

1

Thursday, 8th October 2009

2 (Afternoon session)

3 (1.50 pm)

4 **ARIE JACOB ZEELENBERG (continued)**

5 THE CHAIRMAN: I understand that Mr Smith may have an
6 application now.

7 MR SMITH: I did suggest that Mr Moynihan earlier but over
8 lunch I have decided not to make an application.

9 Obviously, if anything in particular was to arise from
10 Mr Holmes' questioning I may wish to revisit that but at
11 this stage I don't wish to ask any questions.

12 THE CHAIRMAN: Mr Holmes, your application then.

13 MR HOLMES: Yes, sir. There are quite a number of things to
14 cover with Mr Zeelenberg but they all flow from one
15 source which is his Inquiry statement. I would like to
16 ask him to clarify a number of things he said within the
17 statement. That is the only source of any questions I
18 have for him.

19 THE CHAIRMAN: So it is really expanding on matters that are
20 in the statement?

21 MR HOLMES: That is correct, sir, yes.

22 THE CHAIRMAN: Certainly if you feel the statement has not
23 covered it sufficiently, then I will give you leave to
24 do that.

25 **Cross-examined by MR HOLMES**

1 Q. Mr Zeelenberg, do you have a copy of your statement
2 available to you?

3 A. Yes, I have.

4 Q. In paragraph 8 of your statement you say that you
5 believe --

6 MR MOYNIHAN: Sorry, if we bring it up, it is FI0115 -- for
7 the public, sorry.

8 MR HOLMES: In paragraph 8 of your statement you say that
9 you:

10 "... believe that there was a concerted effort to
11 discourage and discredit anyone within the fingerprint
12 community in the UK who opposes SCRO or even wants an
13 open and free evaluation of the marks ..."

14 By whom?

15 A. What do you mean "by whom"?

16 Q. You say that you believe that there was a concerted
17 effort to discourage and discredit anyone who opposes
18 SCRO. I am asking on whose part this effort has been
19 made.

20 A. If it's concerted effort I think it implies many people
21 do that. I can give you some examples of what indicates
22 it was a concerted effort. The study and discussion of
23 the print was systematically blocked and discouraged by
24 everybody involved. The Internet material was
25 discredited and if you would use it you were mentioned

1 in the public domain by police management, you were
2 addressed as incompetent.

3 I look at the treatment of the early contradicters
4 from the Lothian & Borders Police. They are never heard
5 of since. I've spoken to, on some occasions, of one of
6 them. If I look at the treatment that Gary Dempster
7 received. He stood up to be counted. I see that people
8 who wanted to sign our petition were threatened or were
9 not wanting or unable to sign openly. I see how Mr Dave
10 Charlton is treated in the public domain. He wanted
11 some discussion about the fingerprint. He was then an
12 editor of the Fingerprint World Society issue.

13 I have my own contacts with the Scottish staff. If
14 I am in the UK and I meet a lot of fingerprint Experts
15 in the UK I just see that no-one, really no-one, is
16 prepared to talk about this fingerprint. They just fear
17 to raise the matter at any time. I think the management
18 has been very effective in that.

19 The police management was airing untenable positions
20 outside their knowledge domain. We see police chief
21 coming to the public domain and saying you cannot say
22 this and they are talking about fingerprints and they
23 uphold untenable positions suggesting that the
24 fingerprint -- that there is difference of opinion
25 within fingerprint experts and they even went against

1 their own experts in that. Their experts said we are --
2 one of us is right or wrong and the police chiefs came
3 and said, well, you know, experts differ.

4 So there is so much. There's a court ruling that
5 Shirley McKie was innocent and she was acquitted and
6 people went openly against it. There's so, so much that
7 was telling you that everybody that went against anybody
8 who was in the public domain. Even when I assisted
9 Mr Dror and he acknowledged me he later told me just for
10 the fact that he mentioned my names he received hate
11 mails. I think that's -- I leave it to that.

12 Q. Are you aware of the evidence of Mr Graham to this
13 Inquiry?

14 A. I have not seen it, no.

15 Q. I will not ask you about that then.

16 You are aware that Mr Swann and Mr Leadbetter have
17 been subjected to disciplinary proceedings over the
18 preceding few years, are you not?

19 A. I am not aware of that, no.

20 Q. You are not aware of that. Again, I will not ask you
21 about that.

22 You will be aware that there has been significant
23 publicity, both in the news media and on the Internet,
24 about this case. Are you aware of that?

25 A. Yes, of course.

1 Q. You will be aware that a great deal of that is negative
2 as regards my clients; is that correct?

3 A. I don't know whether it's about your clients. I don't
4 know -- of course, I visit CLpex. Once in a while
5 discouraged just to go there by the level of exchanges
6 there but I really don't know whether it really affects
7 your clients or the acts they have done.

8 Q. So the pressure that you are aware of is to discourage
9 and discredit people who oppose the SCRO view but you
10 are not aware of any pressure in the other direction.

11 Is that your evidence?

12 A. I won't say I'm not aware of it but there may be some
13 level of exchange. I can only say I've never engaged in
14 it.

15 Q. The following paragraph of your statement, if I can move
16 on to that, please, states that the question of whether
17 Shirley McKie is the donor of Y7 has been answered by
18 the official bodies that dealt with it and the
19 fingerprint community at large.

20 Does this mean that you fail to see the need for the
21 present proceedings?

22 A. No, I've always been an advocate for these proceedings
23 and that's also why I'm here. But if you refer to where
24 this comes from, I think HMIC has investigated it, the
25 Minister for Justice came to Parliament, we have

1 other -- Justice 1 has received it. I think Mr Mulhern
2 accepted that it was a mistake. The International
3 Association for Identification has investigated it now
4 and I have met numerous, numerous, numerous experts who
5 have seen it and I wonder, I really wonder what's going
6 on in Scotland and, if I may say so, they regard the
7 profession in Scotland as the laughing stock of the rest
8 of the world.

9 Q. You mentioned the IAI investigation in the following
10 paragraph of your statement.

11 Are you able to say whose complaint the IAI
12 investigated?

13 A. I'm not in a position to say that. I may have my -- I
14 may think that I may know where it's coming from but I'm
15 not sure.

16 Q. If you are not certain then, please, there is no need to
17 answer.

18 Do you know who was on the committee that did
19 investigate Y7?

20 A. No, I don't know. Sorry, I know that Mr Bob Garrett was
21 involved but I don't think he really examined the
22 fingerprint himself.

23 Q. And you don't know who did?

24 A. Sorry?

25 Q. You don't know who did.

1 A. I don't -- seriously, I don't know anyone.

2 Q. Paragraph 13 of your statement says that:

3 "The question about whether or not the
4 identification of the marks is correct cannot be
5 resolved by weighing the competency or character of the
6 experts involved."

7 You must concede, though, Mr Zeelenberg, that in
8 order to gain anything from opinion evidence the
9 competency of the expert speaking to that opinion must
10 be established?

11 A. Well, to a certain extent but I think I basically
12 disagree. If we look at the mistakes that were made in
13 the past by the FBI, by New Scotland Yard, by SCRO and
14 by others their competency was never questioned. So
15 that cannot be the measure of it.

16 Q. So competency is not relevant to deciding --

17 A. I don't say competency is not relevant. It is
18 irrelevant to come to a decision whether it's a mistake
19 or not. I have presented the evidence. That's why I'm
20 here and it has to be based on the evidence. That's my
21 position.

22 Q. I am sorry, my original question was: is it relevant, in
23 your view, to establish the competency of an expert
24 before that expert can then go on to give his opinion in
25 proceedings such as this?

1 A. In general terms, yes.

2 Q. So the issue of competency must, to some extent, be
3 relevant as to whether an error was made, must it not?

4 A. I don't think that competency in itself is relevant to
5 the measure. I think the only thing you can do is look
6 at the evidence presented and look at the underlying
7 factors and that must be decisive whether it is a
8 mistake or not.

9 Q. If you won't accept that when there are grounds for
10 challenging the competency of an expert witness that it
11 is relevant to do so, will you accept that where there
12 are grounds for challenging the credibility of an expert
13 witness, for whatever reason, it is legitimate to do so
14 before considering their opinion?

15 A. Well, I don't think it's very helpful and if I look back
16 at ten years now and the attempts are made to discredit
17 people I don't think they've never(**sic**) been helpful in
18 any way. If I look at a list the credibility of
19 Mr Ashbaugh is not questioned, David Grieve has given
20 evidence. He is one of the icons of modern
21 fingerprinting. If you look at Steve Meager, if you
22 look at Pat Wertheim, there is so many, Professor Andre
23 Moenssens, Glenn Langenburg from the University of
24 Minnesota, how long must the list be until you accept
25 that those people are on the side that say it is a

1 mistake.

2 So I even say now not their competency is the
3 measure whether we are right or wrong, it has to be the
4 evidence that is presented in the past and here.

5 Q. Paragraph 14 of your statement says that even the best
6 experts have made mistakes so competency is not a good
7 instrument with which to decide a fingerprint matter.

8 Surely, Mr Zeelenberg, it cannot be wholly
9 irrelevant if a witness is stating a position and there
10 are grounds to question that witness' competency for
11 whatever reason, that must be a relevant consideration,
12 must it not?

13 A. I have just explained my position I think and I don't
14 have anything to add.

15 Q. You go on to explain your position further in
16 paragraph 15 of your statement. You say that:

17 "If there is a matter of competency, the litmus test
18 is mark Y7 itself. If one is unable to assess that this
19 mark is not identical to the print of Shirley McKie,
20 then either competency or otherwise, serious causes must
21 be taken into account."

22 Is that to say that the test for competency is
23 whether the expert in question agrees with your
24 assessment of Y7?

25 A. Not necessarily. I say we have a fingerprint in front

1 of us and every independent assessment of this came to
2 the same conclusion, that it is not identical to the
3 fingerprint of Shirley McKie. If we want to measure any
4 type of competency, then if somebody is unable to see
5 all the differences then he has a serious problem.

6 Q. So if somebody does not agree with your stated view of
7 Y7 then they are not a competent expert?

8 A. I am not asking you to agree with my conclusion. I'm
9 asking you to look at my evidence and all the
10 discrepancies there are between the fingerprints and I
11 contest that I think everybody that has looked at it can
12 see what I'm saying.

13 Q. What you are saying in that paragraph is that the litmus
14 test for competency is the assessment of mark Y7 itself.
15 Is that not tantamount to saying that any expert that
16 does not agree with your assessment of Y7 is not a
17 competent expert?

18 A. I'm not saying that. I'm not agreeing with my
19 assessment. I'm asking you to look at the fingerprint
20 and the fingerprint is telling everything there is and
21 there is no competent expert in the world that I know of
22 that disagrees with this position.

23 Q. Paragraph 18 of your statement, you go on to say that:
24 "If there is a difference between the mark and the
25 inked print" -- and you are talking about the

1 fingerprints in general here I think rather than Y7
2 itself -- "if there is a difference between the mark and
3 the inked print, usually that immediately points to
4 there being no match between the two."

5 Are you saying that in any case where there is a
6 difference that there cannot be an identification?

7 A. No, there is the word "usually" in between.

8 Q. So differences do exist that can be explained then?

9 A. Yes. There are -- we already went over it. A deposit
10 of a fingerprint is never the same when it is repeated.

11 Q. So you do accept that differences or distortion due to
12 movement and due to multiple touches can affect the
13 appearance of a crime scene mark; is that correct?

14 A. That's definitely correct but then you in your analysis
15 phase you would see signs of this depositions and these
16 distortions.

17 Q. I will move on to paragraph 22 of your statement,
18 please. That says that the Scottish authorities refusal
19 to apologise as the FBI apparently did in the Mayfield
20 case has created an atmosphere of spoil.

21 What is it that you mean by that?

22 A. What we see is that officially the Minister for
23 Justice has admitted that a mistake was made, the head
24 of the SPSA has admitted that a mistake was made, but
25 yet again the peoples in the organisation just continue

1 to say that it's definitely Shirley McKie's print, they
2 don't investigate the murder of Asbury any further
3 because I think he is a suspect and that keeps the
4 debate ongoing. That's the problem.

5 Q. The next chapter of your evidence refers to the
6 Tulliallan meeting and I know my learned friend,
7 Mr Moynihan, has asked you a couple of questions about
8 this, but your statement does make reference to it.

9 Paragraph 32 of your statement says that you were
10 invited by HMIC to serve as an independent expert on a
11 committee of three to investigate Y7 and that you
12 concluded that it was not that of Shirley McKie.

13 Who were the other two on that committee?

14 A. One was Torger Rudrud and the third one was Mervin
15 Valentine from the Greater Manchester Police. When I
16 was invited by telephone I was told that it was going to
17 be a committee of three and I was a bit surprised when I
18 came to HMIC that Mr Mervin Valentine chose the position
19 not to take part in the committee. It's only years
20 later that I understood that he probably feared to be in
21 the position to be an expert contradicting some of his
22 fellow experts. I think that is the main reason.

23 Q. Having been employed by a Government agency to look at
24 Y7, did you not feel at all conflicted when you then
25 went on to act for Miss McKie herself during her civil

1 claim against the Scottish Ministers?

2 A. Not at all. Not at all. I think that if I see that a
3 mistake is made and if I look at the Code of Ethics from
4 the ENFSI and other bodies, then you have an obligation
5 as an expert that if you see there is a miscarriage of
6 justice going on that you also have to take up the act
7 and I am an expert in fingerprinting and this profession
8 is quite dominated by the police and people who are
9 suffering from a mistake or whatever you call it, a
10 probable mistake, they have a hard time finding an
11 independent expert and I think it's improper for experts
12 to just to choose the side of the police and just help
13 also these people in the interests of justice.

14 I take it a step further, if I may, I have intimated
15 under the umbrella of ENFSI to erect an arbitrage body
16 that will enable people to address to us and if they
17 think a mistake is made we offer them an independent
18 consult, free from the best experts we can find in
19 Europe and that is one of the reasons and that is going
20 to be effected probably. The proposals are ready.
21 We're looking for funding and I think we all have the
22 obligations. We only serve one goal: that is the truth
23 and my profession.

24 Q. At the meeting in Tulliallan did you accept that you
25 could not exclude the possibility that Y7 came about as

1 the result of a multiple touch?

2 A. Initially, I thought and I said in my presentation that
3 I was puzzled by the appearance of Y7. I could not
4 exclude that it was a double tap but, having further
5 investigated it, and I have presented the evidence as
6 what I say we can never be 100 per cent certain, but I
7 think the explanation I have given for the phenomena we
8 see I think are pretty, pretty well and now I think if
9 in difference with Tulliallan, where I was still in
10 doubt, I'm pretty sure how the fingerprint is laid down.

11 Q. On your initial assessment of it then, do you agree that
12 you first perceived it to be a complex mark?

13 A. I don't think I've said it was a complex mark. I think
14 I said it was of low quality.

15 Q. Surely it's not just the quality of the mark that led
16 you to the conclusion that it could be a double touch
17 though, is it?

18 A. No. As I've said in my presentation, the appearance is
19 in a way confusing because you have areas that have a
20 different structure, are darker and the structure of the
21 lines seemed different. So I have said the properties
22 are indeed misleading but until you find an explanation
23 for all the phenomena I think then I'd be satisfied what
24 has happened.

25 Q. I am going to deal with the conversation that you had

1 with Mr Mackenzie and Mr Dunbar during the break at
2 Tulliallan.

3 You have said in paragraph 42 of your statement that
4 you said to Mr Mackenzie and to Mr Dunbar that
5 everything was at stake for them, their professional
6 reputation and career, their pension and their health
7 and their families.

8 What caused you to think that the consequences at
9 that stage were liable to be so grave for them?

10 A. Well, I think that is simple common sense. I know from
11 experts that they fear -- what they fear the most is to
12 be caught on a mistake and if that comes in the public
13 domain, I gave you the example from this fingerprint
14 expert that took his own life and I've seen the stress
15 and I must say I feared what was going to happen and I
16 stress, again, I pitied them. I knew Robert long before
17 that and I said, "Please, Robert turn around because
18 this is not going well, everything is at stake for you",
19 and Robert confirmed it at that very moment. He said,
20 "Don't you think that this has gone through my mind the
21 last month or so". So where am I wrong?

22 I think again if we see what has happened after
23 that, I don't think I was far off.

24 Q. Did you ask them if they knew what the consequences were
25 for them and tell them that you did know what the

1 consequences would be for them?

2 A. I couldn't know what the consequences would be but I
3 could -- well, just as a human being you could see what
4 was going to happen. It was --

5 Q. So did you say that you did know what the consequences
6 were?

7 A. No, just as -- just common sense tells you there's a
8 running train, it doesn't stop, things go wrong. The
9 pity is, apart from -- and I've always said everybody
10 involved suffers, everybody on the left side and on the
11 right side, everybody is suffering and the only way to
12 stop it is to come to the truth and I really, really
13 feel sorry for them but there is no other outcome and
14 they go down in history and their children and the
15 children of their children will read in history that
16 their father made a mistake and I really feel sorry for
17 them.

18 Q. Did you say at any stage during that conversation that
19 they had two weeks to change their minds?

20 A. Sorry, I missed that one.

21 Q. That they had two weeks in which to change their minds?

22 A. I may have put some kind of urgency upon it and said,
23 but I think I based that on the impression I got from
24 the speed the investigation went but I don't have an
25 exact recollection of that. I've read in the statement

1 that I've said so and if I said so it may be, yes.

2 Q. Two weeks sounds quite specific, doesn't it?

3 A. Yes. I don't know. Could be, yes.

4 Q. But you don't recall now why you would have said

5 specifically two weeks?

6 A. No, I think now that it is based on my assessment of the

7 situation, the speed the things went. I was asked to be

8 interviewed that afternoon. Maybe I was wrong in

9 calling it two weeks or a week. I don't know. I

10 really ... I will not take the position that my

11 recollection fails all the time but really it's long

12 ago.

13 Q. Given what you say and the circumstances under which it

14 was said, can you see now how it could have been

15 perceived as threatening?

16 A. No.

17 Q. Why not?

18 A. Definitely not because it was not said then and if we

19 look at how the meeting ended -- let me see where I can

20 find that -- this is how the meeting ended:

21 "Dr Bramley thanked SCRO and HMIC for their

22 professional co-operation. Mr Zeelenberg stated that it

23 had been a unique occasion and he tried to speculate

24 about what might happen or could happen. He advised the

25 group that he had been very happy with the attitude of

1 Robert and Alan and stated that he was impressed by
2 their courage. Mr Mackay thanked SCRO and HMIC for
3 their excellent and professional presentations and hoped
4 the matter could be resolved."

5 There is no indication whatsoever that I did
6 anything wrong. There was no complaint filed. When
7 Justice 1 Mr Mackenzie came with veiled threats, now
8 they are open threats. I think it has grown over the
9 years. I can understand in the position where they are
10 they try to rationalise everything what happened and
11 that it has grown upon them and if they take it that way
12 I apologise but if you have read my story you know that
13 it has never been my intent. I was not in the position
14 of threatening anyone. How could I threaten them and
15 their family? It's just bizarre.

16 Q. If you are incorrect about what you have just stated and
17 that the matter was indeed reported at the time, would
18 you perhaps then accept that at least there was some
19 perception on the part of Mr Mackenzie and Mr Dunbar
20 that your exchange had been threatening?

21 A. I am not a master of their perception but they have
22 never indicated, not at that moment -- actually,
23 Mackenzie confirmed what I said, "Yes, Arie, this has
24 gone through my mind". At that moment he could not say
25 that it was a threat because he had the same thoughts.

1 A. So it is just bizarre.

2 Q. Paragraph 52 of your statement mentions the subsequent
3 telephone conversation that you had with Mr Dunbar. You
4 say in that:

5 "If this presentation were used to convince people
6 of authority that the opinion of SCRO is correct, then
7 this is the closest to malpractice I have ever seen."

8 Do you recall saying that?

9 A. Yes.

10 Q. Is that still your view?

11 A. Yes.

12 Q. Are you of the view that Mr Mackenzie misrepresented the
13 situation at Tulliallan?

14 A. Yes.

15 Q. How so?

16 A. I have shown in my presentation, I think very obviously,
17 that facts were concealed. He never explicitly stated
18 that the implication was that there were so many
19 deposits. I think if he had done so, other people would
20 have picked up. It's not in the minutes. There's
21 nothing saying that and he has concealed certain things
22 in his presentation. He's never indicated the
23 implication. I am of the firm opinion that -- and that
24 I have put it into context, if you use these type of
25 presentations to convince people of authority that you

1 are right and this has implications for other people,
2 then I think it is malpractice and I stick to that
3 opinion.

4 Q. Mr Mackenzie, you will understand, is one of those
5 officers who had their career brought to an end as a
6 result of this matter.

7 What does he now have to gain by misrepresenting the
8 situation?

9 A. I don't know what he has to gain but I think they have
10 arrived in the position that they cannot retreat from
11 the position any more without loss of face. I think
12 that's what they think but I'm not a psychologist.

13 THE CHAIRMAN: I am not sure now, from what you say, whether
14 you are implying that by nothing to gain this witness, I
15 imagine, wouldn't be in a position to answer any
16 question about employment or financial results of him
17 not remaining in employment. I think his answer must be
18 limited to subjects that are within his own
19 understanding.

20 MR HOLMES: I am merely suggesting to the witness that
21 Mr Mackenzie and those others who are no longer employed
22 by SCRO, none of those officers have a position to
23 protect.

24 Is that something you would accept, Mr Zeelenberg?

25 A. He can protect but I think then he has chosen the wrong

1 road. He can also take the officers from the FBI as an
2 example and they have regained their integrity and their
3 self esteem.

4 Q. Paragraph 54 of your statement refers again to the
5 exchange between yourself and Mr Mackenzie and it says
6 that your concern was to rectify the mistake, as you see
7 it, without it becoming public.

8 Even then, Mr Zeelenberg, was it not plain that
9 matters were going to become very public?

10 A. Yes, but what does it change? I think I've explained my
11 position.

12 Q. Chapter 4 of your statement makes reference to the
13 petition to the Scottish Parliament. It says:

14 "After HMIC and the statement of the
15 Justice Minister many people believed that the matter
16 was closed and would be internally addressed within the
17 fingerprint organisation in Scotland."

18 Who believed the matter to be closed at that stage,
19 Mr Zeelenberg?

20 A. I hoped that the matter was going to be closed because
21 that was, I think, the aim of the HMIC investigation and
22 he had -- and the remit of Scottish Parliament and I
23 think everybody hoped that the case would be closed
24 and good measures were taken.

25 Q. What did you expect when you said that you believed the

1 matter would be internally addressed?

2 A. Well, I would just keep it short and say that they would
3 have something like the Mayfield case, investigate
4 things, look where they went wrong and try to change,
5 try to identify the causes of the mistake. Anybody
6 would expect that.

7 Q. The subsequent paragraph, paragraph 63 of your
8 statement, states that SCRO staff publicly denied that
9 they had made a mistake. Who did?

10 A. I don't really recall now but I think there's several
11 newspaper articles that just insisted and also on public
12 websites that SCRO -- and also the letter they sent to,
13 this public letter in the newspaper, they stated that
14 they were right and others were wrong.

15 Q. Are these newspaper articles that you have seen
16 yourself?

17 A. I guess I have seen so but I have -- at least I've seen
18 this letter they have published where 52 signed and they
19 were of the opinion that -- well, they stated a lot of
20 things but were of the opinion that the identification
21 was right and they also referred in a very negative way
22 to Asbury and to McKie and all those type of things.

23 Q. We have heard some evidence at least that SCRO staff
24 were prevented from commenting on the case so who had
25 the opportunity to make the public denials that you have

1 referred to?

2 A. If you are happy I can dive into the history and try to
3 find out but I have no real examples of it. I think it
4 was a general assessment and I think it still goes on to
5 date.

6 Q. So that is your recollection of it and nothing that you
7 can necessarily point to and say there is a denial.

8 A. I just mentioned the letter that was in the public
9 domain but if you want me I can find other things. I
10 think in a way it's fruitless.

11 Q. Move on to the subsequent paragraph, which is 64. It
12 suggests that the notion that fingerprint evidence is a
13 matter of opinion is damaging to the profession.

14 I think your evidence this morning has been, though,
15 that there is a subjective element to fingerprint
16 analysis. Is that not correct?

17 A. Yes, that's true but I think that if you read the
18 petition to the Scottish Parliament it is very well
19 explained that, in this particular case, this position
20 could not be taken and that was effectively the harm
21 that is still going on because any scientific paper on
22 fingerprints is mentioning this case, in particular the
23 issue that it is not acknowledged.

24 Q. Paragraph 65 of your statement says that:

25 "It was obvious that the fingerprint profession in

1 Scotland was not prepared to resolve the case and
2 neither was the management. Experts, even throughout
3 the UK other than in Scotland, were encouraged to
4 silence."

5 Who were the experts who were encouraged not to say
6 anything?

7 A. I think that that goes still on to date. I think there
8 has been a letter from ACPOS that circulated in the
9 country that what the Office official position was about
10 this fingerprint and from my contacts with a number of
11 experts in the UK it's very obvious that they have got
12 the message not to talk about it.

13 Q. I think you have answered my next question which was how
14 you have mentioned a letter but surely that has not been
15 100 per cent of the experts who could possibly speak
16 about this matter, has it?

17 A. No, I will never talk 100 per cent, no.

18 Q. No, because Mr Bayle hasn't been silent about it. He
19 was on the Frontline Scotland documentaries. Have you
20 seen those?

21 A. I am aware of a number of experts that stood up to be
22 counted. I am also aware that they have had very
23 negative effects off this exercise.

24 Q. Mr Dempster, you will be aware, was also on those
25 television programmes?

1 A. Yes, I'm aware of that.

2 Q. You are aware of the letter written by some of those
3 employed by the Edinburgh Bureau, are you?

4 A. Aberdeen Bureau, you say?

5 Q. Edinburgh Bureau.

6 A. The Lothian & borders, you mean?

7 Q. Yes.

8 A. I'm aware of that, yes.

9 Q. Are you aware that -- we have heard evidence that some
10 of those who are purported to have signed that letter
11 did not actually do so? Are you aware of the
12 circumstances of that or are you not able to comment?

13 A. I've heard of it but I've also spoken to one of them and
14 he's told me personally that he has suffered negative
15 effects from his participation in that.

16 Q. There are also the Aberdeen Bureau's experts, Mr McLeod,
17 Mr McGregor, Mr Grigg, Mr Sheppard. That seems to be
18 quite a number of people who have not been silenced,
19 does it not?

20 A. They are not silenced but they all suffered and I could
21 only say if only SCRO management had listened to them
22 then I wouldn't be here.

23 Q. I do not think we have heard anything -- and I will be
24 corrected -- from any of those individuals who have
25 given evidence about any intimidation and none of them

1 certainly have been shy about speaking up.

2 Is there anything that you can point to to support
3 your allegations?

4 A. What allegations do you mean?

5 Q. The allegations that these experts have been encouraged
6 to silence.

7 A. I think they have all suffered negative effects, either
8 in their career or in their positioning and I'm not
9 going to be any more specific about it.

10 Q. Why not?

11 A. Because it will only make it worse.

12 Q. Well, I can contrast this position, can I not, with that
13 of Mr Graham -- I know you said you haven't read his
14 evidence but if you take it from me he has spoken to
15 contact with Mr McKie that he perceived to be
16 threatening. We can contrast that with the position of
17 Mr Swann who suffered years of complaints and we can
18 contrast that with the position of the SCRO experts
19 themselves, can we not?

20 A. If you say so, yes, I'm fine.

21 Q. It is quite clear that those individuals have all
22 suffered negative effects, yet there have been very many
23 who have spoken out in favour of the contrary position
24 and who don't seem to be suffering from any
25 encouragement to silence, as you have put it.

1 A. Well, what can I say? From the very beginning I've
2 warned for the negative effects for everybody involved.
3 There are no winners in this case and Mr Swann is kind
4 of independent and if there are complaints filed against
5 him for unprofessional(sic) conduct or I will call
6 unprofessional conduct, is that a complaint? Is that a
7 threat? I don't know. That may be normal procedures.
8 I'm not the judge of that.

9 Q. Paragraph 66 of your statement says that:
10 "The evidence (in particular the images of Y7 and
11 Shirley McKie's inked mark) was not released for open
12 debate in the profession as should be the case."

13 Can you name other cases where this has been done?

14 A. Sorry?

15 Q. Can you name other cases where the evidence has been
16 released for public debate?

17 A. The McKie(sic) case was on the Internet, I think, four
18 weeks after it happened.

19 Q. Yes, but can you name cases other than this one where
20 the evidence has been distributed widely in order to
21 encourage some debate about the result?

22 A. I don't think I understand your question.

23 Q. You are suggesting that it would be a good thing if the
24 materials from this case were widely distributed in
25 order to encourage a debate.

1 I am asking if you can think of any other cases in
2 which that has been done?

3 A. Oh, I think so. I mentioned the Mayfield case but there
4 are other old cases. My point is that, I think -- and
5 I've made it before -- that we should disseminate the
6 forensic side of fingerprints from the investigation
7 side serving the police and I think if we look at it as
8 a forensic science, whatever how you call it, or a
9 forensic technique, then the science should rule, the
10 science, and if there is a problem then it should be put
11 in the professional domain and discussed over there.
12 That's the point I want to make.

13 Q. If the material is distributed so widely though is there
14 not a risk that it will be given out to such a large
15 group as there is no possibility of knowing whether any
16 of those who have examined the material and are
17 contributing to the debate have properly examined the
18 material they've been given?

19 A. I don't think that is any problem. If material is
20 released and you say that it is under debate, then that
21 no effect, any effect of bias. If I'm getting a
22 disputed mark, then the instruments I have is do a
23 proper analysis, look at it and then come to an
24 independent opinion.

25 Q. That's something that you can speak to yourself doing

1 but it is something that you cannot guarantee. It is a
2 procedure that you cannot guarantee others will follow
3 if you simply distribute the materials from the case as
4 widely as possible, is it?

5 A. No. I'm not a master of that you are right, yes. But
6 if we have bodies like the IAI and bodies like ENFSI
7 where we regularly study material, release it amongst
8 us, we will have another opportunity in November in
9 Sicily in Italy, we will distribute latents, difficult
10 latents, study them, make our own analysis and then have
11 a group session in which we will discuss them and that's
12 what I am aiming at.

13 Q. Paragraph 67 of your statement says that it was clear
14 that change had to come from the level above that of the
15 administration.

16 Can you clarify what you meant by that?

17 A. Yes. I think that the call from HMIC and the Parliament
18 was to open up for transparency and accountability, and
19 we didn't see it and it was the assessment of a member
20 of Parliament, Michael Russell in particular, his
21 assessment was that the case was not going to be
22 resolved within Scotland and he called for a petition.
23 I think he is now a Minister for Environment and I think
24 I don't dispute his assessment.

25 Q. Is that the petition that you refer to when you say next

1 in that paragraph that experts who had viewed the
2 material had issued a statement?

3 A. Yes.

4 Q. What material did the experts who signed that statement
5 view?

6 A. Those were the images provided by Pat Wertheim.

7 Q. At whose behest had they viewed that material?

8 A. Sorry?

9 Q. At whose behest had they viewed that material?

10 A. Behest?

11 THE CHAIRMAN: Who proposed that that would be the material?

12 A. I think there were several people involved and I was
13 involved in it and people in the United States and in
14 the UK. They distributed the things and asked people's
15 opinions and the outcome was pretty obvious.

16 MR HOLMES: Are you aware of the conditions under which each
17 of those individuals examined the material?

18 A. No, but assuming and knowing most of the people I think
19 they have done that professionally.

20 Q. Whose decision was it to issue this petition after the
21 material had been examined?

22 A. I think the initiative came from Mr Russell and maybe
23 McKie, but there was also a strong feeling in the
24 professional circles that this thing had to be
25 addressed, it had to go out, it was harmful not only

1 within Scotland, it was harming the whole of the
2 profession in the whole world.

3 Q. The petition mentioned a particular individual as being
4 the signatories' examiner of choice really to assist the
5 Parliament. Is that correct?

6 A. Yes.

7 Q. Who was that individual?

8 A. I think Mr Ashbaugh was put forward.

9 Q. Whose decision was it to recommend Mr Ashbaugh?

10 A. I don't know.

11 Q. Was it discussed amongst those who had signed the
12 petition?

13 A. Not all of them, no.

14 Q. Are you aware of any discussions that took place with
15 regard to that recommendation?

16 A. I cannot tell, no. I don't know.

17 Q. Were you aware when you signed the petition that
18 Mr Ashbaugh was to be recommended to assist the
19 Parliament?

20 A. I think the petition came later after on the signatories
21 and then we had a petition. But I'm not sure what you
22 mean.

23 Q. Are you aware that it was Mr Ashbaugh that had been
24 selected as the man to be recommended to the Parliament?

25 A. Oh, yes, I was aware of that and I had no objection

1 because I think he is --

2 Q. Were you aware at the time that you signed the petition
3 that recommended Mr Ashbaugh whether he had already seen
4 Y7 or not?

5 A. I was aware that he had seen it on the occasion but the
6 problem then was not whether Y7 was an ident or a
7 mistaken ident or not. We thought that was already
8 settled. So the issue was not to revisit Y7, the issue
9 was the position taken by the Scottish and to address
10 that, the position they had taken that it was disputed
11 or whatever.

12 Q. You were aware that Mr Ashbaugh had already seen the
13 mark. Should you not really have recommended somebody
14 who could have carried out an independent examination to
15 assist in this?

16 A. If you read the petition, then I think the starting
17 point was that the mistake was already established and
18 acknowledged by the court, by the Minister for
19 Justice and everybody who did an official investigation
20 and the only people that did not was the SCRO. So that
21 was the real problem and to keep that debate alive, that
22 was harmful to the profession. I think that's what the
23 petition says.

24 Q. If you regarded the matter as settled, then why were you
25 submitting a petition to the Parliament?

1 A. I think I can read it out but I think the petition is
2 making it very clear.

3 THE CHAIRMAN: I have the petition.

4 A. I think the petition is very clear about it.

5 MR HOLMES: Paragraph 71 of your statement states that it
6 would be virtually impossible to find an expert of some
7 reputation that would support an identification of Y7,
8 and be prepared to say that it was just a matter of
9 opinion. I think you have given evidence that there is
10 room for some element, at least, of subjectivity in
11 fingerprinting.

12 A. Yes, but I think that we have addressed that quite
13 extensively already. I don't think I've much to add to
14 that. I'm sorry.

15 Q. If there's no room for any more than a small element of
16 subjectivity, how do we have these two polar opposite
17 opinions today?

18 A. I don't think that there are much polar opinions. I
19 think the general opinion is very, very clear. Y7 is
20 not from Shirley McKie: period.

21 Q. You have that opinion and there are, I
22 acknowledge, other experts who have that opinion but you
23 will understand that I act on behalf of experts who
24 formerly worked for SCRO. There are other experts who
25 support that opinion. How do you account for the fact

1 that this opinion still exists?

2 A. Well, I think that's a psychological matter.

3 Q. In respect of each and every one of them, including the
4 independent experts?

5 A. Yes.

6 Q. Paragraph 72 of your statement says that once an expert
7 has taken a position on analysis of a mark, it is very
8 difficult for that expert to change his mind.

9 Surely that must apply to both sides of this debate,
10 must it not?

11 A. Yes.

12 Q. So what value does the statement itself have?

13 A. I was just indicating what we discussed with Mr Moynihan
14 the psychology of how the human mind works, in
15 particular from experts, and I also said it's a feature
16 of human nature that the withstanding of that starts
17 with the awareness that it is a certain effect.

18 Q. If this is the view that you adopt with regard to both
19 sets of expert witnesses, might it not also be a view
20 that one could adopt with regard to Ms McKie?

21 A. I don't see what it has to do with Ms McKie.

22 Q. Ms McKie has taken her position and she has now gone
23 through several years of proceedings as much as anyone
24 else has. Is it not more difficult now for her to
25 change that position than it previously was?

1 A. I refuse to answer questions about Ms McKie because
2 that's not the subject in my opinion. I don't want to
3 go there.

4 THE CHAIRMAN: That is not your expertise. You can only
5 speak about fingerprints and fingerprint experts.

6 A. Exactly.

7 MR HOLMES: Well, sir, the witness was content to speak
8 about matters of psychology affecting the position of
9 experts before.

10 THE CHAIRMAN: In relation to experts.

11 MR HOLMES: Very well. I will move on.

12 Paragraph 73, there is a review referred to which is
13 carried out by assessing which Galton points are
14 relevant within the unknown mark.

15 Is assessment and the determination of relevance not
16 a subjective process?

17 A. In a certain way what you see has some subjectivity but,
18 as I demonstrated, if you are able to point out what you
19 see and follow the lines, I think much of the
20 subjectivity is lifted.

21 Q. The assessment of a mark, can this be achieved in 60
22 seconds?

23 A. What you have seen is that if an expert is looking at a
24 print he can quite quickly assess a cluster of points
25 and then quite quickly exclude somebody as a donor of

1 the mark, yes. You have seen how quick that can be
2 done.

3 Q. Even on an unknown mark which is difficult to interpret?

4 A. It will be slightly different if you have an unknown
5 mark but I don't know how long it was looked at but if
6 somebody is looking at this print it's obvious that
7 there is a cluster of five or six points that you cannot
8 miss and there is coherence between them and, with that
9 in mind, I think the exclusion can be done quite
10 quickly.

11 Q. If I can move on to chapter 6 of your statement which
12 refers to Q12, the first question is have is about
13 paragraph 101 of the statement. It states that if Y7
14 was the only mistake in the case, it could have been
15 argued that a mistake was made and there was no criminal
16 conduct from the outset.

17 Is what you are saying in that sentence that there
18 clearly was criminal conduct from the outset of this
19 case?

20 A. Well, it infers it but I've always said, with respect to
21 Y7, that I believe that it started as an honest mistake
22 and I still uphold that. But if you refer that to Q12,
23 what I actually say is here we don't see the stepping
24 stone that could explain why somebody went wrong.

25 Q. Paragraph 102 of your statement asks a rhetorical

1 question. It says:

2 "How could these individuals who appear to be
3 competent make two serious errors accidentally in one
4 case?"

5 Does that not itself raise the alternative question:
6 how could there be four, that includes XF and QD2,
7 mis-identifications in one case when every
8 identification made by these individuals for a period of
9 a year before and a year after this case had been
10 checked by an outside agency?

11 A. Well, this is a little bit on the edge of my knowledge,
12 my domain. But if we look at the magnitude of the
13 mistakes and then just in particular if it is found out
14 that no other mistakes were ever made and you have two
15 in one case and common sense tells you that there may be
16 other factors involved. I cannot see differently.

17 Q. Well, it has been alleged that there were greater than
18 two mistakes in this case. It has been alleged that
19 there were four. It's been alleged that XF, there was
20 something suspicious about the identification of XF and
21 it has been previously alleged, although that has now
22 been recanted, that QD2 was a mis-identification.

23 Does it not raise a suspicion about those
24 questioning the identifications rather than about those
25 carrying out the identifications if this is the only

1 case in which those questions arise?

2 MR SMITH: Sir, I wonder if I could interject? I am not

3 sure I understand where the suggestion comes from that

4 there was a question mark over the identification of XF.

5 I may have missed it but I don't know whether anyone has

6 actually suggested there was a mis-identification of XF.

7 THE CHAIRMAN: There was, at one time questions were

8 raised --

9 MR SMITH: The provenance of it.

10 THE CHAIRMAN: -- about the mark but I think it's accepted

11 that it is correctly identified.

12 MR SMITH: It always has been. Certainly, I have never on

13 any occasion made an allegation that XF was incorrectly

14 identified and I think if the question is going to be

15 put it should be put against the correct factual basis,

16 though I stand to be corrected by Mr Holmes if I have

17 made a mistake then I am happy to admit to it.

18 MR HOLMES: No, I am not suggesting, sir, there was a

19 question over the identification of XF. What I am

20 suggesting is that there have been question marks over a

21 number of the marks in this case. Mr Smith is perfectly

22 correct to say that it was the provenance of XF that was

23 questioned but nonetheless it's a mark on which

24 suspicion has been cast.

25 THE WITNESS: I have cast no doubt on XF. I have identified

1 it and if you are alluding to the problems with QD2, I
2 think that matter was resolved in a different way and
3 you can read it in my witness testimony or my testimony,
4 what I think was the cause of that and this is confirmed
5 by Mr Frank Jensen from the Danish police.

6 THE CHAIRMAN: I do not think we need to go into QD2.

7 MR HOLMES: My question is: where there are a number of
8 questioned identifications or a number of questions
9 regarding identifications in a single case and in no
10 other, does that not raise suspicions about those that
11 are questioning the identifications rather than about
12 those who are carrying out the identification work
13 itself.

14 A. Well, it could be but I think in my view it raises
15 questions about the underlying reasons why two mistakes
16 were made in one case rather than the other argument.

17 Q. Paragraph 104 of your statement says that:

18 "The allegations made by SCRO against those
19 criticising the identification is to attempt to bring
20 those individuals into disrepute. The pattern [that is
21 of SCRO] dealing with experts who do not support the
22 identification of Y7 is consistent, that any expert who
23 contradicts SCRO is criticised as follows: Pat Wertheim
24 for not being qualified and damaging the mark; the Danes
25 for making an error in QD2; the Dutch for failing to

1 meet the standards in Evett & Williams; and everyone
2 else for not having access to the original material."

3 Firstly, the statement that some individuals did not
4 see original material cannot be construed in any way as
5 an attempt to bring those individuals into disrepute,
6 can it, Mr Zeelenberg?

7 A. Not on itself but I have seen police officers on
8 television who said -- and others posting that -- and I
9 think it was also Mr Leadbetter who stated it explicitly
10 that if you would use that material that was a
11 demonstration of incompetency.

12 Q. Is it not the case that others have attempted to bring
13 those agreeing with the SCRO into disrepute over the
14 years?

15 A. I don't know of that and I have never been involved in
16 such a thing.

17 THE CHAIRMAN: Can I interrupt you just for one moment.

18 Are you confident that you will be able to finish?

19 Otherwise, if not, I will take the break for ten minutes
20 now.

21 MR HOLMES: I am fairly confident I will be able to finish.

22 THE CHAIRMAN: Even if we take the break of 10 minutes?

23 MR HOLMES: Yes, sir.

24 THE CHAIRMAN: I am sure you will welcome a short break. So
25 we will stop now until 3.00.

1 (2.50 pm)

2 (A short break)

3 (3.00 pm)

4 MR HOLMES: Thank you, sir.

5 Mr Zeelenberg, I am at paragraph 108 of your
6 statement now. You are making reference to the Evett
7 & Williams report and you state it 108 that Evett &
8 Williams was not a means to measure competency.

9 Was it not inevitable that it would be taken as
10 such?

11 A. No, I don't think so.

12 Q. The Dutch experts who took part in the Evett & Williams
13 study were working under a numeric system with a lower
14 threshold than the UK at the time.

15 Did they make the number of identifications that was
16 expected of them during that study?

17 A. I don't know whether it was -- a number of
18 identifications were expected. What Iain Evett and
19 Williams were trying to detect was the consistency of
20 how people were marking the points and if that was
21 consistent there would be some merit in using a 16-point
22 standard.

23 Q. How many cases were distributed as part of the materials
24 for the study?

25 A. I think ten.

1 Q. Each of those cases would have a result that was
2 expected by the people that were conducting that study;
3 is that correct?

4 A. I don't know whether they expected a result but I know
5 that one was not identical and the people that composed
6 the collaborative study, it was not a test, expected
7 under the UK conditions that six would be identified,
8 three not and one was not identical.

9 Q. What were the results from your bureau?

10 A. I have to explain that a little bit further because we
11 took it differently. First of all, if I say it's not a
12 competency test then that is because if you give people
13 two images to compare and then I will just say I see
14 20 points and then say it's identical then I would have
15 proved that I was competent and I don't think that was
16 in the nature of it.

17 From a scientific point of view it could never have
18 been a competency test because the ground truth was
19 unknown and if you want to be able to prove somebody
20 wrong or right you should be certain about the origin
21 where it comes from and if you don't know then you still
22 have the dispute is there whether he is right and I am
23 wrong.

24 As I demonstrated in particular with mark B I think
25 it is very questionable to identify that one and then

1 the number of points you can find for me was immaterial.
2 I can only tell that Mr Ian Evett has come over to our
3 office many, many times and we have had in-depth
4 discussions and the point was for us not so much to
5 participate and try to find as many points as we could
6 because it seems that within the UK practitioners it
7 seems that if there was kind of a horse race how many
8 points you could find and that was not our issue. We
9 had a different approach. We had very little time to
10 prepare, I must say, but I myself wrote down my findings
11 in point by point, which point I found good and I got a
12 written reply back from, I think it was Mr Williams.

13 What we did very briefly with three people involved,
14 not from our own department, was look at the prints and
15 we said on a quick assessment this one would maybe pass
16 and this one would maybe not but we did not assign,
17 let's say, that significance to it. But if you want to
18 know the specific results which could not be classified
19 in the way Mr Evett meant, then I would say that mark A
20 had for us a potential for an ident and potential for
21 the multiple procedure; mark B, I have explained why we
22 would never identify that; mark C we would call a
23 partial maybe but we had difficulties and struggled with
24 the word, what the partial was. We had no such thing in
25 the Netherlands as a partial identification. Mark D, it

1 was a potential for the questionable procedure, the
2 multiple procedure; mark E was dismissed because of bad
3 areas; mark F, we were in agreement it was an
4 identification; mark G, we identified as not fit for
5 comparison; mark H, we would discuss 11 points, no
6 ident, no partial; and mark I, 14 points discussed,
7 potential identification; and mark J was not identical.

8 So we are about three or four we would maybe
9 identify and we were completely in line with what the
10 Germans did. They also had a maximum of three
11 identifications. I can only say I think history has
12 proved us right.

13 Q. It was not simply a point-counting exercise though, was
14 it, because what you had was a number of marks, some of
15 which it would be expected that an expert would
16 identify, some of which an expert would exclude and some
17 of which an expert would say were insufficient for
18 examination purposes. Is that not correct?

19 A. Yes, but then is it measured to the standard at hand and
20 what is proven is that we had a different standard.
21 What is not proven is that we are incompetent or
22 competent.

23 The only competency element in this was whether you
24 could find out that mark J was not identical and for the
25 other elements there were no competency elements in it

1 because the simple point was how many reliable points
2 did you see and does it fit your standard.

3 Q. Paragraph 109 of your statement gives a number of
4 reasons for the test not being a test of competency.

5 The second part says in a competency test one would
6 supply an expert with the marks and a number of
7 reference prints to choose so he could prove his
8 competency by picking the right print.

9 Was the point of the study not that this was a
10 single examination to produce the result of
11 identification, no identification or insufficient for
12 identification?

13 A. No, I defy that that was the result. The result was to
14 measure the consistency of marking up the points and the
15 findings Iain Evett I remember very vividly that he came
16 over to our office and said, "Arie, take a look", and it
17 was embarrassing, he said, nobody found 15. That was
18 how he explained to us the culture of teasing the points
19 out rather than having any system of really defining the
20 points. I think what he demonstrated was the absence of
21 any descriptive model and decision-making model, what
22 you assign as a point and a point of similarity.

23 Q. Were the decisions that your examiners were being asked
24 to make not precisely the same decisions that a
25 competent examiner will have to make and be expected to

1 get right on a daily basis?

2 A. I turn back to that the expectation that was set by the
3 team that assessed the test from us, the
4 collaborative study was based upon the presumed UK
5 standards and what Evett effectively proved that there
6 were no standards in the UK.

7 Q. Paragraph 110 of your statement suggests that the test
8 was as simple as matching A to A, B to B, et cetera. I
9 think your evidence yesterday was relatively disparaging
10 about the test, if I am not being unfair.

11 Was it not the case that some of the fingerprints
12 supplied with that test were designed not to be
13 identified, as in not to be a match?

14 A. There was one in there that was not identical, presumed
15 not identical, but they knew it was not identical
16 because it was construed and put together. They tried
17 maybe to trick people. I don't know.

18 Q. Was the potential there for a mis-identification to be
19 made during this test?

20 A. Yes, there was one.

21 Q. Would you say that the experts at your bureau were
22 perhaps overcautious as a result of the possibilities of
23 this test?

24 A. I think that I could cite Mr Evett there extensively.
25 I've already done that and I can repeat I think history

1 has proven us right.

2 Q. Paragraph 113 of your statement presumes that the
3 experts who did better on the test did so by assuming
4 that there was a match and working backwards.

5 How do you know that?

6 A. I think these were the findings of Mr Evett.

7 Q. Paragraphs 116 to 118 state that the result was a joint
8 effort. That does not make an examination in real life,
9 does it?

10 A. I am sorry, I don't know where you are.

11 THE CHAIRMAN: 115 to 118?

12 MR HOLMES: 116 to 118, sir.

13 A. What is the question?

14 Q. The question is that these paragraphs indicate that the
15 result of the Evett and Williams submission from your
16 bureau was a joint effort but that does not mimic an
17 examination in real life, does it?

18 A. Oh, yes, it does.

19 Q. My clients have been criticised for allegedly leaving
20 points on a comparator during an exercise because it can
21 potentially indicate what another examiner was thinking.
22 Could your bureau not be criticise for the same reason,
23 for responding to something like this jointly?

24 A. I think you now misread our process. I think I
25 explained that every examiner will do it individually

1 and then make annotations and then compare it with each
2 other and then justify or argue what he has seen and
3 there is little room for any influence there.

4 Q. Paragraph 119 relates to the numeric standard that was
5 formerly in place in the UK. It identifies a problem
6 with that standard. It says that experts will identify
7 with fewer than 16 but express that identification as a
8 certainty.

9 Can you tell me, have experts always been willing to
10 assign identity with fewer than 16 points or, in the
11 case of your national standard, fewer than 12?

12 A. I'm not sure I understand the question. I'm sorry, I
13 don't want to be ... I want to be constructive.

14 Q. Rather than an identification for the purposes of giving
15 evidence in court, have experts, to your knowledge, in
16 systems where there is a numeric requirement in place,
17 been willing to assign identity to the donor of a mark
18 with fewer points than the numeric standard requires?

19 A. I don't know of any cases but it seems logic to me that
20 if you have a ruling standard and that is proven to be
21 empirical and reliable over many years that you would
22 not go below that but that's not a matter of -- that's
23 more a matter of policy than a matter of principle.

24 Q. You work in a system where the standard is 12 points; is
25 that correct?

1 A. Yes.

2 Q. But you have already spoken to individuals speaking to
3 an identification in court with 10 points?

4 A. Yes.

5 Q. In fact, you have said that individuals will give
6 evidence with fewer than ten points where they are
7 fairly certain that the donor of the mark has been
8 identified?

9 A. Do you mean our situation?

10 Q. Yes.

11 A. What I testified is that if I have worked on a case for
12 court then I will evaluate all the marks and if there is
13 a mark in there in which I have put considerable effort
14 to compare it and I would find six or seven or eight
15 points, no discrepancies, then I would report that I
16 don't see that it's meeting our standards, I cannot be
17 certain that this is the source. I have no instruments
18 to give any other conclusion but I think I have the
19 obligation to reveal to the court what I have done and
20 exactly what my findings are but I cannot give a value
21 to that evidence. I have no instruments for that and
22 maybe that will come in the future with statistics.

23 Q. So in a numeric system say, for example, the one in the
24 UK previously existing, would examiners assign ownership
25 of a mark with fewer than 16 points but not be able to

1 speak to it in court?

2 A. I don't see where you are --

3 THE CHAIRMAN: Can you speak to the UK practice? Can you

4 speak to what the practice was in the United Kingdom?

5 A. No, I can't.

6 MR HOLMES: Paragraph 127 of your statement states that:

7 "The Dutch regard fingerprint comparison as both

8 quantitative and qualitative analysis."

9 How can something involving a qualitative analysis

10 be objective?

11 A. There is definitely, as I have already explained, a
12 subjective element in the analysis of fingerprints and
13 that is why not everybody is doing it; that is why we
14 need experts.

15 Q. So there is always going to be a subjective element to
16 any examination?

17 A. Yes.

18 Q. Paragraph 174 of your statement emphasises the need for
19 full disclosure of all forensic evidence and free
20 evaluation of it without fear or favour.

21 Do you advocate that obligation on both the defence
22 and the prosecution?

23 A. Definitely.

24 Q. So in the present case Ms McKie would have been obliged
25 to reveal prior to her perjury trial that she had been

1 to see Peter Swann and that Mr Swann had confirmed the
2 SCRO view that Y7 was made by her?

3 A. I don't think I feel competent and well informed enough
4 to answer this question.

5 THE CHAIRMAN: No, you are just saying generally that's your
6 position that --

7 A. Yes, but I refer to the science of fingerprints.

8 THE CHAIRMAN: -- all should be available, made available --

9 A. Yes.

10 THE CHAIRMAN: -- both sides?

11 MR HOLMES: Chapter 9 of your statement deals with the SPSA
12 and paragraph 200 refers to the powers that dwell on
13 self-right within the Glasgow Bureau.

14 Who are you referring to when you say that?

15 A. I must emphasise again that this was an internal letter
16 from myself as a panel member to David Mulhern and that
17 was my best assessment of what was going on at that very
18 moment within the Glasgow Bureau.

19 Q. This is your statement to the Inquiry. It's not an
20 internal letter.

21 A. Well, I explain the context but I still uphold what I
22 write there. I think it's still valid.

23 Q. So who are the powers that you refer to?

24 A. I think if we look at self-right, I still refer to this
25 letter that was in the public domain and it is never

1 corrected and I am aware that there's still people
2 within that Bureau that uphold that they are right and
3 others are wrong.

4 Q. Paragraph 201 of your statement says that:

5 "Within the service there will be members of staff
6 that know or suspect that a mistake is made but have
7 adapted to the pressure of the group."

8 Again, who are they?

9 A. I'm not going to name them but I know a few.

10 Q. Do you accept that the only evidence of anyone being put
11 under pressure that we have heard is the evidence that
12 I've referred to where Mr Malcolm Graham gave evidence
13 that Mr McKie had telephoned him and issued what he
14 perceived as a threat?

15 A. I cannot comment.

16 Q. In paragraph 202 you suggest that these individuals that
17 you are not going to name be allowed to speak up. What
18 is stopping them?

19 A. I will give you one citation: the fear factor.

20 Q. Who is afraid of what, Mr Zeelenberg?

21 A. I gave you one citation: that is the fear factor.

22 Q. In paragraph 203 you suggest that relations between the
23 bureaux would be soured if they continue to co-operate
24 with Glasgow.

25 What are you suggesting there?

1 A. I was aware of the very fact and again this is my
2 assessment before the joining of these groups, so to
3 say, or bureaux, Aberdeen was speaking out against the
4 identification, Lothian & Borders were speaking out
5 against and if there is no reconciliation it's my
6 assessment that will sour the relationships. You have
7 to open it up. That was my assessment.

8 Q. Can you have a look at paragraph 206 for me, please. It
9 says:

10 "Those people that investigated the original
11 material and have made up their mind will probably never
12 reverse themselves. Whether this is a competency issue
13 or a psychological one remains difficult."

14 So my clients and those others who support the
15 identification are either incompetent or have
16 psychological issues, in your view.

17 Is that your evidence?

18 A. What I say is that whether they are not able to admit
19 what is so obvious I cannot be the judge of what the
20 problem is. I just indicate some areas but I cannot
21 tell. The reasons cannot be found in the fingerprint.

22 Q. Paragraph 208 refers to experts within SCRO who have
23 been under pressure and walking on eggs.

24 Do you mean by that that they have been avoiding
25 telling the world that they agree that the

1 identification of Y7 is incorrect?

2 A. Yes.

3 Q. Who are they?

4 A. I cannot tell.

5 Q. How has any pressure on them been exerted when our
6 clients were suspended and eventually their employment
7 was brought to an end?

8 A. I don't see the relationship. But I know for a fact
9 that there are people in there that are unable to speak
10 and I cannot name because I will put their position in
11 jeopardy.

12 Q. Who is it that is exerting the possession then if you
13 won't name those that are subject to it?

14 A. I don't know and if I would know I would not tell.

15 Q. How are they exerting pressure on these individuals that
16 you won't name?

17 A. I don't think I'm going to answer that.

18 Q. Mr Zeelenberg, are you not just casting aspersions? Are
19 you not just saying that there are individuals out there
20 who don't agree with this identification but they are
21 afraid to speak? I'm not going to tell you who they
22 are. I'm not going to tell you why they are afraid to
23 speak. Is that not the position you are adopting right
24 now?

25 A. No, what I am saying here is -- and if you read it this

1 was a kind of a prediction what was going to happen and

2 I have got clear signs that it is still going on.

3 That's what I am saying.

4 Q. What are those signs, Mr Zeelenberg?

5 A. I really -- I have confidential contacts with some of

6 the people and I know that it is going on.

7 Q. If you are not prepared to give evidence about it, Mr

8 Zeelenberg, why put it in your statement?

9 A. Because I think that it is important to analyse and to

10 really see that what is going on.

11 Q. I will move on.

12 Paragraphs 209 and 210 refer to the McKie case being

13 buried. The case has been discussed in a massive number

14 of fora over the last ten years. How has it been

15 buried?

16 A. The present position of the SPSA is -- and even I have

17 spoken to people in there, they are not even allowed to

18 use Y7 for training purposes.

19 Q. That hardly constitutes the case being buried, Mr

20 Zeelenberg. I mean, the present proceedings are

21 evidence that the case has not been buried; is that not

22 correct?

23 A. No, but the problem is not outside the SPSA. I was

24 talking about the problems within the SPSA and at

25 present experts which are in the SPSA are forbidden to

1 study Y7. It's not used in training purposes. That is
2 what I'm talking about.

3 Q. But you are not willing to tell us who those experts
4 are; you are not willing to tell us how those experts
5 are being pressurised into not speaking about Y7; and
6 you are not willing to tell us by whom they are being so
7 pressurised?

8 A. It's not about willing. I will correct that. I think
9 it's not in the interests of the people I'm talking
10 about if on the matter of training I have it from Joanne
11 Tierney myself that she was not allowed to use the
12 fingerprint for training purposes.

13 Q. Paragraph 211 of your statement goes on to say that the
14 only lesson learnt will be that if you make a mistake,
15 keep denying it and cover it up you can get away with
16 it. Our clients have lost a great deal, and you have
17 recognised that in your evidence, through their
18 adherence to the identification of Y7. Mr Graham, I
19 have already referred to, has spoken to perceived
20 threats. Mr Swann and Mr Leadbetter have spent a
21 significant part of the last 12 years fighting
22 complaints.

23 Under what circumstances does any of that amount to
24 getting away with it?

25 A. Well, I think there's still people within the SPSA

1 that's uphold that it is an identification. There's
2 nothing done against it and what I say is there's still
3 no investigation from the SPSA into the matter, into the
4 real causes. They really refuse to do that and I could
5 take again the example of the Mayfield case. The
6 example is there and it is not that difficult. It may
7 be cumbersome; it may be hurtful; but it has to be done.

8 Q. You make reference in the next part of your statement to
9 the international fingerprint community. Paragraph 217
10 states that the international fingerprint community is
11 still waiting for the matter to be resolved.

12 Are there not thousands of cases taking place daily
13 in courts around the world involving fingerprint
14 evidence?

15 A. Yes, there are.

16 Q. So are you not overstating the anticipation amongst the
17 international community somewhat?

18 A. No, definitely not because -- let's disregard what's
19 going on in Scotland but in the rest of the world, take
20 any recent paper on fingerprints, any recent study on
21 fingerprints from the NAS report or whatever of the OIG,
22 they are all referring to the McKie case as a negative
23 example how it is handled and as an example that you
24 should not trust fingerprints. That's the basic
25 underlying tone I must say -- so we all suffer.

1 Q. Is it not simply a case of a group of experts
2 admittedly, but experts from different countries around
3 the world, lobbying to make sure that Y7 is identified
4 in a way that agrees with their opinion?

5 A. Well, if you see it that way. I think we have seen the
6 evidence. All the experts, they are not lobbying
7 against -- why would they lobby against Scotland? Why
8 would they do that? It is just a professional matter.
9 The fingerprint is not from Shirley McKie.

10 Q. If it is of that much importance to the international
11 community at large, Mr Zeelenberg, why are there others
12 who are not co-operating with this Inquiry?

13 A. Who do you mean?

14 Q. There are other international experts who have been
15 asked whether they wish to participate and they have
16 refused to do so.

17 A. Well, there may be reasons for that and one of the
18 reasons is some of their organisations will not allow
19 them -- one of the things is you go against the
20 brotherhood of the police. Bell ringers are not very
21 popular. I've got my share of it and they may just be
22 reluctant to come here by the way they are treated or
23 exposed in the media. I don't know, but I think there
24 are a number of reasons.

25 The other thing is I have suggested it many, many

1 times from the very beginning the management of the SCRO
2 could have asked the assistance of New Scotland Yard
3 officially, "Please, tell us what is your opinion", and
4 the case could have been resolved in 1998 and could have
5 been resolved with a bunch of flowers and sorry and now
6 we are here.

7 Q. Paragraphs 227 to 231 suggest that if SCRO do not
8 consent to the release of the original material into the
9 public domain they are encouraging speculation that the
10 material given to those giving evidence to Justice 1
11 cannot be relied upon.

12 Is it not the case that if the original material
13 were widely released that speculation would be
14 perpetuated?

15 A. I don't see why. I have stressed to Mr Mulhern, please,
16 release the material and can it be discussed in
17 professional circles. The science should rule, the
18 science and nothing else.

19 Q. If you release the material to a much wider community of
20 experts and you exercise no control over the manner in
21 which they examine that material, in fact you are not
22 aware of the manner in which they examined that
23 material, does that not allow them to be criticised?
24 Does that not perpetuate debate?

25 A. I think debate is one of the essential elements of

1 science but I think in other sciences, provoking
2 discussion and issuing material and, as it is, via the
3 Internet and new communication means and with, say,
4 conferences the world is internationalising and that is
5 to the benefit of our profession and I think we should
6 use those modern means to profit from it.

7 Q. Paragraph 232 suggests that:

8 "The cloud of suspicion over Shirley McKie and David
9 Asbury remains because with the disputed print the
10 impression is maintained or at least condoned that both
11 parties could be right."

12 Is it not the case that should a conclusion not be
13 reached the notion that both parties could be right is
14 not being entertained, rather that one party is right,
15 that the state of expert opinions is such that it cannot
16 be determined which?

17 A. No, I think that -- and one thing we agree, both the
18 SCRO experts and our experts -- that not both parties
19 can be right and I think that that was explicitly
20 stated.

21 Q. Can you have a look at paragraph 235 for me, please. It
22 states that:

23 "The old strategy of SCRO management decide for the
24 experts what to say, never give in, and discredit
25 opponents and material, is effectively continued."

1 What evidence do you have that SCRO management tells
2 staff what to say regarding identifications?

3 A. I think that from the very beginning the SCRO staff and
4 others from Lothian & Borders were not allowed what they
5 thought about the material. We were openly discredited
6 on television and other things that we were incompetent
7 by using the Internet material and I think this strategy
8 is just continued and what HMIC was calling for was
9 accountability, transparency and I think that's never
10 effected.

11 Q. You said yesterday that the history will prove you
12 right. In fact, I think you said it again today. If,
13 hypothetically, if this Inquiry were to find that Y7 was
14 the mark of Shirley McKie, would you consider it fair to
15 say or for people to accuse you of bad practice or would
16 you just say that you were an expert giving your honest
17 opinion?

18 A. I would say that I'm an expert that gave my honest
19 opinion. I cannot say anything else. I will never
20 believe the outcome will be any different than it has
21 been so far.

22 MR HOLMES: I have no further questions, sir.

23 THE CHAIRMAN: Yes, have you any ...?

24 MR MOYNIHAN: Yes, there are two, one of which is an
25 omission by me. I spoke to Mr Zeelenberg earlier but it

1 is a point that may be of interest.

2 THE CHAIRMAN: Yes.

3 **Re-examined by MR MOYNIHAN**

4 Q. Mr Zeelenberg, with apologies to all concerned the one
5 matter that I failed to pick up was the reference to the
6 individual who committed suicide. It wasn't in fact
7 that but it was that area. What I want to ask you about
8 is not the past but in the realms of lessons that we
9 learn going forward.

10 There is a paper that is before the Inquiry that I
11 would ask you to look at. It is SG0916. You will see
12 that this is the note of a meeting in January 2007 of
13 the international experts meeting, perhaps in December
14 of the preceding year. Within that, if I turn to
15 page 3, electronic page 3, it is discussing
16 verification. The part that I am interested in begins
17 in the last two lines on page 3 and if I bring up
18 page 4. If we could highlight the last two lines and
19 also the continuation under the paragraph on the
20 following page and perhaps enlarge those so people can
21 see.

22 What it actually says is:

23 "The recording of errors was discussed and it was
24 acknowledged that this is an area that is problematic
25 throughout the UK, with no standardised approach across

1 bureaux. Moreover, there was no standardisation of how
2 errors by experts were dealt with. There was sense that
3 errors tended to be addressed through a disciplinary
4 process rather than as a training need. In particular,
5 in Scotland errors by trainees tended to be recorded as
6 such rather than being recognised as part of the
7 training process."

8 Were you part of the meeting of international
9 experts of which this forms part?

10 A. When was it?

11 Q. It would be December 2006?

12 A. I cannot recall but it may be that I was present. I
13 don't know.

14 Q. It is perhaps more important then that the theme -- you
15 have been discussing through evidence in particular with
16 me the question of culture?

17 A. Yes.

18 Q. If we are going forward in a positive way, let us not
19 look at the past about complaints and people feeling
20 they can't come forward, is there in the UK -- not just
21 in Scotland but in the UK -- a problem that because
22 errors are perceived as a disciplinary matter it may
23 inhibit people even disclosing that an error has been
24 made? Is that a problem that you recognise?

25 A. I cannot speak for the whole of the UK but just in

1 general terms if -- you have to refine what is an error.

2 If you have situations somebody says, "I have identified

3 it" and you deem it insufficient, then you err.

4 Then the mistake would be then that we assume that

5 one is right and the other one is wrong. Since we don't

6 know the ground truth, you have to be very careful

7 because you could just differ of opinion about

8 sufficiency and that you have to guard very care because

9 the most careful one may be the one to cherish rather

10 than the more incautious one.

11 I have seen cases or procedures -- I don't know what

12 the present situation is -- in which such a situation if

13 two were in agreement that it was an identification and

14 the other one was more cautious that he was going to get

15 a yellow card and reported. I find it very, very

16 unfortunate and not really contributing to the good

17 culture because you cannot call it a mistake. There are

18 not that many mistaken identifications, not in any

19 bureaux, and I think I would rather see it or encourage

20 people to say where they go wrong. I mentioned today of

21 one of our experts that went wrong and was caught on

22 verification. He has learnt so much from it that he,

23 from that day onward, was a better expert. Rather than

24 to punish him, we see it as a training matter -- even

25 real mistakes.

1 Q. Again, from the point of view of learning lessons. From
2 your exposure to SPSA as part of the international
3 panel, is this something that even today remains an
4 issue within SPSA, people being disinhibited from open
5 discussion because of an apprehension that it might
6 escalate into disciplinary proceedings?

7 A. I don't know the real detail at present but I think that
8 they talk about conflict resolution and I'm really not
9 so happy with the word "conflict" because there is a
10 difference of opinion about certain matters and I think
11 in general I would say you have to be very, very careful
12 how you handle these things because in the past I know
13 that I talked about hidden messages.

14 Let me take one. If you have a trainee and he comes
15 forward with an identification, so to say, and said I
16 found let's say 15 points and then the boss is looking
17 at it and say "I find 18". The hidden message is if you
18 grow up, you can find as much as I can. We have to be
19 very careful with these hidden messages. If you get any
20 situation in which two people agree and the other
21 disagrees about sufficiency, then if he is in some way
22 getting the idea that he is out of line, he will try to
23 be in line the next time and he will adapt to the higher
24 grade or the lower standard.

25 In general, I think it's a very sensitive issue, let

1 me say it like that.

2 Q. Just an issue then that we will keep our eyes on. Is
3 that something that you would suggest we need to look
4 at?

5 A. Yes.

6 Q. The second point which arose out of some question about
7 the Evett and Williams report -- but I am not going into
8 the Evett and Williams report -- but at page 131 of the
9 transcript, you mentioned a need for a descriptive model
10 to define a point of similarity. In the past I have
11 asked people about an objective standard that might
12 judge sufficiency and a number of individuals -- it has
13 become a recurring theme -- have told me it's not
14 possible to have an objective standard for what is
15 essentially a subjective question.

16 First of all, do you think there is any prospect of
17 an objective standard by which one could judge the
18 correctness of a fingerprint identification?

19 A. We will never arrive at total objectivity -- I think we
20 would never -- but the term descriptive model and
21 decision-making model comes from two professors in the
22 Netherlands who have studied certain types of forensic
23 material like lip prints, ear prints, footprints and
24 fingerprints and they came with a kind of different
25 paradigm that they said, "If you operate in this

1 atmosphere, then you should go for a descriptive model
2 and a decision-making model in order for you to be able
3 to control the whole of your process."

4 If we look at the documents from the Interpol
5 European Expert Group on Fingerprinting, we have tried
6 there to describe this decision-making model and
7 descriptive model and the OIG, in his study of the
8 Mayfield case, said what we see is that to our
9 assessment that the whole process is much too intuitive,
10 they talk about gut feeling and they said look at what
11 the documents of Interpol say about it and take examples
12 because they are much more explicit, you could learn
13 from that. So I find that it was -- I was proud that
14 the OIG referred to the document, yes.

15 Q. So would your conclusion be that in the existing
16 Interpol guidance we can find that descriptive model or
17 do you think further work still requires to be done?

18 A. It's never done but I think that the Interpol
19 documents -- and I was heavily involved in that, in the
20 writing of it and it reflects much of what we do in the
21 Netherlands -- can be a very good step up to really get
22 hold of what you were doing in practice, yes. It's
23 never full. We still develop it in practice by
24 discussing things and you always get these new rules of
25 thumbs in place.

1 Let me give one example. A point which you
2 initially think it is a dissimilarity and people say, "I
3 can explain it" and now they mark it as a similarity.
4 We say, "No, the rule is you had a problem because you
5 thought it was a dissimilarity and once you have
6 explained it, you can now not say fairly that it is a
7 similarity." So it's very simple rules of thumb and
8 that can assist you in your decision-making.

9 MR MOYNIHAN: Sir, that completes the questions I was going
10 to ask.

11 THE CHAIRMAN: There were just a few random points you can
12 assist me with.

13 You said that your examiners wouldn't know any facts
14 at all.

15 A. No.

16 THE CHAIRMAN: Does that mean if, for example, a print was
17 taken from a piece of wood they wouldn't know that that
18 was the background to it?

19 A. Well, yes, that's one of the exemptions -- exceptions,
20 sorry. What they will see on the paper that is with the
21 case, with the folder, the substrate on which it is
22 found and the detection technique and if they see the
23 need to go back to it then it will be available, not all
24 the time because most of the work we have nowadays is
25 digital photography. But, yes, that they would know,

1 yes.

2 THE CHAIRMAN: But what they wouldn't know is in Q12 the
3 message -- if that is the right word -- that was
4 attached to it said, "ident [meaning identity] required
5 for Marion Ross".

6 There are explanations for that, one being that
7 there were three prints, that one person's had already
8 been identified and to show which one was wanted but
9 that wouldn't happen with your experts?

10 A. No. In the old process, of course, if you get a folder
11 with a fingerprint to be examined then you know that the
12 purpose would be comparison and coming to a conclusion.

13 In the new process it will be even more blind and
14 more distant but you cannot avoid, if you give a
15 fingerprint expert two fingerprints that are alike, then
16 he can only conclude that the suggestion that he has to
17 compare it. You cannot avoid it.

18 THE CHAIRMAN: I apologise for jumping round various things
19 but it is just collecting up a few points that are of
20 interest to me.

21 We have been given evidence that a machine, which
22 you may be familiar with, called a comparator was used.
23 That was at the end, except when they conducted what is
24 called a blind test or was described by some as a blind
25 test. With the comparator of course you are looking at

1 both together. Unless you have used the system which
2 you prescribe, which is that you look what you have seen
3 on the latent print, then I presume you would agree that
4 there is a danger, even at a late stage, that you would
5 naturally begin to translate points --

6 A. Oh yes, yes.

7 THE CHAIRMAN: -- from the ten-print to the latent?

8 A. Yes, I agree. I think the fingerprint comparator in the
9 old days without computers was an improvement upon using
10 the glasses and just pointing on small things. But we
11 have purchased a fingerprint comparator, I think
12 25 years ago, and I find it a horrible machine because
13 it's kind of -- with the matt glass that's underneath,
14 it's kind of obliterating what you see. It doesn't make
15 it clearer and the other thing is that you have to mark
16 your points in the analysis and you cannot wipe them off
17 and preserve them. That's why I didn't use them for
18 HMIC purposes because I could not have preserved my
19 findings there. You have to wipe it clean and stay(sic)
20 again. I didn't like the machine. In those days we
21 already used computers to compare images and to save
22 them.

23 THE CHAIRMAN: When you were looking at Q12, you pointed to
24 thickening -- one ridge was thicker than another.
25 Earlier in the Inquiry, questions were asked about

1 whether using superglue that some of it can adhere and
2 give the impression of thickening that isn't actually
3 there. What are your views about that?

4 A. I think that, yes, in general the detection technique
5 matters because one of the detection techniques may
6 adhere to the fatty substance and other techniques may
7 adhere more to the moisture and things can be dried out.
8 But I think that I will be inclined to say that the
9 generic process that is applied would then apply to all
10 of the pieces of the finger in the same way so that not
11 one ridge would be thicker than the other one. It will
12 be kind of a generic process --

13 THE CHAIRMAN: Other ridges would be affected in exactly the
14 same way?

15 A. Yes.

16 THE CHAIRMAN: I should say at once that it was not a
17 fingerprint expert and my recollection -- and it was a
18 long time ago in the Inquiry -- was that a Scenes of
19 Crime Officer suggested that the fingerprint looked like
20 that of a woman or a child because it was so small. You
21 have demonstrated that this is a very small part of a
22 print.

23 Is it possible to express any view as to whether it
24 is the print of a small finger or a large person's
25 finger, if I can put it that way?

1 A. You know, it was probably -- I don't know who said it --
2 an older expert with all due respect because when I was
3 in this job and we had to search fingerprints, you had
4 to do your best estimate as what the source was because
5 you had to search for hours and hours over there. So
6 you wanted to know, to guess what finger it was, whether
7 it was a woman or whether it was a child so you don't
8 search. I must admit that when I'm looking at a
9 fingerprint it came to me and said it could be a woman
10 or a child, yes, because of the tininess. But you can
11 be very, very wrong there because there may be people in
12 the room with very small fingers, with very fine lines.
13 So there's no certainty.

14 THE CHAIRMAN: In fairness to the witness, I don't think he
15 was holding himself out as being an expert but saying
16 his impression was that it was a very small print and
17 therefore could be that of a woman or a child.

18 A. That cannot be excluded -- definitely not, no.

19 THE CHAIRMAN: When you work on the AFIS system, are you
20 drawing on fingerprints from within the Netherlands or a
21 much wider group?

22 A. At present we are able to search our own collection. We
23 can of course use Interpol channels to have wider
24 circulation. I have been heavily involved with the
25 workings on the Prüm Treaty -- that is a town in

1 Germany -- and that has now facilitated the exchange of
2 DNA, fingerprints and licence plate numbers on a regular
3 basis. We would then be able -- the technique is there,
4 the treaty is there, then I would be able to be behind
5 my computer and say "search this one in France and
6 Germany" and the whole of the European Union in the end.

7 THE CHAIRMAN: Better restrict it to the Netherlands alone:

8 can you give any idea of roughly how many would be
9 thrown up as being even in the approximate area of a
10 particular print? Could it be sometimes hundreds,
11 sometimes ten or --

12 A. The point is you decide for yourself what the length of
13 the candidate list is.

14 THE CHAIRMAN: I see.

15 A. That's what you decide for yourself. What you can do is
16 you can set thresholds that if the second or the third
17 or the fifth one is so much per cent lower than the
18 former one, then the likelihood of this being a match
19 can be ... so that's a learning process, I would say.

20 But in normal days we would use a candidate list of

21 20. If we do reverse searching, like new ten prints
22 coming in, looking at old latents in the database, we
23 would have a list of about ten and under the Prüm Treaty
24 we would only exchange the candidate list of five.

25 THE CHAIRMAN: So one cannot, as it were, say there may be

1 15 people with prints that are even in the roughest
2 area of a particular one because it just depends how you
3 set the test?

4 A. Yes. Maybe just to enlighten you on upon that, what we
5 see is that the accuracy of the fingerprint computers
6 become much, much better. So then we start learning
7 that with the majority of latents that we search, the
8 candidate will be found within the first ten and with
9 ten prints we see there's an accuracy above 99 per cent
10 the candidate is always on the first place.

11 THE CHAIRMAN: On another quite different point, I gather
12 that the population of the Netherlands is about
13 16 million and the population of Scotland is about
14 5 million, higher than 5 million now, I think. Your
15 system that you have put in must be quite
16 expert-intensive and you require a large number of
17 experts?

18 A. No, I think we are a rather small organisation. I think
19 we have now ten latent experts only and there are some
20 in the country and with the overhaul, it will all be one
21 organisation with remote locations, seven remote
22 locations and I think on the latent level there will be
23 20 or 30 experts in the Netherlands in total.

24 THE CHAIRMAN: In the entire Netherlands for a 16 million
25 population?

1 A. Yes.

2 MR SMITH: Sir, I wonder if I could just ask a question to

3 try and help the Inquiry. I think it may be important

4 in that regard.

5 Mr Zeelenberg, insofar as the database is concerned

6 that you use in the Netherlands does that include

7 fingerprints taken from persons entering through

8 Schiphol Airport?

9 A. At present, the system is also containing fingerprints

10 of immigrants but they will be taken out. It will be

11 just a criminal database. The discussion is always

12 going back and forth but that will be taken out and it

13 will be a separate database.

14 Q. But at the present time it includes people who come into

15 Schiphol, perhaps claiming political asylum, and they

16 are checked to see if they have presented themselves

17 before with a view to deciding whether to send them out

18 of the country. Is that correct?

19 A. Yes. It's not only Schiphol. There are many asylum

20 points where they can apply for asylum over the

21 Netherlands. What we try to do is of course in the

22 early days check whether they are genuine asylum

23 seekers, have not had previous criminal involvement and

24 also of course under the Dublin treaty we try to find

25 out whether they have applied in other countries before

1 and we do that via Eurodac. Eurodac is the European
2 system for asylum seekers and I am proud to say that I
3 am the initiator of that and also gave it the name of
4 Eurodac.

5 THE CHAIRMAN: I very recently discovered as you go into the
6 United States they take your ten prints very quickly
7 also.

8 A. That's the Homeland Security system.

9 THE CHAIRMAN: There were two last things I wanted to just
10 touch on. One has been recently discussed about the
11 Evett view. My impression on reading that -- indeed,
12 more that my impression -- is he is saying really that
13 the Dutch and the German bureaux are more cautious than
14 perhaps the United Kingdom is. You would agree with
15 that, would you?

16 A. Yes. At that time definitely when he was doing that. I
17 have nothing to say any different than he was right in
18 his findings, yes.

19 THE CHAIRMAN: You will be familiar with the National
20 Academy and their recent report. I hope I quote it
21 correctly but they said:

22 "Uniqueness doesn't guarantee that points from two
23 different people are always sufficiently different that
24 they cannot be confused.

25 That is a statement that I have just quoted from

1 there. My understanding of your evidence is that Y7 is
2 sufficiently different that it cannot be confused. Is
3 that your position?

4 A. With the fingerprint from Shirley McKie?

5 THE CHAIRMAN: Yes.

6 A. Oh yes, definitely.

7 THE CHAIRMAN: And Q12.

8 A. That is to the point of the exclusion. I have no doubt
9 this is not coming from the finger of Marion Ross
10 whatsoever and you cannot confuse it, no.

11 THE CHAIRMAN: So neither of those prints comes within that
12 description in your view?

13 A. No, because it is an exclusion rather than an
14 identification.

15 THE CHAIRMAN: One absolutely the last point I want to raise
16 with you is you have referred to Brandon Mayfield and
17 the attitude of the FBI and the way they reacted. Would
18 you agree that there is an important distinction which
19 is that in that case they knew ultimately whose
20 fingerprint it was? Here in this case we don't know who
21 the owner -- if you are correct, we don't know who the
22 owner of this fingerprint is and I suggest to you that
23 is quite an important distinction for those who are
24 being asked to acknowledge that they have got it wrong.

25 A. Yes, I fully agree with you that -- I must be very

1 careful here, but the fact that the Spanish police found
2 another possible donor for this print, that it was very
3 instrumental for them to change their mind, yes, and
4 that was beneficial to them, yes. I would say so, yes.
5 It's a good observation, yes.

6 THE CHAIRMAN: That concludes all I have to ask you but what
7 I would like to do is to thank you for assisting me with
8 this Inquiry and, whatever the outcome, I would like to
9 thank you for the trouble you must have taken over your
10 description of your views in the early part which was,
11 as I said earlier, we thought our IT was very good but I
12 must say yours was extremely good. Thank you very much
13 indeed. So that neatly I think brings us to 4.00 and we
14 will sit again at 10.00.

15 MR MOYNIHAN: Yes, sir, with Mr McLeod.

16 **(4.00 pm)**

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

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