

Thursday, 22nd October 2009

1

2 (Afternoon session)

3 (1.50 pm)

4

PETER MALCOLM SWANN

5

Cross-examined by MR SMITH (continued)

6 Q. Mr Swann, I think you are a member of the Academy of
7 Expert Witnesses; is that right?

8 A. That's correct, yes.

9 Q. I think under reference to an entry on the Internet
10 relating to yourself you say you are single joint(?)
11 expert trained?

12 A. Yes.

13 Q. I take it from that you have given or hold yourself out
14 to be capable of giving evidence in civil cases as well
15 as criminal cases?

16 A. Yes, but not very, very often.

17 Q. Have you done it before?

18 A. Civil cases?

19 Q. Yes.

20 A. Oh, yes, yes, but few and far between.

21 Q. I also note from what you say you indicate that you have
22 an area of expertise in fingerprint legislation.

23 Can you tell me what is fingerprint legislation?

24 A. Well, it's simply any question regarding the legislation
25 regarding to fingerprints, the Act of Parliament or what

1 have you.

2 Q. Sorry, I missed that. Legislation relating to
3 fingerprints.

4 A. Relating to the taking of fingerprints. There's not a
5 great deal of it, to be quite honest.

6 Q. Can you help me, is there any of it?

7 A. Well, there's the Police and -- in England, I'm not
8 talking about Scotland, in England there's the Police
9 and Criminal Evidence Act 1984 and the Criminal
10 Justice Act 2003, which amended certain of the sections
11 in '84.

12 Q. As an expert witness, I take it you understand that
13 there are certain duties that are upon an expert when
14 they are providing an opinion. You know that?

15 A. Yes, oh, yes.

16 Q. One of these duties, and these are laid down in a number
17 of very important cases particularly in England and
18 Wales, but one of the duties is that an expert witness
19 should state the facts or assumption upon which opinion
20 is based.

21 You are aware of that, aren't you?

22 A. State the facts and circumstances ...

23 Q. I will read it out to you. Sir, this is from the
24 **Ikarian Reefer** case which I am sure is fairly well-known
25 but I will provide the citation later. But it was laid

1 down by Cresswell J and has been adopted repeatedly.

2 The reason I am putting this to you, Mr Swann, is as
3 a member of the organisation that I referred to and as
4 an expert witness it is something I take it that you
5 have had some concern about establishing what an expert
6 has to do, what the duties are. Have you done that?

7 A. Well, I know what the duties of an expert are. I mean,
8 we make a declaration at the end of each report I do. I
9 don't have a copy in front of me but the declaration of,
10 you know, your evidence is to the court, et cetera, and
11 there's something about fees, you know, you're not
12 working for a no-win-no ... whatever it is.

13 I don't know them all off by heart but certainly we
14 print a declaration and sign it. I mean, I've read them
15 more than once but I couldn't repeat them now, if that's
16 what you're asking.

17 Q. Surely -- I don't think I need to take you to it at this
18 stage -- but the report that you wrote for Levy & McRae
19 in relation to Shirley McKie did not contain such a
20 declaration.

21 Is this a more recent practice?

22 A. Yes, it is, yes.

23 THE CHAIRMAN: I think it came in with Lord Woolf's reforms
24 in England and Wales.

25 MR SMITH: It was indeed, sir, the CPR.

1 THE CHAIRMAN: I think it's reasonably recent.

2 A. I know I started using it about, what, 5 or 6 years ago.

3 THE CHAIRMAN: I would think it's about that, maybe slightly
4 longer.

5 MR SMITH: That would fit but the principles that are
6 detailed are principles that have been around for a long
7 time.

8 A. Yes.

9 Q. And I take it that you would be keen to comply with
10 these principles when you're preparing your reports when
11 instructed on behalf of Shirley McKie in 1999?

12 A. Yes.

13 Q. You see one of the principles -- and this is at least
14 since 1993, perhaps before -- that what an expert should
15 do is state the facts or assumption upon which his
16 opinion is based.

17 We can see that there's a lot of facts and
18 assumptions relating to the issue of forgery but would
19 you agree with me that in your report you haven't
20 actually stated in your report what is the basis of fact
21 upon which your opinion is based.

22 Would you agree with that the observation?

23 A. My opinion regarding identity?

24 Q. Identity, yes.

25 A. It's based on the fact, as I said in the report, that I

1 found 16 characteristics in agreement. That's all that
2 one needs.

3 Q. That principle goes on to say:

4 "He, the expert, should not omit to consider
5 material facts which could detract from his concluded
6 opinion."

7 That's a principle that you would adhere to in 1999,
8 I take it?

9 A. Sorry, could you repeat that?

10 Q. Yes, I will. What is said is that:

11 "He, the expert, should not omit to consider
12 material facts which could detract from his concluded
13 opinion."

14 So something contrary to the concluded opinion you
15 should still consider them and no doubt disclose them to
16 the instructor of the opinion; do you understand
17 that's --

18 A. Yes, I take your point, yes.

19 Q. You have explained to us already in your evidence that
20 at some stage, and I think it is some stage prior to
21 being interviewed for the Operation Alba Inquiry, you
22 became aware that there were some problems, some
23 differences in the top part of the fingerprint.

24 Do you recall saying that?

25 A. There was a problem that I couldn't resolve it at a

1 certain period of time, yes.

2 Q. You, of course, examined the fingerprint itself on the
3 doorframe when you visited the High Court?

4 A. Yes.

5 Q. And you did so with a magnifying glass, you have
6 explained to us?

7 A. Yes.

8 Q. You had access, no doubt, to fingerprints of Shirley
9 McKie as you may require?

10 A. Yes.

11 Q. I take it that almost as soon as you saw the fingerprint
12 Y7 on the doorframe and compared it with the material
13 that you had access to, you would have been aware that
14 there were problems with the top part of the print when
15 you saw it in the High Court building?

16 A. The top part of the print on the fingerprint forms
17 wasn't too clear. There was a problem with that. Is
18 that what you're referring to?

19 Q. Mr Swann, I am sure it is my fault. At some stage you
20 became aware that there were differences between Y7 and
21 Shirley McKie's inked fingerprint. Did you?

22 A. Yes.

23 Q. When was it that you first became aware that there were
24 differences between Y7 and Shirley McKie's inked
25 fingerprint?

1 A. I would think probably when I got the photograph from
2 Terry Kent and I was able examine something at leisure.

3 Q. There was no pressure placed upon you when you were
4 given access to Y7 or the doorframe, was there?

5 A. When?

6 Q. When you went to examine Y7 on the actual doorframe at
7 the High Court building in Glasgow, there was no
8 pressure on you to conclude within a period of time, was
9 there?

10 A. No, not at all, no.

11 Q. So you had the opportunity to examine it at leisure in
12 the High Court building, didn't you?

13 A. Yes, the mark on the doorframe, yes, yes, yes.

14 Q. What difference does it make when you get Terry Kent's
15 photograph to then give you an advantage that you didn't
16 have when you saw the actual fingerprint on the actual
17 doorframe at that period of time?

18 A. When I examined the mark on the doorframe, as I've said
19 before, I don't want to repeat myself, but I compared it
20 with the photograph that was provided and I compared the
21 areas of that photograph with Shirley McKie's left thumb
22 and satisfied myself as to identity. Whether I went up
23 to the top of the mark and tried to compare those points
24 up there at the top, I can't recall. I probably didn't.

25 Q. You probably didn't try and compare the top part of the

1 mark --

2 A. Well, I can't remember -- I mean, I compared the mark as
3 I saw it, mainly round the centre core area and compared
4 it with the appropriate area on the fingerprint form and
5 formed an opinion.

6 Q. Forgive me for pointing this out, Mr Swann, but if you
7 had taken notes when you examined it at the High Court
8 you would be able to answer the questions I am putting
9 to you, wouldn't you?

10 A. Well, I didn't take any notes.

11 Q. Yes. I am suggesting to you that if it was evident from
12 the Terry Kent photograph that there were differences,
13 it would be equally evident and possibly more evident
14 from the actual doorframe when you had access to it at
15 the High Court Justiciary Building?

16 A. Well, it wouldn't be more evident. One's a photo of the
17 other so it'd be exactly the same.

18 Q. So it would have been evident then when you saw the
19 doorframe at the High Court building?

20 A. If I'd homed in on that area, yes.

21 Q. What I am trying to get to, Mr Swann, is this: that
22 either you noticed the differences when you saw it at
23 the High Court building and didn't disclose them or you
24 didn't notice them.

25 Can you help me with which of those two it is?

1 A. I didn't notice them. Had I noticed them I would have
2 mentioned them but I didn't.

3 Q. Mr Kent provided you with a photograph, as you have
4 explained.

5 A. Yes.

6 Q. How did you know Mr Kent had a copy of the photograph?

7 A. Because it came to my knowledge that Mr Kent had been
8 involved in the photography of the mark on the door
9 standard and had been asked to, I believe, pass an
10 opinion as to its genuineness.

11 Q. How did it come to your knowledge that Mr Kent had been
12 involved in the photography of the mark on the door
13 standard?

14 A. Well, someone must have told me.

15 Q. Who told you?

16 A. I've no idea.

17 Q. I think you told me earlier under reference to
18 questioning about conversations with Mr Pat Wertheim
19 that you don't go about discussing cases you have been
20 involved in?

21 A. Mm-hm.

22 Q. I understood you to indicate that Mr Kent's involvement
23 was limited. What you said to me certainly implied it
24 was limited to the provision of the photograph. You're
25 nodding. Is that your --

1 A. Sorry --

2 Q. -- evidence.

3 A. Sorry, you hadn't finished, I'm sorry.

4 Q. Was Mr Kent's involvement limited to the provision of
5 the photograph?

6 A. As far as I was concerned, yes.

7 Q. I think we saw the document yesterday -- I will have
8 this brought up -- which was the with compliments slip.

9 A. Oh, yes.

10 Q. Do you remember being asked about that? If you give me
11 just one moment while I find the reference.

12 Perhaps while that is being identified I can ask you
13 this: you sent the with compliments slip to Mr Kent
14 obviously giving him something along with it.

15 A. Yes.

16 Q. It was a charting of the fingerprint, wasn't it?

17 A. Yes. Some time after he sent me the photograph, I don't
18 know how long or when, he asked me if I could prepare
19 him a chart. He was going somewhere. He needed it to
20 refer to, so I said, yes, I would.

21 Q. Did you find that a strange request by Mr Kent, asking
22 you to provide him with a chart of the photograph?

23 A. No.

24 Q. Is this something you have done on other occasions, you
25 had provided Mr Kent with work on cases you had

1 completed, is it?

2 A. No, I haven't, no.

3 Q. Why this one?

4 A. Because he asked me.

5 Q. Would you do it if he asked you in any other case, he

6 just says to you, "Listen, I'd like you to do a chart

7 for me in such and such a case that's" --

8 A. I think he was probably interested from the fact that he

9 had been involved in it and he had been involved in

10 photography of it and he had heard the outcome also. He

11 was going to some conference somewhere, I've no idea

12 where, and he wanted some -- well, material to take with

13 him.

14 Q. Mr Swann, this was your work that you were handing over

15 to Mr Kent. According to you, he was going to take it

16 to a conference somewhere --

17 A. I'm assuming he was taking it to a conference. I'm not

18 certain.

19 Q. Mr Swann, you surely asked him, "Why do you need this,

20 Terry", did you not?

21 A. I might have done. I don't know. It's a long time ago.

22 Q. It may be a long time ago, Mr Swann, but it was a very

23 important point in time in your career, wasn't it?

24 A. Oh, yes, it was, yes.

25 Q. The fact of the matter is the fingerprint community was

1 buzzing with the talk that two American experts had come
2 over and they'd contradicted something that British
3 experts had said?

4 A. Mm-hm.

5 Q. And the reason you were providing it to Terry Kent was
6 to try and justify your position, wasn't it?

7 A. No, it wasn't. I provided it to Terry Kent because he
8 asked me as a colleague. Why should I need to justify
9 my position?

10 Q. I will answer your question, Mr Swann. It is because
11 your career could have been seriously impacted upon by
12 two American experts coming across and giving contrary
13 evidence to you. That's right, isn't it?

14 A. Oh, yes, they did, yes, yes. I don't see how it
15 seriously impacted on my work.

16 Q. You had very clearly given information to Levy & McRae,
17 to Donald Findlay, to Iain McKie, to Shirley McKie and,
18 apparently, to Terry Kent, that you thought there was a
19 match between Y7 and Shirley McKie's print.

20 A. Correct.

21 Q. Yes. So it was out in the market that you had said
22 that. But on the other hand there'd been two American
23 experts that came across and said, effectively, that you
24 were wrong. That's right, isn't it?

25 A. Not only me then. There are many other people who had

1 identified the mark.

2 Q. We will maybe come on to that in due course. We have
3 the with compliments slip in front of us. We have
4 looked at this in some detail.

5 If you look at the screen, please, it begins and Mr
6 Moynihan asked you some questions but I just want to be
7 clear about this:

8 "After a lot of thought and time this is one of
9 those marks where, the more you look at it, you either
10 become more convinced it is identical or you can say
11 because of the detail not in agreement it cannot be so."

12 We can read the rest of it if we want to do so, but
13 are you suggesting that this with compliments
14 slip doesn't betray any suggestion of doubt on your
15 part? Are you saying that we should read this as being
16 a statement of absolute positive opinion on your part?
17 Should we?

18 A. I'm just giving alternatives, that's all.

19 Q. No doubt --

20 A. I mean --

21 Q. Sorry, please finish.

22 A. I'm just giving an alternative situation. It was a
23 complex mark and I'd looked at it for an awful long time
24 and, as I say, the more you look at it you know darn
25 well that it is identical but then you've got these

1 characteristics which you cannot explain and you're
2 looking for an explanation which is not there, wasn't
3 there at the time.

4 Q. Can we perhaps agree about this: that there are
5 arguments both ways. Is that what you are trying to
6 communicate to Mr Kent?

7 A. I couldn't really say.

8 Q. I'm sorry, I missed that.

9 A. I couldn't really say.

10 Q. I'm asking you what you were trying to communicate to
11 Mr Kent. You read the first paragraph. Is it not
12 clearly saying, Mr Swann, there are arguments both ways
13 on this fingerprint?

14 A. I suppose there could be arguments both ways, depending
15 on who the people are who are participating in the
16 argument ... or the discussion rather.

17 Q. So you are saying it depends on the quality or identity
18 of the individuals who are maintaining the contrary
19 position, are you?

20 A. It depends upon the expertise of the individuals.

21 Q. Do you know anything about the expertise of Mr David
22 Grieve?

23 A. I've read articles he's written in the IAI journal but
24 as far as working with him, no, I've no contact at all.

25 Q. You know he was one of the gentlemen who said that,

1 effectively, you were wrong. You know that, don't you?

2 A. Yes, I do know that, yes, yes.

3 Q. You are not questioning his expertise in being able to
4 identify the mark, are you?

5 A. I'm not questioning anybody's. All I know is that he
6 got it wrong.

7 Q. I think we are at least agreed that there are two
8 arguments. This is communicating a position where there
9 can be two sides to this argument.

10 Are we still agreed about that, Mr Swann?

11 A. The way the words are written there I can't disagree
12 with what you're saying. I mean, possibly the choice of
13 words is not very good but, as far as I'm concerned, I
14 was simply sending a chart down to a colleague because
15 he'd asked me to do one. Where he was taking it I'm not
16 absolutely certain.

17 Q. At this point in time at least and up until, I think,
18 the Operation Alba period you had this problem with the
19 top part of the print. Am I right so far?

20 A. Well, I don't like the choice of the word problem but --
21 I know I've used it myself, probably -- but there was
22 these characteristics at the top which I couldn't find
23 on the print that I had of Shirley McKie -- not Shirley
24 McKie, sorry, the ones that I saw in the Justiciary
25 Building.

1 Q. I understand. One obvious explanation for that may be
2 that it's not Shirley McKie's, Y7 is not Shirley
3 McKie's. Would you agree with that proposition?

4 A. No, because the characteristic detail in the body of the
5 mark was sufficient to determine that it was.

6 Q. I think you indicated yesterday that out of the points
7 that were found, in fact, it's on this with compliment
8 slip, third paragraph:

9 "18 points marked, some strong and other, weak."

10 Can you tell me how many were weak and how many were
11 strong?

12 A. No.

13 Q. Did you take any notes?

14 A. No. All I know is that some were clearer, to see than
15 others. The choice of the word "weak" is perhaps not
16 the right choice. You can still see the characteristic
17 but it's not as easy to see as some of the ones that are
18 more clear.

19 Q. You will have to help with that, Mr Swann. The
20 characteristic is either there or it's not.

21 A. Correct.

22 Q. Would you agree with the proposition that, as an expert,
23 your expertise is in guiding someone who is not
24 necessarily an expert as to what points it is you're
25 identifying? Would you agree with that as a general

1 proposition?

2 A. Yes.

3 Q. Would you agree with the proposition that if you can see

4 it you should be able to demonstrate it to me as a

5 non-expert? Would you agree with that proposition?

6 A. Not necessarily, no. Why would I need to show you it?

7 Q. Well, suppose I was defence counsel in a case, Mr Swann?

8 A. Well, in that case then, yes, I'd have a chart marked up

9 ready for your perusal.

10 Q. Yes, you should be able to demonstrate it to me.

11 A. Then I would, yes.

12 Q. Because the opposite of that then, if that is not

13 correct, then what you are saying is, "I'm an expert. I

14 can see it. You may not be able to see it but I can see

15 it", and that position would be pretty untenable,

16 wouldn't it?

17 A. Well, fingerprint experts can, with respect, see more in

18 a fingerprint than a lay person but certainly for court

19 purposes then, yes, I prepare a chart and explain it to

20 you fully and ensure that you could see what I had

21 marked.

22 Q. So imagine you're appearing in a case with a judge and

23 jury and it's not just defence counsel you've got to try

24 and persuade but you've got to persuade the judge and

25 the jury on a point, whether a point exists or not.

1 You agree it has to be demonstrable?

2 A. Yes, indeed but, as you well know, probably also, very,
3 very rarely -- I don't agree with it -- but very, very
4 rarely do comparison charts get produced in court these
5 days.

6 THE CHAIRMAN: We are finding it just difficult. It is very
7 awkward for you, I appreciate, because you have to turn
8 to look at the questioner but then the stenographer
9 can't hear quite so clearly. That's the problem. Don't
10 make it uncomfortable for yourself.

11 The last answer was:

12 "Yes, indeed because, as you well know, also very,
13 very rarely, I don't agree with it, but very, very
14 rarely ..."

15 A. Produce comparison charts in court.

16 MR SMITH: I think you indicated to me earlier that from
17 looking at Y7 on its own, without reference to any inked
18 fingerprint, there was no evidence of distortion itself.

19 Are you still maintaining that position?

20 A. There was nothing which was apparent, no, that's
21 correct.

22 Q. So we can identify there was a difficulty, if I put it
23 as neutrally as I can. At some stage you had what
24 appeared to be differences in the top part of the print
25 and you had no evidence of twisting or smudging or

1 movement or anything of that kind in the print itself.

2 We agree that we have a bit of difficulty at that
3 stage?

4 A. That's correct, yes.

5 Q. At some stage you came to a conclusion that the
6 differences were explained by some kind of twisting or
7 movement?

8 A. Well, when I received the fingerprint form, the
9 fingerprints in blue, from Levy & McRae and I identified
10 the characteristics at the tip, they weren't at the tip
11 on the fingerprint form, they were at 2 o'clock. So
12 therefore, the thing, the mark, had been twisted round
13 and in so doing the top half, mainly the top half of the
14 print, Y7, had been moved roughly 66 degrees in an
15 anticlockwise direction.

16 Q. I take it, Mr Swann, that you received the inked
17 fingerprint from Levy & McRae prior to Shirley McKie's
18 trial?

19 A. I'm not sure what date I received it.

20 Q. They can't possibly have been sending it to you after
21 the trial, can they?

22 MR MOYNIHAN: Sir, I may actually be able to help. We have
23 the covering letter which we didn't produce with the
24 print. It's TS0009 and I think the date is
25 3rd March 1997, so that will assist to clarify this.

1 We have the original here and this is what
2 Mr Russell submitted to us with the blue inked forms so
3 I assume that the blue inked form is the set of
4 fingerprints that is mentioned in the letter.

5 MR SMITH: Will you take it from me, Mr Swann, that is
6 before the trial date? Can you just take that as a
7 given for the moment?

8 A. If you say so. I don't know when the trial date was.

9 MR MOYNIHAN: It may also assist if Mr Swann is told that
10 the trial occurred in May 1997.

11 A. Right, thank you.

12 MR SMITH: I think indeed it is the day after you were at
13 the High Court.

14 A. Sorry?

15 Q. I think the date of this letter is the day after you
16 were at the High Court.

17 A. It's the day after, yes.

18 Q. So it appears that Levy & McRae were at least sending
19 you some of the material that you had requested?

20 A. Yes.

21 Q. You don't know who took the inked print?

22 A. I've no idea, no, but that wasn't the material I
23 requested, albeit it was very, very useful indeed. I
24 was requesting copy material of the exhibits in the
25 case.

1 Q. Do you know how quickly after you received -- we assume
2 you did receive this letter as it has been produced by
3 Mr Russell -- how soon after receipt of the letter you
4 looked at the inked prints, the blue inked prints, and
5 compared them against Y7?

6 A. Well, it would be after I had received the photograph
7 from Terry Kent because I'd received no photographs from
8 the authorities so therefore I had nothing to compare
9 the blue prints with.

10 Q. You had the charting enlargement by SCRO, didn't you?

11 A. I did but that doesn't show anything of the area that I
12 wanted to see.

13 Q. So you requested further information from Levy & McRae
14 which was sent to you on or about 3rd March 1999, some
15 months before the trial and you say you didn't even look
16 at it prior to Shirley's trial. Is that your position?

17 A. When I received the copy of these blue fingerprints
18 obviously from Levy & McRae there was nothing I could do
19 with them because I'd nothing to compare them with.

20 There was this one. That's the only one I had
21 **(indicated)**, the copy, and that doesn't show the middle
22 or the top of the mark.

23 Q. Mr Swann, if you had wanted to see the middle or top of
24 the mark, all you had to do was ask Levy & McRae to see
25 it again or to get a photograph of it.

1 A. I did do on many occasions.

2 Q. So --

3 A. Angela McCracken apparently tried her utmost to get me
4 copy materials but she couldn't.

5 Q. So the position is, if I have understood you correctly,
6 you didn't compare the blue inked fingerprints against
7 anything between this date and the time of the trial
8 and, indeed, didn't do so until the Terry Kent
9 photograph was produced after Shirley McKie's trial?

10 A. Correct.

11 Q. At what stage then was it you did notice there were
12 difficulties between Y7 and the top portion of the
13 print? How long after you got Terry Kent's photograph
14 did the light come on?

15 A. Well, I couldn't really tell you. I don't know. I
16 don't know.

17 Q. It must have been some time after the Operation Alba
18 Inquiry?

19 A. Yes, indeed.

20 Q. Whose idea was it, was it yours, Mr Berry's or
21 Mr Leadbetter's, that this could be explained by a 66
22 twist anticlockwise?

23 A. Mainly Mr Berry's.

24 Q. For how long had you known Mr Berry prior to this point
25 in time in 2000?

- 1 A. I can't tell you exactly. I don't know. Many years.
- 2 Q. A friend of yours?
- 3 A. He's a colleague of mine, not a close friend. He lives
4 some distance away but he's a colleague.
- 5 Q. Mr Leadbetter: how long had you known him prior to 2000?
- 6 A. Many years again.
- 7 Q. Did you ever work with Mr Leadbetter?
- 8 A. No -- sorry, how do you mean work with him?
- 9 Q. I mean did you ever work in any department that he
10 shared with you?
- 11 A. No.
- 12 Q. Is he a friend of yours or was he a friend of yours in
13 2000?
- 14 A. He's a friend of mine, yes.
- 15 Q. Was he a friend of yours in 2000?
- 16 A. I can't really remember. I don't know.
- 17 Q. You don't remember --
- 18 A. I probably would have met him at a conference but I
19 mean, you know, who's a friend? Who's a colleague?
- 20 Q. Your position, Mr Swann, is you don't remember if he was
21 what you might describe as a friend of yours in 2000?
22 That is your evidence?
- 23 A. Well, all right then, let's say he was a friend of mine
24 in 2000. I can't specifically remember but I've known
25 him for quite some time, mainly through the Fingerprint

1 Society but also I've worked with him on certain cases.

2 Q. When did you first discuss the question of Y7 and
3 Shirley McKie's fingerprint with Mr Leadbetter?

4 A. I'm sorry, I've no idea. I can't answer that question.

5 Q. Was it before or after the Operation Alba statement was
6 taken from you?

7 A. I don't know.

8 Q. Do you remember the circumstances under which you first
9 discussed it with Mr Leadbetter?

10 A. No.

11 Q. You don't recall whether it was a formal meeting or
12 whether he sent you a report or whether he phoned you up
13 or whether he met you at conference? Nothing at all,
14 you have no recollection of it?

15 A. No, I don't. When we go to conferences we discuss many
16 matters but whether this was discussed I couldn't tell
17 you.

18 Q. Sorry, you did tell me but can you remind me the idea of
19 the 66-degree twist was Mr Berry's, was it?

20 A. Yes, he was the one who first, I think, realised what
21 had happened and once that had been -- once he passed
22 the information on to myself and possibly to others, I
23 don't know -- then the characteristic detail which we
24 were not able to assess in the first place quickly fell
25 into place.

1 Q. You did give some answers yesterday about this question
2 of the mechanics of the twist but I would like to ask
3 you, if you can, to be clear about this.

4 Are you saying that the Rosetta point stays in the
5 same place or is the only point that moves? What
6 happens to the Rosetta in this twist?

7 A. The Rosetta point is probably halfway between the centre
8 core, top of the centre core, and the tip where these
9 characteristics again that were out of alignment are
10 found.

11 The marks at the tip together with the Rosetta
12 characteristic are further over to the right on Shirley
13 McKie's left thumb so that when the left thumb has made
14 contact with the door standard and for whatever reason
15 it's moved anticlockwise because of probably she
16 adjusted the position of her thumb or it slipped. I
17 don't know but one of the two.

18 Q. When you were first told about this theory of the
19 66-degree twist I take it your response is, "Well, I'm
20 sorry, I can't see any evidence of any crossover ridges
21 or twisting or movement from Y7. How can that be
22 explained?"

23 I take it you raised that, did you?

24 A. We discussed it certainly -- whether in so many words, I
25 don't know -- but you can see at the right-hand side of

1 the mark the appearance of ridge structure indicating
2 that. Once you realise what has happened, then other
3 things fall into place.

4 Q. Just to get that right, once you accept the 66-degree
5 twist theory you can then see, what, cross-over ridges?

6 A. How do you mean cross-over ridges?

7 Q. What is it you meant when you said -- I will just read
8 back the section of the transcript. You said:

9 "You can see the right-hand side of the mark the
10 appearance of ridge structure indicating that once you
11 rule out what has happened, then other things fall into
12 place."

13 What is it you are talking about with the appearance
14 of the ridge structure on the right-hand side?

15 A. There are signs on the mark. If we had an enlargement
16 of Y7 on the screen, then I could point it out to you.

17 Q. Just tell me, if you can just now, signs of what?

18 A. On the right-hand side of Y7, the mark comes in like
19 that and it goes round like that and there's an area
20 here where the ridge structure has broadened, if you
21 like, or the space between the ridge structure has
22 broadened and you can see where it's possibly turning.

23 Q. Can we have a photograph of Y7 up on the doorframe.

24 THE CHAIRMAN: Which one would prefer to use? The
25 Daily Mail one or some other one?

1 A. Y7.

2 THE CHAIRMAN: Y7 itself. I see.

3 A. Any one of the --

4 MR MOYNIHAN: If I can help, sir, the one that is
5 conventionally used for this in fact happens to be
6 Mr Swann's own Terry Kent image which is TS0006.

7 MR SMITH: Thank you. That is exactly the image I was
8 looking for.

9 Mr Swann, I think we can see that if we follow the
10 line of the ridges to the right-hand side of Y7 it goes
11 almost on that page straight down and then takes a
12 slight dog-leg heading, as it were, south-east first of
13 all and then more or less 90 degrees across towards the
14 bottom. Is that the feature you described?

15 A. What I was talking about, if I can point it out on the
16 screen, is the area to the right here where the ridges
17 start bulging upwards, if that's the right expression,
18 and the movement has taken place and twisted it over
19 there **(indicated)**.

20 Q. I wonder if we could have that saved and then taken off
21 to a clear image.

22 MISS BAHRAMI: That's saved as FI2210.03.

23 THE CHAIRMAN: That line is marking where you have just said
24 that the ridges broaden; is that correct?

25 A. The twisting, Mr Chairman, starts somewhere there and it

1 takes the top half of the mark in an anticlockwise
2 direction. When I say it takes it, it's moved that way,
3 it's twisted that way.

4 MR SMITH: I wonder if we could have a clean image put up,
5 please.

6 Mr Swann, the difficulty I have with this is that
7 you saw the mark originally. You did not see any
8 evidence of twisting when you first saw it. You
9 confirmed that on a number of occasions.

10 A. Well, I didn't notice any evidence of it, no.

11 Q. You didn't see it or didn't notice it --

12 A. I'm right. I didn't see it --

13 Q. -- we're not going to argue about the use of the word
14 "see" and "notice", are we?

15 A. No.

16 Q. It was only after an explanation of the twisting came
17 along to justify differences that you then look at it
18 and say, "Ah, now I can see evidence, I can see evidence
19 of some of the structure on the right-hand side. I've
20 got the sequence of events correct."

21 A. Mm-hm.

22 Q. I don't understand why it is it takes an explanation of
23 a difference to then superimpose a suggestion of
24 twisting. Can you explain that to us, please?

25 A. Having spoken with Mr Berry and he'd seen this and

1 worked it out then, yes, I followed suit and applied the
2 same principle to the mark I had and there it was. It's
3 just a case of examining the mark, information between
4 colleagues and we resolved it.

5 Q. Mr Swann, I think we can see on that page the Terry Kent
6 image. If you go up to the label -- do you see the
7 label?

8 A. Yes.

9 Q. Just where the pointer is just now, you see what is very
10 clearly the piece of wood grain that goes from there
11 right down the side of the fingerprint; do you see that?

12 A. Yes. You mean down the left-hand side?

13 Q. It's down the right- hand side of the print.

14 A. Sorry, down the right-hand side, yes.

15 Q. If we follow that line down, would you agree with the
16 suggestion that the shape of the fingerprint with the
17 dog-leg, as I have described it, could be accounted for
18 by a depressed wood grain following that line?

19 A. I can't really answer that question, but my knowledge of
20 the door standard was that it was flat and very nicely
21 painted, I think it was white. I didn't see any sign of
22 wood graining at all.

23 Q. We may hear some evidence from Mr Bleay in due course
24 who has taken some photographs of this under oblique
25 light and, as I understand it, his position is that

1 there is indeed a depression in the wood. It is a
2 groove rather than a raised grain but it follows the
3 contour of the edge of the fingerprint from the top,
4 down the way and round the dog-leg, as we can see.

5 Would you be prepared to accept that might actually
6 be the explanation for the dog-leg shape on the
7 right-hand side of Y7?

8 A. Well, I'm prepared to accept anything providing it's
9 reasonable. I mean, I can see what you're looking at
10 and maybe it has some bearing on it.

11 Q. I think, Mr Swann, in fairness if we could perhaps show
12 you the Bleay photographs. I don't wish to be unfair to
13 you. The production before the Inquiry is EA-0164. I
14 wonder if the originals could be handed to Mr Swann. I
15 wonder if we can go to the next image, please. In fact,
16 can you take us on to page 6, please. Pause there for
17 the moment.

18 If you take it from me that there is oblique
19 lighting used on this particular piece of wood.

20 A. I've never seen this before by the way.

21 Q. I realise you've not seen the report before but you have
22 seen the piece of wood before and that's what I'm
23 interested in.

24 Would you accept from me if you see it under that
25 kind of lighting, the photograph, that we can see

1 actually the wood is quite heavily grained? Do you see
2 that?

3 A. Yes, I think I can see what you're referring to, yes.

4 But, of course, I never saw the piece of wood under
5 these conditions.

6 Q. You saw the piece of wood and if you had wished to have
7 oblique lighting I'm sure that could have been arranged,
8 could it not?

9 A. I didn't see the need to have it under oblique lighting
10 at the time. What I was looking for was very clear and
11 quite clear without any lighting at all.

12 Q. No doubt the originals can be passed to you, if you wish
13 to see them, of the photographs but what I am suggesting
14 to you, Mr Swann, is this: if Dr Bleay is correct that
15 the shape of the fingerprint can be accounted for by
16 wood grain and not by twisting, by wood grain, where
17 does that leave your evidence regarding an indication of
18 problems with the right-hand side consistent
19 with twisting?

20 A. I can't accept that the twisting movement has occurred
21 because of the wood graining. All I can work from are
22 the characteristic details. They have moved 60 degrees
23 to the left, whether caused by wood graining or not I
24 don't know.

25 Q. I am trying to get the cart and horse in the right order

1 here, Mr Swann. What I am suggesting to you is that if
2 it is accounted for, if the shape of the print is
3 accounted for not by twisting -- we're not trying to
4 work out if it's twisting -- you're saying what accounts
5 for it and Dr Bleay says, well, this is entirely
6 coincidental with a wood grain that follows the pattern
7 of it, then you cannot say because of the shape of it it
8 was twisting, if that evidence is accepted.

9 You understand what I'm putting to you?

10 A. Yes.

11 Q. So we start from the proposition that we have a
12 fingerprint that may be an unusual shape but we are then
13 asking ourselves is there any evidence of twisting on
14 that fingerprint. Leaving aside the 66-degree twist
15 theory for the moment, leaving that aside, you still
16 agree with me, don't you, that there is no evidence from
17 that fingerprint of twisting?

18 A. From a visual viewpoint then, no, I can't see any but I
19 know that some movement has taken place because of the
20 position of the characteristic detail, whether it's been
21 caused by twisting, movement, distortion, wood grain, I
22 don't know.

23 Q. Mr Swann, you are doing it round the wrong way. You are
24 saying there must have been ...?

25 A. Well, there has to be.

1 Q. But then you are saying it must have been twisted. You
2 saying to justify the differences there must have been a
3 twist; therefore, it was twisted.

4 A. There's been some movement of the thumb when it touched
5 the door standard. It's twisted slightly to the left or
6 moved slightly to the left by whatever means and taken
7 the characteristic detail with it and it's obviously
8 wood. How that situation occurred, I don't know.

9 Q. Mr Swann, did you try to replicate this twist movement
10 in your lab?

11 A. No, no.

12 Q. Do you have any papers that have been written by any
13 fingerprint expert in a peer reviewed journal which
14 suggests this could be achieved without any evidence of
15 cross-over or other indication from the mark of
16 twisting?

17 A. No.

18 Q. Have you or any of your colleagues who adhere to this
19 theory published any article to be peer reviewed which
20 suggests that this theory has any validity?

21 A. Sorry, could you repeat that?

22 Q. You understand what a peer reviewed journal is?

23 A. Yes.

24 Q. I think in the entry on the Internet relating to you you
25 indicate you keep an extensive library of information

1 regarding fingerprints?

2 A. Yes, indeed, yes.

3 Q. You will understand that when someone has a position to
4 take which may be unusual it's a common thing for them
5 to publish it and for colleagues, who have experience,
6 to consider whether it has any validity. You look
7 puzzled?

8 A. I'm trying to follow the question actually.

9 Q. I'm just trying to see where the difficulty is in the
10 question I put.

11 A. I've not seen anything written down about this as to how
12 it should happen, how it could have occurred. If that's
13 what you --

14 Q. What I'm asking you is this is a really important
15 theory, isn't it, Mr Swann?

16 A. Important?

17 Q. It's important to try and explain whether or not Y7
18 belongs to Shirley McKie. It's very important, isn't
19 it?

20 A. Absolutely, yes.

21 Q. And it's been the talk of the fingerprint community for
22 10 years, hasn't it?

23 A. It has, yes.

24 Q. The theory that you are presenting about a 66-degree
25 twist is one that, if correct, would mean that your

1 opinion was right and dozens if not hundreds of other
2 experts are wrong?

3 A. I wasn't aware there was hundreds of experts had passed
4 an opinion on it.

5 Q. We may or may not hear evidence about who has expressed
6 a view but you will agree with me, I take it, that some
7 experts of unquestionable ability, for example,
8 Mr Grieve who has not been questioned on this, have come
9 to the opposite conclusion to you.

10 If you have a theory that you say can justify your
11 position is it not obvious that you would want to
12 publish it in detail and try and justify it in the
13 fingerprint community?

14 A. No, it never entered my head.

15 Q. A way of testing this theory would be to try to
16 replicate it to show that you could have movement
17 without any cross-over, without any smudging, without
18 any twisting. That would be a way of establishing it
19 having validity?

20 A. A very difficult thing to replicate how someone
21 performed at a crime scene, to try and do the actions
22 that were carried out. You can't really do that.

23 Q. It would be a lot harder to do it a crime scene,
24 wouldn't it, where you are perhaps somewhere you
25 shouldn't be, than it would be in a laboratory where you

1 can take as many days, as many hours, as many bits of
2 paper, as many fingers as you want to to try to
3 replicate it? Would you not agree it would be easier to
4 try and replicate it?

5 A. No, I haven't tried. I believed Mr Wertheim has but I
6 haven't.

7 Q. I think Mr Wertheim doesn't adhere theory, you know
8 that?

9 A. Sorry?

10 Q. Mr Wertheim doesn't adhere to the 66-degree theory?

11 A. How does he explain the movement then from one side to
12 the other?

13 Q. At the risk of answering questions, I think you know
14 that his position is there was no such movement. It was
15 a different fingerprint.

16 Mr Swann, if I can move on to just a couple of other
17 matters. A very short point about the **McNamee** case. I
18 think in your Inquiry statement you indicate -- and this
19 is on page 34, paragraph 5.3 -- I think you say:

20 "In respect of that hearing, the second appeal
21 hearing, when it came to the crunch, my expert opinion
22 on the mark, at that stage backed up by Martin
23 Leadbetter and others, was accepted by the Appeal
24 Court."

25 That is what you say in your Inquiry statement. Do

1 you wish to see it?

2 A. Which case is this, sorry?

3 Q. This is about the **McNamee** case. I am referring to your
4 Inquiry statement. Perhaps we could just have the
5 Inquiry statement brought up. It is FI0149.04. What I
6 am looking for, please, is page 34, paragraph 5.3.

7 I will just try and identify the section of it. You
8 see about maybe six or seven lines down from the top
9 17th December 1998 and just after that it says:

10 "In respect of that hearing, the second appeal
11 hearing, when it came to the crunch my expert opinion on
12 the mark, at that stage backed up by Martin Leadbetter
13 and others, was accepted by the appeal judges."

14 A. Yes, I can see that.

15 Q. You understand that we have access to the Appeal Court
16 decision. We can see it for ourselves. I am going to
17 suggest do you that, in fact, what happened in that case
18 was that there was such a confusion of evidence from
19 experts, some saying, yes, it was a match and some
20 saying, no, it wasn't and some saying you can't tell,
21 that what happened was the Appeal Court said the
22 conviction was unsafe.

23 Are you aware of that?

24 A. Well, I might have heard it. I don't know.

25 Q. Well, it is different to what is suggested, with

1 respect, in your statement, Mr Swann. What you are
2 saying is you were accepted and Mr Leadbetter was
3 accepted in preference to some others at least?

4 A. Well, perhaps that's a wrong choice of words again.

5 Q. One other matter I would like to ask you about just on
6 the question of the doubts you were having in the top
7 part of the print.

8 A. Yes.

9 Q. Did you ever report these doubts at any stage to Shirley
10 McKie or her legal team?

11 A. No, I didn't.

12 Q. Why not?

13 A. Well, after my meeting with Mr Findlay, I got the
14 distinct impression that my services were dispensed
15 with -- which they had. I had no further communications
16 from anybody.

17 Q. Mr Swann, the final matter I want to ask you about is
18 this and could we have, again, your Inquiry statement
19 up. I would like to go to paragraph 42 to 43, please --
20 sorry, it may be page 42 to 43.

21 MR MOYNIHAN: It is pages 24 to 25.

22 MR SMITH: Thank you.

23 You will recall that we looked at this earlier and I
24 just have one short point to make. Can I just explain
25 to you that I also act for Mr Wertheim and so that's the

1 reason I am asking this question.

2 You see at the bottom of the left-hand page 24,
3 second last line:

4 "The concept of a false complaint founded (yet
5 again) on identification of mark Y7, coupled with the
6 setting up of a sham IAI disciplinary hearing was
7 devised and implemented in consequence of a deal agreed
8 between Pat Wertheim and a vice-president of the IAI
9 (subsequently the President of the IAI)."

10 As I understand the allegations being made there, a
11 deal was agreed involving Pat Wertheim and I think a
12 Mr Garrett is perhaps the gentleman you are referring
13 to?

14 A. Yes.

15 Q. What evidence do you have, Mr Swann, of a deal being
16 reached between the two of them to cause you difficulty?

17 A. It's all on CLPEX where Mr Wertheim suggested that
18 someone make a complaint against him regarding Y7 then
19 they could have a hearing. Then they could find in his
20 favour. They could come over here armed with the
21 knowledge that the IAI had said that mark Y7 was not
22 identical.

23 Q. You see, what one might take from that statement, your
24 Fingerprint Inquiry statement, is that somehow it was a
25 done deal set up in advance between Pat Wertheim and

1 Mr Garrett.

2 You have no evidence whatsoever of such a thing, do
3 you?

4 A. Well, what was then?

5 Q. It was a disciplinary hearing, Mr Swann, following a
6 complaint by someone to the IAI?

7 A. A complaint from someone in Australia.

8 Q. Is there something wrong about Australians making a
9 complaint?

10 A. No, not at all. I've been there, very nice place. No,
11 all I'm saying is that it's on the CLPEX. You can read
12 it for yourself. It makes the point -- it comes out
13 that there's a hearing going to be heard and they are
14 going to find in favour of Mr Wertheim so they can come
15 over here armed with the information and knowledge that
16 the IAI are backing him that the mark is not identical.
17 That's the implication of it.

18 Q. What I am concerned about is a suggestion of a
19 conspiracy between the IAI, Pat Wertheim and, indeed,
20 the McKies to somehow do this. I think Mr Moynihan
21 asked you questions about this and your answer is it's
22 all over CLPEX?

23 A. It is, yes, and it's all been very well documented by my
24 solicitor and sent to the Chairman and ...

25 Q. So if we're looking for evidence of a conspiracy, people

1 actually getting together and deciding in advance to
2 reach a conclusion it's all on CLPEX, is it?

3 A. Well, there's certainly a lot of information about it on
4 CLPEX. If can't quote it all verbatim but it's
5 certainly there.

6 Q. I would you just to look very briefly at one last
7 document in connection with this. It is DB0759. This
8 is a letter from the IAI dated September 24th 2009. I
9 would just like to ask you if you have seen this letter?

10 A. No, I haven't.

11 MR SMITH: Thank you, Mr Swann.

12 THE CHAIRMAN: Miss Grahame, do you have any application?

13 MISS GRAHAME: Yes, I do, just one very small matter in
14 relation to what was said about Sheriff Gilchrist's
15 evidence. I would like to clear up what I understand to
16 be a mistake.

17 THE CHAIRMAN: Yes, certainly.

18 **Cross-examined by MISS GRAHAME**

19 Q. Mr Swann, before the morning break you were asked a
20 number of questions by Mr Moynihan and I want to go back
21 to those for a moment. You were asked under reference
22 to the report prepared by Bill Gilchrist, who is now
23 Sheriff Gilchrist.

24 A. Yes.

25 Q. You were asked to comment on certain things that

1 Mr Gilchrist or Sheriff Gilchrist had written in his
2 report about his meeting with you.

3 Do you remember being asked those questions this
4 morning?

5 A. Sorry, do I remember the meeting with Mr Gilchrist?

6 Q. No, no. Do you remember being asked those questions
7 this morning about Mr Gilchrist and what he had said in
8 his report about you?

9 A. Yes. Well, most of it, yes.

10 Q. I will go through it again if you don't mind. You said
11 this morning in your evidence that Sheriff Gilchrist had
12 said he couldn't remember meeting you and you questioned
13 where he'd got the words from and you said:

14 "If he can't remember meeting me I don't know how he
15 can write this down."

16 Do you remember saying that?

17 A. I remember saying that, probably -- I presume he does
18 remember the meeting but he couldn't remember the
19 content of the meeting. I think that's the point I
20 should have made.

21 Q. Sheriff Gilchrist gave evidence on 24th June to this
22 Inquiry. For those of us with LiveNote it is page 48 to
23 52. I will not take you to that, Mr Swann, but what he
24 actually said was that it was Mr Graham he couldn't
25 remember but he did remember you and that was probably

1 because he met you in London.

2 A. Correct.

3 Q. So, in fact, Sheriff Gilchrist did remember meeting you.

4 A. Sorry about that. Fine.

5 Q. He was correct: you did meet him in London?

6 A. Yes, indeed, yes, yes.

7 Q. He also said he remembered you talking about 21

8 characteristics and identifying that.

9 A. Right.

10 Q. So in that regard he would be correct about that because

11 you did talk about 21 characteristics?

12 A. Sorry?

13 Q. You did talk to Sheriff Gilchrist about finding 21

14 characteristics?

15 A. I can't remember. Probably. I don't know. I can't

16 remember.

17 Q. I might be wrong, Mr Swann, but I thought you had said

18 you remembered that this morning?

19 A. Well, I do remember the meeting whether I specifically

20 said 21 -- well, I presume I must have said 21 if he's

21 quoting it but I mean we said lots of things and, again,

22 we didn't take notes but I can't remember everything

23 word that was passed there. I can remember what the

24 main -- most of the time was spent during the meeting

25 was looking at Mr Wertheim's exhibits and then they

1 showed me some reports from the Dutch and from the
2 Durham Training School and I pointed out to him what I
3 had prepared and showed him it, et cetera.

4 Q. So do you accept that you probably did mention 21
5 characteristics to Sheriff Gilchrist?

6 A. I may, I may.

7 Q. Just one final thing: can I ask you to look at your
8 statement to the Inquiry. Do you have that in front of
9 you?

10 THE CHAIRMAN: Do you want some paragraph put up?

11 MISS GRAHAME: It may be easier, yes, sir. If we could have
12 FI0149.04, which is the statement to the Inquiry. It is
13 paragraphs 23 and 24 which are on page 14 of the
14 statement. I don't know if that would be 14 on the --
15 yes, it is 14 on the pdf.

16 Do you see in paragraph 23 --

17 A. Yes.

18 Q. -- that from line 4 you received a letter from William
19 Gilchrist, the Regional Procurator Fiscal, on
20 13th June 2001?

21 A. Yes.

22 Q. And he wanted to interview you?

23 A. Yes.

24 Q. Then do you see in paragraph 24 -- and if perhaps that
25 could be brought up -- that you subsequently met with

1 him on 16th June 2001 in London?

2 A. Correct.

3 Q. If you take from me for the moment, Mr Swann, that

4 Mr Gilchrist completed and signed his report on

5 6th July 2001, if you take that from me for the moment.

6 A. Yes.

7 Q. Then can we look again, please, at the report which is

8 CO0003.018. Can we enlarge the second last paragraph on

9 that page, please.

10 You have already been referred to this, Mr Swann.

11 Would you like to just take a moment to read that

12 paragraph again just to refresh your memory. **(Pause)**

13 A. Well, I've read it and I understand it.

14 Q. That's what Mr Gilchrist wrote in his report?

15 A. That was the report of the whole meeting?

16 Q. No, this was his report into the criminal allegations

17 against the four SCRO officers. The report was a

18 lengthy report but this was the paragraph that related

19 to what you said to him at the meeting.

20 A. Right.

21 Q. What Sheriff Gilchrist said in evidence to this Inquiry

22 was that he didn't remember, at the time he gave

23 evidence here, he didn't remember the detail about the

24 11 characteristics being clear and 10 being difficult to

25 see, but what he did say was that that was in the report

1 "... because that is what Mr Swann said to me at the
2 time."

3 Do you accept that what was written by Sheriff
4 Gilchrist in his report, that was written some time in
5 the three-week period between meeting you and completing
6 and signing the report, and do you accept that it is
7 likely to be an accurate record of what you said to him?

8 A. It's difficult to comment or to answer in the
9 affirmative to that because I don't see how I would be
10 talking about individual characteristics to him. I
11 might have said, "Yes, I've prepared a chart or I can
12 find 21 characteristics in agreement", but going down to
13 the 11 being clear, clearer than the other 10 rather, I
14 don't think I would have said that. I can't dispute it
15 but I don't think I would have said it. It's not
16 something I would have discussed with Mr Gilchrist.

17 Most of the time I spent showing him a chart, not
18 this one with 21 characteristics on but a chart of
19 another area of the mark which I don't think he
20 remembered that, did he?

21 Q. Do you accept that your recollection now may be flawed?

22 A. Yet it might be correct.

23 THE CHAIRMAN: I don't think the witness can really go
24 further than that.

25 MISS GRAHAME: I have no further questions.

1 THE CHAIRMAN: We normally take a break at 2.50 but we will
2 take it now at 2.55 and sit again at 3.05 and then I
3 will hear an application from you, Mr Holmes and Mr
4 Russell.

5 MR MOYNIHAN: Sir, just before we rise, perhaps it's just as
6 well I put on the record that if there's any error in
7 Mr Swann's evidence this morning in which he was
8 recounted what Sheriff Gilchrist said on a previous
9 occasion then that is my fault because he is simply
10 giving evidence this morning of what I told him by way
11 of an explanation of Sheriff Gilchrist. So any error is
12 mine, not Mr Swann's.

13 THE CHAIRMAN: It is a good thing that you've owned up, very
14 good.

15 **(2.55 pm)**

16 **(A short break)**

17 **(3.07 pm)**

18 THE CHAIRMAN: Mr Holmes, you have an application?

19 MR HOLMES: Thank you, sir, I do have an application but it
20 relates to only one matter. I appreciate Mr Wertheim
21 has not yet completed his evidence but the matter I
22 would like to ask Mr Swann about relates to a point in
23 Mr Wertheim's evidence so far where he made reference to
24 a charting that was prepared by Mr Swann and I would
25 just like to put a piece of that for comment to him.

1 THE CHAIRMAN: Yes.

2 **Cross-examined by MR HOLMES**

3 Q. Mr Swann, if you can have a look at an image for me
4 FI2309.14. Ignoring the coloured lines that are drawn
5 on those images, do you recognise those as coming from
6 the chartings that were prepared by you.

7 A. Yes, I do.

8 Q. I can't show you the transcript of proceedings but I am
9 going to read you out a portion of what was said during
10 the evidence of Mr Wertheim.

11 He asked to be shown these particular pages of your
12 charts and he asked to mark these coloured lines on them
13 that you see there. For those using LiveNote it's on
14 day 24 of the transcript and the comments are page 100
15 onwards.

16 Mr Wertheim marked from what he saw as the core of
17 each of these inked impressions out to the Rosetta
18 characteristic and that's the yellow line that you see
19 marked on both impressions there.

20 A. Yes.

21 Q. What he then did was to count the ridges in between and
22 to mark each ridge as he went in green. So those are
23 the lines that you see crossing each of the yellow
24 lines.

25 If you take it from me that the image on the left is

1 the inked impression from page N of your chartings and
2 the image on the right is the inked impression from page
3 M of the chartings that you have prepared.

4 Mr Wertheim commented that the ridge counts that he
5 performed while he was giving evidence seemed to be
6 different from inked impression to inked impression and
7 what he said is that:

8 "Mr Swann cannot have it both ways. We are using
9 inked impressions for crying out loud. Mr Swann is
10 utterly mistaken and I reject both his interpretations.
11 Mr Swann obviously doesn't even review his own work."

12 Just looking at those two impressions, can you tell
13 me why the ridge count from the core to the Rosetta
14 point that is marked on each would differ?

15 A. Simply because he's not marked the right characteristic
16 on the right-hand mark.

17 Q. Ah.

18 A. I can indicate where the Rosetta characteristic is on
19 the right-hand mark, if you wish.

20 Q. If you would, please.

21 THE CHAIRMAN: Could we copy this and then have it, in other
22 words, as a different exhibit with the mark on it of
23 where the Rosetta is? In other words, so we're not
24 interfering, if that is the right word, with
25 Mr Wertheim's.

1 MR MOYNIHAN: Unless I am corrected when what is on the
2 screen is saved it will become a new image for today
3 and not disturb what is there.

4 THE CHAIRMAN: That is fine. If you would not mind marking
5 the Rosetta then this becomes a new document, as I
6 understand it.

7 Slightly to the left, is it, of that circle the
8 Rosetta characteristic?

9 A. The Rosetta characteristic is just immediately to the
10 left of that circle. **(Indicated)**

11 THE CHAIRMAN: Yes, to the left of the circle. It's still
12 slightly to the left, is it?

13 A. It's just to the left of it, Mr Chairman. If you are
14 going to draw a line to it?

15 THE CHAIRMAN: I think just to make it clearer if we take it
16 off and I think an arrow to it would be safer.

17 **(Indicated)**

18 MR HOLMES: What you have marked now is the correct position
19 of the Rosetta characteristic on the right-hand chart;
20 is that correct?

21 A. That's correct, yes.

22 MR HOLMES: Could we save that image, please?

23 MISS BAHRAMI: That's saved as FI2210.04.

24 MR HOLMES: So, Mr Swann, any criticism that Mr Wertheim had
25 to make of you at the time seems to be based on the fact

1 that he has marked the Rosetta characteristic in quite
2 the wrong place on chart N; is that correct?

3 A. Yes, I think he's miles out.

4 MR HOLMES: Thank you very much, Mr Swann.

5 THE CHAIRMAN: Mr Russell, have you any application?

6 MR RUSSELL: Yes, sir. I would with to apply to put six
7 matters to Peter Swann. Firstly, Mr Swann's ranking as
8 a fingerprint expert, his position as Shirley McKie's
9 defence expert and the duty of an independent expert.
10 It is a matter that can be put very briefly --

11 THE CHAIRMAN: Yes, certainly.

12 MR RUSSELL: -- as with each matter.

13 Secondly, sir, the Police Service of Northern
14 Ireland report of 15th October 2009, a matter which
15 arises.

16 THE CHAIRMAN: Yes.

17 MR RUSSELL: Thirdly, Mr Moynihan's clockface PowerPoint
18 presentation and the movement on mark Y7.

19 THE CHAIRMAN: Yes.

20 MR RUSSELL: Fourthly, passing reference to the disciplinary
21 proceedings against Mr Swann by the Fingerprint Society
22 and the Council for the Registration of Forensic
23 Practitioners on the complaints of Iain McKie and
24 Shirley McKie.

25 THE CHAIRMAN: Yes.

1 MR RUSSELL: Fifthly, Iain McKie's admission in evidence to
2 this Inquiry on 15th October that in March 1999 Shirley
3 McKie had been notified of Peter Swann's identification
4 of mark Y7 as her left thumbprint, that is to say prior
5 to standing trial for perjury in May 1999.

6 Sixthly --

7 THE CHAIRMAN: Is that not a matter of comment now?

8 Mr McKie has given that evidence.

9 MR RUSSELL: It is a matter which now requires response and
10 comment by Mr Swann because throughout he has
11 consistently argued that Shirley McKie was fully aware
12 of his identification of mark Y7 and pages 42, 43 and 44
13 of his statement to the Inquiry takes this very specific
14 issue.

15 Sir, it is an issue which firstly arises because
16 Mr Swann was requested by this Inquiry to deal with the
17 telephone call from the Procurator Fiscal's Office
18 concerning his examination of Y7 as Shirley McKie's
19 expert. It is an integral part of our evidence to this
20 Inquiry that Shirley McKie committed perjury in her
21 trial **Her Majesty's Advocate v Shirley McKie** when she
22 was tried for perjury and it's --

23 THE CHAIRMAN: I am sorry to interrupt you but, obviously,
24 so far as criminal offences are concerned, I can't
25 enquire into that but --

1 MR RUSSELL: Absolutely agreed, sir.

2 THE CHAIRMAN: But I thought Mr McKie had rather confirmed
3 the view expressed by Mr Swann that she would have known
4 or did know.

5 MR RUSSELL: But it has been consistently denied by the
6 McKies to include the basis that even the letters she
7 wrote, she had not seen but merely signed it. I very,
8 very specifically put to you, sir, as a matter of
9 considerable importance the fact that Andrew Smith and
10 all of the McKie lawyers made a signed statement
11 submission to the Scottish Parliament in April 2006 when
12 they said:

13 "The pursuer, Shirley McKie, advises us and we have
14 no reason to doubt this that she was not aware of the
15 opinion of Swann on the matters she was asked about. At
16 all material times her father was being advised of the
17 developments and not all matters were communicated to
18 her."

19 These are matters of great importance because, even
20 if you go back to the perjury trial, the question arises
21 as to why would Shirley McKie lie about entry into the
22 murder scene of Marion Ross and the answer is that she
23 has consistently lied, sir.

24 THE CHAIRMAN: I appreciate that is what you say but I am
25 not quite sure how Mr Swann can take it further. That

1 is all I am trying to discover.

2 MR RUSSELL: It is an opportunity to have Mr Swann rebut the
3 allegations which have been made against him. When he
4 raised these matters before the Council for the
5 Registration of Forensic Practitioners, it was
6 vehemently denied by the McKies that such an allegation
7 could be made and it was a terrible allegation to make
8 against Shirley McKie. It now transpires to have been
9 entirely true and there is a very interesting aspect in
10 how the McKies are trying to operate before this
11 Inquiry.

12 Sir, just one brief point and that is: when Shirley
13 McKie, on direct instructions to Andrew Smith and
14 others, made that submission to the Scottish Parliament
15 she subsequently sought to shelter behind Andrew Smith
16 QC who was responsible for that she said. She now seeks
17 to shelter behind Donald Findlay QC on her false
18 evidence in her original perjury trial. These are
19 matters of great importance, sir.

20 THE CHAIRMAN: But what is the question that you want to ask
21 Mr Swann?

22 MR RUSSELL: The matter that I wanted to put to Mr Swann
23 was, having regard to Iain McKie's admission, which is
24 Shirley McKie inevitably committed perjury in her
25 perjury trial **Her Majesty's advocate v Shirley Jane**

1 **McKie a/k/a Cardwell** what comments he would have having
2 regard to his involvement in these proceedings to the
3 answers that she gave on oath when she was
4 cross-examined by the Advocate Depute on sworn oath in
5 May 1999.

6 THE CHAIRMAN: I am not really persuaded that his comment is
7 relevant on an issue like that.

8 MR RUSSELL: Sir, if I can in that case transfer that
9 question to a secondary application and that is this:
10 one, I do not know what the position is regarding
11 Shirley McKie giving evidence before this Inquiry. I do
12 not know what date or what is proposed or what the
13 arrangements are. If the matter is being dealt with on
14 a voluntary basis, then we will stand back and await
15 notification and that will be no doubt entirely proper.

16 But, sir, if there is an issue of perhaps whether
17 through matters which Mr McKie touched upon of Shirley
18 McKie not giving evidence before this Inquiry then we
19 would wish to be heard on an application to have her
20 summonsed to appear before this Inquiry.

21 Sir, if and when Ms McKie does give evidence before
22 this Inquiry, we would wish to have a wholly independent
23 member of Crown Office and the Procurator Fiscal Office
24 as well as an officer from Strathclyde Police present
25 during the questioning.

1 THE CHAIRMAN: At the moment, I am dealing with the question
2 of what questions you should be permitted to put to this
3 witness and all I am saying at the moment, I am not
4 persuaded that that is a topic that Mr Swann can assist
5 me on today in answer to any question.

6 MR SMITH: Sir, I wonder if I might just say a very few
7 words by way of assistance. The first thing I should
8 say is it's a matter of regret that there have been
9 suggestions made by Mr Russell regarding members of
10 faculty, and I include myself in that.

11 As Mr Russell is well aware, although he made a
12 complaint to the Faculty of Advocates it was dismissed
13 by the Faculty of Advocates, as was his appeal to the
14 Ombudsman. I think it is right and proper that is a
15 matter of public record. But in a slightly different
16 matter I should say that if Mr Russell had wished to put
17 allegations of that kind to anyone, the obvious person
18 to put them to was Mr Iain McKie. I don't know why
19 Mr Russell wasn't here whenever Mr McKie gave his
20 evidence.

21 THE CHAIRMAN: I think I am with you in the sense that I
22 made it clear to Mr Russell that I am not persuaded that
23 that is a topic that he should put to this witness.

24 Is there any other matter, Mr Russell, that you want
25 to raise?

1 MR RUSSELL: Sir, because Mr Smith has referred to the
2 Faculty of Advocates and his reference to matters having
3 been dismissed, may I remind him that his QC, Mr Jones,
4 wrote to the Faculty of Advocates on 31st August 2007
5 and said:

6 "The terms of the submission made it clear that all
7 four signatories, Mr Smith, Mr Duncan, Mr Dalyell
8 (solicitor) and Mr Cassells (solicitor), had prepared it
9 on the instructions Ms McKie and her father."

10 The Faculty of Advocates, contrary to what Mr Smith
11 suggests, the complaints committee of the Faculty of
12 Advocates said In relation to what Mr Smith and the
13 lawyers for McKie had stated was:

14 "The committee considers it in general inappropriate
15 for counsel to express a personal opinion about the
16 credibility or reliability of a client. Accordingly, in
17 the committee's view, it was ill-advised for counsel
18 (that's Andrew Smith QC and others) to support
19 Ms McKie's assertion about the state of her knowledge."

20 So there is an inevitable inference inevitably
21 Ms McKie committed perjury in her perjury trial. But,
22 secondly, she had either lied to Mr Smith or Mr Smith
23 has lied to the Faculty of Advocates. There is no other
24 interpretation.

25 THE CHAIRMAN: At the moment, I am dealing with questions

1 you should be allowed to put to this witness. These are
2 not matters for this witness. These are not matters
3 with which this witness is concerned. Is there any
4 other matter other than those that you have --

5 MR RUSSELL: If we work on the basis, sir, the fifth
6 question has gone to return as an application at a
7 future date, then my fifth question is a couple of
8 points on the IAI solely response to the matter raised
9 this morning.

10 THE CHAIRMAN: You will bear in mind that what I said about
11 it, that my interest in the IAI is limited to the one
12 aspect of it; namely, who initiated the complaint.

13 MR RUSSELL: That is the only point I wish to make, sir.

14 THE CHAIRMAN: Very good. Then other than the one question
15 which I have ruled against, the others you may ask.

16 MR RUSSELL: Thank you, sir. May I respectfully ask
17 Mr Mackenzie to move slightly to one side because I
18 don't want to strain the microphone as I speak to
19 Mr Swann and if I could ask Mr Swann to stay close to
20 the microphone but to address his replies direct to his
21 Lordship, not to me.

22 THE CHAIRMAN: It's a very unnatural thing to have to do not
23 to look at the person who is speaking to you, but
24 Mr Russell is quite right. It is better, if you would
25 not mind.

1 **Cross-examined by MR RUSSELL**

2 Q. Mr Swann, your ranking as a fingerprint expert. You
3 were superintendent and head of department of West
4 Yorkshire Police; correct?

5 A. Correct.

6 Q. You were Home Office Adviser on fingerprints?

7 A. Correct.

8 Q. You were 30 years West Yorkshire Police fingerprints?

9 A. Indeed, yes.

10 Q. You're 22 years Independent Fingerprint Expert?

11 A. Correct.

12 Q. You've got 52 years in fingerprint work as an expert?

13 A. I have.

14 Q. You maintain a fingerprint library?

15 A. I do.

16 Q. Is it likely to be the most extensive fingerprint
17 library in the United Kingdom?

18 A. Sorry?

19 Q. Is it likely to be the most extensive fingerprint
20 library in the United Kingdom?

21 A. I believe it is.

22 Q. You have been involved in many of the highest profile
23 cases in the world; that's correct, is it?

24 A. I have, yes.

25 Q. You have been involved in terrorism cases, the Yorkshire

1 Ripper, you have given evidence in Australia and you
2 have been involved in a great many matters, in
3 particular McNamee?

4 A. Yes, I have.

5 Q. In your 52 years' work as a fingerprint expert, has any
6 identification made by you been overturned before any
7 court?

8 A. No.

9 Q. Having regard to your expertise, 52 years, and a
10 life-long obviously keen interest in fingerprints aside
11 from your professional work, how certain are you that
12 the mark Y7 is the left thumbprint of Shirley McKie,
13 from 0 per cent to 100 per cent?

14 A. 100 per cent.

15 Q. When you work as an Independent Fingerprint Expert and
16 you're examining marks, do you take into account who is
17 instructing you as a relevant factor, defence,
18 prosecution, whatever?

19 A. No, not at all.

20 Q. So when you are instructed, say, by Shirley McKie you're
21 not there to present Shirley McKie's case?

22 A. Sorry?

23 Q. When you are instructed, say, on behalf of Shirley
24 McKie, you would not approach your work in looking to
25 see how you could assist her on the fingerprint

1 evidence?

2 A. No, certainly not.

3 Q. If your CV isn't already before the Inquiry, then could
4 you just confirm that you have one in front of you, that
5 that is correct and it could be handed in?

6 THE CHAIRMAN: Does it go beyond what is in the statement?

7 MR RUSSELL: Well, it's recited; just so there is a formal
8 CV.

9 THE CHAIRMAN: I have the first five paragraphs, six I
10 think, all relating to that. But if there is more,
11 certainly.

12 MR RUSSELL: I was simply referring to a simple two-page CV
13 in a classic form.

14 That is correct, is it, Mr Swann, apart from the
15 fact it may be a little out-of-date now? It is
16 June 2005.

17 A. Yes.

18 Q. On to the second matter, sir, and that is the Police
19 Service of Northern Ireland.

20 Mr Swann, what is the value of simply sending marks
21 for evaluation, say, to the Police Service of Northern
22 Ireland without any fingerprint forms for comparison
23 purposes?

24 A. In my opinion very little. Certainly an opinion can be
25 passed on a mark that you see but, for the sake of

1 completeness, you should have the donor's prints -- if
2 they're available of course -- with you to be able to
3 make a comparison.

4 Q. You have seen the report from the Police Service of
5 Northern Ireland which is 15th October 2009, findings by
6 Dawson, McKewan, Green in relation to marks QI2 and
7 others where they refer to, for example, insufficient
8 ridge detail, could use pattern to eliminate
9 individuals.

10 If a mark is sufficient to eliminate individuals,
11 could it not reasonably be used for comparison purposes?

12 A. Indeed. If it can be used for proving elimination, it
13 can also be identified to prove a case.

14 Q. In respect of the Police Service of Northern Ireland and
15 the approach to these marks, is it correct that you were
16 previously invited by the PSNI to go to Belfast, you
17 were flown there, albeit that you clearly attended
18 without any fees, but they arranged your travel and is
19 it correct that you attended PSNI in order to make a
20 presentation on marks Y7 and QI2 and the other marks in
21 this matter?

22 A. Yes, I was.

23 Q. When you gave your presentation on Y7 and QI2 to all of
24 the Senior Fingerprint Officers within PSNI, was there
25 any successful challenge that either the marks were not

1 suitable for comparative purposes or that your
2 identification of them was not appropriate or incorrect?

3 A. No, none at all.

4 THE CHAIRMAN: Can you remember when that was?

5 A. At a guess, I'd say three to four years ago now.

6 MR RUSSELL: The third matter, Mr Swann -- and, again, if
7 you resist the temptation to watch me and give your
8 responses to his Lordship -- Mr Moynihan put to you
9 yesterday a clockface PowerPoint presentation. He used
10 a flat screen image of a clockface.

11 The question is: would the rotation of a single
12 image clockface replicate the movement of a human thumb
13 in relation to a door standard?

14 A. I don't think so. I had great difficulty in working out
15 really what was happening with the clockface, to be
16 quite honest. The movement wouldn't occur as suggested
17 because the Rosetta characteristic certainly was not at
18 the tip as was suggested on there, it was halfway
19 between the centre core and the top of thumb. I don't
20 think really it could be worked out like that. I don't
21 know how it happened. We went through that at great
22 length but I certainly don't think you can work it out
23 by putting marks on a clockface.

24 Q. A question on the same issue is in order to demonstrate
25 the movement in deposition of a thumbprint, would you

1 have to have regard to the elasticity of skin, the
2 pressure of application, the direction of application,
3 skin contamination, the physical condition of the donor
4 in terms of secretion, the surface and position of the
5 hard surface?

6 A. Certainly I think that all the areas you've mentioned
7 all play a part. Nobody knows -- well, I don't think --
8 it's never been mentioned. I mean, was the door
9 standard had it been in a bathroom? Was it damp?
10 Moisture you do get in a bathroom. I don't know the
11 state of Shirley McKie's skin on her left thumb but I'm
12 assuming it was quite in good order and the elasticity
13 of the ridge detail.

14 I think the mark was there due to slippage. When
15 she's placed her thumb on there, the ridge structure
16 causes it to act as a brake and it grips the wood, a
17 little bit like corrugated sheeting in appearance, and
18 it grips to prevent any further slippage. I think it
19 just slipped a fraction; that's about all, just a
20 fraction. But a fraction of slippage with a thumb would
21 certainly easily give you from ten past to the hour on a
22 clockface with a degree of movement.

23 The movement that was worked out by Mr Berry, whilst
24 it's accurate as far as he could take it, it's not
25 forced(?) to be exactly spot on. I think we've got

1 appreciate that. There might be some slight slippage
2 either way. But it does depend upon all the factors
3 that Mr Russell has just mentioned.

4 Q. If I can take you to the fourth matter, Mr Swann, the
5 disciplinary proceedings pursued against you by Iain
6 McKie and Shirley McKie, both of whom were separate
7 complainants with Mr McKie also adopting a role to
8 present evidence.

9 Is it correct that you were subject to disciplinary
10 investigation and, in one case, disciplinary tribunal
11 proceedings by the Fingerprint Society and then the
12 Council for the Registration of Forensic Practitioners?

13 A. Yes, I was.

14 Q. Is it fair to say that in respect of the McKies
15 multiple -- and they were multiple -- complaints to the
16 Fingerprint Society and thereafter the CRFP, you were
17 the subject of intensive, protracted disciplinary
18 proceedings for the best part of five years?

19 A. That's correct, yes.

20 Q. Is it correct that the charges against you were thrown
21 out by the Fingerprint Society?

22 A. They were.

23 Q. Is it correct that the charges against you were
24 eventually thrown out by CRFP on the personal
25 intervention of Mr Sherman(?)?

1 A. That's correct, yes.

2 Q. Is it also correct that the CRFP, in throwing out the
3 case after many hearings, deemed Iain McKie and Shirley
4 McKie to have become unreliable witnesses?

5 A. That's as I was told, yes.

6 Q. Your ultimate sin seems to have been a refusal to recant
7 your identification of mark Y7 as being Shirley McKie's
8 left thumbprint; is that about it?

9 A. That would appear to be the case, yes.

10 Q. Is it also correct, as a final point on that, that you
11 refused to be gagged on disclosure of your opinion on
12 mark Y7 as Shirley McKie's expert?

13 A. That's correct too.

14 Q. Is it also correct that the matter which the Chairman is
15 not going to permit a question on was a factor
16 considered in the CRFP disciplinary proceedings and that
17 goes to the McKie's motivation?

18 A. That's correct too, yes.

19 Q. Thank you.

20 Finally, a few brief points on the IAI. Is it
21 correct -- and if you just accept the chronology from
22 me -- that on 14th March 2008 Kenny MacAskill, the
23 Justice Secretary Scottish Government, announced this
24 judicial statutory Fingerprint Inquiry?

25 A. Yes.

1 Q. At the same time announced Sir Anthony Campbell,
2 Lord Justice of Appeal Northern Ireland, Chairman?

3 A. Yes.

4 Q. Is it also correct that within 48 hours under the
5 heading "Judge to head Fingerprint Inquiry" on CLPEX Les
6 Bush and others started postings to set up an IAI
7 disciplinary case against you?

8 A. That's correct.

9 Q. Is it correct that in the posting of 16th March 2008
10 within 48 hours of the Justice Secretary's announcement,
11 Bush said:

12 "I'm interested in the proactive steps that can be
13 taken through the IAI to put some early pressure on the
14 supporters of the mis-identification."

15 That was as he welcomed the setting-up of this
16 Inquiry and the probable start of proceedings. But
17 straight away he wanted to apply pressure to the two
18 supporters of mis-identification who he named as Peter
19 Swann and Martin Leadbetter; is that correct?

20 A. That's correct.

21 Q. You have seen a submission from Iain McKie dated
22 19th October to this Inquiry saying:

23 "[He had] no knowledge of or involvement in the
24 establishment of the IAI Y7 Committee ..."

25 But adds he had, over the years:

1 "... made Internet appeals to the IAI and the
2 Fingerprint Society on www.clpex.com and the family
3 website to take action to have the identity of print Y7
4 established to their satisfaction."

5 To your knowledge, is Iain McKie a keen poster of
6 these statements on the CLPEX website?

7 A. Yes, I would say so, yes.

8 MR RUSSELL: On this question, sir, there is a matter which
9 Mr Smith might be able to assist on. I will put it to
10 Mr Swann.

11 It is understood that when Mr McKie admits to having
12 posted statements on the CLPEX website that he also
13 posts under the pseudonym of Taggart?

14 THE CHAIRMAN: Are you in a position to answer that?

15 A. That's as I understand it.

16 THE CHAIRMAN: Do you know?

17 A. No, I don't know.

18 THE CHAIRMAN: No. Well, then I think you should not --

19 A. That's as I understand it.

20 THE CHAIRMAN: If you don't know, I wouldn't answer a
21 question on oath that you don't know the answer to.

22 MR RUSSELL: That is, sir, something that perhaps Mr Smith
23 could assist on because Taggart --

24 THE CHAIRMAN: Mr Smith isn't the witness.

25 MR RUSSELL: I beg your pardon, it is just sir --

1 THE CHAIRMAN: At the moment, we are dealing with
2 Mr Swann who, as you know, has had a long time in the
3 witness box. He, as I understand it, agrees that it's
4 not an answer he can give on oath and I think we should
5 leave it there.

6 MR RUSSELL: Thank you. In which case I will bypass the
7 issues of what matters arise in respect of how the IAI
8 has conspired against Peter Swann and Martin Leadbetter
9 because this is an issue which we say is a criminal
10 offence under the section 35 of the Inquiries Act 200.

11 But as to why we do it in this way instead of, with
12 respect, being at loggerheads with your Lordship as to
13 the matters that we cannot rehearse before this Inquiry,
14 may I just with refer Mr Swann finally to a letter dated
15 14th October 2008 from Mrs Ann Nelson, solicitor and
16 Secretary to the Inquiry. It's a very straightforward
17 matter.

18 Mr Swann, in a letter dated 14th October 2008 in
19 response to matters concerning the IAI and alleged
20 breach of section 35 of the Act, she wrote to me on
21 behalf of yourself and Mr Leadbetter saying:

22 "I assume that the reference is to section 35(2)(b)
23 which makes it an offence to do anything that is
24 intended to have the effect of preventing any evidence,
25 document or other thing from being given, produced or

1 provided to the Inquiry panel or anything that he knows
2 or believes is likely to have that effect. As you will
3 be aware, the Chairman has no power to institute
4 proceedings in relation to any alleged offence. The
5 only person who could institute proceedings in Scotland
6 is the Lord Advocate or one of the Procurators Fiscal.
7 The investigation of such allegations is a matter for
8 the police and the Crown Office and Procurator Fiscal
9 Service."

10 With that very clear statement as to how this matter
11 should be dealt with, are you satisfied, and do you
12 accept, that this is a matter which, since it cannot be
13 investigated before his Lordship, should be dealt with
14 by the Crown Office, Procurator Fiscal Service and the
15 Strathclyde Police?

16 MR SMITH: Sir, I must step in at this point. That is not a
17 question for the witness. It is a public statement
18 Mr Russell is determined to make.

19 I don't quite know why it is Mr Swann is thought to
20 know who the best person to investigate criminal
21 offences is in these circumstances, but we are straying
22 into territory that, as a result, we have to devise a
23 protocol about issues when accusations are going to be
24 made of criminal offences. I am very concerned that we
25 end up in a position where accusations are being made

1 not about me but about other people who have given
2 evidence in circumstances where the protocol has not
3 been adhered to.

4 So I take objection if Mr Russell is wishing to make
5 a statement on such matters --

6 THE CHAIRMAN: I think really the position is the witness
7 can merely say that is a letter that was received and I
8 think the matter rests there.

9 MR RUSSELL: Yes, sir. The fact is that this matter could
10 only go to Crown Office on the instructions of Peter
11 Swann and Martin Leadbetter; so I'm merely putting it to
12 Mr Swann that you would wish to have this matter dealt
13 with before Crown Office, the Procurator Fiscal Service
14 and the Strathclyde Police?

15 THE CHAIRMAN: Well, it can only be referred by you on the
16 instructions of your client.

17 MR RUSSELL: Yes.

18 THE CHAIRMAN: Yes, that is right.

19 THE WITNESS: Yes.

20 THE CHAIRMAN: Well, it is a matter between you and your
21 client whether he instructs you or not.

22 MR RUSSELL: Mr Swann has just confirmed, sir, that is the
23 matter --

24 A. Yes, Mr Chairman.

25 THE CHAIRMAN: Those will be your instructions?

1 A. Yes.

2 MR RUSSELL: Sir, that completes my questions. Thank you.

3 **Re-examined by MR MOYNIHAN**

4 Q. There is only one point I would like to clarify,
5 Mr Swann, in your evidence and it arises from the
6 photocopy that you produced today of the chartings that
7 were referred to. I just want to clarify something.

8 Do you have the photocopy just in front of you just
9 now?

10 A. Yes.

11 Q. Yesterday at the very start of your examination, I was
12 asking you some questions about the information that you
13 had available to you before you met Mr Findlay on
14 2nd March 1997. I am looking at page 6 into page 7 of
15 the transcript. What you told me was that the
16 solicitors (that's Levy & McRae) sent you a package.
17 That package contained a fair amount of material but
18 there was a particular exhibit. You say it was quite a
19 bundle. There was, however, a particular matter that
20 you homed in on and that was a comparison chart copy.

21 A. Yes. They indicated to me that this is what they wanted
22 me to look at.

23 Q. I am grateful to you because that is the link. The
24 document that you have in your hand at the present
25 time -- which we will, with your permission, retain --

1 is the comparison chart copy you were referring to
2 yesterday?

3 A. Yes.

4 Q. What I would also like to ask, just following on from
5 that, in the days after you received that and before you
6 met Mr Findlay you told me that you had worked on
7 alternate days, for the reason you indicated, studying
8 certain material.

9 Do I take it that what you are working from on
10 alternate days is the photocopy that you had before you?

11 A. Yes, it is.

12 Q. Accordingly, what you were working with on
13 those alternate days were charted copies of the mark and
14 the print?

15 A. This: that's all.

16 Q. Did you have at that stage uncharted, ie unmarked,
17 copies of the mark Y7 and Shirley McKie's fingerprint?

18 A. No.

19 MR MOYNIHAN: Sir, those are the only questions I would ask
20 of the witness. Thank you.

21 THE CHAIRMAN: There were just a few matters I wanted to ask
22 you about. The first is about the position of the
23 Rosetta characteristic. I want to get clear I
24 understand your evidence about that and the 66 or 60
25 degree movement.

1 Is that a possibility that you are putting forward
2 because, as I understand your evidence, you are saying I
3 can see the characteristics in this what I might call
4 new position and therefore it's whether I can explain
5 how they got there or not. That's where I see them and
6 therefore it's a possibility that 60 degree movement
7 accounts for it but, whatever accounts for it, I can see
8 those characteristics in that position.

9 A. Yes.

10 THE CHAIRMAN: Is that a fair representation of what you
11 were saying?

12 A. Yes. I can see the Rosetta characteristic on the left
13 of mark Y7?

14 THE CHAIRMAN: Yes, that's what I mean, yes.

15 A. You can also see it over to the right on the rolled
16 impression. So therefore something has moved.

17 THE CHAIRMAN: So however it got there, it's there?

18 A. Yes.

19 THE CHAIRMAN: And 60 degree movement is a possible
20 explanation but, however it got there, you see it?

21 A. Yes.

22 THE CHAIRMAN: That is the point I am trying to get clear in
23 my mind.

24 On the question of the Rosetta, characteristics have
25 been described to me of simple ones like ridge endings

1 and bifurcations. Nobody ever referred to a Rosetta
2 characteristic in the early stages as to the type of
3 characteristic one sees in the print. So what I am
4 asking is: in your long experience, is it a very unusual
5 characteristic or is it quite common or how would you
6 regard it?

7 A. The name has simply been given it by Mr Berry because of
8 the uniqueness and the Rosetta Stone, et cetera,
9 et cetera.

10 I mean, it is unusual in the sense that the ridge
11 comes along, goes downwards for a short distance and
12 then a little island ridge or whatever it is just to the
13 right of it there. It's not something I've ever seen
14 before, never. Where it starts one ridge up you've got
15 this cluster of five sweat pores, quite prominent,
16 another ridge there, another characteristic and so on.

17 The combination of characteristics around
18 surrounding the Rosetta characteristic are so, well,
19 unique you just don't -- you know, I've never seen them
20 like that before, never. I don't think anybody else
21 ever will. But it's just simply a name given to the
22 uniqueness but the Rosetta characteristic itself is
23 simply the ridge going along, veering down like the
24 front of a train and a dot there.

25 THE CHAIRMAN: If we could break it into parts, is the ridge

1 dropping down I think you said 128 --

2 A. 128 degrees where it angles down --

3 THE CHAIRMAN: Is that in itself unusual whether the dot is
4 there or not?

5 A. Yes, it is.

6 THE CHAIRMAN: Have you ever seen that before?

7 A. It's not a common occurrence. I can't say I've ever
8 seen it in that format before no, I haven't.

9 THE CHAIRMAN: But what you have never seen before is the
10 ridge dropping down and a dot after it?

11 A. Correct, and where it starts on the left.

12 THE CHAIRMAN: And where it starts. So in that sense, from
13 your considerable experience, it's a very unusual
14 characteristic as you see it?

15 A. Most unusual.

16 THE CHAIRMAN: On a different topic, when you are carrying
17 out an examination I think it was in the Evett
18 & Williams report and indeed in one of the witnesses,
19 Mr Zeelenberg, was describing how you go through
20 examination and it was suggested that in some
21 jurisdictions what is done is that you look only at the
22 mark and size up what usable points there are and only
23 then, when you have done that and noted them, do you
24 then look at the print.

25 From your experience, what would be your view of

1 that as a desirable way of carrying out an examination?
2 A. Well, it isn't a way I would advocate personally. It's
3 not the way that I was trained. I mean, yes, we were
4 shown Scenes of Crime marks and you looked at them and
5 you assessed them, et cetera, et cetera, but more or
6 less immediately you don't -- well, you can start
7 marking out characteristics on them if you want to but
8 what they suggest, my training was you select a suitable
9 area of the Scene of Crime mark (a clear area obviously
10 as opposed to a non-clear area) and you compare the
11 characteristic detail in that area with the appropriate
12 characteristic detail which hopefully you've got on the
13 donor print and you compare the two. You see how many
14 characteristics fall in the same place, in the same
15 sequence, et cetera, et cetera, until you've got a
16 sufficient number in sequence on both, a sufficient
17 number being a minimum of at least eight and you can go
18 higher if you wish. Well, we always did go higher.

19 But I never sort of just had the Scene of Crime
20 mark, the one on the left, and look at that to the
21 exclusion of the one of the right.

22 THE CHAIRMAN: The reason I am asking is at the end of the
23 day one of the tasks I have is to make recommendations
24 and I am just wondering whether that is something, from
25 your long experience, you would think would be a good

1 way to do it or not a good way to do it.

2 A. I don't think -- it wouldn't be my way.

3 THE CHAIRMAN: That's good enough.

4 A. I mean, we were a training establishment at Wakefield
5 with students from all over the world and we certainly
6 never taught them that. We taught them to look at the
7 Scene of Crime mark. Obviously, you must look at the
8 Scene of Crime mark first, obviously, and then you look
9 to see where that detail you can home in on on the crime
10 mark whether you can see it on any of the ten
11 fingerprints on the form. When you think you've got the
12 right one, then you just put a glass on each one and get
13 your eye down and sort out the characteristic detail.
14 Until you had sufficient to satisfy yourself.

15 THE CHAIRMAN: The last question really was this, that in
16 the Evett & Williams report which I was looking at they
17 said that there was anecdotal evidence of more than
18 eight points of comparison of prints being actually of
19 different individuals, but then when they looked at it
20 they decided that it wouldn't cause any qualified
21 examiner any difficulty to see the differences.

22 I mean, is there any point -- or maybe there
23 isn't -- at which you would decide that a mark clearly
24 belonged to an individual; in other words, would it be
25 at eight, nine, ten or does it just vary with the mark

1 MR MOYNIHAN: With this one observation, sir, and I have
2 told everyone in the hall: Mr Leadbetter is available
3 tomorrow. There is great difficulty even returning next
4 week. So the understanding I have had with everyone
5 else in the hall is that time properly taken up today
6 will eat into the available time that Mr Leadbetter has
7 tomorrow. The intent is to finish Mr Leadbetter's
8 evidence tomorrow and I think everyone in the hall
9 appreciates the compromise we're making.

10 THE CHAIRMAN: We may have to do without some of the breaks
11 but I am always anxious that it is for the witness a
12 break as much as anybody else because it is very
13 demanding to be there for a long spell.

14 MR MOYNIHAN: It is not so much sacrificing the breaks, it
15 is simply there may be less time available tomorrow for
16 cross-examination but everyone has been aware of that as
17 the day has progressed.

18 THE CHAIRMAN: I am sure with co-operation we can manage.
19 Tomorrow morning then at 10.00.

20 **(3.58 pm)**

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

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