

1

Thursday, 29th October 2009

2 (Afternoon session)

3 (1.52 pm)

4

HUGH MACPHERSON

5

Examined by MR MOYNIHAN (continued)

6 Q. If we can bring up again, please, two images of Q12,  
7 that's FI0166A twice.

8 Mr MacPherson, I think we looked at Mr Wertheim so  
9 far as point numbers 1, 10 and 16 are concerned. I  
10 haven't noticed anything significantly different in  
11 Mr Zeelenberg so I will, therefore, pass on and not  
12 bring up his particular slide in relation to that. I  
13 will pass on now to point number 2.

14 A. Yes.

15 Q. Point number 2, I would understand that you are  
16 indicating a bifurcation?

17 A. Yes.

18 Q. There are two interesting questions to ask in relation  
19 to point number 2 because there are differences of view  
20 of each side.

21 First of all, to begin with, the people who  
22 challenged the identification, some of them rely on the  
23 fact that, as you may be aware, the ridges as they  
24 descend from the bifurcation point number 2 in Marion  
25 Ross, they are of different thickness; whereas it's

1 suggested in Q12 that the ridges are of equivalent  
2 thickness. That difference in thickness of ridges, one,  
3 Q12 compared with Marion Ross is relied on as a point of  
4 difference, incompatible with a match.

5 A. Yes.

6 Q. Do you wish to comment just on that?

7 A. Again, as I say, Q12 being a chance impression, if we go  
8 back to points 11 and 12 you can see on the left-hand  
9 side the ridges are very thick but when you go to 11 and  
10 12 on Marion Ross's right forefinger they are thinner.

11 So, again, to me it's just an indication of the  
12 development technique that's been used. I wouldn't see  
13 that as a difference.

14 Q. The subtlety to what has been advanced by Mr Zeelenberg  
15 and Mr Wertheim, for example, in relation to this was  
16 the suggestion that if it were due to, for example,  
17 pressure or development technique then where features  
18 are in close proximity, such as the two descending legs  
19 from the bifurcation number 2, then there might be an  
20 expectation that the development technique or the  
21 pressure would react equally on the two and not  
22 differentially.

23 Is that something that you would see any force in?

24 A. Well, on the right-hand impression I hesitate to use the  
25 word it was taken in ideal situations but, obviously, as

1 I described yesterday, the right forefinger was recorded  
2 by placing black powder and then being lifted by means  
3 of white adhesive tape and I noticed that everyone -- I  
4 could be wrong about this -- but most of the  
5 contradicters have mentioned it's an inked impression  
6 and know they wouldn't say it would change their view  
7 but all I can say is there may have been a lack of  
8 powder at that particular point where it's been lifted  
9 from the deceased's forefinger.

10 Q. The other point that I wish to put to you just for  
11 comment on the same theme of the clarity being such as  
12 to be open to argument, you may be aware that some of  
13 those, including Mr Mackenzie, some of those who  
14 identified do not see the ridge structure at point 2 as  
15 a bifurcation.

16 A. Okay.

17 Q. But rather what they see is the thinner of the two  
18 ridges as it ascends in fact passes by the point where  
19 the bifurcation might otherwise be formed and continues  
20 on up on the inside, so runs between the ridges just to  
21 the side of point number 16 and up beyond point number 1  
22 and ends at a ridge ending and, to my eye, the ridge  
23 ending is just above the red line that comes down to  
24 identify point number 1, so that in fact if I can  
25 describe it in lay terms, the feature is one of a

1 curling ridge that, in fact, continues on up inside to a  
2 point further towards the top where it ends in a ridge  
3 ending.

4 First of all, just looking at Marion Ross, can you  
5 see features that would be consistent with that  
6 interpretation of Marion Ross?

7 A. Can I highlight the ...?

8 Q. Yes.

9 A. If I could draw in, what I see --

10 Q. It's not so much --

11 A. Well, I'd like to --

12 Q. Okay.

13 A. If you follow the ridge down the right-hand leg like so  
14 **(indicated)** and for me the bifurcation is there  
15 **(indicated)**.

16 THE CHAIRMAN: Slightly higher up, would it be?

17 A. Sorry, that's not very good. That's the bifurcation  
18 that I would be referring to **(indicated)**.

19 MR MOYNIHAN: Yes.

20 A. What I believe you have is an incipient ridge like so  
21 **(indicated)** to the left-hand side of the bifurcation.  
22 Unfortunately, as we've previously discussed on many  
23 days sometimes one feature like an incipient ridge will  
24 show in one print but not show in the mark and I believe  
25 the incipient would be in that region **(indicated)** but it

1 just doesn't show.

2 Q. I am grateful to you. So you do not see whether it is  
3 an incipient or a continuation of the left ridge as  
4 joining the bifurcation, you simply do not see the ridge  
5 structure in that location?

6 A. No.

7 MR MOYNIHAN: I am grateful to you.

8 If we could save that image, please.

9 MISS BAHRAMI: That's saved as FI2910.18.

10 MR MOYNIHAN: What I would like to do is move on to point  
11 number 3 and if I bring up FI0166A twice over again,  
12 please.

13 Your description of the characteristic that is  
14 feature number 3?

15 A. A bifurcation.

16 Q. There are a number of points that arise in relation to  
17 point number 3 that are raised for your comment. In  
18 responding to that comment I will give you the  
19 opportunity to paint the feature as you see it.

20 The first comment is the area that I suggested to  
21 you by overview which feature number 3 is on QI2, I  
22 suggested to you was an area of smear or swipe?

23 A. Yes.

24 Q. The reason for that is that there is a series of  
25 parallel lines, not quite directly straight up and down,

1           there's an element of curve to the end, the series of  
2           parallel lines that plainly have the appearance of not  
3           forming part of another fingerprint --

4    A.    Yes.

5    Q.    -- coming down and there is indeed a lighter area and  
6           point number 3 appears in that area.

7           First of all, do you agree with the proposition that  
8           there is an area of smearing or swipe that would seem to  
9           have superimposed itself upon part of Q12?

10   A.    Yes, I would.

11   Q.    And that point number 3 occurs in that area?

12   A.    I would say it's just below that area, yes.

13   Q.    One of the points again would be, given the clarity of  
14           that area, are you confident there is indeed a feature  
15           to be seen in Q12?

16   A.    Yes.

17   Q.    And it is a bifurcation?

18   A.    Yes.

19   Q.    Insofar as its appearance is concerned, please just  
20           enlarge Q12 as you see fit to mark in the characteristic  
21           as you see it. **(Pause)**

22   A.    See the ridge coming down on the left-hand ridge like so  
23           **(indicated)** and the right-hand ridge like so  
24           **(indicated)**, and obviously the equivalent on the other,  
25           Marion Ross's print, there's a bifurcation down.

1 MR MOYNIHAN: If we could save that particular image,  
2 please.

3 MISS BAHRAMI: That's saved as FI2910.19.

4 MR MOYNIHAN: What I want to do on this occasion is to look  
5 at both Mr Wertheim and Mr Zeelenberg. I will begin  
6 with Mr Wertheim and bring up FI2309.17.

7 If I can just enlarge Mr Wertheim's drawing so we  
8 have the two interpretations side-by-side. The blue and  
9 the red may in fact have been a combination of  
10 Mr Wertheim and me in relation to the smear. In fact, I  
11 have taken down ... if we could put what is on the ...

12 **(Pause)**

13 Can I bring up on the right-hand side FI2910.19.  
14 What I have actually now brought up on screen are the  
15 two alternative interpretations. On the right is your  
16 interpretation with the bifurcation.

17 A. Yes.

18 Q. On the left Mr Wertheim, the red and blue stripes are to  
19 indicate the smear coming through. The yellow is to  
20 indicate the approximate location of the point number 3.  
21 I understand Mr Wertheim to say that insofar as he can  
22 see ridge structure, the ridge structure would be as  
23 marked in green and, therefore, he would say no evidence  
24 of a bifurcation in that location.

25 A. Okay.

1 Q. Do you see that?

2 A. Yes.

3 Q. Again, just looking at the matter as he has drawn it,  
4 are you indicating that there is evidence there of ridge  
5 structure which has been omitted by Mr Wertheim?

6 A. Yes, I think you can see that the ridge comes up and  
7 bends in just there. Admittedly, above that area there  
8 is the slippage or smearing or whatever that you were  
9 referring to.

10 MR MOYNIHAN: I might as well save those as a pair,  
11 actually.

12 MISS BAHRAMI: That's saved as FI2910.20.

13 MR MOYNIHAN: Can we go then to Mr Zeelenberg's presentation  
14 and bring it up to begin with in PowerPoint, AZ0061, and  
15 begin at slide 146.

16 Mr Zeelenberg is going to begin with a point number  
17 3. I think we will just have to be attuned to the fact  
18 that though he believes his point 3 to be the same as  
19 your point 3, to my eye they are not the same.?

20 A. No.

21 Q. In fact, is your point 3, if I can just locate on the  
22 PowerPoint just now where the arrow is  
23 **(indicated)** ... sorry, the arrow doesn't stay for very  
24 long.

25 A. The point 3, if you go up to the bifurcation, just where

1           you were ...

2       Q.    Yes, yes. Sorry, it is there **(indicated)**.

3       A.    Yes, that is right.

4       Q.    So the bifurcation that you in fact call number 3 is one  
5           intermediate ridge to the right but at the same level as  
6           what Mr Zeelenberg has marked as number 3?

7       A.    Yes.

8       Q.    We will be conscious of that, I think he has a later  
9           slide where he has the SCRO point number 3 correctly  
10          positioned but, nonetheless, what I want to ask you  
11          about is Mr Zeelenberg's point of difference number 3.  
12          He is going to demonstrate an interpretation of Marion  
13          Ross and Q12 which would suggest that the point he has  
14          marked as number 3 is a point of difference.

15      A.    Okay.

16      Q.    So let us look at that now just conscious that it is  
17          Mr Zeelenberg's point number 3 and it is not common to  
18          SCRO.

19                What he has drawn is the -- he begins with the right  
20          leg of the bifurcation, number 2. Do you see that?

21      A.    Yes.

22      Q.    As a yellow line of dots, coming down to a point about  
23          6 o'clock on the clock he has an intervening ridge  
24          coming in on which he has inserted a red spot, and the  
25          red spot is his point number 3, with adjacent to it, to

1 its right, again a continuous ridge running up.

2 If I understand correctly what he has indicated on

3 Q12 is that he can see the two continuous ridges but

4 there is an absence of the ridge ending which he has

5 indicated as his point of difference, number 3.

6 A. Number 3, yes.

7 Q. Do you understand?

8 A. Yes.

9 Q. Do you have any comment on what he is suggesting here,

10 that there is a ridge ending in Marion Ross which is

11 absent in Q12 and, therefore, an incompatibility

12 inconsistent with a match?

13 A. Yes. I would have to -- can I ask for a clean version

14 of Q12?

15 Q. Yes, you can. A clean version that there is, if I can

16 bring up on Trial Director AZ0061, slide 144. I see

17 what has happened. When you say, sorry, a clean

18 version, do you mean a completely unmarked version or

19 are you happy ... what I will do is if I can bring up

20 then again, please, FI0166A twice.

21 First of all, so that we can locate this, your

22 point 3, as you have said, is to the right?

23 A. Yes.

24 Q. Therefore, on Marion Ross I am understanding

25 Mr Zeelenberg to be pointing to the ridge that enters

1 and stops at roughly where my cursor is just now  
2 **(indicated)**?

3 A. Yes.

4 Q. Let us just mark that with an arrow **(indicated)**. Is  
5 that correct?

6 A. That's correct, yes.

7 Q. So that arrow on the right-hand side is pointing to  
8 Mr Zeelenberg's point of difference number 3.

9 Where is it that on this particular image of Q12 you  
10 see that ridge entering and ending?

11 A. It is very, very faint and that was one of the reasons  
12 that it wasn't chosen to illustrate the identification.  
13 It's just in there **(indicated)**, which would be  
14 Mr Zeelenberg's point number 3.

15 You would then go one intervening ridge and you'd  
16 come to what is SCRO's point 4.

17 Q. There does seem on this view to be quite some distance  
18 between the ridge ending you have indicated as  
19 Mr Zeelenberg's point of difference number 3 and where  
20 you have marked the SCRO point 3 because just as they  
21 are marked now the SCRO point 3 is not, in fact, far  
22 removed from the yellow arrow, that they are roughly the  
23 same level; correct?

24 I will show you what I mean. Mr Zeelenberg's point  
25 number 3 is just opposite the point of the arrow, a

1 little below it and opposite. Your point number 3 is  
2 the red dot immediately above and to the right of the  
3 yellow arrow. So they are in close proximity --

4 A. Sorry, his point 3 is what you've indicated with the  
5 yellow arrow?

6 Q. His point 3 is where the cursor arrow is just now  
7 **(indicated)**.

8 A. Yes.

9 Q. If you allow me just to control the mouse. His point 3  
10 is where my arrow is just now. So it's immediately  
11 above and to the left of the point of the yellow arrow.  
12 Your point 3 is, in fact, at a similar level, give or  
13 take a millimetre or two, and above the point of the  
14 arrow; whereas, as drawn, there seems to be a  
15 considerable distance between the ridge ending that you  
16 have drawn and point number 3?

17 A. Yes, there is slight movement in the mark, yes.

18 Q. So that you put down to slight movement in the mark?

19 A. Yes.

20 THE CHAIRMAN: Is the enlargement greater? If the  
21 enlargement is greater would that not make the space  
22 look greater?

23 A. That's a possibility, sir, yes.

24 MR MOYNIHAN: If I can save those images, please.

25 MISS BAHRAMI: That's saved as FI2910.21.

1 MR MOYNIHAN: If I could also go back to the PowerPoint,  
2 please, AZ0061 and on this occasion slide 157.

3 On this occasion, Mr MacPherson, just satisfy  
4 yourself, I think Mr Zeelenberg is indeed talking about  
5 the SCRO point number 3. We will just bring it up to  
6 make sure that that is correct.

7 Is that correct? He is now talking about the SCRO  
8 point number 3?

9 A. Yes.

10 Q. The point that we were just talking about before, his  
11 point of difference number 3, is the red dot immediately  
12 below the point number 3 marked and to the left?

13 A. Is it not the ridge above?

14 Q. No, the point we were just talking about, about the  
15 ridge ending that intervenes -- oh, sorry, it may be,  
16 yes --

17 A. No, that's our point 4. What he's indicating there is  
18 point 4.

19 Q. I take your point.

20 Let us look at what he is telling us about the SCRO  
21 point 3. What he is simply saying is point 3 is  
22 inserted in a mark in a distorted area of very poor  
23 quality, distorted through a vertical swipe. Just go  
24 back. So he is simply highlighting an area in the red  
25 circle in the bottom left and saying that the detail is

1 absent.

2 You are satisfied, are you, the detail that you have  
3 described is present?

4 A. Yes. I can't mark this, can I not?

5 Q. No, you can't. If you are happy with the drawing you  
6 did earlier, so be it.

7 A. Yes.

8 Q. If we can move on then to point number 4, SCRO point  
9 number 4. Just for convenience, I will stay with  
10 Mr Zeelenberg's slide. We will see in relation to SCRO  
11 point 4, first of all, has he correctly plotted point  
12 number 4?

13 A. Yes.

14 Q. So then we look to see what he is telling us is his view  
15 of point number 4. **(Pause)**

16 I have taken us through what he has indicated.  
17 First of all, in charting point number 4, SCRO point  
18 number 4, he has reinserted as mystery point X, his  
19 point 3, his difference number 3 that we have discussed  
20 before, and he is, if I understand it correctly,  
21 suggesting that your point number 4 is not, in fact, to  
22 be seen in the ridge structure in Q12. So he says:

23 "Point number 4, like point number 3 in the  
24 reference print, is inserted in the mark in a distorted  
25 area of very poor quality. An adjacent point that fails

1 in the mark in an area of better quality is ignored."

2 So he would seem to be making two points here:

3 firstly, he cannot see point 4 in the ridge structure;

4 and, secondly, insofar as there is clarity in the image,

5 he sees greater clarity in the area where he has

6 inserted point X, that is his point of difference 3, and

7 yet that has not been picked up. So he is, I think,

8 suggesting inconsistency in charting.

9 That is the question. Perhaps if we can go back

10 then to the Q12 image with this in mind and enable you

11 to explain your position. Perhaps we could just use the

12 same images that we have already on screen and just work

13 from there because plainly the point that is his point X

14 is helpfully illustrated by your mustard line just above

15 the red line.

16 Is that correct?

17 A. That's correct.

18 Q. Then you have marked already as the light blue line the  
19 point number 4?

20 A. Yes.

21 Q. Now, on this occasion the interpretation of the point  
22 number 4 is what?

23 A. A ridge ending.

24 Q. Are you content that that is simply the ridge ending  
25 that you have drawn?

1 A. Yes.

2 Q. I am grateful. Just again to be consistent, we are  
3 obviously looking at the image FI2910.21, the last saved  
4 image for that particular passage, so by convenience it  
5 includes point 4.

6 If I can then take you on to points 5 and 6 --

7 A. Yes.

8 Q. -- it is missing on the screen but it is helpful just in  
9 this detail: point 5 I would understand to be the red  
10 line I am pointing to just now (**indicated**), this is  
11 point number 5. Is that correct?

12 A. I am sorry where are you, Mr Moynihan?

13 Q. If you look at the pen on the screen, the red line  
14 coming in is taking us to point number 5?

15 A. Yes, that would be correct.

16 Q. I will just write in 5 so that we have it. And beneath  
17 it point number 6?

18 A. That's correct, yes.

19 Q. In fact, if I understand it correctly -- and I will use  
20 my lay terms and you will correct me if I'm wrong --  
21 point number 5 is a bifurcation, point number 6, again,  
22 is that a spur or not?

23 A. Well, it's a ridge ending -- a bifurcation and a ridge  
24 ending. Yes, it could be termed as a spur, yes.

25 Q. If I understand it correctly, what has been suggested in

1 relation to the points 5 and 6 is that the detail in Q12  
2 is not sufficient to permit of the conclusion that 5 and  
3 6 are present. Apart from anything else, what would be  
4 suggested is that point 5 is where the pen tip is just  
5 now (**indicated**). It's actually a part of the marking  
6 that's actually quite difficult to see because it's  
7 immediately adjacent to an area of black marking.

8 A. Yes.

9 Q. If I can just mark, again I will do it staying above it,  
10 point number 5, in fact, is the dot just below where I  
11 put in the number 5?

12 A. That's correct, yes.

13 Q. Number 6 is immediately beneath it?

14 A. That's correct.

15 Q. What is there about Q12 that admits of sufficient  
16 clarity to say emerging out of that black area -- and  
17 the black area is roughly where I've drawn the number  
18 5 -- that there is sufficient clarity to draw in the  
19 bifurcation which is point number 5 leading to the ridge  
20 ending or spur as I call it, number 6?

21 What we may do -- it is probably not helping you  
22 that I've got the number 5 there. If we could save this  
23 image.

24 MISS BAHRAMI: That's saved as FI2910.22.

25 MR MOYNIHAN: If we could go back then to the preceding

1 saved one, FI2910.21, what I am doing, Mr MacPherson, is  
2 building up a picture now as we go round. So I think we  
3 can follow, without me inserting misleading points, what  
4 5 and 6 are. What I am asking you is if you can explain  
5 how it is that through the area of black you can discern  
6 with sufficient clarity features that are consistent  
7 with Marion Ross, points 5 and 6.

8 A. My belief is, yes, there certainly is a black area  
9 coming in but you can follow this ridge down  
10 **(indicated)**. That's the left-hand side of it and you  
11 follow the ridge down. That's the right-hand side of  
12 it. Yes, there is interference but I believe that the  
13 interference is just to the right-hand side of that  
14 bifurcation.

15 If I could illustrate, just beside point 6 again  
16 another couple of characteristics that weren't used that  
17 I could maybe illustrate by an arrow. **(Indicated)**

18 Just to the right of point 6 there is a ridge ending  
19 up and a ridge ending down. It's like a broken ridge,  
20 if you like, just there **(indicated)**. That  
21 corresponds -- if I could highlight this ... just there  
22 you have basically a split ridge, a ridge ending up and  
23 a ridge ending down adjacent to point 6.

24 MR MOYNIHAN: We will try and capture what is on screen just  
25 now.

1 MISS BAHRAMI: That's saved as FI2910.23.

2 MR MOYNIHAN: What I don't know is whether we have lost the  
3 detail you have drawn just before this. If we can go  
4 back then, please, to what was on screen -- I don't  
5 think we have ... no, we haven't lost it just now.

6 Again, just building up the picture, I will go  
7 slightly out of order. I will skip 7 and 8 just now.  
8 What I want to look at is point number 9.

9 Point number 9, if I understand it correctly, SCRO  
10 point number 9, is the point that my cursor is on just  
11 now (**indicated**). In other words, it's the point where  
12 the red line runs from the bottom of the picture  
13 straight up through the tip of the red arrow and ends  
14 just above the blue marking for points 5 and 6. Is that  
15 correct?

16 A. Point 9 is just to the left of 5 and 6, yes.

17 Q. So it is where the cursor is just now?

18 A. Yes.

19 Q. What I want to do is to take down what we have on screen  
20 just now and come back. I am thinking that I am taking  
21 down FI2910.22 and I am going to bring up  
22 Mr Zeelenberg's presentation again, AZ0061, slide 160,  
23 in PowerPoint.

24 What he begins with on slide 160 are the points 5  
25 and 6 we've just discussed; correct?

1 A. Yes, yes.

2 Q. Then as we proceed through he is going to discuss now  
3 point 9. Has he correctly positioned point 9?

4 A. Yes.

5 Q. What he is doing is drawing in ridge structure insofar  
6 as he can see it. If I understand it correctly, his  
7 problem is that he cannot see 5 and 6 falling where SCRO  
8 see it and also number 9 in that area. In effect, he  
9 seems to be saying you can have two of those but not the  
10 three. That was a very detailed point.

11 Do you observe what he is doing?

12 A. I observe what he's doing but I can see point 9 is a  
13 ridge ending up.

14 Q. So what he is interpreting you tell us is ...?

15 A. He seems to have interpreted it as a continuous ridge  
16 straight up to my point number 5 but I think even  
17 looking at it you can see there's a kink in the ridge.  
18 The ridge comes up and kinks to the left.

19 Similarly, the ridge comes up on Marion Ross's print  
20 and kinks to the left. So if anything that's a  
21 supporting feature rather than a negative feature.

22 Q. I think also though what the point is -- and this is  
23 where the question would be you can have two but not  
24 three -- the lower of these dots, the red dots, on the  
25 right-hand side is your point 6, which you construe as a

1 ridge ending, a spur?

2 A. Yes.

3 Q. His interpretation of the ridge structure evident in Q12  
4 going from left to right would be point number 6 would  
5 be part of a continuing ridge going from where it is  
6 left and, of course, we enter the black area that is  
7 difficult to see what happens beyond that.

8 A. Yes.

9 Q. Whereas you have point number 6 as simply a ridge  
10 ending. So he would not see it as a ridge ending at  
11 all.

12 A. Yes.

13 Q. It is one of these points where I think his overall  
14 thesis is the clarity in Q12 is just not there to make a  
15 definitive observation on this.

16 Do you see any force in that thesis?

17 A. No.

18 Q. That is point number 9.

19 If I then take you to points 7 and 8, in relation to  
20 Mr Zeelenberg we will just continue with his slides and  
21 we will go on now to slide 161. So I think if I just  
22 finish 160 you will see if point 6 was marked in the  
23 proper direction point 9 would become non-existent. So,  
24 as I said to you, that's the proposition but we have  
25 commented on that.

1 Slide 161 -- I'm going now to look at 7 and 8 -- has  
2 Mr Zeelenberg correctly marked SCRO point 7 and 8 both  
3 in Q12 and in Marion Ross?

4 A. Yes.

5 Q. As I proceed through the slides, he says:

6 "The dominant direction of the grey scale  
7 information is horizontal! To claim that a regular  
8 system of vertical lines is present AND that ridges can  
9 be seen as ending [he said] is beyond good practice."

10 Perhaps, since he is talking about grey scale being  
11 horizontal, he is presumably assuming that what he can  
12 see is, as I am showing just now -- I cannot mark this  
13 because it is PowerPoint -- he is saying grey going from  
14 left to right in a horizontal position and, therefore,  
15 reluctant to draw ridges vertically consistent with the  
16 interpretation.

17 So if I take it back, because it otherwise obscures  
18 the detail, he is questioning 7 and 8 in the positions  
19 marked because he says the detail in the red circle on  
20 the left is simply insufficient to reach any firm  
21 conclusion.

22 You obviously take a different view?

23 A. Yes.

24 Q. Well then let us return to your slide and perhaps if we  
25 go back again, building up a picture, to FI2910.22. In

1 fact, we'll try 23. Sorry, I have not been keeping  
2 track. **(Pause)**

3 I think what I feared has actually happened, and  
4 that we may have lost, in that point where you were off  
5 to show number 9, we may have lost the markings for  
6 points 5 and 6.

7 Sir, I see the time. We were going to have a break  
8 at some stage so what I suggest is that we will  
9 reinstate points 5 and 6 in this because I just wanted  
10 to build up one cumulative picture as we proceed. So we  
11 will reinstate points 5 and 6 and then we will come and  
12 discuss 7 and 8 with apologies to Mr MacPherson?

13 THE CHAIRMAN: Yes. We will stop now for ten minutes and I  
14 intend to rise shortly before 4.00. So shall we say  
15 2.55.

16 **(2.46 pm)**

17 **(A short break)**

18 **(3.00 pm)**

19 MR MOYNIHAN: I am grateful to you, Mr MacPherson. In the  
20 interval, while the rest of us have been having a bit of  
21 peace, you have actually redrawn for me the detail of 5  
22 and 6 that was otherwise lost.

23 A. Yes.

24 MR MOYNIHAN: So if we can save, please, what we have for 5  
25 and 6.

1 MISS BAHRAMI: That's save as FI2910.24.

2 MR MOYNIHAN: We will just carry on from there. 5 and 6 are  
3 on the screen. 7 and 8 is what I was asking you about  
4 and I put to you Mr Zeelenberg's view.

5 If I could now ask you just to use what is available  
6 on the screen, unless you wish to use something else, to  
7 demonstrate for us how you see the ridges that are  
8 consistent with points 7 and 8.

9 A. If I could just use as a reference point, I think I  
10 marked it in earlier, just in this area here  
11 **(indicated)**, there's a break in the ridge.

12 To the right of that there's a ridge ending up which  
13 is number 7 and again to the right of -- one intervening  
14 ridge and to the right of that, it's not very well-drawn  
15 but there's a ridge ending up. Admittedly, there is an  
16 area of superimposition in this area and you have to be  
17 very careful when marking points in that area but I  
18 believe you can see 7 and 8 and they correspond next to  
19 the broken ridge of Marion Ross's 7 and 8.

20 Q. Before we lose it you did draw your pen across to show  
21 an area of superimposition. If I can then ask you, if I  
22 use yellow, can you mark for me, please, the area of  
23 superimposition or maybe just highlight it instead of a  
24 line. If we use a tool -- sorry, if I just use the  
25 mouse just now ... perhaps with Miss Allen's assistance

1           you may be able to highlight the area that is one of  
2           superimposition.

3       A.    That's the area, yes.

4       MR MOYNIHAN:   Can we save that image, please.

5       MISS BAHRAMI:   That's saved as FI2910.25.

6       MR MOYNIHAN:   We have already covered 9, 10 was part of what  
7           we began with as 1, 10 and 16 so that takes me back now  
8           to 11 and 12 where we began.

9           If I could bring up again, please, the image  
10          FI2910.13. This is what we started out, when asking you  
11          what area attracted your attention, at least today in  
12          relation to Q12, and you drew for me the bifurcation  
13          which, if memory serves me correctly, coincides with  
14          point 12 and a ridge ending is point 11, yes?

15       A.    Yes.

16       Q.    I had asked you about the ridge feature in Marion Ross  
17           which occurs between the two open ended lines  
18           immediately beneath point number 11?

19       A.    Yes.

20       Q.    That was absent in Q12 but your view was that that could  
21           just be one of those things that occurs with a piece of  
22           incipient ridge?

23       A.    Exactly like I think I mentioned to the left of point 2.

24       Q.    What I would like to show you is the work that's been  
25           done by your colleague, Mr Mackenzie, in relation to

1 Q12. I have two booklets that I can give you. The one  
2 that will be brought up on screen is CO2005H. Keep what  
3 is on screen just now for a reason and also bring up a  
4 copy of CO2005H. **(Pause)** If you just proceed through  
5 CO2005H just now. If we just proceed through ... and  
6 again. Stop there just now.

7 If you look at page number 3 in Mr Mackenzie's  
8 booklet and if I can explain to you this is a charting  
9 that Mr Mackenzie did for Mr Gilchrist who was then the  
10 Procurator Fiscal, now Sheriff Gilchrist. It is a  
11 charting of Q12 and the area that I am interested in, in  
12 Mr Mackenzie's charting, are his points 27 and 29. I am  
13 having difficulty doing this in sufficient detail so it  
14 can be seen.

15 His 27, does that coincide with the bottom end of  
16 this feature **(indicated)**, in effect, opposite your  
17 point 11?

18 A. Yes.

19 Q. His point 29 coincides with your point 12?

20 A. Yes.

21 Q. So your 11 and 12, in approximate location, coincide  
22 with his 27 and 29?

23 A. Yes.

24 Q. If we can then proceed in the top to the digital page 7,  
25 for you it is page 6, in the book form. So digital

1 page 7 in the top.

2 We will see a legend --

3 A. Sorry, page 7?

4 Q. Page 6. It's okay the digital version is one page out

5 always.

6 You will see the description that Mr Mackenzie gives

7 of the characteristics 27 and 29 are that they are each

8 a bifurcation.

9 A. That's correct, yes.

10 Q. If we go back, please, to, for you page 5, for us

11 page 6, do you see that what he has drawn is a red line

12 on the inner part of the ridge detail between 27 and 29?

13 A. Yes.

14 Q. What he has drawn utilises the ridge feature that you

15 are calling an incipient to, in fact, in reality, close

16 off a lake?

17 A. I think the way Mr Mackenzie has marked it, it looks

18 like a ridge ending.

19 Q. What he tells us though is, by his legend, he tells us

20 it's a bifurcation?

21 A. Okay. Well, I see it as a ridge ending.

22 Q. If he's construing 27 as being a bifurcation, then what

23 he is construing is that in the area of 27 and 29 we

24 have two bifurcations in association that would form a

25 lake?

1 A. Yes.

2 Q. That is not your interpretation?

3 A. That's not my interpretation, no. I have to say I've  
4 don't believe I've ever seen this.

5 Q. There may well be reasons that you would not have seen  
6 it. That went into the Crown Office so you may not have  
7 seen it.

8 Again, what we have now top and bottom are two  
9 alternative interpretations of this area. Again, one of  
10 the themes I have running -- these are two alternative  
11 interpretations of this area that, in fact, happen to be  
12 by two individuals who are of the same conclusion, as  
13 Mr Mackenzie agrees with the identification; is that  
14 correct?

15 A. That's correct, yes.

16 Q. If I were to insist to you that what you see in Q12  
17 ought properly be construed -- sorry, let us say what is  
18 seen in Marion Ross with the incipient ridge, if I were  
19 to insist to you that that is an essential part of the  
20 ridge structure, an essential part of a bifurcation  
21 forming a lake, we would perhaps encounter a fundamental  
22 difference between what is present in Marion Ross and  
23 what you understand to be present in Q12 because you see  
24 two ridges descending from point 12 as divergent ridges,  
25 not meeting and not forming a lake.

1 A. I believe it's a ridge ending, yes.

2 Q. But the difference would be, if I insisted, let us say

3 if I were insistent -- I am not, this is just an

4 argument -- if I were insistent that the correct

5 understanding of Marion Ross were that there's a lake in

6 that position ...

7 A. Well, again I can only reiterate what I said before.

8 Possibly due to the superglue or whatever that's been

9 used, the incipient ridge hasn't been shown on the

10 left-hand image, mark QI2, but on the right-hand side it

11 has been shown because it's been taken under ideal

12 conditions.

13 All I can say is point 27 on Mr Mackenzie's chart

14 would appear to be, at the bottom end of it where his

15 arrow is, it looks to me like a ridge ending.

16 Q. Perhaps I will only try this one more time,

17 Mr MacPherson. It just a proposition I am trying to

18 run.

19 There is in each of Marion Ross and QI2 an event.

20 As fingerprint examiners would say, there's an event in

21 this location. If I construe that event differently in

22 each of the two, so I say in Marion Ross that event is a

23 lake and in QI2 it's an open-ended bifurcation where the

24 two ridges at point 11 do not meet and continue to

25 diverge, would I, by reason of that difference of

1 interpretation, in fact, have set up a mismatch between  
2 Marion Ross and Q12?

3 A. I don't believe so. I think we've been talking for days  
4 about appearances and differences, explainable  
5 differences, and I think I've tried to explain it. I  
6 don't see what else I can say.

7 Q. So, in other words, the difference you would say is that  
8 the piece in Marion Ross necessary to close off the lake  
9 is absent from Q12 because incipients are not always  
10 reproduced?

11 A. Absolutely, yes.

12 Q. Whereas your colleague, Mr Mackenzie, might argue that  
13 the piece is, in fact, present and to be discerned in  
14 Q12?

15 A. He may well do, yes -- or he does do, sorry.

16 Q. Sorry?

17 A. He does do, yes.

18 Q. He obviously does?

19 A. He does, yes.

20 Q. You see that then enables us to look at perhaps some of  
21 the others. Let us take if we return to Mr Zeelenberg,  
22 AZ0061, and on this occasion go to slide 162. Perhaps I  
23 will just click through to slide 162.

24 Mr Zeelenberg is looking at point 12 as you have  
25 drawn, point 11 in fact he has taken on the lower rather

1           than the upper leg, yes?

2     A.    Sorry, can you just repeat that, sorry?

3     Q.    I apologise. Point 12 he is taking correctly

4           positioned?

5     A.    Maybe slightly lower but, yes, that would be about

6           right, yes.

7     Q.    Point 11 he has put on the lower leg?

8     A.    Yes.

9     Q.    Is that where you would position it?

10    A.    No.

11    Q.    You are on the upper leg?

12    A.    No, I think you can -- I'm in the upper leg. You can

13           actually see the bottom leg that you're referring to

14           where he has placed the dot actually starts to kink up

15           slightly and my point, my ridge ending, would be just

16           above where the dot is.

17    Q.    That's fine. So we've got to understand Mr Zeelenberg

18           is slightly out with the lower of the two dots.

19           In fact, for some reason in the upper picture he has

20           in fact put the dot in the correct position, that is in

21           the upper ridge?

22    A.    Yes, that's correct, in the upper picture, yes.

23    Q.    We will see what he has drawn. In fact, if I just work

24           back a few slides, we will see what he has drawn. First

25           of all, if I understand him correctly the area of,

1 perhaps, purple dots coming top to bottom, demarks an  
2 area of disturbance?

3 A. Yes.

4 Q. You are reasonably happy, an area of disturbance  
5 somewhere in this vicinity?

6 A. Maybe not stretching up as far but, yes, I believe there  
7 is, yes.

8 Q. Then he has drawn, you will see, what he discerns as the  
9 ridge structure in this vicinity and it would seem that,  
10 in fact, he has drawn the ridge structure of point 11  
11 closer to your interpretation of an open ridge  
12 structure?

13 A. Yes.

14 Q. Rather than a lake?

15 A. Yes.

16 Q. So what he is, in fact, saying is that he does not see  
17 point 11 and perhaps that may simply be that he was  
18 inferring that point number 11 was a bifurcation and he  
19 hasn't seen it and he would be correct, if that is the  
20 interpretation?

21 A. Yes. He's quite right. To the right of point 11 there  
22 is disturbance, yes; I would agree with that.

23 Q. If we look at point number 12 for Mr Zeelenberg, what I  
24 have to do is to jump back to slide 148. This is  
25 looking at his areas of difference. His point number 4

1 is what you have drawn as SCRO point 12, yes?

2 A. Yes, it would be slightly higher than where he has  
3 indicated.

4 Q. Slightly higher but nonetheless in the --

5 A. Yes, the correct area, yes.

6 Q. -- correct location.

7 What we will in fact see as we click through is that

8 what he is indicating is his interpretation of Q12 is

9 that where on Marion Ross there is the bifurcation

10 number 12 --

11 A. Yes.

12 Q. -- leading simply to a ridge that carries on up to, one

13 assumes, an ending at a point just beyond the green

14 dots, on Q12 he is in fact seeing a ridge enter from

15 above point 11, run up and in fact form a second

16 bifurcation above point 12 that's absent from Marion

17 Ross?

18 A. Well, I think I marked earlier on, when I marked 11 and

19 12, I marked to the right of 11 and 12 what I perceived

20 was a split ridge and possibly I think that's what he's

21 indicating there as he runs up for a second bifurcation

22 above characteristic 12.

23 Q. If we look then back at your FI2910.13, and I will just

24 highlight -- perhaps if we just have the -- sorry, is

25 that sufficient just for your purposes?

1 A. Yes.

2 Q. Your interpretation of that would be that there is an  
3 incoming ridge which ends and above it a descending  
4 ridge which overlaps but the two do not coincide?

5 A. It's maybe -- I've maybe not marked that as well as I  
6 could have but, yes, in general, yes, that's what I  
7 mean.

8 Q. In that case if I finish with 11 and 12 at that, I am  
9 now going to move to point number 13. So if I go back  
10 to FI0166A twice over, please, point number 13 is to the  
11 left and below point number 12?

12 A. Yes.

13 Q. In relation to point number 13, what I have asked some  
14 other witnesses about in relation to point number 13 is  
15 the feature that is immediately to the left of point  
16 number 13, which I have been describing as the hook,  
17 which has no counterpart in Marion Ross?

18 A. Yes.

19 Q. Do you see where I am terming the hook with no  
20 counterpart in the print of Marion Ross?

21 A. Yes.

22 Q. No expert on either side of the argument has made  
23 anything of what I've called the hook?

24 A. Yes.

25 Q. Can you tell me why the hook has got no significance at

1 all?

2 A. For me I think we discussed earlier about the  
3 superimposition of possibly Mr Asbury right middle and  
4 for me that's an area, a no-a area, a red flag area or  
5 whatever you want to call it but I wouldn't place any  
6 reliance on it.

7 Q. Because it answers the particular point about the hook,  
8 I will put it in a more general way. Could you assist  
9 me, please, by marking for me the area that is the no-go  
10 area, the area of superimposition in this locality.

11 A. On the outside of characteristic 13 there's a genuine  
12 ridge going down that way **(indicated)**.

13 Q. Sorry, I didn't understand, when you said --

14 A. Yes, there's a ridge on the outside of characteristic  
15 13.

16 Q. So what you have drawn in in yellow is a genuine ridge?

17 A. Is a genuine ridge on the outside of characteristic 13  
18 but the area ... **(Pause)**

19 It's roughly like so **(indicated)**. I believe there's  
20 interference in this area here that I've indicated, so  
21 Basically I wouldn't go into that area.

22 I think you can see a line just above there and then  
23 you've got it looks like possibly a whorl again but I  
24 wouldn't like to say for definite. It could be a loop  
25 but it gives the appearance of being a whorl. In that

1           general direction, to the left of point 13, I would say  
2           there's too much interference.

3       Q.    Just so we can capture that, if I can perhaps make some  
4           marks, the line that you are referring to have I just  
5           inserted it in the yellow across? Was that the line you  
6           were referring to?

7       A.   Well, I wouldn't go as far as across as you have done.

8       Q.    In that case what I will do is take it away and let you  
9           draw in the lines.

10                 If you then just mark in the line that ...

11      A.    Something like so (**indicated**).

12      Q.    Then you were indicating that there's, I think you said  
13           a loop pattern. Can you just mark for me, not the whole  
14           pattern, just the outer boundaries of the loop pattern?  
15           What I am trying to see is where, as we approach Q12,  
16           that interference ends.

17      A.    There quite possibly could be a whorl pattern in there  
18           but I wouldn't like to say for definite. It could be a  
19           loop to the right or ...

20      MR MOYNIHAN:   I think we had better save that.

21      THE CHAIRMAN:   That means really that 13 is on the margin.

22      A.    It's on the margin, sir, yes. Would I be able to  
23           draw --

24      MISS BAHRAMI:   That's saved as FI2910.26.

25      MR MOYNIHAN:   Mr MacPherson --

1 A. Is it possible to get a clean image of Q12?

2 Q. Yes. In fact, just before we leave this -- and I will  
3 let you draw just in a second -- the one point that I  
4 was going ask you about, and it helps with the areas of  
5 disturbance mentioned in answer to his Lordship's  
6 question about this being right on the margin, would  
7 there be some suspicion of ambiguity in this area since  
8 it is simply so close to that area of disturbance?

9 A. I feel you can see there's broken ridges in that area,  
10 the area that you're talking about, the hook and  
11 possibly lower than that. It's just too broken up to,  
12 basically, try and decipher.

13 Q. But if I can mark something to show you where I am  
14 thinking about, for example, even if it is an area of  
15 clear detail, you have marked as, is it a ridge ending,  
16 point number 13?

17 A. Yes.

18 Q. You have marked on what is in the middle of an area of  
19 black line, obviously with a grey gap -- so if I put it  
20 as one piece -- why is it wrong to regard that as one  
21 piece and not see the tip of the green as a ridge  
22 ending, in other words, where the black ends and we're  
23 going to grey?

24 A. If I could illustrate, but before I move away from this,  
25 can I --

1 MR MOYNIHAN: It is okay. What we will do is save that  
2 image and then we will get back to what you want, which  
3 is a clear image. We will save this one and go back to  
4 a clear image.

5 MISS BAHRAMI: That's saved as FI2910.27.

6 MR MOYNIHAN: What I will do is on the left-hand side of the  
7 screen I will bring up again, please, FI0166A and I will  
8 enlarge it and that will give you, Mr MacPherson, the  
9 benefit of a clean image with point number 13. Sorry, I  
10 have been interrupting you for a while. There is a  
11 point you wish to make.

12 A. Simply the fact that above point 13 there is a small  
13 island which corresponds to the small island like so.

14 Q. I suppose what I am asking is that is choosing, in  
15 relation to QI2 on the left, it's choosing to attach  
16 weight to the fact that there is a space evident between  
17 the black almost circle that's point 13 and the black  
18 shape above?

19 A. Yes.

20 Q. While not attaching weight to the fact that there is  
21 similarly a space between the bottom end of the black  
22 shape that's point number 13 and any other corresponding  
23 piece of black marking.

24 Do you follow me?

25 A. You mean below point 13?

1 Q. What I am suggesting to you is immediately above -- if I  
2 take the mouse -- immediately above point number 13,  
3 there is a change in colour from black, to grey, to  
4 black and you attach significance to that as a ridge  
5 ending, a defining characteristic?

6 A. Yes.

7 Q. Whereas beneath the shape, because point number 13 is  
8 really against a black, almost a circle, beneath the  
9 black circle there is similarly a gap between it and the  
10 next black shape which I am roughly pointing to just  
11 now --

12 A. Yes.

13 Q. -- and I can mark with an arrow.

14 What I am asking you to explain, in effect, is why  
15 recognise and, indeed, attach matching significance to  
16 one gap, a small gap, in ridge detail while in fact  
17 being prepared to literally overwrite and see a  
18 continuing ridge in another gap?

19 A. If I could -- I mean, what you could argue is that where  
20 I'm indicating at the moment ... **(indicated)** there's, if  
21 you like, a small dot and it could be argued that just  
22 below point 13 there's a small dot and you could argue  
23 that there's a gap between the small dot and the ridge  
24 coming up. You can argue that the ridge coming up stops  
25 there **(indicated)** and there's a small dot.

1                   Also to the right of point 13, if you come down that  
2                   ridge, now back in '97 we wouldn't be able to use,  
3                   basically, this but what there appears to be is a pore  
4                   shape like so **(indicated)** and, similarly, that appears  
5                   on Q12 and below that there is a ridge like so  
6                   **(indicated)** and again below that there is a ridge like  
7                   so **(indicated)**.

8                   So, yes, I've given weight to what I see as a small  
9                   island above point 13 but I've also have these  
10                  supportive features to the right of 13 and below 13.

11       MR MOYNIHAN:   If we save those ...

12       MISS BAHRAMI:   That's saved as FI2910.28.

13       MR MOYNIHAN:   Sir, the next points are points 14 and 15 and  
14                  I know those those involve ridge counts and likes. I am  
15                  not going to finish Mr MacPherson today because I also  
16                  have the point towards the top of Q12 to deal with and  
17                  it may, in fact, be kinder to all concerned if we leave  
18                  14 and 15 to Tuesday morning. It is not going to make a  
19                  difference to the overall timing.

20       THE CHAIRMAN:   No, I think among other things, Mr MacPherson  
21                  has had a very long spell so I think that is the fairer  
22                  thing to do.

23                  We will resume then on Tuesday at 10.00.

24       MR MOYNIHAN:   I am obliged, sir. Thank you.

25       **(3.40 pm)**

1 (Adjourned until 10.00 am on Tuesday, 3rd November)

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