

Thursday, 15th October 2009

1

2 (Morning session)

3 **(10.05 am)**

4 MR MOYNIHAN: Sir, before I call Mr McKie, the one point I

5 had to tidy up was, as I mentioned to you at the end of

6 last week, an error I had made in relation to

7 Mr Wertheim's evidence about the Rosetta characteristic

8 and the reference for that which you had asked was on

9 6th October at page 41 of the LiveNote transcript.

10 Sir, with that introduction the next witness is

11 Mr McKie.

12 **IAIN ARTHUR JAMES MCKIE, sworn**

13 THE CHAIRMAN: We probably have your full names but just so

14 we have them on the record can you give them again.

15 A. Iain Arthur James McKie.

16 **Examined by MR MOYNIHAN**

17 Q. Good morning, Mr McKie.

18 A. Good morning, Mr Moynihan.

19 Q. You have provided the Inquiry with two statements that

20 you have prepared yourself.

21 A. Correct.

22 Q. Obviously, as you are aware, some of the passages will

23 not appear in the published version essentially because

24 they are not relevant to the Terms of Reference.

25 A. Yes.

1 Q. However, subject to that, you are content that you have
2 set out to the best of your recollection a true account
3 of the matter?

4 A. Yes.

5 Q. What I want to do, Mr McKie, is not to go through the
6 detail of your extensive statement, rather just to pick
7 a few important points.

8 The first one I want to begin with is in your first
9 statement, part 1 (that is FI0181). If I pick up
10 paragraph 12 of that, this is the part where you speak
11 of the desire for truth and reconciliation, all parties
12 accepting the findings and moving on with their lives.
13 That is your desire?

14 A. It is my heart-felt desire and it's my reason for doing
15 what I've done and submitting the evidence I have
16 submitted. We all need, in my opinion, an end to this
17 and the best end would be the truth was on the table.

18 I don't think it's a question of right or wrong. I
19 think it's a question of establishing the truth to
20 everybody's satisfaction and letting us all move on
21 because it's been a long, long trail.

22 Q. One of my points I would like to ask you about that is
23 that for some of the officers, the Fingerprint Officers
24 who have been involved in this, some of them no longer
25 practice in fingerprints. However, you have a number of

1 references peppered through your part 1 to three
2 officers who do still continue to practise.

3 What I am just wondering is, in relation to them
4 moving on and getting on with their lives, what your
5 position is in relation to them?

6 A. My position is that if we all speak the truth then
7 everyone can move on with their lives. I hold no --
8 I've no axe to grind with any of these people at all on
9 a personal level. It's not been a great 13 years for
10 them or for ourselves and I just feel much more
11 important in this whole affair is learning the lessons
12 and there are many lessons I believe to be learned.

13 To some extent of course I believe that their future
14 is in their own hands, not in my hands at all and I
15 think that they need to take cognisance of that as well.
16 Providing everyone speaks the truth in this, I have no
17 axe to grind with them at all and certainly I have no --
18 I'm not a judge in this at all. My role is to give my
19 statement to the Inquiry and to leave it to that. It's
20 up to the Inquiry itself to come to these conclusions.

21 Q. One of the points you make in your statement is that you
22 think Y7 should be used as a training exercise.

23 Would you accept that at the moment that is, at this
24 precise point, premature because, first of all, one
25 needs to know whether it's been correctly identified or

1 not and that requires to be definitively determined?

2 A. I think my position, as I've probably said in my
3 statement, slightly different. I believe from my point
4 of view -- I've got to stress that -- I believe I know
5 the truth of Y7 and I've laid out the reasons why I
6 believe that. So I think from my point of view that's
7 slightly different but I do accept that a judicial
8 decision by this Inquiry of course is extremely
9 important.

10 I still believe that there were lessons that could
11 have been learned from Y7 and from Q12 and perhaps the
12 animosity that's developed and the side-taking that has
13 developed could have been prevented. I still believe
14 there's a big part to play in training in the future and
15 I'd like to think -- I mean, I've made mistakes and will
16 continue to make mistakes and I would like to think I
17 could face these mistakes and move on and that's what I
18 hope will happen.

19 Q. I imply no criticism but obviously in relation to the
20 argument, as you have said, you come from one side and
21 you argue that forcefully. There is an opposing side
22 and this is the first proper opportunity for the two
23 sides to put their case and for it to be determined.

24 A. I think that's exactly right, yes.

25 Q. Obviously, insofar as the three existing officers are

1 concerned, first of all, one would need to know what the
2 judicial determination is in relation to Y7; is that
3 correct?

4 A. Of course, yes.

5 Q. More importantly, one would need to know what lessons
6 ought properly to be learned from that?

7 A. Absolutely.

8 Q. Indeed, in the first instance, it would then be for each
9 of those three officers to assess his own position in
10 the light of the determination?

11 A. Correct.

12 Q. Indeed, thereafter it would be a matter, should any
13 issue arise, for their employers to determine?

14 A. I do believe that. I would like the officers and their
15 employers to take this matter -- and this is not my
16 business at all and to some extent, reviewing the
17 statements that I've given, I can realise that I have
18 been forceful and a minor part of regret in that, but
19 that's the way it was. I stand by the statement I made
20 at the very beginning of truth and reconciliation. I
21 really, really believe we've got to move on -- all of
22 us.

23 Q. The next point, really just building on from that, you
24 have in your statements made reference to the fact that
25 if one turned the clock back you would have wished there

1 to have been an open, professional debate about Y7 based
2 on images of unquestioned authenticity?

3 A. Yes.

4 Q. Would you acknowledge for me that, again, if one is
5 looking at this from the outside of course it is fraught
6 with difficulty about confidentiality on all sides?

7 A. Yes, absolutely.

8 Q. Indeed, some of the officers who are involved, some of
9 the Fingerprint Officers primarily involved, may have
10 had a difficulty in that they were inhibited by virtue
11 of their duties of confidentiality, inhibited in
12 participating in a public debate?

13 A. I think that's partially true. However, I think it's
14 totally wrong to say that there was no opportunity for
15 the truth to be spoken in this. There were many
16 opportunities for the truth to be spoken and, in my
17 opinion, it wasn't spoken.

18 So, while I agree to some extent, I still believe
19 along the way, from the very beginning, when the trial
20 ended on 14th May 1999, there was the opportunity then
21 for us all to sit back and reflect on what had happened
22 and my problem is that we didn't do that. Not only did
23 the experts not do that but the authorities did not do
24 that and, as my statement says, I to some extent hold
25 the authorities as responsible as I do experts.

1 Q. Can I therefore look at that particular point. One way
2 I have of focussing is to look at the first opportunity
3 that there was for a reflection on the outcome of your
4 daughter's trial.

5 First of all, before I do that, if I can just pick
6 up one of the points you yourself made. It is in
7 paragraph 45, page 7 of your statement. If you allow me
8 just a second, Mr McKie, I will bring it up. It is
9 FI0181.

10 In paragraph 45 you are speaking of a time prior to
11 your involvement with Mr Wertheim, therefore down to
12 about March 1999, when even you say:

13 "It has to be remembered at this time we were not
14 claiming that the SCRO experts were wrong in identifying
15 the print as Shirley's because our previous police
16 training had lulled us into accepting that such experts
17 were infallible and as 'scientists' displayed honesty
18 and integrity. The various double-checks we believed
19 had been carried out only strengthened our conviction
20 that while the print was hers something must have gone
21 seriously wrong. Our sole focus was on the belief that
22 the print, although hers, must have been forged or
23 placed in the house accidentally or transplanted there
24 by persons unknown -- probably by other than the
25 experts."

1 A. Yes.

2 Q. So what we have to accept is even in the cauldron of
3 pressure that was in the lead-up to your daughter's
4 trial for perjury, you, in common with many of the
5 others involved in this particular matter, had a firm
6 belief in the infallibility of fingerprint evidence.

7 A. Yes, I did.

8 Q. Reinforced in this particular case by the fact that the
9 officers had been asked to check and recheck the
10 fingerprint and had come back with the same opinion.

11 A. Absolutely.

12 Q. As I understand it, not only you, your daughter and some
13 of the other police involvement in this to adopt that
14 approach, that the fingerprint evidence was infallible,
15 put you, as a very senior retired police officer, in an
16 invidious position involved by implication a serious
17 allegation that others, not necessarily police officers
18 but others, had forged evidence in the case?

19 A. That was the only place for us to go at the time. I
20 really did believe -- I had been in CID and I've said
21 before when we found a fingerprint that was the end of
22 the case and that stuck with me so much. But there were
23 so many mysteries surrounding this. I believed my
24 daughter was telling the truth, I believed that the SCRO
25 were honest people and I believed that the police

1 basically were honest people and can you imagine just a
2 few weeks before my daughter's trial and we have no
3 evidence at all, we have no witnesses, no experts at all
4 to tell us that and it wasn't until Pat Wertheim
5 appeared on the scene that we finally realised what the
6 truth was and, please believe me, it came as an almighty
7 shock.

8 Q. I am grateful to you because the shock, in a sense, then
9 all the fog cleared from your perspective --

10 A. I didn't catch that, sorry.

11 Q. The shock was that the fog cleared and all of a sudden
12 it became clear for you the problem arose from a
13 mis-identification of the print?

14 A. Yes, unfortunately because we were only a few weeks from
15 the trial and you can understand the difficulty that the
16 advocate had in picking up that because Mr Findlay
17 himself, I believe, and I've had my moments with
18 Mr Findlay, that he believed in fact that fingerprint
19 evidence was infallible as well and he was doing his
20 best to represent my daughter.

21 When we discovered from Pat Wertheim and then David
22 Grieve that, in fact, it was wrong, I know from
23 Mr Findlay's writings how surprised he was and he
24 realised the severe impact that this could have on so
25 many areas of our life. We're both ex-police officers

1 and the impact of this was enormous at that time leading
2 up to trial and we had to get, I suppose, our heads
3 together and try to look at what the defence was going
4 to be.

5 Q. Again, speaking of it as I am just now makes it sound as
6 if there is only one issue here at the trial ultimately
7 and that's the correctness of the identification of the
8 fingerprint.

9 You are critical of the meeting afterwards that took
10 place on 20th May; is that correct?

11 A. I am, yes.

12 Q. I wonder if you would accept from me -- and I will lay a
13 base for this coming back -- but would you accept from
14 me the clarity with which you see this case as being
15 only the correctness of the fingerprint evidence is
16 perhaps a simplification of it? If you looked at others
17 who were looking at this from outside to understand that
18 they've gone wrong, to concentrate solely on the
19 correctness of the fingerprint evidence is a
20 simplification?

21 A. It's a very big over-simplification and hearing some of
22 the evidence, oral and written that we've seen at this
23 Inquiry, its quite abundantly obvious that minds were
24 going in different directions but my position must be
25 that when you prosecute a police officer for perjury you

1 need to know what you are doing. My feelings are that
2 this went wrong in many areas in the lead-up to my
3 daughter's prosecution. I mean, we know from previous
4 evidence that an independent -- I think it was
5 Mrs Greaves had suggested to her that or she had
6 suggested we should be looking for an independent
7 expert. There was forensic evidence led at my
8 daughter's trial. There were police officers on watch
9 on the house brought out as witnesses at my daughter's
10 trial. There was lots of evidence that actually turned
11 up, except for the fingerprint there was very, very
12 little evidence against my daughter and I suppose, if
13 we're talking about the time, of course I'm now looking
14 back on my recollections that have happened over the
15 years, there was a lot of evidence -- I still criticise
16 the prosecution authorities for the way they pursued
17 this.

18 I think possibly they pursued it with the arrogance
19 of infallibility as well because we've also noticed in
20 the statements the word "infallible" is used by more
21 than one of the lawyers involved in this. One of the
22 lessons I hope we learn from this whole affair is, in
23 fact, expert evidence is not infallible.

24 I don't want anyone to go through what we went
25 through. So while the simple answer is in my mind the

1 fog cleared, the fog should have cleared in the minds of
2 the prosecutors long before that and they should not
3 have fallen into the trap of taking the evidence of
4 expert evidence as infallible. There was other
5 evidence, they had a responsibility to look closely at
6 that evidence and to assess it before they put my
7 daughter on perjury.

8 May I add it's a crime which is seldom prosecuted.
9 It's not a regular crime to prosecute. Against police
10 officers, it's not often prosecuted. I think there's a
11 duty on the Crown and a duty on the police to do their
12 job better. But, again, all I say is I hope the lessons
13 have been learned.

14 Q. If I may just pick up one of the phrases you have used
15 there, "the arrogance of infallibility". The fair
16 position is before Mr Wertheim's intervention there
17 would have been a consensus, yourself, your daughter,
18 the prosecutors and others, that fingerprint evidence
19 was indeed infallible.

20 A. Yes, I accept that.

21 Q. Whether that's right or wrong of course is an issue for
22 the Inquiry. Would it not be fairer to avoid using such
23 phrases as "the arrogance of infallibility" when in
24 fact, if it's wrong, it was a common fallacy that
25 everyone involved in the case shared?

1 A. No, I can't agree with you. I believe the word
2 "arrogance" is perfectly put there. There's an expert
3 arrogance that I've notice in our courts over the years
4 and you can imagine over the last 13 years I've had
5 cause to look at many other cases involving experts and
6 the word "arrogance" fits the bill completely.

7 I think it also fits -- I'm not, in a perch of
8 sense, I'm not criticising people for looking at things
9 as infallible. I'm looking at a system which allowed
10 this to happen and I believe the whole system, from the
11 Crown Office down, the police were arrogant.

12 My daughter as far as I'm concerned was, if you
13 like, a little police lady and they didn't give it the
14 thought they should have gave it. All I hope is when
15 they approach expert evidence in the future -- and I've
16 got to say I don't necessarily see signs of that at the
17 moment -- that they will see things differently. So,
18 no, I believe that the word "arrogance" was chosen
19 carefully but it was not meant as a criticism of
20 individuals it was meant as a system thing.

21 Q. In looking again at the lead-up to the 20th May meeting
22 which of course, as you now know, was requested by SCRO
23 itself with a view to learn lessons, we in this country
24 by virtue of the Contempt of Court Act cannot ask the
25 jurors why they reached the decision they did but the

1 one insight we may get to the thinking was to look at
2 what the judge charged the jury. My reason for looking
3 at what the judge charged the jury is to suggest to you
4 that the clarity with which you see things now (namely,
5 that the fingerprint evidence was wrong, full stop) was,
6 in fact, just one of the many points that the judge made
7 and, indeed, was quite far down the road that the judge
8 suggested, in his own inimitable style, a number of
9 simple answers that the jury might consider.

10 A. That's right.

11 Q. If we just look at them now, if I bring up the charge
12 that the judge made, CO1465. It is not long, at least
13 on this copy, mine begins at page 3. If we move through
14 the covering sheets to page 3, on my copy it is page 3
15 of 24. So it is a relatively short charge. If I take
16 you to page 12, I just want to look at pages 12 through
17 to about 20.

18 His Lordship is looking at the onus of proof which
19 of course is on the prosecution. Then at C he takes
20 up -- if I bring up pages 12 and 13, at page 12 letter
21 C:

22 "If you reach neither of these conclusions that's
23 not the end of this matter, it's merely the beginning
24 because the Crown must still thereafter prove to your
25 satisfaction that she is guilty, and that is where, in

1 the way Mr Findlay emphasised it to you yesterday
2 afternoon, he is quite correct, to take his metaphor,
3 it's not an equal contest. The Crown must surmount
4 every hurdle that it places in its own way, quite
5 rightly, before you can establish guilt. And if any of
6 those hurdles -- and I'll just tell you in a few moments
7 what they are -- are not surmounted, then at each stage
8 the Crown case will fail completely and you must acquit,
9 bearing in mind that each hurdle has to be surmounted
10 beyond reasonable doubt."

11 So what his Lordship is saying is that there are a
12 number of hurdles that have to be overcome by the
13 prosecution. In fact, I just see the top of the page
14 the part his Lordship has preceded this with. If I
15 bring up digital page 12 and page 13, his Lordship had
16 begun at page 11 letter C by saying that he:

17 "... is not inverting the onus but common sense
18 might dictate to you and it's entirely a matter for you
19 that the first thing you might like to consider when you
20 retire is whether or not you believe Ms McKie on the
21 basis that she gave evidence to you entirely consistent
22 with the position that she has followed from the start.
23 She does not have to prove anything, as I've said, she
24 remains innocent until the presumption is rebutted. But
25 the fact remains that she has told you she is innocent

1 and if you believe that that's the end of the matter and
2 you need take the matter no further. If you are
3 satisfied to that effect, you simply conclude that she
4 is an honest and straightforward witness and you can
5 come back to me in five minutes' time and tell me that;
6 you need take the matter no further, and you needn't
7 even start to consider the question of fingerprints."

8 So that is what he said: they might arrive at in
9 five minutes without even looking at the fingerprints?

10 A. That's right, yes.

11 Q. What has happened is, if I explain, my notes are the
12 digital pages not the original transcript pages. So his
13 Lordship then, in effect, is saying if, however, the
14 jury is going on to consider the fingerprint evidence
15 then there are these hurdles that he is going to lay out
16 and it's like any hurdle race, if they simply fall at
17 the first hurdle that is the end of their race and then
18 the prosecution must run over all these hurdles to the
19 end.

20 If I take you then to the digital page 14 and
21 perhaps we can bring up 14 and 15 you will see the first
22 hurdle. He says at page 13, letter A of the original
23 transcript:

24 "Now, ladies and gentlemen, if you are embarking on
25 that exercise [that is considering whether the Crown has

1 overcome hurdles] looking at the Crown case the first
2 question you have to consider -- which Mr Findlay put
3 very clearly before you yesterday -- is if, lets assume
4 for the moment, if this is Ms McKie's fingerprint, how
5 did it get there and when did it get there? The Crown
6 as I understand it -- it's your recollection that
7 matters -- but according to what I noted yesterday, the
8 Crown go for -- if that's the right expression -- some
9 time on the Saturday and say, well, that's when she must
10 have slipped in, contrary to any loggist's evidence,
11 implanted the fingerprint.

12 "But ladies and gentlemen, as Mr Findlay pointed out
13 to you, what you must consider with the greatest of care
14 in this context is the evidence of the man Wilson who,
15 in fact, lifted the print on the Tuesday. We know from
16 Thurley that he dusted the aluminium powder down on the
17 Tuesday -- I beg your pardon, lifted the print on the
18 Tuesday following. We know that Thurley found dusted
19 the aluminium powder on the Thursday, the first morning
20 of the investigation, but what Wilson says, as I noted
21 it -- and it's your recollection that matters -- is that
22 when he finally found the print with the black powder on
23 the Tuesday, he saw, prior to it coming up, no sign of
24 disturbance in the aluminium powder, no sign that there
25 was a print that had been implanted upon it. Though

1 it's entirely a matter for you, what you have got to
2 consider very carefully is what conclusion you draw from
3 that evidence. One obviously conclusion which is open
4 to you is that the print was there when the aluminium
5 powder was put on it. That is consistent with Wilson's
6 evidence and there's no evidence to a contrary effect.
7 If that is the case, the Crown case fails."

8 So what Lord Johnson is very clearly expressing to
9 the jury is before ever they get to the technical
10 fingerprint evidence the Crown case might have collapsed
11 because they cannot put your daughter's fingerprint --
12 even if it is hers -- on the door at the correct point
13 in time?

14 A. Yes, that's one part but do you want me to look a little
15 further?

16 Q. I was going to go through the rest of the hurdles just
17 to see in context but, please, feel free to comment?

18 A. Just to make a brief point on this: when this other
19 evidence failed, when the forensic evidence came up how
20 the forensic powder was laid down and when the other
21 loggist evidence came through that she could not have
22 been seen in the house, all of that evidence in my mind
23 pointed to the fact that the fingerprint was wrong. So
24 while his Lordship may, in his summing-up, which was
25 studied and studious and had to be done the way it was

1 done, the fact of the matter is that once that evidence
2 fell it meant that the fingerprint in itself was wrong.
3 My daughter could not have been in that house, ergo the
4 fingerprint could not be hers and this is the point I'm
5 trying to make here, it was abundantly clear the
6 fingerprint was not hers from the other evidence led.

7 Q. Sorry, if I come at it from my perspective, all I am
8 doing is trying to take from the judge and his charge,
9 it's the only record we have of someone reasoning
10 through this, that there could have been a number of
11 complicating, variable factors in play when people are
12 looking at it on 20th May, which is shortly after the
13 trial, that over time have been distilled with a degree
14 more clarity than they had at the time?

15 A. There were complicating factors on 20th May; yes, I
16 accept that.

17 Q. The next one if I move to the digital page, page 16 --
18 perhaps I will bring up 16 and 17 -- we move to what his
19 Lordship says about the second hurdle. Again, it is
20 page 15 and 16 of the original transcript. His Lordship
21 says at 15B:

22 "The second hurdle is why would Ms McKie do this and
23 stick to her position from day 1, moment 1, apart from
24 the very initial reaction where she didn't think very
25 much about it because obviously, as we know, rogue -- to

1 put it loosely -- fingerprints can turn up. But it is a
2 very pertinent aspect of this case in your consideration
3 of it. Why should Ms McKie, for two years, against
4 obvious -- because there's no doubt about this --
5 pressure, in an isolated and lonely position, adhere as
6 firmly as she has done to the denial of any involvement
7 with the fingerprint, so easy to detract, so easy to
8 turn round and say, well, all right why has she done
9 that? And, secondly, why, in any event, would she want
10 to go in there at all? The suggestion is she was
11 curious or it would help her in her own analysis of the
12 case. Well, so be it. But that's the second hurdle,
13 ladies and gentlemen, which you have to take into
14 account in considering where you are on this particular
15 aspect of the case."

16 Then his Lordship actually adds:

17 "Bearing in mind" --

18 A. Excuse me, can I take that point up --

19 Q. Sorry.

20 A. -- because I'm finding a lot of stuff coming at me here
21 and is there a point to make in that first part because
22 I think the point that I would like to make in the first
23 part is that that was something the judge came across.
24 He didn't need to have a trial or hear evidence to hear
25 that. It was abundantly clear before this prosecution

1 was made: why should my daughter protest her
2 innocence with such strength. And you understand I'm
3 her father so I'm coming at it from a very biased point
4 of view, so please accept that. I'm not criticising;
5 that's just my view.

6 I believe that's something that was so clear and
7 crystal clear before this trial started, it should have
8 been taken into the account by the authorities and was
9 not.

10 Q. My only reason, Mr McKie, in looking at it this way is
11 that when afterwards you were critical that the
12 authorities did not respond as you say they should by a
13 root and branch reconsideration of fingerprint evidence,
14 all I am suggesting to you is that when one sees the
15 minutes of the meeting on 20th May one actually sees the
16 individuals who are at that meeting pondering on just
17 this range of complicating factors. So they did not
18 perhaps at that time see the matter as clearly as you
19 have yourself seen it, that the fingerprint evidence and
20 the fingerprint evidence alone was wrong, there were a
21 number of other factors?

22 A. Absolutely. No, they didn't see the matter clearly but
23 they made some very clear judgments at that time about
24 what not to do and that was to close the whole matter
25 down and move on. That's my criticism. This is not

1 hindsight. Obviously on 20th May when the meeting was
2 held there were many complications. What I object to is
3 at that time, on my daughter's behalf and on behalf of
4 anyone in the future, that when I wrote to Lord Hardie
5 in June and pointed out these matters, which is only --
6 it was not even a month afterwards and pointed out these
7 matters, the matter was closed down. Why was the matter
8 closed down on the meeting of 20th June why did they
9 not -- this is the first time that fingerprints had been
10 successful challenged in a Scottish court. Did that not
11 raise any alarm bells?

12 Q. I suppose, Mr McKie, all I am putting to you for
13 comment -- it's not for me to take up a position on
14 this -- is when one looks at what the judge has said one
15 might, as the meeting did on 20th May, have said, well,
16 it's not simply there was a successful challenge to the
17 fingerprints because, as we're seeing here, there were a
18 number of issues that the judge raised before he even
19 got to the fingerprints. The first one was that the
20 Crown, the evidence in relation to the sequence of
21 events about when the print was alleged to have been put
22 there didn't actually stand up. That's the first.

23 The second one was -- and the Crown were aware of
24 this before, as you rightly say -- your daughter is
25 entirely credible as a witness and in the passage I was

1 just about to read out the judge says:

2 "You have to bear in mind of course that all the
3 loggists are consistent with the view that she did not
4 enter the house. What you make of that is entirely a
5 matter for you, but you have to be satisfied beyond
6 reasonable doubt that she did enter the house. The
7 Crown say you can infer that from the fingerprints, and
8 that's where we come, finally, to that aspect of the
9 case, if you get this far."

10 So the judge is saying before ever you get to the
11 fingerprint evidence you might actually think how did
12 she get into that house when all the loggists say that
13 she did not enter.

14 A. Yes. Well, you're absolutely right on what you say but
15 let's remember what happened on 20th May and who
16 attended that meeting. Do you really -- I know you're
17 not telling me this but are you trying to tell me that
18 that was a correct forum to discuss these matters and
19 issues? Are you trying to tell me that the experts
20 should have been present at that? My daughter and her
21 lawyers should have been present. It was not the forum
22 on 20th May, six days after this trial ended, to make
23 decisions which effectively closed this whole thing
24 down.

25 I take the points you make and I do take them

1 absolutely -- there were serious matters to be looked
2 at. That was not the forum to do it. It should have
3 been done by the Crown Office and the police in the
4 proper forum. Experts should not have been there. It
5 is quite clear from the recollections on that meeting
6 that it was done and dusted, that they were told it was
7 not fingerprints to blame and we'll all move on.

8 I think you will agree with me, Mr Moynihan, that
9 even you given that timescale could not have made these
10 decisions. So my objection is the Crown Office should
11 have had a proper analysis of this, a proper assessment
12 and a proper inquiry. They totally failed to do that.

13 The meeting on 20th was six days after and that was not
14 the decision making forum I would have chosen.

15 THE CHAIRMAN: I suppose one has to also bear in mind the
16 possibility, here the judge had said and made very clear
17 about the onus of proof. If you have two conflicting
18 experts on a tricky subject, as we know, of fingerprints
19 the jury may well have come to the view that they could
20 not decide between the experts and, therefore, not been
21 satisfied beyond reasonable doubt?

22 A. I would not argue with that, sir, but the point is --
23 let's clear away the extraneous material, clear away
24 what the jury heard. This was the first time that
25 fingerprint expert evidence had been challenged in a

1 Scottish court. I believe that may have alerted people
2 to the fact we need to look at this more closely. The
3 point I'm making is that meeting on the 20th was too
4 early. It was the forum to make these decisions. I
5 totally accept what you're saying.

6 THE CHAIRMAN: So really the point is the fact that it was
7 challenged is what you think should have encouraged a
8 different reaction?

9 A. The fact it was challenged and there was also evidence
10 like the forensic evidence, the evidence of the
11 loggists, that proved that she was never in the house.
12 Did no-one ever think if she wasn't in the house how did
13 her fingerprint get there? I might have just thought
14 that, even at that time.

15 MR MOYNIHAN: I am going to carry on the theme just to
16 exhaust what the judge has to say because he does
17 ultimately come to some of the points you are
18 mentioning.

19 Among the other things that were discussed at that
20 meeting on 20th May, is the judge has said if one goes
21 as far as then entertaining the question which of the
22 two sets of expert witnesses is correct, recognise that
23 20th May is the fact that the productions that the
24 prosecution put before the jury were of greatly inferior
25 quality and, indeed, had the problem that some of the

1 features that were being referred to came to be referred
2 to simply as blobs, correct?

3 A. Yes.

4 Q. We then see that this is indeed what the trial judge
5 says, again in his own direct style, just below page 16
6 letter C:

7 "Now, ladies and gentlemen, in assessing the
8 fingerprint evidence, you do not, as it were, count
9 heads. You must look at the evidence on its qualitative
10 basis, albeit there are three led by the Crown and only
11 two by the defence. But what you have to do, ladies and
12 gentlemen, as Mr Findlay quite properly pointed out to
13 you, is to assess the whole matter against what you were
14 told, but also the use of your own eyes. You have the
15 photographs, you have the prints, make your own
16 comparisons, you are quite entitled to do so."

17 If I just stop there and I bring up the next page so
18 I have digital pages 17 and 18. So what the judge goes
19 on to say is:

20 "You can accept expert evidence when they say a blob
21 in fact means something else, certainly to my mind a
22 blob's a blob. But if somebody says a blob contained
23 something, you can accept that if you believe them.
24 But, on the other hand, where the two comparisons with
25 your own eyes reveal mismatches, then you have to start,

1 I suggest, being seriously concerned about whether this
2 really is Ms McKie's print and certainly seriously
3 concerned to the point of beyond reasonable doubt."

4 So there again we see the complication of the
5 quality of the images being a factor the judge gives
6 prominence?

7 A. I accept that.

8 Q. Then he goes on and this is coming then to the through
9 thrust of the technical argument, he says:

10 "Perhaps the most critical aspect of this -- though
11 not the only one because the American witnesses have
12 pointed to what they perceive to be discrepancies in the
13 Crown's witness comparisons -- but I suggest to
14 you -- again, it's entirely a matter for you -- the most
15 important part of this question is this issue of
16 distortion in the top third of the print. If the
17 Americans' evidence is acceptable to you, the top third
18 of the print is genuine and available as a credible
19 piece of evidence, then, again, it's a matter for you.
20 It seems to me the Crown case completely collapses
21 because of the obvious discrepancies[sic] between the
22 two tops of the print and you can see with your own
23 eyes."

24 So what I am suggesting to you is we now get to
25 what, in fact, we have been spending much of the last

1 month looking at but it's fairly far down the road of
2 the very practical directions the judge has given.
3 A. Yes, I'm hopefully not repeating myself. What I'm
4 saying is the evidence is one thing and the judge was
5 carefully laying out the hurdles that the jury had to
6 surmount before finding my daughter guilty but we've got
7 to look behind this, as I've said before. Someone,
8 somewhere, should have been looking at this whole
9 affair. This was a challenge to fingerprinting which
10 occurred, if you like, to some extent.

11 This is not relevant to the point I'm trying to
12 make. The point I'm trying to make is why on 20th May
13 was this whole thing written off? Why did Lord Hardie
14 give me a reply which said they were not going to make
15 any inquiries public and the experts would continue as
16 they were.

17 I suppose that's my real issue with this. It's not
18 the issue with the trial where I can see exactly what
19 the judge is saying and what the judge had to say. I'm
20 trying to split, if you like, the trial from the fact I
21 do believe that a challenge to fingerprint of such
22 enormous challenge to fingerprinting should have been
23 looked at more seriously.

24 I keep coming back to the point. It seems to me,
25 no-one really bothered, that's fine, the trial's

1 finished and let's move this whole thing on. Had it
2 moved on I may add -- and letters that I sent to
3 Lord Hardie I believe hit the nail on the head -- had
4 this been allowed just to move on then I think perhaps
5 evidence in this country would be poorer today. So I'm
6 splitting the points, Mr Moynihan.

7 Q. That's fine.

8 The final part I wanted to look at, if I bring up
9 the next two pages, you will see that in fact the
10 highlighting that someone has made preceding me begins
11 to get to the thrust of what you are talking about. His
12 Lordship, having mentioned a blob's a blob to him at 17A
13 then at 17C continues:

14 "Perhaps ..."

15 I have read that part about the Crown case collapses
16 in relation to the top half. Then he says at the top of
17 page 18:

18 "Why then or how then should you approach this
19 matter? You are bound I suggest, but it's entirely a
20 matter for you, to recollect and take account the Crown
21 witnesses, particularly Mr Stewart and Ms McBride
22 pressed by Mr Findlay in cross-examination offered no
23 reasons for why they were dismissing the top part of the
24 print other than, 'It's my opinion; it's my judgment'.

25 "On the other hand, what do the Americans do,

1 particularly Mr Wertheim. He says you look at the
2 prints, it's your recollection, I'm just trying to help
3 you and you find immediately without more than a casual,
4 almost or casual expert, if that's the right expression,
5 glance that there are mismatches between the top half of
6 both prints. What does he do? He says, 'Well, that
7 places me immediately in a doubt and what should I do
8 next', he says. He says, well, distortion or slippage
9 was the word he used is something that can happen for a
10 variety of reasons pressure, application, movements and
11 so on and so forth. But he doesn't say, 'It's my
12 judgment'. He goes on to say -- I look for his words
13 'warning signs, signs of blurring, signs of movement'
14 and you will remember he drew a number of aspects on
15 bits of paper as to what he would expect to find if he
16 was looking for distortion. He finds none. So what
17 does he do? He goes back to the first base and says,
18 therefore, this is a mismatch and he basis that on
19 reasons, not just judgment."

20 Then he says:

21 "It's entirely a matter for you, ladies and
22 gentlemen, but against that background you must give
23 very serious consideration to whether or not you can
24 safely say the Crown have established that the print was
25 that of Ms McKie on their evidence beyond a reasonable

1 doubt."

2 Then he goes on to deal with slightly other matters.

3 Perhaps if I conclude it, he says:

4 "As Mr Findlay put it, it is sufficient for him at
5 the end of the day, if you are left in a doubt, 'maybe'
6 was the word he used and I endorse it, if that is your
7 view, maybe it's not, that is enough and at that stage
8 of this process the Crown would fail on the last hurdle,
9 bearing in mind that it has to pass all the hurdles I've
10 tried to identify for you."

11 A. Yes.

12 Q. Without looking at the detail of the minutes of the
13 20th May, you would accept from me in overview that what
14 was discussed at 20th May was the Advocate Depute's
15 perception that the evidence, general factual evidence,
16 hadn't quite turned out as he expected, point number 1
17 covered by the judge. Point number 2 was that the
18 clarity of the images was just not up to scratch.
19 That's one of the points the judge makes: a blob's a
20 blob for all that. Point number 3, the Advocate Depute
21 squarely faces up at that meeting to the fact that the
22 quality of the experts' presentation was as different as
23 night and day, Scottish experts' presentation not being
24 as good as the American experts, which is something the
25 judge specifically identified.

1 All I am suggesting to you is that at the meeting on
2 20th May the individuals present did actually address
3 the issues that where the points, the hurdles the judge
4 identified -- I am making no criticism of you -- later
5 on it then becomes a bit clear because what emerges
6 later on is, even if we take those variables out and we
7 have people look at exactly the same material of good
8 quality, then there is a problem with the SCRO evidence
9 but that does not emerge until later. It is to your
10 credit that it emerges later because you persist in
11 relation to this particular matter.

12 A. I wanted to be seen to be opposing -- I'm not, I'm
13 totally accepting what you say. It wasn't that much
14 later, though, Mr Moynihan. It was only, I think, argue
15 for 12th June and it took time to assess what was
16 happening. I was not at that time, of course, aware
17 of any meeting on the 20th. So in my own offices, in my
18 own, if you like, understanding of the case I was able
19 to write that letter to Lord Hardie pointing out -- I
20 mean, one issue is why did no-one think of getting the
21 mark independently looked at, even given all of that, I
22 can understand it, if the evidence led so far suggests
23 that before the prosecution there was some talk of
24 having an independent expert brought in, why in the
25 name -- did the Crown Office not after this at least

1 have that mark taken out for independent analysis? My
2 argument would be if it had been then perhaps we would
3 not be sitting here today.

4 Q. If I move on then -- and the gap is from 20th May, as
5 you say your letter is in June to the Lord Advocate,
6 Lord Hardie -- we move on to February 2000 when indeed
7 the Taylor report was commissioned with Mr Zeelenberg
8 and Mr Rudrud instructed as independent experts.

9 The gap in the middle is the BBC Scotland programme
10 that you mention and that no-one seems to doubt was a
11 catalyst for some form of re-examination of this. The
12 re-examination takes place in that first half of 2000.
13 Mr Zeelenberg and Mr Rudrud report. It is then drawn
14 immediately to the attention of the Scottish Parliament
15 with emergency statements made by the Justice Minister
16 and, indeed, the Lord Advocate, correct?

17 A. Correct, yes.

18 Q. Then the sensible suggestion is made by Mr Zeelenberg
19 there should be a meeting of the experts in a relaxed
20 atmosphere to see if people could actually understand
21 how this difference of opinion has actually arisen,
22 perfectly sensible?

23 A. Absolutely.

24 Q. That's what brings about the Tulliallan meeting, but by
25 then there is again the complicating factor that by

1 then, just shortly after the Rudrud and Zeelenberg
2 conclusion is known, what you had done is submitted a
3 complaint of criminal misconduct on the part of some
4 officers and that, I suggest to you, just brings about a
5 complication in the relaxed resolution of this as a
6 matter of expert opinion?

7 A. I think you understate it. I can understand where you
8 are coming from but I'm coming from a different place.
9 I believe that the authorities would never, ever have
10 looked at this in that relaxed atmosphere and done what
11 was done unless severe pressure had been put on to them
12 in the lead-up to February 2000. A lot of that was from
13 the media. I admit that this was something that I had a
14 hand in.

15 It's this idea that, well, these things were going
16 to happen anyway. They were not going to happen anyway
17 and the problem was by that time I believed in my heart
18 of hearts, given the evidence that we had, that in fact
19 there may well be criminality.

20 It's a simple thing to sit here today and recount
21 things that happened and the reasonableness of it all.
22 At the time it was not reasonable. As you know, I have
23 submitted to the Inquiry many, many letters between the
24 June letter and the February time asking the authorities
25 to do -- at one stage I made, if you like, an accusation

1 of the possibility of perjury, which was passed from the
2 Crown Office to the Minister for Justice. So I suppose
3 it's the subtext I'm looking at. There's this reality
4 and there is the reality that we were experiencing and I
5 don't think it was as simple and as relaxed as that and
6 I certainly don't believe that because I made, if you
7 like, an allegation of criminality that somehow
8 heightened the tension. The tension was there, please
9 believe me, and the belief was there that in fact
10 during, as you will be aware, during the HMCI's Inquiry,
11 Mr Zeelenberg and Mr Rudrud had things to say about the
12 authenticity of the marks. Mr Wertheim had already had
13 things to say about the distortion of the print. So
14 there was a lot of things in the background there and it
15 would have been wonderful if we had gone to Tulliallan
16 and had resolved it, if somebody had put their hands up
17 and said we can agree to disagree on this one and move
18 the thing on but that didn't happen.

19 Q. Mr McKie, nothing I am asking you is intended to be
20 critical of you. You are the father of a daughter who
21 has, by now it's been determined, wrongly prosecuted for
22 perjury, one I can understand your feelings. All that I
23 am suggesting to you is that, in fact, the media
24 campaign has brought pressure on all of those involved
25 and you speak of people being vilified, people on both

1 sides of this argument have been vilified by others and
2 they have in fact vilified each other.

3 A. Yes.

4 Q. It's not in fact been, for that reason, exactly the
5 easiest atmosphere for people to sit down and have calm
6 reflection.

7 A. Yes. The assumption, Mr Moynihan, if I am getting you
8 rightly, seems to be that, if you like, there was -- I
9 suppose, when this happens to your daughter I have got
10 to admit it going back there I was very emotional, very
11 determined, very bloody-minded, all of these things. So
12 I accept a responsibility for, if you like, pushing
13 things along and escalating them. But at the end of the
14 day -- okay, this is in hindsight -- things were round.
15 This Inquiry's found out that things were wrong. So I
16 think that we need to marry the two things and say I'll
17 accept that I was perhaps a bit forthright in defending
18 my daughter but I genuinely believed, even at that time,
19 that fingerprinting mistakes had been made and that
20 this -- I'm an ex-police officer of 30-years' standing.
21 I'm an ex-CID officer who has taken people to court and
22 convicted them on fingerprints. This to me was a very,
23 very serious issue. So behind, if I like, my daughter,
24 what was happening to my daughter was also the question
25 I'm a police officer. I'm one of the family. I've

1 believed for years and years in fingerprinting and what
2 I find is when somebody challenges fingerprint people
3 say, "Oh, there's no problems here", and that's what
4 people were saying. So there is that subtext of, if you
5 like, the good, the need to rationalise and sort these
6 out. In my opinion, the only way -- I felt it was a
7 backs-to-the wall. The one man -- if you ever had your
8 back to the wall (and I know that the experts have, and
9 I acknowledge that, and their families), if you have
10 ever had your backs to the wall with the police against
11 you, with the Crown Office apparently against you, with
12 the authorities determined not to look at this, then
13 please believe me, it's not easy.

14 So if I did escalate it -- and I'll accept what you
15 say to me, there's a possibility of that -- I did it in
16 good faith at the time and I honestly believe to good
17 cause.

18 Q. Mr McKie, again, I make it clear I am not criticising
19 you. What I in fact am trying to do is to, perhaps from
20 my perspective, see that others, on whichever side of
21 the argument, have in fact been brought under pressure
22 in this --

23 A. Absolutely.

24 Q. -- which has made it difficult for all concerned?

25 A. If I could make a point, I can understand from my own

1 perspective and from the individuals and the fingerprint
2 experts, we're individuals. Surely to goodness we
3 shouldn't be able to pressure a system. Surely the
4 Crown Office and the police are able to stand back and
5 the politicians -- sorry, I'm speaking a bit fast.

6 THE CHAIRMAN: Sorry about the background noise.

7 A. Noises off -- surely organisations like that should be
8 capable of standing back from this. To say that I can
9 excite them and exacerbate the situation, I'm quite sure
10 these organisations as professional organisations should
11 stand back from this and look behind what's happening.
12 So I think that -- and I don't take anything you say as
13 criticism. In fact, I accept criticism because I accept
14 at the time I was firing on all guns. It's not as
15 simple as that. I believe there's been a failure by the
16 police and the Crown Office overall and the politicians,
17 not only to ourselves but also to the experts
18 themselves. They should have taken control of this. So
19 I'm not prepared to sit here and accept any individual
20 has responsibility. The responsibility lies with the
21 system and the system did not operate, in my opinion,
22 correctly.

23 MR MOYNIHAN: What I want to do at the end of the
24 examination of you is to ask for your reflections and
25 the lessons that we should be learning and we will come

1 to that when I ask you about the non-numeric matter.

2 There are, however, two other points of detail I
3 want to ask you about that I will cover separately. The
4 first of those relates to the IAI (International
5 Association for Identifications) and the second relates
6 to an allegation that has been put against your daughter
7 of perjury having been committed by her at the perjury
8 trial.

9 THE CHAIRMAN: I take it before we embark on the IAI that
10 you are content to answer questions about that.

11 A. Totally content, sir. Totally content. I have no
12 problem at all in it. I'd like to.

13 THE CHAIRMAN: If you understand the position then.

14 A. I do, indeed.

15 MR MOYNIHAN: Have you had an opportunity to study
16 Mr Swann's statement?

17 A. I wouldn't say study it, certainly catch the bones of
18 it. I would appreciate, if you want to, just bring up
19 the passages that refer --

20 Q. It's FI0149. If you allow me just a second, I'll just
21 find the precise passage. If I take you to
22 paragraph 42, which is on page 24 of the document and
23 the next page as well, pages 24 and 25 digitally, if we
24 just look at the paragraph that I am highlighting on the
25 two sides of the page, what I want to do, Mr McKie, is

1 simply give you a chance to read the paragraph number 42
2 and, as with Mr Wertheim, I wish to make it clear to you
3 that what I am doing is putting this to you for your
4 comment. It is not an allegation that I am personally
5 making. I am putting it to you for your comment because
6 no doubt we will hear from Mr Swann his account of this
7 matter and his Lordship may have to reach a view on it.

8 So if I give you a chance to read it, this is, as
9 far as I can see, the most succinct but comprehensive
10 account of the allegation. **(Pause)**

11 A. Thank you.

12 Q. Perhaps for me -- and I don't wish to give a misleading
13 summary -- the thrust of this for me at any rate is the
14 accusation that the case, that is the complaint to the
15 IAI, it is said was conceived, encouraged and pursued
16 between Iain McKie, Shirley McKie, Pat Wertheim and the
17 IAI itself.

18 I will only ask you to give your own account from
19 your own perspective. What is it you wish to say in
20 response to that?

21 A. When one is accused of something there should be
22 evidence to support that. I do not see in this
23 paragraph here or any other of the other statements
24 other than just bald allegations. Now you've got to
25 understand and I don't want to complicate the matter but

1 I have been subject to many allegations: I'm
2 Professor Champod's best friend; I was in league with
3 the Crown Office ... these are all recorded allegations
4 against me. I am perfectly happy to answer them but
5 surely there must be evidence given of this.

6 Let me give you my understanding of, if you like,
7 the IAI position. I for years on the Internet have
8 asked the Fingerprint Society and the IAI to, as if you
9 like worldwide fingerprint organisations, to take a hand
10 in sorting this mess out. I believe that if they did
11 that, the professionals in those organisations
12 should -- I think fingerprint experts should sort this
13 matter out but it didn't happen. So for years I have
14 been, if you like, campaigning. But that's a long step
15 from saying that Mr Garrett, myself or anyone else is in
16 some conspiracy. There is no evidence of it, I have
17 never been involved in a conspiracy with anyone to do
18 anything.

19 I believe that the IAI was a good step. It's a step
20 which I would applaud in retrospect but we've got to be
21 very careful here, if people make bald allegations
22 against me all I ask is that they provide some form of
23 evidence to support that.

24 Now I have not seen the evidence of meetings,
25 surreptitious meetings, correspondence or anything else.

1 It doesn't exist and I -- when Mr Wertheim was here I
2 believe he was insulted quite bluntly, although I
3 understand it wasn't yourself doing it. These are bald
4 allegations. As with Mr Les Brown, allegation after
5 allegation, which were, in my opinion, again, proven to
6 be false.

7 So let's pursue this allegation with Mr Swann. Let
8 Mr Swann provide to you the evidence that I have done
9 this and my daughter has done this. When they do that
10 then by all means call me back and let me account for
11 myself. All I seek to do is put on the table things as
12 I know it. If they are wrong, I'll admit they're wrong.
13 So this is -- the allegation hasn't got it. There is no
14 evidence of it. We need evidence before we can allege
15 things against people, so I'd like to hear the evidence
16 from Mr Swann.

17 Q. I will leave the matter there.

18 The second matter that I wanted to discuss with you
19 was the, again, allegation that has been put that your
20 daughter did not give a true account in her perjury
21 trial. We will look specifically at the passages that
22 you have quoted with some commentary in your first
23 witness beginning at paragraph 81. What I will do is
24 look at them in their original source.

25 Before we stand back, though, the substance of this

1 is firstly that, so far as Ms McKie is concerned, she
2 knew that Mr Swann had been instructed as an expert?

3 A. Absolutely, yes.

4 Q. She had met him on one occasion in Wakefield?

5 A. Correct.

6 MISS GRAHAME: Excuse me, Mr Chairman, if I may raise one
7 issue. I understand that from paragraph 81 this section
8 has been redacted and certainly I have been given a
9 copy --

10 MR MOYNIHAN: I am sorry, I have misread my notes, sir.

11 THE CHAIRMAN: It hasn't gone up on the screen.

12 MR MOYNIHAN: I am grateful. I have misread my note. I
13 have 81, something is deleted. I apologise.

14 I will deal with it, you have a section in your
15 evidence dealing with the perjury allegation.

16 A. Yes.

17 Q. If I start again, your daughter, Ms McKie, knew Mr Swann
18 had been instructed and you said yes. You and she met
19 him on one occasion in Wakefield?

20 A. Yes.

21 Q. At a time when the instruction was given to him to
22 investigate the question of forgery and planting?

23 A. Shortly after that, yes.

24 Q. So that is what we should understand was his brief at
25 the time?

1 A. Absolutely, yes.

2 Q. That was in 1998. We then roll forward to the run-up to
3 the trial in 1999. In March 1999 Mr Swann had the
4 opportunity to look at a number of productions including
5 the doorframe and, as we know, he reached a conclusion
6 that Y7 was indeed your daughter's fingerprint.

7 A. Correct.

8 Q. Your daughter was advised that that was the conclusion
9 he, Mr Swann, had reached?

10 A. She was.

11 Q. Then you yourself acknowledge that what happened was
12 that you continued your search for an expert to assist
13 and you went initially to Mr Wertheim, again on the same
14 brief (namely, to give some evidence about planting and
15 forgery)?

16 A. Yes, after having gone to a number of other experts.

17 Q. Indeed, you came upon Mr Wertheim because he was someone
18 who had a reputation in relation to planting and
19 forgery?

20 A. Correct.

21 Q. Then, as we have already discovered, as events turned
22 out, Mr Wertheim delivered the shock, as you have said,
23 it wasn't even her fingerprint to begin with?

24 A. Correct.

25 Q. That is an overview. The essentials for me are that

1 your daughter did know of Mr Swann's involvement and did
2 know that he had reached a conclusion on Y7 that was
3 adverse to her?

4 A. Correct.

5 Q. If I bring up in their original form -- sorry, one other
6 feature that I will mention just in the background,
7 since we are looking at events in March 1999, there is a
8 letter that was written in your daughter's name to Levy
9 & McRae. It is dated 7th March 1999. I have it in two
10 forms: one with your daughter's signature on it,
11 SGO363 -- maybe it is not on the system. If we try
12 DB0703, what I have is a copy. Now, this one is
13 unsigned but it's a copy of a letter that went to
14 Levy & McRae. If I scroll through the letter, page 2,
15 page 3, we will see it ends up as a letter in the name
16 of your daughter. There is another version signed.

17 I understand your position to be that you are, in
18 fact, the author of this letter?

19 A. I'm the author of all these letters.

20 Q. Your position is that you put this to your daughter to
21 sign and that she signed it without reading it?

22 A. Yes. Can I put the background to it?

23 Q. Yes, please do.

24 A. I don't want to complicate this but I've said in my
25 statement what I've decided to do was lay it out as I

1 saw it from the very beginning and let people look at it
2 and make their own judgment on it.

3 The background to this is extremely important. This
4 is in the run-up to a trial which was virtually for my
5 daughter's life and if that's being too dramatic I
6 apologise, but it wasn't. Medical reports which I
7 submitted which I know have --

8 Q. Well --

9 A. -- I accept that but I still need to make reference to
10 the fact that, to her mental health and psychological
11 health at that time. She was on the ropes, totally. I
12 took total control of this matter from 1998 through to
13 1999. I made all the decisions and sitting here it
14 seems arrogant, it does indeed, but it's needed. I made
15 all the decisions. I wrote all the letters. I did all
16 the negotiation. These are things that I did, things
17 that I will take the responsibility for.

18 Q. The only reason I am raising this is, in a sense, to put
19 it to the side. As you may know, some of those who have
20 made the allegations against your daughter look to this
21 letter to say that this is evidence that she herself did
22 know of Mr Swann and know of his opinion.

23 A. Of course, I can't blame them for that but I'm putting
24 the record totally straight.

25 Q. Nonetheless, in a sense this is why I put the letter to

1 the side. The letter is, on one view, irrelevant
2 because even though she did not read the letter and
3 therefore had no knowledge of its content, you start by
4 acknowledging that she in fact did know of Mr Swann and
5 did know of his opinion by about this time?

6 A. I think that's correct and also that, if you like,
7 Mr Swann and Mr Russell well knew of these matters
8 because these matters have been raised, as I've made
9 clear in my statement, on many, many occasions. These
10 matters have been reported to Crown Office on a number
11 of occasions, 2005, 2006 and there's letters extant on
12 that. But I just want to make that totally clear, the
13 background to this. I take total responsibility for it,
14 yes.

15 Q. That's fine. If I then bring up the transcript of your
16 daughter's evidence on 11th May 1999, SG0294, and I am
17 going to begin at digital page 84.

18 This is the cross-examination, in fact, of your
19 daughter by now Sheriff Murphy. He begins on page 86 of
20 the transcript, 84 of our digital reference, at line 6
21 saying he now wants to move on. He says:

22 "There are two possible scenarios here in general
23 terms that we are talking about. Can I just try and be
24 clear about this. Number 1 if SCRO are right and it is
25 your fingerprint in which case you haven't told the

1 truth and some loggist hasn't. Alternatively, SCRO are
2 wrong and you are right. Do you accept that as the two
3 broad scenarios we are facing?"

4 To which she said:

5 "Yes."

6 So that, to my understanding, brings the background
7 to this, the Advocate Depute is asking your daughter, in
8 effect, "Who is right here: SCRO or you".

9 For me, the next reference I had and I do not wish
10 to curtail this inappropriately but the next reference I
11 had began at page 85, so the next page, line 11. The
12 Advocate Depute asks:

13 "Can you tell the ladies and gentlemen how many
14 people were asked to look at the print Y7 for the
15 defence before Mr Wertheim?"

16 To which she said:

17 "I have no idea."

18 A. That's correct.

19 Q. I am looking at, in particular, paragraphs 109 on to 117
20 of your statement if that assists you.

21 A. Thank you very much.

22 Q. And maybe just a bit before that.

23 A. That's helpful.

24 Q. 109 to 117, your statement.

25 I understand your position to be so far as page 87

1 of the original transcript (85 for me), lines 11 to 14
2 that you say because you had taken charge of the
3 matters, you explained that your daughter would not have
4 been aware of the number of people you had contacted?

5 A. That's correct -- no idea.

6 Q. So it then proceeds:

7 "Well, was it one? Was it more than one?"

8 She says:

9 "You would need to ask my counsel about that",
10 something we will come back to.

11 Then he said:

12 "Is this not a matter that you would have been
13 anxious to know about?"

14 "Mr Findlay assured me he would do the job properly
15 and to trust him and that is what I did."

16 Again, we will come back to that.

17 "At what stage did you first meet Mr Findlay?"

18 She:

19 "I can't remember the date.

20 "Well, approximately?"

21 If we bring up the two pages side-by-side, she said:

22 "A number of months ago."

23 The Advocate Depute then says:

24 "Right but this matter has gone on for two years?"

25 "Yes.

1 "And certainly from the point of view of your arrest
2 you have instructed solicitors?

3 "Yes.

4 "Did you instruct solicitors before that?

5 "Yes.

6 "At what stage did you instruct solicitors?"

7 She says:

8 "Within about a fortnight of my fingerprints being
9 identified", and then he says:

10 "Oh right. A way back in 1997?

11 "Yes.

12 "And at that stage your solicitors would have
13 started to look into the thing?"

14 She says:

15 "I don't know if they did at that point because it
16 wasn't really clear what was going to happen."

17 The Advocate Depute says:

18 "Right. Well, at what stage do you think your
19 solicitors started to look into things?"

20 She says:

21 "I don't know. You will need to ask my solicitors."

22 It is this that I pause at, Mr McKie, she is asked
23 by the Advocate Depute:

24 "Do you seriously not know whether the print was
25 shown to anyone before Mr Wertheim?"

1 To which she answered:

2 "I don't know who has examined the fingerprint."

3 She is asked:

4 "Do you know if anybody has?"

5 To which she answered:

6 "I don't know who has."

7 Then the Advocate Depute says:

8 "Do you know if anybody has regardless of their
9 identity?"

10 She says:

11 "I don't know. You would need to ask my solicitor
12 that.

13 "Well, did you not ask your solicitors?"

14 "Sorry?"

15 "Did you not ask your solicitors how things were
16 progressing?"

17 "Yes.

18 "And was there no discussion at any stage of other
19 people looking at the fingerprint?"

20 She says:

21 "Well, there was discussion about, obviously, the
22 fingerprint, people looking at the fingerprint but they
23 don't discuss with me day-to-day who, what and why."

24 The Advocate Depute:

25 "So you don't know whether or not anybody else

1 looked at the print. Is that your evidence?"

2 To which she then replied:

3 "No, I don't know."

4 The Advocate Depute then, of course, turns to the
5 broader matters and suggests that she is not telling the
6 truth about being in the house.

7 Now, there's obviously a number of factors there but
8 looking at this with hindsight knowing that your
9 daughter did know of Mr Swann and did know he had
10 examined the print and he had reached an opinion, would
11 you accept from me that when the Advocate Depute said to
12 your daughter at page 88 of the transcript, line 19
13 (page 86 for us):

14 "Do you seriously not know whether the print was
15 shown to anyone before Mr Wertheim?"

16 When she says:

17 "I don't know who has examined the fingerprint",
18 that knowing what you accept was the position that is an
19 incorrect answer?

20 A. No, again I've got to go to context. Could you take me
21 back to that line? Have you my statement paragraph on
22 that?

23 Q. Yes, I do.

24 A. It would be helpful for me to follow from my statement.

25 Q. Which paragraph in your statement?

1 A. I've got it. It's that one you were talking about, the
2 last one you spoke about.

3 Q. Your statement is FI0181.

4 A. 100, was it, my paragraph 100?

5 Q. Your paragraph 100. If we look at FI0181 and if we find
6 paragraph 100, it is apparently page 18.

7 I should explain to people what you have done is you
8 have gone through the transcript, the section I have
9 read, and you have given your own commentary which for
10 us is highlighted in -- in fact, first of all, what you
11 do is highlight in purple the answer that Ms McKie gave
12 and then you give your commentary in relation to that.

13 A. Yes.

14 Q. Do you want to proceed then through? Perhaps if we take
15 down the highlighting, if you proceed through as you
16 wish.

17 A. Please, we need to look at the background, first of all.

18 The first background is Shirley's state of health, the
19 fact she was not getting involved in anything at all.

20 That matter was known to her advocate, Mr Findlay, and
21 it is my understanding, although again I remain to be
22 corrected if that is necessary, that his opinion was on
23 these matters that that was his business, no-one else's
24 business and that she should not bother with these
25 issues at all. The matter should be referred to him if

1 it was required to be done.

2 So -- and the third thing would be the context in
3 which these answers are given. I feel I'm having to sit
4 here -- I can understand why I'm doing it -- and defend
5 something quite bluntly I just do not believe and it
6 another of the many allegations that are made. I will
7 do it, but I do it under some objection but I understand
8 why it's got to be done.

9 As regards that comment we are talking, again, about
10 the context the fact of the matter is:

11 "Can you tell the ladies and gentlemen how many
12 people were asked to look at the print Y7 before Mr
13 Wertheim?

14 "I have no idea."

15 That's absolutely correct. She no idea at all.

16 The fourth issue, I may as well make this issue just
17 to, if you like, as a background to what we're saying
18 just now, you have got to remember, in my opinion, that
19 both Mr Murphy (who was the Advocate Depute) and
20 Mr Findlay knew well of Peter Swann's existence. That
21 is a very, very important background to this. They were
22 aware of what was happening.

23 I've got to say -- again, I've perhaps put it a
24 little crudely in my statement. I will rephrase it --
25 that's their business how they deal with the evidence

1 that's coming out in the trial but these are backgrounds
2 to this. The fact of the matter, she didn't know who
3 had examined it in terms of numbers, because I had been
4 to Pierre Margot, I had been to Gareth Pearce, I had
5 been to Luff, brought us a chart; Davidson in Scotland
6 and Scotland. I'd been to a number of experts, all on
7 my own account. She had no awareness of this. So
8 that's the background to the whole thing. So she had no
9 idea.

10 I have no problem with that at all and I would also
11 argue with you the context of the whole thing is from
12 that point on she did not have an idea of these things
13 at all. You have got to -- this analytical sitting here
14 looking at evidence is all very well, as we found out
15 before when you looked at the charge to the jury, you
16 need to understand the background to it and the position
17 that my daughter was in at that time, not having, if you
18 like, this information and being told to refer -- she
19 consistently does that the whole way through. That's my
20 position.

21 Q. I will not go into the detail because others can reach
22 their own conclusions in the light of the basic
23 information. The one point though, and you are aware of
24 this, that you have been alerted to, is because this
25 allegation made against your daughter then spills over

1 into an allegation against Mr Findlay, you --

2 A. Not from me.

3 Q. No, I appreciate that.

4 A. I've made that quite clear.

5 Q. You are aware that we have made contact, belatedly, with

6 Mr Findlay and all that I can put to you I think is

7 foreshadowed by one of your comments. If we, as you

8 say, look at the context, Mr Findlay's a fairly

9 strongly-minded individual?

10 A. Yes, he and I fell out on a number of occasions but I

11 still respect him and I respect what he did.

12 Q. I was just about to say there was a meeting of equals

13 really when you and Mr Findlay met?

14 A. There was a white-faced moment and it wasn't he or I had

15 the white faces, it was those around us. You can

16 understand that. I'm the father and he's an autocratic

17 gentleman -- and I mean that in the nicest possible

18 way -- who brooks no interference at all. He runs the

19 show and he run it.

20 Q. I put nothing positive to you because I don't have

21 Mr Findlay's positive account of this but all that I

22 understand from him is that because you had, for the

23 very good reason you have mentioned, fallen out you were

24 not therefore present at all of the meetings he had?

25 A. I wasn't present at all the meetings. I was present at

1 some meetings and I hope -- I don't have records of
2 exactly when the meetings were but I was present at them
3 but I've also got to say I may have been getting some of
4 that secondhand from my daughter after attending
5 meetings. I can't remember. But I do remember, even
6 after that -- if you recall it, I was told to sit down
7 and shut up or words to that effect, which I found very
8 difficult to do -- I did attend other meetings and
9 sometimes I was sitting outside when the meetings were
10 going on.

11 Q. Again, we are thinking back 12 years and therefore all
12 the human frailties of memory, all that is being
13 suggested by Mr Findlay is that when it comes to the
14 point that you are saying, and the phrase you use is he,
15 Mr Findlay, instructed your daughter to answer questions
16 in a certain manner, what Mr Findlay says is that is
17 hearsay on your part because you were not present at
18 those meetings.

19 A. That could well be, although I have a slightly different
20 recollection. I'm prepared to accept that possibility
21 but I'm also so well aware of this whole issue because I
22 had been feverishly been trying to find experts
23 literally all over the world. This was a very, very
24 important issue. Peter Swann had said that -- and
25 Mr Graham as well, had said that that print Y7 was my

1 daughter's. I had been feverishly searching for experts
2 throughout the world so this was a very critical point
3 and it's a point that's stayed with me during the trial,
4 after trial and since then, the discussions we had with
5 Mr Findlay, because Mr Findlay's take was, "I prepare
6 the defence here. You have nothing to do with it", and
7 I'm afraid my take was the other side of that, "I'm the
8 father and I will take part in it". So these things do
9 stick in my mind and I do believe that I was at the
10 meetings or at least when it was discussed, when it was
11 made quite clear.

12 Why I remember is that -- I'm not against
13 Mr Findlay, this is all recollection -- but he even
14 doubted the way she would dress for the trial. So I do
15 remember this. I truly believe that that's exactly what
16 he said because she didn't have that information. I can
17 understand why he did it but it was to answer questions
18 about matters you don't know about and she said two or
19 three times she referred it back to her solicitor,
20 Donald Findlay.

21 Q. Apart from anything else, the one point I do have an
22 observation by Mr Findlay is in relation to the manner
23 of dress is that he would routinely tell people just to
24 dress comfortably for court. It's not the most pleasant
25 of environments.

1 A. Okay.

2 THE CHAIRMAN: I don't think it would be unusual for counsel
3 preparing for a defence in a criminal case to give some
4 advice about the dress of the accused. I'm sure it's no
5 different in Scotland to how it is in the jurisdiction
6 that I am familiar with it?

7 A. None at all.

8 THE CHAIRMAN: So I should say I find nothing unusual or
9 exceptional about that but on this point, when it really
10 comes to it, you have very clearly stated what you were
11 aware of as being your daughter's state of knowledge and
12 how her responses construed at the trial is for others
13 to form their opinion.

14 A. I put all the information on the table, sir.

15 MR MOYNIHAN: That would have been the end of this chapter
16 but there is one other point and the chapter which is to
17 come is simply the more reflective aspect.

18 THE CHAIRMAN: We will rise now until 11.50.

19 **(11.30 am)**

20 **(A short break)**

21 **(11.52 am)**

22 MR MOYNIHAN: Mr McKie, I am going now to turn to
23 fingerprint matters, starting with the non-numeric
24 system. If I again bring up your statement, FI0181 and
25 on this occasion I will begin at page 51. It is

1 paragraph 240.

2 THE CHAIRMAN: This is the second --

3 MR MOYNIHAN: Sorry, sir, the first one.

4 Perhaps if I could bring up pages 51 and 52
5 side-by-side. I am just going to ask a number of
6 questions that relate to the same subject, Mr McKie. I
7 will give you just time to look at the context. It is
8 talking about, in effect, the introduction of the
9 non-numeric system.

10 In paragraph 240, what you say is that the
11 introduction of the non-numeric system you describe as a
12 knee-jerk reaction to the ongoing controversy. I wonder
13 if that is not perhaps historically inaccurate; that, in
14 fact, the plan had been to implement it in 2000?

15 A. I would accept that although to some extent I think that
16 the timing was probably precipitated by the whole affair
17 but no I would accept that.

18 Q. What I was suggesting was, in fact, the plan had been to
19 introduce it in 2000/2001 and, in fact, your daughter's
20 case had resulted in a delay, in fact, until 2006 before
21 the system was introduced?

22 A. All I would state on that is I don't think it was the
23 time to bring it in. I think the controversy was still
24 in the air. They were still looking at aspects of
25 presentation and expert evidence and perhaps it could

1 have been delayed but I would accept -- I've looked at
2 it again and I don't think knee-jerk was the best way of
3 putting it.

4 Q. The other points and these build up ultimately to
5 looking for lessons that we might learn. In
6 paragraph 241 what you say is that your concerns revolve
7 around your belief that:

8 "... while the official spin on implementation of
9 the system is extremely positive, the reality is that
10 since implementation we are faced with a system that is
11 arguably worse than the one it replaced and is more open
12 to abuse."

13 Do I take it from that that you have some sympathy
14 with, as a preferred approach, what Mr Zeelenberg spoke
15 of, a system which has a numerical threshold and not
16 just the current system in Scotland? Is that what you
17 are driving at?

18 A. I'm driving at that in part. My belief is that in some
19 areas this new non-numeric system in fact is just a
20 numeric system and instead of finding 16 points people
21 are quite happy now to find 10 or 12.

22 In the hands of competent and trained scientists I
23 am quite happy to go with the non-numeric system which,
24 with the three levels, I think a qualitative system is
25 better. The danger comes in the training and the way --

1 Mr Bruce's evidence, if I just take one person's
2 evidence, it didn't seem to me in terms of protocol
3 Mr Bruce was able to explain to us what protocols were
4 for giving evidence. I would like one of the witnesses
5 to say to me, "This is how we, if you like, prove our
6 identification to the jury". I have not heard
7 that evidence. So, point in blunt, I think to some
8 extent, in some areas, it's a numeric system by another
9 name.

10 Q. I am going to be selective in what I actually ask you
11 about, in part for the reason you indicated, what you
12 have done is raise some issues on which you yourself are
13 interested to hear the contribution from the SPSA?

14 A. Absolutely, yes.

15 Q. We will hear from a number of witnesses from SPSA in
16 relation to the topics you raise and indeed topics that
17 have been raised by other evidence. That is why I will
18 be light in relation to this.

19 A. Can I just make the point that, if you like, and I say
20 it, the word "spin" has not been the reality of the
21 situation. I think that the whole non-numeric system
22 was welcomed in with open arms by the police and the
23 Crown. However, I don't think that their actions since
24 it came in in September 2006 have matched the
25 aspirations. I suppose you will come on to that at some

1 future date.

2 Q. Paragraph 242 we have really covered. I think we have
3 covered the first sentence, namely that you have a
4 concern that identifications are now spoken to in court
5 by less than 16 points. You have mentioned that.

6 A. Yes.

7 Q. It is the next sentence you say:

8 "I suspect that far from embracing the science of
9 ridgeology and ensuring that the overall quality of the
10 print is analysed and reported on these so-called
11 experts are still cutting corners to identifications,
12 confident that the system will not challenge them."

13 What evidence do you have that today experts are
14 cutting corners?

15 A. The evidence I've heard from expert witnesses at this
16 Inquiry lead me to that conclusion. I have found some
17 of them extremely vague in terms of what the non-numeric
18 system is. If I was a juror what would they say to me
19 to, if you like, to help me to understand.

20 When the system was launched it was said -- and I
21 will just, if I may, have a quick quote here from I
22 think it was SPSA website they said:

23 "The fingerprint expert will be able to offer a
24 fuller explanation of how they arrived at their
25 conclusion, be discussing all the features revealed

1 rather than simply focussing only on a number of points.
2 This will be more easily understood by the court and,
3 where appropriate, the jury. The court will be able to
4 consider all the information presented to it and make an
5 informed decision on the identification."

6 I just do not believe we've had evidence at this
7 Inquiry to show that that is true. I need to align with
8 that -- I know these are other matters -- I think we
9 need to look at the way the Crown has, in fact, dealt
10 with non-numeric evidence since it came in and I know
11 that --

12 Q. It is okay. In fact, what I was wanting to establish
13 and I think you have answered is in relation to
14 paragraph 242, where you are saying that you yourself
15 suspect the cutting of corners, it was to establish
16 whether there was evidence beyond what we've heard at
17 the Inquiry as the basis for that suspicion and you have
18 answered there is no evidence beyond what we have heard
19 in the Inquiry.

20 A. I think I'd just like to, if I may, qualify that
21 slightly. I would like to add to that that in fact
22 again, and I don't want to impinge on other areas, but
23 there is evidence before the Inquiry apparently in terms
24 of the experts being precognosced. This year's circular
25 came out --

- 1 Q. Well, Mr McKie --
- 2 A. Stop me if I'm going into the wrong territories.
- 3 Q. I will stop you but I will tell everyone why I am
- 4 stopping you: you have raised an issue. What we have
- 5 told you is that we will investigate that issue and it's
- 6 associated with the point you have made about some
- 7 questions required to be asked of SPSA and, indeed, of
- 8 Crown Office. So rather than ask you to give evidence,
- 9 what I am doing is saying I hear what you say, we will
- 10 investigate and we will raise it in that manner and
- 11 that's why I am just stopping this particular --
- 12 A. Just to justify -- one sentence to justify what I have
- 13 said at the end in that the cutting corners must be
- 14 taken into account. If people aren't held to account
- 15 for the expert evidence they are going to give, then I
- 16 think cutting corners inevitably happens.
- 17 Q. If I then also take just finally in relation to this
- 18 your part 2 statement, there is only one paragraph
- 19 looking at this particular context I wanted to ask you
- 20 about. I don't actually have the code number for your
- 21 part 2 statement. It may not be on the system as yet.
- 22 There is one paragraph I want to ask you about and that
- 23 is paragraph 427.
- 24 A. Sorry, the number again, Mr Moynihan?
- 25 Q. It is 427, and it is on page 91. I will read it out so

1 that you have got it. The context is we are dealing
2 with contact with SCRO before July 2000 but in fact I
3 will read out so that everyone knows what I am going to
4 ask you about. At paragraph 426 you ask or you say:

5 "In the overall context of change, I believe that
6 serious assessment must be made of the ongoing culture
7 within this organisation and close attention paid to
8 solutions implemented following other
9 mis-identifications, for example, the Mayfield case."

10 That is the part where I indicated to you we will be
11 asking SPSA about and indeed Crown Office so I need to
12 explore that with you.

13 What I did want to explore with you, though, was
14 paragraph 427 where you say:

15 "I understand that SPSA personnel have been
16 discouraged from attending this Inquiry and there has
17 been little evidence of any day-to-day interest by
18 management in the testimony being presented by its
19 experts on the general evidence of the Inquiry."

20 I understand from Miss Jones from McClays, who
21 represents SPSA, SPSA's position is that as an
22 organisation it has not discouraged any of its officers
23 from attending this Inquiry.

24 Do you have evidence to the contrary?

25 A. Yes, I have evidence from two experts who state that

1 that is the case, that in fact they have been
2 discouraged. I'm not saying they're wrong, all I'm only
3 saying these tow experts have -- because I could never
4 quite understand. I thought this Inquiry would be a
5 good learning experience for experts. I thought they
6 were encouraged to attend it and to learn the lessons
7 and I was wondering why they weren't here. So my
8 information is from two experts, serving members, that
9 that's the case.

10 Q. Obviously when you say "people not encouraged", it's a
11 slightly different thing from positively encouraging
12 people and negatively discouraging them. Which is it?

13 A. Semantics. They are not encouraged to attend the
14 hearings. It's made clear apparently that they should
15 not attend the hearings.

16 The problem that some people have, of course, is
17 that serving members are actually in the hall and have
18 been since the Inquiry started and I think it was felt
19 that in a sense of equity if one was here, they should
20 all be here. But, I say, again, that's hearsay. This
21 is what I've heard, so ...

22 Q. We will leave that there.

23 The final matter I wanted to ask you about was the
24 positive position looking at this. My point of
25 reference for this is to bring up an article by Dr Dror

1 we looked at with Mr Zeelenberg. You yourself have
2 mentioned Dr Dror in your statement, part 2 at
3 paragraph 403. If I bring up the article by Dr Dror and
4 others, FI1008A. You may recollect Mr Zeelenberg
5 speaking about this article. Do you have a copy of it?

6 A. Yes. I'm okay. I'm pretty well conversant with it.

7 Q. It is not something you mention in your statement. The
8 page in your statement when you mention Dr Dror is your
9 second statement, page 85.

10 A. That's right, yes.

11 Q. But it is no more than a convenient link in to looking
12 at Dr Dror. What this paper relates to, just so that I
13 can refresh your memory and tell people in the hall,
14 this is the paper in which Dr Dror mimics the Brandon
15 Mayfield case. He gives false information deliberately
16 to the Fingerprint Officers taking fingerprints they
17 have already correctly identified five years before. He
18 puts it to them again five years later but gives them
19 the false information that these are the Brandon
20 Mayfield prints so that they will then know these are
21 notorious mis-identifications and he assesses or waits
22 to see what happens.

23 Of the five experts, four change their opinion and,
24 indeed, some go to the opposite extreme and say
25 fingerprints they had previously identified are

1 incompatible with the suspect. So they completely
2 change. Only one of the five has the courage of his or
3 her convictions to stand by, as we now know, their
4 original identification.

5 What Dr Dror in this paper is saying is this is
6 evidence of Fingerprint Officers being influenced
7 subconsciously by the context that the information they
8 are fed. But, in fact, what I am more interested in
9 looking at with you is page 76 of the article. If we
10 scroll through, and stop there, I will give you a chance
11 and if we could highlight the last full paragraph on the
12 right-hand column against "The critical question"
13 Dr Dror says:

14 "The critical question is what do these results
15 reflect and what do they imply. Are the inconsistent
16 fingerprint identification decisions a reflection of
17 practitioners' errors? Do they reveal deeper
18 methodological and procedural problems in the way that
19 fingerprint experts are trained and identifications are
20 conducted? Or do the results point out basic flaws in
21 the scientific basis and assumptions underlying
22 fingerprint identification altogether?"

23 Do you see that?

24 A. Yes.

25 Q. It is no more than a very concise summary. Are these,

1 in effect, the questions that you yourself commend to
2 the Chairman as requiring consideration in relation to
3 your daughter's case?

4 A. Yes, I do with one or two qualifications if I may just
5 reel them out.

6 I took a considerable interest in this research
7 because I met Dr Dror and David Charlton some years ago
8 when it was all starting out. My main interest in all
9 this is not only the question of contextual matters or
10 emotional and psychological matters but also the whole
11 question of culture, because I feel that in many ways
12 culture is an overarching causal factor. So while I
13 accept that, yes, I would like the Inquiry to look at
14 that I think there is value in looking at, as Dr Dror
15 says, the other influencing factors.

16 I think we've got to come out of this Inquiry, I
17 think, with the lessons learned and I think these are
18 big lessons. There are matters affecting us all in this
19 room today coming from emotions, psychology and also
20 from culture and I think this research points the way
21 towards that.

22 Other research -- the National Academy of Sciences
23 in the USA have conducted a major analysis of forensic
24 evidence. I think there are many, many lessons to be
25 learned from that because, if you look at the

1 recommendations, you find out that some of the things
2 that perhaps I suspected are contained in that. I think
3 going to see, like, the Mayfield case these are
4 excellent ways of doing it in a non-judgemental way;
5 instead of accusing people of having done things wrong,
6 it's now suggesting how we may do things right. So I
7 think it's very, very important research.

8 The only qualification I put to that is in many ways
9 Dr Dror is talking about unconscious elements, not
10 conscious elements, and we also need I think to look at
11 were there any conscious elements present in the work of
12 the experts which would perhaps take them away from
13 psychological and emotional factors.

14 Q. As I have said, that final point could be brought within
15 this first question today and that is whether the
16 decisions here reflect practitioner error and indeed
17 what the cause of the error would be.

18 Then, as you say, so far as the psychological aspect
19 is concerned, there is culture. If I understand that,
20 what you mean is one looks at it from the collective
21 organisation, the culture of the organisation
22 collectively?

23 A. I think it would be important -- if I may just qualify
24 that again -- is that we've heard the evidence, and I
25 believe it to be the case, that we do find these aspects

1 in an organisation where sometimes the older expert has
2 the most knowledge and must be obeyed. I think some of
3 that is relevant to this Inquiry. I call these
4 "cultural aspects". I think arrogance is another
5 cultural aspect: people who believe that in fact they
6 are the best in the world. It's always a dangerous
7 assumption to say because, of course, someone will
8 immediately prove you wrong. Statements have been made
9 that in fact one -- I mean, Mr Zeelenberg has, to some
10 extent, been criticised as not being an expert. The
11 Danes are not experts. Well, that I think it would be
12 useful to look at these and evaluate them and, in
13 looking at culture, try if you like through training to
14 make people understand that we make these value
15 judgments which maybe are not based in reality.

16 I think what it does, what it has done in the past,
17 it isolates organisations caught up in some wave of "we
18 are wonderful" and I think it's a very, very dangerous
19 thing. In the SCRO in the early days, a lot of in-house
20 training was done. I think that's improved now and it's
21 more outside training. I think there are big, big
22 dangers in experts being caught up in this little world
23 of their own.

24 I would like to see in Scotland, if you like, for
25 want of a better word, an academy of forensic science.

1 I would like to see all the forensic sciences brought
2 under the one umbrella. Fingerprinting is still close
3 to the Police Service. The Police Service need
4 fingerprinting. Taking myself back to my old days in
5 CID, you know, you really wanted them to get this
6 identification because it was the best evidence you
7 could get. I think I would love to see them, all the
8 experts, brought together under the one umbrella. I
9 would like to see some working group established to
10 analyse, for instance, the recommendations from this
11 Inquiry and the implementation of them. I think there's
12 a great deal to be done. If we do that, I believe
13 fingerprinting is a very, very important science, a
14 very, very important preventative measure and detection
15 measure for crime. I am a supporter of fingerprints.
16 I'm a supporter of fingerprint experts.

17 Q. I think you may recollect when we had Mr Rennison, who
18 was the English UK regulator but primarily with a remit
19 that did not include Scotland, that he put his finger on
20 the fact now we have the SPSA (the Scottish Police
21 Services Authority) we have one organisation responsible
22 for most of the forensic sciences. We have them brought
23 under the one roof now in Scotland.

24 A. To some extent but, as you well know -- and it needs to
25 be an issue that I'm sure you will explore -- there has

1 been a great deal of infighting in the SPSA over the
2 last couple of years since its establishment. I mean,
3 with Mr Mulhern and the board there have been cases in
4 law. I don't think this has helped. I think this has
5 detracted from the work that the scientists are doing.

6 If you go back to minutes I gave you of a meeting in
7 Edinburgh held with a laboratory when Mr Nelson went
8 through to speak to them in 2007, these are
9 disillusioned people. I still believe that morale is
10 low. So I think we need to look at all these issues.
11 Because we have an organisation which says it
12 encompasses all the forensic science, it doesn't mean
13 that's happened.

14 So I think we've got the organisation but now we've
15 got to make the organisation work and I believe it's not
16 working. I believe that the morale within the
17 organisation is poor from bureau to bureau and I believe
18 that this Inquiry can go a long, long way to helping
19 resolve that for the experts themselves.

20 Q. Just again, as I said earlier on, rather than engage in
21 a discussion with yourself, what I would prefer to do is
22 simply take some of the themes you have mentioned with
23 these questions as well and carry them through in a
24 session that we will have to have with SPSA, indeed the
25 Crown Office, in due course.

1 Accordingly, what I will do is simply close my
2 questions just now and thank you. Thank you, sir.

3 THE CHAIRMAN: Perhaps we will begin with you, Mr Holmes.

4 MR HOLMES: There are two chapters I would like to ask
5 Mr McKie about. They are in reverse chronological
6 order. The first is the media attention that these
7 proceedings have been subject to over the course of the
8 past ten years or more.

9 The second relates to the trial of Ms McKie and her
10 evidence during that trial.

11 THE CHAIRMAN: I mean, you are aware of the limitations on
12 my powers on the second area and that I would have
13 thought at the moment that what Mr McKie has done is he
14 has told us that this state of knowledge that he knows
15 of his own knowledge what his daughter knew and, as I
16 said before, it seems to me then her answers at the
17 trial have to be construed in the light of that. It is
18 for those who are construing it to form their view.

19 MR HOLMES: It may well be that as a result of that, sir,
20 that section is extremely brief and I think the majority
21 of my questions --

22 THE CHAIRMAN: All I would do is ask you to bear in mind
23 that I have a limited power certainly so far as any
24 criminal proceedings would be concerned. Subject to
25 that then.

1 **Cross-examined by MR HOLMES**

2 Q. Mr McKie, a lot of reference has been made to the media
3 attention this case has had over the course of the last
4 13 years now. Is it fair to characterise your contact
5 with the media as a campaign?

6 A. Yes.

7 Q. You have stated in your statement to this Inquiry at
8 paragraph 157:

9 "Some outside agencies had disagreed with SCRO but
10 Mr Bell and/or others had ensured that their comments
11 were suppressed."

12 Is that correct?

13 A. What paragraph?

14 Q. It is 157 of your statement.

15 A. Part 1?

16 Q. Part 1, yes.

17 A. Yes, got it.

18 Q. Can we take it from you the use of "and/or" in that
19 paragraph that you do not know yourself that Mr Bell
20 attempted to suppress these comments from outside
21 agencies?

22 A. Only from Mr Bell's evidence the fact that Devon &
23 Cornwall had written to them in giving a contrary view
24 to the identification of Y7 and, to my knowledge, that
25 was not -- no-one was told of that, including the Crown

1 Office. But I may be wrong in that. That's my
2 understanding.

3 Q. Can we take it from your reference to "others" in that
4 paragraph as well that if any comment was suppressed,
5 you do not know who it was that sought to suppress it?

6 A. No.

7 Q. I ask because Mr Dempster, for example, took part in the
8 BBC documentary in 2000 and during that documentary he
9 claimed that Y7 was mis-identified and went on to imply
10 that the mistake was not an honest mistake. His
11 comments can hardly be said to have been suppressed, can
12 they?

13 A. I was being specific in what I was saying there.
14 Mr Dempster, in fact, decided to do this. He was a
15 whistle-blower in this case who, in my opinion, was not
16 treated well. That's the background to it. So you're
17 not going to suppress him. The fact of the matter is
18 that Mr Dempster was suppressed throughout this and it
19 was only at some considerable risk to himself that he
20 took part in the Frontline programme and that
21 he subsequently said that it wasn't an honest mistake.

22 I may add that he was then threatened with
23 discipline by the Grampian Police on the complaint of
24 SCRO. So there was certainly no authority given to him.
25 He had to step outside the line there and be a

1 whistle-blower. He was threatened with discipline.
2 There was a discipline inquiry that lasted for week
3 after week after week and to do what he did was done
4 with considerable bravery, as any other people who spoke
5 up in this. Fourteen, or thirteen eventually, experts
6 from Lothian & Borders stepped outside it. But they
7 weren't allowed to do it, they stepped outside it and
8 they did it of their own free will and their own
9 volition and, quite honestly, whistle-blowers were not
10 treated well in this case.

11 Q. I will come to the other experts but in relation to
12 Mr Dempster he had already taken part in the BBC
13 documentary. He had already claimed this was not an
14 honest mistake.

15 A. Could you move away from that -- you're heading
16 underneath that monitor there and it's extremely
17 difficult just to catch you. Thanks very much.

18 Q. Mr Dempster had already taken part in the documentary
19 and he had already claimed on television that this was
20 not an honest mistake. In what way can he have been
21 said to have been had his comments suppressed?

22 A. Because it was well known that if you spoke out against
23 this mark then it was a mark of Cain. I've heard this
24 from a number of experts.

25 Do you actually believe the management of SCRO or

1 SPSA wanted people coming out and saying these were
2 mis-identifications? When Mr Dempster and his two
3 colleagues put in two reports that was not something
4 they wanted. As I've said to you before they were
5 threatened with discipline. They were suppressed. The
6 only reason they did come forward through their own, if
7 you like, integrity and honesty, in my opinion.

8 Q. There are others who have commented on the mark and I
9 will give you some examples to see in what way their
10 comments have been suppressed. Mr McGregor, for
11 example, has provided a contrary opinion to his
12 colleagues here.

13 Has he been suppressed in any way?

14 A. I need to come back to my point. My point is that they
15 were suppressed. They did this through their own good
16 offices; they did this because they felt that the truth
17 should be known; they did this because Mr Innes visited
18 them then in Grampian and brought with him a letter from
19 Mr Russell which is part, I believe, of the database in
20 which was made quite clear there were allegations
21 against myself. It was made quite clear to these
22 gentlemen, Mr Holmes, that they speak out at their
23 peril. So they were suppressed, please believe me they
24 were suppressed.

25 If you just let me take this point through it's

1 very, very important, if you are threatened with
2 discipline, if there's weeks and month long
3 investigation, if in fact you are more or less told we
4 don't want anybody speaking out against us, yes, they
5 were suppressed. It was only through their own
6 integrity and honesty they actually spoke out.

7 Q. What is Mr McGregor doing now?

8 A. Mr McGregor is working in Aberdeen.

9 I suspect I know quite a bit about the background to
10 this, Mr Holmes. The fact of the matter is when
11 Mr McGregor, who is now head of the fingerprint unit,
12 was, if you like, appointed that post, surprise was
13 expressed by senior people at Grampian that he ever got
14 the post. So there's an awful lot working in the back
15 of this. There's been a lot of animosity, a lot of
16 backstabbing and this has happened to everyone, not just
17 Mr McGregor. I think the experts themselves to some
18 extent this has happened to, the SCRO experts. The
19 organisation in my opinion, Mr Holmes, was seeking to
20 shut this down as best it could.

21 Q. What about those outwith the organisation? Mr Bayle,
22 for example, took part in the BBC documentaries and he
23 has commented on this case publicly. He can't be said
24 to have been suppressed, can he?

25 A. He's not within -- whose power -- he's not under

1 Mr Bell's or anyone else to suppress. But you see he
2 has been suppressed. He, in fact, was threatened with
3 discipline in the Metropolitan Police when he first came
4 out to support this. He was threatened with discipline
5 and eventually, although he left the job because they
6 would not listen to him. So if you give me names,
7 Mr Holmes, I will tell you the circumstances. He indeed
8 tried to suppress him and the only way he could not be
9 suppressed was by leaving the organisation.

10 Now I can't put that down at Mr Bell's door but I
11 know for instance the Metropolitan Police and the SCRO
12 were in contact about this. The idea was, after the
13 meeting of 15th March, to close this down.

14 There's correspondence went out to forces in this
15 country and abroad to say that in their opinion it was
16 not fingerprints that lost this trial. It was other
17 matters and we could take belief in the quality of the
18 expertise coming from the SCRO. So, yes, Mr Bayle was
19 suppressed; he was indeed. In fact, he left his job
20 because of it. That's suppression.

21 Q. What about Mr Wertheim? He is also someone who is
22 outwith the organisation and he has been quite
23 vociferous about this case. He has taken part in a
24 television documentaries; he has given quotes to
25 newspapers; there have been articles quoting him and he

1 has posted frequently on various Internet sites where
2 comment about this case is exchanged.

3 Has he been suppressed?

4 A. Let me qualify it to try to get through this one. It's
5 a fact where Mr Bell and the SCRO and the management had
6 power they were suppressed. Mr Wertheim was not within
7 their power. You've got to remember we had to go to
8 America to get an expert to actually speak to the
9 mis-identification of Y7 and Q12. Every expert in this
10 country, in my opinion, was more or less subtly told,
11 "You don't speak about this case". So, yes, they were
12 suppressed. Mr Wertheim is a foreign expert. No, he
13 wasn't suppressed although please believe me, as
14 happened from yourself, when he appeared at this Inquiry
15 to give evidence allegations were made against him. I
16 know that's not for me to judge but they have
17 continually along the way, along with SCRO experts, had
18 their fair share of, if you like, suppression and
19 vilification.

20 Q. Can we contrast that position with the experts who take
21 the view that Y7 is the fingerprint of Ms McKie. What
22 about Mr Swann and Mr Leadbetter? You were asked
23 earlier on about the disciplinary proceedings to which
24 they had been subjected. Is that not an attempt to
25 suppress what they have to say about it?

1 A. No, its not an attempt to suppress. I've already laid
2 out in my statement, which you must have read, I have
3 accused them of incompetence or criminality. I have
4 done that and I have tried to lay out in my statement
5 the background and the reasons for that. These are my
6 reasons. I've given you 12 or 13 which I am quite happy
7 to read through for you. These are my reasons for
8 saying what was said.

9 Q. What about Mr Graham? You are aware of his evidence to
10 the Inquiry that he was subject to threats from you
11 yourself. If that's to be accepted is that not
12 something that could be characterised as an attempt to
13 suppress his evidence?

14 A. I have attempted to suppress no-one. I have attempted
15 to have the truth told in this. Time after time, I have
16 said if people speak the truth I will put my hand out
17 and shake them. I would do that today. Mr Swann,
18 Mr Leadbetter and Mr Graham have not been suppressed. I
19 made complaints on the basis of the evidence I had that,
20 in fact, they were incompetent and they got an error
21 wrong.

22 If you want me to I can go into the reasons why. I
23 have already laid out the number of inquiries that have
24 found that they were wrong and we start back with the
25 HMCIs, and I've also got the point to other issues in

1 their behaviour which I presume will come out when
2 Mr Swann is interviewed. So, no, they weren't
3 suppressed.

4 What I was trying to do was I had people standing up
5 saying that my daughter had been in that house, that
6 David Asbury was a murderer. I'm sorry, but I'm not
7 prepared to accept that. They were not.

8 All I've ever done, Mr Holmes, is I've used the
9 evidence to back up what I'm saying and the complaints I
10 made to the Fingerprint Society and to CRFP, yes, I made
11 these complaints but not with a view to suppress them
12 but with a view to get the truth on the table. I asked
13 the Fingerprint Society to look at this independent of
14 myself. I told you I asked IAI. I wanted someone to
15 take hold of this thing. So I totally reject the idea
16 that I suppressed anyone.

17 Q. Would you accept the fact that your own commentary on
18 the case over the course of the past 13 years has not
19 been suppressed?

20 A. It certainly has not been suppressed, no, because I have
21 taken, if you like, the move to try and put my
22 information out there. I can tell you another thing,
23 the only reason that people listen to me and the only
24 reason the media listen to me was that I never once told
25 them a lie. I'm an ex-police officer and I'm now

1 70 years of age. I have told lies in my lifetime. Let
2 me tell you there was never, ever a lie told and when
3 the media came to me and they said, "Look, we've got a
4 story", as they came on a number of occasions and said,
5 "So and so has said this", I invited them to my home or
6 went to their offices and took with me all the
7 documentation I have and I laid that documentation on
8 the table as proof. Now, what the media do with that is
9 they read that and they make their own assessment of it.
10 It's cards on the table time; it's not suppression in
11 any way that I can see it.

12 Q. I would like to ask about this Inquiry now. You have
13 spoken about and it is in your statement your attitude
14 towards this Inquiry. You have called for an approach
15 of truth and reconciliation. You were asked by Inquiry
16 Counsel about that earlier on and you were asked about
17 the approach to the experts who are still employed at
18 SPSA. You say that you feel that their fate is in their
19 own hands. Do you recall that from earlier today?

20 A. Yes.

21 Q. You have written letters to the Lord Advocate, in fact
22 the last is it two or three Lord Advocates?

23 A. Yes.

24 Q. To the last Justice Minister or --

25 A. Justice Ministers --

1 Q. -- looking for notice to be given to the defence in all
2 cases in which Mr Foley, Mr Geddes or are Mr Bruce are
3 involved; is that right?

4 A. Correct.

5 Q. Paragraph 270 of your statement -- and, again, that will
6 be part 1 -- that is your current statement to this
7 Inquiry, not previous statements in which, as you said
8 this morning, you may have been a bit forceful.
9 Paragraph 270 goes so far as to state that the
10 continued --

11 MR MOYNIHAN: If you could just give me a second I will
12 bring up the paragraphs so the public can see. It is
13 FI0181. The paragraph number, sorry?

14 MR HOLMES: 270, please.

15 MR MOYNIHAN: It is page 58. Sorry for interrupting you.

16 MR HOLMES: Paragraph 270 goes so far as to state that the
17 continued retention of these experts does not instill
18 confidence. That's not notice that you are looking for,
19 is it?

20 A. Not what?

21 Q. You say in that paragraph that the continued retention
22 of these experts does not instill confidence. It's not
23 notice that you are looking for to be given to the
24 defence in that paragraph, it's the fact that these
25 experts continue to be employed by the SPSA that seems

1 to be causing you some trouble.

2 A. I think, again, it's the background to that, why does
3 the continued employment of these experts not instill
4 confidence? The reasons are that, in my
5 opinion -- again, I've got to say it's my opinion --
6 based on the inquiries and reports that I've laid before
7 the Inquiry that, in fact, these officers made a
8 mistake. If you want the background again to that: when
9 I wrote to these people I was looking at the
10 authorisation of experts. What I was trying to find out
11 who authorises experts in this country? Is it the Crown
12 Office that does it? Is it the police? Is it the SPSA?
13 Who will take responsibility for experts in this
14 country? That was the background to making these
15 statements and I thought we had three experts there who,
16 in my opinion, had made two mis-identifications who were
17 still employed in that organisation. If I was wanting to
18 know who made the decisions to employ them? Who made
19 the decisions that they should give evidence in court?
20 That was the background to that.

21 Q. You have just made reference to them being still
22 employed by this organisation. What I am suggesting to
23 you is that you began by suggesting that it is necessary
24 to give notice to the defence in cases where these
25 experts are to give evidence.

1 A. Yes.

2 Q. But what you seem to be saying is that there is a
3 problem with the continued employment of these experts.
4 Is that right?

5 A. There's a problem in the failure to deal with them. I
6 have said and say it again if these experts came to me
7 today and said, "I have got it wrong", I would shake
8 their hand. It's hard to say but you cannot go through
9 life -- we've had 13 years of this; they've had 13 years
10 of this. Someone has got to bring a halt to this. No,
11 I don't want them sacked or whatever else. I want the
12 authorities to deal with this issue. If these experts
13 have made a mistake, to admit it and to get the
14 retraining that they require. That's the whole ethos,
15 the whole principle behind what I'm doing, in fact, is
16 to establish the truth. It's not hatred against people.
17 It's not to get people sacked. It's to get this matter
18 resolved. I'm putting myself on the line to do that and
19 offering all the paperwork and all the knowledge that I
20 have to do it. Please believe me, Mr Holmes, it's
21 not ...

22 Q. But if these experts continue to maintain their opinion
23 that Y7 was made by your daughter, then what do you
24 expect to occur?

25 A. If you're employed by an organisation, the organisation

1 has some responsibility for this. The point I'm making
2 is, aside from that, aside from that, the SPSA, the
3 Crown and other people responsible for the evidence they
4 give have got a responsibility to the courts and to the
5 public to ensure that that evidence is accurate.

6 The point I'm meeting is, in my opinion and in the
7 opinion of a large number of independent people in
8 reports dating back to 2000, that they are not effective
9 and efficient. I am not going to personalise this
10 against them. It's a principle at stake, when you have
11 three experts, it could be anyone working within an
12 organisation, who, in my opinion, have made
13 mis-identifications which they have not accepted, then
14 something needs to be looked at. That's all I'm saying.
15 And hopefully, as I say, that will be done.

16 Q. It is an issue that clearly causes you some concern.
17 You have gone from asking for notice to be given to the
18 defence to calling attention to the fact that the
19 continued retention of these experts, the continued
20 employment of these experts, poses a problem unless they
21 can be persuaded to change their views.

22 Is that not right?

23 A. No, it points to the fact that, in my opinion, if you
24 have three experts giving evidence in Scottish courts
25 who, in my opinion, have been proven to have made two of

1 the most heinous mistakes in the history of
2 fingerprinting are still giving evidence someone needs
3 to have a look at that. Someone needs look at
4 authorisation procedures. I'm not looking for witch
5 hunts here; we're looking for solutions.

6 If these officers are looked at by the SPSA and the
7 Crown, surely the Crown have a responsibility to look to
8 the quality of evidence that's being placed before the
9 courts. As I have said, Mr Holmes, I spent 30 years of
10 my life, and my daughter did, and one of my sons did, in
11 the Police Service. Actually I care about, I care about
12 the justice system and the whole -- at times I'll accept
13 I have been forceful. I would admit that. At times I
14 have hoped perhaps that these experts that they would be
15 found out but these days are long gone, Mr Holmes.

16 My whole focus now is to resolve this matter, is to
17 assist this Inquiry in resolving this matter, is to have
18 the Inquiry reach its conclusions, conclusions which I
19 will accept in their entirety. I will accept them and
20 all I would ask is that all the other experts and the
21 SCRO, they give the same undertaking. That's all I can
22 ask.

23 Q. You say there are times you have been forceful, but your
24 efforts in this particular area have been very recent
25 indeed. The letters that you have lodged are as recent

1 as March of this year. So it is clearly not an issue
2 that you are going to let, is it?

3 A. It's not an issue that I'm going to let go. It's not a
4 question of whether I let go of it or not. What I'm
5 saying to you is that the authorisation of experts and
6 their appearance before courts in Scotland, these are
7 matters for the SPSA and the Crown Office. So, if you
8 like, no, I'm not going to let go but I believe they're
9 responsibility to look at that. I'm bringing that to
10 the Inquiry here because I believe the Inquiry should
11 look at that: no more, no less than that.

12 Q. It's more than being a bit forthright though, isn't it?
13 It's a question of saying to the organisation that
14 unless these experts agree with your opinion, as you
15 have put it, of this mark then there is a problem with
16 their continued employment?

17 A. No, I'm not saying that. I've already explained to you
18 the focus of these letters was authorisation. There is
19 a problem with their continued employment -- not so much
20 their employment but giving evidence in court -- if in
21 fact the matter of the identification of Y7 and Q12 has
22 not been resolved. I believe that's a big issue.

23 I also believe there's an issue if in fact the
24 defence are not aware that these experts have made these
25 mistakes. So there are issues there. There are

1 principles at stake in there. So if you want to
2 personalise it, personalise it. I am not personalising.
3 I have been forceful; I've admitted that. I've been
4 forceful in the statement I've given; I admit that, as
5 well. But even I am willing to step back and say, oh,
6 let's reflect on this and that's what I'm doing.

7 Q. As far as the other experts that have been involved in
8 this case are concerned -- and I am thinking
9 particularly about Mr Swann and Mr Leadbetter -- you
10 were asked earlier on by Inquiry Counsel whether you had
11 lodged a complaint against them to the IAI.

12 Forgive me, I'm not sure I picked you up correctly.
13 Were you involved in complaining to the IAI about
14 Mr Swann and Mr Leadbetter?

15 A. I was involved in no way in the establishment of the IAI
16 inquiry. I had no knowledge that the inquiry was coming
17 up. I in no way was involved in that. I told you that
18 I had been on the Internet in contact with the IAI
19 asking them to look at these matters but I have not
20 gone, if you like, gunning for Mr Swann and
21 Mr Leadbetter in particular, although I have made
22 statements that I believe the IAI had a responsibility
23 to experts in general to look at the behaviour of people
24 like Mr Swann and Mr Leadbetter, yes.

25 Q. So the approach that you have taken during this Inquiry

1 and the approach that you have taken with the IAI is
2 hardly likely to reconcile you to the five experts that
3 we have just been speaking about, is it?

4 A. Mr Holmes, for 13 years it's a back-to-wall exercise and
5 here I'm trying to take some cognisance of what the
6 experts have been through as well. It's a system thing.
7 What you are trying to do is get the system to
8 understand what you're saying about authorisation and
9 other issues. And IAI and these organisations are part
10 of a world system for fingerprinting.

11 Going to these organisations, ask them to resolve
12 issues is not, in my mind, going after individual
13 experts. I say again if Mr Swann and Mr Leadbetter were
14 in fact to accept that mistakes have been made then I
15 would be the first to congratulate them. I just don't
16 think it's ever too late. But my focus has been the
17 system. My focus I don't think has been personal
18 dislike or hatred.

19 THE CHAIRMAN: Just while I remember to ask you, when you
20 say you have been on the Internet, that's on a website,
21 is it?

22 A. Yes, CLFEX.

23 THE CHAIRMAN: And that's your contact with the IAI then?

24 A. It's the only contact I've had with the IAI. I do
25 believe that I've been in contact with the IAI over

1 time, perhaps verbally and perhaps in one letter asking
2 them to examine this whole issue but I have had no part
3 and no knowledge of any IAI committees coming up.

4 I want to clear -- yes, I have been pushing them to
5 do something about it and I have mentioned experts, all
6 of them, but only in the context: sort out this mess
7 yourself. Let the experts sort it out and then we won't
8 need to sort it out.

9 THE CHAIRMAN: Yes, thank you.

10 MR HOLMES: You have mentioned that the campaign, as it's
11 been termed, has been media-driven in your own statement
12 and the reference is paragraph 199. You say that if
13 ever a case can be said to have been media-driven, this
14 is it. Would you agree with that?

15 A. Absolutely.

16 Q. You admit in your statement that your campaign has
17 benefited from the fact that you were formally the Media
18 Liaison Officer of Strathclyde Police. Would you accept
19 that?

20 A. Yes.

21 Q. Again, you say in your statement that my clients have
22 been reluctant to involve themselves in the publicity
23 surrounding this case and, again, you feel that is
24 something that your side of the argument has benefited
25 from as a result. Would that be correct?

1 A. No, I didn't say -- what I said was if they have chosen
2 not to do that or whatever reason that be, that's their
3 choice to make. The media are there.

4 I go back to the point I made originally here when
5 this all started off in 1997. We had our backs to the
6 wall and the feeling was that you were dealing with the
7 Crown Office, the police and the system itself. Come
8 1999, when my daughter was unanimously acquitted, we
9 thought the feeling would go but it didn't go. It
10 seemed to me -- and, again, I'm willing to be corrected
11 on this -- the meeting of 20th May onwards it was made
12 quite clear that the system was not going to deal with
13 this.

14 So I don't what you ask one man or one woman to do
15 in these cases. I chose, in fact, to go with the media.
16 Now, what I did was present to the media my side of the
17 story. That's all I did. If you think that the
18 media -- the Frontline Scotland programme, just as an
19 example which I've referred to in my statement, please
20 believe me the questioning that we got from the
21 Frontline team was extremely stringent and if you think
22 that Shirley, after going through what she'd gone
23 through in her trial, happily subjected herself to five
24 extra experts coming in, and the truth is they may have
25 found something different.

1 What you do is with the media, you lay the stuff on
2 the table, you open up everything to them, you speak the
3 truth to them. That was a choice I made to do. The
4 choice that the other people made to do, that's their
5 choice.

6 Q. You say that you spent a good deal of time building
7 relationships with the media and those who chose not to
8 do so or who shunned the publicity and claimed the media
9 were against them then only had themselves to blame?

10 A. It's their responsibility. Blame's not a word -- if
11 I've used the word, I won't -- it's their
12 responsibility. We need all to take responsibility for
13 our own actions.

14 Q. Would you accept the fact that the SCRO officers were
15 prevented to some extent from commenting on matters
16 because of their employment?

17 A. That may well have been. I know that some have
18 commented but I accept that, yes, that would be present.

19 Q. So any adverse media commentary they may have gained is
20 not their own fault, as you have previously put it?

21 A. It's their own responsibility, the organisation's
22 responsibility. Yes, I'll leave it at that, yes.

23 Q. You have already accepted the fact that you were able to
24 get published, you built relationships with various
25 media, has assisted you in this case; is that fair?

1 A. Come back to me, won't you please?

2 Q. It's assisted you that you have been able to build
3 relationships with the media, you were able to get
4 articles published; is that fair?

5 A. It's a two-edged sword but, yes, I would accept that.

6 Q. Paragraph 169 of your statement quotes Mr Bell as
7 stating that:

8 "In view of the media speculation I immediately
9 directed that the deputy head of the SCRO Fingerprint
10 Bureau and the Quality Assurance/Training Officer
11 re-examine the crime mark referred to as Y7 and it then
12 confirmed to me that in their opinion the mark had
13 indeed been made by Shirley McKie."

14 Again, I go back to this issue of suppression.
15 That's at a very early stage. How can media comment in
16 your favour have been suppressed when even when the mark
17 was being rechecked it was apparently resulting --
18 sorry, even when the re-checking of mark Y7 was
19 apparently as a result --

20 A. I'm not following you. You'll need to come back at me,
21 sorry.

22 Q. I'm sorry. I will put it a different way.

23 The quote from Mr Bell states that:

24 "In view of the media speculation, I immediately
25 directed that the deputy head of the SCRO Fingerprint

1 Bureau and Quality Assurance/Training Officer re-examine
2 the crime mark referred to as Y7 and they then confirmed
3 to me that in their opinion the mark had been indeed
4 been made by Shirley McKie."

5 So do you accept that even at that very early stage,
6 the stage where the mark was being rechecked
7 by Mr Dunbar and by Mr Mackenzie, that the media
8 attention was assisting you?

9 A. Yes.

10 Q. I go back to this issue of suppression. It's hardly
11 fair to say that media commentary was suppressed when
12 even at that very early stage media commentary was
13 resulting in additional checks of this mark, is it?

14 A. Really, I'm not following you. Suppressed by whom?

15 Q. That is what I was asking you earlier on. It is clear
16 that there was media commentary out there and it was
17 resulting in additional checking of this mark which
18 perhaps wouldn't otherwise have taken place?

19 A. Yes, I accept that.

20 Q. The Internet as well has also assisted, you say in your
21 statement, that to September 2009 CLPEX (Complete
22 Latent Print Examination to give it its full title)
23 700,000 visitors; is that right?

24 A. Yes, 700,000-odd.

25 Q. Where did you get that information?

1 A. I got it from the CLPEX itself and asking what the
2 responses had been to the various postings on the site
3 and that was a figure that I got.

4 Q. That's a website that's run by Kasey Wertheim,
5 Mr Wertheim's son; is that right?

6 A. Correct.

7 Q. There is also a website that are you the moderator of,
8 Shirley McKie.com?

9 A. Yes.

10 Q. Again, does that receive a large number of visitors?

11 A. Yes. For the fingerprint side it receives a steady flow
12 of visitors, yes.

13 Q. Are you responsible for the content of that site?

14 A. I am.

15 Q. So with television, newspapers, Internet sites at your
16 disposal, I come back to this issue again: who was in a
17 position to suppress any media commentary that was
18 taking place on the case?

19 A. You understand that there are two dimensions of media
20 contact and publicity. It is truly a two-edged sword.
21 You go out with facts as you see them to people. Then
22 they can find other facts and come back at you. All
23 I've ever done is put the facts as I see them on the
24 table, on the Internet site or with the media and it's
25 up to other people to make a judgment on that.

1 I don't see how you -- if you're criticising me, if
2 you're not I apologise to you -- you cannot criticise me
3 for, if you like, choosing to mount the campaign which
4 I've already told using the media and using the
5 Internet. These are modern things which we tend to use.

6 It may be added that the SCRO and their friends have
7 used it as well, which is totally and perfectly fair.

8 So I think we've all been using this.

9 Q. You would accept that from the outset you had access to
10 these media; whereas, because of their employment, the
11 individuals at least, the SCRO officers themselves --
12 I'm not talking about the institution but the
13 individuals -- did not have that kind of access?

14 A. I would accept I created access and I had, from my
15 previous post as a Force Information Officer, that I had
16 in fact some contacts. Yes, I readily accept that.

17 Q. Is it fair to say that the access that you had is
18 something that you have used to create the most positive
19 image possible for your daughter's case?

20 A. Yes, I would say that. Yes, I would say yes to that.

21 Q. A couple of examples. You suggest in paragraph 277 to
22 288 of your statement, which will be published, that the
23 experts who left the service, who left the SCRO, did so
24 because their expert evidence would no longer be
25 acceptable to the Crown.

1 Who told you that was the reason why these experts
2 left?

3 A. The Lord Advocate made a statement at the Justice 1
4 Inquiry that he talked not in a pejorative sense that
5 the case was notorious and he felt because of that,
6 their evidence would not be acceptable in court.

7 I've also had a number of meetings with Mr Mulhern
8 (who was the Chief Executive Designate for the SPSA, as
9 you are well aware) and this was my understanding from
10 these conversations and from the evidence I heard from
11 the Lord Advocate.

12 Q. That does not account for the two senior officers who
13 wouldn't be giving evidence on a regular basis anyway,
14 though, does it?

15 A. Which two?

16 Q. Mr Mackenzie and Mr Dunbar.

17 A. In what way doesn't that account for it?

18 Q. Their positions at the time would not have called upon
19 them to give evidence on a regular basis. They were
20 Deputy Head of Bureau and the Quality Assurance/Training
21 Officer. So the fact that evidence would no longer have
22 been acceptable to the Crown is not something which
23 would have caused them to leave the service, is it?

24 A. Well, the reason -- I don't know the reasons. I have
25 not spoken to Lord -- I'm not aware of the inside

1 information on that but the fact is both did leave the
2 service and they were tied into, if you like, the four
3 main experts by the fact that the Lord Advocate made a
4 decision that there would be no prosecution possible
5 against them in the future and that's the only way I tie
6 them together.

7 Q. "Leaving" implies that the process was entirely
8 voluntary on their part, does it not?

9 A. There may be an implication of that. My understanding
10 was -- and, again, I really stand to be corrected -- was
11 that they were offered a package to leave. Now, if the
12 gun was put at their head, I don't know that, but they
13 were certainly offered a package to leave the
14 organisation. That was my understanding.

15 Q. Part of the consequences, it has been accepted, of this
16 whole case on these officers is the loss of their
17 careers. Is that something that you would accept?

18 A. Of course it is, yes. It's extremely sad for them and
19 for their families, particularly for their families
20 because I don't think it's in their families' hands. A
21 lot of people have suffered in this and I just wish we
22 could turn the clock back and no-one had to leave
23 anything to be perfectly honest with you.

24 Q. Another example taken from your statement would be the
25 reference to the Lothian & Borders letter. That is

1 referred to in paragraph 25.

2 A. 25?

3 Q. Yes. That states that there were 14 experts who sent

4 that letter which was later reduced to 13 when one

5 withdrew?

6 A. Yes -- I don't have that part of the statement here but

7 I will take that.

8 Q. When you say "one expert withdrew her agreement", are

9 you referring to Miss Hannah?

10 A. I believe I am, yes.

11 Q. Have you had an opportunity to see Miss Hannah's

12 statement?

13 A. To the Inquiry?

14 Q. I think it's the Mackay statement that is lodged on the

15 database.

16 A. I'm not aware of the detail of her statement.

17 Q. What you have said there is that she withdrew her

18 agreement to this letter. That's designed to make it

19 sound as if Miss Hannah had second thoughts about

20 signing that letter. Would you accept that?

21 A. My understanding of this was -- I may even have received

22 an e-mail from Miss Hannah at one stage, but it was made

23 quite clear that she had been on holiday at the time and

24 she had not intended that the letter was signed on her

25 behalf.

1 However, there is another side from the Lothian
2 & Borders Bureau at that time that she had in fact
3 openly acceded to her name being put on to that although
4 she was on holiday. So you've two versions of that it.
5 But I accept that, yes.

6 Q. Her statement makes it clear that she did not sign the
7 letter, that she did not see the letter and that she did
8 not know about the letter. That is a little bit
9 different from "withdrawing her agreement"; is that not
10 right?

11 A. It's her version and there are other versions. I cannot
12 speak to this myself. All I can say to you is the
13 information I had before me was that in fact she was on
14 holiday at the time and she said that she hadn't given
15 her agreement. Again, I'm going from memory -- I think
16 she said that in fact she agreed that in fact Y7 was a
17 correct identification. I think that's what she did.

18 Q. So what you are presenting in your statement here is the
19 most positive possible view, from the point of view of
20 your daughter, that there was one expert who had
21 withdrawn her agreement to this letter rather than the
22 fact that, as seems to be the case from her statement,
23 there was one expert who did not agree to this letter
24 and in fact didn't even know about it.

25 A. That's the version you give but I've given another

1 version. The fact of the matter is it was understood by
2 the other 13 signatories to this matter that she had
3 authorised her name to be put upon it.

4 I can't say who's right or wrong, Mr Holmes. I'm
5 not putting positive spin on it. I'm putting on that 14
6 experts from the Lothian & Borders Police signed the
7 letter to the Minister for Justice criticising, if you
8 like, the identification of Y7 and asking for something
9 to be done about it. I put in that one had withdrawn.
10 I've drawn that to your attention that one person did
11 withdraw their name.

12 Q. You have stated previously that a number of world
13 experts have looked at Y7 and come to the view that it
14 was not made by your daughter; is that right?

15 A. Correct.

16 Q. Firstly, in relation to that statement, you have said
17 yourself that there is no international standard for
18 identifying fingerprints. Is that the position so far
19 as you are aware?

20 A. That's the position.

21 Q. So the experts that you refer to are experts from
22 somewhere other than this jurisdiction and you can have
23 no idea what standards and procedures they have adopted
24 in carrying out any examination they might have made of
25 Y7, can you?

- 1 A. I can only know from the countries they are coming from.
- 2 The majority would come from America and Canada with an
- 3 occasional one from UK. I am conversant with the
- 4 standards there. But some people came from Portugal and
- 5 from Eastern European countries. So you are absolutely
- 6 right; I would not know the standards from these
- 7 countries. Actually, probably one of the reasons why I
- 8 think it's so important to have an international
- 9 standard -- like you, I'm well aware that if we're to
- 10 trust fingerprints we need standards which every court
- 11 in every country can actually adhere to.
- 12 Q. The second point about that statement is you confirm in
- 13 your letter of 14th January 2000 to the Lord Advocate
- 14 that the materials distributed to these experts were
- 15 distributed by our American colleagues. First, by that
- 16 do you mean Mr Wertheim and Mr Grieve?
- 17 A. Mr Wertheim, I think Mr Grieve was involved. Ed German,
- 18 who was in the US Army at that time, he was involved in
- 19 the matter as well.
- 20 Q. These are individuals who already come to a view on Y7?
- 21 A. Indeed.
- 22 Q. Do you confirm also that the materials distributed were
- 23 distributed with an explanatory note?
- 24 A. In my belief, yes.
- 25 Q. Given the fact that we have heard it implied time after

1 time that the note on the Form 13 in this case, which
2 says "ident required for deceased", could have some
3 influence on the eventual decision or the eventual
4 examination of the fingerprint experts, and given the
5 fact that we have heard evidence this morning about
6 Dr Dror's article about confirmatory bias, could an
7 explanatory note being issued with materials not be
8 expected to have influence on the eventual outcome of an
9 examination?

10 A. When you go across the world and ask 129 experts who
11 eventually, as you are aware, gave their conclusion on
12 Y7, of course that's going to happen. It's not only
13 psychological and contextual items, there's a whole host
14 of factors at play. The only point I'm making is that
15 among these experts were people, a professor at
16 University Monisans(?), Mr Sholtz who was the head of
17 the UN mission at Kosovo. These are fairly, if you
18 like, well-known experts with a world-wide reputation.
19 The professor has written a number of books on it.

20 What I am saying is that, looking at that in the
21 broad, it was just another, if you like, link in the
22 chain for me in the fact that print Y7 was a wrong
23 identification. But I totally accept with you that
24 there's some subjectivity of the whole thing, there's
25 psychological and emotional factors at play. They're at

1 play with them just the same as they are with anyone

2 else.

3 MR HOLMES: Sir, I have some further questions. That might

4 be a suitable place to break.

5 THE CHAIRMAN: We will stop now then and sit again at 1.50.

6 MR HOLMES: I am obliged.

7 **(1.00 pm)**

8 **(Luncheon Adjournment)**

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