

1

Tuesday, 3rd November 2009

2 (Afternoon session)

3 (1.50 pm)

4

HUGH MACPHERSON

5

Cross-examined by MR SMITH (continued)

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MR SMITH: Mr MacPherson, before lunch I was asking you

7

questions about the build up to the trial of Shirley

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McKie. I think the point I got to was where you

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acknowledged that this was a unique situation, as far as

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you were aware. You knew there was going to be a

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direct, head-on challenge to the identification by SCRO.

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I think you accepted that it was indeed unique?

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A. Yes, there was lots of things about the case that was

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unique, as in each person that was identified we had to

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prepare 13 or 14 separate books. It was unusual also in

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the fact that normally for court you're only require a

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joint report and two fingerprint experts to go and speak

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to it but in this instance all four people who were

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involved in the case were cited to attend.

20

Q. How long prior to the trial were you aware this unusual

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feature of all four having been cited to attend the

22

trial was taking place?

23

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

24

Q. Do you know if it was before or after the meeting you

25

had with Sheriff Murphy?

1 A. I couldn't say. I don't know.

2 Q. So the scene, I suppose, we can imagine is that after
3 you meet with the Sheriff Murphy you realise there is
4 this unique situation of a challenge being brought. You
5 and Mr Stewart would return to the office and it is
6 something that you would be keen to at least advise the
7 other two signatories to the analysis of?

8 A. Again, I can't remember if we did or not, probably, as I
9 say, or maybe we didn't know at that time they were cite
10 four people. I just can't remember.

11 Q. You must have been aware, Mr MacPherson, of the
12 possibility that either all four were going to be cited
13 or indeed that, for some reason, you or Mr Stewart might
14 be available and one of the other two would have to come
15 along in your stead?

16 A. That's correct, yes.

17 Q. The information that was imparted to you by the Advocate
18 Depute, Sheriff Murphy, was of such importance that it
19 would be logical, in fact, almost an escapable logic
20 that you would then pass on the information to the
21 others within the SCRO that this unique situation was
22 one that had at least arisen?

23 A. I can't remember if I did or not. I'm sorry.

24 Q. It would be astonishing if you didn't, Mr MacPherson,
25 wouldn't it?

1 A. I don't think astonishing. As I say, the expert goes
2 before the court on their own merits, basically.

3 Q. I am trying to imagine --

4 A. The only invite Mr Murphy gave out was for two of us to
5 go down and basically speak to him so that was it.

6 Q. After you spoke to him did you think that that was your
7 involvement in that aspect of it over or did you
8 understand you were to go away and consider it and
9 communicate with him if you had a problem with it or
10 anything of the kind?

11 A. I think it was pretty near to the -- I can't remember
12 the exact time. Was it quite near the trial itself?

13 Q. My understanding is it was very near to the trial, just
14 a matter of days before?

15 A. So it may not have happened. In hindsight, yes, maybe
16 that would have been a good idea but I don't remember it
17 happening.

18 Q. Well --

19 A. I may be contradicted regarding that.

20 Q. In particular, do you recall if you discussed it with
21 Ms McBride in the office?

22 A. I don't recall.

23 Q. Might you have done?

24 A. I may have done.

25 Q. Of course, again, I'm imagining the situation and there

1 would certainly be nothing improper about that. I don't
2 think anyone would suggest it. You get back to the
3 office and you say, "Listen, there's a couple of
4 American blokes coming across and apparently they are
5 going to say this is a mis-identification by us". That
6 would be not only obvious but almost inevitable.

7 Do you not agree with that suggestion?

8 A. Well, there was a challenge to our fingerprint evidence
9 but I presume Mr Stewart and I just thought we would be
10 involved in that challenge and that was it, basically.

11 Q. It wasn't the talk of The Steamie, was it?

12 A. It wasn't the talk of The Steamie. I know that at the
13 trial the Identification Bureau had sent officers down
14 to observe because they felt there was the talk of it
15 may have been planted, et cetera, but there was no-one
16 from SCRO, no.

17 Q. So they knew about an issue over fingerprints --

18 A. There was an issue, yes.

19 Q. -- to be concerned, that they actually sent some
20 observers down?

21 A. One observer, I think.

22 Q. One observer.

23 Who was your immediate superior in SCRO?

24 A. My immediate superior ... probably Mr Dunbar or
25 Mr Mackenzie.

1 Q. You seem to be hesitant, Mr MacPherson. Did you not
2 know who your immediate superior was when you worked
3 there?

4 A. Well, that's why I'm saying that's -- I mean, you're
5 talking, I've been out the job for 3 years. You're
6 asking me to remember 12 years before. I'm sorry, I'm
7 not being obtuse or whatever but I just can't remember.

8 Q. I'm not suggesting --

9 THE CHAIRMAN: Perhaps you could clear it, your line manager
10 would be normally the person who held what office?

11 A. My line manager would probably be Mr Dunbar, the Quality
12 Assurance Officer.

13 MR SMITH: It would be obvious that, if you were concerned
14 about something, you would report it to your line
15 manager, Mr Dunbar.

16 A. Yes.

17 Q. I take it from what you said you have no recollection
18 sitting here today as to whether you did report it to
19 Mr Dunbar or can you help us with that?

20 A. I don't think I did, no.

21 Q. Why not?

22 A. Well, as I say, there was a challenge to it, we were
23 going to hopefully face that challenge and that was an
24 end to it.

25 Q. Did it ever cross your mind what the repercussions might

1 be if you -- let's just assume for the moment it was
2 viewed as being a successful challenge. Just imagine
3 that for the moment. Did you never think what the
4 repercussions might have been?

5 A. No. I mean, no-one knows why a jury comes to their
6 decision. I think at the meeting with Mr Murphy
7 after -- I think it's been referred to already in
8 SCRO -- someone at the meeting said each fingerprint
9 case is taken on its own merits.

10 Q. Mr MacPherson, if the jury accepted your evidence that
11 it was Shirley McKie's fingerprint, if they had, she was
12 not suggesting in the trial that it was planted, was
13 she, or transposed? There was no evidence to that
14 effect. It was never suggested, was it?

15 A. I thought Sheriff Murphy said in his statement that that
16 was one of the three challenges.

17 Q. I am talking about in the course of the trial?

18 A. In the course of the trial, yes.

19 Q. Just take it from me, if you will, that there was no
20 suggestion before the trial that, "Look, it's not my
21 fingerprint but if it is then it must have been
22 planted". That wasn't the defence that was being run,
23 as I'm sure you will understand?

24 A. No, possibly I'm getting mixed up. Certainly the David
25 Asbury trial there was questioned -- before I went in to

1 give my evidence, the Fiscal came out from the Advocate
2 Depute to say that there may be allegations that the tin
3 had been taken down to the mortuary and Marion Ross's
4 print, right forefinger print, had been placed on it and
5 there may be allegations of planting. So I'm sorry,
6 maybe I'm getting the two mixed up.

7 Q. I'm really just interested in this question of the
8 perception of what might happen in Shirley McKie's case.
9 You say juries might come to decisions for all kinds of
10 reasons and that that may be so, but in the absence of
11 any suggestion as to how, if it was Shirley McKie's
12 print, it got where it shouldn't have been, take that
13 out of the picture, what this was was a straight
14 head-to-head. You said it's her fingerprint?

15 A. Yes.

16 Q. Absent any other explanation, if you are right about
17 that she committed perjury. That follows, doesn't it?

18 A. Yes.

19 Q. Therefore, I take it your view would be that whatever,
20 allowing for some vagary of this particular jury,
21 something they did that they were directed not to do in
22 making up in a Sherlock Holmes way about something else,
23 if they followed their directions, if your evidence was
24 accepted she would have been convicted of perjury?

25 A. That's correct, yes.

1 Q. Therefore, the fact she wasn't, it's a fair assumption
2 that your evidence wasn't accepted?

3 A. Well, the assumption is there was a disagreement between
4 experts but, as I say, you don't know what was in the
5 jury's mind.

6 Q. Correct. I am not disagreeing with that. What I am
7 trying to establish is this: knowing you were going into
8 a trial where there was a direct head-to-head challenge,
9 if she was not convicted that would undoubtedly have had
10 serious repercussions for fingerprints and for you and
11 for SCRO?

12 A. Well, that wasn't the opinion of whoever was at the
13 meeting with Mr Murphy. I think it was Mr Crowe. It
14 was said that each fingerprint case had to be taken on
15 its own own merits.

16 Q. I am imagining the position before the trial. I am not
17 asking about what Mr Crowe said or what Mr Murphy may or
18 may not have said afterwards. I think there was a bit
19 of a discussion about what might have been said. I am
20 imagining you going back to the office after
21 having spoken with the Advocate Depute about
22 fingerprints, knowing there is a challenge and then you
23 think to yourself, "Well, if there is, in shorthand, a
24 successful challenge, this is going to be a problem for
25 someone".

1 That would be a fair assumption; would you agree
2 with me?

3 A. Yes.

4 Q. In light of that, what I don't understand is why you
5 wouldn't go to Mr Dunbar and say, "Listen, you're my
6 line manager. We have, at the very least, an
7 interesting issue in this case. There is going to be a
8 challenge. We're going to have the opportunity of
9 seeing foreign experts giving evidence in what I think
10 is a strange but an unusual way", it must have been
11 something that people were interested in in the office,
12 was it not?

13 A. Well, again, in hindsight, maybe it should have been
14 flagged up but I certainly didn't do it, no.

15 Q. So the evidence in the case, as I understand it, there
16 were three SCRO experts who gave evidence?

17 A. I know Mr Stewart had communication with the Fiscal and
18 I believe there was a book prepared, as I said, earlier
19 it was like an early disclosure. Everything that was
20 insufficient, everything that was outstanding,
21 everything that was identified had to be accounted for.
22 I think Mr Stewart was in the box for two days,
23 Ms McBride followed some time after and was in for a day
24 and I went in on a Friday afternoon for half a day, as
25 far as I remember.

1 Q. As far as you recall, was it in that order you have
2 given: Mr Stewart, Ms McBride, then yourself?

3 A. Yes.

4 Q. I take it, in accordance with ordinary practice, you
5 wouldn't discuss with them their evidence after they had
6 given it but before you had given your evidence?

7 A. Absolutely not.

8 Q. There is one matter I wanted to ask about and it's just
9 some questions of procedure and training and so on and
10 so forth.

11 At that time, were you aware of any duty on an
12 expert witness to disclose anything that helped, as it
13 were, the other side or defeated or damaged the prospect
14 of a prosecution? Had you received any training on
15 issues of disclosure?

16 A. There was a Code of Ethics but I don't know what exactly
17 you're referring to.

18 Q. Maybe I can ask you this: even since then have you
19 received any specific training on what the law in
20 Scotland requires regarding disclosure?

21 A. Disclosure? I don't believe so, no.

22 Q. If I tell you -- and I stand to be corrected on this if
23 I get it wrong -- my understanding of the law on
24 disclosure, which has been around for an awful long time
25 actually, but are very, very focused which is to the

1 effect that it is the duty of, effectively, the
2 prosecution -- but they can only act on information they
3 get -- the duty of the prosecution to disclose any fact
4 that either damages or could damage the prosecution case
5 or it helps the defence case. That is it in broad
6 measure.

7 A. We're talking about disclosure here where the
8 prosecution always had to disclose, as you say, all
9 material facts. I don't know if it's been brought in
10 line now that the defence also has to disclose all
11 material facts before a trial. Is that what you're
12 referring to?

13 Q. I am talking about the prosecution. I think, I don't
14 wish to get too deep into the law, but as a matter of
15 law the defence are not under the same duty of
16 disclosure as the prosecution.

17 A. No, that was correct. But I thought maybe that had
18 changed but I don't know.

19 Q. No, I am interested though in what training, if any,
20 first of all, SCRO, then SFS and then SPSA had to direct
21 individuals as to what they had to disclose when they
22 were working on a case. Do you recall -- again not
23 criticising you, you must understand that, I am
24 interested in the system that was in place.

25 A. I couldn't speak for SPSA, Mr Smith, because I ended on

1 31st March 2007 and SPSA came into being on
2 1st April 2007. Certainly SCRO and SFS, no, I don't
3 recall any training in that aspect.

4 Q. You understand why it's important, don't you, that these
5 things are disclosed? That if there is something let's
6 say in your office, an extreme example, I'm not putting
7 it to this case, someone in the office said, "I flatly
8 disagree with that examination", but three people said,
9 "No, it's definitely a match". You understand why it's
10 important that at least the prosecution should be told
11 that and what they do with it is up to them?

12 A. Yes. Well, I can think of an example of that, before I
13 was suspended, I think it was June 2000, Ms McBride
14 brought a case to me. It had been signed by -- I can't
15 remember the exact details but the case was brought to
16 me anyway and basically my opinion on the mark was that
17 it was insufficient, couldn't tell if it was a
18 mis-identification or not because there was not detail
19 contained within the mark to say definitively who the
20 donor was. So I remember that case. That was my only
21 involvement in the case. That was intimated to the
22 Procurator Fiscal. What happened to it after that, I
23 don't know. I don't know whether the case went ahead or
24 whether the case was made insufficient or whatever. So
25 I know an exact instance where the Prosecution Service

1 has been told there's a disagreement, basically.

2 Q. Absolutely. Was that done as a result of any training
3 you had received or was that just intuitive on your part
4 that, "No, we really need to" --

5 A. No, we flagged that up. Any disagreement like that we
6 flagged up to the Chief Inspector.

7 Q. I would like to ask you about the particular method of
8 comparison and particularly in this case when you were
9 looking at Y7 how one went about it. The comparator
10 machine, as I understand it, is a system -- forgive me,
11 I wasn't here when the demonstration was done -- but a
12 system where it is open to an individual to mark the
13 points on, let's say, a latent. These dots then remain.
14 The next person can look at it and see what has been
15 marked up but they have the opportunity of wiping them
16 out and rejigging them, that kind of thing.

17 Have I got that right that that system could --

18 A. Well, again, I have slight difficulty in there was,
19 again, as I've tried to explain the procedures and
20 processes were in a state of flux. There was a point in
21 time when someone would mark up the screen with the
22 characteristics and they would be left on for the next
23 person. That then stopped and you basically left the
24 screen clear but with your initials on it.

25 When that exactly changed, again, I don't recall but

1 what you describe is accurate.

2 Q. As far as Y7 is concerned and again recalling your
3 evidence earlier in the Inquiry you have used the same
4 phrase, interestingly enough, in SCRO this was on
5 page 36 for those who have got access to LiveNote on
6 Tuesday 27th October, the morning session, what you said
7 was, as to Y7 you said:

8 "I may have probably left the points on. In SCRO we
9 are in a constant state of flux and at that time with
10 changes, et cetera, at that time I believe that I left
11 them on but that didn't preclude anyone from just
12 basically going and looking at those characteristics.
13 They would probably wipe them off and start again and so
14 on and so forth."

15 So as I understand it your belief is that you did
16 actually leave them on in Y7?

17 A. Yes, but I could be mistaken about that, yes.

18 Q. You understand the practical difficulty. We have heard
19 much evidence about it now, it's almost an implied
20 suggestion that there is something there, you realise
21 that could be problematic?

22 A. Yes.

23 Q. What I would like to do is ask you to look at a
24 document, if you can, to see how that fits in with the
25 evidence that you gave in the trial and see if you can

1 help me with reconciling what might be thought to be a
2 slight difference of emphasis at least.

3 Can we look at document SG0529 on the database
4 page 53, please.

5 This is your evidence, as I understand it, in the
6 Shirley McKie trial and you were being cross-examined by
7 Mr Findlay who represented Shirley. From line 15, I
8 will just read through this, if I can, to give you the
9 context as much as possible. He says:

10 "You then said something I would like you to help us
11 with. You said basically that you tell the next person
12 nothing. What do you mean by 'basically' and
13 'nothing'?"

14 You say: "We pass the photograph and the form to
15 the next person."

16 He asks: "The photograph of what?"

17 "A. Of the impression from the scene.

18 "Q. So you pass the photograph of the mark and
19 the form to the expert?

20 "A. Yes.

21 "Q. And you tell them nothing?

22 "A. No, that is correct."

23 Going on to page 54 of the database at line 10:

24 "Mr Stewart's method in fact, not Mr Stewart's
25 method but the SCRO method as Mr Stewart understood it

1 would be to pass on the mark and say look at the right
2 index finger. Check that.

3 "A. Yes, sir that's correct.

4 "Q. Well, that's hardly nothing. That is
5 something quite specific, is it not?

6 "A. Well, you would make out the paperwork and
7 pass it on. So, that would be on the paperwork.

8 "Q. So it's not the case of telling the experts
9 nothing. You tell the experts which digit you believe
10 it is or isn't?

11 "A. That is correct. When I say nothing, I mean
12 what the characteristics contain within the impression
13 you have seen.

14 "Q. But that is not nothing now, is it,
15 Mr MacPherson?

16 "A. You are actually telling the next person what
17 digit you believe it is or isn't.(sic)

18 "A. Yes, on occasion.

19 "Q. Well, on virtually every occasion.

20 "A. Sometimes we uses comparators within SCRO and
21 these comparators which are simply magnifying the
22 impression, all you have on these comparators is the
23 photograph and the impression, nothing else.

24 "Q. Well, that is just one on one.

25 "A. Yes.

1 "Q. But when you pass on the form as we are
2 concerned with this case and the mark, the crime scene
3 mark, you will say to the next person check left thumb.

4 "A. Yes.

5 "Q. So what you are in fact telling the next
6 person is you have formed a view of the left thumb.

7 "A. Yes.

8 "Q. That is hardly telling them nothing, is it?

9 "A. Well, as I say, you are not telling them what
10 you have seen or are content within the impression.

11 "Q. Wait a minute, please. Stick to the facts.
12 You are actually telling the next person that you have
13 formed a view of the left thumb, yes or no?

14 "A. Yes, indirectly.

15 "Q. Well, very directly, Mr MacPherson. It's
16 obvious it is very directly. That is what you are
17 telling them.

18 "A. Everyone looks at the impression in their own
19 way and brings to the impression their own fingerprint
20 experience, their own comparison and their own
21 judgment."

22 He says: "I know you want to toe the party line but
23 nevertheless the fact of the matter is that you are
24 actually telling the next person you have formed a view
25 on a particular digit, yes or no .

1 "A. Yes."

2 I would just like to be clear about it, the
3 description of events there in the course of the
4 evidence seems to suggest a good deal of information has
5 actually been passed on over to the next person to look
6 at.

7 Does the evidence that you gave in the course of the
8 trial, does that accord with your position sitting here
9 today? Does it refresh your memory as to what the
10 system might have been?

11 A. That would be two years after I made the ident so I
12 would rather rely on that rather than a statement I gave
13 12, nearly 13 years down the line.

14 Could I just say normally in cases that's what you
15 do. You are passing on the photograph and the
16 fingerprint form. I think in the Marion Ross case I
17 don't know because I haven't seen them all but we may
18 have put two or three impressions on the comparator, two
19 or three of the hundreds that were identified. In
20 general, what I am talking there is you pass on the
21 photograph, you pass on the form, as I said in my
22 statement, yes, on the photograph would probably be the
23 digit that you're interested in but the majority of the
24 comparisons that you have passed on you don't
25 tell anyone what characteristics you have used, it's

1 down to themselves, as I said, at the end, their own
2 personal judgment of which characteristics to use.

3 Q. You see, I am wondering though, if it was the case that
4 on the comparator machine the dots were left on for the
5 next person, if that happened that would be a different
6 situation to the situation described in the evidence in
7 the Shirley McKie case. We are agreed about that much,
8 I take it?

9 A. Yes.

10 Q. I take it from what you have said your position
11 is that, actually, what you told Mr Findlay is more
12 likely, in this remove, to be an accurate representation
13 of what happened; have I understood that correctly?

14 A. Yes.

15 Q. When you were being asked in court -- I don't need to go
16 to the particular passage -- but asked about the
17 identification, when Mr Findlay was cross-examining you
18 about the various issues and asking you about the
19 charting enlargement production, the pictures, if you
20 take it from me there's no indication anywhere in your
21 evidence, even under questioning from the Advocate
22 Depute or Mr Findlay, that there was something not quite
23 satisfactory about the charting enlargement machine.
24 There's no issue of that raised at all.

25 Are you able to explain why you wouldn't have said,

1 when he's pressing you for an analysis why you wouldn't
2 just say, "Look, Mr Findlay, I'm comfortable with this
3 but the machine is not the best. It's actually --
4 there's a view it's not fit for purpose", or something
5 like that? Why wouldn't you tell him that in the course
6 of your evidence?

7 A. Because as I say, it was only an illustration. You
8 don't have the enlargements anymore. At least what we
9 produced then I believe was accurate but from July 2006
10 they don't have any enlargements so ...

11 Q. Can I just deal with this question of illustration,
12 illustrating what?

13 A. The characteristics that I used to bring about my
14 identification.

15 Q. Would you agree with the suggestion that in any proper
16 presentation to the jury what must be illustrated is
17 something the jury can see?

18 A. Well, you try but they will not be able, as I think I've
19 gone through this, you can't make the jury instant
20 experts. They may see some of the characteristics; they
21 may not. The evidence is myself, the joint report and
22 the photograph in the book and that's what any
23 independent expert coming along would look at.

24 Q. I am trying to imagine though how it is that an accused
25 person is supposed to effectively try and challenge a

1 witness in the witness box who says, "I'm an expert. I
2 can see that. You might not be able to see it but I can
3 see it".

4 Would you not agree that there's a difficulty?

5 A. I would say there's more of a difficulty now since
6 they've gone non-numeric. They don't produce
7 enlargements. The training has been reduced from 7 to 5
8 to 2 years. I would say that's more of a problem now
9 than it ever was.

10 Q. The training is much less now, is it?

11 A. I believe but I don't know. I can't say for definite
12 but I believe it's, basically, if you show that you're
13 adept at the training, you can qualify, through modular
14 means, much sooner than was done previously with 5 years
15 or 7 years.

16 The only problem -- this is just a personal point of
17 view -- I believe you have to have the casework under
18 your belt to basically make you adept at being an
19 expert, a fingerprint expert.

20 Q. That is very helpful. Obviously, Ms Jones from the
21 SPSA, if you've got something wrong in training, she
22 will no doubt correct it but --

23 A. Sorry, again, I can't speak to the SPSA. I wasn't in
24 the SPSA.

25 Q. I understand that but just on the question of the

1 training if it's been reduced, no doubt we can hear --

2 A. Yes, that's fine.

3 Q. No-one can criticise you for not knowing the detail of
4 an organisation you no longer work for.

5 A. Okay.

6 Q. I fully understand that.

7 But on the question of actual presentation of
8 evidence, what I am interested in is the idea that in
9 present day times there are no enlargements produced as
10 you have explained.

11 A. Yes.

12 Q. Suppose I was acting for an accused person and I wasn't
13 comfortable with just a report being produced saying
14 there's a match between these two fingerprints, "From my
15 experience, these two match", and I was to say, "I want
16 to see your working documents. I want to see
17 photographs. I want to see how you've gone about it".

18 A. Yes.

19 Q. At the time you continued to work prior to your
20 retirement, is that something you would have then been
21 able to produce if either the prosecution or the defence
22 said, "No, I want to see how you have reached this
23 conclusion"?

24 A. Yes, if a defence -- I presume you mean if a defence
25 looked at our productions and wasn't happy with what he

1 saw, presumably he could then ask the Fiscal, "I would
2 prefer it if more enlargements were prepared or ..." I
3 don't know if that's what you mean.

4 Q. Yes, but it was more the method by which you reached
5 your conclusion, what you could then do, I take it, is
6 prepare a supplementary report with lines and so on,
7 saying this is a very unusual feature, very much the
8 same way as you have been attempting to do to assist
9 the Inquiry. I take it that is something that would be
10 capable of proof, if you were actually called upon to
11 establish it?

12 A. I suppose it could be done, yes.

13 Q. It would have to be done, Mr MacPherson, wouldn't it,
14 otherwise all you are saying is, "I'm an expert. You
15 just have to take my word for it. I don't have to
16 justify it to you"?

17 A. Yes. Well, that is a problem we've got today and a
18 problem that I would say, I think I said in evidence
19 before, the Glasgow Fingerprint Bureau was the only
20 Bureau in Britain, as far as I recall, who produced
21 case-specific enlargements. Other people would produce
22 generic enlargements, et cetera. But we were the only
23 ones who actually produced case-specific enlargements.

24 Sometimes the Fiscal, if it was a bloody mark on a
25 knife, sometimes the Fiscal would request, "I want that

1 specific mark, say mark A. I want that mark enlarged",
2 and I think as I've said before sometimes when you get a
3 watery bloody mark combining sweat and blood, no matter
4 what method you use, whether it was charting PC,
5 photographic enlargements, the jury, I'm afraid, would
6 never see it.

7 Q. I would like to just ask you a few general questions
8 about Y7. Obviously the charting enlargement
9 reproductions, it is the bottom area of Y7 that's been
10 reproduced.

11 Can I ask you this question, first of all: as far as
12 the bottom section of Y7, the bit that's actually in the
13 charting enlargement, from that alone, is there any
14 evidence to you of movement or distortion without then
15 comparing it with the inked print, just looking at it
16 itself, the bit's that's reproduced in the charting
17 enlargement, is there any evidence of movement,
18 distortion, twisting, pressure?

19 A. I think I said before one of the ridges down the way, I
20 can't remember which one, there is a slight bowing out
21 of the ridge, yes.

22 Q. So there's a little bit --

23 A. A little bit but nothing as compared to the top of the
24 mark.

25 Q. Were you here when Mr Leadbetter gave evidence to the

1 Inquiry?

2 A. I was here for some of it, yes.

3 Q. Were you here when he was asked to do the ridge count in
4 the bottom section?

5 A. Indeed, yes.

6 Q. Just to put it in short measure, as I understand it, his
7 explanation for a difference in ridge count of maybe 9
8 or 10 ridges between the inked print and Y7 was that
9 there was evidence of it must have been caused by some
10 kind of movement or distortion or something of that kind
11 to obliterate these ridges.

12 Do you consider that's a reasonable explanation?

13 A. It's not one with which I accord, no.

14 Q. It is really the question of reasonable. We're talking
15 about the loss of nine or ten ridges and I think you
16 acknowledged that this must be quite severe distortion
17 of some kind to justify a large chunk of ridges
18 disappearing.

19 A. Okay.

20 Q. You don't agree with it --

21 A. No.

22 Q. -- but would you agree with me to lose all these ridges
23 it would have to be quite severe.

24 A. Absolutely, yes.

25 Q. On the basis that you and your colleagues used the

1 bottom section of the print, you must actually say that
2 is just wrong to suggest that there was any severe
3 movement otherwise you would have seen it --

4 A. Yes.

5 Q. -- and you wouldn't do your ridge counts in that area.

6 A. That's correct. No, I don't agree with that; that's
7 right.

8 Q. Equally, as far as the top part of the print is
9 concerned, he has used the top part but, as I understand
10 it, you say, "Well, we didn't because there was a lot of
11 distortion, movement, et cetera, et cetera". So you are
12 actually in the opposite --

13 A. Yes, it would appear so, yes.

14 Q. -- end of the telescope from Mr Leadbetter.

15 Dealing with the top section of the print, do you
16 recall in the course of the trial, or indeed at any
17 other time, in particular when you met with Mr Murphy,
18 you said, "Listen, top section of the print there is
19 some kind of distortion, these bifurcations go the wrong
20 way, there's some twisting or movement or distortion"?
21 Did you ever explain that as being the reason?

22 A. Maybe you're going to show me what I said at the trial.
23 I don't know.

24 Q. If you take it from me there was no suggestion, as I
25 recall it, certainly not any detailed explanation. I am

1 not trying to trick you, Mr MacPherson --

2 A. Well, my recollection is then that I've always said -- I

3 think I've already said in evidence -- that the top of

4 the print, mark Y7, for me was fragmentary and

5 insufficient. I don't know what else to say. I've said

6 it about three times. I was sure that I did say it in

7 the trial but maybe I didn't. I haven't read the

8 transcripts for many a year or for a while anyway.

9 Q. I think, in fairness to you, an indication was given you

10 thought something had caused, certainly as regards the

11 two halves of it, if I put it that way, that there was

12 some problem in using the top section of the print --

13 A. Good.

14 Q. But what you had at the time you met Sheriff Murphy was

15 you had a bifurcation going the wrong way, apparently,

16 as compared between Y7 and the inked print, the two

17 bifurcations at the top --

18 A. I don't recall they were going the wrong way, no.

19 Q. It was really about questions earlier to you about the

20 acetates, that what we could see is that Mr Wertheim had

21 drawn in bifurcations pointing in the opposite direction

22 to bifurcations that were in Shirley McKie's inked

23 print. Do you remember --

24 A. I remember the right to left, you said, which was fair

25 enough.

1 Q. But of course they flow the other way on the inked print
2 of Shirley McKie. We know that, don't we?

3 A. I don't think you're comparing like with like, possibly.

4 Q. What I am interested in is as far as the bifurcations
5 Mr Wertheim identified at the top section of the print?

6 A. As far as I remember, they don't show because we used
7 the plain impression.

8 Q. I see, so you're saying there are bifurcations in that
9 direction which are, as it were, off the inked?

10 A. They would be off the inked but, as I said one
11 characteristic in isolation you can't count through to
12 another two in isolation. For me, it was fragmentary
13 and insufficient.

14 Q. Did you suggest to Sheriff Murphy that the rolled inked
15 impression should be obtained to identify the area being
16 off message, if I can put it that way, that Mr Wertheim
17 was relying on?

18 A. No, because obviously we had identified the bottom of
19 the mark Y7 and there was a minimum of 16. I think now
20 you have seen, hopefully, that you've looked at the
21 Terry Kent image and Mr Swann's image, there's actually
22 more than 16 but it's not a numbers game. I could see
23 more than 16 originally and I think there's more in it
24 now.

25 Q. I just wondering though about methodology, suppose you

1 were analysing a fingerprint and you start comparing the
2 latent with the inked and the first thing you spot is a
3 difference. You say, "Oops, there's a bifurcation going
4 the wrong way", can't see any explanation for it. Do
5 you stop?

6 A. Well, in this instance, obviously, I could see that
7 there was movement in the mark. I mean, there's many,
8 many times you'll identify a mark that's -- I think
9 Mr Leadbetter showed one in particular where it was half
10 down the middle and you had basically enough to
11 identify a mark on the left-hand side but it wasn't in
12 sequence and agreement with what was on the right-hand
13 side. It was actually two different people.

14 You would have to take cognisance of everything
15 until -- within the area that we identified the 16 ridge
16 characteristics there were no differences.

17 Q. I'm really just interested in this methodology. You
18 see, the first thing you see or the second thing you see
19 is a difference, an obvious difference?

20 A. Yes.

21 Q. Do you stop?

22 A. If there had been an obvious disagreement within the
23 bottom half of the mark, if there was something really
24 wrong with it, then, yes, it would stop but there was no
25 differences in the bottom half of the mark.

1 The problem now with LiveScan, you get these rogue
2 characteristics. How they appear I don't know but the
3 problem with that is if you put a crime scene mark in to
4 search against what is on the AFR database and there may
5 be rogue characteristics in it, what do you do? Do you
6 say the identification stops, you may have 16 ridge
7 characteristics in sequence and agreement but -- well,
8 you don't need 16 now -- but say to the left there's an
9 obvious discrepancy which you can't explain.

10 Q. Mr MacPherson, I understand that in Y7 you were seeing
11 what you tell us you saw were similarities. I
12 understand that.

13 A. Yes.

14 Q. But as far as the differences are concerned, let us
15 think in a hypothetical for the moment. From what you
16 have said, there was a clear difference, one you come
17 across straight away, you can't explain, no evidence of
18 movement, nothing like that, you then stop. I take it
19 you say, "Well, this can't be common authorship"?

20 A. Yes.

21 Q. Thank you. So, if it is clear, then one difference is
22 enough to, unexplained difference, is enough to say it
23 can't be the same?

24 A. Well, I've tried to explain that there may be -- the
25 ten-print itself may have rogue characteristics in it

1 but I would say, yes, if it's a definite, definite
2 difference -- but if you have 16 ridge characteristics
3 in sequence and agreement it has to be an ident.

4 Q. I would like to ask you if I can a couple of questions
5 regarding the theory I think Mr Berry came up with, the
6 66-degree movement theory.

7 Do you understand what he and Mr Swann and
8 Mr Leadbetter mean by that, what the mechanics are of
9 the movement they are describing? Do you understand
10 what they mean?

11 A. Well, I tried to explain my interpretation of the
12 movement earlier on.

13 Q. Forgive me, it's a slightly different question. I
14 understand you have your own view about it. I follow
15 that. But as far as the 66-degree movement and the
16 Rosetta point and so on and so forth, is that something,
17 do you agree with all they say, with some of they say or
18 just the generality? How would you put it?

19 A. I would agree that, yes, the movement is consistent with
20 what I tried to illustrate earlier on in my evidence.

21 Q. Can I ask when it was that you actually came to the
22 conclusion that any difference in the top part of the
23 print could be explained by movement and distortion or
24 twisting of the kind you've described? Was that
25 immediately or was it after the trial, before the trial?

1 A. Again, I think I said earlier in evidence that I wasn't
2 sure when I saw what is the Rosetta characteristic. I
3 may have seen it at the time. I just can't remember.

4 Q. The Rosetta characteristic has been referred to on many
5 occasions.

6 A. Yes.

7 Q. As far as your understanding is concerned, are you
8 saying that the Rosetta remains constant in the same
9 place or it actually moves in this twist?

10 A. No, it's moved.

11 Q. It has moved?

12 A. It's moved and it's moved either one or two ridges up
13 and to the left and I think, again in evidence that I
14 gave, I believe that it had been put on, lifted very,
15 very slightly and that's why the ridges are thin round
16 about the area of the Rosetta characteristic and it's
17 been placed back down again with very, very heavy
18 pressure towards the middle, which is called the blob
19 and to the tip where the two characteristics that you
20 have referred to are. That's why I did my own sort of
21 illustration of the movement to try and explain it.

22 Q. I would like to ask you some questions now about the
23 relationship with Strathclyde Police in the time of
24 1996, '97, '98, '99, about that period of time.

25 As I understand the position, SCRO operated at some

1 stage within the same building in Pitt Street as
2 Strathclyde Police, their headquarters were based.

3 Do you recall when it was that they stopped doing so
4 and moved to their own premises?

5 A. Can I say when I began?

6 Q. Of course.

7 A. When I started it was at St Andrew's Square at Glasgow
8 Cross and it was the GCRO -- sorry, it was the SCRO had
9 come into being in 1960. Prior to that it was the GCRO
10 which had come into being after the Robert Hamilton case
11 that I mentioned in 1933.

12 From 1970 to 1975 there then was the regionalisation
13 of Strathclyde and we moved to Strathclyde Police
14 Headquarters in 1975. I don't know, are you referring
15 to the Identification Bureau? They were through -- on
16 the same floor as ourselves but they were through in
17 another part of the building.

18 From 1975 we were then decanted to what was called
19 Pegasus House, I can't remember the exact timing of
20 that, in preparation for moving to new premises at
21 Pacific Quay.

22 I believe they moved to Pacific Quay when myself and
23 my three colleagues were suspended in 2001. So,
24 basically, from there -- there were other departments
25 within Pacific Quay, I can't remember who they were but

1 ... oh, the IT departments, there wasn't -- some were
2 based at Strathclyde Police. I think the Records
3 Office, et cetera.

4 Q. Again, I am not in any sense trying to criticise you but
5 when you worked in the same premises as the police I
6 take it there would be, and it would only be natural,
7 there would be an exchange of information occasionally,
8 even informally with police officers that might pop down
9 to your office and say, "Listen, we are struggling a
10 little bit", or, "Can you speed that one up".

11 Is that something that occasionally took place?

12 A. Well, I mean -- the Strathclyde Police Headquarters is
13 not -- I mean, you're talking about -- personally, the
14 Team 4 that I dealt with, RUX Division of Strathclyde
15 Police and I think Grampian. I mean, it wasn't often
16 that officers would come in, if you like, from R, U and
17 X. No, we would have officers who sometimes were based
18 in the headquarters would come in but they weren't
19 always operational officers. Mainly the operational
20 officers were all out at division, et cetera. So they
21 would come in occasionally, yes, but that was about it,
22 really.

23 Q. What about the Identification Branch? They were in the
24 same building at one stage.

25 A. Yes.

1 Q. Would they ever pop in and have a chat with you about
2 something that they concerned about?

3 A. Sometimes they would, yes.

4 Can I just say, people seem to have the impression
5 that we went and examined loci. That wasn't our job.
6 We were totally office-bound. At the earlier stage in
7 my career you used to go to mock-ups of murders, et
8 cetera, you would print prisoners -- well, we couldn't
9 prisoners because it was up to the police to do that
10 under authorship of the Chief Constable but we'd help
11 with the printing of prisoners, taking prints off
12 cadavers at the mortuary -- sorry, I've lost my ...

13 Q. Not at all. I just wanted to understand something about
14 the system that was operating but I think you have
15 confirmed to me, I suppose since the SCRO originally was
16 actually kind of a police organisation that it kind of
17 stayed in that mode for quite a while until it was
18 mostly civilians working for it. It's only natural --

19 A. Well, the civilianisation programme started about
20 1966/67. I think you had -- most of the chief
21 inspectors -- or the people that trained me, basically,
22 were all police officers but they were all steeped in
23 fingerprints, basically. They were all fingerprint men
24 but that eventually changed and we would have chief
25 inspectors who came in who were just basically

1 management, the same with the superintendents, chief
2 superintendents. When I started they were all
3 fingerprint men but eventually it became a fact that
4 they were just managers.

5 Q. I think, though, in this particular case, if I have the
6 evidence right, that may come in due course from
7 Mr Stewart, there were always daily briefings by
8 Mr McAllister about the progress of the investigation.

9 Is that something you were aware of?

10 A. A daily briefing, no, not that I'm aware of. Yes, I
11 phoned Mr McAllister regarding identifications,
12 et cetera. If you couldn't get him -- he was the sort
13 of liaison person. If you couldn't get him you would be
14 phoning the incident room but certainly not daily
15 briefings, no. That didn't happen, not that I recall.

16 Q. I would like to ask you, if I can, just one question
17 really about Q12 that we've seen a lot of information
18 on. If you give me a moment I'll get the number.

19 Maybe we could just have FI0311.02 up. I think
20 there is some annotation by yourself on it but it does
21 not particularly matter.

22 What I am interested in is actually not so much Q12
23 but the impression to the right of that screen. I
24 can't, of course, see the numbers on it but I am
25 interested in the bifurcation which is to the right of

1 the core. If you go from the core I think what has been
2 described as a chilli pepper right in the middle and
3 then you go one ridge to the right, then another ridge
4 to the right and then we can see a bifurcation
5 downwards.

6 Do you see that?

7 A. Yes.

8 Q. I think it is SCRO point 2 for the record.

9 We are agreed, I think, that it is relatively plain
10 from that impression that was taken that on the image
11 the right-hand leg is thicker in appearance to the
12 left-hand leg. We are agreed it looks that way, even to
13 the untrained eye?

14 A. Slightly, yes.

15 Q. Is it not about twice the width, if you take the point
16 just below the actual junction between the two? Is
17 there not a significant difference in thickness?

18 A. No, I would say not, no.

19 Q. As you will, but if we take the SCRO point 2 on the
20 other side we can see it appears that both legs are of
21 roughly equivalent thickness. Do you see that?

22 A. Yes.

23 Q. You will understand, as it was put to you by Mr Moynihan
24 in a good deal of detail, that the explanation by the
25 experts to say this is not a similarity this is a

1 difference because the thickness of the left-hand leg is
2 different as between one image and the other.

3 You understand that is being suggested?

4 A. Yes. I think I have already said that if you look at 11
5 and 12 on Marion Ross's print, if you look at 11 and 12
6 on the mark, there's a difference in thickness. It just
7 depends on the process used.

8 Q. I just want to be clear about how one might account for
9 this. You have explained to us that, in fact, rather
10 than an inked impression taken from the late Marion Ross
11 this was the application of some powder?

12 A. Yes, that's correct.

13 Q. Which would then be pressed, was it, on to tape?

14 A. On to white tape, yes.

15 Q. And then lifted and then it could be analysed at
16 leisure. Have I got that right?

17 A. Yes, the fingers would be dusted with black powder,
18 white tape is applied to it and you turn it like so
19 **(indicated)** and then an acetate is placed on top of it
20 to preserve the impression.

21 Q. I see. What I am interested in though is if we look
22 again at the right-hand image, the impression taken from
23 Marion Ross, if we look at the bifurcation I mentioned,
24 you can see that the right-hand leg is, relative
25 speaking to the left-hand leg, quite thick. If we go to

1 the next ridge we can see, again, as it were, there's a
2 thickness about the ridge and then we've got the chilli
3 pepper and then the one next to it which looks -- these
4 all look to be roughly the same thickness or quality as
5 the right-hand leg of the downward opening bifurcation.

6 Would you agree with that as a general comment?

7 A. As general comment, yes.

8 Q. What I have difficulty understanding, Mr MacPherson, is
9 this: if the apparent thinness of the ridge as you
10 indicated earlier is caused by a lack of application of
11 powder or different pressure on pressing the white tape
12 against her finger, then how can it be that the powder
13 has either jumped a ridge, not adhered properly to the
14 thin ridge but managed to stick properly to the ridges
15 either side of that? Can you explain how that could
16 possibly have been achieved?

17 A. Obviously, there's not an exudation of sweat running
18 along the ridge. I can't explain it. It's just
19 possibly that there's not been an application of powder
20 in that very specific area. But to me the thickness and
21 thinness of the ridge is not what I would term a
22 difference.

23 Q. I understand that is, for better or worse, at variance
24 with the testimony of other people. I think Mr Grigg
25 and Mr Sheppard both said that that is important.

1 A. Okay.

2 Q. But what again I just don't understand is the likelihood
3 of the possibility of powder being applied to Marion
4 Ross's finger, to the powder adhering to ridges either
5 side without any difficulty, with the tape being applied
6 and lifting the appropriate amount of powder from either
7 side but we've still got this rogue one in the middle
8 that appears to be thinner than the others?

9 A. Well, it could be that the tape just wasn't applied with
10 even pressure and it's not quite lifted the ridge in its
11 entirety.

12 Q. But we must be dealing with tolerances that are tiny
13 here, the difference in measurement between these ridges
14 must be less than a millimetre when --

15 A. Yes.

16 Q. But you say that it could be accounted for by the
17 process rather than anything else?

18 A. Process, yes, I believe so, yes.

19 Q. What if it isn't accountable by the process? What if it
20 is actually thinner than the one next to it? Would you
21 be prepared to agree that was a difference then?

22 A. I honestly can't see that there is much difference in
23 the thinness between the left-hand leg coming down here
24 and the left-hand leg coming down (**indicated**) -- sorry,
25 are we talking about ...?

1 Q. Point 2, SCRO point 2.

2 A. Point 2, I don't see there being such a massive
3 difference between the left leg in the mark and the left
4 leg in the print.

5 Q. Very well. Just while we have that image before us, you
6 helpfully drew on the colours and, as I understand it,
7 what it is bearing to represent is that the left-hand
8 image is showing the same things as in the right-hand
9 image; have I got that correct?

10 A. Well, very roughly, yes.

11 Q. I understand it is not easy using the mouse but can I
12 ask this: if I look at the right-hand image, and you can
13 see the yellow V shape, V on its side, now the top line
14 in that, if I follow the ridge down -- I beg your
15 pardon, the bottom ridge, if we follow that down, can we
16 follow a ridge that goes the whole way down relatively
17 clearly -- I am sorry, it's not where the cursor is. I
18 wonder if it would be better if I just used another
19 mouse. Forgive me just one moment.

20 If you can let me just use the mouse for myself,
21 please.

22 You see where the cursor is just now, just the top
23 part. I'll try to get an arrow it will make it easier.

24 You see the part I'm pointing to (**indicated**) which is
25 just at the end of your yellow line?

1 A. Yes.

2 Q. If one was to follow the ridge down, can you see a ridge

3 in the line I'm drawing which effectively joins up with

4 the end of the orange?

5 A. Yes.

6 Q. Do you agree with that?

7 A. Yes.

8 Q. If we try and do the same exercise on Q12 do we see that

9 any ridge flow misses the orange completely?

10 A. Yes.

11 Q. Against that background, is it not relatively clear that

12 that's a significant difference between Q12 and Marion

13 Ross's digit?

14 A. Well, I think you can start from here, count up to here

15 and across. Yes, there is some damage, some movement in

16 here and that would account for the fact that it's not

17 quite in alignment but it's still in sequence and

18 agreement if you follow the green line up.

19 Q. If you follow the green line up?

20 A. If you follow the green line up, yes.

21 Q. Up to where?

22 A. Up to the bifurcation to the left with the ridge ending

23 just above it.

24 Q. Sorry, you see where my cursor is just now? **(Indicated)**

25 A. Yes.

1 Q. If I count the ridge flow, that would be 1, 2, 3, 4. Is
2 that the kind of exercise?

3 A. Between the ridge ending and the bifurcation there are
4 two intervening ridges.

5 Q. I see. Down this way --

6 A. Down where the cursor is there is definite damage of
7 some sort in there and that for me would account as to
8 why, when you have traced down to the yellow, down to
9 the orange bifurcation, it doesn't quite fit in.

10 Q. You see the problem, Mr MacPherson, is it not, if you go
11 to the green line and you see how many images are
12 between that and the end of the orange. So we say
13 there's, 1, 2, 3, maybe 4?

14 A. There's 3.

15 Q. 3, I stand corrected, we don't count the first one, 1,
16 2, 3 in between.

17 Then we do the same exercise over here and on this
18 we get, what is it, if we go down here we can count 3,
19 1, 2, 3 in between?

20 A. Yes.

21 Q. So it would appear that the green line and the orange
22 lines are not distorted by movement as between the two
23 of them.

24 A. No, it's clear.

25 Q. It's clear. But if we stick with the green line and

1 come up and then do the same exercise and we get two in
2 between and two on the bottom, yes?

3 A. That's why I stopped where I did. There's definite
4 movement in here of some kind or other, superimposition
5 of some kind.

6 Q. Yes, but if we stick with the point, that if we look at
7 the green on Q12 --

8 A. Yes.

9 Q. Between the green line and the yellow lines are the
10 Y-shaped yellow lines. We have 1, 2, 3 really, 3
11 ridges?

12 A. There's 2.

13 Q. There's 2?

14 A. Yes. So just below where I've stopped the yellow, I
15 don't know what it is, there's some sort of shape of
16 something coming in. I don't know whether it's another
17 mark, another print but I did say in phase 2 of the
18 comparative exercise that mark Q12 did suffer on the
19 periphery from other marks superimposing themselves on
20 it.

21 Q. I understand that, Mr MacPherson. The problem I've got
22 is we have a reference point in the green line. At the
23 top of the green line we can count up and it works. At
24 the bottom of the green line we can count up and it
25 works.

1 A. Yes.

2 Q. If you try and join orange lines the yellow lines then
3 they don't work at all?

4 A. That's just the nature of crime scene marks. That's
5 just the nature of a chance impression from a scene of
6 crime.

7 Q. But I am trying to imagine, Mr MacPherson, the mechanism
8 by which the bottom section and the top section can
9 work but the top section in yellow and the bottom
10 section in orange we can't fit together. How can you
11 have movement or distortion in that area between the
12 two?

13 A. Well, I think there's some sort of form of
14 superimposition, some sort of damage. It was the same
15 as I tried to explain with mark Q12, the number 3 of
16 Mr Asbury. I couldn't go up and round over the top of
17 the core because of either movement, slippage, pressure,
18 whatever, and that to me is the exact same replication
19 here. But it's just the nature of the work, I'm afraid.

20 MR SMITH: Can you give me one moment to see if there are
21 any further questions I have. **(Pause)**

22 Thank you very much.

23 Sir, should say that there are a couple of matters,
24 I am not sure if I am expected to deal with the question
25 of the e-mail that came in just now. I could try and

1 deal with that actually.

2 THE CHAIRMAN: I think at the moment what we hope to do is
3 to get some more information which might be of
4 assistance. I think your instructing solicitors were
5 being asked about that, which might make it easier. I
6 am not sure if this witness can really deal with what
7 Mr Swann had before him.

8 MR SMITH: That may be so.

9 Sir, the other matter is the presentation that was
10 produced this morning. I've explained to Mr Moynihan
11 that -- obviously, I haven't had time to give it any
12 detailed consideration and I know that it is something
13 that it is felt is possible that Mr MacPherson may be
14 asked to come back into the witness box, if he is able
15 to do so, depending upon the views of others. So if I
16 can reserve that matter --

17 THE CHAIRMAN: I am sure if it becomes necessary he,
18 reluctantly, I am sure will do so.

19 A. Can I just say not next week, sir, because it's my 30th
20 wedding anniversary.

21 THE CHAIRMAN: That is all right. We would have to study
22 your convenience, if that arose.

23 Miss Grahame, just before we come to the break have
24 you ...?

25 MISS GRAHAME: I have no questions, thank you.

1 THE CHAIRMAN: I assume, Miss Jones, you have nothing or
2 have you?

3 MS JONES: Just very briefly, sir, on the training point.

4 THE CHAIRMAN: Yes, if you would like to deal with that.

5 MS JONES: I will be very brief, sir.

6 **Cross-examined by MS JONES**

7 Q. Mr MacPherson, you made some comment about training of
8 experts just now. Can I take it from your evidence you
9 have not read the statement of Alec McGinnies who is
10 currently responsible for training at SPSA?

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

12 Q. Would you accept he would be best placed to give
13 evidence on that?

14 A. Yes, absolutely.

15 THE CHAIRMAN: Before I ask you, Mr Holmes, should we take
16 the short break? I presume you have matters you want to
17 raise?

18 MR HOLMES: I have some, sir. It should be relatively brief
19 but I do have some matters.

20 THE CHAIRMAN: Shall we take that at 3.05 then.

21 **(2.55 pm)**

22 **(A short break)**

23 **(3.06 pm)**

24 MR HOLMES: Sir, there are only three matters that I would
25 like to cover with Mr MacPherson. The first relates to

1 the use of enlargements in explaining identifications.

2 THE CHAIRMAN: Yes.

3 MR HOLMES: The second relates to Q12, that is the portion

4 of Q12 that has been identified as belonging to

5 Mr Asbury not the portion belonging to Miss Ross.

6 THE CHAIRMAN: Yes.

7 MR HOLMES: The third relates to a question that was asked

8 by my learned friend, Mr Smith, about whether or not

9 Mr MacPherson accepts that the identification of Y7

10 could be a mistake.

11 THE CHAIRMAN: Yes. Very good.

12 **Cross-examined by MR HOLMES**

13 Q. Mr MacPherson, the first matter I would like to cover

14 with you relates to the use of enlargements. It was put

15 to you several times last week by Inquiry Counsel that

16 when you give evidence about characteristics you observe

17 in a mark, not your interpretation of the

18 characteristics but when you give evidence about what

19 you can actually see, that you are making a bald

20 assertion to the jury that a particular characteristic

21 is there, if it is not obvious on a photograph to a lay

22 person.

23 Do you consider that the description of what you are

24 doing when you are giving evidence like that, that you

25 are making a bald assertion that a particular

1 characteristic is there, do you consider that to be a
2 fair assessment of what you are doing?

3 A. I can only mark what I believe that I see in the mark,
4 in the impression, and that's what I was doing.

5 Q. It was put to you by my learned friend, Mr Smith, that
6 it would be proper to point out characteristics, so far
7 as you can, to a jury on an enlargement but if you are
8 giving evidence of what you can see, is that all that
9 you can do? Is that what you are saying?

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

11 Q. In common with any other expert, you will have to speak
12 to the facts on which you base your opinion; is that
13 right?

14 A. That's right, yes.

15 Q. Whether you do so by reference to a photograph or
16 whether you do so by reference to some other means of
17 illustration or whether you just speak to what you have
18 seen, it makes no difference to the evidence that you
19 are giving, does it?

20 A. No, that's right.

21 Q. As you have said already, experts speaking to
22 identifications now do so without reference to
23 case-specific enlargements?

24 A. That's correct, yes.

25 Q. If I can ask you a couple of questions about Q12 -- that

1 is the portion of Q12 that has been identified as
2 belonging to Mr Asbury -- it was put to you earlier
3 today that the Danes regarded Q12 as not sufficient for
4 comparison. I wonder if I could show you the portion of
5 their report that relates to this. It is CO0030 and it
6 is page 3 of the report, please. You will see in the
7 centre there is a paragraph relating to Q12. It says
8 that:

9 "Because of the said lack of special light, as well
10 as the poor quality of the photograph, it was not
11 possible to make a comparison between the impression and
12 David Asbury's fingerprints."

13 Is that the same as saying that Q12 is not
14 sufficient for comparison?

15 A. Well, they are not being able to make any comparison
16 whatsoever which is strange because just to the right of
17 Mr Asbury's right middle i's Marion Ross right
18 forefinger. So I think they pronounced on it but they
19 don't seem to have been able to pronounce on this
20 impression.

21 Q. Indeed, and the reason that they give for not being able
22 to give any opinion on this impression is a lack of a
23 special light and the poor quality of the particular
24 photograph that they have given. Is that the same thing
25 as saying the mark itself is not of sufficient quality

1 to compare?

2 A. I wouldn't think so because you've not really looked at
3 it, if you like. To make a fingerprint comparison you
4 have to have ideal conditions of lighting, peace and
5 quiet and I would have thought before carrying out any
6 sort of or making a report, they would have made sure
7 they had the right conditions to make an assessment.

8 Q. In any event, yourself and the other individuals who
9 examined Q12 within SCRO and the individuals who signed
10 the report were all content that Q12 was an
11 identification. Is that correct?

12 A. That's correct.

13 Q. And that was identified to 16?

14 A. Yes.

15 Q. You were asked earlier on by my learned friend Mr Smith
16 whether you would concede that there was a possibility
17 that a mistake had been made in the identification of
18 Y7.

19 A. Yes.

20 Q. You have not been accused of making a mistake by those
21 who disagree with the identification, have you?

22 A. No, it seems to have been extrapolated from a
23 fingerprint comparison that I've in some way been
24 criminal, et cetera.

25 Q. If I can put to you some of the things that have been

1 said, do you recall Mr Zeelenberg stating that the
2 examination of Y7 was either bad practice or
3 malpractice?

4 A. I think he said it at Justice 1 and I've seen it on the
5 screen before me, yes.

6 Q. Do you take from that an accusation of something more
7 than a mistake?

8 A. Yes.

9 Q. Do you recall accusations from Mr Wertheim that any
10 honest expert should have halted their examination?

11 A. I was here when he said it, yes.

12 Q. Again, do you take from that something more than a
13 mistake?

14 A. Yes.

15 Q. Are you aware of the statements that have been made by
16 Mr Bayle and Mr Dempster on television?

17 A. I don't know if I already said about this but a few days
18 before myself and my colleagues -- the SCRO Four, if you
19 like -- were due to give evidence at the Justice 1
20 Committee, there was a call that there had been another
21 mis-identification. I don't want to use the name
22 because I see it was redacted but if I say AN Other,
23 Mr AN Other. There was a mistake, a mis-identification,
24 in this case not made by myself or my colleagues but a
25 lady who had come to us from Northern Ireland, a

1 gentleman who had come to us from Wales and Mr Geddes.
2 So it was three people who were basically being accused
3 of having made another mis-identification.

4 Mr Bayle went on Newsnight that Thursday night, I
5 think it was, saying how basically the place should be
6 closed down, that it was a byword for incompetence.
7 That was also reported in, I think, the Glasgow Herald.
8 But there was no way to repudiate what had been said
9 before myself and my colleagues gave evidence at
10 Justice 1 on 30th May 2006.

11 Mr Alec Newall(?), who was a supporter of the
12 McKies, brought this up at Justice 1 saying, "There you
13 are, there's been another mis-identification, shut the
14 place down". Well, I think it was Mr Bayle said, "Shut
15 the bloody place down. It's a byword for incompetence".

16 The mark itself was sent to the Metropolitan Police
17 and they agreed it was a palmar mark. I had never seen
18 it before but apparently it was a mark that a trainee
19 should be able to identify. There was many, many
20 characteristics but I can't speak to that because I
21 don't believe I've seen it. So as I say a palm mark and
22 it was just a few days before we were due to give
23 evidence at Justice 1.

24 Subsequently, the Metropolitan Police decided that
25 it was not a mis-identification and I think on Newsnight

1 Mr Bayle had said that he had the backing of Mr John
2 MacLeod and an officer from Aberdeen Fingerprint Bureau
3 and it later transpired it was Gary Dempster, who had
4 given his backing to basically Mr Bayle and Mr MacLeod
5 that it was a mis-identification and it wasn't. So if
6 that's the case ...

7 Q. Is there any truth to any of the allegations that these
8 individuals and others have levelled at you and your
9 colleagues?

10 A. No, there's not.

11 MR HOLMES: Thank you very much, Mr MacPherson.

12 **Re-examined by MR MOYNIHAN**

13 MR MOYNIHAN: Mr MacPherson, I just want to tidy up two
14 particular points of detail arising from today.

15 Earlier on my learned friend Mr Smith was asking you
16 about the charted enlargements that you produced in
17 court. We have already asked you about the accuracy or
18 inaccuracy of those charting enlargements and, in
19 particular, the accuracy or inaccuracy of the charting
20 PC.

21 At one point you mentioned Mr Malcolm Graham.

22 A. Yes, that's right.

23 Q. You said that Mr Graham seemed to be satisfied with the
24 charted enlargements; is that correct?

25 A. I'm only taking that from the understanding that I

1 believe he looked at all the productions in the Asbury
2 case and there was no difficulty regarding the charted
3 enlargements.

4 Q. This is what I want you to address. The reasoning, if I
5 understand it, on page 64 of today's transcript was that
6 you presume Mr Graham had no difficulty with the charted
7 enlargements because he agreed with your identification.

8 A. Yes, that was my assumption, yes.

9 Q. But do you know anything about the evidence that
10 Mr Graham gave?

11 A. No, I don't. In fact, I was surprised. I didn't know
12 he had actually given evidence. It wasn't until -- I
13 can't remember exactly when but it was many months or
14 maybe many years after the fact. I didn't know he had
15 given evidence in the Asbury trial.

16 Q. Let there be no doubt. One of the reasons that I am
17 asking you questions and Miss Carmichael asked you
18 questions about the charting PC was that we at least had
19 a perception that some Scottish Criminal Record Office
20 officers would say that one of the difficulties that
21 happened in the McKie trial had been the chartings
22 produced by the charting PC were discovered to be
23 inaccurate; in other words, not correctly pointing to
24 the points that you relied upon.

25 I understand your position is you were satisfied

1 that they were accurate?

2 A. Yes.

3 Q. If I can bring up on screen then, please, the written
4 statement of Mr Graham which is FI0089 and look at
5 page 9, paragraph 41. I will give you a chance to read
6 that. **(Pause)**

7 Do you see that?

8 A. Yes. I definitely disagree with the very last sentence
9 in particular. I've never prepared any production that
10 I was going to speak to in court in a lackadaisical
11 manner: never.

12 Q. That maybe just his rationalisation but what is of
13 interest to me is he says that:

14 "The enlargement prepared by SCRO were of very poor
15 quality."

16 He is speaking generally, he is not just speaking of
17 the McKie trial:

18 "The enlargements prepared by SCRO were very poor
19 quality. The SCRO enlargements that I saw from time to
20 time in my work were of shocking quality."

21 A. I don't agree with that. I'm sorry.

22 Q. When he gave evidence on 9th July at page 91 of the
23 transcript, he said the enlargements from SCRO were
24 always exceptionally bad.

25 A. Well, I'd have to disagree with him. I think even if

1 you look at my enlargements that I've just prepared for
2 QI2 number 3 Mr David Asbury, that's the sort of
3 standard I would expect from or would send out from
4 SCRO.

5 I don't know if he's -- is he talking specifically
6 about charted enlargements or is he talking about
7 photographic enlargements as well?

8 Q. I can only show you what he says.

9 A. I'm sorry, I don't agree with that at all, no.

10 Q. We are interested insofar as he says:

11 "As an example, lines would mark features that were
12 not present."

13 A. Again, I don't agree with that.

14 Q. If I give you just an example, if we look -- and it
15 happens to be because we are looking at QI2 Marion
16 Ross -- if you could be shown peace production 99.

17 **(Handed)**

18 If we bring up CO0207 and proceed through, please,
19 on this particular copy and see if we can have it high
20 resolution. Proceed through to the charting. I will
21 try to highlight part of the charting. It is a little
22 difficult to do on this particular example brought up on
23 screen but you have the photocopy in front of you that
24 is clear enough.

25 We are now all familiar with points 1, 10 and 16 in

1 the heart of Q12. Number 10, number 1 a bifurcation?

2 A. Yes.

3 Q. Number 16 a short ridge ending forming part of that
4 bifurcation, a spur, and number 10 is the ridge ending
5 beneath it.

6 As you look at the document in front of you -- this
7 is just a poor copy up here, you look at the one in
8 front of you -- does point number 16 in fact point to
9 the tip of the spur? The one on the screen is very
10 poor. Does the booklet in front of you, the point
11 number 16, point to the tip of the spur or in fact to
12 the part of the ridge to the left of it?

13 A. It should be. I admit it should be further up.

14 Q. Mr MacPherson, I did not ask what it should be. You
15 agree with me that on the production in front of you
16 point number 16 does not identify the tip of the spur,
17 but rather identifies a ridge to the left of it.

18 A. Slightly lower, yes. I agree with that, yes.

19 Q. That is just an example. Do you still adhere to the
20 position that the enlargements that you produced,
21 illustrative no doubt, did accurately pinpoint the
22 points that you intended to identify?

23 A. Yes. I was trying to show that that was a ridge ending
24 but obviously it's not quite landed where it should
25 have.

1 Q. Can I tell you that where it has landed perhaps, if I
2 bring up something that is on Mr Mackenzie, if you allow
3 me just a moment ...

4 If I could bring up CO2005H and if we could proceed
5 through. Just stop. Just stop there. If you look on
6 screen just now at the area that is beneath -- that is
7 in the core, the area that you would have as 1, 10, 16,
8 so far as point number 10 is concerned, your point
9 number 10 would seem to coincide with Mr Mackenzie's
10 point number 16?

11 A. Yes, I think so.

12 Q. I find it just a little difficult to see the number of
13 the point that's the one immediately above it but it
14 would seem to be number 13. Is that right? If you
15 allow me just a second.

16 A. It looks like number 12 possibly but it's hard to see.

17 **(Pause)**

18 Q. I have given you the photographic original. Having
19 passed my eye over it it seems to be, as you say, point
20 number 12?

21 A. 12, yes.

22 Q. Would you agree with me that what he has identified as
23 point number 12 is not the spur to the right but in fact
24 the top of the piece of ridge to the left of the spur?

25 A. What it looks like to me is he's identified the

1 bifurcation down, which is our point number .

2 Q. In fact, if you look, please, to the back of the book
3 where there's the legend and look at what he describes
4 as point number 12?

5 A. Bifurcation downward.

6 Q. Can we look at the last page, please, the bifurcation
7 down. So that he has not -- can you go back, please?
8 He has in fact marked the bifurcation down?

9 A. Yes.

10 Q. In A position which would on your production, the Crown
11 production 99, correspond to what in fact you were
12 indicating was the spur to the right?

13 A. Yes, A bifurcation with a ridge ending or sloping in a
14 short distance, yes.

15 Q. Perhaps all taken up by this sort of technical detail is
16 whether by comparing these productions we can see, in
17 particular looking at your production 99, the fact that
18 the charting PC had not correctly identified the spur,
19 had identified another piece of ridge, that you can see
20 the sort of difficulty that was occurring?

21 A. Yes.

22 Q. If we leave that point there, the second point I wanted
23 to ask you about was when my learned friend, again
24 Mr Smith, was asking you about the image FI0311.02.
25 This is the illustration you prepared for me earlier

1 today that has the two bifurcations, one in yellow at
2 the top and the other one that is in amber or whatever
3 colour lower down?

4 A. Yes.

5 Q. Mr Smith was putting to you that there seems to be a
6 discontinuity in the ridge flow between the two
7 bifurcations and you would agree with that?

8 A. Yes.

9 Q. In the transcript at page 122 you said "there's movement
10 in here" but in fact there is no record of the area of
11 movement. Can you actually just mark for me, please,
12 the area of movement that you observed. Presumably it
13 is in QI2 on the left?

14 A. On the left, yes. Something just in that area -- like
15 so (**indicated**).

16 Q. I simply wanted a record of the area of movement so if
17 we could save that, please.

18 MISS BAHRAMI: That's saved as FI0311.05.

19 MR MOYNIHAN: Thank you, sir. I have no further questions.

20 Thank you, Mr MacPherson.

21 THE CHAIRMAN: If I could ask you about one particular
22 matter first, QI2 and the bifurcation that was being
23 drawn to your attention by Mr Smith, that is the one
24 with a what appeared one thin leg and one thicker one.

25 A. Yes.

1 THE CHAIRMAN: I understand your explanation about that
2 would be because it was taken from somebody who was dead
3 at the time that it was taken and, therefore, the
4 procedure would be quite different.

5 A. It's different, yes.

6 THE CHAIRMAN: If you saw a difference like that in the
7 reference mark made in respect of somebody who was
8 living by a standard method, would it cause you any
9 concern then?

10 A. I don't believe it would, sir. Again, it may be just a
11 lack of application of ink or with LiveScan you don't
12 use any ink at all. Maybe the fingers haven't been
13 properly cleaned or whatever when they are put on the
14 platen, the glass, and they are recorded electronically.
15 Personally, no, it wouldn't cause me any difficulty.

16 THE CHAIRMAN: So really the width of ridges is not
17 generally significant?

18 A. I would say not. I mean, in this instance I think
19 there's an explanation for it.

20 THE CHAIRMAN: Yes. It is always there is an explanation.

21 A. Then you accept it.

22 THE CHAIRMAN: On a more general question, as I understand
23 it, among fingerprint experts you are expected to be
24 100 per cent certain when you arrive at a conclusion and
25 any opinion that one has which is 100 per cent certain

1 is not always open to persuasion that you may be wrong.

2 A. Yes, that's correct.

3 THE CHAIRMAN: I am not blaming you, but I am just saying

4 that's the way it seems to be. I got the impression, I

5 hope correctly, that there was almost a sense of

6 irritation when the police asked for Y7 to be checked

7 again because if you and your colleagues were

8 100 per cent sure, there was no need to check it again.

9 A. Well, that's right, sir. I mean, back then, once four

10 people had basically signed a mark and a print up to

11 16-point standard, that normally was the end of it.

12 I've never known -- if you're talking about the blind

13 test, I've never known an exercise like that to have

14 been carried out for an accused person or for anyone

15 else for that matter.

16 THE CHAIRMAN: Yes.

17 A. It was an **ad hoc** decision that was taken by management

18 and I don't think it's ever been used since.

19 THE CHAIRMAN: No, but I can see that if you are

20 100 per cent sure, then you don't need to be

21 100 per cent sure twice over.

22 A. I think maybe you're feel you're slightly you irked that

23 your professionalism has been called into question, but

24 that was a thing put in place by management and I just

25 had to live with it.

1 THE CHAIRMAN: That really leads me on to what Mr Smith was
2 asking you. When you heard there was going to be a
3 challenge and these two other experts were probably
4 going to come to a different conclusion -- and I'm not
5 being critical, I'm just trying to discover -- would
6 your view be, "Well, look, I'm 100 per cent sure and I
7 don't really need to look at why they say I'm wrong
8 because I know I'm right".

9 Is that unfair or would you be curious to see why
10 they were questioning your opinion?

11 A. No, I think that would be a fair assessment.

12 THE CHAIRMAN: What the first?

13 A. Yes.

14 THE CHAIRMAN: Because you know 100 per cent right?

15 A. 100 per cent certain, yes.

16 THE CHAIRMAN: There was no room for others to question it,
17 they couldn't be right?

18 A. Because if you're willing to -- as I said maybe earlier,
19 any comparison you make, whether it's elim, AFR, suspect
20 you have to always remember at the back of your mind
21 that you may end up in court with this comparison. You
22 are dealing with -- we were always taught early on in
23 training you are dealing with the liberty of the
24 individual and you have to be correct.

25 THE CHAIRMAN: The other matter I would like your help with

1 is, in your very considerable experience, how often
2 would you be exposed, if that is the word, to the views
3 of the way other laboratories worked?

4 What I have in mind and I realise that Holland may
5 be quite different and, indeed, Evett & Williams might
6 suggest that, but I can see people wanting or requiring
7 to be 100 per cent sure but some people needing more
8 before they would be 100 per cent sure than others
9 because they would want, like everything in life, people
10 who would want it just so before they can be absolutely
11 satisfied.

12 What I am interested to know is in the long time
13 that you served in this role, would you ever have been
14 exposed to seeing the work of other laboratories and how
15 they came to their conclusions?

16 A. I am trying to think, but basically only in Britain. We
17 had Steve Meager came over and gave us a ridgeology
18 course, a seminar, if you like, but, no, I mean, a busy
19 working bureau, no.

20 One thing that maybe, I don't know, that might come
21 out of the Inquiry, I always felt before we went
22 non-numeric that there should be a level playing field
23 with regards what constitutes counting characteristics
24 for court. I could be wrong but I think other places
25 have, say, a standard of 10 but the 10 that they speak

1 about are not like-for-like with the 16 that we were
2 talking about, the ridge ending or the bifurcation.
3 They may have 10 lakes, islands, spurs which would
4 constitute 12 -- sorry, constitute 20 counting
5 characteristics for court and I always felt before we
6 went non-numeric that even, specifically in Europe,
7 there should be a level playing field of what is a
8 counting characteristic.

9 In 1960 SCRO, when it was set up, had a
10 interpretation that basically ridge unit is unique, so
11 to count for court a bifurcation or a ridge ending was
12 sufficient. 16 may seem a very high threshold and I
13 think, as I said before, other bureaux or people have
14 said, "Well, you would never have identified, say, the
15 Deptford murder, there's only 11 characteristics in
16 that", but when you actually look at that mark there's
17 maybe about 20 characteristics the way we interpret it.

18
19 So I just feel that there should be some form of
20 level playing field. I could be wrong about that. I
21 don't know if people still do count lakes, islands and
22 spurs, the Galton details, as one characteristic whereas
23 we would count it as two. I could be wrong about that.
24 As I say, I've been out of the job for a few years now
25 so I don't know but I think there should be a level

1 playing field.
2 16 seems a high numerical number but it's quite a
3 low threshold when you come to identifying someone and I
4 know that some practitioners were not happy with moving
5 away from the 16-point standard because they felt they
6 were at a low enough threshold; whereas other systems,
7 10 Galton details, it's like a fail-safe system, if you
8 like. It's not a gung ho attitude that I'm talking
9 about, it's just basically I think there should be
10 like-for-like.

11 THE CHAIRMAN: But that conformity would be one of the
12 changes you would have, looking back on your own time,
13 that is a change you would have --

14 A. Yes. I think -- that is something that never, ever
15 happened. It may have happened now. I could be wrong
16 but I think it's something that should be looked at,
17 basically.

18 THE CHAIRMAN: Thank you very much. I am afraid you have
19 had a very long period and I hope we will not have to
20 bother you but we certainly will not bother you next
21 week and thank you for being so patient and for your
22 assistance.

23 A. Can I just say, sir, I'd like to thank the Inquiry for
24 giving me the opportunity but can I hand over these?
25 These are my originals for Terry Kent's image and Peter

1 Swann's. **(Handed)**

2 THE CHAIRMAN: Thank you very much indeed.

3 **(The witness withdrew)**

4 MR MOYNIHAN: I also think somewhere in the hall there is
5 the original from the charting from today that we will
6 collect. Thank you very much.

7 **(The witness withdrew) ^^**

8 THE CHAIRMAN: If Mr McGinnies doesn't mind starting ...

9 **ALEXANDER CHARLES MCGINNIES, affirmed**

10 THE CHAIRMAN: Could we have your full names, please.

11 A. My full name is Alexander Charles McGinnies.

12 THE CHAIRMAN: Take a seat, please, Mr McGinnies.

13 **Examined by MISS CARMICHAEL**

14 Q. Good afternoon, Mr McGinnies. I am afraid you have had
15 a long time waiting today.

16 A. That's okay.

17 Q. I think you have provided a signed statement for the
18 Inquiry already.

19 A. That's correct, yes.

20 Q. Subject to any additions or alterations that you want to
21 make today, are you happy to adopt that as part of your
22 evidence?

23 A. Yes, I am, thank you.

24 Q. I would like to go straight in your statement to
25 paragraph 94. This is FI0193 at page 24.

1 You tell us in your statement that your role is in
2 training. Can we take it that one of the points of
3 training for Fingerprint Examiners is to make sure that
4 they don't miss any identifications that they should be
5 making?

6 A. That would be correct.

7 Q. But it is also important, is it not, to try to make sure
8 that they don't make any identifications that they
9 should not be making?

10 A. That's certainly correct, yes.

11 Q. What you tell us, starting with the passage we have
12 here, is that ACE-V and training in ACE-V is something
13 that you regard as key to that part of the training
14 function?

15 A. Certainly, yes.

16 Q. That is really what I would like to start by asking you
17 about, Mr McGinnies, about how the trainees are trained
18 in analysis, comparison, evaluation and then eventually
19 in relation to verification and what current best
20 practice within SPSA is?

21 A. Certainly.

22 Q. If we could start with the analysis component of ACE-V,
23 could you tell the Chairman, please, just exactly how
24 trainees are taught to do this?

25 A. The analysis part of a print would be when you are

1 dealing with the unknown crime scene mark. The analysis
2 part, we actually use for trainees, we use an ACE-V
3 sheet when they first come into the Bureau. I think I
4 may have examples of those.

5 Q. I think we can bring one up, in fact, at PS0375.

6 I think what we see there is the first page of that.

7 If it helps you to explain to the Chairman how it works,

8 we can perhaps go through that form.

9 A. When a trainee first comes down to the Bureau they are
10 taught regarding the ACE-V process, the methodology we
11 use for taking over prints. The ACE part of it is the
12 analysis of the unknown crime scene mark. This form is
13 something that they fill out right at very start of
14 their training and it helps them to get into the mindset
15 and process of using the same methodology every time, on
16 every occasion they look at a mark. They look at the
17 deposition factors; what surface the mark's left on;
18 what the substance composition is; is it made up of
19 sweat; is it made up of blood; is it left if a surface
20 is glass; what development method has been used to make
21 the mark visible; is it ninhydrin on paper; the
22 deposition pressure that's involved when actually the
23 fingerprint impression has been left. This would help
24 them decide on whether there's any movements or
25 explaining any possible differences in the marks because

1 of deposition pressure. Movement: if there's any
2 movement in the mark, again caused by possibly if it's a
3 sweat mark on glass there might be slippage.

4 The size and orientation of the print should help
5 them -- getting the print the right way up would help
6 them realise what size the print is, if it may be a bit
7 of palm, and again would help them with their digit
8 determination. Again, with pattern and ridge flow this
9 would help them with digit determination and looking at
10 levels of detail.

11 Q. If I can stop you there just at the pattern and ridge
12 flow, what sort of -- it's perhaps slightly hard to read
13 on this copy just what this trainee has written but can
14 you give us some idea, if you can from that, what sort
15 of information they are recording there?

16 A. Actually from that I can't make it out but in pattern
17 and ridge flow they would be looking at -- the first
18 thing you would look at on a mark is to see there is any
19 ridge detail present. That may be the fact that it's
20 been submitted from the scene of mark in a mark
21 enhancement lab and it maybe is a glove mark, it may be
22 just a smudge, there may be no ridge detail to compare.
23 Once they realise there's ridge detail to compare,
24 though we use a holistic approach they will still look
25 at the three levels of detail and the first level of

1 detail would be pattern type and ridge flow, so they'd
2 look to see if they had a pattern.

3 This would assist them in earlier identification or
4 elimination because say if, for instance, the scene of
5 crime mark is clearly a whorl and they had the
6 fingerprint form of a suspect or the elimination form
7 had all arches or all loops they wouldn't want to go any
8 further than that, so the ridge flow and the pattern
9 type would be very important to them at that time.

10 The ridge flow or pattern type would also help them
11 with the next part, which is the finger or palm choice,
12 help them decide where they are going to start looking
13 when they come to doing their comparison stage.

14 The next part we have is anatomical features where
15 we'd look to see if there are creases present, which
16 again would help with the orientation or digit
17 determination; if there are incipient ridges present,
18 which again are part of the holistic approach to using
19 all the information that's within the print; and, again,
20 with scars; and then they have other -- if they had
21 anything, anything unusual happening within the print
22 they may put it there just to help them with their
23 guidance.

24 Detailed observations would -- sorry, the detail's
25 observed next would be any features that are present.

1 Q. What sort of level of detail would one be looking at or
2 should the trainee be looking for at this stage in the
3 analysis?

4 A. Features would go on to -- which is on the reverse of
5 the sheet, was where they start looking at target areas,
6 if they start looking at specific ridge path, ridge
7 endings, bifurcations.

8 The next thing in detail observed would be the
9 tolerance or the clarity. This again ties back to the
10 deposition pressure or any movement they see in the
11 print which would then help them when they come to doing
12 their comparison part and again from that any warnings
13 of disturbances would be in there, if there were any
14 movement through the print, if there were any double
15 touches they would put that there.

16 The whole thing is geared towards them going through
17 a methodical process so they analyse everything in the
18 print before they move on to the next stage of
19 comparison.

20 Q. So if the trainee has thought about all of the matters
21 that we see in the left-hand column there as he or she
22 goes through the analysis, can we take it that he or she
23 will have considered all the things that they should
24 have done in analysing the mark?

25 A. Yes.

1 Q. You wanted to go on to the next page, I think.

2 A. Yes, on the reverse of the ACE-V analysis sheet.

3 Q. Now at the top we see two boxes: target area 1 and
4 target area 2.

5 Can you tell us what these are?

6 A. When the person is doing his analysis, they will next
7 look at specific ridge path, ridge endings and
8 bifurcations. They will draw areas that the eye is
9 naturally drawn to and any unusual features, ridge
10 endings next to bifurcations, lakes and they will draw
11 those on those target areas. These are the areas that,
12 when they come to do their comparison, they are going to
13 look for and again, as I say, it's where the eye is
14 naturally drawn to.

15 Q. So that might be, for example, a relatively limited
16 number of Level 2 Details?

17 A. That's correct. The next part would be the comparison
18 results. So they've done their analysis and they then
19 move on to their comparison.

20 Q. So this is a trainee who is at the stage of looking at
21 prints as well as unknown marks?

22 A. That's correct, yes.

23 Q. If we can stay for the moment simply on the analysis
24 rather than moving on to the comparison stage, there has
25 been some suggestion that when analysing a mark what one

1 might do is take the unknown mark and go through it and
2 in some way mark every, say, Level 2 Detail that one
3 might think one could come to rely on at a later stage
4 before going on to consider known prints or a series of
5 known prints.

6 If I understand the process that we've seen
7 described here, the person carrying out this exercise is
8 not going that far. They are concentrating on a
9 relatively small possible target area of points that
10 spring to the eye immediately?

11 A. Yes. They are taking into consideration all the
12 information that's in the print. As I say, it's almost
13 like starting from a helicopter view and working further
14 and further in until they are actually looking, putting
15 a glass on it and looking for target areas.

16 It's possible that at any one of these stages they
17 will be able to eliminate the print that they are
18 looking at. They will be able to, sorry, discount the
19 print they are looking at, since they may have, as I
20 stated earlier, they may have a whorl and if they are
21 going to compare it and he only has loops that would be
22 enough to end the comparison.

23 If they have -- if it's, for instance, an ulnar
24 loop, they may look and see that the ridge count (that's
25 the number of ridges between the core and the delta) may

1 be four or five on the scene of crime mark but when they
2 look at the responding finger that they are going to
3 compare it may be 15 or 16, so that would end it.

4 So they are working further and further into the
5 mark until they come to, as you say, they put their
6 target area down and then they will start actually with
7 their comparison.

8 Q. The reason I ask you about perhaps more extensive
9 annotation at the analysis stage comes from my
10 reading -- and you will no doubt put me right if it is a
11 wrong reading -- of one of the recommendations in the US
12 Government's OIG report into the Brandon Mayfield affair
13 and that's something you refer to in slightly more than
14 passing, I think, at a later stage in your statement.

15 A. Yes.

16 Q. I think we have chapter 5, the recommendations chapter,
17 on the system at AP0006. I wonder if we could go to
18 page 9 of the pdf which should be 203 as numbered at the
19 bottom. I wonder if we could home in on recommendation
20 11. Sorry, it is a slightly lengthy passage,
21 Mr McGinnies, but I would like to have your comment on
22 it. What it says is:

23 "The OIG recommends that the FBI laboratory consider
24 a refinement of the proposed changes to the
25 documentation requirements in the SOPs [I think we can

1 take that as standard operating procedures]. Although
2 the proposals regarding documentation would require
3 identification of the level 1, 2 and 3 features that
4 contributed to the examiner's conclusion, they do not
5 appear to require any documentation of the analysis
6 phase. Documentation of the features and red flags
7 observed during the analysis phase will help prevent
8 circular reasoning in which features in the known prints
9 can influence an examiner to find such features in the
10 latent print, even though they may not be there."

11 If I can stop there, I take it that that is a danger
12 that you recognise in looking at known prints and
13 reasoning back?

14 A. Yes.

15 Q. If I can carry on:

16 "Where feasible a record should be made of analysis
17 phase of the examination, including recording the
18 location and type (if known) of the features perceived
19 at that phase. Ashbaugh specifically recommends such
20 documentation of the analysis phase, at least for
21 certain complex latent prints. Creation of such a
22 record will help assure that the examiner assigns lesser
23 individualising weight to any features in the latent
24 print that are not discovered until after the exemplar
25 prints are compared, and lesser individualising weight

1 to a Level 2 Detail found in agreement when the examiner
2 cannot determine whether it is a bifurcation or an
3 ending ridge until after he sees the exemplar print."

4 So there seem to be two factors there. There is a
5 suggestion that it would be a good idea to have a
6 documentation of, if I can put it this way, events in
7 the mark to ensure that those events are not reasoned
8 back from the known print and that it would also be a
9 good idea to have documentation of the extent to which
10 the examiner has been able to identify an event in the
11 mark as a bifurcation or a ridge ending before he or she
12 has looked to the known print.

13 Does that make sense to you --

14 A. Yes, it does. That's my reading of it as well, yes.

15 Q. -- that passage.

16 Analysis, certainly as we see it in the process that
17 your trainees are following doesn't seem, if I have
18 understood correctly, to extend as far as either the
19 process or the recommendation for documentation that we
20 see from the OIG here.

21 I wonder if you have any comment on that?

22 A. To the extent of writing -- well, I mean, if we look at
23 the target area drawings, those target area drawings are
24 quite extensive and they might write what area of the
25 print is in, given an orientation through the clock.

1 They don't take extensive notes on recording whether
2 it's a ridge ending or a bifurcation. I feel that what
3 they do gives them a target area enough to go and start
4 looking. I think to take that further and to write it
5 out before looking at the exemplar mark would take time
6 that possibly, as I say, if we do all that for a loop
7 and spend the time doing all of that for a loop and then
8 we look and see its an arch or a whorl then we could
9 have already dispensed with that part of the
10 examination.

11 I think what we do for the ACE-V analysis sheets is
12 certainly what we use in the national model. This is
13 something that the NPIA and ourselves work, in fact, it
14 the national model for the whole of the UK working to
15 the ACE-V methodology in this way. For that being a
16 recommendation from the OIG, I don't know that anywhere
17 has taken it up to that extent.

18 Q. If we take down that particular highlight and perhaps
19 move on to the next passage, perhaps picking up on what
20 I think you are hinting at regarding some of the
21 practicalities, I think something of the nature of this
22 nature was recognised by the OIG and they go on again,
23 if I might read it out:

24 "However, we recognise that creation of a record of
25 the analysis phase could be burdensome and potentially

1 wasteful in the case of [I think this is an acronym for
2 an automated fingerprint search system] IAFIS"?

3 A. Yes.

4 Q. -- "that do not result in identifications, which is a
5 common occurrence. We recommend the following potential
6 solution for this problem: in the case of IAFIS
7 searches, the requirement to fully document the analysis
8 could be postponed until the examiner determines, based
9 on a preliminary non-exhaustive initial comparison, that
10 one of the candidate's exemplars is sufficiently similar
11 to the latent print to warrant a more rigorous
12 comprehensive comparison. At that point, the standard
13 operating procedure would require the examiner to put
14 the exemplar aside and complete the documentation of his
15 analysis of the latent print before proceeding to the
16 comparison and evaluation phases of the examination."

17 A. That certainly puts it far more eloquently than I did.

18 Yes, that's exactly what we do to the extent of ACE-V
19 sheet, yes.

20 Q. Is there ever a stage though when the exemplar (as I
21 think we'd say in this country more, the known print) is
22 put aside and there's then a complete documentation of
23 the analysis phase where all the features that seem to
24 be discernible from the mark on its own are documented
25 and recognised and recorded in some way?

1 A. In early training they are -- the first marks that they
2 are given in early training are marks that are not marks
3 that they mark up on their ACE-V analysis to compare
4 with anything. So what we ask them to do in their
5 earliest training stages is just to say what you see and
6 to put everything down.

7 However, when they go on to making comparisons we
8 revert to this ACE-V analysis and certainly for
9 day-to-day comparisons, no, there's no facility for
10 doing complete comparisons on a mark independent before
11 you look at it against a mark.

12 Q. You are talking really about three separate things
13 there: at a very early stage when trainees are only
14 analysing marks, they may be marking up an unknown mark
15 very fully?

16 A. Yes.

17 Q. When they come to doing comparisons in the way that we
18 have seen with the ACE-V sheet the documentation is
19 about the target group?

20 A. That's correct, yes.

21 Q. But when they move into practice there isn't any
22 documentation, even of the level of detail that we see
23 in the target group drawing on the ACE-V sheet?

24 A. No, that's correct.

25 THE CHAIRMAN: I think we are going to have to interrupt the

1 evidence, Mr McGinnies, until tomorrow to meet at 10.00.

2 **(4.05 pm)**

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

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