

Tuesday, 27th October 2009

1

2 **(Morning session)**

3 **(10.00 am)**

4 THE CHAIRMAN: I think we are going to begin with your
5 application, Mr Holmes, which was about the evidence of
6 Mr Wertheim.

7 MR HOLMES: That's correct, sir. I should say that I have
8 had a brief conversation this morning with my learned
9 friend Mr Smith and hopefully this can be dealt with in
10 relatively short order.

11 The first thing to deal with, sir, is the question
12 of Mr Wertheim's evidence to date. My learned friend
13 has asked me to confirm that I do not intend to make any
14 allegation Mr Wertheim perjured himself during the trial
15 of Ms McKie. I am quite happy to do so, sir. I asked
16 Mr Wertheim a question about whether he gave evidence
17 during Ms McKie's trial that he knew to be incorrect and
18 that was based on the fact that he had previously agreed
19 that certain points were within tolerance that he now
20 disputes. Of course the assessment of his credibility
21 in the light of his answers to that question is a matter
22 entirely for the Inquiry and I accept that without
23 making any kind of allegation.

24 THE CHAIRMAN: Yes.

25 MR HOLMES: The second matter to be dealt with in relation

1 to this application is Mr Wertheim's evidence with
2 regard to XF. I have put certain passages in the
3 application relating to Mr Wertheim's comments on XF and
4 I would like to ask him questions about those comments,
5 standing the fact that Mr Wertheim appears to have
6 examined the mark as early as 2000. I understand
7 there's no opposition to my asking him about his
8 comments on XF.

9 THE CHAIRMAN: Yes. The only reason I wondered about it
10 was, first of all, I thought it was relevant, the part
11 about when he spoke, I think, on the Panorama programme
12 or a television programme, I was interested to know
13 whether that was before or after he had actually seen
14 the gift tag, as we now know that he had, and that he
15 now accepts that he had. I think there was also some
16 written confirmation about him having seen it, which I
17 thought was relevant that that should come out.

18 The only reason I queried the other matters was,
19 first of all, there were some questions which I thought
20 came to comment, I mean, how would he know where the
21 jury had come to a decision. I'm well aware that he
22 wouldn't know about what made the jury decide the case
23 in a particular way so I was not really interested in
24 that.

25 Otherwise, I thought the other occasions when he had

1 said that he had not had access, they were all about
2 2006, I think. After all, he was saying at the
3 beginning of this Inquiry that he had not seen it and
4 then accepting that he had when it was put to him. So I
5 just wondered is there much difference between what he
6 was saying in 2006 and 2009?

7 MR HOLMES: Indeed, sir. He has commented often and with
8 some force on the origins of XF and my intention would
9 be to simply put those comments to him and ask if he
10 accepts that he made them. In the light of his response
11 to those questions, it is again a matter for the Inquiry
12 to assess Mr Wertheim's credibility.

13 THE CHAIRMAN: If you are anxious to ask them I am not going
14 to stand in your way if you think it progresses the
15 matter. I leave that to you.

16 MR HOLMES: I am obliged, sir.

17 THE CHAIRMAN: There were then a number of questions, 15,
18 16, 17, 18, 19, which I have all allowed, so you want to
19 pose those questions.

20 MR HOLMES: Yes, sir.

21 THE CHAIRMAN: I would just like to be absolutely clear that
22 so far as what was question 21 is concerned, what you
23 were proposing to ask in the light of what you discussed
24 with Mr Smith.

25 MR HOLMES: I'm afraid, I don't have a copy in front of me,

1 sir. I assume this relates to --

2 THE CHAIRMAN: The only point I wanted to make there was
3 that if you are cross-examining as to credit, the rule
4 with which I am familiar and I am advised is the same in
5 Scotland is that you are bound by the witness' answer;
6 in other words, when you are cross-examining to credit,
7 you can't go off on a diversion, if that is the way to
8 put it, on that particular subject.

9 When he, Mr Wertheim, has said the passage which you
10 have quoted at paragraph 21, that he chose to concede
11 the five points and let's move on from there and then he
12 said that he had done it in that context of the trial
13 but this was a more important occasion, I'm
14 paraphrasing, this was more important and that's why he
15 said what he had.

16 Now that seems to me, on cross-examination as to
17 credit, you can't take it further than that. So you are
18 not intending to. Is that the position?

19 MR HOLMES: Indeed not, sir. It is a matter, as you say,
20 for comment on his answer thereafter.

21 THE CHAIRMAN: So we can abandon that question really
22 altogether --

23 MR HOLMES: Yes, sir.

24 THE CHAIRMAN: -- at 21.

25 Just so that I am quite clear now what we are left

1 with, is that the matters about XF that we have just
2 discussed and the questions that you wanted to ask,
3 which were 15 through to 19, are about marks, that you
4 wanted to ask about marks, various points, 3, 4, 5, 8
5 and 14 --

6 MR HOLMES: Yes, sir, those --

7 THE CHAIRMAN: -- which I have agreed to. I have already
8 agreed that you may ask those questions about that.

9 MR HOLMES: Yes, sir.

10 THE CHAIRMAN: In the light of that, just so that we can
11 clear this matter up, would it be fair to say that in
12 the light of that it would not now be necessary for
13 Mr Wertheim to come back to Scotland?

14 MR SMITH: Yes, sir. I am grateful to Mr Holmes making the
15 position clear and just so that everyone understands
16 where I am coming from on this, I understand no further
17 questions will be put regarding the question of variance
18 in testimony and that, to the extent that any allegation
19 of perjury was put to Mr Wertheim, I think there is some
20 question mark over how far it got, I just wish to make
21 it plain that I understand that allegation, effectively,
22 to be withdrawn, had it been put.

23 If that is the position, I am fairly sure, having
24 regard to the conversations I have had with Mr Wertheim
25 since he was in Scotland, that there would be no

1 difficulty about him continuing with his testimony.

2 I may say, sir, that obviously the extent to which
3 he may be asked to give further evidence will be very
4 limited and I would suspect that his position will be he
5 will be content, if he gives further evidence, to do so
6 by video link. Obviously, I haven't taken final
7 instructions on that in light of today's developments
8 but I am fairly sure that will be his position.

9 THE CHAIRMAN: I would prefer to do it that way for the
10 reasons that I have explained.

11 MR HOLMES: I certainly have no difficulty with that, sir.
12 For the sake of clarity, my position is that no
13 allegation was made to Mr Wertheim.

14 THE CHAIRMAN: Good. That allows us now to move on. Thank
15 you for your help with that. Now we can have
16 Mr MacPherson.

17 **HUGH MacPherson (sworn)**

18 **Examined by MISS CARMICHAEL**

19 THE CHAIRMAN: As usual, if I could ask your for your full
20 names with the record.

21 A. It's Hugh MacPherson.

22 MISS CARMICHAEL: Good morning, Mr MacPherson. I think you
23 have produced two signed statements for the Inquiry; is
24 that right?

25 A. That's correct, yes.

1 Q. Subject to any changes that you want to make to those in
2 your oral evidence today, are you happy to adopt those
3 as true and accurate?

4 A. Yes but can I just say in the initial statement I gave,
5 on page 7, these statements were done in rather a rush
6 so it's got on it I finished with the Bureau on
7 12th March 2007 and --

8 Q. Yes, I see that. That is at paragraph 28.

9 A. Yes, that's correct. I actually finished my -- well was
10 made redundant, retired, on 31st March. Just something
11 I noticed when I was going through my statement.

12 Q. Thank you for that, Mr MacPherson.

13 You might find it helpful if you can get the
14 microphone just a wee bit closer to yourself. It's a
15 big hall and we tend to find, unless we hear ourselves
16 echoing round the hall, we're probably not audible to
17 people right at the back?

18 A. Okay.

19 Q. I would like to start by asking you, Mr MacPherson, a
20 bit about procedures, in the first place generally and
21 then perhaps with a bit more particular emphasis on some
22 of the procedures that were used in the Marion Ross
23 murder investigation.

24 I would like to take you first to paragraph 38 of
25 your first statement, which is FI0055. Paragraph 38 is

1 at page 9.

2 You tell us at paragraph 38 that when you started --

3 which I think from the earlier part of your statement

4 was back in 1970?

5 A. 2nd November 1970, yes.

6 Q. -- there was an SCRO handbook. But moving on to 1997

7 you say that you know there were written procedures but

8 no complete procedures manual. You say:

9 "Any changes to practice would be sent out in a memo

10 from the Chief Inspector and these memos would be kept

11 in a single place of reference where they could be

12 looked at."

13 A. That's correct.

14 Q. I would like to ask you in the first place, to the best

15 of your recollection, what those written procedures

16 related to?

17 A. They basically related to how you operated a specific

18 team. Most of the procedures were general procedures

19 but if you, say, worked at the cheque fraud the

20 procedures might be slightly different from, say, a

21 volume crime team.

22 Q. Would the procedures have dealt with things like, for

23 example, how many points of similarity you needed to

24 make an elimination?

25 A. No, I don't believe so.

1 Q. So they would be related to specific types of crime that
2 you would deal with, perhaps like a cheque fraud or
3 something of that sort?

4 A. Yes, motor vehicle, crime, house breakings, et cetera.

5 Q. So we wouldn't expect to find any assistance there as to
6 the way that you operated in terms of the procedures for
7 eliminations or identifications generally?

8 A. No, I don't believe so.

9 Q. I will move on then to ask you a little bit about
10 something that you tell us at paragraph 80 of your
11 statement. You tell us there about sending out strong
12 suspicion letters about the use of the 10 plus 10 rule
13 and about the use of the dire and crucial rule?

14 A. In the handbook that I referred to earlier which I was
15 supplied with in 1970, it mentions in that handbook
16 about the 10 and 10 rule. The 10 and 10 rule at that
17 time was if two impressions in sequence, say the number
18 7 and the number 8, if they could be identified on the
19 fingerprint form as the number 7 and number 8, as long
20 as there was a minimum of ten characteristics in each
21 and they were in sequence that was sufficient to be
22 presented in court.

23 I think I say in my statement that we had the
24 16-point standard but with provisos and that was one of
25 the provisos.

1 Further from that in the mid-to-late '80s, that 10
2 and 10 rule with regards to, say, cheque fraud, if you
3 had a serious of cheques and there were 30 cheques in a
4 book, if you had identified a person with ten
5 characteristics on one cheque and ten characteristics on
6 another, that was sufficient to proceed that for
7 evidential value for court.

8 Q. Was the 10 and 10 rule used consistently throughout your
9 time at SCRO? I appreciate you are telling us about
10 what was in a handbook when you started but thinking on
11 to the period, say, 1997 and later?

12 A. Yes, it was used. I heard evidence earlier that someone
13 had been told that we didn't use the 10 and 10 rule.
14 Well, they either weren't listening to the instructions
15 they were given or they were misinformed but the 10 and
16 10 rule was available for use.

17 Q. Was that in all categories of case? Would it be
18 restricted, for example, to special cases or serious
19 crime or did it apply to volume crime also?

20 A. Special cases, if designated by the management, if there
21 was a dire and crucial, "dire and crucial" would mean
22 there was no set number of characteristics for
23 proceeding to court.

24 Q. I wonder if you could explain a little bit more about
25 dire and crucial and how that was operated, in your

1 experience.

2 A. I could give you an example of one case. The Mark

3 Sinclair case was a series of robberies in Ayrshire.

4 Mr Sinclair was identified, I think, on 11

5 characteristics and that was produced in court.

6 Q. Would I be right in thinking that was actually after

7 1997 --

8 A. That was after 1997, yes.

9 Q. -- after the Marion Ross case. Thinking about the

10 period perhaps before that, how often in your experience

11 had you used the dire and crucial?

12 A. It was very limited. I don't believe I ever produced a

13 dire and crucial in a case in court.

14 Q. Were you aware of anybody else doing so?

15 A. I believe there was, yes.

16 Q. Returning to the 10 plus 10 practice, Mr MacPherson,

17 somebody like yourself who obviously had been in the

18 organisation for a very long time might be thought

19 perhaps to carry a great deal of knowledge in his head,

20 a great deal of perhaps past knowledge about procedures.

21 Is it perhaps possible that someone coming into the

22 organisation later, perhaps about 2000, simply might not

23 have been told of things that had perhaps become part of

24 your practice at an earlier stage in your involvement?

25 A. I wouldn't believe so. Trainees were mentored by

1 experienced personnel so I wouldn't see that happening.

2 Q. I think you have referred to what Mr Luckraft said in
3 his evidence.

4 A. Yes.

5 Q. The Inquiry also has a statement from a lady, Miss
6 Tierney, who came to the Bureau in 2000 who found
7 herself surprised on the basis of her previous
8 experience in other bureaux not apparently being to be
9 able to use 10 plus 10 and rather frustrated by that.

10 Can you explain how that might --

11 A. No, I can't explain that, I'm sorry. 10 and 10, as I
12 say, was in in 1970 when I started. So I can't explain
13 that at all.

14 Q. You have explained that you were working to a 16-point
15 standard subject to the --

16 A. With provisos, yes.

17 Q. -- to the exceptions you have told us about.

18 You heard I think also what Mr Luckraft said in
19 evidence and see what he said in his statement about a
20 concern that the need to find 16 points perhaps put
21 pressure, particularly on junior staff, to find all
22 16 points when they might not really be able to do so.

23 Do you have any comment on that, Mr MacPherson?

24 A. I don't believe any pressure was put on anyone. A prime
25 example is the Marion Ross murder where Mr Geddes could

1 not find 16. I didn't pressure him in any sense to find
2 the 16. We had a discussion about it and it was left at
3 that. At that time I was quite within my rights to move
4 on to someone else if I felt I could get 16 in the mark.

5 Q. I will ask you a little bit more about that particular
6 example later.

7 Can I be quite clear that I am not talking about a
8 suggestion that you or any other individual person put
9 pressure on a junior person and said, "You must find
10 16 points", but the very fact that there was a need to
11 find 16 points normally to make a court identification
12 might have led to junior people feeling a pressure to
13 try and find those points, perhaps seeing points that
14 were either difficult to see or perhaps not even really
15 there?

16 A. I wasn't aware of that. If it was less than 16 you had
17 previously the strong suspicion which was sent out which
18 I believe was between 10 and 15. That would be sent
19 out. That eventually became what was known as an
20 intelligence letter.

21 I have to say you are asking process and procedures,
22 maybe the person -- Mr Dunbar was here on a previous
23 occasion, that might have been the person to ask
24 regarding all these questions.

25 Q. If there is something you don't remember or you can't

1 help us with, please, just say so.

2 A. I'm afraid there are -- I've now been out the job for
3 nearly three years. You're talking now about nearly
4 13 years ago. I'm sorry, I just -- I don't want to
5 appear prevaricating but, I'm sorry, I just don't
6 remember certain things.

7 Q. You mentioned the strong suspicion letter or the
8 intelligence letter, Mr MacPherson.

9 How often in your experience were you aware of that
10 being used?

11 A. Well, that's one thing I do remember. A strong
12 suspicion was about 0.2 of the total idents that were
13 made in a year. I can't remember exactly how many
14 idents we used to make. It was maybe 3,000 or 4,000
15 persons were identified out of 12,000 cases. Again,
16 this is -- and I'm not too sure which year I'm talking
17 about but there were very slight -- also strong
18 suspicions were sent out when the form itself was not of
19 good enough quality. In other words, the mark had
20 possibly 16 or more characteristics in it but the form
21 you were comparing it against was maybe poorly taken and
22 didn't disclose the area in the mark that you were
23 looking for. So while it was a very, very small
24 percentage of the whole overall identifications made,
25 sometimes it wasn't just the mark that was poor, it was

1 the fingerprint form as well. So there were very small
2 percentage.

3 That was one thing that come up in the Evett
4 & Williams report. In England and Wales they had what
5 they would call partial idents, between 10 and 15, and
6 they were running at maybe about 20 per cent.

7 I think Mr Moynihan touched on this earlier,
8 regarding what we constitute as a counting ridge
9 characteristic for court purposes. Since the inception
10 of SCRO in 1960 we have always used a ridge ending or
11 a bifurcation as a counting characteristic for court,
12 whereas down south I believe they would use lakes,
13 islands and spurs as one characteristic where, in actual
14 fact, we would use a spur, a lake, an island as two
15 characteristics.

16 It has been levelled in the past about us, we
17 wouldn't be able to prove one of the first
18 identifications made in a capital crime, which was the
19 Deptford murders down south in 1911, I think it was.
20 One of the Stratton brothers was identified and it was a
21 capital crime, they actually ended up being executed for
22 it.

23 I could be wrong about that but what -- the point
24 I'm trying to say is that we were accused, "Oh, there
25 was only 11 characteristics in that. You wouldn't be

1 able to make that identification. You have a higher
2 standard, a numeric standard of 16", but actually when
3 you look at that, we would be able to interpret that,
4 for argument's sake, as 22 characteristics because if
5 the 11 characteristics they used were lakes, islands and
6 experts spurs we would be able to interpret that as 22.
7 Hopefully I'm me explaining this correctly.

8 Also the Chinese used to have a standard of 8 but
9 they would be 8 unusual characteristics, again, lakes,
10 islands and spurs and we would be able to basically get
11 16 from that. So 16 seems a numerically very high
12 standard to get but in practice it wasn't that difficult
13 to achieve 16 characteristics in sequence and agreement.

14 Q. That is why you would be running at, if I understand
15 rightly, point 2 per cent?

16 A. A smaller percentage than what was -- that's my
17 perception. We were running 0.2 for partial idents, if
18 you like; whereas in England and Wales they were running
19 at something like 20 to 25 per cent.

20 Q. You mentioned a Chinese practice involving what you have
21 described --

22 A. I've mentioned that but that was many years ago. I
23 don't know what the practice is now.

24 Q. No. If I can finish the question, if you can't assist
25 then, please, do just say so but you mentioned unusual

1 characteristics and I wonder if you knew why the Chinese
2 thought that the characteristics you mentioned were
3 unusual characteristics or if there were any studies
4 that would back that up?

5 A. Well, the main characteristics are ridge endings and
6 bifurcations. Each ridge unit is unique. It's formed
7 in the fourth month of foetal development and, as I say,
8 each ridge unit is unique and that's why in 1960 the
9 SCRO used the modern interpretation that these could be,
10 a ridge ending or a bifurcation, could be used as
11 counting characteristics for court.

12 Lakes, islands and spurs, particularly if you get
13 them in a small area, they are more unusual. They are
14 the original Galton details, if you like.

15 THE CHAIRMAN: Just before we leave this topic, while I
16 remember, dire and crucial: who decided whether
17 something was a dire and crucial situation? How did
18 that come about?

19 A. It would be the senior management. They would make a
20 decision on that regarding whether a case would be
21 deemed dire or crucial or not. A dire or crucial ident
22 had to be given by a person of long experience within
23 the Bureau. It did seem rather strange that in a
24 special case you could go with less than 16, whereas in
25 a normal volume crime you had to have, basically, 16

1 ridge characteristics, albeit that that wasn't a legal
2 requirement, of course. It was merely a guideline from
3 1953.

4 THE CHAIRMAN: But when you were examining would you say
5 against it this could be used in a dire and crucial
6 situation or would the police come and say --

7 A. It was because there would only be one mark in the case
8 that was identified. It was purely in a single mark, if
9 it was a bloody impression from a crime scene and there
10 was only say 10 or 11 characteristics it would be down
11 to the management to decide that could be put forward as
12 a dire and crucial and a copy of the guidelines, 1953
13 guidelines, would be sent out with that to the
14 prosecutors.

15 THE CHAIRMAN: I see. Thank you.

16 MISS CARMICHAEL: Following on that point, Mr MacPherson,
17 you say it was a decision for the senior management but
18 who would ask the senior management to take that
19 decision?

20 A. You would have to go to them and say I only have one
21 impression here identified as whoever and leave it with
22 them.

23 Q. So the initial impetus would come from you as the
24 examiner that made that identification?

25 A. Yes.

1 Q. Is that something that you personally did, go to senior
2 management on any occasion you can remember?

3 A. I don't think I ever did, no.

4 Q. Are you aware of anyone else having done so?

5 A. I believe so but I can't give you an example, I'm
6 afraid.

7 Q. I'm sorry, I didn't catch the last thing you said.

8 A. I can't give an example of that. The only example I can
9 give you is the Mark Sinclair case but that was not led
10 by the Crown.

11 Q. That is perhaps at a slightly later stage than we are
12 mainly concerned with here?

13 A. It wasn't just on our own behalf that it -- there seems
14 to be the perception there was a reluctance for us to go
15 with less than 16 but there was a reluctance in the
16 prosecution to actually prosecute a case with less than
17 16 as well.

18 Q. If I can just perhaps turn to that in a little more
19 detail, Mr MacPherson, when you have talked about a
20 strong suspicion letter, would I be right in saying that
21 the expression "strong suspicion" would perhaps be
22 something of a misnomer, as far as you as an examiner
23 were concerned?

24 A. Yes, that's correct. It was an identification but
25 mainly, yes, it was a misnomer. It's a bit like

1 non-numeric's a misnomer. Non-numeric you're still
2 counting characteristics. So that's a misnomer as well.

3 Q. Please correct me if I am putting this wrongly but would
4 I be right in saying that even on what was a strong
5 suspicion basis, 10 to 15 points, you as an individual
6 would be 100 per cent sure of your identification?

7 A. Yes. Can I say, sorry, dire and crucial was obviously
8 used in special cases, murders, rapes, et cetera.
9 That's where the dire and crucial came in. It wasn't
10 used in volume crime.

11 Q. If I can explore the idea of the degree of certainty
12 with which you would make an identification,
13 Mr MacPherson, we have a statement where one witness
14 describes that as being fully confident that any other
15 examiner could come only to the same conclusion as you
16 yourself had.

17 Do you have any comment on that as an expression of
18 the degree of certainty with which you were working? Is
19 that something you would recognise?

20 A. You mean in relation to a strong suspicion?

21 Q. In relation to any identification that you made.

22 A. Well, no matter what the number, you had to be certain.
23 Any comparison you make, whether it was from
24 elimination, suspect, AFR, any comparison I was always
25 taught you could end up in court with. So you had to

1 be, certainly from my point of view, you had to be
2 100 per cent certain that you had made an
3 identification, no matter what its source.

4 Q. There would never be any situation where you would say,
5 "Well, it is much more likely than not to be a match as
6 between the mark and the print but I cannot say with
7 100 per cent certainty that they come from the same
8 source"?

9 A. I personally wouldn't go -- you're talking about
10 probabilities here, maybe. It could be, it might not
11 be. It depends on the mark itself. I mean, a mark can
12 be subject to so much superimposition, double touch,
13 background interference, how much sweat has been left in
14 the first place, how it's developed. All these factors,
15 you have to take into consideration. But for me I had
16 to be certain. I don't see the point of going into
17 court and saying it's a probable identification and
18 somebody can just come in behind you and say it's not.
19 You have, for me, you have to be 100 per cent certain.
20 But if you're going to ask me what, how many
21 characteristics that would take, I couldn't say. You'd
22 have to show me the mark.

23 Obviously, we're non-numeric now. That would be --
24 I've never officially worked under the non-numeric
25 system but I would imagine that would be the first

1 question that a defence lawyer would ask is how low can
2 you go, basically. We've heard the example of the IAI
3 one where there's no Second Level Detail present at all
4 so ...

5 Q. I am not going to ask you yourself at this point about
6 whether you have a bottom line, Mr MacPherson, but would
7 you expect, having made an identification, that any
8 other examiner would come to the same conclusion as you?

9 A. I would hope that someone who had been trained in a
10 suitable fashion and had many years' experience of
11 comparing marks, crime scene marks against elim forms,
12 suspect forms, AFR, would come to the same conclusion.
13 Yes, I would hope so.

14 Q. I would like to explore how far that goes,
15 Mr MacPherson, because on the one hand you may be
16 expecting that the person will come to the same overall
17 conclusion as you as to who was the donor of the mark
18 and on the other hand there might be questions as to
19 whether you would expect another examiner to be able to
20 identify it in the same way and on the same points as
21 you had.

22 A. No. Each examiner has to use what characteristics that
23 he is satisfied with and it may be that you might
24 come -- two examiners may come to the same conclusion
25 but they may not have used the exact same

1 characteristics.

2 Q. Would it follow from that then that it might be that
3 there might be characteristics within the varying
4 selections that the two examiners had about which they
5 might even actively disagree?

6 A. Yes.

7 Q. I will return to that theme in a different context a
8 little later but at the moment I would like to ask you
9 particularly about eliminations and identifications and
10 perhaps differences of procedure in relation to those.

11 Leaving aside just for the moment the Marion Ross
12 murder investigation, was there normally a distinction
13 between the number of points you would need for
14 eliminations and the number of points you would need for
15 a full identification at the time we are talking about,
16 1997?

17 A. You could eliminate on less than 16.

18 Q. What was the number that was used that was less than 16?

19 A. I don't believe there was a number but it would be I
20 would imagine between 10 and 16. You could eliminate
21 maybe on less but ...

22 Q. In this context I am going to ask you what was your own
23 bottom line for elimination.

24 A. Again, it was down to the mark but I would say probably
25 between 10 and -- 10 and above.

1 Q. I would like to turn here to three of the marks that you
2 dealt with in the Marion Ross investigation. I will ask
3 you first about XF, then about QI2 and then about Y7.

4 I would like you to look just now, please, at
5 CO1987, which should be the marked-up photograph of XF.

6 We see here that I think most of the writing on that
7 is yours, Mr MacPherson; is that correct?

8 A. It is, yes.

9 Q. We see that there are markings in black and markings in
10 red also. Yes?

11 A. I mean, you talked about what the bottom line for
12 elimination is. I mean, you were allowed to eliminate
13 in volume crime cases, in the main, on less than 16 but
14 what we're talking about here was a who-done-it murder.
15 Basically, when I identified someone in this I did it to
16 16 because I didn't know when this was identified or, as
17 it happened in this case, that Mr Asbury went from being
18 elim to a suspect, to an accused. That's why I applied
19 the 16-point standard to this. I didn't know who --
20 also, it's obviously -- I'm not the final arbiter as
21 regards who's an elim.

22 If I had eliminated this on less and then
23 subsequently Mr Asbury became an accused, I would have
24 to have gone back again and got another four people to
25 sign this ident off the 16. So I was trying to be

1 efficient and effective and, basically, I eliminated it
2 to the 16. So when I say eliminated, I mean identified.

3 In this case there was no demarcation between what
4 an elim and a suspect was. In the end there were
5 suspects quoted but there was no suspect
6 identifications, there was no AFR (automatic fingerprint
7 recognition) identifications. The only identifications
8 in the Marion Ross murder were crime scene marks
9 compared against elimination fingerprint forms. That
10 included the deceased, some family members. I think on
11 recollection we even identified one of the IB officers
12 who had left his print on the edge of a tape. It was a
13 lateral reversal.

14 Q. I think we heard that it was Mr Ferguson.

15 A. Right. Instead of cutting off, what they used to do was
16 cut off the tape so there would be no interference but
17 he left his mark. So we had to account for everything
18 and basically that's what we did. Sorry, I've forgotten
19 what your question was.

20 Q. It is helpful that you explain these things to us,
21 Mr MacPherson, but should we understand that at the
22 outset of this investigation somebody had made a
23 decision that everything was going to be done to a
24 16-point standard?

25 A. Certainly that's the way I started it off. I mean, when

1 it came to XF, you can see it's in black there
2 eliminated as David Asbury and the reason it's been
3 changed is because he moved from being an elim to a
4 suspect and then to an accused and that's why it's then
5 done in red. But albeit it was eliminated, it was
6 eliminated on the 16-point standard.

7 Q. I am understanding you to say that you were proceeding
8 on the basis that you were doing things to a 16-point
9 standard.

10 How would other people involved in this
11 investigation know that they were working to a 16-point
12 standard with --

13 A. It may have started off that people were just
14 eliminating on less than 16 but once XF, I believe this
15 was identified fairly early on in the inquiry but,
16 again, I don't know without the paperwork in front of
17 me. You might be able to tell me differently.

18 Q. I think I can help you that it was about 21st
19 January 1997.

20 A. I'm sorry, I can't remember when the murder was.

21 Q. The murder being about the 8th?

22 A. Okay.

23 Q. I think we are helped by the date 21/01/97 in black
24 writing on the screen here.

25 But would it necessarily be that the other people

1 whose initials appear here, people other than
2 yourselves, would have known that they were working to a
3 16-point standard throughout --

4 A. Yes, definitely.

5 Q. How would they have know that?

6 A. I'd probably have told them.

7 Q. The reason I am asking you about this is because one
8 might infer from the fact we have the black writing
9 apparently relating to an elimination of David Asbury
10 and then the red writing which you tell us is when he
11 comes under direct suspicion, that there was perhaps a
12 two-stage process here.

13 A. No.

14 Q. Would there have been any announcement, perhaps at a
15 team meeting or anything, of this sort to other SCRO
16 examiners about the need to use 16 points throughout on
17 all the marks in the case?

18 A. I don't think so, no. I don't believe so.

19 Q. So would you have spoken individually --

20 A. Individually, yes.

21 Q. I may be able to find an example of this for you but I
22 think in this investigation you had a number of
23 elimination sheets that you were working with?

24 A. Yes.

25 Q. And there was in fact -- and I am hoping I can perhaps

1 get the number for you for this, Mr MacPherson -- there
2 was actually a sheet that related particularly to people
3 who were regarded as suspects. I wonder if we could
4 have CO0197. I wonder if we can ...

5 What we are looking at here is a sheet that has, I
6 think the version on the screen has a lot of names taken
7 out of it to protect the privacy of people who are not
8 of any direct relevance to this Inquiry but we can see
9 on the sheet we are looking at, which is page 5, David
10 Asbury's name. I think I am right in saying -- and I
11 will be corrected if I am wrong -- that this was not, in
12 fact, the elimination sheet that related to the people
13 who had been designated suspects at that stage.

14 Would that accord with your recollection?

15 A. Yes.

16 Q. If we can perhaps try looking instead at CO1446. Can we
17 scroll on, please.

18 We see something here that has certainly been given
19 a title I think in the Alba Investigation of Suspect
20 Page BY3 and if we scroll through, again it's perhaps
21 not very helpful to you today because it has been edited
22 so heavily but I think -- again will be corrected if I
23 am wrong -- but this was not the sheet that David Asbury
24 himself originally appeared on.

25 Would that be fair to say?

1 A. Because he come in on an elimination fingerprint form,
2 yes.

3 Q. But there was a sheet with people who were designated as
4 potential suspects as well so it's perhaps not quite
5 right to say -- we see, in fact, on the top left corner
6 here that we have the word "Suspects", so it would not
7 necessarily be right that everybody simply came in as an
8 elimination, there would be some people who had been
9 drawn particularly to your attention as potential
10 suspects in the case?

11 A. Yes, that's 12 suspects that eventually came in through
12 the inquiry over many, many months. Those are 12
13 suspects that were quoted.

14 Mr Asbury wouldn't appear on there because he came
15 in as an elimination, on an elimination form. When he
16 identified as XF, I believe -- I didn't know this at the
17 time when I identified it -- that he denied being in the
18 house for a period of, say, two years since he worked in
19 the house. It was only when this was apparently
20 fingerprint was put to him that he had to amend his
21 statement and said that he actually had been in the
22 house a couple of days prior to the murder. I did not
23 know that when I made the identification by the way.

24 Q. At the moment I am simply trying to be clear about what
25 the procedures were and what we see from this is that

1 you did have some sheets that related particularly to
2 people who were regarded as suspects --

3 A. Yes.

4 Q. -- and I think we see a date range here from broadly
5 mid-January to mid-to-late February in terms of the
6 dates when these individuals were being checked against
7 marks?

8 A. Yes, and these were suspects, yes. Suspects, people who
9 basically were on file, if you like, who had unique
10 reference numbers.

11 Q. I will not ask you any more about the individuals
12 because, as I have said, we are not interested in those
13 particular individuals for today's purposes.

14 I would like to move on, still thinking about the
15 elimination to the 16-point standard, to mark Q12. I
16 would like to look, please, at DB0001. Can we scroll
17 through, please, until we get to the photograph. Can we
18 have this photograph up along with the next page in the
19 pdf as well, please, which should show writing on the
20 back of the photograph.

21 Again, we see I think annotations in your own
22 handwriting, Mr MacPherson?

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

24 Q. I am interested in what we see "deceased's on screen
25 31/1/97", and we see your initials, I think Mr Stewart's

1 initials, Mr Geddes's initials and Mr Bruce's initials
2 there?

3 A. That's correct, yes.

4 Q. We have heard evidence from Mr Bruce and we have
5 evidence from him in his statement and I hope -- and,
6 again, I am sure I will be corrected if I am wrong --
7 that I represent his evidence correctly as being that he
8 did not have any immediate recollection of his
9 involvement with this mark from 1997. He thought that
10 if he had identified the mark to 16 points he would have
11 signed the case envelope and, therefore, thought he may
12 not have done so because he had not found 16 points --

13 A. No. As I think I tried to explain earlier, I couldn't
14 sit and wait to the end of this case to phone out or
15 have phoned out identifications. I had to make the
16 identifications, get them signed off by four people and
17 phone them out to keep the officers in charge of the
18 case abreast of developments.

19 Mr Bruce has signed that as the fourth person so he
20 would know that it was an identification to the 16-point
21 standard.

22 Q. If we can be perhaps a little precise about the language
23 we're using, Mr MacPherson, I think I am right in saying
24 that Mr Bruce did not recognise the writing of his
25 initials as his own writing.

1 A. No.

2 Q. And that that would, in fact, be your writing.

3 A. Yes.

4 Q. Would that be correct?

5 A. Yes.

6 Q. So are you saying that Mr Bruce must be incorrect in
7 inferring today from the fact he had not signed the
8 envelope that he had made an elimination on less than
9 16 points?

10 A. He'd made an identification.

11 Q. How do you know that he had identified this mark to
12 16 points, Mr MacPherson?

13 A. Well, I probably would have said to him that this is
14 obviously an important mark and -- you would only be
15 signing fourth or initialling or seeing it as a fourth
16 person if it was an identification because you needed
17 four people to -- before I could phone out an
18 identification, I needed four experts before I could
19 communicate that to the Senior Investigating Officer and
20 if you're the fourth person signing it, what other
21 reason would there be?

22 Q. We have heard also from Mr Bruce that, even with the
23 benefit of photographic enlargements in 2006 for the
24 civil action, he could not find more than 12 points on
25 this mark, which again might suggest that he is right

1 and you are wrong when you say that he identified to
2 16 points.

3 A. Fair enough. All I'd say I wouldn't criticise Mr Bruce
4 in any respect. He's obviously having a small touch of
5 the pressures that myself and my colleagues have been
6 placed under for the past near 13 years and I would have
7 no criticism of him whatsoever.

8 I think you can tell by the evidence that he gave
9 that he was feeling a bit of that pressure, that he's
10 still working within the SPSA, he's been told that he
11 still supports -- albeit maybe his evidence didn't come
12 across as that -- he still supported two
13 mis-identifications, if you like, and I think he's maybe
14 feeling a bit of the pressure that we have been placed
15 under for many, many years.

16 Q. I would like to be quite clear what you are suggesting
17 about Mr Bruce's evidence, Mr MacPherson. Are you
18 suggesting that he was mistaken in what he said to the
19 Inquiry or are you suggesting that, as a result of
20 pressure, he has told the Chairman something
21 deliberately that is not correct?

22 A. All I can say is my understanding from what is on the
23 screen was that Mr Bruce saw that mark and saw it to
24 16 points. That's my evidence. That's what I believe
25 and I'm sure I would have said to him at the time, "This

1 is an important mark. I need four experts to sign it to
2 the 16-point standard before I phone it out". Other
3 than that I don't want to make any further comment on
4 it.

5 Q. I would like to press you just a little, Mr MacPherson,
6 as to whether you have any recollection yourself --

7 A. No, I don't have any. No, I don't. No.

8 Q. -- of having spoken to Mr Bruce about this at the time
9 at all?

10 A. That's -- obviously, there's four initials on it. Four
11 people have seen it and the only reason I would do that
12 would be to phone it out to the Senior Investigating
13 Officer.

14 Q. What I am suggesting to you is that there might be some
15 possibility that, for whatever reason, the message had
16 not got to Mr Bruce that, if you were dealing with this
17 mark you must be doing so to a 16-point standard?

18 A. No, I wouldn't believe so.

19 THE CHAIRMAN: When you say on the "deceased's on screen",
20 that means on the comparator?

21 A. The comparator, sir, yes.

22 THE CHAIRMAN: Does that mean that those people would have
23 seen it on the comparator?

24 A. That's correct, sir -- or, well, eventually they could
25 see it on the comparator. If they didn't like it, they

1 could take it from the comparator and then put it back
2 on.

3 THE CHAIRMAN: This is what I was interested to know,
4 whether you would go -- if I was number 2 or 3, as the
5 case may be, might I just see it on the comparator and
6 if I was satisfied with that that would be sufficient?

7 A. Satisfied, yes, absolutely, yes.

8 MISS CARMICHAEL: Again, just following that theme a little
9 further, Mr MacPherson, about the deceased's prints
10 being on the screen and the series of initials that we
11 see there, what would you have seen of the involvement
12 of Mr Stewart, Mr Geddes and Mr Bruce with the mark and
13 print after you had dealt with it personally? I take it
14 from what you said in your statement that you placed the
15 mark and the print on the screen perhaps -- and correct
16 me again if I'm wrong -- marked up for the next person
17 to see.

18 A. Yes.

19 Q. We would understand from what we see here that that
20 would be Mr Stewart?

21 A. Yes.

22 Q. Would you then see what Mr Stewart did with the mark?

23 A. No.

24 Q. So it would follow that you wouldn't have seen either
25 what Mr Bruce did with the mark?

1 A. No, he would have probably brought it back to me, I
2 would think, or he's left it on the screen and once
3 everyone's finished with it I would go -- I mean, the
4 reason for the initials on the screen is like a tracking
5 log to make sure that before I phoned anything out there
6 was four people had seen it, basically.

7 Q. But, for example, you would not know whether any of the
8 people who saw it after you had taken it away and looked
9 at it with glasses?

10 A. No.

11 Q. You would not know if they had decided to wipe the
12 screen of your markings so they could see it plain and
13 clear for themselves?

14 A. I may have probably left the points on. In SCRO we are
15 in a constant state of flux and at that time, with
16 changes, et cetera, at that time I believe I left them
17 on but that didn't preclude anyone from just basically
18 going and looking at those characteristics. They would
19 probably wipe them off and start again or they may have
20 used one or two of them as a starting point.

21 I mean, for example, if I can give you an example,
22 if I spent an hour and a half finding a piece of palm,
23 and it's very difficult -- or a piece of flexure or a
24 piece of palm, I would always on the screen put at least
25 two or three characteristics as a starting point. This

1 was a busy working office. I had 428 impressions to be
2 dealt with in this case. If you're insinuating that
3 because you leave something on the screen, some
4 characteristics, you're influencing someone, I would
5 disagree with that.

6 As I say, a busy working office. It would maybe
7 take me an hour and a half to find out where this piece
8 of palm or piece of flexure is. I would always leave a
9 starting point, maybe two or three characteristics, for
10 someone basically again to be efficient and effective.
11 You've got to use the manpower and the time in the day
12 as best as you can. I don't know whether they saw what
13 I'd left on the screen or whether they had taken it off
14 or what they did. All I know is that once I had four
15 people who had signed it up, it was to the 16-point
16 standard and I could phone it out.

17 Q. When you say "signed it off", and thinking particularly
18 here about Mr Bruce who we have heard from, what do you
19 mean by saying that Mr Bruce signed it off?

20 A. Well, his initials would be on the screen. I've
21 taken -- I've written on the back of the form "EB", his
22 initials, but he would initial the screen itself and I
23 took from that that basically he'd seen it to the
24 16-point standard.

25 Q. Do you yourself have any explanation for how it came to

1 be that Mr Bruce didn't sign the case envelope that
2 related to mark Q12?

3 A. Well, as I say, you had to go through the marks as they
4 were identified. I couldn't wait to the end of the
5 case -- I don't know how many months later -- I couldn't
6 wait until the end of the case and then phone out. If
7 somebody's identified and eventually they become an
8 accused, I can't leave it for a month or whatever, four
9 weeks, six weeks, to get the exact same person who saw
10 it on the screen to sign the ident envelope. It's just
11 not practical.

12 What would have happened if -- I'm not talking about
13 this case -- but in some other case where there's a
14 murder committed and a person comes in on an elim form,
15 it's identified and I don't do anything for it for six
16 weeks? What happens if somebody that person goes out
17 and murders someone else or rapes someone else? It's
18 just not practical to sit and wait and have the exact
19 same four people who have seen one mark out of a case of
20 428. They've seen one mark, wait for four to six weeks
21 and then sign up the envelope. It's just not practical.

22 Mr Bruce might not have been there. He might have
23 been on annual leave, he might have been on a different
24 shift or whatever when I wrote up the ident envelope,
25 but you'll find there's quite a few people who are

1 involved in the case but they don't eventually end up
2 signing the ident envelope.

3 I think Ms McBride signed the ident envelope because
4 she was allocated the case for court; so she would have
5 to sign for seeing all the impressions on that
6 ident envelope and be satisfied with them.

7 Q. We can perhaps -- no, I will ask you maybe a little more
8 about that later.

9 Something I would like to just clarify with you just
10 to be quite sure about, you would have taken the
11 initials from the comparator screen of your colleagues
12 who had looked at the mark?

13 A. That's correct, yes.

14 Q. Would that necessarily then be recorded here in the same
15 order as what you saw on the comparator screen?

16 A. Yes.

17 Q. That would reflect the order in which your colleagues
18 had seen the mark?

19 A. Yes.

20 Q. Again then, should we take it that when you came to mark
21 Y7, which was somewhat later --

22 A. Sorry can I just say one thing?

23 Q. Yes, please.

24 A. If you see Mr Bruce's initials, it's "Accused's on
25 screen 31/1/97", it's myself, Mr Geddes and then

1 Mr Bruce and Mr Stewart so, again, would Mr Bruce be
2 saying there that he's not signed that to 16 points?

3 Q. What we have Mr Bruce's evidence about and what I've
4 been putting to you is the part of Q12 that related to
5 Miss Ross's fingerprint. So that is why I have been
6 asking you about that, Mr MacPherson.

7 What I was going to ask you next was that should we
8 then again take it that you were looking for 16 points
9 also when you came to mark Y7?

10 A. Yes. Do you want me to give reasons why I did that
11 or ...?

12 Q. If you feel it would assist, then please go ahead,
13 Mr MacPherson. I don't want to try to limit your
14 evidence in any way.

15 A. It was personally because that's what I could see in the
16 mark itself but the mark was 2 feet away from where the
17 body had been discovered; so it doesn't take a top
18 detective to know that the officers in charge of the
19 case would probably be interested in it. I believe
20 there may have been some ramifications regarding it.

21 Needless to say, I didn't think that 13 years later
22 I would still be discussing the identification of mark
23 Y7 as Shirley McKie's left thumbprint but here I am
24 today, I'm still doing it. So at least if one thing
25 I've been proved correct in that that I applied the

1 16-point standard to it and I was right to do it. I
2 could see criticism being levelled at me if I hadn't
3 done so. Mr Wertheim sat in this very chair and said I
4 get five points and then just threw it aside. I'd like
5 to refute that completely. I had found 16 points in it
6 and that was one of the reasons I knew there would be
7 ramifications and there were.

8 Q. What you are telling us there is that with mark Y7 you
9 appreciated that the detectives involved would be
10 treating this as of importance because it was near to
11 where Miss Ross's body had been found?

12 A. Yes.

13 Q. But you are also telling us that as a matter of
14 principle in this investigation everything was being
15 identified to 16 points --

16 A. Obviously I've done that for consistency basically, yes.

17 Q. If I can finish, I'm seeing possibly a potential
18 distinction between what you're saying as on the one
19 hand on principle we looked at everything to a 16-point
20 standard and then what you are saying that there was
21 perhaps some special reason why with Y7 you were doing
22 this. Do you understand what I'm saying to you?

23 A. Mm-hm.

24 Q. Was Y7 being looked at to a 16-point standard because
25 that was a principle you were working on in the case or

1 were you treating it in a special way because you
2 thought it would be of particular importance for the
3 investigation?

4 A. It was a bit of both I would say.

5 THE CHAIRMAN: Was any distinction being drawn between for
6 example somebody like Mr Asbury, who was a member of the
7 public, and police officers in general? I mean, was
8 every police officer or any police officer whose prints
9 were found eliminated to 16 points?

10 A. In this case, sir, yes. Eventually it ended up we were
11 requested by the Fiscal to prepare about 13 or 14 books
12 in this case each with at least one impression
13 illustrated to the 16-point standard. So you had Scene
14 of Crime Officers, relatives of the accused -- sorry, of
15 the deceased. Everyone basically had been identified,
16 there were 13 or 14 books prepared and each one had an
17 enlargement within the book prepared to 16 points.

18 THE CHAIRMAN: But that means 428 were done to 16 points?

19 A. No, 428 -- of that 428, I can't remember the figures but
20 over 200 were fragmentary and insufficient for
21 comparison. If anybody wants to look at them --

22 THE CHAIRMAN: I am sorry, of course, but out of 228, let us
23 say, would they all have been done to 16 points?

24 A. 13 or 14 books would have had 16 points.

25 THE CHAIRMAN: I see. So whether they were beside the body

1 or not --

2 A. No --

3 THE CHAIRMAN: -- is irrelevant.

4 A. -- because a relative was identified in the bathroom

5 door as well, so ...

6 MISS CARMICHAEL: Thank you, sir.

7 You have told us a little bit, I think, about why
8 you said Ms McBride came to sign the case envelope but I
9 would like to ask you just a little bit more about that
10 for completeness and I would like you to look please at
11 DB0529. I think this is the case envelope that is
12 relevant to XF and also to both of the parts of Q12, the
13 part that was identified as Mr Asbury's and the part
14 that was identified as Miss Ross's mark.

15 A. Yes.

16 Q. We see your own signature, "ident by Hugh MacPherson"
17 about halfway down the sheet and then we see:

18 "Checked by Charles Stewart, Alistair Geddes, [I
19 think] Anthony McKenna ..." and then it's difficult to
20 see because of the sellotape but I think it is
21 Ms McBride's signature?

22 A. I believe so, yes.

23 Q. You have said that Ms McBride may have come to sign this
24 because she became involved in the court work in the
25 case?

1 A. Yes.

2 Q. However, we also see there Mr Geddes's signature who was
3 of course somebody who did not become involved in the
4 court work for the case. Can you explain why his
5 signature would be there but not --

6 A. Because he's -- sorry.

7 Q. Well, what we see is Mr Bruce's signature is not there
8 and of course you rightly say he didn't become involved
9 in the court work in the case, but we do see Mr Geddes's
10 signature there and he is again somebody who didn't
11 become involved in the court work for the case. I just
12 wonder if you can explain how it came to be signed in
13 the way that it did there.

14 A. This isn't obviously for the court work. This is
15 basically every impression that you see under "marks
16 identified" Mr Geddes has seen and signed for. It would
17 be at a later stage when the request came in for court
18 that the management would make a decision as to who has
19 been allocated the case. But Mr Geddes has quite
20 rightly on the envelope because he would have seen every
21 impression there under "marks identified". So he was
22 quite entitled to sign it.

23 Q. So are you suggesting that Ms McBride wouldn't have
24 signed until a much later stage then?

25 A. That's only -- I can't remember but I would believe that

1 was the reason for it.

2 Q. Am I reflecting your position correctly if I say that
3 your position is that you simply can't tell us why it is
4 Mr Bruce came not to sign the envelope?

5 A. No, I don't know why not. He may not have been
6 available or whatever. I don't know.

7 Q. I would like to move away from the marks, although we
8 will come back to them in a little while, and ask you
9 again perhaps some more general questions about the way
10 that you went about the job of analysing and comparing
11 finger-marks and fingerprints.

12 The Inquiry has heard some witnesses talking about
13 ACE-V. Would I be right in saying that that was perhaps
14 not a term that was in currency in 1997 when you were
15 working on this investigation?

16 A. As far as I can remember it wasn't in vogue at the time,
17 no.

18 Q. We have heard that it stands for "analysis, comparison,
19 evaluation and verification".

20 A. That's correct.

21 Q. Did you follow a procedure of analysis, comparison,
22 evaluation and verification at the time or was what you
23 were doing different from that in some way?

24 A. No, I don't think so. It's a bit like ridgeology. I'd
25 been to two or three ridgeology courses and the first

1 thing that they tell you is that you're doing nothing
2 different from what you've been doing. Basically what
3 you're doing is basically verbalising what your
4 procedure is when you look at a mark.

5 Analysis: I would look at a mark, you would glean as
6 much information as you can from that mark. As I said
7 already, if there's distortion, how many
8 characteristics, double touch, slippage, the surface
9 that's involved. All these things would come under
10 analysis.

11 I think on the move to non-numeric they seem to hang
12 their coattails on ridgeology as if because you were
13 taking away this 16-point standard you have to have
14 something else along with it. But, as I say, any
15 ridgeology course I was on you were always told you're
16 doing nothing different and to me that's the same with
17 ACE-V. It's basically putting into words what you did.
18 You would analyse the mark, you would eventually find
19 something that caught your eye, you would then -- this
20 is all prior to looking at, as they say, the known
21 impression -- you would do all this prior to that, get
22 as much information as you possibly can, you would then
23 start your comparison --

24 Q. Can I stop you there because I would like to just stay
25 on the analysis at the moment but I will ask you

1 questions and give you a chance to talk about the
2 comparison as well, Mr MacPherson.

3 Just picking up on something that you said there,
4 you said you would find something that caught your eye
5 and I wonder if you could tell us what you meant by
6 that.

7 A. Possibly just a grouping of characteristics that would
8 catch your eye. When I started in 1970, everything was
9 done manually right up until 1991 when we were the first
10 bureau in Britain to have the Automatic Fingerprint
11 Recognition system brought in. Basically it did the
12 searching for you that you used to do manually.

13 But the beauty of working under a manual system was
14 that it honed your eye to pick up certain
15 characteristics and patterns and how they form, patterns
16 form themselves, their relationship one to another, how
17 to assess marks. Basically, under the manual system you
18 had to be nearly 10 out of 10. If you assess something
19 as a thumb or if you assess something as a forefinger,
20 you had to be spot-on basically because you only had one
21 chance. You didn't have -- like with the AFR you could
22 put in that it was a digit 1 to 10 and it would be
23 searching against the whole national database.

24 Under the manual system, it was what was called the
25 two hand collection. You would have to assess

1 which digit made the mark and basically search that
2 against the two hand collection. It was a mini version
3 of the 300,000 persons that were kept on file. You
4 would have one shot at it basically so you had to be
5 pretty good at assessing which digit did the mark.

6 Q. Shall we take it then that this was really if you hadn't
7 done that, if you hadn't come to a view when you were
8 doing that sort of manual work in the past, then you
9 would have been looking at ten times the number of
10 fingerprints than you otherwise would have?

11 A. It was impractical, yes.

12 Q. So there was a reason in the interests of efficiency why
13 you would be keen to try to break it down from coming
14 from one particular digit.

15 A. Trying to asses which digit had made that mark. There
16 were guidelines but that's all they are, just purely
17 guidelines. If you want to go further and there's
18 obviously books -- Cummings and Midlow --

19 Q. Sorry, I didn't catch the author.

20 A. Cummings and Midlow. All these -- Fingerprints and Its
21 Uses by Sir Edward Henry. All these books you would
22 read these up obviously when you first started and these
23 books would give you guidelines say like, for
24 example, in a whorl, an anticlockwise spiral is
25 indicative of being a right hand. It's not always the

1 case but things like that, guides that could help you
2 determine which digit had made a mark. The height of
3 the mark, the relationship one to another, all these
4 things because you had to, as I say, you had one shot at
5 it. Whereas under the AFR system you could put a mark
6 in and search it as all ten digits against the national
7 database.

8 Q. So would I be correct in saying that you carried into
9 your general examination of fingerprints the habits that
10 you had learned --

11 A. Under a manual system, yes --

12 Q. -- that would help you to try to narrow a mark down to
13 coming from a particular finger?

14 A. I mean, even in the AFR system it helps. If you could
15 determine which digit had made a mark, if you were
16 positive that it was, say, a left thumb you would only
17 search that against, as I say -- well, I say the
18 national database. It was Scottish National database,
19 It's now UK-wide. But you would search it locally and
20 search it nationally but if you were certain that it
21 was, say, a left thumb you would only do it from a left
22 thumb. But you had have to be careful. Sometimes on
23 rounded objects, impressions roll, et cetera. I've seen
24 a little finger looks like a thumb. Everything was just
25 a guideline basically.

1 Q. But you mentioned things that would catch your eye.

2 From what you said, perhaps certain patterns might catch
3 your eye as being more likely to come from one digit
4 rather than another, but you also mentioned when I asked
5 you further about it that there might be groupings of
6 characteristics that caught your eye?

7 A. Yes.

8 Q. I wonder if you could explain more about what you mean
9 by that, Mr MacPherson?

10 A. Well, if I could take mark Y7 as an example, just above
11 the core there's a small independent -- a small lake and
12 next to that there's what has been referred to as the
13 banana characteristic but to me it's like a hump backed
14 bridge, if you like.

15 Q. The banana is what we've all come to know as 9.

16 A. Yes.

17 Q. The lake above it as what we have come to know as 10 and
18 11.

19 A. Well, there's what's been called an incipient ridge but
20 I don't think it's an incipient ridge because there's a
21 pore in it but it's 11 and 12 I think possibly, but I
22 would have to see it.

23 Q. It might actually help us if we just put up FI0167A. I
24 think the detail of this will come to be more from my
25 learned friend Mr Moynihan but since you would like to

1 tell us about it at this stage we perhaps could put a
2 little bit on record now. I think you have got it up
3 not just up on the screen but also on the board beside
4 you in your original marked-up copy.

5 As I say, the detail for this perhaps will be for a
6 later part of your evidence but just to make sure that I
7 am understanding correctly what you are saying here,
8 when we are talking about the banana or the hump backed
9 bridge we're talking about 9?

10 A. 9, correct, yes.

11 Q. When we are talking about a lake we're talking about 10
12 and 11 and when we're talking about what some people
13 have described as an incipient ridge, albeit you might
14 not agree with them, we would be talking about 12 and
15 13?

16 A. 12 and 13 is the incipient ridge, yes, and 11 is the end
17 of the lake going in to the left, yes. But it was
18 mainly number 9 that caught my eye at the start.

19 Q. I expect that Mr Moynihan will ask you more about that
20 but do I understand you to be saying that those are the
21 characteristics that caught your eye in the first
22 instance when we are looking at this mark?

23 A. As far as I can remember, yes.

24 Q. We can take that down for now.

25 Once a group of characteristics of that sort had

1 caught your eye, what would you do? Would you record
2 that in any way? Is it something that you would carry
3 in your head?

4 A. I just carry it in my head, yes.

5 Q. So you would be carrying in your head a group of --
6 well, for the sake of argument, we see there I think
7 five characteristics?

8 A. No, maybe not as many as that -- for me anyway.

9 Q. I am sorry?

10 A. Maybe not as many as that for myself, no.

11 Q. So there might be a particular characteristic that
12 catches your eye --

13 A. Yes --

14 Q. -- and you hold that in your head as you go forward?

15 A. Well, you've picked up a bundle of photographs. You've
16 picked up one elimination form or I don't know if there
17 was elimination forms and then you would start your
18 comparison. Obviously you've decided possibly this is a
19 left thumb because of the ridge flow, et cetera. You
20 would then place one magnifying glass over the mark and
21 one magnifying glass over, say, the left thumb. You
22 wouldn't limit yourself to that. I mean, as I say, it's
23 only guidelines. I can't remember. I might have looked
24 at it more than just the left thumb. But anyway that's
25 where you would start and you would try and see if there

1 was any correlation between the mark and the digit under
2 examination.

3 Q. Again, just so that I can make sure I have understood
4 this probably, at the stage when you start looking with
5 the two glasses, it may be that rather than counting
6 every possible characteristic that you can find in the
7 mark there may be particular items that have jumped out
8 at you and that is what you have concentrated on?

9 A. Yes, but you have looked for as many characteristics as
10 possible because it may be that it might not be the one
11 that catches your eye that catches your eye in the known
12 print, if you like. You made a thorough examination, a
13 thorough analysis, of the mark prior to you starting
14 your comparison.

15 Now, the problem with in an ideal world -- I mean,
16 the problem is you may have looked at this elimination
17 form many, many times. So it's not as if you're
18 starting -- you can't start from the beginning every
19 time. Sometimes in the elimination form some of the
20 characteristics in that you can remember as well.

21 Q. I will ask you a little bit more about that because that
22 perhaps is a practicality of a large investigation that
23 we need to learn a little bit more about from you,
24 Mr MacPherson.

25 You say that you have looked at the mark and, apart

1 from the things that catch your eye, you will be trying
2 to assess whether there are other characteristics also.

3 A. Yes.

4 Q. But I would be right in saying that there would be no
5 marking-up of characteristics --

6 A. No.

7 Q. -- on the crime scene mark --

8 A. On the crime scene mark, no.

9 Q. -- at this stage. Would it be fair to say that it is
10 the characteristics that catch your eye particularly
11 that you would be carrying forward in your head as you
12 go on to the next stage of the examination.

13 A. This is from my point of view, yes.

14 Q. That is really all I am trying to learn, Mr MacPherson,
15 how you went about it.

16 You had started to tell us then about how you would
17 go on to use the two glasses. I wonder if you could
18 tell us just what you were doing as you do that, bearing
19 in mind that we know that you are carrying with you
20 certain characteristics that may have come to jump out
21 at you as you do this.

22 A. You're looking at it both the mark and, say, the left
23 thumb simultaneously. It's not as if you're using one
24 eye and jumping from the mark to the known print. You
25 are looking at them both simultaneously at the same time

1 so that you do not have to move. Basically, you don't
2 move your head. Basically, you're looking at both one
3 and the same time.

4 Q. I am gaining a picture -- and, again, tell me if I am
5 wrong -- of almost like looking down a set of
6 binoculars?

7 A. Correct, yes.

8 Q. One eye over each glass at the same time?

9 A. And not moving your head, yes, so you can assimilate at
10 the same time. You don't go from one to the other which
11 I believe some folk do but that's not how I operated.

12 Q. So we should understand that one set of visual
13 information is, as it were, coming in one eye and
14 another set in the other; would that be correct?

15 A. I don't know how to explain it but you're looking at
16 them both at the same time.

17 THE CHAIRMAN: Is that a skill you acquire over the years?

18 A. I believe it is, sir, yes.

19 THE CHAIRMAN: I wouldn't have thought most people would be
20 able to do that.

21 A. I think that's where your training comes in, you know.

22 MISS CARMICHAEL: If it helps you to explain the process to
23 say how you did it in relation to this particular mark
24 Y7, then please do go ahead. Again, I don't want to
25 create unnatural divisions that are unhelpful to you in

1 giving your evidence simply because of the way that
2 Mr Moynihan and I have decided to divide up the work.
3 So if it helps you to use this example, then please do
4 so.

5 A. I don't see how I could basically.

6 Q. That is fine. I just wanted to be clear that I wasn't
7 perhaps trammelling you in an unhelpful way,
8 Mr MacPherson.

9 So let us suppose that you are looking down the two
10 glasses on one hand at a mark, on the other hand at a
11 print. How does this develop when you start to see
12 something that you think is a similarity? Perhaps let's
13 take the example that you have got a particular
14 characteristic that's, to use my words, jumped out at
15 you from the mark, you carry it in your head and you see
16 something that you think is similar in the known print.
17 How do matters proceed from there?

18 A. Well, if say point 9 you find to be in the known print
19 also, I remember in mark Y7 to the right-hand side there
20 are maybe four or five characteristics which are quite
21 strong. You would see from number 9 if you went, say,
22 one intervening ridge to the right is there a
23 bifurcation or a ridge ending or is there an event
24 happening there? You would then go from that point,
25 say, another intervening ridge again out to the right,

1 is there again a feature, is there an event, is there a
2 ridge ending, is there a bifurcation there and so on?
3 You would build up this picture in your head and
4 eventually you would come to a conclusion.

5 I have to say in mark Y7 it took me a long, long
6 time but what you're looking for are characteristics. I
7 mean, I don't know how far back you want me to go. Do
8 you want me to explain what is a fingerprint? I mean, I
9 don't know.

10 Q. I am not going to ask you about that. What I am trying
11 to understand is really the process that you go through
12 when you're carrying out this comparison and starting to
13 create your own picture that leads to an identification.

14 A. I mean, I've heard -- I mean, obviously biological
15 uniqueness, the features, the characteristics that we
16 use for identification purposes are formed before birth
17 and remain constant throughout life unless they are
18 badly damaged. They're permanent, they're unique.

19 So the problem with -- I've heard -- I don't like to
20 use the word "differences", "appearance" maybe is a
21 better word between, say, a crime scene mark and an
22 elimination form or a suspect form. They appear
23 different but it's all down to how they've been
24 recorded. It's the recording medium, if you like, that
25 shows that there may be some slight variations within

1 them. I mean, I've heard that a lot of people have
2 referred to -- I think Mr Sheppard and Mr Wertheim --
3 about the inked impression of Marion Ross. Marion
4 Ross's impressions were done by black powder being
5 applied to the digits and lifted by means of adhesive
6 tape. Now, to me, if you're doing scientific reports or
7 whatever surely you should be able to get the medium
8 right. But all I'm saying is the recording of these
9 features, as I say, it can be done differently. There's
10 LiveScan, electronic capture of them, there's ink and
11 paper. But mark Y7 is obviously a chance impression, a
12 sweat impression which is 98 per cent water, 2 per cent
13 oils and fats. It depends on the amount of sweat that's
14 been left. It depends on the developing agent. All I'm
15 trying to say is people have talked about differences
16 between the two, but the features are unique and
17 permanent. It's just the way that they are recorded is
18 the problem.

19 But, to go back to your question, you build up
20 eventually a picture in your mind of, say, four
21 intervening ridges out there, there's another event,
22 there's a lake, there's an island or whatever, and
23 eventually it comes to a point where you are satisfied
24 that the mark and the known print have been made by one
25 and the same person.

1 MISS CARMICHAEL: Mr MacPherson, you have been telling us
2 about how you went about the comparison process and you
3 had started I think again by reference to Y7 to say what
4 you would have done and in terms of working out from the
5 banana from point 9.

6 Is that something that you actually remember doing
7 with mark Y7?

8 A. No, I can't say for definite. I would believe that's
9 what I did but I wouldn't like to say. I could have
10 started out at the points at the right and worked in but
11 I remember specifically that was what caught my eye,
12 first of all but as to whether -- I would imagine I
13 would start there and work out the way but ...

14 Q. But that is not something you can remember --

15 A. I can't say specifically clearly 13 years ago, no.

16 Q. You told us that you spent what you said was a long time
17 with mark Y7.

18 Can you give the Chairman any picture of how long?

19 A. No, I'm afraid not. It was a long time. It wasn't --
20 it wasn't hours, but it was a long time because I did
21 both. I looked at it originally under the glasses and I
22 also spent some time on the comparator with it as well.
23 So between the two I couldn't give you -- honestly, give
24 you a specific time.

25 Q. I know it would be very hard to give an exact time at

1 this sort of period but if you think of the time you
2 spent with the glasses perhaps, I mean, would we be
3 talking about more than 10 minutes or more than 20
4 minutes or more than half-an-hour?

5 A. It would be a minimum of half an hour anyway I would
6 think, minimum of half an hour I would have thought for
7 me personally.

8 Q. Working with the glasses in the way you have described?

9 A. Yes.

10 Q. It may, in fact have been --

11 A. It may have been longer.

12 Q. -- been longer than half-an-hour.

13 Could it have been as much as an hour?

14 A. It could have been, yes.

15 Q. As you carried on with the process with the glasses that
16 you have described, at this point are you writing
17 anything up or taking any note to assist yourself?

18 A. No.

19 Q. How do you decide when to stop with the glasses?

20 A. As I said earlier, there just comes a point where you're
21 absolutely satisfied that the mark and the known print
22 have been made by one and the same person.

23 Q. I detect perhaps from something that you said earlier to
24 me that you might be reluctant to put that in terms of
25 numbers for me.

1 A. Yes.

2 Q. Is there a number that you can give me as to the point
3 when you personally would become satisfied?

4 A. No, I'm sorry, there isn't, no.

5 Q. Thinking about Y7 as an example, if you can think back
6 to numbers -- and I appreciate it may be hard for you --
7 at what point did you personally become satisfied?

8 A. No, I don't recall.

9 Q. When you did reach that point of satisfaction, what did
10 you do then?

11 A. Once I was satisfied -- well, obviously in this instance
12 I was satisfied that there was a minimum of 16 in it. I
13 may have come to my conclusion earlier but I went on to
14 see there was 16 in it, a minimum of 16 in it. I would
15 then have taken it to the comparator and placed it on
16 the comparator and marked up the relevant 16 points in
17 sequence and agreement that I could see.

18 Q. So you have your stage of personal satisfaction which
19 may be before 16 --

20 A. Yes.

21 Q. -- you then go on and look for 16 and you then take it
22 to the comparator and mark up 16?

23 A. Some marks may take you 16 or more to be happy. I mean,
24 it was a numbers game but it wasn't a numbers game, if
25 you like. Sometimes you're satisfied prior to, on quite

1 a few, less than 16, sometimes some impressions could be
2 really, really difficult and you may have gone beyond 16
3 and you were happy with it.

4 Q. Again thinking back, if you can, to Y7 were you
5 satisfied before 16 or after 16 or --

6 A. I don't remember. I don't remember. I'm sorry.

7 Q. Do you remember if you did any more of your comparison
8 on the comparator or whether by the time you got to the
9 comparator you were marking-up things that you were
10 already quite satisfied of in your own mind?

11 A. I would think I would be satisfied in my own mind by the
12 time I got to the comparator.

13 Q. Because we have heard that some people will actually do
14 some of the comparison on the comparator machine rather
15 than under the glasses and I'm trying to be clear about
16 where you fell in that spectrum on this mark?

17 A. It's down to individual choice, obviously, but I would
18 have been satisfied with my identification prior to
19 putting it on the comparator.

20 Q. What did you do with it when you got to the comparator?

21 A. I would mark 16 ridge characteristics in sequence and
22 agreement on it and then I would ask someone else to
23 look at it.

24 Q. Did you keep any record of what you had marked up?

25 A. No, no.

1 Q. When the person who follows you comes to look at it on
2 the comparator, thinking back to how I suppose I started
3 this sequence of questions, which was asking about what
4 you did with what we would now think of as ACE-V. We
5 have heard from you about analysing the mark and we have
6 heard from you about comparing the two. I am wondering
7 where the evaluation comes in or whether there was any
8 distinct part of the process at that time that you would
9 regard as evaluation?

10 A. Evaluation in what respect?

11 Q. I suppose that is what I am asking you, Mr MacPherson.

12 A. No, I'm sorry -- as I say, it wasn't in vogue at the
13 time, ACE-V. Evaluation to me it what is done as a
14 first step.

15 Q. You mean when you are assessing the information that is
16 available in the mark itself?

17 A. Yes.

18 Q. So would it be fair to say that using the two glasses as
19 between the mark and the print, you are perhaps
20 comparing and to some extent evaluating at the same
21 time -- would it be correct to make a distinction there?

22 A. I could be getting the evaluation stage completely
23 wrong, I'm sorry.

24 Q. I am not trying to put words in your mouth perhaps to
25 force the process that you did into boxes that it does

1 not fit in so if you think I'm doing that then, please,
2 just say so, Mr MacPherson.

3 Mr Moynihan is telling me he cannot hear you very
4 well. I am sorry, it is a constant struggle with the
5 microphone so if I can ask you to put that a wee bit
6 closer to make sure that all those who are interested
7 can hear, Mr MacPherson.

8 So it comes to this really that evaluation as a
9 separate stage was not something that was in vogue at
10 the time and it's perhaps not a term that assists you in
11 describing what you did at the time?

12 A. Well, evaluation this was something that we did as we
13 were moving towards non-numeric. There was a
14 non-numeric pack came out within the Department and you
15 get to give your comments on how you felt things should
16 go with regards to non-numeric, whether there should be
17 enlargements still prepared, whether there should be a
18 CV prepared, just certain things like that, how the
19 joint report should be prepared. I've got here
20 evaluation:

21 "Satisfy yourself as to the definitive identity
22 using all available features, ie pattern, ridge
23 characteristics, poroscopy and edgeoscopy."

24 So, as I said, personally, I would have done that
25 all at the initial stage of my assessment. I'm looking

1 at every piece, every scrap of information that I can
2 take from that mark and looking at it. So for me
3 evaluation is not quite in the right order if that
4 helps.

5 Q. By the time we get to other people looking at the mark
6 on the comparator, would this broadly be what is now
7 referred to as verification, other people checking?

8 A. Sorry, I missed that.

9 Q. No, I am sorry, I am probably not close enough to the
10 microphone.

11 By the time we get to other people looking at the
12 mark that you put on the comparator, would we be at a
13 stage that is broadly equivalent to what we would now
14 call verification?

15 A. Yes, that's correct, yes -- peer review, basically, yes.

16 Q. It is being suggested to me that if you copy the
17 position of my microphone which is, I suppose, at right
18 angles to the edge of the table in front of you it may
19 be easier for you to use it, Mr MacPherson.

20 A. Okay. I don't want my heavy breathing to be heard
21 throughout the hall.

22 Q. I'm afraid it's a struggle that we all have. We will
23 all have to excuse each other's heavy breathing, I'm
24 afraid.

25 I was about to ask you some more questions about the

1 use of the comparator in the verification process. If I
2 can take you first to paragraph 55 of your statement --
3 so that is paragraph 55 of FI55, page 12 -- you are
4 telling us there in the context of XF that sometimes
5 people would look at the identification under glasses or
6 on the comparator machine. You write that sometimes you
7 would put the mark and the form on the comparator
8 machine and mark up your points of comparison and that
9 it could then be examined from there by other experts.
10 You say you will return to this below when discussing Y7
11 because you remember using that method for that mark.

12 A. That's correct, yes.

13 Q. I would like to turn on also to paragraphs 119 to 121
14 which we will find at pages 27 to 28.

15 In that particular context in your statement -- that
16 is at page 27 and 28 -- you are talking about mark Q12
17 in paragraph 118 and then in paragraph 119 you tell us
18 that once you had identified the correlative match you
19 would then use the comparator machine to display the
20 points of comparison and at that stage the next person
21 would come along to check your finding. You go on to
22 say that the person would tend to do their first
23 assessment on the comparator.

24 Is that something that was a matter of normal
25 procedure in SCRO at the time?

1 A. Yes, if they weren't happy with it they were free to
2 remove it and look at it under the glasses if they
3 wished.

4 Q. You go on I think to say that in paragraph 120:
5 "If they were not satisfied on the basis of the
6 displayed image on the comparator machine then they
7 would take the mark and the elimination form off and
8 look at them through the fingerprint glasses, as I have
9 described."

10 A. That's correct, yes.

11 Q. I just want to make sure that I have understood this bit
12 correctly, Mr MacPherson. Would it follow from what you
13 have written here that if the person was satisfied on
14 the basis of the marking-up that they see on the
15 comparator when they come to it, they would go no
16 further and just sign off by placing their initials on
17 the screen at that point?

18 A. That is a possibility, yes.

19 Q. Would it be only if they were unhappy in some way with
20 what they saw on the comparator screen that they would
21 take away the print and form and carry out their own
22 examination with the glasses or might they choose to do
23 that for some other reason?

24 A. It may be that they didn't quite see what had been
25 marked or whatever. I mean, each person has to make

1 their own decision. A fingerprint expert stands alone
2 before the court. They don't have me at their back, you
3 know, coming in and holding their hand. Everybody has
4 to basically make their own personal decision with
5 regards identity.

6 Q. I think in something that you said earlier you perhaps
7 anticipated to some extent what I was going to ask you
8 here because you were anticipating or perhaps drawing
9 from what others have said in evidence some suggestion
10 that by leaving markings up on a comparison you might be
11 suggesting to the person who comes after you points that
12 they might not otherwise be able to see on their own and
13 thereby to some extent influencing them --

14 A. Influencing, someone, yes.

15 Q. -- and I would like to have your own comment on that
16 suggestion.

17 A. Well, just what I said previously, each person has to
18 come to their own decision independently and that's it.

19 I mean, eventually I think the process was that you
20 wiped the screen clear. It must have been just around
21 about that time when it changed. But, as I've already
22 explained, if you spend an hour and a half looking for a
23 piece of palm, you have to give some indication as to a
24 starting point, if you like. That's not leaving all the
25 characteristics on, it's leaving some characteristics on

1 but you could still infer, I suppose, that you're
2 influencing someone.

3 Q. Would you accept that sometimes someone will not see a
4 point for themselves but will become able to see it when
5 it has been pointed out to them by somebody else?

6 A. Yes. That's happened to myself.

7 Q. So it does perhaps follow from that that what the person
8 sees when they have seen a marked-up copy is not
9 necessarily what they would be able to see for
10 themselves alone, entirely independent and unaided?

11 A. Possibly, yes.

12 Q. So would you accept that, with that in mind, there may
13 be something in the suggestion that if somebody has seen
14 a marked-up fingerprint they may thereby be assisted to
15 see something that they would not without that help have
16 seen for themselves?

17 A. I would think that would be more applicable say in a
18 trainee/mentor situation. Obviously, you have to learn
19 the job in some way, so it's not as if you're influencing
20 people. You're basically just helping them train, if
21 you like.

22 Q. Again, correct me if I am wrong, but thinking
23 particularly of the marks Q12 and Y7, do you yourself
24 know how the other examiners who looked at those marks
25 went about dealing with them after you left them on the

1 comparator.

2 A. No. The only thing I can say about Y7 was I think I
3 remember it came out, maybe at Justice 1 or whatever,
4 Fiona McBride had marked on the back of Y7. I don't
5 know if you have got it there.

6 Q. Yes, we can get that for you. It is PS0002. If we have
7 the second page of that, we will be able to see what
8 Mr MacPherson is telling us about.

9 There, I think, we see your initials and
10 Mr Stewart's initials?

11 A. Yes.

12 Q. But not in -- I think what you are saying is those are
13 perhaps in Ms McBride's writing, although the date is in
14 your own writing?

15 A. I'm not -- certainly my initials and Mr Stewart's
16 initials, they have obviously been placed there by
17 Ms McBride. I think that's Mr McKenna's initials but
18 what you can see next to Ms McBride's initials are the
19 word "glass", and that obviously infers, as I said in
20 here previously, it was up to the person if they wanted
21 to take it off and look at it under fingerprint glasses
22 and that's obviously what she's done in that reference
23 there.

24 Q. I think just since we have this image up we can take it
25 then that perhaps unlike the Q12 writing on the

1 photograph that we saw earlier, this is not a situation
2 where you yourself have taken it from the comparator but
3 Ms McBride has taken at least some of the initials from
4 the comparator, at least down to the stage where she has
5 dealt with the matter herself?

6 A. As I said earlier, a tracking log of who's seen it.

7 Q. I think we can take that down.

8 I am sorry, Mr MacPherson, I do have some particular
9 questions I want to ask you now about Q12 and about Y7.
10 The first question is one that you have dealt with to
11 some extent in your supplementary statement F10056 at
12 paragraph 51 and 52, pages 11 and 12.

13 I am sorry, I am taking this in the wrong order. I
14 think you have already been asked about a document
15 DB0251.33. This was a form 13B which I think was shown
16 to you at the time your supplementary statement was
17 taken. It is DB0251.33B which should be a form 13B.

18 I think you were asked when you gave your statement
19 about the entry here that says:

20 "Ident required for deceased".

21 A. Yes.

22 Q. I think you tell us at paragraph 49 of your
23 supplementary statement that you had read this as a
24 request to compare the marks against Miss Ross's prints?

25 A. Yes.

1 Q. And that it should be read as requiring that a mark be
2 identified as hers?

3 A. That's correct.

4 Q. Had you ever seen a form with this form of words on it
5 before?

6 A. I may have done. I don't remember how many or whatever
7 but I may have seen the wording. It's not the best
8 wording, obviously.

9 Q. I am just trying to get a picture of whether this was a
10 form of words that people would use --

11 A. Not commonly, no.

12 Q. Not commonly?

13 A. No. Because obviously there's space for elims and
14 suspects on the form so if you wanted it compared all
15 you needed to do was basically ...

16 Q. Fill in the bit of the form immediately after where you
17 see that?

18 A. Fill in the bit, yes.

19 Q. I wonder now if we could have could have paragraph 51,
20 page 11 up. Just leave both of those up for the moment,
21 please.

22 You point out rightly, of course, Mr MacPherson,
23 that an elimination can be requested on the form there.
24 Should we place any significance upon the fact that the
25 expression "ident" rather than "elim" or elimination is

1 being used there?

2 A. I certainly didn't, no. But I don't know whether it's
3 been put on because sometimes the officer in charge of
4 the case, you would only compare certain marks against
5 certain elimination forms in this case, I think, and in
6 this instance there were marks from money and we only
7 had to compare a specific set of elims because, again,
8 trying to be efficient and effective, it may be that
9 only certain elims are worth comparing against the marks
10 from the money. So I don't know if that's what's tried
11 to be inferred here, that these specific marks should be
12 compared definitely against the deceased but that's how
13 I took it.

14 THE CHAIRMAN: But on Q12 in that area there were at least
15 three. There was allegedly the mark of Marion Ross and
16 then two others, so it would draw your attention to the
17 one that they were interested in?

18 A. Yes, I think the two --

19 THE CHAIRMAN: One witness suggested that that's what "ident
20 required", really how that arose because it wasn't the
21 adjoining other marks in that immediate area that they
22 wanted to know if you could identify the deceased's mark
23 there.

24 A. All I can say is that's how it took it, sir, that I was
25 required to compare the deceased. I think the other two

1 marks you referred to were Mr Asbury's, I believe.

2 THE CHAIRMAN: I can't remember what the other two were but

3 certainly there were other marks in immediate proximity

4 of the mark in question.

5 A. Yes.

6 MISS CARMICHAEL: Can I take it, Mr MacPherson, just

7 to follow-up from that, that at the point you would have

8 received this form you wouldn't have known which

9 particular part of the cluster of marks Q12 was thought

10 to be perhaps relevant to Miss Ross as opposed to

11 anybody else?

12 A. I don't know. I don't know when things were identified.

13 Q. Indeed, I think we've got a series of marks on this form

14 so it is not even -- it's not Q12 alone, that you are --

15 A. It's that group from QB2 to QL2, by the looks of it.

16 Q. And your attention is being drawn in relation to that

17 series of marks --

18 A. It's not one specific mark, no.

19 Q. You are told also Mr Asbury by that stage is a suspect

20 because he is named in the lower part of the form?

21 A. That's quite right, yes.

22 Q. You have told us at paragraph 51 of your statement that

23 you would have been aware of the background to the mark

24 Q12 when examining it and that you remember knowing that

25 the tin came from the accused's house, although you

1 can't remember seeing a handwritten note you were shown
2 when given your statement regarding the police's hopes
3 regarding the tin.

4 Do you remember knowing anything else at all about
5 the tin, other than it came from Mr Asbury's house?

6 A. No, no. I mean, these 13s were filed away when they
7 came in. I don't know whether I would have seen this
8 13. The 13's come in with the photographs. They were
9 booked in. When you did your comparison of marks that
10 the 13 relates to, you didn't have the 13 in front of
11 you, if you know what I mean. They were filed away.
12 They were mainly for information later on when you made
13 up the letter to the Senior Investigating Officer. They
14 were used for dates, et cetera.

15 Q. Just following that through a little further, it does
16 look as if somebody has thought that that's an effective
17 way to get a message of whatever nature to the person
18 who is examining the fingerprints or finger-marks?

19 A. Yes.

20 Q. Are you saying that it is something that may have passed
21 effectively without being looked at by the first --

22 A. Somebody, whoever booked it in -- I mean, I may have
23 seen it but I'm definitely not saying for 100 per cent I
24 saw it when I came in. That's all I'm saying.

25 Q. There is a further matter and it picks up on what you

1 were starting to tell us and I cut you off a little
2 earlier that perhaps arises particular with mark Q12.
3 If we can go to paragraph 118 of your first statement,
4 FI0055 at page 27.

5 In paragraph 118 you tell us a little of what you
6 have given us in more detail today about the way that
7 you went about analysing and comparing marks. But what
8 you say in the final sentence was that sometimes you had
9 used a set of prints so often that you could memorise
10 certain patterns and points displayed within it.

11 I am afraid I cut you off when you started to tell
12 me about that earlier because I wanted to come back to
13 it here.

14 A. Yes. I think what I'm trying to say there is -- maybe
15 not very well -- but what I'm trying to say is in a case
16 like this you've maybe examined an elim form many, many
17 times and if there are new marks that came in sometimes
18 you were able to, usually by pattern, if there was a big
19 twin loop or a lateral pocket or an accidental pattern,
20 contained within the known print, to use that
21 expression, contained within the fingerprint form, you
22 may have looked at it so often that if a mark comes in
23 new to the case and it's a big twin loop, that has
24 possibilities and that's all I was trying to say there,
25 that you may be able to -- I'm not saying identify it

1 but, well, look, there's a twin loop in so and so's
2 form. You may have had 160 elims but because you've got
3 that unusual twin loop pattern and you receive a new
4 mark in the case and it's a twin loop as well and it may
5 have certain similarities, you would basically go to
6 that elim form first, again, trying to be efficient and
7 effective in use of manpower and time.

8 Q. In this particular investigation would I be right in
9 thinking that Marion Ross's fingerprints were compared
10 against quite a large number of items for the very
11 obvious reason that she was the householder --

12 A. That's correct.

13 Q. -- and it was of interest to take her prints out of the
14 picture as far as marks at the crime scene itself were
15 concerned?

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

17 Q. And would I be right also to say that you would have
18 yourself viewed Miss Ross's elimination prints on a
19 number of occasions before you came to look at mark Q12?

20 A. Absolutely, yes. But that's where -- in an ideal world,
21 you know, you assess the mark and you're not influenced
22 by the known print but it just doesn't happen like that.

23 Q. In a sense, this is why I am asking you about this
24 because we have here a real crime investigation where
25 people are, for reasons that may be very good, looking

1 at the same elimination prints over and over again and,
2 in a sense, it's to bring perhaps a sense of reality
3 back here to us in understanding how you go about this
4 in a real investigation.

5 A. Absolutely, you just can't get away from that fact.
6 That's just the way things are.

7 Q. But is there with that some danger that by seeing a
8 known print so often, by, as you say, memorising
9 patterns and points displayed within it, that you may
10 then come to be influenced in some way when you come --

11 A. I don't believe so, no.

12 Q. -- to look at crime scene marks?

13 A. No, I don't believe so. That's where your professional
14 judgment comes in. No, I would say not.

15 Q. Because I am putting something that is perhaps very
16 complicated in an oversimple way, for which I hope you
17 will forgive me, but there are some lines of research
18 which indicate that perhaps because fingerprint
19 examination is such a visual matter that if one has one
20 particular visual image in one's mind and one then turns
21 to look at something else that may look, to some extent,
22 like it, you may be drawn to think that there's a
23 similarity where none truly exists?

24 A. You just used the word there "similarities". They're
25 not in sequence, in agreement. They don't correlate

1 with each other. They don't appear in the same
2 position, in the same sequence, you know, the same area,
3 the same position and in the same relationship to each
4 other unless they are identical. So there may be
5 similarities. It's like identical twins, they may have
6 similar patterns but within those patterns the
7 characteristics contained within those patterns are
8 different. Each person's fingerprints are unique so ...

9 Q. Again, it was a point that I perhaps did not take you up
10 on when you started to tell us about it but you
11 mentioned, under reference I think to evidence that some
12 other people had given about what they had described as
13 differences but I think you wanted to describe as
14 appearances that might vary between different
15 impressions. We know that appearances may vary, to some
16 extent, even amongst different inked prints from a given
17 digit --

18 A. Well, I think that was shown earlier on in the Inquiry
19 when Mr Moynihan had two left thumbs of Shirley McKie,
20 one showed a bifurcation, one showed a ridge ending. If
21 you say that's a difference then do you discount the
22 hundreds of thousands of characteristics contained
23 within the two ten-print forms and say, "That's a
24 difference. Sorry, the identification must stop there"?
25 That's ludicrous so ...

1 Q. Indeed. We then come on to variations, if I can call
2 them that, which may arise because a finger has been put
3 down in a certain way, there has been development with a
4 particular medium, a whole range of variables that we
5 have heard about in the Inquiry.

6 A. Yes.

7 Q. It follows from that that someone in your position is,
8 to some extent, carrying out a process of interpretation
9 in drawing conclusions as to where things do not appear
10 exactly similar, perhaps for the sorts of reasons that
11 we have been discussing, but feeling able to draw a
12 conclusion that, despite a variation in appearance, the
13 two items come from the same source. So there is a
14 judgment, an interpretation --

15 A. Yes, definitely.

16 Q. -- that comes in in that process?

17 A. Yes.

18 Q. Why would it be that one might not come to be influenced
19 in that process of interpretation and judgment by
20 perhaps having a firm image in one's mind from something
21 such as a print that you have looked at, for good
22 reason, many times?

23 A. I can only put it down to your training and experience.
24 That's why I spent seven years training before I was
25 allowed to give evidence in court, before I became an

1 expert. You are now down -- well, it was reduced to
2 five years. It's now down to two or three years or if
3 you're adept at the job. You now don't have a 16-point
4 standard and you now don't have any enlargements, so ...

5 For me, your experience comes from as many
6 comparisons as you can make against crime scene marks
7 against fingerprint forms, in whatever form, and that's
8 to me where you gain your experience. That's what my
9 expertise is in.

10 Q. What is it, if there is one thing that, if you will
11 forgive me for the expression, put your finger on in
12 training that would guard against the risk of you being
13 influenced in the way that I have described? Could you
14 tell us what it is?

15 A. Just that you've seen so many different marks and so
16 many variations, all the things that we've talked about
17 previously, that hopefully, within your professional
18 judgment, you're able to discern what is genuine and
19 what is not genuine.

20 Q. I am going to move on and ask you some questions that
21 relate specifically to what happened with Y7 and the
22 examination of that, Mr MacPherson, and in particular
23 what happened when Mr Geddes came to view the mark
24 because I think he was the first person that saw the
25 mark and the print on the comparator after you had

1 carried out your examination?

2 A. Yes, that's correct.

3 Q. After you had given it to Mr Geddes, did you leave him

4 to his own devices with it or did you stay with him?

5 A. I absolutely left him to his own devices, yes.

6 Q. So how did it come about that you learned he had not

7 been able to see the 16 points that you had?

8 A. He came back and told me.

9 Q. What did you say to him?

10 A. Well, I tried to -- I said, well -- we had a discussion

11 about it and I tried to illustrate the points which I

12 saw in the mark. We had a professional discussion.

13 Alistair still felt that he was only with the ten that

14 he saw at that time and that was it. That was fine.

15 He was basically identifying the mark but just not

16 to 16.

17 Q. At that point you consulted Mr Stewart, one of your

18 other colleagues?

19 A. I was entitled at that time to move on to someone else

20 if I wished, yes.

21 Q. It was not recorded anywhere that Mr Geddes had seen Y7

22 and come to the view that he had about it?

23 A. No, I don't believe so, no.

24 Q. You may have been here --

25 A. Sorry, I should say we had diary pages for special cases

1 at that time but they were just really for any contact I
2 think you had with outside officers or whatever. The
3 diary pages now obviously may reflect more of that sort
4 of information but at that time diary pages were only in
5 special cases and they weren't really used for -- I know
6 a lot has been made of making notes, et cetera, but
7 there was nothing of that then.

8 Q. What we have heard from Mrs Greaves and Ms Climie, the
9 two fiscals who gave evidence earlier on, is that they
10 would have been rather interested to know, not just
11 about Mr Geddes but certainly about Mr Geddes and the
12 fact that he had seen the mark and had not been able to
13 come up to the 16 points which was the standard at the
14 time.

15 A. I don't remember being precognosced. Obviously, there
16 is a precognition on the system. I don't -- honestly, I
17 saw is it Mrs Greaves giving evidence but I don't
18 remember the lady. Maybe it was over the phone I gave a
19 precognition or whatever. I don't remember. But what
20 would I have said to her, that somebody agrees with me?

21 Q. What is in my mind, and perhaps you can comment on this,
22 is that at some stage it must have become obvious that
23 Y7 was going to have to be presented to a jury and
24 perhaps not at the stage of precognition, if we can
25 perhaps even jump ahead of time by the time you were

1 nearing Ms McKie's trial you would have known that Y7
2 was going to have to be presented to a jury and that
3 they were going to have to hear evidence about the
4 identification of Y7 as Ms McKie's mark?

5 A. Yes.

6 Q. Certainly by the time you got to within a couple of days
7 of the trial you knew from Mr Murphy (now Sheriff Murphy
8 who gave evidence here) that there was going to be a
9 dispute about it, in the sense of American experts
10 coming and saying that your identification wasn't right?

11 A. Well, I'm not sure what the -- I honestly can't remember
12 what the challenge was. Initially the challenge was
13 that it had been planted. The other challenges are
14 obviously that it's either insufficient or it's not that
15 person but I don't -- I can't honestly remember what the
16 challenge to our evidence was.

17 Q. At some stage you must have become aware that you were
18 going to be cross-examined about the mark and that it
19 was going to be suggested to you that you were wrong?

20 A. In some fashion, yes.

21 Q. So you would know the mark was going to have to be shown
22 to a jury?

23 A. Yes.

24 Q. And that they were going to have to be satisfied on the
25 standard at the time that there were 16 points in

1 sequence and in agreement?

2 A. That's why I had four people sign it to the 16-point
3 standard, yes.

4 Q. So what is in my mind is if on the one hand you have not
5 been able to show to Mr Geddes that there are 16 points
6 there, bearing in mind that he is albeit junior to you
7 but a man with training and experience in fingerprints,
8 if you have not been able to show him the 16 points I
9 wonder if it did not occur to you that, perhaps, there
10 might be some difficulty the demonstrating them all to a
11 jury?

12 A. The enlargements that are mainly for illustration
13 purposes. There's no way that I can have a jury see
14 everything. Sometimes if it's a clear mark they may be
15 able to interpret what I have shown them but they won't
16 be able to interpret every characteristic I wouldn't
17 think, particularly if you get a bloody mark from a
18 knife that's very, very watery or a bloody mark from
19 anywhere, no matter whether it's done by charting PC or
20 by photographic enlargements it would be very, very
21 difficult -- and no disrespect to anyone, a lay jury or
22 whatever, to see what I see. If that's the case why
23 bother having any experts at all. Why did I train for
24 seven years? To me it's a bit of a fallacy now because
25 since July 2006 they haven't produced any enlargements.

1 At that time, the Glasgow Bureau were the only
2 Fingerprint Bureau in Britain to produce case-specific
3 enlargements. When I started in 1970, we had to produce
4 enlargements for every case whether it was summary,
5 Sheriff and jury, or High Court. Summary or solemn
6 procedure we had to produce enlargements.

7 In 1983 there was a ruling came out from Crown
8 Office that we could stop doing for summary trials but
9 we still had to do them for Sheriff and jury and High
10 Court and that lasted right up until July 2006.

11 So, as I said before, you've now got a
12 non-numeric system, you've now got no 16-point standard,
13 you now don't have to produce enlargements at all. So
14 there's no way, I believe anyway, that I could
15 illustrate all my 16 points. I'd try my best but I
16 don't think with regards a lay jury they would be able
17 to see them all. You would hope they would but that is
18 merely there as an illustration as to how I came about
19 my decision.

20 Q. I will ask you a little bit more about the question of
21 enlargements in a moment. Just thinking through perhaps
22 what the position of the Advocate Depute Mr Murphy was
23 before the trial, he is going to trial to try to show a
24 jury, I suppose, that you are right --

25 A. Yes.

1 Q. -- and to show the jury that there are the 16 points
2 which are, after all, marked-up on the productions that
3 are available to the jury. What I am suggesting to you
4 is that it might have been relevant for you to tell him
5 that there had been a situation where someone in your
6 own office had not been able to see all of the
7 16 points.

8 A. Well, they couldn't but I had four people who could see
9 the 16 points; so they would be going to court with it
10 and that's what happened. I mean, the evidence is not
11 the enlargement. The evidence is the photograph, the
12 form and myself giving evidence. That's the evidence.
13 Any independent expert who comes along can look at your
14 enlargement, can look at whatever, they can look at the
15 photograph of the form, but if I can tell you from
16 personal experience I've been told not to coach the
17 jury. I believe it was -- I can't remember his name
18 now. They made a film about it, The Stone of Destiny.
19 I think it was a Mr Hamilton --

20 Q. I think you are talking about Mr Ian Hamilton, QC.

21 A. Ian Hamilton, that's correct. I can't remember what
22 they called it. I don't know whether it was
23 illustrating my enlargement to the jury and I had to go
24 in front of the jury and show them the points.

25 There was at one point in time for High Court trials

1 they would make copies of the IB (that is Identification
2 Bureau), Strathclyde Police would make copies for all
3 the jurors of your enlargement and they would go in
4 front of the jury. Each jury would be given an
5 enlargement and I can't remember what was happening but
6 I think I was illustrating or trying to show the jury
7 the characteristics that I had used to make my
8 identification and I was accused by Mr Hamilton of
9 coaching the jury.

10 So there's only so much -- I don't understand it,
11 I'm not a lawyer, but there's only so much you can do.
12 As I say, for me, enlargements are only as a means of
13 illustration and enlargements have been done away with
14 for three years, so I don't know how -- over three years
15 now, so I don't know how they do it now, how they
16 illustrate their identification, whether it's in five
17 points, six points, whatever it is, in a non-numeric
18 system.

19 Q. You will be relieved to know I do not have to pursue
20 that with you today, though I think that is a chapter
21 yet to come in the Inquiry as to what the current
22 practice actually is.

23 Just staying on this theme, if I may, Mr MacPherson,
24 do I understand you rightly that you say that there will
25 be situations where you will simply not be able to

1 demonstrate to lay people what you have seen?

2 A. Well, I can see it but maybe the jury -- they've not had
3 seven years of training or whatever so they may not be
4 able to see it.

5 Q. Is that even with your assistance? Leaving aside the
6 situation with Mr Hamilton, QC, do I understand you to
7 be saying that even if you are standing there with an
8 enlargement of whatever sort pointing to what you have
9 been able to see --

10 A. Yes.

11 Q. -- your position is that you may not be able to
12 demonstrate that to the jury themselves?

13 A. They may not be able to see it.

14 Q. Why should the jury accept something that they can't see
15 with their own faculties, Mr MacPherson?

16 A. Well, as I say, the evidence is the joint report, the
17 form and the photograph and my evidence so ... it's down
18 to them to either accept it or not.

19 Q. The jury may require to hear evidence to enable them to
20 determine whether they should accept what is, well, at
21 the time marked on the face of an enlargement or
22 reported in a report. I take it you would accept they
23 may not just be taking those entirely at face value?

24 A. Absolutely not.

25 Q. So if we accept that there may be situations where they

1 are being shown something and in order to accept your
2 opinion, they may have to be able to detect and accept
3 the evidence of their own eyes?

4 A. All I'm saying is I may have pointed it out to them but
5 they may not accept it. I don't know what else I can
6 say.

7 One thing I would like to raise is we talked about
8 non-numeric and there's no enlargements. The most
9 important fingerprint case was **HMA v Robert Hamilton** and
10 that was appealed in 1933. I don't want to bore you but
11 anyway --

12 Q. No, no, please.

13 A. It held that one fingerprint uncorroborated by other
14 evidence was sufficient to convict a person but with the
15 caveat providing the court accepts the evidence. So
16 Mr Bradley gave a talk -- a Fiscal gave a talk at one of
17 the first Scottish Fingerprint Service conferences and
18 he said that case should be held uppermost in any
19 fingerprint experts' mind. It's a bit like in 1933
20 Scotland did their own Daubert hearing. Daubert held
21 that permanence, uniqueness, et cetera, was established
22 but the fact that it was down -- the final arbiter
23 regarding the evidence was the court and that's exactly
24 what happened in 1933. So that's all I'm saying. It's
25 down to the court to accept the evidence. They may see

1 the enlargement; they may not see it. I don't know.

2 Q. But if they are to accept it, it must at least be
3 capable of demonstration to them?

4 A. Yes.

5 Q. I am going to turn to this a little bit later but it may
6 be a convenient point to do it since we are touching on
7 the scheme and you are wanting to tell me a little bit
8 about enlargements and their purpose.

9 A. Yes.

10 Q. What is your position about what the purpose of
11 enlargements was back in 1997?

12 A. It was to show the characteristics that you had used to
13 come to your conclusion. That was ...

14 Q. When you did the charting -- and I'm thinking here
15 particularly -- sorry, I should clarify with you.

16 You were the examiner who did the chartings of Y7
17 for both the trials, the Asbury trial and Ms McKie?

18 A. I believe so, yes. The McKie trial, though, I was on
19 holiday and I know Mr Stewart did the charts with
20 Mr Bradley, the Fiscal. I could be wrong about this but
21 there was a booklet prepared but that could have been
22 for the Asbury trial. I'm sorry, I'm getting mixed up.

23 There was a booklet prepared regarding how we came about
24 with findings as in there was an elim form and a
25 fingerprint form, an illustration of enlargements and

1 the characteristics we used but I'm sorry, I can't
2 remember whose trial it was prepared for.

3 Q. We will maybe go back. The more general form of
4 demonstration booklet was for the McKie trial?

5 A. Well, that's what I was saying. Mr Stewart had
6 discussions with the Fiscal. I was on holiday and he
7 sort of took the lead in that trial.

8 Q. When we are talking about the chartings of Y7 itself --

9 A. I think I did the chartings, yes.

10 Q. That was yourself?

11 A. Yes.

12 Q. When you did those, were you happy that they were
13 accurate chartings?

14 A. Yes.

15 Q. Because you have made some mention in your statement of
16 difficulties with the charting PC.

17 A. Yes.

18 Q. But should we take it that, notwithstanding those
19 difficulties, you were happy that what came to be
20 charted was an accurate representation of the points
21 that you had seen?

22 A. Of the points. They may not have been specifically a
23 millimetre. They may have been a millimetre or so out.
24 It was a difficult machine to use.

25 Q. But not something --

1 A. No, not something that would invalidate the
2 identification, no. I tried to make them as accurate as
3 I possibly could with the restrictions that the machine
4 had. That was what was involved at the time. That's
5 what we were told to use, "It cost £30,000. Use it" and
6 that was basically it. That's what I did: I used it. I
7 think in 2000 it was basically scrapped.

8 Q. Throughout the trial, did you remain happy with the
9 representation of the points as charted in the
10 productions that you had prepared?

11 A. Yes.

12 Q. As far as you were concerned, the charting of them with
13 the machine did not cause any difficulties in the trial?

14 A. Not that I'm aware of, no. (... Inaudible ...) Sorry.

15 Q. You have mentioned, I think, the dispensing of
16 enlargements in more recent times.

17 A. Yes.

18 Q. Would I be right to understand that SCRO examiners had
19 wanted to dispense with them perhaps for some time but
20 there had been perhaps some perception that the Crown
21 wanted to keep them?

22 A. Not that I'm aware of. There was quite a few examiners
23 would still wish that. Personally I wish to retain
24 case-specific enlargements -- personally. I don't know
25 what the general feeling is. I'm not quite sure about

1 that.

2 Q. I think we will pick that up from other things we have
3 looked at, Mr MacPherson. I should stick perhaps to
4 what your own view of that is. Why would you want to
5 hold on to them?

6 A. Again, just to illustrate your identification and
7 particularly if you've got less than 16. I don't know
8 how many points, whatever. I think it would have been
9 worthwhile. It's just my personal point of view that it
10 would have been better. It's maybe an old-fashioned
11 view or whatever but I think they would have been better
12 retaining enlargements, particularly when you move away
13 from a standard. I know some people even wished to
14 retain some kind of standard.

15 In the wake of the Brandon Mayfield case, I know
16 there was an article in the Washington Post and it
17 stated that the American authorities were looking at
18 going back to a 12-point standard, but I don't know if
19 anything's happened about that. But it would be quite
20 ironic because the GCRO (which is the Glasgow Criminal
21 Record Office that was set up after 1933 and the Robert
22 Hamilton case) they used a 12-point standard, albeit I
23 have to say the Robert Hamilton case, if you read the
24 judgment, all the -- it was two officers came up from
25 New Scotland Yard to prove the first fingerprint ident

1 in Scotland and it's all done to 16-point standard.

2 It was mentioned earlier in evidence is there an

3 empirical whatever for using ridgeology on its own.

4 When I started, there was all these stated cases. There

5 was Robert Hamilton, George Harold(?) Rowley for a palm

6 print, William Gourley and Jim Walker Adams for sole

7 prints and toe prints. These are all stated cases and

8 we needed to learn about all these stated cases before

9 we, you know, gave evidence at court. I don't know of

10 any stated case that is based on a non-numeric standard.

11 I know 16 points isn't a legal requirement but for me,

12 before they moved away from the 16-point standard, they

13 should have been talking about what constituted a

14 characteristic for court. I think Mr Zeelenberg said

15 they had 10 plus 2 but I think his 10 was 10 unusual

16 characteristics. I could be wrong about that.

17 But, to me, before they went to non-numeric they

18 should at least in Europe have a level playing field

19 with regards what is a characteristic for court

20 purposes. But I've gone off the beaten track now.

21 Q. I was going to follow up what you had said along that

22 theme, Mr MacPherson, because you had said that you

23 thought perhaps especially with non-numeric it would be

24 useful to have an illustration, an enlargement, and I

25 would just like you to perhaps expand upon why you say

1 that is?

2 A. Well, again just to illustrate the points you've used.

3 I know some places use generic enlargements but they are

4 only illustrating what a characteristic is; you know,

5 whether it's a ridge ending or bifurcation. That's just

6 my own personal view.

7 Q. What I will do now is perhaps go back a little bit

8 because we have, I think for good reason, gone down that

9 particular line and take you back further into the

10 history of the matter. There are one or two matters

11 which you may be able to assist us with about which

12 perhaps we are not quite clear yet in the history of Y7

13 in particular, Mr MacPherson.

14 We heard evidence back on 17th June from Stuart

15 Wilson who had been involved in taking some further

16 pictures of Y7 on 12th February 1997. He told us about

17 getting those developed at Pitt Street and taking them

18 across the corridor to SCRO where they were examined, he

19 told us, by several male fingerprint examiners looking

20 at the photo and prints with an eye glass. He was only

21 able to tell us about one individual who was a small

22 chap with glasses and a beard.

23 I wonder if you would be able to help us with who

24 that might have been?

25 A. No. I have the glasses -- I didn't have glasses at that

1 time right enough. I've got glasses now but I didn't
2 have a beard either.

3 Q. Do you have any recollection of being involved in that
4 yourself?

5 A. No. I think the ident for Y7 was 11th and this is the
6 12th. No, I don't recall that at all.

7 Q. I would like to move on to asking you about court
8 reports and some particular court reports and
9 enlargements. Generally speaking, regarding the reports
10 for court, you tell us at paragraph 66 of your statement
11 that it was a management decision who should write the
12 court reports in the case?

13 A. Who was allocated a case to prepare for court, yes.

14 Q. Do you know why the four individuals (yourself,
15 Mr Stewart, Ms McBride and Mr McKenna) came to be the
16 individuals involved in the cases of Asbury in the first
17 instance and then Ms McKie?

18 A. Not really. I can only guess it was because the four
19 initials on the back of Y7 were those persons, was
20 ourselves.

21 Q. Because, as we know, Mr Geddes and Mr Bruce had both
22 been involved with Q12 at the earlier stage?

23 A. Yes, that's right.

24 Q. A concern that has perhaps arisen in some minds over the
25 years -- and I would like your comment on it -- is that

1 there may have been some conscious decision not to use
2 Mr Geddes because he had not seen 16 points on Y7 or
3 perhaps not to use Mr Bruce because he had not seen
4 16 points in Q12.

5 A. That's possible but certainly I don't know what I said
6 earlier but my impression was that Mr Bruce had seen
7 16 points in Q12.

8 Q. If we leave Mr Bruce out of it and just think about
9 Mr Geddes, who we know had seen only the 10 points in
10 Y7, is there any possibility that there would have been
11 a conscious decision not --

12 A. You would have to ask the person that made the decision
13 regarding that. I don't know who allocated the case.

14 Q. I see.

15 Moving on to particular queries about reports and
16 productions, Mr MacPherson, I would like you to look,
17 please, at DB0004 and if we scroll on and if you take a
18 moment to satisfy yourself perhaps looking at this page
19 and we can then put the next page up to its right-hand
20 side. We've got a report that bears to be dated 27th
21 March 1997 from yourself, Mr Stewart, Ms McBride and
22 Mr McKenna relating to Y7?

23 A. Yes.

24 Q. We have learned I think that this is a report that never
25 came to be a court production itself and --

1 A. I notice Mr Stewart's written up "report without book"
2 so I don't know.

3 Q. So you are identifying the red writing on the first page
4 as Mr Stewart's writing?

5 A. Yes.

6 Q. We can maybe ask him more about it as well then,
7 Mr MacPherson. I think we have learned and it is not in
8 dispute that this itself never came to be a court
9 production and also that it contains a sentence that
10 does not appear in the versions of the reports that did
11 come to be court productions. That is the final
12 sentence on the second page there which reads:

13 "From examination of the photographed impression
14 itself and examination of the **locus** photograph of the
15 impression Y7 in situ, it was ascertained that the top
16 of the left thumbprint, which was identified, was facing
17 in an inward direction, relative to the bathroom."

18 A. Yes. Can I ask what I said about this in my statement?
19 I don't recall why we made this --

20 Q. I'm sorry, you don't --

21 A. I don't recall why -- obviously, we were asked to do
22 this report but I don't know by whom.

23 Q. There have been various suggestions about this that it
24 may have been a preliminary report requested by --

25 A. By the Fiscal.

1 Q. I don't think we have any clear explanation of where it
2 came from or rather how it came to be in existence.

3 A. I don't remember, I'm afraid.

4 Q. It is really the last sentence that I would like to ask
5 you about further because I think I am right in saying
6 that you were one of the officers who had actually been
7 out to the **locus**?

8 A. Myself and Mr Geddes went down to the **locus** to look at
9 an unusually shaped horseshoe print on an armchair. At
10 the time I think there was some suggestion that somebody
11 had been looking out of the window and they may have
12 lifted the armchair -- well, we only discovered that
13 basically when we went to the **locus** and looked at the
14 mark in situ and it was this area (**indicated**), I can't
15 remember if it was the left or the right but it was this
16 area anyway. This area didn't show on the deceased's
17 form, the original elimination form so we had to request
18 another set be taken.

19 Q. But am I right in thinking also that while the focus of
20 your inquiry that day may have been the mark on the
21 armchair you were also made aware of Y7 and it's
22 location?

23 A. We would have seen it, yes. I don't think -- it wasn't
24 identified at that point. I can't remember when I went
25 to the **locus**.

1 Q. I think we know it was 17th January 1997 from --

2 A. That it was before it was identified, yes.

3 Q. It is the last sentence I would like to ask you more
4 about and in particular what you say about the
5 orientation of the left thumbprint as facing in an
6 inward direction.

7 I would like you to look for me, please, at an image
8 FI2710.01. I should explain to you and everybody else
9 what that image is when it comes up.

10 If we take away the page that's on the right there
11 and have the images on the left larger.

12 What we have on the left-hand side of the screen at
13 the moment is the first page of PS0002, which is the
14 image of Y7 which has the writing on the second page on
15 the back. On the right-hand side of the screen at the
16 moment we have page 189 of CO0345 which is a Strathclyde
17 Police disciplinary report by a Mr Wilson which contains
18 what appear to be **locus** photographs showing the mark in
19 a wider perspective.

20 You will correct me if I am wrong, but would it be
21 fair to say that the label that I am marking now with a
22 highlight on the left image is depicted where I'm
23 marking with a highlight on the right image?

24 A. Yes, that's correct.

25 Q. That is with yellow highlights in both cases and, if I

1 can change the colour of the highlight, that the label
2 that I'm marking with a red highlight on the left image
3 is where I'm marking with a red highlight on the right
4 image?

5 A. Yes.

6 Q. So we can take it that we have the two images, as it
7 were, the same way up --

8 A. Yes.

9 Q. -- on the screen.

10 If you take it from me that looking at the
11 right-hand side image here, the left-hand side of that
12 image is the interior of the bathroom?

13 A. That's correct.

14 Q. Would you accept that the mark does not appear to be
15 pointing into the bathroom but rather is either pointing
16 straight up or slightly out of the bathroom?

17 A. What you're highlighting there at the moment is the very
18 extreme tip.

19 Q. Sorry, when you say highlighting, you are talking about
20 where I've put my pen?

21 A. The cursor, the pen, yes. That's not the area that I
22 was referring to when we made up the report. I could
23 only talk about the part of the mark which was the top
24 of the mark, the top of the mark but just above the
25 core, not the extreme tip, just here (**indicated**), along

1 here where we had identified.

2 Q. What I am wondering is if you would be able to show us,
3 perhaps using one of the drawing tools here on the
4 screen, what you are pointing to -- the time has been
5 pointed out to me.

6 THE CHAIRMAN: I was going to let you finish the subject but
7 if this is convenient --

8 MISS CARMICHAEL: It may be we can mark this up over
9 lunchtime.

10 Mr MacPherson, I am sorry to have kept you.

11 THE CHAIRMAN: We have run on a bit so we will sit again at
12 1.55 not 1.50.

13 MISS CARMICHAEL: Can we save this in its current form and
14 perhaps come back to it after lunch, just in case we
15 lose it.

16 MISS BAHRAMI: That's saved as FI2710.04.

17 **(1.05 pm)**

18 **(Luncheon Adjournment)**

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