, that that was  
13 not the consideration when we were asked to verify  
14 whether the right information had went out or not.  
15 These individuals did not take part in any blind trial.  
16 So what numerical figure they came to I have no  
17 knowledge of whatsoever.

18 Q. What, in fact, I am coming to is that this is an example  
19 I had given you earlier on, Mr Asbury as an example of  
20 an individual who was today's innocent bystander,  
21 tomorrow's suspect and the distinction between an  
22 elimination and identification.

23 Exactly the same is true of Ms McKie. She was in  
24 February 1997 seen as simply a police officer who might  
25 have had access to the house whose print had to be

1 excluded. By May 1999 when she is prosecuted for  
2 perjury she became the suspect.

3 Do you accept that scenario?

4 A. In retrospect certainly, yes.

5 Q. What, in fact, I am going to come to is whether the SCRO  
6 itself faced up to that distinction in status as bearing  
7 on the identification of Y7?

8 A. I don't think there's a question to answer there for the  
9 simple fact, as I've already described this morning, an  
10 officer has to be satisfied with an identification. You  
11 can call it an elim; you can call it what you like, but  
12 you are saying that that mark belongs to this  
13 individual. So in the case of Mr Asbury or if that is  
14 the case with Ms McKie, you can't wind that back in  
15 because it didn't reach some magic number. That  
16 information's out there. So the expert knows that he or  
17 she may have to go to court and present that evidence.  
18 So it really wasn't about 8 or 16. It was about the  
19 information was out there and it's up to these officers  
20 how they presented it. I had no dealings with that.

21 Q. I will put this to you: first of all, do you accept that  
22 the prosecutors had here an expectation that the four  
23 SCRO officers (Mr Macpherson, Mr Stewart, Ms McBride and  
24 Mr McKenna) had found 16 points in sequence and  
25 agreement?

1 A. If that's what their findings were, again, then they  
2 believed that that was the case, yes, absolutely.

3 Q. Let us just be very clear about this. So far as their  
4 report is concerned ... if we could bring up, please,  
5 SG0396. This is production 190 and is a joint report.

6 If we move to the next page, please, and the next.  
7 Let us move on then to the fourth.

8 Here is a joint report signed by four officers  
9 (Mr Macpherson, Mr Stewart, Ms McBride and Mr McKenna),  
10 relating to an examination of photographs and  
11 fingerprint forms and we will see that they say:

12 "It was found that the aforementioned photograph  
13 impressions were both identical in the sequence of ridge  
14 characteristics with the left thumbprint on the finger  
15 and palm-print from the form in the name of Shirley Jane  
16 McKie/Cardwell."

17 So the officers are certifying the identity.

18 A. Yes.

19 Q. If I then turn to the next page, page 5, we will see  
20 this is the 29th January 1999 report. What the  
21 Fingerprint Officers are saying is they produced an  
22 illustration, the first paragraph?

23 A. Yes.

24 Q. And the second paragraph, 16 ridge characteristics in  
25 sequence and agreement were marked on each and then

1           there's a reference to the book.

2       A.    Yes.

3       Q.    So the prosecutors would have had an understanding from  
4           this report that four SCRO officers had found 16 points?

5       A.    Yes, that's what they're stating, yes.

6       Q.    And, indeed, the same 16 points?

7       A.    Yes, because that enlargement is prepared and isn't  
8           signed for unless the others agree.

9       Q.    So taking it at this stage there has been no  
10          communication it would seem thus far to the prosecutor  
11          that consideration might have to be given to the dire  
12          and crucial exception?

13      A.    Not under these officers' findings, no.

14      Q.    Do you now know that, in fact, if one had stepped back  
15          and asked the individuals in SCRO, other than these  
16          four, that individuals within SCRO would have said,  
17          "Though we agree with the identification of the mark Y7  
18          as that of Ms McKie, we do not agree that 16 points in  
19          sequence and agreement can be found"?

20      A.    I'm sorry, I can't answer that question. That's not  
21          what happened so I really can't answer that question.

22      Q.    Exactly, it did not happen because no-one asked. No-one  
23          told the prosecutor.

24      A.    No. It's not a case of they didn't tell the prosecutor.

25          There was no-one in SCRO who said that this print wasn't

1           that individual so it really doesn't matter about number  
2           of characteristics or what standards we have.

3        Q.    I think you may have misunderstood me. The individuals  
4           would have said, "Yes, we agree this is Ms McKie's  
5           fingerprint, we agree that, but we disagree that  
6           16 points can be found"?

7        A.   That's possible. In fact, as I later found out,  
8           Mr Geddes found that to be the case.

9        Q.    You have told me that you had found out that Mr Geddes  
10          had found that and had told you that was the case before  
11          the prosecution of Ms McKie?

12       A.    Yes, that was his finding, yes.

13       Q.    If I understand it correctly, your colleague,  
14          Mr Mackenzie, observed 10 or 11 points on 17th February?

15       A.    Yes, that's correct. I heard that, yes.

16       Q.    12 or 13 on the 18th?

17       A.    Again, I heard that, yes.

18       Q.    So he did not find 16?

19       A.    Again, that's not what we were trying to achieve in our  
20          comparisons.

21       Q.    You did not find 16?

22       A.    Again, that's not what I was trying to achieve. It was  
23          to verify the information that had already been sent.  
24          To me it was irrelevant.

25       Q.    Mr Dunbar, that was to verify at a stage where Ms McKie

1 was being excluded as simply a police officer among a  
2 number of innocent individuals involved.

3 A. Sorry, I strongly disagree with that because when you  
4 give out that information you are giving out that  
5 information, call it what you like, it's still an  
6 identification and you have to be satisfied as a  
7 Fingerprint Expert that that information is correct. So  
8 we can run round the buses with 6, 8, 10, 16 points.  
9 That is totally are relevant.

10 These officers were happy -- sorry, I will coin that  
11 back in. They were satisfied with identity and so were  
12 we. Mr Mackenzie and I were asked to verify that  
13 decision that had been sent outwith the department so it  
14 was the information, was that correct, yes or no. That  
15 was then asked to the people who took part in the blind  
16 trial, "Do you eliminate this person, yes or no",  
17 because that was the information that went out.

18 Q. If I proceed through those who were involved in the  
19 blind test, so far as they did give the identity of  
20 Ms McKie: Mr Foley found only 10 points. Are you aware  
21 of that?

22 A. Yes, I heard him say that, yes.

23 Q. The other individual we have to include, we will just  
24 include him just now, he is not part of the blind test.  
25 Mr Geddes found only 10?

1 A. I found that out later on, yes.

2 Q. Indeed Mr Geddes, when Mr Macpherson demonstrated  
3 16 points, Mr Geddes stuck to his guns and said, "I do  
4 not see those 16. I see only 10."

5 A. Yes, so I've heard, yes.

6 Q. Taking those individuals (that is Mr Mackenzie,  
7 yourself, Mr Foley and Mr Geddes), do you see that  
8 difference of view on the number of points as simply  
9 irrelevant to the prosecutor's decision?

10 A. The four experts, as you have demonstrated to me, have  
11 clearly illustrated 16 characteristics in sequence and  
12 agreement. That was their evidence. It's not  
13 Mr Geddes' evidence.

14 Q. Is it irrelevant, therefore, do you think, to a  
15 prosecutor that four equally well-qualified experts  
16 would not agree with them that there were the 16 points  
17 in sequence and agreement?

18 A. I would see it being more relevant if they disagreed to  
19 the identity, irrespective of number of characteristics.  
20 I would certainly agree with that.

21 Q. For completeness, I have omitted one of the individuals  
22 involved in the blind test for a reason. Mr Bruce is  
23 also involved in the blind test.

24 A. That's correct, yes.

25 Q. He tells us he found only eight points.

1 A. I heard him, yes.

2 Q. If I understand him correctly, because he thinks the  
3 threshold for the elimination is 10 points --

4 A. Again, I heard him say that, yes.

5 Q. -- he says that he did not eliminate the print as that  
6 of Ms McKie. The highest he would go is it would be at  
7 the level of suspicion.

8 A. Well, that's the first time I'd actually heard this new  
9 classification system. It was a surprise to me that  
10 morning -- I believe it was the last day of the first  
11 session -- and it certainly surprised me the content of  
12 that particular piece of evidence and, whilst it's not  
13 my business to particularly comment on -- I didn't  
14 recognise most of it -- Mr Bruce did not discuss the  
15 number of characteristics that he saw, he answered the  
16 question that he believed that it was eliminated.  
17 That's what he told me on 17th February.

18 Q. So what he told you was it had been eliminated?

19 A. Correct.

20 Q. If I can bring this to a head having gone through the  
21 number of individuals and put something to you, also an  
22 opinion of someone who agrees with the view that Y7 is  
23 that of Ms McKie -- so this is not the opinion of  
24 someone who is a contradictor of the identification,  
25 someone who agrees the identification -- I have in mind

1 Mr Graham. Did you hear Mr Graham's evidence?

2 A. I heard most of it, yes.

3 Q. If I could bring up for you, please, as a concise  
4 summary CO0003.18. If I tell you what this is, I am  
5 bringing up a page -- it happens to be the page numbered  
6 17 -- from Mr Gilchrist's report. Mr Gilchrist was then  
7 the Procurator Fiscal who investigated the possibility  
8 of a charge against the four signatories to the court  
9 report.

10 A. Yes, I have met him.

11 Q. I am bringing up one particular page. What I want you  
12 to look at is the middle paragraph that is on the screen  
13 just now that begins "Malcolm Graham ..."

14 If I understand Mr Graham, he gave evidence on  
15 9th July and dealt with this matter between pages 75 and  
16 81 of the transcript. If I understand what he is  
17 saying, it is simply this: there was a distinction  
18 between the standard by which a Fingerprint Examiner  
19 could make an identification on the one hand and what  
20 would ordinarily be taken to court on the other. Thus  
21 far, do you accept what Mr Graham says?

22 A. What he's saying, yes, that's right.

23 Q. The ordinary rule would be that to take the matter to  
24 court, there would require to be 16 points in sequence  
25 and agreement?

1 A. Yes, as I've described this morning.

2 Q. And you accept that?

3 A. In the volume crime-style scenario and the day-to-day  
4 running in court business, yes, I would accept.

5 Q. But even in a murder case you have told me you know no  
6 instance of which the prosecutors in Scotland in fact  
7 went to court with a fingerprint on less than 16 points?

8 A. Well, I don't know personally; that's correct, yes.

9 Q. Even in a murder case you would understand that the  
10 prosecutors adhered to the practice of looking for  
11 16 points?

12 A. I would suggest maybe that's all there's been. There's  
13 maybe just identifications gone to them with 16 or more  
14 in the serious crimes.

15 Q. What the thrust of this comes, Mr Graham found only  
16 7 points. So he is at the lowest end of the spectrum.  
17 He found only 7. He was happy to agree the  
18 identification but, conscious of the distinction between  
19 the working practices of Fingerprint Officers and the  
20 approach of taking evidence to court, he says it was a  
21 mistake to have taken this to court because, on what he  
22 found, he could not speak to the 16 points. Do you see  
23 that?

24 A. I read that, yes.

25 Q. What is your answer to that? What is your comment?

1 A. Well, again, this is Mr Graham's opinion. We've heard  
2 many opinions in this Inquiry. The fact of the matter  
3 is that these four officers took evidence to court based  
4 on the 16 points of sequence and agreement. Now, there  
5 may have been more. You would need to ask these  
6 officers.

7 Q. The context for this is that by the time May 1999, when  
8 the officers are taking it to court, first of all, the  
9 prosecutors had an expectation that 16 points in  
10 sequence and agreement could be found with not only  
11 confidence but with 100 per cent certainty. That is the  
12 expectation the prosecutors have?

13 A. Well, that's what the statement actually discloses.

14 Q. Yet equally well-qualified and indeed, in the case of  
15 yourself and Mr Mackenzie, senior to the four officers,  
16 senior officers could not agree that 16 points were  
17 found.

18 A. Again -- and forgive me if I'm repeating myself here --  
19 that is not what I set out to achieve. I was asked on  
20 behalf of SCRO to examine this mark to see if the  
21 information we gave out was correct and that's what I  
22 did.

23 Q. What I would suggest to you is this, that at the point  
24 when Mr Wertheim came on the scene, he is now disputing  
25 the matter, the prosecutors might expect to be told,

1 "Hold on a minute, there's a problem here because even  
2 in Scotland equally eminent Fingerprint Officers will  
3 say they can't see 16 points."

4 A. Sorry, I would accept that if you're telling me that it  
5 was not an identification.

6 Q. Do you not see that it is a slippery slope that even  
7 Fingerprint Officers who agree an identification, if it  
8 actually came to it in court, could dispute as many as 8  
9 of the 16 points?

10 A. I think -- forgive me if I'm wrong but that is  
11 Mr Graham's. Mr Graham didn't work for SCRO.

12 Q. No, it is Mr Bruce saw only 8?

13 A. Again, that's not what he said to me. So whatever  
14 Mr Bruce said to you that day, I can't account for that.  
15 Only Mr Bruce can account for that statement. If  
16 Mr Bruce had shown any concern that night, I would have  
17 reported that on.

18 Q. Let us go then to the two individuals over whom you have  
19 no difficulty, I suggest, and that is Mr Foley and  
20 Mr Geddes, both of whom saw only 10 points?

21 A. Yes. Mr Foley again was part of the so-called blind  
22 trial and was asked, "Would you eliminate: yes or no?"

23 Q. And saw only 10 he tells us?

24 A. That's what he told us, yes.

25 Q. Mr Geddes you know says only 10?

1 A. In retrospect, yes, I do know.

2 Q. In fact, Mr Geddes goes further and he says he had a  
3 practical demonstration by Mr Macpherson of the  
4 16 points relied on by Mr Macpherson and he couldn't see  
5 in excess of 10. So he would not have been persuaded  
6 himself by the extra points that Mr Macpherson was  
7 relying upon?

8 A. Again, I was present when Mr Geddes gave evidence and I  
9 don't think that was the case. I think Mr Geddes would  
10 have given evidence if he had allowed to and there is a  
11 distinct difference between not agreeing and making an  
12 identification, which he did.

13 Q. There is a spectrum building up though. The point that  
14 was point to Mr Geddes by Mr Smith was simply this: by  
15 the time in May 1999 there was a dispute between the  
16 four SCRO officers on the one hand and Mr Wertheim and  
17 Mr Grieve, the other American expert, on the other. It  
18 has been put to a jury the prosecution is relying on  
19 16 points. The prosecutor has an expectation that the  
20 jury will be persuaded that there are 16 points and here  
21 equally eminent SCRO officer, Mr Geddes, says, "I'm an  
22 expert, I don't see at least six of the points that Mr  
23 Macpherson is relying on."

24 A. Again, I understand what you are saying but it never  
25 registered with me that angle of it for the simple fact

1 is these four experts prepared a statement to 16 points  
2 in sequence and agreement and again they had further  
3 control prints to compare and that was their findings.  
4 Because one person sees only 14 and another person sees  
5 16, it doesn't mean to say that there are not 16 there.

6 Mr Wertheim talked about tolerance and that may,  
7 with that particular control print and that particular  
8 mark, have been well outside Mr Geddes' tolerance at  
9 that moment in time.

10 Q. Did you hear the evidence of the Procurators Fiscal, Mrs  
11 Greaves and Ms Climie?

12 A. No, I'm sorry, I didn't. I believe I heard the  
13 beginning of Mrs Greaves but, apart from that, no, I'm  
14 sorry.

15 Q. I do not think we can bring up the transcript for you to  
16 see. I do not think we have the transcript on Trial  
17 Director. What I will do is let you know what the  
18 prosecutors said. They both happened to give evidence  
19 about this matter on day 16. That is 1st July.  
20 Mrs Greaves did so ultimately at pages 108 to 109. She  
21 precognosced both Mr Macpherson and Mr Stewart and she  
22 was not told of what Mr Geddes had said. So she was  
23 being asked about this. She was asked:

24 "Q. Was there any indication given to you that  
25 would give rise to the need to precognosce Mr Geddes?

1 "A. Not at that particular time. Obviously I  
2 didn't. I don't think I did precognosce him.

3 "Q. You don't think you did?

4 "A. No.

5 "Q. You plainly understood the Fingerprint Officers  
6 to be working to a standard of 16 points in sequence and  
7 agreement as is shown in the image.

8 "A. Yes.

9 "Q. Did they tell you that any of the other  
10 Scottish Criminal Record Office staff had been unable to  
11 agree the presence of the 16 points?

12 "A. No.

13 "Q. So they didn't tell you Mr Geddes saw only 10?

14 "A. No.

15 "Q. Mr Dunbar saw perhaps more than 10 but less  
16 than 16?

17 "A. No.

18 "Q. That Mr Bruce saw 8?

19 "A. No.

20 "Q. And Mr Foley saw ten?

21 "A. No.

22 "Q. If that information had been given to you --  
23 and let me make it quite clear that would have been  
24 explained to you -- sorry, what could have been  
25 explained to you is all of the officers I have mentioned

1 are in agreement that Y7 was Shirley McKie's fingerprint  
2 but no one of those officers, at least at the point when  
3 they are making the identification, were able to satisfy  
4 the 16-point standard, they were able to see a lower  
5 number between 8 and 13, would you have been interested  
6 in knowing that?

7 "A. Yes, I would.

8 "Q. What would you have done had you been told  
9 that?

10 "A. I would have mentioned it in the precognition  
11 obviously. So obviously it would be a matter for Crown  
12 Counsel to consider the veracity of the fingerprint  
13 evidence and it might have had a different emphasis or  
14 laid a different emphasis on the obtaining of an  
15 additional independent report."

16 So that Procurator Fiscal is saying that had she  
17 been told the full information, it may have made a  
18 difference and it may have resulted in the Crown  
19 commissioning an independent report. Do you understand?

20 A. I understand what you're saying, yes.

21 Q. Do you still see from your perspective that it is  
22 irrelevant that a number of officers in SCRO could not  
23 see the 16 points?

24 A. In retrospect, I'm not saying it's irrelevant but what I  
25 am trying to suggest is that it had no bearing on the

1 fact that these four officers prepared a court  
2 production based to a 16-point illustration.

3 THE CHAIRMAN: I can see your point that the others who  
4 could not find the 16 have identified it and the four  
5 who are going to court can produce the 16 points, but  
6 the problem might be that it means that there are  
7 officers relying on points that others in your  
8 department could not see.

9 A. When you mention like that, Sir Anthony, that is very  
10 well looking in retrospect and having all the  
11 information in front of you. We didn't at that  
12 particular time. I didn't when the trial went ahead. I  
13 had no knowledge that there was any issue whatsoever  
14 with the evidence.

15 THE CHAIRMAN: Of course, I have the benefit of looking at  
16 it in retrospective. You are quite right. I am just  
17 looking at the logic of it. It does mean that the four  
18 officers who could see the 16 points are relying on some  
19 points that others, equally expert, cannot see.

20 A. Well, again, they had the benefit of having perhaps more  
21 material with regards the charge form and even to this  
22 day I'm not even sure what forms it was they used in the  
23 trials, but I do know that that was a conclusion that  
24 they reached. I've tried to be as open as I can in the  
25 statement that I've given that my contact with the case

