

Tuesday, 20th October 2009

1

2 (Afternoon session)

3 (1.52 pm)

4

ALLAN JOHN BAYLE (continued)

5

Examined by MISS CARMICHAEL (continued)

6

Q. Thank you, sir.

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Mr Bayle, just before lunchtime you were telling us

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about the courses that you had been involved in and you

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started to speak about Mr Leadbetter.

10

There was just one point I wanted to follow up on on

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that. What you said in your statement is that

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Mr Leadbetter did not dissent.

13

There's a difference between somebody not showing

14

dissent and actively agreeing or disagreeing.

15

A. No, I don't think he wanted to say anything, which we

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were a bit amazed about because everybody else in the

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room was saying it definitely wasn't Shirley McKie's

18

mark. But I wasn't surprised but then when he said he

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had a friend who said it was identical we knew who he

20

was talking about. But we did show to them except, the

21

last one for good reasons.

22

Q. I would like to go back and ask you something perhaps I

23

should have asked you earlier. When you were shown the

24

mark by Mr Ashbaugh, what exactly did he tell you about

25

it?

1 A. Well, he just said, you know -- well, he didn't say
2 anything about it because he didn't want to say anything
3 about it; he just wanted my opinion on it. He wanted my
4 opinion on it, I think, because he didn't want to give
5 me any clues or anything else but I knew I'd seen it
6 before but I didn't know anything about it.

7 Q. So he didn't tell you his view about it?

8 A. No, he just said, "Can you have a look at it", and
9 that's what I did. He didn't mention SCRO or anything
10 like that, any experts or whatever. He just said, "What
11 do you think of this mark".

12 Q. So the first time you saw it, were you or were you not
13 aware that it was Y7 and Shirley McKie's mark you were
14 dealing with?

15 A. No, no, I didn't know at all. Even when people were
16 talking at New Scotland Yard I didn't really take any
17 interest because I've got my own -- I was an instructor
18 at Hendon and I only used to go to New Scotland Yard for
19 liaison visits and making sure the students are doing
20 what they're supposed to do and getting an update on
21 their progress. So when I did see it on the walls I
22 looked at it but I didn't really take any notice of it.
23 I wasn't really interested in it.

24 Q. Could we have paragraph FI0154, that is on page 2.
25 Before we leave paragraph 9 just to return to the detail

1 of this for a moment you say in your statement that on
2 your return from seeing Mr Ashbaugh you started to make
3 enquiries. What were those enquiries?

4 A. I wanted to know what was happening about this mark;
5 what was New Scotland Yard doing about it. Their reply
6 was, "We do not investigate other police forces". Now,
7 that comment shocked me because I thought now here we
8 have a lady who's supposedly left a mark at the scene
9 and it's not her mark. Why are they keeping quiet? Why
10 aren't they doing something about it? And it just got
11 to me. I thought this is wrong and I didn't like the
12 attitude of senior officers at New Scotland Yard. As
13 far as they are concerned it's SCRO's problem. Well, to
14 me, on, it's not their problem. It's everybody's
15 problem because it will affect us in the future and by
16 God it has.

17 Q. You go on to say you were told it would be sorted out by
18 senior officers. That's the next sentence in your
19 statement.

20 A. Mmm. They said, well, they would sort it out. I did
21 hear later that the Director of Identification, who was
22 Mr Chris Coombes at the time, actually wrote to the
23 hierarchy at SCRO requesting that they look at the mark.
24 I think they turning him down. I'm pretty sure they
25 turned him down but that's second-hand, by the way. I'm

1 not too ... that's what I heard.

2 Q. What did you see your own role in all this as at that
3 point?

4 A. I was confused, I was angry and I thought this can't go
5 on and I tackled them again after a few months and their
6 attitude was as worse as ever and I had the feeling
7 there, especially with Mr Bruce Grant -- he was a
8 Scotsman by the way -- his attitude was that I don't
9 think he wanted to get investigated or (inaudible) it at
10 all. He didn't want to know.

11 I thought, right, I've had enough of this and I'll
12 go on to the Internet and the night before or when I was
13 going on the Internet I said to my wife, "This is the
14 end of my career", and I went on to the Internet and
15 then the next day all hell broke loose. You can
16 imagine, can't you?

17 The reason why I did that was because it was
18 becoming Scotland versus America. You had the SCRO
19 experts against Pat Wertheim and Dave Grieve. Nothing
20 was being done and I thought I can only make that
21 difference and I knew I'd make the difference. So from
22 are member from New Scotland Yard, from the Scientific
23 Support College, to say ... and go in agreement with the
24 Americans that must have hit them for a six and I knew
25 it would and it certainly did.

1 Q. Just on this theme, if I can take you to paragraph 10 of
2 your statement, Mr Bayle, you say there that by
3 18th January 2000 you knew nobody was going to speak up
4 publicly in the UK about the case?

5 A. That's right.

6 Q. I'm wondering why we light on this date, 18th January,
7 and why your mind was decided by that particular point?

8 A. It was just by that date I had had enough. It was
9 just -- I mean, I made a note of it you see, that's why
10 I put it in the -- it's just a date that I knew that
11 nobody's going to talk about it, nobody's going to do
12 anything about it and that's when I decided to start
13 talking up about it and speaking about it.

14 Q. How did you know that? How did you know that nobody was
15 going to speak up about it or talk about it?

16 A. Because just of their attitude and because I challenged
17 senior officers. I challenged them quite a few times
18 and I knew that nothing was going -- nothing was going
19 on on the Internet. Nobody from the UK would speak up
20 and because I know, okay, there's a culture at SCRO.
21 There's also a culture in England and it's this culture
22 that the lads stick together, you mustn't speak out and
23 I found that difficult as well and I thought, well,
24 it's -- somebody here could actually commit suicide
25 because of a result of incompetence. That's what I saw

1 it as and that's the reason why I went on the Internet.

2 I was known because I taught a lot of US officers on
3 fingerprints and stuff like that. So I was well-known
4 and I thought this was the only way I could hit it and
5 bring it to the fore but I did know it would finish my
6 career, which it did in the end.

7 Q. So you made a decision to publish your own views on the
8 Internet?

9 A. Yes, I did, yes.

10 Q. I think the Inquiry has heard that shortly after that
11 time there came to be a BBC documentary and a number of
12 official investigations that followed after that so it
13 would appear, perhaps with the wisdom of hindsight, that
14 others were interested and that other investigations did
15 follow. Would that be fair to say?

16 A. Yes, just a bit because when -- the day after I went on
17 the Internet I was actually marched in, literally
18 marched in, and I knew what was coming and the head
19 of -- there's no point mentioning his name -- anyway, he
20 called me in, the head of the Scientific Bureau, and
21 said, "What have you done?" I said, "What do you mean
22 what have I done?" He said, "You've gone against SCRO".
23 I said, "Yes, that's right. I'm doing my honest
24 analysis and it's not her mark. What are you going to
25 do about it?"

1 "We're going to bring disciplinary action against
2 you."

3 "Well, go ahead."

4 A few months after that or whatever they did try to
5 bring disciplinary action against me and they called a
6 day -- they called a union man -- I called the union man
7 in with me, a higher manager interviewed me and we got
8 about 10 minutes/15 minutes through the interview and
9 the union man says, "Are you going to carry on with
10 this? It's corruption". So the manager said, "I can
11 see that. We're going to stop this interview now", and
12 then I got a letter saying that I would not be
13 disciplined. But after that, it got a little bit hairy.

14 Q. If I can take you on to paragraph 15 of your statement,
15 is this the interview that you are talking about at the
16 moment?

17 A. Right, that was the interview by Tayside Police.

18 Q. No, I'm sorry. You start the paragraph saying:

19 "I was interviewed by officers from Tayside Police",
20 then two lines later you say:

21 "Some time later I was interviewed for a
22 disciplinary matter regarding my conduct with the McKie
23 case."

24 Is that what you are talking about here?

25 A. Yes.

1 Q. So it was some time after 11th August?

2 A. Yes.

3 Q. So should we understand that you remained in your job
4 certainly through from the January to the August?

5 A. Mmm.

6 Q. But in the meantime you tell us also that you had been
7 meeting with Pat Wertheim, looking at certain matters
8 connected with the McKie and Asbury cases?

9 A. That's right.

10 Q. And, indeed, meeting a film crew in the April in
11 Kilmarnock?

12 A. That's correct, yes. There was a Panorama team, I
13 think, I'm not too sure now or it was -- I can't
14 remember. I made quite a few media presentations.

15 Q. What exactly was your role at this stage because you
16 weren't at that stage yet an independent fingerprint
17 expert?

18 A. No, I was at New Scotland Yard. I tried to do things
19 under cover but I realised that my career was finished
20 anyway so I was going to head -- I went ahead with Pat
21 and this was the Marion Ross mark on the tin and Pat
22 took photographs of it and he said, "Don't look at it
23 now. You go back to your Bureau. I'll go back to mine.
24 We'll phone each other when we've looked at it". So
25 some time after I phoned Pat up in America and he says,

1 "What do you think then?" I said, "Well, it's not
2 Marion Ross's print". He said, "Yes, you're damn right
3 it isn't". So we went ahead with that, so we made a
4 programme with it.

5 After that one, I was called in again and they said,
6 "Mr Bayle, you have been in front of the cameras again".
7 I said, "Yes, that's right, because you're not doing
8 anything about it so that's it". Well, I think the
9 Official Secrets Act was mentioned then. I thought
10 that's a load of rubbish for a start but do your worst.
11 Well, they did their worst in the end because they made
12 my life a bit of a misery. They stopped me from going
13 to the ACPO training meetings. Which I found a bit
14 silly really because there was a member of SCRO who was
15 at the ACPO training meetings, Mr Dunbar. They didn't
16 ban him. They banned me.

17 I then wasn't allowed to do any advanced courses,
18 just fingerprint courses, just for the basic stuff, I
19 thought was an insult to my intelligence. I did a few
20 courses. I'd had enough. I decided, well, can I go
21 back on the area as crime scene examiner, going to major
22 crime scenes. I was refused. I then had a word with my
23 family and said, "Right, I've had enough of this. I
24 think I'll go independent", and they said do it. So I
25 handed in my resignation.

1 Q. When did that happen?

2 A. I think it was a further(?) time in the year, or
3 something like that. I can't remember dates any more
4 but it was some time after anyway because it was over a
5 period and it was getting worse and worse and in the end
6 I couldn't do it any longer. I had to get out.

7 Q. The events that you describe, were these entirely as a
8 result of your involvement with the McKie case?

9 A. Yes, it was, yes. There's no doubt about that because
10 they sent me over to America to do the ridgeology
11 course. I was doing all the research for modernisation
12 of fingerprint experts in this country. I wrote a
13 manual for future expertise looking at identification
14 and since that time I've actually changed the way I
15 present evidence to courts, especially in Scotland as
16 well. So it's been a big change but I've been doing it
17 now for, what, nine years, doing just reports and not
18 statements. I do forensic reports in Scotland and
19 solicitors like it, the judiciary like it. I've never
20 had to use the marking up, which I'm a bit disappointed
21 about because my reports are very good.

22 Two reports -- they were basic reports when I first
23 started, like the mark on the tin and the other mark,
24 you can actually see the reports I've done there and
25 they are completely different from the reports that a

1 normal expert does and that's the way I was going to
2 start teaching experts in this country. "Forget about
3 statements, you want to call yourself forensic
4 scientists, you want to call yourself scientists, then
5 you have to do a report on what you see. I want you to
6 tell me what you see in that mark, not say I've got so
7 many points in agreement. So what? It doesn't mean
8 anything. I want you to tell me -- do your notes and
9 tell me how you come to your conclusions", and that's
10 what I now do in reports and I've been doing that for
11 nine years. I don't do statements any more. I do
12 forensic reports.

13 Q. So your view is that you are very clearly of the view
14 then, I take it, that you would be wanting to record
15 things like the medium of development, matters relating
16 to the deposition of the mark, those sorts of factors in
17 your report?

18 A. Yes. I did have meetings with senior solicitors about
19 how to present evidence in this country. We had
20 problems with the Americans and the Canadians as well
21 with some of the technicality of the wording like if
22 there's a problem they call them red flags. Now to me
23 that was unscientific and I said to Ashbaugh, "We can't
24 use red flags here. Nobody knows what red flags are.
25 It's problematic areas. It's more scientist". It's

1 things like matrix. Well, we don't understand matrix in
2 this question. So the wording, if there was a question
3 of pressure distortion, things like that, it was okay
4 but some of the wording like incipient ridges, double
5 taps, we don't use that in this country. It wouldn't be
6 accepted. That's Americanism, so we stopped all that.

7 Q. When you say you had discussions with senior solicitors
8 about reports, were these defence solicitors or
9 prosecution lawyers?

10 A. No, they were from the Crown Office or wherever. They
11 were quite senior lawyers and they wanted to know where
12 we were going in giving our evidence and I had meetings
13 with some of the senior staff there on what I wanted to
14 do and how to present evidence in court.

15 Q. When you say in this country, do you mean Scotland
16 specifically?

17 A. When I said "this country", sorry, I mean the whole of
18 the United Kingdom.

19 Q. Because you will appreciate there are different
20 prosecution authorities in Scotland than in England and
21 I would like to be quite clear who it is you say you met
22 and had discussions with.

23 A. Yes and I had some big problems when I started giving
24 evidence in Scotland as well and I had to learn that
25 particular way but the reports on what I had actually

1 done, giving evidence it's all been accepted in
2 Scotland, say, for the last nine years now. So I
3 actually do a forensic report now.

4 You were talking about notes with Richard and
5 whatever. Well, the notes -- my notes and my report,
6 when I've got a mark in front of me I write my report.
7 My notes are in my report because I'm actually
8 describing that mark. Now, I don't even look, do the
9 comparison. I want to know everything that's going on
10 in that mark. I want to know all the movement. I want
11 to know where everything is going from. Is there a
12 delta region? Is there a core region? Is part of the
13 mark missing? Is there a lot of pressure? I put all
14 that in my book.

15 Now then, when I've finished all that and I look at
16 the fingerprint I can see where the problems are and I
17 can actually describe is there enough ridge
18 characteristic to make an agreement? Yes, there is.
19 Are the furrows okay? Yes, it is. I never, ever
20 mentioned in nine years -- in fact it's ten because when
21 I was in New Scotland Yard in the last year I was
22 actually doing cases at New Scotland Yard using
23 ridgeology.

24 So in these final reports I don't mention how many
25 ridge characteristics. There's no need to because I've

1 done the analysis.

2 Q. I'm not sure I was quite clear that I got an answer to
3 the question, you're not saying, are you, that you have
4 met with senior Scottish legal personnel about
5 preparation of evidence?

6 A. No, no, but they have accepted my evidence.

7 THE CHAIRMAN: So it would have been the Crown Prosecution
8 Service in England and Wales that you talked to?

9 A. That's right, sir.

10 MISS CARMICHAEL: I would like to move on, please, to
11 paragraph 16 of your statement, Mr Bayle. I wonder if
12 we could have AZ0011 up on the screen at page 5, please,
13 alongside. I think this is the petition or part of it
14 that you refer to in your statement.

15 A. Yes.

16 Q. That was a petition to the Scottish Parliament.

17 If we look at the second paragraph on the page
18 on the right here we see:

19 "We believe the best way to resolve the matters we
20 raise is to commission a fingerprint expert of world
21 renown to examine them therefore respectfully suggest
22 that the relevant committee of the Scottish Parliament
23 seeks the assistance of the Royal Canadian Mounted
24 Police to obtain the service of the World's foremost
25 fingerprint experts, David Ashbaugh, in this regard."

1 A. Yes.

2 Q. Can I suggest to you that it was perhaps a slightly
3 curious suggestion that you made there of Mr Ashbaugh
4 knowing that he was of a particular view about Y7 and
5 that he might, therefore, not be perceived to be an
6 entirely independent person for the purposes you were
7 suggesting there?

8 A. The Canadians are the world leaders in identification.
9 Although it said David Ashbaugh there, he's a man
10 that -- he looks at everything as a scientist and he was
11 the best man. Although we say, yes, he's looked at it
12 and whatever -- because SCRO were making all sorts of
13 statements saying it's not the same mark and all this
14 silly business. But anyway, David Ashbaugh was the best
15 person we thought because, I mean, don't forget on the
16 internet there we were getting such response from over
17 the world, come on, what we doing about it, and we all
18 decided that this was the best way to go. And David
19 Ashbaugh really, although, yes, he's made a few comments
20 and whatever, he wasn't involved as much as Pat
21 Wertheim, Dave Grieve or myself or Arie Zeelenberg. So
22 that's what -- we decided to do that because he was the
23 best in the world.

24 Q. I think I will be corrected if I am wrong, I am sure,
25 but I think I am right in saying Mr Wertheim had

1 originally shown the mark to Mr Ashbaugh; is that right?

2 A. Yes, that was at an IAI conference, I think.

3 Q. And Mr Ashbaugh had shown you the mark because he was
4 concerned about it?

5 A. Yes.

6 Q. So thinking about this for a moment for the point of
7 view of the SCRO personnel and organisation, would you
8 accept that it would perhaps be rather difficult for
9 them to see him as an independent and honest broker in
10 the way that you are suggesting in this petition?

11 A. They knew about David Ashbaugh and they sent people on
12 the courses so I don't think it had been a problem for
13 SCRO. Why? They must have known about David Ashbaugh.
14 Everybody was accepting his work so -- he was a very
15 good person to do that, the best person to do that.

16 Q. I would like to ask you a little bit about one of the
17 reports you wrote and if we could have SG0518, please.
18 What should come up here is the report that you wrote
19 about Y7, SG0518.

20 I think you started to tell us a little bit about
21 how you write your reports. It should be on the screen
22 for you, Mr Bayle.

23 A. Yes, I've got it. I just wanted to look at my own but
24 okay.

25 THE CHAIRMAN: If you would prefer to work from your

1 original, from your own copy?

2 A. No, it's all right sir, no problem, no problem.

3 MISS CARMICHAEL: When you are telling us how you come to

4 write your reports we see here you mention the

5 substrate, which in lay language is what we find the

6 mark on?

7 A. That's right.

8 Q. I think you indicated didn't much like the term matrix

9 yourself, perhaps you can tell us what you meant here.

10 A. No, this is the very beginning of my career in writing

11 reports. It's changed a hell of a lot since then but I

12 myself wanted to do a forensic report on this and it was

13 a good opportunity to do that and for people to actually

14 see where I was coming from when I wrote this report.

15 But I have changed a hell of a lot and I've learnt a lot

16 in the last nine years on how to write reports and

17 whatever. But this is how, yes, that's how I started in

18 doing this particular one.

19 Q. So we see, in ordinary language, a description of some

20 aspects of the appearance of the mark?

21 A. That's correct.

22 Q. You mention the development medium. You say you could

23 see no evidence of any other developing powder. We have

24 heard some evidence there was aluminium powder applied

25 here as well.

1 A. Yes, but it was mainly black when I saw it. I don't
2 know the reason why neither.

3 Q. If we move on to the next paragraph about deposition
4 pressure and you record there about there being more
5 pressure above the core area and towards the top of the
6 digit.

7 A. Yes.

8 Q. Can I clarify with you whether you are of the view that
9 the mark was a single touch?

10 A. It was a single touch?

11 Q. That was your view?

12 A. **(Nodded)**

13 Q. If we can move on to the next page, please. If we look
14 under the heading "Clarity "and the final sentence under
15 that heading you say that "tolerance appears to be low",
16 and I would like to clarify with you what you meant by
17 that?

18 A. Tolerance low means there's a lot of detail there. If
19 there's not so much detail like there's ridge
20 characteristics missing or Third Level Detail missing or
21 whatever then the tolerance becomes higher but there's
22 so much detail there it was a low tolerance.

23 Q. When you have a low tolerance, what is it that you are
24 tolerating, Mr Bayle, if you could just make that quite

25 clear?

1 A. The tolerance I'm actually looking at is the amount of
2 detail there. So the amount of tolerance is you can
3 work either side of -- I know it's a bit difficult to
4 understand but what it's what you're actually -- detail
5 you're looking at, how much detail is there. If there's
6 a lot of detail there that's going to be a low tolerance
7 because if you've got the high tolerance then you have
8 got to make allowances and those allowances -- that's
9 why you get the high tolerance. You've really got
10 beware. If there's high tolerance there you've really
11 got to be careful.

12 Q. So if there's low tolerance you would expect there to be
13 clear resemblances between mark and print?

14 A. No, there's got to be clear detail, clear detail of
15 ridge characteristics, clear detail of Third Level
16 Detail. Everything there that's looks like a mark -- I
17 mean, if you look at an ordinary print, say, just
18 looking at that, that's got a lot of detail in it.

19 **(Indicated)**

20 Q. You're holding up the known print of Shirley McKie.

21 A. That's right. You can see the pores and everything.
22 That's a very low tolerance. If it's all smudged and
23 everything else that's a high tolerance. Be careful, be
24 very careful.

25 Q. So you are indicating that when an image appears to be

1 of poorer quality, greater care needs to be taken?

2 A. Very much so.

3 Q. That is what you mean when you refer to tolerance?

4 A. That's right.

5 Q. You have a heading, "Anatomical core aspects", where you

6 say that after experimentation you believe that the mark

7 was made by a right hand digit on the basis that it

8 would be impossible for a person to be facing the

9 doorway and depositing a mark with a digit from the left

10 hand.

11 A. Because it would be like that (**indicated**). It was just

12 a peculiar way of looking at it and I thought I can't

13 understand how that could be a left thumb in that

14 particular position and very difficult and the mark

15 itself, that's not a left thumb. I would be very

16 surprised if it's a thumb at all. It's experience. I

17 mean, I'm a forensic scene examiner and you get to know

18 the position of marks. It didn't look right. Well,

19 it's not a left thumb.

20 Q. I take it that if things were reversed from, I suppose,

21 the assumption you've made there and someone was facing

22 out of the doorway it might be easier to place a left

23 thumb?

24 A. If it was a left thumb, yes.

25 Q. If it was indeed a left thumb, yes. Indeed, one could

1 about it.

2 Q. Do you know why the images were on the walls of these
3 various departments that you had seen them on?

4 A. When I asked about it and what I did find out eventually
5 was it was because it was so bad.

6 Q. You have said in your statement that your colleagues
7 were talking about what you refer to as "the mistake in
8 Scotland"?

9 A. That's right.

10 Q. So you were aware at the time that this was something
11 that was viewed as an error that had been made?

12 A. That's correct.

13 Q. Was it with that knowledge that you had your first
14 opportunity to look at mark Y7 when you went to see
15 Mr Ashbaugh in 1999?

16 A. That's correct.

17 Q. Does it not concern you that you had some prior
18 inclination towards seeing this as a mis-identification
19 because you had seen the mark on the walls of various
20 offices in New Scotland Yard and this had been spoken of
21 as a mistake?

22 A. I don't take any notice of that. I make my own
23 opinions. So although people say, okay, they have made
24 a mistake, or I've made a mistake or somebody has made a
25 mistake, I want to look at it and evaluate it myself.

1 It's like a student coming up to me and saying, you
2 know, look, I think this is wrong and I want to tell
3 them why is it wrong and I will look at it. I won't
4 make any opinions about it and I want them to tell me
5 why they think it's wrong. Okay?

6 The same type of thing, see something on a wall,
7 okay. They are saying it's a mistake. Well, okay, it's
8 a mistake but I won't take any notice of that unless
9 somebody really asks me to evaluate it and nobody asked
10 me to evaluate it. It's only when I went over to Canada
11 and Ashbaugh asked me to evaluate it then I'll have a
12 look at it.

13 Q. No doubt the majority of fingerprint experts would say
14 that they would not want to be influenced by anything
15 that they may have seen or heard before carrying out an
16 examination but much has been made in the evidence that
17 we have heard of a concept called confirmatory bias.

18 Are you familiar with that?

19 A. Well, I think that's SCRO's own fault because they
20 wrote -- somebody wrote -- I can't remember who wrote
21 the paper now, saying that it wasn't the same mark.

22 Now, we were given, if I remember rightly that went
23 round the office and it was just -- we were just amazed
24 that SCRO could come out with something like that. It
25 was a very stupid thing to do and to say, "Oh, there's

1 brush marks. It can't be the same mark", look, experts
2 all over the country, fingerprint experts, look at Xerox
3 copies of Xerox copies, I've even made an identification
4 over a phone, I'm at a murder scene and I've got a mark
5 and I'm talking to a fingerprint expert and when I get
6 back we'll see what he's pulled out.

7 So it's evaluating. You have to have a look at that
8 mark. You don't turn round until you see that actual
9 mark but that's SCRO's own fault. If they hadn't sent
10 that letter out or making silly remarks like "Well, it's
11 not the same mark", that made things even worse, if that
12 answers your question.

13 Q. I'm afraid not, Mr Bayle. Witnesses on both sides of
14 this argument have been asked about the possible effects
15 of what has been referred to as confirmatory bias and
16 from that I understand that if a fingerprint expert has
17 some kind of prior information before he or she carries
18 out his or her examination that it can affect the
19 outcome of that examination.

20 Are you saying that is a phenomenon that just
21 doesn't exist?

22 A. Well, I've never been in -- I don't know. I've never
23 heard of that. That's ...

24 Q. You're not familiar with the work of Dr Dror?

25 A. No, no.

1 Q. No?

2 A. No.

3 Q. What was your concern about the impression when you
4 first saw it?

5 A. Amazed. I thought, well, okay, it's a mistake. Perhaps
6 they'll they put their hands up because we had a mistake
7 at New Scotland Yard and they put their hands up and
8 what we did was I had to test -- I think we had six
9 experts who made the same mistake on the one mark and I
10 had to organise a course to test these officers and it
11 went down from the lowest Fingerprint Officer to a very
12 senior fingerprint officer and test them. So that's
13 what we had to do. So honesty is the best policy.

14 THE CHAIRMAN: I think what you were being asked about when
15 you first saw it, which was in Canada, you're now
16 talking about when you came back but when you actually
17 looked at it in Canada, what sort of an examination did
18 you have of it there? Was that with --

19 A. Well, I had plenty of time, sir, because although I saw
20 the mark on the walls I didn't take much about it.
21 People were probably talking about it but I didn't take
22 any notice because it didn't concern me and I didn't
23 think much about it because I had enough to do anyway in
24 Hendon and -- But when I went to Canada I had plenty of
25 time because I had this one mark Ashbaugh, is checking

1 it or whatever, and he took this mark ... so I had hours
2 to look at it and I just looked at it but it didn't take
3 me long to look at it and say --

4 THE CHAIRMAN: I am just trying to find the conditions under
5 which you -- were you being asked, "Take a look at that
6 and see what you think", or was it really under
7 laboratory conditions that you were looking?

8 A. No, no, it was just have a look at it and, you know,
9 I've got quite a few years service in so I've got a lot
10 of experience in anyway. So I looked at it and it was
11 wrong; it was wrong. It didn't take me long at all, by
12 the way.

13 MR HOLMES: Is that why you took it upon yourself to make
14 more enquiries when you got back to the UK?

15 A. That's correct, yes.

16 Q. That led to your actions after you had initially seen
17 the mark. One of the things that you did, aside from
18 making more enquiries, was to include the mark Y7 in the
19 training courses that you have spoken about, the four
20 courses.

21 A. That's correct -- well, it's three courses not four.
22 The fourth one because SCRO were present so we decided
23 not to show the mark on that particular course in
24 Durham.

25 Q. You have said that yourself and Mr Sheppard showed the

1 mark to a number of training groups and I think you have
2 explained that was three out of the four courses that
3 were run. Which images of Y7 did you show to the
4 training groups?

5 A. It would be pat Wertheim's.

6 Q. Were these the same images that you saw when Mr Ashbaugh
7 showed you the images?

8 A. Yes, they were because it was Ashbaugh that got the
9 copies.

10 Q. Did you have any discussions from anyone, from either of
11 the two training centres that the courses were run at,
12 before you decided to use the mark?

13 A. Can you repeat the question again, please?

14 Q. Did you have any discussions with anyone from either of
15 the two institutions that you were teaching at before
16 you decided to make use of the mark on those courses?

17 A. No.

18 Q. Was Mr Ashbaugh present during any of the courses?

19 A. Oh, yes, yes, because with Jeff Sheppard we did all the
20 lecturing. I did some, David did some and Jeff Sheppard
21 on the one lecture to each day. So we picked our
22 different subjects we'd talk about like how skin's
23 formed, how ridges are formed and everything else
24 because it's quite a ... but it wasn't -- I must insist
25 here that it was only an awareness course. It wasn't a

1 training course. It was an awareness course and it was
2 just for training officers but for some strange reason
3 we had managers turning up, which we thought was a bit
4 strange but anyway we did it off our own back because we
5 just wanted to see what their opinions were and that's
6 why we did it.

7 Q. Mr Grigg has also spoken about a number of courses. I
8 am wondering if these are the same.

9 Was Mr Grigg present during any of these?

10 A. No, I don't think he attended a course in America at
11 that time. I was -- it was only Jeff Sheppard and
12 myself.

13 Q. I am sorry, you have referred to a course in America. I
14 was asking you about Mr Grigg?

15 A. Yes, but Mr Grigg hadn't been on a course in America.
16 He hadn't done the ridgeology course. There was only
17 Jeff Sheppard and myself so we were the main lecturers
18 from both colleges.

19 Q. You have said that all the marks used on these courses
20 were displayed anonymously. There was no indication of
21 what they were when you were showing the students. Is
22 that correct?

23 A. That's correct but I think some of them recognised it.

24 Q. Are you able to say who it was that recognised Y7?

25 A. Mr Leadbetter definitely did.

1 Q. You have mentioned a conversation that you had with
2 Mr Leadbetter where he seemed to recognise the mark and
3 I think the comment you have attributed to him is that
4 he said a friend of his said that it was identical. Is
5 that right?

6 A. That's correct, yes.

7 Q. You have said that you were aware who he was speaking
8 about. How would Mr Leadbetter recognise the mark if it
9 was someone other than Mr Leadbetter who had examined
10 it?

11 A. I don't know. I can't answer that.

12 Q. You have said as well this afternoon that everyone in
13 the room said that Y7 was not Shirley McKie's. Why
14 again would they be saying that if these marks were
15 displayed anonymously?

16 A. Well, because we gave them so many marks from
17 complicated cases which -- we left a certain time in the
18 timetable so they can look at various marks, difficult
19 marks, and then we wanted them to explain to us what was
20 going on with that mark. So that was -- we just put it
21 in, mixed it in with everything else.

22 Q. So was there some point during the course that the
23 people who were attending it became aware that Y7 was
24 the mark that had been attributed to Shirley McKie?

25 A. We told them.

1 Q. Oh I see. At what point during the course did you tell
2 them?

3 A. Well, after everybody had seen it. I don't know how
4 long it was afterwards but we told them, you know, it
5 was the McKie mark.

6 Q. Was that subject for some further discussion on any of
7 these courses?

8 A. No, no.

9 Q. You also speak in your statement about the examination
10 that yourself and Mr Wertheim carried out on the
11 productions from the Asbury trial and you have said that
12 you went to visit the offices of the Procurator Fiscal
13 and carried out an examination of the productions from
14 the trial.

15 Do you recall that?

16 A. Yes. It was very difficult, very difficult. It was
17 difficult because, if I remember rightly, we had to go
18 through all sorts of procedures to actually finally look
19 at the productions.

20 Q. You eventually got to see those. Do you remember when
21 that was?

22 A. Unless I put a date in there, no. But it was all -- we
23 organised it so that the camera team would be there and
24 we'd look at the stuff and whatever and by the way we
25 used a laboratory in the programme to try and make it a

1 bit more scientific or whatever.

2 Q. Was that the point at which one of the BBC documentaries
3 was filmed?

4 A. Yes, yes.

5 Q. So your examination took place around about that time?

6 A. Something like that.

7 Q. If I suggest to you that that might have been around
8 about April 2000 does that sound right?

9 A. I'll take your word for that.

10 Q. Amongst the productions that you examined that were
11 involved in David Asbury's trial do you recall whether
12 there was a gift tag from a Christmas present?

13 A. I was aware of that but I never saw it.

14 Q. You have said in relation also to the tin on which Q12
15 was found that Mr Wertheim took photographs of it. Is
16 that right?

17 A. That's correct, yes.

18 Q. Did he do so using any kind of special light source?

19 A. He had a very good camera. I didn't think so. I can't
20 remember really. I can't remember any light sources but
21 he just used his ordinary camera.

22 Q. How was it that the mark on the tin was developed?

23 A. I can't remember. I can't remember, sorry.

24 Q. You have described also some of the effects on your own
25 career of taking part in various stages of this case.

1 Paragraph 15 of your statement describes the way in
2 which you were ostracised by some colleagues as a result
3 of your involvement, leading eventually to your
4 resignation from the Metropolitan Police.

5 That is the reason you gave a short time ago to my
6 learned friend for your departure from the Met; is that
7 correct?

8 A. That's correct.

9 Q. Do you recall giving an interview in 2001 in connection
10 with another case where you attributed your departure
11 from the Metropolitan Police to your involvement in
12 that?

13 A. No. Hold on a minute. Are you talking about the
14 McNamara case?

15 Q. Yes.

16 A. No, I didn't leave because of that.

17 Q. If I tell you that you gave an interview to a newspaper
18 called the Barnet Times describing your involvement and
19 you stated to them that:

20 "I had had enough and I said I would leave to
21 represent him and that's what I did."

22 Do you recall making that statement?

23 A. Yes. I think that was the final nail in the coffin.

24 I've got a funny feeling that was the final nail in the
25 coffin. That was it, that was the final thing.

1 Q. So is your evidence now that Ms McKie's case was not the
2 entire reason that you left the Metropolitan Police,
3 there was another case at least in which you were
4 involved?

5 A. No, the McKie case was the big problem and that was just
6 a small side -- no, it was the McKie case. That was the
7 one that I was marched in for; that was the one I was
8 going to be disciplined for; that was the one I was
9 allowed to do a small course; that was why I was taken
10 off the ACPO meetings; that's why I wasn't enough to
11 give enough training to senior officers. That was it.
12 That was it for me. I had enough of it.

13 Q. So if you previously attributed your departure in part
14 to the McNamara case that wouldn't be right? Is that
15 what you are saying now?

16 A. No, not really.

17 Q. You have spoken to the media about the McKie case and is
18 it fair to say that you have been critical of SCRO?

19 A. SCRO, yes, but not the experts. I've never, ever named
20 the experts. Really, they're victims as well and I must
21 say to the Inquiry that this has been going on a long
22 time. Now I've been checking SCRO work now for nine
23 years.

24 THE CHAIRMAN: In the sense of when you were appearing for
25 the defence.

1 A. This is as an independent expert for the defence.

2 THE CHAIRMAN: But not in any official capacity, so to
3 speak.

4 A. No.

5 90 per cent of their marking-up was not right -- 90
6 per cent of it was not right. The angle of the marks
7 were wrong. There's one nearly upside down but it was
8 still ident so I let it go.

9 Their lines went to the wrong place and there's a
10 set procedure for doing enlargements in the United
11 Kingdom. The lines must be at a 90-degree angle to the
12 ridge characteristic. They must never, ever go through
13 other ridge characteristics. You must never use ridge
14 characteristics at the edge of a mark because you don't
15 know what's happening to them.

16 Also, in all those nine years I never, ever saw a
17 characteristic table with those enlargements. Now then,
18 when you produce enlargements for any court in the
19 United Kingdom you must produce a characteristic table.
20 That is your expertise. So when you start off, sir, and
21 you must go round the clock, clockwise, point 1, we'll
22 say it's a bifurcation, then you go to the next line
23 ridge characteristic number 2, there are two intervening
24 ridges and you go down to number 16 and then from 16 you
25 count the number of ridges back to number 1 again. That

1 is your expertise, that is your explanation when you are
2 charting. Now I have not seen that in nine years with
3 SCRO. That is part of your expertise. You must do
4 that.

5 If you do not produce a table then you are relying
6 on the responsibility of the court to make that judgment
7 and that is wrong.

8 Q. How often do experts in the UK, with the exception of
9 Scotland, produce case-specific enlargements?

10 A. Very rarely now but there is a problem. England have
11 got rid of the standard, okay. It's okay getting rid of
12 the standard but you've got to back it up and what they
13 are not doing is when they do have a number of 9 or 10
14 they are not producing enlargements to explain the
15 identification.

16 You will probably say to me, okay, they've done a
17 statement. Now that statement it says there they've got
18 so many points in agreement. Some English bureaux are
19 saying, well, this mark was made by this person and
20 that's it. Well, you're going to collapse. The system
21 will collapse. There's no co-operation now between the
22 bureaux.

23 I went to Nottingham. As far as I've heard from
24 them they are not going to send anybody to Durham and
25 they are actually doing Ashbaugh stuff. So there's a

1 big problem.

2 Scotland, okay, there's been a mistake. We've gone
3 past that now. These people now that are in Scotland,
4 experts, have got to be trained properly and they've got
5 to go back to the basics because -- let's give you an
6 example. All right, each ridge characteristic has got a
7 definition. Now then has the SCRO experts forgotten the
8 definition of a ridge ending? Okay, the definition of a
9 ridge ending is where a ridge stops short and flanking
10 ridges takes its place. This is very basic stuff. They
11 haven't been doing it.

12 To me, there's this problem but now you've got the
13 opportunity here in Scotland for God's sake get somebody
14 that knows how to do up-to-date, modern marking-up or
15 whatever and get a team in to do the training to all the
16 experts in Scotland.

17 Q. Have you ever mentioned any of these concerns to anyone
18 within the organisation in Scotland?

19 A. Right, I came up against another problem and my problem
20 with solicitors, PFs and when I deliver reports I put on
21 the bottom there, look, "Please ask the expert where is
22 the characteristic table. Why is this line doing this?
23 Why isn't it pointing to the correct ridge
24 characteristic? Why haven't they done this? Why
25 haven't they done that?" And the answer I got a few

1 times was, listen, fingerprints is God in Scotland.
2 Nobody goes against the fingerprint experts and I just
3 thought, well, come on, I'm giving you bullets to fire
4 in your gun to try and put this expert in the box there.
5 I want an answer from him. They never did it.

6 Also the PFs as well, I've had big problems with
7 those as well and to me there's a problem with the
8 system and also I used to fly up from London to Scotland
9 and then say go to the PFs office and look at these
10 latent marks, I would be put into a dingy old blooming
11 cellar and I've got my magnifying glass, I thought,
12 "Bloody hell, how long have they been doing this for",
13 and really you should be going to the bureaux or the
14 bureaux in Wales now they will send me the stuff by
15 recorded delivery instead of wasting taxpayers' money
16 going backwards and forwards looking at marks.

17 There's a huge problem. I know we've gone away from
18 your thing but I'm just giving you some idea of the
19 problems that we have in training in Scotland and it's
20 still in England as well, they still haven't sorted it
21 out in England, but there's going to come a point where
22 say, okay, there's eight or nine points in agreement,
23 well, they're going to have to put that on that because
24 I want to see those points.

25 Q. You have spoken about comments you have made to defence

1 solicitors and you have spoken about comments that you
2 have made to Procurators Fiscal but what I am asking is
3 have you ever raised any concerns with anyone working
4 within the Bureaux in Scotland?

5 A. I have with Grampian and -- God, I don't know the
6 places. Okay, Edinburgh, Dundee, those sort of places I
7 have done but I found there that there was a lot of they
8 didn't like SCRO and I got that impression, only because
9 I think they've had problems before with SCRO. I don't
10 know what the problems were but I knew there was a
11 problem with the bureaux and with SCRO.

12 Q. I take it then that you have never yourself raised any
13 concerns with anyone within the Glasgow Bureau?

14 A. No. I feel it's like going into a spider's web. I
15 thought, well, there's been enough stuff now on the
16 Internet and whatever so really -- I mean, if they'd
17 invited me in and whatever some time just to talk about
18 it and whatever, but I also had a problem when I used to
19 phone up, say I had a chemical mark and I'd phone up
20 SCRO and say, "Look, what treatment did you use", and it
21 was a police officer, if I remember rightly, and he
22 said, "If you want some information about a latent mark
23 or a finger-mark, you send a letter to the PF and then
24 he can write to us". Well, that report had to be in
25 within two days. I was never going to get it.

1 Q. You have worked on training courses with individual
2 officers who were also at Glasgow, is that the case?

3 You have worked on training courses with Mr Dunbar,
4 Mr Sheppard with others?

5 A. **(Nodded)**

6 Q. I am sorry that was badly worded. It made it sound as
7 if Mr Sheppard was at Glasgow but you have worked on
8 courses in which Mr Sheppard and others were present and
9 one of the others would have been Mr Dunbar; is that
10 correct?

11 A. I've never worked on a course with Mr Dunbar. Mr Dunbar
12 I've worked with at ACPO meetings as he was there as a
13 guest.

14 Q. Were you in a working group relating to modular
15 training?

16 A. No, not just modular training, it was all training.

17 We had to train -- I was totally against modular
18 training. I don't like modular training but the
19 training, I try to give advice on ridgeology or whatever
20 and I had problems with some people because they
21 wouldn't want to change and I found it with quite a few
22 senior experts they did not want to change and that was
23 a big problem, not just for me but Chris Coombes who was
24 the Director of Identification. It was a problem that
25 they wanted to do a lot of changes and they couldn't do

1 it because there was this background of -- I wouldn't
2 say it was cliquey but there was a problem there and I
3 couldn't put my hand on it but even when I tried to give
4 a lecture to field managers and whatever in Coventry and
5 I started to explain a future course on ridgeology, it
6 was for a week's course, and some of the audience
7 started booing and I thought, "Crikey, is it as bad as
8 that?" But they are all senior people and there's about
9 five or six of them.

10 But going back to your question, Mr Dunbar, I've
11 never done a course with at all.

12 Q. Have you ever been in a position to raise concerns that
13 you might have had with any member of the Glasgow Bureau
14 and not done so?

15 A. Not that I know of.

16 Q. You have raised concerns though in other arenas. You
17 have raised concerns in the media, taking part in a
18 documentary, for example, would that be correct?

19 A. **(Nodded)**

20 Q. You have also chosen to raise concerns as a result of
21 your involvement in this case about other cases in the
22 media, have you not?

23 A. What, Scottish cases?

24 Q. Yes.

25 A. I complained -- is it the Chief Advocate, not mainly

1 about fingerprints. It was mainly about crime scene
2 examination. I was very concerned there about scene
3 examiners. What really did it for me was it was a
4 particular crime scene, it was a murder crime scene, and
5 this scene examiner found finger-marks in every room but
6 they were all five feet from the base and I thought he
7 hasn't used a measure. There's no way that you can go
8 round this house and all the marks are 5 feet from the
9 floor. He hasn't used a tape measure. It was little
10 things like that and I'm also concerned about the Scene
11 Examiners, why aren't -- there's supposed to be a
12 quality control or hopefully at SCRO and that, and
13 they've found something was wrong with the lifts or
14 whatever -- I used to do quality control in New Scotland
15 Yard, crime scenes used to come in and that, and if I
16 noticed there was a mark there that didn't look right
17 I'd call that scene examiner and say, "Where did you get
18 that mark from, because what you are saying hasn't come
19 from there. Where did you get it from?"

20 "I might have made a mistake."

21 "What's your mistake?" and I'd want to know what his
22 mistake was.

23 THE CHAIRMAN: But you were being asked about others cases
24 that you complained about in the media.

25 A. I think the main one was crime scenes. I can't remember

1 about -- I mean, I just can't remember but go on if you
2 know of something I don't.

3 MR HOLMES: I am going to have to be quite careful about
4 this because your statement makes reference to a
5 specific other case. The name of that case has been
6 removed from the copy of the statement which will appear
7 eventually on the Internet but if you look at
8 paragraph 18 of your statement --

9 A. Yes, I know what you're talking about, yes.

10 Q. You know the case that I mean?

11 A. Yes.

12 Q. Did you make criticisms of SCRO in the media in
13 connection with that case?

14 A. Yes, I did.

15 Q. Were you aware at the time that the Justice 1 hearings
16 were taking place in connection with the present case?

17 A. Can you repeat the question?

18 Q. Were you aware at the time that you were criticising
19 SCRO in connection with that case in the media that the
20 Justice 1 hearings into the present case were taking
21 place?

22 A. Oh, I didn't take any notice of that.

23 Q. So you did not see that any criticism in the media of
24 SCRO at that time could have been potentially quite
25 damaging?

1 A. Damaging to whom?

2 Q. Well, damaging to those who were appearing in the
3 Justice 1 hearings that were taking place at the time.

4 A. I just wanted to bring forward what the problems were
5 and I thought that I -- I knew there was a problem.

6 Q. Yourself and, if I'm correct, Mr MacLeod called for the
7 closure of the Glasgow Bureau as a result of that case,
8 did you not?

9 A. I can't speak for them.

10 Q. Yourself and Mr MacLeod?

11 A. Yes, I may have done.

12 Q. Do you recall having done so?

13 A. Yes.

14 Q. Do you recall or do you accept now that the allegation
15 of a mis-identification in that case was not correct?

16 A. I need some guidance with this, sir. I need to speak to
17 somebody as well.

18 THE CHAIRMAN: Perhaps if we --

19 A. Because it's going to -- I need some guidance.

20 THE CHAIRMAN: Perhaps the best course, since you are not
21 represented here today, I will give you an opportunity
22 to speak to Counsel to the Inquiry and we will rise for
23 ten minutes and sit again just after 3.05.

24 **(2.57 pm)**

25 **(A short break)**

1 (3.10 pm)

2 MR MOYNIHAN: I'm sorry, sir. I have had discussions with
3 Mr Bayle to a limited extent and what I have advised
4 Mr Bayle is that if this matter proceeds then the safer
5 option may be for him to seek independent legal advice.

6 I have not felt able to give positive advice to him.
7 However, what I can say is though the particular
8 paragraph with the name deleted forms part of his
9 statement, my learned friend, Miss Carmichael, and I
10 were both taking the view that it was not part of the
11 subject matter of this Inquiry to look at the handling
12 of other cases and that case is one that has been
13 mentioned to us in the past and we have set a course to
14 avoid debating the rights and wrongs of this matter.

15 My primary submission to you, sir, would be that
16 this matter is irrelevant and, therefore, need not be
17 pursued. If, however, it is being pursued plainly it is
18 a matter for Mr Bayle to reflect on what I have said but
19 the advice I have given him is that he would be better
20 advised to take independent legal advice before
21 discussing this matter further.

22 THE CHAIRMAN: Yes.

23 Mr Holmes, certainly get back to where the question
24 was ...

25 MR HOLMES: I believed I asked, sir, if Mr Bayle recalled or

1 whether he accepted now that the allegation of a
2 mis-identification in the case referred to was not
3 correct.

4 THE CHAIRMAN: Do you recall that you accept now that the
5 allegation of a mis-identification in that case was not
6 correct.

7 MR HOLMES: That's right.

8 THE CHAIRMAN: Do you wish to pursue that point?

9 MR HOLMES: I would like to pursue that line, sir. The
10 reason for that is that I believe that it is an
11 allegation of a mis-identification which was levelled
12 against SCRO. It was done at a particularly sensitive
13 time in relation to the present case because of course
14 it was done during the Justice 1 proceedings and it has
15 transpired that that allegation was incorrect.

16 THE CHAIRMAN: The point really is that I am not, as you
17 will appreciate, going to investigate that matter at all
18 because it is not relevant to this Inquiry; in other
19 words, the subject matter of that case at all but on
20 that limited ground --

21 MR HOLMES: It is the fact of the --

22 THE CHAIRMAN: I can see you take it that it goes towards
23 credit really.

24 MR HOLMES: Indeed, sir, yes.

25 THE CHAIRMAN: I think in those circumstances we cannot

1 pursue that any further at this stage without Mr Bayle
2 seeking advice or having an opportunity to take advice.

3 MR HOLMES: Certainly the position that was taken at
4 Justice 1 is a matter of public record, sir.

5 THE CHAIRMAN: My recollection is that he stated his view on
6 that occasion but I don't know, there is some reason why
7 and that is confirmed by Counsel to the Inquiry, that if
8 he is going to answer the question, he should take
9 independent legal advice.

10 There can be no objection at this point if you want
11 to put to him the passage at the Justice 1 Inquiry but
12 whether that takes us any further or not because I am
13 not going to require him to answer the question unless
14 he has been advised.

15 MR HOLMES: Perhaps that is the way forward, sir.

16 THE CHAIRMAN: Is there any other matter that we can move on
17 to so far as this particular one is concerned? Then I
18 will give Mr Bayle an opportunity to take advice.

19 Are there any other subjects apart from this in your
20 list?

21 MR HOLMES: I can move on and deal with the rest of my cross
22 from there, sir.

23 THE CHAIRMAN: You could do that and we would return to this
24 issue --

25 MR HOLMES: I am concerned as to how to deal with this.

1 THE CHAIRMAN: -- when he has had advice.

2 MR HOLMES: I am concerned as to how we deal with this

3 issue, sir, in the context of Mr Bayle's evidence. Is

4 it likely that he will then be kept here overnight?

5 THE CHAIRMAN: I am not sure when Mr Bayle is going to be

6 get advice. It may not be today. It won't be today

7 that he can do that, I imagine. He's got to seek

8 someone, instruct them and this is going to take time.

9 MR HOLMES: I would like to be able to put the particular

10 passages to him, sir, and if he wishes to take advice

11 then --

12 THE CHAIRMAN: There can be no objection but I am not going

13 to expect him to answer. If you care to put the passage

14 to him then you can do that now but I shall advise him

15 not to answer the question.

16 Do you understand, Mr Bayle, what they want to do is

17 put something to you but on what I am told the advice is

18 that you should not answer at all at this stage until

19 you have been advised.

20 MR HOLMES: Mr Bayle, I would like to put two passages to

21 you for your comment. This is from the transcript of

22 the Justice 1 Committee hearings the date of which is

23 7th June 2006.

24 The first of these passages is from Mr Zeelenberg

25 and he states that:

1 "Although it is not the subject of today's meeting,
2 I will share an example. It was recently alleged that
3 the SCRO had made a mis-identification on the basis of
4 the material that was presented to me on this matter, I
5 also speak on Allan Bayle's behalf, I am confident that
6 that allegation was wrong."

7 Do you recognise that as the case we have been
8 discussing that Mr Zeelenberg is speaking about there,
9 Mr Bayle?

10 A. I do remember it.

11 THE CHAIRMAN: I would not -- I suggest you do not go any
12 further than that.

13 A. Okay.

14 MR HOLMES: The second passage then I would like to put to
15 you for your comment, Mr Bayle, is a question which was
16 asked of you by Mr Mackintosh MSP where he says:

17 "I return to the subject that the Convener
18 questioned Mr Bayle on earlier. Allegations have been
19 made, not only about Shirley McKie's fingerprint but
20 about others. Mr Bayle, a week last Friday you were
21 quoted in the papers as saying that the SCRO Fingerprint
22 Bureau should be shut down because it was incompetent.
23 Is it the SCRO that is incompetent or is it you?"

24 THE CHAIRMAN: Again, do you want to continue?

25 MR HOLMES: Sorry, sir, the answer to that that Mr Bayle

1 gives is:

2 "No, there are things that we did not set to the
3 procedures."

4 Mr Mackintosh asks:

5 "Were you right or wrong?"

6 And Mr Bayle says:

7 "I was wrong. I admitted that ."

8 THE CHAIRMAN: Can you now move to a different subject so
9 that, in the interim, the witness can be advised as to
10 his position with regard to the question that you posed.

11 MR HOLMES: Yes, sir, certainly.

12 I will move on to Mr Bayle's report on Y7 which is
13 SG0518. There are just a couple of questions about
14 that, sir.

15 Mr Bayle, you state that the mark Y7 is of normal
16 appearance and deposition pressure appears to be light
17 to medium.

18 Can you tell me, are you saying in that report that
19 the mark is a single touch with a continuous ridge flow?

20 A. Yes.

21 Q. Are you aware that Mr Ashbaugh has given an opinion in
22 which he regards this as the result of a double of even
23 triple tap, as he would put it?

24 A. Yes.

25 Q. You obviously disagree with that.

1 Is there any reason that you are correct and

2 Mr Ashbaugh is not correct?

3 A. I can't answer for him. It depends if we looked at the
4 same photograph at the same time. I can't answer for
5 that.

6 Q. Is it a matter of looking at a different image to be
7 able to tell whether this is a single touch or whether
8 there are a multiple depositions in the same mark?

9 A. Looking at that (**indicated**) that's a single mark.

10 THE CHAIRMAN: That is on the basis of the print that --

11 A. That's the tracing of the actual mark itself, sir.

12 THE CHAIRMAN: Yes, but of the print that you brought today?

13 A. Yes.

14 MR HOLMES: Is there any evidence of movement or variation
15 in pressure within the mark, in your opinion?

16 A. Well, this part in the middle was smudged and I couldn't
17 get any detail off that at all. So I couldn't answer
18 that but, as far as I'm concerned, that was just one
19 mark all made at the same time.

20 Q. Is that the only area of distortion that you feel can be
21 accounted for by movement or variation in pressure?

22 A. Yes.

23 Q. Page 3 of your report says that there are problems with
24 the mark. What are the problems that you had in mind
25 when you wrote that?

1 A. Just the breaks in the ridges in that area. That was
2 the main problem there. No delta region. I don't know
3 if it's been confirmed but there should be a delta
4 region here (**indicated**), that's missing. Part of the
5 core is missing. What we call platform ridges, they are
6 missing as well. Platform ridges are below the delta.
7 They hold up the delta. They're missing as well.

8 Q. So you disagree with those, including Mr Ashbaugh, who
9 would attribute some of the difficulties in the mark to
10 either multiple touches or significant movement upon
11 deposition?

12 A. It depends what photograph he looked at and when did he
13 make that statement. I mean, did he make that statement
14 before I met him? I don't know.

15 Q. The e-mail is dated 2000.

16 A. Well, I can't -- I can't comment on what he's found.
17 This is my opinion; that's Ashbaugh's opinion. I can't
18 go by what he said or not against it.

19 Q. In relation to anyone who is of that view, you would
20 disagree with them; would that be right?

21 A. Well, I don't know what photograph he looked at. If he
22 looked at the same one as me -- which I don't think he
23 has by the sounds of it -- I don't know. I just don't
24 know. I can't answer your question.

25 Q. It was he who showed you the photographs in the first

1 place, was it not?

2 A. He showed me a photograph but I don't know if that's the
3 photograph he made his original analysis on. I don't
4 know.

5 Q. In relation to Q12 you also prepared a report and
6 there's only one point that I have to ask you about that
7 so I am not going to put the report up but you refer to
8 a quarter moon shape, which is part of the roof of the
9 carriage. Do you recall there's a pattern on the tin
10 underneath the finger-marks that are on it?

11 A. Yes, that's right, street, if I remember rightly.

12 Q. Indeed, and it was part of that pattern, a trolley car
13 or a carriage of some kind.

14 A. **(Nodded)**

15 Q. When you are referring to the roof of the carriage and
16 the visible quarter moon shape within the picture of
17 Q12, it seems that it's been obvious to you that that is
18 part of the background rather than part of the mark
19 itself.

20 Would you say that's fair?

21 A. That's fair.

22 Q. So if it's that recognisable from the photograph would
23 you agree it's clearly not going to be any sort of
24 damage or any sort of smudge to the mark, it's quite
25 clearly part of the background picture?

1 A. Mmm.

2 Q. There are only two further matters that I would like to
3 ask you about. The first relates to paragraph 22 of
4 your statement which concerns remarks that were made on
5 the Internet. You say in your statement:

6 "The remarks on the Internet have also been very
7 hurtful and spiteful. All this has damaged my
8 reputation."

9 Firstly, are you aware of whose remarks these were
10 on the Internet?

11 A. No, that's why I didn't -- I don't know. But I mean,
12 Arie Zeelenberg phoned me up and said, "Don't bother
13 looking at the Internet, it's pretty bad". So I haven't
14 looked at CPLEX in a long, long time now because he said
15 some of the comments there are pretty awful. So I don't
16 know who made them if that's what you're asking.

17 Q. Is that the site on which these remarks appear?

18 A. Mainly, yes, I think they are. I haven't looked on the
19 Internet for a long time on that sort of website.

20 Q. Have you yourself ever made Internet comments concerning
21 this case?

22 A. No, I don't think so. If there were, they were only
23 things -- I haven't mentioned anybody's names or
24 whatever. It's been really -- I've been trying to be
25 honest when I'm on the Internet. I haven't said

1 anything wrongfully, I don't think so anyway. It's been
2 a long time now.

3 Q. You made specific comments about individuals involved in
4 this case?

5 A. Not that I know of.

6 Q. Did you write a letter to the Fingerprint Society's
7 journal in 2001 suggesting that Mr Mackenzie should be
8 suspended?

9 A. Yes, I did because I thought at the time that SCRO
10 should be taken off the board until something had been
11 sorted out like an inquiry or something like that and
12 that was probably my downfall as well because after that
13 things started really going wrong as with the
14 Fingerprint Society so, yes, I did because I thought if
15 they were taken off there then -- because I always
16 thought that the Fingerprint Society would actually sort
17 all this out. They never did and they actually made it
18 worse and worse and, I mean, I left in the end because
19 we were getting nowhere with them. But that was the
20 reason. It was an honest thing that I wanted them to
21 come up, put somebody on there until it all got sorted
22 out and then go back on there again. So it's for an
23 honest reason.

24 Q. Have you ever suggested that anything inappropriate has
25 taken place with the images of Y7 themselves?

1 A. No, not that I know of.

2 MR HOLMES: Aside from the matters on which Mr Bayle needs
3 to take advice, I don't propose to cover any further
4 then that, sir.

5 THE CHAIRMAN: Mr Smith, have you any matters --

6 MR SMITH: Sir, there is really one matter I would like to
7 ask about and that is Mr Ashbaugh's opinion that was put
8 to Mr Bayle, just to be clear about when he became aware
9 of it and how he became aware of it. I'd like to
10 explore that with him if I may.

11 THE CHAIRMAN: Yes.

12 **Cross-examined by MR SMITH**

13 Q. Mr Bayle, I am sure you have heard what I have just
14 asked. A few minutes ago you indicated you understood
15 what Mr Ashbaugh's opinion was regarding the number of
16 touches of the fingerprint. Do you remember saying
17 that?

18 A. **(Nodded)**

19 Q. You have to speak your answers here so that we can
20 record them.

21 A. Yes, yes.

22 Q. How was it you became aware of his opinion?

23 A. Well, when he showed me the mark.

24 Q. Forgive me, it's my fault the way I put the question. I
25 am interested just in the number of touches. It was

1 suggested to you that he was of the view that there was
2 more than one touch, contrary to your view.

3 When did you first become aware that that may have
4 been his opinion at some time?

5 A. I think a few weeks ago. I didn't know. When the
6 Inquiry actually sent me I think it was a statement or
7 report from Ashbaugh. I'd never seen that report before
8 so that was new to me. I didn't know.

9 Q. May I just be clear about it. Could we have up the
10 document CO1752, please, and scroll through that.
11 Perhaps go to digital page 2 at the moment.

12 You can see this is an e-mail that has been sent by
13 Mr Ashbaugh to Mr Robertson in 2000. Is that the
14 document you say that you recently became aware of?

15 A. That's correct.

16 Q. Again, I just want to understand the context in which it
17 seems Mr Ashbaugh was expressing a view. Can you go on
18 to digital page 5, please. Unfortunately, it is a
19 fairly poor copy but I think we can see if we can read
20 it properly that in the second last paragraph and the
21 last paragraph in that page could we have that expanded
22 and see if it is any clearer. We can see that what he
23 is indicating is his initial view of the photographs in
24 the circumstances. We can see in the third last line he
25 explains that he is looking at it on his lap in a lounge

1 using a small magnifying device after he had consumed
2 one or possibly two pints of beer.

3 In that context, he initially took the view it may
4 have been a multiple tap.

5 Do you understand whether there is any indication
6 anywhere that after he examined it more leisurely he was
7 still of that view? Have you seen any indication to
8 that effect in this e-mail?

9 A. I can't explain what he's doing there but I can't really
10 answer for him. I just can't.

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

12 MISS GRAHAME: Sir, there are two matters, if I may. The
13 first relates to the characteristic table. I would like
14 to clarify the position in relation to that.

15 The second relates to the difficulties he has
16 experienced with the Fiscal and, again, I would like to
17 clarify the position.

18 THE CHAIRMAN: Yes.

19 **Cross-examined by MISS GRAHAME**

20 Q. Mr Bayle, may I ask you, first of all, about the
21 characteristic table. I don't have the benefit of
22 LiveNote this afternoon but I have you noted as saying
23 this must be produced in court anywhere in the UK. You
24 then went on to talk about 16 points being identified in
25 it.

1 A. That's correct.

2 Q. Can I ask you, first of all, are you speaking of the
3 practice and procedure in England?

4 A. Well, as far as I know, it should be everywhere because
5 we teach -- Durham actually teach the same stuff, as far
6 as I know, to Scottish trainees and the two colleges, we
7 liaise with each other. So we should be singing from
8 the same hymn sheet.

9 Q. So would it surprise you to know that in Scotland we
10 don't produce characteristic tables to court?

11 A. I've noticed.

12 Q. You have noticed that?

13 A. But let me say it's dangerous, okay, because really the
14 reason why we teach experts to use the characteristic is
15 because it's part of their expertise. They're actually
16 explaining the identification process with that
17 characteristic table. It would be interesting to know
18 did they ever do that or when did they stop it. I don't
19 know.

20 Q. Can I also ask since the introduction of the non-numeric
21 system in England, is this characteristic table still
22 produced by experts there?

23 A. No, because they very rarely go to court with
24 enlargements now. I've never seen one yet.

25 Q. So is it only produced in England where the case is

1 going to trial?

2 A. Enlargements -- no, they don't produce enlargements at
3 all now.

4 Q. I am talking about the characteristic table.

5 A. If they are going to produce it -- I don't know. I just
6 don't know now because I've been left, what, nine years
7 now. We did teach up to I left they must produce a
8 characteristic table. I think that's the best answer I
9 can give you for that.

10 Q. That was prior to the introduction of the non-numeric
11 standard?

12 A. That's correct.

13 Q. The second matter I wanted to ask you about was
14 something you said about having a complaint or problems
15 with the Fiscal.

16 Am I correct in my understanding that the
17 difficulties seemed to be that you would have to go to
18 the Fiscal's Office to look at productions and labels?

19 A. That's correct, yes.

20 Q. Rather than them sending you any items for examination?

21 A. Yes.

22 Q. Was that when you were instructed by the defence?

23 A. That's correct, yes.

24 Q. Again, do you understand that in Scotland it's not the
25 practice of the Crown Office and Procurators Fiscal

1 Service to send labels or productions to outside parties
2 when they are going to be required for trial?

3 A. Yes, I understand that although some of them have been
4 doing it now for the past year or so. But I wasn't
5 really -- I'm not complaining about it. It's that the
6 system that I have to go to a PF's office where I've got
7 no lighting, I haven't got the facilities, I'd rather go
8 to the bureau which I did on a few occasions but it's --
9 really we shouldn't be examining latent marks in the
10 PF's office. They haven't got the facilities for doing
11 it and I've been to some right dingy places. So it's
12 very difficult.

13 Q. So your complaint is that that makes you job more
14 difficult?

15 A. Well, it does and how many other experts have had to go
16 through that process as well which why haven't they
17 complained about that?

18 Q. But you will appreciate that COPFS have to make sure
19 items aren't lost and also that there's continuity of
20 the evidence and items aren't mishandled or damaged in
21 any way?

22 A. Yes, I realise that but that's why I brought it up for
23 the Inquiry to have a look at.

24 MISS GRAHAME: Thank you very much. I have no further
25 questions.

1 MISS CARMICHAEL: No thank you, sir.

2 THE CHAIRMAN: I just wanted to clarify one thing. When you

3 said that 90 per cent of the markings were wrong, of

4 course you are not saying 90 per cent of the

5 identifications are wrong, it's the way it is being

6 presented. I just don't want it going abroad that you

7 were suggesting things were otherwise.

8 A. No, it's just the marking-up -- very, very poor.

9 THE CHAIRMAN: I take it that is your view.

10 Was one of the reasons why you used Y7 at Durham and

11 at Hendon is that it is a difficult mark?

12 A. I think many experts would have problems with it. An

13 experienced officer wouldn't. Trainees would have

14 problems with it, but they should be able to look at

15 that and make an ident. The experts I spoke to had no

16 problems with it. It's only been trainees or whatever,

17 but even I showed the marks to some trainees and they

18 still couldn't identify it. So, no, I wouldn't say it's

19 a difficult mark, no.

20 THE CHAIRMAN: It's just one witness suggested that you

21 could tell in 90 seconds that it was wrong. But I'm

22 interested to know why you would choose something simple

23 when you are, as it were, training people you would give

24 them difficult ones which would test them.

25 A. Oh, I do. I've given them some very difficult ones --

1 more difficult than this. It depends what stage they're
2 at and especially with the mistake we made at New
3 Scotland Yard and I tested six experts there and I gave
4 them some very difficult marks. So really that's
5 nothing compared to what I've seen.

6 THE CHAIRMAN: I think the next matter is administrative
7 really. You want to get some advice before you answer
8 the question that was put and the problem will be how
9 soon you can get that advice so we can let you complete
10 your evidence, but could I leave that for you to notify
11 the Inquiry team sitting on my left as soon as you have
12 had an opportunity to take such advice as you feel you
13 need and we will then try and interpose that short -- I
14 hope it will be short -- bit of evidence from your point
15 of view and we won't detain you much longer.

16 A. Thank you very much.

17 THE CHAIRMAN: So that seems to be as far as we can go
18 today. I take it on the question of Mr Wertheim you
19 said you wanted to speak to him to take instructions.

20 MR SMITH: I would prefer to do. I may I say have been in
21 e-mail contact with him but he is unable to speak to me
22 by phone until this evening. Obviously there is a time
23 difference.

24 THE CHAIRMAN: If he is seven hours behind us --

25 MR SMITH: He is indeed. I hope I should be in a position

1 to make my position clear.

2 THE CHAIRMAN: We will see how quickly we can deal with it
3 but my main aim, I think, would be that we should be
4 able to take Mr Swann and Mr Leadbetter and then deal
5 with that as soon as possible, but I don't want to delay
6 it, for a number of reasons, any longer than absolutely
7 necessary.

8 MR SMITH: I am guessing that by tomorrow I will be in a
9 position to enable the Inquiry to deal with the matter.

10 THE CHAIRMAN: We will try to deal with it as soon as we
11 can.

12 Tomorrow morning, have you arranged the order that
13 the witnesses wish to be taken?

14 MR MOYNIHAN: Sir, I have not spoken to Mr Swann simply
15 because Mr Russell is not available. My current plan is
16 to begin with Mr Swann and then Mr Leadbetter
17 thereafter. I understand Mr Leadbetter is arriving in
18 Glasgow this afternoon so he will not be --

19 THE CHAIRMAN: I see Mr Swann is here so at least we can
20 start with him tomorrow.

21 MR MOYNIHAN: Yes, sir.

22 THE CHAIRMAN: Good. Thank you very much. We will meet
23 again as soon as you have had an opportunity. So that
24 is 10.00 tomorrow.

25 **(3.40 pm)**

1 (Adjourned until 10.00 am the following morning)

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